

**JANE LEW PUBLIC SERVICE DISTRICT**

**Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)**

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**JANE LEW PUBLIC SERVICE DISTRICT**  
**WATER REVENUE BONDS, SERIES 2009 A**  
**(WEST VIRGINIA DWTRF PROGRAM); AND**  
**WATER REVENUE BONDS, SERIES 2009 B**  
**(WEST VIRGINIA DWTRF PROGRAM/ARRA)**

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**JANE LEW PUBLIC SERVICE DISTRICT**

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF JANE LEW PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$429,399 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA DWTRF PROGRAM), AND NOT MORE THAN \$429,399 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA DWTRF 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, RATIFYING AND CONFIRMING THE ARRA ASSISTANCE AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF JANE LEW PUBLIC SERVICE DISTRICT :

**ARTICLE I**

**STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01. Authority for this Resolution. This Resolution (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted pursuant to the provisions of Chapter 16; Article 13A and Chapter 16, Article 13C 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. Jane Lew Public Service District (the "Issuer") is a public service district and a public corporation and political subdivision of the State of West Virginia in Lewis County of said State.

B. The Issuer presently owns and operates a public waterworks system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer, consisting of improvement to existing waterlines, decommission an existing treatment plant to purchase from West Virginia American Water Company and construction of an extension to serve a small amount of customers near Claylick (collectively, the "Project") (the existing public waterworks system of the Issuer, the Project and any further extensions, additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

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

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds in the total aggregate principal amount of not more than \$858,798 in two series (collectively, the "Series 2009 Bonds"), being the Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), in the aggregate principal amount of not more than \$429,399 (the "Series 2009 A Bonds"), and the Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), in the aggregate principal amount of not more than \$429,399 (the "Series 2009 B Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2009 Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the 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 hereafter 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 construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 Bonds or the repayment of

indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 32 years.

F. It is in the best interests of the Issuer that its Series 2009 Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the West Virginia Bureau for Public Health (the "BPH"), in form satisfactory to the respective parties (the "ARRA Assistance Agreement"), approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding bonds or obligations of the Issuer which will rank on a parity with the Series 2009 A Bonds and the Series 2009 B Bonds as to liens, pledge and source of and security for payment, being the Issuer's Water Revenue Bonds, Series 2004, (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000 (the "Series 2004 Bonds" or "Prior Bonds.")

Prior to the issuance of the Series 2009 Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consents 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 other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest, if any, on the Bonds (as hereinafter defined) and payments into all funds and accounts and other payments provided for herein and in the Prior Resolution, all as such terms are hereinafter defined.

I. The Issuer has complied with all requirements of West Virginia law and the ARRA Assistance Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2009 A Bonds and the Series 2009 B 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 West Virginia Infrastructure and Jobs Development Council and the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2009 A Bonds and the Series 2009 B 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 West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B 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, Chapter 16, Article 13A and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended and in effect on the date of adoption hereof.

"Administrative Fee" means the Administrative Fee required, if any, to be paid pursuant to the ARRA Assistance Agreement for the Series 2009 Bonds.

"ARRA Assistance Agreement" means, collectively, the respective ARRA Assistance Agreement heretofore entered, or to be entered, into by and between the Issuer and the Authority, on behalf of the BPH, providing for the purchase of the Series 2009 A Bonds from the Issuer by the Authority, and by and between the Issuer and the Authority, on behalf of the BPH, providing for the purchase of the Series 2009 B Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 A Bonds and the Series 2009 B 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 BPH under the Act.

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

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

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

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

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

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

"BPH" means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any successor thereto.

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

"Closing Date" means the date upon which there is an exchange of the Series 2009 A Bonds and the Series 2009 B Bonds for all or a portion of the proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds, respectively, 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 Greenhorne & O'Mara, Inc., Fairmont, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System or portion thereof in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

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

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

"DWTRF Regulations" means the DWTRF regulations set forth in the West Virginia Code of State Regulations, as amended from time to time.

"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.

"Grant" means all moneys received by the Issuer 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 Jane Lew Public Service District, a public service district, public corporation and political subdivision of the State of West Virginia, in Lewis County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 A Bonds and the Series 2009 B Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2009 A Bonds Reserve Account and the Series 2009 B Bonds Reserve Account, respectively. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts

resulting from the investment of proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds, respectively, 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 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 canceled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

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

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

"Prior Bonds" means, the Series 2004 Bonds.

"Prior Resolution" means, collectively, the resolutions and supplemental resolutions of the Issuer authorizing the issuance of 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.

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

"Registrar" means the Bond Registrar.

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by the Prior Resolution as the Depreciation Reserve and renamed and continued hereby.

"Reserve Accounts" means, collectively, the respective Reserve Accounts established for the Series 2009 A Bonds, the Series 2009 B Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any Reserve Account for the Prior Bonds, the Series 2009 A Bonds and the Series 2009 B Bonds.

"Revenue Fund" means the Revenue Fund created by the Prior Resolution and continued hereby.

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

"Series 2004 Bonds" means the Issuer's Water Revenue Bonds, Series 2004, (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000.

"Series 2009 Bonds" means collectively, the Series 2009 A Bonds and the Series 2009 B Bonds.

"Series 2009 A Bonds" means the Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) of the Issuer, authorized by this Resolution.

"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 which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

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

"Series 2009 B Bonds" means the Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA) of the Issuer, authorized by this Resolution.

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

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

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

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

"Sinking Funds" means, collectively, the respective Sinking Funds established for the Series 2009 A Bonds, the Series 2009 B Bonds and the Prior Bonds.

"State" means the State of West Virginia.

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

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

"System" means the complete public waterworks system of the Issuer, as extended and improved by the Project, including the existing waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or

hereafter owned, held or used in connection with the System; and shall also include any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the waterworks system from any sources whatsoever.

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

"West Virginia DWTRF Program" means the West Virginia Drinking Water Treatment Revolving Fund program established by the State, administered by the BPH and funded by capitalization grants awarded to the State pursuant to the federal Safe Drinking Water Act, as amended, for the purpose of establishing and maintaining a permanent perpetual fund for the acquisition, construction and improvement of drinking water projects.

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

## ARTICLE II

### **AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT**

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of \$1,005,541, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority and the BPH.

The cost of the Project is estimated not to exceed \$1,005,541, of which approximately \$429,399 will be obtained from proceeds of the Series 2009 A Bonds, approximately \$429,399 will be obtained from proceeds of the Series 2009 B Bonds, \$96,200 will be obtained from an United States Environmental Protection Agency grant and \$50,543 will be obtained from a West Virginia Infrastructure Fund.

### ARTICLE III

#### **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF ARRA ASSISTANCE AGREEMENT**

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2009 A Bonds and the Series 2009 B Bonds, if any, funding reserve accounts for the Series 2009 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 A Bonds and the Series 2009 B Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the Series 2009 A Bonds and the Series 2009 B Bonds of the Issuer. The Series 2009 Bonds shall be issued in two series, each as a single bond, designated respectively as "Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program)," in the principal amount of not more than \$429,399, and "Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA)," in the principal amount of not more than \$429,399, and both shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds remaining after capitalizing interest, if any, on the Series 2009 A Bonds and the Series 2009 B Bonds, and funding the Series 2009 A Bonds Reserve Account and the Series 2009 B Bonds Reserve Account shall be deposited in or credited to the respective Bond Construction Trust Funds established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2009 A Bonds and the Series 2009 B Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the ARRA Assistance Agreement. The Series 2009 A Bonds and the Series 2009 B 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, if any, on the Series 2009 A Bonds and the Series 2009 B Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2009 A Bonds and the Series 2009 B Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2009 A Bonds and the Series 2009 B Bonds. The Series 2009 A Bonds and the Series 2009 B Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the

amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

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

Section 3.04. Authentication and Registration. No Series 2009 A Bond nor Series 2009 B 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 form 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 A Bond and the Series 2009 B 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 Series 2009 A Bonds and the Series 2009 B Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 A Bonds and the Series 2009 B Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2009 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2009 A Bonds and the Series 2009 B Bonds.

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

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

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

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

the Issuer, if any, to pay the Series 2009 A Bonds and the Series 2009 B Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position 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 the 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 Prior Bonds, the Series 2009 A Bonds and the Series 2009 B Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

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

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

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

(FORM OF SERIES 2009 A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
JANE LEW PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND, SERIES 2009 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That on this day \_\_\_\_ of \_\_\_\_\_, 2009, JANE LEW PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Lewis 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 \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The Administrative Fee (as defined in the hereinafter described Bond Legislation) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_, 1, \_\_\_\_\_, as set forth on EXHIBIT B attached hereto.

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated \_\_\_\_\_, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (ii) to pay costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks

system of the Issuer, the Project and any further extensions, additions, betterments and improvements 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 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (I) WATER REVENUE BONDS, SERIES 2004, (UNITED STATES DEPARTMENT OF AGRICULTURE) DATED DECEMBER 16, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$580,000 (THE "SERIES 2004 BONDS"), AND (II) WATER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED \_\_\_\_\_, 2009, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2009 B BONDS"). THE SERIES 2004 BONDS ARE HEREINAFTER REFERRED TO AS THE "PRIOR 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 Prior Bonds and the Series 2009 B 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 on a parity with the Bonds, including the Prior Bonds and the Series 2009 B Bonds; provided however, that so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity

with the Bonds, including Prior Bonds and the Series 2009 B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia (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.

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

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

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

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

[SEAL]

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is 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.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ \_\_\_\_\_

EXHIBIT B

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  
JANE LEW PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2009 B  
(WEST VIRGINIA DWTRF PROGRAM/ARRA)

No. BR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That on this \_\_\_\_ day of \_\_\_\_\_, 2009, JANE LEW PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Lewis 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 \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year commencing \_\_\_\_\_ 1, 200\_\_\_\_, as set forth in the Debt Service Schedule attached as EXHIBIT B hereto and incorporated herein by reference. The Series 2009 B Bonds are not subject to the Administrative Fee (as defined in the hereinafter described Bond Legislation).

This Bond shall bear no interest. Principal installments of this Bond are forgivable quarterly as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated \_\_\_\_\_, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further extensions, additions, betterments and improvements 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 16,

Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (I) WATER REVENUE BONDS, SERIES 2004, (UNITED STATES DEPARTMENT OF AGRICULTURE) DATED DECEMBER 16, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$580,000 (THE "SERIES 2004 BONDS"), AND (II) WATER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA DWTRF PROGRAM), DATED \_\_\_\_\_, 2009, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2009 A BONDS"). THE SERIES 2004 BONDS ARE HEREINAFTER REFERRED TO AS THE "PRIOR 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 Prior Bonds and the Series 2009 A Bonds, 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 on a parity with the Bonds, including the Prior Bonds and the Series 2009 A Bonds; provided however, that so long as there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds and the Series 2009 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia (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.

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

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

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

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

[SEAL]

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is 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.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ \_\_\_\_\_

EXHIBIT B

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

Section 3.12. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority and the BPH the respective amended schedules, the forms of which will be provided by the BPH, setting forth the actual costs of the Project and sources of funds therefor.

#### ARTICLE IV

[RESERVED]

#### ARTICLE V

### **FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF**

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by the Prior Resolution) with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Resolution);
- (2) Renewal and Replacement Fund (established by the Prior Resolution);  
and
- (3) Series 2009 Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by the Prior Resolution) with and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2004 Bonds Reserve Account (established by Prior Resolution);

- (2) Series 2009 A Bonds Sinking Fund;
- (3) Series 2009 A Bonds Reserve Account;
- (4) Series 2009 B Bonds Sinking Fund; and
- (5) 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 monies 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 Revenue Fund, all current Operating Expenses of the System.
- (2) The Issuer shall next, each month, on or before the due date, transfer from the Revenue Fund and remit to the National Finance Office the amount required by Prior Resolution to pay interest on the Series 2004 Bonds.
- (3) The Issuer shall next, each month, simultaneously (i) on or before the due date, transfer from the Revenue Fund and remit to the National Finance Office, the amounts required by the Prior Resolution to pay the principal of the Series 2004 Bonds; (ii) on the first day of each month, 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; and (iii) on the first day of each month, remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, 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 A Bonds Sinking Fund and 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 remit (i) to the Commission the amounts required by the Prior Resolution to be deposited in the Reserve Account for the Prior Bonds; (ii) 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) 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; 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 to the Renewal and Replacement Fund an amount equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Accounts (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies

remaining therein and not permitted to be retained therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose of the System.

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 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 come due, when other monies in the Series 2009 A Bonds Sinking Fund and the Series 2009 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2009 A Bonds Sinking Fund, the Series 2009 B Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account 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 construction of the Project, be deposited in the respective Bond Construction Trust Funds, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2009 A Bonds and 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 or the Series 2009 B Bonds Reserve Account which result in a reduction in the balance of the Series 2009 A Bonds Reserve Account or the Series 2009 B Bonds Reserve Account to below the Series 2009 A Bonds Reserve Requirement or the Series 2009 B Bonds Reserve Requirement, respectively, 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 Prior Bonds, Series 2009 A Bonds and the Series 2009 B 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 respective reserve accounts 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 and the Series 2009 B Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2009 A Bonds 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.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds, the

Series 2009 A Bonds and the Series 2009 B Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 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 and reserve account payments with respect to the Series 2009 A Bonds and the Series 2009 B 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. 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 Administrative Fee as set forth in the Schedule Y attached to the ARRA Assistance Agreement for the Series 2009 B Bonds.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the ARRA Assistance Agreement and submit a copy of said form, together 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 Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in 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 relevant provisions of the Prior Resolution, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

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

## ARTICLE VI

### **BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2009 A Bonds and the Series 2009 B 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, the amount, if

any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 A Bonds for the period commencing on the date of issuance of the Series 2009 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. 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, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 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. From the proceeds of the Series 2009 A Bonds, there shall next be deposited with the Commission in the Series 2009 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2009 A Bonds Reserve Account.

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

E. 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 Bonds Construction Trust 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.

F. 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 Bonds Construction Trust 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.

G. 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 Bonds shall be applied as directed by the BPH.

Section 6.02. Disbursements From the Bond Construction Trust Fund.

On or before the Closing Date, the Issuer shall have delivered to the Authority and the BPH a report listing the specific purposes for which the proceeds of the Series 2009 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for the costs of the Project shall be made monthly.

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

- (A) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (C) Each of such costs has been otherwise properly incurred;  
and
- (D) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the respective Bonds Construction Trust 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 Series 2009 A Bonds and the Series 2009 B Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2009 A Bonds and the Series 2009 B Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2009 A Bonds and the Series 2009 B Bonds or the interest, if any, thereon is Outstanding and unpaid.

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

any, to pay the Series 2009 A Bonds or the Series 2009 B Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of the Series 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 the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2009 A Bonds, the Series 2009 B Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the ARRA Assistance 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 dated March 13, 2009, the Commission Order dated April 7, 2009, and Commission Order dated September 14, 2009 (collectively, the "Order") in Case No. 08-1867-PWD-T-PC-CN.

So long as the Series 2009 A Bonds and the Series 2009 B 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 ARRA Assistance Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2009 A Bonds and the Series 2009 B Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the ARRA Assistance 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 ARRA Assistance Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Resolution. Additionally, so long as the Series 2009 A Bonds and the Series 2009 B Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the BPH, 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 A Bonds and the Series 2009 B Bonds, immediately be remitted to the Commission for deposit in the respective Sinking Funds, and, with the written permission of the Authority and the BPH, or, in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2009 A Bonds and the Series 2009 B Bonds. Any balance remaining after the payment of the Series 2009 A Bonds and the Series 2009 B 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, in writing, determine upon consultation with a professional engineer that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property shall be deposited in the Renewal and Replacement Fund. Payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into such 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 A Bonds and the Series 2009 B Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

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

The Issuer shall give the Authority and the BPH 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 A Bonds and the Series 2009 B Bonds pursuant to this Bond Legislation, except with the prior written consent of the Authority and the BPH under the conditions and in the manner herein provided (unless less restrictive than the provisions of the Prior Resolution).

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

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

- (1) The Bonds then Outstanding;

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

The foregoing limitation may be waived or modified by the written consent of the Holders of the Prior Bonds, representing 75% of the then-outstanding principal indebtedness.

So long as the Series 2009 Bonds are outstanding no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

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

The "estimated average increased annual Net Revenues 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 (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the period for appeal of which has 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. Bonds issued on a parity, 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 Bond. 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 revenues of the System is subject to the prior and superior liens of the Series 2009 A Bonds and the Series 2009 B Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 A Bonds and the Series 2009 B Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this 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 such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

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

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

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any 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 BPH, the Authority, or any other original purchaser of the Series 2009 A Bonds and the Series 2009 B Bonds, and shall mail in each year to any Holder or Holders of the Series 2009 A Bonds and the Series 2009 B Bonds and the Consulting Engineer, requesting the same, an annual report containing the following:

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

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

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

The Issuer shall permit the Authority and the BPH, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Authority and the BPH, 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 Purchaser, the Authority and the BPH with respect to the System pursuant to the Act.

The Issuer shall provide the BPH with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit D of the ARRA Assistance Agreement for the Series 2009 B Bonds or as promulgated from time to time.

Section 7.09. Rates. Prior to the issuance of the Series 2009 A Bonds and the Series 2009 B Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 A Bonds and the Series 2009 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds and the Series 2009 B Bonds, including the Prior Bonds; provided that, in the event amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2009 A Bonds Reserve Account and the Series 2009 B Bonds Reserve Account and any reserve accounts for obligations on a parity with the Series 2009 A Bonds and the Series 2009 B Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 A Bonds and the Series 2009 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds and the Series 2009 B 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 Authority and the BPH 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 Authority and the BPH 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 Authority and the BPH 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 respective ARRA Assistance Agreement, and forward a copy of such report to the Authority and the BPH 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 ARRA Assistance Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the BPH is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

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

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to the Issuer within 60 days of the completion of the Project. The Issuer shall notify the BPH in writing of such receipt.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to the Issuer when the 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 Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the ARRA Assistance Agreement. The Issuer shall notify the BPH in writing of the certified operator employed at the 50% completion stage.

The Issuer will serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer will not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority (the "Authority"). Following completion of the Project the Issuer will certify to the Authority the number of customers added to the System.

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 to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14.     No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be

established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

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

- (1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the ARRA Assistance Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.
- (2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.
- (3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of

construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

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

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the BPH and the Issuer shall verify such insurance prior to commencement of construction. In the event the ARRA Assistance 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. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

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

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service

Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the financing, acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2009 A Bonds and the Series 2009 B Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Reserved.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B Bonds, which statutory mortgage lien shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

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

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority and the BPH 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.

The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

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 15c2-12 (17 CFR Part 240).

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

B. The Issuer shall submit all proposed change orders to the BPH for written approval. The Issuer shall obtain the written approval of the BPH before expending any proceeds of the Series 2009 A Bonds and the Series 2009 B 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 BPH before

expending any proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the Authority and the BPH 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, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank, or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2009 A Bonds and the Series 2009 B Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2009 A Bonds and the Series 2009 B 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 governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2009 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the BPH, 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, 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 IX

### **DEFAULT AND REMEDIES**

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

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any series of the Series 2009 A Bonds and the Series 2009 B Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2009 A Bonds and the Series 2009 B Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 A Bonds and the Series 2009 B Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Resolution.

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 Series 2009 A Bonds and the Series 2009 B Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2009 A Bonds and the Series 2009 B Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2009 A Bonds and the Series 2009 B Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2009 A Bonds and the Series 2009 B Bonds shall be on a parity with each other and with those of the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2009 A Bonds and the Series 2009 B Bonds 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 the Series 2009 A Bonds and the Series 2009 B Bonds shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Series 2009 A Bonds and the Series 2009 B 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 Series 2009 A Bonds and the Series 2009 B 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 Series 2009 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 A Bonds and the Series 2009 B Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 A Bonds and the Series 2009 B Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 A Bonds and the Series 2009 B 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 therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Series 2009 A Bonds and the Series 2009 B Bonds, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest, if any, on the Series 2009 A Bonds and the Series 2009 B 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 A Bonds and the Series 2009 B Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

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

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

Section 11.05. Notices. All notices to be sent to the Issuer, the Authority or the BPH shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

ISSUER:

Jane Lew Public Service District  
Post Office Box 845  
Jane Lew, West Virginia 26378  
Attention: Chairman

AUTHORITY:

Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311-1571  
Attention: Director

BPH:

West Virginia Bureau for Public Health  
Capitol & Washington Streets  
One Davis Square, Suite 200  
Charleston, West Virginia 25301  
Attention: Environmental Engineering

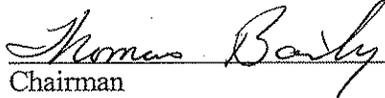
All notices to be sent to the BPH hereunder, shall also be sent to the Authority.

Section 11.06. Conflicting Provisions Repealed: Prior Resolution. Except for the Prior Resolution, all orders, ordinances or resolutions, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict, hereby repealed; provided that, this Section shall not be applicable to the Prior Resolution. In the event of any conflict between this Resolution and the Prior Resolution, the Prior Resolution shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

Section 11.07. 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 11.08. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 8th day of October, 2009.

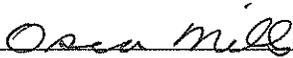
  
Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board  
of JANE LEW PUBLIC SERVICE DISTRICT on the 8th day of October, 2009.

Dated: October 23, 2009.

[SEAL]

  
Secretary

09.30.09  
448300.00003

EXHIBIT A

ARRA Assistance Agreement included in bond transcript as Document 3.

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA DWTRF PROGRAM) AND WATER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA DWTRF PROGRAM/ARRA), OF JANE LEW PUBLIC SERVICE DISTRICT; APPROVING AND RATIFYING THE ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Governing Body") of Jane Lew Public Service District (the "Issuer") has duly and officially adopted a bond resolution, on October 8, 2009 (the "Bond Resolution" or the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF JANE LEW PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$429,399 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA DWTRF PROGRAM) AND NOT MORE THAN \$429,399 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA DWTRF 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, RATIFYING AND CONFIRMING THE ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Resolution provides for the issuance of Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) and Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), of the Issuer (collectively, the "Bonds" and individually, the "Series 2009 A Bonds" and the "Series 2009 B Bonds"), in the respective aggregate principal amounts not to exceed \$429,399 and \$429,399, and has authorized the execution and delivery of the ARRA Assistance Agreement relating to the Series 2009 A Bonds, and the Series 2009 B Bonds, by and between the Issuer and the Authority, on behalf of the BPH (the "ARRA Assistance Agreement"), all in accordance with Chapter 16, Article 13A and Chapter 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Resolution it is provided that the form of the ARRA Assistance Agreement and the exact principal amounts, dates, maturity dates, redemption provisions, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

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

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the ARRA Assistance Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the ARRA Assistance Agreement be approved and entered into by the Issuer, that the exact principal amounts, the dates, the maturity dates, the redemption provisions, the interest rates, the interest and principal payment dates and the sale prices of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF JANE LEW PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Bond Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the Issuer:

A. Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$429,399. The Series 2009 A Bonds shall be dated the date of delivery thereof, shall finally mature December 1, 2040, 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, and to and including December 1, 2040, and in the amounts as set forth in the "Schedule Y" attached to the Series 2009 A ARRA Assistance 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 BPH, and upon payment of the redemption premium, if any, and otherwise in compliance with the Series 2009 A ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2009 A Bonds. The Series 2009 A Bonds are not subject to the Administrative Fee.

B. Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of \$429,399. 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 forgivable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, and to and including December 1, 2020, and in the amounts as set forth in the "Schedule Y" attached to the Series 2009 B ARRA Assistance 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 BPH, and upon payment of the redemption premium, if any, and otherwise in compliance with the Series 2009 B ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2009 B Bonds. The Series 2009 B Bonds are not subject to the Administrative Fee.

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

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

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

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

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

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

Section 8. Series 2009 B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 B Bonds Sinking Fund as capitalized interest.

Section 9. Series 2009 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 A Bonds Reserve Account.

Section 10. Series 2009 B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 B Bonds Reserve Account.

Section 11. The balance of the proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds shall be deposited in or credited to the Series 2009 Bonds Construction Trust Fund as received from time to time for payment of costs of the Project, including, without limitation, costs of issuance of the Series 2009 A Bonds and the Series 2009 B Bonds and related costs.

Section 12. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds hereby and by the Bond Resolution approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the ARRA Assistance Agreement on or about October 23, 2009.

Section 13. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 14. The Issuer does hereby ratify, approve and accept all contracts relating to the financing, acquisition and construction of the Project.

Section 15. The Issuer hereby determines that it is in the best interest of the Issuer to invest all monies in the funds and accounts established by the Bond Resolution held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts, until further directed in writing by the Issuer. Monies in the Sinking Funds and the Reserve Accounts for the Bonds shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 16. The Special Conditions of the ARRA Assistance Agreement are attached as Exhibit A and hereby incorporated herein.

Section 17. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 8th day of October, 2009.

JANE LEW PUBLIC SERVICE DISTRICT

By: Thomas Bailey  
Its: Chairman

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of JANE LEW PUBLIC SERVICE DISTRICT on the 8th day of October, 2009.

Dated: October 23, 2009.

[SEAL]

  
Secretary

09.30.09  
448300.00003

CH5202701.2

## EXHIBIT A

### SPECIAL CONDITIONS – ARRA FUNDED PROJECTS

A. PUBLIC RELEASE REQUIREMENT – The Local Entity 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 Entity 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 Entity.

C. BUY AMERICAN CERTIFICATION – The Local Entity 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 Entity shall develop and implement an asset management plan in accordance with guidelines issued by BPH and as approved by BPH.

E. CONTRACTS – The Local Entity shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Entity must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING – The Local Entity shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by BPH.

H. PURCHASING REQUIREMENTS – The Local Entity 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 Entity 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 BPH, the Local Entity shall provide certifications as to compliance.

J. REPORTING – The Local Entity 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 BPH.

K. INSPECTOR GENERAL REVIEWS – The Local Entity 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 Entity.

L. FALSE CLAIMS – The Local Entity 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 Entity 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 Entity 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 Entity 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 Entity 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](http://www.recovery.gov), and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Entity agrees to make good faith efforts whenever procuring

construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Entity shall provide BPH with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Entity 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 Entity 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 Entities, 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 Entity 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 Entity shall notify the Authority and the BPH of any action to reduce rates during the eighteen months following completion of construction of the Project.

DWTRF – ARRA  
(08/09)

ARRA ASSISTANCE AGREEMENT

THIS DRINKING WATER TREATMENT REVOLVING FUND ARRA ASSISTANCE AGREEMENT (the “ARRA Assistance Agreement”), made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the “Authority”), acting under the direction of the WEST VIRGINIA BUREAU FOR PUBLIC HEALTH, a division of the West Virginia Department of Health and Human Resources (the “BPH”), and the local entity designated below (the “Local Entity”).

JANE LEW PUBLIC SERVICE DISTRICT  
(2006W-921/09DWTRFA026)

WITNESSETH:

WHEREAS, the United States Congress under Section 1452 of the Safe Drinking Water Act, as amended (the “Safe Drinking Water Act”), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining drinking water treatment revolving funds for the construction, acquisition and improvement of drinking water systems;

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 16, Article 13C of the Code of West Virginia, 1931, as amended (the “Act”), the State of West Virginia (the “State”) has established a drinking water treatment revolving fund program (the “Program”) to direct the distribution of loans and funding assistance to eligible Local Entities pursuant to the Safe Drinking Water Act and the ARRA;

WHEREAS, under the Act the BPH 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 BPH 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, the Act establishes a permanent perpetual fund known as the "West Virginia Drinking Water Treatment Revolving Fund" (hereinafter the "Fund"), which fund is to be administered and managed by the Authority under the direction of the BPH;

WHEREAS, pursuant to the Act, the Authority and BPH are empowered to make loans from the Fund to Local Entities for the acquisition or construction of drinking water projects by such Local Entities, all subject to such provisions and limitations as are contained in the Safe Drinking Water Act, the ARRA and the Act;

WHEREAS, the Local Entity constitutes a local entity as defined by the Act;

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

WHEREAS, the Local Entity is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a drinking water 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 Entity;

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

WHEREAS, the Local Entity has completed and filed with the Authority and BPH an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction 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 BPH are willing to lend the Local Entity the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Entity with moneys held in

the Fund, subject to the Local Entity'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 Entity, BPH 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 entity," and "project" have the definitions and meanings ascribed to them in the Act, the ARRA, or in the DWTRF 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 BPH to the Local Entity 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 Entity required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Entity 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.

1.8 "Program" means the drinking water facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Safe Drinking Water Act and administered by BPH.

1.9 "Project" means the drinking water project hereinabove referred to, to be constructed or being constructed by the Local Entity in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Entity 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 "DWTRF Regulations" means the regulations set forth in the West Virginia Code of State Regulations.

1.11 "System" means the drinking water system owned by the Local Entity, 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 Entity by the Consulting Engineers, the BPH 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 Entity 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 Entity 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 Entity, 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 BPH and the Authority.

2.4 The Local Entity agrees that the Authority and BPH 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 Entity further agrees that the Authority and BPH 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 BPH with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Entity 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 Entity shall permit the Authority and BPH, 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 Entity shall submit to the Authority and BPH 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 Entity agrees that it will permit the Authority and BPH and their respective agents to have access to the records of the Local Entity 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 Entity 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 Entity 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 BPH

and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Entity, the Local Entity or (at the option of the Local Entity) 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 Entity, 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 Entity on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding.

2.9 The Local Entity shall provide and maintain competent and adequate engineering services satisfactory to the Authority and BPH 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, BPH and the Local Entity 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 Entity shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Local Entity shall notify BPH in writing of such receipt.

2.10 The Local Entity shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to BPH when the Project is 90% completed. The Local Entity shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Entity 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 Entity shall notify BPH in writing of the certified operator employed at the 50% completion stage.

2.11 The Local Entity hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, BPH 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 Entity, 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 A and incorporated herein by reference, and forward a copy by the 10th of each month to BPH and the Authority.

2.13 The Local Entity, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward such forms to BPH in compliance with the Local Entity's construction schedule.

2.14 The Local Entity shall serve the additional customers, if any, at the location(s) as set forth in Schedule X. The Local Entity shall not reduce the number of additional customers served by the project without the prior written approval of the Authority Board. Following completion of the Project the Local Entity shall certify to the Authority the number of customers added to the System.

2.15 The Local Entity shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia (the "PSC").

### ARTICLE III

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

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

(b) The Local Entity 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 Entity 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 Entity 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 Entity 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 BPH shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit C;

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

(f) The Local Entity shall have obtained all requisite orders of and approvals from the PSC and the West Virginia Infrastructure and Jobs Development Council (the "IJDC") 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 BPH shall have received an opinion of counsel to the Local Entity, which may be local counsel to the Local Entity, bond counsel or special PSC counsel but must be satisfactory to the Authority and BPH, to such effect;

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

(h) The Local Entity 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 BPH shall have received an opinion of counsel to the Local Entity, which may be local counsel to the Local Entity, bond counsel or special PSC counsel but must be satisfactory to the Authority and BPH, 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 BPH shall have received a certificate of the accountant for the Local Entity, or such other person or firm experienced in the finances of local entities and satisfactory to the Authority and BPH, 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 BPH shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of drinking water projects and satisfactory to the Authority and BPH, to such effect, such certificate to be in form and substance satisfactory to the Authority and BPH, and evidence satisfactory to the Authority and BPH 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 BPH, including the DWTRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Local Entity and the Local Entity shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Entity 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 Entity 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, BPH and the Local Entity. 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.

3.5 The Local Entity understands and acknowledges that it is one of several local entities which have applied to the Authority and BPH for loans from the Fund to finance drinking water projects and that the obligation of the Authority to make any such loan is subject to the Local Entity'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 Entity 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 execution of this ARRA Assistance Agreement, the Authority may purchase the bonds of other local entities set out in the State Project Priority List, as defined in the DWTRF Regulations. The Local Entity further specifically recognizes that all loans will be originated in conjunction with the DWTRF Regulations and with the prior approval of BPH or such later date as is agreed to in writing by the BPH.

3.6 The Local Entity shall provide BPH with the appropriate documentation to comply with the special conditions regarding the public release requirements established by federal and State regulations as set forth in Exhibit D 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 Entity shall, as one of the conditions of the Authority and BPH to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Entity 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) 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; 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 Entity has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues, as applicable, of the System as provided in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the

Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Local Entity will complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the DWTRF Regulations, 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 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 the 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 Entity 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 BPH;

(vi) That the Local Entity 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 Entity 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 Entity 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 Entity will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Entity shall annually, within six months of the end of the fiscal year, 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 BPH. If the Local Entity receives \$500,000 or more (in federal funds) in a fiscal year, the audit shall be obtained in accordance with the Single Audit Act (as amended from time to time) and the applicable OMB Circular (or any successor thereto). Financial statement audits are required once all funds have been received by the Local Entity. The audit 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 Entity's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Entity 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 BPH 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 Entity 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

funding of such Local Entity, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and BPH, 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 Entity may authorize redemption of the Local Bonds with 30 days written notice to BPH and 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 Entity 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 Entity shall complete the Monthly Payment Form, attached hereto as Exhibit E 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 Entity shall make monthly payments to the Commission by electronic transfer;

(xviii) That, if required by the Authority and BPH and, 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 Entity 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 Entity 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 BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and BPH 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 Entity shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate its services to any customer of the System who is delinquent in payment of charges for services provided by

the System and will not restore such services until all delinquent charges for the services of the System have been fully paid; and

(xxi) That the Local Entity shall submit all proposed change orders to the BPH for written approval. The Local Entity shall obtain the written approval of the BPH 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 Entity shall obtain the written approval of the BPH before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Entity 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 F.

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

4.3 At least two and one half percent (2.5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the Authority monthly as required by the Local Entity 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 Entity, the BPH 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 DWTRF 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 Entity. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the DWTRF Regulations, the Local Entity agrees to pay from time to time, if required by the Authority and BPH, the Local Entity's allocable share of the reasonable administrative expenses of the BPH and the Authority relating to the Program. Such administrative expenses shall be determined by the BPH and the Authority and shall include, without limitation, Program expenses, legal fees paid by the BPH and the Authority and fees paid for any bonds or notes to be issued by the Authority for contribution to 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 Entity; Imposition and Collection of User Charges; Payments To Be Made by Local Entity to the Authority

5.1 The Local Entity 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 Entity 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 Entity 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 Entity 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 Entity hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Entity, 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 Entity

6.1 The Local Entity hereby acknowledges to the Authority and BPH its understanding of the provisions of the Act, vesting in the Authority and BPH certain powers, rights and privileges with respect to drinking water projects in the event of default by local entities in the terms and covenants of this ARRA Assistance Agreement, and the Local Entity hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Entity 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 Entity hereby warrants and represents that all information provided to the Authority and BPH 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 BPH 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 BPH by the Local Entity in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Entity 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 DWTRF Regulations or this ARRA Assistance Agreement.

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

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

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

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

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

## 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 Entity 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 Entity 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 Entity from either the Authority or BPH;

(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 the BPH if the Local Entity has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and BPH pursuant to Section 6.2 hereof; or

(iv) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Entity to the Authority or BPH.

In the event funds are not available to make all of the Loan, the responsibility of the Authority and BPH to make all the Loan is terminated; provided further that the obligation of the Local Entity to repay the outstanding amount of the Loan made by the Authority and BPH is not terminated due to such non-funding on any balance of the Loan. The BPH agrees to use its best efforts to have the amount contemplated under this ARRA Assistance Agreement included in its budget. 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.

JANE LEW PUBLIC SERVICE DISTRICT

(SEAL)

By: Thomas Bailey  
Its: Chairman  
Date: October 23, 2009

Attest:

Osman Mills  
Its: Secretary

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

By: [Signature]  
Its: Executive Director  
Date: October 23, 2009

Attest:

Carol A. Cummings  
Its: Secretary-Treasurer

EXHIBIT A

MONTHLY FINANCIAL REPORT

Name of Local Entity \_\_\_\_\_  
 Name of Bond Issue(s) \_\_\_\_\_  
 Type of Project \_\_\_\_\_ Water \_\_\_\_\_ Wastewater \_\_\_\_\_  
 Fiscal Year \_\_\_\_\_ Report Month \_\_\_\_\_

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

\_\_\_\_\_  
**Name of Person Completing Form**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Telephone**

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1 You will need a copy of the current fiscal year budget adopted by the Local Entity 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 Entity 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 Entity.

**The Local Entity must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10<sup>th</sup> 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 B**

**PAYMENT REQUISITION FORM**

<b>- WATER TREATMENT UPGRADE PROJECT</b>									
<b>DWTRF FUNDING</b>									
		APPROVED		REVISED	PAID	REQUESTED		PAID TO	BALANCE
	CLASSIFICATION	BUDGET	ADJUSTMENTS	BUDGET	PRIOR TO THIS DRAW	THIS REQUEST		DATE	REMAINING
1	Construction & Cons. Cont.								
	a. Contract 1 - Contractor Name	0	0	0	0	0	0	0	0
	b. Contract 2 - Contractor Name	0	0	0	0	0	0	0	0
	c. Contract 3 - Contractor Name	0	0	0	0	0	0	0	0
	g. Construction contingency	0	0	0	0	0	0	0	0
2	Technical Services								
	a. Basic Engineering Design	0	0	0	0	0	0	0	0
	b. Inspection	0	0	0	0	0	0	0	0
	c. Special Services	0	0	0	0	0	0	0	0
3	Legal/Fiscal								
	a. Legal	0	0	0	0	0	0	0	0
	b. Accounting	0	0	0	0	0	0	0	0
4	Administrative								
	a. Administrative Expenses	0	0	0	0	0	0	0	0
	b. Tap Fees	0	0	0	0	0	0	0	0
	c. Accounting	0	0	0	0	0	0	0	0
	d. Registrar Fee	0	0	0	0	0	0	0	0
5	Sites & Other Lands	0	0	0	0	0	0	0	0
6	WV DOH Fees	0	0	0	0	0	0	0	0
7	Interest	0	0	0	0	0	0	0	0
8	Contingency	0	0	0	0	0	0	0	0
9	Miscellaneous (Equipment)	0	0	0	0	0	0	0	0
10	TOTAL of Lines 1 through 9	0	0	0	0	0	0	0	0

<b>OTHER FUNDING</b>									
		APPROVED		REVISED	PAID	REQUESTED		PAID TO	BALANCE
	CLASSIFICATION	BUDGET	ADJUSTMENTS	BUDGET	PRIOR TO THIS DRAW	THIS REQUEST		DATE	REMAINING
1	Construction & Cons. Cont.								
	a. Contract 1 - Contractor Name	0	0	0	0	0	0	0	0
	b. Contract 2 - Contractor Name	0	0	0	0	0	0	0	0
	c. Contract 3 - Contractor Name	0	0	0	0	0	0	0	0
	g. Construction contingency	0	0	0	0	0	0	0	0
2	Technical Services								
	a. Basic Engineering Design	0	0	0	0	0	0	0	0
	b. Inspection	0	0	0	0	0	0	0	0
	c. Special Services	0	0	0	0	0	0	0	0
3	Legal/Fiscal								
	a. Legal	0	0	0	0	0	0	0	0
	b. Accounting	0	0	0	0	0	0	0	0
4	Administrative								
	a. Administrative Expenses	0	0	0	0	0	0	0	0
	b. Tap Fees	0	0	0	0	0	0	0	0
	c. Accounting	0	0	0	0	0	0	0	0
	d. Registrar Fee	0	0	0	0	0	0	0	0
5	Sites & Other Lands	0	0	0	0	0	0	0	0
6	WV DOH Fees	0	0	0	0	0	0	0	0
7	Interest	0	0	0	0	0	0	0	0
8	Contingency	0	0	0	0	0	0	0	0
9	Miscellaneous (Equipment)	0	0	0	0	0	0	0	0
10	TOTAL of Lines 1 through 9	0	0	0	0	0	0	0	0

<b>TOTAL FUNDING</b>									
		APPROVED		REVISED	PAID	REQUESTED		PAID TO	BALANCE
	CLASSIFICATION	BUDGET	ADJUSTMENTS	BUDGET	PRIOR TO	THIS		DATE	REMAINING
					THIS DRAW	REQUEST			
1	Construction & Cons. Cont.								
	a. Contract 1 - Contractor Name	0	0	0	0	0		0	0
	b. Contract 2 - Contractor Name	0	0	0	0	0		0	0
	c. Contract 3 - Contractor Name	0	0	0	0	0		0	0
	g. Construction contingency	0	0	0	0	0		0	0
2	Technical Services								
	a. Basic Engineering Design	0	0	0	0	0		0	0
	b. Inspection	0	0	0	0	0		0	0
	c. Special Services	0	0	0	0	0		0	0
3	Legal/Fiscal								
	a. Legal	0	0	0	0	0		0	0
	b. Accounting	0	0	0	0	0		0	0
4	Administrative								
	a. Administrative Expenses	0	0	0	0	0		0	0
	b. Tap Fees	0	0	0	0	0		0	0
	c. Accounting	0	0	0	0	0		0	0
	d. Registrar Fee	0	0	0	0	0		0	0
5	Sites & Other Lands	0	0	0	0	0		0	0
6	WV DOH Fees	0	0	0	0	0		0	0
7	Interest	0	0	0	0	0		0	0
8	Contingency	0	0	0	0	0		0	0
9	Miscellaneous (Equipment)	0	0	0	0	0		0	0
10	TOTAL of Lines 1 through 9	0	0	0	0	0		0	0

EXHIBIT C

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 used herein and 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 between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), 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 BPH and any change orders approved by the Issuer, BPH 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 B attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions

<sup>1</sup>If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then

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 BPH 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) as of the effective date thereof<sup>2</sup>, 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; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by BPH; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

[SEAL]

By:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

insert the following: [and in reliance upon the opinion of \_\_\_\_\_, Esq.] and delete "my firm has ascertained that".

<sup>2</sup>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 (ix).

## EXHIBIT D

### SPECIAL CONDITIONS – BASE PROGRAM

The Local Entity 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.

The Local Entity shall complete the form attached as Exhibit D-1 and submit to the BPH prior to the Closing.

### SPECIAL CONDITIONS – ARRA FUNDED PROJECTS

The Local Entity shall include the following covenants in its bond authorizing documents:

A. **PUBLIC RELEASE REQUIREMENT** – The Local Entity 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 Entity 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 Entity.

C. **BUY AMERICAN CERTIFICATION** – The Local Entity 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 Entity shall develop and implement an asset management plan in accordance with guidelines issued by BPH and as approved by BPH.

E. CONTRACTS – The Local Entity shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Entity must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Entity shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by BPH.

H. PURCHASING REQUIREMENTS – The Local Entity 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 Entity 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 BPH, the Local Entity shall provide certifications as to compliance.

J. REPORTING – The Local Entity 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 BPH.

K. INSPECTOR GENERAL REVIEWS – The Local Entity 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 Entity.

L. FALSE CLAIMS – The Local Entity 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 Entity 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 Entity 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 Entity 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 Entity 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](http://www.recovery.gov), and any subsequent guidance documents issued by OMB.

P. **DISADVANTAGED BUSINESS ENTERPRISE** – Pursuant to 40 CFR, Section 33.301, the Local Entity agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Entity shall provide BPH with MBE/WBE participation reports semi-annually.

Q. **CIVIL RIGHTS** – The Local Entity 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 Entity 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 Entities, 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 Entity 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 Entity shall notify the Authority and the BPH of any action to reduce rates during the eighteen months following completion of construction of the Project.

# EXHIBIT D-1

For OSBR Use Only  
Grant Number: \_\_\_\_\_

**West Virginia Department of Health and Human Resources**  
**Subrecipient (Grantee) Information Form**  
 Please see the instructions for completion of the Subrecipient (Grantee) Information Form

**1. Subrecipient (Grantee) Name**

**2. Subrecipient (Grantee) Location (Street Address, City State and Zip Code)**

**3. Subrecipient (Grantee) 9-Digit DUNS Number**

**4. Subrecipient (Grantee) Type (Please check one box only)**

<input type="checkbox"/> State Government <input type="checkbox"/> County Government <input type="checkbox"/> City or Township Government <input type="checkbox"/> Special District Government <input type="checkbox"/> Regional Organization <input type="checkbox"/> U.S. Territory or Possession <input type="checkbox"/> Independent School District <input type="checkbox"/> Public/State Controlled Institution of Higher Learning <input type="checkbox"/> Indian/Native American Tribal Government (Federally Recognized) <input type="checkbox"/> Indian/Native American Tribal Government (Other than Federally Recognized) <input type="checkbox"/> Indian/Native American Tribally Designated Organization <input type="checkbox"/> Public/Indian Housing Authority	<input type="checkbox"/> Nonprofit with 501(C)3 IRS Status (Other than Institution of Higher Education) <input type="checkbox"/> Nonprofit without 501(C)3 IRS Status (Other than Institution of Higher Education) <input type="checkbox"/> Private Institution of Higher Education <input type="checkbox"/> Individual <input type="checkbox"/> For-Profit Business (Other than Small Business) <input type="checkbox"/> Small Business <input type="checkbox"/> Hispanic-serving Institution <input type="checkbox"/> Historically Black Colleges and Universities (HBCUs) <input type="checkbox"/> Tribally Controlled Colleges and Universities (TCCUs) <input type="checkbox"/> Alaska Native and Native Hawaiian Serving Institutions <input type="checkbox"/> Non-domestic (non-US) entity <input type="checkbox"/> Other [Please explain] _____
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**5. Primary Performance Location (Street Address, City State and Zip Code)**

**6. Names, Titles and Total Compensation for the 5 Most Highly Compensated Officers**

Officer Name	Title	Total Compensation

**NOTE: This form must be signed by an individual no lower than the Executive Director or Chief Financial Officer.**

Printed Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_ Phone # \_\_\_\_\_

OSBR Form A-1000

## EXHIBIT D-2

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**ADDENDUM  
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT  
AMERICAN RECOVERY AND REINVESTMENT ACT**

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### A. Purpose and Summary

The purpose of this Addendum is to ensure that recipients of grant awards from the West Virginia Department of Health and Human Resources understand their responsibilities under the Federal Funding Accountability and Transparency Act of 2006 and the American Recovery and Reinvestment Act of 2009, as may be applicable.

As part of these responsibilities, and as condition for execution of this Grant Agreement, Grantees must remain current in the Central Contractor Registration (CCR) database (<http://www.ccr.gov>) at all times during which they have active DHHR grant awards. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients and subrecipients. Grantees must update or renew their CCR registration at least once per year to maintain an active status.

In order to register in the Central Contractor Registration database, Grantees must first obtain a valid Data Universal Numbering System (DUNS) Number from Dun and Bradstreet at <http://www.dnb.com>. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and for validating the address and point of contact information for Federal assistance applicants, recipients and subrecipients.

Additional information about obtaining a DUNS number and maintaining registration with the CCR are included on the websites referenced above and on the attached instructions for Completion of the Subrecipient (Grantee) Information Form. As further explained within this Addendum, the attached Subrecipient (Grantee) Information Form must be completed by the Grantee and submitted to the DHHR during the negotiation (pre-award) stage of the grant cycle.

### B. Federal Funding Accountability and Transparency Act of 2006

The Federal Funding Accountability and Transparency Act of 2006, Public Law 109-282, hereinafter referred to as the Transparency Act, is an Act of Congress that requires full disclosure to the public of all entities or organizations receiving Federal funds. The Transparency Act directed the Office of Management and Budget (OMB), by January 1, 2008, to ensure the existence and operation of a single searchable website, accessible to the public at no cost, which includes for each Federal award:

1. The amount of the award;
2. Information including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source, and an award title descriptive of the purpose of each funding action;
3. The name and location of the recipient and the primary location of performance;
4. A unique identifier of the recipient and any parent agency (DUNS Number); and
5. Any other relevant information specified by the OMB.

The Transparency Act also required the OMB, by July 1, 2007, to commence a pilot program to test the collection of and access to data about subgrants and to determine how to implement a subaward-reporting program across the Federal Government. Thereafter, the Transparency Act required the OMB to terminate the pilot program by January 1, 2009 and, subject to extensions, replace it with a permanent system of ensuring that data regarding subawards is disclosed in the same manner as data regarding other Federal awards.

ADDENDUM  
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT  
AMERICAN RECOVERY AND REINVESTMENT ACT

C. American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009, Public Law 111-5, hereinafter referred to as the ARRA, is an economic stimulus package enacted by the 111<sup>th</sup> United States Congress and signed into law by President Barack Obama on February 17, 2009. The ARRA is intended to provide a stimulus to the U.S. economy in the wake of the economic downturn and includes Federal tax relief, expansion of unemployment benefits and other social welfare provisions; and domestic spending on education, health care, and infrastructure, including the energy sector. The ARRA provides for unprecedented levels of transparency and accountability so that the public will be able to know how, when and where their tax dollars are being spent. Specific information and requirements under the ARRA are as follows:

1. Funding provided from the Federal Government through the ARRA is "one-time only" funding and, to maximize the transparency and accountability of ARRA funds, organizations receiving funding under the ARRA must maintain records that identify adequately the source and application of those funds.
2. Section 1512(c) of the ARRA requires quarterly reporting on the use of funds. The data elements proposed for reporting the information described in Section 1512(c) were published in the Federal Register on April 1, 2009 (74 FR 14824). The reporting requirements under Section 1512(c) of the ARRA currently apply only to entities receiving ARRA funds directly from the Federal Government, sometimes referred to as primary recipients.
3. Section 1512(h) of the ARRA requires recipients of ARRA funds, and their first-tier recipients (subrecipients) to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov>. In order to register in the CCR, a valid Data Universal Numbering System (DUNS) Number is required, as further described within this Addendum and within the Instructions for Completion of the Subrecipient (Grantee) Information Form.
4. Section 1605 of the ARRA requires that projects funded by the ARRA for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exemptions applies. The ARRA provides that this requirement be applied in a manner consistent with U.S. obligations under international agreements. Definitions of "manufactured good," "public building and public work," and other terms as they pertain to the Buy American guidance in 2 CFR part 176 are found in § 176.140 and § 176.160.
5. Section 1606 of the ARRA requires the payment of Davis-Bacon Act (40 U.S.C. 34) wage rates to "laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government" pursuant to the ARRA.
6. Grantees bound by the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*, must separately identify the expenditures for Federal awards under the ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This requirement shall be accomplished by identifying expenditures for Federal awards made under the ARRA separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC. Additional information regarding the Federal audit requirements of OMB Circular A-133 is located within Exhibit F of the DHHR Grant Agreement and the Source of Funds Schedule, attached to this Grant Agreement as Exhibit B, identifies whether the funds awarded under this grant are being made available through appropriations under the ARRA.

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ADDENDUM  
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT  
AMERICAN RECOVERY AND REINVESTMENT ACT

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**D. DHHR Reporting to the Federal Government**

At present time, direct reporting to the Federal Government lies solely at the primary recipient level. Therefore, while subrecipients of grant awards from the DHHR do not have to report data directly to the Federal Government, the DHHR, as a primary recipient and pass-through entity of Federal awards, does have a responsibility to report on certain data elements regarding its subgrant activities. As such, the DHHR is required to report the following information to the Federal Government with respect to its subawards:

1. Subrecipient DUNS number
2. Award number or other identifying number
3. Subrecipient name
4. Subrecipient location
5. Subrecipient type
6. Amount of subaward disbursed
7. Total amount of subaward
8. Subaward date
9. Subaward project/grant period
10. Primary performance location
11. Names and total compensation of the five most highly compensated officers of the entity

**E. Subrecipient (Grantee) Information Form**

Both the Transparency Act and the ARRA address the primary recipient's requirements to report information on the subawards it makes to subrecipient (Grantee) organizations. To ensure completeness and consistency in accounting for the funds received and subawarded by the West Virginia Department of Health and Human Resources (DHHR) to DHHR Grantees, the DHHR has developed a standardized form in which Grantees shall be required to complete and submit to the DHHR during the negotiation (pre-award) stage of the grant cycle. The DHHR will not process the Grant Agreement or commit any of the funds related thereto until the Grantee submits a signed copy of the Subrecipient (Grantee) Information Form.

**F. Future Informational Updates and Regulatory Requirements**

Currently, the rules, regulations and guidance issued by the Federal Government with respect to the oversight, accountability and reporting requirements associated with the Transparency Act and the ARRA are a work-in-progress. As referenced in the aforementioned sections of this Addendum, there are a number of reporting requirements (data elements) for which the DHHR, as a primary recipient of Federal funds, must report directly to the Federal Government. While the Federal Government has not currently placed specific reporting obligations on all subrecipients (Grantees), by all indications, these requirements are forthcoming from the Executive Office of the President or through the release of individual Federal agency regulations. Therefore, as additional information becomes available and the Federal Government provides more details on managing Federal funds, the DHHR will transmit the information or requirements to its grant community through an update to this memorandum or by other determinable means to ensure overall compliance with the Transparency Act and the ARRA.

**G. Sources of Information / Websites**

Federal Funding Accountability and Transparency Act of 2006  
<http://www.usaspending.gov/>

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**ADDENDUM  
FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT  
AMERICAN RECOVERY AND REINVESTMENT ACT**

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[http://trwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=frs23502nr.txt.pdf](http://trwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=frs23502nr.txt.pdf)

American Recovery and Reinvestment Act of 2009

<http://www.recovery.gov/>

[http://trwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=fr111nr.pdf](http://trwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fr111nr.pdf)

<http://www.whitehouse.gov/the-press-office/2009/02/10/m09-10.pdf>

<http://www.whitehouse.gov/the-press-office/2009/02/10/m09-11.pdf>

<http://www.recovery.gov/>

Interim Final Guidance from the OMB – Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards – published in the Federal Register, Volume 74, Number 77, April 23, 2009, pages 18449-63

<http://www.gpoaccess.gov/fr>

EXHIBIT E

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 \_\_\_\_\_ on \_\_\_\_\_  
[Local Entity] [Date]

Sinking Fund:

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

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

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

Reserve Account: \$ \_\_\_\_\_

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

\_\_\_\_\_  
[Name of Local Entity]

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

Enclosure: wire transfer form

EXHIBIT F

OPINION OF BOND COUNSEL FOR LOCAL ENTITY

[To Be Dated as of Date of Loan Closing]

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

West Virginia Bureau for Public Health  
815 Quarrier Street, Suite 418  
Charleston, WV 25301-2616

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of a (i) ARRA Assistance Agreement dated \_\_\_\_\_, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), between the Local Entity and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), and (ii) the issue of a series of revenue bonds of the Local Entity, 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 Entity on \_\_\_\_\_, as supplemented by the supplemental resolution duly adopted by the Local Entity 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 Entity and is a valid and binding special obligation of the Local Entity, enforceable in accordance with the terms thereof.

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

3. The Local Entity 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 Entity and constitute valid and binding obligations of the Local Entity, enforceable against the Local Entity 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 Entity to the Authority and are valid, legally enforceable and binding special obligations of the Local Entity, payable from the gross or net revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the gross or net 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 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 (Base Program)

Principal Amount of Local Bonds	\$429,399
Purchase Price of Local Bonds	\$429,399

The Local Bonds shall bear no interest. Commencing March 1, 2011, principal of the Local Bonds is payable quarterly, with no administrative fee. 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 Entity 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 Entity 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 Entity 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 and interest, if any, and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Local Entity's system as provided in the Local Act.

The Local Entity may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and BPH. The Local Entity shall request approval from the Authority and BPH in writing of any proposed debt which will be issued by the Local Entity 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 ARRA Assistance 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 Entity: Jane Lew Public Service District Water Revenue Bonds, Series 2004, (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000.

Number of New Customers To Be Served: 6  
Location: Clay Lick Road

B. Series B Bonds (ARRA)

Principal Amount of Local Bonds \$429,399  
Purchase Price of Local Bonds \$429,399

The Local Bonds shall bear no interest. The Authority at the direction of the BPH shall forgive the principal amount of the Local 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 hereto and incorporated herein by reference.

The Local Bonds are fully registered in the name of the Authority.

The Local Entity 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 Entity shall notify the Authority and the BPH of any proposed bond indebtedness secured by the revenues of the System.

**SCHEDULE Y  
DEBT SERVICE SCHEDULE**

0% Interest Rate				
30 Years				
		Dated Date	10/23/09	
		Delivery Date	10/23/09	
Period Ending	Principal	Interest	Debt Service	
10/23/09				
3/1/11	3,579		3,579	
6/1/11	3,579		3,579	
9/1/11	3,579		3,579	
12/1/11	3,579		3,579	
3/1/12	3,579		3,579	
6/1/12	3,579		3,579	
9/1/12	3,579		3,579	
12/1/12	3,579		3,579	
3/1/13	3,579		3,579	
6/1/13	3,579		3,579	
9/1/13	3,579		3,579	
12/1/13	3,579		3,579	
3/1/14	3,579		3,579	
6/1/14	3,579		3,579	
9/1/14	3,579		3,579	
12/1/14	3,579		3,579	
3/1/15	3,579		3,579	
6/1/15	3,579		3,579	
9/1/15	3,579		3,579	
12/1/15	3,579		3,579	
3/1/16	3,579		3,579	
6/1/16	3,579		3,579	
9/1/16	3,579		3,579	
12/1/16	3,579		3,579	
3/1/17	3,579		3,579	
6/1/17	3,579		3,579	
9/1/17	3,579		3,579	
12/1/17	3,579		3,579	
3/1/18	3,579		3,579	
6/1/18	3,579		3,579	
9/1/18	3,579		3,579	
12/1/18	3,579		3,579	
3/1/19	3,579		3,579	
6/1/19	3,579		3,579	
9/1/19	3,579		3,579	
12/1/19	3,579		3,579	
3/1/20	3,579		3,579	
6/1/20	3,579		3,579	
9/1/20	3,578		3,578	
12/1/20	3,578		3,578	
3/1/21	3,578		3,578	
6/1/21	3,578		3,578	
9/1/21	3,578		3,578	
12/1/21	3,578		3,578	

0% Interest Rate			
30 Years			
Period Ending	Principal	Interest	Debt Service
3/1/22	3,578		3,578
6/1/22	3,578		3,578
9/1/22	3,578		3,578
12/1/22	3,578		3,578
3/1/23	3,578		3,578
6/1/23	3,578		3,578
9/1/23	3,578		3,578
12/1/23	3,578		3,578
3/1/24	3,578		3,578
6/1/24	3,578		3,578
9/1/24	3,578		3,578
12/1/24	3,578		3,578
3/1/25	3,578		3,578
6/1/25	3,578		3,578
9/1/25	3,578		3,578
12/1/25	3,578		3,578
3/1/26	3,578		3,578
6/1/26	3,578		3,578
9/1/26	3,578		3,578
12/1/26	3,578		3,578
3/1/27	3,578		3,578
6/1/27	3,578		3,578
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12/1/27	3,578		3,578
3/1/28	3,578		3,578
6/1/28	3,578		3,578
9/1/28	3,578		3,578
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9/1/29	3,578		3,578
12/1/29	3,578		3,578
3/1/30	3,578		3,578
6/1/30	3,578		3,578
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12/1/30	3,578		3,578
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9/1/31	3,578		3,578
12/1/31	3,578		3,578
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6/1/32	3,578		3,578
9/1/32	3,578		3,578
12/1/32	3,578		3,578
3/1/33	3,578		3,578
6/1/33	3,578		3,578
9/1/33	3,578		3,578
12/1/33	3,578		3,578
3/1/34	3,578		3,578







**STEP TOE &  
JOHNSON**  
PLLC  
ATTORNEYS AT LAW

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Writer's Contact Information  
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(304) 353-8180 – Facsimile  
John.stump@steptoee-johnson.com

October 14, 2009

Via Hand Delivery

Sandra Squire, *Executive Secretary*  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25323

RECEIVED  
09 OCT 14 PM 4:08  
W VA PUBLIC SERVICE  
COMMISSION  
STAFF OFFICE

Re: Case No.: 08-1867-PWD-T-PC-CN  
**JANE LEW PUBLIC SERVICE DISTRICT**

Application for a certificate of convenience and necessity to construct a water improvement project, for approval of interim tariff changes and for consent and approval of an agreement with Greater Harrison County Public Service District

Dear Ms. Squire:

Enclosed herein for filing on behalf of Jane Lew Public Service District, please find an affidavit by the District's certified public accountant.

Please file the enclosed affidavit and distribute the additional copies to the appropriate parties at the Commission. Additionally, I ask that you date stamp the file copy provided and return it with our messenger. Thank you in advance for your attention to this matter, and should you have any questions please contact me at (304) 353-8196.

Best Regards,

John C. Stump  
(W. V. State Bar No. 6385)

Enclosures

- cc: James Kelsh, Esq. (w/o enclosures)
- Christopher Howard, Esq. (w/o enclosures)
- Robert Decrease (w/o enclosures)
- Todd Dingess (w/o enclosures)
- Nancy Gee (w/o enclosures)

448390.00003

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

Case No.: 08-1867-PWD-T-PC-CN

JANE LEW PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to construct a water improvement project, for approval of interim tariff changes and for consent and approval of an agreement with Greater Harrison County Public Service District

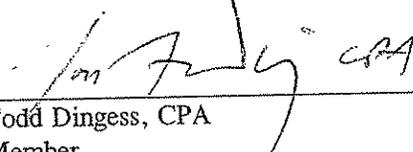
RECEIVED  
09 OCT 14 PM 4:08  
W VA PUBLIC SERVICE COMMISSION  
REGISTRATION OFFICE

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

AFFIDAVIT

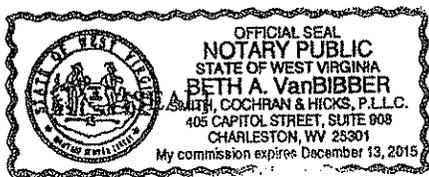
I, Todd Dingess, CPA, after making an oath of affirmation to tell the truth, say that, I have reviewed the Recommended Decision of the Public Service Commission of West Virginia in Case No. 08-1867-PWD-T-PC-CN dated March 13, 2009, Commission Order dated April 7, 2009 and Commission Order dated September 14, 2009 approving a \$96,200 SAP Grant, a \$454,399 loan from the Drinking Water Treatment Revolving Fund at 0% interest for a term of 30 years, and a \$454,399 loan from the Drinking Water Treatment Revolving Fund at 0% interest with 100% debt forgiveness over a term of 10 years and, and based upon all the information that has been provided to me, to date, I am of the opinion that the rates and charges for the District (i) are not affected by the revised funding consisting of a \$96,200 SAP Grant, a \$429,399 loan from the Drinking Water Treatment Revolving Fund at 0% interest for a term of 30 years, a \$429,399 loan from the Drinking Water Treatment Revolving Fund at 0% interest with 100% debt forgiveness over a term of 10 years, and a \$50,543 grant from the West Virginia Infrastructure & Jobs Development Council; and (ii) will be sufficient to provide revenues which, together with other revenues of the System, will allow me to provide the CPA certification required for the issuance of the Bonds.

This Affidavit is executed on the 8<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
Todd Dingess, CPA  
Member  
Smith Cochran & Hicks

Taken, subscribed and sworn to before me this 8<sup>th</sup> day of October, 2009.

My commission expires 12/13/15.



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

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

Case No.: 08-1867-PWD-T-PC-CN

JANE LEW PUBLIC SERVICE DISTRICT

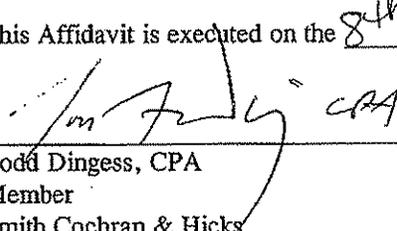
Application for a certificate of convenience and necessity to construct a water improvement project, for approval of interim tariff changes and for consent and approval of an agreement with Greater Harrison County Public Service District

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

AFFIDAVIT

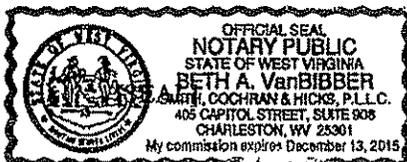
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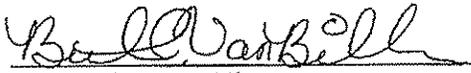
This Affidavit is executed on the 8<sup>th</sup> day of October, 2009.

  
\_\_\_\_\_  
Todd Dingess, CPA  
Member  
Smith Cochran & Hicks

Taken, subscribed and sworn to before me this 8<sup>th</sup> day of October, 2009.

My commission expires 12/13/15.



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

**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 14th day of September 2009.

CASE NO. 08-1867-PWD-T-PC-CN (Reopened)

JANE LEW PUBLIC SERVICE DISTRICT,  
a public utility, Jane Lew, Lewis County.

Application for a certificate of public convenience and necessity to construct a water improvement project, for approval of interim tariff changes and for consent and approval of an agreement with Greater Harrison County Public Service District.

**COMMISSION ORDER**

This Order reopens this case and approves revised funding.

**BACKGROUND**

On October 29, 2008, Jane Lew Public Service District ("Jane Lew PSD") applied for a certificate of public convenience and necessity ("Certificate") to (1) improve its existing waterlines to reduce unaccounted-for water, (2) decommission an existing treatment plant and purchase water from the West Virginia-American Water Company, (3) amend its tariff to provide for new fees and fire protection service, and (4) construct an extension to serve a small number of customers near Clay Lick ("Extension"). The prospective customers along the Extension live within the territorial boundaries of neighboring Greater Harrison Public Service District ("Greater Harrison"). Jane Lew PSD tendered an agreement with Greater Harrison reciting that Greater Harrison was unable to provide service to customers along the Extension and agreeing that Jane Lew PSD should provide water service in that area. Jane Lew PSD also requested that the Commission establish an interim tariff establishing certain new fees to apply during construction and approve a rate increase to apply after it completes construction. Jane Lew PSD planned to pay for construction with a grant and an interest-free loan from the West Virginia Water Development Authority ("WV-WDA") as authorized by the West Virginia Infrastructure and Jobs Development Council. See Application.

By Recommended Decision issued March 13, 2009, and Commission Order on Exceptions issued April 7, 2009, the Commission granted the Certificate and approved the proposed funding in the form of 1) a loan from the WV-WDA in the amount of \$792,464 for

a term of forty years at 0% interest, and 2) a Special Assistance Project ("SAP") Grant in the amount of \$96,200.

On August 26, 2009, Jane Lew PSD filed a Petition to Reopen for approval of revised funding based on Federal stimulus funds. The Petition stated that the bid tabulations filed by Jane Lew PSD resulted in a low bid exceeding Jane Lew PSD's original project cost estimate by \$106,000. Based on the bids, Jane Lew PSD obtained a revised commitment from the West Virginia Bureau of Public Health based on Federal stimulus funds for replacement loans to total \$908,798 and to include Loan A in the amount of \$454,399 at 0% interest for a term of ten years, and Loan B in the amount of \$454,399 at 0% interest for a term of thirty years. Funding continues to include a SAP Grant of \$96,200. Loan A and Loan B would be between Jane Lew PSD and the WV-WDA as administrator of the Drinking Water Treatment Revolving Fund. Although Loan A has a stated term of ten years, no annual debt service payment is required and the principal amount of the loan will be forgiven. The annual debt service on Loan B will be \$15,147 plus a 10% reserve requirement.

By Memorandum issued September 4, 2009, Commission Staff ("Staff") stated that Commission approval of the revised funding would have no impact on the previously approved project-related rates. Staff recommended that the Commission reopen this case and approve the revised funding. Staff advised that with the revised funding, Jane Lew PSD will have a surplus of \$15,491 and a debt coverage amount of 169.35%. Although the project cost is higher than originally projected, under the beneficial new financing proposal both cash surplus and debt coverage are slightly higher than they were under the original financing package.

### DISCUSSION

Upon review of the Petition to Reopen and the Staff recommendation, the Commission concludes that this certificate case should be reopened and the revised funding approved.

### FINDINGS OF FACT

1. The lowest qualified bid received by Jane Lew PSD for this certificate project was \$106,000 greater than Jane Lew PSD's estimated project costs. See Petition to Reopen filed August 26, 2009.
2. Jane Lew PSD seeks approval of a revised funding package that will include WV-WDA loans based on Federal stimulus funds. Id.
3. The proposed revised funding package will not impact the previously approved project-related rates. Id.; see also September 4, 2009 Staff Memorandum.

## CONCLUSION OF LAW

In consideration that Jane Lew PSD's revised funding proposal is based on Federal stimulus funds and will have no impact on the approved project-related rates, it is reasonable and in the public interest to approve JaneLew PSD's revised funding to ensure adequate funds to construct the project based on the qualified bids received.

## ORDER

IT IS THEREFORE ORDERED that Jane Lew PSD's Petition to Reopen this certificate case is granted.

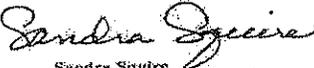
IT IS FURTHER ORDERED that revised funding for the project consisting of 1) WV-WDA loans to Jane Lew PSD including Loan A in the amounts of \$454,399 at 0% interest for a term of ten years, and Loan B in the amount of \$454,399 at 0% interest for a term of thirty years and 2) a SAP Grant in the amount of \$96,200, is hereby approved.

IT IS FURTHER ORDERED that, except for the revised funding approved in this Order, the Recommended Decision issued March 13, 2009, as modified by the Commission Order issued April 7, 2009, remains in full force and effect.

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

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

A True Copy, Testes:

  
Sandra Squire  
Executive Secretary

JML/klm  
081876cb.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 7<sup>th</sup> day of April 2009.

CASE NO. 08-1867-PWD-T-PC-CN

JANE LEW PUBLIC SERVICE DISTRICT,  
a public utility, Jane Lew, Lewis County.

Application for a certificate of public convenience and necessity to construct a water improvement project, for approval of interim tariff changes and for consent and approval of an agreement with Greater Harrison County Public Service District.

**COMMISSION ORDER**

The Commission adopts the Recommended Decision, except that it shall grant permission to construct an extension near Clay Lick and approving an agreement with Greater Harrison Public Service District ("Harrison").

**BACKGROUND**

On October 29, 2008, The Jane Lew Public Service District ("Jane Lew") applied for a certificate of public convenience and necessity ("Certificate") to (1) improve in its existing waterlines to reduce unaccounted for water, (2) decommission an existing treatment plant and purchase water from the West Virginia-American Water Company, (3) amend its tariff to provide for new fees and fire protection service and (4) construct an extension to serve a small number of customers near Clay Lick ("Extension"). Jane Lew represented that the prospective customers along the Extension live within the territorial boundaries of neighboring Harrison. Jane Lew tendered an agreement with Harrison reciting that Harrison is currently unable to provide service to customers along the Extension and agreeing that Jane Lew will provide water service in that area. Jane Lew also requested that the Commission establish an interim tariff establishing certain new fees to apply during construction and approve a rate increase to apply after it completes construction. Jane Lew plans to pay for construction with a grant and an interest-free loan from the West Virginia Infrastructure and Jobs Development Council. See, Application.

The Commission directed Jane Lew to publish a Notice of Filing in both Lewis and Harrison Counties. See, October 30, 2008 Commission Order. Jane Lew subsequently filed affidavits of publication attesting to publication of the Notice of Filing in both counties. See, Affidavits of Publication. No one filed a protest in response to the Notice. See, Case file generally.

Commission Staff ("Staff") filed an initial memorandum requesting that Jane Lew file letters from the county commissions of both counties consenting to Jane Lew extending service within Harrison territorial boundaries and a loan commitment letter. Staff also stated that it believed that Jane Lew could serve the Extension under W.Va. Code §16-13A-8. See, December 3, 2008 Staff Memorandum. The District filed letters from both county commissions supporting the Extension. See, January 5, 2009 letter.

On February 11, 2009, the assigned Administrative Law Judge ("ALJ") issued a Procedural Order directing Jane Lew to show cause why the ALJ should not dismiss this matter. The ALJ expressed concern about the need for a boundary adjustment between Jane Lew and Harrison before Jane Lew constructs the Extension. Jane Lew and Staff both requested that the matter remain on the active docket and argued that Jane Lew could serve customers along the Extension without a boundary adjustment. See, Responses to Order to Show Cause.

Staff filed a final memorandum recommending approval of the application, including the Extension. Staff also recommended approval of project funding and tariff changes, except for a disconnection fee. Staff requested that the Certificate include routine language regarding bid tabulations, a certificate of completion and project changes. See, March 5, 2009 Staff Memorandum.

On March 13, 2009, the ALJ issued a Recommended Decision granting a Certificate for the project except for the Extension. The Recommended Decision also approved project financing and most tariff changes Jane Lew requested. The ALJ found in Conclusions of Law One, Three and Four that Jane Lew must obtain a boundary adjustment before constructing the Extension. See, Recommended Decision.

On March 17, 2009, Jane Lew filed Exceptions requesting that the Commission reject the portion of the Recommended Decision denying permission to construct the Extension. Jane Lew argues that W.Va. Code §16-13A-2 and §16-13A-8, do not require an adjustment of its territorial boundaries in order to construct the Extension. Jane Lew believes that territorial boundaries are separate from service rights, allowing the Commission to approve the Extension without a boundary adjustment. See, Berkeley County Public Service District v. Public Service Commission, 204 W. Va. 279, 512 S.E. 2d 201 (1998).

Staff responded in support of the Exceptions, agreeing that Jane Lew can legally construct the Extension and urging the Commission to approve that portion of the application. See, March 10, 2009 Staff Response.

### DISCUSSION

The Commission must determine the extent of its ability to authorize a public service district to serve customers within unincorporated areas of a neighboring district. Jane Lew argues that the Commission should allow it to extend service to customers along the Extension without a boundary adjustment. Staff pointed out that Jane Lew may serve customers in unincorporated areas up to ten

miles outside its boundaries. See, W.Va. Code §16-13A-8. As the Supreme Court of Appeals noted in Berkeley County PSD, statutes governing public service districts do not specifically address how geographic boundaries affect service rights. 204 W. Va. at 285. The Commission concludes that it has the authority to allow public service districts to cross geographic territorial boundaries to serve customers if that district can serve affected customers in the most appropriate way under particular factual circumstances. Id. at 286. The Commission agrees with Jane Lew and Harrison that Jane Lew is in the best position to serve customers along the Extension and therefore approves the portion of the application relating to the Extension. Conclusions of Law One, Three and Four finding that Jane Lew cannot legally serve the Extension are not adopted. The Commission will also approve the associated service agreement between Harrison and Jane Lew. The Commission adopts the remainder of the Recommended Decision.

### FINDINGS OF FACT

1. Jane Lew applied for a Certificate to (1) improve its existing waterlines to reduce unaccounted for water, (2) decommission a treatment plant and purchase water from West Virginia-American Water Company, (3) adjust its tariff to provide for new fees and fire protection service and (4) construct the Extension. See, Application

2. Jane Lew sought approval for an agreement with Harrison providing that Jane Lew will extend water service to residents living along the Extension because Harrison is not able to provide that service. Id.

3. No one filed a protest in response to the Notice of Filing Jane Lew published. See, Case file generally.

4. Staff recommended that the Commission approve the application, except for a proposed disconnection fee. Staff requested that the Certificate include routine language regarding bid tabulations, a certificate of completion and project changes. See, March 5, 2008 Staff Memorandum.

5. The ALJ issued a Recommended Decision approving the application except for the Extension. Three legal conclusions in the Recommended Decision find that Jane Lew must obtain a boundary adjustment before constructing the Extension. See, March 13, 2009 Recommended Decision.

6. The District filed exceptions to the Recommended Decision arguing that geographic territorial boundaries are a separate consideration from service rights, allowing the Commission to approve the Extension without a boundary adjustment. See, Exceptions.

7. Staff supports the Exceptions and urges the Commission to approve the Extension. See, March 17, 2009 Staff Response.

## CONCLUSIONS OF LAW

1. Jane Lew may serve customers in unincorporated areas up to ten miles outside its boundaries. See, W. Va. Code §16-13A-8.

2. The Commission has the authority to allow Jane Lew to cross geographic territorial boundaries to serve customers if doing so is the most appropriate way to provide utility service. Berkeley County PSD, 204 W. Va. at 286.

3. It is convenient and necessary for Jane Lew to serve customers along the Extension because Harrison is unable to provide water service to the Extension.

## ORDER

IT IS THEREFORE ORDERED that the March 13, 2009 Recommended Decision is adopted except Conclusions of Law One, Three and Four.

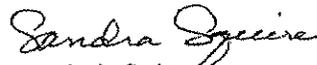
IT IS FURTHER ORDERED that the Certificate is expanded to include permission for construction of the Extension described in the application Jane Lew filed in this matter.

IT IS FURTHER ORDERED that the service agreement between Jane Lew and Harrison listed as Exhibit 14 to the application is approved without specifically approving the terms of the agreement.

IT IS FURTHER ORDERED that on entry of this Order, this case shall be removed from the Commission docket of open cases.

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

A True Copy. Teste:

  
Sandra Squire  
Executive Secretary

MJM/tt  
081867ca.wpd

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: March 13, 2009

EXCEPTIONS  
FILED

CASE NO. 08-1867-PWD-T-PC-CN

JANE LEW PUBLIC SERVICE DISTRICT,  
a public utility,  
Jane Lew, Lewis County.

Application for a certificate of public convenience and necessity to construct the water system improvement project, for approval of interim tariff changes, and for consent and approval of an agreement with Greater Harrison County Public Service District.

RECOMMENDED DECISION

PROCEDURE

On October 29, 2008, the Jane Lew Public Service District (District or Jane Lew), a public utility, Jane Lew, Lewis County, filed a duly verified multi-faceted application seeking approval for (1) a certificate of public convenience and necessity to construct additions and improvements to its water system, (2) what it termed as "non-revenue changes" to its Commission-approved tariff prior to the completion of the proposed project's construction and (3) a territorial agreement with Greater Harrison County Public Service District (Greater Harrison) regarding the provision of service to approximately nine (9) customers residing in Greater Harrison's service territory.<sup>1</sup> Total project cost is estimated to be \$888,665 and will be financed through a United States Environmental Protection Agency State and Tribal Assistance Grant in the amount of \$96,200 and a West Virginia Infrastructure and Jobs Development Council Loan in the amount of \$792,464, at 0% interest for a term of 38 years.

According to the application, in addition to providing service to the 9 new customers, the District will decommission its water treatment plant which will allow the District to purchase its supply from the West Virginia-American Water Company (Company). In Case No. 08-0184-W-PWD-PC,

<sup>1</sup> The application references 9 new customers; however, the agreement attached to the application for which approval is sought refers to six (6) customers.

*mk*

West Virginia-American Water Company and Jane Lew Public Service District (August 8, 2008), the Commission approved a service agreement between the District and the Company for the purchase and sale of water service under the Company's Demand-Based Sale for Resale Service Tariff. Additionally, the District represented, inter alia, that it has ample water operators to provide service for the project once completed; that it would furnish the requisite outstanding permits for the project once received; that it has obtained binding commitment letters for the project funding; and that it is proposing an across-the-board rate increase of 22.5%, applicable to all customers post-construction.

Also according to the application, the District proposes modifications and additions to its tariff to be charged after the certificate has been granted until the completion of the project. These modifications include a discounted tap fee, addition of private fire protection service provisions, modification of the District's disconnection charge<sup>2</sup>, addition of a security deposit provision, addition of an administrative charge, and addition of a reconnection charge.<sup>3</sup>

Finally, the District seeks Commission approval of an agreement with Greater Harrison for the District to extend facilities and services into the Clay Lick area of Greater Harrison's service territory in Harrison County.

By Commission Order entered on November 5, 2008, the Jane Lew Public Service District was ordered to publish an Amended Notice of Filing in compliance with the requirements of West Virginia Code §24-2-11.

On November 13, 2008, the Commission entered an Order referring this matter to the Division of Administrative Law Judges with a decision due date of March 13, 2009, if no timely protests were received to the Amended Notice of Filing. However, if timely protests were received, the decision due date would be May 27, 2009.

Affidavits of Publication were filed on November 21, 2008, confirming that the Amended Notice of Filing was published as a Class II legal advertisement in The Weston Democrat on November 12 and 19, 2008, and in The Exponent Telegram on November 10 and 17, 2008. The Weston Democrat is published in Weston, Lewis County, and The Exponent Telegram is published in Clarksburg, Harrison County.

On December 3, 2008, Staff Attorney Chris Howard of the Commission's Legal Division filed an Initial Joint Staff Memorandum to which was attached an Initial Internal Memorandum prepared by Utilities Analyst Karen L. Buckley of the Water and Wastewater Division and Technical Analyst Jim Spurlock of the Engineering Division. Collectively, Commission Staff modified the amount of the security deposit proposed by the District; recommended that the Staff-recommended interim tariff be

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<sup>2</sup> Although the District describes the provision as a modification of its disconnection charge, in actuality, the charge is new as the District's current tariff contains only a reconnection charge.

<sup>3</sup> See footnote no. 2.

published; requested that the District submit a funding commitment letter from the Infrastructure Council in the amount of \$792,464; requested that the District submit letters from the Lewis and Harrison County Commissions verifying that neither County Commission opposed the District infringing on Greater Harrison's service territory; and rejected the District's request to include a disconnection charge in its tariff.

On December 11, 2008, the District filed a response to the Initial Joint Staff Memorandum. The District argued that no additional notice was necessary regarding the requested interim rates. The District claimed that the notice provided through its publication of the Amended Notice of Filing was sufficient. Regarding Staff's rejection of the District's proposed disconnection fee, the District argued that the disconnection fee is necessary for the District to recover the cost from the cost-causers thereby shielding the District's other customers from the expense that is incurred when service is disconnected. The District agreed with Staff's changes to the security deposit. However, with respect to the agreement proposed between the District and Greater Harrison, the District noted that it believed the agreement, standing alone, to be sufficient; nevertheless, the District stated that it will file concurrence letters from the respective County Commissions once received.

On January 5, 2009, the District filed letters from the presidents of the Harrison and Lewis County Commissions wherein they stated their concurrence with the District's proposed line extension into the Clay Lick area of Harrison County.

On January 30, 2009, Staff Attorney Chris Howard filed a Further Initial Joint Staff Memorandum. The Memorandum stated that the permits that are needed for the project had not been applied for when Staff checked on their status. However, the District's Engineer promised to immediately apply for the requisite permits to avoid dismissal of the certificate application. Of particular concern to Commission Staff is the Health Department Permit, which could change the design of the project. Staff Attorney Howard recommended that either the District request that the statutory deadline be tolled to allow additional time for the District to obtain the necessary permits for the project or that the District request an extension of the decision due date to allow more time for the necessary permits to be obtained.

On January 30, 2009, the District was mailed a copy of Staff's January 30, 2009 Further Initial Joint Staff Memorandum and provided with ten (10) days from that date to respond.

On February 9, 2009, the District filed a response to the Further Initial Joint Staff Memorandum. The District stated that it has now applied for all the permits required for the project and that it has no reason to believe that the Bureau for Public Health review will entail modifications to the project. The District stated that, since no protest has been received to the project, the Commission can enter an order granting the certificate contingent upon the District obtaining all necessary permits.

On February 11, 2009, the undersigned issued a Procedural Order which discussed perceived deficiencies with the District's application and ordered, among other things, that the District show cause as to why its certificate application should not be dismissed for failure to provide information required under Procedural Rule 26.1 and failure to comply with West Virginia Code §16-13A-2. The Order also directed the District to file a certification that it notified its customers that it was seeking a rate increase, within thirty (30) days of filing its application, along with a copy of a billing card providing said notice and the date or dates on which those cards were mailed to the customers. All of the requested information was ordered to be filed on or before February 23, 2009.

On February 17, 2009, the District filed its response to the February 11, 2009 Procedural Order.

On February 20, 2009, the District filed a copy of Bureau of Public Health Permit No. 18,238 issued to the District on February 18, 2009, granting approval to "install approximately 200LF of 8", 930 LF of 6", 1,630 LF of 4" and 8,120LF of 2" water line; one (1) 45 GPM duplex constant pressure booster station with VFD; and all necessary valves, controls and appurtenances."

On February 23, 2009, Staff Attorney Howard filed Staff's Response to the Response of Jane Lew Public Service District to Order to Show Cause. Staff's response supported the District's positions regarding the perceived deficiencies relative to the certificate application and the District's responses provided thereto. Staff recommended that the District's certificate application remain on the Commission's docket of open cases.

On March 5, 2009, Staff Attorney Howard filed a Final Joint Staff Memorandum to which was attached a Final Staff Internal Memorandum prepared by Utilities Analyst Buckley and Technical Analyst Spurlock. Collectively, Commission Staff recommended approval of the certificate application. However, Commission Staff continued its objection to the inclusion of a disconnect fee in Jane Lew's tariff.

On March 6, 2009, Jane Lew filed a response to Staff's final recommendations which concurred with all but one recommendation, namely, the exclusion of a disconnection fee from Jane Lew's tariff. Jane Lew argued, in part, that the Commission had recently approved such a fee in Case No. 08-1831-PSD-W-PC-T, Mason County Public Service District and Point Pleasant Water Works (January 28, 2009).

On March 10, 2009, Commission Staff filed a response to Jane Lew's March 6, 2009 response to Staff's Final Joint Staff Memorandum. Staff argued that Jane Lew's reliance on Case No. 08-1831-PSD-W-PC-T in support of the disconnection fee is misplaced.

#### DISCUSSION

As was ordered, the District filed a certification that it provided notice to its customers that it is seeking a rate increase within the

context of its certificate case. It also supplied a copy of the billing card sent to customers dated December 1, 2008, which supports a finding of substantial compliance with Procedural Rule 10.3.d.<sup>4</sup> Likewise, the District filed the Bureau of Health Permit issued for the project which addresses a major concern noted by Commission Staff in its January 30, 2009 Further Initial Joint Staff Memorandum.

Notwithstanding the District's arguments to the contrary and Commission Staff's agreement therewith, the undersigned is of the opinion that the certificate application must be dismissed, in part, without prejudice, for the following reasons. As discussed in the February 11, 2009 Order, while West Virginia Code §16-3A-8 is the proper authority which allows the District to lawfully extend service 10 miles outside its boundaries, neither the agreement between Jane Lew and Greater Harrison nor the respective letters from the presidents of the Lewis and Harrison County Commissions are sufficient to allow Jane Lew to infringe upon Greater Harrison's territorial boundaries. First of all, the extension would take Jane Lew into another county, and secondly, the extension would infringe upon the territory of a district which provides the same service that Jane Lew seeks to provide, which runs afoul of Code §16-13A-2. Even though the extension falls within the 10-mile parameter noted in Code §16-13A-8, Code §16-13A-2 requires both the reduction of the infringed upon District's boundary and the enlargement of the expanding District's boundary.

In its February 17, 2009 response, Jane Lew argues that, in the past, the Commission has allowed such extensions without either the reduction and/or enlargement of boundaries being required. Therefore, Jane Lew argued that the modification in boundaries under Code §16-13A-2, by appropriate order of the Lewis and Harrison County Commissions and subsequent order of the Commission, was not necessary or required. Jane Lew cited two cases where it argued that no such boundary adjustment was required by the Commission. The first case cited is Case No. 02-1209-PSD-C, Jefferson County Public Service District v. Berkeley County Public Service District (2003). In that particular case, there was a dispute over whether the Berkeley County Public Service District could cross over into Jefferson County and provide service to several developments. Although Jefferson County Public Service District objected to Berkeley traversing into its service territory under Code §16-13A-2, the Commission accepted a settlement reached between the parties, without even mentioning the applicability of Code §16-13A-2 or discussing the merits of the same. Furthermore, even if the Commission would have discussed the applicability of Code §16-13A-2 to the facts and circumstances of that case, the Commission is not bound by either stare decisis or res judicata. As the West Virginia Supreme Court of Appeals stated in The Chesapeake and Potomac Telephone Company of West Virginia v. Public Service Commission of West Virginia, 300 S.E.2d 607, 613

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<sup>4</sup> This particular rule requires notice be provided within thirty (30) days of the filing of the certificate application. The application was filed on October 29, 2008. Technically, the notice should be provided on or before November 28, 2008. However, since the 30-day period fell within the Thanksgiving holiday, mailing of the notice on December 1, 2008, is reasonable.

(1982), citing 2 K. Davis, Administrative Law §18.09 (1958), an administrative agency whose purpose is one of regulatory action must at all times be free to take such steps as may be proper in the circumstances irrespective of past decisions. The Court recognized that, even when conditions remain the same, the agency's understanding of those conditions may change, so the agency must be free to act upon its change in understanding. The undersigned would submit that, without such flexibility, the regulatory process would become stagnant, rather than fluid.

The second case cited by Jane Lew in support of its argument is Case No. 04-0377-PWD-CN, Haymond Public Service District (2004) where the assigned ALJ in that case mentioned in Finding of Fact No. 5 that, "At its Board meeting on February 24, 2004, the Preston County Public Service District No. 1 gave its permission for the Haymond Public Service District to serve any customers in its service territory that may be affected by this project." The decision provided no discussion as to the requirements and/or applicability of Code §16-13A-2 to the certificate case. In fact, nowhere in the decision is any reference even made to Code §16-13A-2.

Additionally, Jane Lew argues that Case No. 02-0299-PWD-CN, Hodgesville Public Service District (2002), cited by the undersigned in the February 11, 2009 Procedural Order, is of minimal consequence because the ALJ stated his analysis of the applicability of Code §16-13A-2 to that certificate case in a Procedural Order, which was not one written by the Commissioners or adopted by the Commission. Accordingly, Jane Lew argues that the Orders in Case Nos. 02-0299-PWD-CN and 04-0377-PWD-CN are of superior authority.

Finally, although, in its February 23, 2009 response, Commission Staff supported Jane Lew's arguments, Staff offered no independent analysis of the applicability of Code §16-13A-2 to the instant set of circumstances. Furthermore, Staff's final recommendations were also silent on the matter.

Code §16-13A-2(a), in pertinent part, reads as follows:

That after the effective date of this section [§16-13A-2], 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 district properties and regardless of whether or not it includes one or more cities, incorporated towns or municipal corporations being served by privately owned public service district 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 water, sewerage services, stormwater services or gas facilities not being furnished within such territory or part thereof...

This Code Section is clear and unambiguous. In order for Jane Lew to serve the customers located in the Greater Harrison service territory, Jane Lew's boundary must increase and the Greater Harrison boundary must decrease. The cases cited by Jane Lew and its arguments made in support of its position are unpersuasive. Other than arguing that the Commission did not require parties to follow the requirements of Code §16-13A-2(a) in prior cases and, therefore, it should not have to follow the law now, there isn't much substance to Jane Lew's position on this issue.

In addition to the applicability of Code §16-13A-2(a) to the circumstances of the instant case, Code §§16-13A-2(b) and (c) are instructive also. Under Code §16-13A-2(b), which applies when a group of citizens petitions for a new or modified public service district, when modifying an existing public service district's boundary, and if the district's proposed territory is situated in more than one county, each county commission affected by the boundary modification shall have a copy of the petition filed with its county clerk. The county clerks, in turn, present the petition to the county commissions for consideration. Code §16-13A-2(b) states as follows:

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.  
(Emphasis added.)

Code §16-13A-2(c) mandates that due process be afforded to all impacted by a boundary modification and is applicable to the instant situation. This particular Code Section states that:

When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. Within ten days of fixing the date of hearing, the county commission shall provide

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

Among those who have a stake in the modification of a public service district's boundaries are property owners and bondholders. Since public service districts have the right to exercise the power of eminent domain under Code §16-13A-8, it appears unfathomable that Jane Lew would argue that a mere contract with Greater Harrison is all that is required under the premises. Those whose property may be subject to confiscation surely have a right to express themselves before the county commission and Public Service Commission as contemplated by the applicable statutes regarding boundary modification. Another stakeholder who should receive notice of a boundary modification is the bondholder who has invested capital in the system of the utility whose territory is being infringed upon and is looking to that utility to generate sufficient revenue to meet its bond payments. If Jane Lew's logic is embraced, no person or entity may question a change in a district's service area after the district has been formed. Undeniably, Code §§16-13A-2(a), (b) and (c) contemplate formal action by the affected county commissions and by the Public Service Commission when the territory of a public service district is infringed upon and require that the affected boundaries be formally modified to accommodate an expanding district, so that members of the public and any bondholders are provided notice and an opportunity to be heard, minimum and basic due process rights.

More importantly, however, is the fact that the county commission has no authority other than what has been granted to it by the West Virginia Constitution and the West Virginia Legislature. Furthermore, when carrying out those express powers and duties, the county commission has no authority to act other than in the manner prescribed by law. See, e.g., Russell L. Daugherty v. Jim Ellis, 142 W.Va. 340 (1956); State ex rel., State Line Sparkler of W. Va., Ltd. V. Teach, 187 W.Va. 271, 418 S.E.2d 585 (1992). It is well-settled in West Virginia that the county commission, as a corporation created by statute, can only do such things as the law authorizes it to do; it must act as a commission, while in legal session with a quorum present, and it must follow that procedure

and enter its proceedings of record to make its action valid and binding; and its members cannot separately and individually give their consent or enter into a contract and in that manner obligate the commission. See Daugherty and Teach, supra.

In pertinent part, Art. IX, §11, of the West Virginia Constitution, states as follows regarding the powers of the county commission:

The county commissions, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as now is, or may be prescribed by law. They shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties.... Such commissions may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law. (Emphasis added.)

Additionally, Code §§7-1-3, et seq., provides a listing of the jurisdiction, powers and duties of the county commission. All of the listed items must be carried out "as prescribed by law." Therefore, since the authority is vested in the county commission as a body, the presidents of the Lewis and Harrison County Commissions can not usurp the authority of the respective county commissions. Indeed, there has to be official county commission action as prescribed by Code §§16-13A-2(a) and (c). Without such official county commission action and subsequent ratification by the Public Service Commission, Jane Lew has no authority whatsoever to infringe upon the service territory of the Greater Harrison County Public Service District. In other words, mere letters from the presidents of the Lewis and Harrison County Commissions are insufficient and are of no force and effect. In Daugherty, the Court laid to rest any question as to the effect of a single county commissioner acting without proper authority from a quorum of the county commission. The Court ruled that an action is valid and binding only when undertaken while the county commission is in legal session with a quorum present and said proceedings are entered on record. 142 W.Va. 340, at 353.

Another issue presented by Jane Lew's misplaced logic is that, if the Public Service Commission allowed the districts to determine among themselves when and how their respective boundaries should be modified, power and authority vested with the county commission by the West Virginia Constitution and the West Virginia Legislature will be usurped. Public service districts are agents of the county commission by which they were created. Their powers are limited to those found in Code §§16-13A-1, et seq. See July 8, 1976 West Virginia Attorney General Opinion. Recently, in Case No. 07-0253-PWD-PC, Lincoln County Commission and Wayne County Commission (2007) and Case No. 08-1861-PWD-PC, Fayette County Commission (January 29, 2009), the Commission reiterated the importance of Code §16-13A-2 and the roles of the County Commission and Public Service Commission when public service district boundaries are modified. Notice and an opportunity to be heard were important factors in those decisions. Since Jane Lew and Greater Harrison are without proper authority to modify the boundaries of their respective districts, the Customer Service Agreement will not be approved. Modification of a

public service district's territorial boundary starts with a lawful order of the county commission, not with an agreement between two public service districts. In Case No. 07-0173-PSWD-PC, Greenbrier County Commission (March 25, 2008), the Public Service Commission rejected the terms of the Joint Stipulation entered in that case by the parties because it allowed the parties to fix the geographic boundaries under which they would provide service, without regard to the Commission's authority and jurisdiction. Similarly, the attempt made by Jane Lew and Greater Harrison to fix their boundaries without proper authority, must, too, be rejected.

To reiterate, the undersigned is of the opinion that the proposed project requires modification of the boundaries of both Jane Lew and Greater Harrison. The proposed project requires Jane Lew to cross the Lewis County line and expand into Harrison County. Under Code §16-13A-2(a), when the expansion takes the expanding district into another county and the district whose territory is being infringed upon provides the same service, the requisite county commissions involved and the Public Service Commission must approve, by proper orders, an expansion of and reduction in boundaries. As previously noted, Code §16-13A-2(a) states 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. Therefore, the reduction in the Greater Harrison territorial boundary is necessary because Greater Harrison was created with the authority to provide water service to the area in question. Furthermore, since Jane Lew is crossing over the county boundary into Harrison County, it must enlarge its territorial boundary to encompass the Clay Lick Run area. See, West Virginia Code §16-13A-2; Case No. 02-0299-PWD-CN, Hodgesville Public Service District (2002). It should also be reiterated that the letters obtained from the respective presidents of the Harrison and Lewis County Commission are not official actions of those County Commissions and cannot substitute for the County Commission orders required by statute. See Code §16-13A-2.

The previously stated limitations on a county commission's authority are the principle reason why the authority provided in West Virginia Code §16-13A-8, allowing a public service district to serve areas within ten (10) miles of its boundaries, cannot extend beyond a county boundary line, absent action by the county commission to extend the district's boundaries pursuant to West Virginia Code §16-13A-2.

Code §24-2-11(b) states that, upon the filing of any application for such certificate, and after hearing, the Commission may, in its discretion, issue or refuse to issue, or issue in part or refuse in part, such certificate of convenience and necessity, although, in the absence of protest, hearing can be waived. By Procedural Order issued on February 11, 2009, the District was placed squarely on notice that the undersigned perceived its certificate application to be deficient. In addition to listing the perceived deficiencies, Jane Lew was provided with the opportunity to show cause as to why its certificate application should not be dismissed. In relevant part, the undersigned wrote at pages 4 and 5 of that Order:

The District cites to West Virginia Code §16-13A-8 as the proper authority which allows it to go 10 miles outside its boundaries to provide service and goes on to state that the agreement in which Greater Harrison consents to the extension is all that is needed to infringe upon Greater Harrison's territorial boundaries, although, at the request of Commission Staff, the District obtained and filed copies of letters from the Harrison and Lewis County Commissions concurring thereto. The undersigned agrees that the District may extend service 10 miles outside its boundaries. However, when the expansion takes the expanding district into another county and the district whose territory is being infringed upon provides the same service, the requisite County Commissions involved and the Public Service Commission must approve, by proper orders, an expansion of and reduction in the respective district boundaries. West Virginia Code §16-13A-2(a) states 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. Therefore, a reduction in the Greater Harrison territorial boundary is necessary because Greater Harrison was created with the authority to provide water service to the area in question. Furthermore, since Jane Lew is crossing over the county boundary into Harrison County, it must enlarge its territorial boundary to encompass the Clay Lick Run area. See, West Virginia Code §16-13A-2; Case No. 02-0299-PWD-CN, Hodgesville Public Service District (2002). It should be noted that the letters obtained from the respective presidents of the Harrison and Lewis County Commissions are not official actions of those County Commissions and cannot substitute for the County Commission orders required by statute. See Code §16-13A-2.

As heretofore explained, the position taken by the District regarding this important issue failed to take into consideration the gravity of the situation, and failed to recognize that a failure to enforce the requirements of the applicable Code Sections to situations in the past does not forever bind the Commission in perpetuity to that position. In fact, the undersigned will again stress that the Court has recognized that the Commission is not bound by either stare decisis or res judicata. See Chesapeake, supra. Further, neither Jane Lew nor Commission Staff requested an evidentiary hearing in this matter. In fact, Jane Lew was so certain of its flawed arguments, it declined the opportunity for hearing. See March 6, 2009 response of the District to the Final Joint Staff Memorandum. Accordingly, the portion of the project which takes Jane Lew over the Lewis County boundary line into Harrison County will be denied a certificate. Approval will only be granted for the replacement of the lines to reduce unaccounted-for water levels and for the decommissioning of the Jane Lew water plant. Commission Staff has identified Contract B as the construction contract pertaining to the 9 customers located in Greater Harrison's service territory. Therefore, approval will not be granted for the portions of said contract that are to be constructed in order to provide those 9

customers with service, until the appropriate county commission and Public Service Commission Orders have been obtained, as required by State law.

Finally, the undersigned is concerned about the interim tariff provisions that have been requested by the Jane Lew District. Of particular concern is the request by the District for a disconnection charge to be included in its interim tariff. Commission Staff objected to its inclusion, to which the District responded that it should be allowed to recover the cost it incurs from the cost-causer when it actually disconnects service. When responding to Staff's final memorandum, Jane Lew relied on the Commission's rationale in Case No. 08-1831-PSD-W-PC-T, Mason County Public Service District and Point Pleasant Water Works (January 28, 2009) and argued that Staff's objection to the disconnection fee was overridden by the Commission's holding in that case. The District's request for a disconnection fee will not be approved. The disconnection charge proposed by the District in the amount of \$25.00 is to be charged whenever the supply of water is turned off at the customer's request for seasonal use of the property, or for violations of rules, nonpayment of bills, or fraudulent use of water. The District currently has a reconnection fee which it proposes to increase from \$20.00 to \$25.00. The reconnection fee will be charged whenever the supply of water is turned on by the utility following disconnection at the customer's request for seasonal use of property or for violation of rules, non-payment of bills or fraudulent use of water. Additionally, the District has also requested an administrative charge in the amount of \$25.00 which will be charged whenever the utility dispatches personnel to turn off the supply of water for nonpayment of bills and the customer makes payment prior to actual disconnection.

It appears to the Administrative Law Judge that the Jane Lew District seeks double recovery of expenses associated with service termination. Already imputed in rates are certain operating expenses regarding billing and collection. In theory, special charges such as reconnection fees, disconnection fees and administrative fees are targeted at the cost-causers, because, but for the actions of those customers, the expenses would not have been incurred by the utility. However, the inclusion of both an administrative fee and a disconnection fee, as proposed by the District, represents a clear misinterpretation of instances when the Commission has found reason to grant all three (3) fees. The Commission has only granted all three fees in situations where the water utility is obligated to terminate water service to delinquent sewer customers. In fact, the case cited by Jane Lew is just such a case. Therefore, Jane Lew's reliance on Mason County is misplaced. The addition of only an administrative charge to the District's tariff is reasonable. Since this charge is being requested outside of a rate case and there is no way to gauge the financial impact, the District will be required to keep track of the revenue generated from the newly included administrative fee for proper review and consideration during its next general rate case.

The Pre-Project Tariff, attached hereto as Appendix A, shall be approved. This tariff includes tariff provisions that may be implemented even though the certificate application is partially denied. Additionally, the Post-Project Tariff, attached hereto as Appendix B,

shall also be approved for use upon substantial completion of the project.

#### FINDINGS OF FACT

1. On October 29, 2008, the Jane Lew Public Service District, a public utility, Jane Lew, Lewis County, filed a duly verified multi-faceted application seeking approval for (1) a certificate of public convenience and necessity to construct additions and improvements to its water system, (2) what it termed as "non-revenue changes" to its Commission-approved tariff prior to the completion of the proposed project's construction and (3) a territorial agreement with Greater Harrison County Public Service District regarding the provision of service to approximately nine (9) customers residing in Greater Harrison's service territory. (See certificate application and attachment filed on October 29, 2008).

2. By Commission Order entered on November 5, 2008, the Jane Lew Public Service District was ordered to publish an Amended Notice of Filing in compliance with the requirements of West Virginia Code §24-2-11. (See November 5, 2008 Commission Order).

3. On November 13, 2008, the Commission entered an Order referring this matter to the Division of Administrative Law Judges with a decision due date of March 13, 2009, if no timely protests were received to the Amended Notice of Filing. However, if timely protests were received, the decision due date would be May 27, 2009. No protest has been received in response to the publication of the Amended Notice of Filing. (See November 13, 2009 Commission Order; case file generally).

4. Affidavits of Publication were filed on November 21, 2008, confirming that the Amended Notice of Filing was published as a Class II legal advertisement in The Weston Democrat on November 12 and 19, 2008, and in The Exponent Telegram on November 10 and 17, 2008. (See Affidavits of Publication filed on November 21, 2008).

5. Although part of the project at issue herein requires Jane Lew to serve customers in Harrison County, who are located in an area within the boundaries of another public service district providing water service, neither the Lewis County Commission nor the Harrison County Commission has followed the procedures established in W.Va. Code §16-13A-2 to expand Jane Lew's boundaries and reduce the boundaries of Greater Harrison Public Service District, the affected district in Harrison County. (See, February 17, 2009 response of Jane Lew to February 11, 2009 Procedural Order; certificate application filed October 29, 2008).

6. On February 11, 2009, the undersigned issued a Procedural Order which discussed perceived deficiencies with the District's application and ordered, among other things, that the District show cause as to why its certificate application should not be dismissed for failure to provide information required under Procedural Rule 26.1 and failure to comply with West Virginia Code §16-13A-2. (See February 11, 2009 Procedural Order).

7. The Bureau of Public Health has issued Permit No. 18,238 to the District on February 18, 2009, for the proposed project. (See filing made by the District on February 20, 2009).

8. The project will replace portions of Jane Lew's existing system which have deteriorated with age. (Final Joint Staff Memorandum and attachment filed March 5, 2009).

9. The project will result in the decommissioning of Jane Lew's existing water treatment plant and the purchase of water from West Virginia-American Water Company, pursuant to an agreement approved by the Commission in Case No. 08-0184-W-PWD-PC. (See, Final Joint Staff Memorandum and attachment filed March 5, 2009; application filed October 29, 2008; Case No. 08-0184-W-PWD-PC).

10. The District has obtained binding commitment letters for a loan from the West Virginia Infrastructure and Jobs Development Council in the amount of \$792,464, at an interest rate of 0% for a term of 38 years, and a \$96,200 EPA STAG grant. The proposed project will not need interim financing. (Application and attached exhibits filed October 29, 2008; Final Joint Staff Memorandum and attachment filed March 5, 2009).

11. The total construction cost of the project is \$669,020, of which \$169,995.60 applies to the portion of the project which would serve nine (9) customers in Harrison County. (Final Joint Staff Memorandum and attachment filed March 5, 2009).

12. The Staff review of the project plans and specifications revealed no conflicts with the Commission's rules and regulations. (Final Joint Staff Memorandum and attachment filed March 5, 2009).

13. Annual O&M expenses will increase by approximately \$58,715 after project completion, due primarily to the purchase of water from WVAWC. (Final Joint Staff Memorandum and attachment filed March 5, 2009).

14. The total annual increase resulting from the project, including debt service and reserves, is approximately \$83,596. (Final Joint Staff Memorandum and attachment filed March 5, 2009).

15. The Staff-recommended rates will generate approximately \$77,698 in additional revenues, which should be sufficient, since, at going-level, the District is generating a \$15,113 cash flow surplus. (Application and exhibits filed October 29, 2008; Final Joint Staff Memorandum and attachment filed March 5, 2009).

16. On March 5, 2009, Commission Staff filed its Final Joint Staff Memorandum recommending approval of the certificate and denial of the disconnection fee. (See March 5, 2009 Final Joint Staff Memorandum).

17. On March 6, 2009, Jane Lew filed a response to Staff's Final Joint Staff Memorandum disagreeing only with Staff's recommendation that the requested disconnection fee be denied. Jane Lew also declined evidentiary hearing on the merits of its certificate. (See Jane Lew's March 6, 2009 response to the Final Joint Staff Memorandum).

### CONCLUSIONS OF LAW

1. The holdings in Case No. 02-1209-PSD-C, Jefferson County Public Service District v. Berkeley County Public Service District (2003), and Case No. 04-0377-PWD-CN, Haymond Public Service District (2004), do not relieve the Jane Lew Public Service District of its responsibility to comply with the requirements of either West Virginia Code §16-13A-2 or Procedural Rule 26.1.20.

2. It is reasonable to deny the inclusion of a disconnection fee in Jane Lew's tariff since it is current Commission policy to only allow a disconnection fee when a water utility is terminating water service for a delinquent sewer bill under contract with a sewer utility.

3. It is reasonable to deny the District's certificate application, in part, without prejudice, for its failure to comply with the requirements of West Virginia Code §16-13A-2 and Procedural Rule 26.1.20.

4. The failure of prior Commissions to enforce the requirements of Code §16-13A-2 in the past does not bar the instant Commission from enforcing the law in this case. It is reasonable to require that the Jane Lew Public Service District comply with the laws of the State of West Virginia.

5. It is reasonable to grant the certificate application for the portions of the project which will replace the deteriorated distribution system and allow Jane Lew to decommission its treatment plant and purchase treated water from West Virginia-American Water Company. The project is economically feasible as it will be funded by a federal grant and an interest-free loan. Additionally, the improvements will allow Jane Lew to reduce its unaccounted-for water levels, decommission its antiquated treatment plant and provide reasonably-priced water service for its customers.

### ORDER

IT IS, THEREFORE, ORDERED that the certificate application filed on October 29, 2008, by Jane Lew Public Service District, be, and hereby is, approved, in part, and denied, in part, without prejudice, consistent with the findings herein.

IT IS FURTHER ORDERED that the funding for the project, consisting of a loan from the West Virginia Infrastructure and Jobs Development Council in the amount of \$792,464 for a term of 40 years at 0% interest and a State Tribal Assistance Grant in the amount of \$96,200, be, and hereby is, approved, contingent upon the Jane Lew Public Service District identifying all costs associated with the disapproved portion of the project and modifying the financing accordingly, within ninety (90) days of the date that this Order becomes final.

IT IS FURTHER ORDERED that the Customer Service Agreement submitted for approval, be, and it hereby is, denied.

IT IS FURTHER ORDERED that the Pre-Project Tariff, attached hereto as Appendix A, be, and hereby is, approved. The District shall file an original and at least six (6) copies of revised tariff sheets, reflecting the charges approved therein, with the Commission, no later than ten (10) days after this decision becomes a final order of the Commission.

IT IS FURTHER ORDERED that the Final (Post-Project) Tariff to be implemented upon substantial completion of the project, attached hereto as Appendix B, be, and hereby is, approved. The District shall file an original and at least six (6) copies of the final tariff sheets, reflecting the charges approved therein, with the Commission, no later than ten (10) days after this decision becomes a final order of the Commission.

IT IS FURTHER ORDERED that the Jane Lew Public Service District file for a review of its post-project rates at the end of six months of operating at said rates, to determine if a rate adjustment is needed due to the elimination of the Harrison County portion of the project certificated herein.

IT IS FURTHER ORDERED that, for the portions of the project certificated herein, if there are any changes in the plans or scope of those portions, Jane Lew Public Service District must seek Commission approval of such changes. Further, if there are changes in the rates to be charged associated with the portions of the project approved herein, the District must seek and obtain Commission approval of such changes. However, if the project-related rates for the portions of the project approved herein remain unchanged, it is not necessary for the District to obtain additional Commission approval, rather, the District will be required to file an affidavit executed by its certified public accountant verifying that its post-project rates and charges are not affected.

IT IS FURTHER ORDERED that the Jane Lew Public Service District file with the Commission a copy of the engineer's certified bid tabulations for all contracts awarded for the project and submit a copy of the Certificate of Substantial Completion issued for each construction contract associated with the portions of the project approved herein, as soon as they become available.

IT IS FURTHER ORDERED that, if the portions of the project certificated herein requires the use of any West Virginia Department of Highways' rights-of-way, the Jane Lew Public Service District follow all applicable rules and regulations of the Department of Highways regarding those rights-of-way.

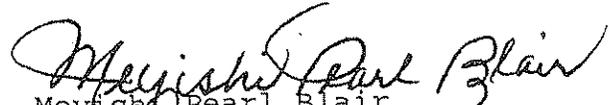
IT IS FURTHER ORDERED that this proceeding be, and hereby is, removed from the Commission's docket of open cases.

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.

  
Meyish Pearl Blair  
Administrative law Judge

MPB:s:mal  
081867aa.wpd

JANE LEW PUBLIC SERVICE DISTRICT  
CASE NO. 08-1867-PWD-T-PC-CN  
APPROVED PRE-PROJECT TARIFF

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

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

RATES (Customers with metered water supply)

First	2,000 gallons used per month	\$9.96 per 1,000 gallons
Next	3,000 gallons used per month	7.84 per 1,000 gallons
Next	4,000 gallons used per month	7.02 per 1,000 gallons
Next	6,000 gallons used per month	6.63 per 1,000 gallons
All over	15,000 gallons used per month	6.01 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than the following based on meter size:

5/8 inch meter	\$ 19.92
3/4 inch meter	\$ 29.88
1 inch meter	\$ 49.80
1-1/4 inch meter	\$ 72.71
1-1/2 inch meter	\$ 99.60
2 inch meter	\$159.36
3 inch meter	\$298.00
4 inch meter	\$498.00

PRIVATE FIRE PROTECTION SERVICE

Where connections, hydrants, sprinklers, etc. on private property are maintained by the consumer:

	<u>Per Annum</u>
2-inch Service Line with hydrants, sprinklers, and/or hose connections	\$ 80.00
3-inch Service Line with hydrants, sprinklers, and/or hose connections	\$181.90
4-inch Service Line with hydrants, sprinklers, and/or hose connections	\$319.39

These terms are payable twice annually in advance.

PUBLIC FIRE PROTECTION SERVICE

The Town of Jane Lew shall pay a public fire service charge of \$400.00 per annum, payable in twelve monthly payments. This charge covers all water system facilities existing at Main St. and Public Park, Jane Lew, WV, which are used in whole or in part for public fire service.

DELAYED PAYMENT PENALTY

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

TAP FEE

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

A tap fee of \$50.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This preconstruction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

SECURITY DEPOSIT

Not to exceed one-twelfth (1/12) of the annual estimated charge for residential service or one-sixth (1/6) of the annual estimated charge for commercial service, or fifty dollars, whichever is greater.

RECONNECTION CHARGE - \$25.00

To be charged whenever the supply of water is turned on by the utility following disconnection at the customer's request for seasonal use of property or for violation of rules, non-payment of bills or fraudulent use of water.

ADMINISTRATIVE CHARGE - \$25.00

To be charged whenever the utility dispatches personnel to turn off the supply of water for non-payment of bills and the customer makes payment prior to actual disconnection.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or 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.

LEAK ADJUSTMENT

\$0.83 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customers' side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

MUNICIPAL EXCISE TAX SURCHARGE

The municipalities listed below, having imposed a public utility tax computed on the basis of two percent of the revenues from water sales by the Jane Lew Public Service District water utility within the corporate limits of such municipalities, shall be billed as a "surcharge" to the customers receiving service within said corporate limits.

The water utility is required to collect the utility tax pursuant to West Virginia Code §8-13-5a.

Customers receiving water service within the corporate limits of the specified municipality shall pay a surcharge based on the following rates:

Town of Jane Lew - 2%

JANE LEW PUBLIC SERVICE DISTRICT  
CASE NO. 08-1867-PWD-T-PC-CN  
APPROVED POST-PROJECT TARIFF

(to be implemented upon substantial completion of the project)

APPLICABILITY

Applicable within the entire territory served.

AVAILABILITY

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

RATES (Customers with metered water supply)

First	2,000 gallons used per month	\$12.20 per 1,000 gallons
Next	3,000 gallons used per month	9.60 per 1,000 gallons
Next	4,000 gallons used per month	8.60 per 1,000 gallons
Next	6,000 gallons used per month	8.12 per 1,000 gallons
All over	15,000 gallons used per month	7.36 per 1,000 gallons

MINIMUM CHARGE

No bill will be rendered for less than \$24.40 per month which is the equivalent of 2,000 gallons of water:

5/8 inch meter	\$ 24.40
3/4 inch meter	\$ 36.60
1 inch meter	\$ 61.00
1-1/2 inch meter	\$ 122.00
2 inch meter	\$ 195.20
3 inch meter	\$ 366.00
4 inch meter	\$ 610.00
6 inch meter	\$1,220.00
8 inch meter	\$1,952.00

PRIVATE FIRE PROTECTION SERVICE

Where connections, hydrants, sprinklers, etc. on private property are maintained by the consumer:

	<u>Per Annum</u>
2-inch Service Line with hydrants, sprinklers, and/or hose connections	\$ 80.00
3-inch Service Line with hydrants, sprinklers, and/or hose connections	\$181.90
4-inch Service Line with hydrants, sprinklers, and/or hose connections	\$319.39

These terms are payable twice annually in advance.

PUBLIC FIRE PROTECTION SERVICE

The Town of Jane Lew shall pay a public fire service charge of \$400.00 per annum, payable in twelve monthly payments. This charge covers all water system facilities existing at Main St. and Public Park, Jane Lew, WV, which are used in whole or in part for public fire service.

DELAYED PAYMENT PENALTY

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

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Not to exceed one-twelfth (1/12) of the annual estimated charge for residential service or one-sixth (1/6) of the annual estimated charge for commercial service, or fifty dollars, whichever is greater.

RECONNECTION CHARGE - \$25.00

To be charged whenever the supply of water is turned on by the utility following disconnection at the customer's request for seasonal use of property or for violation of rules, non-payment of bills or fraudulent use of water.

ADMINISTRATIVE CHARGE - \$25.00

To be charged whenever the utility dispatches personnel to turn off the supply of water for non-payment of bills and the customer makes payment prior to actual disconnection.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District or 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.

LEAK ADJUSTMENT

\$3.93 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customers' side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

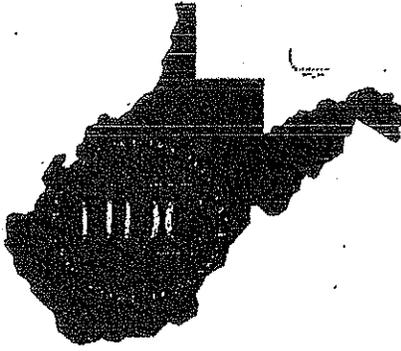
MUNICIPAL EXCISE TAX SURCHARGE

The municipalities listed below, having imposed a public utility tax computed on the basis of two percent of the revenues from water sales by the Jane Lew Public Service District water utility within the corporate limits of such municipalities, shall be billed as a "surcharge" to the customers receiving service within said corporate limits.

The water utility is required to collect the utility tax pursuant to West Virginia Code §8-13-5a.

Customers receiving water service within the corporate limits of the specified municipality shall pay a surcharge based on the following rates:

Town of Jane Lew - 2%



Jefferson E. Brady, P.E. - Executive Director

300 Summers Street, Suite 980  
Charleston, West Virginia 25301  
Phone: (304) 558-4607  
Facsimile: (304) 558-4609  
Jefferson.Brady@verizon.net

January 10, 2007

Tom Pitman, General Manager  
Jane Lew PSD  
P.O. Box 845  
Jane Lew, WV 26378

Re: Loan Agreement  
Water Project 2006W-921  
Action Required by January 30, 2007

Dear Mr. Pitman:

At the January 10, 2006 meeting of the West Virginia Infrastructure & Jobs Development Council (the "Council"), the Council authorized the West Virginia Water Development Authority (the "Authority") to enter into a Loan agreement with the Jane Lew Public Service District (the "District") for a Loan of \$792,464 to complete the funding of this \$888,664 project. The Loan will be made from the proceeds of bonds issued by the Authority on behalf of the Council. To comply with new US Internal Revenue Code requirements, the Council and the Authority replaced the binding commitment letters with the attached Loan agreement.

If the District intends to accept the Loan, its governing body must adopt a written resolution authorizing it to enter into the Loan agreement. If authorized, the District should execute the Loan agreement in triplicate and return them, along with a certified copy of the resolution, to the Authority. The District must also submit to the Council a proposed written schedule for the closing of the Loan and evidence of the commitment of the \$96,200 EPA STAG grant.

Please contact Jeff Brady at (304) 558-4607 if you have any questions.

Sincerely,

Jefferson E. Brady, P.E.  
Executive Director

cc: Scott Cain, Greenhorne & O'Mara (w/o enclosure)

Public Members  
Ken Lowe, Shepherdstown - Dwight Calhoun, Petersburg - Tim Stranko, Morgantown - Dave McComas, Prichard

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

On this 23rd day of October, 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 Jane Lew Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the 23rd day of October, 2009, the Authority received the Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), of the Issuer, in the principal amount of \$429,399, numbered AR-1 (the "Series 2009 A Bonds"), and the Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), of the Issuer, in the principal amount of \$429,399, numbered BR-1 (the "Series 2009 B Bonds"), both issued as a single, fully registered Bond, and both dated October 23, 2009.

2. At the time of such receipt, all the Series 2009 A Bonds and the Series 2009 B Bonds had been executed by the Chairman and the Secretary of the Issuer by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2009 A Bonds, of the sum of \$96,434, being a portion of the principal amount of the Series 2009 A Bonds. The balance of the principal amount of the Series 2009 A Bonds will be advanced by the Authority and the West Virginia Bureau for Public Health to the Issuer as acquisition and construction of the Project progresses.

4. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2009 B Bonds, of the sum of \$-0-, being a portion of the principal amount of the Series 2009 B Bonds. The balance of the principal amount of the Series 2009 B Bonds will be advanced by the Authority and the West Virginia Bureau for Public Health to the Issuer as acquisition and construction of the Project progresses.

WITNESS our respective signatures as of the date first written above.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

By: Carol A. Cummings  
Its: Authorized Representative

JANE LEW PUBLIC SERVICE DISTRICT

By: Thomas Bailey  
Its: Chairman

09.30.09  
448300.00003

CH5202686.2

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

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

Ladies and Gentlemen:

On this 23rd day of October, 2009, there are delivered to you herewith:

- (1) Bond No. AR-1, constituting the entire original issue of Jane Lew Public Service District Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), in the principal amount of \$429,399 (the "Series 2009 A Bonds"), and Bond No. BR-1, constituting the entire original issue of Jane Lew Public Service District Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), in the principal amount of \$429,399 (the "Series 2009 B Bonds"), both dated October 23, 2009 (collectively, the "Bonds"), executed by the Chairman and the Secretary of Jane Lew Public Service District (the "Issuer") and bearing the official seal of the Issuer, respectively authorized to be issued under and pursuant to a Bond Resolution duly enacted by the Issuer on October 8, 2009, and a Supplemental Resolution duly adopted by the Issuer on October 8, 2009 (collectively, the "Bond Legislation");
- (2) A copy of the Bond Legislation authorizing the above-described Bonds, duly certified by the Secretary of the Issuer;
- (3) Executed counterparts of the ARRA Assistance Agreement for the Series 2009 A Bonds and Series 2009 B Bonds, dated October 23, 2009, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health, (the "ARRA Assistance Agreement"); and
- (4) Executed opinions of nationally recognized bond counsel regarding the validity of the ARRA Assistance Agreement and the Bonds.

You are hereby requested and authorized to deliver the Series 2009 A Bonds to the Authority upon payment to the Issuer of the sum of \$96,434, representing a portion of the principal amount of the Series 2009 A Bonds. You are also hereby requested and authorized to

deliver the Series 2009 B Bonds to the Authority upon payment to the Issuer of the sum of \$-0-, of the principal amount of the Series 2009 B Bonds. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the form of Certificate of Authentication and Registration thereon.

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Dated as of the day and year first stated above.

JANE LEW PUBLIC SERVICE DISTRICT

By: Thomas Bailey  
Its: Chairman

09.30.09  
448300.00003

SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
JANE LEW PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND, SERIES 2009 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

\$429,399

KNOW ALL MEN BY THESE PRESENTS: That on this day 23rd of October, 2009, JANE LEW PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Lewis 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 FOUR HUNDRED TWENTY-NINE THOUSAND THREE HUNDRED NINETY NINE DOLLARS (\$429,399), 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, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The Series 2009 A Bonds are not subject to the Administrative Fee (as defined in the hereinafter described Bond Legislation).

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated October 23, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (ii) to pay costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further extensions, additions, betterments and improvements 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 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Resolution

duly adopted by the Issuer on October 8, 2009, and a Supplemental Resolution duly adopted by the Issuer on October 8, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (I) WATER REVENUE BONDS, SERIES 2004, (UNITED STATES DEPARTMENT OF AGRICULTURE) DATED DECEMBER 16, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$580,000 (THE "SERIES 2004 BONDS"), AND (II) WATER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA DWTRF PROGRAM/ARRA), DATED OCTOBER 23, 2009, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$429,399 (THE "SERIES 2009 B BONDS"). THE SERIES 2004 BONDS ARE HEREINAFTER REFERRED TO AS THE "PRIOR 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 Prior Bonds and the Series 2009 B 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 on a parity with the Bonds, including the Prior Bonds and the Series 2009 B Bonds; provided however, that so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including Prior Bonds and the Series 2009 B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered

owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia (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.

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

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

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

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

[SEAL]

*Thomas [Signature]*  
Chairman

ATTEST:

*[Signature]*  
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: October 23, 2009.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

  
Authorized Officer

EXHIBIT A  
RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$96,434	October 23, 2009	(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

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**BOND DEBT SERVICE**

Jane Lew PSD

0% Interest Rate

30 Years

Dated Date 10/23/2009

Delivery

Date 10/23/2009

<u>Period</u> <u>Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>
10/23/2009			
3/1/2011	3,579		3,579
6/1/2011	3,579		3,579
9/1/2011	3,579		3,579
12/1/2011	3,579		3,579
3/1/2012	3,579		3,579
6/1/2012	3,579		3,579
9/1/2012	3,579		3,579
12/1/2012	3,579		3,579
3/1/2013	3,579		3,579
6/1/2013	3,579		3,579
9/1/2013	3,579		3,579
12/1/2013	3,579		3,579
3/1/2014	3,579		3,579
6/1/2014	3,579		3,579
9/1/2014	3,579		3,579
12/1/2014	3,579		3,579
3/1/2015	3,579		3,579
6/1/2015	3,579		3,579
9/1/2015	3,579		3,579
12/1/2015	3,579		3,579
3/1/2016	3,579		3,579
6/1/2016	3,579		3,579
9/1/2016	3,579		3,579
12/1/2016	3,579		3,579
3/1/2017	3,579		3,579
6/1/2017	3,579		3,579
9/1/2017	3,579		3,579
12/1/2017	3,579		3,579
3/1/2018	3,579		3,579
6/1/2018	3,579		3,579
9/1/2018	3,579		3,579
12/1/2018	3,579		3,579
3/1/2019	3,579		3,579
6/1/2019	3,579		3,579
9/1/2019	3,579		3,579
12/1/2019	3,579		3,579
3/1/2020	3,579		3,579
6/1/2020	3,579		3,579
9/1/2020	3,578		3,578
12/1/2020	3,578		3,578
3/1/2021	3,578		3,578
6/1/2021	3,578		3,578
9/1/2021	3,578		3,578
12/1/2021	3,578		3,578

BOND DEBT SERVICE

Jane Lew PSD

0% Interest Rate

30 Years

Period Ending	Principal	Interest	Debt Service
3/1/2022	3,578		3,578
6/1/2022	3,578		3,578
9/1/2022	3,578		3,578
12/1/2022	3,578		3,578
3/1/2023	3,578		3,578
6/1/2023	3,578		3,578
9/1/2023	3,578		3,578
12/1/2023	3,578		3,578
3/1/2024	3,578		3,578
6/1/2024	3,578		3,578
9/1/2024	3,578		3,578
12/1/2024	3,578		3,578
3/1/2025	3,578		3,578
6/1/2025	3,578		3,578
9/1/2025	3,578		3,578
12/1/2025	3,578		3,578
3/1/2026	3,578		3,578
6/1/2026	3,578		3,578
9/1/2026	3,578		3,578
12/1/2026	3,578		3,578
3/1/2027	3,578		3,578
6/1/2027	3,578		3,578
9/1/2027	3,578		3,578
12/1/2027	3,578		3,578
3/1/2028	3,578		3,578
6/1/2028	3,578		3,578
9/1/2028	3,578		3,578
12/1/2028	3,578		3,578
3/1/2029	3,578		3,578
6/1/2029	3,578		3,578
9/1/2029	3,578		3,578
12/1/2029	3,578		3,578
3/1/2030	3,578		3,578
6/1/2030	3,578		3,578
9/1/2030	3,578		3,578
12/1/2030	3,578		3,578
3/1/2031	3,578		3,578
6/1/2031	3,578		3,578
9/1/2031	3,578		3,578
12/1/2031	3,578		3,578
3/1/2032	3,578		3,578
6/1/2032	3,578		3,578
9/1/2032	3,578		3,578
12/1/2032	3,578		3,578
3/1/2033	3,578		3,578
6/1/2033	3,578		3,578
9/1/2033	3,578		3,578
12/1/2033	3,578		3,578
3/1/2034	3,578		3,578

BOND DEBT SERVICE

Jane Lew PSD

0% Interest Rate

30 Years

Period Ending	Principal	Interest	Debt Service
6/1/2034	3,578		3,578
9/1/2034	3,578		3,578
12/1/2034	3,578		3,578
3/1/2035	3,578		3,578
6/1/2035	3,578		3,578
9/1/2035	3,578		3,578
12/1/2035	3,578		3,578
3/1/2036	3,578		3,578
6/1/2036	3,578		3,578
9/1/2036	3,578		3,578
12/1/2036	3,578		3,578
3/1/2037	3,578		3,578
6/1/2037	3,578		3,578
9/1/2037	3,578		3,578
12/1/2037	3,578		3,578
3/1/2038	3,578		3,578
6/1/2038	3,578		3,578
9/1/2038	3,578		3,578
12/1/2038	3,578		3,578
3/1/2039	3,578		3,578
6/1/2039	3,578		3,578
9/1/2039	3,578		3,578
12/1/2039	3,578		3,578
3/1/2040	3,578		3,578
6/1/2040	3,578		3,578
9/1/2040	3,578		3,578
12/1/2040	3,579		3,579
	429,399		429,399

(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:

\_\_\_\_\_

SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
JANE LEW PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2009 B  
(WEST VIRGINIA DWTRF PROGRAM/ARRA)

No. BR-1

\$429,399

KNOW ALL MEN BY THESE PRESENTS: That on this 23rd day of October, 2009, JANE LEW PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Lewis 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 FOUR HUNDRED TWENTY-NINE THOUSAND THREE HUNDRED NINETY NINE DOLLARS (\$429,399), 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, as set forth in the Debt Service Schedule attached as EXHIBIT B hereto and incorporated herein by reference. The Series 2009 B Bonds are not subject to the Administrative Fee (as defined in the hereinafter described Bond Legislation).

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 Bureau for Public Health (the "BPH"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and between the Issuer and the Authority, on behalf of the BPH, dated October 23, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance for the Bonds of this Series (the "Bonds") and related costs. The existing public waterworks system of the Issuer, the Project and any further extensions, additions, betterments and improvements 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 16, Article 13C of the West Virginia Code of 1931, as amended (collectively, the "Act"), a

Bond Resolution duly adopted by the Issuer on October 8, 2009, and a Supplemental Resolution duly adopted by the Issuer on October 8, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S (I) WATER REVENUE BONDS, SERIES 2004, (UNITED STATES DEPARTMENT OF AGRICULTURE) DATED DECEMBER 16, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$580,000 (THE "SERIES 2004 BONDS"), AND (II) WATER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA DWTRF PROGRAM), DATED OCTOBER 23, 2009, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$429,399 (THE "SERIES 2009 A BONDS"). THE SERIES 2004 BONDS ARE HEREINAFTER REFERRED TO AS THE "PRIOR 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 Prior Bonds and the Series 2009 A Bonds, 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 on a parity with the Bonds, including the Prior Bonds and the Series 2009 A Bonds; provided however, that so long as there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the Prior Bonds and the Series 2009 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia (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.

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

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

[SEAL]

*Thomas Pauley*  
\_\_\_\_\_  
Chairman

ATTEST:

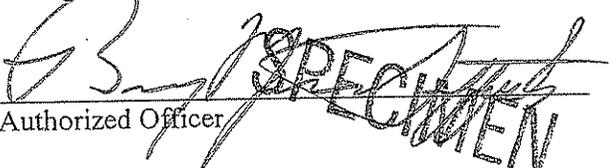
*Os Mills*  
\_\_\_\_\_  
Secretary

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: October 23, 2009.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

  
Authorized Officer

**SPECIMEN**

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$-0-	October 23, 2009	(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

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**BOND DEBT SERVICE**

Jane Lew PSD

10 Years

Dated Date 10/23/2009

Delivery

Date 10/23/2009

Period Ending	Debt Service	Principal Forgiveness
10/23/2009		
3/1/2011	10,735	10,735
6/1/2011	10,735	10,735
9/1/2011	10,735	10,735
12/1/2011	10,735	10,735
3/1/2012	10,735	10,735
6/1/2012	10,735	10,735
9/1/2012	10,735	10,735
12/1/2012	10,735	10,735
3/1/2013	10,735	10,735
6/1/2013	10,735	10,735
9/1/2013	10,735	10,735
12/1/2013	10,735	10,735
3/1/2014	10,735	10,735
6/1/2014	10,735	10,735
9/1/2014	10,735	10,735
12/1/2014	10,735	10,735
3/1/2015	10,735	10,735
6/1/2015	10,735	10,735
9/1/2015	10,735	10,735
12/1/2015	10,735	10,735
3/1/2016	10,735	10,735
6/1/2016	10,735	10,735
9/1/2016	10,735	10,735
12/1/2016	10,735	10,735
3/1/2017	10,735	10,735
6/1/2017	10,735	10,735
9/1/2017	10,735	10,735
12/1/2017	10,735	10,735
3/1/2018	10,735	10,735
6/1/2018	10,735	10,735
9/1/2018	10,735	10,735
12/1/2018	10,735	10,735
3/1/2019	10,735	10,735
6/1/2019	10,735	10,735
9/1/2019	10,735	10,735
12/1/2019	10,735	10,735
3/1/2020	10,735	10,735
6/1/2020	10,735	10,735
9/1/2020	10,734	10,734
12/1/2020	10,735	10,735
	<b>429,399</b>	<b>429,399</b>

(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:

October 23, 2009

Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program)

Jane Lew Public Service District  
Jane Lew, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Jane Lew Public Service District (the "Issuer"), a public service district, public corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its \$429,399 Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), 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 October 23, 2009, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), 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 as to principal only to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, and to and including December 1, 2040, all as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds. The Bonds are not subject to an Administrative Fee.

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 16, Article 13C 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 certain extensions, additions, betterments and improvements to the existing public waterworks 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, the Bond Resolution duly adopted by the Issuer on October 8, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 8, 2009 (collectively, 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 BPH and cannot be amended by the Issuer so as to affect adversely the rights of the Authority or the BPH or diminish the obligations of the Issuer without the written consent of the Authority and the BPH.

3. The Bond Legislation and all other necessary orders and resolutions have been duly and effectively adopted by the Issuer in connection with the issuance and sale of the Bonds 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 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 with the Issuer's (i) Water Revenue Bonds, Series 2004 (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000 (the "Series 2004 Bonds"), and (ii) Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), dated October 23, 2009, issued in the original aggregate principal amount of \$429,399 (the "Series 2009 B Bonds"), issued concurrently herewith, all in accordance with the terms of the Bonds and the Bond Legislation.

5. The Bonds are, under the Act, exempt from taxation by the State of West Virginia and the other taxing bodies of the State and the interest on the Bonds, if any, is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

6. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

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,



STEPHENS & JOHNSON PLLC

09.30.09  
448300.00003

October 23, 2009

Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

Jane Lew Public Service District  
Jane Lew, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Jane Lew Public Service District (the "Issuer"), a public service district, public corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its \$429,399 Water Revenue Bonds, Series 2009 B (West Virginia DWTRF 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 October 23, 2009, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), 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 as to principal only to the Authority, bearing no interest, with principal forgivable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2011, and 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. The Bonds are not subject to an Administrative Fee.

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 16, Article 13C 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 certain extensions, additions, betterments and improvements to the existing public waterworks 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, the Bond Resolution duly adopted by the Issuer on October 8, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 8, 2009 (collectively, 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 BPH and cannot be amended by the Issuer so as to affect adversely the rights of the Authority or the BPH or diminish the obligations of the Issuer without the written consent of the Authority and the BPH.

3. The Bond Legislation and all other necessary orders and resolutions have been duly and effectively adopted by the Issuer in connection with the issuance and sale of the Bonds 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 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 with the Issuer's: (i) Water Revenue Bonds, Series 2004 (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000 (the "Series 2004 Bonds"), and (ii) Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), dated October 23, 2009, issued in the original aggregate principal amount of \$429,399 (the "Series 2009 A Bonds"), issued concurrently herewith, all in accordance with the terms of the Bonds and the Bond Legislation.

5. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross

income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

6. The Bonds are, under the Act, exempt from taxation by the State of West Virginia and the other taxing bodies of the State, and the interest, if any, on the Bonds is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

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,



STEPHENS & JOHNSON PLLC

09.30.09  
448300.00003

LAW OFFICE OF  
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October 23, 2009

Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

Jane Lew Public Service District  
Jane Lew, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

Steptoe & Johnson PLLC  
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to Jane Lew Public Service District in Lewis County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, an ARRA Assistance Agreement for the Series 2009 A Bonds and Series 2009 B Bonds, dated October 23, 2009, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), (the "ARRA Assistance Agreement"), a Bond Resolution duly adopted by the Issuer on October 8, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 8, 2009 (collectively, the "Bond Legislation"), orders of The County Commission of Lewis County relating to the Issuer and the appointment of members of the Public Service Board of the Issuer, and other documents, papers, agreements, instruments and certificates relating to the above-captioned Bonds of the Issuer (the "Bonds"). 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.

I am of the opinion that:

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, all under the Act and other applicable provisions of law.

2. The ARRA Assistance Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority, 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 ARRA Assistance Agreement and the consummation of the transactions contemplated by the Bonds, the ARRA Assistance 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, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from The County Commission of Lewis County, the BPH and the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received a Recommended Decision of the Public Service Commission of West Virginia entered

on March 13, 2009, Commission Order dated April 7, 2009 and Commission Order dated September 14, 2009, and an affidavit of CPA dated October 8, 2009 (collectively, the "Order") in Case No. 08-1867-PWD-CN, among other things, granting the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project and the rates of the System. The time for appeal has expired prior to the date hereof without any appeal. The Order remains in full force and effect.

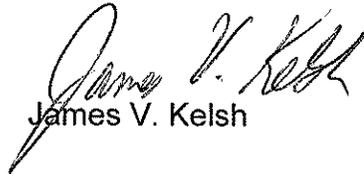
7. The Issuer has duly published a notice of the acquisition and construction of the Project, the issuance of the Bonds and related matters, as required under Chapter 16, Article 13 A, Section 25 of the West Virginia Code of 1931, as amended, and has duly complied with the provisions thereof.

8. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the ARRA Assistance Agreement, the Bonds and the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds, the collection of Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

9. I have ascertained that all successful bidders have provided the drug-free workplace affidavit, submitted their drug free workplace plan, and the contracts contain language that comply with the Drug Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code and made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (i) are in compliance with the contracts; (ii) are adequate in form, substance and amount to protect the various interests of the Issuer; (iii) have been executed by duly authorized representatives of the proper parties; (iv) meet the requirements of the Act, the Bond Legislation and the Loan Agreement; and (vi) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,



James V. Kelsh

JVK/bg



**Smith, McMunn & Glover, PLLC**  
Attorneys at Law

G. Thomas Smith  
D. Andrew McMunn  
David C. Glover

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Writer's Email: davidcglover@aol.com

October 23, 2009

West Virginia Infrastructure and Jobs Development Council  
Charleston, WV

West Virginia Bureau of Public Health  
Charleston, WV

Re: Jane Lew Public Service District  
Water System Improvement Project  
Final Title Opinion

Dear Ladies and Gentlemen:

This firm represents Jane Lew Public Service District (hereinafter "District") with regard to the above-referenced Project, and provides this final title opinion on behalf of the District to satisfy the requirements of the West Virginia Division of Environmental Protection with regard to the financing proposed for the Project. As such, please be advised of the following:

1. That I am of the opinion that the District is a duly created and existing public service district possessed with all powers and authority granted to public service districts under the laws of the State of West Virginia and has the full power and authority to construct, operate and maintain the Project as approved by the West Virginia Division of Environmental Protection and the Public Service Commission of West Virginia.
2. That the District has obtained all necessary permits and approvals for the construction of the Project, including a Certificate of Public Convenience and Necessity issued by the Public Service Commission of West Virginia (Final September 14, 2009).
3. That I have investigated and ascertained the location of and am familiar with the legal description of the necessary sites, including easements and/or rights-of-way, required for

the Project as set forth in the plans for the Project prepared by Greenhorne & O'Mara, Inc., the consulting engineers for the Project.

4. That I have examined the records on file in the Office of the Clerk of the County Commission of Lewis County, West Virginia, the County in which the Project is to be located and, in my opinion, the District has acquired legal title or such other estate or interests in all the necessary site components for the Project, including the easements and/or rights-of-way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.

5. That all deeds or other documents which have been acquired to date by the District have or will be duly recorded in the aforesaid Clerk's Office in order to protect the legal title to and the interests of the District.

If you should have any questions regarding this matter or any of the information contained in this letter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "David C. Glover". The signature is written in a cursive, flowing style.

David C. Glover

cc: Katy Mallory, P.E.  
James V. Kelsh, Esquire  
Richard Gaines, P.E.  
Nancy Gee, General Manager

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. ARRA ASSISTANCE AGREEMENT
11. RATES
12. PUBLIC SERVICE COMMISSION ORDER
13. SIGNATURES AND DELIVERY
14. BOND PROCEEDS
15. PUBLICATION OF NOTICE AND PSC FILING
16. SPECIMEN BONDS
17. CONFLICT OF INTEREST
18. PROCUREMENT OF ENGINEERING SERVICES
19. GRANTS
20. SAFE DRINKING WATER ACT
21. EXECUTION OF COUNTERPARTS

On this 23rd day of October, 2009, we, the undersigned CHAIRMAN and the undersigned SECRETARY of the Public Service Board of Jane Lew Public Service District in Lewis County, West Virginia (the "Issuer"), and the undersigned COUNSEL to the Issuer, hereby certify in connection with the Issuer's Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) and Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), both dated October 23, 2009, (collectively, the "Bonds" or individually, the "Series 2009 A Bonds" and the "Series 2009 B Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning set forth in the Bond Resolution of the Issuer duly adopted October 8, 2009, and a Supplemental Resolution of the Issuer duly adopted October 8, 2009 (collectively, the "Bond Legislation"), when used herein.

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition or construction of the Project, the operation of the System, the collection or use of the revenues of the System, 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 monies or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues of the System, or the pledge of the Net Revenues 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 acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

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

There are outstanding bonds or obligations of the Issuer which will rank on a parity with the Series 2009 A Bonds and the Series 2009 B Bonds as to liens, pledge and source of and security for payment, being the Issuer's Water Revenue Bonds, Series 2004 (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000 (the "Series 2004 Bonds, or the "Prior Bonds").

The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consents of the Holders of the Prior Bonds to the issuance of the Series 2009 A Bonds and the Series 2009 B Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other 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.

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, altered, supplemented or changed in any way unless modification appears from later documents also listed below.

Bond Resolution

Supplemental Resolution

ARRA Assistance Agreement

Public Service Commission Orders

Infrastructure Council Approval

County Commission Orders on the Creation and Expansion of 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 Supplemental Resolution

Consent of Rural Utilities Service to Issuance of Parity Bonds

Prior Bond Resolution

Environmental Health Services Permit

Title Opinion

Evidence of Insurance

Evidence of U.S. EPA Grant

Evidence of IJDC Grant

6. INCUMBENCY AND OFFICIAL NAME, ETC.: The proper corporate title of the Issuer is "Jane Lew Public Service District". The Issuer is a public service district and public corporation in Lewis County and is presently existing under the laws of, and a 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
Elaine Flaxer	July 17, 2006	June 30, 2012
Oscar Mills	July 1, 2008	June 30, 2014
Thomas Bailey	August 4, 2004	June 30, 2010

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

Chairman - Thomas Bailey  
Secretary - Elaine Flaxer

NOTE: Oscar Mills was elected as Secretary for the purposes of closing the Series 2009 Bonds.

The duly appointed and acting counsel to Issuer is James Kelsh, Esquire, Charleston West Virginia.

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

8. MEETINGS, ETC.: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds, the acquisition, construction, operation and financing of the Project and the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, 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. The successful bidders have provided the Drug-Free Workplace Affidavit as evidence of compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code. All insurance for the System required by the Bond Legislation and ARRA Assistance Agreement is in full force and effect.

10. ARRA ASSISTANCE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the ARRA Assistance Agreement are true and correct in all material respects as if made on the date hereof; (ii) the ARRA Assistance Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the ARRA Assistance 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 ARRA Assistance

Agreement not misleading; and (iv) the Issuer is in compliance with and has met the requirements of the ARRA Assistance Agreement.

The Issuer will serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer will not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority (the "Authority"). Following completion of the Project the Issuer will certify to the Authority the number of customers added to the System.

The Special Conditions of the ARRA Assistance Agreement are attached as Exhibit A and hereby incorporated herein.

11. RATES: The Issuer has received the Recommend Decision of the Public Service Commission of West Virginia entered on March 13 2009, Commission Order dated April 7, 2009 and Commission Order dated September 14, 2009 (collectively, the "Order") in Case No. 08-1867-PWD-T-PC-CN, approving the rates and charges for the services of the System, and has adopted a resolution prescribing such rates and charges. The time for appeal of such Order has expired prior to the date hereof without any appeal.

12. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommend Decision of the Public Service Commission of West Virginia entered on March 13 2009, Commission Order dated April 7, 2009 and Commission Order dated September 14, 2009 and an affidavit of CPA dated October 8, 2009 (collectively, the "Order") in Case No. 08-1867-PWD-T-PC-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the Order has expired prior to the date hereof. The Order remain in full force and effect.

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

14. BOND PROCEEDS: On the date hereof, the Issuer received \$96,434 from the Authority and the BPH, being a portion of the principal amount of the Series 2009 A Bonds and \$-0- from the Authority and the BPH, being a portion of the principal amount of the Series 2009 B Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

15. PUBLICATION OF NOTICE OF PSC FILING: The Issuer has published any required notice with respect to, among other things, the acquisition and construction of the Project, anticipated user rates and charges, and 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 member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

18. 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.

19. GRANTS: The Issuer has a Grant Commitment from the U.S. Environmental Protection Agency in the amount of \$96,200 and the West Virginia Infrastructure and Jobs Development Grant in the amount of \$50,543 are in full force and effect.

20. SAFE DRINKING WATER ACT: The Project as described in the Bond Legislation complies with the Safe Drinking Water Act.

21. 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.

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

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

Thomas Bailey

Chairman

Oscar Mills

Secretary

James V. Kish

Counsel to Issuer

07.14.09  
448300.00003

CH5202693.2

EXHIBIT A

SPECIAL CONDITIONS – ARRA FUNDED PROJECTS

A. PUBLIC RELEASE REQUIREMENT – The Local Entity 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 Entity 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 Entity.

C. BUY AMERICAN CERTIFICATION – The Local Entity 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 Entity shall develop and implement an asset management plan in accordance with guidelines issued by BPH and as approved by BPH.

E. CONTRACTS – The Local Entity shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Entity must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING – The Local Entity shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by BPH.

H. PURCHASING REQUIREMENTS – The Local Entity 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 Entity 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 BPH, the Local Entity shall provide certifications as to compliance.

J. REPORTING – The Local Entity 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 BPH.

K. INSPECTOR GENERAL REVIEWS – The Local Entity 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 Entity.

L. FALSE CLAIMS – The Local Entity 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 Entity 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 Entity 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 Entity 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 Entity 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](http://www.recovery.gov), and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Entity agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Entity shall provide BPH with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Entity 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 Entity 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 Entities, 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 Entity 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 Entity shall notify the Authority and the BPH of any action to reduce rates during the eighteen months following completion of construction of the Project.

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

CERTIFICATE OF ENGINEER

On this 23rd day of October, 2009, I, Richard L. Gaines, Registered Professional Engineer, West Virginia License No. 017220 of Greenhorne & O'Mara, Inc., Fairmont West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain additions, betterments, improvements and extensions (the "Project") to the existing public waterworks system (the "System) of Jane Lew Public Service District (the "Issuer"), to be constructed primarily in Lewis County, West Virginia, which acquisition and construction are being financed in part by the proceeds of the above-captioned bonds (collectively, the "Bonds") of the Issuer. All capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Resolution adopted by the Issuer on October 8, 2009, as supplemented by the Supplemental Resolution adopted by the Issuer on October 8, 2009, and the ARRA Assistance Agreement for the Series 2009 A Bonds dated October 23, 2009, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), and the ARRA Assistance Agreement for the Series 2009 B Bonds dated October 23, 2009, by and between the Issuer and the Authority, on behalf of the BPH (collectively, the "ARRA Assistance Agreement").

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

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the BPH, and any change orders approved by the Issuer, the BPH, and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 32 years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule B attached hereto as Exhibit A and the Issuer's counsel, James Kelsh, Esquire, will, prior to the Issuer executing the construction contracts for the Project, ascertain that all successful bidders have made required provisions for all insurance and payment and

performance bonds and 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 successful bidders have provided the Drug-Free Workplace Affidavit as evidence of compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; (vi) the bid documents relating to the Project reflect the Project as approved by the BPH and the bid forms provided to the bidders contain the critical operational components of the Project; (vii) the successful bids include prices for every item on such bid forms; (viii) the uniform bid procedures were followed; (ix) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (x) in reliance upon the certificate of the Issuer's certified public accountant, Smith Cochran & Hicks, CPA, as of the effective date thereof, the rates and charges for the System as adopted by the Issuer and approved by the Public Service Commission of West Virginia will be sufficient to comply with the provisions of the ARRA Assistance Agreement and the Bond Resolution; (xi) the net proceeds of the Bonds, together with all other monies on deposit or to be simultaneously deposited and irrevocably committed therefor, 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 Authority and the BPH; and (xii) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

4. I have received the Buy American Certification from each contractor.
5. The Project will service 6 new customers in the Clay Lick Road area.

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WITNESS my signature and seal as of the date first written above.

GREENHORNE & O'MARA, INC

  
Richard L. Gaines, P.E.

West Virginia License 017220

[SEAL]



09.29.09  
448300.00003

SCHEDULE B

Jane Lew PSD

A. Cost of Project	TOTAL	IJDC Soft Cost Grant	SAP GRANT	DWTRF (1st round)	DWTRF (2nd Round)	DWTRF (ARRA)
1. Construction						
Contract A	\$ 546,348.00	\$ -	\$ 96,200.00	\$ 25,000.00	\$ 78,709.00	\$ 346,439.00
Contract B	\$ 167,610.00	\$ -	\$ -	\$ 64,650.00	\$ -	\$ 82,960.00
Construction Contingency	\$ 67,630.00	\$ -	\$ -	\$ 67,630.00	\$ -	\$ -
2. Technical Services (G&O)						
Design	\$ 77,639.00	\$ -	\$ -	\$ 77,639.00	\$ -	\$ -
Inspection	\$ 42,153.00	\$ -	\$ -	\$ 42,153.00	\$ -	\$ -
Accounting (A. Vealy)	\$ 6,375.00	\$ -	\$ -	\$ -	\$ 6,375.00	\$ -
3. Accounting (A. Vealy)	\$ 50,000.50	\$ 50,000.50	\$ -	\$ -	\$ -	\$ -
4. a. Legal (Keish)	\$ 10,000.00	\$ -	\$ -	\$ -	\$ 10,000.00	\$ -
b. Legal (West & Jones)	\$ 542.50	\$ 542.50	\$ -	\$ -	\$ -	\$ -
c. Legal (Glover - title)	\$ 2,500.00	\$ -	\$ -	\$ 2,500.00	\$ -	\$ -
5. Administration / Permits	\$ 2,500.00	\$ -	\$ -	\$ 2,500.00	\$ -	\$ -
6. Sites & Lands (R-O-W Acquisitions)	\$ 16,243.00	\$ -	\$ -	\$ 16,243.00	\$ -	\$ -
7. Project Contingency	\$ 989,541.00	\$ 50,543.00	\$ 96,200.00	\$ 318,315.00	\$ 95,084.00	\$ 429,399.00
8. TOTAL Lines 1 through 7	\$ 1,005,541.00	\$ 50,543.00	\$ 96,200.00	\$ 319,315.00	\$ 110,084.00	\$ 429,399.00
B. Cost of Financing						
9. Registrar Fee	\$ 1,000.00	\$ -	\$ -	\$ 1,000.00	\$ -	\$ -
10. Debit Reserve	\$ -	\$ -	\$ -	\$ -	\$ 15,000.00	\$ -
11. Bond Counsel (Steeple & Johnson)	\$ 15,000.00	\$ -	\$ -	\$ -	\$ 15,000.00	\$ -
12. Cost of Issuance (Line 9 plus Line 10)	\$ 16,000.00	\$ -	\$ -	\$ 1,000.00	\$ 15,000.00	\$ -
13. TOTAL COST OF PROJECT (Line 8+Line 9+Line 10+Line 11+Line 12)	\$ 1,005,541.00	\$ 50,543.00	\$ 96,200.00	\$ 319,315.00	\$ 110,084.00	\$ 429,399.00
C. Sources of Funds						
14. Federal Grants (SAP)	\$ 96,200.00	\$ -	\$ 96,200.00	\$ -	\$ -	\$ -
15. State Grants (IJDC)	\$ 50,543.00	\$ 50,543.00	\$ -	\$ -	\$ -	\$ -
16. Other Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
17. TOTAL GRANTS	\$ 146,743.00	\$ 50,543.00	\$ 96,200.00	\$ -	\$ -	\$ -
18. SIZE OF BOND ISSUE (Line 12 minus Line 17)	\$ 858,798.00	\$ -	\$ -	\$ 319,315.00	\$ 110,084.00	\$ 429,399.00

*Thomas Bealy*  
Jane Lew Public Service District

10-8-09  
Date

*[Signature]*  
Greentorne & O'Mara

10-8-09  
Date

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

CERTIFICATE AS TO USE OF PROCEEDS

On this 23rd day of October, 2009, the undersigned Chairman of the Public Service Board of Jane Lew Public Service District in Jane Lew, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$429,399 Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) (the "Series 2009 A Bonds") and \$429,399 Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA) (the "Series 2009 B Bonds"), of the Issuer, both dated October 23, 2009 (collectively, the "Bonds"), hereby certify as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Resolution duly adopted by the Issuer on October 8, 2009 and Supplemental Resolution duly adopted on October 8, 2009 (collectively the "Bond Resolution"), authorizing the Bonds.

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

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on October 23, 2009, the date on which the Bonds are being physically delivered in exchange for an initial advance of the principal of the 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 Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority") and the West Virginia Bureau for Public Health (the "BPH"), from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2009 A Bonds were sold on October 23, 2009, to the Authority, pursuant to an ARRA Assistance Agreement dated October 23, 2009, by and between the Issuer and the Authority, on behalf of the BPH, for an aggregate purchase price of \$429,399

(100% of par), at which time, the Issuer received \$96,434 from the Authority and the BPH, being the first advance of the principal amount of the Series 2009 A Bonds. No accrued interest has been or will be paid on the Series 2009 A Bonds. The balance of the principal amount of the Series 2009 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2009 B Bonds were sold on October 23, 2009, to the Authority, pursuant to an ARRA Assistance Agreement dated October 23, 2009, by and between the Issuer and the Authority, on behalf of the BPH, for an aggregate purchase price of \$429,399 (100% of par), at which time, the Issuer received \$-0- from the Authority and the BPH, being the first advance of the principal amount of the Series 2009 B Bonds. No accrued interest has been or will be paid on the Series 2009 B Bonds. The balance of the principal amount of the Series 2009 B Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

7. The 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 certain improvements and extensions to the existing public waterworks system of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds 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 in excess of 5% of the net sale proceeds of the Bonds on the Project, constituting a substantial binding commitment, or has already done so. The acquisition, construction and equipping of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the respective Reserve Accounts for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before December 1, 2010. The acquisition and construction of the Project is expected to be completed by June 1, 2010.

9. The total cost of the Project is estimated at \$1,005,541. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Series 2009 A Bonds	\$ 429,399
Proceeds of the Series 2009 B Bonds	\$ 429,399
Proceeds of the SAP Grant	\$ 96,200
Proceeds of the IJDC Grant	\$ <u>50,543</u>
Total Sources	\$1,005,541

USES

Costs of Acquisition and Construction of the Project	\$ 989,541
Cost of Financing	<u>\$ 16,000</u>
Total Uses	\$1,005,541

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

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

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

- (1) Series 2009 A Bond proceeds in the amount of \$-0- will be deposited in the Series 2009 A Bonds Sinking Fund to cover capitalized interest.
- (2) Series 2009 B Bond proceeds in the amount of \$-0- will be deposited in the Series 2009 B Bonds Sinking Fund to cover capitalized interest.
- (3) Series 2009 A Bond proceeds in the amount of \$-0- will be deposited in the Series 2009 A Bonds Reserve Account to cover capitalized interest.

(4) Series 2009 B Bond proceeds in the amount of \$-0- will be deposited in the Series 2009 B Bonds Reserve Account to cover capitalized interest.

(5) All proceeds of the Series 2009 A Bonds will be deposited in the Series 2009 Bonds Construction 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 A Bonds and related costs.

(6) All proceeds of the Series 2009 B Bonds will be deposited in the Series 2009 Bonds Construction 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 and interest on the Series 2009 A Bonds and will not be available to meet costs of acquisition and construction 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 into the Series 2009 Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

13. Monies held in the Series 2009 B Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2009 B Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on monies in the Series 2009 B Bonds Sinking Fund and Series 2009 B Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2009 Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

14. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 7 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, if any, all of the proceeds of the Series 2009 A Bonds will be expended on the Project within 13 months from the date of issuance thereof.

17. With the exception of the amount deposited in the Series 2009 B Bonds Reserve Account, if any, all of the proceeds of the Series 2009 B Bonds will be expended on the Project within 13 months from the date of issuance thereof.

18. The Issuer does not expect to sell or otherwise dispose of the Project prior to the last maturity date of the Bonds.

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

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

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

22. The Issuer covenants that it shall maintain thorough and accurate accounting records, in conformance with generally accepted accounting principles, relative to the proceeds of Bonds so that use of proceeds from each series of the Bonds can be accounted for.

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

24. The Issuer shall use the 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.

25. The Bonds are not federally guaranteed.

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

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

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

funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

29. 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.

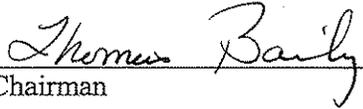
30. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

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

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WITNESS my signature as of the date first written above.

JANE LEW PUBLIC SERVICE DISTRICT

  
Chairman

09.30.09  
448300.00003



Smith, Cochran & Hicks, P.L.L.C.  
Certified Public Accountants

Oak Hill Charleston Montgomery

405 Capitol Street • Suite 908 • Charleston, WV 25301 • 304-345-1151 • Fax 304-346-6731

October 23, 2009

Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

Jane Lew Public Service District  
Jane Lew, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

United States Department of Agriculture  
Morgantown, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the water rates and charges set forth in the Commission Order of the Public Service Commission of West Virginia in Case 08-1867-PWD-T-PC-CN, entered April 7, 2009, the projected operating expenses and the anticipated customer usage as furnished to us by Greenhorne & O'Mara, Inc. the Consulting Engineer to Jane Lew Public Service District (the "Issuer"), it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the waterworks system (the "System") of the Issuer, will pay all operating expenses of the System and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) and Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA) (the "Bonds"), to be issued to the West Virginia Water Development Authority and all other obligations secured by or payable from the revenues of the System, including the Issuer's (i) Water Revenue Bonds, Series 2004 A, (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000 (the "Series 2004 A Bonds" or the "Prior Bonds")

It is my further opinion that the Net Revenues for the Fiscal Year following the year in which the Bonds are issued will be at least 120% of the average annual debt service requirements on the Bonds and the Prior Bonds.

Respectfully,

SMITH COCHRAN & HICKS

SESSION HELD FRIDAY, SEPTEMBER 26th, 1958

19

The Johnson-Watson Co., Dayton, Ohio—Charleston, W. Va.—P-2571

IN RE: CREATION OF A PUBLIC SERVICE DISTRICT UNDER THE AUTHORITY OF CHAPTER NO. 147 OF THE ACTS OF THE LEGISLATURE, 1953, REGULAR SESSION AS AMENDED

This matter came on again to be heard this 26th day of August, 1958, upon a petition heretofore presented to this Court on the 5th day of August, 1958, petitioning this Court for the establishment of a public service district under the authority of Chapter No. 147, of the Acts of the Legislature, 1953, Regular Session; upon the finding by this Court that said petition was signed by more than one hundred (100) legal voters resident within and owning real property within the limits of such proposed public service district and upon the entry of an order herein setting this matter for hearing this day, but requiring that a notice first be published by the Clerk of this Court, at least once, in a newspaper of general circulation, published within this County, at least ten days prior to this date.

And it appearing to the Court that notice has been duly published in the Weston Independent, a newspaper published in Lewis County, West Virginia, at least once, ten days prior to the date that this Court would, on the 26th day of August, 1958, at 10:00 o'clock A. M. in the County Courthouse in Weston, Lewis County, West Virginia, proceed to take evidence on the proposal to establish the Jane Lew Water Commission and to hear such persons resident within, or owning or having any interest in property, in such proposed public service district, who cared to be heard, for or against the creation of such public service district.

And thereupon, this Court proceeded to hear the evidence of all interested parties for and against the creation of such public service district.

And this Court, after hearing the evidence offered before it, does find and determine that the construction or acquisition, by purchase or otherwise, and maintenance, operation, improvement and extension of public service properties by a public service district to comprise Hackers Creek Magisterial District, as is situate in the Town of Jane Lew and its adjacent and outlying areas, in Lewis County, West Virginia, is feasible and will be conducive to the preservation of the public health, comfort and convenience of students and pupils attending the public schools of the County located within this such area and of the persons residing within such area.

And it further appearing that written protest signed by thirty per cent (30%) or more of the qualified voters registered and residing within said district, has not been filed and this Court, finding no reason against the establishment of a public service district as petitioned for,

IT IS, THEREFORE, ORDERED, that there shall be, and there is, hereby created a public service district to be known as "JANE LEW WATER COMMISSION, a corporation", which shall have existence from this date, and be possessed of all of the rights, powers, duties and obligations granted to and imposed upon it, by the laws of the State of West Virginia, the territorial limits of which shall embrace the territorial limits of the Town of Jane Lew and its adjacent and outlying areas within Hackers Creek Magisterial District of Lewis County, West Virginia, and the powers, duties of such Jane Lew Water Commission shall be vested in and exercised by a public service board.

IT IS FURTHER ORDERED, That the persons named hereafter are hereby appointed as members of the Public Service Board of The Jane Lew Water Commission, who shall serve for the period of time indicated opposite their names and until they resign or the expiration of their respective terms of office and/or thereafter until their successors

SESSION HELD

FRIDAY, SEPTEMBER 26TH, 1958

19

have been appointed as follows:

For a period of two years	DOLPH MUSSER, CHAIRMAN
For a period of four years	J. CARSON WHITE
For a period of six years	HARRY MCWHORTER
For a period of eight years	RUDOLPH KAUFER
For a period of ten years	JOHN G. FUNK

But before entering upon his duties as such member of the Board as aforesaid, each of the aforesaid members shall meet at the Office of the Clerk of this Court as soon as practicable hereafter and shall qualify by taking the required oath of office.

If it is further ordered that the term of office of each of the members appointed as aforesaid, shall begin as of the first day of August, 1958.

ORDERED, that this Court doth now adjourn until Friday, October 3rd, 1958.

Hazel L. Bennett, President.

State of West Virginia,  
County of Lewis, To-Wit:

I, Mary Lou Myers, Clerk of the County Commission of Lewis County, in the State of West Virginia, and as such Clerk having the care and custody of the records of GENERAL ORDERS of said County, do hereby certify that the foregoing is a true and accurate copy OF THE ORDER OF CREATION OF A PUBLIC SERVICE DISTRICT FOR JANE LEW

as the same appears of record in my office in GENERAL ORDER Book 33, Page 104 & 105

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Commission, at the City of Weston, in said County and State, this 28th day of September, 20 04.

Mary Lou Myers  
Clerk of the County Commission of Lewis County, West Virginia by;dw

SESSION HELD

FRIDAY, NOVEMBER 13, 1959.

19

The Johnson-Watson Co., Dayton, Ohio—Charleston, W. Va.—P-2071

Court sat pursuant to adjournment of Friday, November 6, 1959.

PRESENT: The same Court.

The proceedings of this Court on Friday were approved and signed by the President.

IN RE: CORRECTION JANE LEW WATER COMMISSION ORDER ENTERED  
SEPTEMBER 26, 1958

This day came the Jane Lew Water Commission, a Public Service District of Lewis County, West Virginia, by its Chairman, Rudolph Kafer and its Counsel, Louis G. Craig, and asked the Court to correct the records of said order creating said Public Service District of said session of this Court held on the 26th day of September, 1958, wherein said order recited said meeting was held on the 26th day of August, 1958 and said notice having been presented on the 5th day of August, 1958.

And it appearing to the Court that said order did incorrectly state the said date of August 26, and August 5th, and that said dates to be in error, it is therefore accordingly ordered that said records be, and said records are hereby corrected by this order to declare said matter was approved on the 26th day of September, 1958 and said petition having been filed herewith on the 5th day of September, 1958.

State of West Virginia,  
County of Lewis, Co-Wit:

I, Mary Lou Myers, Clerk of the County Commission of Lewis County, in the State of West Virginia, and as such Clerk having the care and custody of the records of General Orders of said County, do hereby certify that the foregoing is a true and accurate copy of the Correction of the Jane Lew Water Commission Order entered September 26, 1958

as the same appears of record in my office in General Order Book 33, Page 458.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Commission, at the City of Weston, in said County and State, this 28th day of September, 20 04.

Mary Lou Myers  
Clerk of the County Commission of Lewis County, West Virginia By: DW

State of West Virginia,  
County of Lewis, Co.-Vit:

I, Mary Lou Myers, Clerk of the County Commission of Lewis County, in the State of West Virginia, and as such Clerk having the care and custody of the records of Miscellaneous Records of said County, do hereby certify that the foregoing is a true and accurate copy of the Order approving boundary expansion of the Jane Lew Water Commission District

as the same appears of record in my office in Miscellaneous Record Book 11, Page 259.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Commission, at the City of Weston, in said County and State, this 28th day of September, 20 04.

*Mary Lou Myers*

Clerk of the County Commission of Lewis County, West Virginia By: sms

ORDER APPROVING BOUNDARY EXPANSION  
OF THE JANE LEW WATER COMMISSION DISTRICT

A public hearing was held this date, March 19, 2001, 10:00 a.m. prevailing time, at the Lewis County Courthouse, in the Lewis County Commission Office pursuant to WV Code 16-13A-2 for the purpose of public input concerning a proposed boundary extension which would allow the Jane Lew Water Commission, PSD to provide public water service to Sycamore Lick, Berlin Road and Jesse's Run areas of Lewis County. (See attached metes and bounds and Class I legal advertisement.)

No one appeared to speak against the proposed boundary extension. Those present at the hearing in addition to the Lewis County Commission were: Elaine Flaxer and Vernon Lohr representing the Jane Lew Water Commission Board, Larry Wilson, General Manager of the Jane Lew Water Commission, PSD, Tracey Weber III, Attorney for the Jane Lew Water Commission, PSD, Randy Watson of Thrasher Engineering and Frances Carroll, a resident of Jesse's Run.

A question concerning the boundaries of the West Fork River PSD was addressed as follows: The West Fork River PSD was created March 16, 1979, by the Lewis County Commission as a countywide public service district. It became inactive in February 1993, after selling their lines to West Virginia American-Water Company with the Public Service Commission's approval. WFRPSD has remained inactive since that time with no employees and serves no customers. It's boundaries do not infringe upon any other PSD or entity's boundaries since WFRPSD's boundaries are countywide excluding the boundaries of the following: Jane Lew PSD, West Virginia-American Water Company and the Weston Sanitary Board.

Therefore, the County Commission considered and determined the feasibility of the proposed boundary expansion and found said expansion to be conducive to the preservation of public health, comfort and convenience of the area. With no opposition to the proposed boundary expansion of the Jane Lew Water Commission PSD, the Lewis County Commission upon a motion made by Robert J. Conley with motion being duly seconded by Thomas V. Fealy, the Lewis County Commission voted unanimously to approve the aforementioned boundary expansion to the Jane Lew Water Commission PSD which is consistent with the attached metes and bounds which would, in turn, decrease the West Fork River PSD boundary accordingly.

Samuel U. Hicks  
Samuel U. Hicks, President

3-19-01  
Date

Thomas V. Fealy  
Thomas V. Fealy, Commissioner

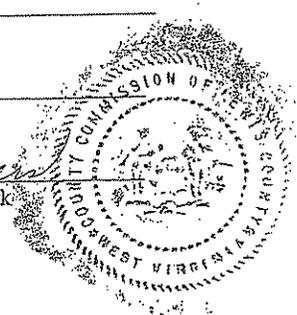
3-19-01  
Date

Robert J. Conley  
Robert J. Conley, Commissioner

3-19-01  
Date

Attest: Mary Lou Myers  
Mary Lou Myers, County Clerk

3-19-01  
Date



**Jane Lew Public Service District  
Proposed 2001 Boundary Extension  
Lewis County, West Virginia**

The proposed extended geographical boundaries for the Jane Lew Public Service District are as follows:

"Beginning at point 0 along the Harrison-Lewis County border at the Lewis County Route 3 running southeast 105 degrees (azimuth), a distance of 25,050 feet, to point A at the intersection of the Harrison, Lewis, and Upshur County borders. From point A running southwest 185 degrees along the Lewis-Upshur County border, a distance of 10,500 feet, to point B. From point B running northwest 310 degrees, a distance of 2,250 feet, to point C. From point C running southwest 227 degrees, a distance of 2,300 feet, to point D. From point D running southwest 268 degrees, a distance of 2,100 feet, to point E. From Point E running southwest 266 degrees, a distance of 2,550 feet, to point F. From point F running northwest 285 degrees, a distance of 1,200 feet, to point G. From point G running northwest 323 degrees, a distance of 2,550 feet, to point H. From point H running northwest 271 degrees, a distance of 1,200 feet, to point I. From point I running northeast 3 degrees, a distance of 1,250 feet, to point J. From point J running northwest 297 degrees, a distance of 2,250 feet, to point K. From point K running northwest 355 degrees, a distance of 1,950 feet, to point L. From point L running northwest 301 degrees, a distance of 900 feet, to point M. From point M running southwest 241 degrees, a distance of 2,550 feet, to point N. From point N running northwest 281 degrees, a distance of 1,550 feet, to point O. From point O running northwest 314 degrees, a distance of 1,875 feet, to point P. From point P running southwest 229 degrees, a distance of 900 feet, to point Q. From point Q running southwest 268 degrees, a distance of 1,650 feet, to point R. From point R running southwest 251 degrees, a distance of 2,475 feet, to point S crossing the intersection of Lewis County Route 7 and Lewis County Route 14 "Lifes Run Road" and stopping at bank of Hackers Creek. From point S running northwest along Hackers Creek water edge to the intersection between Hackers Creek and I-79, a distance of 5,250 feet to point T. From point T running northwest 285 degrees, a distance of 3,900 feet, to point U. From point U running northeast 3 degrees, a distance of 450 feet, to point V on the existing Jane Lew PSD border. From point V running northwest 280 degrees, running along existing Jane Lew PSD boundary and crossing US Route 19, a distance of 2,700 feet, to point W. From point W running southwest 224 degrees, a distance of 3,300 feet, to point X. From point X running southwest 228 degrees, a distance of 2,700 feet, to point Y. From point Y running southwest 266 degrees, a distance of 1,875 feet, to point Z. From point Z running northwest 237 degrees, a distance of 2,250 feet, to point AA. From point AA running northwest 278 degrees, a distance of 2,850 feet, to point AB. From point AB running northwest 353 degrees, a distance of 4,500 feet, to point AC. From point AC running northeast 40 degrees, running along the banks of the West Fork River, a distance of 4,950 feet, to point AD. From point AD running southeast 113 degrees, a distance of 4,200 feet, to point AE. From point AE running northeast 83



**ORDERS --- BOARD OF COMMISSIONERS, LEWIS COUNTY**

REGULAR  
**SESSION HELD: MONDAY, JULY 15, 2002**

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IN RE: FINAL ORDER RECEIVED FROM PSC  
FOR BOUNDARY CHANGE

By notice received from the PSC of Charleston to the Lewis County Commission, it is, therefore, ordered that the Order of the Lewis County Commission of October 22, 2001, to decrease the boundaries of the West Fork PSD to accomodate the increase in the Jane Lew Water Commission PSD boundaries to provide water extension to the affected area, be, and the same hereby is approved.

State of West Virginia,  
County of Lewis, Co. Wit:

I, Mary Lou Myers, Clerk of the County Commission of Lewis County, in the State of West Virginia, and as such Clerk having the care and custody of the records of GENERAL ORDERS of said County, do hereby certify that the foregoing is a true and accurate copy OF THE FINAL ORDER FOR BOUNDARY CHANGE FOR WEST FORK PSD AND JANE LEW WATER COMMISSION PSD

as the same appears of record in my office in GENERAL ORDER Book 57, Page 462.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Commission, at the City of Weston, in said County and State, this 28th day of September, 20 04.

Mary Lou Myers  
Clerk of the County Commission of by: DW  
Lewis County, West Virginia

RESOLUTION OF THE BOARD OF THE  
JANE LEW WATER COMMISSION PUBLIC SERVICE DISTRICT  
CHANGING THE NAME OF THE DISTRICT TO THE  
JANE LEW PUBLIC SERVICE DISTRICT

WHEREAS, the Jane Lew Water Commission Public Service District ("District") is a properly created public service district, entitled to execute all the powers of a public service district, pursuant to West Virginia Code Chapter 16, Article 13A;

WHEREAS, the Board of the District is authorized to change the official or corporate name of the District by resolution prior to the issuance of bonds by the District pursuant to West Virginia Code §16-13A-4(f);

WHEREAS, the District has yet to issue any bonds;

WHEREAS, the Board of the District believes it would be advantageous to change the name of the District to the Jane Lew Public Service District, and to create and designate two separate divisions thereto, a water division and a wastewater division, to clarify the services performed by the District;

WHEREAS, West Virginia Code §16-13A-4(f) provides that a change in the name of a public service district becomes effective upon the filing of an authenticated copy of the resolution changing a district's name with the clerk of the county commission and with the Public Service Commission;

NOW, THEREFORE, the Board of the Jane Lew Water Commission Public Service District hereby resolves that the official and corporate name of the District is hereby changed to the Jane Lew Public Service District, which shall include both a water and wastewater division. The Secretary of the District shall cause authenticated copies of this Resolution to be filed with the Clerk of the County Commission of Lewis County and the Public Service Commission of West Virginia.

*Oscar R. Mills*  
Oscar R. Mills - Chairman

*Vernon W. Lohr*  
Vernon W. Lohr - Vice Chairman

*Elaine B. Flaxer*  
Elaine B. Flaxer - Secretary

LEWIS COUNTY, WV  
FEB 24 10 54 AM '03

Adopted this 13<sup>th</sup> day of February, 2003.

[SEAL]



ATTEST: *Elaine B. Flaxer*  
Elaine B. Flaxer - Secretary

Date: February 13, 2003

STATE OF WEST VIRGINIA, CLERK'S OFFICE,  
COUNTY COMMISSION, LEWIS COUNTY.

February 24<sup>th</sup>, 2003 *None*  
The foregoing Resolution District Change  
together with the certificate thereto  
annexed was this day presented in said  
office and admitted to record.

ATTEST: *Mary Lou Myers*, CLERK

State of West Virginia,  
County of Lewis, Co. W. Va.:

I, Mary Lou Myers, Clerk of the County Commission of Lewis County, in the State of West Virginia, and as such Clerk having the care and custody of the records of Certificates of Incorporation of said County, do hereby certify that the foregoing is a true and accurate copy of the Resolution of the Board of the Jane Lew Water Commission Public Service District changing the name of the District to the Jane Lew Public Service District

as the same appears of record in my office in Certificate of Incorp. Book 9, Page 51.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Commission, at the City of Weston, in said County and State, this 28th day of September, 20 04.

Mary Lou Myers  
Clerk of the County Commission of  
Lewis County, West Virginia

By: sms

FILE COPY

JAMES V. KELSH, ESQ.

300 Summers St., Ste. 1230  
P.O. Box 3713  
Charleston, WV 25337-3713  
kelshlaw@yahoo.com

Telephone  
(304) 343-1654

Facsimile  
(304) 343-1657

February 21, 2003

Ms. Sandra Squire  
Executive Secretary  
Public Service Commission  
of West Virginia  
201 Brooks Street  
Post Office Box 812  
Charleston, West Virginia 25323

Re: Notice of Change of Name of Jane Lew  
Water Commission Public Service District  
to Jane Lew Public Service District

Dear Ms. Squire:

The purpose of this letter is to inform the Commission, consistent with West Virginia Code §16-13A-4(f) that the Board of the Jane Lew Water Commission Public Service District at its meeting on February 13, 2003, adopted the attached authenticated original Resolution changing its name from the Jane Lew Water Commission Public Service District to the Jane Lew Public Service District. Simultaneously with the mailing of this letter to you, the District is sending a letter to the Clerk of the Lewis County Commission informing it of the name change. Pursuant to West Virginia Code §16-13A-4(f), this change of name becomes effective upon the filing of an authenticated copy of this Resolution with the Lewis County Commission and the Public Service Commission of West Virginia. For your information, a copy of the letter to the Lewis County Commission is attached.

Please stamp the extra copy of this letter as received and place it in my box for retrieval. Thank you for your assistance.

Very truly yours,

  
James V. Kelsh  
(WV State Bar No. 6617)

JVK/nal  
Enclosure  
cc: Larry Wilson  
(janelew@squire.ltr)

RESOLUTION OF THE BOARD OF THE  
JANE LEW WATER COMMISSION PUBLIC SERVICE DISTRICT  
CHANGING THE NAME OF THE DISTRICT TO THE  
JANE LEW PUBLIC SERVICE DISTRICT

WHEREAS, the Jane Lew Water Commission Public Service District ("District") is a properly created public service district, entitled to execute all the powers of a public service district pursuant to West Virginia Code Chapter 16, Article 13A;

WHEREAS, the Board of the District is authorized to change the official or corporate name of the District by resolution prior to the issuance of bonds by the District pursuant to West Virginia Code §16-13A-4(f);

WHEREAS, the District has yet to issue any bonds;

WHEREAS, the Board of the District believes it would be advantageous to change the name of the District to the Jane Lew Public Service District, and to create and designate two separate divisions thereto, a water division and a wastewater division, to clarify the services performed by the District;

WHEREAS, West Virginia Code §16-13A-4(f) provides that a change in the name of a public service district becomes effective upon the filing of an authenticated copy of the resolution changing a district's name with the clerk of the county commission and with the Public Service Commission;

NOW, THEREFORE, the Board of the Jane Lew Water Commission Public Service District hereby resolves that the official and corporate name of the District is hereby changed to the Jane Lew Public Service District, which shall include both a water and wastewater division. The Secretary of the District shall cause authenticated copies of this Resolution to be filed with the Clerk of the County Commission of Lewis County and the Public Service Commission of West Virginia.

*Oscar R. Mills*  
Oscar R. Mills - Chairman

*Vernon W. Lohr*  
Vernon W. Lohr - Vice Chairman

*Elaine B. Flaxer*  
Elaine B. Flaxer - Secretary

Adopted this 13<sup>th</sup> - day of February, 2003.

[SEAL]

ATTEST: *Elaine B. Flaxer*  
Elaine B. Flaxer - Secretary

Date: February 13, 2003

COPY

JAMES V. KELSH, ESQ.

300 Summers St., Ste. 1230  
P.O. Box 3713  
Charleston, WV 25337-3713  
kelshlaw@yahoo.com

Facsimile  
(304) 343-1657

Telephone  
(304) 343-1654

February 21, 2003

Mary Lou Myers  
Lewis County Commission  
Post Office Box 466  
Weston, West Virginia 26452

Re: Change of name of Jane Lew Water  
Commission Public Service District to  
the Jane Lew Public Service District

Dear Ms. Myers:

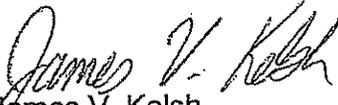
The purpose of this letter is to inform the Lewis County Commission that the Board of the Jane Lew Water Commission Public Service District, at its meeting of February 13, 2003, adopted the attached authenticated original Resolution changing its name from the Jane Lew Water Commission Public Service District to the Jane Lew Public Service District. Pursuant to West Virginia Code §16-13A-4(f), this change of name becomes effective upon the filing of an authenticated copy of this Resolution with the Lewis County Commission and the Public Service Commission of West Virginia. For your information, I attach a copy of the letter which was sent to the Public Service Commission simultaneously with the mailing of this letter.

Please file, record, and index this Resolution in the appropriate record book.

Please stamp the extra copy of this letter as received by your office and return it to me in the enclosed stamped, self-addressed envelope. Thank you for your assistance.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

  
James V. Kelsh  
(WV State Bar No. 6617)

JVK/nal  
Enclosure  
cc: Larry Wilson  
(janelaw@lewiscom.ltr)

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: April 8, 2003

FINAL

04-28-03

CASE NO. 03-0269-PWD-NC

JANE LEW PUBLIC SERVICE DISTRICT  
Application for name change from  
Jane Lew Water Commission Public  
Service District to Jane Lew  
Public Service District.

RECOMMENDED DECISION

On February 21, 2003, Jane Lew Water Commission Public Service District (District) filed a letter informing the Commission that, consistent with the provisions of West Virginia Code §16-13A-4(f) and at a meeting of its Board, the District adopted a Resolution changing its name from Jane Lew Water Commission Public Service District to "Jane Lew Public Service District". An authenticated original Resolution was attached to the letter. Also attached to the letter was a copy of a letter sent to the Clerk of the County Commission of Lewis County informing the Commission of the name change and requesting that a copy of the Resolution, attached thereto, be recorded and indexed in the appropriate record book. The letter concluded by stating that, pursuant to West Virginia Code §16-13A-4(f), the change of name became effective upon the filing of an authenticated copy of the Resolution with the Lewis County Commission and the West Virginia Public Service Commission. The Commission's Executive Secretary's Office proceeded to file and designate the District's letter as an application for Commission approval of a name change and assigned a formal case number to the filing.

On February 27, 2003, counsel for the District, James V. Kelch, Esquire, filed a letter stating his desire to clarify the District's February 21, 2003 filing. Mr. Kelsh stated that the territory of the former Jane Lew Water Commission Public Service District was not changed by the Resolution which was included with the letter filed on February 21, 2003. The letter filed on February 21, 2003, was intended as a change of name filing, pursuant to West Virginia Code §16-13A-4(f), not a change in the territory or a merger of the District pursuant to West Virginia Code §16-13A-2.

West Virginia Code §16-13A-4(f) provides, in relevant part, that "[a]t any time prior to the issuance of bonds as hereinafter provided, the board [of the public service district] may by resolution change the official or corporate name of the public service district and the change is effective from the filing of an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located

and with the Public Service Commission." Because the District had complied with this statute by filing authenticated originals of its Resolution with both the Clerk of the County Commission of Lewis County and with the Public Service Commission, Mr. Kelsh opined that the change of name was then effective. Mr. Kelsh concluded by stating that the February 21, 2003 letter was, exclusively, for the purpose of complying with West Virginia Code §16-13A-4(f) and was not intended to initiate a new case. Since the name change had already become effective, there was no purpose for Commission review of the information filed on February 21, 2003. In Mr. Kelsh's words, it was a fait accompli and the Public Service Commission has no more jurisdiction to open a case to review the change of name of a public service district than does the Clerk of the County Commission. Accordingly, it was requested that the Commission dismiss this formal proceeding.

On March 18, 2003, Staff Attorney Cecelia Gail Jarrell filed an Initial and Final Joint Staff Memorandum. An Initial and Final Internal Memorandum, dated March 10, 2003, from Karen L. Buckley, Utilities Analyst II, Water and Wastewater Division, was attached thereto. Ms. Buckley initially noted that, since the District, according to its Resolution, wanted to create a water division and a wastewater division, the case number of this case should be changed to 03-0269-PSWD-PC. Ms. Buckley stated that the District's current Annual Report revealed that it has not issued any bonds and has no long-term debt. Since the District had followed the provisions of West Virginia Code §16-13A-4(f), Ms. Buckley recommended that the change of name of Jane Lew Water Commission Public Service District to "Jane Lew Public Service District" be approved.

Staff Attorney Jarrell stated that Commission Legal Staff disagreed with Mr. Kelsh's assertion that Public Service Commission approval is not required for the subject name change. Ms. Jarrell asserted that Rules 31<sup>1</sup> and 34<sup>2</sup> of the Commission's Rules for the Construction and Filing of Tariffs (Tariff Rules) contemplated that an application would be filed with the Public Service Commission by a public service district seeking Commission consent and approval of any change in its name. Based upon all of the foregoing, Commission Legal Staff also recommended that the

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<sup>1</sup>RULE 31. In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and rules and regulations of the former operating company, (unless authorized to change by the Commission).

<sup>2</sup>RULE 34. Within thirty (30) days after the Commission approves an application filed pursuant to Rule [31], said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, as prescribed in Rules 1 through 13 hereof with proper identifying designation. (Example: P.S.C. W.Va. No. 1 cancels P.S.C. W.Va. No. 1 of [insert predecessor utility]).

Commission approve the change in the name of Jane Lew Water Commission Public Service District to "Jane Lew Public Service District".

On March 25, 2003, Mr. Kelsh filed a letter in response to Commission Staff's Initial and Final Joint Staff Memorandum. Mr. Kelsh noted that, above all else, the District did not wish to do anything which would delay this proceeding since it is expecting to issue bonds or incur debt sometime in the near future in connection with a proposed project and wished to change its name before doing so. The District would seek the Commission's approval before incurring debt or issuing bonds. Mr. Kelsh explained that, in this instance, it was the District's position that Tariff Rules 31 and 34 were in conflict with West Virginia Code §16-13A-4(f) and that, according to the principles of statutory construction, the statute superseded the Tariff Rules thereby negating the need for Commission approval of the District's name change. However, Mr. Kelsh concluded by stating that the District could live with an order which approved its change of name even though it believed the more appropriate action by the Commission would be to dismiss this proceeding for lack of jurisdiction.

By Order dated March 27, 2003, the Commission referred this matter to the Division of Administrative Law Judges for further disposition, with a decision due date of April 25, 2003.

Upon consideration of all of the above, the undersigned is of the opinion the counsel for the District is correct and that the District is not required to obtain Public Service Commission approval of the name change, pursuant to the terms of West Virginia Code §16-13A-4(f). Since the Legislature has given the boards of public service districts the authority to change the name of a district prior to debt being issued, with the change of name effective upon the filing of an authenticated copy of the resolution changing the name with the affected county commissions and the West Virginia Public Service Commission, the Public Service Commission cannot, by rule, attempt to generate jurisdiction for itself where there is none. Further, the undersigned is of the opinion that the Staff Attorney has misconstrued Tariff Rules 31 and 34. Neither Rule requires Commission approval of a change in name. The two Rules require only 1) that a utility whose name or ownership has changed, continue to operate under the previously existing rates and charges, until different rates and charges are approved by Commission order, and 2) the filing of an appropriate tariff under the new name of the utility within a certain period of time. There is no language in either of those Rules which operates to provide the Commission with the authority or jurisdiction to rule upon the appropriateness of the name change itself. Accordingly, this proceeding will be dismissed and Jane Lew Public Service District will be directed to file a revised tariff containing its new name.

#### FINDING OF FACT

On February 21, 2003, Jane Lew Water Commission Public Service District filed a letter informing the Commission that, consistent with the provisions of West Virginia Code §16-13A-4(f) and at a meeting of its Board held on February 13, 2003, the District had adopted a Resolution

changing its name from Jane Lew Water Commission Public Service District to "Jane Lew Public Service District". Accompanying the letter was an authenticated copy of the Resolution effectuating the name change. The Commission's Executive Secretary's Office proceeded to file and designate the District's letter as an application for Commission approval of a name change and assigned a formal case number to the filing. (See, February 21, and 27, 2003 filings).

#### CONCLUSIONS OF LAW

1. Pursuant to the provisions of West Virginia Code §16-13A-4(f), at any time prior to the issuance of bonds, a public service district board may change the official or corporate name of that district by resolution and the change is effective from the filing of an authenticated copy of that resolution with the clerk of the county commission of each county containing territory embraced by that district and with the Public Service Commission. There is no provision in Article 13A of Chapter 16 of the West Virginia Code which requires Public Service Commission approval of the name change.

2. Tariff Rules 31 and 34 do not operate to provide the Public Service Commission with authority to approve or disapprove a proposed name change for a public service district; rather, those two Tariff Rules simply require a utility whose name or ownership has changed to continue to use the previously existing rates and charges unless authorized by the Commission to change those rates and requires the filing of a revised tariff containing the new name within a certain period of time.

3. It is reasonable to dismiss this proceeding from the Commission's docket of open cases as being unnecessary and to require Jane Lew Public Service District to file a revised tariff under its new name within thirty days of date that this Order becomes final.

#### ORDER

IT IS, THEREFORE, ORDERED that, within thirty (30) days of the date that this Order becomes final, Jane Lew Public Service District shall file with the Commission's Tariff Office an original and no less than five (5) copies of a proper tariff adopting the tariff of Jane Lew Water Commission Public Service District as its own and reflecting the name change.

IT IS FURTHER ORDERED that the instant proceeding be, and it hereby is, dismissed, as being unnecessary, and removed from the Commission's docket of open cases.

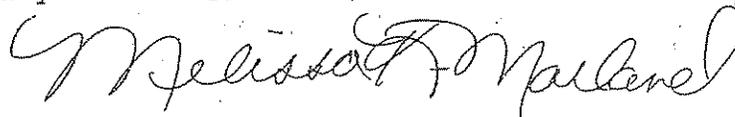
IT IS FURTHER ORDERED that the style of this case be changed to reflect the correct name of the District.

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.



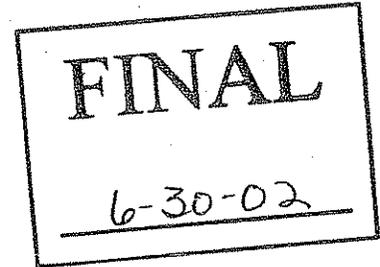
Melissa K. Marland  
Chief Administrative Law Judge

MKM/JPC:dfs  
030269a.wpd



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: June 10, 2002



CASE NO. 01-1607-PWD-PC

LEWIS COUNTY COMMISSION

Petition for consent and approval to decrease the boundary of West Fork River Public Service District and to increase the boundary of Jane Lew Water Commission Public Service District to accommodate water extensions to the area.

RECOMMENDED DECISION

In an Order dated September 12, 2001, the Order of the Lewis County Commission filed March 23, 2001, in Case No. 01-0402-PWD-PC, to expand the boundaries of the Jane Lew Water Commission Public Service District, was approved to become effective on and after the date that the Lewis County Commission either decreased the territory of the West Fork River Public Service District to accommodate the enlargement of the Jane Lew Water Commission Public Service District's boundaries or dissolved the West Fork River Public Service District.

On November 28, 2001, the Lewis County Commission filed an Order decreasing the boundary of the West Fork River Public Service District to accommodate the increase of the Jane Lew Water Commission Public Service District's boundary to provide water extensions to the affected area, pursuant to West Virginia Code §16-13A-2. The County Commission's Order addresses only water service.

On December 4, 2001, Staff Attorney Cassius H. Toon filed an Initial and Final Joint Staff Memorandum, to which was attached the Initial and Final Internal Memorandum prepared by Mr. Scott McNeely, Utility Analyst, Water and Wastewater Division, and Mr. David W. Holley, Technical Analyst-In-Training II, Engineering Division. Since the Lewis County Commission has sufficiently satisfied the requirements set forth in West Virginia Code §16-13A-2, Staff recommended approval of the Order to reduce the boundaries of the West Fork River Public Service District and recommended that the changes be approved subject to the statutorily required hearing.

*MSM*

By Order dated December 11, 2001, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before June 26, 2002.

On December 19, 2001, Staff Attorney Toon filed a Further Joint Staff Memorandum, to which was attached the Further and Final Internal Memorandum prepared by Mr. McNeely and Mr. Holley. Staff explained that, in Case No. 01-0402-PWD-PC the Commission approved the increase to the Jane Lew Water Commission Public Service District's boundaries, conditioned upon the Lewis County Commission decreasing the West Fork River Public Service District's boundaries to accommodate that change. The West Fork River Public Service District became inactive in February 1993. The West Fork River Public Service District involves the operation of sewer service also. The Commission Order in Case No. 01-0402-PWD-PC discussed an alternative to the Lewis County Commission decreasing the West Fork River Public Service District's boundary, which was to dissolve the District altogether. Staff has changed its original recommendation and now feels that it is in the best interest of the public to dissolve the West Fork River Public Service District, since it has no employees and provides no water or sewer service. In addition, the Jane Lew Water Commission Public Service District may be expanded to provide sewer service to other areas of the County.

By Order dated January 10, 2002, in light of Staff's recommendation, the Lewis County Commission was directed to advise the Commission, by January 27, 2002, if it wished to go forward with the Lewis County Commission's original Order in this case or if it would take the Staff-recommended action to dissolve the West Fork River Public Service District by enacting a new County Commission Order.

In a letter filed January 17, 2002, the Lewis County Commission advised that it did not wish to dissolve the West Fork River Public Service District but would go forward with the original Order in this case, which would decrease the boundary of the West Fork River Public Service District.

By Order dated February 22, 2002, this matter was set for a hearing to be held in Weston City Building, Council Chambers, Weston, West Virginia, on March 15, 2002. Said Order provided that the Lewis County Commission give notice of the hearing to be held on March 15, 2002, by publishing a copy of a Notice of Hearing, once, in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Lewis County.

The hearing was held as scheduled. The Lewis County Commission was present by its president, Mr. Sam Hicks, and board members, Ms. Shelia Lewis, Mr. Tom Fealy and Mr. Bob Conley. Commission Staff was represented by Staff Attorney Cassius H. Toon. The County Commission presented at the hearing an affidavit of publication of the Notice of Hearing reflecting that publication had been made in accordance with the Commission's requirements. (Tr. p. 3).

## EVIDENCE PRESENTED

Mr. Scott McNeely, Utilities Analyst, Water and Wastewater Division, identified for the record Staff Exhibit No. 1, a Further Final Internal Memorandum. Staff recommends that the West Fork River Public Service District be dissolved rather than reduced in size. There is presently in existence the Jane Lew Water Public Service District and another public service district that provides sewer service. Mr. McNeely indicated that, in the event any other water service in the County is needed, these Districts could be expanded. Staff believes that the retention of another district would cause duplication in bookkeeping and make it more expensive to comply with the new federal requirements and the Safe Drinking Water Act. It would be difficult to maintain the federal standards with two districts rather than one district. (See, Tr., pp. 7-8).

Mr. Sam Hicks, the President of the Lewis County Commission, responded that the Lewis County Commission has no objection to the extension of the Jane Lew Water Public Service District to cover that territory which heretofore has been the territory of the West Fork River Public Service District, to the extent necessary for the Jane Lew Public Service District to make its utility extensions. Mr. Hicks commented that the Staff recommendation to abolish, rescind and dissolve the West Fork River Public Service District is not needed. The Lewis County Commission believes that there may develop, in the southern end of Lewis County, a need for water service and the only way to get the water will be to buy it and extend lines from a public service district in southern Upshur County. To provide for this eventuality, the Lewis County Commission feels that it is in the best interest of the people of Lewis County to keep the West Fork River Public Service District on the books, although it is currently inactive. If it becomes necessary to further extend the Jane Lew Public Service District system, the Lewis County Commission could further reduce the West Fork River Public Service District area or territory. Mr. Hicks did not see that the existence of the West Fork River Public Service District is creating any problem in bookkeeping or administration. The West Fork River Public Service District has been totally inoperative for a long time. (Tr., pp. 10-11).

No one appeared in protest to the petition of the Lewis County Commission. (Tr., p. 11). No further evidence was submitted in the case and it was submitted for a decision. No briefs were filed in the case by either party.

## DISCUSSION

In 2001, the Lewis County Commission proposed the expansion of the boundaries of the Jane Lew Water Commission Public Service District. At that time, Staff recommended approval and, after the hearing was held and no protest was received, the Order was approved to become effective on and after the date that the Lewis County Commission either decreased the territory of the West Fork River Public Service District to accommodate the enlargement of the Jane Lew Water Commission Public Service District or dissolved the West Fork River Public Service District. Staff has since changed its recommendation and recommended that the West Fork River

Public Service District be dissolved, since it has been inactive for a number of years. The Lewis County Commission elected not to dissolve the West Fork River Public Service District, but to proceed with its petition to decrease the boundaries of the West Fork River Public Service District, to accommodate the increase in the Jane Lew Water Commission Public Service District to provide water extensions in the affected area.

At the hearing, Staff presented its recommendation to dissolve the West Fork River Public Service District, since it has been inactive for eight years. Staff cited duplication of bookkeeping and difficulty in compliance with federal standards as reasons for the dissolution. However, it did not explain how the existence of this district generated either of the cited problems. (Tr. pp. 7-8).

Mr. Sam Hicks, President of the Lewis County Commission explained that the reason that the Lewis County Commission desires to keep the inactive district on the books is that, on the southern end of the county, the Lewis County Commission foresees that there may arise a need to buy water from a public service district in southern Upshur County. If this eventuality occurs, the Lewis County Commission could use the West Fork River Public Service District to acquire this water. (Tr. pp. 10-11).

Since West Virginia Code §16-13A-2 gives county commissions the authority to create, enlarge, reduce, merge, dissolve and/or consolidate public service districts, the Administrative Law Judge believes that, in the absence of a showing that the existence of the West Fork River Public Service District violates a law, rule or regulation, the desires of the Lewis County Commission should be honored and the County Commission Order in this case approved in order to allow it to meet the requirements of the Commission's Order of September 12, 2001. This is particularly true since the County Commission Order of November 28, 2001, was passed specifically to comply with the requirements of the Public Service Commission's Order of September 12, 2001.

#### FINDINGS OF FACT

1. On November 28, 2001, the Lewis County Commission filed an Order decreasing the boundaries of the West Fork River Public Service District, to accommodate an increase in the Jane Lew Water Commission Public Service District's boundaries to provide water extensions to the affected area. (See, petition filed November 28, 2001).

2. By Public Service Commission Order entered September 12, 2001, the expansion of the Jane Lew Water Commission Public Service District's boundaries was approved to become effective on and after the date that the Lewis County Commission either decreased the territory of the West Fork River Public Service District to accommodate the enlargement of the Jane Lew Water Commission Public Service District or dissolved the West Fork River Public Service District. (See Order dated September 12, 2001).

3. Staff recommended that the Lewis County Commission dissolve the West Fork River Public Service District since it has no employees and

provides no water or sewer service. (See Further Joint Staff Memorandum filed December 19, 2001).

4. The Lewis County Commission elected to proceed with its original petition rather than adopt Staff's recommendation of dissolution of the West Fork River Public Service District. (See letter filed January 17, 2002).

5. At a hearing held on the County Commission's petition, Mr. Sam Hicks, President of the Lewis County Commission, explained that the Lewis County Commission believes that it is in the best interest of the citizens of Lewis County to retain the West Fork River Public Service District, in the event it is necessary for a Lewis County district to purchase water service from an Upshur County utility to serve the southern end of Lewis County. (Tr., pp. 10-11).

6. No one appeared in protest to the petition at the hearing held in this matter on March 15, 2002. (Tr., p. 11).

#### CONCLUSIONS OF LAW

1. Since the Order of the Lewis County Commission filed on November 28, 2001, decreases the West Fork River Public Service District, this will satisfy the conditions set forth in the Public Service Commission Order of September 12, 2001, which required the Lewis County Commission to either decrease the territory of the West Fork River Public Service District to accommodate the enlargement of the Jane Lew Water Commission Public Service District boundaries or dissolve the West Fork River Public Service District.

2. It is reasonable to allow the West Fork River Public Service District to continue to exist since the Lewis County Commission sees a potential need to use this District to obtain water from a public service district in southern Upshur County and its existence does not appear to violate any law, rules or regulations of the Commission.

#### ORDER

IT IS, THEREFORE, ORDERED that the Order of the Lewis County Commission of October 22, 2001, to decrease the boundaries of the West Fork River Public Service District to accommodate the increase in the Jane Lew Water Commission Public Service District boundaries to provide water extensions to the affected area, be, and the same hereby is, approved.

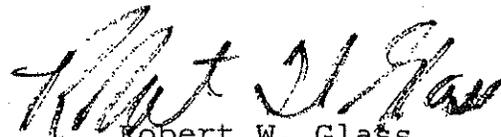
The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions

are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

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

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

  
Robert W. Glass  
Administrative Law Judge

RWG:jas:mal  
011607ab.wpd



ORDERS --- BOARD OF COMMISSIONERS, LEWIS COUNTY

REGULAR  
SESSION HELD: MONDAY, AUGUST 9, 2004

WV DEPUTY SHERIFF'S RETIREMENT CLAIMS

ORDERED, that drafts be issued payable out of the 2005, Levy WV DEPUTY SHERIFF'S RETIREMENT FUND the following amounts and to the parties hereinafter named, account of CLAIMS filed for payment as follows:

000156 WV Deputy Sheriff's Retirement Syst. 08/09/04 \$ 721.50

E-911 EMERGENCY COMMUNICATION CLAIMS

ORDERED, that drafts be issued payable out of the 2005, Levy E-911 EMERGENCY COMMUNICATION FUND the following amounts and to the parties hereinafter named, account of CLAIMS filed for payment as follows:

004049	Bee Tee Sports	08/09/2004	\$ 89.95
004050	Staples	08/09/2004	375.88
			<u>\$ 465.83</u>

IN RE: POLLWORKERS REVIEWED SINGLE AND DOUBLE BOARDS SET

Commission, upon motion of Robert J. Conley, second by Thomas V. Fealy, motion passing, approved the list of pollworkers as presented by the County Clerk for the General Election to be held November 2, 2004. Commission also established single boards for the election, with the exception of precinct #13, #15, and #20, which shall have double boards for the presidential election.

IN RE: STORAGE - COUNTY AND CIRCUIT CLERK, FORMER HAYDEN PROPERTY

John Hinzman, Circuit Clerk and Mary Lou Myers, County Clerk, requested storage of records in the former Hayden Property in the basement. After discussion, the Commission approved the request for the storage upon motion of Robert J. Conley, second by Thomas V. Fealy.

IN RE: APPOINTMENT OF THOMAS BAILEY TO JANE LEW PSD

A letter from the Jane Lew PSD advising of the resignation of John T. Frazier from the Jane Lew PSD Board, and the recommendation of the appointment of Thomas Bailey in the place of Mr. Frazier. The Commission, upon motion of Robert J. Conley, second by Thomas V. Fealy, motion passing, appointed Thomas Bailey as a member of the Jane Lew PSD.

**ORDERS --- BOARD OF COMMISSIONERS, LEWIS COUNTY**  
REGULAR  
SESSION HELD: MONDAY, JULY 17, 2006

IN RE: ELAINE B. FLAXER, OATH OF OFFICE  
JANE LEW PUBLIC SERVICE DISTRICT

Elaine B. Flaxer having previously being reappointed as a Board Member of the Jane Lew Public Service District, appeared this day and was given the oath of office by Robert J. Conley, President. Mrs. Flaxer's term will end July 31, 2012.

IN RE: RESIGNATION OF JOHN R. HALLER AND QUALIFICATION  
OF MARGARET M. HIGHT, ADMINISTRATRIX DE BONIS NON OF THE  
ESTATE OF ALONZO SCOTT FRIEND, DECEASED

WHEREAS, John R. Haller, who was on the 7th day of February, 2006, duly qualified as Administrator of the personal estate of Alonzo Scott Friend, deceased; and

WHEREAS, on this day came the said John R. Haller and submitted his resignation as such Administrator of said estate, and there still being administration of the Estate of Alonzo Scott Friend, deceased; and

NOW, THEREUPON, came Margaret M. Hight and moved the Commission that she be appointed Administratrix de bonis non of the personal estate of Alonzo Scott Friend, deceased. Upon, consideration of which, the Commission is of the opinion to and doth hereby appoint the said Margaret M. Hight as such Administratrix.

THEREFORE, Margaret M. Hight as principal together with Western Surety Company as her surety, entered into and acknowledged a bond in the penalty of Ten Thousand (\$10,000.00) Dollars, payable to the State of West Virginia, conditioned according to law, which bond is hereby approved and deemed sufficient. And, thereupon, the said Margaret M. Hight qualified as such Administratrix de bonis non by taking the oath prescribed by law.

THEREFORE, the previous bond in the penalty of Twenty-Five Thousand (\$25,000.00) Dollars with John R. Haller as principal together with Ohio Farmers Insurance Company as his surety is hereby cancelled and deemed null and void.

It is stated by said Administratrix that Alonzo Scott Friend departed this life on the 28th day of January, 2006, aged fifty-eight years.

MISCELLANEOUS CLAIMS

ORDERED, that drafts be issued payable out of the 2007, Levy, GENERAL COUNTY FUND for the following amounts and to the parties hereinafter named, account of CLAIMS filed for payment as following:

057152	6251	ESBANK	The State Credit Union	07/14/2006	200.00
057152	6251	CHILDREN	Bureau for Child Support	07/14/2006	428.28
057194	6251	NACR	Nationwide Pettr Solutions	07/14/2006	1588.33
079222	6251	ETFE	Elec. Fed. Tax. Syst. System	07/14/2006	36878.28
					33074.89

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA  
COUNTY OF LEWIS

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

GARY L. WIANI

Subscribed and sworn to before me, in said County and State, this 3rd day of July, 2006

Filed: June 3, 2006

ATTEST: ROBERT J. CONLEY, President  
Lewis County Commission

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA  
COUNTY OF LEWIS

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Board Member of the Jane Lew Public Service District, to the best of my skill and judgment, SO HELP ME GOD.

ELAINE B. FLAXER

Subscribed and sworn to before me, in my said County and State, this 17th day of July, 2006.

Filed: July 17, 2006

ATTEST: ROBERT J. CONLEY, President  
Lewis County Commission

OATH OF OFFICE AND CERTIFICATE

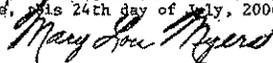
STATE OF WEST VIRGINIA  
COUNTY OF LEWIS

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Lewis County Safe Structures and Sites Enforcement Agency Board Member, to the best of my skill and judgment, SO HELP ME GOD.

ROY C. VALENTINE

Subscribed and sworn to before me, in my said County and State, this 24th day of July, 2006.

Filed: July 24, 2006

ATTEST:   
MARY LOU MYERS, County Clerk  
Lewis County Commission

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA  
COUNTY OF LEWIS

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

ALLAN H. EVANS

Subscribed and sworn to before me, in my said County and State, this 24th day of July, 2006.

Filed: July 24, 2006

ATTEST: ROBERT J. CONLEY, President  
Lewis County Commission

## OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF LEWIS

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Representative to the Region VII Planning and Development Council to the best of my skill and judgment SO HELP ME GOD.

Glenn L. Brown, Jr.

Subscribed and sworn to before me, in my said County and State, the 14th day of June, 2004.

THOMAS V. FEALY, President  
Lewis County Commission

Filed: June 14, 2004

ATTEST: Mary Lou Myers Clerk

## OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF LEWIS

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

WILLIAM D. CORATHERS

Subscribed and sworn to before me, in my said County and State, the 14th day of June, 2004.

THOMAS V. FEALY, President  
Lewis County Commission

Filed: June 14, 2004

Attest: Mary Lou Myers Clerk

## OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF LEWIS

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Representative to the Region VII Planning and Development Council to the best of my skill and judgment, SO HELP ME GOD.

FRANK J. ANGOTTI

Subscribed and sworn to before me, in my said County and State, the 14th day of June, 2004.

THOMAS V. FEALY, President  
Lewis County Commission

Filed: June 14, 2004

Attest: Mary Lou Myers Clerk

## OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF LEWIS

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Jane Lew Public Service District Board Member to the best of my skill and judgment, SO HELP ME GOD.

THOMAS BAILEY

Subscribed and sworn to before me, in my said County and State, the 16th day of August, 2004.

MARY LOU MYERS, Clerk  
Lewis County Commission

Filed: August 16, 2004

Attest: Mary Lou Myers

**OATH OF OFFICE AND CERTIFICATION**

STATE OF WEST VIRGINIA,

COUNTY OF LEWIS, TO-WIT:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the Office of JANE LEW PUBLIC SERVICE DISTRICT BOARD MEMBER to the best of my skill and judgment, SO HELP ME GOD.

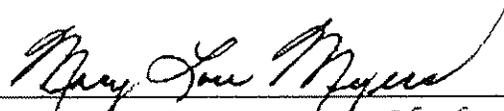
  
\_\_\_\_\_  
OSCAR MILLS

Subscribed and sworn to before me in my said County and State this 4th day of August, 2009.

LEWIS COUNTY, WV  
FILED

2009 AUG -4 P 4:05

MARY LOU MYERS  
COUNTY CLERK

  
\_\_\_\_\_  
MARY LOU MYERS, Clerk

RULES OF PROCEDURE

JANE LEW PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. Name: JANE LEW PUBLIC SERVICE DISTRICT.

Section 2. The principal office of this Public Service District will be located at 68 Park Avenue, Jane Lew, Lewis County, West Virginia.

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

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

ARTICLE II

PURPOSE

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

ARTICLE III

MISSION

It shall be the mission of the Jane Lew Public Service District to provide and deliver potable drinking water at a reasonable cost to the people of the District; in addition, the District shall collect, treat and dispose of wastewater so as to protect the local environment and safeguard the public health of the people in the District.

## ARTICLE IV

### BOARD MEMBERSHIP

Section 1. In accordance with the Act, the members of the governing Board of the Jane Lew Public Service District shall be persons residing in the District and appointed by the County Commission of Lewis County, West Virginia. Members of the Board shall be appointed to serve six-year terms or to fill vacant, unexpired terms as may be specified in the order of the County Commission. Such persons shall assume the rights and obligations of Board membership upon taking the Oath of Office administered by the County Commission/County Clerk.

Section 2. Should any member of the Public Service Board resign or otherwise become legally disqualified to serve on the Board, the Secretary shall immediately notify the County Commission and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any Board member, the Secretary shall notify the County Commission of the pending termination and request the County Commission to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Public Service Board. Persons appointed to fill unexpired terms shall assume the rights and obligations of Board membership upon taking the Oath of Office administered by the County Commission/County Clerk. Board members being re-appointed shall re-take the Oath of Office.

Section 3. Members of the Public Service Board shall be compensated for service according to the provisions of the Act; however, no Board member shall be compensated for any meeting not attended. Members of the Board may be reimbursed according to the prevailing rules of the District for expenses incurred in carrying out duties of the Board. Board members and members of their immediate family shall not be or become pecuniarily interested, directly or indirectly, in any proceedings of the District.

Section 4. Within six months of assuming office, newly-appointed members of the Public Service Board shall undergo mandatory Board member training as provided by the Public Service Commission. Within thirty days of appointment, the Secretary shall provide to the Public Service Commission the name of the new Board member, home address, home and office phone numbers, date of appointment, length of term and, if applicable, name of the Board member being replaced. The Secretary shall provide all new members of the Board with a copy of these Rules of Procedure immediately upon their assuming office.

## ARTICLE V

### MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Board of the Jane Lew Public Service District shall hold regular monthly meetings on the second Thursday of each month, at such place and hour as the members shall determine from time to time. At the regular January meeting the scheduled dates of all regular meetings for that year shall be determined and entered of record, including, if applicable, any changes to the normal schedule occasioned by the concurrence of a scheduled meeting and a legal holiday. Special meetings convened for designated purposes and emergency meetings requiring immediate action by the Public Service Board may be called at any time by the Chairman or by a quorum of the Board.

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

Section 3. Unless otherwise agreed, notice of regular meetings shall not be provided to Board members. Unless otherwise waived, 3-day advance notice of each special meeting shall be given to all Board members by the Secretary via fax, telephone, mail or other satisfactory means.

## ARTICLE VI

### PUBLIC NOTICE OF MEETINGS

Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), notice of the date, time and place of all regularly scheduled meetings of such Public Service Board, and the date, time, place and purpose of all special meetings of such Public Service Board, shall be made available in advance to the public and news media (except in the event of an emergency requiring immediate action) as below:

A. Regular Meetings. After the regular January meeting of the Board the Secretary shall give advance notice to the news media of the meeting place and dates of all regularly scheduled meetings for the forthcoming year. The annual schedule of meetings shall also be posted and maintained by the Secretary on the front door or bulletin board of: 1) the Lewis County Courthouse; 2) the District office where walk-in payment is accepted; and 3) the regular Board meeting place. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the same locations as soon as feasible after such cancellation or postponement has been determined.

B. Special Meetings. Public notice shall be posted by the Secretary not less than 72 hours before any specially scheduled meeting of the Board. Such notice shall be posted on the front door or bulletin board of: 1) the Lewis County Courthouse; 2) the District office where walk-in payment is accepted; and 3) the regular Board meeting place. Such notice shall state briefly the date, time, place and sole purpose or purposes of the special meeting. No business other than that stated in the notice or incidental thereto shall be transacted at any special meeting. If the special meeting is cancelled, a notice of such cancellation shall be posted at the same locations as soon as feasible after such cancellation has been determined.

C. Emergency Meetings. In the event of an emergency requiring immediate action by the Public Service District Board, the Chairman of the Public Service District Board may convene an emergency meeting at any time. No public notice need be given in such an emergency situation.

## ARTICLE VII

### PUBLIC AGENDA

Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), notice of the agenda of all regularly scheduled meetings of such Public Service Board shall be made available in advance to the public and news media as follows:

Section 1. Not less than 72 hours before each regularly scheduled Board meeting is to be held the Secretary shall cause a public agenda for that meeting to be posted on the front door or bulletin board of: 1) the Lewis County Courthouse; 2) the District office where walk-in payment is accepted; and 3) the regular Board meeting place. The agenda may be amended, if necessary, up to 48 hours before the meeting; in such case the amended public agenda shall be posted in the same locations by the 48-hour deadline.

Section 2. Such agenda shall consist of a list generally identifying each item of business to be heard or considered during the meeting and the order in which it is to be taken up. This article does not prohibit the modification of the order of the day for any reasonable purpose at the request of any Board member and by consensus of the Board.

Section 3. The Board shall not act on any item of business or on any matter incidental thereto unless it is identified on the publicly posted agenda, except in the event of an emergency requiring immediate Board action. In such cases, the meeting minutes shall explain the facts and circumstances of the emergency. All non-emergency matters brought to the Board during the course of a meeting shall be directed to the District office for response or scheduled for a subsequent meeting of the Board.

## ARTICLE VIII

### PUBLIC PARTICIPATION

Section 1. The Jane Lew Public Service Board recognizes the benefit of public participation both to the public and to the District. Public involvement makes District decisions more likely to reflect public need and preferences, and public confidence and understanding tends to ease potential resistance to District decisions.

Section 2. Members of the public shall be allowed to ask questions and make comment to the Board on any posted agenda item prior to its being acted upon by the Board, provided such members of the public are given the floor by the Chairman, and provided such questions and comment be brief and non-disruptive in nature. Each member of the public may be limited to five-minutes of participation. The Board shall reserve the right to remove from the meeting any member of the public whose participation is such that orderly conduct of the meeting is compromised. Members of the public shall not be required to register intent to speak; however, all members of the public desiring to speak shall be encouraged to provide advance notice of same to the District as a courtesy.

Section 3. New business brought to the Board by members of the public after the agenda is posted shall not be acted upon except to determine if it needs to be placed on the agenda of a subsequent meeting or referred to the District office for response.

## ARTICLE IX

### EXECUTIVE SESSION CLOSED TO PUBLIC

Pursuant to Section 4, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), a Public Service Board may hold an executive session during a regular, special or emergency meeting in accordance with the provisions of this section as follows:

Section 1. Members of the public shall only be excluded from a meeting of the Board of the Jane Lew Public Service District for one of the allowed purposes set forth under the law. An executive session shall not be convened to safeguard the privacy of an individual if that individual duly requests an open meeting.

Section 2. During the open portion of any regular, special or emergency meeting the Chairman shall cite before all persons present the abovementioned statutory authorization and allowable purpose for closing the meeting to the public. Adjournment to executive session shall require a motion and a majority affirmative vote of the Board. At the end of the executive session the Chairman shall publicly declare the meeting to be open to any members of the public wishing to attend.

Section 3. The Public Service Board shall make no decision during an executive session. All actions on an issue considered during an executive session shall be taken during open session.

Section 4. Minutes of any executive session shall state the statutory authority and allowed purpose for excluding the public, the time the executive session began and the time it ended.

## ARTICLE X

### MINUTES OF MEETINGS

Pursuant to Section 5, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), a Public Service Board shall provide for the preparation of written minutes of all its meetings as follows:

Section 1. Minutes of all Public Service Board meetings shall consist at a minimum of the date, time and place of the meeting, all Board members present and absent, all invited guests of the District, any members of the public, and (by agenda item in sequence) all motions, proposals, resolutions, orders, ordinances and measures proposed, as well as the name of the Board members who proposed and seconded same, the results of all votes taken, and the time of adjournment.

Section 2. At the request of any Board member for a roll call vote, a record of the vote of each member by name shall be made a matter of record in the minutes. There shall be no decisions made by secret ballot of the Board.

Section 3. After having been approved, the minutes shall be signed by both the Chairman and the Secretary of the Board and a copy provided to the County Commission of Lewis County.

Section 4. At a minimum, all General Manager Reports to the Board, all official Board correspondence for the preceding month, and all documents executed during the meeting shall be appended to the minutes as attachments.

Section 5. The minutes shall be completed and made available to the public within a reasonable time after each meeting. All minutes and their addenda are public records and shall be maintained in perpetuity in a Minutes book which is open to the public upon request. The Secretary of the Board shall have charge of the Minutes book.

## ARTICLE XI

### BOARD OFFICERS

Section 1. The officers of the Public Service Board shall be a Chairman, a Secretary and a Treasurer. The Chairman shall be elected from the members of the Public Service Board. The Secretary and Treasurer need not be members of the Public Service Board, and may be the same person. Persons who are not Board members who serve in the capacity of Secretary or Treasurer may be compensated for their work according to rules established by the Board.

Section 2. The officers of the Board shall be elected by the members at the first regular meeting of each calendar year. The officers so elected shall serve until the next annual election by the Board and until their successors are duly elected and qualified. Chairmanship of the Public Service Board shall rotate annually among the three members of the Board. Any vacancy occurring among the officers shall be filled by action of the Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected as hereinabove provided.

## ARTICLE XII

### DUTIES OF OFFICERS

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

Section 2. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. The Secretary shall, together with the Chairman, sign the minutes of the meetings at which he or she is present. The Secretary shall have charge of the Minutes book, be the custodian of the Common Seal of the District and of all deeds and other writings and papers of the Board. The Secretary shall also perform such other duties as he or she may have under law by virtue of the office

or as may be conferred from time to time by the members of the Board, these Rules of Procedure or as prescribed by law. The Secretary of the Board may delegate duties and functions to designated employees of the District.

Section 3. The General Manager of the Jane Lew Public Service District shall hold the office of Treasurer of the Board. The Treasurer shall be the lawful custodian of all funds of the District and shall disburse funds of the District on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 4. If the Chairman is absent from any meeting, the remaining members of the Board shall select a temporary chairman who shall have all of the powers of the absent officer during such period of absence. If the Secretary or Treasurer is absent from any meeting, the General Manager shall be responsible for seeing that secretarial services are provided for the period of absence, and for seeing that the Treasurer's Report is made to the Board.

#### ARTICLE XIII

##### PROCEDURES NOT COVERED HEREIN

Any procedures not covered by these Rules of Procedure shall be governed by Robert's Rules of Order.

#### ARTICLE XIV

##### AMENDMENTS TO RULES OF PROCEDURE

Pursuant to Section 4, Article 13A, Chapter 16 of the Code of West Virginia of 1931, as amended (the "Act"), the board shall by resolution determine its own rules of procedure.

Section 1. It shall be the right of the Public Service Board to establish and enforce reasonable Rules of Procedure for the carrying out of its official responsibilities.

Section 2. These Rules of Procedure may be altered, changed, amended, repealed or added to at any regular or special meeting of the Board by a majority vote of the entire Board, so long as ten days notice of the exact substance of said proposed changes shall be provided to each Board member. No such change or amendment shall be made at any special meeting unless notice of the intention to propose said change be submitted to the news media, and a clear summary of the amendment or amendments be included in the posted public notices.

Section 3. The Board shall review and ratify its Rules of Procedure at the regular January meeting of each calendar year.

Section 4. The Secretary of the Board shall be custodian of the Rules of Procedure of the Board.

Section 5. These Rules of Procedure shall replace any and all previous rules of procedure, bylaws or similar rules heretofore adopted by the District.

Adopted this 14<sup>th</sup> day of December, 2004.

LAW OFFICE OF  
**JAMES V. KELSH**

300 Summers St., Ste. 1230  
P.O. Box 3713  
Charleston, WV 25337-3713  
kelshlaw@yahoo.com  
WV State Bar #6617

Telephone  
(304) 343-1654

Facsimile  
(304) 343-1657

November 21, 2008

Ms. Sandra Squire  
Executive Secretary  
Public Service Commission of  
201 Brooks Street  
Post Office Box 812  
Charleston, West Virginia 25323

**RECEIVED**  
2008 NOV 21 P 3:56  
WVA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

RE: CASE NO. 08-1867-PWD-T-PC-CM  
JANE LEW PUBLIC SERVICE DISTRICT

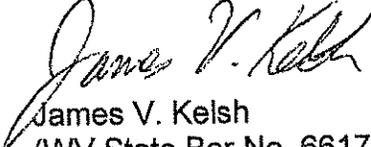
Dear Ms. Squire:

Pursuant to the Order entered in the above proceeding on November 5, 2008, enclosed herein please find the original and twelve (12) copies of Affidavits evidencing Class II publication of the Amended Notice of Filing in the *Clarksburg Exponent Telegram* and the *Weston Democrat* newspapers.

With the submission of the enclosed Affidavits, all publication requirements set forth in the November 5, 2008 Order have been met.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

  
James V. Kelsh  
(WV State Bar No. 6617)

JVK/nal  
Enclosures  
cc: Nancy Gee  
(janelew\water\claylick\squire ltr filing aff pub)

# PUBLISHER'S CERTIFICATE

I, Sara V. Shingleton, Classified  
Manager of THE EXPONENT TELEGRAM, a  
newspaper of general circulation published in the City  
of Clarksburg, County and state aforesaid, do hereby  
certify that the annexed:

## AMENDED NOTICE OF FILING

was published in THE EXPONENT-TELEGRAM 2  
time(s) commencing on

the 10th day of November 2008 and ending on  
the 17th day of November 2008 at the request of  
JAMES V. KELSH LAW OFFICE.

Given under my hand this 17th day of November 2008

The publisher's fee for said publication is: \$582.63  
for 2,561 words at \$0.2275 per word.

Sara V. Shingleton  
Classified Manager of The Exponent-Telegram

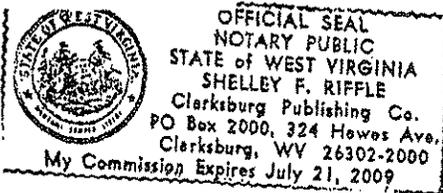
SEAL

Subscribed to and sworn to before me this 17th day of  
November 2008.

Shelley F. Riffle  
Notary Public in and for Harrison County, WV

My commission expires on:

The 21 day of July 2009



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

Entered by the Public Service Commission of West Virginia, in the City of Charleston on the 5th day of November 2008.  
CASE NO. 08-1867-PWD-T-PC-CN  
JANE LEW PUBLIC SERVICE DISTRICT,  
a public utility.  
Application for a Certificate of Convenience and  
Necessity to construct the Water System Improvements Project.

**AMENDED NOTICE OF FILING**

On October 29, 2008, the Jane Lew Public Service District ("District") filed an application, duly verified, for a Certificate to construct certain additions and improvements to its water system in Lewis County, and an extension into Harrison County, and a tariff containing a requested increase in rates, tolls, and charges for furnishing water service to approximately 597 users located in Lewis and Harrison Counties. The application is on file with and available for public inspection at the Public Service Commission, 20 1 Brooks Street, in Charleston, West Virginia.

The proposed increased rates and charges will produce \$77,698 annually in additional revenues, or an overall increase in revenues of approximately 25.9%. The Jane Lew Public Service District estimates that construction will cost approximately \$888,665. It is proposed that the construction will be financed by a grant from the U. S. Environmental Protection Agency, State and Tribal Assistance Grant program in the amount of \$96,200 and a \$792,464 West Virginia Infrastructure and Jobs Development Council loan, payable over 33 years at 0% interest. The utility will not need interim financing. The utility anticipates charging the following rates for all its customers after construction of the project:

**RATES (customers with metered water supply)**

First	2,000 gallons used per month	\$12.20 per 1,000 gallons
Next	3,000 gallons used per month	\$ 9.60 per 1,000 gallons
Next	4,000 gallons used per month	\$ 8.60 per 1,000 gallons
Next	5,000 gallons used per month	\$ 8.42 per 1,000 gallons
All over	15,000 gallons used per month	\$ 7.36 per 1,000 gallons

**MINIMUM CHARGE**

No bill will be rendered for less than the following based on meter size:

5/8	inch meter	\$24.40
3/4	inch meter	\$ 36.60
1	inch meter	\$ 61.00
1 - 1/2	inch meter	\$122.00
2	inch meter	\$195.20
3	inch meter	\$365.00
4	inch meter	\$610.00
6	inch meter	\$1,352.00
8	inch meter	\$1,220.00

**LEAK ADJUSTMENT**

\$5.83 per 1/8 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

**SECURITY DEPOSIT**

Residential Customers .....\$69.92  
All others 1/6th of average annual usage as per American Water Works Association Table.  
These rates represent the following increases for all District customers over the proposed non-project related rate increase:

	(\$)INCREASE	(%)INCREASE
Residential (3,100 gallons monthly)	\$ 8.41	22.5%
Commercial (1 8,700 gallons monthly)	\$25.05	22.6%
Industrial (24,500 gallons monthly)	\$37.89	22.5%

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing.

The District anticipates charging the following for all its customers upon the Commission's issuance of a final order in this proceeding, and continuing in effect after completion of the project, until amended by Commission order.

**PRIVATE FIRE PROTECTION SERVICE**

Where connections, hydrants, sprinklers, etc. on private property are maintained by consumer:

	Per Annum
2 inch Service Line with hydrants, sprinklers, and/or hose connections	\$ 80.00
3 inch Service Line with hydrants, sprinklers, and/or hose connections	\$181.90
4 inch Service Line with hydrants, sprinklers, and/or hose connections	\$3 19.36

**PUBLIC FIRE PROTECTION SERVICE**

The Town of Jane Lew shall pay a public fire service charge of \$400.00 per annum, payable in twelve monthly payments. This charge covers all water system facilities existing at Main St. and Public Park, Jane Lew, WV, which are used in whole or in part for public fire service.

**TAP FEE**

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

A tap fee of \$50.00 will be charged to customers applying for service before construction is completed adjacent to the customers' premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

**SECURITY DEPOSIT**

Residential Customers .....\$55.00  
All others 1/6th of average annual usage as per American Water Works Association Table.

**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.

**DISCONNECTION CHARGE**

\$25.00  
To be charged whenever the supply of water is turned off at the customer's request for seasonal use of property, or for violations of rules, non-payment of bills, or fraudulent use of water.

**ADMINISTRATIVE CHARGE**

\$25.00  
To be charged whenever the utility dispatches personnel to turn off the supply of water for non-payment of bills and the customer makes payment prior to actual disconnection.

**RECONNECTION CHARGE**

\$25.00  
To be charged whenever the supply of water is turned on by the utility following disconnection at the customer's request for seasonal use of property or for violation of rules, non-payment of bills or fraudulent use of water.

**RETURNED CHECK CHARGE**

A service charge equal to the actual bank fee assessed to the District or a maximum of \$28.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

**MUNICIPAL EXCISE TAX SURCHARGE**

The municipalities listed below, having imposed a public utility tax computed on the basis of two percent of the revenues from water sales by the Jane Lew Public Service District water utility within the corporate limits of such municipalities, shall be billed as a "surcharge" to the customers receiving service within said corporate limits. The water utility is required to collect the utility tax pursuant to West Virginia Code 38-13-5a.

Customers receiving water service within the corporate limits of the specified municipality shall pay a surcharge based on the following rates:

Town of Jane Lew - 2%  
A complete copy of this tariff, as well as a representative of the District to provide any information requested concerning it, is available to all customers, prospective customers, or their agents at the following office of the District:

Jane Lew Public Service District  
Post Office Box 845  
Jane Lew, West Virginia 26378

A copy of this tariff is also available for public inspection at the office of the Executive Secretary of the Public Service Commission at 20 1 Brooks Street, Charleston, West Virginia.

Pursuant to 524-2-1, West Virginia Code, IT IS ORDERED that the Jane Lew Public Service District give notice of the filing of said application, by publishing a copy of this order twice in newspapers duly qualified by the Secretary of State, published and of general circulation in Lewis and Harrison Counties, making due return to this Commission of proper verification of publication immediately after publication. Anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Sandra Squire, Executive Secretary, P. O. Box 8 12, Charleston, West Virginia 25323. IT IS FURTHER ORDERED that if no protests are received within said thirty (30) day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

Sandra Squire, Executive Secretary

**AFFIDAVIT OF PUBLICATION**

STATE OF WEST VIRGINIA,

COUNTY OF LEWIS, to wit:

I, ROBERT BILLETER, being first duly sworn upon my oath, do depose and say that I am Editor of The Weston Democrat, Inc., a corporation, publisher of the newspaper entitled The Weston Democrat, a Democratic newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published weekly; for at least fifty weeks during the calendar year; in the Municipality of Weston, Lewis County, West Virginia; that such newspaper is a newspaper of "general circulation", as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and Lewis County; that such newspaper averages in length four or more pages exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the

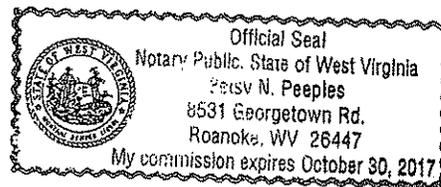
general public resorts for passing events of a political, religious, commercial and social nature, and for the current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of Filing

was duly published in said newspaper once a week for two weeks (Class. II), commencing with the issue of the 12th day of November, 2008 and ending with the issue of the 19th day of November, 2008; that said annexed notice was published on the following dates: November 12th & 19th, 2008; and the cost of publishing said annexed notice as aforesaid was \$586.95; total number of words: 2795.

Robert Billeter Editor

Taken, subscribed and sworn to before me in my said county this 19th day of November, 2008.

Betsy N. Peoples  
My commission expires October 30, 2017  
Notary Public Lewis County, Weston Virginia.



**LEGAL ADVERTISEMENT**

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered by the Public Service Commission of West Virginia, In the City of Charleston on the 5th day of November, 2008.

CASE NO. 08-1867-PWD-T-PC-CN

JANE LEW PUBLIC SERVICE DISTRICT,  
a public utility.

Application for a Certificate of Convenience and Necessity to construct the Water System Improvements Project.

**AMENDED NOTICE OF FILING**

On October 29, 2008, the Jane Lew Public Service District filed an application, duly verified, for a Certificate to construct certain additions and improvements to its water system in Lewis County, and an extension into Harrison County, and a tariff containing a requested increase in rates, tolls, and charges for furnishing water service to approximately 597 users located in Lewis and Harrison Counties. The application is on file with and available for public inspection at the Public Service Commission, 201 Brooks Street, in Charleston, West Virginia.

The proposed increased rates and charges will produce \$77,698 annually in additional revenues, or an overall increase in revenues of approximately 25.3%.

The Jane Lew Public Service District estimates that construction will cost approximately \$888,665. It is proposed that the construction will be financed by a grant from the U. S. Environmental Protection Agency, State and Tribal Assistance Grant program in the amount of \$96,200 and a \$792,464 West Virginia Infrastructure and Jobs Development Council loan, payable over 38 years at 0% interest. The utility will not need interim financing.

The utility anticipates charging the following rates for all its customers after construction of the project:

**BATES (customers with metered water supply)**

First	2,000 gallons used per month	\$12.20 per 1,000 gallons
Next	3,000 gallons used per month	\$ 9.60 per 1,000 gallons
Next	4,000 gallons used per month	\$ 8.60 per 1,000 gallons
Next	6,000 gallons used per month	\$ 8.12 per 1,000 gallons
All Over	15,000 gallons used per month	\$ 7.36 per 1,000 gallons

**MINIMUM CHARGE**

No bill will be rendered for less than the following based on meter size:

5/8	Inch meter	\$ 24.40
3/4	Inch meter	\$ 36.60
1	Inch meter	\$ 61.00
1-1/2	Inch meter	\$122.00
2	Inch meter	\$195.20
3	Inch meter	\$366.00
4	Inch meter	\$610.00
6	Inch meter	\$1,220.00
8	Inch meter	\$1,952.00

**LEAK ADJUSTMENT**

\$3.93 per M gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on customer's side of the meter. This rate shall be applied to all such unusual consumption above the customer's historical average usage.

**SECURITY DEPOSIT**

Residential Customers.....\$69.92  
All others 1/8th of average annual usage as per American Water Works Association Table.

These rates represent the following increases for all District customers over the proposed non-project related rate increase:

	(\$) INCREASE	(%) INCREASE
Residential (3,100 gallons monthly)	\$ 6.41	22.5%
Commercial (18,700 gallons monthly)	\$25.05	22.5%
Industrial (24,500 gallons monthly)	\$37.89	22.5%

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing.

The District anticipates charging the following for all its customers upon the Commission's issuance of a final order in this proceeding, and continuing in effect after completion of the project, until amended by Commission order

**PRIVATE FIRE PROTECTION SERVICE:**

Where connections, hydrants, sprinklers, etc. on private property are maintained by consumer:

	Per Annum
2 inch Service Line with hydrants, sprinklers, and/or hose connections	\$ 80.00
3 inch Service Line with hydrants, sprinklers, and/or hose connections	\$181.90
4 inch Service Line with hydrants, sprinklers, and/or hose connections	\$319.36

These terms are payable twice annually in advance.

**PUBLIC FIRE PROTECTION SERVICE**

The Town of Jane Lew shall pay a public fire service charge of \$400.00 per annum, payable in twelve monthly payments. This charge covers all water system facilities existing at Main St. and Public Park, Jane Lew, WV, which are used in whole or in part for public fire service.

**TAP FEE**

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

A tap fee of \$50.00 will be charged to customers applying for service before construction is completed adjacent to the customers' premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

**SECURITY DEPOSIT**

Residential Customers.....\$55.00  
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**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.

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**ADMINISTRATIVE CHARGE**

\$25.00  
To be charged whenever the utility dispatches personnel to turn off the supply of water for non-payment of bills and the customer makes payment prior to actual disconnection.

**RECONNECTION CHARGE**

\$25.00  
To be charged whenever the supply of water is turned on by the utility following disconnection at the customer's request for seasonal use of property or for violation of rules, non-payment of bills or fraudulent use of water.

**RETURNED CHECK CHARGE**

A service charge equal to the actual bank fee assessed to the District or a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds.

**MUNICIPAL EXCISE TAX SURCHARGE**

The municipalities listed below, having imposed a public utility tax computed on the basis of two percent of the revenues from water sales by the Jane Lew Public Service District water utility within the corporate limits of such municipalities, shall be billed as a "surcharge" to the customers receiving service within said corporate limits.

The water utility is required to collect the utility tax pursuant to West Virginia Code §8-13-5a.

Customers receiving water service within the corporate limits of the specified municipality shall pay a surcharge based on the following rates:

Town of Jane Lew - 2%

A complete copy of this tariff, as well as a representative of the District to provide any information requested concerning it, is available to all customers, prospective customers, or their agents at the following office of the District:

Jane Lew Public Service District  
Post Office Box 845  
Jane Lew, West Virginia 26378

A copy of this tariff is also available for public inspection at the office of the Execu-

**LEGAL ADVERTISEMENT**      **LEGAL ADVERTISEMENT**

utive Secretary of the Public Service Commission at 201 Brooks Street, Charleston, West Virginia.

Pursuant to §24-2-11, West Virginia Code, IT IS ORDERED that the Jane Lew Public Service District give notice of the filing of said application, by publishing a copy of this order twice in newspapers duly qualified by the Secretary of State, published and of general circulation in Lewis and Harrison Counties, making due return to this Commission of proper certification of publication immediately after publication. Anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Sandra Squire, Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that if no protests are received within said thirty (30) day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

A True Copy, Teste:  
Sandra Squire  
Executive Secretary 26-2

# Minutes of Jane Lew Public Service District

## Regular Meeting      January 07, 2009

---

**Present:** Thomas E. Bailey (Chairman); Elaine B. Flaxer (Secretary); Nancy Gee (General Manager).

**Guests:**

**Absent:** Oscar R. Mills (Board) due to death in family.

1. **Call to Order:** The meeting was called to order by 2008 Chairman Flaxer at 4:00 p.m. at the Jane Lew Wastewater Plant Classroom.

2. **Election of Officers:**

**MOTION:** (Flaxer/Bailey) - in conformity with Article XI, Section 2 of the Board's Rules of Procedure, to rotate the office of Chairman to Thomas E. Bailey for calendar year 2009, effective immediately. [Carried Unanimously]

**MOTION:** (Bailey/Flaxer) - to elect Elaine B. Flaxer to the office of Board Secretary for calendar year 2009. [Carried Unanimously]

**MOTION:** (Flaxer/Bailey) - in conformity with her 2004 Resolution of Appointment, to re-appoint Nancy E. Gee to the office of Treasurer for calendar year 2009 as part of the job of General Manager. [Carried Unanimously]

Once elections were finished Chairman Bailey presided over the remainder of the meeting

3. **Rules of Procedure:**

**MOTION:** (Bailey/Flaxer) to ratify the existing Rules of Procedure as approved December 14, 2004.

4. **Schedule of 2008 Meetings:**

**MOTION:** (Bailey/Flaxer) to adopt the proposed schedule, time and location (attached) of regular meetings for 2009. [Carried Unanimously]

**Discussion:** General Manager Gee reported that after an incident involving a customer's water turn-off, she (Gee) was advised by Attorney Kelsh that PSDs are not supposed to transact official business on a day that the PSC is closed.

**MOTION:** (Bailey/Flaxer) given the advice of attorney, to amend the proposed schedule of official holidays (office closures) for 2009 to conform with the PSC official list of holidays. [Carried Unanimously]

### Assignments

- ✓ Office Manager to provide copy of approved schedule, time, & location of 2009 regular meetings to news media.
- ✓ Office Manager to see that copies of abovementioned meeting schedule are posted on the door of the District Office, the door to the Wastewater Plant, and at the Lewis County Courthouse.
- ✓ Flaxer to identify the chapter and verse or official rule that mandates PSD office closures to conform to PSC office closures.

5. **Minutes: (12/11/07)**

**MOTION:** (Bailey/Flaxer) To approve attached Minutes of 12/11/07 regular meeting. [Carried Unanimously]

6. **General Manager's Reports (Gee)**

**A. WATER:**

**1. Bills** (Attached)

**MOTION:** (Flaxer/Bailey) To ratify payment of attached list of invoices for December 2008. [Carried Unanimously]

**2. Treasury Report** (Attached)

**MOTION:** (Flaxer/Bailey) To approve attached Water Treasury Report for December 2008. [Carried Unanimously]

**3. Water Production Report** (Attached)

**4. Water Maintenance Report -**

- a) Leak detection - 2 leaks found & repaired (one at Harper St. & 1 at Jackson Hts.) Additionally, we are having trouble staying pumped up to capacity; therefore, the men have been actively walking the lines looking for the as yet unidentified leak.
- b) Line flushing
- c) Backflow prevention
- d) Valves -
- e) Other

**B. WASTEWATER:**

**1. Bills** (Attached)

**MOTION:** (Flaxer/Bailey) To ratify payment of attached list of invoices for December 2008. [Carried Unanimously]

**2. Treasury Report** (Attached)

**MOTION:** (Flaxer/Bailey) To approve attached Sewer Treasury Report for December 2008. [Carried Unanimously]

**3. Water Production Report** (Attached)

**4. Wastewater Maintenance Report -**

- a) I & I prevention
- b) Line flushing -
- c) Cleanouts
- d) Pumps
- e) Other -

7. **Announcements:** Flaxer surgery canceled for time being. Can assume full Secretary duties immediately.

8. **Correspondence:**

- A. Response (December 11'08) from Sandra Squire PSC to James Kelsh re: Case # 08-1867-PWD-T-PC-CN Initial Joint Staff Memorandum.
- B. Letter (December 11'08) from James Kelsh to Susan Thomas of Harrison County Commission re: requesting permission for the Clay Lick extension.
- C. Letter (December 15'08) from Lewis County Commission re: approving Clay Lick Road line extension.
- D. Letter (December 12'08) from Nancy Gee of Jane Lew PSD to Bill Hoover of Greater Harrison PSD re: executed copy of Water Purchase & Transportation Agreement extension.
- E. Letter from Infrastructure & Jobs Development Council (December 16'08) to Elaine Flaxer re: Jane Lew PSD 2005S-889 Revised Binding Commitment & Project Schedule.
- F. Letter (December 3'08) to Jane Lew PSD from Randy Harris, CPA re: retiring from business effective January 1'09, Jillian Spencer taking over company.
- G. Letter (December 22, 2008) to Dave Glover, Kingwood Wastewater Plant, re: Lab equipment for sale.

- H. Letter (December 16, 2008) from Kenneth Lowe, Jr., IJDC re: JLPSD 2005S-889 Revised Binding Commitment signed and returned to IJDC on December 30, 2008.
- I. Letter (January 5'09) to Sandra Squire of PSC from James Kelsh w/: attached letters of approval from the Lewis and Harrison County Commissions to District proposed extension into the Clay Lick area of Harrison County.
- J. Letter (January 6'09) to Greg St. Clair of World Wide Equipment from Nancy Gee re: drains from wash bay tied into sewer lines.
- K. Letter (January 6'09) to Larry Brown of Weston Transfer from Nancy Gee re: wash bay drains tied into sewer line.
- L. Letter (January 6'09) to Ralph Cayton from Nancy Gee re; has not signed up for sewer service and has been at residence since October 17'05.

## ~ OLD BUSINESS ~

### 9. Update: Phase II Sewer Upgrade (Gee)

- A. **Current I&I Data** – has been much rain in December and in past several days, but Thrasher has not yet been by to check the meters on the C.D. Cole property to identify source of infiltration. December wastewater production report shows 4.85 inches rainfall and 8.70 million gallons day average flow through (significantly elevated from November as ground becomes more saturated.)
- B. **I&I Reduction** – still no response from Lewis County Schools to our notice of violation. Tom Bailey offered to remind Superintendent's Office that written response is required. Letters were sent to Worldwide Equipment and Weston Transfer about their uncovered truck bays.
- C. **Billing Contract w/ WVAW** – no progress
- D. **Minimum Sewer Bill** - after discussing with PSC, Attorney Kelsh recommended that we not change sewer minimum. 1) It would involve a cost of service study, which would involve hiring new engineer; 2) A new sewer minimum of 3000 gallons would be inconsistent with our 2000 gallon water minimum, and the PSC would not approve it.
- E. **Funding**
  - ✓ **WVIJDC** – as authorized by motion at December meeting, General Manager Gee signed new Letter of Commitment and Project Schedule signifying Board approval. Executed copies returned to IJDC on 12/30/08.
  - ✓ **Small Cities**
- F. **Project Design** - reported by phone from Chad Riley, final design in process.
- G. **Boundary Adjustment-**
  - ✓ **JL-PSD** – according to Chad Riley, a new map and description has been created and sent to Kelsh.
  - ✓ **West Fork River PSD** – unknown whether this has been done.
- H. **Revised Sewer Use Ordinance** - pending
- I. **Other**

#### Assignments

- ✓ ThrasherEng to check meters and attempt to locate source of infiltration on CD Cole property;
- ✓ Bailey to remind Lewis County Schools of deadline for response to Notice of I&I Violation;
- ✓ Gee or Flaxer to follow up with WVAW, preferably in written format to establish chain of documentation, and with copy to Dan Bickerton;
- ✓ Gee or Flaxer to check with ThrasherEng about West Fork PSD boundary adjustment.

10. Update: Multi-Water Project (Gee)

A. Funding -

- ✓ IJDC
- ✓ SAP -

B. Certificate Case – both Lewis County Commission and Harrison County Commission sent letters approving the incursion of Jane Lew PSD into Harrison County, and Attorney Kelsh has forwarded same to PSC.

C. Project Schedule -

D. Other -

11. Update: Pending Extensions and Road Bores (Gee) nothing to report

12. Update: Pending BPH Water Survey Recommendations (Gee)

Discussion: Items in **boldface** indicate this month's progress updates. Completed items will be dropped from the list after being reported to the Board.

2005 Items

- ✓ Capital Improvements Plan (CIP) needed (Gee has until 5/01/09 to complete) **Gee has ordered a copy of the CUPSS program from EPA as recommended by Board.**

2006 Items

- ✓ Unaccounted water loss too high since July '05 -

<u>2006 %</u>	<u>2007 %</u>		<u>2008 %</u>	
July - 27.73	Jan - 8.55	July - 18.81	Jan - 27	July- 19
Aug - 16.80	Feb - 32.46	Aug - _____	Feb - est.	Aug-23
Sept - 34.4	Mar - 28.5	Sept - 19.0	Mar - ?	Sept - 18
Oct - 33.7	Apr - 17.3	Oct - 13.0	Apr- 15	Oct - 20
Nov - 34.17	May - 20.	Nov - 18	May - 29	Nov- 17
Dec - 35.47	Jun - 32.	Dec - 25	June 22	<b>Dec - 29%</b> [staff actively searching for leak]

[NOTE: Industry Standard is 15%]

2008 Items

- ✓ Need system for reporting pre & post-chlorination on Form EW-90
- ✓ Need system for preventing water disinfectant byproducts violation

**NOTE: Jacob Fischel (BPH) scheduled to come for 2009 Water Survey Inspection next month**

Assignments

- ✓ Gee to talk to water operators & ascertain whether & how frequently they are using Form EW-90;
- ✓ Gee to schedule specific discussion (and document same) for how to prevent disinfectant by-products until such time that we purchase all our water (by end 2009). Explain to him how letter affected our customer w/ dying husband.

13. Update: Board Review of PSD Policies and Job Descriptions (Flaxer) – nothing to report

- A. Emergency Response Policy
- B. Main Extension Policy - pending outcome of PSC Rule Revision
- C. Private Fire Protection Policy
- D. Grinder Pump Policy
- E. Other

14. Update: **Personnel Matters (Gee)** – nothing to report.

- A. Office
- B. Water Division
- C. Sewer Division

15. Update: **Wastewater Property Repairs and Maintenance (Gee)** - Items in boldface indicate this month's progress updates. Completed items will be dropped from the list after being reported to the Board.

- A. Roof inspection & estimates – **no report**
- B. Take up tiles & paint floor -
- C. Lab equipment removed and/or renovated – **letter sent to Dave Glover of Kingwood PSD, which is reportedly very interested and plans to send an employee down to evaluate the items; items also posted on RWA web page.**
- D. Clean countertops -
- E. Paint interior walls -
- F. New folding tables -
- G. Donated office furniture -
- H. Bathroom -

16. Update: **Proposed PSC Revision of Water & Sewer Rules (Flaxer)** -

(MOTION): (Flaxer/ ) To designate Jim Kelsh to speak to the WV-RWA Board on our behalf to attempt to get RWA to adopt and fund an effective PSD advocacy role. [No Vote]

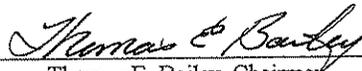
(MOTION): (Flaxer/Bailey) To postpone action for a month until we hear more about the proposed plan from Attorney Kelsh. [ Carried Unanimously ]

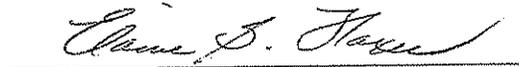
17. Update: **GH-PSD Water Purchase Agreement (Gee)** – no response yet from GH-PSD. Gee tried calling this date but found Hoover to be on holiday leave.

## ~ NEW BUSINESS ~

18. **Late Received Agenda Items (Gee)** - none.

19. **Adjournment:** The meeting was adjourned at 5:00 p.m.

  
Thomas E. Bailey, Chairman

  
Elaine B. Flaxer, Secretary

Attachments:

# Minutes of Jane Lew Public Service District

## Regular Meeting      October 08, 2009

---

**Present:** Thomas E. Bailey (Chairman); Oscar R. Mills (Board); Elaine B. Flaxer (Secretary, by phone hookup); Nancy E. Gee (General Manager).

**Guests:** John Stump (Steptoe & Johnson); James V. Kelsh (Project Attorney); Richard Gaines (Multi-Water Engineer); Dan Ferrell (Sewer Engineer);

**Absent:**

1. **Call to Order:** The meeting was called to order by Chairman Bailey at 4:03 p.m. at the Jane Lew Wastewater Plant Classroom.

2. **Multi-Water Project Bond Closing (Stump)**

A. Appointment of Secretary pro tempore for bond closing

**MOTION:** (Flaxer/Bailey) To designate Oscar R. Mills as Secretary *pro tempore* for the purpose of the water bonds closing. [Carried Unanimously]

B. Bond Resolution

**MOTION:** (Flaxer/Mills) To authorize Thomas E. Bailey as Chairman to sign the attached thirty-year Bond Resolution dated 10/08/09 indicating Board approval of a forgivable and a 30-year bond at \$429,399.00 each. [Carried Unanimously]

C. Supplemental Resolution

**MOTION:** (Bailey/Mills) To authorize Thomas E. Bailey as Chairman to sign the attached Supplemental Resolution dated 10-08-09 and outlining the specific terms of the \$429,399 thirty-year bond agreement and the forgivable \$429,399 bond indicating Board approval of same. [Carried Unanimously]

D. Draw Resolution

**MOTION:** (Flaxer/Bailey) To authorize Thomas E. Bailey as Chairman to sign attached Pay Requisition #1 dated 10/08/09 for:

- ✓ Huntington Banks (Registrar) \$1000.00,
- ✓ Steptoe & Johnson (Bond Counsel) \$15,000.00,
- ✓ Jane Lew PSD \$41,321.00,
- ✓ James Kelsh (Project Attorney) \$13,493.50,
- ✓ Greenhorne & O'Mara (Project Engineers) \$66,012.00,
- ✓ Smith, Cochran & Hicks (Project Accountant) \$6,374.05,
- ✓ Smith, McMunn & Glover (property work) \$542.50

for a total draw of \$143,743.05, which signature indicates Board approval of payments. [Carried Unanimously]

E. Sweep Resolution

**MOTION:** (Bailey/Flaxer) To authorize Thomas E. Bailey as Chairman to sign attached authorization for the monthly bond payment in the amount of \$1,193.00 to be automatically withdrawn from the Water Revenue Account on the first day of every month starting December 1, 2010, which signature indicates Board approval of same. [Carried Unanimously]

F. Smith, Cochran, Hicks (Project Accountant) Resolution

**MOTION:** (Bailey/Mills) To authorize Thomas E. Bailey as Chairman to sign attached amendment to Letter of Understanding for Rule 42 increasing payment to amount of \$6,374.05 for work done in support of defense during Greater Harrison PSD Complaint against JL-PSD, and toward obtaining stimulus funding, signature indicating Board approval of same. [Carried Unanimously]

G. Soft Cost Resolution

**MOTION:** (Mills/Bailey) to authorize Thomas E. Bailey as Chairman to ratify attached Infrastructure Soft Cost amendment in the

amount of \$50,543.00 indicating Board approval of same. [Carried Unanimously]

3. **Minutes:**

MOTION: (Bailey/Mills) To approve attached Minutes of 09/10/09 regular meeting. [Carried Unanimously]

4. **General Manager's Reports (Gee)**

A. WATER:

i. **Water Bills** (Attached)

MOTION: ( Mills/Bailey ) To ratify payment of attached list of water invoices for September 2009. [Carried Unanimously]

ii. **Water Treasury Report** (Attached)

MOTION: ( Bailey/Flaxer) To approve attached Water Treasury Report for September 2009. [Carried Unanimously]

iii. **Two Months' Water Adjustments Reports** (Attached)

MOTION: ( Flaxer/Mills ) To approve attached Water Adjustments Report for August 2009. [Carried Unanimously]

MOTION: ( Bailey/Flaxer ) To approve attached Water Adjustments Report for September 2009. [Carried Unanimously]

iv. **Water Production Report** (Attached) – 25 % loss this month

v. **Water Maintenance Report** -

- a) Leak detection /repairs – 3 leaks – Neely Avenue, Jackson Heights, Harper St., all repaired.
- b) Line flushing – Nothing
- c) Cross Connections/Backflow prevention - Nothing
- d) Valves – Nothing
- e) Other – Nothing

vi. **Current Quarterly Water Disinfectant By-Products** - 3<sup>rd</sup> Quarter test (Tthm's and Haa5) results both were in compliance.

B. WASTEWATER:

i. **Sewer Bills** (Attached)

MOTION: ( Bailey/Mills) To ratify payment of attached list of sewer invoices for September 2009. [Carried Unanimously]

ii. **Sewer Treasury Report** (Attached)

MOTION: (Mills/Bailey) To approve attached Sewer Treasury Report for September 2009. [Carried Unanimously]

iii. **Two Months' Sewer Adjustments Reports** (Attached)

MOTION: ( Mills/Bailey ) To approve attached Sewer Adjustments Report for August 2009. [Carried Unanimously]

MOTION: ( Bailey/Mills) To approve attached Sewer Adjustments Report for September 2009. [Carried Unanimously]

iv. **Sewer Production Report** (Attached) –

v. **Sewer Maintenance Report** -

- a) I&I Prevention – Nothing
- b) Line flushing - Nothing
- c) Cleanouts – Nothing
- d) Manholes - Nothing
- e) Pumps – Nothing

f) Other – Nothing

vi. Other Sewer

4. Announcements: Flaxer out of town from October 3<sup>rd</sup> – 23<sup>rd</sup>.

5. Correspondence:

- A. Letter (September 14'09) from PSC to Jane Lew PSD re: Application for certificate of public convenience & necessity to construct a water improvement project, for approval of interim tariff change and for consent and approval of an agreement with GHPSD.
- B. Revised Water System Extension re: Schedule B Cost Analyst.
- C. West Virginia Rural Water Association 2009 Taste Results: Jane Lew PSD places 6<sup>th</sup> place out of 24 entrants.
- D. Commission Order (September 14'09) re: Public Service Commission approves revised funding for Water Improvements Project.
- E. Fax (September 25'09) from James Kelsh to Nancy Gee re: WV Rural Water Association Newsletter –Sept. 3'09.
- F. Memorandum (September 29'09) from Department of Health & Human Services, Scott Rodeheaver re: Water Systems Operations & Administrative Contracts update & develop source water plans.
- G. Fax (September 30'09) from Katy Mallory of Steptoe & Johnson to Angela Chestnut of WV Infrastructure & Jobs Development Council re: Application for \$65K grant for legal costs which are ineligible under the DWTRF program.
- H. Schedule B Cost Analyst (Revised 9/30/09) Water System Extension Project.
- I. Resolution of the Jane Lew PSD approving invoices relating to acquisition and construction and other services for the proposed Water Project and authoring payment thereof.
- J. Letter (October 23'09) received October 1'09 from Smith, McMunn & Glover to WVI & JDC and also WVBPH re: Jane Lew Public Service District Water System Improvements Project Final Title Opinion.
- K. Letter from James Kelsh to Sandra Squire of PSC re: Certificate of Notice of Change in Tariff.

~~ OLD BUSINESS ~~

6. Update: Phase II Sewer Upgrade [Case # 09-1043-PSD-42T-PC-PW-CN] (Gee)

A. Water Use Data from WVAW – Nothing

B. Water Termination (Customer Shut Off) Agreement with WVAW –

**MOTION:** (Bailey / Mills ) To authorize Thomas E. Bailey as Chairman to sign the attached Water Termination Agreement indicating Board approval of same. [Carried Unanimously]

**DISCUSSION:** Jim Kelsh will send the approved agreement to PSC for approval.

C. Funding/Stimulus – Nothing

D. Sewer Use Ordinance – Nothing

E. PSC Certificate – Waiting on a new rule 42 based on financials for 08/09 audit. Should be completed mid Oct.

F. Bond Counsel Procurement Search – Nothing, and Attorney Kelsh found out there are no DBE Bond firms in the state of WV.

G. Property Work - Glover reported to Ferrell that he has 1/3 of the easements completed. Ferrell also reported that Lana Smith from Professional Appraisals has taken a job with Region 6 but would like Jane Lew to allow Region 6 to obtain the R/W agreements. Jim said he was not sure that that would be an option since we are in Region 7. Nancy asked Ferrell to check on a new R/W agent. He said he would check with Morgan Haymond from Buckhannon who had done some work for

them.

H. Culture & History – Nothing

I. Other – Nothing

Assignments

- *Kelsh to update Sewer Use Ordinance*
- *Ferrell to contact Morgan Haymond regarding his cost and also to contact Lana as to what the cost would be if Region 6 were to do the R/W agreements.*
- *Kelsh to contact the Development authority over the different regions regarding the legality for us to use region 6 for the R/W agent.*

7. Update: Multi-Water Project [Case #08—1867-PWD-T-PC-CN] (Gaines/Gee)

A. Construction Issues– Nothing

B. PSC Certificate/Rate Complaint Issues - Nothing

C. Funding/Stimulus Issues –

- ✓ IJDC – Preliminary Loan closing date, 10-22-09, Wired loan closing 10-23-09
- ✓ SAP –

D. Bottom Line Financing –

The final funding package is as follows:

- \$429,399 stimulus grant (forgivable bond)
- \$429,399 zero % thirty-year loan
- \$ 96,200 STAG grant
- \$ 50,543 IJDC grant

The monthly payback will be \$1,193/mo.

Minimum bill (2,000 gal/mo) will be \$24.40 (post-project but before bulk water purchase). Currently \$19.92.

E. Asset Management Planning Guidelines – Gee checked on the possibility of getting help from a WVU student. The cost would be \$800.00 plus expenses. Gee waiting to hear back from Zane Satterfield from National Environmental Services Center regarding obtaining help from them.

Assignments

- *GM Gee to proceed with Asset Management Plan.*

8. Update: Pending Extensions and Road Bores (Gee) –

- Blackberry Estates – Water lines, pump station, sewer lines and manholes all done. Lines have been flushed and bacteria samples will be taken on Monday 10-12-09.

9. Update: Pending Sanitary Survey Recommendations (Gee)

**Discussion:** Items in **boldface** indicate this month's progress updates. Completed items will be dropped from the list after being reported to the Board.

**2005 Items**

- ✓ Capital Improvements / Asset Management Plan (CIP) needed (Gee has been given until 5/01/09 to complete). **Still not done.**

**2006 Items**

- ✓ **Unaccounted water loss too high since July '05 -**

<u>2006 %</u>	<u>2007 %</u>		<u>2008 %</u>		<u>2009 %</u>	
July - 27.73	Jan - 8.55	July - 18.81	Jan - 27	July - 19	Jan - 15	Jul - 23
Aug - 16.80	Feb - 32.46	Aug - _____	Feb - est.	Aug-23	Feb - 24	Aug - 19
Sept - 34.4	Mar - 28.5	Sept - 19.0	Mar - ?	Sep - 18	Mar - 19	Sep - 25
Oct - 33.7	Apr - 17.3	Oct - 13.0	Apr - 15	Oct - 20	Apr - 22	
Nov - 34.17	May - 20.	Nov - 18	May - 29	Nov - 17	May - 29	
Dec - 35.47	Jun - 32.	Dec - 25	June 22	Dec - 29	Jun - 20	

[NOTE: Industry Standard is 15%]

Assignments

- *Gee to develop a comprehensive plan for preventative maintenance/ asset management,/capital spending/ fiscal planning (call it whatever you will)*

**10. Update: Board Review of PSD Policies and Job Descriptions (Flaxer) - no progress this month.**

1. Grinder Pump Policy Nothing
2. Right-of-Way Policy Nothing
3. Private Fire Protection Policy Nothing
4. Emergency Response Policy Nothing
5. Mainline Extension Policy Nothing
6. Other

**11. Update: Personnel Matters (Gee) -**

- A. Office - Nothing
- B. Water Division - Nothing
- C. Sewer Division - Nothing

**12. Update: Wastewater Property Repairs and Maintenance (Gee) - Items in boldface indicate this month's progress updates. Completed items will be dropped from the list after being reported to the Board.**

- A. Roof replacement - Matt Neely .....Will be starting soon.
- B. Retile floor - Nothing
- C. Finish painting interior walls - Nothing
- D. New tables - Nothing
- E. Bathroom - Nothing
- F. Heating & Cooling Unit

**MOTION:** (Bailey/Mills) to approve the unbudgeted purchase of a new heating & cooling unit not to exceed \$ 6,000.00.

[Carried]

**13. Update: Proposed PSC Rule Revisions (Kelsh) -**

- A. Water Rules Nothing

- B. Sewer Rules Nothing  
C. PSC Rules Nothing

## ~ NEW BUSINESS ~

14. Late Received Agenda Items (Gee) – none.

15. Adjournment: The meeting was adjourned at 6:10 p.m.

---

Thomas E. Bailey, Chairman

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Elaine B. Flaxer, Secretary

### Attachments:

- September 2009 Bills Paid (Water/Wastewater)
- September 2009 Treasury Reports (Water/Wastewater)
- August & September 2009 Billing Adjustments Reports (Water/Wastewater)
- September 2009 Production Reports (Water/Wastewater)
- All correspondence listed on page 3
- Executed copy of Multi-Water Project Bond Resolution
- Executed copy of Multi-Water Project Supplemental Resolution
- Executed copy of Multi-Water Project Draw Resolution (Requisition #1)
- Executed copy of Multi-Water Project Sweep Resolution
- Executed copy of Multi-Water Project Smith, Cochran & Hicks Resolution
- Executed copy of Multi-Water Project Soft Costs Resolution
- Executed copy of Water Termination Agreement with WVAW (for sewer purposes)

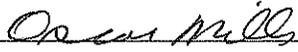
### E-Copies of Unapproved Minutes sent to

- James V. Kelsh, Attorney
- Dan Ferrell, Phase II Sewer Project Engineer, Thrasher Engineering
- Richard Gaines, Multi Water Project Engineer, Greenhorne & O'Mara
- PSD Office
- Board Members

CERTIFICATION

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

WITNESS my signature on this 23rd day of October, 2009.

  
Secretary

**WV MUNICIPAL BOND COMMISSION**

1207 Quarrier Street  
Suite 401  
Charleston, WV 25301  
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 23-Oct-09

ISSUE: Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program)

ADDRESS: Post Office Box 845, Jane Lew, West Virginia 26378 COUNTY: Lewis

PURPOSE OF ISSUE:

New Money: x  
Refunding: \_\_\_\_\_

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: 23-Oct-09

CLOSING DATE: 23-Oct-09

ISSUE AMOUNT: \$429,399

RATE: 0%

1ST DEBT SERVICE DUE: 1-Mar-11

1ST PRINCIPAL DUE 1-Mar-11

1ST DEBT SERVICE AMOUNT \$3,579

PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:

Firm: Stephoe & Johnson PLLC  
Contact: John Stump, Esquire  
Phone: (304) 353.8196

UNDERWRITERS COUNSEL

Firm: Jackson Kelly, PLLC  
Contact: Samme Gee, Esquire  
Phone: (304) 340-1318

CLOSING BANK:

Bank: Citizens Bank  
Contact: Barbara Boore  
Phone: 304.269.2862

ESCROW TRUSTEE:

Firm: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT

Contact: Nancy Gee  
Position: Manager  
Phone: 304.884.7111

OTHER:

Agency: West Virginia DWTRF Program  
Contact: Robert DeCrease, P.E.  
Position: Manager  
Phone: 304.558.6749

DEPOSITS TO MBC AT CLOSE

By: \_\_\_\_\_ Wire \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_  
Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
Reserve Account: \$ \_\_\_\_\_  
Other: \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE

By: \_\_\_\_\_ Wire \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_  
To Escrow Trustee \$ \_\_\_\_\_  
To Issuer \$ \_\_\_\_\_  
To Cons. Invest. Fund \$ \_\_\_\_\_  
To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: The Series 2009 A Bonds Reserve Account will be funded over 10 years.  
\_\_\_\_\_  
\_\_\_\_\_

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS REQUIRED: \_\_\_\_\_  
TRANSFERS REQUIRED: \_\_\_\_\_  
\_\_\_\_\_

**WV MUNICIPAL BOND COMMISSION**  
 1207 Quarrier Street  
 Suite 401  
 Charleston, WV 25301  
 (304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 23-Oct-09

ISSUE: Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA)

ADDRESS: Post Office Box 845, Jane Lew, West Virginia 26378 COUNTY: Lewis

PURPOSE OF ISSUE:  
 New Money: x  
 Refunding: \_\_\_\_\_

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: 23-Oct-09 CLOSING DATE: 23-Oct-09

ISSUE AMOUNT: \$429,399 RATE: 0%

1ST DEBT SERVICE DUE: 100% Forgivable 1ST PRINCIPAL DUE 100% Forgivable

1ST DEBT SERVICE AMOUNT 100% Forgivable PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Firm: Step toe & Johnson PLLC  
 Contact John Stump, Esquire  
 Phone: (304) 353.8196

UNDERWRITERS COUNSEL Firm: Jackson Kelly, PLLC  
 Contact: Samme Gee, Esquire  
 Phone: (304) 340-1318

CLOSING BANK: Bank: Citizens Bank  
 Contact: Barbara Boore  
 Phone: 304.269.2862

ESCROW TRUSTEE: Firm: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT Contact: Nancy Gee  
 Position: Manager  
 Phone: 304.884.7111

OTHER: Agency: West Virginia DWTRF Program  
 Contact: Robert DeCrease, P.E.  
 Position: Manager  
 Phone: 304.558.6749

DEPOSITS TO MBC AT CLOSE

By: _____	Wire _____	Accrued Interest: _____	\$ _____
_____	Check _____	Capitalized Interest: _____	\$ _____
_____	_____	Reserve Account: _____	\$ _____
_____	_____	Other: _____	\$ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE

By: _____	Wire _____	To Escrow Trustee _____	\$ _____
_____	Check _____	To Issuer _____	\$ _____
_____	IGT _____	To Cons. Invest. Fund _____	\$ _____
_____	_____	To Other: _____	\$ _____

NOTES: The Series 2009 B Bonds are 100% forgivable. The Series 2009 B Bonds Reserve Account will not be funded.

\_\_\_\_\_

\_\_\_\_\_

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS REQUIRED: \_\_\_\_\_

TRANSFERS REQUIRED: \_\_\_\_\_

\_\_\_\_\_

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Citizens Bank, Weston, West Virginia, hereby accepts appointment as Depository Bank in connection with the Bond Resolution of Jane Lew Public Service District (the "Issuer") adopted by the Issuer on October 8, 2009, and a Supplemental Resolution adopted by the Issuer on October 8, 2009 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program) and Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), both dated October 23, 2009, issued in the respective original aggregate principal amounts of \$429,399 and \$429,399 (collectively, the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 23rd day of October, 2009.

CITIZENS BANK

By: Kimberly D. Brown  
Its: Authorized Officer

09.30.09  
448300.00003

Ch5201957.2

JANE LEW PUBLIC SERVICE DISTRICT

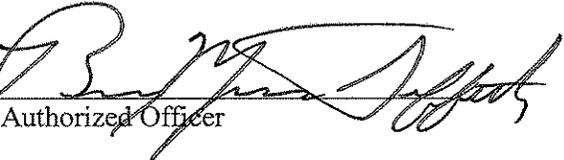
Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

ACCEPTANCE OF DUTIES AS REGISTRAR

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the Jane Lew Public Service District Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), and Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), both dated October 23, 2009, issued in the respective original aggregate principal amounts of \$429,399 and \$429,399 (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 on this 23rd day of October, 2009.

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

09.30.09  
448300.00003

CH5202673.2

JANE LEW PUBLIC SERVICE DISTRICT

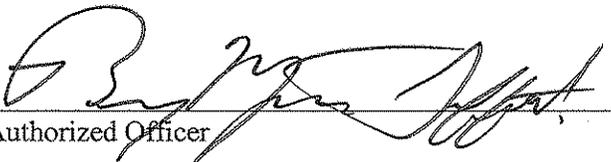
Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

CERTIFICATE OF REGISTRATION OF BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Resolution and Registrar's Agreement providing for the above-captioned Bonds of Jane Lew Public Service District (the "Issuer"), hereby certifies that on the date hereof (i) the single, fully registered Water Revenue Bond, Series 2009 A (West Virginia DWTRF Program), of the Issuer, dated October 23, 2009, in the principal amount of \$429,399, numbered AR-1, was registered as to principal only and (ii) the single fully registered Water Revenue Bond, Series 2009 B (West Virginia DWTRF Program/ARRA) of the Issuer, dated October 23, 2009, in the principal amount of \$429,399, numbered BR-1, was registered as to principal only, in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The Huntington National Bank, as Registrar.

WITNESS my signature on this 23rd day of October, 2009.

THE HUNTINGTON NATIONAL BANK

  
Authorized Officer

09.30.09  
448300.00003

JANE LEW PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 23rd day of October, 2009, by and between JANE LEW PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$429,399 Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), and \$429,399 Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), both dated October 23, 2009, in fully registered form (collectively, the "Bonds"), pursuant to a Bond Resolution of the Issuer duly adopted October 8, 2009, and a Supplemental Resolution of the Issuer duly adopted October 8, 2009 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: Jane Lew Public Service District  
Post Office Box 845  
Jane Lew, West Virginia 26378  
Attention: Chairman

REGISTRAR: The Huntington National Bank  
One Huntington Square  
Charleston, West Virginia 25301  
Attention: Corporate Trust Department

8. The Registrar shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The registrar shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Registrar to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or other legal available remedies.

9. The Registrar is hereby requested and authorized to authenticate, register and deliver the Bonds in accordance with the Bond Legislation.

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

[Remainder of Page Intentionally Blank}

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.

JANE LEW PUBLIC SERVICE DISTRICT

By: Thomas Bailey  
Its: Chairman

THE HUNTINGTON NATIONAL BANK

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

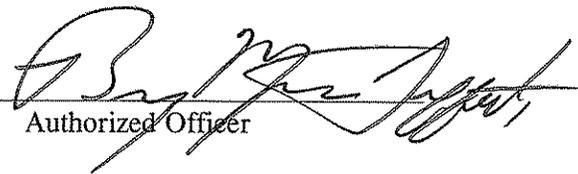
09.30.09  
448300.00003

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.

JANE LEW PUBLIC SERVICE DISTRICT

By: \_\_\_\_\_  
Its: Chairman

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

09.30.09  
448300.00003

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(Please see the attached)

Private Financial Group  
P.O. Box 633 - WE3013  
Charleston, West Virginia 25322-0633



STATEMENT OF REGISTRAR'S FEES  
Invoice Date October 23, 2009

**Jane Lew Public Service District**  
**Account Number 6089001809**

Jane Lew Public Service District  
Water Revenue Bond, Series 2009 A  
C/o John C. Stump  
Steptoe & Johnson, PLLC  
P.O. Box 1588  
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

\*\*\*\*\*  
FEE CALCULATION FOR October, 2009  
\*\*\*\*\*

TOTAL AMOUNT	\$	500.00
<b>TOTAL DUE</b>	<b>\$</b>	<b><u>500.00</u></b>

- \* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT \*
- \* IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN \*
- \* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: BARRY. . \*
- \* .. GRIFFITH, PO BOX 633, CHARLESTON, WV 25322-0633 . . . . . \*

**PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR PAYMENT**

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT  
Barry Morgan Griffith at (304)348-5035

Private Financial Group  
P.O. Box 633 - WE3013  
Charleston, West Virginia 25322-0633



STATEMENT OF REGISTRAR'S FEES  
Invoice Date October 23, 2009

**Jane Lew Public Service District**  
**Account Number 6089001809**

Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 B  
C/o John C. Stump  
Steptoe & Johnson, PLLC  
P.O. Box 1588  
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

\*\*\*\*\*  
FEE CALCULATION FOR October, 2009  
\*\*\*\*\*

TOTAL AMOUNT	\$	500.00
TOTAL DUE	\$	<u>500.00</u>

- \* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT \*
- \* IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN \*
- \* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: BARRY.. \*
- \* .. GRIFFITH, PO BOX 633, CHARLESTON, WV 25322-0633 . . . . . \*

**PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR PAYMENT**

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT  
Barry Morgan Griffith at (304)348-5035



## CLOSING MEMORANDUM

**To:** Financing Team

**From:** John C. Stump, Esquire

**Date:** October 23, 2009

**Re:** Jane Lew Public Service District Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program); and Series 2009 B (West Virginia DWTRF Program/ARRA)  
68 Park Avenue, Jane Lew, WV 26378

---

**1. DISBURSEMENTS TO JANE LEW PUBLIC SERVICE DISTRICT**

- A. Payor: West Virginia Bureau for Public Health  
Source: Series 2009 A Bonds Proceeds  
Amount: \$96,434  
Form: Wire Transfer  
Payee: Jane Lew Public Service District  
Bank: Citizens Bank  
Routing #: 051501451  
Account #: 366029  
Contact: Barbara Boore, 304.269.2862  
Account: Series 2009 Bonds Construction Trust Fund
  
- B. Payor: West Virginia Infrastructure and Jobs Development Council  
Source: IJDC Grant  
Amount: \$47,309.56  
Form: Wire Transfer  
Payee: Jane Lew Public Service District  
Bank: Citizens Bank  
Routing #: 051501451  
Account #: 366209  
Contact: Barbara Boore, 304.269.2862  
Account: Series 2009 Bonds Construction Trust Fund

448300.00003

2006 W-921

JANE LEW PUBLIC SERVICE DISTRICT

RESOLUTION OF THE JANE LEW PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING TO ACQUISITION AND CONSTRUCTION AND OTHER SERVICES FOR THE PROPOSED WATER PROJECT AND AUTHORIZING PAYMENT THEREOF,

WHEREAS, the Jane Lew Public Service District has reviewed the invoices attached hereto and incorporated herein by reference relation to the construction of the Water Project funded by a Drinking Water Treatment Revolving Fund ARRA (DWTRF) Loan and a USEPA Special Appropriations grant (SAP) and find as follows:

- a) That none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made.
- b) That each item for which the payment is proposed to be paid is or was necessary in connection with the Project and constitutes a Cost of the project.
- c) That each of such costs has been otherwise properly incurred.
- d) That the payment for each of the items proposed is due and owing.

NOW, THEREFOR, BE IT RESOLVED The Jane Lew Public Service District by as follows: There is hereby authorized and directed the payment of the attached invoices as follows:

Vendor	Total	DWTRF	SAP	IJDC
Huntington Banks (Registrar)	1,000.00	1,000.00	0.00	0.00
Step toe & Johnson (Bond Counsel)	15,000.00	15,000.00	0.00	0.00
Jane Lew PSD	41,321.00	8,047.44	0.00	33,273.56
James Kelsh	13,493.50	0.00	0.00	13,493.50
Greenhorn & O'Mara	66,012.00	66,012.00	0.00	0.00
Smith Cochran & Hicks	6,374.05	6,374.05	0.00	0.00
Smith McMunn & Glover	542.50	0.00	0.00	542.50
Total	143,743.05	96,433.49	0.00	47,309.56

ADOPTED BY the Jane Lew Public Service District, at the meeting held on the 8th day of October, 2009.

By: Thom Barby

Its: Chairman

State of West Virginia  
**WATER DEVELOPMENT AUTHORITY**  
 180 Association Drive, Charleston, WV 25311-1217  
 (304) 558-3612 - (304) 558-0299 (Fax)  
 Internet: www.wvwda.org - Email: contact@wvwda.org

**PRECLOSING ATTENDANCE LIST**

Date 10/22/09 Time 10:30 LGA Jame Law PSD Program DWTRF

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Carol Cummings	WDA	558-3662	558-0899	CummingsD@wvwda.org
Shanne Cree	TAKSON KELLY LLC	304-1318	304-1272	5jpeej@tdkelly.com

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Nancy Cree Telephone 304.884.7111 E-Mail \_\_\_\_\_  
 Address P.O. Box 845, Jame Law, WV 26378

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the Non-Arbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.



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

October 23, 2009

Jane Lew Public Service District  
Water Revenue Bonds, Series 2009 A  
(West Virginia DWTRF Program); and  
Water Revenue Bonds, Series 2009 B  
(West Virginia DWTRF Program/ARRA)

**CONSENT TO ISSUANCE OF PARITY BONDS**

TO WHOM IT MAY CONCERN:

The undersigned duly authorized representative of the United States of America, acting through the Rural Utilities Service, United States Department of Agriculture, the present holder of the entire outstanding aggregate principal amounts of the Prior Bonds, hereinafter defined and described, hereby (i) consents to the issuance of the Water Revenue Bonds, Series 2009 A (West Virginia DWTRF Program), in the original aggregate principal amount not to exceed \$429,399 and Water Revenue Bonds, Series 2009 B (West Virginia DWTRF Program/ARRA), in the original aggregate principal amount not to exceed \$429,399 (collectively, the "Series 2009 Bonds"), by Jane Lew Public Service District (the "Issuer"), under the terms of the bond resolution authorizing the issuance of the Series 2009 Bonds (the "Resolution"), on a parity as to liens, pledge and source of and security for payment, and in all respects, with the Issuer's outstanding Water Revenue Bonds, Series 2004 (United States Department of Agriculture) dated December 16, 2004, issued in the original aggregate principal amount of \$580,000 (the "Series 2004 Bonds" or the "Prior Bonds"), (ii) waives any requirements imposed by the Prior Bonds or the resolutions authorizing the Prior Bonds (the "Prior Resolutions"), regarding the issuance of parity bonds which are not met by the Series 2009 Bonds or the Resolution, and (iii) consents to any amendments made to the Prior Resolutions or the Prior Bonds by the Resolution.

  
\_\_\_\_\_  
State Director

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505  
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,  
Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL & WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301  
Telephone (304) 558-2981

### PERMIT

(Water)  
PROJECT: Water System Rehabilitation

RECEIVED

PERMIT NO.: 18,238

LOCATION: Jane Lew

COUNTY: Lewis

FEB 20 REC'D

DATE: 2-18-2009

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that:

Jane Lew Public Service District  
P. O. Box 845  
Jane Lew, West Virginia 26378

is hereby granted approval to: install approximately 200 LF of 8", 930 LF of 6", 1,630 LF of 4" and 8,120 LF of 2" water line; one (1) 45 GPM duplex constant pressure booster station with VFD; and all necessary valves, controls and appurtenances.

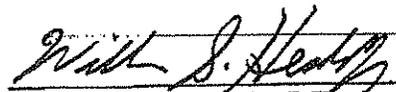
Facilities are to replace existing deteriorating water distribution piping in Jane Lew and to extend water service to six (6) new customers in the Clay Lick area in the Jane Lew Public Service District. Once this project is completed, the plan is to decommission the existing Jane Lew Public Service District water treatment plant and to purchase water from the West Virginia American Water Company.

**Note: This permit is contingent upon: 1) All new water line being disinfected, flushed and bacteriologically tested, prior to use; 2) Maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum 18" vertical separation between crossing sewer and water lines, with the water line to be over the sewer line.**

The Environmental Engineering Division of the OEHS-Philippi District Office, (304) 457-2296, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR



William S. Herold, Jr., P.E., Assistant Manager  
Infrastructure and Capacity Development  
Environmental Engineering Division

WSH:cls

pc: Greenhorne & O'Mara Inc.  
James W. Ellars, P.E., PSC Engineering Division  
Amy Swann, PSC  
Lewis County Health Department  
OEHS-EED Philippi District Office

**JANE LEW PUBLIC SERVICE DISTRICT**

**Water Revenue Bonds, Series 2004 A**  
**(United States Department of Agriculture)**

**BOND RESOLUTION**

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JANE LEW PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN PUBLIC SERVICE PROPERTIES CONSISTING OF ADDITIONS, IMPROVEMENTS AND EXTENSIONS TO THE EXISTING WATERWORKS SYSTEM OF JANE LEW PUBLIC SERVICE DISTRICT, AND THE FINANCING OF A PORTION OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$580,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2004 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF JANE LEW PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law. Jane Lew Public Service District (the "Issuer") is a public corporation, public service district and political subdivision of the State of West Virginia in Lewis County of said State, duly created pursuant to the Act by The County Commission of Lewis County.

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

A. The Issuer currently owns and operates a public waterworks system and desires to finance and acquire, construct, operate and maintain certain additional public service properties consisting of additions, improvements and extensions to such existing waterworks facilities with all appurtenant facilities, within the boundaries of the Issuer to be owned and operated by the Issuer.

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered, that there be acquired and constructed certain additions, improvements and extensions to the existing waterworks facilities of the Issuer, consisting of the construction of approximately 50,000 linear feet of two-inch to six-inch water line, 81 new meters, and various valves, hydrants and other appurtenances to serve approximately 79 new customers in Lewis County and repairing a 500,000-gallon steel reservoir, and all necessary appurtenant facilities (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The existing waterworks facilities of the Issuer, together with the Project and any further additions, improvements or extensions thereto, are herein called the "System." The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bonds (hereinafter defined) and all funds and accounts and other payments provided for herein.

D. The estimated maximum cost of the acquisition and construction of the Project is \$1,280,000 of which \$580,000 will be obtained from the proceeds of sale of the Series 2004 A Bonds herein authorized and \$700,000 will be obtained from a grant from the United States Department of Agriculture, Rural Utilities Service.

E. It is necessary for the Issuer to issue its Water Revenue Bonds, Series 2004 A (United States Department of Agriculture), in the aggregate principal amount of \$580,000 (the "Series 2004 A Bonds"), to finance a portion of the cost of such acquisition and construction in the manner hereinafter provided. The cost of such acquisition and construction shall be deemed to include, without being limited to, the acquisition and construction of the Project; the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest on the Series 2004 A Bonds prior to, during and for six months after completion of such acquisition and construction of the improvements and extensions; engineering, fiscal agents 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 Project, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the acquisition and construction of the properties and the placement of same in operation; provided that, reimbursement to the Issuer for any amounts expended by it for the repayment of indebtedness incurred for costs of the Project by the Issuer shall be deemed costs of the Project.

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

G. There are no outstanding obligations of the Issuer which will rank on a parity with the Series 2004 A Bonds as to liens, pledge and source of and security for payment.

There is an outstanding obligation of the Issuer which does not have a lien on any revenues of the System, nor is it payable from Net Revenues, held by Progressive Bank, issued in the original aggregate principal amount of \$16,015.

H. It is in the best interest of the Issuer that the Series 2004 A Bonds be sold to the Purchaser, pursuant to the terms and provisions of the Letters of Conditions, dated June 12, 2003, and all amendments thereto, if any (collectively, the "Letter of Conditions").

I. The Issuer has complied with all requirements of law relating to the authorization of the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2004 A Bonds, or will have so complied prior to issuance of the Series 2004 A Bonds, including, among other things and without limitation, obtaining a certificate of public convenience and necessity and approval of the financing and necessary user rates and charges from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or shall have been duly waived or otherwise provided for.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2004 A Bonds by those who shall be the Registered Owner of the same from time to time, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the Series 2004 A Bonds.

Section 1.04. Definitions. In addition to capitalized terms defined elsewhere herein, the following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Chapter 16, Article 13A of the West Virginia Code of 1931, as amended.

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

"Bond Registrar" means the Issuer, which shall usually so act by its Secretary.

"Bonds" means, collectively, the Series 2004 A Bonds.

"Chairman" means the Chairman of the Governing Body.

"Commission" means the West Virginia Municipal Bond Commission, formerly known as the State Sinking Fund Commission, or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

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

"Depository Bank" means Progressive Bank, Weston, West Virginia, bank or trust company which is a member of FDIC (herein defined), and its successors and assigns.

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

"FDIC" means the Federal Deposit Insurance Corporation.

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

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

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

"Grants" means, collectively, all grants committed for the Project.

"Herein" or "herein" means in this Bond Legislation.

"Issuer," "Borrower" or "District" means Jane Lew Public Service District, a public service district, a public corporation and a political subdivision of the State of West Virginia, in Lewis County, West Virginia, and includes the Governing Body.

"Letter of Conditions" means, collectively, the Letter of Conditions of the Purchaser dated June 12, 2003, and all amendments thereto, if any.

"Minimum Reserve" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2004 A Bonds in the then current or any succeeding year.

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

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

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

"Purchaser" or "Government" means United States Department of Agriculture, Rural Utilities Service, and any successor thereof, acting for and on behalf of the United States of America.

"Qualified Investments" means and includes any of the following, to the extent such investments are permitted by law:

- (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 (hereinbefore defined) 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 Investment Management Board pursuant to Chapter 12, Article 6 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 or Standard & Poor's Corporation.

"Registered Owners," "Bondholders," "Holders of the Bonds" or any similar term means any person who shall be the registered owner of the Bonds.

"Resolutions" means, the Bond Legislation.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

"Series 2004 A Bonds" means the Water Revenue Bonds, Series 2004 A (United States Department of Agriculture), authorized hereby to be issued pursuant to this Bond Legislation.

"System" means the complete public waterworks system of the Issuer, presently existing in its entirety or any integral part thereof, and shall include the Project and any improvements and extensions thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

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 neuter gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Chairman or the Secretary shall mean that such Bonds, certificate or other document may be executed or attested by an Acting Chairman or Acting Secretary.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND  
CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of \$1,280,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2004 A Bonds hereby authorized shall be applied as provided in Article IV hereof.

### ARTICLE III

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

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions of the Bond Legislation, the Series 2004 A Bonds of the Issuer, to be known as "Water Revenue Bonds, Series 2004 A (United States Department of Agriculture)", are hereby authorized to be issued in the principal amount of \$580,000, for the purpose of financing a portion of the cost of the acquisition and construction of the Project.

Section 3.02. Description of Bonds. The Series 2004 A Bonds shall be issued in single form, numbered AR-1, only as a fully registered Bond, and shall be dated the date of delivery thereof. The Series 2004 A Bonds shall bear interest from the date of delivery, payable monthly at the rate of 4.50% per annum, and shall be sold for the par value thereof.

The Series 2004 A Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the respective Bond forms hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Bonds. The Series 2004 A Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2004 A Bonds, and the right to principal of and stated interest on the Series 2004 A Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Series 2004 A Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Series 2004 A Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

No registration of transfer of the Series 2004 A Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2004 A Bonds.

Section 3.04.        Bond Registrar. The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, sufficient books for the registration and transfer of the Series 2004 A Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 2004 A Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 2004 A Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2004 A Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Series 2004 A Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2004 A Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05.        Execution of Bonds. The Series 2004 A Bonds shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2004 A Bonds shall cease to be such officer of the Issuer before the Series 2004 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. The Series 2004 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.06.        Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2004 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bonds or in lieu of and substitution for the Bonds destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2004 A Bonds so surrendered shall be canceled and held for the account of the Issuer. If the Series 2004 A Bonds shall have

matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07.      Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2004 A Bonds shall be secured forthwith by a first lien on the Net Revenues derived from the System. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Series 2004 A Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2004 A Bonds as the same become due.

Section 3.08.      Form of Bond. Subject to the provisions hereof, the text of the Series 2004 A Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA  
JANE LEW PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$580,000

No. AR-1

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

FOR VALUE RECEIVED, JANE LEW PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), plus interest on the unpaid principal balance at the rate of 4.50% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 28 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ \_\_\_\_\_, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

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

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

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolutions and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized

denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

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

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"), and a Resolution of the Borrower duly adopted \_\_\_\_\_, 2004, authorizing issuance of this Bond (the "Resolution").

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

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

**THERE ARE NO OUTSTANDING OBLIGATIONS OF THE ISSUER WHICH WILL RANK ON A PARITY WITH THE SERIES 2004 A BONDS AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT.**

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

IN WITNESS WHEREOF, JANE LEW PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

JANE LEW PUBLIC SERVICE DISTRICT

[CORPORATE SEAL]

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Chairman  
Jane Lew Public Service District  
Post Office Box 845  
Jane Lew, West Virginia 26378

ATTEST:

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Secretary, Public Service Board

(Form of)

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		\$	

(Form of Assignment)

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:

\_\_\_\_\_

## ARTICLE IV

### SYSTEM REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01.      A. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund; and
- (2) Project Construction Account.

B. Establishment of Funds and Accounts with Commission. The following special funds or accounts are created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and from each other:

- (1) Series 2004 A Bonds Reserve Account.

Section 4.02.      Bond Proceeds; Project Construction Account. The proceeds of the sale of the Series 2004 A Bonds shall be deposited upon receipt by the Issuer in the Project Construction Account. The monies in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Monies in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Monies in the Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will additionally transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Series 2004 A Bonds if there are not sufficient Net Revenues to make such monthly payment.

Pending application as provided in this Section 4.02, money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

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

Section 4.03. Covenants of the Issuer as to System Revenues and Funds.

So long as any of the Series 2004 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2004 A Bonds Reserve Account, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Series 2004 A Bonds remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the Holders of the Series 2004 A Bonds as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited as collected by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Resolutions 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 provided in the Resolutions.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority, subject to the provisions of the Prior Resolutions not otherwise modified herein:

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

(2) The Issuer shall next, each month, transfer from the Revenue Fund and simultaneously remit to the National Finance Office, the amounts required to pay the interest on the Series 2004 A Bonds and to amortize the principal of the Series 2004 A Bonds over the life of the Bond issue.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit into the Series 2004 A Bonds Reserve Account, an amount equal to 10% of your monthly payment each month, until the amount in the Series 2004 A Bonds Reserve Account equals the Minimum Reserve; provided that, no further payments shall be made into the Series 2004 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 Minimum

Reserve. Monies in the Series 2004 A Bonds Reserve Account shall be used solely to make up any deficiency for monthly payments of the principal of and interest on the Series 2004 A Bonds to the National Finance Office as the same shall become due or for prepayment of installments on the Series 2004 A Bonds, or for mandatory prepayment of the Series 2004 A Bonds as hereinafter provided, and for no other purpose; provided, however, earnings from monies in the Series 2004 A Bond Reserve Account, so long as the Series 2004 A Bonds Reserve Requirement is on deposit and maintained therein, shall be returned not less than once each year, by the Commission to the Issuer, to be deposited in the Revenue Fund.

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

Whenever the money in the Series 2004 A Bonds Reserve Account shall be sufficient to prepay the Series 2004 A Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Series 2004 A Bonds at the earliest practical date and in accordance with applicable provisions hereof.

The Commission is hereby designated as the Fiscal Agent for the administration of the Series 2004 A Bonds Reserve Account. All amounts required for the Series 2004 A Bonds Reserve Account will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

The Revenue Fund and the Series 2004 A Bonds Reserve Account shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Series 2004 A Bonds and the interest thereon.

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

The Commission, at the direction of the Issuer, shall keep the monies in the Series 2004 A Bonds Reserve Account and invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Bond Legislation shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia Investment Management Board. 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 interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. Earnings from monies in the Series 2004 A Bonds Reserve Account, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually by the Commission to the Issuer and deposited in the Revenue Fund.

C. CHANGE OF DEPOSITORY BANK. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

D. USER CONTRACTS. The Issuer shall, prior to delivery of the Series 2004 A Bonds, provide evidence that there will be at least 453 bona fide users upon the System on completion, in full compliance with the requirements and conditions of the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Depository Bank and the Commission such additional sums as shall be necessary to pay the charges and fees of the Depository Bank or the Commission then due.

F. INVESTMENT OF EXCESS BALANCES. The monies in excess of the sum insured by FDIC in any of such funds or 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 of West Virginia.

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

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

Section 4.04. Interim Construction Financing. In order to pay certain costs of the Project pending receipt of proceeds of the Grants and advances of principal of the Series 2004 A Bonds, the Issuer may issue and sell its interim construction notes in an aggregate principal amount not to exceed \$580,000 (the "Notes"). The Notes shall be in the form of a line of credit from a commercial bank or other lender, and the Issuer is hereby authorized to enter into the credit agreement with such commercial bank or other lender. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the credit agreement.

The Notes shall be special obligations of the Issuer payable as to principal and interest solely from proceeds of the Series 2004 A Bonds or the Grants. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer, if any, is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth herein.

## ARTICLE V

### GENERAL COVENANTS, ETC.

Section 5.01.      General Statement. So long as the Series 2004 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2004 A Bonds Reserve Account a sum sufficient to prepay the entire principal of the Series 2004 A Bonds remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Holder of the Series 2004 A Bonds.

Section 5.02.      Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Series 2004 A Bonds and sufficient to make the payments required herein into all funds and accounts and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 5.03.      Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Series 2004 A Bonds are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.04.      Issuance of Additional Parity Bonds or Obligations. No additional Parity Bonds or obligations payable out of any of the Revenues of the System shall be issued, except with the prior written consent of the Purchaser.

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

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

The foregoing limitation may be waived or modified by the written consent of the Holders of the Bonds, representing 75% of the then-outstanding principal indebtedness.

Section 5.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Series 2004 A Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Series 2004 A Bonds.

(c) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) Workers' Compensation Coverage for All Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds have been or will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' compensation coverage shall be maintained as required by the laws of the State of West Virginia.

(e) Flood Insurance to be procured, to the extent available at reasonable cost to the Issuer; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

(f) Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in such amount as may be requested by the Purchaser from time to time.

(g) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Series 2004 A Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06. Statutory Mortgage Lien. For the further protection of the Holder of the Series 2004 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Series 2004 A Bonds.

Section 5.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

(a) Failure to make payment of any monthly amortization installment upon the Series 2004 A Bonds at the date specified for payment thereof; and

(b) Failure to duly and punctually observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Series 2004 A Bonds or herein, or violation of or failure to observe any provision of any pertinent law.

Section 5.08.      Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default, appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 5.09.      Fiscal Year: Budget. While the Series 2004 A Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 1st day of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.10.      Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 5.11.      Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 5.12.      Books and Records; Audits. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.13.      Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Series 2004 A Bonds are outstanding.

Section 5.14.      No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

ARTICLE VI

RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consonant with the provisions hereof, shall be as set forth in the Final Order of the Public Service Commission of West Virginia, entered on August 25, 2004, in Case No. 04-0239-PWD-PC-CN, which Final Order is incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have all remedies and powers provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01.      Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holder of the Series 2004 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation; then with respect to the Series 2004 A Bonds, 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 Owner of the Series 2004 A Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

Except through such direct payment to the Holder of the Series 2004 A Bonds, the Issuer may not defease the Series 2004 A Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 7.02.      Modification or Amendment. The Bond Legislation may not be modified or amended after final passage without the prior written consent of the Purchaser.

Section 7.03.      Delivery of Bonds. The Chairman, Secretary and Treasurer of the Governing Body are hereby authorized and directed to cause the Series 2004 A Bonds, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04.      Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Series 2004 A Bonds.

Section 7.05.      Conflicting Provisions Repealed. The Prior Resolutions and all parts thereof not expressly hereby changed shall continue in full force and effect and this Bond Legislation shall be supplemental to the Prior Resolutions.

All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 7.06.      Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 7.07.      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 7.08.      Effective Time. This Resolution shall take effect immediately upon its adoption.

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Adopted this 14th day of December, 2004.

JANE LEW PUBLIC SERVICE DISTRICT

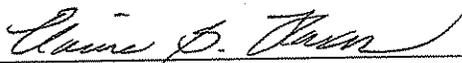
  
Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board  
of JANE LEW PUBLIC SERVICE DISTRICT on the 14th day of December, 2004.

Dated: December 16, 2004.

[SEAL]

  
Secretary

10/26/04  
448300.00001

91-04

UNITED STATES OF AMERICA  
JANE LEW PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$580,000

No. A-1

Date: December 16, 2004

FOR VALUE RECEIVED, JANE LEW PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of FIVE HUNDRED EIGHTY THOUSAND DOLLARS (\$580,000), plus interest on the unpaid principal balance at the rate of 4.50% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$2,663, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

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

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

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

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

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

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"), and a Resolution of the Borrower duly adopted December 14, 2004, authorizing issuance of this Bond (the "Resolution").

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

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

**THERE ARE NO OUTSTANDING OBLIGATIONS OF THE ISSUER WHICH WILL RANK ON A PARITY WITH THE SERIES 2004 A BONDS AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT.**

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

IN WITNESS WHEREOF, JANE LEW PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

JANE LEW PUBLIC SERVICE DISTRICT

[CORPORATE SEAL]

*Oscar R. Mills*  
Chairman  
Jane Lew Public Service District  
Post Office Box 845  
Jane Lew, West Virginia 26378

ATTEST:

*Clara B. Hester*  
Secretary, Public Service Board

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$109,500	December 16, 2004	(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	\$	_____

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:

\_\_\_\_\_

10/26/04  
448300.00001

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/29/2009

PRODUCER (304)375-4900 FAX (304)375-2162  
Bill Bailey Insurance Agency  
701 Highland Avenue  
P. O. Box 246  
Williamstown, WV 26187

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Jane Lew Water Commission PSD  
DBA: Tom Pitman  
PO Box 845  
Jane Lew, WV 26378

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A	American Alternative Insurance	
INSURER B		
INSURER C		
INSURER D		
INSURER E		

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	SP9151825-02	06/30/2009	06/30/2010	EACH OCCURRENCE	\$ 1,000,000
						DAMAGE TO RENTED PREMISES - EA OCCURRENCE	\$ 1,000,000
						MED EXP - Any one person	\$ 5,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 3,000,000
						PRODUCTS COMP OP AGG	\$ 3,000,000
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT - EA ACCIDENT	\$
		ANY AUTO				BODILY INJURY - Per person	\$
		ALL OWNED AUTOS				BODILY INJURY - Per accident	\$
		SCHEDULED AUTOS				PROPERTY DAMAGE - Per accident	\$
		HIRED AUTOS					
		NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY AGG	\$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
		DEDUCTIBLE					\$
		RETENTION					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTHER
		ANY PROPRIETOR PARTNER EXECUTIVE OFFICER-MEMBER EXCLUDED				E L EACH ACCIDENT	\$
		IF AS DESCRIBED UNDER SPECIAL PROVISIONS				E L DISEASE - EA EMPLOYEE	\$
		OTHER				E L DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder listed below is named as an Additional Insured in regards to the policy number listed above.

## CERTIFICATE HOLDER

WV Water Development Authority  
180 Association Drive  
25311, WV

## 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

## SWEEP RESOLUTION

### Jane Lew Public Service District

**WHEREAS**, Jane Lew Public Service District (the "Issuer") is a governmental body and political subdivision of West Virginia;

**WHEREAS**, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

**WHEREAS**, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

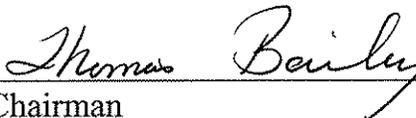
**WHEREAS**, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

**WHEREAS**, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer sweeping the Issuer's account.

#### **NOW THEREFORE BE IT RESOLVED AS FOLLOWS:**

- 1) The monthly debt service payments on and reserve funds for the Bonds, as set forth in Exhibit A, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A 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 23rd day of October, 2009.

  
\_\_\_\_\_  
Chairman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

MAR 10 2006

Mr. Tom Pitman, General Manager  
Jane Lew Public Service District  
P.O. Box 845  
Jane Lew, West Virginia 26378

Re: FY 2005 Special Appropriations Grant  
to Jane Lew Public Service District

Dear Mr. Pitman:

As requested, this is to notify the Jane Lew Public Service District (PSD) about the availability of Federal grant funds for the District's Fiscal Year 2005 (FY 2005) water and wastewater project.

The Consolidated Appropriations Act, 2005 (Public Law 108-447) earmarked \$96,200 for water and wastewater needs, as part of the budget for the Environmental Protection Agency (EPA). For your information, we have enclosed a copy of the final guidelines on how EPA will award and administer grants from the FY 2005 budget authority.

If you have any questions, please contact me at (215) 814-5770.

Sincerely,

Bruce Smith, EPA Project Officer

Enclosure

cc: Patrick Taylor, WV BPH  
Clyde Emigh, Greenhome & O'Mara, Inc.



**GRANT AGREEMENT**  
(2009W-1151)

This Grant Agreement entered into by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority"), on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the JANE LEW PUBLIC SERVICE DISTRICT (the "Governmental Agency").

**RECITALS**

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed \$50,543 (the "Grant") for the purposes of the design, acquisition or construction of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purposes of designing, acquiring or constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Grant Agreement sets forth the Council, the Authority and the Governmental Agency's understandings and agreements with regard to the Grant.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Authority and the Governmental Agency hereby agree as follows:

**TERMS**

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources. The Project budget shall not be amended unless the Governmental Agency has received the prior written consent of the Council.

2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority. Unless agreed to by the Council prior to the commencement of construction, the Grant shall be the last dollars expended on the Project.

3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.

4. The Authority shall wire the approved requisition amount using the wiring instructions provided in Exhibit A, unless the Council and Authority are provided replacement instructions in writing.

5. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit B.

6. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

7. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

8. The Governmental Agency shall list the Grant provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.

9. This Grant Agreement shall be governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by the respective duly authorized officers as of the date executed below by the Authority.

JANE LEW PUBLIC SERVICE  
DISTRICT

By: Thomas Barley

Its: Chairman

Date: October 23, 2009

(SEAL)

Attest:

Osma M. O.

Its: Secretary

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

By: [Signature]

Its: Executive Director

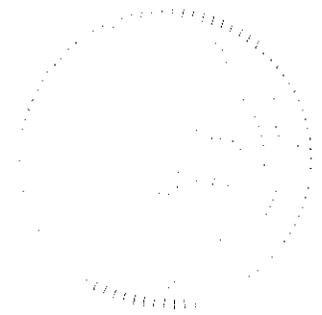
Date: October 23, 2009

(SEAL)

Attest:

Carol A. Cummings

Its: Secretary-Treasurer



[To Be Placed on Letterhead]

**Exhibit A**

**Wiring Instructions**

\_\_\_\_\_, 20\_\_

**Jane Lew Public Service District  
P. O. Box 845  
Jane Lew, West Virginia 26378**

Payor: West Virginia Water Development Authority  
Source: Grant Proceeds  
Amount: \$ \_\_\_\_\_  
Date: \_\_\_\_\_, 20\_\_  
Form: Electronic Funds Transfer  
Payee: Jane Lew Public Service District  
Bank: \_\_\_\_\_  
Bank Street Address: \_\_\_\_\_  
Bank Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Routing No.: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_

## **Exhibit B**

### **Project Description**

The Project consists of water system improvements, decommissioning the water treatment plant, connecting to West Virginia American Water Company and extending service to the Clay Lick area.



## American Recovery and Reinvestment Act of 2009 (ARRA)

### Project Certification

**Program:** West Virginia Drinking Water Treatment Revolving Fund (DWTRF)

**Project:** Jane Lew Public Service District, Lewis County

**Description:** The proposed project will replace approximately 2 miles of deteriorated galvanized pipes in the distribution system, replace 25 existing valves and install 35 new valves on existing lines. A new booster pump station with 1,970 feet of water line will be constructed to serve nine new customers.

#### Total Project Cost

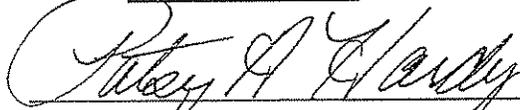
\$1,004,998

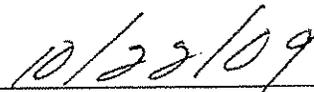
#### ARRA Assistance Provided

\$454,399

I hereby certify that the above project has received the full review and vetting required by federal law and that the investment of federal and state funds in this infrastructure project is an appropriate use of taxpayer dollars.

This certification will be posted on the Governor's website and linked to the federal ARRA website [www.recovery.gov](http://www.recovery.gov).

  
\_\_\_\_\_  
Patsy A. Hardy, Cabinet Secretary, FACHE, MSN, MBA

  
\_\_\_\_\_  
Date

WEST VIRGINIA  
Department of



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.<sup>1</sup>
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.

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<sup>1</sup> 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.

~~Andrea Spivey~~

  
Andrea Spivey  
Executive Secretary

go18209c.wpd