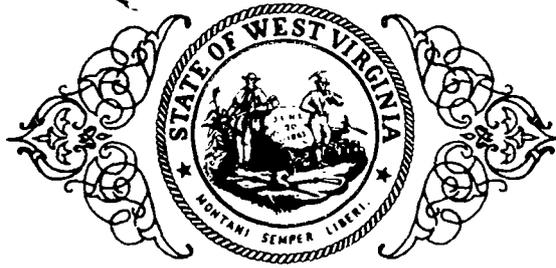


State of West Virginia



Certificate

*I, Betty Ireland, Secretary of State of the
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13A OF THE WEST
VIRGINIA CODE, AND CHAPTER 16, ARTICLE 13A OF THE 2004
SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE
RECORDS OF THIS OFFICE.**



*Given under my hand and the
Great Seal of the State of
West Virginia on
May 26, 2005*

Betty Ireland
Secretary of State

- | | |
|--|--|
| <p>Sec.</p> <p>16-13A-10. Budget.</p> <p>16-13A-11. Accounts; audit.</p> <p>16-13A-12. Disbursement of district funds.</p> <p>16-13A-13. Revenue bonds.</p> <p>16-13A-14. Items included in cost of properties.</p> <p>16-13A-15. Bonds may be secured by trust indenture.</p> <p>16-13A-16. Sinking fund for revenue bonds.</p> <p>16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.</p> <p>16-13A-18. Operating contracts.</p> <p>16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.</p> | <p>Sec.</p> <p>16-13A-19. Statutory mortgage lien created; foreclosure thereof.</p> <p>16-13A-20. Refunding revenue bonds.</p> <p>16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.</p> <p>16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.</p> <p>16-13A-23. Validation of acts and proceedings of public service boards.</p> <p>16-13A-24. Acceptance of loans, grants or temporary advances.</p> <p>16-13A-25. Borrowing and bond issuance; procedure.</p> |
|--|--|

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

Constitutionality. — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Purpose. — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

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

Public utilities. — Public service districts are "public utilities" because they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Att'y Gen. 447 (1963).

Cited in Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am., 152 W. Va. 252, 162 S.E.2d 189 (1968); **State v. Neary,** 179 W. Va. 115, 365 S.E.2d 395 (1987); **McClung Invs., Inc. v. Green Valley Community Pub. Serv. Dist.,** 199 W. Va. 490, 485 S.E.2d 434 (1997).

§ 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

SEWERAGE

extend to highways constructed, and no rates, may be assessed for water facilities on of highways.

adding "sewer facilities," added "or entire end; in the sixth following "fixing" and sixth paragraph, delete" twice; and in the proviso. *Antown v. Town of* 9, 195 S.E.2d 166

welfare, it shall Ex. Sess., c. 25,

members of public service; members' committee; procedure; district

manager of board. board. and operation of districts. and purchase of public properties; right of eminent; extraterritorial

service rates and charges; issuance of service; water and sewer connection for delinquent fees. with respect to foreclo-

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts. (1953, c. 147; 1980, c. 60; 1986, c. 81.)

Authority of county commissions. — The county courts (now county commissions) may not supersede the authority delegated by them to public service districts created in accordance with the provisions of this article. Op. Att’y Gen., June 27, 1973.

Public service district — Authority. — A public service district, which was created only for the purposes of furnishing water services, has no power to condemn real estate for sewerage facilities. Canyon Pub. Serv. Dist. v. Tasa

Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Public service district — Purpose. — The purpose for the creation of a public service district may be ascertained by a review of the order establishing the district and the history behind the creation of the district (the notice of hearing and hearings held prior to the creation of the district). Op. Att’y Gen., July 8, 1976.

Cited in State ex rel. APCO v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965); Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979).

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

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

(a) To study, modify, approve, deny or amend the plans created under section one-b [§ 16-13A-1b] of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

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

(c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters. (1986, c. 81.)

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

§ 1

E.
whic
rela
dist:
serv
com.
nine
stat
serv
perf
plan
com
shall
estal
perc
servi
sche
the
coop
servi
coun
mont
sion,
publi
comm
shall
comm
comm
(1986

§ 16

An
the s
other
prope
all of
public
public
words
includ
divers
tion o

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

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81; 1994, c. 61.)

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

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or

other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

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

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

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county

ilities"), (2) the collection of solid wastes, sewage or other facilities" or "landfill gas to the public for uses referred to as "gas

**city commission;
or dissolving
districts, etc.; in-
city commission;
districts with the**

the creation, enlargement of a public service district by motion by order of the county commission, or (3) who reside within the district or more counties. The boundaries, sufficient to describe the same of such proposed district, no new public service district, merged, dissolved or created, shall be subject to the consent and approval of the county commission and may include one or more cities, which own and operate or not it includes one or more municipal corporations being provided, however, That the boundaries of more than one district thereof is included and organized to supply service within such incorporated town or the boundaries of the district of the governing body of the governing body consenting.

The clerk of the county shall constitute the proposed district, more than one county, and the clerk of the county

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

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three (§§ 59-3-1 et seq.), chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and

all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125.)

Editor's notes. — Concerning the reference in (a) to "the effective date of this section," this language was added by Acts 1986, c. 81, and became effective June 6, 1986.

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

Constitutionality. — There is no unlawful delegation of legislative power to the county courts (now county commissions) of this State under this section in violation of W. Va. Const., art. V, § 1, and art. VI, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

There is no unconstitutional delegation of judicial functions to the county court (now county commission) made by this section. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Authority of commission and voters. — (1) Only the county commission has the affirmative authority to create, enlarge or reduce a public service district; (2) in the absence of any action by a county commission, the requisite number of qualified voters in the affected geographic area may petition a county commission to create, enlarge or reduce a public service district, and, that upon the filing of such petition, a hearing shall be held thereon; (3) the county commission may, in its discretion, refuse to act in an affirmative manner upon such formal petition for creation, enlargement or reduction of such public service district, which action is not subject to protest or public referendum; (4) the county commission may, on its own motion or on the basis of such proper petition, enter an order creating, enlarging or reducing a public service district, which such action and order are subject to a hearing requiring proper notice, and a formal protest and

public referendum depending upon the number of qualified voters who protest such action. Op. Att'y Gen., Nov. 13, 1975.

Authority of court. — A county court (now county commission) has authority to add sewerage services to the facilities of a public service district which was created for the purpose of furnishing water services, under appropriate proceedings. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Compliance. — The provisions of this section relating to the filing of the petition or motion of the county court (now county commission), the description of the territory to be embraced and like provisions are mandatory, but the use of the word "shall," in relation to the requirements for the posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Merger or consolidation of districts. — This section authorizes either merger or consolidation of public service districts. Op. Att'y Gen., June 12, 1985, No. 9.

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

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

Public corporation. — A public service

district is a public corporation and does not come within the constitutional inhibition requiring all corporations to be created by general law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Referendum. — There is no authority for voters, by written protest or otherwise, to force a referendum upon the issue of whether or not a created public service district should be continued or abolished. 52 Op. Att'y Gen. 33 (1966).

"Shall apply with like effect," etc. — Because a protest against creation triggers a

referendum, the language "shall apply with like effect as if a district were being created" can mean only that a protest against enlargement or reduction likewise triggers a referendum. Op. Att'y Gen., Nov. 13, 1975.

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

Cited in *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

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

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is

en
or
tho
eac
rej
sha
gov
res
wh
me
me
rate
exc
the
mer
If
pop
the
app
dist
beco
proc
boar
If
cities
distr
creat
board
numl
consc
meml
rated
the a
afors
board
The
tion, l
any, to
stated
last of
Not
distric
article
effectiv
appoin
commi
code p.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

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

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

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159.)

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

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

Authority of districts. — Public service

districts are agents of the county commission by which they were created, having no authority other than that expressly set out in this article. Op. Att'y Gen., July 8, 1976.

Compensation for additional duties. — Board members of a public service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading

meter
Gen.,
Exe
West
State,
expres
paying
8), the
and th
§ 17A

§ 16

The
appoi
provis
of a p
the di
gover
article
failure
object
duty e
comm
with a
charge
distic
determ
If the c
are fri
the rea
party
(1963,

Textb
West V
(Michie).

§ 16-1

(a) T
any oth
the rem
selectec
of the t
until th
(b) S.
(1) F
dollars

first board shall be fixed as may be, that is no years, a like number or members for six the appointments are resaid shall meet at the order creating nts and shall qualify by r members of the board ided in section three-a

m within thirty days, pointed for terms of six successors have been e appointed in the same district shall provide to f the appointment, the e, home address, home h of term, who the new sly served on the board. ard member of the legal ion.

g the first appointments first day of January of chair and by appointing bers of the board. The e board which shall be ate records shall be filed : minutes of all board ds of the public service : approved by the board. ies appertaining to the all be prescribed by the to be fixed by the board

y and treasurer thereof, imes, all of its books and ; and affairs, for inspecy. (1953, c. 147; 1965, c. 1994, c. 61; 1997, c. 159.)

nts of the county commission re created, having no authorat expressly set out in this Gen., July 8, 1976.

n for additional duties. — f a public service district could ed for performing the duties of r secretary, or for reading

meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

Exemptions. — Public service districts of West Virginia are political subdivisions of the State, and as such, they are specifically, by express statute, exempted from the duty of paying registration fees (provided by § 17A-10-8), the privilege tax (imposed by § 17A-3-4), and the certificate of title charge (required by § 17A-3-4). 49 Op. Att'y Gen. 131 (1961).

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

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

Cited in *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

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

The county commission or the public service commission or any other appointive body creating or establishing a public service district under the provisions of this article, or any group of five percent or more of the customers of a public service district, may petition the circuit court of the county in which the district maintains its principal office for the removal of any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty either prescribed by law or required by a final order of the public service commission or for any malfeasance in public office. Any board member charged with a violation under this section who offers a successful defense against such charges shall be reimbursed for the reasonable costs of such defense from district revenues. Such costs shall be considered as costs associated with rate determination by the public service district and the public service commission. If the circuit court judge hearing the petition for removal finds that the charges are frivolous in nature, the judge may assess all or part of the court costs, plus the reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal. (1963, c. 75; 1971, c. 72; 1981, c. 124; 1986, c. 81.)

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

Quoted in *State v. Neary*, 179 W. Va. 115, 365 S.E.2d 395 (1987).

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

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

(b) Salaries of the board members are:

(1) For districts with fewer than six hundred customers, up to seventy-five dollars per attendance at regular monthly meetings and fifty dollars per

attendance at additional special meetings, total salary not to exceed fifteen hundred dollars per annum;

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

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

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

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

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

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

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

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

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

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

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

(e) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings

may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided for by said section. A majority of the members constituting the board also constitute a quorum to do business.

(f) The members of the board are not personally liable or responsible for any obligations of the district or the board, but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and the change is effective from the filing of an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located and with the public service commission. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81; 1997, c. 159; 2000, c. 199.)

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

Compensation for performing additional duties. — Board members of a public

service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

§ 16-13A-5. General manager of board.

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

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

The board of any public service district which purchases water or sewer service from a municipal water or sewer system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water or sewer system or public service district from which such water or sewer service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

§ 16-13A-6. Employees of board.

The board may in its discretion from time to time by resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees. (1953, c. 147; 1981, c. 124.)

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

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159.)

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

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits

of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

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

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

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124.)

olution passed by a
fiscal agent, one or
rd may determine
olution fix the term
to be performed by

istrict proper-

and control of all
istrict, and shall have
extend and improve
istrict of more than
urchase of equipment
tered into only after
legal advertisement
3-1 et seq.), chapter
ublication shall be as
ounty or counties in
e less than ten days
owed by law, in-state
ublic service district
local in-state labor
g laborers for public
shall further be the
an made products in
incurred of any kind
ned an indebtedness
s of the constitution,
t of revenues derived
the district or from
ntinuing contract for
ng the district with
er period than fifteen
; 1986, c. 81; 1997, c.

public service main; extrater-

owned public service
egardless of whether
the corporate limits

Eminent domain. — The grant of power of eminent domain to public service districts by this section is valid. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

If a facility creates a nuisance this harm is simply an element of just compensation in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Public service commission, in the absence of specific statutory authority, is not empowered to determine whether particular property interests acquired or to be acquired by a utility are compensable in an eminent domain action, or to render any type of monetary judgment for such property interests. Affixing the value of the property taken is the function of the trier of fact in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Superior right of municipality to extend

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

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

Cited in 45 Op. Att'y Gen. 506 (1953).

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

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall

— If a tract of real estate public service district has been municipality, then, as between and the public service district, has the superior right under tend public services, such as ver service, which were not furnished to the tract by the strict. Berkeley County Pub. st. v. West Va. Pub. Serv. 7a. 279, 512 S.E.2d 201 (1998).
of municipality needed. — ity has superior right to ex- ces, a public service district onsent of the municipality and e commission in order to pro- s. Berkeley County Pub. Serv. st Va. Pub. Serv. Comm'n, 204 S.E.2d 201 (1998).
 s. Att'y Gen. 506 (1953).

arges; discontinu- er and sewer con- ees.

rules and regulations in ement, extension, man- d the use of any public ct, and the board shall ities it furnishes, which visions of any other law nd depreciation of such st on all bonds issued, article and all reserve or authorized the issuance d charges may be based remises connected with mercial, industrial and nd of fixtures connected ; or (c) the number of on thereof; or (e) may be he board may determine location of the premises und facilities furnished. ed to any premises, the or the aggregate thereof. ilities furnished by the vwhether the applicant is he applicant is a tenant, owner or owners of the icants for service shall

deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

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

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be

transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine [§ 16-1-9], article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the

norn
addi
distr
Ar
ment
two,
perm
secti
exem
60; 1

W. V
Title I
sonabl
(1996)

Aba
Where
erty ov
its sev
sewer
person
distric
grounc
taking
sation
III, §
Riverv
Va. 11f

Buff
vice Cc
propos
buffer-
Serv. C
(1992).

Duty
pants l
rates a
ties fro
(now 3f
are ava

§ 16-

No
distric
section
throug
brougl
such a
eviden
action
to sucl
any su
or cor
delinq

normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61.)

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

Abandonment of private systems. — Where a public service district requires a property owner, tenant, or occupant to connect onto its sewer system and to abandon a private sewer system located on the property, such person cannot recover from the public service district the value of the private system on the ground that such abandonment constitutes a taking of private property without just compensation within the meaning of W. Va. Const., art. III, § 9. *Kingmill Valley Pub. Serv. Dist. v. Riverview Estates Mobile Home Park*, 182 W. Va. 116, 386 S.E.2d 483 (1989).

Buffer-zone requirements. — Public Service Commission did not err in finding that the proposed sewage lagoons site satisfied the buffer-zone requirements. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Duty to pay. — Owners, tenants, or occupants have a duty under this section to pay rates and charges for the district sewer facilities from and after the date of receipt of notice (now 30 days after receipt) that such facilities are available. *Rhodes v. Malden Pub. Serv. Dist.*,

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

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

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

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

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

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

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen [§§ 16-13A-9 or 16-13A-19] of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1982, c. 74.)

§ 16-13A-10. Budget.

The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board. (1953, c. 147; 1981, c. 124.)

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

§ 16-13A-11. Accounts; audit.

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited: Provided, That such audit may be any audit by an independent public accountant completed within one year of the time required for the submission of the report: Provided, however, That if the district is required to have its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine [§§ 6-9-1 et seq.], chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

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

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

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board. (1953, c. 147; 1981, c. 124.)

§ 16-13A-13. Revenue bonds.

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

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

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

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

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

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

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

no
bor
§
A
sha
sinl
the
cost
the
resp
sur
suel
retin
by s
§ 1
Th
prov
colle
oper
enfor
there
paym
distribri
refus
coven
offere
such
suit,
the cc
court
requir
issuar
such t
for th
shall
and t
therec
of the
deeme
and re

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

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

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

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

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

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

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

As to receivers, see Rule 66.

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

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

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

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

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

§ 16-13A-18. Operating contracts.

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

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

In any case where a public service district owns a water, sewer or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately-owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commis-

of such receiver shall
faults shall have been
notice and hearing as it
under possession of the
appointed shall have no
of any assets of the

ex rel. Allstate Ins. Co. v.
Dist., 151 W. Va. 207, 151

on, any holder of the bonds of
ervice district shall have the
is to enforce and compel the
the duties required by stat-
by the district in connection
of bonds by such district.
ate Ins. Co. v. Union Pub.
W. Va. 207, 151 S.E.2d 102

th any persons, firms or
ublic service properties
of time and under such
en the board and such
power to provide in the
n any trust indenture
ents shall be valid and
or interest thereon, are

ater, sewer or gas
ion of proceeds.

ter, sewer or gas system,
members of the public
the district to sell, lease
ality or privately-owned
gas system owned by an
lease or rent such water,
ns as said board, in its
ict: Provided, That such
e publication of notice of
istrict, as a Class I legal
rticle three [§§ 59-3-1 et
published and of general
district is located, such
and not later than seven
/ commission or commis-

sions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160.)

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

There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property. (1953, c. 147.)

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

In general. — The provision granting bond-

holders a statutory mortgage lien is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

§ 16-13A-20. Refunding revenue bonds.

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded. (1953, c. 147.)

In general. — The only purpose for refunding bonds is the retirement or refinancing of outstanding bond issues of a particular district. Op. Att'y Gen., July 8, 1976.

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

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

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

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

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

Constitutionality. — The tax exemption granted to the property, income, and bonds of the district does not violate W. Va. Const., art. X, § 1. State ex rel. McMillion v. Stahl, 141 W.

Va. 233, 89 S.E.2d 693 (1955).

Applied in Rhodes v. Malden Pub. Serv. Dist, 171 W. Va. 645, 301 S.E.2d 601 (1983).

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

All acts and proceedings taken by any county court [county commission] of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city,

inc
exc
and
the
des
not
the
con
boa
tak
aut
ma

Ec
coun
W.Va
Co
secti

§ 1

Al
whic
cour
are
irreg
qual
cons

Edi
count
W.Va.
Con

§ 16

An
is au
temp
in th
respe
the p
water
purpc
State
State
temp
proce

incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

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

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

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

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

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect, by any county court [county commission] of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)

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

Concerning the reference to "the date this

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

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

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this

article, the revenues of the said water system, sewage system or gas facilities or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118.)

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

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

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

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

(a) be iss
statec
(b) intere
exceed
(c) of the
(d) Provid
of rate
(e) nience
public
cate, or
and co.
pursua
such cc
In th
in writi
1996, c

Cross
tisement
Certifi
service di
public cor
acquire o
Sexton v.
423 S.E.2
Emine

Sec.
16-13B-1.
16-13B-2.
16-13B-3.

16-13B-4.

16-13B-5.

16-13B-6.
16-13B-7.

stem or gas facilities
 d agency or from the
 or department of the
 individual or from any
 into the necessary
 with any authorized
 or public agency or
 y, corporation or
 ury notwithstanding,
 y be paid from the
 or negotiable instru-
)

borrowing under this sec-
 May 6, 1988, No. 27.

procedure.

he contrary, a public
 s for the provision of
 act to issue revenue
 rovisions of section
 10 or § 16-13A-24] of
 f the public service
 he provision of prior
 ineering, design or
 use shown which is
 waiver of this section
 ef description of the
 G-1-1 et seq.] of this
 eir own engineering
 h the same engineer-
 ces; or (2) completion
 equiring engineering
 y of the engineering
 e waiver. Unless the
 inary extensions or
 ess, a public service
 e and necessity from
 rovisions of chapter
 lic service district is

certificate, the public
 mission its plans and
 ish a Class II legal
 l circulation in each
 ailable in the public

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

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

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

(d) The anticipated rates which will be charged by the public service district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213; 1997, c. 159.)

Cross references. — Class II legal advertisement defined, § 59-3-2.

Certificate. — Under this section, a public service district must first obtain a certificate of public convenience and necessity before it can acquire or construct public service property. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

Eminent domain. — Although construction

of a new facility proposed by a utility will often require the taking of private property through eminent domain, in the absence of express statutory language, the public service commission has no duty to review and decide issues that are inherent in the eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

ARTICLE 13B.

COMMUNITY IMPROVEMENT ACT.

<p>Sec. 16-13B-1. Short title. 16-13B-2. Definitions. 16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects. 16-13B-4. Determination of need and feasibility of creating an assessment district. 16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication. 16-13B-6. Petition of property owners for creation of assessment district. 16-13B-7. Receipt of petition of property own-</p>	<p>ers; ordinance or order authorizing creation of assessment district and construction of project. 16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards. 16-13B-9. Provisions for construction of a project. 16-13B-10. Notice to property owners of assessments; hearings, correcting and laying assessments; report on project completion; permits. 16-13B-11. Construction of projects; assessments; corner lots, etc. 16-13B-12. Apportionment and assessment of cost.</p>
--	--

**MICHIE'S™
WEST VIRGINIA
CODE
ANNOTATED**

VOLUME 5A

2001 Replacement Volume

2004 SUPPLEMENT

*Including Acts passed through
the 2004 Regular
and First Extraordinary Sessions*

Prepared by the Editorial Staff of the Publisher

Place in pocket of corresponding bound volume



LexisNexis®

PC-32-01-2759 WV OACs V-5A (6-5-03)

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

Effect of amendment of 2004. — Acts 2004, c. 185, effective June 10, 2004, inserted “deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant’s deposit” in the introductory language; added the subsection designations for (c) through (m); added (d) and (e); substituted “Class II-0” for

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

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

<p>Sec. 16-13A-1c. General purpose of districts. 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state. 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards 16-13A-5. General manager of board. 16-13A-7. Acquisition and operation of district properties. 16-13A-8. Acquisition and purchase of pub-</p>	<p>Sec. lic service properties; right of eminent domain; extraterritorial powers. 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees. 16-13A-14. Items included in cost of properties. 16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds. 16-13A-24. Acceptance of loans, grants or temporary advances. 16-13A-25. Borrowing and bond issuance; procedure.</p>
--	---

§ 16-13A-1. Legislative findings.

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

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

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water, sewerage or stormwater services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may

be cons
this ar
shall m
(1) The
distrib
private
collecti
or indu
“landfi
industri
utilitie
(herein
tems”).
stormv
“storm
As use
stormv
control
natura
throug
limitec
ponds,
stream
dams,
Provid
not in
constr
used i
ageme
operat
and ir
runoff
tion, e
Provic
“storn
ated v
road a
operat
agree

Effect
2002, c
stormw

s or charges shall be obligated under ue both water and sewer services to ties, or sewer facilities or both, and r sewer facilities, to any delinquent s, fees or charges for both water ; reasonable interest and penalty x. Sess., c. 25, § 16; 1933, 2nd Ex. 11, c. 212; 2004, c. 185.)

lass II-O" in (h); substituted "within twenty ys" for "within thirty days" in (k); in (l) bstituted "twenty days" for "thirty days" and ded the second sentence; and deleted "and gulations" following "reasonable rules" in o).

13A.

FOR WATER, SEWERAGE SERVICES.

- c. lic service properties; right of eminent domain; extraterritorial powers.
- 13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
- 13A-14. Items included in cost of properties.
- 13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.
- 13A-24. Acceptance of loans, grants or temporary advances.
- 13A-25. Borrowing and bond issuance; procedure.

f districts.

any part of one or more counties in ion or acquisition by purchase or n, improvement and extension of, tormwater services or gas distribu- territory, will be conducive to the and convenience of such area, may

be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with: (1) The diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"); (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills"); (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"); or (4) the collection, control or disposal of stormwater (herein sometimes referred to as "stormwater system" or "stormwater systems"), or (5) the management, operation, maintenance and control of stormwater and stormwater systems (herein sometimes referred to as "stormwater management program" or "stormwater management programs"). As used in this article "stormwater system" or "stormwater systems" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater, and includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations: Provided, That the term "stormwater system" or "stormwater systems" does not include highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways. As used in this article "stormwater management program" or "stormwater management programs" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, however, That the term "stormwater management program" or "stormwater management programs" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways. (1986, c. 81; 2002, c. 272.)

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

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

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

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

(c) V
motion
consoli
creatio
session
reducti
district
twenty
is situa
of hear
of each
fixed. T
in the
hearing
the ter
Class I
[§§ 59-
the pu
municipi
propos
days p
(d) I
merger
by pet
satisfac
hearing
in the
other f
notice
conspic
the sa
notices
(e) A
the pro
and ag
consoli
is conc
enlarge
district
sition t
extensi
conduc
area, t
dissolv
after d
conduc
area o

dicts by county commission; merging, merging, or dissolving; creation, merging, or dissolving; agreements, etc.; powers of county commission; powers and districts with the

county may propose the creation, enlargement or consolidation of a public service district: (1) On its own motion by order duly adopted by the public service commission, or (2) on the petition of registered voters who reside within the district within one or more counties. The petition shall include metes and bounds, sufficient to describe the territory herein and the name of such proposed district. No new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated without the written consent and approval of the public service commission and may be created by the appropriate county commission. Any territory may be included in a public service district which includes one or more cities, towns or corporations which own and operate public service properties: Provided, however, That no territory within the boundaries of more than one public service district organized to supply water, sewerage services or gas facilities not being included in any other public service district shall be included therein: Provided further, That no city, town or corporation shall be included within the boundaries of a public service district upon the adoption of a resolution of the county commission.

The office of the clerk of the county in which the territory to constitute the proposed district is situated in more than one county, or the office of the clerk of the county in which the major portion of the territory extends, shall be filed with each of the clerks of the county or counties into which the territory extends. The county commission receiving such petition shall cause notice of the hearing of the county at the first regular meeting called for the consideration

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

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

consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b], of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated

pursuant bonded in enter into abridges o forth in th

(h) A li the count commissio 1967, c. 1 2002, c. 2

Effect of 2002, c. 27 capitalized "

§ 16-13

From a service di but witho acquire, c and may contracts city, incc without distribut furnishir tion, an extensior or extens public se corporati extend b therein f comply v municipi

The pc a public persons or work district. fully con public s protectio become contract

as set forth and described in the petition to enter an order creating the district or description of the proposed district and to merge or consolidate the district as amended. The commission shall determine that any other public service district in the area of the proposed public service district, merger, dissolution or consolidation, but shall enter an order creating, merging or consolidating the area with an order in accordance with rules adopted by the public service commission. Provided, That no enlargement of a present or proposed physical facilities of a district created by the appropriate county commission shall be inadequate to provide such enlarged service to each county into which any part of this office an authentic copy of the order creating, dissolving or consolidating the district: The public service commission shall file after the entry of an order creating, merging or consolidating a district, such order shall be filed by the public service commission. The public service commission shall hold a hearing in the affected county on the order of the county commission to file the order of the county commission to the public to do so. The public service commission shall file to such filings and the approval, the public service commission orders for creating, enlarging or consolidating districts. The provisions of this section shall apply to the creation of an order of a public service commission pursuant to this section and this article.

in its discretion it deems it necessary, the public service commission may include additional areas, reduce the equipment, service or materials have not been used or inactive or create or consolidate two or more public service districts if not feasible, the county commission may realize management and administration of a public service district in a multi-county area to achieve efficiency of a public service district. The public service commission determines on its own, or there is a petition to enlarge the district, or the management and administration of a public service district or dissolve the district if inactive, the provisions of this article providing for hearing, notice of a public service commission shall apply. The public service commission shall not bring about the enlargement or consolidation of public service districts in order to provide increased services of new public service districts in those areas not served by a public service district: Provided, That no public service districts are consolidated

pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125; 2002, c. 272.)

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

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

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, or for furnishing stormwater services for the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district nor

shall a former board member be hired by the district in any capacity within a minimum of twelve months after board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

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

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

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

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

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this

article, the te effective date appoint a ne commission. V code prohibits

The respect by the county approximatel for a term of f years, from t made. The fir office of the c the district as taking an oat may be remc (§ 16-13A-3a

Any vacan otherwise suc years and th appointed an manner as th the public se following inf and office ph member repl The public se obligation to

The board : and annually each year by a secretary : secretary sha available for with the cou meetings. Th district and s The secretar affairs of the board. The tr for the use a

The memb shall make a records perta tion and aud 134; 1971, c. 2002, c. 272.

by the district in any capacity within a term member's term has expired or such district board. The members shall be

other municipal corporation having a population of not less than eighteen thousand is included within the district, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall have one additional member of the board for each town or other municipal corporation. The members of the board shall be appointed by a resolution of the governing body of the district, the persons so appointed become members of the board upon their act or proceedings. If the number of members of the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds five, then three members shall be appointed to the board and the remainder of the district except in cases of merger or consolidation where the number of members of board members may equal five. If the number of members of the governing bodies of cities, incorporated towns or other municipal corporations included within the district, then the order creating the district shall provide for the appointment of three members who are persons residing within the district of West Virginia, which three members shall be appointed to the district without any further act or proceedings where the number of

members of the governing bodies of cities, incorporated towns or other municipal corporations included within the district, the county commission which entered the order creating the district shall appoint one additional member or members of the board to the district, as is necessary to make the total number of members of the board equal three except in cases of merger or consolidation where the number of members of board members may equal five, and the remainder of the district and the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and appointed by the county commission as a person may serve as a member of the district.

other municipal corporation having a population of not less than eighteen thousand is included within the district, and each city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall have one additional member of the board for each town or other municipal corporation in the

in this code to the contrary, whenever a provision is inconsistent with section two [§ 16-13A-2] of this

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

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four years, the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

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

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

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61; 1997, c. 159; 2002, c. 272.)

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

§ 16-13A-5. General manager of board.

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

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

The board of any public service district which purchases water, sewer or stormwater service from a municipal water, sewer or stormwater system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water, sewer or stormwater system or public service district from which such water, sewer or stormwater service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81; 2002, c. 272.)

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

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

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. All contracts involving the expenditure by the district of more than fifteen thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as

specified which th prior to t contract contracts shall be service d duty of t their cor or chara within tl but all su from the proceeds the pur electrica years. (159; 200

Effect 2002, c. : "including

§ 16-1

The l properti or not a of any c the dist and all purpose

The b district acquire within corpora within any inc district facilitie constru same k tions or rated to public other n

own or other municipal corporation" in the second sentence of the first paragraph.

of board.

ger to serve a term of not more than ssor is employed, and his or her t of the board. Such general manager f his or her time to the affairs of the ix the compensation of all employees ernerwise provided, and he or she shall and duties as may be conferred upon

without regard to his or her political or her administrative and technical properties and affairs of the district on the affirmative vote of two thirds not be a resident of the district at the manager may not be a member of the ard.

ct which purchases water, sewer or ater, sewer or stormwater system or alternative to hiring its own general ager of the municipal water, sewer or rict from which such water, sewer or le professional management to the or public service board agrees to nager shall receive reasonable com- 1981, c. 124; 1986, c. 81; 2002, c. 272.)

ird paragraph, and made minor stylistic anges.

eration of district proper-

e the supervision and control of all ructed by the district, and shall have intain, operate, extend and improve those activities necessary to comply ncluding water quality improvement nditure by the district of more than ork or for the purchase of equipment nents, shall be entered into only after hed as a Class I legal advertisement le three [§§ 59-3-1 et seq.], chapter area for such publication shall be as

specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81; 1997, c. 159; 2002, c. 272.)

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

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

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

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

of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

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

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned or operated by the West Virginia division of highways without the express agreement of the commissioner of highways: Provided, however, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124; 2002, c. 272.)

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

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

(a)(1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates,

fees and sufficient to pay the property incurred provided under the upon:

(A) The facilities public u

(B) The vari

(C) T

(D) A

(E) M

may det of the p furnish assesse facilitie highwa

(2) W thereof. billed a require on ever of the p the nar the dist three, c service annual district they be water e of a su fifty de annual or fifty and ch of serv distric twelfth dollars payme the cu

bligations theretofore issued by such
 cipal corporations then outstanding
 solution or other proceedings which
 onds or obligations.

ted, acquired or established water
 r system, stormwater management
 s, stormwater or gas services within
 icipal corporation included within a
 or other municipal corporation may
 lish any facilities of the same kind
 er municipal corporation without the

service properties or lands, rights or
 l for the purposes of the district, each
 main to the same extent and to be
 hereafter provided by law for such
 orated towns and other municipal
 of eminent domain provided in this
 road and drainage easements, or
 or operated by the West Virginia
 : agreement of the commissioner of
 board may not acquire all or any
 aterworks system unless and until
 mmission of West Virginia, and that
 orize any district to acquire through
 le or substantial part an existing
 stem or gas facilities located in or
 i district or extensions made or to be
 i existing plant or system, nor may
 blic service properties to supply its
 ion with existing waterworks or gas
 ide in territory contiguous to such
 eof. (1953, c. 147; 1980, c. 60; 1981,

stem, stormwater management program" fol-
 wing "sewer facilities" and "stormwater" pre-
 ling "or gas services"; in the last paragraph,
 led a new first proviso and redesignated the
 mer first proviso as the second

**and charges; discontinu-
 ired water and sewer con-
 linquent fees.**

enforce all needful rules in connec-
 rovement, extension, management,
 and the use of any public service
 ict. The board shall establish rates,

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

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

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

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

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

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

(2) Where water, sewer, stormwater or gas services, or any combination
 thereof, are all furnished to any premises, the schedule of charges may be
 billed as a single amount for the aggregate of the charges. The board shall
 require all users of services and facilities furnished by the district to designate
 on every application for service whether the applicant is a tenant or an owner
 of the premises to be served. If the applicant is a tenant, he or she shall state
 the name and address of the owner or owners of the premises to be served by
 the district. Notwithstanding the provisions of section eight [§ 24-3-8], article
 three, chapter twenty-four of this code to the contrary, all new applicants for
 service shall deposit the greater of a sum equal to two twelfths of the average
 annual usage of the applicant's specific customer class or fifty dollars, with the
 district to secure the payment of service rates, fees and charges in the event
 they become delinquent as provided in this section. If a district provides both
 water and sewer service, all new applicants for service shall deposit the greater
 of a sum equal to two twelfths of the average annual usage for water service or
 fifty dollars and the greater of a sum equal to two twelfths of the average
 annual usage for wastewater service of the applicant's specific customer class
 or fifty dollars. In any case where a deposit is forfeited to pay service rates, fees
 and charges which were delinquent at the time of disconnection or termination
 of service, no reconnection or reinstatement of service may be made by the
 district until another deposit equal to the greater of a sum equal to two
 twelfths of the average usage for the applicant's specific customer class or fifty
 dollars has been remitted to the district. After twelve months of prompt
 payment history, the district shall return the deposit to the customer or credit
 the customer's account at a rate as the public service commission may

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

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

(c) Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the division of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine [§ 16-1-9], article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the division of health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one,

tomers is a tenant, the district is not time the tenant discontinues service fees, rentals or charges for services or period of twenty days after the same the services and facilities provided is until all rates, fees and charges are able rules promulgated by the public continue water or gas services to all facilities, or both, ten days after the

privately owned utility, city, incorporation or other public service district operates separately either water district owns and operates the other kind case may be, then the district and the incorporated town or other municipal act shall covenant and contract with the supplying of water service for the charges: Provided, That any contracts not pursuant to this section shall be in for approval. Any public service ce to its customers has the right to in payment of either water or sewer providing sewer service and another included within the boundaries of the e, and the district providing sewer ment, the district or the municipality water district that is providing water ct providing sewer service to the ater service to the customer having however, That any termination of as and orders of the public service

es within the district may require, or he county in which the property is ion of health to compel all owners, ings and buildings located near any / gravity or be transported by other alth, including, but not limited to, under the provisions of section nine his code, from the houses, dwellings) connect with and use the sewer means for the collection, treatment rs from the houses, dwellings and ansportation by any other methods ing, but not limited to, vacuum and ovisions of section nine, article one,

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

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

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

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and

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

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61; 2002, c. 272; 2003, c. 183.)

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

Rules and regulations for the government of sewer utilities, 150 CSR 5, effective January 2, 1996.

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

Rules and regulations for the government of water utilities, 150 CSR 7, effective February 5, 1996.

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

services, or any combination thereof" for "Where water, sewer and gas services" in the present fourth sentence; inserted the fifth paragraph; in the present sixth paragraph, inserted "stormwater systems or stormwater management systems" following "sewer facilities" and "stormwater" preceding "or gas bills" in the first sentence.

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

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

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the

improv
expens
tions a
feasibi
other
author
placing
require
272.)

Effect
2002, c.

§ 16-

In a
or gas
the pu
sell, b
munic
any w
service
stormw
discre
sale, b
a heal
advert
seq.],
circul
public
days
sions
by the

In t
payme
ratabl
constr
not to
any b
comm
storm
count
272.)

Effect
2002, c.

maintenance of an action in magistrate water, sewer, stormwater or gas bills. If account, plus reasonable costs, from its he district shall pay to the magistrate the sts which were previously deferred. In may exchange with other public service Provided, That an owner of real property nquent rates or charges for services or 1 attach to real property for the reason of ices or facilities of a tenant of the real tracted directly with the public service icilities.

contrary notwithstanding, any establish- 22-11-3], article eleven, chapter twenty- vrn sewage disposal system pursuant to a ironmental protection, as prescribed by even, chapter twenty-two of this code, is ction. (1953, c. 147; 1965, c. 134; 1980, c. 74; 1994, c. 61; 2002, c. 272; 2003, c. 183.)

services, or any combination thereof" for "Where water, sewer and gas services" in the present fourth sentence; inserted the fifth paragraph; in the present sixth paragraph, inserted "stormwater systems or stormwater management systems" following "sewer facilities" and "stormwater" preceding "or gas bills" in the first sentence.

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

in cost of properties.

erties acquired under the provisions of : the cost of the acquisition or construc- ghts, easements and franchises deemed for the improvements and extensions l associated stormwater management de, but are not limited to, water quality mply with all federal and state require- l during construction or acquisition and construction or of acquisition of the

improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147; 2002, c. 272.)

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

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

In any case where a public service district owns a water, sewer, stormwater or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer, stormwater or gas system to any municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer, stormwater or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer, stormwater or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81; 1997, c. 160; 2002, c. 272.)

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

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

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems, stormwater systems or stormwater management systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system, stormwater system or associated stormwater management system or gas facilities, or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118; 2002, c. 272.)

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

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

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen [§ 16-13A-13], twenty [§ 16-13A-20] or twenty-four [§ 16-13A-24] of this article, without the prior consent and approval of the public service commission.

(b) The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied

with
abilit
to: (C
const
forw:
recei
(c)
is ex
(1)
first
utilit
(2)
and
(3)
the
the
(4)
(d)
deer
serv
is fi
hun
requ
well
(e)
exte
pub
nec
of cl
dist
T
serv
sup
com
c. 8

Et
2002
subs
(b),
boar
has
letec
ing
and

ans, grants or temporary ad-

rsuant to the provisions of this article loans or grants and procure loans or or other negotiable instruments issued ileges and limitations, set forth with under the provisions of this article, for cost of construction or acquisition of ater systems or stormwater manage- these, and the other purposes herein or from the United States of America artment of the United States or any , which loans or temporary advances, epaid out of the proceeds of the bonds ons of this article, the revenues of the stormwater system or associated is facilities, or grants to the public gency or from the United States of or department of the United States or ndividual or from any combination of r into the necessary contracts and eof with any authorized agency or the or public agency or department of the , corporation or individual. Any other otwithstanding, interest on any such d from the proceeds thereof until the e instrument. (1958, c. 14; 1980, c. 60;

ent systems" and "stormwater system or as- sociated stormwater management system".

nd issuance; procedure.

ons of this article to the contrary, a money, enter into contracts for the lity studies, issue or contract to issue wers conferred by the provisions of § 16-13A-20) or twenty-four [§ 16- consent and approval of the public

waive the provision of prior consent for engineering, design or feasibility use shown which is evidenced by the aiver of this section stated in a letter description of the project, a verified public service district has complied

with chapter five-g [§§ 5G-1-1 et seq.] of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm; or (2) completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.

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

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

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

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

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

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

(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four [§§ 16-24-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall prefile with the public service commission its plans and supporting information for the project in a manner prescribed by public service commission rules and regulations. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213; 1997, c. 159; 2003, c. 184.)

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

ing "requiring engineering services" in subdivi- sion (2); and rewrote the final paragraph of the section, deleting former subdivisions (a) through (e) regarding requirements for legal advertisements giving public notice of projects.

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

State of West Virginia



Certificate

*I, Betty Ireland, Secretary of State of the
State of West Virginia, hereby certify that*

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



*Given under my hand and the
Great Seal of the State of
West Virginia on
May 26, 2005*

Betty Ireland
Secretary of State

18

ARTICLE 15A.

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

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

§ 31-15A-1. Short title.

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act." (1994, 1st Ex. Sess., c. 26.)

Cited in State ex rel. Cooper v. Caperton, 196 W. Va. 208, 470 S.E.2d 162 (1996).

ny manner
agreement
riority shall
ie purposes

hority shall
year to the
a complete
tions during
ts books and
blic accoun-
construction

improve-

s its primary
or nonpublic
neaning of the
e of this code.

roval.

ed to apply for,
te pursuant to
Provided, That
ign trade zone

nce or clause of
ch adjudication
ticle, and, to this
erable. (1989, c.

erally construed
three [§ 31-15-3]

§ 31-15A-2. Definitions.

For purposes of this article:

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

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

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

(d) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3] of this article;

(e) "Division of environmental protection" means the division [department] of environmental protection established under article one [§§ 22-1-1 et seq.], chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Division of health" means the division of health created in article one [§§ 16-1-1 et seq.], chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the authority established by article one of the code of West Virginia, chapter twenty-two, and the duties;

(h) "Emergency" means (1) Is essential to the health, safety and (2) will not commence until the emergency has ended;

(i) "Governmental improvement district" means a district created by the water development authority and a public corporation or water or wastewater utility;

(j) "Housing development fund" means a fund established by chapter, or article, of the code of West Virginia;

(k) "Infrastructure" means infrastructure created and maintained by the water development authority;

(l) "Infrastructure project" means a project that determines the location, design, construction and operation of infrastructure in the area of the project, including, but not limited to, water transmission and distribution facilities and other real property owned by the state or any political subdivision in the process of construction of the project, including water supply, telephone and telegraph lines, bridges, railroads, gutters, sidewalks, and other facilities on the site;

(m) "Infrastructure project" means a project that determines the location, design, construction and operation of infrastructure in the area of the project, including water supply, telephone and telegraph lines, bridges, railroads, gutters, sidewalks, and other facilities on the site;

(n) "Need" means a need for infrastructure. The council shall determine the need for infrastructure supporting the development of the area.

(g) "Economic development authority" means the economic development authority established under article fifteen [§§ 31-15-1 et seq.], chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined: (1) Is essential to the immediate economic development of an area of the state; and (2) will not likely be developed in that area if construction of the project is not commenced immediately;

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

(j) "Housing development fund" means the West Virginia housing development fund established under article eighteen [§§ 31-18-1 et seq.] of this chapter, or any successor to all or any substantial part of its powers and duties;

(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine [§ 31-15A-9] of this article;

(l) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

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

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

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

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

(q) "Public service commission" means the public service commission of West Virginia created and established under section three [§ 24-1-3], article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

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

(s) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four [§§ 24-1-1 et seq.] of this code or which is required to file its tariff with the public service commission;

(t) "State development office" means the West Virginia development office established under article two [§§ 5B-2-1 et seq.], chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

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

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

(w) "Water development authority" means the West Virginia water development authority continued pursuant to the provisions of article one [§§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties; and

(x) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

(a) conti
exerc
out o:
deter
(b) direc
the d
the e
wate
the s
of he
or h
Prov
publ
expi
tive:
publ
pub
com
rail
Wes
of t:
the
The
furt
poli
boa
adv
(c)
sha
sha
cor
me
No
su
(d)
rec
me
re
co
st

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

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

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

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

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

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its

business, and shall meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen (§§ 31-15-1 et seq.), chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

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

(g) The council shall invite to all its meetings one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate the purposes of this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

§ 31-15A-4. Development of guidelines and preliminary application for funding assistance.

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three (§§ 29A-3-1 et seq.), chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six (§ 31-15A-6), of this article; (5) the cost effectiveness of the project or infrastructure project as compared with alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated comple-

tion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article. (1994, 1st Ex. Sess., c. 26.)

Code of State Rules References. — Infrastructure and jobs development council funding rules, 167 CSR 1, effective June 6, 1996.

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

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

(b) The council shall, within thirty days of receipt of each completed preliminary application submitted to it, review the preliminary application and either (i) make a written recommendation as to the infrastructure project or project financing, in terms of the kind, amount and source of funding, which the project sponsor submitting the application should pursue and which the state infrastructure agency or agencies should consider an appropriate invest-

ment of public funds, or (ii) if the council determines that (1) the proposed project or infrastructure project is not eligible for funding assistance from any state infrastructure agency, or (2) the proposed project or infrastructure project is not otherwise an appropriate or prudent investment of state funds, the council shall recommend that the project sponsor not seek funding from any state infrastructure agency. A project sponsor shall include the preliminary application and the council's recommendations in any application to a state infrastructure agency.

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

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency. (1994, 1st Ex. Sess., c. 26.)

Code of State Rules References. — Infrastructure and jobs development council funding rules, 167 CSR 1, effective June 6, 1996.

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

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

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

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

from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

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

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

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

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate. (1994, 1st Ex. Sess., c. 26.)

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

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

(b) The council has the authority to appoint local infrastructure planning teams. The local infrastructure planning teams may consist of the following: A designee of the division of highways from the region where the new road is being built; a designee of the division of highways from the central state office;

a designee from the environmental engineers division of the department of health and human resources; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the public service commission; a designee from the division of environmental protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the division of highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the division of highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines. After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

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

(e) After the construction of water and sewer lines adjacent to the new road these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality. (1994, 1st Ex. Sess., c. 26.)

g
e
fi
e
w
c
c
l
s
r
s

u
t
a
T
fc
P
p
fr
th

of
w

ec
(
pi
sp
th
aj
pi
de
la
ac
by
th
pr
si

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

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or wastewater facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven [§ 24-2-11], article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant to section eleven [§ 24-2-11], article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty-day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five [§ 16-13A-25], article thirteen-a, chapter sixteen of this code.

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

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (l), section two [§ 31-15A-2] of this article and to include a water facility project as defined in subsection (n), section two of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subsection (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commission-

er's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Editor's notes. — Concerning the reference in (d) to "a water facility project as defined in subsection (n), section two of this article," the term "water facility" is defined in subsection (x) of that section.

§ 31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four [§ 31-15B-4] of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b [§§ 31-15B-1 et seq.] of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b [§§ 31-15B-1 et seq.].

Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b)
the
in o
shal
inst
tive
as a
and
[§§
(c
fifte
may
mor.
prov
Prov
depc
amo
duri
unle
resti
resti
pers
(d
by t
guar
auth
assis
limit
(1)
the l
case
ther
(2)
expe
and
(3)
tion,
(4)
feder
wate
the a
proje
appo
defa
(e)
guar
that

es of North Bend
 e expanded park
 nds appropriated

efined in subsection (x)

**in fund; dis-
 n guarantees,
 ns, loan guar-
 ance shall be
 s.**

establish a special
 grant, contribution
 id". This fund shall
 ctors, officers and
 a special purpose
 ds or funds owned
 nrastructure fund
 ouncil or the water
 e revenues; (2) any
 or other revenues
 blic or private; (3)
 water development
 oject; (4) insurance
 the infrastructure
 oject; (5) all income
 funds deposited in
 teen-b; and (7) all
 to article fifteen-b

paid into the West
 y charged with the
 l, and used only for
 l-15B-1 et seq.].
 and administered by
 its other assets and
 e transferred to any
 the purposes of any
 ept that the water
 e fund to reimburse
 ved by the council in
 - funding assistance
 is article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen [§§ 31-18-1 et seq.], chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article and article fifteen-b [§§ 31-15B-1 et seq.] of this chapter, the water development authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the water development authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

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

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

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

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

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

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

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

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration [office abolished], where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance. (1994, 1st Ex. Sess., c. 26; 1995, c. 130.)

Editor's notes. — The office of the commissioner of finance and administration was abolished, and the duties of that office were transferred to the secretary of administration. See § 5A-1-2.

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

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine [§ 31-15A-9] of this article, upon receipt of one or more recommendations from the council pursuant to section five [§ 31-15A-5] of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) [26 USCS § 501(c)] of the Internal Revenue Code of 1986 , as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or

mc
co
da
as
rec
de
sol
(
pr
otl
(2)
ex
str
of
co
th
th
a
pr
de
sh
to
ad
in
to

co
m
m
st
gr
T]
bc
ni
th
[§
et
ra
di
of
si
r:
a
ir

tu
o

governmental, or this article shall state to prioritize non-governmental made to for-profit before, no loan may be made which is less than the amount of the loan.

Annual audit to be conducted by the council, accounts and records, leases, assignments, financial operation of the project account within the project shall furnish copies of the project administration [office shall be available for inspection and shall also furnish copies of the project file on government

of administration. See

for expenditure on engineering

In this article, the water infrastructure fund created in receipt of one or more than five [§ 31-15A-5] loan guarantees or bonds or otherwise, to be used for projects to be financed by the council shall be disbursed from the fund in accordance with the provisions of this article. Notwithstanding any other assistance and funding available to the project upon an application for a loan or grant, it shall be made to a for profit corporation [§ 1(c)] of the Internal Revenue Code, loan guarantees, or project sponsor for one or

more infrastructure projects on preliminary application forms prepared by the council pursuant to section four [§ 31-15A-4] of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six tenths of one percent: Provided, That funding assistance made from the proceeds of any general obligation bonds and revenue bonds issued after the fifteenth day of March, one thousand nine hundred ninety-eight, after transfer required to make the state match for the water and wastewater revolving loan programs pursuant to article two [§§ 22C-2-1 et seq.], chapter twenty-two-c and article thirteen-c [§§ 16-13C-1 et seq.], chapter sixteen of this code, shall be provided by the council on a pro rata basis divided equally among the congressional districts of this state as delineated in accordance with section three [§ 1-2-3], article two, chapter one of this code: Provided, however, That infrastructure projects as defined in subsection (l), section two [§ 31-15A-2] of this article shall not be subject to pro rata distribution. When determining median household income of a geographic area of the project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

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

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

(f) The council shall report to the governor, the speaker of the House of Delegates and the president of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article. (1994, 1st Ex. Sess., c. 26; 1995, c. 130; 1998, c. 180.)

Code of State Rules References. — Infrastructure and jobs development council funding rules, 167 CSR 1, effective June 6, 1996.

Editor's notes. — Section 501 of the Internal Revenue Code of 1986, referred to in (a), is codified at 26 USCS § 501.

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

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two [§ 31-15A-2] of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

Editor's notes. — Concerning the reference to "projects as defined in subsection (n), section two of this article," the term "project" is defined in subsection (o) of that section.

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

To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed in whole or in part or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifications for making loans, loan guarantees or grants, or providing any other assistance, for any infrastructure project or project, and the terms of any loans, loan guarantee, grant or assistance agreement for any project; and (5) do all things which are necessary to further the purposes and intent of this article. (1994, 1st Ex. Sess., c. 26.)

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

No part of the infrastructure fund or the West Virginia infrastructure revenue debt service fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority. (1994, 1st Ex. Sess., c. 26; 1998, c. 180.)

§ 31-15A-14. Termination or dissolution.

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

infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors. (1994, 1st Ex. Sess., c. 26.)

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

(a) No project or infrastructure project acquired, constructed, maintained or financed, in whole or in part, by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a [§§ 21-5A-1 et seq.], chapter twenty-one of this code as a result of the financing.

(b) The state and its subdivisions shall, except as provided in subsection (c) of this section, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a [§§ 21-5A-1 et seq.], chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

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

(c) This section does not:

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

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

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

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

(d) The provisions of subsection (b) of this section do not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state. (1994, 1st Ex. Sess., c. 26; 2001, c. 45.)

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

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a [§§ 11-13A-1 et seq.], chapter

ele
rep
for
eco
(
beg
firs
[§§
cre
cre
Pro
nin
pu
We
pu
(
cor
six
dec
thi
me
20:
in
(
of
cer
int
inf
art
19
§

m
is:
pr
gt
or
m
ui

eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a [§§ 11-13A-1 et seq.], chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three [§ 31-15B-3], article fifteen-b of this chapter: Provided, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) none of the collections from the tax imposed pursuant to section six [§ 11-13A-6], article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a [§§ 11-13A-1 et seq.], chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a [§ 11-13A-20a] of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b [§§ 31-15B-1 et seq.] of this chapter. (1994, 1st Ex. Sess., c. 26; 1995, c. 130; 1998, c. 180.)

§ 31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.

(a) To accomplish the purpose and intent of this article, the water development authority is hereby empowered at the written request of the council to issue from time to time infrastructure revenue bonds of the state in such principal amounts as the council deems necessary to make loans and loan guarantees and other forms of financial assistance to project sponsors for one or more projects or infrastructure projects: Provided, That the water development authority may not issue any such bonds, other than refunding bonds, unless the council by resolution determines that the aggregate cost of the

projects or infrastructure projects expected to be constructed during any annual period exceeds (1) the projected annual infrastructure revenues for the same period, and (2) the principal and interest payments not otherwise pledged to the infrastructure revenue debt service fund that are due the water development authority on all outstanding loans previously made by the water development authority pursuant to the provisions of this article.

(b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of making loans and loan guarantees and other forms of financial assistance to sponsors of one or more projects or infrastructure projects, and shall be deposited in one or more special accounts with the trustee under the trust agreement securing such bonds and disbursed from time to time for projects or infrastructure projects in accordance with this article: Provided, That notwithstanding any provision of this code to the contrary, twenty percent of the funds deposited in the special account shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two [§ 31-15A-2], of this article.

(c) The water development authority may not authorize the disbursement of any proceeds of infrastructure revenue bonds unless it has received documentation from the council pursuant to the provisions of section ten [§ 31-15A-10] of this article.

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

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

w
m
ye
ex
Ir
va
sh
pa
of
tu
or
co
by
ei
w:
pr
ta
si
re
si
ex
of
be
pu
ta:
wh
ho
an
re:
ity
ap
bo
ne
an
lin
ad
bo.
the
ab
the
in
(
bo
res
or

ructed during any
re revenues for the
ents not otherwise
it are due the water
made by the water
article.

e used solely for the
r forms of financial
cture projects, and
ie trustee under the
m time to time for
is article: Provided,
ie contrary, twenty
be dedicated for the
rojects as defined in

the disbursement of
s received documen-
on ten (§ 31-15A-10)

authority a special
Virginia Infrastruc-
nsferred solely from
the amounts certified
necessary to pay the
e revenue bonds and
e agreement with the
deposited in the West
ll be pledged to the
mium, if any, on any
icle: Provided, That
or maintain reserves
e revenue bonds. The
dge is made, and the
nd so pledged shall
any physical delivery
e shall be valid and
id in tort, contract or
pective of whether the

in this article or by
ssue of infrastructure
velopment authority
tructure revenue debt
by the water develop-
he bonds regardless of
olders of any bonds to
egotiable instruments.

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

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

(h) In the event that the sum of all reserves pledged to the payment of the bonds is less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of the bonds, the chairman or the director of the water development authority shall certify, on or before the

first day of December of each year, the amount of such deficiency to the governor of the state for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the water development authority to be pledged for payment of such bonds: Provided, That the Legislature shall not be required to make any appropriations so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

(i) Neither the officers or board members of the water development authority, nor any person executing the infrastructure revenue bonds, shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. (1998, c. 180.)

§ 31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin fund.

Notwithstanding any other provision of this code to the contrary, the water development authority may issue, in accordance with the provisions of section seventeen [§ 31-15A-17] of this article, infrastructure revenue bonds payable from the A. James Manchin fund created by section six [§ 17-24-6], article twenty-four, chapter seventeen of this code and such other sources as may be legally pledged for such purposes other than the West Virginia infrastructure revenue debt service fund created by section seventeen of this article. (2003, c. 251.)

Effective dates. — Acts 2003, c. 251, provided that the act take effect June 6, 2003.

§ 31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement.

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

(b) Any trust agreement may pledge or assign the infrastructure revenue debt service fund. Any trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section seventeen [§ 31-15A-17] of this article, and covenants setting forth the duties of the water development authority in respect to the payment of the principal of and interest, charges and fees on loans made to, or bond purchases from, governmental agencies from the proceeds of the bonds, and the custody, safeguarding and application of all moneys. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of the infrastructure debt service fund shall furnish such indemnifying bonds or pledge securities as are

re
for
tru
no
se
pr
for
ca
of
of
§
an
giv
ag
en
art
bo
thi
the
§
/
lav
loa
tio
an
§
(
no
fur
of
(
pu
int
rev
exc
up
su
180

required by the water development authority. The trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds and notes. The trust agreement may contain such other provisions as the water development authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as part of the cost of the construction, renovation, repair, improvement or acquisition of a project or infrastructure project. (1998, c. 180.)

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

Any holder of infrastructure revenue bonds issued pursuant to this article and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or trust agreement, may by civil action, mandamus or other proceedings protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution in the issuance of the bonds, and may enforce and compel the performance of all duties required by this article, pursuant to the trust agreement or resolution, to be performed by the water development authority or any officer thereof. (1998, c. 180.)

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

All infrastructure revenue bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, and insurance companies, including domestic for life and domestic not for life insurance companies. (1998, c. 180.)

§ 31-15A-21. Purchase and cancellation of infrastructure revenue bonds.

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

(b) If the infrastructure revenue bonds are then redeemable, the price of the purchase shall not exceed the redemption price then applicable, plus accrued interest to the next interest payment date thereon. If the infrastructure revenue bonds are not then redeemable, the price of the purchase shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption, plus accrued interest to such date. Upon purchase or redemption, the bonds shall be canceled. (1998, c. 180.)

§ 31-15A-22. Refunding revenue bonds.

Any infrastructure revenue bonds issued pursuant to the provisions of this article and at any time outstanding may at any time and from time to time be refunded by the water development authority by the issuance of its refunding revenue bonds in an amount it deems necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon, to provide additional funds for the water development authority to accomplish the purpose of this article, and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the infrastructure revenue bonds to be refunded shall have then matured or shall thereafter mature: Provided, That the holders of any infrastructure revenue bonds so to be refunded shall not be compelled without their consent to surrender their infrastructure revenue bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding revenue bonds issued pursuant to this article shall be payable from the West Virginia infrastructure revenue debt service fund, and shall be subject to the provisions contained in section seventeen [§ 31-15A-17] of this article, and shall be secured in accordance with the provisions of sections seventeen and eighteen [§ 31-15A-18] of this article. (1998, c. 180.)

§ 31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision.

Infrastructure revenue bonds issued pursuant to the provisions of this article shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. The holders or owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The bonds shall be payable solely from the revenues and funds pledged for their payment as authorized by this article. All such bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment. (1998, c. 180.)

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

The exercise of the powers granted to the water development authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is for a public purpose. As the

cr
p
tl
a
w
tu
a.
aj

Se
31
31

31

31
31-
31-

§

ch
(
coi
(
of
in
(
by
(
me
tw
po

§

I
im

construction, acquisition, repair or renovation of projects or infrastructure projects will constitute the performance of essential governmental functions, the water development authority shall not be required to pay any taxes or assessments upon any project or upon any property acquired or used by the water development authority or upon the income therefrom. The infrastructure revenue bonds and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except estate taxes. (1998, c. 180.)

ARTICLE 15B.

INFRASTRUCTURE BONDS.

- | | | | |
|-----------|---|------------|---|
| Sec. | | Sec. | |
| 31-15B-1. | Definitions. | | |
| 31-15B-2. | Infrastructure general obligation bonds; amount; when may issue. | | to directors or officers; transactions between the council and West Virginia water development authority and directors or officers having certain interests in such transactions. |
| 31-15B-3. | Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds. | 31-15B-8. | Infrastructure bonds lawful investments. |
| 31-15B-4. | Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder. | 31-15B-9. | Refunding bonds. |
| | | 31-15B-10. | Termination or dissolution. |
| 31-15B-5. | Covenants of state. | 31-15B-11. | Treasurer to determine financial advisor. |
| 31-15B-6. | Sale by governor; minimum price. | 31-15B-12. | Governor to determine bond counsel. |
| 31-15B-7. | Prohibition on funds inuring to the benefit of or being distributable | 31-15B-13. | Approval and payment of all necessary expenses. |

§ 31-15B-1. Definitions.

For purposes of this article and article fifteen-a (§§ 31-15A-1 et seq.) of this chapter:

- (a) "Council" means the West Virginia infrastructure and jobs development council created in section three [§ 31-15A-3], article fifteen-a of this chapter;
- (b) "Infrastructure amendment" means the amendment to the constitution of this state entitled "infrastructure amendment" as approved by referendum in the month of November, one thousand nine hundred ninety-four;
- (c) "Infrastructure general obligation bond" means any bond or bonds issued by the state pursuant to section two [§ 31-15B-2] of this article;
- (d) "Water development authority" means the West Virginia water development authority established under article one [§§ 22C-1-1 et seq.], chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties. (1995, c. 130.)

§ 31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the

IN RE: LUBECK DISTRICT - PUBLIC SERVICE DISTRICT WITHIN WOOD COUNTY, WEST VIRGINIA.
Parkersburg, West Virginia
Jan. 30, 1958

The County Court of Wood County, West Virginia, met in regular session pursuant to law and to the rules of said court at the County Court House, Parkersburg, West Virginia, at 10 o'clock A. M. The meeting was called to order and the roll being called there were present Harry C. Nicely, President, presiding, and the following named commissioners: Guy M. Kincheloe and Malcolm B. Loudon.

Absent: NONE

This being the date fixed by prior action of the County Court for conducting the public hearing on the creation of the proposed Lubeck Public Service District, as contemplated and provided for in a resolution and order adopted by the County Court on 19th December, 1957, the president announced that all persons residing in or owning or having any interest in property in such proposed public service district desiring to be heard for or against the creation of said district would be heard and all such interested persons desiring to be heard were given full opportunity.

The County Court then further discussed the creation of said public service district, whereupon Malcolm B. Loudon introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER creating Lubeck Public Service District in Wood County, West Virginia."

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Guy M. Kincheloe seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Harry C. Nicely
Guy M. Kincheloe
Malcolm B. Loudon

Nay: NONE

Whereupon the President declared the motion duly carried and said resolution and order duly adopted. Malcolm B. Loudon introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER appointing members to the public service board of the Lubeck Public Service District."

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Guy M. Kincheloe seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Harry C. Nicely
Guy M. Kincheloe
Malcolm B. Loudon

Nay: NONE

Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

On motion and vote the meeting adjourned.

s/ Harry C. Nicely
President

Attest:

L. C. White
Clerk

A RESOLUTION AND ORDER CREATING
LUBECK PUBLIC SERVICE DISTRICT IN
WOOD COUNTY, WEST VIRGINIA

WHEREAS, the County Court of Wood County, West Virginia, did heretofore by a resolution and order adopted December 19, 1957, fix a date for a public hearing on the creation of the proposed Lubeck Public Service District and in and by said resolution and order provide that all persons residing in or owning or having any interest in property in the proposed public service district might appear before the County Court at this meeting and have the opportunity to be heard for and against the creation of said district; and,

WHEREAS, notice of this hearing was duly given in the manner provided and required by said resolution and order and by Article 13A of Chapter 16 of the West Virginia Code, and all interested persons have been afforded an opportunity of being heard for and against the creation of said district, but no written protest has been filed by the requisite number of qualified voters registered and residing within said proposed public service district and said County Court has given due consideration to all matters for which such hearing was offered; and,

WHEREAS, it is now deemed desirable by said County Court to adopt a resolution and order creating said district;

NOW, THEREFORE, Be It and It Is Hereby Resolved and Ordered by the County Court of Wood County, West Virginia, as follows:

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

Beginning at the Ohio River approximately one-half mile up stream from Blennerhassett Island at a point having a latitude of N. 39° 15' 58" and a longitude of W. 81° 35' 00", thence South 1.4 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35' 00", thence West 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 36' 58", thence S. 37° 00' 00" W. 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 53", thence West 1.80 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 40' 55", thence to the Ohio River W. 32° 00' 00" W. 0.75 miles to a point having a latitude of N. 39° 13' 16" and a longitude of W. 81° 41' 22", thence along and with the Ohio River approximately 6.05 miles to the beginning.

Containing generally the communities of Marttown, Lubeck, Blennerhassett Heights and Washington together with contiguous areas. All within the magisterial district of Lubeck, Wood County, State of West Virginia, as shown upon a map prepared by J. H. Miles, Inc., Consulting Engineers, 1214 Myers Avenue, Dunbar, West Virginia, November 1957.

Section 2. That said public service district so created shall have the name and corporate title of "Lubeck Public Service District", and shall constitute a public corporation and political subdivision of the State of West Virginia having all of the rights and powers conferred on public service districts by the laws of the State of West Virginia, and particularly Article 13A of Chapter 16 of the West Virginia Code.

Section 3. That the County Court of Wood County, West Virginia, has determined that the territory within Wood County, West Virginia, having the heretofore above described boundaries,

2

ORDERS--Wood County Court, West Virginia

JANUARY Term

FIFTEENTH

Day

JANUARY

19 58

THURSDAY, JANUARY 30th, 1958

is so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of properties supplying both water and sewage services within such territory by said public service district will be conducive to the preservation of public health, comfort and convenience of such area.

ADOPTED BY THE COUNTY COURT Jan. 30, 1958.

s/ Harry C. Nicely, President

Attest:

L. C. White Clerk

A RESOLUTION AND ORDER APPOINTING MEMBERS TO THE PUBLIC SERVICE BOARD OF THE LUBECK PUBLIC SERVICE DISTRICT.

WHEREAS, the County Court of Wood County, West Virginia, did heretofore by resolution and order adopted Jan. 30, 1958, create the Lubeck Public Service District; and,

WHEREAS, under the provisions of Article 13A of Chapter 16 of the West Virginia Code the powers of said public service district shall be vested in and exercised by a public service board; and,

WHEREAS, since there is no city, incorporated town or other municipal corporation included within said district, it is provided by said Article 13A of Chapter 16 of the West Virginia Code that this County Court shall appoint three members of said board, who shall be persons residing within the district:

NOW, THEREFORE, Be It and It Is Hereby Resolved and Ordered by the County Court of Wood County, West Virginia, as follows:

Section 1. That the County Court of Wood County, West Virginia, hereby finds and determined that David T. Gorrell, Paul F. Somerville and Stafford J. McQuillin, are persons residing within the Lubeck Public Service District, and the aforesaid persons are hereby appointed as members of the public service board of said district and their respective terms of office shall be as follows:

David T. Gorrell for a term of six years from the first day of the month in which this resolution and order is adopted;

Paul F. Somerville for a term of four years from the first day of the month in which this resolution and order is adopted; and,

Stafford J. McQuillin for a term of two years from the first day of the month in which this resolution and order is adopted.

Section 2. The aforesaid persons shall meet as soon as practicable, at the office of the Clerk of said County Court and shall qualify by taking an oath of office, and thereafter said appointees constituting the initial public service board of the Lubeck Public Service District shall meet and organize in compliance with the provisions of Article 13A of Chapter 16 of the West Virginia Code.

ADOPTED BY THE COUNTY COURT JAN. 30, 1958.

s/ Harry C. Nicely President

Attest:

L. C. White Clerk

STATE OF WEST VIRGINIA) ss
County of Wood)

I, L. C. White, hereby certify that I am the duly qualified and acting Clerk of the County Court of Wood County, West Virginia, and that the foregoing constitutes a true, complete and correct transcript of the proceedings of said County Court as had under date of Jan. 30, 1958, and resolutions and orders then adopted relating to the creation of Lubeck Public Service District, and appointment of members to the public service board of said district.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of said Court at Parkersburg, West Virginia, this 30 January, 1958.

s/ L. C. White County Court Clerk

(SEAL)

And there appearing no further business to claim the attention of this Court, it is, hereby ordered that this Court do now adjourn to meet in regular session on Saturday, the 1st day of February, 1958, at 9:30 o'clock A. M.

Harry C. Nicely President

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

I, H. K. Smith, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody the files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of Order Dated January 30, 1958
IN RE: Lubeck Public Service District

as the same appears of record in my said Office in Order Book 28, Page 149

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 24th day of April, 1986

H. K. SMITH

CLERK WOOD COUNTY COMMISSION

By: Martha J. DeWree
Deputy

Officials of Lubeck Public Service District were present at the meeting of the Commission and again discussed with the Commission the need for public water service in a substantial area of Wood County roughly described as the Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, collectively referred to as the additional area. The Commission, having been previously contacted by residents of the area and having made certain investigations into the need for safe, potable and dependable water in the additional area and having been advised that Lubeck Public Service District is commencing an expansion of its water facilities and can provide expanded water service, has determined that there is an urgent need for public water service in said additional area, that Lubeck Public Service District is able to provide that service, and that the district should be enlarged to include this additional area.

The Commission, on its own motion, does hereby propose that Lubeck Public Service District be enlarged to include the Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, more particularly described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. 39° 12' 43" and having a longitude of W. 81° 40' 55"; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 39' 07"; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 33' 07"; thence in a northerly direction approximately 2.5 miles to a point having a

latitude of N. 39° 13' 25" and having a longitude of W. 81° 33' 07"; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35'; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 36' 58"; thence southwest approximately 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 58"; thence W. approximately 1.80 miles to the place of beginning.

It is ordered that a public hearing to consider the enlargement of Lubeck Public Service District to include the aforesaid area be held in the Judicial Annex Building of Wood County in the City of Parkersburg, West Virginia, on the 7th day of July, 1988, at 7:00 o'clock P. M., that notice of said hearing be published in The Parkersburg News as a Class I legal advertisement not less than 10 days before the date of the hearing and that notices be posted in at least five conspicuous places in said additional area not less than 10 days before the date of the hearing.

Entered this 16th day of June, 1988.


Commissioner


Commissioner


Commissioner

JULY 11, 1988

7/11/88
5/72

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE COUNTY COMMISSION OF WOOD COUNTY APPROVED THE
ENLARGEMENT OF THE LUBECK PUBLIC SERVICE DISTRICT.

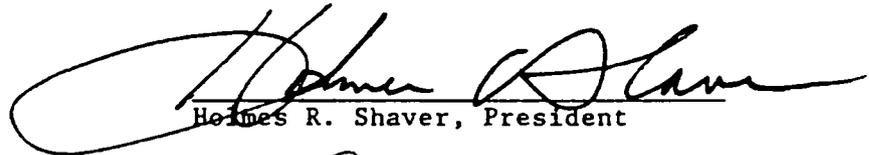
O R D E R

The County Commission of Wood County, on this date, approved the enlargement of the Lubeck Public Service District upon a motion made by Lewis E. Guinn, seconded by Steven A. Grimm and made unanimous by Holmes R. Shaver. This action is pursuant to the Public Hearing held on Thursday, July 7, 1988, at 7:00 P.M. after being duly advertised in accordance with Article 13-A, Chapter 16 of the West Virginia Code.

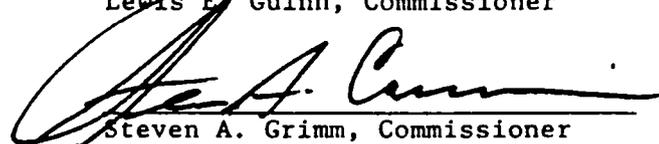
Attached to this Order is a Resolution and affidavits of notice and posting within the area to be annexed, and should be made a part thereof.

Approved:

COUNTY COMMISSION OF WOOD COUNTY


Holmes R. Shaver, President


Lewis E. Guinn, Commissioner


Steven A. Grimm, Commissioner

7/11/88
51/72

A RESOLUTION AND ORDER ENLARGING
LUBECK PUBLIC SERVICE DISTRICT IN WOOD COUNTY, WEST VIRGINIA

WHEREAS, the Wood County Commission did heretofore by order entered on June 16, 1988, fix the 7th day of July, 1988, as a date for a public hearing on the enlargement of Lubeck Public Service District, and notice of said hearing was published and posted as required by Article 13-A, Chapter 16 of the West Virginia Code, and in said notice it was provided that all persons residing in, or owning, or having any interest in property in the areas proposed to be included might appear at the time and place of said meeting and be heard for and against said enlargement, and

WHEREAS, the Wood County Commission proceeded to hold said public hearing on the 7th day of July, 1988, at 7:00 o'clock P. M., at which hearing in excess of 175 persons were present, and the Commission receiving neither written protest nor oral protest to said enlargement, and all of the persons present unanimously favoring said enlargement,

NOW THEREFORE BE IT RESOLVED AND ORDERED that the affidavit of The Parkersburg News of the publication of the notice of public hearing, together with the affidavit of James M. Cox as to the posting within the areas to be included within Lubeck Public Service District, be and the same are hereby filed.

BE IT FURTHER RESOLVED AND ORDERED that it is necessary, feasible and proper to enlarge Lubeck Public Service

District to include areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, and Woodyard Creek Road areas, located in Wood County, West Virginia, to provide public water service to those areas, which areas are collectively described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. $39^{\circ} 12' 43''$ and having a longitude of W. $81^{\circ} 40' 55''$; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. $39^{\circ} 11' 13''$ and having a longitude of W. $81^{\circ} 39' 07''$; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. $39^{\circ} 11' 13''$ and having a longitude of W. $81^{\circ} 33' 07''$; thence in a northerly direction approximately 2.5 miles to a point having a latitude of N. $39^{\circ} 13' 25''$ and having a longitude of W. $81^{\circ} 33' 07''$; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. $39^{\circ} 14' 24''$ and a longitude of W. $81^{\circ} 35'$; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. $39^{\circ} 14' 24''$ and a longitude of W. $81^{\circ} 36' 58''$; thence southwest approximately 2.9 miles to a point having a latitude of N. $39^{\circ} 12' 43''$ and a longitude of W. $81^{\circ} 38' 58''$; thence W. approximately 1.80 miles to the place of beginning.

IT IS FURTHER ORDERED that from and after the date of the entry of this Order said additional area shall be a part of Lubeck Public Service District.

The Wood County Commission does further find and ORDER that the enlargement, maintenance, operation, improvement and extension of public service properties by said Public Service

District will be conducive to the preservation of public health, comfort and convenience of such areas.

BE IT FURTHER ORDERED that within ten (10) days after the entry of this Order a certified copy thereof be filed for review and approval with the Public Service Commission of West Virginia as required by Article 13-A, Chapter 16, of the West Virginia Code.

Entered this 11th day of July, 1988.


Commissioner


Commissioner

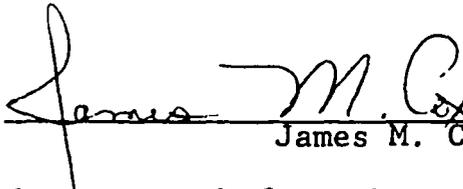

Commissioner

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

I, James M. Cox, Manager of Lubeck Public Service District, upon my oath say that on June 25TH, 1988, I caused to be posted copies of the attached notice in six conspicuous places throughout the area to be annexed, commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, located in Wood County, West Virginia, at the following locations:

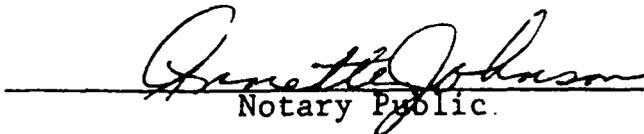
1. ~ 0.8 MILE ON HOMEWOOD RD. FROM LUBECK = LARRY BROTHERS PROPERTY
2. ~ 0.25 MILE ON LOST PAVEMENT RD. FROM ROUTE 32 OR GIBSON RD.
3. ~ 0.6 MILE ON HOPE HILL RD. FROM ROUTE 32 OR GIBSON RD. = M^CHARRY PROPERTY.
4. ~ INTERSECTION OF ROUTES 21/17 & 13/10.
5. AT THE OLD WILLIAMS SCHOOL ON ROUTE 38.
6. ~ INTERSECTION OF ROUTES 13 & 9/8.

Dated this 25TH day of June, 1988.


James M. Cox

Taken, subscribed and sworn to before the undersigned authority this 26th day of June, 1988.

My commission expires: 10-8-91


Notary Public.

NOTICE OF PUBLIC HEARING
TO ENLARGE LUBECK PUBLIC SERVICE
DISTRICT TO INCLUDE THE LOST
PAVEMENT, MISSOURI RUN, HOPE HILL,
HOMWOOD ROAD AND WOODYARD CREEK
ROAD AREAS

Notice is given that the Wood County Commission has fixed the 7th day of July, 1988, at 7:00 o'clock P. M. at the Judicial Annex Building of Wood County in the City of Parkersburg, West Virginia, as the time and place for a public hearing to consider the enlargement of Lubeck Public Service District to include the areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, located in Wood County, West Virginia, to provide public water service to those areas, which areas are collectively described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. 39° 12' 43" and having a longitude of W. 81° 40' 55"; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 39' 07"; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 33' 07"; thence in a northerly direction approximately 2.5 miles to a point having a latitude of N. 39° 13' 25" and having a longitude of W. 81° 33' 07"; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35'; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 34' 58"; thence southwest approximately 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 58"; thence W. approximately 1.80 miles to the place of beginning.

All persons residing in, or owning, or having any interest in property in said areas may appear at the aforesaid time and place and be heard in support of, or in opposition to, the enlargement and against said enlargement.

Jamie Six, Clerk
Wood County Commission

June 24

MARCIA MOORE

being first duly sworn, says that the

notice of public hearing----7th day of

JULY

hereto attached was printed in the **Parkersburg News**
a daily newspaper published
in the City of Parkersburg, Wood County, West Virginia, and posted
at the front door of the Court House for

successive weeks, the first publication ~~and appearing~~ thereon being on
the 24th day of JUNE 19 88, and subse-
quent publication on the day of 19
the day of 19, the day of
19, and the day of 19.

Printer's Fee \$ 27.13

434 words @ .0625

Marcia Moore

24th

Subscribed and sworn to before me this day of

JUNE 19 88.

Walter O. Sinner
Notary Public for Wood County, West Virginia

My commission expires 7-21-92

NOTICE OF PUBLIC HEARING
TO ENLARGE LUBECK PUBLIC SERVICE DISTRICT
TO INCLUDE THE LOST PAVEMENT, MISSOURI RUN,
HOPE HILL, HOMEWOOD ROAD AND WOODYARD CREEK ROAD AREAS

Notice is given that the Wood County Commission has fixed the 7th day of July, 1988, at 7:00 o'clock P. M. at the Judicial Annex Building of Wood County in the City of Parkersburg, West Virginia, as the time and place for a public hearing to consider the enlargement of Lubeck Public Service District to include the areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, Woodyard Creek Road areas, located in Wood County, West Virginia, to provide public water service to those areas, which areas are collectively described as follows:

BEGINNING at a point in the present southerly boundary of Lubeck Public Service District having a latitude of N. 39° 12' 43" and having a longitude of W. 81° 40' 55"; thence in a southeasterly direction approximately 2.3 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 39' 07"; thence in an easterly direction approximately 4.6 miles to a point having a latitude of N. 39° 11' 13" and having a longitude of W. 81° 33' 07"; thence in a northerly direction approximately 2.5 miles to a point having a latitude of N. 39° 13' 25" and having a longitude of W. 81° 33' 07"; thence in a northwesterly direction approximately 2.15 miles to a point in the present boundary of Lubeck Public Service District having a latitude of N. 39° 14' 24" and a longitude of W. 81° 35'; thence with the present boundary line of Lubeck Public Service District the following three courses: W. approximately 1.73 miles to a point having a latitude of N. 39° 14' 24" and a longitude of W. 81° 36' 58"; thence southwest approximately 2.9 miles to a point having a latitude of N. 39° 12' 43" and a longitude of W. 81° 38' 58"; thence W. approximately 1.80 miles to the place of beginning.

All persons residing in, or owning, or having any interest in property in said areas may appear at the aforesaid time and place and be heard for and against said enlargement.

Jamie Six, Clerk
Wood County Commission

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

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

IN RE: THE COUNTY COMMISSION OF WOOD COUNTY APPROVED THE ENLARGEMENT OF THE LUBECK PUBLIC SERVICE DISTRICT

as the same appears of record in my said Office in COURT ORDER BOOK NO. 51, Page 72

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 6th day of February, 1990

JAMIE SIX

CLERK WOOD COUNTY COMMISSION,

By: _____

Pauline Eaton

Deputy

ENTERED

O.B. 88-6 Page _____

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
10-25-88

Entered: October 5, 1988

CASE NO. 88-404-W-PC

WOOD COUNTY COMMISSION,
Parkersburg, Wood County.

Petition for permission to enlarge boundaries
of Lubeck Public Service District.

RECOMMENDED DECISION

On June 16, 1988, the Wood County Commission adopted an order to enlarge the boundaries of Lubeck Public Service District to include areas commonly known as Lost Pavement, Missouri Run, Hope Hill, Homewood Road, and Woodyard Creek Road, all of which are located in Wood County. The purpose of this expansion of the Lubeck Public Service District boundaries was to ultimately provide water service to those areas as a part of a future project to be undertaken by that District.

In accordance with the provisions of West Virginia Code §16-13A-2, the order of the Wood County Commission was submitted for the Commission's consideration and approval. In accordance with the provisions of that statute, the Public Service Commission is required to conduct a public hearing in the affected County prior to entering a decision which either approves, modifies or disapproves the proposed Public Service District boundary modifications.

By Order entered on August 3, 1988, hearings in these matters were scheduled to commence in the Judge's Chambers, City Building, 2nd and Avery Streets, Parkersburg, West Virginia, on Tuesday, September 13, 1988, beginning at 10:00 a.m., EDST. The purpose of this hearing was to receive public testimony and to receive additional evidence to determine if the order of the Wood County Commission is in the public interest.

The August 3, 1988 Order required the Wood County Commission to publish a copy of the Commission's Order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Wood County. On August 30, 1988, the Wood County Commission submitted an affidavit of publication verifying that the required public notice was provided by publication on August 19, 1988 in The Parkersburg News, a newspaper published and of general circulation in Wood County.

The hearing commenced as scheduled. The Wood County Commission and the Lubeck Public Service District were represented by Lawrence M. Ronning, and the Commission's Staff was represented by Ann Rodak of the Legal Division.

DISCUSSION

The hearing was well attended by members of the public. The 53 persons in attendance signed a sheet which noted their attendance and indicated whether they were in protest or in support of the proposed boundary expansion. All persons in attendance indicated that they supported the project, except two persons who did not indicate whether they either supported or protested the described boundary expansion.

The Lubeck Public Service District and the Wood County Commission first made statements on the record describing the rationale behind the proposed boundary expansion. Staff then went on record to voice its support for the proposed boundary expansion. Thereafter, members of the public were provided the opportunity to appear and make statements on the record either in support of or against the proposed boundary expansion.

James Cox, the District Manager for Lubeck Public Service District, generally described the territories covered by the proposed boundary expansion and the District's plans for providing water service to those territories. As shown on the map identified as Exhibit 1, the territories in question lie beyond the municipal boundaries of the City of Parkersburg, and they are not currently within the boundaries of any public service district. Both Lubeck Public Service District and Mineral Wells Public Service District have facilities and territories which are directly adjacent to the territories included in the proposed expansion. (Tr., pp. 10-12; Lubeck Exhibit No. 1).

The residents in these territories do not currently have access to a public water supply, and many must transport bottled water or take other measures to meet their water supply needs. These customers have repeatedly approached the City of Parkersburg, Mineral Wells Public Service District and Lubeck Public Service District in an effort to obtain public water to these territories, but to date they have been unable to secure public water from any of the adjacent public utilities. (Tr., pp. 29-35).

As described by Mr. Cox, Lubeck Public Service District is currently unable to extend its facilities by ordinary extensions to serve these territories, and it must upgrade its facilities and add a new treatment plant to be able to serve these customers. These residents have petitioned Lubeck Public Service District for water service, and Lubeck is in the process of performing engineering feasibility studies to determine how water service can best be extended to these territories. (Tr., pp. 6-10).

The Public Service Commission previously approved an engineering contract for the performance of feasibility studies to evaluate the growth and expansion of the Lubeck Public Service District to serve these territories. (Case No. 88-042-W-PC).

Based upon its initial evaluation, Lubeck Public Service District believes that it can extend service throughout these territories as part of a project to upgrade its system and add a new treatment plant to serve its existing facilities as well as the new territories. The District hopes to secure available grant money and low interest loans to finance

the construction of this contemplated project. It is ultimately hoped that service can be extended to these customers to provide quality service at reasonable rates. If everything goes according to schedule, Lubeck Public Service District hopes to submit a proposed project for the Commission's review and consideration as early as 1989. The Mid-Ohio Valley Regional Council and the Wood County Commission have evaluated the ability of both Lubeck Public Service District and Mineral Wells Public Service District to serve these territories, and they have concluded that the plan proposed by Lubeck Public Service District provides the most reasonable alternative for providing much needed water service to these territories. (Tr., pp. 11, 14-15).

Robert L. Skiles, Chief Utilities Manager for the Public Service District Division of the Public Service Commission, testified that Staff had reviewed the proposed boundary expansion and is in support of the enlargement of Lubeck Public Service District's boundaries. During its initial review of the filing, Staff was of the opinion that the proposed boundary expansion should be approved unless Mineral Wells Public Service District provided evidence that it could provide water service to the proposed area of expansion in a more feasible manner than the Lubeck Public Service District. Since Mineral Wells Public Service District had neither submitted a plan for Staff consideration nor appeared at the hearing in opposition to the expansion, Staff believed that it was best for the District to proceed with the expansion of its boundaries and the development of an acceptable project to serve the territory. The Staff believed that the District was taking reasonable measures to evaluate available alternatives for serving the territory, and the approval of the proposed boundary expansion was seen as the first step in providing safe, adequate and reasonably priced water service to these territories. (Tr., pp. 19-22).

Public statements in support of the proposed boundary expansion and the future development of the public water system in these territories were provided by Dale Sole, James E. Smith, David Van Kirk and Betty Bower. All of these customers related the residents' longstanding desire to obtain public water service to meet the needs of the territory, and the approval of the boundary expansion was seen as the first significant step towards securing adequate water service. The residents have been trying to obtain appropriate water service to this territory for over 15 years, and the residents had wide spread support for the development of water service to these territories by Lubeck Public Service District. (Tr., pp. 28-35).

Upon review of all of the above, the Administrative Law Judge is of the opinion that the July 7, 1988 Order of the Wood County Commission to enlarge the boundaries of Lubeck Public Service District is reasonable and appropriate and is consistent with the public interest. Therefore, the proposed boundary expansion shall be approved by this order. The proposed enlargement of the Lubeck Public Service District boundaries to include the territories of Lost Pavement, Missouri Run, Hope Hill, Homewood Road and Woodyard Creek Road appears to represent the initial step in securing a much needed public water supply to serve these territories.

While the residents of these areas are eager to get water service in this territory as soon as possible, the Administrative Law Judge notes that the Commission's approval of the described enlargement to Lubeck Public Service District's boundaries shall in no way constitute prior approval of any proposed project to serve these territories which is subsequently submitted by Lubeck Public Service District. When submitted, such a project would be reviewed on its own merits to insure that the described service and facilities were properly designed, the project is supported by adequate financing, rates and charges, and the project is consistent with the public interest.

Even though a specific project has yet to be submitted and reviewed, it is reasonable to grant the proposed boundary expansion at this time so that an acceptable project can be developed by Lubeck Public Service District as soon as possible to satisfy the public needs throughout these territories. If, for some reason, the contemplated project does not proceed to construction in a timely manner, and the approved expansion of Lubeck Public Service District's boundaries proves to be a hindrance to the development of alternate public water supplies to serve these territories, the Wood County Commission and the Public Service Commission would have to take appropriate steps to subsequently modify Lubeck Public Service District's boundaries as necessary to promote the development of alternate water projects.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

1. The Wood County Commission's order proposes to expand the boundaries of Lubeck Public Service District to include certain unincorporated territories adjacent to Lubeck Public Service District which currently have no source of water supply. (July 3, 1988 Application and attachments).

2. Lubeck Public Service District is in the process of evaluating a proposed project to include the expansion of service into these designated territories in conjunction with a project to expand the District's capacity and upgrade its facilities to meet the needs of existing and future customers. Lubeck Public Service District intends to seek available funding and file for a certificate of convenience and necessity from the Commission for such a project as soon as possible, hopefully as early as 1989. (Tr., pp. 11, 14-15).

3. Based upon preliminary estimates, it is anticipated that Lubeck Public Service District can provide quality water service at reasonable rates to these areas, and an appropriate project can be submitted for the Commission's review and approval. (Tr., pp. 11, 14-15).

4. Mineral Wells Public Service District, which is another water utility which serves adjacent territories, has not submitted an alternate proposal for serving the territory in question, and it did not appear in opposition to the proposed expansion of boundaries by Lubeck Public Service District. (Tr., pp. 10-12).

5. The general public in the affected territories supports the expansion of Lubeck Public Service District's boundaries. (Tr., pp. 28-35).

6. The Staff of the Public Service Commission supported the proposed boundary expansion, and believed the District was taking reasonable measures to evaluate available alternatives for serving the territory. (Tr., pp. 19-22).

CONCLUSION OF LAW

Upon consideration of all of the above, the Administrative Law Judge is of the opinion that the July 7, 1988 Order of the Wood County Commission to enlarge the boundaries of Lubeck Public Service District is reasonable and appropriate and consistent with the public interest. This approval shall in no manner constitute any prior approval for any project which is subsequently designed to serve these territories, and such a project, when developed, must be submitted to the Commission and reviewed on its own merits.

ORDER

IT IS, THEREFORE, ORDERED that the July 7, 1988 Order of the Wood County Commission to enlarge the boundaries of Lubeck Public Service District to include the territories of Lost Pavement, Missouri Run, Hope Hill, Homewood Road, and Woodyard Creek Road, is hereby approved. Any project which is subsequently developed to serve this territory shall be submitted to the Commission for review and approval on its own merits.

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 F. Williams

Robert F. Williams
Administrative Law Judge

RFW:jas

ORDERS-Wood County Commission, West Virginia

JANUARY

Term,

MONDAY, MARCH 17, 1997
TWENTY-SIXTH Day

MARCH 19 97

OFFICE OF THE CLERK OF THE COUNTY COMMISSION, WOOD COUNTY, WEST VIRGINIA

IN RE: ENLARGEMENT AND RE-ADJUSTMENT OF THE BOUNDARIES OF LUBECK PUBLIC SERVICE DISTRICT.
O R D E R

This 17th day of March, 1997, came Lubeck Public Service District and filed with the Clerk of the County Commission of Wood County, West Virginia, its Petition to enlarge and re-adjust the boundaries of said District; and the said Clerk presented such Petition to said County Commission at its regular meeting on this date, which Petition is ordered filed.

The County Commission, having considered the Petition and the testimony of witnesses in support thereof, finds that the facts contained in the Petition are true and that it is necessary, feasible and proper to enlarge the District to include the additional area of 53.9 square miles and to exclude 0.63 square mile to be included in the Mineral Wells District Territory; and the County Commission proposes inclusion of 53.9 square miles and exclusion of 0.63 square miles and does fix the 10th day of April, 1997, at 10:00 o'clock, A. M., at the office of the Wood County Commission in the Courthouse at Third and Market Streets, Parkersburg, West Virginia, as the time and place for a hearing on said Petition and proposal. Notice shall be published and posted as required by law.

(SEE PHOTOSTAT BOOK 44N, PAGE 77. FOR COPY OF PETITION, EXHIBIT A AND MAP IN ITS ENTIRETY)

ENTER:
COUNTY COMMISSION OF WOOD COUNTY
BY: s/ Holmes R. Shaver
Its: President

There appearing no further business to claim the attention of this Commission, it is hereby ordered that this Commission, do now adjourn to meet in Regular Session, Thursday, March 20, 1997, at 9:00 o'clock A. M. and meeting in Special Session, Wednesday, March 19, 1997, at 9:00 o'clock A. M., in regard to the preparation of the Budget for Fiscal Year 1997/1998.


President

JANUARY TERM

WEDNESDAY, MARCH 19, 1997
TWENTY-SEVENTH DAY

MARCH 1997

At a Special Session of the County Commission, continued and held for the County of Wood, at the Courthouse thereof, Wednesday, March 19, 1997, Present, Holmes R. Shaver, President of said Commission, and David A. Couch and Robert K. Tebay, Commissioners.

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

I, JAMIE SIX, Clerk of the County Commission in and for the County of Wood and State of West Virginia, having a Seal, and the Officer in whose custody the files, books and records of said Office are required by laws of said State to be kept, do hereby certify that the attached and foregoing writing is a full, true and complete transcript and copy of IN RE: ENLARGEMENT AND RE-ADJUSTMENT
OF THE BOUNDARIES OF LUBECK PUBLIC SERVICE DISTRICT

as the same appears of record in my said Office in COURT ORDER BOOK 60, Page 80

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of said Office, at the City of Parkersburg, County of Wood and State of West Virginia, this the 20th day of MARCH, 1997

JAMIE SIX

CLERK WOOD COUNTY COMMISSION

By: Brenda Lambert

Deputy

✓ IN RE: A RESOLUTION AND ORDER ENLARGING AND RE-ADJUSTING THE BOUNDARIES OF LUBECK PUBLIC SERVICE DISTRICT
IN WOOD COUNTY, WEST VIRGINIA

WHEREAS, the Wood County Commission did heretofore by order entered on March 17, 1997, fix the 10th day of April, 1997, as a date for a public hearing on the enlargement and re-adjustment of the boundaries of Lubeck Public Service District, and notice of said hearing was published and posted as required by Article 13-A, Chapter 16 of the West Virginia Code, and in said notice it was provided that the meeting is open to the public and

WHEREAS, the Wood County Commission proceeded to hold said public hearing on the 10th day of April, 1997, at 10:00 o'clock A.M., at which hearing the Commission receiving neither written protest nor oral protest to said enlargement or boundary re-adjustment, and all persons present favoring said enlargement and re-adjustment,

NOW THEREFORE BE IT RESOLVED AND ORDERED that the affidavits of The Parkersburg News and Parkersburg Sentinel of the publication of the notice of public hearing, together with the affidavits of John Kirk as to the posting within the area to be included within Lubeck Public Service District and the area to be excluded, be and the same are hereby filed.

BE IT FURTHER RESOLVED AND ORDERED that it will be conducive to the preservation of public health, comfort and convenience of the area to be included, that Lubeck Public Service District can adequately serve said area, and that said enlargement is feasible and proper to provide services to the following described area:

BEGINNING at the Ohio River near the head of Newberry Island at a point having a Latitude of N. 39° 13' 16"

and a Longitude of W. 81° 41' 22"; thence along the existing southerly boundary of the Lubeck Public Service District, S. 32° 28' E. 3,958 feet to a point having a Latitude of N. 39° 12' 43" and a Longitude of W. 81° 39' 07"; thence east 22,583 feet to a point in the westerly line of the Mineral Wells Public Service District having a Latitude of N. 39° 11' 13" and a Longitude of W. 81° 34' 20"; thence with the boundary of the Mineral Wells Public Service District, S. 36° 44' W. 53,680 feet to a point in the Wood/Jackson County line having a Latitude of N. 39° 04' 08" and a Longitude of W. 81° 41' 08"; thence with the said County line, N. 61° 01' W. 19,016 feet to a point at the confluence of Pond Creek and the Ohio River having a Latitude of N. 39° 05' 39" and a Longitude of W. 81° 44' 39"; thence with the meanders of the Ohio River approximately 10.8 miles to the place of beginning, containing 53.90 square miles (34,500 acres).

IT IS FURTHER RESOLVED AND ORDERED that Lubeck Public Service District cannot adequately serve the following area, that it can be adequately served by Mineral Wells Public Service District, and that said area be excluded from Lubeck Public Service District's service area, which area to be excluded is described as follows;

BEGINNING at a point in the easterly boundary the Lubeck Public Service District having a Latitude of N. 39° 12' 21" and Longitude of W. 81° 33' 15"; thence along the existing boundary of the Lubeck Public Service District, W. 6,880 feet to a point having a Latitude of N. 39° 11' 13" and a Longitude of W. 81° 33' 15"; thence W. 5,134 feet to a point having a Latitude of N. 39° 11' 13" and a Longitude of West 81° 34' 20"; thence N. 36° 44' E. 8,585 feet to the place of beginning, containing 0.63 square miles (405.44 acres).

IT IS FURTHER ORDERED that from and after the date of the entry of this Order said additional area of 52.9 square miles (34,500 acres) shall be a part of Lubeck Public Service District, and that the 0.63 square mile (405.44 acres) shall be excluded from Lubeck Public Service District's service area.

BE IT FURTHER ORDERED that within ten (10) days after the entry of this Order a certified copy thereof be filed for review and approval with the Public Service Commission of West Virginia as required by Article 13-A, Chapter 16, of the West Virginia Code.

ENTERED this 10th day of April, 1997.

s/ Holmes R. Shaver
Holmes R. Shaver, Commissioner President
s/ Robert K. Tebay
Robert K. Tebay, Commissioner
DAvid A. Couch, Commissioner, Absent

Order Book 60

Page 92

ENTERED

OR 97P Page

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
9-22-97

Entered: September 2, 1997

CASE NO. 97-0297-PSWD-PC

WOOD COUNTY COMMISSION

Petition for consent and approval
for enlargement of the boundaries of
the Mineral Wells Public Service District.

CASE NO. 97-0483-PSWD-PC

WOOD COUNTY COMMISSION

Petition for consent and approval to
enlarge and readjust the boundaries
of Lubeck Public Service District.

RECOMMENDED DECISION

Case No. 97-0297-PSWD-PC

On March 19, 1997, the Wood County Commission filed a petition seeking Commission approval for the enlargement of the boundaries of the Mineral Wells Public Service District. Such enlargement would incorporate areas in Steele, Slate and Tygart Magisterial Districts of Wood County.

Case No. 97-0483-PSWD-PC

On April 25, 1997, the Wood County Commission filed a petition seeking Commission approval to enlarge and readjust the boundaries of the Lubeck Public Service District.

By Order dated June 6, 1997, Case Nos. 97-0483-PSWD-PC and 97-0297-PSWD-PC were consolidated and referred to the Division of Administrative Law Judges for a decision to be rendered on or before October 15, 1997.

In Final Joint Memoranda filed in these cases on May 22 and June 3, 1997, Staff Attorney J. Joseph Watkins, Esquire, indicated that, in both cases, Staff recommended approval of the Wood County Commission's petitions and that the matters be set for hearing as required by West Virginia Code §16-13A-2.

By Order dated July 16, 1997, these matters were set for hearing to be held in the Court Room, Second Floor, City-County Complex, Parkersburg, West Virginia, on August 13, 1997. Said order also required that the Wood County Commission give notice of the date, time and place of the hearing by publishing a Notice of Hearing once in a newspaper, duly qualified by the

mm

Secretary of State, published and of general circulation in Wood County. The hearing was held as scheduled. The Wood County Commission appeared by its counsel Ellen Madeglio, Esquire. The Lubeck Public Service District appeared by its counsel Lawrence Ronning, Esquire. Commission Staff was represented by Staff Attorney J. Joseph Watkins.

No one appeared at the hearing in protest after proper publication had been made, as evidenced by the affidavit of publication dated August 4, 1997, which was filed with the Commission on August 11, 1997.

FINDINGS OF FACT

1. In Case No. 97-0297-PSWD-PC, on March 19, 1997, the Wood County Commission filed a petition seeking Commission approval for the enlargement of the boundaries of the Mineral Wells Public Service District. (See, petition).

2. In Case No. 97-0483-PSWD-PC, on April 25, 1997, the Wood County Commission filed a petition seeking Commission approval to enlarge and readjust the boundaries of Lubeck Public Service District. (See, petition).

3. In a Final Joint Staff Memorandum filed in these cases on May 22 and June 3, 1997, Staff Attorney J. Joseph Watkins advised that, in both cases, Staff recommended approval of the Wood County Commission's petitions. (See, Final Joint Staff Memorandum filed May 22, 1997 and June 3, 1997).

4. By Order dated July 16, 1997, these matters were set for hearing to be held in the Court Room, Second Floor, City-County Complex, Parkersburg, West Virginia, on August 13, 1997. Said Order also required that the Wood County Commission give notice of the hearing by publishing a Notice of Hearing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Wood County. (See, Order dated July 16, 1997).

5. The Wood County Commission published the Notice of Hearing in Wood County in accordance with the Commission's requirements. (See, affidavit of publication filed August 11, 1997).

6. At the hearing held in these cases on August 13, 1997, no one appeared in protest to the orders of the Wood County Commission. (See, Tr., p. 5).

CONCLUSION OF LAW

The Administrative Law Judge is of the opinion and finds that, since the Wood County Commission gave proper notice of the hearing to be held in these cases, and no one appeared in protest to the petitions at the hearing held on August 13, 1997, the orders of the Wood County Commission in these cases can be approved as unprotested.

ORDER

IT IS, THEREFORE, ORDERED that the order of the Wood County Commission dated April 10, 1997, filed in Case Nos. 97-0297-PSWD-PC and 97-0483-PSWD-PC, adjusting the boundaries of Mineral Wells Public Service District and Lubeck Public Service District, 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:pst

JANUARY 29, 2004

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

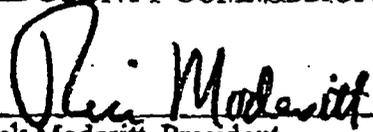
IN RE: THE COUNTY COMMISSION APPOINTED PAUL W. SMITH TO THE LUBECK PUBLIC SERVICE DISTRICT BOARD.

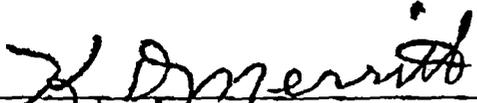
ORDER

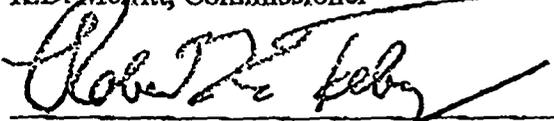
On this date, and pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments to Boards and Authorities, the County Commission of Wood County, upon a motion made by Robert K. Tebay, seconded by K.D. Merritt and made unanimous by Rick Modesitt, appointed Paul W. Smith to fill a vacancy on the Lubeck Public Service District Board. Mr. Smith's term will expire December 31, 2009.

APPROVED:

THE COUNTY COMMISSION OF WOOD COUNTY


Rick Modesitt, President


K.D. Merritt, Commissioner


Robert K. Tebay, Commissioner

A/218

COPY

file

COPY

MARCH 18, 2004

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE COUNTY COMMISSION APPOINTED ROGER DALE MARTIN
TO THE LUBECK PUBLIC SERVICE DISTRICT.

ORDER

On this date, the County Commission of Wood County, upon a motion made by Robert K. Tebay, seconded by K.D. Merritt and made unanimous by Robert K. Tebay, appointed Roger Dale Martin to the Lubeck Public Service District. Said appointment is pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments to Board and Authorities. Mr. Martin's term will expire December 31, 2007.

APPROVED:

THE COUNTY COMMISSION OF WOOD COUNTY

Rick Modesitt

Rick Modesitt, President

K.D. Merritt

K.D. Merritt, Commissioner

Robert K. Tebay

Robert K. Tebay, Commissioner

A/296

²⁰⁰⁰
JANUARY 3, 1999

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: THE COUNTY COMMISSION REAPPOINTED LEE "OX" JOHNSON
TO THE LUBECK PUBLIC SERVICE DISTRICT BOARD.

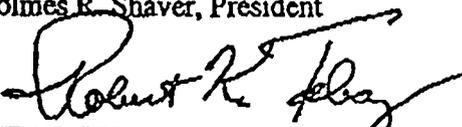
ORDER

On this date and pursuant to an Order appearing in Order Book 51, at Page 433 and bearing the date of April 1, 1991, dealing with the procedure policy for appointments to Boards and Authorities; the County Commission of Wood County, upon a motion made by Robert K. Tebay, seconded by David A. Couch and made unanimous by Holmes R. Shaver, reappointed Lee "Ox" Johnson to the Lubeck Public Service District Board. Mr. Johnson's term had expired December 31, 1999. His new term will expire on December 31, 2005.

Approved:

THE COUNTY COMMISSION OF WOOD COUNTY


Holmes R. Shaver, President


Robert K. Tebay, Commissioner


David A. Couch, Commissioner

A/1118

Book 66
Page 155

ORDERS-Wood County Commission, West Virginia

THURSDAY, JANUARY 29, 2004

JANUARY Term,

SEVENTH Day

JANUARY Year 2004

IN RE: PAUL W. SMITH—OATH OF OFFICE—LUBECK PUBLIC SERVICE DISTRICT.
STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, PAUL W. SMITH, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia and that I will faithfully and impartially discharge the duties of the office of LUBECK PUBLIC SERVICE DISTRICT, in and for Wood County, West Virginia, to the best of my skill and judgment, during my continuance in the same; SO HELP ME GOD.

s/Paul W. Smith

Subscribed and sworn to, before the County Commission of Wood County, West Virginia, this 29th day of January, 2004.

Jamie Six,

Clerk Wood County Commission

By: Cara Atkinson, Deputy

K. J. McElroy, Commissioner

Book 66

208

ORDERS-Wood County Commission, West Virginia

JANUARY Term,

TUESDAY, MARCH 16, 2004
TWENTY FIFTH Day

MARCH Year 2004

COPY & MARK, INC. SPENCER, WV REGISTERED NO. 13929-02

IN RE: ROGER DALE MARTIN—OATH OF OFFICE—LUBECK PUBLIC SERVICE DISTRICT.
STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, ROGER DALE MARTIN, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully and impartially discharge the duties of the office of LUBECK PUBLIC SERVICE DISTRICT, in and fo

Wood County, West Virginia, to the best of my skill and judgment, during my continuance in the same; SO HELP ME GOD.

s/Roger Dale Martin

Subscribed and sworn to, before the County Commission of Wood County, West Virginia, this 18th day of March, 2004.

Jamie Six,

Clerk Wood County Commission

By: Brenda Blondin, Deputy

Book 64

142

ORDERS-Wood County Commission, West Virginia

JANUARY

Term,

THURSDAY, JANUARY 6, 2000

FIRST Day

JANUARY Year 2000

Case 8-14887, Doc. 1-1, Filed 01/06/00, Page 1 of 1

IN RE: LEE JOHNSON--OATH OF OFFICE--REAPPOINTED MEMBER LUBECK PUBLIC SERVICE DISTRICT COMMISSION.

STATE OF WEST VIRGINIA

COUNTY OF WOOD TO-WIT:

I, LEE JOHNSON, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and that I will faithfully and impartially discharge the duties of the office of REAPPOINTED MEMBER LUBECK PUBLIC SERVICE DISTRICT COMMISSION, in and for Wood County, West Virginia, to the best of my skill and judgment, during my continuance in the same; SO HELP ME GOD.

s/LEE JOHNSON

Subscribed and sworn to, before the County Commission of Wood County, West Virginia, this 6TH day of JANUARY, 2000.

Jamie Six,
Clerk Wood County Commission
By: RUTH A. MCBRIDE, Deputy*

RULES OF PROCEDURE

1.5

LUBECK PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

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

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

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

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

ARTICLE II

PURPOSE

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

ARTICLE III

MEMBERSHIP

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

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

Section 3. The District shall provide to the Public Service Commission of West Virginia, within 30 days of the appointment, the following information: the new board member’s name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board, and such other information required under the Act.

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

Section 5. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the District, nor shall a former board member be hired by the District in any capacity within a minimum of 12 months after such board member’s term has expired or after such board member has resigned from the Board.

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

Section 7. The members of the Board are not personally liable or responsible for any obligations of the District or the Board but are answerable only for willful misconduct in the performance of their duties.

ARTICLE IV

MEETINGS OF THE BOARD

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

Section 2. At any meeting of the Board, a majority of the members of the Board shall constitute a quorum. Each member of the Board shall have one vote at any meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise waived, notice to members of regular meetings shall be by letter or telephone. Unless otherwise waived, notice to members of each special meeting shall be by letter or telephone not less than 72 hours before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted at such meeting, and no business other than that stated in the notice shall be transacted at such special meeting.

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

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

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

<u>News Media</u>	<u>Fax Number</u>
The Parkersburg News and The Parkersburg Sentinel	(304) 485-5122
WXIL	(304) 424-6955
WNUS	(304) 295-4389
WTAP	(304) 422-3920

A notice shall be considered distributed to a news medium when it has been faxed to such news medium at the fax number listed above. In January of each year after the adoption of these Rules of Procedure, the Board shall review the above list and shall amend such list as needed, in the opinion of the Board, to reflect properly all the newspapers and other news media that customarily cover news of the area served by the Board. In addition, a copy of the agenda for each regularly scheduled meeting shall also be distributed to the news media by the Secretary not less than 72 hours before such regular meeting is to be held.

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

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

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

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

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

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

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

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

Rule No. 6. No Actions by Reference. Except as otherwise expressly provided by law, the Board may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting to understand what is being deliberated,

voted or acted upon. However, this rule does not prohibit the Board from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting. The Board may not vote by secret or written ballot.

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

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

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

ARTICLE V

OFFICERS

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

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

serve until the next annual organizational meeting of the Board when their successors shall be elected as hereinabove provided.

ARTICLE VI

DUTIES OF OFFICERS

Section 1. When present, the Chairperson shall preside as Chairperson at all meetings of the Board. The Chairperson shall, together with the Secretary, sign the minutes of all meetings at which the Chairperson shall preside. The Chairperson shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon the Chairperson by the Board, by these Rules of Procedure, or prescribed by law. The Chairperson shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements, or other documents necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. If the Chairperson is absent from any meeting, the remaining members of the Board shall select a temporary chairperson.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. Duplicate records shall be filed with the County Commission and shall include the minutes of all Board meetings. The Secretary shall, together with the Chairperson, sign the minutes of the meetings at which the Secretary is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other documents and papers of the Board. The Secretary shall also perform such other duties as may be required of the Secretary by law or as may be conferred upon the Secretary from time to time by the members of the Board.

Section 4. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through the Treasurer and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. The Treasurer shall keep and preserve all financial records of the District for 10 years and shall at all times have such records readily available for public inspection. At the end of the Treasurer's term of office, the Treasurer shall promptly deliver all financial records of the District to his successor in office. The Treasurer shall also perform such other duties as may be required of the Treasurer by law or as may be conferred

upon the Treasurer from time to time by the members of the Board. The Treasurer shall furnish bond in an amount to be fixed by the Board for the use and benefit of the District.

Section 5. No money may be paid out by the District except upon an order signed by the Chairperson and Secretary, or such other person or persons authorized by the Chairperson or the Secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the Board.

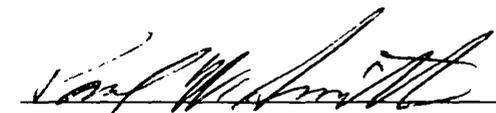
Section 6. The members and officers of the Board shall make available to the County Commission, at all times, all of its books and records pertaining to the District's operation, finances and affairs, for inspection and audit.

ARTICLE VII

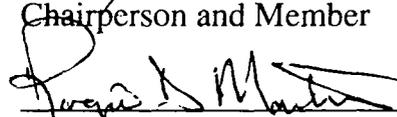
AMENDMENTS TO RULES OF PROCEDURE

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

Adopted this 26th day of May, 2005.



Chairperson and Member



Member

Member

CERTIFICATION

Certified a true copy of the Rules of Procedure duly adopted by the Board of Lubeck Public Service District on May 26, 2005.

Dated this 17th day of June, 2005.

[SEAL]


Secretary

05/20/05
101090/00308

LUBECK PUBLIC SERVICE DISTRICT

January 13, 2005

7:00 P.M.

Lee Johnson, Chairman
 Paul W. Smith, Treasurer
 Roger D. Martin Secretary

Attending: Lee Johnson, Roger Martin, Paul Smith, Phil Postlewait, Richard Hayhurst,
 Jim Cox, Charles R. Flinn, Mike Wright, Bill Argabrite, Dewey & Ann Queen,
 Judy Boston, Virginia Sines, Marvin Bradley, and Jerry Martin.

NO. OF CUSTOMERS:	Section		Sewer	Water
	1 Lake Washington Road		311	493
	2 Lubeck		333	422
	3 Riverhill - Blenn. Heights		280	365
	4 DuPont Road		287	292
	5 Larkmead Road		109	345
	6 LMH - Homewood Road		0	281
	7 Washington Bottom		301	368
	8 New England Ridge		178	317
	9 Lubeck South		207	322
	10 Larkmead Area - Marrtown		53	323
	11 Route 68 South - Hopewell		0	218
	12 Mitchell's		50	69
	Total Customers		2109	3,815

TREASURER'S REPORT:

Revenue Fund - Wesbanco	\$48,827.84
Operations & Maintenance Fund - Wesbanco	\$3,437.28
RUS Construction Account	\$419.05
Series 1999 Sewerage Bonds Account	\$0.00
WesBanco Trust Fund	\$224,414.34
Transfer From Revenue to Operation & Maintenance Checking Account	\$102,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$9,000.00
Transfer From Revenue to Wesbanco Investment	\$5,621.48
Transfer From Revenue to Operation & Maintenance Checking Account	\$5,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$82,000.00
The following transfers were made to cover payroll since the last Board meeting:	
Transfer From Revenue to Operation & Maintenance Checking	\$5,600.00
Transfer From Revenue to WesBanco Tax Account	\$1,715.03
Transfer From Revenue to Operation & Maintenance Checking	\$13,400.00
Transfer From Revenue to WesBanco Tax Account	\$5,162.65
Transfer From Revenue to Operation & Maintenance Checking	\$13,800.00

6

BUSINESS: Prayer by Paul Smith.

FIRST ORDER OF BUSINESS:

- ✓ A) Election of officers: Moved by Paul Smith, seconded by Roger Martin that the officers for 2005 remain the same as 2004 and be as follows: Lee Johnson - Chairman, Paul Smith - Treasurer, and Roger Martin - Secretary. Passed unanimously.

- B) Moved by Roger Martin, seconded by Paul Smith that the minutes of the Board meeting of December 9, 2004 and the Special Meeting of December 22, 2004 be approved. Passed unanimously.

DISCUSSION OF DISTRICT HAPPENINGS:

It was reported what the field has been doing in the District:

- A) Installed 2 water tap since the last Board meeting. There are 2 water taps to be installed. This gives us 65 water taps for 2004. The District has installed 0 sewer taps since the last Board meeting. There are 2 sewer taps to be installed. This gives us 12 sewer taps for 2004.

- B) Working maintenance of hydrants.

- C) Replaced hydrant that had been taken out by a car on Lake Washington Road.

- D) Working on restoring yards.

- E) Replaced manhole that was installed incorrectly.

- F) Repaired electrical conduit that gas company contractor hit beside Whitman's.

- G) Did Turn offs and turn ons.

- H) Completed work orders, spotted lines, set meters.

It was reported what Bill and Rod have been working on:

December Water Pumped to System:	24,788,000 Gallons
Homewood Booster Station:	202,000 Gallons
New England Booster Station:	2,141,500 Gallons
High Water Usage and Day:	951,000 on 12/25
Low Water Usage and Day:	690,000 on 12/03

Experienced no overflows.

GENERAL BUSINESS:

- A) Moved by Roger Martin, seconded by Paul Smith that all bills be approved as reviewed by management and the Board, in addition to all fund transfers as presented. Passed unanimously.

- B) The November 2004 financial statement will be deferred to the next Board meeting.

- C) The District has received information from the Parkersburg Utility Board concerning water and sewer service to any thing from duplexes to multiple units that brings up a good question about the services to these units based upon Public Service Commission rules for water and how they are now interpreting the sewer rules for these situations. Please read the enclosed information so we can discuss it at the next meeting. Jim made mention of the fact that Lee and he had talked about the article in the newspaper about the impact of sewer rates in Vienna with the work that Parkersburg is going to have to complete. It was stated that this was why the District did not want to be tied into the Parkersburg system.

- D) In that Reynolds Company is still here with their equipment, Jim requests that the District have them rehabilitate a second water well at a cost of \$6,800. This is a savings of \$700 over having to go out and hire them when they are not in the area working as we saw from their first price. Moved by Roger Martin, seconded by Paul Smith that the District modify the contract with Reynolds for rehabilitation of Well C at a cost of \$6,800 since they are still in the area and thus saving the District \$700 over the initial well rehabilitation of Well D. Passed unanimously.

- E) Moved by Roger Martin, seconded by Paul Smith that the February 10, 2005 meeting date be changed due to Jim being out of town on this date. It is to be moved to February 11, 2005 at 7 PM. Passed unanimously.

- F) Jim reported that he had scheduled a meeting with the County Commission on December 16 and it had been canceled. Jim had again scheduled a meeting for December 23, 2004 and it was again canceled by the county commission. I asked the Board what direction they wanted me to take. Jim was instructed to get another meeting scheduled with the County Commission.

- G) Mr. Flinn was here to talk about water up his road. Mr. Flinn asked about the possibility of the District putting in the water line and then billing each of the people along the road. Jim is to talk to Chris Waldron and get back to Mr. Flinn about whether the people along the road would cooperate with this idea which would require a lien on their property until the cost was paid off.

H) Roger asked we knew anything about the proposed sewer bond situation. Jim told him that the District would need to attend a working meeting on January 28 and then the Infrastructure Council meeting on February 2. It would be at the full Council meeting that they would rule on it.

I) Lee asked whether the Public Service Commission had set up a hearing date on the District's inter company borrowing of funds. No, the District has yet to hear of a hearing date.

J) Virginia Sines asked how the water wells might be affected by the lowering of the Ohio River water level while they try and remove the barges from the dam. Jim told her that the District anticipated a small influence based upon past studies but that we really wouldn't know the full impact until it happens.

K) Meeting Adjourned.

Lee Johnson APPROVED R. J. Hart ATTESTED

LUBECK PUBLIC SERVICE DISTRICT

April 14, 2005
7:00 P.M.

Lee Johnson, Chairman
Paul W. Smith, Treasurer
Roger D. Martin Secretary

Attending: Paul Smith, Roger Martin, Jim Cox, Phil Postlewait, Richard Hayhurst, Dewey & Ann Queen, Mike Wright, Bill Argabrite, Virginia Sines, Judy Boston, John Kirk, Craig Richards-Burgess & Niple and Don Putnam-Greentree Applied Systems(software).

NO. OF CUSTOMERS:	Section		Sewer	Water
	1 Lake Washington Road		315	499
	2 Lubeck		339	428
	3 Riverhill - Blenn. Heights		276	367
	4 DuPont Road		287	293
	5 Larkmead Road		110	344
	6 LMH - Homewood Road		0	280
	7 Washington Bottom		305	374
	8 New England Ridge		177	317
	9 Lubeck South		207	320
	10 Larkmead Area - Marrtown		54	327
	11 Route 68 South - Hopewell		0	218
	12 Mitchell's		53	71
	Total Customers		2123	3,838

TREASURER'S REPORT:

Revenue Fund - Wesbanco	\$42,815.15
Operations & Maintenance Fund - Wesbanco	\$4,408.45
RUS Construction Account	\$419.05
Series 1999 Sewerage Bonds Account	\$0.00
WesBanco Trust Fund	\$263,960.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$62,500.00
Transfer From Revenue to Operation & Maintenance Checking Account (Held)	\$0.00
Transfer From Revenue to Wesbanco Investment	\$2,500.00
Transfer From Revenue to Wesbanco Investment	\$0.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$0.00
The following transfers were made to cover payroll since the last Board meeting:	
Transfer From Revenue to Operation & Maintenance Checking	\$13,600.00
Transfer From Revenue to WesBanco Tax Account	\$5,045.70
Transfer From Revenue to Operation & Maintenance Checking	\$13,500.00
Transfer From Revenue to WesBanco Tax Account	\$5,034.85
Transfer From Revenue to Operation & Maintenance Checking	\$0.00

BUSINESS: Prayer by Paul Smith.

- ✓ A) The District needs to appoint an Acting Chairman until Lee can rejoin the meetings. As has been the practice in the past, the longest serving member is appointed the Acting Chairman. This would be Paul Smith.
- B) Moved by Roger Martin, seconded by Paul Smith that the minutes of the Board meeting of March 24, 2005 be approved. Passed unanimously.

DISCUSSION OF DISTRICT HAPPENINGS:

It was reported what has been happening in the District:

- A) Installed 2 water taps since the last Board meeting. There is 1 water tap to be installed. This gives us 7 water taps for 2005 calendar year. The District has installed 0 sewer taps since the last Board meeting. There is 1 sewer tap to be installed. This gives us 1 sewer tap for 2005.
- B) Began repairing yards from leaks and taps.
- C) Did turn off and turn ons for the month.
- D) Repaired the water line leak at GE and 2 leaks on Ridgeway.
- E) Completed laying water line across Smitherman Road.
- F) Completed work orders, spotted lines, set meters, etc.

It was reported what Bill and Rod have been working on:

A) March Water Pumped to System:	24,992,000 Gallons
Homewood Booster Station:	217,000 Gallons
New England Booster Station:	2,210,500 Gallons
High Water Usage and Day:	982,000 on 03/14
Low Water Usage and Day:	669,000 on 03/09

GENERAL BUSINESS:

- A) Moved by Roger Martin, seconded by Paul Smith that all bills be approved as reviewed by management and the Board, in addition to all fund transfers as presented. Passed unanimously.

B) The District opened bids on April 7, 2005 for the water system improvements. The total costs exceeded the amount of money available for the contracts by \$472,000. The District has been working on ideas to get the project moving forward. The District has asked the Rural Utilities Services to loan us an additional \$472,000 to make up the difference. This money would be borrowed at a rate of not more than 4.625% for 40 years. However, if the District is able to close the loan before June 22, 2005 the District can take advantage of a loan rate of 4.25 % versus 4.625%. Phil and Jim have talked to the RUS and they have agreed to loan us the additional money. We need to give them three pieces of paper work:

- The bid tabulation sheet
- Engineers recommendation for bid awards
- District's recommendation of bid awards

This will need to be passed through the Public Service Commission for their blessing but it needs to be stated that this increase **will not** affect our post construction rates at all.

The awards would be:

Contract 03-1	Everett L. Harper & Son, Inc.	\$1,109,369.50
Contract 03-2	Mid-Atlantic Storage Systems, Inc.	\$ 439,500.00
Contract 03-3	Mid-Atlantic Storage Systems, Inc.	\$1,047,900.00
Contract 03-4	Geiger Brothers, Inc.	\$ 407,600.00
Contract 03-5	Moody's of Dayton	\$ 157,450.00

Change Orders totaling no more than \$65,000 for programming work, etc. at the water treatment plant.

Richard Hayhurst has looked at the bid information and agrees with the awarding of the bids and change orders to these contractors.

Moved by Roger Martin, seconded by Paul Smith that the District award the contracts as outlined above contingent upon the approvals of the Rural Utilities Service and the Public Service Commission. Passed unanimously.

C) Greentree Applied Systems was here to present the District with their information concerning changing of our billing software to their company.

D) Moved by Roger Martin, seconded by Paul Smith that the District change our Sick Leave Policy to comply with the attached policy. Policy to take effect December 15, 2005. Passed unanimously.

E) The District has received the results of the round of C-8 testing that was collected on January 21, 2005. The results show a large reduction in all but one wells. In the one well the level basically doubled.

F) The District has been looking at replacing our meter reader truck. The District has obtained pricing from the State of West Virginia's Purchasing Department and then we have gone out to a couple local dealers to get pricing on a 4 wheel drive Jeep Liberty. The following are the results:

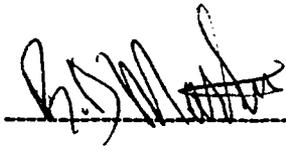
Stephen Auto Center	\$15,828.00
Wharton Auto	\$22,809.00
Pioneer Jeep	Have not received a price

The amount of trade is estimated to be about \$3,100, leaving a difference of \$12,728. Moved by Paul Smith, seconded by Roger Martin that the District purchase the Jeep Liberty from Stephens Auto group for a cost not to exceed \$12,728 provided Pioneer Jeep does not give the District a better price than Stephens. Passed unanimously.

G) Mr. Flinn's grandson was here to make sure the District is aware that he still wants water. He was asking if we had heard anything from the Public Service Commission concerning our application for a special extension agreement. Richard Hayhurst stated that the case has been established but they have yet to set any target dates.

H) Discussion ensued concerning the fact that Jim has a personal license plate on the front of his company vehicle and that there is no lettering on the vehicle that declares it to be a Lubeck PSD vehicle. Jim told the members of the audience that he would remove the plate from the front of the vehicle.

I) Meeting Adjourned.

 _____ APPROVED  _____ ATTESTED

031473alj040504.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: April 5, 2004

CASE NO. 03-1473-PWD-CN

LUBECK PUBLIC SERVICE DISTRICT,
a public utility, Washington, Wood County.
Application for a certificate of convenience
and necessity to upgrade the District's
existing water distribution system.

RECOMMENDED DECISION

On September 8, 2003, Lubeck Public Service District (District) filed a duly verified application for a certificate of convenience and necessity to construct and operate a water improvement project consisting of two components.

Component One consists of the construction of an air stripping unit at the existing water treatment plant and the construction of three water storage tanks. Construction of the air stripping unit will remove excessive carbon dioxide and reduce the corrosivity of the water to meet drinking water regulations. Construction of the water storage tanks will increase water pressure and reduce pressure fluctuations in the distribution system to provide adequate water pressure to the District's customers.

Component Two consists of the construction of the following: (1) 20,700 linear feet of water main; (2) a 160 gallon per minute (gpm) booster station; (3) a new altitude valve and valve vault at the New England Ridge tank site; (4) rehabilitation of the existing altitude valve at the Riverhill Tank site; (5) a flow control valve and valve vault on the Homewood system; (6) improvements on the Wildwood tank, including increasing the overflow and sizing; (7) demolition of both the tanks at the Riverhill tank site and construction of a new 531,000-gallon tank at the Riverhill site; and (8) drilling/development of a new 300 gpm water production well and other associated work in the Lubeck, Tygart, Steele and Harris Districts of Wood County, West Virginia. These improvements are necessary to improve the distribution, supply and storage capability of the system.

The District estimated that construction of this project will cost approximately \$3,541,000. The project will be funded by a loan from the West Virginia Infrastructure and Jobs Development Council in the amount

of \$1,573,000, at an approximate interest rate of 3% for a term of twenty years, and a loan from the West Virginia Water Development Authority in the amount of \$1,968,000, at an approximate interest rate of 5% for a term of forty years. The District requested increased rates and charges to become effective upon completion of this construction in order to pay the debt service required by these project loans. Additionally, the District is requesting an immediate increase in rates and charges to become effective upon the conclusion of this case in order to cover the District's current cost of service, not including the expected project costs.

This application was filed with the Commission for pre-filing notice on July 28, 2003. On September 8, 2003, the District filed a duly executed Affidavit of Publication demonstrating publication for public legal notice of the intent to file this application on August 2 and 9, 2003, in The Parkersburg News, a daily newspaper, duly qualified by the Secretary of State, published and of general circulation in Wood County, West Virginia.

The District's customers are all billed under the same rates. There is no distinction between residential, commercial, industrial, public authority or any other customer classification. The District has no resale customers. The initial rate increase requested by the District in this application is approximately 35%. The second, or post-construction, rate increase is approximately 21%. The combined effect of both increases is approximately 64%, when compared to current rates. The requested rates and charges are only proposals and may be increased, decreased or left unchanged at the conclusion of this proceeding.

By an Amended Notice of Filing entered by the Public Service Commission on September 22, 2003, the District was required to give public legal notice of this application by causing publication of said Notice of Filing once in a newspaper duly qualified by the Secretary of State, published and of general circulation in Wood County, West Virginia, and to make due return to the Commission of proper certification of publication immediately thereafter. The Notice of Filing contained both sets of increased rates and charges requested by the District and made provision for timely intervention, protest or objection to this application.

Pursuant to public notice of this application, numerous letters of protest were received by the Public Service Commission and filed in this case file. Many Protestants requested an evening hearing to accommodate their usual schedule.

By a Commission Referral Order entered October 23, 2003, this certificate case was referred to the Division of Administrative Law Judges for further proceedings with a decision due date of April 5, 2004.

On October 31, 2003, and December 10, 2003, letters requesting to intervene in this proceeding were filed by John Penczak and Dan Casto, respectively. Mr. Penczak stated that the District had failed to complete previous projects, overstated water consumption and mismanaged operating expenditures. He also believes that the requested increased rates will be burdensome to future generations and senior citizens and

will reduce property values. His request to intervene was well-taken and would be granted. Mr. Casto's request to intervene was not supported by any explanation, grounds or justification as required by Rule 12.6.a. of the Commission's Rules of Practice and Procedure, and, therefore, would be denied. Mr. Casto was encouraged to contact Mr. Penczak and coordinate any questions or evidence he may wish to present with Mr. Penczak.

By a Procedural Order issued January 14, 2004, this certificate case was scheduled for hearing to be held at 1:30 p.m. and 6:30 p.m., on Tuesday, February 17, 2004, in Parkersburg, Wood County, West Virginia. This Procedural Order also addressed publication for public legal notice, a procedural time frame and the two requests to intervene.

On January 23, 2004, William T. Argabrite, a customer of the Lubeck Public Service District, filed an additional Petition for Leave to Intervene in this matter. The Petitioner stated that he intended to question Public Service Commission Staff, the District's management and other witnesses concerning the application of state law and the financial analysis of the District's operations. The Petitioner did not specify why his interests would not be represented by the current parties and the customer-intervenor, John Penczak. However, by a Procedural Order issued February 3, 2004, Mr. Argabrite was granted Intervenor status.

On February 6, 2004, Commission Staff filed its Final Joint Staff Memorandum and Report in this matter. Staff recommended approval of the District's application for a certificate of convenience and necessity for this proposed construction and increased rates and charges required to support this project.

On February 9, 2004, the Wood County Commission filed a letter stating that legal counsel for residents of the District had made a request that the Wood County Commission ask for an official continuance of the hearing scheduled in this matter. The attorney had apparently requested a continuance of three (3) months. Also, on this date a Petition for Leave to Intervene was filed by Donald W. Auch, III, a customer of the District.

On February 11, 2004, thirty-seven additional Petitions for Leave to Intervene were filed in this matter. These petitions were essentially identical to the petition filed by Mr. Auch on February 9, 2004, and were forwarded to the Commission by attorney Justin L. Hardman. Also on this date, Mr. Hardman filed, by telefacsimile, a formal Motion to Continue on behalf of John Penczak, an intervenor in this case. In support of his motion, Mr. Penczak stated that, for a variety of reasons, he has had insufficient time to prepare for hearing.

By a Procedural Order entered February 11, 2004, the motion to continue the hearing was denied. The statutory deadline in this certificate did not allow sufficient time for a continuance. Additionally, the petitions to intervene filed on February 9 and 11, 2004, were denied.

On February 17, 2004, this matter was convened for hearing as previously scheduled in Parkersburg, Wood County, West Virginia, with all parties in attendance. The Applicant, Lubeck Public Service District,

was present in the persons of its Board and was represented by its attorneys Christopher Callas and Stephanie Mullet. The Intervenor, John Penczak and William T. Argabrite, were present and represented by their attorney, Justin L. Hardman. The Staff of the Public Service Commission was present and represented by Staff Attorney Ron Robertson. Numerous customer/Protestants appeared and made statements as well. At the conclusion of seven (7) hours of testimony, the parties waived additional proceedings and the preparation and filing of post-hearing briefs. An accurate transcript of this proceeding was filed on March 5, 2004.

On February 18, 2004, Sharon B. Rutter, a customer of Lubeck Public Service District, filed a Petition for Leave to Intervene in this matter. This petition was presented on the preprinted form used by many of the previous intervention petitioners. For the reasons cited in the Procedural Order previously entered in this matter on February 11, 2004, Ms. Rutter's petition to intervene will be denied. The interests of all prospective customer/intervenors were well served at hearing by Mr. Penczak, Mr. Argabrite and their attorney, Mr. Hardman.

On February 19, 2004, the Applicant filed a copy of a letter from Jack L. Berry, a real estate developer strongly in favor of the project. This letter had previously been received into evidence at hearing.

On February 20, 2004, a Procedural Order was entered which approved a post-hearing request by the Intervenor to establish a briefing schedule. Under that order, briefs were due by March 12, 2004, and reply briefs were due by March 19, 2004. No party was required to file a brief or reply brief.

On March 10, 2004, the Applicant filed a letter of conditions from the Rural Utilities Service for an alternative loan to fund this proposed project. The loan amount is \$2,068,300, or approximately \$100,000 more than the Water Development Authority loan it replaces. The additional amount represents RUS' estimate of construction period interest, a budget component not required with the WDA funding. The RUS loan will bear a reduced interest rate of 4.625% for a term of forty (40) years. The inclusion of this loan will result in a reduction of the post-construction rate increase.

On March 12, 2004, Commission Staff filed a Further Final Joint Staff Memorandum in this matter. In light of the RUS loan and its revision of the project funding package, Staff submitted revised Staff-Recommended Post-Construction Rates and a revised cost flow statement for this project. Staff's revised rates resulted in a rate reduction in the first rate block when compared to Staff's previous rates. Staff recommended adoption of its revised Post-Construction Rates and revised cash flow statement.

Also, on March 12, 2004, the Applicant filed a letter stating that it was not filing an initial brief in this matter, but reserved the right to file a reply brief. Additionally, the District had reviewed Staff's revised Post-Construction Rates and concurred in the adoption of those rates. Submitted with this letter was an amended Applicant's Exhibit No. 5, the rate comparison chart, revised to reflect Staff's newly recommended Post-Construction Rates.

On March 12, 2004, the Intervenor, William T. Argabrite, submitted a Post-Hearing Brief in this matter.

On March 16, 2004, the Applicant filed a letter as an informal reply brief in this matter.

On March 19, 2004, attorney Justin L. Hardman filed a Notice of Withdrawal as counsel for the Intervenor, John Penczak.

On March 30, 2004, the Applicant filed a copy of a Memorandum from the RUS officially committing to the loan previously offered to the District. This document confirmed the letter of conditions from RUS previously filed in this matter.

EVIDENCE

At hearing, statements of protest, objection or support for this project were taken first. Jerry Martin, a resident of Washington, West Virginia, stated that he had a separate formal complaint pending against the District for not filing certain financial reports as required in a previous case. (Tr. pp. 12-13). Lee Sylvester, a resident of Washington, West Virginia, stated that the District's bookkeeping system had been consistently identified as a problem by Commission Staff, but had not been updated by the District. (Tr. pp. 13-14). Don Vaughn also complained about the District Board members, salaries and benefits, bookkeeping procedures and the unavailability of important information. (Tr. pp. 15, 26). William Wilson stated that the Public Service Commission did not enforce its previous decisions concerning the District and he believed his water and sewer bills are unusually high. (Tr. p. 16). Pam Weir stated that it made no sense to put the District's new well in the same field as its current wells if there is a raw water quality problem. (Tr. p. 17). Charlotte Stewart believes that the District continues to waste customer money. (Tr., p. 18). Earl McConnell stated that he has lived in the area for 57 years and was forced to accept water service he didn't need. Now the water is contaminated with C-8 and he won't drink it. (Tr. pp. 18-19).

Delbert Monday, Bill Sands, Dwight Yoho and James Carvell believe the District does not manage its vehicles in an efficient manner and makes poor decisions regarding those vehicles. (Tr. pp. 19-21).

Debbie Murphy stated that the District's customer base was aging and might not be able to support the District if costs weren't controlled. (Tr. p. 21). Mike Gright stated that a previously authorized construction project by the District came in well under budget and he was concerned as to where the balance of the money went. (Tr. p. 22). Lee Sylvester rose again to complain that the use of 4,500 gallons as an average usage was unrealistic, the overall cost of water and sewer service was too high and the District Manager's salary of \$76,000 per year was excessive. (Tr. pp. 22-23). Mike Thomas stated that this was generally a period of economic cutbacks, but the District had proposed no such cutbacks. (Tr. p. 24). Ilene Montgomery complained about the District paying for legal representation. (Tr. p. 25). Warren Walker stated that he was retired and receives four or five percent income

increases and he doesn't believe the District deserves a sixty-four percent increase. (Tr. p. 26). John Crum believes the District could save money by sharing resources with the Parkersburg Utility Department. (Tr., p. 27). Don Miller stated that, from his personal experience, many utility projects can be completed well under the construction estimate. (Tr., p. 29).

Phil Lindsey stated that his service area has a pressure or supply problem, which may be improved by this project. (Tr. pp. 29-30). Jack Bohan believes the requested rate increase should be reduced. (Tr. p. 31). Virginia Sines does not want rates to increase. (Tr. p. 32). Judy Boston requested that the Commission consider the high volume of opposition in this case. She doesn't believe that all the new water tanks are needed at one time and that this reflects poor management. The proposed minimum bill is also too low. (Tr. pp. 32-33). This concluded the initial round of public statements.

The Applicant, Lubeck Public Service District, called its Manager, James M. Cox, as its first witness. Mr. Cox has worked for the District for approximately 18 years. He has general day-to-day operating and oversight authority and reports to the three-member Board. The District has both a water operation and a sewer operation, which are separated for accounting and regulatory purposes. The District has 3,700 water customers and 2,000 sewer customers. The water system draws raw water from six wells and uses a treatment facility built in 1990 or 1991. He then detailed the District's current storage array. The project proposed in this certificate case will develop three new storage tanks to increase pressure and supply to the higher areas of the system now suffering from periodic inadequate pressure. The project also calls for the installation of a new well and an "air stripper" to raise the PH level of the water after treatment. The new well is needed for quality purposes and redundancy during periods of well maintenance. The project will cost 3.5 million dollars, which will be borrowed for the most part. This project has been in development since June of 2000. The West Virginia Infrastructure and Jobs Development Council (WVIJDC) has agreed to provide a loan of \$1.573 million dollars, at three percent (3%) interest for twenty (20) years. The second part of the loan package will come from either the Water Development Authority (WDA) or the Rural Utilities Service (RUS). The RUS loan, if approved, is at a better rate than the WDA loan. (Tr., pp. 37-45).

The Manager, Mr. Cox, then identified and sponsored the original application filed in this case, and a supplemental filing made on September 17, 2003, as Applicant's Exhibits No. 2 and No. 3. He stated that the District's last rate increase went into effect on July 1, 1997, and that the District would have required a rate increase regardless of the proposed construction project. Pursuant to its review in this matter, Commission Staff has recommended an immediate rate increase, as well as another increased set of rates when the project is completed. The District has reviewed those Staff-recommended rates and is in agreement with them. (Tr. pp. 46-52).

Under cross-examination by Mr. Hardman, the attorney for the Intervenor, Mr. Cox stated that he had earned an Associate's degree in business, an Associate's degree in surveying and an Associate's degree in

civil engineering prior to his employment with the District. He worked for an engineering firm between 1976 and 1980. The District has fourteen (14) employees and Mr. Cox believes that he is both a "hands-on manager as well as a delegating manager." Lubeck does its own maintenance, which requires a few more employees. Mr. Cox has done no analysis as to whether the District should be subcontracting for maintenance. He believes the current system is saving money and has been in-place and working well for a long time. Employee salaries are reviewed on a yearly basis and any changes are recommended by the Manager and approved by the Board. The Board reviews the Manager's performance and salary as well. The process is formal and systematic. All employees are hourly, except the Manager. Employees receive overtime pay for overtime work. (Tr. pp. 54-60).

The Manager was then questioned about certain additions and improvements recommended by the Commission's Engineering Staff as part of a previous rate case in 1995. Those projects were discretionary and were to be funded as cash surplus allowed. One list of projects, designated DAH-1, was required by Staff if sufficient funds became available. A second list of projects, designated DAH-2, was optional. Mr. Cox then detailed which projects were actually completed and which were not. Not all projects were completed, but some of the DAH projects were picked up and re-authorized in the 1997 rate case. The projects which were not completed either did not have sufficient cash surplus funding, or were held off to be combined with other complementary installations. Construction of the steel storage building, a DAH-2 project, was funded and constructed because new vehicles were being exposed to the weather and the building "kit" became available at a bargain price. District employees built the "pre-fab" building at great savings. The materials were obtained through a bidding process. The estimated costs in the current 3.5 million dollar project are based on the engineer's professional opinion and current construction conditions. (Tr. pp. 63-77).

Mr. Cox then gave further detail on the process of obtaining funding for a certificate project and explained the functions of the various agencies involved. Once funding is located and allocated, the actual certificate application is filed with the Public Service Commission. Mr. Cox then explained that, in the 1995 tariff case, a cash flow surplus of \$217,000 was projected and should have been available for the Staff-recommended (DAH-1) projects or improvements. In reality, due to other problems experienced by the District, the projected surplus was not fully recovered. Initially, the District was required to file quarterly reports on those projects with the Public Service Commission. The District stopped filing those reports in 1999, with the approval of Staff. The original order called for a three-year reporting period. (Tr. pp. 78-85).

Under cross-examination by Commission Staff, Mr. Cox confirmed that, since the 1995 tariff case, the District's annual operating expenses have increased from \$548,064 to \$791,488. Mr. Cox believes this increase is due to increased power, chemicals and repair and replacement costs. Mr. Cox's salary is currently allocated on a 50/50 basis between the sewer operation and the water operation. The hourly employees' wages are also allocated according to actual hours worked for either water or sewer. The Board determines salaries and benefits and has two regular meetings

each month at which customers are welcome to attend. Mr. Cox confirmed that both the District and the Public Service Commission continue to get low pressure complaints from District customers living at higher elevations. This problem will be addressed by the proposed project. Both components of the proposed project are needed now and should not be postponed. Confirmation of funding from the RUS is expected in about a month. Construction of this project will take about twelve (12) months. (Tr. pp. 86-95).

On redirect examination, Mr. Cox clarified that the WVIJDC is the statewide entity that reviews funding requests for water and sewer projects and determines the available and appropriate funding sources for each project. This determination is based in part on median household income for the area to be served by the project. This project has received the most competitive funding rates available. (Tr. pp. 95-96).

On re-cross examination by Mr. Hardman, Mr. Cox confirmed that line leaks can cause pressure problems at the time of the break, but usually not on a long-term basis. Slow leaks can also persist when not discovered. The District's low pressure problems are generally in the same locations. The higher the elevation, the more persistent the problem. Mr. Cox estimates that around five percent (5%) of the District's customers are experiencing low pressure problems. The vast majority of these problems will be remedied by this project. New extensions of service can also impact pressure for existing customers. Sometimes this can be predicted and planned for. The normal customer count increase for the District is 60 to 100 new customers per year. There also is some loss of customers. (Tr. pp. 97-102).

On re-cross by the Staff Attorney, Mr. Cox confirmed that the District keeps a complaint log and that the District's responsibility to provide adequate pressure ends at the customer's water meter and is determined by the Public Service Commission's rules and regulations. (Tr. pp. 102-103).

The District then called its project engineer, Craig Richards, of Burgess & Niple, Inc., as a witness. Mr. Richards is a Registered Professional Engineer in the State of West Virginia, and all parties stipulated to his expertise in the field of engineering. Burgess & Niple has been providing engineering services and advice to Lubeck Public Service District since 1972, and has been involved in this project since its inception. A map of the District's system was identified, marked and admitted as Applicant's Exhibit No. 4. Mr. Richards stated that this project involved all four of the primary components of the Lubeck system: supply, treatment, distribution and storage. The new well is needed to increase water supply and quality. The current wells produce water with high levels of iron and manganese and low PH. The level of iron and manganese varies between the different wells and the District optimizes treatment by selecting between the wells for production requirements. These wells eventually become partially plugged by the contaminants, flow is decreased and plant supply is reduced. The District's water is acidic due to the presence of carbon dioxide in the raw water, which causes increased levels of lead and copper to be leached out of customer plumbing. The treatment plant improvements in this project will reduce

the inherent acidity of this water and reduce the presence of lead and copper at the faucet. (Tr. pp. 104-111).

The Engineer continued by pointing out that the District had roughly 90 to 100 miles of water main and operated with three distinct or separate pressure districts, defined by each area's storage characteristics. Average daily demand is 700,000 to 800,000 gallons, with a 1,500,000 maximum day demand. Storage volume should equal two days of demand. The District currently has only 1.1 to 1.2 days of storage. Increased storage is needed and storage needs to be redistributed. Residential development within the District has thrown the storage and distribution systems out of proportion. The distribution system must also be improved to allow movement of water around the system. The well field is large enough to support additional wells in the future as need arises. The new well will restore the production capacity of the treatment plant. The Engineer then detailed the improvements inside the treatment plant and explained what each would accomplish in the treatment process. He also located the new tanks on the map of the District previously marked as an exhibit and explained how each tank would supplement or improve service. Lastly, he explained that all system improvements would be constructed under one of five separate contracts. (Tr. pp. 112-122).

By agreement of counsel, Staff cross-examined the Applicant's engineer first. Mr. Richards confirmed that all planned improvements had been approved by the Department of Health and a permit had been issued. He reiterated that two days of storage was the recommended standard of the Health Department. The proposed air stripper units should reduce the District's chemical costs. The two tanks scheduled for demolition will be left in service until the new tanks are in place. The new distribution lines are required to allow the efficient movement of water around the system, but the system is still not designed for fire protection. The new well will improve operational flexibility. (Tr. pp. 123-127).

On cross-examination by the Intervenors' attorney, Mr. Richards stated that he had been involved in this project as a supervisor since its inception. He believes that the staff at Lubeck Public Service District is well-educated, qualified and easy to work with. They recognize problems quickly and are independent-minded. Most solutions are joint efforts between the District's staff and the District's engineers. Initially, any system problem is identified by District personnel who then may call in the engineers. Some problems are solved by system or operational adjustments, while others may require capital improvements which necessitate design and funding. The Engineer confirmed that Lubeck's water contains one or two parts per billion of the contaminate C-8. The EPA allowable limit for C-8 is 150 parts per billion. Consequently, the current well field is still a safe source. The District always participates in the legally required bidding process for engineering services. All construction is also appropriately bid by the District. Mr. Richards was not aware of the amount being paid to Burgess & Niple for this project. (Tr. pp. 128-135).

On redirect, Mr. Richards confirmed that the larger of the two River Hill tanks will be demolished at the start of construction and the second tank will remain in service until the new tank goes on line. He also

believes that, based on his experience and current market conditions, these project cost estimates are accurate and reasonable. (Tr. pp. 135-136).

The District called its Certified Public Accountant, Phil Postlewait, as its next witness. Mr. Postlewait has worked with the District since 1982 as its accountant of record. He developed the Rule 42 exhibit submitted by the District in this case, as well as the revised Rule 42 exhibit. The revised Rule 42 exhibit was necessary in order to calculate the interim rate increase needed by the District. Mr. Postlewait then identified and sponsored Applicant's Exhibit No. 5. The exhibit contains a rate calculation and comparison chart using the various rates proposed in this case. Staff recommended lower rate increases, both interim and post-construction, than the District had requested. However, the District Board has reviewed Staff's rates and has agreed to accept them as appropriate. The agreed rates will provide adequate debt coverage. The District will work within the limits of the available cash surplus. The District provided all requested financial data to Commission Staff during this review process. The District's accounting system will be upgraded to provide the Staff-requested twelve-month history of the accounts payable. Mr. Postlewait is an experienced utility rate accountant and believes that the Staff-recommended increased rates are fair and reasonable. (Tr. pp. 139-147).

By agreement of counsel, the Staff Attorney cross-examined the District's accountant first. Mr. Postlewait confirmed the increase in the District's operational expenses from \$550,000 in the 1995 case, to \$791,000 in the current case. The system is roughly nine years older now and requires more maintenance. Also, overall costs have increased. The District is currently operating with a cash flow deficit, although all debt payments are being made. He confirmed that the District's current accounting system records expenses on a month-to-month basis in a year-to-date journal, while Staff would prefer a full twelve-month history. He confirmed that Staff's interim rate should provide a cash flow surplus of \$162,434, which is sufficient. Debt coverage should also be sufficient. (Tr. pp. 148-152).

Under cross-examination by the Intervenor's attorney, Mr. Postlewait stated that he was in no way related, by blood or marriage, to any employee of the District. He is paid \$2,200 per month by the District as a retainer. The work on a major project like this one is billed separately at an hourly rate. He then explained that the term "coverage ratio" relates to standard bond covenants and is a requirement of the lender. The accountant did not recall if he was paid any fees, over and above his retainer, in the year 2003. The Staff Attorney interjected that he had not been so paid, according to Staff's records. The District's annual operating expenses include a component for wages, which runs around \$470,000, water and sewer combined. That amount is allocated precisely between water and sewer operations according to actual hours expended on each. These wages do not seem unusual or extraordinary in anyway. (Tr. pp. 153-160).

Under re-cross examination by the Staff Attorney, Mr. Postlewait confirmed that the District had instructed him to calculate a revised minimum bill based on 2,000 gallons of usage instead of 3,000 gallons in

order to assist the retired, single or elderly customers. He also explained what a minimum bill represented. (Tr. pp. 160-161).

After a brief recess, the evening session of hearing convened as scheduled with all parties in attendance. The session opened with additional statements of protest, objection or support.

Bennie Graham has been a District customer for 26 years and is against any increase. He is also concerned about the use of the same well field. (Tr. p. 165). Marie Cutright believes a complete audit of the District's financial and managerial practices should be conducted prior to any increase. (Tr. p. 166). Jim Tracewell is against the increase because he has had supply and pressure problems with the District's water for 27 years. (Tr. p. 167). Edward Benson is against this increase and thinks the previous increase (1997) should be rescinded as well. (Tr. p. 168). Melvina Fauley stated that she and her husband were senior citizens on a fixed income and might have to turn their water service off if this increase is granted. (Tr. p. 168).

Rick Perdue has lived in Lubeck and been a customer for 24 years. He believes employee benefits should be reduced. He also has replaced four hot water tanks in 24 years and won't drink the water. He is against the increase. (Tr. p. 169). Kenneth Cunningham is opposed to any increase. (Tr. p. 169). Linda Towner believes she has had to replace many water-using appliances because of the District's poor water quality and she wants the quality improved. She is concerned, however, about how the District uses customer funds. (Tr. p. 170). Ed Emerson believes that the need for these new water tanks is due to poor planning and that previous surplus funds should have been used to build them. (Tr. p. 171). Vickie Satow does not believe these improvements are needed and opposes the increase. (Tr. p. 172).

Judy Hartber has pressure problems at her residence, but does not believe an increase of this magnitude is justified. She buys bottled water. (Tr. p. 172). Calvin Strader is against this rate increase until the District's accounting practices change. He believes these improvements are not needed and that certain money is unaccounted for. (Tr. pp. 172-173). Jerry Martin stated that the District already has an outstanding debt of 30 million dollars. The new project will add 3 million more debt. He does not believe that it can ever be paid off. He also believes the monthly accounting fees are high. (Tr. p. 173). Kenneth Gunn believes a 64% increase reeks of poor planning by the Board. The problems did not occur overnight. He believes the accounting fees are high. He is also concerned about C-8, and the general accountability of the Board. (Tr. pp. 173-175). Roger Bush doesn't mind paying reasonable rates for water and sewer, but states that a 64% increase is too high. It could affect property values. (Tr. p. 175).

Terry Hoffman believes that she and other customers are on a runaway train. She does not understand how the original 64% increase got reduced to 39%. (Tr. p. 176). Marie Cutright was concerned about the accounting practices used to produce this audit. (Tr. p. 177). Don Vaughn believes that the District has a history of mismanagement and will mismanage this increase. (Tr. p. 178). Karl Allen stated that the District's service territory needs to be limited. He also believes the District has made

bad maintenance decisions about its vehicles, although the individual workers are fine gentlemen. (Tr. pp. 179-180). Ruthanne Boston questioned the District's past spending decisions and how this increase would be used. (Tr. p. 180). Jim Ferguson believes his billing is inaccurate and he opposes the increase. (Tr. p. 181). Rebecca Wells lives on Ball School Road within the District and can't get the District's water. The improvements in this project will allow the District to serve her elevation. She and her neighbors currently haul water. (Tr. pp. 181-182).

Commission Staff called its engineering Technical Analyst, Joseph A. Marakovits, as its first witness. Mr. Marakovits identified the Staff report prepared for this case as Staff Exhibit No. 1. He explained that the report contains an engineering review for the interim rates which are necessary for the District to continue current operations, as well as a review of the project. He then explained his role in the Staff review process and detailed certain adjustments he made to going-level expenses. He stated that chemical costs were down for the test year, but filter sludge disposal had increased. (Tr. pp. 184-188).

Mr. Marakovits also reviewed the proposed additions and improvements needed by the District. As part of his review, Mr. Marakovits determined that the District will be authorized to replace one service vehicle per year, on a seven-year cycle. Mr. Marakovits also believes the District needs to pave an access road for \$5,000, to be amortized over five years. Staff allowed money for well-monitoring controls, replacement well pumps and treatment plant modifications not included in the project. Chlorine gas is escaping from the clear well and that situation needs to be repaired. Staff also funded continuing improvement projects previously initiated, such as touch-read meter replacement. In total, Staff recommended \$147,041 in continuing average plant additions. Lubeck has a very tight water system and unaccounted-for water was only 7-1/2% for the test year, one of the lowest rates in the State. Mr. Marakovits also produced the cost allocation factors for the class cost of service study in this case. He then detailed that process. (Tr. pp. 188-197).

Mr. Marakovits also reviewed the necessity of the proposed project improvements. He described the proposed enhanced storage and the major treatment plant improvements and itemized the cost. The overall project cost per customer is \$885, which is reasonable and economically feasible. The West Virginia Office of Environmental Health Services has issued a permit for this project. Staff concurred that the District needs additional storage as well as improved pressure conditions at higher elevations. The air strippers will remove carbon dioxide from the raw water and lower the acidity. That will be a cost-effective alternative to continued chemical use, which should decrease by about 60%. Air strippers are the optimum treatment option at this time. Staff recommends approval of this proposed project. (Tr. pp. 197-204).

Under cross-examination by the Intervenors' attorney, the Staff Technical Analyst stated that he performed approximately 100 reports per year concerning water and sewer projects and other matters. He spent three weeks in preparation of this report, which was complicated. He then detailed the documentation used in this review, and the extent of the field visit. The adjustment to chemical cost was due to overbuying

in the test year, which is common. Mr. Marakovits believes the District is doing a very good job of treating its water and operating the system. He found no mismanagement. (Tr. pp. 205-211).

On redirect, Mr. Marakovits pointed out that the District is meeting all of the Health Department standards. The Health Department's recent sanitary survey of the District was very thorough. Iron in water is a taste problem, while manganese causes stains if not properly treated. Manganese causes problems with hot water tanks as well. The District's C-8 levels are well within current standards. (Tr. pp. 211-213).

Commission Staff then called Utilities Analyst Steven Kaz as its next witness. Mr. Kaz confirmed his work on the Staff report and identified the Staff Rule 42 exhibit and Class Cost of Service Study as his work product. He then explained the process of the review in this case and detailed some of the adjustments that were warranted. Payroll, benefits and taxes were adjusted to reflect current levels, as were operating expenses. Mr. Kaz stated that the District was operating with a per books cash flow deficit of approximately \$10,000, which puts the District in technical default with its bondholders. This is why Staff is recommending an immediate rate increase. The current outstanding balance of bonds is 3.4 million dollars. After this project is constructed, total outstanding bonds for the water operation will be 7 million dollars. Staff's post-construction recommended rate is driven by the additional debt. Mr. Kaz confirmed that the District's Board controls salaries and benefits and has recently switched insurance carriers to lower some of those expenses. Staff has urged the Board to reevaluate these areas. Additionally, Staff has requested the Board to adopt a more standard and useful accounting program. (Tr. pp. 214-224).

Staff is recommending an immediate rate increase of 15.8%, and a post-construction total increase of 39.2%, compared to current rates. Staff also recommended approval of its prepared tariff, Staff Exhibit No. 5. An average bill for 4,500 gallons of usage will be approximately \$29.12, post construction. Mr. Kaz recommended overall approval of this project. (Tr. pp. 224-226).

Under cross-examination by the Intervenor's attorney, Mr. Kaz stated that grant money for projects such as this one is generally based on median household income as determined by the U.S. Census. A lower median income can result in higher grant funding, if grant monies are otherwise available. Mr. Kaz prepares between four and ten financial reports per year for a wide variety of utilities. This investigation and report took the better part of three months to complete. He then explained his review process. Lubeck's wages are not out of line with other similar districts. Mr. Kaz did not look at a comparison of the managers' salaries. He also explained that the test year cash flow deficit was \$10,000, which will increase to \$40,000 at going level if no increase is granted. He described technical default as insufficient available cash to insure debt repayment. Current expenses, such as operation and maintenance costs, are paid before the debt is serviced. The interim increase will resolve that problem. The District pays 100% of the premium for health and dental insurance for its employees, which is not to say that there are not significant co-pay and deductibles paid by the employees. (Tr. pp. 228-235).

Mr. Kaz believes that the primary reason for the District's current cash flow deficit is simply due to rising overall expenses without a corresponding increase in new revenue due to growth. The revenue levels first projected in the 1995 rate case, in reality, were not realized until just this past year. This was due to the conservation of water by customers. Approximately 800 customers per month will benefit from the proposed new minimum bill based on 2,000 gallons of usage. Mr. Kaz found no indication of mismanagement during his work on this report. (Tr. pp. 236-240).

Mr. Kaz believes that the District's general bookkeeping methods are comparable to the methods used by other public service districts. He then detailed the problem the District was having producing a full twelve-month history as requested by Staff. Everything is accurate and available on a monthly basis; it's just more difficult for Staff to collect and analyze. The same problem was noted by Staff in the 1995 case. If projected revenues in this case are not realized as quickly as predicted, the District has a history of getting by on available revenue. However, a technical default could occur again. The District will be back in compliance with the bond requirements as soon as the interim rate goes into effect. (Tr. pp. 241-245).

On redirect, Mr. Kaz explained that, during the test year, the District Manager's salary was allocated 50/50 between the water and sewer operations. Staff has recommended that only \$18,000 of that salary be allocated to water in the coming year. This results in a 24% water, 76% sewer allocation, which reflects actual time expended. He also confirmed that public bondholders can file legal action to force utilities to cure bond defaults by rate increases. (Tr. pp. 245-247).

The Intervenors called James E. Smith as a witness in this matter. Mr. Smith is a 27-year Board member and Chairman of the Lubeck Public Service District. Mr. Smith stated that it was Board custom to regularly meet with its Manager twice a month, at regular Board meetings or when necessary. The Board meetings are public and last between 45 to 90 minutes. Some are much longer. The meetings convene at 7:00 p.m. to accommodate the public. Notice of each meeting is advertised and posted. A written agenda is provided and minutes kept. He then described a typical meeting. All payments by check require two signatures. The public is also allowed to raise issues of new business. The Board's accountant attends all meetings unless he is traveling or unavailable. The District has a 20-year strategic plan, which is in written form and is available to the public. (Tr. pp. 251-256).

All of the employees' performance and salaries are reviewed in writing using a prepared form. Each job duty and category is rated from 1 to 5, and increases are based on overall rating averages. Mr. Cox's salary was adjusted to its current base level four years ago when the District's sewer project was completed. At that time, the District's Assistant Manager resigned and relocated and those job responsibilities were combined with the Manager's job and the salary was increased accordingly. This resulted in a savings of around \$20,000. Mr. Cox's salary was compared to other district managers' salaries at that time as well. (Tr. pp. 256-258).

Under cross-examination by the District's attorney, Mr. Smith confirmed that he was a registered professional engineer in the State of West Virginia. He also confirmed that customer complaints are received at Board meetings and many involve people wanting the extension of water service at any cost. No new customers will be added by this project, but the District's overall ability to serve other areas will be enhanced. This project will improve service to current customers and was intended to respond to persistent customer complaints. The Board does not request rate increases without good reason. Mr. Smith pays the same rates every other customer pays. (Tr. pp. 258-260).

Under cross-examination by Commission Staff, Mr. Smith stated that customers were encouraged to attend the full Board meetings and to raise any issue that is reasonable during the call for new business. (Tr., pp. 261-262). This concluded the testimony at hearing.

DISCUSSION

The Applicant, Lubeck Public Service District, operates a combined water and sewer utility serving a large and diverse geographical area of Wood County, West Virginia. This certificate case involves only the water operation and its 3,700 customers. The District has requested an immediate increase in rates in order to meet current operating expenses and debt service and to eliminate an existing cash flow deficit. Additionally, the District has proposed construction of a broad range of additions and improvements to its production, storage, treatment and distribution system to address existing service deficiencies.

The Staff Report filed in this matter and all testimony at hearing clearly indicate that the District is currently experiencing a cash flow deficit of approximately \$10,000, which will increase to \$40,000 in the current fiscal year. Since the District's rate increase in 1995, the annual overall operational expense has increased from \$548,064 to \$791,488, without a corresponding increase in new revenue. There is no question that the District is in need of enhanced revenue from operations to offset the increase in expenses. Staff has recommended, and the District has accepted, an immediate revenue increase of approximately 15.8%.

The Protestants and Intervenors in this case are obviously well-intentioned, but have failed to produce any reliable evidence of financial mismanagement by the District. Likewise, there was no effective presentation of any realistic cost-saving measures which would mitigate against an immediate rate increase. Staff reports that the increase in annual operating expense was due to normal and expected increased costs for power, chemicals, repair and replacement items, taxes and labor costs. The District has also pointed out that its system is now seven years older and requires more maintenance. Neither the Staff Technical Analyst nor the Utilities Analyst found any mismanagement by the District. Consequently, the Staff-recommended Pre-Construction Rates filed herein on February 6, 2004, will be approved for collection and use by the District for all service provided on and after the date this Recommended Decision becomes a final order of the Commission.

The District's original application in this matter also requested Commission approval of the construction of a wide range of system additions and improvements. Due to system expansion and residential development within the District's service territory, the distribution and storage system is now inadequate and certain elevations within the District suffer supply and pressure problems. This project is a comprehensive effort to provide the required storage, improve system supply and pressure and update and improve treatment and well supply. The need for all proposed improvements was well-established by the District's Manager and Engineer. Substantial and obvious service and quality problems will be addressed by these improvements and all existing customers will benefit from these changes. Commission Staff has concurred in both the necessity and the economic feasibility of this project. The project is appropriately designed and funded and cannot be said to pose an undue hardship on the general customer base.

Although a large volume of protest was initially received in this case, that protest was not substantiated at hearing. The issues raised by the Protestants and Intervenor at hearing were either not very significant (removing air conditioning from District vehicles), or were not supported by competent testimony or reliable evidence (disproportionate salaries and benefits, poor planning and management). In fact, Commission Staff found no evidence of unusual spending or poor management and stated that the District was generally well-operated. The issue concerning the District's accounting system appears to be an inability of the District's computer software to produce a compilation of account data in a form which is convenient and useful to Commission Staff. There was no allegation that Staff did not eventually receive all of the data it requested, or that the data was in anyway inaccurate. The Intervenor were given wide leeway to cross examine all witnesses and that examination produced much testimony. However, most of that testimony simply corroborated the necessity and convenience of this project. Some of the best witnesses to the need for this project were the Protestants themselves, who repeatedly complained of periodic pressure problems, damaged appliances and the need for improved water quality. Likewise, the Intervenor Argabrite, in his post-hearing brief, continued to argue perceived procedural shortcomings and did not present any substantive interpretation of the facts or argument of law in contravention of the requested rate increase or the proposed project. For these reasons, the District's proposed project will be approved and a certificate of convenience and necessity issued.

After the Staff recommendation was received and the hearing was conducted, the Rural Utilities Services of the United States Department of Agriculture confirmed that it would provide an alternative loan for this project at better terms than the previously expected loan from the State Water Development Authority. Staff revised its recommended rates to reflect inclusion of this loan, and the District has concurred. The revised Staff-recommended Post-Construction Rates filed herein on March 12, 2004, will be approved for all service rendered on and after the date this project is certified as substantially complete by the District's Project Engineer.

FINDINGS OF FACT

1. On September 8, 2003, Lubeck Public Service District (District) filed a duly verified application for a certificate of convenience and necessity to construct and operate a water improvement project consisting of two components.

Component One consists of the construction of an air stripping unit at the existing water treatment plant and the construction of three water storage tanks. Construction of the air stripping unit will remove excessive carbon dioxide and reduce the corrosivity of the water to meet drinking water regulations. Construction of the water storage tanks will increase water pressure and reduce pressure fluctuations in the distribution system to provide adequate water pressure to the District's customers.

Component Two consists of the construction of the following: (1) 20,700 linear feet of water main; (2) a 160 gallon per minute (gpm) booster station; (3) a new altitude valve and valve vault at the New England Ridge tank site; (4) rehabilitation of the existing altitude valve at the Riverhill Tank site; (5) a flow control valve and valve vault on the Homewood system; (6) improvements on the Wildwood tank, including increasing the overflow and sizing; (7) demolition of both the tanks at the Riverhill tank site and construction of a new 531,000-gallon tank at the Riverhill site; and (8) drilling/development of a new 300 gpm water production well and other associated work in the Lubeck, Tygart, Steele and Harris Districts of Wood County, West Virginia. These improvements are necessary to improve the distribution, supply and storage capability of the system.

(See, Application filed September 8, 2003).

2. This application was filed with the Commission for pre-filing notice on July 28, 2003. On September 8, 2003, the District filed a duly executed Affidavit of Publication demonstrating publication for public legal notice of the intent to file this application on August 2 and 9, 2003, in The Parkersburg News, a daily newspaper, duly qualified by the Secretary of State, published and of general circulation in Wood County, West Virginia. (See, letter filed July 28, 2003; Affidavit of Publication filed with application).

3. The Applicant has provided public legal notice of this application and rate increase by direct mailing, posting and publication, all in accordance with the Amended Notice of Filing entered September 22, 2003, and Rule 10.3.d. of the Commission's Rules of Practice and Procedure. (See, Affidavits filed January 23, 2004).

4. Pursuant to public notice of this application, numerous letters of protest were received by the Public Service Commission and filed in this case file. Many Protestants requested an evening hearing to accommodate their usual schedule. (See, Commission case file generally).

5. As an accommodation to the Protestants, this certificate application was scheduled and convened for hearing at 1:30 and 6:30 p.m., on February 17, 2004, in Parkersburg, Wood County, West Virginia. (See, Procedural Order issued January 14, 2004).

6. Pursuant to its investigation and review in this matter, Commission Staff has recommended approval of the proposed construction contained in the application for a certificate of convenience and necessity, as well as an increase in the District's rate to become effective at the conclusion of this case and an additional increase in rates to become effective upon completion of the construction project. (See, Final Joint Staff Memorandum filed February 6, 2004).

7. Commission Staff has determined that the Lubeck Public Service District is currently operating with a cash flow deficit of \$40,000 for the present fiscal year. Staff has recommended an immediate interim increase in revenue of 15.8%, which will provide a cash flow surplus of approximately \$162,000 and adequate debt service coverage. Staff has stated that this interim increase is sufficient and not excessive and will fund ongoing operations, debt service and recommended plant additions and maintenance items. (See, Final Joint Staff Memorandum filed February 6, 2004; Tr. pp. 214-224, 224-226).

8. Commission Technical Staff has recommended an interim cash flow surplus of at least \$147,041 for the District based on average plant additions, necessary equipment repair and replacement and imminent maintenance needs. (See, Final Joint Staff Memorandum filed February 6, 2004; Tr. pp. 188-197).

9. Commission Staff has designed and recommended a pre-construction tariff, which will produce the increased operational revenues needed by the District, to become effective upon the entry of a final order in this case. (See, Final Joint Staff Memorandum filed February 6, 2004; Tr. pp. 224-226; Staff Exhibit No. 4).

10. The project which is the subject of this application will improve water service to all customers of the District and relieve significant production, treatment, storage and distribution problems currently experienced by the District. (See, Final Joint Staff Memorandum filed February 6, 2004; Tr. pp. 37-45, 86-95, 104-111, 112-122, 188-197, 197-204).

11. Pursuant to its review of this project, the West Virginia Office of Environmental Health Services, Department of Health, has issued its permits, Nos. 15,676 and 15,677, for this project. (See, application filed September 8, 2003; Tr. pp. 123-127, 197-204).

12. This project is estimated to cost \$3,541,000 and will be financed by a loan from the West Virginia Infrastructure and Jobs Development Council in the amount of \$1,570,000 with an interest rate of three percent (3%) for a term of 20 years, and a loan from the U.S. Department of Agriculture, Rural Utilities Service, for \$2,068,300, with an interest rate of 4.625% for a term of 40 years. \$100,000 of the RUS loan was included to cover RUS' estimate of construction period interest,

a budget component required by RUS. (See, application filed September 8, 2003; letter of conditions filed March 10, 2004; Tr. pp. 37-45).

13. All funding sources for this proposed project have been committed or reserved and are expected to be available for this project. (See, application filed September 8, 2003; letter filed March 30, 2004).

14. Pursuant to its review of this project, Commission Staff has recommended approval of the application filed in this matter and that a certificate of convenience and necessity be issued for said project. (See, Final Joint Staff Memorandum filed February 6, 2004; Tr. pp. 197-204, 224-226).

15. Commission Staff has recommended approval of increased rates in order to support this project. Staff's revised increased rates will generate annual operating revenues of approximately \$1,478,672, with a cash flow surplus of \$162,304, and a debt coverage of 135%, which is sufficient to support ongoing operations, but is not excessive. (See, Further Joint Staff Memorandum filed March 12, 2004; Tr. pp. 224-226).

16. Staff has designed and recommended a revised post-construction to become effective for all service rendered on and after the date the project engineer certifies this project as substantially complete. (See, Further Final Joint Staff Memorandum filed March 12, 2004; Tr. pp. 224-226).

17. Pursuant to proper public notice, numerous statements of protest, both written and oral, were filed in this matter; however, the Protestants and Intervenors did not produce any reliable evidence that the Lubeck Public Service District does not require interim rate relief, or that the proposed project is not convenient and necessary. (See, letters and petitions, Commission case file generally; Tr. pp. 12-33, 164-182).

CONCLUSIONS OF LAW

1. The Lubeck Public Service District is currently operating with a cash flow deficit and is in need of interim rate relief as recommended by Commission Staff.

2. The proposed construction project detailed in this application is necessary in that it will improve water service to all customers of the District and relieve significant production, treatment, storage and distribution problems currently experienced by the District.

3. The proposed construction project detailed in this application is convenient in that a reasonable and advantageous funding package has been arranged and the resulting increased rates are reasonable and not unduly burdensome to the District's customers.

ORDER

IT IS, THEREFORE, ORDERED that the Lubeck Public Service District shall be authorized to charge and collect the Staff-Recommended Pre-Construction increased rates and charges, attached hereto as Appendix A, for all service rendered on and after the date this Recommended Decision becomes a final order of the Commission.

IT IS FURTHER ORDERED that the application filed by Lubeck Public Service District on September 8, 2003, shall be granted, and that a certificate of convenience and necessity shall be issued for the construction and operation of the improvement project detailed in said application.

IT IS FURTHER ORDERED that the Lubeck Public Service District shall be authorized to accept, execute and close on the funding package proposed for the project herein approved, including a loan from the West Virginia Infrastructure and Jobs Development Council in the amount of \$1,570,000 at an interest rate of three percent (3%) for a term of 20 years and a loan from the U.S. Department of Agriculture, Rural Utilities Service, in the amount of \$2,068,300 at an interest rate of 4.625% for a term of 40 years.

IT IS FURTHER ORDERED that the Lubeck Public Service District is authorized to charge and collect increased rates and charges in support of the project approved herein, as set out in the revised Staff-Recommended Post-Construction rates, attached hereto as Appendix B, for all service rendered on and after the date the District's project engineer certifies the project as substantially complete.

IT IS FURTHER ORDERED that final bid summaries for this project shall be provided to Commission Staff, and, further, should the bids exceed the estimated construction cost approved herein, or if the plans, scope or terms of financing for the project change, the District shall request a reopening of this case for subsequent review and approval by the Commission, prior to commencing construction.

IT IS FURTHER ORDERED that the Lubeck Public Service District shall file an original and five (5) copies of a revised tariff, containing the interim rates approved in this Recommended Decision, within thirty (30) days of the date that this order becomes final. The District shall file an original and five (5) copies of the post-construction rates approved in this Recommended Decision within thirty (30) days of the date the project certificated herein is certified as substantially complete.

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

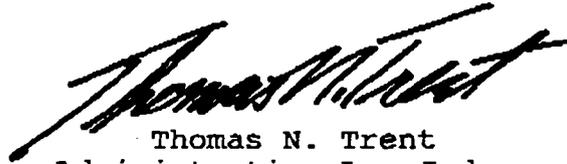
The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

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.



Thomas N. Trent
Administrative Law Judge

TNT:mal/dfs
031473ad.wpd

LUBECK PUBLIC SERVICE DISTRICT - WATER
APPROVED PRE-CONSTRUCTION RATESRATE SCHEDULE 1APPLICABILITY

Available within the entire territory served.

AVAILABILITY

Available for general domestic, commercial and industrial water service.

RATES

First	5,000 gallons used per month	\$5.45 per 1,000 gallons
Next	95,000 gallons used per month	\$4.05 per 1,000 gallons
All Over	100,000 gallons used per month	\$1.94 per 1,000 gallons

MINIMUM CHARGES

No minimum bill will be rendered for less than \$10.90 per month which is the equivalent of 2,000 gallons of water.

5/8-inch meter	2,000 gallons	\$ 10.90 per month
1-inch meter	5,000 gallons	\$ 27.25 per month
2-inch meter	19,802 gallons	\$ 87.20 per month
3-inch meter	38,642 gallons	\$163.50 per month
4-inch meter	65,556 gallons	\$272.50 per month
6-inch meter	168,557 gallons	\$545.00 per month

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

PRIVATE FIRE PROTECTION SERVICE

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

4-inch service line with hydrants, sprinklers, and/or hose connections	\$ 5.00
6-inch service line with hydrants, sprinklers, and/or hose connections	\$ 8.00
8-inch service line with hydrants, sprinklers, and/or hose connections	\$11.00
10-inch service line with hydrants, sprinklers, and/or hose connections	\$14.00

These terms are payable monthly in advance.

APPENDIX A
Page 2 of 2**Special Fire Protection Charge:**

Where connections, hydrants, sprinklers, etc., on private property are maintained by the consumer requiring cycling of pumps to maintain system:

Non-Static Connection \$66.00 per month

HAULING TAP CHARGES

Water purchased at the District office hauling tap shall be dispensed at a charge of \$0.25 (twenty-five cents) per 100 gallons.

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.

RECONNECTION FEE -- \$30.00

To be charged whenever the supply of water is turned off for violation of rules, non-payment of bills or fraudulent use of water.

SURCHARGE

\$1.00 per 1,000 gallons billed for a period not to exceed the total repayment of the Rural Utility Service Loan dated March 28, 1997, for customers in the Hopewell, Hope Hill and Missouri Run extension area funded by this loan.

TAP FEE

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

A tap fee of \$400.00 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 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.

INCREMENTAL LEAK ADJUSTMENT

\$0.40 per 1,000 gallon is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

SECURITY DEPOSIT

Not to exceed one-sixth (1/6th) of the annual estimated charge for service or Fifty Dollars (\$50.00), whichever is greater.

LUBECK PUBLIC SERVICE DISTRICT - WATER
APPROVED POST-CONSTRUCTION RATESRATE SCHEDULE 1APPLICABILITY

Available within the entire territory served.

AVAILABILITY

Available for general domestic, commercial and industrial water service.

RATES

First	5,000 gallons used per month	\$6.38 per 1,000 gallons
Next	95,000 gallons used per month	\$4.82 per 1,000 gallons
All Over	100,000 gallons used per month	\$2.68 per 1,000 gallons

MINIMUM CHARGES

No minimum bill will be rendered for less than \$12.76 per month which is the equivalent of 2,000 gallons of water.

5/8-inch meter	2,000 gallons	\$ 12.76 per month
1-inch meter	5,000 gallons	\$ 31.90 per month
2-inch meter	19,782 gallons	\$102.08 per month
3-inch meter	38,589 gallons	\$191.40 per month
4-inch meter	65,456 gallons	\$319.00 per month
6-inch meter	158,675 gallons	\$638.00 per month

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the District up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

PRIVATE FIRE PROTECTION SERVICE

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

4-inch service line with hydrants, sprinklers, and/or hose connections	\$ 7.00
6-inch service line with hydrants, sprinklers, and/or hose connections	\$11.00
8-inch service line with hydrants, sprinklers, and/or hose connections	\$14.00
10-inch service line with hydrants, sprinklers, and/or hose connections	\$17.00

These terms are payable monthly in advance.

Special Fire Protection Charge:

Where connections, hydrants, sprinklers, etc., on private property are maintained by the consumer requiring cycling of pumps to maintain system:

Non-Static Connection \$89.00 per month

HAULING TAP CHARGES

Water purchased at the District office hauling tap shall be dispensed at a charge of \$0.25 (twenty-five cents) per 100 gallons.

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.

RECONNECTION FEE -- \$30.00

To be charged whenever the supply of water is turned off for violation of rules, non-payment of bills or fraudulent use of water.

SURCHARGE

\$1.00 per 1,000 gallons billed for a period not to exceed the total repayment of the Rural Utility Service Loan dated March 28, 1997, for customers in the Hopewell, Hope Hill and Missouri Run extension area funded by this loan.

TAP FEE

A tap fee of \$400.00 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.

INCREMENTAL LEAK ADJUSTMENT

\$0.38 per 1,000 gallon is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above customer's historical average usage.

SECURITY DEPOSIT

Not to exceed one-sixth (1/6th) of the annual estimated charge for residential service or one-sixth (1/6th) of the annual estimated charge for commercial service, or Fifty Dollars (\$50.00), whichever is greater.

031473.coma060304.wpd

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

03-04-CC

ORIGINAL

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 3rd day of June, 2004.

CASE NO. 03-1473-PWD-CN

LUBECK PUBLIC SERVICE DISTRICT,
a public utility, Washington, Wood County.

Application for a certificate of convenience
and necessity to upgrade the District's
existing water distribution system.

COMMISSION ORDER

The Commission denies the exceptions and filed herein and adopts the April 5, 2004,
Recommended Decision.

BACKGROUND

On September 8, 2003, Lubeck Public Service District (District) filed an application for a certificate of convenience and necessity to construct and operate a water improvement project consisting of two components.

The first component consists of construction of an air stripping unit at the existing water treatment plant and the construction of three water storage tanks. Construction of the air stripping unit will remove excessive carbon dioxide and reduce the corrosivity of the water to meet drinking water regulations. Construction of the water storage tanks will

increase water pressure and reduce pressure fluctuations in the distribution system to provide adequate water pressure to the District's customers.

The second component consists of (1) 20,700 linear feet of water main; (2) a 160 gallon per minute (gpm) booster station; (3) a new altitude valve and valve vault at the New England Ridge tank site; (4) rehabilitation of the existing altitude valve at the Riverhill Tank site; (5) a flow control valve and valve vault on the Homewood system; (6) improvements on the Wildwood tank, including increasing the overflow and sizing; (7) demolition of both the tanks at the Riverhill tank site and construction of a new 531,000-gallon tank at the Riverhill site; and (8) drilling/development of a new 300 gpm water production well and other associated work in the Lubeck, Tygart, Steele and Harris Districts of Wood County, West Virginia. These improvements are necessary to improve the distribution, supply and storage capability of the system.

The District estimated construction of the project to cost approximately \$3,541,000. The proposed project funding would come from a loan from the West Virginia Infrastructure and Jobs Development Council (IJDC) in the amount of \$1,573,000, at an approximate interest rate of 3% for a term of twenty years, and a loan from the West Virginia Water Development Authority (WDA) in the amount of \$1,968,000, at an approximate interest rate of 5% for a term of forty years.

The District requested increased rates and charges to become effective upon completion of the construction in order to pay the debt service required by these project loans. Additionally, the District requested an immediate increase in rates and charges to become effective upon the conclusion of this case in order to cover the District's current cost of service, not including the expected project costs.

The District's current rates are \$4.50 per 1,000 gallons used with a 3,000 gallon minimum bill of \$13.50. The initial rate increase requested by the District would increase rates to \$6.08 per 1,000 gallons. The second, or post-construction, rate increase requested would increase rates to \$7.38 per 1,000 gallons.

Pursuant to public notice of the application, numerous letters of protest were received. Many protestants requested an evening hearing to accommodate their usual schedule.

On October 23, 2003, the case was referred to the Division of Administrative Law Judges for further proceedings with a decision due date of April 5, 2004.

On October 31, 2003, District customer John Penczak filed a letter requesting to intervene in this proceeding.

December 10, 2003, Dan Casto filed a request to intervene.

On January 14, 2004, the ALJ issued a procedural order that set the case for hearing to be held at 1:30 p.m. and 6:30 p.m., on Tuesday, February 17, 2004. The order also addressed the two requests to intervene. The ALJ determined that Mr. Penczak's request to intervene was well-taken and would be granted. However, the ALJ concluded that Mr. Casto's request to intervene was not supported by any explanation, grounds or justification as required by Rule 12.6.a. of the Commission's Rules of Practice and Procedure, 150 C.S.R. Series 1 (Procedural Rules) and, therefore, would be denied. Mr. Casto was encouraged to contact Mr. Penczak and coordinate any questions or evidence he may wish to present with Mr. Penczak.

On January 23, 2004, William T. Argabrite, a District customer filed a petition to intervene in this matter. Mr. Argabrite did not specify why his interests would not be represented by the current parties and the customer-intervenor, John Penczak. However, by order issued February 3, 2004, the ALJ granted intervenor status to Mr. Argabrite. The order also notified the customer-intervenors that in the absence of good-cause, pursuant to Procedural Rule 12.6.d, only one of them would be allowed to cross-examine witnesses, make and argue motions or object on behalf of the customer-intervenors.

On January 23, 2004, the District filed an affidavit or publication from *The Parkersburg News* indicating that the required notice of filing had been published on October 1, 2003. The District also filed an affidavit from the District's manager indicating that the District posted notice of the certificate application at its office and mailed the notice to customers on its post-card bills in the months of August and September 2003.

On February 6, 2004, Commission Staff filed its Final Joint Staff Memorandum and Report in this matter. Staff opined that the overall project cost was reasonable. Staff stated that the project will provide an additional well to serve as a backup source to the District's existing wells; the air stripper/polyphosphate application is the optimal treatment and should allow the District to meet the requirements of the lead and copper rules in the Safe Drinking Water Act; the improvements are necessary to the distribution system to ensure a safe and continuous potable supply of water to the District's customers; the booster station and new storage tanks would provide improved service to customers in certain areas in the District's service area and boost water pressure to customers in higher elevation areas. Staff recommended approval of the certificate of convenience and necessity.

Staff also analyzed the District's request for pre-and post-construction rates. Staff's investigation of the District's financial condition revealed that the District's current rates produce a cash flow deficit of \$40,135. The District's debt service coverage is 91.99%. The

debt service requirement is 115%. Staff concluded that the District's requested rates would provide cash flow surplus and debt service coverage that was more than sufficient to meet its needs. Accordingly, Staff proposed recommended rates for immediate implementation and for implementation upon completion of the proposed construction¹.

On February 11, 2004, counsel for customer intervenor John Penczak, filed a motion to continue the hearing. In support of his motion, Mr. Penczak stated that, for a variety of reasons, including the untimely granting of his petition to intervene, he had insufficient time to prepare for the hearing.

On February 11, 2004, the motion to continue the hearing was denied. The ALJ explained that the statutory deadline in this certificate proceeding did not allow sufficient time for a continuance.

On February 17, 2004, a hearing was held as previously scheduled with all parties in attendance and represented by counsel. At both the afternoon and the evening sessions of the hearing many customers appeared to protest the increase and to register complaints about the service and water quality. Staff gave testimony consistent with its final memorandum and opined that the project was convenient and necessary and that the District required both

¹ The Staff Recommended rates were subsequently modified at the hearing and after the hearing when supplemental financing information was filed by the District.

a pre- and post construction rate increase. Staff recommended that the District's pre-construction rate be \$5.45 per 1,000 gallons with a minimum bill of \$10.90 (based on 2,000 gallons). Upon questioning by the intervenors, Staff indicated that the salaries paid to the District manager and employees were not excessive and that the District was well managed. (For a full review of the evidence submitted at the hearing, see pp. 5-15 of the Recommended Decision.)

On March 10, 2004, the District filed a letter of conditions from the Rural Utilities Service (RUS) for an alternative loan to fund this proposed project. The loan amount is \$2,068,300, or approximately \$100,000 more than the WDA loan it replaced. The additional amount represents RUS's estimate of construction period interest, a budget component not required with the WDA funding. The RUS loan will bear a reduced interest rate of 4.625% for a term of forty (40) years. According to the District, the inclusion of the WDA loan will result in a reduction of the post-construction rate increase.

On March 12, 2004, Commission Staff filed a Further Final Joint Staff Memorandum. In light of the RUS loan and the revision of the project funding package, Staff submitted revised Staff-Recommended Post-Construction Rates and a revised cash flow statement for this project. Staff's revised rates resulted in a rate reduction in the first rate block when compared to Staff's previous rates. Staff recommended post-construction rates of \$6.38 per

1,000 gallons with a \$12.76 minimum bill.

On April 5, 2004, the ALJ issued the Recommended Decision. The ALJ concluded that the District was operating with a cash flow deficit; that the project was necessary to improve water service to all customers and to relieve significant production, treatment, storage and distribution problems; and that the funding package was reasonable and advantageous resulting in rates that are not unduly burdensome. The Recommended Decision granted the requested certificate of convenience and necessity, including the project financing, and approved the Staff recommended pre- and post-construction rates.

On April 20, 2004, both Mr. Argabrite and Mr. Penczak filed exceptions to the Recommended Decision.

Mr. Argabrite argued: (1) He was not given a fair hearing; (2) The delay in granting Mr. Penczak intervenor status limited his ability to engage in adequate discovery; (3) His efforts to obtain information, through two freedom of information act requests, have been unreasonably delayed by the District. (A complaint is currently pending regarding this issue in Case No. 04-0147-PSWD-C); (4) The ALJ's February 3, 2003, requiring the intervenors to chose a responsible participant prevented Mr. Argabrite from having relevant questions asked of witnesses. He claims the attorney engaged by Mr. Penczak refused to ask questions

that he submitted; (5) Fair discovery and questioning of witnesses about the District's past activities will show that the District and its consultants have made unwise decisions and unfairly burdened the customers with debt; (6) The ALJ committed an error when the intervenors' counsel was limited to asking questions about the certificate case. Mr. Argabrite contends that allowing a pre-construction rate increase without allowing a review of all District activities is not fair to the District customers; and (7) His name was recently removed from the mailing list for receipt of documents.

As relief, Mr. Argabrite asked that the pre-construction rate increase and consideration of the certificate case be deferred until the intervenors are allowed to adequately prepare for and freely question the witnesses.

Mr. Penczak's argued: (1) His February 11, 2004, Motion for Continuance of the hearing was improperly denied; (2) Since 1995, the District's operating expenses have increased by \$243,424. Mr. Penczak asserted that the increase was related to salaries, not increased costs of power, chemicals, and repairs as asserted by the District. Since 1997 he stated that salaries increased \$226,787. He complained that his attorney failed to present this evidence at the hearing; (3) He was prevented from questioning the rate increase at the hearing; (4) The question of why 2,000 sewer customers are required to pay over \$24,000,000 plus this added increase has not been answered. He asserted that the District

should get its water from Parkersburg.

On April 20, 2004, John Penczak filed additional exceptions to the Recommended Decision. First, he asked that letters dated September 24, 2003, and October 9, 2003, regarding District employee salaries be made part of the record.

Next, Mr Penczak asked that the quarterly reports filed by the District from October 8, 1996, to July 20, 1998, be made part of the record. (The reports were required by a prior Commission order.) Mr. Penczak asked that Staff reconsider the need and size of the rate increase until spending records of a \$64,883 surplus that was reflected in the April 22, 1998, and the July 20, 1998, quarterly reports is accounted for.

Mr. Penczak requested that documents verifying pressure and other water problems be produced by the District and entered into the record.

Mr. Penczak disputes Staff's calculation of the per customer cost of the project. He believes that Staff's number (\$885 per customer) does not include interest over 40 years. He asked that the correct cost be stated in the record.

Mr. Penczak faulted Staff for failing to offer any possible savings plans for the District, particularly the need for both an accountant and an attorney to be present during board meetings. He also questioned the amount paid to the accountant, especially since Staff previously suggested that the District improve its accounting system.

Mr. Penczak asserted that the ALJ did not take into account the interests of the many citizens who protested the rate increase. He asserted that none of the customers spoke in favor of the increase and their concerns have been brushed aside.

As relief, Mr. Penczak requested that the Commission deny the rate increase and deny the certificate. He argued that not all customers will benefit from the construction and until the quantitative cost of treatment, storage and distribution are presented, the project should not proceed.

On April 22, 2004, the District filed its response to the exceptions. The District argued that the exceptions do not comply with the requirements of Procedural Rule 19.1. That rule requires exceptions to specifically identify the erroneous finding of fact or conclusion of law with which the party takes issue. The District characterized the intervenors' exceptions as "unsupported grievances" which do not relate to the issues before the Commission.

The District objected to the requests to supplement the record. The District asserted that the intervenors were represented by counsel at the hearing and were given wide leeway to question and cross examine witnesses. The District noted that the intervenors had the opportunity to fully present their arguments in post-hearing briefs.

The District asked the Commission to deny the exceptions and adopt the Recommended Decision so that it can implement the pre-construction rate increase and begin construction as soon as possible.

DISCUSSION

Many of the matters set forth in the exceptions are related. The Commission will address the exceptions as two separate issues. First, was the delay of two and a half months in granting intervenor status prejudicial to the presentation of the intervenors' case? Second, were the intervenors given a fair hearing, including the ability to question the witnesses and present evidence on the subject of increased rates?

With regard to the first issue, Procedural Rule 12.6 governs intervention. That rule allows a party to seek intervention up to the time of the hearing. The rule does not set out a time frame for the Commission to act upon such a request. The intervenors' primary complaint about the delay is that they were prevented from engaging in discovery. However,

given the nature of the case, a substantial amount of information was available to the parties from the District's application and Staff's memorandum. All of this is contained in the case file and was readily available. The intervenors have also failed to specify what discovery they needed and were unable to obtain. Further, in Commission cases, it is not an uncommon practice for parties that have petitions to intervene pending to begin and participate in discovery.

A review of the file and the transcript in this leads the Commission to conclude that the two and a half month delay in granting intervention status to Mr. Penczak was not prejudicial to the intervenors.

With regard to the issue of a fair hearing, the Commission disagrees with the intervenors various assertions that they were denied a fair hearing, particularly regarding the rate increase.

Following an extensive cross-examination of the District's manager regarding staffing, use of staffing resources, employee performance reviews, employee raises and required work hours, the intervenors' counsel and the ALJ had an exchange regarding the presentation of evidence relevant to the ALJ's review of the case. After being advised that the intervenors' theory of the case was that the District has mismanaged the utility over the

years and should not be allowed to raise rates to compensate for the mismanagement, the ALJ suggested to that the most efficient way to reach those issues would be questioning the Staff witnesses. (Tr pp. 60-62).

Subsequently, the intervenors participated in the unlimited cross-examination of the Staff witnesses regarding all aspects of the case. (Tr pp. 205-211 and 227-240). The intervenors also participated in the unlimited cross-examination of the District's accountant. (Tr. pp. 153-160). The intervenors were given the opportunity to present witnesses and documentary evidence. They called one witness, James Smith, a member of the District's Board and a registered professional engineer.

With regard to Mr. Penczak's request to supplement the record, the Commission notes the salary information attached to the exceptions was available for submission at the time of the hearing or in post-hearing briefs. Further, the intervenors were able to cross-examine several witnesses regarding the District's finances and salaries. There is no reason to supplement the record with these documents. The same reasoning applies to the request to supplement the record with the District's quarterly reports submitted to the Commission from October 8, 1996 to July 20, 1998. Mr. Penczak's request that the District be required to produce customer complaint records for entry into the record should have been made prior to or at the hearing. This was not done. Nonetheless, the intervenor's were allowed an

opportunity to make inquiry into all of those issues during the hearing.

Mr. Argabrite suggested that he was prejudiced by the ruling that he and Mr. Penczak were required to participate in the hearing as one party. Where there are two or more intervenors that have substantially similar interests or positions, Procedural Rule 12.6.d gives the Commission discretion to limit the number of parties who may cross-examine, make and argue motions, or object on behalf of intervenors. While it appears that both the intervenors were dissatisfied with their counsel, given the complexity of the issues, the duration of the hearing, including public comments, and the commonality of the intervenor's interests, it was reasonable to require the intervenors to participate as one party.

The Commission concludes that the intervenors were given a fair hearing, including the opportunity to participate in the hearing, present evidence and cross-examine witnesses on all relevant issues, including the rate increase.

For the reasons set forth above, the Commission denies the intervenors' exceptions and adopts the April 5, 2004, Recommended Decision.

FINDINGS OF FACT

1. On September 8, 2003, the District filed an application for a certificate of convenience and necessity to construct and operate a water improvement project. The District requested increased rates and charges to become effective upon completion of the construction in order to pay the debt service required by the project loans. The District also requested an immediate increase in rates and charges to become effective upon the conclusion of this case in order to cover the District's current cost of service, not including the expected project costs.
2. On October 31, 2003, District customer John Penczak filed a letter requesting to intervene in this proceeding.
3. On January 14, 2004, the ALJ issued a procedural order that granted Mr. Penczak's request to intervene.
4. On January 23, 2004, William T. Argabrite, a District customer, filed a petition to intervene in this matter.
5. By order issued February 3, 2004, the ALJ granted intervenor status to Mr. Argabrite. The order also notified the intervenors that in the absence of good-cause,

pursuant to Procedural Rule 12.6.d, only one of them would be allowed to cross-examine witnesses, make and argue motions or object on behalf of the intervenors.

6. On February 6, 2004, Commission Staff filed its Final Joint Staff Memorandum and Report. Staff recommended approval of the certificate of convenience and necessity. Staff determined that the District was suffering a cash flow deficiency and proposed recommended rates for immediate implementation and rates for implementation upon completion of the proposed construction.

7. On February 17, 2004, a hearing was held as previously scheduled with all parties in attendance and represented by counsel.

8. On March 10, 2004, the District filed a letter of conditions from RUS for an alternative loan to fund the proposed project.

9. On March 12, 2004, Staff filed a Further Final Joint Staff Memorandum In light of the RUS loan and the revision of the project funding package, Staff submitted revised Staff-Recommended Post-Construction Rates and a revised cash flow statement for this project. Staff's revised rates resulted in a rate reduction in the first rate block when compared to Staff's previous rates.

10. On April 5, 2004, the ALJ issued the Recommended Decision. The ALJ concluded that the District was operating with a cash flow deficit; that the project was necessary to improve water service to all customers and to relieve significant production, treatment, storage and distribution problems; and that the funding package was reasonable and advantageous resulting in rates that are not unduly burdensome. The Recommended Decision granted the requested certificate of convenience and necessity, including the project financing, and approved the Staff recommended pre- and post-construction rates.

11. On April 20, 2004, both Mr. Argabrite and Mr. Penczak filed exceptions to the Recommended Decision.

12. On April 20, 2004, John Penczak filed additional exceptions to the Recommended Decision.

13. On April 22, 2004, the District filed its response to the exceptions.

CONCLUSIONS OF LAW

1. Many of the matters set forth in the exceptions are related, the Commission will address the exceptions as two separate issues. First, was the delay in granting intervenor status prejudicial to the presentation of the intervenors' case? Second, were the intervenors

given a fair hearing, including the ability to question the witnesses and present evidence on the subject of increased rates?

2. The Commission concludes that the intervenors were not unduly prejudiced by the two and a half month delay in granting intervenor status to Mr. Penczak.

3. The Commission concludes that the intervenors were given a fair hearing, including the opportunity to participate in the hearing, present evidence and cross-examine witnesses on all relevant issues, including the rate increase.

4. The Commission concludes that it is appropriate to deny the intervenors' exceptions and to adopt the April 5, 2004, Recommended Decision.

ORDER

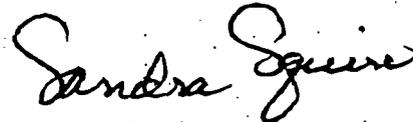
IT IS, THEREFORE, ORDERED that the exceptions filed by both John Penczak and William Argabrite to the April 5, 2004, Recommended Decision are hereby denied.

IT IS FURTHER ORDERED that the April 5, 2004, Recommended Decision is adopted as the final order of the Commission.

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

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

A True Copy, Teste:



Sandra Squire
Executive Secretary

JMH/sck
031473ca.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 14th day of June, 2005.

CASE NO. 03-1473-PWD-CN (Reopened)

LUBECK PUBLIC SERVICE DISTRICT
Petition to reopen.

COMMISSION ORDER

By Recommended Decision entered on April 5, 2004, the Commission granted the Lubeck Public Service District (District) a certificate of convenience and necessity for the construction and operation of a water improvement project consisting of two components. The District was authorized to charge and collect Staff-Recommended Pre-Construction and Post-Construction increased rates. The District's financing was also approved, which included a \$1,570,000 West Virginia Infrastructure and Jobs Development Council loan at 3% interest for 20 years and a \$2,068,300 U.S. Department of Agriculture, Rural Utilities Service (RUS) loan at 4.625% for 40 years.

On April 20, 2004, William T. Argabrite and John Penczak, each an intervenor, filed exceptions to the Recommended Decision. The Commission entered an Order on June 3, 2004 denying the exceptions and adopting the Recommended Decision.

On April 15, 2005, the District filed a petition to reopen for approval of an additional \$472,000 RUS loan due to a bid overrun and required additional contingency by the RUS.

On April 20, 2005, the District filed correspondence which attached the engineers bid certifications. The District also noted that it was not requesting a change in the post construction rates which were previously approved by the Commission.

On April 22, 2005, William T. Argabrite filed correspondence stating that as an intervenor, he had not yet received any documents from the District regarding its petition to reopen.

Correspondence was filed on April 25, 2005 by Phillip R. Postlewait, Jr., Certified Public Accountant, which attached a copy of the Request for Obligation of Funds from RUS to secure the needed \$472,000 balance of funding.

On April 29, 2005, the District filed a copy of the RUS signed paperwork approving the \$472,000 loan at 4.25% interest.

On May 12, 2005, Commission Staff filed an Initial and Final Joint Staff Memorandum.¹ Subsequent to its analysis, Staff noted that the additional borrowing does not require an increase in rates nor will it hinder the District in meeting its day to day operating expenses or debt service coverage requirements. Therefore, Staff recommended that the District's proposed borrowing be approved.

DISCUSSION

Upon review of all of the foregoing, the Commission agrees with the Staff recommendation filed on May 12, 2005. The District's petition for revised funding should be granted, consisting of an additional \$472,000 RUS loan at 4.25% interest.

FINDINGS OF FACT

1. By Recommended Decision entered on April 5, 2004, the Commission granted the District a certificate of convenience and necessity for the construction and operation of a water improvement project consisting of two components. The District was authorized to charge and collect Staff-Recommended Pre-Construction and Post-Construction increased rates. The District's financing was also approved, which included a \$1,570,000 West Virginia Infrastructure and Jobs Development Council loan at 3% interest for 20 years and a \$2,068,300 RUS loan at 4.625% for 40 years.

2. On June 3, 2004, the Commission denied William T. Argabrite and John Penczak's exceptions and adopted the Recommended Decision.

3. On April 15, 2005, the District filed a petition to reopen for approval of an additional \$472,000 RUS loan due to a bid overrun and required additional contingency by the RUS.

¹A copy of Staff's memorandum was mailed to William T. Argabrite.

4. On April 22, 2005, William T. Argabrite filed correspondence stating that as an intervenor, he had not yet received any documents from the District regarding its petition to reopen.

5. On April 29, 2005, the District filed a copy of the RUS signed paperwork approving the \$472,000 at 4.25% interest.

6. On May 12, 2005, Staff noted that the additional borrowing does not require an increase in rates nor will it hinder the District in meeting its day to day operating expenses or debt service coverage requirements. Staff recommended that the District's proposed borrowing be approved.

CONCLUSION OF LAW

The District's petition for revised funding should be granted, consisting of an additional \$472,000 RUS loan at 4.25% interest.

ORDER

IT IS, THEREFORE, ORDERED that the petition to reopen, filed by the Lubeck Public Service District on April 15, 2005, is hereby granted.

IT IS FURTHER ORDERED that the Lubeck Public Service District's petition for the revised funding, consisting of an additional \$472,000 RUS loan at 4.25% interest is hereby approved.

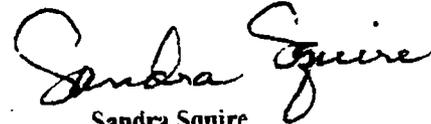
IT IS FURTHER ORDERED that in the event of any change to the funding, terms of financing, plans, or scope of the approved project, the Lubeck Public Service District shall petition the Commission to reopen this proceeding for approval of the same.

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

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

A True Copy, Teste:

TBS/ljm
031473cb.wpd


Sandra Squire
Executive Secretary

From:

West Virginia Infrastructure & Jobs Development Council

Public Members:

James D. Williams, Chairman
St. Albans
William J. Harman, PE, Vice Chairman
Grafton
Dwight Calhoun
Petersburg
Tim Rutledge
Gilbert

980 One Valley Square
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Katy Mallory, PE
Executive Secretary

KMallory@ezwv.com

August 4, 2000

Mr. James M. Cox, Manager
Lubeck Public Service District
P.O. Box 700
Washington, West Virginia 26181

Re: Lubeck Public Service District
Water treatment plant upgrade project 2000W-551

Dear Mr. Cox:

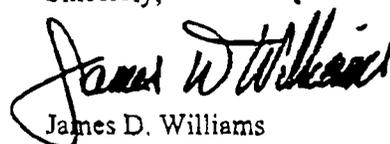
The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Lubeck Public Service District's (the "District") preliminary application regarding its proposed project to construct an airstripping unit at the treatment plant and install three storage tanks (the "Project").

Based on the findings of the Water Technical Review Committee, the Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The District should carefully review the enclosed comments of the Water Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the preliminary application, the Council recommends that the District pursue a Drinking Water Treatment Revolving Fund (DWTRF) loan of \$1,573,000 to finance the Project. Please contact the Bureau for Public Health at 558-2981 for specific information on the steps the District needs to follow to apply for these funds. **Please note that this letter does not constitute funding approval from the Bureau for Public Health.**

If you have any questions regarding this matter, please contact Katy Mallory at 558-4607.

Sincerely,



James D. Williams

Enclosure
JDW/km

cc: Walt Ivey, PE, BPH (w/o enc)
Ronald Schultz, PE, Burgess & Niple
Region V Planning & Development Council

West Virginia Infrastructure & Jobs Development Council

Public Members:

Russell L. Isaacs, Chairman
Cottageville
Henry Harmon, Vice Chairman
Hurricane
Dwight Calhoun
Petersburg
C. R. "Rennie" Hill, III
Beckley

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

Katy Mallory, PE
Executive Secretary

Katy.Mallory@iverizon.net

July 9, 2003

James M. Cox, Manager
Lubeck Public Service District
P.O. Box 700
Washington, West Virginia 26181

Re: Lubeck Public Service District
Water Project 2003W-758

Dear Mr. Cox:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the Lubeck Public Service District's (the "District") preliminary application regarding its proposed project to construct a water main, a booster station, a new altitude valve and valve vault; rehabilitate the existing altitude; a flow control valve and valve vault; improve the Wildwood tank, demolish both tanks at the Riverhill tank site; construct a new tank; and drilling/development of a new water production well (the "Project").

Based on the findings of the Water Technical Review Committee, the Infrastructure Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The District should carefully review the enclosed comments of the Water Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the preliminary application, the Infrastructure Council recommends that the District pursue a \$1,968,000 Water Development Authority loan to fund this project. Please contact the Water Development Authority at 558-3612 for specific information on the steps the District needs to follow to apply for these funds. **Please note that this letter does not constitute funding approval from this agency.**

If you have any questions regarding this matter, please contact Katy Mallory at 558-4607.

Sincerely,



Russell L. Isaacs

Enclosure

RLI/km

cc: Walt Ivey, BPH (w/o enclosure)
Bernie Yonkosky, WDA (w/o enclosure)
Region V Planning & Development Council
Burgess & Niple, Limited

West Virginia Infrastructure & Jobs Development Council

Public Members:

Mark Prince
Cottageville
Dwight Calhoun
Petersburg
C. R. "Rennie" Hill, III
Beckley
Tim Stranko
Morgantown

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

Katy Mallory, PE

Executive Secretary
Katy.Mallory@verizon.net

May 4, 2005

James Cox, Manager
Lubeck Public Service District
P.O. Box 700
Washington, West Virginia 26181

Re: Lubeck Public Service District
Revised Binding Commitment Letter
Water Project 2000W-551 / 2003W-758

Dear Mr. Cox:

The West Virginia Infrastructure and Jobs Development Council (the "Council") has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The Council reviewed the Lubeck Public Service District's (the "District") request for revision to the Infrastructure Council's binding commitment offer of November 8, 2002 to the District for financing the above referenced projects. At its May 4, 2005 meeting, the Infrastructure Council voted to revise the binding commitment as shown on the attached proposed Schedule A. The total revised project cost is \$4,113,300.

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

Sincerely,



Mark Prince

Attachments

cc: Samme Gee, Esq., Jackson Kelly
Ron Schultz, Burgess & Niple

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

Lubeck Public Service District

By: _____

Its: _____

Date: _____

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

Lubeck PSD
Water Project 2000W-551/2003W-758
Revised May 4, 2005

SCHEDULE A

- A. Approximate Amount: \$ 1,573,000 Loan
- B. Loan: \$ 1,573,000
1. Maturity Date: 20 years from date of closing.
 2. Interest Rate: 3%
 3. Loan Advancement Date(s) Monthly, upon receipt of proper requisition
 4. Debt Service Commencement: The first quarter following completion of construction, which date must be identified prior to closing.
 5. Special Conditions: None

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

- C. Other Funding: RUS \$2,540,300
- D. Total Project Cost: \$4,113,300
- E. Proposed User Rates: approximately \$28.71 / 4500 gallons

LOAN AGREEMENT

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

LUBECK PUBLIC SERVICE DISTRICT
(Governmental Agency)

W I T N E S S E T H:

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

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

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

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

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an 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 made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

ARTICLE I

Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their 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 Governmental

Agency further agrees that the Authority and the Council and their duly authorized agents and representatives 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 the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency 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 Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their 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 Governmental Agency shall submit to the Authority and the Council such documents and information as they 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 Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency 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 Governmental Agency 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 Governmental Agency 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 Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) 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 Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of

Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

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

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

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

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, 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 Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency 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;

(c) The Governmental Agency 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 Governmental Agency 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 the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency 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 the Council shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

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

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

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

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

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. 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 Loan Agreement by the Authority or such later date as is agreed to in writing by the Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling

all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

ARTICLE IV

Local Bonds; Security for Loan;
Repayment of Loan; Interest on Loan;
Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall 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 (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) 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 Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

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

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

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

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency 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 the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency 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 Governmental Agency 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 Governmental Agency 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;

(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 Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

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

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

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

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

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the 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 Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, 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 the Council, the Project is

adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xxi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding 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; and

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

following the procedures established by the DOL. The monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

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

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

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

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

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

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the bonds which are the source of money used to purchase the Local Bonds, unless otherwise agreed to by the Council.

ARTICLE V

Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency 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 Loan Agreement, the Governmental Agency 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 Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to this Loan 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 Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

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

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

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

ARTICLE VII

Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan 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 Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority and the Council.

7.3 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.4 If any provision of this Loan 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 Loan Agreement, and this Loan Agreement

shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.5 This Loan 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 Loan Agreement.

7.6 No waiver by either party of any term or condition of this Loan 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 Loan Agreement.

7.7 This Loan 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.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

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

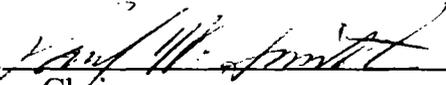
7.10 This Loan Agreement shall terminate upon the earlier of:

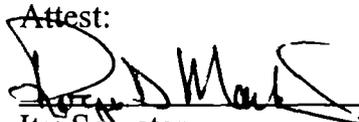
- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority and the Council pursuant to Section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

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

LUBECK PUBLIC SERVICE DISTRICT

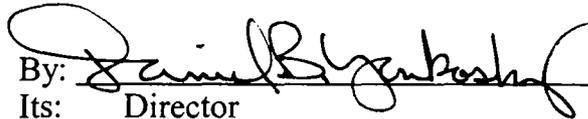
(SEAL)

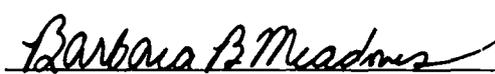
By: 
Its: Chairperson
Date: June 17, 2005

Attest:

Its: Secretary

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: 
Its: Director
Date: June 17, 2005

Attest:

Its: Secretary-Treasurer

05/11/05
000832/00466

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

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

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

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

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

set forth in the Schedule B attached hereto as Exhibit A and my firm¹ has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] 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, ²the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan 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 set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

[SEAL]

By: _____
West Virginia License No. _____

¹If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

²If 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 B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

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

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

Ladies and Gentlemen:

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

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

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

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

to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan 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 Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency 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 Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency 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 Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

-21-

EXHIBIT C

MONTHLY FINANCIAL REPORT

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

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

 Name of Person Completing Form

 Address

 Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT D

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest \$_____

Principal \$_____

Total: \$_____

Reserve Account: \$_____

Witness my signature this ____ day of _____.

[Name of Governmental Agency]

By: _____
Authorized Officer

Enclosure: copy of check(s)

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$1,573,000
Purchase Price of Local Bonds \$1,573,000

The Local Bonds shall bear no interest from the date of delivery to December 1, 2006. Commencing December 1, 2006, interest on the Local Bonds will accrue at the rate of 3% per annum. Commencing March 1, 2007, interest on and principal of the Local Bonds are payable quarterly. 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 Governmental Agency shall submit its payments monthly to the Commission which will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interest, if any, and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency:

1. Water Revenue Bonds, Series 1990 A, dated April 2, 1990, issued in the original principal amount of \$3,139,013.
2. Water Revenue Bonds, Series 1997, dated March 27, 1997, issued in the original principal amount of \$535,000.
3. Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), dated June 17, 2005, issued in the original principal amount of \$2,068,300.
4. Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), dated June 17, 2005, issued in the original principal amount of \$472,000.

SCHEDULE Y

\$1,573,000

Lubeck Public Service District

3% Interest Rate, 20 Years

Closing Date: June 17, 2005

Debt Service Schedule

Part 1 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2005	-	-	-	-
12/01/2005	-	-	-	-
03/01/2006	-	-	-	-
06/01/2006	-	-	-	-
09/01/2006	-	-	-	-
12/01/2006	-	-	-	-
03/01/2007	14,421.60	3.000%	11,797.50	26,219.10
06/01/2007	14,529.76	3.000%	11,689.34	26,219.10
09/01/2007	14,638.73	3.000%	11,580.36	26,219.09
12/01/2007	14,748.52	3.000%	11,470.57	26,219.09
03/01/2008	14,859.14	3.000%	11,359.96	26,219.10
06/01/2008	14,970.58	3.000%	11,248.52	26,219.10
09/01/2008	15,082.86	3.000%	11,136.24	26,219.10
12/01/2008	15,195.98	3.000%	11,023.12	26,219.10
03/01/2009	15,309.95	3.000%	10,909.15	26,219.10
06/01/2009	15,424.77	3.000%	10,794.32	26,219.09
09/01/2009	15,540.46	3.000%	10,678.64	26,219.10
12/01/2009	15,657.01	3.000%	10,562.08	26,219.09
03/01/2010	15,774.44	3.000%	10,444.65	26,219.09
06/01/2010	15,892.75	3.000%	10,326.35	26,219.10
09/01/2010	16,011.95	3.000%	10,207.15	26,219.10
12/01/2010	16,132.03	3.000%	10,087.06	26,219.09
03/01/2011	16,253.03	3.000%	9,966.07	26,219.10
06/01/2011	16,374.92	3.000%	9,844.17	26,219.09
09/01/2011	16,497.73	3.000%	9,721.36	26,219.09
12/01/2011	16,621.47	3.000%	9,597.63	26,219.10
03/01/2012	16,746.13	3.000%	9,472.97	26,219.10
06/01/2012	16,871.72	3.000%	9,347.37	26,219.09
09/01/2012	16,998.26	3.000%	9,220.83	26,219.09
12/01/2012	17,125.75	3.000%	9,093.35	26,219.10
03/01/2013	17,254.19	3.000%	8,964.90	26,219.09
06/01/2013	17,383.60	3.000%	8,835.50	26,219.10
09/01/2013	17,513.98	3.000%	8,705.12	26,219.10
12/01/2013	17,645.33	3.000%	8,573.77	26,219.10
03/01/2014	17,777.67	3.000%	8,441.43	26,219.10
06/01/2014	17,911.00	3.000%	8,308.09	26,219.09
09/01/2014	18,045.34	3.000%	8,173.76	26,219.10
12/01/2014	18,180.68	3.000%	8,038.42	26,219.10
03/01/2015	18,317.03	3.000%	7,902.07	26,219.10
06/01/2015	18,454.41	3.000%	7,764.69	26,219.10
09/01/2015	18,592.82	3.000%	7,626.28	26,219.10
12/01/2015	18,732.26	3.000%	7,486.83	26,219.09
03/01/2016	18,872.76	3.000%	7,346.34	26,219.10
06/01/2016	19,014.30	3.000%	7,204.80	26,219.10

\$1,573,000

Lubeck Public Service District

3% Interest Rate, 20 Years

Closing Date: June 17, 2005

Debt Service Schedule

Part 2 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2016	19,156.91	3.000%	7,062.19	26,219.10
12/01/2016	19,300.58	3.000%	6,918.51	26,219.09
03/01/2017	19,445.34	3.000%	6,773.76	26,219.10
06/01/2017	19,591.18	3.000%	6,627.92	26,219.10
09/01/2017	19,738.11	3.000%	6,480.98	26,219.09
12/01/2017	19,886.15	3.000%	6,332.95	26,219.10
03/01/2018	20,035.30	3.000%	6,183.80	26,219.10
06/01/2018	20,185.56	3.000%	6,033.54	26,219.10
09/01/2018	20,336.95	3.000%	5,882.14	26,219.09
12/01/2018	20,489.48	3.000%	5,729.62	26,219.10
03/01/2019	20,643.15	3.000%	5,575.95	26,219.10
06/01/2019	20,797.97	3.000%	5,421.12	26,219.09
09/01/2019	20,953.96	3.000%	5,265.14	26,219.10
12/01/2019	21,111.11	3.000%	5,107.98	26,219.09
03/01/2020	21,269.45	3.000%	4,949.65	26,219.10
06/01/2020	21,428.97	3.000%	4,790.13	26,219.10
09/01/2020	21,589.68	3.000%	4,629.41	26,219.09
12/01/2020	21,751.61	3.000%	4,467.49	26,219.10
03/01/2021	21,914.74	3.000%	4,304.35	26,219.09
06/01/2021	22,079.10	3.000%	4,139.99	26,219.09
09/01/2021	22,244.70	3.000%	3,974.40	26,219.10
12/01/2021	22,411.53	3.000%	3,807.56	26,219.09
03/01/2022	22,579.62	3.000%	3,639.48	26,219.10
06/01/2022	22,748.97	3.000%	3,470.13	26,219.10
09/01/2022	22,919.58	3.000%	3,299.51	26,219.09
12/01/2022	23,091.48	3.000%	3,127.62	26,219.10
03/01/2023	23,264.67	3.000%	2,954.43	26,219.10
06/01/2023	23,439.15	3.000%	2,779.94	26,219.09
09/01/2023	23,614.95	3.000%	2,604.15	26,219.10
12/01/2023	23,792.06	3.000%	2,427.04	26,219.10
03/01/2024	23,970.50	3.000%	2,248.60	26,219.10
06/01/2024	24,150.28	3.000%	2,068.82	26,219.10
09/01/2024	24,331.40	3.000%	1,887.69	26,219.09
12/01/2024	24,513.89	3.000%	1,705.21	26,219.10
03/01/2025	24,697.74	3.000%	1,521.35	26,219.09
06/01/2025	24,882.98	3.000%	1,336.12	26,219.10
09/01/2025	25,069.60	3.000%	1,149.50	26,219.10
12/01/2025	25,257.62	3.000%	961.48	26,219.10
03/01/2026	25,447.05	3.000%	772.04	26,219.09
06/01/2026	25,637.91	3.000%	581.19	26,219.10
09/01/2026	25,830.19	3.000%	388.91	26,219.10
12/01/2026	26,023.92	3.000%	195.18	26,219.10
Total	\$1,573,000.00	-	\$524,527.73	\$2,097,527.73

SCHEDULE Z

None.

USDA UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

75 High Street Federal Building, Suite 320, Morgantown, WV 26505-7500
304.284.4860 • 1.800.295.8228 • fax 304.284.4893 • TTY/TDD 304.284.4836

March 4, 2004

James M. Cox, General Manager
Lubeck Public Service District
P.O. Box 700
Washington, WV 26181

Dear Mr. Cox:

This letter, with Attachments 1 through 12 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$2,068,300, and other funding in the amount of \$1,573,000, for a total project cost of \$3,641,300. The other funding is planned in the form of a loan from the West Virginia Infrastructure and Jobs Development Council.

The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing.

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

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist for Lubeck PSD
(All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)

www.rurdev.usda.gov/wv

USDA Rural Development is an Equal Opportunity Lender, Provider and Employer
Complaints of discrimination should be sent to: USDA Director, Office of Civil Rights, Washington, D.C. 20250-9410

- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)
- Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)
- Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"
- Attachment No. 8 - Government Auditing Standards (Revision 1994) (Accountant Copy)
- Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"
- Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"
- Attachment No. 11 - RUS Policy regarding Use of Remaining Funds
- Attachment No. 12 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.625% interest rate and a monthly amortization factor of .00467, which provides for a monthly payment of \$9,659. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

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

2. Security - The loan must be secured by a statutory lien of equal priority with the District's existing water revenue bonds, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond resolution which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-27 which is mentioned later.
3. Users - This conditional commitment is based upon you providing evidence that there will be at least 3,792 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of a certification from you that identifies and attests to the number of users that are actually connected to the PSD's existing water system which is to be partially replaced by the new system, at the time you request authorization to advertise the project for construction bids.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and currently using the system.

4. Bond Counsel Services - The services of a recognized bond counsel are required. The bond counsel will prepare the form of resolution to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. 1910-1-FA, "Standard Form of Agreement between Owner and Engineer for Professional Services" (Funding Agency Edition) should be used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.
6. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, "Legal Services Agreement" is enclosed for your use.
7. Accounting Services – It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:
 - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).
 - b. Prior to loan/grant closing, your accountant must certify that the accounts and records as required by your bond resolution have been established and are operational.

The Accountant's Agreement should be submitted to RUS for review. Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

RUS regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your PSD. The attached booklets, "Government Auditing Standards (Revised 1994)" (Attachment No. 8), and RUS Bulletins 1780-30 1780-31 (Attachment Nos. 9 and 10) outline audit requirements.

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$300,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:

- a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
 - b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the PSD already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
 - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
 - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions. The attorney's legal opinion should include a certification that all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and West Virginia State Code Chapter 54 have been met in the acquisition of both real property and rights-of-way. Such requirements may include, but are not limited to, distributing informational material to all affected property owners, and completing appraisals of the affected properties.
 - e. On the day of loan closing, the PSD's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the PSD has already acquired real property(s) (land or facilities), the PSD's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
 - State Department of Health
 - Department of Environmental Protection
 - Corps of Engineers
 - Public Land Corporation
10. Public Service Commission Approvals - You must obtain the following from the West Virginia Public Service Commission:
- a. A Certificate of Convenience and Necessity.

- b. Approval of user charges that are acceptable to you and the Rural Utilities Service.
- c. Approval of financing for the project's proposed financing arrangements.

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

11. Insurance and Bonding Requirements - Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:
- a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
 - b. Workers' Compensation - In accordance with appropriate State laws.
 - c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. During the construction phase of your project, this maximum amount will be much greater than normal; therefore, it is our recommendation that you temporarily increase your coverage by \$900,000 (estimated highest monthly construction drawdown). Once construction is complete, you may decrease the amount of your coverage. Please note that the cost of the temporary increase in coverage is an eligible project cost.

The minimum coverage acceptable to RUS once your project is in operation will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).

- d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas.
 - (1) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
 - (2) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

- e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications -

- a. The contract documents should consist of the following:

- (1) EJCDC Document No. 1910-8-A-1-FA, 1997 Edition, "Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price" and EJCDC Document No. 1910-8-FA, "Standard General Conditions of the Construction Contract – Funding Agency Edition" and Attachments. The EJCDC document is issued under copyright and cannot be provided by RUS.

- (2) "RUS Supplemental General Conditions."

RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance," is enclosed for use by your engineer in the preparation of the contract documents (Attachment No. 7).

- b. The contract documents must provide, as a minimum, the following insurance:

- (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the PSD and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.

- (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.

- (3) Workers' Compensation - In accordance with applicable State laws.

- c. The contract documents and final plans and specifications must be submitted to RUS for approval.

- d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.

13. State Prevailing Wage Law - You should ensure that all requirements of Article 5A of the West Virginia State Prevailing Wage Law, "Wages for Construction of Public Improvements" are met during construction of the project.

14. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your PSD, over 30 day periods. Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

The PSD will establish a separate fund, to be known and hereafter referred to as the Construction Account, with a lending institution insured by the Federal Deposit Corporation. The account shall be used solely for the purpose of paying the costs of the project as outlined in the construction budget. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account. All deposits in excess of \$100,000 will be secured by a collateral pledge in accordance with Treasury Circular Number 176.

The PSD must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

15. Other Project Funds - Prior to advertisement for construction bids, you must provide evidence showing the approval of any other project funds. This evidence should include a copy of the funding award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the other project funds are available for expenditure. This evidence should consist of at least a letter from the funding agency stating the funds are available for expenditure.
16. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:
- Form RD 442-7 - "Operating Budget"
 - Form RD 1940-1 - "Request for Obligation of Funds"
 - RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"
 - Form RD 400-1 - "Equal Opportunity Agreement"
 - Form RD 400-4 - "Assurance Agreement"
 - Form AD 1047 - "Certification Regarding Debarment - Primary"
 - Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
 - FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
 - Certification of Compliance
 - Form RD 1942-46, "Letter of Intent to Meet Conditions"
17. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan docket. All the items listed must be included in the loan docket when it is forwarded to the USDA – Rural Development State Office with a request for loan closing instructions to be issued.
18. Upon receipt of the loan docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable,

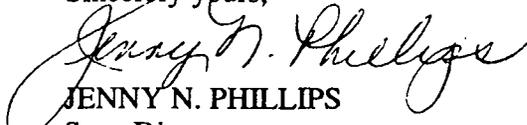
it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

The "RUS Policy Regarding Use of Remaining Funds" is attached for your information and use (Attachment No. 11). This policy should be adhered to when addressing the use of bid underrun funds, as well as any funds remaining after project construction is complete.

If the conditions set forth in this letter are not met within twelve (12) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the twelve-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

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

Sincerely yours,


JENNY N. PHILLIPS
State Director

Enclosures

cc: Rural Development Specialist
Parkersburg, WV

Philip R. Postlewait, Jr., CPA
Parkersburg, WV

Richard Hayhurst, Esquire
Parkersburg, WV

Katy Mallory, Executive Secretary
WV Infrastructure and Jobs Development Council
Charleston, WV

Burgess & Niple, Ltd.
Parkersburg, WV

Jackson & Kelly ✓
Charleston, WV

Project Construction Budget

<u>PROJECT COST</u>	<u>WVIJDC LOAN</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$ 1,227,800	\$ 1,536,200	\$ 2,764,000
CONST. CONTINGENCY	\$ 61,400	\$ 76,800	\$ 138,200
LAND/RIGHTS & PERMITS	\$ 13,300	\$ 16,700	\$ 30,000
LEGAL FEES	\$ 4,500	\$ 5,500	\$ 10,000
BOND COUNSEL	\$ 13,300	\$ 16,700	\$ 30,000
ACCOUNTING	\$ 1,200	\$ 1,550	\$ 2,750
ENGINEERING FEES	\$ 185,300	\$ 232,000	\$ 417,300
Basic - \$291,600			
Insp. - \$125,700			
Special - \$0			
INTEREST		\$ 100,000	\$ 100,000
ELECTRIC	\$ 22,200	\$ 27,800	\$ 50,000
PROJECT CONTG.	\$ 44,000	\$ 55,050	\$ 99,050
TOTAL	\$ 1,573,000	\$ 2,068,300	\$ 3,641,300

Rates

Available for general domestic, commercial, and industrial service.

First	5,000	gallons @	\$	7.38	per M gallons
Next	95,000	gallons @	\$	5.51	per M gallons
Over	100,000	gallons @	\$	2.36	per M gallons

Minimum Charge

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

5/8" x 3/4"	meter	\$	14.76	per month
3/4"	meter	\$	22.14	per month
1"	meter	\$	36.90	per month
1 1/2"	meter	\$	73.80	per month
2"	meter	\$	118.08	per month
3"	meter	\$	221.40	per month
4"	meter	\$	369.00	per month
6"	meter	\$	738.00	per month
8"	meter	\$	1,180.80	per month

Minimum Monthly Bill \$ 14.76 for 2,000 gallons

Delayed Payment Penalty

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

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

Connection Charge

\$400.00

Reconnection Charge

\$30.00

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

Attachment No. 1 to Letter of Conditions
 For: Lubeck Public Service District
 Date: March 4, 2004

LUBECK PUBLIC SERVICE DISTRICT
 USE AND INCOME ANALYSIS
 EXISTING SYSTEM

	Bills	Gallons	First 5000	Next 95,000	Over 100,000	Min. Bill 5/8"	Min. Bill 1"	Min. Bill 2"	Min. Bill 6"	Total Revenue
Min. Bill 5/8"	714	807				713.5				
Min. Bill 1"	7	3,073					7.33			
Min. Bill 2"	19	351						19.17		
2000-5000	1,868	6,583	6,824.67	0.00	0.00					
5001-100,000	1,179	9,472	5,966.67	3,505.73	0.00					
Over 100,000	5	4,400	18.33	348.33	4,033.41					
Adjustments			0.99	18.19	-13.37					
Total	3,792	24,686	\$ 12,810.66	\$ 3,872.25	\$ 4,020.05	\$ 713.50	\$ 7.33	19.17	-	
Proposed Rates			\$7.38	\$5.51	\$2.36	\$14.76	\$55.35	\$177.12	\$-	
Monthly Revenue			\$94,543	\$21,336	\$9,487	\$10,531	\$406	\$3,395	\$0	\$139,698.00
Annual Revenue			\$1,134,511.83	\$256,032.93	\$113,847.72	\$126,375.12	\$4,870.80	\$40,737.60	\$0.00	\$1,676,376.00

LUBECK PUBLIC SERVICE DISTRICT
OPERATING BUDGET

OPERATING INCOME

Metered Sales	\$ 1,676,376	
Penalties	\$ 27,397	
Other Income	\$ 8,038	
Private Fire Protection	\$ 2,080	
Hauling Tap	\$ 5,308	
TOTAL OPERATING INCOME		<u>\$ 1,719,199</u>

NON OPERATING INCOME

Interest income	\$ 9,290	
TOTAL NON OPERATING INCOME		<u>\$ 9,290</u>

TOTAL INCOME

\$ 1,728,489

EXPENSES

O & M	\$ 853,264	
Taxes	\$ 29,218	
Capital Expenditures	\$ 205,000	
TOTAL EXPENSES		<u>\$ 1,087,482</u>

INCOME AVAILABLE FOR D/S (A)

\$ 641,007

DEBT SERVICE

Existing Bond P & I (B)	\$ 294,840	
Proposed WWIJD C Bond P & I (B)	\$ 104,876	
Proposed RUS Bond P & I (B)	\$ 115,908	

TOTAL DEBT SERVICE \$ 515,624

DEBT SERVICE RESERVE

Existing Debt Service Reserve	\$ 3,102	
Proposed WWIJD C Debt Service Reserve	\$ 10,488	
Proposed RUS Debt Service Reserve	\$ 11,591	
TOTAL DEBT SERVICE RESERVE		<u>\$ 25,181</u>

SURPLUS (DEFICIT)

\$ 100,202

DEBT COVERAGE (A/B)

124%

**UNITED STATES DEPARTMENT OF AGRICULTURE
 RURAL UTILITIES SERVICE
 Water and Waste Processing Checklist**

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
SF 424.2	Application for Federal Assistance	3	1780.31(b)	Applicant		HAVE	3
	DUNS Number	1		Applicant			3
	CAIVRS Number	1		RUS			CPAP Form
	Public Notice of Intent to File App./ Env. Notice	3	1780.19(a) 1794	Applicant			3
Bulletin 1780-22	Applicant Eligibility Certification/ Other Credit Certification	1	1780.33(d)	Applicant		HAVE	3
	Bond Ordn. or Resol. On Outstanding Debts	1	1780.33(e)	Applicant/ Attorney		HAVE	5
	Bonds or Notes Outstanding Debt	1	1780.33(e)	Applicant/ Attorney		HAVE	2
	Audit for last year of operation	1	1780.33(e)	Applicant/ Accountant		HAVE	1
	Staff Review Financial Statements	1	S.I. 1780.2	RUS		HAVE	1
	EJCDC No. 1910-1-FA	Agreement between Owner & Engineer	3	1780.39(b)	Applicant/ Engineer		

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>	
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	Applicant/ Attorney		HAVE	5	
	Site Visit		S.I. 1780-2	RUS			3	
	Processing Conference	1	1780.39(a)	RUS		HAVE	3	
	Environmental Report	2	1794	Applicant		HAVE	3	
	Environmental Assessment	2	1794	RUS/ Engineer			3	
	FONSI/ Evidence of Publication	1	Exhibit 1 RUS 1794 News Ad	RUS/ Applicant			3	
	Bulletins 1780-2 1780-3	Preliminary Engineering Report	2	1780.33(c)	Engineer		HAVE	6
Staff Engineer PER Review		1	1780.33(c)	RUS			3	
Bill Analysis for existing system(s)		2	1780.33(c)	Applicant/ Engineer		HAVE	8	
Rate Tariff		2	1780.33	Applicant		HAVE	8	
Applicant's IRS Tax Number(TIN)		1	1780.33(g)	Applicant		HAVE	3	
Agency Determination on the Availability of "Other Credit" with Documentation		1	1780.7(d)	RUS		HAVE	3	
Documentation on Service Area		1	1780.11	RUS		HAVE	3	
Bulletin 1780-1		Project Selection Criteria	2	1780.17	RUS			1

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Letter of Conditions	7	1780.41 (a)(5)	RUS			3
Exhibit A / A-1	Certifications Regarding Lobbying	2	1780.33(h)	Applicant			2
CPAP Form	Project Summary	3	1780.41(a)	RUS			1
RD 442-7	Operating Budget	3	1780.33(h)	Applicant			3
CPAP Form	Project Fund Analysis	3	1780.41(a)	RUS			2
RD 1940-1	Request for Obligation of Funds	4	1780.41(a)	RUS/ Applicant			2
RD 1942-46	Letter of Intent to Meet Conditions	2	1780.41 (a)(6)	Applicant			3
AD 1047	Certification Regarding Debarment (Primary)	1	1780.33(h)	Applicant			5
	Relationships/ Associations with Agency Employees	1	1780.1(f)	RUS			3
RD 1910-11	Applicant Certification, Federal Collection Policies	1	1780.33(h)	Applicant			3
Bulletin 1780-27	Loan Resolution	1	1780.45 (a)(2)	Applicant			5
RD 400-1	Equal Opportunity Agreement	1	1901-E	Applicant			6
RD 400-4	Assurance Agreement	1	1901-E	Applicant			3

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Legal Services Agreement with Bond Counsel	1	1780.39 (b)(3)	Applicant/ Bond Counsel			5
	Agreement for Accounting Services	1	1780.39 (b)(2)	Applicant/ Accountant		HAVE	5
	Certification Relative to Existing Users	1	LOC	Applicant			5
	Verification of Users	1	1780.44(b)	RUS			3
	Accountant's Certification	1	LOC	Applicant/ Accountant			3
	RUS Review of Accounting Records	1	S.I. 1780-4 (1)(ii)	RUS			3
	Copy of PSC Rule 42 Exhibit	1	State	Attorney/ Accountant			3
	DOH Permit	1	1780.15(d)	Applicant			6
	Public Land Corp. Permit	1	1780.15(d)	Applicant			6
	Corps of Engineers Permit	1	1780.15(d)	Applicant			6
	Dept. of Health Approval	1	1780.15(d)	Engineer			6
	Dept. of Environmental Protection Permit	1	1780.15(d)	Engineer			6
	Contract Documents, Plans & Specifications	2	1780.61(a)	Engineer			Separate File

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	Agency Determination on Procurement	1	1780.70(d)	RUS			6
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			5
	Right-of-Way Map	1	1780.44(g)	Engineer			Separate File
	Deeds and/or Options		1780.44.(g)	Applicant/ Attorney			5
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Narrative Opinion from Attorney	1	1780.44(g)	Attorney			5
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Attorney			5
	Review of Outstanding Judgment	1	1780.7(g)	RUS/ Attorney			3
	Evidence of "Other Funds"	1	1780.44(f)	Applicant		HAVE	2
SF 3881	Electronic Funds Transfer Payment Enrollment Form	1	31 CFR 208	Applicant/ Financial Institution			2
	PSC Approval	1	1780.15(b)	Applicant/ Attorney			6
	Bid Tabulation	1	1780.61(b)	Engineer			6
	OGC Closing Instructions	1	1780.44(h)	RUS			5

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
	S/O Closing Instructions	1	1780.44(h)	RUS			5
RD 1927-10	Final Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Separate File
RD 400-8	Compliance Review	1	1780.44(c)	RUS			5
	Liability Insurance	1	1780.39(g)	Applicant			7
	Workers' Compensation Certificate	1	1780.39(g)	Applicant			7
	Flood Insurance Policy	1	1780.39(g)	Applicant			7
440-24	Fidelity Bond	1	1780.39(g)	Applicant			7
1924-16	Record of Pre-Construction Conference	1	1780.76(a)	RUS/ Engineer			6
AD 1048	Certification Regarding Debarment (Contractor)	1 each	1780.33(h)	All Appropriate Vendors			5
	OGC Final Opinion	1	1780.45(g)	RUS			5

Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

§1780.80 General.

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, referred to as bonds in this subpart) and other necessary loan documents.

§1780.81 Policies related to use of bond counsel.

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of \$100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

- (a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;
- (b) It must be established that not using bond counsel will produce significant savings in total legal costs;
- (c) The local attorney must be able and experienced in handling this type of legal work;
- (d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;
- (e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in §1780.94; and
- (f) Closing instructions must be issued by OGC.

§1780.82 [Reserved]

RUS Instruction 1780

§1780.83 Bond transcript documents

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

- (a) Copies of all organizational documents;
- (b) Copies of general incumbency certificate;
- (c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;
- (d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;
- (e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;
- (f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;
- (g) Specimen bond, with any attached coupons;
- (h) Attorney's no-litigation certificate;
- (i) Certified copies of resolutions or other documents pertaining to the bond award;
- (j) Any additional or supporting documents required by bond counsel;
- (k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates;
- (l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of Section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§1780.84 and 1780.86 [Reserved]

§1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) First preference - Form RD 440-22, "Promissory Note". Refer to paragraph (b) of this section for methods of various frequency payment calculations.

(b) Second preference - single instruments with amortized installments. A single instrument providing for amortized installments which follows Form RD 440-22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

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

(2) Semiannual payments. Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) Annual payments. Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) Third preference - single instruments with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) Fourth preference - serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of §1780.94. Provisions for application of payments will be the same as those set forth in paragraph (c)(2)(ii) of this section.

(e) Coupon bonds. Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of §1780.94.

§1780.88 [Reserved]

§1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

§1780.90 Multiple advances of Agency funds using temporary debt instruments.

When none of the instruments described in §1780.87 are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

- (a) The date from which each advance will bear interest;
- (b) The interest rate as determined by §1780.13;
- (c) A payment schedule providing for interest on outstanding principal at least annually; and
- (d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

§§1780.91 - 1780.93 [Reserved]

§1780.94 Minimum bond specifications.

The provisions of this section are minimum specifications only and must be followed to the extent legally permissible.

- (a) Type and denominations. Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.
- (b) Bond registration. Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of "United States of America" and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

RUS Instruction 1780

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

(d) **Date of bond.** Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(e) **Payment date.** Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(1) If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(2) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(3) If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(f) **Extra payments.** Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(1) For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

(2) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(3) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

(4) For assessment bonds, see paragraph (k) of this section.

(g) The place of payments on bonds purchased by the Agency will be determined by the Agency.

(h) **Redemptions.** Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) Additional revenue bonds. Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120 percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

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

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

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

(3) Provisions that amend covenants contained in RUS Bulletins 1780-27 or 1780-28.
[Revision 2, 06/04/99]

(4) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) Assessment bonds. When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) Multiple debt instruments. The following will be adhered to when preparing debt instruments:

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

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

Revision 2

RUS Instruction 1780

§1780.95 Public bidding on bonds.

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

§§1780.96 - 1780.100 [Reserved]



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

April 26, 2005

Paul Smith, Acting Chairman
Lubeck Public Service District
P.O. Box 700
Washington, WV 26181-0700

Re: Amendment No. 1 to
Letter of Conditions

Dear Mr. Smith:

This letter, with Attachment No. 1 amends the letter of conditions dated March 4, 2004, and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of \$2,068,300, a subsequent RUS loan in the amount of \$472,000, and other funding in the amount of \$1,573,000, for a total project cost of \$4,113,300. The other funding is planned in the form of a loan from the West Virginia infrastructure and Jobs Development Council.

Subject to the requirements noted herein, all of the conditions of the March 4, 2004 letter of conditions remain in effect and must be satisfied prior to loan closing.

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

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

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, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

Enclosed are the following:

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

The conditions referred to above are as follows:

1. Loan Repayment – The subsequent loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. The remaining 456 months will be equal amortized monthly installments. For planning purposes, use a 4.25% interest rate and a monthly amortization factor of .00443 which provides for a monthly payment of \$2,091.00 on the subsequent loan.
2. The bond for the \$472,000 subsequent loan will need to be a separate bond and it will include the interest rate determined applicable prior to loan closing. It will be satisfactory for the subsequent loan bond to be described in the same loan resolution as the \$2,068,300 initial loan and for all other information and items of the loan resolution and bond transcript to reflect a \$2,540,300 total issue consisting of two or more bonds. A copy of this letter should be provided to your bond counsel immediately.
3. Public Service Commission Approval - You must obtain PSC approval of the project's proposed financing and user rates as may result from this amendment to the letter of conditions.
4. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

Form 1940-1 – “Request for Obligation of Funds”

RUS Bulletin 1780-27 – “Loan Resolution”

Form RD 1942-46 - “Letter of Intent to Meet Conditions”

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

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

Sincerely,


RICHARD E. SATTERFIELD
Acting State Director

Enclosures

cc: RUS Rural Development Specialist
Parkersburg, WV

Philip R. Postlewait, Accountant
Parkersburg, WV

Richard Hayhurst, Esquire
Parkersburg, WV

Francesca Tan, Esquire ✓
Jackson & Kelly
Morgantown, WV

Burgess & Niple, Ltd.
Parkersburg, WV

Katy Mallory, Executive Secretary
West Virginia Infrastructure & Jobs Development Council
Charleston, WV

Attachment No. 1 to Amended Letter of Conditions
 For: Lubeck Public Service District
 Amendment Date: April 26, 2005

Project Construction Budget

<u>PROJECT COST</u>	<u>RUS SUB LOAN</u>	<u>WVIJDC LOAN</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$ 397,770	\$ 1,227,800	\$ 1,536,250	\$ 3,161,820
CHANGE ORDER	\$ 65,000			\$ 65,000
CONST. CONTINGENCY		\$ 61,400	\$ 96,700	\$ 158,100
LAND/RIGHTS & PERMITS		\$ 13,300	\$ 16,700	\$ 30,000
LEGAL FEES		\$ 4,500	\$ 5,500	\$ 10,000
BOND COUNSEL		\$ 13,300	\$ 16,700	\$ 30,000
ACCOUNTING		\$ 1,200	\$ 1,550	\$ 2,750
ENGINEERING FEES		\$ 185,300	\$ 232,000	\$ 417,300
Basic - \$291,600				
Insp. - \$125,700				
Special - \$0				
INTEREST	\$ 9,230		\$ 100,000	\$ 109,230
ELECTRIC		\$ 22,200	\$ 27,800	\$ 50,000
PROJECT CONTG.		\$ 44,000	\$ 35,100	\$ 79,100
TOTAL	\$ 472,000	\$ 1,573,000	\$ 2,068,300	\$ 4,113,300

USDA UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

Federal Building, 425 Juliana Street, Room 2701, P.O. Box 303, Parkersburg, WV 26102
304.420.6666 • fax 304.420.6876 • TTY/TDD 304.284.4836

May 12, 2005

Paul W. Smith, Chairman
Lubeck Public Service District
P.O. Box 700
Washington, WV 26181-0700

Dear Mr. Smith:

The pre-closing for the District's Rural Utilities Service loans will be held on June 15, 2005, at 10:00 AM at the District's office in Washington, West Virginia. The preconstruction conference will follow at 11:00 AM. The official loan closing date for the District's Water System Improvements Project will be June 17, 2005.

Reference is made to our Letter of Conditions dated March 4, 2004, and amended April 26, 2005. All of the requirements of these letters must be met and in addition, the loan must be closed in accordance with RUS Instruction 1780 and "Closing Guidelines for Community Facilities Loans to Public Bodies."

The RUS loan of \$2,068,300 and the subsequent loan of \$472,000 will be closed utilizing an interest rate of 4.25%, resulting in payments of \$9,163 and \$2,091 per month, respectively. The District will establish and fund monthly a debt service reserve account which equals 10% of the monthly payments until you accumulate the equivalent of one annual installment on the loans.

The following items should be submitted to our office as soon as possible but not later than June 8, 2005:

1. The District's engineer must provide a resume of the proposed inspector(s).
2. The District must provide a letter accepting the proposed inspector(s).
3. The District must provide evidence that it has acquired insurance and bond coverage in accordance with Item 11 of the Letter of Conditions. The position fidelity coverage must be increased to at least \$900,000. The cost of the temporary increase in coverage in coverage is an eligible project cost and may be reimbursed at closing.
4. The District must furnish evidence that it provides State Workers' Compensation Insurance. A certificate of good standing will be satisfactory.
5. The permit from the West Virginia Department of Highways. The District should proceed to obtain the necessary bond and forward same to the WVDOH requesting the permit be issued. At the very latest, this permit must be available on June 15, 2005
6. An advance copy of the first drawdown.

<http://www.rurdev.usda.gov/wv>



USDA Rural Development is an Equal Opportunity Lender, Provider and Employer
Complaints of discrimination should be sent to: USDA Director, Office of Civil Rights, Washington, D.C. 20250-9410

COMMITTED TO THE FUTURE OF RURAL COMMUNITIES

On the day of preclosing, the following documents must be provided:

1. The District's attorney will need to provide Form RD 442-22 "Opinion of Counsel Relative to Rights of Way." showing no exceptions. This form should be dated June 17, 2005.
2. The District's attorney must furnish a Form RD 1927-10 "Final Title Opinion." on all land(s) being acquired. In addition, the attorney must provide a separate final title opinion(s) covering all existing property owned by the District. The opinion(s) should be dated June 17, 2005.
3. The District must furnish evidence that the West Virginia Public Service Commission has approved the project's proposed financing.

If you have any questions regarding these or any other matters pertaining to your loan, please contact our office at your earliest convenience.

Sincerely,

VIRGINIA M. McDONALD
Rural Development Specialist

Enclosure

cc: State Director
USDA-Rural Development
Morgantown, WV

Lise Sibicky, P.E.
Burgess & Niple, Ltd.
Parkersburg, WV

Richard Hayhurst, Esquire
Parkersburg, WV

Francesca Tan, Esquire
Jackson & Kelly, PLLC
Morgantown, WV

Phillip R. Postlewait, Jr., CPA
Parkersburg, WV

Katy Mallory, Executive Secretary
WVIJC
Charleston, WV

**CLOSING GUIDELINES FOR
COMMUNITY FACILITY LOANS TO PUBLIC BODIES**

At or before the closing for the financing, the following conditions must be satisfied:

1. **General Requirements.** There must be full compliance with all requirements specified in (a) applicable Farmers Home Administration Instructions, (b) correspondence from OGC, (c) any applicable correspondence from the Administrator's office, (d) FmHA letter of conditions, (e) clearinghouse comments, and (f) any state office memorandum of approval.
2. **Loan Resolution.** Confirm that the Applicant has duly adopted the fully executed Form FmHA 1942-47, Loan Resolution (Public Bodies).
3. **Grant Agreement.** In the event that a grant is also to be made to the Applicant, then the grant may be closed in accordance with FmHA Instructions provided that these Closing Instructions have also been complied with and duly authorized officials of the Applicant have fully executed Form FmHA 1942-31, Grant Agreement.
4. **Civil Rights.** Confirm that the following fully executed civil rights forms are in the docket:
 - a. Form RD 400-1, Equal Opportunity Agreement.
 - b. Form RD 400-4, Assurance Agreement.
 - c. Form FmHA 400-8, Compliance Review (Pre-loan closing).
5. **Environmental Impact.** Confirm that a completed and executed Environmental Impact Assessment, is in the docket. If the Assessment indicates that an Environmental Impact Statement must be filed, this must be accomplished prior to loan closing.
6. **Clearinghouse Comments.** Confirm that A-95 approvals have been received from both state and regional clearinghouses. Note any comments received and confirm that the Applicant intends to comply with such comments. If the Applicant expresses a contrary intention, the State Office should be notified immediately in detail. The State Office should consult OGC with respect to the legal ramification of any such noncompliance.
7. **Specimen Bond(s).** Prior to closing, confirm that the terms of the specimen bond(s) are consistent with FmHA Instructions, the FmHA Letter of Conditions and other obligating documents. Amortization schedules and maturity dates should be checked very carefully.
8. **Certification of Payment.** If FmHA loan proceeds will be used to retire interim indebtedness, the Applicant must provide FmHA with written statements in accordance with FmHA Instruction 1942-A, 1942.17(n)(2) [7 C.F.R. 1942.17].

- e. **Certified documents evidencing that the Applicant has complied fully with all statutory requirements incident to advertising the consideration and/or adoption of the bond ordinance unless Bond Counsel advises you that this is not applicable.**
- f. **Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvements, if such documents are not included in the minutes furnished.**
- g. **Copies of official Notice of Sale and Affidavit of Publication of Notice of Sale unless Bond Counsel advises you that this is not applicable.**
- h. **Specimen Bond (of each denomination), with any attached coupons.**
- i. **No Litigation Certificate of Local Counsel (See Item 12 below).**
- j. **Certified copies of resolutions or other documents pertaining to the award of the Bond(s).**
- k. **Non-Arbitrage Certificate.**
- l. **Any additional or supporting documents required by Bond Counsel.**
- m. **Preliminary approving opinion, if any, and final unqualified approving opinion of Bond Counsel, including opinion regarding interest on bonds being exempt from Federal and any State income taxes.**

Any omissions from the Bond transcript should be supplied by the Rural Development Specialist with the assistance of the Applicant and Bond Counsel. Obviously, certain of the documents listed above will normally be delivered prior to the closing.

- 12. **Attorney's No-Litigation Certificate. Local Counsel should deliver a manually-executed original attorney's no-litigation certificate dated the date of closing.**
- 13. **Evidence of Title. In all cases, confirm that Local Counsel has supplied FmHA with his or her title opinion regarding the sites for any project structures such as treatment plants and community buildings. The opinion should be on Form FmHA 1927-10 with any changes necessary to reflect the circumstances of this financing. In the case of utility-type financings, confirm that executed Form FmHA 442-21 and 442-22 concerning rights-of-way are also in the docket. Any title exceptions should either be removed prior to closing or be specifically cleared through OGC.**
- 14. **Additional Instructions. OGC will normally issue additional closing instructions on a case-by-case basis containing special requirements for specific loans. The District Director should review the Closing Instructions prepared by OGC relating to the specific case and close the loan in accordance with those instructions.**

LOAN RESOLUTION
(Public Bodies)

COPY 2 2004

A RESOLUTION OF THE

Board

OF

Lubeck Public Service District

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS **Water System Expansion & Improvements Project**

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the

Lubeck Public Service District

(Public Body)

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

TWO MILLION SIXTY-EIGHT THOUSAND THREE HUNDRED AND XX / 100 DOLLARS (\$2,068,300.00)

pursuant to the provisions of

Chapter 16, Article 13A, West Virginia Code

; and

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

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

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

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as Secretary of the Lubeck Public Service District

hereby certify that the Board of such Association is composed of

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

held on the 11th day of March, 2004; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of June 17, 2005,
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been
rescinded or amended in any way.

Dated, this 17th day of June, 2005



Roger D. Martin

Title Secretary

MAY 16 7

LOAN RESOLUTION
(Public Bodies)

COPY

A RESOLUTION OF THE Board

OF THE Lubeck Public Service District

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS Water System Expansion & Improvements Project

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO

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

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

FOUR HUNDRED SEVENTY-TWO THOUSAND AND XX / 100 DOLLARS (\$472,000.00)

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

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

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

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

CERTIFICATION TO BE EXECUTED AT LOAN

I, the undersigned, as Secretary of the Lubeck Public Service District

hereby certify that the Board of such Association is composed of

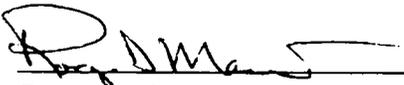
2 members, of whom 2 constituting a quorum, were present at a meeting thereof duly called and

held on the 12th day of May, 2005; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of June 17, 2005,

the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this 17th day of June, 2005



Roger D. Martin

Title Secretary

2.5

**LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)**

BOND RESOLUTION

Table of Contents

Subject	Page
ARTICLE I STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS	
Section 1.01 Authority for this Resolution	1
Section 1.02 Findings	2
Section 1.03 Bond Legislation Constitutes Contract	4
Section 1.04 Definitions	5
ARTICLE II AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT	
Section 2.01 Authorization of Acquisition and Construction of the Project	14
ARTICLE III AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT	
Section 3.01 Authorization of Bonds	15
Section 3.02 Terms of Bonds	15
Section 3.03 Execution of Bonds	16
Section 3.04 Bond Registrar; Authentication and Registration	16
Section 3.05 Negotiability, Transfer and Registration	17
Section 3.06 Bonds Mutilated, Destroyed, Stolen or Lost	18
Section 3.07 Bonds not to be Indebtedness of the Issuer	18
Section 3.08 Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	19
Section 3.09 Delivery of Bonds	19
Section 3.10 Form of Bonds	19

	FORM OF SERIES 2005 A BOND	20
	FORM OF SERIES 2005 B BOND	29
	FORM OF SERIES 2005 C BOND	37
Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreement	45
Section 3.12	Filing of Amended Schedule	45
ARTICLE IV		
[RESERVED]		
		46
ARTICLE V		
FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF		
Section 5.01	Establishment of Funds and Accounts with Depository Bank	47
Section 5.02	Establishment of Funds and Accounts with Commission	47
Section 5.03	System Revenues; Flow of Funds	47
ARTICLE VI		
APPLICATION OF BOND PROCEEDS		
Section 6.01	Application of Bond Proceeds	53
Section 6.02	Disbursements From the Bond Construction Trust Fund	54
ARTICLE VII		
ADDITIONAL COVENANTS OF THE ISSUER		
Section 7.01	General Covenants of the Issuer	56
Section 7.02	Bonds not to be Indebtedness of the Issuer	56
Section 7.03	Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds	56
Section 7.04	Initial Schedule of Rates and Charges	56
Section 7.05	Sale of the System	57
Section 7.06	Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances	58
Section 7.07	Parity Bonds	58
Section 7.08	Books; Records and Audit	61
Section 7.09	Rates	63
Section 7.10	Operating Budget and Monthly Financial Report	63
Section 7.11	Engineering Services and Operating Personnel	64
Section 7.12	No Competing Franchise	64
Section 7.13	Enforcement of Collections	65
Section 7.14	No Free Services	65

Section 7.15	Insurance and Construction Bonds	65
Section 7.16	Connections	67
Section 7.17	Completion and Operation of Project; Permits and Orders	67
Section 7.18	Tax Covenants	67
Section 7.19	Statutory Mortgage Lien	68
Section 7.20	Compliance with Letter of Conditions, Loan Agreement and Law	69
Section 7.21	Securities Laws Compliance	69
Section 7.22	Contracts; Public Releases	69

**ARTICLE VIII
INVESTMENT OF FUNDS; NON-ARBITRAGE**

Section 8.01	Investment of Funds	70
Section 8.02	Arbitrage and Tax Exemption	70
Section 8.03	Tax Certificate and Rebate	71

**ARTICLE IX
DEFAULT AND REMEDIES**

Section 9.01	Events of Default	73
Section 9.02	Remedies	73
Section 9.03	Appointment of Receiver	73

**ARTICLE X
PAYMENT OF BONDS**

Section 10.01	Payment of Series 2005 A Bonds	76
Section 10.02	Payment of Series 2005 B Bonds	76
Section 10.03	Payment of Series 2005 C Bonds	76

**ARTICLE XI
MISCELLANEOUS**

Section 11.01	Amendment or Modification of Bond Legislation	77
Section 11.02	Bond Legislation Constitutes Contract	77
Section 11.03	Severability of Invalid Provisions	77
Section 11.04	Headings, Etc.	77
Section 11.05	Conflicting Provisions Repealed; Prior Resolutions	77
Section 11.06	Covenant of Due Procedure, Etc.	78
Section 11.07	Public Notice of Proposed Financing	78
Section 11.08	Effective Date	79
	SIGNATURES	79
	CERTIFICATION	80

LUBECK PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$1,573,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), NOT MORE THAN \$2,068,300 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE), AND NOT MORE THAN \$472,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE); 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 LOAN AGREEMENTS 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 LUBECK PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted pursuant to the provisions of Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 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. Lubeck Public Service District (the "Issuer") is a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State.

B. The Issuer presently owns and operates a public water 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 improvements and extensions to the existing public water facilities of the Issuer, consisting of construction of an air stripping unit at the existing water treatment plant; 3 water storage tanks; 20,700 linear feet of water main; a 160-gallon per minute (gpm) booster station; a new altitude valve and valve vault at the New England Ridge tank site; rehabilitation of the existing altitude valve at the Riverhill tank site; a flow control valve and valve vault on the Homewood system; improvements on the Wildwood tank; demolition of 2 tanks and construction of a new 531,000 gallon tank at the Riverhill site; and the drilling and development of a new 300 gpm water production well and other associated work in the Lubeck, Tygart, Steele and Harris Districts of Wood County, West Virginia, together with all appurtenant facilities (collectively, the "Project"), which constitute public service properties for the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (the existing public water facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

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 United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government") and the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Infrastructure Fund administered by the Authority 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 \$4,113,300, in 3 series (collectively, the "Series 2005 Bonds"), being the Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the aggregate principal amount of not more than \$1,573,000 (the "Series 2005 A Bonds"), the Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), in the aggregate principal amount of not more than \$2,068,300 (the "Series 2005 B Bonds"), and the Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), in the aggregate principal amount of not more than \$472,000 (the "Series 2005 C Bonds"), to permanently finance the costs of acquisition and construction of

the Project. Such costs shall be deemed to include the cost of acquisition and construction of any public service properties and any improvements and extensions thereto, the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, on the Series 2005 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 respective Reserve Account for the Series 2005 Bonds (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2005 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 2005 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that (i) the Series 2005 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), in form satisfactory to the respective parties (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer, and (ii) the Series 2005 B Bonds and the Series 2005 C Bonds be sold to the Government pursuant to the terms and provisions of the Letter of Conditions (as hereinafter defined).

G. The Series 2005 Bonds shall be issued on a parity with each other and with the Issuer's (i) Water Revenue Bonds, Series 1990 A, dated April 2, 1990, issued in the original principal amount of \$3,139,013 (the "Series 1990 A Bonds"), and (ii) Water Revenue Bonds, Series 1997, dated March 27, 1997, issued in the original principal amount of \$535,000 (the "Series 1997 Bonds"). The Series 2005 Bonds shall be issued senior and prior to the Issuer's Water Revenue Bonds, Series 1990 B, dated April 2, 1990, issued in the original principal amount of \$146,487 (the "Series 1990 B Bonds"). The Series 1990 A Bonds, the Series 1990 B Bonds and the Series 1997 Bonds are collectively referred to herein as the "Prior Bonds."

Prior to the issuance of the Series 2005 Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Series 1990 A Bonds and the Series 1997 Bonds are met; (ii) the written consent of the Registered Owners of the Series 1990 A Bonds and the Series 1997 Bonds to the issuance of the Series 2005 Bonds on a parity with the Series 1990 A Bonds and the Series 1997 Bonds; and (iii) the written consent of the Registered Owners of the Series 1990 B Bonds to the issuance of the Series 2005 Bonds on a senior and prior basis to the Series 1990 B 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 following completion of the Project from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest, if any, on the Series 2005 Bonds and the Prior Bonds and all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System, and the issuance of the Series 2005 Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the Council and the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia (the "PSC") by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2005 Bonds or such final order will not be subject to appeal or rehearing.

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

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2005 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 2005 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 31, Article 15A of the Code of West Virginia, 1931, as amended and in effect on the date of adoption hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2005 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Chairperson of the Governing Body of the Issuer or any temporary Acting Chairperson duly elected by the Governing Body.

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

"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.

"Bonds" means, collectively, the Series 2005 Bonds, the Prior Bonds and any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

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

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

"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 Burgess & Niple, Inc., Parkersburg, 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 Code of West Virginia, 1931, as amended.

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

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

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

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

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

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

"Government" means the United States of America, United States Department of Agriculture, Rural Utilities Service, which is expected to be the original purchaser and Registered Owner of the Series 2005 B Bonds and the Series 2005 C Bonds.

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

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

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

"Investment Property" means:

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

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

"Letter of Conditions" means, collectively, the Letter of Conditions of the Government dated March 4, 2004, the amended Letter of Conditions of the Government dated April 26, 2005, and all amendments thereto, providing for the purchase of the Series 2005 B Bonds and the Series 2005 C Bonds from the Issuer by the Government.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into by and between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 2005 A Bonds from the Issuer by the Authority, the form of

which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Net Proceeds" means the face amount of the Series 2005 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2005 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

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

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

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

"Paying Agent" means the Commission or other entity designated as such for the Series 2005 A Bonds in the Supplemental Resolution.

"Prior Bonds" means, collectively, the Issuer's (i) Water Revenue Bonds, Series 1990 A, dated April 2, 1990, issued in the original aggregate principal amount of \$3,139,013; (ii) Water Revenue Bonds, Series 1990 B, dated April 2, 1990, issued in the original aggregate principal amount of \$146,487; and (iii) Water Revenue Bonds, Series 1997, dated March 27, 1997, issued in the original aggregate principal amount of \$535,000.

"Prior Resolutions" means, collectively, the resolutions of the Issuer adopted March 28, 1990, and March 27, 1997, authorizing the Prior Bonds.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account.

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

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

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

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

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

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

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

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the 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 Code of West Virginia, 1931, as amended; and

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

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

"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 created by the Prior Resolutions and continued by Section 5.01 hereof.

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

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in the Reserve Accounts.

"Revenue Fund" means the Revenue Fund created by the Prior Resolutions and continued by Section 5.01 hereof.

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

"Series 2005 Bonds" means, collectively, the Series 2005 A Bonds, the Series 2005 B Bonds and the Series 2005 C Bonds.

"Series 2005 A Bonds" means the Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, authorized by this Resolution.

"Series 2005 A Bonds Construction Trust Fund" means the Series 2005 A Bonds Construction Trust Fund created by Section 5.01 hereof.

"Series 2005 A Bonds Reserve Account" means the Series 2005 A Bonds Reserve Account created by Section 5.02 hereof.

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

"Series 2005 A Bonds Sinking Fund" means the Series 2005 A Bonds Sinking Fund created by Section 5.02 hereof.

"Series 2005 B and C Bonds Construction Trust Fund" means the Series 2005 B and C Bonds Construction Trust Fund created by Section 5.01 hereof.

"Series 2005 B Bonds" means the Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), of the Issuer, authorized by the Resolution.

“Series 2005 B Bonds Reserve Account” means the Series 2005 B Bonds Reserve Account created by Section 5.02 hereof.

“Series 2005 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 2005 B Bonds in the then current or any succeeding year.

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

“Series 2005 C Bonds” means the Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), of the Issuer, authorized by the Resolution.

“Series 2005 C Bonds Reserve Account” means the Series 2005 C Bonds Reserve Account created by Section 5.02 hereof.

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

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

“Sinking Funds” means, collectively, the respective sinking funds of the Series 2005 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 2005 Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2005 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 Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

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

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

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

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

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 \$4,113,300, 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 2005 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 Government, the Authority, and the Council.

The cost of the Project is estimated to be \$4,113,300, of which \$1,573,000 will be obtained from proceeds of the Series 2005 A Bonds, \$2,068,300 will be obtained from proceeds of the Series 2005 B Bonds and \$472,000 will be obtained from proceeds of the Series 2005 C Bonds.

ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2005 Bonds, funding the respective Reserve Account for the Series 2005 Bonds, paying Costs of the Project not otherwise provided for, and paying certain costs of issuance of the Series 2005 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2005 Bonds of the Issuer. The Series 2005 Bonds shall be issued in 3 series, each as a single bond, designated respectively as “Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund),” in the principal amount of not more than \$1,573,000, “Water Revenue Bonds, Series 2005 B (United States Department of Agriculture),” in the principal amount of not more than \$2,068,300, and “Water Revenue Bonds, Series 2005 C (United States Department of Agriculture),” in the principal amount of not more than \$472,000, and each shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2005 Bonds remaining after funding the Reserve Accounts (if funded from Bond proceeds) and capitalizing interest on the Series 2005 Bonds, if any, shall be deposited in or credited to the respective Series 2005 Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. A. The Series 2005 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the legal maximum rate, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2005 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2005 A 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 2005 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2005 A Bonds. The Series 2005 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding

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

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

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

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

Section 3.03. Execution of Bonds. The Series 2005 Bonds shall be executed in the name of the Issuer by the Chairperson, 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 2005 Bonds shall cease to be such officer of the Issuer before the Series 2005 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2005 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. Bond Registrar; Authentication and Registration. A. The Bond Registrar for the Series 2005 A Bonds shall be the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns. No such Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such 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 such Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of such Bonds issued hereunder. The provisions of this paragraph relating to authentication and registration shall not apply to the Series 2005 B Bonds or the Series 2005 C Bonds.

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

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

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2005 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 Registered Owner, in accepting the Series 2005 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 Registered Owner shall further be conclusively deemed to have agreed that such Bonds shall be incontestable in the hands of a bona fide registered owner for value.

So long as the Series 2005 Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Series 2005 Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2005 Bonds or transferring the registered Series 2005 Bonds is exercised, all such Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All such Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of such 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 such Bonds or, in the case of any proposed redemption of such 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 2005 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 Registered Owner's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2005 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the

Net Revenues derived from the operation of the System as herein provided. No Registered Owner of such Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay such 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 all the Series 2005 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Series 1990 A Bonds and the Series 1997 Bonds and senior and prior to the lien on the Net Revenues in favor of the Registered Owners of the Series 1990 B Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2005 Bonds and the Prior Bonds and to make all other payments provided for in the Bond Legislation and the Prior Resolutions, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. A. The Issuer shall execute and deliver the Series 2005 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2005 A Bonds to the original purchasers upon receipt of a request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate, register and deliver such Bonds to the original purchasers.

B. The Issuer shall execute and deliver the Series 2005 B Bonds and the Series 2005 C Bonds to the Government as soon as the Government will accept such delivery.

Section 3.10. Form of Bonds. The text of each series of the Series 2005 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 2005 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-_____

\$_____

KNOW ALL MEN BY THESE PRESENTS: That on this ___ day of _____, 200_, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood 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, ____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The interest on this Bond at the rate per annum set forth on said EXHIBIT B shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, ____, as set forth on said EXHIBIT B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the Registered Owner (as defined in the hereinafter described Bond Legislation) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia

Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated _____, 200__.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public water facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on _____, 200__, and a Supplemental Resolution duly adopted by the Issuer on _____, 200__ (collectively, the "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 this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1990 A, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,139,013 (THE "SERIES 1990 A BONDS"); (2) WATER REVENUE BONDS, SERIES 1997, DATED MARCH 27, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$535,000 (THE "SERIES 1997 BONDS"); (3) WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED _____, 2005, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$_____ (THE "SERIES 2005 B BONDS"); AND (4) WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED _____, 2005, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$_____ (THE "SERIES 2005 C BONDS"). THE SERIES 1990 A BONDS, THE SERIES 1997 BONDS, THE SERIES 2005 B BONDS AND THE SERIES 2005 C BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "FIRST LIEN BONDS."

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT TO THE ISSUER'S WATER REVENUE BONDS, SERIES 1990 B, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$146,487.

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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the First Lien Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the 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 of principal of and interest on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 A Bonds Reserve Account, an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien 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 Owner (as defined in the Bond Legislation) of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond 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 Registrar (as defined in the Bond Legislation) 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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

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

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

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

[SEAL]

Chairperson

ATTEST:

Secretary

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 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: _____, 200_.

_____, as Registrar

Authorized Officer

(Form of)

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 2005 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. BR-1

\$_____

FOR VALUE RECEIVED, on this ___ day of _____, 200__, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of _____ DOLLARS (\$_____), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of _____% per annum.

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

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

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

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1990 A, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,139,013 (THE "SERIES 1990 A BONDS"); (2) WATER REVENUE BONDS, SERIES 1997, DATED MARCH 27, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$535,000 (THE "SERIES 1997 BONDS"); (3) WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 2005 A BONDS"); AND (4) WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE

PRINCIPAL AMOUNT OF \$_____ (THE "SERIES 2005 C BONDS"). THE SERIES 1990 A BONDS, THE SERIES 1997 BONDS, THE SERIES 2005 A BONDS AND THE SERIES 2005 C BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "FIRST LIEN BONDS."

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT TO THE ISSUER'S WATER REVENUE BONDS, SERIES 1990 B, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$146,487.

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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the First Lien Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 B Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates or 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 of principal of and interest on this Bond payable in any year and all other obligations secured by a lien or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 B Bonds Reserve Account, an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien 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 Owner (as defined in the Bond Legislation) of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond 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 in the Bond Legislation, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Secretary of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney or legal representative duly authorized in writing.

Subject to the registration requirements set forth in the Bond Legislation, 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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

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

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

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

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

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

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

Chairperson

[SEAL]

ATTEST:

Secretary

(Form of)

RECORD OF ADVANCES

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

TOTAL \$ _____

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

(FORM OF SERIES 2005 C BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 C
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. CR-1

\$_____

FOR VALUE RECEIVED, on this ____ day of _____, 200__, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of _____ DOLLARS (\$_____), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of _____% per annum.

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

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

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

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1990 A, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,139,013 (THE "SERIES 1990 A BONDS"); (2) WATER REVENUE BONDS, SERIES 1997, DATED MARCH 27, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$535,000 (THE "SERIES 1997 BONDS"); (3) WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$_____ (THE "SERIES 2005 A BONDS"); AND (4) WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED _____, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE

PRINCIPAL AMOUNT OF \$_____ (THE "SERIES 2005 B BONDS"). THE SERIES 1990 A BONDS, THE SERIES 1997 BONDS, THE SERIES 2005 A BONDS AND THE SERIES 2005 B BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "FIRST LIEN BONDS."

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT TO THE ISSUER'S WATER REVENUE BONDS, SERIES 1990 B, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$146,487.

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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the First Lien Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 C Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 C Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates or 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 of principal of and interest on this Bond payable in any year and all other obligations secured by a lien or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 C Bonds Reserve Account, an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien 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 Owner (as defined in the Bond Legislation) of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond 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 in the Bond Legislation, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Secretary of the Issuer, as registrar (the "Registrar"), which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its attorney or legal representative duly authorized in writing.

Subject to the registration requirements set forth in the Bond Legislation, 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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

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

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

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

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

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

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

Chairperson

[SEAL]

ATTEST:

Secretary

(Form of)

RECORD OF ADVANCES

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

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2005 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Chairperson is specifically authorized and directed to execute the Loan Agreement and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation. The Series 2005 B Bonds and the Series 2005 C Bonds shall be sold to the Government, pursuant to the terms and conditions of the Letter of Conditions. The Letter of Conditions, including all attachments, are 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, the Council and the Government, a schedule, the forms of which will be provided by the Council and the Government, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

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

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

Section 5.02. Establishment of Funds and Accounts with Commission.

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

- (1) Series 2005 A Bonds Sinking Fund;
- (2) Series 2005 A Bonds Reserve Account;
- (3) Series 2005 B Bonds Reserve Account; and
- (4) Series 2005 C Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds.

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

revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order of priority:

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

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Series 1990 A Bonds Sinking Fund, the amount required by the Prior Resolutions to pay the interest on the Series 1990 A Bonds; (ii) remit to the National Finance Office for deposit in the Series 1997 Bonds Sinking Fund, the amount required by the Prior Resolutions to pay the interest on the Series 1997 Bonds; (iii) remit to the Commission, commencing 3 months prior to the first date of payment of interest on the Series 2005 A Bonds, for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2005 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2005 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payment shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date; (iv) remit to the National Finance Office, commencing on the day which is 30 days following the date of delivery of the Series 2005 B Bonds and continuing on the corresponding day of each month, for deposit in the Series 2005 B Bonds Sinking Fund hereby established at the National Finance Office, the amount of interest due as set forth in the Series 2005 B Bonds; and (v) remit to the National Finance Office, commencing on the day which is 30 days following the date of delivery of the Series 2005 C Bonds and continuing on the corresponding day of each month, for deposit in the Series 2005 C Bonds Sinking Fund hereby established at the National Finance Office, the amount of interest due as set forth in the Series 2005 C Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Series 1990 A Bonds Sinking Fund, the amount required by the Prior Resolutions to pay the principal of the Series 1990 A Bonds; (ii) remit to the National Finance Office for deposit in the Series 1997 Bonds Sinking Fund, the amount required by the Prior Resolutions to pay the principal of the Series 1997 Bonds; (iii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2005 A Bonds, for deposit in the Series 2005 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2005 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2005 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment 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; (iv) remit to the National Finance Office, commencing 24 months following the date of delivery of the Series 2005 B Bonds, for deposit in the Series 2005 B Bonds Sinking Fund, the amount of principal due as set forth in the Series 2005 B Bonds; and (v) remit to the National Finance Office, commencing 24 months following the date of delivery of the Series 2005 C Bonds, for deposit in the Series 2005 C Bonds Sinking Fund, the amount of principal due as set forth in the Series 2005 C Bonds.

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

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Series 1990 A Bonds Reserve Account, the amount required by the Prior Resolutions; (ii) remit to the Depository Bank for deposit in the Series 1997 Bonds Reserve Account, the amount required by the Prior Resolutions; (iii) remit to the Commission, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineers, if not fully funded upon the issuance of the Series 2005 A Bonds, for deposit in the Series 2005 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 A Bonds Reserve Requirement, until the amount in the Series 2005 A Bonds Reserve Account equals the Series 2005 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2005 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2005 A Bonds Reserve Requirement; (iv) remit to the Commission, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineers, if not fully funded upon the issuance of the Series 2005 B Bonds, for deposit in the Series 2005 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 B Bonds Reserve Requirement, until the amount in the Series 2005 B Bonds Reserve Account equals the Series 2005 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2005 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 2005 B Bonds Reserve Requirement; and (v) remit to the Commission, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineers, if not fully funded upon the issuance of the Series 2005 C Bonds, for deposit in the Series 2005 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2005 C Bonds Reserve Requirement, until the amount in the Series 2005 C Bonds Reserve Account equals the Series 2005 C Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2005 C Bonds Reserve Account when there shall have been deposited therein, and as

long as there shall remain on deposit therein, an amount equal to the Series 2005 C Bonds Reserve Requirement.

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

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit (i) in the Series 1990 B Bonds Sinking Fund, the amount required by the Prior Resolutions to pay the principal of the Series 1990 B Bonds; and (ii) in the Series 1990 B Bonds Reserve Account, the amount required by the Prior Resolutions.

Moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 B Bonds Sinking Fund and the Series 2005 C Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2005 Bonds, respectively, as the same shall become due. Moneys in the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Reserve Account and the Series 2005 C Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2005 Bonds, respectively, as the same shall come due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Reserve Account and the Series 2005 C Bonds Reserve Account (if fully funded) 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 Series 2005 Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2005 Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Reserve Account or the Series 2005 C Bonds Reserve Account which result in a reduction in the balance therein to below the respective Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2005 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 therefor.

The Issuer shall not be required to make any further payments into the respective Sinking Fund or the Reserve Account for the Series 2005 Bonds when the aggregate amount of funds therein are at least equal to the respective aggregate principal amount of the Series 2005 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

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

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

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

The respective Sinking Fund and the Reserve Account for the Series 2005 Bonds shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2005 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 interest, principal and reserve account payments and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement, and submit a copy of said form, 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 respective parties shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority or the Government at any time, 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 moneys in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

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

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

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds. From the moneys received from the sale of the Series 2005 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2005 A Bonds, there shall first be deposited in the Series 2005 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 2005 A Bonds for the period commencing on the date of issuance of the Series 2005 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. From the proceeds of the Series 2005 B Bonds, there shall first be deposited in the Series 2005 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 2005 B Bonds for the period commencing on the date of issuance of the Series 2005 B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

C. From the proceeds of the Series 2005 C Bonds, there shall first be deposited in the Series 2005 C 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 2005 C Bonds for the period commencing on the date of issuance of the Series 2005 C Bonds and ending 6 months after the estimated date of completion of construction of the Project.

D. Next, from the proceeds of the Series 2005 A Bonds, there shall be deposited in the Series 2005 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2005 A Bonds Reserve Account.

E. Next, from the proceeds of the Series 2005 B Bonds, there shall be deposited in the Series 2005 B Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2005 B Bonds Reserve Account.

F. Next, from the proceeds of the Series 2005 C Bonds, there shall be deposited in the Series 2005 C Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2005 C Bonds Reserve Account.

G. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2005 A Bonds, such moneys shall be deposited with the Depository Bank in the Series 2005 A 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 2005 A Bonds.

H. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2005 B Bonds, such moneys shall be deposited with the Depository Bank in the Series 2005 B and C 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 2005 B Bonds.

I. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 2005 C Bonds, such moneys shall be deposited with the Depository Bank in the Series 2005 B and C 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 2005 C Bonds.

J. 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 2005 A Bonds shall be expended as directed by the Council and any remaining proceeds of the Series 2005 B Bonds and the Series 2005 C Bonds shall be expended as directed by the Government.

Section 6.02. Disbursements From the Bond Construction Trust Fund.

A. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments of all costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of proceeds of the Series 2005 A Bonds from the Series 2005 A Bonds Construction Trust Fund shall be made only after submission to and approval from the Council of a certificate, signed by an Authorized Officer and the Consulting Engineers, 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.

The Issuer shall expend all proceeds of the Series 2005 A Bonds within 3 years of the date of issuance of the Council's bonds, the proceeds of which were used to make the loan to the Issuer.

B. The proceeds of the Series 2005 B Bonds and the Series 2005 C Bonds in the Series 2005 B and C Bonds Construction Trust Fund shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Government.

Until completion of acquisition and construction of the Project, the Issuer will transfer sufficient proceeds of the Series 2005 B Bonds and the Series 2005 C Bonds from the Series 2005 B and C Bonds Construction Trust Fund and pay to the Government on or before the due date, such sums as shall be required to make the monthly payments on the Series 2005 B Bonds and the Series 2005 C Bonds, if there are not sufficient revenues to make such monthly payments.

Pending such application, moneys in the respective Series 2005 Bonds Construction Trust Fund 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 Registered Owner of the Series 2005 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Registered Owner of the Series 2005 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as the Series 2005 Bonds or the interest, if any, thereon are Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2005 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 Registered Owner of the Series 2005 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2005 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 all the Series 2005 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues, on a parity with the lien on the Net Revenues in favor of the Registered Owners of the Series 1990 A Bonds and the Series 1997 Bonds and senior and prior to the lien on the Net Revenues in favor of the Registered Owner of the Series 1990 B Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2005 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 and the Prior Resolutions 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. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in and approved by the PSC Order and such rates are hereby adopted.

So long as the Series 2005 Bonds are Outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2005 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are Outstanding, the System may not be sold, transferred, mortgaged, leased or otherwise disposed of, except in accordance with the terms of the Prior Resolutions. Additionally, so long as the Series 2005 Bonds are Outstanding and except as otherwise required by law or with the written consent of the Council, the Authority and the Government, 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 2005 Bonds, be remitted to the respective Sinking Funds and applied to the payment of principal of and interest, if any, on the Series 2005 Bonds. Any balance remaining after the payment of the Series 2005 Bonds and interest, if any, thereon shall be remitted to the Issuer unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

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

disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amount required to be paid into said fund by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Registered Owners of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners 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 2005 Bonds. All obligations issued by the Issuer after the issuance of the Series 2005 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 2005 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 2005 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 2005 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, the Council and the Government 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 Resolutions 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 2005 Bonds pursuant to this Bond Legislation, except with the prior written consent of the Authority, the Council and the Government under the conditions and in the manner herein provided.

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

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

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

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

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

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

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

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

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, 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 Registered Owners of the Bonds and the Registered Owners 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 of one series over any other Bond of the same series. 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 outstanding 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 2005 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, the Council and the Government, 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, the Council and the Government 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 State and federal grants or other sources of financing for the Project.

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

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the 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 PSC. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Council, the Authority, the Government, or any other original purchaser of the Series 2005 Bonds, and shall mail in each year to any Registered Owner of the Series 2005 Bonds, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation, and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Registered Owner of the Series 2005 Bonds, and shall submit said report to the Council, the Authority and the Government, or any other original purchaser of the Series 2005 Bonds. Such audit report submitted to the Authority, the Council and the Government 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 Operating Expenses and debt service and reserve requirements.

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

The Issuer shall permit the Authority, the Council and the Government, 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, the Council and the Government, or their agents and representatives, with access to the System site and System

facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority, the Council and the Government with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2005 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 2005 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Reserve Accounts for the Series 2005 Bonds and the reserve accounts for obligations on a parity with the Series 2005 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 2005 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2005 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 30 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority, the Council and the Government 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, the Council and the Government and to any Registered Owner of the Series 2005 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, the Council and the Government and to any Registered Owner of the Series 2005 Bonds, or anyone acting for and on behalf of such Registered Owner.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority and the Council by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, certifying, 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, the Council and the Government, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority, the Council and the Government 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, the Council and the Government covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council, the Government and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

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

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

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the PSC 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 PSC, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14. 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 2005 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds

of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

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

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT 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 Chapter 38, Article 2, Section 39 of the Code of West Virginia, 1931, as amended.

(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, the Council and the Government. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear. The Issuer shall verify such insurance prior to commencement of construction.

Section 7.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the PSC, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and State requirements and standards.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project, all orders and approvals from the PSC and the Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for issuance of the Series 2005 Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. **PRIVATE BUSINESS USE LIMITATION.** The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2005 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2005 A Bonds during the term thereof is, under the terms of the Series 2005 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2005 A Bonds are used for a Private Business Use, and (B) an amount

in excess of 5% of the principal or 5% of the interest due on the Series 2005 A Bonds during the term thereof is, under the terms of the Series 2005 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2005 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2005 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of the portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 2005 A Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2005 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will timely file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2005 A Bonds and the interest thereon including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2005 A Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Registered Owner of the Series 2005 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 2005 Bonds; provided however, that the statutory mortgage lien of the Series 2005 Bonds shall be on a parity with the statutory mortgage lien of the Series 1990 A Bonds and the

Series 1997 Bonds and senior and prior to the statutory mortgage lien of the Series 1990 B Bonds.

Section 7.20. Compliance with Letter of Conditions, Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Letter of Conditions, the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the Council 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, the Council, the Government or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.21. 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; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2005 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Council and the Government for written approval. The Issuer shall obtain the written approval of the Council and the Government before expending any proceeds of the Series 2005 Bonds held in "contingency" as set forth in the schedules attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Council and the Government before expending any proceeds of the Series 2005 Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the Council, the Authority and the Government 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. Investment of Funds. Any moneys 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 moneys 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 moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission 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 2005 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2005 A Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2005 A Bonds which would cause the Series 2005 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take any and all actions

that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2005 A Bonds) so that the interest on the Series 2005 A Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2005 A Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2005 A Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and the Regulations, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and shall be used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and the Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by the Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and

retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and the Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 2005 A Bonds from gross income for federal income tax purposes.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2005 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2005 A Bonds (as such term "gross proceeds" is defined in the Code).

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 2005 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 2005 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 2005 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2005 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, the Paying Agent or a Registered Owner 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 under the Prior Bonds or the Prior Resolutions.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2005 Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Registered Owners of the Series 2005 Bonds shall be on a parity with those of the Registered Owners of the Series 1990 A Bonds and the Series 1997 Bonds and senior and prior to those of the Registered Owners of the Series 1990 B Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2005 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, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the

Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Series 2005 A Bonds. If the Issuer shall pay or there shall otherwise be paid to the Registered Owners of the Series 2005 A Bonds, the principal of and interest, 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 moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2005 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of the interest on the Series 2005 A Bonds from gross income for federal income tax purposes.

Section 10.02. Payment of Series 2005 B Bonds. If the Issuer shall pay or there shall otherwise be paid to the Registered Owners of the Series 2005 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 moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2005 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 10.03. Payment of Series 2005 C Bonds. If the Issuer shall pay or there shall otherwise be paid to the Registered Owners of the Series 2005 C 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 moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2005 C Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2005 Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2005 Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2005 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2005 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 pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Series 2005 A Bonds from gross income of the Registered Owners 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 2005 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 2005 Bonds.

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

Section 11.05. Conflicting Provisions Repealed; Prior Resolutions. Except for the Prior Resolutions, all orders or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed; provided that,

in the event of any conflict between this Resolution and the Prior Resolutions, the Prior Resolutions shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairperson, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

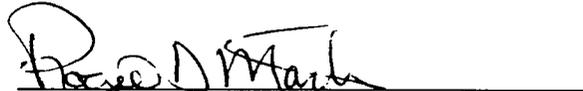
Section 11.07. Public Notice of Proposed Financing. Prior to making formal application to the PSC for a certificate of public convenience and necessity and adoption of this Resolution, the Secretary shall have caused to be published in a newspaper of general circulation in each municipality in Lubeck Public Service District and within the boundaries of the Issuer, a Class II legal advertisement stating:

- (a) The maximum amount of the Series 2005 Bonds to be issued;
- (b) The maximum interest rate and terms of the Series 2005 Bonds authorized hereby;
- (c) The public service properties to be acquired or constructed and the cost of the same;
- (d) The maximum anticipated rates which will be charged by the Issuer; and
- (e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the PSC.

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

Adopted this 15th day of June, 2005.


Chairperson


Member

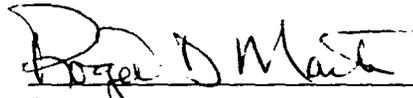
Member

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board
of LUBECK PUBLIC SERVICE DISTRICT on the 15th day of June, 2005.

Dated this 17th day of June, 2005.

[SEAL]


Secretary

05/16/05
101090/00308

M0421819.1

2.6

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE LUBECK PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SERIES 2005 A BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE SERIES 2005 B BONDS AND THE SERIES 2005 C BONDS TO THE UNITED STATES DEPARTMENT OF AGRICULTURE; APPROVING AND RATIFYING THE LOAN AGREEMENT WITH RESPECT TO THE SERIES 2005 A BONDS; 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 Lubeck Public Service District (the "Issuer") has duly and officially adopted a Bond Resolution on June 15, 2005 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$1,573,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), NOT MORE THAN \$2,068,300 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE), AND NOT MORE THAN \$472,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE); 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 LOAN 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, the capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution when used herein;

WHEREAS, the Resolution provides for the issuance of the Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), the Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), and the Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), of the Issuer, in the respective aggregate principal amounts not to exceed \$1,573,000, \$2,068,300 and \$472,000 (collectively, the "Bonds" or individually, the "Series 2005 A Bonds," the "Series 2005 B Bonds" and the "Series 2005 C Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Series 2005 A Bonds, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Resolution it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be therein provided for;

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

WHEREAS, the Series 2005 A Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement and the Series 2005 B Bonds and the Series 2005 C Bonds are proposed to be purchased by the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government") pursuant to the Letter of Conditions; and

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

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

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

A. Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$1,573,000. The Series 2005 A Bonds shall be dated the date of delivery, shall finally mature December 1, 2026, and shall bear interest at a rate of 3% per annum. The principal of and interest on the Series 2005 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2007, in the amounts set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Series 2005 A Bonds. The Series 2005 A Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Series 2005 A Bonds.

B. Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), of the Issuer, originally represented by a single bond, numbered BR-1, in the original principal amount of \$2,068,300. The Series 2005 B Bonds shall be dated the date of delivery, shall mature forty years from the date thereof, and the principal amount advanced under the Series 2005 B Bonds shall bear interest at the rate of 4.25% per annum. Monthly installments of interest only on the amounts advanced under the Series 2005 B Bonds are payable 30 days following the date of delivery of the Series 2005 B Bonds and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Series 2005 B Bonds, and thereafter, monthly installments of principal of and interest on the Series 2005 B Bonds, in the aggregate amount of \$9,163, are payable on the corresponding day of each month, except that the final installment on the Series 2005 B Bonds shall be paid at the end of 40 years from the date of the Series 2005 B Bonds in the sum of the unpaid principal and interest due on the date thereof. The Series 2005 B Bonds are subject to prepayment as set forth in the Resolution and the Series 2005 B Bonds. All principal and interest payments on the Series 2005 B Bonds will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

C. Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), of the Issuer, originally represented by a single bond, numbered CR-1, in the original principal amount of \$472,000. The Series 2005 C Bonds shall be dated the date of delivery, shall mature forty years from the date thereof, and the principal amount advanced

under the Series 2005 C Bonds shall bear interest at the rate of 4.25% per annum. Monthly installments of interest only on the amounts advanced under the Series 2005 C Bonds are payable 30 days following the date of delivery of the Series 2005 C Bonds and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Series 2005 C Bonds, and thereafter, monthly installments of principal of and interest on the Series 2005 C Bonds, in the aggregate amount of \$2,091, are payable on the corresponding day of each month, except that the final installment on the Series 2005 C Bonds shall be paid at the end of 40 years from the date of the Series 2005 C Bonds in the sum of the unpaid principal and interest due on the date thereof. The Series 2005 C Bonds are subject to prepayment as set forth in the Resolution and the Series 2005 C Bonds. All principal and interest payments on the Series 2005 C Bonds will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

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

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

Section 4. The Issuer hereby appoints and designates WesBanco Bank, Inc., Wheeling, West Virginia, to serve as Registrar (the "Registrar") for the Series 2005 A Bonds under the Resolution and approves and accepts 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 Chairperson, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 5. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Series 2005 A Bonds under the Resolution.

Section 6. The Issuer hereby appoints and designates WesBanco Bank, Inc.,

Parkersburg, West Virginia, to serve as the Depository Bank under the Resolution.

Section 7. Series 2005 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 A Bonds Sinking Fund as capitalized interest.

Section 8. Series 2005 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 A Bonds Reserve Account.

Section 9. The remaining proceeds of the Series 2005 A Bonds, as advanced from time to time, shall be deposited in the Series 2005 A Bonds Construction Trust Fund for payment of costs of the Project, including costs of issuance of the Series 2005 A Bonds.

Section 10. Series 2005 B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 B Bonds Sinking Fund as capitalized interest.

Section 11. Series 2005 B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 B Bonds Reserve Account.

Section 12. The remaining proceeds of the Series 2005 B Bonds, as advanced from time to time, shall be deposited in the Series 2005 B and C Bonds Construction Trust Fund for payment of costs of the Project, including costs of issuance of the Series 2005 B Bonds.

Section 13. Series 2005 C Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 C Bonds Sinking Fund as capitalized interest.

Section 14. Series 2005 C Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 C Bonds Reserve Account.

Section 15. The remaining proceeds of the Series 2005 C Bonds, as advanced from time to time, shall be deposited in the Series 2005 B and C Bonds Construction Trust Fund for payment of costs of the Project, including costs of issuance of the Series 2005 C Bonds.

Section 16. The Chairperson and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Resolution approved and provided for, to the end that the Series 2005 A Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about June 17, 2005, and the Series 2005 B Bonds and the Series 2005 C Bonds may be delivered to the Government pursuant to the Letter of Conditions on or about June 17, 2005.

Section 17. 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 18. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Resolution held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Reserve Account and the Series 2005 C Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

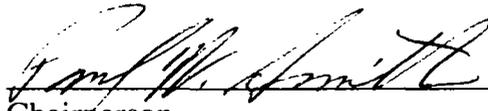
Section 19. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project and the Chairperson is hereby authorized and directed to execute and deliver all such contracts.

Section 20. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 21. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Regulations to be promulgated thereunder.

Section 22. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 15th day of June, 2005.



Chairperson



Member

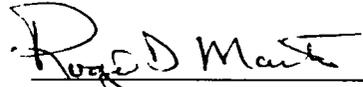
Member

CERTIFICATION

Certified as a true copy of a Supplemental Resolution duly adopted by the Public Service Board of Lubeck Public Service District on the 15th day of June, 2005.

Dated this 17th day of June, 2005.

[SEAL]


Secretary

05/23/05
101090/00308

LUBECK PUBLIC SERVICE DISTRICT

March 11, 2004

Lee Johnson, Chairman
Paul W. Smith, Secretary-Treasurer

Attending: Lee Johnson, Paul Smith, James Cox, Richard Hayhurst,
Craig Richards, Rodney Holbert, Jimmy McCumbers,
Phil Postlewait, Charles Flinn, Judith Ann Boston,
Mike Wright, James C. Smith, Juistin B. Smith,
Ellen L. Smith, Betty R. Smith, Donald E. Vaughn,
Marvin Bradley, Virginia Sines, and Nancy Vaughn.

NO. OF CUSTOMERS:	Section	Sewer	Water
	1 Lake Washington Road	311	485
	2 Lubeck	334	430
	3 Riverhill - Blenn. Heights	277	373
	4 DuPont Road	227	290
	5 Larkmead Road	101	326
	6 LMH - Homewood Road	0	274
	7 Washington Bottom	300	362
	8 New England Ridge	177	315
	9 Lubeck South	211	323
	10 Larkmead Area - Marrtown	48	302
	11 Route 68 South - Hopewell	0	209
	12 Mitchell's	50	72
	Total Customers	2034	3,781

TREASURER'S REPORT:

Revenue Fund - United National Bank	\$266.84
Operations & Maintenance Fund - Wesbanco	(\$44,943.49)
Prudential Securities Water Fund	\$0.00
Series 1999 Sewerage Bonds Account	\$24,183.89
WesBanco Trust Fund	\$165,275.65

Transfer From Revenue to Operation & Maintenance Checking Account	\$24,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$3,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$6,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$7,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$2,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$5,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$5,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$11,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$13,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$53,500.00
Transfer From Revenue to Operation & Maintenance Checking Account Held	\$4,000.00
Transfer From Revenue to Operation & Maintenance Checking Account Held	\$3,500.00
Transfer From Revenue to Operation & Maintenance Checking Account Held	\$4,000.00
Transfer From Revenue to Operation & Maintenance Checking Account Held	\$7,500.00
Transfer From Revenue to Operation & Maintenance Checking Account Held	\$8,000.00
Transfer From Revenue to Operation & Maintenance Checking Account Held	\$22,000.00
Transfer From Revenue to Operation & Maintenance Checking Account	\$0.00
Transfer From Water Revenue to Sewer Projection Construction	\$0.00
Transfer From Investment Account to Operation & Maintenance Account	\$0.00
Transfer From Investment Account to Operation & Maintenance Account	\$0.00
The following transfers were made to cover payroll since the last Board meeting:	
Transfer From Revenue to Operation & Maintenance Checking	\$15,000.00
Transfer From Revenue to WesBanco Tax Account	\$5,505.14
Transfer From Revenue to Operation & Maintenance Checking	\$14,900.00
Transfer From Revenue to WesBanco Tax Account	\$5,512.15

BUSINESS: Prayer by Paul Smith.

- A) Moved by Paul Smith, seconded by Lee Johnson that Richard Hayhurst be appointed as this meetings temporary Chairman. Passed unanimously.
- B) Lee Johnson noted that he was resigning as Treasurer of Lubeck Public Service District effective immediately.
- C) Moved by Lee Johnson that Paul Smith be the new Treasurer and interim Secretary until a replacement Commissioner is named to the Lubeck Public Service District Board, seconded by Paul Smith. Passed unanimously.
- D) Moved by Paul Smith that Lee Johnson be the new Chairman of the Lubeck Public Service District, seconded by Lee Johnson. Passed unanimously.
- E) The temporary Chairman, Richard Hayhurst, then turned the meeting over to the new Chairman, Lee Johnson.
- F) The Board hereby presents to Betty Smith the attached Resolution which is hereby adopted by motion of Paul Smith and seconded by Lee Johnson citing the significance of the service of Jim Smith to the Lubeck Public Service District's overall being. Passed unanimously.
- G) Moved by Paul Smith, seconded by Lee Johnson that the minutes of the Board meeting of February 12, 2004, the two Special Board meetings of February 17, 2004 and the cancellation of the February 26, 2004 meeting be approved. Passed unanimously.

DISCUSSION OF DISTRICT HAPPENINGS:

It was reported what has been happening in the District:

- A) Installed 2 water taps since the last Board meeting. There are 3 water taps to be installed. This gives us 5 water taps for 2004. The District has installed 0 sewer taps since the last Board meeting. There is 1 sewer tap to be installed. This gives us 3 sewer taps for 2004.
- B) Sealed and capped the test wells in the well field.
- C) Did employee evaluations and worked in shop.
- D) Men worked in water plant cleaning pipes to paint and painting of those pipes.
- E) Reset high service pump #4 that Mueller rebuilt at no cost to us.

- F) Testing of water meters.
- G) Two employees went to a seminar on water meters and the computer programming that goes with it.
- H) Did turn offs and turn ons.
- I) Working on cleaning the asphalt off the manholes at Wellesley.
- J) Repaired one main line leak and two service line leaks.
- K) Completed work orders, spotted valves & lines, set meters, etc.

It was reported what Rod and Bill have been working on:

A) February Water Pumped to System:	22,991,000 Gallons
Homewood Booster Station:	173,600 Gallons
New England Booster Station:	2,412,200 Gallons
High Water Usage and Day:	965,000 on 02/02
Low Water Usage and Day:	648,000 on 02/06

- B) Have experienced 20,000 gallons in overflows at tanks.

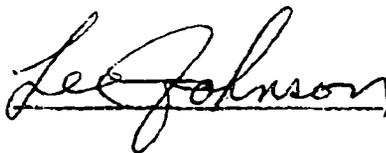
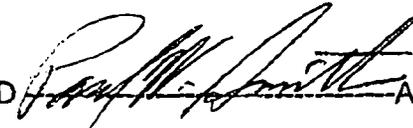
GENERAL BUSINESS:

- A) Moved by Paul Smith, seconded by Lee Johnson that all bills be approved as reviewed by management and the Board, in addition to all fund transfers as presented. Passed unanimously.
- B) The District has received a letter from the Wood County Commission stating that they will be sponsoring a seminar on Ethics issues and Open Meeting Law issues on March 22, 2004 at 7 PM.
- ✓ C) The District has received our Letter of Conditions from the Rural Utilities Service for their portion of the project which will replace the Water Development Authority money at a higher interest rate. We now need to sign the paper work for the money. Paul Smith moved that the Board adopt and sign the following forms:
 - Form RD 442-7 - Operating Budget
 - Form RD 1940-1 - Request for Obligation of Funds
 - RUS Bulletin 1780-27 - Loan Resolution (Public Bodies)
 - Form RD 400-1 - Equal Opportunity Agreement
 - Form 400-4 - Assurance Agreement
 - Form AD 1047 - Certification Regarding Disbarment - Primary
 - Form RD 1910-11 - Applicant Certification, Federal Collection Policy

FmHA Instruction 1940-Q, Exhibit A-1, Certification for
Contracts, Grants, and Loans
Certification of Compliance
Form RD 1942-46 - Letter of Intent to Meet Conditions
Lee Johnson seconded the motion. Motion passed unanimously.

- D) Moved by Paul Smith, seconded by Lee Johnson that the Board authorize James Cox, Manager to purchase a Position Fidelity Bond from our insurance carrier or other supplier of said insurance when it is deemed the appropriate time. This policy is to be in the amount of an extra \$900,000 of coverage as required by the Rural Utilities Service. Passed unanimously.
- E) The District needs to open a checking account to run the money for the water project through. Moved by Paul Smith, seconded by Lee Johnson that an account be opened at Wesbanco as per the attached resolution. Passed unanimously.
- F) Jim Cox reported that he had mailed a copy of the cost estimate to Rebecca Wells of Ball School Road for their consideration. He has yet to hear anything back from them.
- G) The District has a dispute with the way the Public Service Commission (PSC) has decided to administer the new Senate Bill 412 having to deal with property owner's responsibility for payment of tenant delinquent bills. The PSC has taken the stance that as of June 8, 2003 the District can no longer require a property owner to pay for any tenant who was a District customer before that date but who was not delinquent before that date. Mr. Hayhurst agrees with Jim Cox's determination that the PSC does not have a right to make the law retro active to cover any current customer. Therefore, the District has received two complaints concerning this situation by one person whom we do not even know and another one by a property owner in the District. The District has responded to the complaints and awaits an answer from the PSC.
- H) The District has received a Procedural Order allowing for initial briefs to be filed by Friday March 12, 2004 and reply briefs to be filed by Friday, March 19, 2004. Upon this happening the Administrative Law Judge will make his determination as to what is going to happen to this case.
- I) The District's attorney continues to answer complaints that have been filed with the Public Service Commission in respect to the Commissioners of the District.

- J) The District has received a copy of a letter sent to Wood County Commission President, Rick Modesitt regarding guidelines to voting by members of boards and commissions. A copy was given to the Commissioners for their future reference.
- K) Moved by Paul Smith, seconded by Lee Johnson that the District accept the January 2004 financial statement as prepared by Philip R. Postlewait, Jr., CPA. Passed unanimously.
- L) Moved by Paul Smith, seconded by Lee Johnson that the District hold the employee evaluations and pay raises until we hear from the Public Service Commission with a final decision or until July 1, 2004 whichever comes first. Passed unanimously.
- N) Mr. Flinn was here to remind us that he is still looking for water to come up his road. The District told him that we were still waiting on the Public Service Commission to make a final ruling and for that ruling to go into effect before we could award the contracts for the construction of the water tank that will serve his area. Once this happens then we can start making plans for his line.
- O) Meeting adjourned.

 APPROVED  ATTESTED

2.8

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

MINUTES ON ADOPTION OF BOND
RESOLUTION AND SUPPLEMENTAL RESOLUTION

On this 17th day of June, 2005, the undersigned duly appointed Secretary of the Public Service Board of Lubeck Public Service District hereby certifies that the following is a true and correct excerpt of the minutes of a special meeting of said Public Service Board:

The Public Service Board of Lubeck Public Service District met in special session, pursuant to notice duly posted, on the 15th day of June, 2005, in Washington, West Virginia, at the hour of 10:00 a.m.

PRESENT: Paul Smith - Chairperson, Treasurer and Member
Roger Martin - Secretary and Member

ABSENT: None

Paul Smith, Chairperson, presided, and Roger Martin, acted as Secretary. The Chairperson announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Chairperson presented a proposed Bond Resolution in writing entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$1,573,000 IN AGGREGATE

PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), NOT MORE THAN \$2,068,300 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE), AND NOT MORE THAN \$472,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE); 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 LOAN AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

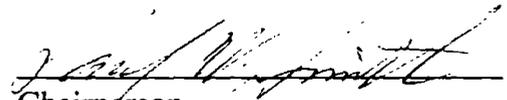
Next, the Chairperson presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE LUBECK PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SERIES 2005 A BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE SERIES 2005 B BONDS AND THE SERIES 2005 C BONDS TO THE UNITED STATES DEPARTMENT OF AGRICULTURE; APPROVING AND RATIFYING THE LOAN AGREEMENT WITH RESPECT TO THE SERIES 2005 A

BONDS; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.


Chairperson


Secretary

CERTIFICATION

I hereby certify that the foregoing action of Lubeck Public Service District remains in full force and effect and has not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature as of the date first written above.


Secretary

06/03/05
101090/00308

**** DUPLICATE AFFIDAVIT ****

SHERRY L. BRUNETT

Being first duly sworn, says that the

"Lubeck PSD PSC Notice of Pre-Filing"

Hereto attached was printed in the

**DUPLICATE AFFIDAVIT
REQUESTED, per
MARY BETH MURAD**

XX
.....Parkersburg News,

.....The Marietta AM,

.....The Parkersburg Sentinel,

A daily newspaper published in the City of Parkersburg,

Wood County, West Virginia, for **TWO** successive

weeks, the first publication and posting thereon being on

the **2nd** day of **August** 20**03**, and

subsequent publication on the **9th**

day (s) of **August** 20**03**..

Printer's Fee \$..628.59.. PAID IN FULL 9/15/03

Notarized Signature \$.....2.00..

Additional Copy Fee \$.....75..

Total Due: \$.....2.75.. **DUPLICATE AFFIDAVIT
CHARGES**

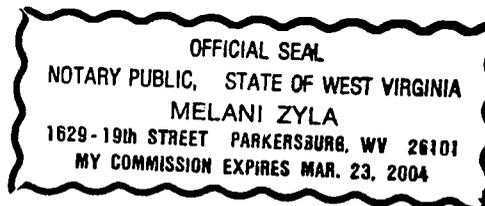
By 

Subscribed and sworn to before me this

8th day of **September** 20**03**.


.....
Notary Public for Wood County, West Virginia

My commission expires **3-23-04**.....



Notice of Pre-Filing

State of West Virginia
Public Service Commission
Chairman

NOTICE IS HEREBY GIVEN that LUBECK PUBLIC SERVICE DISTRICT (District), a public utility, has given notice to the Public Service Commission (Commission) of its intent to file an application for a certificate of convenience and necessity (Certificate) for the construction of various improvements to the District's facilities. The improvements are described below as two separate components of the project.

The first component consists of the construction of an air stripping tank at the existing water treatment plant and the construction of three water storage tanks (Component One).

The second component consists of the construction of the following: (1) 20,700 feet of water main; (2) a 100 gallon per minute (gpm) booster station; (3) a new electric valve and valve vault at New England Ridge tank site; (4) rehabilitation of the existing electric valve at the Riverhill Tank site; (5) a flow control valve and valve vault on the Horseshoe system; (6) improvements on the Wildwood tank, including increasing the overflow and sizing; (7) demolition of both of the tanks at the Riverhill tank site and construction of a new 531,000-gallon tank at the Riverhill site; (8) design/development of a new 300 gpm water production well; and (9) other associated work in the Lubeck, Tygart, Stealy, and Harris Districts of Wood County, West Virginia (Component Two) together with Component One, the Project. The Project will not result in any additional customers to be served by the District.

The estimated total cost of the Project is anticipated not to exceed \$3,541,000. The estimated total cost of Component One will be \$1,873,000. The District intends to finance Component One with a loan at 3% interest for 20 years from the West Virginia Infrastructure and Jobs Development Council in the principal amount of \$1,873,000. The estimated total cost of Component Two will be \$1,668,000. The District intends to finance this cost through a loan at 5% interest for 40 years from the West Virginia Water Development Authority in the principal amount of \$1,668,000.

Because the District will borrow funds to finance the Project, the District is seeking a rate increase to cover its costs. The District requests that the following rates and charges be implemented:

LUBECK PUBLIC SERVICE DISTRICT
WASHINGTON, WEST VIRGINIA
WATER RATE SHEET

LOCATION: DuPont Road South, Hazardous Waste Substation
MAKE CHECKS PAYABLE TO: Lubeck Public Service District, P. O. Box 700, Washington, West Virginia 26181, Phone: (304)683-3341

APPLICABILITY: Applies to all the entire territory served

AVAILABILITY: Available for domestic, commercial, industrial water service

RATES table with columns for Meter Size, Gallons used per month, and Rate per 1,000 gallons.

Minimum Charges: The minimum bill by metered for less than \$14.78 per month which is the rate for 2,000 gallons of water.

Table listing meter sizes (1/2 inch to 4 inch) and their corresponding monthly rates.

RETURNED CHECK CHARGE: A service charge equal to the actual bank fee assessed to the District or a minimum of \$25.00 will be imposed upon any customer for check for payment of charges returned by the bank due to insufficient funds.

PRIVATE FIRE PROTECTION SERVICE table listing hydrant and sprinkler connection rates.

Delayed Payment Penalty: Where connections, hydrants, sprinklers, etc on private property are maintained by consumers requiring cycling of pumps to maintain system.

HAULING TAP CHARGES: Water purchased at the District office hauling tap shall be dispensed at a charge of \$25 (twenty five cents) per 100 gallons.

RECONNECTION FEE \$30.00: To be charged to reverse the supply of water is turned off for violation of rules, rules of contract of bill, or customer use of water.

RESURCHARGE: \$1.00 per 1,000 gallons billed for a period not to exceed the total repayment of the Rural Utility Service Loan dated March 25, 1997 for customers in the Hayswood, Hobe Hill, and Hayswood Run substation areas funded by this loan.

TAP FEE \$400.00: To be charged whenever the District installs a new tap to serve an applicant.

SEWER ADJUSTMENT: \$0.57 (eighty two cents) per 1,000 gallons to be used when a bill reflects unusual consumption which can be attributed to customer's use of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SECURITY DEPOSIT: Not to exceed one month (1/12th) of the annual estimated charge for service or Fifty Dollars (\$50.00), whichever is greater.

These rates represent the following increases:

Table showing rate increases for Residential, Commercial, Industrial, and Public Authority based on 4,800 Monthly Gallon Billing.

The District does not have any resale customers who will be affected by this Project. The proposed increased rates and charges will produce approximately \$671,739 annually in additional revenue, an increase of \$1,488.

The proposed rates are based on averages of all customers in the indicated class. Individual customers may receive a bill that is higher or lower than average. Furthermore, the requested rates and charges are only a proposed and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing.

This Project is subject to the Public Service Commission's approval of its new proposed rates and charges, and to implementation of the proposed rates and charges. The Public Service Commission's approval of the proposed rates and charges is not a guarantee of the District's ability to recover its costs. If the Public Service Commission does not approve the proposed rates and charges, there will be an opportunity for the District to file a new application for a Certificate of Convenience and Necessity.

LUBECK PUBLIC SERVICE DISTRICT
WASHINGTON, WEST VIRGINIA
Attest: _____
Lubeck Public Service District

SHERRY L. BRUNETT

Being first duly sworn, says that the
"Notice of Special Meeting - June 15, 2005"

Hereto attached was printed in the

XX
.....Parkersburg News,

.....The Marietta AM,

XX
.....The Parkersburg Sentinel,

A daily newspaper published in the City of Parkersburg,
Wood County, West Virginia, for ONE successive

weeks, the first publication and posting thereon being on
the 3rd day of June 2005, and

subsequent publication on the N/A
day (s) of 20.....

Printer's Fee \$...96.60...

Notarized Signature \$...2.00...

Additional Copy Fee \$.....

Total Due: \$...98.60...

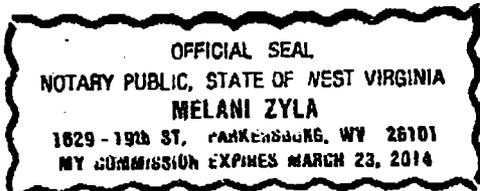
By:.....
Sherry L. Brunett

Subscribed and sworn to before me this

6th day of June 2005.

.....
Melani Zyla
Notary Public for Wood County, West Virginia

My commission expires 3-23-14.....



AR-1



UNITED STATES OF AMERICA
 STATE OF WEST VIRGINIA
 LUBECK PUBLIC SERVICE DISTRICT
 WATER REVENUE BOND, SERIES 2005 A
 (WEST VIRGINIA INFRASTRUCTURE FUND)

SPECIMEN

No. AR-1

\$1,573,000

KNOW ALL MEN BY THESE PRESENTS: That on this 17th day of June, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood 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 ONE MILLION FIVE HUNDRED SEVENTY THREE THOUSAND DOLLARS (\$1,573,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2007, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The interest on this Bond at the rate per annum set forth on said EXHIBIT B shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2007, as set forth on said EXHIBIT B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the Registered Owner (as defined in the hereinafter described Bond Legislation) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Bond Legislation) on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

NUMBER

AR-1 SPECIMEN

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated June 17, 2005.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public water facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on June 15, 2005, and a Supplemental Resolution duly adopted by the Issuer on June 15, 2005 (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 this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1990 A, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,139,013 (THE "SERIES 1990 A BONDS"); (2) WATER REVENUE BONDS, SERIES 1997, DATED MARCH 27, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$535,000 (THE "SERIES 1997 BONDS"); (3) WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED JUNE 17, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,068,300 (THE "SERIES 2005 B BONDS"); AND (4) WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED JUNE 17, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$472,000 (THE "SERIES 2005 C BONDS"). THE SERIES 1990 A BONDS, THE SERIES 1997 BONDS, THE SERIES 2005 B BONDS AND THE SERIES 2005 C BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "FIRST LIEN BONDS."

NUMBER

AR SPECIMEN

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT TO THE ISSUER'S WATER REVENUE BONDS, SERIES 1990 B, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$146,487.

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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the First Lien Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the 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 of principal of and interest on this Bond payable in any year and all other obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 A Bonds Reserve Account, an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien 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 Owner (as defined in the Bond Legislation) of this Bond for the terms of which reference is made to the Bond Legislation. Remedies provided the Registered Owner of this Bond 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 Registrar (as

NUMBER

AR-1 SPECIMEN

defined in the Bond Legislation) 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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

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

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

All provisions of the 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.

AR-1

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

[SEAL]

Chairperson

[Handwritten signature]

ATTEST:

Secretary

[Handwritten signature]

SPECIMEN

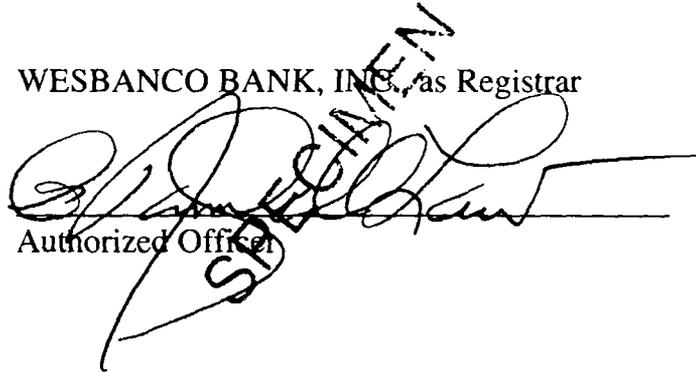
AR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 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: June 17, 2005.

WESBANCO BANK, INC., as Registrar


Authorized Officer

AR-1

EXHIBIT A

RECORD OF ADVANCES

SPECIMEN

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$222,320	6/17/05	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ _____

AR-1
EXHIBIT B

SPECIMEN

\$1,573,000

Lubeck Public Service District (West Virginia)

3% Interest Rate, 20 Years

Closing Date: June 17, 2005

Debt Service Schedule

Part 1 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2005	-	-	-	-
12/01/2005	-	-	-	-
03/01/2006	-	-	-	-
06/01/2006	-	-	-	-
09/01/2006	-	-	-	-
12/01/2006	-	-	-	-
03/01/2007	14,421.60	3.000%	11,797.50	26,219.10
06/01/2007	14,529.76	3.000%	11,689.34	26,219.10
09/01/2007	14,638.73	3.000%	11,580.36	26,219.09
12/01/2007	14,748.52	3.000%	11,470.57	26,219.09
03/01/2008	14,859.14	3.000%	11,359.96	26,219.10
06/01/2008	14,970.58	3.000%	11,248.52	26,219.10
09/01/2008	15,082.86	3.000%	11,136.24	26,219.10
12/01/2008	15,195.98	3.000%	11,023.12	26,219.10
03/01/2009	15,309.95	3.000%	10,909.15	26,219.10
06/01/2009	15,424.77	3.000%	10,794.32	26,219.09
09/01/2009	15,540.46	3.000%	10,678.64	26,219.10
12/01/2009	15,657.01	3.000%	10,562.08	26,219.09
03/01/2010	15,774.44	3.000%	10,444.65	26,219.09
06/01/2010	15,892.75	3.000%	10,326.35	26,219.10
09/01/2010	16,011.95	3.000%	10,207.15	26,219.10
12/01/2010	16,132.03	3.000%	10,087.06	26,219.09
03/01/2011	16,253.03	3.000%	9,966.07	26,219.10
06/01/2011	16,374.92	3.000%	9,844.17	26,219.09
09/01/2011	16,497.73	3.000%	9,721.36	26,219.09
12/01/2011	16,621.47	3.000%	9,597.63	26,219.10
03/01/2012	16,746.13	3.000%	9,472.97	26,219.10
06/01/2012	16,871.72	3.000%	9,347.37	26,219.09
09/01/2012	16,998.26	3.000%	9,220.83	26,219.09
12/01/2012	17,125.75	3.000%	9,093.35	26,219.10
03/01/2013	17,254.19	3.000%	8,964.90	26,219.09
06/01/2013	17,383.60	3.000%	8,835.50	26,219.10
09/01/2013	17,513.98	3.000%	8,705.12	26,219.10
12/01/2013	17,645.33	3.000%	8,573.77	26,219.10
03/01/2014	17,777.67	3.000%	8,441.43	26,219.10
06/01/2014	17,911.00	3.000%	8,308.09	26,219.09
09/01/2014	18,045.34	3.000%	8,173.76	26,219.10
12/01/2014	18,180.68	3.000%	8,038.42	26,219.10
03/01/2015	18,317.03	3.000%	7,902.07	26,219.10
06/01/2015	18,454.41	3.000%	7,764.69	26,219.10
09/01/2015	18,592.82	3.000%	7,626.28	26,219.10
12/01/2015	18,732.26	3.000%	7,486.83	26,219.09
03/01/2016	18,872.76	3.000%	7,346.34	26,219.10
06/01/2016	19,014.30	3.000%	7,204.80	26,219.10

AR-1

SPECIMEN

\$1,573,000

Lubeck Public Service District (West Virginia)

3% Interest Rate, 20 Years

Closing Date: June 17, 2005

Debt Service Schedule

Part 2 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2016	19,156.91	3.000%	7,062.19	26,219.10
12/01/2016	19,300.58	3.000%	6,918.51	26,219.09
03/01/2017	19,445.34	3.000%	6,773.76	26,219.10
06/01/2017	19,591.18	3.000%	6,627.92	26,219.10
09/01/2017	19,738.11	3.000%	6,480.98	26,219.09
12/01/2017	19,886.15	3.000%	6,332.95	26,219.10
03/01/2018	20,035.30	3.000%	6,183.80	26,219.10
06/01/2018	20,185.56	3.000%	6,033.54	26,219.10
09/01/2018	20,336.95	3.000%	5,882.14	26,219.09
12/01/2018	20,489.48	3.000%	5,729.62	26,219.10
03/01/2019	20,643.15	3.000%	5,575.95	26,219.10
06/01/2019	20,797.97	3.000%	5,421.12	26,219.09
09/01/2019	20,953.96	3.000%	5,265.14	26,219.10
12/01/2019	21,111.11	3.000%	5,107.98	26,219.09
03/01/2020	21,269.45	3.000%	4,949.65	26,219.10
06/01/2020	21,428.97	3.000%	4,790.13	26,219.10
09/01/2020	21,589.68	3.000%	4,629.41	26,219.09
12/01/2020	21,751.61	3.000%	4,467.49	26,219.10
03/01/2021	21,914.74	3.000%	4,304.35	26,219.09
06/01/2021	22,079.10	3.000%	4,139.99	26,219.09
09/01/2021	22,244.70	3.000%	3,974.40	26,219.10
12/01/2021	22,411.53	3.000%	3,807.56	26,219.09
03/01/2022	22,579.62	3.000%	3,639.48	26,219.10
06/01/2022	22,748.97	3.000%	3,470.13	26,219.10
09/01/2022	22,919.58	3.000%	3,299.51	26,219.09
12/01/2022	23,091.48	3.000%	3,127.62	26,219.10
03/01/2023	23,264.67	3.000%	2,954.43	26,219.10
06/01/2023	23,439.15	3.000%	2,779.94	26,219.09
09/01/2023	23,614.95	3.000%	2,604.15	26,219.10
12/01/2023	23,792.06	3.000%	2,427.04	26,219.10
03/01/2024	23,970.50	3.000%	2,248.60	26,219.10
06/01/2024	24,150.28	3.000%	2,068.82	26,219.10
09/01/2024	24,331.40	3.000%	1,887.69	26,219.09
12/01/2024	24,513.89	3.000%	1,705.21	26,219.10
03/01/2025	24,697.74	3.000%	1,521.35	26,219.09
06/01/2025	24,882.98	3.000%	1,336.12	26,219.10
09/01/2025	25,069.60	3.000%	1,149.50	26,219.10
12/01/2025	25,257.62	3.000%	961.48	26,219.10
03/01/2026	25,447.05	3.000%	772.04	26,219.09
06/01/2026	25,637.91	3.000%	581.19	26,219.10
09/01/2026	25,830.19	3.000%	388.91	26,219.10
12/01/2026	26,023.92	3.000%	195.18	26,219.10
Total	\$1,573,000.00	-	\$524,527.73	\$2,097,527.73

AR-1

ASSIGNMENT

SPECIMEN

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:

BR-1



SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. BR-1

\$2,068,300

FOR VALUE RECEIVED, on this 17th day of June, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of TWO MILLION SIXTY EIGHT THOUSAND THREE HUNDRED DOLLARS (\$2,068,300), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 4.25% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$9,163, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

BR-1

SPECIMEN

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public water facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Resolution duly adopted by the Issuer on June 15, 2005, and a Supplemental Resolution duly adopted by the Issuer on June 15, 2005 (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 this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1990 A, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,139,013 (THE "SERIES 1990 A BONDS"); (2) WATER REVENUE BONDS, SERIES 1997, DATED MARCH 27, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$535,000 (THE "SERIES 1997 BONDS"); (3) WATER REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JUNE 17, 2005,

ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,573,000 (THE "SERIES 2005 A BONDS"); AND (4) WATER REVENUE BONDS, SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED JUNE 17, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$472,000 (THE "SERIES 2005 C BONDS"). THE SERIES 1990 A BONDS, THE SERIES 1997 BONDS, THE SERIES 2005 A BONDS AND THE SERIES 2005 C BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "FIRST LIEN BONDS."

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT TO THE ISSUER'S WATER REVENUE BONDS, SERIES 1990 B, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$146,487.

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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the First Lien Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 B Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 B Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates or 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 of principal of and interest on this Bond payable in any year and all other obligations secured by a lien or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 B Bonds Reserve Account, an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien 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 Owner (as defined

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

Subject to the registration requirements set forth in the Bond Legislation, 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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

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

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

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

BR-1

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

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

All provisions of the 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.

BR-1

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


Chairperson

SPECIMEN

[SEAL]

ATTEST:


Secretary

SPECIMEN

BR-1

RECORD OF ADVANCES

SPECIMEN

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$6,500	6/17/05	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ _____

BR-1

ASSIGNMENT SPECIMEN

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____ the within Bond and
does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond
on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:



SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 C
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. CR-1

\$472,000

FOR VALUE RECEIVED, on this 17th day of June, 2005, LUBECK PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Wood County of said State (the "Issuer"), promises to pay to the order of the UNITED STATES OF AMERICA (the "Government"), at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of FOUR HUNDRED SEVENTY TWO THOUSAND DOLLARS (\$472,000), or such lesser amount as is set forth on the Record of Advances attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 4.25% per annum.

The principal of and interest on this Bond shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing 30 days following the date of delivery of this Bond and continuing on the corresponding day of each month thereafter for the first 24 months after the date hereof, and thereafter, on the corresponding day of each month in installments of principal and interest in the aggregate amount of \$2,091, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and except that prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

NUMBER

CR-1 SPECIMEN

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of the Issuer to pay the remaining installments as scheduled herein.

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

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of this Bond and related costs. The existing public water facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Bond Resolution duly adopted by the Issuer on June 15, 2005, and a Supplemental Resolution duly adopted by the Issuer on June 15, 2005 (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 this Bond under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1990 A, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,139,013 (THE "SERIES 1990 A BONDS"); (2) WATER REVENUE BONDS, SERIES 1997, DATED MARCH 27, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$535,000 (THE "SERIES 1997 BONDS"); (3) WATER REVENUE BONDS,

CR-1

SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED JUNE 17, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,573,000 (THE "SERIES 2005 A BONDS"); AND (4) WATER REVENUE BONDS, SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED JUNE 17, 2005, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,068,300 (THE "SERIES 2005 B BONDS"). THE SERIES 1990 A BONDS, THE SERIES 1997 BONDS, THE SERIES 2005 A BONDS AND THE SERIES 2005 B BONDS ARE HEREINAFTER COLLECTIVELY CALLED THE "FIRST LIEN BONDS."

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT TO THE ISSUER'S WATER REVENUE BONDS, SERIES 1990 B, DATED APRIL 2, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$146,487.

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 System, on a parity with the pledge of Net Revenues in favor of the registered owners of the First Lien Bonds, and from moneys in the reserve account created under the Bond Legislation for this Bond (the "Series 2005 C Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 2005 C Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates or 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 of principal of and interest on this Bond payable in any year and all other obligations secured by a lien or payable from such revenues on a parity with this Bond, including the First Lien Bonds; provided however, that so long as there exists in the Series 2005 C Bonds Reserve Account, an amount at least equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the First Lien 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 Owner (as defined

NUMBER

CR-1 SPECIMEN

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

Subject to the registration requirements set forth in the Bond Legislation, 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 the costs of issuance hereof as described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of this Bond.

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

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

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

CR-1 SPECIMEN

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

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

All provisions of the 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.

CR-1

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

Paul Smith
Chairperson

[SEAL]

ATTEST:

Robert Smith
Secretary

CR-1

RECORD OF ADVANCES

SPECIMEN

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$1,600	6/17/05	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ _____

CR-1

ASSIGNMENT

SPECIMEN

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

_____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, ____.

In the presence of:

BOND REGISTER

2.11 (A)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 A
(WEST VIRGINIA INFRASTRUCTURE FUND)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$1,573,000	June 17, 2005

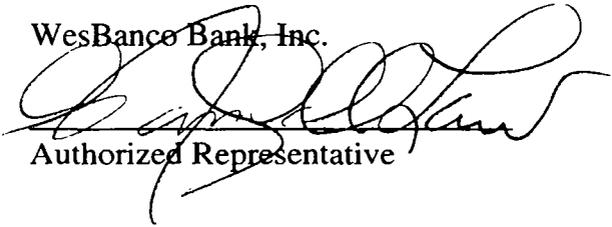
NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

WesBanco Bank, Inc.


Authorized Representative

05/05/05
101090/00308

M0411566.1

17A

BOND REGISTER

2.11 (B)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 B
(UNITED STATES DEPARTMENT OF AGRICULTURE)

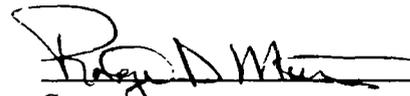
<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. BR-1	\$2,068,300	June 17, 2005

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

United States of America
National Finance Office
1520 Market Street
St. Louis, Missouri 63103

Signature of Registrar:

Lubeck Public Service District

Secretary

05/05/05
101090/00308

M0411567.1

BOND REGISTER

2.11 (C)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BOND, SERIES 2005 C
(UNITED STATES DEPARTMENT OF AGRICULTURE)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. CR-1	\$472,000	June 17, 2005

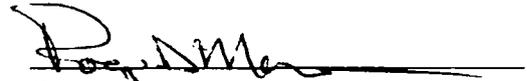
NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

United States of America
National Finance Office
1520 Market Street
St. Louis, Missouri 63103

Signature of Registrar:

Lubeck Public Service District


Secretary

05/09/05
101090/00308

M0456352.1

17C

LUBECK PUBLIC SERVICE DISTRICT
BOND RESOLUTION

ARTICLE I:
DEFINITIONS, STATUTORY AUTHORITY AND FINDINGS

Section 1.01 Definitions
Section 1.02 Authority for this Resolution
Section 1.03 Findings
Section 1.04 Resolution Constitutes Contract

ARTICLE II:
AUTHORIZATION OF THE PROJECT; APPROVAL
OF ACTIONS: APPROVAL AND EXECUTION
OF DOCUMENTS

Section 2.01 Authorization of the Project
Section 2.02 Approval of Application, Loan Agreement, Amended
Application and Supplemental Loan Agreement
Section 2.03 Approval of Actions

ARTICLE III:
BONDS

Section 3.01 Authorization of Bonds
Section 3.02 Term of the Series A Bond and Series B Bond
Section 3.03 Form of the Series A Bond and Series B Bond
Section 3.04 Execution of Bonds
Section 3.05 Authentication and Registration
Section 3.06 Negotiability and Registration
Section 3.07 Bonds Mutilated, Destroyed, Stolen or Lost
Section 3.08 Person Treated as Owners
Section 3.09 Delivery of the Series A Bond and the Series B
Bond
Section 3.10 Application of Proceeds of Bonds
Section 3.11 Sale of Bonds; Ratification of Execution of
Loan Agreement with Authority
Section 3.12 "Amended Schedule A" Filing; Tender of Series B
Bond

ARTICLE IV:
BOND PROCEEDS; REVENUES;
FUNDS; AND ACCOUNTS

Section 4.01 Establishment of Funds and Accounts with
Depository Bank
Section 4.02 Establishment of Funds and Accounts with Bond
Commission

Section 4.03 Revenues; Funds and Accounts
Section 4.04 Construction Trust Fund
Section 4.05 Application of Bond Proceeds; Pledge of
Unexpended Bond Proceeds

ARTICLE V:
ADDITIONAL COVENANTS OF THE DISTRICT

Section 5.01 General Covenants of the District
Section 5.02 Bonds Not To Be Indebtedness of the District
Section 5.03 Bonds Secured by Pledge of Net Revenues,
Funds and Unexpended Bond Proceeds
Section 5.04 Rates
Section 5.05 Completion, Operation and Maintenance,
Right of Access
Section 5.06 Sale of the System While the Bonds are
Outstanding
Section 5.07 Additional Provisions Concerning the Sale of
the System
Section 5.08 Issuance of Other Obligations Payable Out of
Net Revenues and General Covenant Against
Encumbrances
Section 5.09 Parity Bonds
Section 5.10 Insurance, Construction and Fidelity Bonds,
Workers' Compensation
Section 5.11 Service Rendered to the District
Section 5.12 Enforcement of Collections
Section 5.13 No Competing Franchise
Section 5.14 Books and Records
Section 5.15 Initial Schedule of Rates
Section 5.16 Operating Budget
Section 5.17 Redemption of Bonds Held By Authority
Section 5.18 Payment of Program Expenses
Section 5.19 Authority Rights on Default
Section 5.20 Authority Approval of Federal Pollution
Abatement Assurance
Section 5.21 Tax Covenants
Section 5.22 Statutory Mortgage Lien

ARTICLE VI:
INVESTMENTS: NON-ARBITRAGE

Section 6.01 Investments
Section 6.02 Arbitrage
Section 6.03 Rebate of Excess Arbitrage Earnings to the
United States

ARTICLE VII:
DEFAULTS AND REMEDIES

Section 7.01	Events of Default
Section 7.02	Enforcement
Section 7.03	Appointment of Receiver
Section 7.04	Restoration of District and Holder of the Bonds

ARTICLE VIII
REGISTRAR; PAYING AGENT

Section 8.01	Appointment of Registrar
--------------	--------------------------

ARTICLE IX:
DEFEASANCE; DISCHARGE OF PLEDGE

Section 9.01	Defeasance of Series A Bond
Section 9.02	Defeasance of Series B Bond

ARTICLE X:
MISCELLANEOUS

Section 10.01	Amendment of Resolution
Section 10.02	Evidence of Signatures of Holders and Ownership of Bonds
Section 10.03	Preservation and Inspection of Documents
Section 10.04	Cancellation of the Bonds
Section 10.05	Failure To Present Bonds
Section 10.06	Notices, Demands and Requests
Section 10.07	Conflicting Provisions Repealed
Section 10.08	No Personal Liability
Section 10.09	Law Applicable
Section 10.10	Parties Interested Herein
Section 10.11	Severability of Invalid Provisions
Section 10.12	Table of Contents and Headings
Section 10.13	Effective Date

EXHIBITS

Exhibit A	Description of the Project
Exhibit B	Form of Series A Bond
Exhibit C	Form of Series B Bond
Exhibit D	Loan Agreement
Exhibit E	Supplemental Loan Agreement

LUBECK PUBLIC SERVICE DISTRICT
BOND RESOLUTION

A RESOLUTION AUTHORIZING THE CONSTRUCTION AND ACQUISITION OF A WATER TREATMENT PLANT AND AN EXTENSION TO THE EXISTING WATERWORKS SYSTEM IN THE LUBECK PUBLIC SERVICE DISTRICT, WOOD COUNTY, WEST VIRGINIA, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE LUBECK PUBLIC SERVICE DISTRICT OF NOT MORE THAN \$3,285,500 IN AGGREGATE PRINCIPAL AMOUNT OF WATER SYSTEM REVENUE BONDS, SERIES A AND SERIES B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH WATER SYSTEM REVENUE BONDS; AUTHORIZING THE SALE OF SUCH WATER SYSTEM REVENUE BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY BY SUPPLEMENTAL RESOLUTION; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The Public Service Board of the Lubeck Public Service District hereby adopts and orders:

ARTICLE I

DEFINITIONS, STATUTORY AUTHORITY AND FINDINGS

Section 1.01. Definitions. The following terms have the following meanings in this Resolution unless the context expressly requires otherwise:

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

"Authority" means the West Virginia Water Development Authority or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the chairman of the Board, as hereinafter defined, or any other officer of the public service board of the Lubeck Public Service District specifically designated by resolution of the Board, as hereinafter defined, as such.

"Board" means the public service board of the Lubeck Public Service District and shall include the membership of the Board as may hereafter be duly constituted as the legal

successors to the present membership or any other authority vested with and authorized to exercise the powers of the Lubeck Public Service District.

"Bond or Bonds" means the District's Series A Bond and Series B Bond, as hereinafter defined, and any additional bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution and any Supplemental Resolution.

"Bonds Capitalized Interest Account" means the Water System Revenue Bonds Capitalized Interest Account established with the Bond Commission by Section 4.02(1) hereof.

"Bond 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.

"Bond Year" means the 12 month period beginning on the anniversary of the closing date of the Bonds of each year and ending on the date immediately preceding the anniversary of the closing date for the Bonds in the following year, except that the first Bond Year shall begin with the closing date for the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, or under any predecessor thereto.

"Construction Trust Fund" means the Lubeck Public Service District Construction Trust Fund established by Section 4.01(3) hereof.

"Consulting Engineers" means Burgess & Niple, Limited, consulting engineers, Parkersburg, West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of water systems or facilities that have been retained by the Lubeck Public Service District as Consulting Engineers for the System, as hereinafter defined.

"Cost(s) of the Project" or similar phrases mean those costs described in Section 1.03F hereof to be part of the costs of construction and acquisition of the Project, as hereinafter defined.

"Depository Bank" means One Valley Bank, National Association, a national banking association, Charleston, West Virginia, or any one or more State banking corporations or national banking associations located in the State, eligible under the laws of the State to receive deposits of state and municipal funds and insured by the FDIC, as hereinafter defined and designated as custodian of any one or more of the funds or accounts established by Article IV hereof.

"District" means the Lubeck Public Service District, a public corporation organized and existing under the laws of, and a political subdivision of, the State of West Virginia and, where appropriate, the Board thereof.

"Earnings Fund" means the Lubeck Public Service District Earnings Fund created in Section 6.03B hereof.

"Excess Investment Earnings" means the amount equal to the sum of:

(A) the excess of (i) the amount earned on all Nonpurpose Investments [other than investments attributable to an excess described in this subparagraph (A)], over (ii) the amount which would have been earned if such Nonpurpose Investments were invested at a rate equal to the yield on the issue, plus

(B) any income attributable to the excess described in subparagraph (A).

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

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

"General Resolution" means the general resolution adopted by the Authority.

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

"Gross Proceeds" means the definition that is given such term in Section 148(f)(6)(B) of the Code.

"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 VI hereof) or any Tap Fees, as hereinafter defined.

"Independent Accountant" means Philip R. Postlewait, Jr., certified public accountant, Parkersburg, West Virginia, or any other certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the District to prepare an independent annual or special audit of the accounts of the System, as hereinafter defined, or for any other purpose except keeping the accounts of such System in the normal operation of its business and affairs.

"Investment Property" means any security (as such term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation-annuity contract or investment-type property, excluding however, obligations the interest on which is excluded from gross income by Section 103 of the Code for Federal income tax purposes.

"Loan Agreement" means the loan agreement executed by the District on February 7, 1990, between the District and the Authority, pursuant to which the Authority has agreed to purchase \$3,139,013.00 in aggregate principal amount of the Series A Bond, as the same may be supplemented or amended.

"Net Revenues" means Gross Revenues less Operating Expenses, as hereinafter defined.

"Nonpurpose Investments" means the definition given such term in Section 148(f)(6)(A) of the Code.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System, as hereinafter defined, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those supplies, labor, wages, the cost of materials and supplies used for current operations, capitalized as part of the Cost of the Project), fees and expenses of fiscal agents, the Paying Agent, as hereinafter defined, the Depository Bank and the Authority, 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 the Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (1) any

Bond cancelled by the Registrar, as hereinafter defined, at or prior to the date; (2) any Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be in trust under this Resolution and set aside for such payment (whether upon or prior to maturity); and (3) any Bond deemed to have been paid as provided in Article IX hereof.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 5.09 hereof.

"Paying Agent" means the bank, or such other entity designated by the District by the Supplemental Resolution.

"Plans and Specifications" means the plans and specifications for the construction of the Project prepared by the Consulting Engineers on file in the office of the District.

"Program" means the Authority's loan program, under which the Authority purchases the water development revenue bonds of local government entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

"Project" means the public service properties for the storage, treatment and distribution of water of the District, as described in Exhibit A attached hereto and incorporated herein by reference.

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

A. Government Obligations;

B. Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; the Federal National Mortgage Association (but only to the extent such obligations are guaranteed by the Government National Mortgage Association); or the Government National Mortgage Association;

C. Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; temporary notes, preliminary loan notes or project notes issued by public

agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

D. Certificates of deposit or other similar banking arrangements permitted by law, with a member bank or member banks of the Federal Reserve System or banks the deposits of which are insured by the FDIC, upon the terms and conditions as follows:

(i) all moneys invested in each such interest-bearing time deposit, certificate of deposit or similar banking arrangement shall be continuously and fully secured by obligations of the types described in clauses A, B and C above of a market value equal at all times to the amount of the deposit, certificate or similar banking arrangement; and

(ii) each such interest-bearing time deposit, certificate of deposit or similar banking arrangement shall permit the moneys so placed to be available for use at the times provided with respect to the investment or reinvestment of such moneys;

E. Direct and general obligations of the State or any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged; provided, that, at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond rating agency;

F. The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended;

G. Repurchase agreements relating to any securities of the type described in clauses A or C above with any banking institution or association, including the Depository Bank, or any other financial institution, provided that the Depository Bank (unless it is the issuer, in which case a third party) or the Bond Commission, as the case may be, or its agent have possession of the collateral, and that such collateral be free of claims of third parties; and

H. Obligations of states or political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard and Poor's Corporation.

"Rebate Fund" means the Lubeck Public Service District Rebate Fund created by Section 6.03B hereof.

"Registrar" means the bank or such other entity designated by the District as Registrar herein or by the Supplemental Resolution and its successors and assigns.

"Renewal and Replacement Fund" means the Lubeck Public Service District Water System Renewal and Replacement Fund established by Section 4.01(2) hereof.

"Resolution" means this resolution, as from time to time amended or supplemented.

"Revenue Fund" means the Lubeck Public Service District Water System Revenue Fund established by Section 4.01(1) hereof.

"Series A Bond" means the Series A Water System Revenue Bond of the District described in Section 3.02 hereof.

"Series A Bond Reserve Account" means the Series A Water System Revenue Bond Reserve Account established in the Series A Sinking Fund, as hereinafter defined by Section 4.02(1) hereof.

"Series A Bond Reserve Account Requirement" means the maximum amount of principal and interest which will come due on the Series A Bond in the then current or any succeeding year.

"Series A Sinking Fund" means the Series A Water System Revenue Bond Sinking Fund established by Section 4.02(1) hereof.

"Series B Bond" means the Series B Water System Revenue Bond of the District described in Section 3.02 hereof.

"Series B Bond Reserve Account" means the Series B Water System Revenue Bond Reserve Account established in the Series B Sinking Fund, as hereinafter defined, by Section 4.02(2) hereof.

"Series B Bond Reserve Account Requirement" means the maximum amount of principal which will come due on the Series B Bond in the then current or any succeeding year.

"Series B Sinking Fund" means the Series B Water System Revenue Bond Sinking Fund established by Section 4.02(2) hereof.

"State" means the State of West Virginia.

"Supplemental Loan Agreement" means the supplemental loan agreement executed by the District on February 7, 1990, between the District and the Authority, pursuant to which the Authority has agreed to purchase \$146,487.00 in aggregate principal amount of the Series B Bond, as the same may be supplemented or amended.

"Supplemental Resolution" means any resolution of the Board amending or supplementing this Resolution.

"Surplus Revenue" means the Net Revenue not required by the Resolution to be set aside and held for payment of or security for the Bonds or any other obligation of the District including the Renewal and Replacement Fund and the respective reserve accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the public service properties for the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses, owned by the District 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.

"Tap Fees" means the fees paid by customers of the District initially to connect onto the System.

"Water Development Act" means Chapter 20, Article 5C, of the Code of West Virginia of 1931, as amended, and in effect on the date of adoption of this Resolution.

"Yield" means the definition given that term in Section 148(h) of the Code.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

Words importing singular number include the plural number in each case and vice versa; words importing the masculine gender include every other gender; and words importing persons include firms, partnerships, associations and corporations.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

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

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

A. The District is a public service district of the State of West Virginia situated in Wood County of the State. The District presently operates well fields, a water plant and distribution facilities which are inadequate to serve the present residents of the District.

B. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the District that the Project be constructed at an estimated cost of \$5,535,020, in accordance with the Plans and Specifications.

C. The District has entered into an agreement to sell its existing well field and appurtenant facilities to E. I. du Pont de Nemours & Co. The District will apply moneys to be received from E. I. du Pont de Nemours & Co. to the construction of the Project.

D. The District does not have any bonds or other obligations outstanding as of the date hereof which have a lien on the Gross Revenues or on the Net Revenues derived from the operation of the System.

E. The estimated Gross Revenues to be derived from the operation of the System in each year after the construction of the Project will be sufficient to pay all Operating Expenses and to pay the principal of and interest on the Bonds and to pay all Sinking Fund, respective reserve account, and Renewal and Replacement Fund and other payments provided for in this Resolution.

F. It is deemed necessary for the District to issue its Bonds and to finance costs of the construction and acquisition of the Project. Costs of the Project shall be deemed to include the cost of the acquisition or construction of the Project; the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements determined upon as provided in the Act; interest upon the Bonds prior to, during and for six months after the completion of construction and acquisition of the Project;

amounts which may be deposited in the respective reserve accounts; costs and expenses of the Authority related and incidental to the Project and the issuance of the Bonds, 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 Project; administrative expenses; commitment fees, fees and expenses of the Authority, discount, initial fees for the services of the Registrar, Paying Agent or depositories or other costs in connection with the sale of the Bonds; and such other expenses as may be necessary or incident to the financing authorized by this Resolution and the Act; the construction and acquisition of the Project and the placing of the same in operation and the performance of the things herein required or permitted in connection with any thereof including with respect to the Bonds any commitment fees to the Authority; provided, that reimbursement to the District for any amounts expended by it for any allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the District for such purposes shall be deemed Costs of the Project.

G. The Authority has agreed to purchase not more than \$3,285,500 in aggregate principal amount of the Bonds pursuant to the terms and provisions of the Loan Agreement and the Supplemental Loan Agreement.

H. It is in the best interests of the District that its Bonds be sold to the Authority pursuant to the Loan Agreement and the Supplemental Loan Agreement as soon after the adoption of this Resolution as may be practicable and authorized and permitted by applicable law.

I. The period of usefulness of the System after completion of the Project is not less than forty (40) years.

J. The District has complied with all requirements of State law relating to the authorization of the construction, acquisition and operation of the System and the issuance of the Bonds, or will have so complied prior to issuance of any thereof, including among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of the State by final order the time for rehearing and appeal of which have expired or the appeal of which shall have been waived by the District and the staff of the Public Service Commission of the State.

K. There are not outstanding any obligations of the District which will rank prior to or on a parity with the Bonds as to lien and source of the security for payment. The Series B Bond shall be junior and subordinate to the Series A Bond as set forth herein.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the registered owners of the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the District and such holders of the Bonds, and the covenants and agreements herein set forth to be performed by the District shall be for the equal benefit, protection and security, respectively, of the registered owners of any and all of such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond 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.

ARTICLE II

AUTHORIZATION OF THE PROJECT; APPROVAL OF ACTIONS: APPROVAL AND EXECUTION OF DOCUMENTS

Section 2.01. Authorization of the Project. There is hereby authorized the construction and acquisition of the Project described in Exhibit A hereto at an estimated cost of \$5,535,020, in accordance with the Plans and Specifications which have been prepared by the Consulting Engineers heretofore filed in the office of the Board. The proceeds of the Bonds hereby authorized shall be applied as provided in Article IV hereof.

Section 2.02. Approval of Application, Loan Agreement, Amended Application and Supplemental Loan Agreement. The application for a construction loan to the Authority executed by an Authorized Officer of the District on November 17, 1989; the Loan Agreement; the amended application for a construction loan to the Authority, executed by an authorized officer of the District on November 17, 1989 and the Supplemental Loan Agreement are hereby approved, accepted and ratified. The execution by the Chairman of the Board and the Secretary of the Board of the Loan Agreement and the Supplemental Loan Agreement, copies of which are attached hereto as Exhibit D and Exhibit E, are hereby approved and ratified. The Chairman of the Board and

the Secretary of the Board are hereby authorized to execute all other documents required to be executed by or on behalf of the District by the terms of the Loan Agreement and the Supplemental Loan Agreement. All stipulations, covenants and agreements contained in the Loan Agreement and the Supplemental Loan Agreement are incorporated herein and made a part hereof as fully as if set out herein.

Section 2.03. Approval of Actions. The Chairman of the Board, the Secretary of the Board and the other officers of the District hereby are authorized and directed to execute any and all instruments and perform any and all acts as, in their discretion, may be necessary or advisable in effecting the purposes of this Resolution, any Supplemental Resolution, the Loan Agreement and the Supplemental Loan Agreement.

ARTICLE III

BONDS

Section 3.01. Authorization of Bonds. For the purpose of capitalizing interest on the Series A Bond, paying the Costs of the Project not otherwise provided for, funding the Series A Bond Reserve Account and Series B Bond Reserve Account, and paying certain costs of issuance and related costs, there shall be issued negotiable Bonds of the District, in an aggregate principal amount of not more than \$3,285,500. The Bonds shall be designated "Series A Bond" and "Series B Bond" in the aggregate principal amounts to be set forth in a Supplemental Resolution, and shall have such terms as set forth in Exhibit B and Exhibit C attached hereto or in a Supplemental Resolution. The proceeds of the Bonds remaining, if any, after funding of the respective Reserve Accounts and capitalization of interest shall be deposited in the Construction Trust Fund established by Section 4.01 hereof.

Section 3.02. Terms of the Series A Bond and Series B Bond. The Series A Bond and Series B Bond shall bear interest, if any, at such rate or rates not exceeding the then legal maximum; shall mature on such day in such year and in such amounts; and shall be redeemable, in whole or part, all as the District shall prescribe in a Supplemental Resolution. The Series A Bond and Series B Bond shall be payable as to principal at the office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series A

Bond 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 Registrar, or by such other method as shall be mutually agreeable as long as the Authority is the holder thereof.

Unless otherwise provided by a Supplemental Resolution, the Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in a Supplemental Resolution. The Bonds of each series shall be exchangeable at the option of the registered owner for other fully registered Bonds of the same series in an aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from their date of delivery.

Section 3.03. Form of the Series A Bond and Series B Bond. The Series A Bond shall be issued in substantially the form set forth as Exhibit B hereto, with such appropriate corrections, omissions and insertions as are permitted or required by this Resolution or any Supplemental Resolution and are deemed advisable by the District.

The Series B Bond shall be issued in substantially the form set forth as Exhibit C hereto, with such appropriate corrections, omissions and insertions as are permitted or required by this Resolution or any Supplemental Resolution and are deemed advisable by the District.

Section 3.04. Execution of Bonds. The Bonds shall be executed in the name of the District by the manual or facsimile signature of an Authorized Officer thereof, and the seal of the District shall be affixed thereto or imprinted thereon and attested by the Secretary of the District by manual or facsimile signature. In case any one or more of the persons who shall have signed or sealed any Bond shall cease to hold such office before such Bond so signed and sealed shall have been delivered, such Bond nevertheless may be delivered as herein provided and may be issued as if such person had not

ceased to hold such office. Any Bond may be signed, sealed and attested on behalf of the District by such person who at the time of such actions shall hold the requisite office, regardless of whether such person shall have held such office or shall have been so authorized on the date of such Bond.

Section 3.05. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit hereof unless and until the Certificate of Authentication and Registration on such Bond shall have been duly executed by the Registrar. Any Certificate of Authentication and Registration upon any Bond so executed shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if signed by the manual signature of any officer of the Registrar duly authorized. It shall not be necessary that the same authorized officer sign the Certificate of Authentication and Registration on all of the Bonds or on all of the Bonds of any series.

Section 3.06. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive holder, in accepting any of the Bonds, shall be deemed conclusively to have agreed to the incontestability of the Bonds in the hands of a bona fide holder for value, subject to compliance by such holder with the registration provisions herein and therein provided.

As long as any of the Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds.

A Bond shall be transferable only by transfer of registration upon the books of the Registrar by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Bond, there shall be issued another Bond or Bonds (at the option of the transferee) of the same series, interest rate, if any, and maturity as the transferred Bond and of an aggregate principal amount equal to the unpaid principal amount of the transferred Bond.

In all cases in which the privilege of transferring or exchanging a Bond is exercised, any such Bond shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such transfer or exchange shall be cancelled forthwith by the Registrar. Transfers of Bonds and exchanges of Bonds in the event of partial redemption shall be made by the Registrar without charge to the holder or the transferee thereof. For every transfer or exchange of Bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange. The District shall pay such service charge, tax or other governmental charge. The Registrar shall not be obliged to make any such transfer or exchange of Bonds during the period commencing with the 15th day of the month preceding (i) an interest payment date on the Bonds, or (ii) the date of selection of the Bonds to be redeemed (in the case of any proposed redemption of Bonds), and ending on such interest payment date or such Bond redemption date.

Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the District may execute, and the Registrar shall authenticate, register and deliver, a new Bond of like series, maturity and principal amount as the Bond so mutilated, destroyed, stolen or lost, either in exchange for and upon surrender and cancellation of, such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, but only if the holder shall furnish the District and the Registrar with proof of his ownership thereof and that the Bond has been destroyed, stolen or lost and shall comply with such other reasonable regulations and conditions as the District or the Registrar may stipulate and paying such expenses as the District and the Registrar may incur. The name of the holder listed in the the books of the Registrar shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and cancelled by the Registrar, and evidence of such cancellation shall be given to the District. If any such Bond shall have matured or be about to mature, the District, by and through the Registrar, may pay the same without issuance of a substitute Bond therefor.

Section 3.08. Person Treated as Owners. The District, the Registrar and any agent of the District or the Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of and interest, if any, on such Bond, and for all other purposes, whether or not such Bond is overdue.

Section 3.09. Delivery of the Series A Bond and the Series B Bond. The District shall execute and deliver to the Registrar, and the Registrar shall authenticate, register and deliver to the Authority the Series A Bond and the Series B Bond, upon payment therefor and receipt of the documents set forth below:

A. A request and authorization to the Registrar on behalf of the District, signed by an Authorized Officer, to authenticate and deliver to the Authority the Series A Bond and the Series B Bond; and

B. The unqualified approving opinion of bond counsel designated by the District and acceptable to the Authority.

Section 3.10. Application of Proceeds of Bonds. The proceeds received from the sale of the Bonds, except for the funding of the Bond Capitalized Interest Account and the Reserve Accounts shall be deposited in the Construction Trust Fund, which, except as otherwise agreed to in writing by the holder of the Bonds, shall be held separate and apart from all other funds of the District and on which such holder of the Bonds shall have a lien until the Bond proceeds are applied to the Costs of the Project, provided, however, that to the extent, if any, that the Costs of the Project include the funding of any reserve accounts for the Bonds and Bond proceeds are to be so applied, as shall be determined by a Supplemental Resolution, the Bond proceeds shall be credited to the Construction Trust Fund and deposited in the respective reserve accounts and the holder of the Bonds shall have a lien on the proceeds in such reserve accounts.

Section 3.11. Sale of Bonds; Ratification of Execution of Loan Agreement with Authority. The Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement and Supplemental Loan Agreement. If not so authorized by previous resolution, any Authorized Officer is specifically authorized and directed to execute the Loan Agreement and Supplemental Loan Agreement and the Secretary is directed to affix the seal of the District, attest the same and deliver the Loan Agreement and the Supplemental Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved. The District may approve any supplements or amendments to the Loan Agreement or Supplemental Loan Agreement by a Supplemental Resolution.

Section 3.12. "Amended Schedule A" Filing; Tender of Series B Bond. Upon completion of the acquisition and construction of the Project, the District will file with the

Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor. In the event such schedule reflects an excess of funding for the Project, or if the Authority is otherwise advised of an excess, the Authority may tender the Series B Bond to the District for payment in an amount equal to such excess.

ARTICLE IV

BOND PROCEEDS; REVENUES; FUNDS; AND ACCOUNTS

Section 4.01. 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;
- (2) Renewal and Replacement Fund;
- (3) Construction Trust Fund.
- (4) Earnings Fund.
- (5) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. The following special funds or accounts are hereby established with the Bond Commission:

- (1) Series A Sinking Fund;
 - (a) Within the Series A Sinking Fund, the Series A Bond Reserve Account;
 - (b) Within the Series A Sinking Fund, the Bonds Capitalized Interest Account.
- (2) Series B Sinking Fund;
 - (a) Within the Series B Sinking Fund, the Series B Bond Reserve Account.

1

Section 4.03. Revenues; Funds and Accounts.

A. The Gross Revenues from the operation of the System shall be deposited upon receipt with the Depository Bank in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the District and used solely for the purposes and in the manner herein provided. All revenues on deposit each month in the Revenue Fund shall first be used to pay all reasonable Operating Expenses of the System. Thereafter, disbursements shall be made from the Revenue Fund in the order and priority set forth in Subsections B, C, D, E and F of this Section 4.03 and shall be used only for the purposes and in the manner herein provided.

B. (1) On the first day of each month, beginning on the first day of that month which is seven months prior to the first interest payment date on which interest is to be paid on the Series A Bond for which interest has not been capitalized, the District shall apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Series A Sinking Fund a sum equal to one-sixth of the amount of interest which will become due on the Series A Bond on the next ensuing semiannual interest payment date; provided, that "next ensuing semiannual interest payment date" shall not refer to the interest payment date on which any such deposit is made. In the event the period to elapse between the date of such initial deposit in the Series A Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, at least one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

(2) On the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment date of the Series A Bond, the District shall apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Series A Sinking Fund, a sum equal to one-twelfth of the amount of principal which will mature and become due on the Series A Bond on the next ensuing principal payment date; provided, that "next ensuing principal payment date" shall not refer to the principal payment date on which any such deposit is made. In the event the period to elapse between the date of such initial deposit in the Series A Sinking Fund and the next annual principal payment date is less than 13 months, then such monthly payments shall be increased proportionately to provide, at least one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(3) To the extent the District has not funded the Series A Bond Reserve Account with Bond proceeds or otherwise upon the issuance of the Series A Bond, the District shall next, from the Revenue Fund, remit to the Bond Commission for deposit in the Series A Bond Reserve Account on the first day of each month of each year, beginning with and including the month in which the payments required by Section 4.03 B (2) are commenced, an amount equal to 1/120th of the Series A Bond Reserve Account Requirement; provided that no further payments shall be made into the Series A Bond 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 A Bond Reserve Account Requirement.

Moneys in the Series A Bond Reserve Account shall be used only for the purpose of paying principal of or interest on the Series A Bond, as the same shall come due, when other moneys in the Series A Sinking Fund are insufficient therefor, and for no other purpose.

Any withdrawals from the Series A Bond Reserve Account shall be subsequently restored from the first Net Revenues available after all required payments to the Series A Sinking Fund and Series A Bond Reserve Account, including any deficiencies for prior payments, have been made in full.

C. On the first day of each month, beginning with the first month in which interest on the Series A Bond shall be payable from the Revenue Fund, the District shall apportion and set apart out of the Revenue Fund and transfer to the Depository Bank, for deposit in the Renewal and Replacement Fund a sum equal to 2-1/2% of Gross Revenues, less any amount transferred to the respective reserve accounts received during the previous month. All funds in the Renewal and Replacement Fund shall be kept separate and distinct from all other funds of the District and the Depository Bank.

Withdrawals and disbursements from the Renewal and Replacement Fund shall be made by the District only for the following purposes:

(1) For the payment of the reasonable costs of replacements, emergency repairs, improvements or extensions to the System;

(2) For the payment of the then payable principal of, premium, if any, and interest on the Series A Bond if there are not sufficient funds therefor in the Series A Sinking Fund (including the Series A Bond Reserve Account); and

(3) To make up any deficiency in the Series A Bond Reserve Account (so that the amount on deposit therein is at least equal to the Series A Bond Reserve Account Requirement), subject to the provisions of Section 4.03 B hereof;

D. The District shall restore any withdrawals from the Series A Bond Reserve Account which have the effect of reducing the value of the funds therein below the Series A Bond Reserve Account Requirement, first from moneys then remaining in the Revenue Fund and next from funds deposited in the Renewal and Replacement Fund and then from the first Net Revenues available after all required deposits to the Series A Sinking Fund, including deposits in respect of deficiencies for prior deposits, have been made in full.

E. (1) On the first day of each month, beginning on the first day of that month which is 13 months prior to the first principal payment date of the Series B Bond, the District shall apportion and set apart out of the Revenue Fund and remit to the Bond Commission for deposit in the Series B Sinking Fund a sum equal to one-twelfth of the amount of principal which will mature and become due on the Series B Bond on the next ensuing principal payment date; provided, that "next ensuing principal payment date" shall not refer to the principal payment date on which any such deposit is made. In the event the period to elapse between the date of such initial deposit in the Series B Sinking Fund and the next annual principal payment date is less than 13 months then such monthly payments shall be increased proportionately to provide, at least one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(2) To the extent the District has not funded the Series B Bond Reserve Account with Bond proceeds, the District shall next, from the Revenue Fund, remit to the Bond Commission for deposit in the Series B Bond Reserve Account on the first day of each month of each year, beginning with and including the month in which the payments required by Section 4.03E(1) are commenced, an amount equal to 1/120th of the Series B Bond Reserve Account Requirement; provided that no further payments shall be made into the Series B Bond 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 B Bond Reserve Account Requirement.

Moneys in the Series B Bond Reserve Account shall be used only for the purpose of paying the principal of the Series B Bond as the same shall become due, when other moneys in the Series B Sinking Fund are insufficient therefor, and for no other purpose.

Any withdrawals from the Series B Bond Reserve Account shall be subsequently restored from the first Net Revenues available after all required payments to the Series A Sinking Fund, Series A Bond Reserve Account, Renewal and Replacement Fund, Series B Sinking Fund and Series B Bond Reserve Account, including any deficiencies for prior payments, have been made in full.

F. On such dates as the Bond Commission shall require, the District shall remit to the Bond Commission such additional sums from the Revenue Fund as shall be necessary to pay the fiscal agency charges due for paying the Bonds and the interest thereon, if any.

Pending such application, moneys in the Revenue Fund shall be invested in accordance with Article VI hereof.

Moneys on deposit in the Series A Sinking Fund shall be used only for the purposes of paying the principal of and the interest on the Series A Bond as the same shall become due. Moneys on deposit in the Series B Sinking Fund shall be used only for the purpose of paying principal of the Series B Bond as the same shall become due.

The District shall not be required to make further deposits into the Series A Sinking Fund and the Series A Bond Reserve Account therein and the Series B Sinking Fund and the Series B Bond Reserve Account therein when the sums of cash, Government Obligations and interest to be earned on such Government Obligations, without reinvestment in the respective Sinking Funds and Reserve Accounts therein, is at least equal to the aggregate principal amount of Bonds then Outstanding plus the amount of interest due or thereafter to become due thereon.

As and when additional bonds are issued, provision shall be made for additional deposits into the respective Sinking Funds sufficient to pay the interest, if any, on such additional bonds and accomplish retirement thereof at or before maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum provided and required to be paid into the concomitant sinking fund in any year for account of the bonds of such series, including such additional bonds which by their terms are payable from such sinking fund.

Deposits into the respective Series A Sinking Fund and Series B Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such deposit shall be made on the next succeeding business day. All such deposits

shall be remitted to the Bond Commission with appropriate instructions, consistent with the provisions of this Resolution, as to the custody, use and application of the funds deposited.

G. All investment earnings on moneys in the several Sinking Funds and Reserve Accounts shall be returned, not less than once each year, by the Commission to the District, and such amounts shall, during construction of the Project, be deposited in the Construction Trust Fund and following completion of the 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 respective series of Bonds, and then to the next ensuing principal payments or prepayments due thereon.

H. Whenever all the required transfers and deposits from the Revenue Fund have been made and there remains on deposit in the Revenue Fund an amount exceeding the amount estimated to be required to be paid for Operating Expenses during the then current Fiscal Year and the next ensuing Fiscal Year, as determined by resolution of the Board, such Surplus Revenue may be transferred to the Renewal and Replacement Fund or used for any lawful purpose of the System, or payment on other obligations junior, subordinate and inferior to the Series A Bond and the Series B Bond as directed by the Board.

I. If on any payment date Net Revenues are insufficient to make the transfers and deposits hereinabove provided, the deficient transfer or deposit shall be corrected on the next ensuing payment date by payments in addition to the payments otherwise required to be made on such payment date.

J. The Bond Commission hereby is designated as the fiscal agent for the administration of the Series A Sinking Fund and the Series B Sinking Fund. All amounts to be deposited into the respective Sinking Funds shall be remitted by the District to the Bond Commission, as provided herein. All such remittances shall identify clearly the fund or account into which such remittance is to be deposited.

K. Funds on deposit in the Revenue Fund, excess Bond proceeds and the Renewal and Replacement Fund in excess of the amount insured by the FDIC shall be secured at all times to the full extent of such excess by such Qualified Investments as are eligible under the laws of the State to secure deposits of municipal funds.

L. Gross Revenues will be used only for the lawful purposes of the System.

Section 4.04. Construction Trust Fund. The Construction Trust Fund shall be segregated from all other funds and accounts of the Depository Bank or the District and used solely for the purposes provided herein.

Disbursements from the Construction Trust Fund, except for the costs of issuance of the Series A Bond and Series B Bond which shall be made upon request of the District, shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Construction Trust Fund may be invested and reinvested in Qualified Investments at the discretion of the District.

After completion of the Project, as certified by the Consulting Engineers, any moneys remaining in the Construction Trust Fund shall be applied to (i) the Series A Bond Reserve Account up to the amount of the Series A Bond Reserve Account Requirement; (ii) the Series B Bond Reserve Account up to the amount of the Series B Bond Reserve Account Requirement, and (iii) any remaining amount to the Revenue Fund, with the District to apply such moneys in full first, to the next

ensuing interest payment due on the Series A Bond, second, to the next ensuing principal payment due on the Series A Bond, and third, to the next ensuing principal payment due on the Series B Bond. Notwithstanding the foregoing, if the Authority tenders any Series B Bond to the District pursuant to the provisions of the Supplemental Loan Agreement, such moneys shall be applied to the purchase of such Series B Bond.

Section 4.05. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series A Bond and Series B Bond, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series A Bond and the Series B Bond there shall first be paid any and all borrowings by the District made for temporarily financing a portion of the Costs of the Project, including interest accrued thereon to the date of such payment.

B. From the proceeds of the Series A Bond, there shall be deposited with the Bond Commission in the Bond Capitalized Interest Account, the amount, if any, specified in a Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series A Bond for the period commencing on the date of issuance of the Series A Bond and ending six (6) months after the estimated date of completion of construction of the Project.

C. Next, from the proceeds of the Series A Bond, there shall be deposited with the Bond Commission in the Series A Bond Reserve Account and from the proceeds of the Series B Bond there shall be deposited with the Bond Commission in the Series B Bond Reserve Account the respective sums, if any, set forth in a Supplemental Resolution for funding of the Series A Bond Reserve Account, and the Series B Bond Reserve Account.

D. The remaining moneys derived from the sale of the Series A Bond and the Series B Bond shall be deposited with the Depository Bank in the Construction Trust Fund and applied solely to payment of the Cost of the Project in the manner set forth in Section 4.04 above.

E. The Depository Bank shall act as a trustee and fiduciary for the holder of the Series A Bond and the Series B Bond, with respect to the Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Construction Trust Fund set forth in this Resolution. Moneys in the Construction Trust Fund shall be

used solely to pay the Cost of the Project and until so expended, are hereby pledged as additional security for the Series A Bond and thereafter for the Series B Bond.

ARTICLE V

ADDITIONAL COVENANTS OF THE DISTRICT

Section 5.01. General Covenants of the District. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the District and shall be enforceable in any court of competent jurisdiction by any holder or holders of the Bonds, as prescribed in Article VII hereof. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, for as long as any Bonds remain Outstanding.

Section 5.02. Bonds Not to be Indebtedness of the District. The Bonds shall not be or constitute an indebtedness of the District within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No holder or holders of any Bonds, shall ever have the right to compel the exercise of the taxing power, if any, of the District to pay said Bonds or the interest thereon.

Section 5.03. Bonds Secured by Pledge of Net Revenues, Funds and Unexpended Bond Proceeds. The payment of the debt service on the Series A Bond issued hereunder shall be secured forthwith by a first lien on and pledge of the Net Revenues and the payment of the debt service on the Series B Bond issued hereunder shall be secured forthwith by a lien on and pledge of the Net Revenues, but such lien shall be junior and subordinate to the lien on the Net Revenues in favor of the holder of the Series A Bond. Net Revenues in an amount sufficient to pay the principal of, premium, if any, and interest on first, the Series A Bond, and second, the Series B Bond, if any, and to make the deposits into the respective Sinking Funds and all other payments provided for in this Resolution, and the funds on deposit in the respective Sinking Funds, the Renewal and Replacement Fund are pledged irrevocably hereby in the manner provided in this Resolution to the payment of the principal of, premium, if any, and interest, if any, on first, the Series A Bond, and second, the Series B Bond, as the same becomes due and for the other purposes provided in this Resolution. The District hereby pledges the unexpended proceeds, if any, of each series of Bonds as additional

security for payment of the principal of, premium, if any, and interest, if any, on first, the Series A Bond, and second the Series B Bond, until expended in accordance with the provisions of this Resolution.

Section 5.04. Rates. Just and equitable rates and charges for the use of and the 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 fixed and established at all times shall be kept on file in the offices of the District, open to inspection by all interested parties. The schedule of rates and charges shall produce in each year Gross Revenues sufficient to make the required payments into the funds and accounts created hereunder and to pay Operating Expenses. Such schedule of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the District hereby covenants and agrees that it will fix, establish and collect rates and charges which always shall provide Net Revenues along with all other revenues of the System after paying all Operating Expenses sufficient to leave a balance each year equal to not less than one hundred fifteen percent (115%) of the maximum annual amount required to pay the interest and principal as the same become due and accomplish retirement of all Bonds, and all other obligations secured by or payable from the Net Revenues prior to or on a parity with the Bonds; provided that in the event that amounts equal to or in excess of the Reserve Account Requirements are on deposit in the respective Reserve Accounts and the reserve accounts for obligations prior to or on a parity with the Bonds are funded at least at the requirements therefor, the foregoing percentage may be adjusted by the District to one hundred ten percent (110%) of the maximum annual amount required to pay the principal of and interest on the Bonds and all other obligations secured by or payable from Net Revenues prior to or on a parity with the Bonds.

Section 5.05. Completion, Operation and Maintenance, Right of Access. The District will expeditiously complete the Project and will provide and maintain competent and adequate resident engineering services satisfactory to the District and the Authority for the supervision and inspection of the construction of the Project, and bearing the responsibility of assuring the construction conforms to the Plans and Specifications and shall require its resident engineer to certify to the Authority and the District at the completion of construction that construction is in accordance with the Plans

and Specifications. Upon completion of the construction, the District will operate and maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner in compliance with the water quality standards established by the West Virginia Department of Natural Resources, as well as all other State and Federal laws, regulations, orders, and standards, with qualified operating personnel properly certified, making expenditures for equipment and for the economical operation and maintenance thereof from Gross Revenues as provided in this Resolution. As long as the Authority shall hold the Bonds, the Authority and its duly authorized agents shall have the right at all reasonable times to enter upon the System to examine and inspect the same and shall, prior to, at and after completion of construction and commencement of operation of the System, have such rights of access to the System as may be reasonably necessary to accomplish all of the powers and rights of the Authority in respect of the System pursuant to the pertinent provisions of the Water Development Act.

Section 5.06. Sale of the System while the Bonds are Outstanding. As long as any of the Bonds are Outstanding, the System may be sold, mortgaged, leased or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to defease the pledge created by this Resolution as provided by Sections 9.01 and 9.02 hereof. The proceeds from such sale, mortgage, lease or other disposition of the System immediately shall be remitted to the Bond Commission for deposit in the respective Sinking Funds, and with the written permission of the Authority, or in the event the Authority is no longer a holder of a Bond, the District shall direct the Bond Commission to apply such proceeds to the principal at maturity and interest on the Bonds. Any balance remaining after such payment and discharge shall be remitted to the District by the Bond Commission unless necessary for the payment of other obligations of the District payable out of Net Revenues.

Section 5.07. Additional Provisions Regarding the Sale of the System. The foregoing provisions notwithstanding, the District shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, 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 District shall, by resolution, determine that such property

comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the District shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding or by transfer to another political subdivision of the State. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall with the written consent of the Authority, be remitted by the District to the Bond Commission for deposit in the Series A Bond Sinking Fund and shall be applied only to the purchase of the Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Series A Bond Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Resolution. No sale, lease or other disposition of the properties of the System shall be made by the District if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. The District shall prepare the form of such approval and consent for execution by the then holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 5.08. Issuance of Other Obligations Payable out of Net Revenues and General Covenant Against Encumbrances. As long as any Bonds are Outstanding, the District shall not issue any other obligations whatsoever payable from Net Revenues which, as to lien, security and source of payment, rank prior or equal to the Bonds; provided, however, that additional Bonds on a parity with the Series B Bond only may be issued as provided in Section 5.09 hereof.

All obligations issued by the District after the issuance of the Bonds and payable from the Net Revenues of the System, except such additional parity bonds provided for by Section 5.09 shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series A Bond and the Series B Bond; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts, the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

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

Section 5.09. Parity Bonds. A. No Parity Bonds, payable out of Net Revenues, shall be issued after the issuance of any Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series B Bond. No Parity Bonds shall be issued which shall be payable out of Net Revenues on a parity with the Series A Bond, unless the Series B Bond is no longer Outstanding.

No such Parity Bonds shall be issued except for the purpose of financing the costs of construction or acquisition of extensions, improvements or betterments to the System or refunding one or more of the Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the secretary of the public service board of the District a written statement by the Independent Accountant, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after

the completion of the improvements to be financed by such Parity Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the District and approved by the Public Service Commission of West Virginia, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the secretary of the public service board of the District prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Accountant, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Accountant, on account of increased rates, rentals, fees and charges for the System adopted by the District, the period for appeal of which has expired prior to the issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the District shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the holders of the 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 District shall comply fully with all the increased payments into the various funds and accounts created in this Resolution required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofor issued pursuant to this Resolution.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series A Bond and the Series B Bond, on such revenues. The District shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, 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 A Bond or the Series B Bond.

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

B. Notwithstanding the foregoing, or any provision of Section 5.08 to the contrary, additional Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 5.09 if there is first obtained by the District the written consent of the Authority to the issuance of bonds on a parity with the Bonds.

Section 5.10. Insurance; Construction and Fidelity Bonds; Workers' Compensation.

A. The District hereby covenants and agrees that so long as any of the Bonds remain Outstanding, the District 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 aboveground insurable portions of the System in an amount equal to the actual cost thereof. In time of war, the District 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 said Renewal and Replacement Fund. The District 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 District, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during the 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 District, 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 District 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 District from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) Workers' Compensation coverage for all employees of or for the System eligible therefor.

(4) 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 District, and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with Chapter 38, Article 2, Section 39 of the Code of West Virginia of 1931, as amended.

(5) Fidelity Bonds for every officer or employee of the District having custody of any funds of the System in an amount at least equal to the total amount of funds in the custody of such officer or employee at any one time.

(6) Flood Insurance, to the extent available at reasonable cost to the District.

(7) Business Interruption Insurance, to the extent available at reasonable cost to the District.

B. The District shall also require all contractors engaged in the construction of the Project to carry such workers' 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. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the District, the prime contractor and all subcontractors, as their interests may appear.

Section 5.11. Service Rendered to the District. The District will not render or cause to be rendered any free services of any nature by the System; and, in the event the District or any department, agency, instrumentality, officer or employee of the District shall avail itself or himself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other

customers receiving like services under similar circumstances shall be charged the District and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the District shall transfer from its general funds sufficient sums to pay such charges. The revenues so received shall be deemed to be Gross Revenues and shall be deposited and accounted for in the same manner as other Gross Revenues.

Section 5.12. Enforcement of Collections. The District diligently will enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges as shall become delinquent to the full extent permitted or authorized by the Act or otherwise by the laws of the State. The District shall to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission discontinue and shut off the services and facilities of the System to all users of the service of the System delinquent in payment of charges for the services of the System. The District will not restore the services of the System until all such delinquent amounts, including reasonable interest and penalty charges for services of the System, have been paid in full. As provided in the Act, all fees, rates and charges of the District for water facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of State, county and school and municipal taxes. To the extent allowable under the Act, all other laws, and applicable rules and regulations of the Public Service Commission, the District will take reasonable steps to perfect such liens, and upon exhaustion of all other remedies to foreclose upon such premises in the manner required by Section 9a of the Act.

Section 5.13. No Competing Franchise. To the extent legally allowable, the District will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 5.14. Books and Records. The District will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the District, in which complete and correct entries shall be made of all transactions relating to the System and the Costs of the Project, and any holder of Bonds and the Authority shall have

the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the District relating thereto. As long as the Authority shall hold the Bonds, the District shall submit to the Authority such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project and the administration of the Bonds, or other sources of financing for the Project.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of the State and the Act. Separate control accounting records shall be maintained by the District. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books and along with other bookkeeping records, as prescribed by the District. The District 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 District shall be reported to the Board and to such other agents of the District as the Board shall direct.

The District shall file with the Authority, and shall mail in each year to any holder of the Bonds, requesting the same, an annual report containing the following:

A. A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenue derived from and relating to the System.

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution, with respect to the Bonds, and the status of all the funds and accounts.

C. The amount of the Bonds, or other obligations Outstanding.

The District also, at least once a year, shall cause the books, records and accounts of the System to be completely audited by Independent Accountant, shall mail upon request, and make available generally, the report of the Independent Accountant, or a summary thereof, to any holder of the Bonds and shall file the report with the Authority. Said report shall be completed and made available within 120 days following the conclusion of each Fiscal Year. Such audit report shall specifically include a recital that the District is in compliance with the covenants and duties provided in this Resolution or the Loan Agreement and Supplemental Loan Agreement as applicable.

Section 5.15. Initial Schedule of Rates. The rates, fees and other charges for the use of the services and facilities of the System, established under a resolution enacted by the Board on or before the effective date of this Resolution and in full force and effect, or ordered by the Public Service Commission of the State, the time for appeal of such rates, fees and other charges having expired or been waived by any party who could so appeal, shall constitute the initial schedule, rates, fees and charges to be collected for use of the services and facilities of the System.

Section 5.16. Operating Budget. Annually, at least 30 days preceding the beginning of each Fiscal Year, the District shall prepare and adopt by resolution a detailed budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditure for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefore in such budget without a written finding and recommendation by the Consulting Engineers stating in detail the purpose of and necessity for such increased expenditure for the operation and maintenance of the System, and no such increased expenditure shall be made until the District has approved such finding and recommendation by a resolution duly adopted. No increased expenditure in excess of ten percent (10%) of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increase expenditures are necessary for the continued operation of the System. The District shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and shall make available such budget and all such resolutions at all reasonable times to the Authority and, upon request, to any holder of the Bonds, or anyone acting for and in behalf of any such holder of the Bonds.

Section 5.17. Redemption of Bonds Held by Authority. As long as the Authority is the owner of any of the Series A Bond and Series B Bond Outstanding, the District shall not redeem any of such Series A Bond and Series B Bond Outstanding without the written consent of the Authority, and any such redemption of Series A Bond and Series B Bond authorized by the Authority shall provide for the payment of interest to the first allowable redemption date for the applicable water development revenue bonds, the redemption premium payable on the applicable water development revenue bonds redeemable as a consequence of such redemption of Series A Bond and Series B Bond and the costs and expenses of the Authority in effecting any such redemption, all as further prescribed by Section 9.11 of the General Resolution.

)

Section 5.18. Payment of Program Expenses. As long as the Bonds are held by the Authority, the District agrees to pay from time to time, as required by the Authority, the District's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be as determined by the Authority and shall include without limitation Program expenses and fees paid to the Trustee and paying agents for the water development revenue bonds. The District hereby specifically authorizes the Authority to exercise the powers granted it by Section 9.06 of the General Resolution.

In the event the District defaults in the payment of any fees due to the Authority pursuant to this section, the amount of such default shall bear interest at the rate of five percent (5%) per annum, from the date of default until the date of the payment thereof.

Section 5.19. Authority Rights on Default. As long as the Authority shall hold the Bonds, the District hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the District, the Authority may exercise any or all of the rights and powers granted under Section 6a of the Water Development Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System; and the District hereby covenants and agrees that, if the Authority should hereafter have recourse to the rights and powers, the District shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority.

Section 5.20. Authority Approval of Federal Pollution Abatement Assurance. The District hereby covenants and agrees to secure approval of the Authority and all other State agencies having jurisdiction before hereafter applying for federal financial assistance for pollution abatement.

Section 5.21. Tax Covenants. The District hereby further covenants, represents and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. (i) Not in excess of 10% of the Net Proceeds of the Bonds is used for private business use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a private business use or in payments in respect of property used or to be used for a private business use or is to be derived from payments,

whether or not to the District, in respect of property or borrowed money used or to be used for a private business use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for private business use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said private business use or in payments in respect of property used or to be used for said private business use or is to be derived from payments, whether or not to the District, in respect of property or borrowed money used or to be used for said private business use, then said excess of said 5% of Net Proceeds of the Bonds used for a private business use shall be used for a private business use related to the governmental use of the Project.

B. PRIVATE LOAN LIMITATION. Not in excess of the lesser of 5% of the Net Proceeds of the Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting nonpurpose investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The District shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code of Regulations promulgated thereunder.

D. REPORTING REQUIREMENTS. The District will file all reports or statements necessary to insure the tax-exempt status of the Bonds, including without limitation, the information return required under Section 149(e) of the Code.

Section 5.22. Statutory Mortgage Lien. For the further protection of the holders of the Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Bonds and shall be for the equal benefit of all holders of each respective series of the Bonds, provided however, that the statutory mortgage lien in favor of the holders of the Series A Bond shall be senior to the statutory mortgage lien in favor of the holders of the Series B Bond.

ARTICLE VI

INVESTMENTS: NON-ARBITRAGE

Section 6.01. Investments. The District shall invest and reinvest, and hereby instructs the Bond Commission and the Depository Bank to invest and reinvest, in Qualified Investments any moneys held as part of the funds and accounts created by this Resolution, other than the Revenue Fund, to the fullest extent possible subject to applicable laws and this Resolution, and the need for such moneys for the purposes set forth herein, and the specific restrictions and provisions set forth in this Section 6.01. The District may direct the Bond Commission and the Depository Bank in writing as to what particular permitted investments shall be made.

Except as otherwise provided herein or as provided below, any investment shall be held in and at all times be deemed a part of the fund or account in which the moneys and investments are held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the corresponding fund or account. The investments held by the Depository Bank shall be valued as of each January 1 and July 1 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 value if such investment is in the "Consolidated Fund"; provided, that no investment shall be sold or reduced by reason of the current market value exceeding the cost thereof. The Bond Commission or the Depository Bank, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of any loss on such liquidation. The District may invest funds on deposit with the Depository Bank through the trust department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, except losses due to its own gross negligence or willful misconduct.

Any Qualified Investments acquired for the Bond Capitalized Interest Account shall mature or be subject to redemption at the option of the holder at least one day prior to the date on which such moneys are required for transfer to the Paying Agent.

Qualified Investments acquired for the Renewal and Replacement Fund shall mature or be subject to redemption at the option of the holder within three years from the date of such investment.

Qualified Investments acquired for the Series A Bond Reserve Account and the Series B Bond Reserve Account shall mature or be subject to redemption at the option of the holder within five years from the date of such investment.

Section 6.02. Arbitrage. The District covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the District's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.03. Rebates of Excess Arbitrage Earnings to the United States. A. GENERAL COVENANT. The District hereby covenants to comply with all regulations from time to time in effect and applicable to the Bonds, as may be necessary in order to fully comply with Section 148(f) of the Code.

B. CREATION OF FUNDS. Notwithstanding the above, there are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Resolution, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Resolution, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than \$100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the District shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on the last day of each Bond Year or on the preceding business day in the event that such last day is not a business day, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings,

all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to be used for the payment of Debt Service on the next interest payment date and for such purpose, Debt Service due from the District on such date shall be credited by an amount equal to the amount so transferred.

C. DUTIES OF DISTRICT IN GENERAL. The District shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsection E and F.

D. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 30 days following the last day of the first Bond Year, the District shall calculate, and shall provide written notice to the original holder of the Bonds and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 30 days following the last day of each Bond Year and within 30 days following the date of the retirement of the Bond, the District shall calculate, and shall provide written notice to the holder of the Bonds and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the District in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause A(i) of the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair

)

market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Bonds shall be determined based on the actual Yield of the Bonds during the period between the closing date of the Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Bond, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and debt service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual debt service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than \$100,000.

(E) PAYMENT TO THE UNITED STATES. The District shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The District shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Bonds, the District shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the District to be used for any lawful purpose of the System. The District shall remit payments to the United States at the address prescribed by the Regulations as the same may be in time to time in effect with such reports

and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection E, the District shall assure that such payments are made by the District to the United States, on a timely basis, from any funds lawfully available therefor.

F. FURTHER OBLIGATIONS OF DISTRICT. The District shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the District shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

G. MAINTENANCE OF RECORDS. The District shall keep, and retain for a period of six (6) years following the retirement of the Bonds, records of the determinations made pursuant to this Section 6.03.

H. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 6.03, the District and the Depository Bank (at the expense of the District) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the District or the Depository Bank may deem appropriate.

I. REPORTS TO AUTHORITY. The District shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the District qualifies for the small governmental issue exception to rebate, or any other exception therefrom, then the District shall submit a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series A Bond subject to rebate. The District shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. A. Occurrence of any of the following events shall constitute an "Event of Default" with respect to the Bonds:

1. Default in the due and punctual payment of the principal of, premium, if any, or interest on any Bond;

2. Default in the observance by the District of any of the covenants, agreements or conditions on its part in this Resolution or any Supplemental Resolution or in the Bonds, and continuance thereof for a period of 30 days after written notice specifying such default and requiring that the same be remedied shall have been given to the District or by any holder of the Bonds; or

3. The filing by the District of a petition seeking bankruptcy, reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America or of the State.

Section 7.02. Enforcement. Upon the occurrence and during the continuance of any Event of Default, any holder of the Bonds, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights. Without limiting the generality of the foregoing, a holder of the Bonds, may:

A. Bring suit for any unpaid principal, premium or interest then due;

B. By mandamus or other appropriate proceeding enforce all rights of the holders, including the performance by the District of its duties under the Act and this Resolution;

C. Bring suit upon the Bonds;

D. By action at law or bill in equity require the District to account as if it were the Trustee of an express trust for the holders of the Bonds; and

E. By action or bill in equity enjoin any acts in violation of this Resolution or of the rights of the holders of the Bonds and provided that all rights and remedies of the holder of the Series B Bond shall be subject to those of the holder of the Series A Bond.

No remedy by the terms of this Resolution conferred upon or reserved to any holders of the Bonds, is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to any other remedy given to the holders of any Bonds, hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by any holders of the Bonds shall extend to or affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 7.03. Appointment of Receiver. Any holder of a Bond may, by proper legal action, compel the performance of the duties of the District under this Resolution, any Supplemental Resolution and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If any Event of Default shall have occurred and be continuing, in addition to all other remedies or rights, any holder of the Bonds shall have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the District, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of, premium, if any, and interest, if any, on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses, and to apply such rates, rentals, fees, charges and any other Gross Revenues in conformity with the provisions of this Resolution and the Act.

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

Whenever all that is due upon the Bonds, and interest thereon, if any, and under any covenants of this Resolution for the funds and accounts hereby established, and upon any other

obligations and interest thereon having a charge, lien or encumbrance upon the Net Revenues, shall have been paid and made good, and all defaults under the provisions of this Resolution shall have been cured and made good, possession of the System shall be surrendered to the District upon the entry of an order of the court to that effect. Upon any subsequent Event of Default, any holder of the Bonds, shall have the same right to secure the further appointment of a receiver.

Such receiver, in the performance of the powers hereinabove conferred, 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 appointed at the direction 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 District and for the joint protection and benefit of the District and first the holders of the Series A Bond and second the holders of the Series B Bond. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System and the collection of rates and charges related to the services now provided by the System for the sole purpose of the protection of both the District and first the holders of the Series A Bond and second the holders of the Series B Bond, and the curing and making good of any default under the provisions of this Resolution, and the title to and ownership of the System shall remain in the District, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of District and Holder of the Bonds. In case any holder of the Bonds shall have proceeded to enforce any right under this Resolution by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the claims of such holder of the Bonds, then and in every such case the District and such holder shall be restored to their former positions and rights hereunder, and all rights and remedies of such holder of the Bonds, shall continue as if no such proceedings had been taken, subject to such adverse determination as the court in such proceedings shall have made.

ARTICLE VIII

REGISTRAR; PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar and the Paying Agent of the Bonds shall be appointed by the enactment of a Supplemental Resolution hereto.

ARTICLE IX

DEFEASANCE; DISCHARGE OF PLEDGE

Section 9.01. Defeasance of Series A Bond. If the District shall pay or cause to be paid, or there shall otherwise be paid, to the holder of the Series A Bond, the principal of, premium, if any, and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then with respect to the Series A Bond only, the pledge of Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the District on behalf of the holder of the Series A Bond, made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds, for the payment of which either moneys in an amount which shall be sufficient, or Government Obligations the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of, premium, if any, and interest on such Series A Bond, shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. Prior to the maturity thereof, the Series A Bond shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section if there shall have been deposited with the Bond Commission either moneys in an amount which shall be sufficient, or Government Obligations the principal of and the interest on which, when due, without reinvestment, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission at the same or earlier time will be sufficient, to pay when due the principal of, premium, if any, and interest, if any, due and to become due on the Series A Bond, on and prior to the maturity date thereof. Neither Government Obligations nor moneys deposited with the Bond Commission pursuant to this Section,

nor principal or interest payments on any such Government Obligations, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, premium, if any, and interest, if any, on the Series A Bond; provided, that any cash received from such principal or interest payments on such Government Obligations deposited with the Bond Commission if not then needed for such purpose, to the extent practicable shall be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal of, premium, if any, and interest, if any, to become due on the Series A Bond, on and prior to the maturity dates thereof and interest earned from such reinvestments shall be paid over to the District as received by the Bond Commission or its agent, free and clear of any trust, lien or pledge.

Section 9.02. Defeasance of Series B Bond. If the District shall pay or cause to be paid, or there shall otherwise be paid, to the respective holder of the Series B Bond, the principal of and premium, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then with respect to the Series B Bond only, the pledge of Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the District on behalf of the holders of the Series B Bond, made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds, for the payment of which either moneys in an amount which shall be sufficient, or Government Obligations the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and premium, if any, on such Series B Bond, shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. Prior to the maturity thereof, the Series B Bond shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section if there shall have been deposited with the Bond Commission either moneys in an amount which shall be sufficient, or Government Obligations the principal of and the interest on which, when due, without reinvestment, will provide moneys which, together with the moneys, if any, deposited with the Bond Commission at the same or earlier time will be sufficient, to pay when due the principal of and premium, if any, due and to become due on the Series B Bond, on and prior to the maturity date thereof. Neither Government Obligations nor moneys deposited with the Bond Commission pursuant to this Section, nor principal or interest payments on

any such Government Obligations, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and premium, if any, on the Series B Bond; provided, that any cash received from such principal or interest payments on such Government Obligations deposited with the Bond Commission if not then needed for such purpose, to the extent practicable shall be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal of and premium, if any, to become due on the Series B Bond, on and prior to the maturity dates thereof and interest earned from such reinvestments shall be paid over to the District as received by the Bond Commission or its agent, free and clear of any trust, lien or pledge.

ARTICLE X

MISCELLANEOUS

Section 10.01. Amendment of Resolution. No amendment or modification to this Resolution or to any Supplemental Resolution which is materially adverse to the holder of any Bond may be made without the prior written consents, filed with the Secretary of the Board before any such modification or amendment may be made, of the holders of sixty percent in aggregate principal amount of the Bonds then Outstanding. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of, premium, if any, or interest on any Bond, without the express written consent of the holder of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment. Notwithstanding the foregoing, this Resolution may be amended without the consent of any holders of the Bonds as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion from gross income for Federal income taxation of interest on the Bonds.

Section 10.02. Evidence of Signatures of Holders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Resolution may require or permit to be signed and executed by the holder of any Bonds, may be in one or more instruments of similar tenor, and shall be signed or executed by such holders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any

purpose of this Resolution if made in the following manner, or in any other manner satisfactory to the District or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable.

A. The fact and date of the execution by any holder or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgements of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn before such a notary public or other officer, or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, trust company or financial firm or corporation satisfactory to the District or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate holder of any Bonds may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed and attested by a person purporting to be its secretary or assistant secretary.

C. The amount of Bonds held by a person executing any instrument as a holder of any Bonds, the date of his holding such Bonds, and the numbers and other identification thereof, shall be confirmed by the Register.

Any request, consent or other instrument executed by the holder of any Bond shall bind all future holders and owners of any Bond, in respect to anything done or suffered to be done hereunder by the District or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowed under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Resolution shall be retained in its possession and shall be available at all reasonable times for the inspection of the District, the holders of any Bonds, their agents and representatives, but, at the election of the Registrar, any such reports, certificates, statements or other documents may be destroyed or otherwise

disposed of at any time after such date as the pledge created by this Resolution shall be discharged as provided in Article IX.

Section 10.04. Cancellation of the Bonds. All Bonds purchased or paid and surrendered to the District shall be cancelled and delivered to the Registrar, or if surrendered to the Registrar, shall be cancelled by it. No such cancelled Bonds shall be deemed Outstanding under this Resolution, and no Bonds shall be issued in lieu thereof. All such Bonds shall be cancelled and upon order of the District shall be destroyed, and a certificate evidencing such destruction shall be delivered to the District.

Section 10.05. Failure To Present Bonds. Anything in this Resolution to the contrary notwithstanding, any moneys held by the Bond Commission in trust for the payment and discharge of any of the Bonds which remain unclaimed for one year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the District be paid by the Bond Commission to the District as its absolute property and free from trust, subject to applicable law on escheat, and the Bond Commission thereupon shall be released and discharged with respect thereto, and the holders of such Bonds shall look only to the District for the payment of such Bonds; provided, however, that before making any such payment to the District, at the request of the Bond Commission the Registrar shall send to the holder by certified mail, at the address listed on the Register, a notice that such moneys remain unclaimed and that after a date stated in the notice, which date shall be not less than 30 days after the date on which such notice is mailed, the balance of such moneys then unclaimed will be returned to the District.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the District, the Registrar or the Depository Bank shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

A. The District:

Lubeck Public Service District
Post Office Box 700
Washington, West Virginia 26181
Attention: Chairman of the Public
Service Board; and to

B. Registrar - as shall be set out in
the Supplemental Resolution

C. Depository Bank:

One Valley Bank, National Association
Post Office Box 1793
Charleston, West Virginia 25362

D. Authority:

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Any party listed above may change the address given for it at any time upon written notice thereof sent by United States mail, postage prepaid, to the other parties.

Section 10.07. Conflicting Provisions Repealed. All orders or resolutions and or parts thereof in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed.

Section 10.08. No Personal Liability. No member of the Board of the District or official or employee of either shall be individually or personally liable for the payment of the principal of, premium, if any, or interest on any Bond, as the case may be, but nothing herein contained shall relieve any such member, official or employee of any duty provided by law or this Resolution.

Section 10.09. Law Applicable. The laws of the State shall govern the construction of this Resolution and all Bonds issued hereunder.

Section 10.10. Parties Interested Herein. Nothing in this Resolution expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the District, the Registrar, the Paying Agent, the Bond Commission, the Depository Bank, the holders of the Bonds, and the Authority, any right, remedy or claim under or by reason of this Resolution. All the covenants, stipulations, promises and agreements contained in this Resolution by and on behalf of the District shall be for the sole and exclusive benefit of the District, the Registrar, the Paying Agent, the Bond Commission, the Depository Bank, the holders of the Bonds, and the Authority.

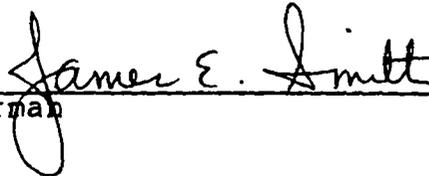
Section 10.11. Severability of Invalid Provisions.
If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution.

Section 10.12. Table of Contents and Headings. The Table of Contents and headings of the articles and sections 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 10.13. Effective Date. This Resolution shall take effect immediately upon adoption.

Adopted this 28th day of March, 1990.

LUBECK PUBLIC SERVICE DISTRICT,



Chairman

6804P

EXHIBIT A

[Description of the Project]

The public service properties to be constructed will consist of a 2.4 million gallon per day water treatment plant, two water supply wells, equipment of six water supply wells, a 200,000 gallon water storage tank, a 200 gallon per minute booster station, 6,600 feet of water main and other appurtenances within the territorial boundaries of the District. The properties will be located in Lubeck Magisterial District of Wood County, West Virginia.

EXHIBIT B

[FORM OF SERIES A BOND]

No. R-1

\$ _____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER SYSTEM REVENUE BOND, SERIES A

<u>Original Issuance Date</u>	<u>Interest Rate</u>	<u>Bond Date</u>
_____	_____	_____

Registered Owner: WEST VIRGINIA WATER DEVELOPMENT AUTHORITY
Principal Sum: \$ _____

LUBECK PUBLIC SERVICE DISTRICT, a public service district organized and existing under the laws of the State of West Virginia (the "District"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, the Principal Sum specified above to the Registered Owner named above or registered assigns (the "Registered Owner"), in the following principal installments on _____ of each of the following years:

<u>Year</u>	<u>Principal Installment</u>	<u>Year</u>	<u>Principal Installment</u>
-------------	------------------------------	-------------	------------------------------

[TO BE INSERTED]

The District further hereby promises solely from such special funds also to pay interest on the outstanding principal balance of this Series A Bond from the Bond Date specified above at the Interest Rate per annum specified above semiannually, on the first day of _____ and the first day of _____ in each year, beginning _____.

The principal of this Series A Bond, and the premium hereon, if any, are payable in any coin or currency which, on the date of payment thereof, 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 as paying agent (the "Paying Agent"). Interest will be paid to the registered owner as of the close of business on the Record Date for such interest payment, which shall be the

fifteenth day (whether or not a business day) of the calendar month next preceding such interest payment date. Interest shall be paid by check or draft mailed to the address of such Registered Owner at the address as it appears on the books of the _____ as Registrar (the "Bond Register"), or by such other method as shall be mutually agreeable as long as the Authority is the Registered Owner hereof.

This Series A Bond is the duly authorized Series A Bond (herein referred to as the "Series A Bond") issuable under the Bond Resolution of the District, and pursuant to which this Series A Bond is issued, in the principal amount of \$ _____ and pursuant to which the Series B Bond in the principal amount of \$ _____ is issued, and is issued for the purpose of assisting the District in the permanent financing of costs of acquiring, constructing and installing water treatment, storage and distribution facilities, capitalizing interest during the construction period and for six months thereafter, funding a debt service reserve account, and paying costs of issuance and other costs incidental thereto and to the financing thereof (the "Project"), located within the boundaries of Wood County, West Virginia, all under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act"), the Resolution duly enacted by the Public Service Board of the District on the _____ day of _____, 19____, as supplemented by a supplemental resolution duly enacted by the Public Service Board of the District on the _____ day of _____, 19____ (collectively, the "Resolution"), and is subject to all the terms and conditions of the Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, which 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 Series A Bond under the Resolution.

This Series A Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with the Loan Agreement between the District and the Authority executed by the District on _____, 19____, as supplemented and amended.

This Series A Bond is issued contemporaneously with the Water System Revenue Bond Series B of the District (the "Series B Bond"), issued in the aggregate principal amount of \$ _____, which Series B Bond is junior and subordinate with respect to liens and sources of security for payment to the Series A Bond.

)

This Series A Bond and the interest thereon are payable only from and are secured by a first lien on and pledge of the Net Revenues derived from the System, all funds in the Series A Sinking Fund, established under the Resolution, and the unexpended proceeds of the Series A Bond, and the District hereby and in the Resolution pledges such Net Revenues and funds to such payment, and the Net Revenues of the System shall be set aside as a special fund hereby pledged for such purpose. Such Net Revenues shall be sufficient to pay the principal of, premium, if any, and interest on all bonds issued pursuant to the Resolution and which shall be set aside as a special fund hereby pledged for such purpose. This Series A Bond does not constitute a corporate indebtedness of the District within the meaning of any statutory or constitutional limitation, nor shall the District be obligated to pay the same or the interest hereon except from the special fund provided from the Net Revenues of the System, all moneys in the Series A Bond Reserve Account and unexpended Series A Bond proceeds. Under the Resolution, the District has covenanted and agreed to fix, 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 one hundred fifteen percent (115%) of the amount required to pay the maximum amount due in any year of principal of and interest on the Series A Bond, the Series B Bond, and all other obligations secured by or payable from such revenues prior to or on a parity with the Series A Bond or the Series B Bond, provided however, that as long as there exists in the Series A Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series A Bond in the then current or any succeeding year, and in the respective reserve accounts established for the Series B Bond and any other obligations outstanding prior to or on a parity with the Series A Bond or the Series B Bond, an amount at least equal to the respective requirement therefor, such percentage may be reduced to one hundred ten percent (110%). The District has entered into certain further covenants with the Registered Owner of this Series A Bond, for the terms of which reference is made to the Resolution. Remedies provided the Registered Owner of this Series A Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof. Subject to the registration requirements set forth herein, this Bond is transferrable, as provided in the Resolution, only upon the books of

_____, as registrar (the "Registrar") by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Series A 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.

All moneys received from the sale of the Series A Bond shall be applied solely to pay Costs of the Project as provided in the Resolution, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owner of the Series A Bond.

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

This Series A 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 be transferred only by transfer of registration hereof with the Registrar.

This Series A Bond shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the Certificate of Authentication and Registration hereon shall have been manually signed by the Registrar.

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

IN WITNESS WHEREOF, in the manner provided in the Resolution, The District has caused this Series A Bond to be signed by _____, the Chairman of its Public Service Board, and the seal of the District to be impressed hereon and attested by the Secretary, and has caused this Series A Bond to be dated as of the Bond Date shown above.

[SEAL]

Chairman Public Service Board

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION
AND REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Resolution and has been duly registered in the name set forth above on the date set forth below.

As Registrar

Date: _____

By: _____
Its Authorized Officer

ASSIGNMENT

For value received, the undersigned Registered Owner do(es) hereby sell, assign and transfer unto _____

(name, address and social security number or other identifying number of assignee) the within Bond and hereby irrevocably constitute(s) and appoint(s) _____ to transfer the Bond on the books kept for registration of the within Bond with full power of substitution in the premises.

Date: _____

Registered Owner

Signature Guaranteed: _____

Notice: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of this Bond in every particular, without alteration or any change whatsoever.

EXHIBIT C

[FORM OF SERIES B BOND]

No. R-1

\$ _____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER SYSTEM REVENUE BOND, SERIES B

Original
Issuance
Date

Interest
Rate

Bond Date

0.00%

Registered Owner: WEST VIRGINIA WATER DEVELOPMENT AUTHORITY
Principal Sum: \$ _____

LUBECK PUBLIC SERVICE DISTRICT, a public service district organized and existing under the laws of the State of West Virginia (the "District"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, the Principal Sum specified above without interest to the Registered Owner named above or registered assigns (the "Registered Owner"), in the following principal installments on _____ of each of the following years:

Year Principal Maturing Year Principal Maturing

[TO BE INSERTED]

The principal of this Series B Bond, and the premium hereon, if any, are payable in any coin or currency which, on the date of payment thereof, 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 as paying agent (the "Paying Agent").

This Series B Bond is the duly authorized Series B Bond (herein referred to as the "Series B Bond") issuable under the Resolution of the District, and pursuant to which this Series B Bond is issued, in the principal amount of \$ _____ and pursuant to which the Series A Bond in the principal amount of \$ _____ (the "Series A Bond") is issued, and is issued for

the purpose of assisting the District in the permanent financing of costs of acquiring, constructing and installing water treatment, storage and distribution facilities, funding a debt service reserve account, and paying costs of issuance and other costs incidental thereto and to the financing thereof (the "Project"), located within the boundaries of Wood County, West Virginia. This Series B Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act"), the Resolution duly enacted by the Public Service Board of the District on the _____ day of _____, 19____, as supplemented by supplemental resolution duly enacted by the Public Service Board of the District of the _____ day of _____, 19____ (collectively, the "Resolution"), and is subject to all the terms and conditions of the Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, which 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 Series B Bond under the Resolution.

This Series B Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with the Supplemental Loan Agreement between the District and the Authority executed by the District on _____, 19____, as supplemented and amended.

This Series B Bond is payable only from and is secured by a second lien on and pledge of the Net Revenues derived from the System after there has first been paid from such Net Revenues all payments then due and owing on account of the Series A Bond herein described, moneys in the Series B Bond Reserve Account created under this Resolution, and the unexpended proceeds of the Series B Bond. Such Net Revenues shall be sufficient to pay the principal of, premium, if any, and interest, if any, on all bonds issued pursuant to the Resolution and which shall be set aside as a special fund hereby pledged for such purpose. This Series B Bond does not constitute a corporate indebtedness of the District within the meaning of any statutory or constitutional limitation, nor shall the District be obligated to pay the same except from the special fund provided from the Net Revenues of the System, all moneys in the Series B Bond Reserve Account and unexpended Series B Bond proceeds. Under the Resolution, the District has covenanted and agreed to fix, 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 one

hundred fifteen percent (115%) of the amount required to pay the maximum amount due in any year of principal of and interest, if any, on the Series B Bond, the Series A Bond, and all other obligations secured by or payable from such revenues prior to or on a parity with the Series A Bond or the Series B Bond, provided however, that as long as there exists in the Series B Bond Reserve Account an amount at least equal to the maximum amount of principal which will become due on the Series B Bond in the then current or any succeeding year, and in the respective reserve accounts established for the Series A Bond and any other obligations outstanding prior to or on a parity with the Series A Bond or the Series B Bond, an amount at least equal to the respective requirements therefor, such percentage may be reduced to one hundred ten percent (110%). The District has entered into certain further covenants with the Registered Owners of the Series B Bond, for the terms of which reference is made to the Resolution. Remedies provided to the Registered Owners of the Series B Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof. Subject to the registration requirements set forth herein, this Series B Bond is transferrable, as provided in the Resolution, only upon the books of

_____, as registrar (the "Registrar") by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of the Series B 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.

All moneys received from the sale of the Series B Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to pay the Costs of the Project described in the Resolution, and there shall be, and hereby is, created and granted a lien upon such moneys, until so applied, in favor of the Registered Owners of the Series B Bond, which lien is subordinate to the lien in favor of the Registered Owner of the Series A Bond.

THIS SERIES B BOND IS JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGES AND SOURCES OF AND SECURITY FOR PAYMENT TO THE OUTSTANDING SERIES A BOND ISSUED CONCURRENTLY HERewith IN THE AGGREGATE PRINCIPAL AMOUNT OF \$ _____ DESCRIBED IN THE RESOLUTION.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Series B Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Series B Bond, together with all other obligations of the District, does not exceed any limit prescribed by the

Constitution or statutes of the State of West Virginia, and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into the special funds by the District for the prompt payment of the principal of and premium, if any, on this Series B Bond.

This Series B 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 be transferred only by transfer of registration hereof with the Registrar.

This Series B Bond shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the Certificate of Authentication and Registration hereon shall have been manually signed by the Registrar.

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

IN WITNESS WHEREOF, in the manner provided in the Resolution, The District has caused this Series B Bond to be signed by _____, the Chairman of its Public Service Board, and the seal of the District to be impressed hereon and attested by the Secretary, and has caused this Series B Bond to be dated as of the Bond Date shown above.

[SEAL]

Chairman Public Service Board

ATTEST:

Secretary

))

**CERTIFICATE OF AUTHENTICATION
AND REGISTRATION**

This Bond is one of the Bonds described in the within-mentioned Resolution and has been duly registered in the name set forth above on the date set forth below.

As Registrar

Date: _____

By: _____
Its Authorized Officer

ASSIGNMENT

For value received, the undersigned Registered Owner do(es) hereby sell, assign and transfer unto _____

(name, address and social security number or other identifying number of assignee) the within Bond and hereby irrevocably constitute(s) and appoint(s) _____ to transfer the Bond on the books kept for registration of the within Bond with full power of substitution in the premises.

Date: _____

Registered Owner

Signature Guaranteed: _____

Notice: The Assignor's signature to this Assignment must correspond with the name as it appears upon the face of this Bond in every particular, without alteration or any change whatsoever.

EXHIBIT D

LOAN AGREEMENT

See Transcript Item # 9.

EXHIBIT E

SUPPLEMENTAL LOAN AGREEMENT

See Transcript Item # 10.

LUBECK PUBLIC SERVICE DISTRICT
WATER SYSTEM REVENUE BONDS
SERIES A AND SERIES B

FIRST SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY, INTEREST RATE, PRINCIPAL PREPAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE WATER SYSTEM REVENUE BONDS SERIES A AND SERIES B OF LUBECK PUBLIC SERVICE DISTRICT; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF THE BONDS TO WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; APPROVING AND ADOPTING THE RATES AND CHARGES AS ESTABLISHED BY THE WEST VIRGINIA PUBLIC SERVICE COMMISSION IN THE ORDER GRANTING THE DISTRICT A CERTIFICATE OF CONVENIENCE AND NECESSITY; AND MAKING OTHER PROVISIONS AS TO THE SERIES A AND SERIES B BONDS.

WHEREAS, the public service board (the "Board") of Lubeck Public Service District (the "District"), has duly and officially adopted a bond resolution, effective March 28, 1990 (the "Resolution"), entitled:

A RESOLUTION AUTHORIZING THE CONSTRUCTION AND ACQUISITION OF a WATER TREATMENT PLANT AND AN EXTENSION TO THE EXISTING WATERWORKS SYSTEM IN THE LUBECK PUBLIC SERVICE DISTRICT, WOOD COUNTY, WEST VIRGINIA, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE LUBECK PUBLIC SERVICE DISTRICT OF NOT MORE THAN \$3,285,500 IN AGGREGATE PRINCIPAL AMOUNT OF WATER SYSTEM REVENUE BONDS, SERIES A AND SERIES B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDERS OF SUCH WATER SYSTEM REVENUE BONDS; AUTHORIZING THE SALE OF SUCH WATER SYSTEM REVENUE BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY BY SUPPLEMENTAL RESOLUTION; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AND ADOPTING OTHER PROVISIONS RELATING THERETC.

WHEREAS, the Resolution provides for the issuance of the Water System Revenue Bonds Series A and Series B of the District (the "Bonds"), in a principal amount not to exceed \$3,285,500 and has authorized the execution and delivery of a Loan Agreement and a Supplemental Loan Agreement relating to the Bonds each executed by the District on February 7, 1990, by and between the District and West Virginia Water Development Authority (the "Authority"), all in accordance with Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act"); and in the Resolution it is provided that the exact principal amount, maturity date, interest rate, interest and principal prepayment schedule, sale price and other terms of the Bonds may be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds and to the Project be herein provided for;

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

WHEREAS, the Board deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the exact principal amount, the price, the maturity date, the redemption provision, the interest rate and the interest and principal payment dates of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds and to the Project be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF LUBECK PUBLIC SERVICE DISTRICT:

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

a. The Series A Bond designated R-1 shall be issued in the form of a single bond in typewritten form fully registered to the West Virginia Water Development Authority, in the denomination of \$3,139,013.00, with interest thereon at the rate of 7.85% per annum payable semi-annually on October 1 and April 1, first interest payable on October 1, 1990, representing the aggregate principal amount of the Series A Bond issue and shall mature in principal installments on October 1 of each year as follows:

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
1991	\$ 13,648.00	7.85%
1992	14,720.00	7.85%
1993	15,876.00	7.85%
1994	17,122.00	7.85%
1995	18,466.00	7.85%
1996	19,915.00	7.85%

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
1997	21,479.00	7.85%
1998	23,165.00	7.85%
1999	24,983.00	7.85%
2000	26,945.00	7.85%
2001	29,060.00	7.85%
2002	31,341.00	7.85%
2003	33,801.00	7.85%
2004	36,455.00	7.85%
2005	39,316.00	7.85%
2006	42,403.00	7.85%
2007	45,731.00	7.85%
2008	49,321.00	7.85%
2009	53,193.00	7.85%
2010	57,368.00	7.85%
2011	61,872.00	7.85%
2012	66,729.00	7.85%
2013	71,967.00	7.85%
2014	77,616.00	7.85%
2015	83,709.00	7.85%
2016	90,280.00	7.85%
2017	97,367.00	7.85%
2018	105,011.00	7.85%
2019	113,254.00	7.85%
2020	122,144.00	7.85%
2021	131,733.00	7.85%
2022	142,074.00	7.85%
2023	153,227.00	7.85%
2024	165,255.00	7.85%
2025	178,228.00	7.85%
2026	192,218.00	7.85%
2027	207,308.00	7.85%
2028	223,581.00	7.85%
2029	241,132.00	7.85%

b. The Series B Bond designated R-1 shall be issued in the form of single Bond in typewritten form, fully registered to the West Virginia Water Development Authority, in the denomination of \$146,487.00, without interest, representing the aggregate principal amount of the Series B Bond issue, and shall mature in principal installments on October 1, of each year after date as follows:

<u>Year</u>	<u>Installment</u>
1991	\$3,755.96
1992	3,756.08
1993	3,756.08
1994	3,756.08
1995	3,756.08
1996	3,756.08
1997	3,756.08
1998	3,756.08

<u>Year</u>	<u>Installment</u>
1999	3,756.08
2000	3,756.08
2001	3,756.08
2002	3,756.08
2003	3,756.08
2004	3,756.08
2005	3,756.08
2006	3,756.08
2007	3,756.08
2008	3,756.08
2009	3,756.08
2010	3,756.08
2011	3,756.08
2012	3,756.08
2013	3,756.08
2014	3,756.08
2015	3,756.08
2016	3,756.08
2017	3,756.08
2018	3,756.08
2019	3,756.08
2020	3,756.08
2021	3,756.08
2022	3,756.08
2023	3,756.08
2024	3,756.08
2025	3,756.08
2026	3,756.08
2027	3,756.08
2028	3,756.08
2029	3,756.08

c. The Bonds shall be subject to redemption prior to maturity to the extent, under the conditions and subject to the limitations set forth in the Loan Agreement and Supplemental Loan Agreement.

Section 2. The District hereby approves the sale of the Series A Bond and the Series B Bond to the Authority at the par value thereof.

Section 3. The District does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, as Registrar for the Bonds, and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the District and the Registrar in substantially the form attached hereto, and the execution and delivery by the Chairman of the Registrar's Agreement, and the performance of the obligations contained therein, on behalf of the District are hereby authorized, approved and directed.

Section 4. The District does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Paying Agent for the Bonds.

Section 5. The District does hereby appoint and designate One Valley Bank, National Association, a national banking association, Charleston, West Virginia, as Depository Bank under the Resolution.

Section 6. The District does hereby approve and adopt the rates and charges as established by the West Virginia Public Service Commission in the Order granting the District a Certificate of Convenience and Necessity in Case No. 89-160-PWD-CN.

Section 7. Series A Bond proceeds in the amount of \$492,289 shall be deposited in the Bonds Capitalized Interest Fund within the Series A Sinking Fund, as capitalized interest.

Section 8. Series A Bond proceeds in the amount of \$260,062 shall be deposited in the Series A Bond Reserve Account within the Series A Sinking Fund.

Section 9. Series B Bond proceeds in the amount of \$3,756 shall be deposited in the Series B Bond Reserve Account within the Series B Sinking Fund.

Section 10. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Resolution approved and provided for, to the end that the Bonds may be delivered on or about April 2, 1990, to the Authority pursuant to the Loan Agreement and the Supplemental Loan Agreement.

Section 11. The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the District and will promote the health, welfare and safety of the residents of the District.

Section 12. The District hereby determines that it is in the best interest of the District to invest all moneys in the funds and accounts established by the Resolution according to the letter of instructions of the District to be delivered at the closing (the "Letter of Instructions"), and the District hereby directs the Depository Bank and the Paying Agent to take such actions as may be necessary to cause such moneys to be invested in accordance therewith.

Section 13. The District hereby determines to pay, on the date of delivery of the Bonds and receipt of proceeds thereof, all borrowings of the District heretofore incurred for the purpose of

temporarily financing a portion of the Costs of the Project, including, but not limited to, any borrowings incurred for the purpose of paying engineering or design costs.

Section 14. Pursuant to Section 148(f)(4)(B)(iv) of the Code, as amended, the District hereby covenants and agrees to use not less than 75% of the net proceeds of the Series A Bond for construction expenditures on the Project. The District reasonably expects, as of the date hereof, to spend the net proceeds of the Series A Bond for the governmental purposes of the issue as follows:

- (i) not less than 10% within 6 months after the date of issue of the Series A Bond;
- (ii) not less than 45% within 12 months after the date of issue of the Series A Bond;
- (iii) not less than 75% within 18 months after the date of issue of the Series A Bond;
- (iv) not less than 100% within 24 months after the date of issue of the Series A Bond, unless the District is required to retain not more than 5% of the net proceeds of the Series A Bond as reasonable retainage under its construction contracts, in which case, said reasonable retainage shall be expended within 36 months after the date of issue of the Series A Bond.

As used in this Section 14 the term "net proceeds" shall include investment proceeds earned before the close of the periods above set out on the investment of the sale proceeds of the Series A Bond.

In the event that the net proceeds of the Series A Bond are not spent in the minimum percentages set out in this Section 14 within the times set out herein, the District hereby elects, pursuant to Section 148(f)(4)(B)(iv)(V) of the Code, to have the rebate provisions of Section 148 of the Code applied to the Series A Bond from its date of issue.

The District further elects, pursuant to Section 148(f)(4)(B)(iv)(VI) of the Code, to include within the term "net proceeds", as used in this Section 14, investment earnings on the Series A Bond Reserve Account.

Section 15. This Supplemental Resolution shall be effective immediately upon adoption.

Adopted this 28th day of March, 1990.

LUBECK PUBLIC SERVICE DISTRICT

By: James E. Smith
James E. Smith, Chairman

6820P

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 1997
BOND AND LINE OF CREDIT RESOLUTION

**LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 1997**

BOND RESOLUTION

Table of Contents

	<u>Page</u>
ARTICLE I - STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS	1
Section 1.01. <u>Definitions</u>	1
Section 1.02. <u>Authority for this Resolution</u>	8
Section 1.03. <u>Findings</u>	8
Section 1.04. <u>Resolution Constitutes Contract</u>	9
ARTICLE II - AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF PROJECT	10
Section 2.01. <u>Authorization of Acquisition and Construction of Project</u>	10
ARTICLE III - AUTHORIZATION, TERMS, EXECUTION REGISTRATION AND SALE OF BONDS	11
Section 3.01. <u>Authorization of Bonds</u>	11
Section 3.02. <u>Description of Bonds</u>	11
Section 3.03. <u>Execution of Bonds</u>	11
Section 3.04. <u>Authentication and Registration</u>	11
Section 3.05. <u>Negotiability, Transfer and Registration</u>	12
Section 3.06. <u>Bonds Mutilated, Destroyed, Stolen or Lost</u>	12
Section 3.07. <u>Bonds not to be Indebtedness of the Issuer</u>	13
Section 3.08. <u>Bonds Secured by Pledge of Net Revenues</u>	13
Section 3.09. <u>Form of Bonds</u>	13
Section 3.10. <u>Sale of Bonds</u>	23
ARTICLE IV - LINE OF CREDIT	24
Section 4.01. <u>Authorization of Line of Credit</u>	24
Section 4.02. <u>Authorization of Credit Line Note</u>	24
Section 4.03. <u>Execution of Credit Line Note</u>	25
Section 4.04. <u>Negotiability, Transfer and Registration</u>	25
Section 4.05. <u>Form of Credit Line Note and Line of Credit Agreement</u>	26

ARTICLE V - SYSTEM REVENUES AND APPLICATION THEREOF	27
Section 5.01. <u>System Revenues and Application Thereof</u>	27
Section 5.02. <u>Tap Fees</u>	29
ARTICLE VI - APPLICATION OF BOND PROCEEDS	30
Section 6.01. <u>Application of Bond Proceeds</u>	30
Section 6.02. <u>Construction Trust Fund</u>	30
ARTICLE VII - ADDITIONAL COVENANTS OF THE ISSUER	31
Section 7.01. <u>General Covenants of the Issuer</u>	31
Section 7.02. <u>Bonds not to be Indebtedness of the Issuer</u>	31
Section 7.03. <u>Bonds Secured by Pledge of Net Revenues</u>	31
Section 7.04. <u>Rates</u>	31
Section 7.05. <u>Sale of the System</u>	32
Section 7.06. <u>Issuance of Additional Bonds</u>	32
Section 7.07. <u>Books and Records</u>	32
Section 7.08. <u>Fiscal Year; Budget</u>	33
Section 7.09. <u>Services Rendered by the System</u>	34
Section 7.10. <u>Enforcement of Collections</u>	34
Section 7.11. <u>Insurance and Bonds</u>	34
Section 7.12. <u>No Competing Franchise</u>	36
Section 7.13. <u>Consulting Engineer</u>	36
Section 7.14. <u>Contracts</u>	36
Section 7.15. <u>Statutory Mortgage Lien</u>	36
Section 7.16. <u>PSC Order</u>	36
Section 7.17. <u>Covenant to Amend Resolution</u>	36
Section 7.18. <u>Compensation of the Issuer</u>	36
Section 7.19. <u>Funds and Accounts Under Prior Resolutions</u>	37
ARTICLE VIII - DEFAULTS AND REMEDIES	38
Section 8.01. <u>Events of Default</u>	38
Section 8.02. <u>Remedies</u>	38
Section 8.03. <u>Appointment of Receiver</u>	38
Section 8.04. <u>Remedies On Parity With Prior Bonds</u>	39
ARTICLE IX - INVESTMENTS	40
Section 9.01. <u>Investments</u>	40
ARTICLE X - MISCELLANEOUS	41
Section 10.01. <u>Modification or Amendment</u>	41
Section 10.02. <u>Severability of Invalid Provisions</u>	41
Section 10.03. <u>Table of Contents and Headings</u>	41

Section 10.04.	<u>Repeal of Conflicting Resolutions</u>	41
Section 10.05.	<u>Covenant of Due Procedure</u>	41
Section 10.06.	<u>Satisfaction and Discharge</u>	41
Section 10.07.	<u>Effective Date</u>	42

LUBECK PUBLIC SERVICE DISTRICT

BOND AND LINE OF CREDIT RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS FACILITY OF THE LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF \$535,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS AND THE SALE THEREOF TO THE UNITED STATES DEPARTMENT OF AGRICULTURE; AUTHORIZING A LINE OF CREDIT NOT TO EXCEED \$600,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE LUBECK PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

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

"Additional Bonds" means additional bonds issued under the provisions and within the limitations prescribed by Section 6.06.

"Authorized Officer" means the Chairman of the Governing Body of the Issuer or any other person duly appointed as such by the Governing Body.

"Board" means the public service board of the Issuer and shall include the membership of the Board as may hereafter be duly constituted as the legal successors to the present membership or any other authority vested with and authorized to exercise the powers of the Issuer.

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

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

"Bonds" means the \$535,000 in aggregate principal amount of Water Revenue Bonds, Series 1997, and any Additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

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

"Closing Date" means the date upon which there is an exchange of the Bonds for all or a significant portion of the proceeds representing the purchase of the Bonds by the Government.

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

"Consulting Engineers" means Burgess and Niple, LTD., Parkersburg, West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of waterworks systems or facilities that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Construction Trust Fund" means the Construction Trust Fund established by Section 6.02.

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

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Depository Bank" means a bank or national banking association located in the State, eligible under the laws of the State to receive deposits of state and municipal funds and insured by the FDIC, which Depository Bank shall be named in the Supplemental Resolution.

"Depreciation Account" means the Renewal and Replacement Fund established by Section 4.03 C of the Prior Resolutions and continued by Section 5.01(5).

"Event of Default" means any event or occurrence specified in Section 8.01.

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

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

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

"Government" means the United States Department of Agriculture, Rural Utilities Service, which is expected to be the original purchaser of the Bonds.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Grants" means collectively the SCBG Grant and the RUS Grant.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments purchased pursuant to Section 9.01) or any Tap Fees.

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

"Issuer" or "District" means the Lubeck Public Service District, a public corporation and political subdivision of the State.

"Letter of Conditions" means the letter of conditions of the Government dated March 28, 1996, and any supplements or amendments thereto.

"Line of Credit" means the irrevocable line of credit in an amount not to exceed \$600,000 authorized by Section 4.01 hereof, the terms and amount of which may be approved by a resolution supplemental hereto.

"Line of Credit Agreement" means the agreement, if any, establishing the Line of Credit, said agreement to be approved by a resolution supplemental hereto.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Noteholder," "Registered Owner of the Notes" or "Owner of the Notes" or any similar term means the person, whenever used herein with respect to an outstanding Note or Notes, as hereinafter defined, in whose name such Note is registered.

"Notes" or "Credit Line Note" means the not more than \$600,000 in aggregate principal amount of interim construction financing, consisting of grant anticipation notes or a Line of Credit evidenced by notes, or any combination of the foregoing, as authorized by Article IV hereof and, unless the context clearly indicates otherwise, the term "Notes" includes any refunding grant anticipation notes of the Issuer.

"Notes Registrar" means the Registrar for the Notes which shall be designated by a resolution supplemental hereto.

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

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond canceled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and

set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Section 10.06 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Paying Agent" means the bank or banks or other entity designated as such for the Bonds in the Supplemental Resolution or such entity or authority as may be designated by the Issuer.

"Prior Bonds" means collectively, the Series 1990 A Bonds and the Series 1990 B Bonds, both purchased by the West Virginia Water Development Authority.

"Prior Resolutions" means the resolution adopted by the Public Service Board of the Issuer on March 28, 1990.

"Project" means the extension of water service to the Hopewell, Hope Hill and Missouri Run areas of the District and the necessary related appurtenances.

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

"PSC Order" means the recommended decision of the PSC in Case No. 96-0645-PSWD-CN, which was entered by the Administrative Law Judge of the PSC on February 21, 1997 and became the final order on March 4, 1997, granting the Issuer a Certificate of Convenience and Necessity to construct the Project and approving the financing thereof.

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

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

Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

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

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

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

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

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

(j) Advanced - Refunded Municipal Bonds.

"Reserve Account" means the Reserve Account established by Section 5.01(A)(4).

"Reserve Requirement" means, for the Bonds, an amount equal to the greater of (a) \$31,020 or (b) the maximum amount of principal and interest which will mature and become due on the Bonds in any succeeding Fiscal Year.

"Resolution" means this resolution, as from time to time amended or supplemented.

"Revenue Fund" means the Revenue Fund established or continued by Section 5.01(A).

"RUS Grant" means the Rural Utilities Service Grant in the amount of \$525,000.

"SCBG Grant" means the Small Cities Block Grant in the amount of \$750,000.

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

"Series 1990 A Bonds" means the Issuer's \$3,139,013 Water System Revenue Bonds, Series A, issued on April 2, 1990.

"Series 1990 B Bonds" means the Issuer's \$146,457 Water System Revenue Bonds, Series B, issued on April 2, 1990.

"Sinking Fund" means the Sinking Fund established by Section 5.01(A)(2).

"State" means the State of West Virginia.

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

"System" means the public service properties to be used for or in connection with the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for industrial, public, private or other uses, owned by the Issuer, and any improvements or extensions thereto hereafter constructed or acquired from any sources whatsoever, and includes the Project.

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

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

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

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

A. The Issuer now owns and operates a public waterworks system, furnishing water service to residences, premises and businesses residing or located within and without the area of the Issuer. There are, however, residents of the Issuer who are not currently served by the water system.

B. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions and improvements to the existing System, the acquisition and construction to be permanently financed, in part, by the issuance of the Bonds to the Government all in accordance with the plans and specifications prepared by the Consulting Engineers. The acquisition and construction of the System was financed, in part, with the proceeds from the Prior Bonds, authorized pursuant to the Prior Resolutions.

C. The Prior Bonds of the Issuer are currently outstanding in the principal amount of \$3,163,217. The Issuer derives revenues from the System and, except for the pledge thereof to secure and pay for the Prior Bonds, said revenues are not pledged or encumbered in any manner. The Series 1990 A Bonds are secured by a first lien on the Net Revenues of the System. The Series 1990 B Bonds are secured by a second lien on the Net Revenues subordinate to the lien of the Series 1990 A Bonds.

D. The estimated maximum cost of the construction of the Project is \$1,810,000. The Project will be financed with the proceeds of the sale of the Bonds anticipated to be in the amount of \$535,000, and from the SCBG Grant in the amount of \$750,000 and from the RUS Grant in the amount of \$525,000.

E. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Prior Bonds and the Bonds authorized to be issued pursuant to this Resolution and all sinking funds, reserve and other payments provided for in this Resolution and the Prior Resolutions. The Issuer has met the parity test set forth in the Prior Resolution. Prior to the issuance of the Bonds, the Issuer will obtain the consent of the Prior Bonds owners to the issuance of the Bonds on a parity with the lien of the Series 1990 A Bonds. Upon the issuance of the Bonds, the Issuer will grant the Government a first parity lien on the Net Revenues of the System.

F. It is deemed necessary for the Issuer to issue its Bonds, in part to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements, and franchises deemed necessary therefor; the cost of the construction of said extensions, additions, betterments and improvements to the System and any other expenses necessary, incidental, desirable or appurtenant to the acquisition and construction of the Project and such replacements as are necessary therefor; the cost of interim financing for such Project; interest on the Bonds, prior to, during and for six months after the estimated date of completion of construction of the Project; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; expenses for the service of registrars, paying agents, depositories or other agents in connection with the issuance of the Bonds, and such other expenses as may be necessary or desirable to said acquisition and construction of the project and placing the same in operation and the financing authorized by this Resolution.

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

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

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

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the Registered Owners of the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF PROJECT

Section 2.01. Authorization of Acquisition and Construction of Project. There is hereby authorized the construction and acquisition of the Project in accordance with the plans and specifications which have been prepared by the Consulting Engineers; provided, that such plans and specifications, and the construction and acquisition of the Project in accordance therewith, are subject to the specific authorization by the Board pursuant to a Supplemental Resolution.

The Issuer has received bids or entered into contracts for the acquisition and construction of the Project.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions hereof, the Bonds of the Issuer, to be known as "Lubeck Public Service District Water Revenue Bonds, Series 1997" (the "Bonds") are hereby authorized to be issued in the aggregate principal amount of \$535,000 for the purpose of permanently financing a portion of the Costs of the Project.

Section 3.02. Description of Bonds. The Bonds shall be issued as fully registered Bonds with a record of advances and payments attached, numbered R-1 upward, and shall be dated the date of delivery thereof. The Bonds shall bear interest from the date of delivery on the amount outstanding on the interest payment date as evidenced on the record of advances and payments, payable monthly, commencing on the first day of the month following the month of delivery of the Bond and on the first day of each month thereafter for the first 24 months after the date thereof and thereafter on the first day of each month in installments of principal and interest in the aggregate amount of \$2,585 except that the final installment shall be paid at the end of 40 years from the date of the Bond, at a rate, not exceeding four and 875/1000 percent (4.875%) per annum and shall be sold for the par value thereof.

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

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

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Bond, substantially in

the form set forth in Section 3.09, shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

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

So long as any of the Bonds remain outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

The Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Registered Owner or his duly authorized attorney.

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

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost,

and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

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

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds and the Series 1990 A Bonds shall be secured forthwith equally and ratably and on a parity with each other, by a first lien on the Net Revenues derived from the System, senior to the lien on the Net Revenues of the Series 1990 B Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments as hereinafter provided are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Form of Bonds. The text of the Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 1997

No. R-1

\$535,000

March 27, 1997

United States of America
National Finance Office
1520 Market Street
St. Louis, Missouri 63103

FOR VALUE RECEIVED, the Lubeck Public Service District, a public corporation organized and existing under the laws of, and a political subdivision of, the State of West Virginia, in Wood County (herein called the "Borrower"), promises to pay to the order of the United States of America (herein called the "Government"), at its National Finance Office, St. Louis, Missouri, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of Five Hundred Thirty-Five Thousand Dollars (\$535,000) or such lesser amount as shall then be reflected on the Record of Advances and Payments attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of four and 875/1000 percent (4.875%) per annum. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto. Interest shall accrue only on the amount of each advance from its actual date as listed on said Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments.

The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing the first day of the month following the month of delivery of this Bond and on the first day of each month thereafter for the first 24 months after the date hereof, and thereafter on the first day of each month in installments of principal and interest in the aggregate amount of \$2,585 except the final installment shall be paid at the end of forty years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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

Pre-payments of scheduled installments, or any portion thereof, may be made at any time at the option of the Borrower. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

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

THIS BOND SHARES A FIRST LIEN PARITY POSITION WITH RESPECT TO SOURCES OF AND SECURITY FOR PAYMENT WITH THE OUTSTANDING LUBECK PUBLIC SERVICE DISTRICT WATER SYSTEM REVENUE BONDS, SERIES A, ISSUED IN THE PRINCIPAL AMOUNT OF \$3,139,013 (THE "SERIES 1990 A BONDS"), AND IS SENIOR TO THE LUBECK PUBLIC SERVICE DISTRICT WATER SYSTEM REVENUE BONDS, SERIES B, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$146,487 (THE "SERIES 1990 B BONDS" AND COLLECTIVELY WITH THE SERIES 1990 A BONDS, THE "PRIOR BONDS").

This Bond is issued to permanently finance a portion of the costs of acquisition and construction of certain extensions, additions and improvements to the existing waterworks distribution system (the "Project" and together with any further extensions, additions, betterments and improvements thereto, herein called the "System"); to pay interest on the Bonds during acquisition and construction and for up to six months after completion of the Project; and to pay certain issuance and related costs in connection therewith. This Bond is authorized and issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A of Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution duly adopted by the Board of the Borrower on March 27, 1997, and supplemented by a Supplemental Resolution duly adopted by said Board on March 27, 1997 (collectively, the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues (as defined in the Resolution) to be derived from the operation of the System,

which lien is on a parity as to security and source of payment with the lien of the Series 1990 A Bonds, moneys in the Reserve Account created under the Resolution (the "Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on this Bond, the Prior Bonds, and all bonds which may be issued for the construction, acquisition, improvement, extension or betterment of such System as and when the same become due and payable, and which shall be set aside and remitted to the Government for the Bonds as provided herein and in the Resolution and in the Prior Resolutions. This Bond does not constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provisions or limitations, nor shall said Borrower be obligated to pay the same or the interest hereon except from the Net Revenues derived from the operation of said System, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Borrower has covenanted and agreed to establish and maintain just and equitable rates or charges for the use of such System and the services rendered thereby, which shall be sufficient to provide for the proper and reasonable expenses of operation, repair and maintenance of said System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or subordinate to the Bonds, including, without limitation, the Prior Bonds, provided, however, that so long as there exists in the 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 prior to or on a parity with or subordinate to the Bonds, including, without limitation, the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Borrower has entered into certain further covenants with the owner of this Bond for the terms of which reference is made to said Resolution. Remedies provided the owner of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Resolution, only upon the books of United National Bank, Parkersburg, West Virginia (the "Registrar") which shall be kept for that purpose at the office of the Registrar, by the owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar duly executed by the owner or its attorney or legal representative duly authorized in writing.

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

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

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

This Bond will be in default should any proceeds 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, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts connected with the issuance hereof, as provided by law and the Resolution, shall be applied solely to the costs of acquisition and construction of the Project, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

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

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

IN WITNESS WHEREOF, the Lubeck Public Service District has caused this Bond to be signed by its Chairman and its seal to be hereunto impressed and attested by its Secretary, all as of the date first written above.

LUBECK PUBLIC SERVICE DISTRICT

Chairman

[SEAL]

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Lubeck Public Service District Water Revenue Bonds, Series 1997, described in the within-mentioned Resolution and has been duly registered in the name of the United States of America as of the date set forth below.

Date: March 27, 1997

UNITED NATIONAL BANK, as
Registrar

By _____
Its Authorized Officer

RECORD OF ADVANCES AND PAYMENTS

Advances

Date	Amount	Initialed By
(1) March 27, 1997	\$ 90,000	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	

TOTAL: \$ _____

UNITED STATES DEPARTMENT OF
AGRICULTURE, RURAL UTILITIES
SERVICE

By: _____
(Title)

RECORD OF ADVANCES AND PAYMENTS

Payments

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	

TOTAL: \$ _____

UNITED STATES DEPARTMENT OF
AGRICULTURE, RURAL UTILITIES
SERVICE

By: _____
(Title)

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____,
Attorney to transfer said Bond on the books kept for registration thereof with full power of
substitution in the premises.

Dated: _____, ____.

In the presence of:

Section 3.10. Sale of Bonds. The Bonds shall be sold to the Government pursuant to the terms and conditions of the Letter of Conditions. The provisions of the Letter of Conditions are specifically incorporated in this Resolution.

ARTICLE IV
LINE OF CREDIT

Section 4.01. Authorization of Line of Credit. To provide funds for the acquisition and construction of the Project when other funds are temporarily not available therefor, the Issuer is hereby authorized to arrange for a Line of Credit in an amount not to exceed \$600,000. The amount and terms of the Line of Credit may be approved by a resolution supplemental hereto.

Section 4.02. Authorization of Credit Line Note. For the purpose of evidencing any draw upon the Line of Credit and thus, of financing a portion of the cost of acquisition and construction of the Project, there may be issued the Credit Line Note of the Issuer in an amount and upon such terms as set forth in a resolution supplemental hereto. The Credit Line Note may be issued in single, fully registered form and dated as of the date of delivery thereof. There shall be attached to the Credit Line Note a Record of Advances and Payments, upon which the date and principal amount of any draw upon the Line of Credit, the date and amount of any payment of principal of the Credit Line Note and the amount of the Credit Line Note outstanding after either of said transactions shall be recorded. Anything to the contrary herein, in the Line of Credit Agreement or therein notwithstanding, the Credit Line Note shall evidence only the outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the amount if each advance from the actual date thereof as listed on said Record of Advances and Payments. Each such advance shall bear interest, payable at such times and at a rate set forth in a supplemental resolution, but not to exceed the then legally permissible limit. Interest shall cease to accrue on the amount of the Credit Line Note outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Credit Line Note shall mature not more than thirty (30) months from the date thereof. The Credit Line Note shall be subject to such further terms as shall be provided by the Line of Credit Agreement. Notwithstanding the foregoing, the terms of the Credit Line Note, other than the principal amount thereof, may be modified by resolution supplemental and amendatory hereto, subject to the limits of the Act.

The Credit Line Note shall be payable as to principal upon surrender at the principal office of the Notes Registrar, in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of America; provided, that any partial payment or principal prior to the final maturity of the Credit Line Note shall be recorded on the Record of Advances and Payments attached to the Credit Line Note, and the Credit Line Note shall be returned to the Registered Owner. Interest on the Credit Line Note shall be paid by check or draft mailed to the Registered Owner thereof at the address as it appears on the books of said Notes Registrar; provided, that, at the option of the Registered Owner, such payment may be made by wire transfer or such other lawful method as shall be mutually agreeable.

Section 4.03. Execution of Credit Line Note. The Credit Line Note shall be executed in the name of the Issuer by the signature of its Chairman, and the seal of the Issuer shall be impressed thereon and attested by the signature of the Secretary. Any Credit Line Note may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Credit Line Note shall hold the proper office of the Issuer, although at the date of such Credit Line Note such person may not have held such office or may not have been so authorized.

Section 4.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Credit Line Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting the Credit Line Note, shall be conclusively deemed to have agreed that said Credit Line Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Credit Line Note or any portion thereof remains Outstanding, the Notes Registrar shall keep and maintain books for the registration and transfer of the Credit Line Note. The Credit Line Note shall be transferable only upon the books of the Notes Registrar which shall be kept for that purpose at the office of the Notes Registrar (and in such capacity as paying agent) by the Registered Owner thereof in person or by its attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Notes Registrar duly executed by the Registered Owner or its duly authorized attorney. Upon the transfer of the Credit Line Note, there shall be issued at the option of the Registered Owner or the transferee another Credit Line Note or Notes of the aggregate stated principal amount equal to the stated principal amount of such transferred Credit Line Note not paid as reflected on the Record of Advances and Payments attached thereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount of the transferred Credit Line Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Credit Line Note is exercised, Credit Line Notes shall only be issued in accordance with the provisions of this Ordinance and the Supplemental Resolution. All Credit Line Notes surrendered in any such transfers shall forthwith be cancelled by the Notes Registrar. For every such transfer of Credit Line Notes, the Notes Registrar may make a charge sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Credit Line Note upon each transfer, and any other expenses of the Notes Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer. The Notes Registrar shall not be obligated to make any such transfer of Credit Line Notes during the ten (10) days preceding an interest payment date on the Credit Line Notes or after notice of any prepayment of the Credit Line Notes have been given.

Section 4.05. Form of Credit Line Note and Line of Credit Agreement. The text of the Credit Line Note and the Line of Credit Agreement shall be in substantially the form set forth in the Supplemental Resolution. The Line of Credit Agreement shall be executed on behalf of the Issuer by the Chairman. The Credit Line Note shall not become valid until manually authenticated and registered by the Notes Registrar.

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. System Revenues and Application Thereof. So long as the Bonds shall be Outstanding and unpaid, the Issuer covenants with the Bondholders as follows:

(A) The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund which is hereby established and created. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. Funds in the Revenue Fund shall be disposed of only in the following manner and order of priorities.

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

(2) Next from the moneys in the Revenue Fund, the Issuer shall on the first day of each month commencing on the first day of the month following the month of delivery of the Bonds, make the payments required by Section 4.03 B(1) of the Prior Resolutions and shall simultaneously therewith apportion and set apart out of the Revenue Fund and remit to the office and place designated by the Bonds (herein called the "Sinking Fund") the monthly payment of interest set forth in the Supplemental Resolution or such lesser amount as is required to pay the interest on the Bonds as evidenced by the Record of Advances and Payments attached to the Bonds as set forth in the Bond form in Section 3.09. If funds in the reserve fund are not sufficient to make all the payments required by this section, the Issuer shall apportion and prorate the funds available to the payments required herein.

(3) Next from the moneys in the Revenue Fund, the Issuer shall on the first day of each month, as provided by the Supplemental Resolution, make the payment required by Sections 4.03 B(2) of the Prior Resolutions and simultaneously therewith shall apportion and set apart from the Revenue Fund and remit to the Sinking Fund the monthly payment of principal set forth in the Supplemental Resolution or such lesser amount as is evidenced by the Record of Advances and Payments attached to the Bond as set forth in the Bond form in Section 3.09, such amount or amounts being the amount required to amortize the principal of the Bonds over the life of the Bonds. If funds in the reserve fund are not sufficient to make all the payments required by this section, the Issuer shall apportion and prorate the funds available to the payments required herein.

The deposits to the Sinking Fund provided in this paragraph and in (2), above, constitute actual payments of principal and interest on the Bonds issued to the Government. The amounts required for principal and interest payments on the Bonds issued hereunder

other than to the Government shall be deposited in a sinking fund created by a Supplemental Resolution.

(4) The Issuer shall next transfer from the Revenue Fund and make the payment required by Sections 4.03 B(3) of the Prior Resolution and simultaneously therewith deposit in a Reserve Account at the Depository Bank (herein the "Reserve Account"), or in the case of Bonds other than the Bonds originally authorized hereby in a reserve account in a sinking fund created by Supplemental Resolution or otherwise as designated by a Supplemental Resolution, on the first day of each month of each year beginning with and including the month in which payments from the Revenue Fund for interest on the Bonds are commenced, an amount equal to one tenth (1/10) of the amount deposited into the Sinking Fund, as set forth above. If funds in the reserve fund are not sufficient to make all the payments required by this section, the Issuer shall apportion and prorate the funds available to the payments required herein.

No further payments shall be made into the Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement. Moneys in the Reserve Account shall be used only for the purpose of payment of maturing principal of or interest on the Bonds when moneys in the Revenue Fund or, in the case of bonds other than the Bonds originally authorized hereby, the funds in a sinking fund created by Supplemental Resolution are insufficient therefor and for no other purposes.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payment to the Sinking Fund and Reserve Account, including any deficiencies for prior payments, have been made in full.

As and when Additional Bonds ranking on a parity with the Bonds are issued, provision shall be made by Supplemental Resolution for additional payments sufficient to pay the interest on such Additional Bonds and to accomplish retirement thereof at or before maturity and to accumulate a balance in the Reserve Account in an amount equal to the maximum provided and required to be paid in principal and interest in any succeeding year for account of all the Bonds.

(5) Thereafter, from the moneys remaining in said Revenue Fund, the Issuer shall make the payments to the Renewal and Replacement Fund required by Section 4.03 C of the Prior Resolutions which are continued hereby and incorporated herein. All funds in said Depreciation Account shall be kept apart from all other funds, and all or any part of said fund may be invested as provided by Article VIII. Withdrawals and disbursements may be made from said Depreciation Account for replacements, emergency repairs, additions, betterments or improvements to the System; deficiencies in the payment of principal and interest on the Bonds, or debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such additions, betterments or improvements.

(6) If all of the above required payments are then current, the Issuer may use any moneys remaining in the Revenue Fund for the following purposes: (a) for prepayment of the amount, or any part thereof, of the Bonds Outstanding in accordance with the terms thereof (b) additions, betterments or improvements to the System which the Consulting Engineers certify are needed and/or (c) payments of principal and interest on subordinate water revenue bonds, or other obligations which may hereafter be issued by the Issuer on account of the System.

(B) All of the funds and accounts provided for above shall constitute trust funds and shall be used only for the purposes provided herein.

(C) The moneys in excess of the sum insured by the maximum amounts insured by the FDIC in the Revenue Fund, in the Reserve Account and in the Depreciation Account shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or such other obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

(D) If on any monthly payment date the Net Revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payments dates; provided, that all deposits, including on account of deficiencies, shall be made in the order of priority set forth in Paragraph (A), above, and no payment of lower priority shall be made if there exists a deficiency in a fund or account of higher priority. No such deficiency shall exist solely because the required payments into the Reserve Account have not, as of such date, funded such account to the requirement therefor.

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

(F) The Gross Revenues of the System shall only be used for purposes of the System.

Section 5.02. Tap Fees. During the construction of the Project, Tap Fees shall be deposited in the Construction Trust Fund created in Section 6.02 hereof. Following completion of the Project, Tap Fees shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds. All the moneys received from time to time from the sale of Bonds shall be deposited in the Construction Trust Fund, hereinafter created.

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

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

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

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

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System which lien is on a parity as to such security and source of payment with the lien of the Series 1990 A Bonds and senior to the lien of the Series 1990 B Bonds. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Bonds herein authorized and to make the payments into the Sinking Fund and the Reserve Account and all other payments provided for in this Resolution and the Prior Resolutions are hereby irrevocably pledged, in the manner provided herein and therein, to the payment of the principal of and interest on the Prior Bonds and the Bonds as the same become due, and for the other purposes provided in this Resolution and the Prior Resolutions.

Section 7.04. Rates. Prior to the issuance of the Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file in the office of the Governing Body, copies of which will be open to inspection by all interested parties. The schedule of rates and charges shall be sufficient to pay the Operating Expenses of the System, to pay the principal of and interest on all Bonds issued hereunder, and to provide an adequate Reserve Account and an adequate Depreciation Fund. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer

hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance 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 on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds (including, without limitation, the Prior Bonds); provided that, in the event that amounts equal to or in excess of the Reserve Requirement are on deposit in the Reserve Account and reserve accounts for obligations prior to or on a parity with the Bonds (including, without limitation, the Prior Bonds) are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds (including, without limitation, the Prior Bonds).

Section 7.05. Sale of the System. So long as the Bonds are Outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of or encumbered (other than any statutory mortgage lien created under the Act on account of obligations issued within the restrictions hereof) only with the written consent of the Government, and such consent will specify the disposition of any such sale or transfer. So long as the Prior Bonds are outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of only in accordance with the terms of the Prior Resolutions and with the written consent of the Government.

Section 7.06. Issuance of Additional Bonds. As long as the Bonds are Outstanding, no additional Bonds shall be issued without the prior written consent of the Government.

Section 7.07. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the PSC. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Government. The Government 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 Government shall be reported to such agent of the Issuer as the Government shall direct.

The Issuer shall file with the Consulting Engineers, and the Government, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution and the status of all said funds and accounts.

(C) The amount of any Bonds, Prior Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Government, or any other original purchaser of the Bonds. Such audit report submitted to the Government shall include a statement that the Issuer is in compliance with the terms and provisions of this Resolution and the Prior Resolutions.

The Issuer shall keep and preserve all financial records for a period of ten (10) years, and such material, upon request, will be made available for public inspection.

Section 7.08. Fiscal Year: Budget. While the Bonds are Outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the annual budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of such annual budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Board. Copies of each annual budget shall be delivered to the Government by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the annual budget before the first day of any Fiscal Year, it shall adopt a budget of current expenses from month to month until the adoption of the annual budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten percent (10%); and provided further, that adoption of a budget of current expenses shall not constitute compliance with the covenant to adopt an annual budget unless the Issuer's failure to submit an annual budget shall be for a reason beyond the control of the Issuer. Each such budget of current expenses shall be delivered and mailed immediately as in the case of the annual budget.

Section 7.09. Services Rendered by the System. The Issuer will not render or cause to be rendered any free services of any nature by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.10. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals, or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent, to the full extent permitted or authorized by the laws of the State and the rules and regulations of the Public Service Commission. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

To the extent allowed by law and the PSC, whenever any rates, rentals or charges for the services and facilities of the System, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid.

The Issuer further covenants and agrees that it will, to the full extent permitted by law and the rules and regulations promulgated by the PSC, for any account not paid within sixty (60) days, discontinue and shut off the services and facilities of the System and, in the event the Issuer owns a sewer facility (the "Sewerage System"), the Sewerage System to all users of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System have been paid in full and all accrued penalties plus a reconnection charge have been paid and shall take all further actions to enforce collections to the maximum extent permitted by law. The Issuer further covenants to use its best efforts to enter into agreements with any other entities providing sewerage service to its users, providing for discontinuing and shutting off the services and facilities of the sewerage system to users of the System delinquent in payment.

Section 7.11. Insurance and Bonds. The Issuer hereby covenants and agrees that, so long as the Bonds remain Outstanding, it will, as an expense of operation and maintenance of the System, procure, carry and maintain insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(A) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured prior to acceptance of any part of the Project from the contractor, on all above-ground insurable portions of the System, including machinery and equipment housed therein, in an amount equal to the insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) Public Liability Insurance, with limits of not less than \$500,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$200,000 from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured at the commencement of construction of the Project.

(C) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated for the benefit of the Issuer, with limits of not less than \$500,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$200,000 from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle.

(D) Workers' Compensation Coverage for All Employees of the System Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each contractor dealing directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of Wood County prior to commencement of construction of the Project in compliance with Chapter 38, Article 2, Section 39 of the Code of West Virginia, 1931, as amended.

(E) Fidelity Bonds will be provided as to every officer and employee of the Issuer having custody of the Revenue Fund or of any other funds or valuable property of the System in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount required by the Government and to be increased thereafter as necessary to cover the maximum amount of funds under control of that position at any one time.

(F) Flood Insurance will be obtained by the Issuer if available.

(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 Government holds any of the Bonds, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each prime contractor to carry insurance, of such types and in such amounts as the

Government may specify, and with insurance carriers or bonding companies acceptable to the Government.

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

Section 7.13. Consulting Engineer. The Issuer will retain recognized, qualified independent Consulting Engineers on an annual basis to supervise generally the operation, maintenance and renewal of the System and report annually to the Issuer in writing their recommendations and comments as to the System. Such annual report of the Consulting Engineers or a summary thereof shall be made available at reasonable times to the Government and to any Bondholder requesting the same.

Section 7.14. Contracts. Not later than simultaneously with the delivery of the Bonds, the Issuer shall have entered into written contracts for the immediate acquisition or construction of the project.

Section 7.15. Statutory Mortgage Lien. For the further protection of the Holders of Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, and shall take effect immediately upon delivery of the Bonds and shall be for the equal benefit of all Holders of the Bonds; provided however, that a statutory mortgage lien in favor of the Holders of the Bonds issued hereunder shall be on a parity with the statutory mortgage lien in favor of the owners of the Series 1990 A Bonds and senior to the lien of the Series 1990 B Bonds.

Section 7.16. PSC Order. The Issuer shall comply with the conditions of the PSC Order and any supplement or amendment thereto.

Section 7.17. Covenant to Amend Resolution. The Issuer retains the right to make any amendments, insertions or deletions by Supplemental Resolution of this Resolution as the Issuer deems necessary prior to the issuance of the Bonds to meet the requirements of the Government.

Section 7.18. Compensation of the Issuer. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Public Service Board of the Issuer 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 and in the Prior Resolutions, nor when there is a default in the performance of or compliance with any covenants or provision hereof or of the Prior Resolutions.

Section 7.19. Funds and Accounts Under Prior Resolutions. The Issuer hereby covenants that all payments into the respective funds and accounts created under the Prior Resolutions will have been made in full as required by the Prior Resolutions prior to the date of delivery of the Bonds.

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.01. Events of Default. A. Each of the following events shall constitute an "Event of Default" with respect to the Bonds.

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Resolution, any Supplemental Resolution or the Bonds and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Government, the Depository Bank, the Bond Registrar, any Paying Agent or a Registered Owner of a Bond; or

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

(D) If a default occurs under the Prior Resolutions.

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and this Resolution relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action at law or bill in equity enjoin any acts in violation of the resolution with respect to the Bonds, or the rights of such Registered Owners.

Section 8.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under this Resolution and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default, with respect to the Bonds, the Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project, or both, on behalf of the Issuer, with power to charge rates, rentals, fees and other

charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and any interest thereon and the deposits into the funds and accounts herein provided and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Resolution and the Act.

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

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

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

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

Section 8.04. Remedies On Parity With Prior Bonds. The exercise of any remedies set forth in Sections 8.02 and 8.03 above shall recognize and protect the parity rights of the owners of the Series 1990 A Bonds.

ARTICLE IX
INVESTMENTS

Section 9.01. Investments. Any moneys held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission or the Depository Bank, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section.

Except as specifically provided herein, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, including but not limited to those in the Construction Trust Fund, and used for the purpose of such fund or account. The interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the Owner, including the value of accrued interest and giving effect to the amortization of discount and investments in the "consolidated fund" of the West Virginia Board of Investments shall be valued at par. The Commission or the Depository Bank, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. Such Depository Bank may make any and all investments permitted by this Section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Notwithstanding the foregoing, any investments made pursuant to this Resolution shall comply with the guidelines of the Government.

ARTICLE X

MISCELLANEOUS

Section 10.01. Modification or Amendment. Except as provided in Section 7.17, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto that would materially and adversely affect the respective rights of Owners of the Bonds shall be made without the consent in writing of the Owners of 66-2/3 percent or more in principal amount of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the Net Revenues of the System without the consent of the respective Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds respectively, required for consent to the above-permitted amendments or modifications.

Section 10.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution, any Supplemental Resolution or the Bonds.

Section 10.03. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.04. Repeal of Conflicting Resolutions. All resolutions and orders, or parts thereof, in conflict with this Resolution are, to the extent of such conflict, repealed; provided, that no provision of the Government's Form 1942-47 or the Prior Resolutions shall be repealed hereby.

Section 10.05. Covenant of Due Procedure. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred, and are, duly in office and duly qualified for such office.

Section 10.06. Satisfaction and Discharge. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the respective pledges of Net Revenues, and other moneys and

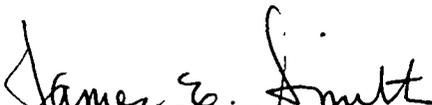
securities pledged under this Resolution, and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. Any payment must comply with the terms of the Letter of Conditions and any Government regulations.

Section 10.07. Effective Date. This Resolution shall take effect immediately upon its adoption.

Adopted this 27th day of March, 1997.

LUBECK PUBLIC SERVICE DISTRICT

[SEAL]



Chairman, Public Service Board



Member, Public Service Board



Member, Public Service Board

CHAS 3:51512

CERTIFICATION

Certified as a true copy of a Resolution adopted by the Public Service Board
of Lubeck Public Service District.

[SEAL]


Secretary, Public Service Board

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATE, INTEREST RATE, AND SALE PRICE OF THE LUBECK PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 1997; DESIGNATING A REGISTRAR AND DEPOSITORY BANK; SETTING FORTH REGISTRATION INFORMATION; APPROVING THE LINE OF CREDIT AND MAKING OTHER PROVISIONS AS TO THE BONDS AND LINE OF CREDIT.

WHEREAS, the Public Service Board (the "Board") of the Lubeck Public Service District (the "District") has duly and officially adopted a Bond Resolution, effective March 27, 1997 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS FACILITY OF THE LUBECK PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF \$535,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS AND THE SALE THEREOF TO THE UNITED STATES DEPARTMENT OF AGRICULTURE; AUTHORIZING A LINE OF CREDIT NOT TO EXCEED \$600,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Resolution provides for the issuance of Water Revenue Bonds (the "Bonds") of the District in an aggregate principal amount not to exceed \$535,000 and the sale thereof to the United States Department of Agriculture, Rural Utilities Service ("RUS"), all in accordance with Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended (the "Act"), and the Resolution, and it is provided that the interest rates

and sale price of the Bonds would be established by a supplemental resolution and that other matters relating to the Bonds be herein provided for;

WHEREAS, RUS proposes to purchase the Bonds;

WHEREAS, United National Bank has offered to extend a line of credit to the District; and

WHEREAS, the Board of the District deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the price of and the interest rate on the Bonds be fixed hereby in the manner stated herein; that the line of credit be approved; and that other matters relating to the Bonds and line of credit be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LUBECK PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution and the Act, this Supplemental Resolution is adopted and there is hereby authorized and ordered to be issued the Lubeck Public Service District Water Revenue Bonds, Series 1997 in the aggregate principal amount of \$535,000, and the sale thereof to the United States Department of Agriculture, Rural Utilities Service. The Bonds shall be in the form of one Bond, shall be dated the date of delivery, shall mature forty years from the date thereof, shall be numbered R-1 and the principal amount advanced under the Bonds shall bear interest at the rate of four and 875/1000 per centum (4.875%) per annum. Monthly installments of interest only on the amounts advanced under the Bonds are payable monthly, commencing the first day of the month following the month of delivery of the Bonds, for the first 24 months after delivery of the Bonds and thereafter, monthly installments of principal and interest on the Bonds, in the aggregate amount of \$2,585, are payable on the first day of each month, except that the final installment on the Bonds shall be made 40 years from the date of the Bonds in the sum of the unpaid principal and interest remaining unpaid on the date thereof. The Bonds are subject to prepayment as set forth in the Resolution.

Section 2. All other provisions relating to the Bonds shall be as provided in the Resolution and the Bonds shall be in substantially the form provided in the Resolution with such changes, insertions and omissions as may be approved by the Board of the District. The execution of the Bonds by the Chairman shall be conclusive evidence of such approval.

Section 3. The District hereby approves and accepts the offer of RUS to purchase the Bonds. The execution and delivery by the Chairman and Secretary of the Bonds, and the performance of the obligations contained therein, on behalf of the District are

hereby authorized, approved and directed. The price of the Bonds shall be Five Hundred Thirty-five Thousand Dollars (\$535,000) (100% of par value). Ninety Thousand Dollars (\$90,000) will be advanced on the date of Closing and the remaining purchase price will be advanced to the District, from time to time, as needed to pay the Costs of the Project.

Section 4. All principal and interest payments on the Bonds will be paid to the order of the United States of America on behalf of the United States Department of Agriculture at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

Section 5. The Bonds shall be issued as a fully registered Bond, both as to principal and interest, and shall be registered to the United States of America on behalf of the United States Department of Agriculture, Rural Utilities Service, P. O. Box 678, Morgantown, West Virginia 26505.

Section 6. The District hereby appoints and designates the United National Bank, Parkersburg, West Virginia, as the Depository Bank, as provided in the Resolution.

Section 7. The District hereby appoints and designates the United National Bank, Parkersburg, West Virginia, as Registrar for the Bonds as provided in the Resolution.

Section 8. The line of credit in the amount of \$600,000 from United National Bank (the "Line of Credit") is hereby approved and the Chairman and Secretary are hereby authorized to sign the Line of Credit Agreement and all other documents related to the Line of Credit.

Section 9. The Chairman and the Secretary are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Resolution and the RUS financing.

Section 10. The financing of the Project by the Bonds is in the public interest, serves a public purpose of the District and will promote the health, welfare and safety of the residents of the District.

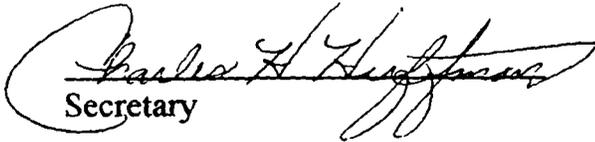
Section 11. It is anticipated that the Bonds will be delivered on or about March 27, 1997.

Section 12. This Supplemental Resolution shall be effective immediately upon adoption.

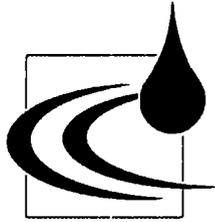
Dated: March 27, 1997


Chairman

[SEAL]


Secretary

62522



WEST VIRGINIA

Water Development Authority

Celebrating 31 Years of Service 1974 - 2005

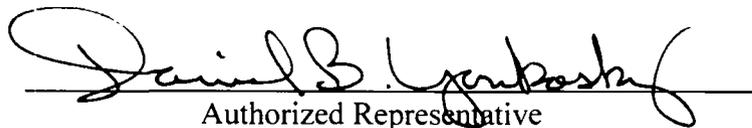
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

CONSENT TO ISSUANCE OF BONDS

In reliance upon a certificate of an independent certified public accountant stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Series 1990 A Bonds and the Series 1990 B Bonds, hereinafter defined and described, hereby consents to the issuance of the Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the original aggregate principal amount of \$1,573,000, the Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), in the original aggregate principal of \$2,068,300, and the Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), in the original aggregate principal amount of \$472,000 (collectively, the "Series 2005 Bonds"), by Lubeck Public Service District (the "Issuer"), under the terms of the resolutions authorizing the Series 2005 Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1990 A (the "Series 1990 A Bonds") and senior and prior with respect to liens, pledge and source of and security for payment to the Issuer's Water Revenue Bonds, Series 1990 B (the "Series 1990 B Bonds").

WITNESS my signature on this 17th day of June, 2005.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY


Authorized Representative



United States Department of Agriculture
Rural Development
West Virginia State Office

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

CONSENT TO ISSUANCE OF BONDS

The undersigned duly authorized representative of the United States of America, acting through the United States Department of Agriculture, Rural Development, the registered owner of the Prior Bonds, hereinafter defined and described, hereby (i) consents to the issuance of the Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the original aggregate principal amount of \$1,573,000, the Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), in the original aggregate principal amount of \$2,068,300, and the Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), in the original aggregate principal amount of \$472,000 (collectively, the "Series 2005 Bonds"), by Lubeck Public Service District (the "Issuer"), under the terms of the resolutions authorizing the Series 2005 Bonds (collectively, the "Resolution"), on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1997 (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 2005 Bonds or the Resolution; and (iii) consents to any amendments made to the Prior Resolutions by the Resolution.

WITNESS my signature on this 17th day of June, 2005.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT

State Director

3.1(A)

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. LOAN AGREEMENT
13. SPECIMEN BOND
14. BOND PROCEEDS
15. CONFLICTS OF INTEREST
16. VERIFICATION OF SCHEDULE
17. PROCUREMENT OF ENGINEERING SERVICES
18. USERS
19. WETLANDS COVENANT
20. COUNTERPARTS

On this 17th day of June, 2005, we, the undersigned CHAIRPERSON and the undersigned SECRETARY of the Public Service Board of Lubeck Public Service District (the "Issuer") and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Issuer's Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), and Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), all dated the date hereof (collectively, the "Bonds" or the "Series 2005 Bonds," or individually, the "Series 2005 A Bonds," the "Series 2005 B Bonds" and the "Series 2005 C Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Resolution duly adopted by the Issuer on June 15, 2005, the Supplemental Resolution duly adopted by the

Issuer on June 15, 2005 (collectively, the "Resolution"), the loan agreement for the Series 2005 A Bonds by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated June 17, 2005 (the "Loan Agreement"), the letter of conditions dated March 4, 2004, and the amended letter of conditions dated April 26, 2005, for the Series 2005 B Bonds and the Series 2005 C Bonds from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), to the Issuer (collectively, the "Letter of Conditions").

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer or the Board thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge and security of the Net Revenues for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals, permits, exemptions, consents, authorizations, registrations, licenses, orders and certificates required by law for the creation and existence of the Issuer, the acquisition and construction of the Project, the operation of the System, 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 by the Issuer in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery of the Loan Agreement and the approval of the Letter of Conditions. The Issuer has met all conditions set forth in the Loan Agreement and the Letter of Conditions and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Series 2005 Bonds shall be issued on a parity with each other and with the Series 1990 A Bonds and the Series 1997 Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Series 2005 Bonds shall be issued senior and prior to the Series 1990 B Bonds with respect to liens, pledge and source of and

security for payment and in all other respects. The Issuer has met the parity and coverage requirements of the Prior Bonds and the Prior Resolutions and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. The Issuer has obtained (i) a certificate of an Independent Certified Public Accountant stating that the parity and coverage tests of the Series 1990 A Bonds and the Series 1997 Bonds have been met; (ii) the written consent of the Registered Owners of the Series 1990 A Bonds and the Series 1997 Bonds to the issuance of the Series 2005 Bonds on a parity with the Series 1990 A Bonds and the Series 1997 Bonds; and (iii) the written consent of the Registered Owners of the Series 1990 B Bonds to the issuance of the Series 2005 Bonds on a senior and prior basis to the Series 1990 B Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

5. **SIGNATURES AND DELIVERY:** The undersigned Chairperson and Secretary are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Chairperson did officially sign all of the Bonds, consisting upon original issuance of a single Bond for each series, dated the date hereof, by his or her manual signature; the undersigned Secretary did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his or her manual signature; the Registrar did officially authenticate, register and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement.

6. **PUBLIC SERVICE COMMISSION ORDER:** The Issuer has received the Orders of the Public Service Commission of West Virginia (the "PSC") entered on April 5, 2004, June 3, 2004 and June 14, 2005, in Case No. 03-1473-PWD-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal of the April 5, 2004 Order and the June 3, 2004 Order has expired prior to the date hereof. The time for appeal of the June 14, 2005 Order has not expired on the date hereof. However, the parties to such Order have stated that they do not intend to appeal such Order. The Issuer hereby certifies that it will not appeal such Order. All three Orders remain in full force and effect.

The Issuer has duly published the required notice with respect to, among other things, the amount of the Bonds to be issued, the interest rate and terms of the Bonds, the Project to be acquired or constructed and the cost of the Project, the anticipated user rates and charges and the date that a formal application for a certificate of public convenience and necessity is to be filed with the PSC in accordance with Chapter 16, Article 13A, Section 25 of the Code of West Virginia, 1931, as amended.

7. RATES: The pre-construction rates for the System, as approved by the PSC Order entered on April 15, 2004, in Case No. 03-1473-PWD-CN, are currently in effect. The post-construction rates approved by such Order will become effective when the Project is substantially complete. The time for appeal for such Order has expired prior to the date hereof and such Order remains in full force and effect.

8. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Lubeck Public Service District." The Issuer is a public service district and public corporation duly created by The County Commission of Wood County and presently existing under the laws of, and a political subdivision of, the State of West Virginia in Wood County of said State. 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 their current terms are as follows:

<u>Name</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Roger Martin	March 18, 2004	December 31, 2007
Paul Smith	January 29, 2004	December 31, 2009
[vacant]*		

*Lee Johnson, the third Board member, recently passed away and The County Commission of Wood County has not appointed a new member.

The duly elected or appointed officers of the Board for 2005 are as follows:

- Paul Smith - Chairperson and Treasurer
- Roger Martin - Secretary

The duly appointed and acting attorney for the Issuer is Richard Hayhurst, Esquire, of Parkersburg, West Virginia.

9. LAND AND RIGHTS-OF-WAY: All land, rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions that would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties that may have to be acquired by condemnation, are, 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.

10. **MEETINGS:** All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Board duly and regularly or specifically called and held pursuant to all applicable statutes and the rules of procedure of the Board, and a quorum of duly appointed, qualified and acting members of the Board was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

11. **INSURANCE:** The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability insurance, property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Resolution and the Loan Agreement. All insurance for the System required by the Resolution and the Loan Agreement are in full force and effect.

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

13. **SPECIMEN BOND:** Attached hereto as Exhibit A are specimens of the Bonds which, except as to execution and authentication, are identical in all respects with the Bonds this day delivered to the Authority and the Government and being substantially in the form prescribed in the Resolution.

14. **BOND PROCEEDS:** On the date hereof, the Issuer received (a) \$222,320 from the Authority and the Council, being a portion of the principal amount of the Series 2005 A Bonds; (b) \$6,500 from the Government, being a portion of the principal amount of the Series 2005 B Bonds; and (c) \$1,600 from the Government, being a portion of the principal amount of the Series 2005 C Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

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

16. **VERIFICATION OF SCHEDULE:** The final amended Schedule B attached to the Certificate of Consulting Engineer, with the signature of the Chairperson and the Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

17. **PROCUREMENT OF ENGINEERING SERVICES:** The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

18. **USERS:** The Issuer will serve at least 3,792 bona fide users upon the completion of the Project, in full compliance with the Letter of Conditions.

19. **WETLANDS COVENANT:** The Issuer hereby certifies that it will not use any proceeds of the Bonds for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetlands to produce an agricultural commodity.

20. **COUNTERPARTS:** This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of Lubeck Public Service District as of the date first written above.

[SEAL]

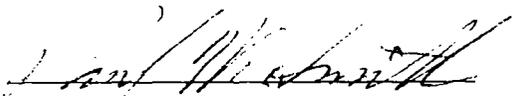
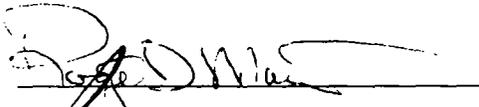
<u>Signature</u>	<u>Official Title</u>
	Chairperson
	Secretary
	Attorney

EXHIBIT A

See Specimen Bonds (Tab No. 16).

06/14/05
101090/00308

3.1(B)

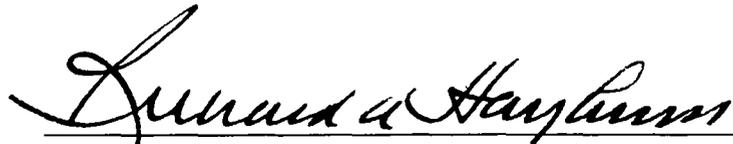
LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF NO LITIGATION

On this 17th day of June, 2005, the undersigned hereby certifies that as of the date hereof, no controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale or delivery of the above-captioned Bonds ("the Bonds"), the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues, or in any way contesting or affecting the validity of the Bonds or any proceedings of Lubeck Public Service District (the "Issuer") taken with respect to the authorization, issuance, sale or delivery of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of the Net Revenues for payment of the Bonds.

All capitalized terms used herein shall have the same meaning set forth in the Bond Resolution, authorizing the Bonds, duly adopted by the Issuer on June 15, 2005.

WITNESS my signature as of the date first written above.



Richard A. Hayhurst, Esquire
Attorney for Lubeck Public Service District

05/16/05
101090/00308

M0457067.1

218

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND)

3.2

CERTIFICATE AS TO ARBITRAGE

On this 17th day of June, 2005, the undersigned Chairperson of the Public Service Board of Lubeck Public Service District in Wood County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$1,573,000 Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, dated June 17, 2005 (the "Bonds" or the "Series 2005 A Bonds"), hereby certifies as follows:

1. This certificate is being executed and delivered pursuant to Section 148 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"). 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 same meaning as set forth in the Bond Resolution duly adopted by the Issuer on June 15, 2005 (the "Bond Resolution"), authorizing the Bonds.

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

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its bonds or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on June 17, 2005, the date on which the Bonds are to be physically delivered in exchange for all or a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Bond Resolution pursuant to which the Bonds are issued, the Issuer has covenanted that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause the Bonds to be "arbitrage

bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Sections 103 and 148 of the Code.

6. The Series 2005 A Bonds were sold on June 17, 2005, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated June 17, 2005, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), for an aggregate purchase price of \$1,573,000 (100% of par value), at which time, the Issuer received \$222,320 from the Authority and the Council, being the first advance of the principal amount of the Series 2005 A Bonds. The remaining principal amount of the Series 2005 A Bonds will be advanced to the Issuer by the Authority and the Council as construction proceeds to completion. No accrued interest has been or will be paid on the Series 2005 A Bonds.

7. The Series 2005 A Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain extensions and improvements to the existing public water facilities of the Issuer (the "Project"); and (ii) paying costs of issuance of the Series 2005 A Bonds and related costs.

On the date hereof, the Issuer has simultaneously issued its Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), in the original principal amount of \$2,068,300 and Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), in the original principal amount of \$472,000 (collectively, the "Series 2005 Bonds"), for the purposes of (i) paying a portion of the costs of the Project; and (ii) paying costs of issuance of the Series 2005 Bonds and related costs. The Series 2005 Bonds have not been issued on a tax-exempt basis.

8. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment, or has already done so. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and proceed with due diligence to completion and, with the exception of proceeds constituting capitalized interest, if any, and proceeds deposited in the 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 June, 2006, except as otherwise required for rebate to the United States under Section 148(f) of the Code. The acquisition and construction of the Project is expected to be completed by March, 2006.

9. The total cost of the Project (including all costs of issuance of the Bonds) is estimated at \$4,113,300. Sources and uses of funds for the Project are as follows:

SOURCES

Series 2005 A Bonds Proceeds	\$1,573,000
Series 2005 B Bonds Proceeds	\$2,068,300
Series 2005 C Bonds Proceeds	<u>\$ 472,000</u>
Total Sources	<u>\$4,113,300</u>

USES

Costs of Project	\$4,083,300
Costs of Issuance	<u>\$ 30,000</u>
Total Uses	<u>\$4,113,300</u>

The amount of the costs of acquisition and construction of the Project is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds stated above, no other funds of the Issuer will be available to meet costs of the Project, which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1 (c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds is longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the Project, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Bonds were not used or to be used for that governmental purpose.

10. Pursuant to Article V of the Bond Resolution, the following special funds or accounts have been created for the Series 2005 A Bonds (or continued pursuant to the Prior Resolutions):

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2005 A Bonds Construction Trust Fund;

- (4) Series 2005 A Bonds Rebate Fund;
- (5) Series 2005 A Bonds Sinking Fund; and
- (6) Series 2005 A Bonds Reserve Account.

11. Pursuant to Article VI of the Bond Resolution, the proceeds of the Series 2005 A Bonds will be deposited as follows:

(1) Series 2005 A Bond proceeds in the amount of \$-0- will be deposited in the Series 2005 A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Series 2005 A Bonds during acquisition and construction of the Project and for a period not to exceed six months following completion thereof.

(2) Series 2005 A Bond proceeds in the amount of \$-0- will be deposited in the Series 2005 A Bonds Reserve Account.

(3) The balance of the proceeds of the Series 2005 A Bonds will be deposited in the Series 2005 A Bonds Construction Trust Fund and applied solely to payment of costs of the Project, including costs of issuance of the Series 2005 A Bonds and related costs, and for no other purpose.

Prior to expenditure, the proceeds of the Series 2005 A Bonds in the Series 2005 A Bonds Construction Trust Fund will be invested at a yield not to exceed the yield on the Authority's bonds, the proceeds of which were used to make the loan to the Issuer.

Except for "preliminary expenditures" as defined in Treas. Reg. § 1.150-2(f)(2), none of the proceeds of the Bonds will be used to reimburse the Issuer for costs of acquisition and construction of the Project previously incurred and paid by the Issuer with its own funds.

12. Moneys held in the Series 2005 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2005 A Bonds and will not be available to meet costs of acquisition and construction of the Project. Except to the extent transferred to the Series 2005 A Bonds Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 2005 A Bonds Reserve Account (if fully funded) will be withdrawn therefrom and deposited into the Series 2005 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited in the Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

13. Except for the Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account, there are no other funds or accounts established or held by the

Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Bonds, and because such amounts may be expended for other purposes, there is no reasonable assurance that such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved desegregation plan or other investment property producing a yield in excess of the yield on the Bonds, have been or will be pledged to payment of the Bonds. Less than 10% of the stated principal amount of the Bonds, if any, will be deposited in the Series 2005 A Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 2005 A Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal and interest on the Bonds and will not exceed 125% of average annual principal and interest on the Bonds. Amounts in the Series 2005 A Bonds Reserve Account, not to exceed 10% of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 2005 A Bonds Reserve Account is required by the Authority, is vital to its purchase of the Bonds and is reasonably required to assure payments of debt service on the Bonds.

14. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into a contract for the acquisition and construction of the Project, and the amount to be expended pursuant to such contract exceeds 5% of the net sale proceeds of the Bonds.

15. 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 9 months of the date hereof.

16. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of the Bonds to the Authority.

17. With the exception of the amount deposited in the Series 2005 A Bonds Sinking Fund for payment of interest on the Series 2005 A Bonds, if any, and amounts deposited in the Series 2005 A Bonds Reserve Account, if any, all of the proceeds of the Series 2005 A Bonds will be expended on the Project within 12 months from the date of issuance thereof.

18. The Series 2005 A Bonds Sinking Fund (other than the Series 2005 A

Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Series 2005 A Bonds each year. The Series 2005 A Bonds Sinking Fund (other than the Series 2005 A Bonds Reserve Account therein) will be depleted at least once a year, except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Series 2005 A Bonds or 1 year's interest earnings on the Series 2005 A Bonds Sinking Fund (other than the Series 2005 A Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 2005 A Bonds Sinking Fund for payment of the principal of or interest on the Series 2005 A Bonds (other than the Series 2005 A Bonds Reserve Account therein) will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 2005 A Bonds Sinking Fund (other than in the Series 2005 A Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

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 held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

21. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Bonds or \$5,000,000 have been or will be used to make or finance loans to, any person who is not a governmental unit.

22. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue, except to the extent any such proceeds are required for rebate to the United States.

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

24. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Regulations promulgated or to be promulgated thereunder in order to assure that the interest on the Bonds is excluded from gross income for federal income tax purposes.

25. The Bonds are not, and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

26. The Issuer will rebate to the United States the amount, if any, required by the Code and take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount and any and all penalties and other amounts from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

27. The Issuer has retained the right to amend the Bond Resolution authorizing the issuance of the Bonds if such amendment is necessary to assure compliance with Section 148(f) of the Code or as may otherwise be necessary to assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

28. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

29. The Issuer has either (a) funded the Series 2005 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Series 2005 A Bonds in the then current or any succeeding year with the proceeds of the Series 2005 A Bonds, or (b) created the Series 2005 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until the Series 2005 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Series 2005 A Bonds in the then current or any succeeding year. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2005 A Bonds and will not be available to pay costs of the Project.

30. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation and a certificate with respect thereto or, if the Issuer qualifies for the small governmental issuer exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

31. The Issuer expects that no part of the Project financed by the Bonds will be sold or otherwise disposed of prior to the last maturity date of the Bonds.

32. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds and the interest thereon. In addition, the Issuer has covenanted to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code and has covenanted to take such actions, or refrain from taking such actions, as may be necessary to fully comply with Section 148(f) of the Code and the Regulations, regardless of whether such actions may be contrary to any of the provisions of the Resolution authorizing issuance of the Bonds.

The Issuer has further covenanted to calculate, annually, the rebatable arbitrage, determined in accordance with Section 148 (f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, with respect to each series of the Bonds, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which shall be paid from investment earnings on the underlying fund or account established in the Resolution and on which such rebatable arbitrage was earned or from other lawfully available sources. The Issuer has further covenanted to pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148 (f) of the Code and the Regulations. The Issuer shall remit payments to the United States at the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by the Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

33. The Issuer shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 10% of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal of, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property

or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Code.

34. The Bonds are a fixed yield issue. No interest or other amount payable on the Bonds (other than in the event of an unanticipated contingency) is determined by reference to (or by reference to an index that reflects) market interest rates or stock or commodity prices after the date of issue.

35. None of the Bonds has a yield-to-maturity more than one-fourth of one percent higher than the yield on the Bonds determined by assuming the Bonds are retired on the date that when used in computing the yield on the Bonds produces the lowest yield.

36. No portion of the proceeds of the Bonds will be used, directly or indirectly to acquire higher yielding investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

37. Other than the Series 2005 B Bonds and the Series 2005 C Bonds, 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 source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Bonds.

38. The transaction contemplated herein does not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

39. On the basis of the foregoing, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

40. On the date hereof, the undersigned Chairperson did officially execute a properly completed IRS Form 8038-G in connection with each series of the Bonds and will cause such executed IRS Form 8038-G to be filed in a timely manner pursuant to Section 149(e) of the Code with the applicable Internal Revenue Service Center. The information contained in such executed Form 8038-G is true, correct and complete.

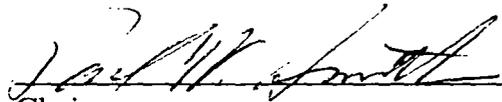
41. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

42. Jackson Kelly PLLC is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

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

WITNESS my signature as of the date first written above.

LUBECK PUBLIC SERVICE DISTRICT


Chairperson

05/27/05
101090/00308

3.3

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF SECRETARY
AS TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

On this 17th day of June, 2005, the undersigned duly appointed Secretary of Lubeck Public Service District (the "Issuer") hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of the Lubeck Public Service District Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), Water Revenue Bonds, Series 2005 B (United States Department of Agriculture) and Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted or approved by the Public Service Board (the "Board") of the Issuer and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Orders of The County Commission of Wood County Creating and Enlarging the Issuer.
2. Orders of The County Commission of Wood County Appointing the Members of the Board.
3. Oaths of Office of the Board Members.
4. Rules of Procedure.
5. Minutes of Current Year Organizational Meeting.
6. Public Service Commission Order.
7. Infrastructure Council Approval Letter.
8. Infrastructure Council Loan Agreement.

9. USDA Letter of Conditions, Closing Letter and Loan Resolution.
10. Bond Resolution.
11. Supplemental Resolution.
12. Minutes of Board Meeting regarding Adoption of USDA Loan Resolution.
13. Minutes of Board Meeting regarding Adoption of Bond Resolution and Supplemental Resolution.
14. Affidavits of Publication regarding Notice of Borrowing and Notice of Meeting to Adopt Bond Resolution and Supplemental Resolution.
15. 1990 and 1997 Bond Resolutions.
16. WDA Consent to Issuance of Bonds.
17. USDA Consent to Issuance of Bonds.
18. Environmental Health Services Permit.
19. Evidence of Insurance.

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

LUBECK PUBLIC SERVICE DISTRICT



Secretary

[SEAL]

05/05/05
101090/00308

LUBECK PUBLIC SERVICE DISTRICT 3.4
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

CERTIFICATE OF CONSULTING ENGINEER

On this 17th day of June, 2005, I, Craig D. Richards, Registered Professional Engineer, West Virginia License No.10358, of Burgess & Niple, Inc., Consulting Engineers, Parkersburg, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain improvements and extensions (the "Project") to the existing public water facilities (the "System") of Lubeck Public Service District (the "Issuer"), to be constructed primarily in Wood County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (collectively, the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Resolution adopted by the Issuer on June 15, 2005 (as supplemented, the "Resolution"), the loan agreement by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated June 17, 2005 (the "Loan Agreement"), the letter of conditions dated March 4, 2004, and the amended letter of conditions dated April 26, 2005, from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), to the Issuer (collectively, the "Letter of Conditions").

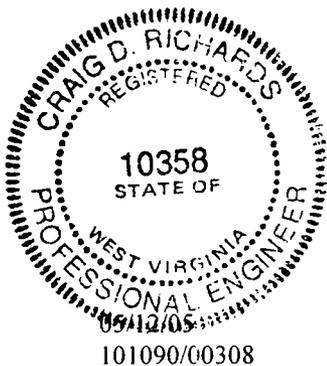
2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying certain costs of issuance of the Bonds and related costs.

3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the West Virginia Bureau for Public Health (the "BPH") and any change orders approved by the Issuer, the Council, the Government and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and will have a useful life of at least 40 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B

attached hereto as Exhibit A, and in reliance upon the opinion of the Issuer's counsel, Richard Hayhurst, Esquire, dated the date hereof, 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 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) in reliance upon the certificate of Philip R. Postlewait, Jr., CPA, dated the date hereof, as of the effective date thereof, the rates and charges for the System as approved by the Public Service Commission of West Virginia and adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement and the Resolution; (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 the the Council and the Government; 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 as of the date first written above.

[SEAL]



BURGESS & NIPLE, INC.

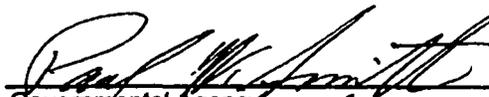
A handwritten signature in black ink that reads "Craig D. Richards".

Craig D. Richards, P.E.

West Virginia License No. 10358

SCHEDULE B

A. COST OF PROJECT		TOTAL	IJDC Loan	RUS Loan 1	RUS loan 2
1 Construction					
Contract 1	Everett Harper	1,109,370.00	494,557.00	614,813.00	
Contract 2	Mid Atlantic Storage	439,500.00	195,929.00	243,571.00	
Contract 3	Mid Atlantic Storage	1,047,900.00	467,154.00	580,746.00	
Contract 4	Geiger Brothers	407,600.00	0.00	9,830.00	397,770.00
Contract 5	Moody's of Dayton	157,450.00	59,990.00	97,460.00	
Change Order		65,000.00			65,000.00
Electric		50,000.00	0.00	50,000.00	
2 Technical Services					
a.	Planning & Design	291,600.00	291,600.00	0.00	
b.	Inspection	125,700.00		125,700.00	
c.	Special Services	0.00			
3 Legal & Fiscal					
a.	Legal	10,000.00		10,000.00	
b.	Accounting	2,750.00		2,750.00	
4 Administrative				0.00	
5 Sites & Other Lands					
a.	Land acquisition / ROW	75,000.00	33,270.00	41,730.00	
6 Interim Financing					
7 Contingency		191,700.00	0.00	191,700.00	
8					
9 TOTAL of Lines 1 through 8		3,973,570.00	1,542,500.00	1,968,300.00	462,770.00
10 Capitalized Interest		109,230.00		100,000.00	9,230.00
11 Other Costs					
a.	Registrar fees	500.00	500.00	0.00	
b.	Bond Counsel	30,000.00	30,000.00	0.00	
12 Cost of Issuance		139,730.00	30,500.00	100,000.00	9,230.00
13 TOTAL PROJECT COST line 9 plus line 12		4,113,300.00	1,573,000.00	2,068,300.00	472,000.00
14 Federal Grants					
15 (IJDC)		1,573,000.00	1,573,000.00		
16 Other Grants					
17 Any Other Source RUS Loans		2,540,300.00		2,068,300.00	472,000.00
18 TOTAL GRANTS Lines 14 through 17					
19 Size of Bond Issue		4,113,300.00	1,573,000.00	2,068,300.00	472,000.00


 Governmental Agency

 Engineer

5/12/05
 Date
 5/13/05
 Date

PHILIP R. POSTLEWAIT, JR.

CERTIFIED PUBLIC ACCOUNTANT

P.O. BOX 1281

PARKERSBURG, WEST VIRGINIA 26102

TELEPHONE (304) 422-7444

FACSIMILE (304) 422-4911

June 17, 2005

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

Lubeck Public Service District
Washington, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

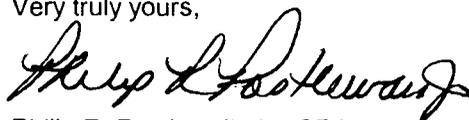
United States Department of Agriculture
Rural Utilities Service
Parkersburg, West Virginia

Ladies and Gentlemen:

I have reviewed the water rates of Lubeck Public Service District (the "Issuer"), as approved by the order of the Public Service Commission of West Virginia entered April 5, 2004, in Case No. 03-1473-PWD-CN, the projected operating expenses and the anticipated customer usage provided by Burgess & Niple, Inc., the consulting engineer of the Issuer. It is my opinion that such rates are sufficient (i) to provide for all operating expenses of the water facilities of the Issuer (the "System") and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Issuer's Water Revenue Bonds, Series 1990 A; Water Revenue Bonds, Series 1990 B; Water Revenue Bonds, Series 1997 (collectively, the "Prior Bonds"); Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund); Water Revenue Bonds, Series 2005 B (United States Department of Agriculture) and Water Revenue Bonds, Series 2005 C (United States Department of Agriculture) (collectively, the "Series 2005 Bonds").

It is further my opinion that (i) the Net Revenues for the fiscal year following the year in which the Series 2005 Bonds are to be issued will be at least 120% of the average annual debt service requirements on the Prior Bonds and the Series 2005 Bonds; and (ii) the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2005 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2005 Bonds, will not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for the principal of and interest on the Prior Bonds and the Series 2005 Bonds.

Very truly yours,



Philip R. Postlewait, Jr., CPA

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND)

3.6 (A)

RECEIPT FOR SERIES 2005 A BONDS

On this 17th day of June, 2005, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the date hereof, in Charleston, West Virginia, the Authority received the Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of Lubeck Public Service District (the "Issuer"), dated June 17, 2005, issued in the principal amount of \$1,573,000, numbered AR-1, in the form of one bond, fully registered to the Authority (the "Bonds").

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

WITNESS my signature as of the date first written above.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

Barbara B Meadows
Authorized Representative

05/09/05
101090/00308

M0411639.1

26 A

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE)

3.6(B)

RECEIPT FOR SERIES 2005 B BONDS

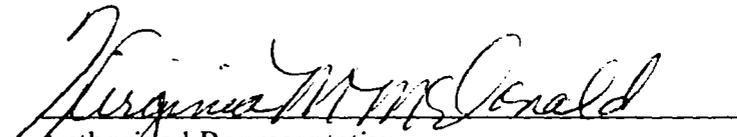
On this 17th day of June, 2005, the undersigned authorized representative of the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), for and on behalf of the Government, hereby certifies as follows:

1. On the date hereof, the undersigned received for and on behalf of the Government, the Water Revenue Bonds, Series 2005 B (United States Department of Agriculture) (the "Bonds"), of Lubeck Public Service District (the "Issuer"), dated June 17, 2005, issued in the form of one bond in the principal amount of \$2,068,300, and numbered BR-1. The Bonds bear interest at the rate of 4.25% per annum, payable in monthly installments on the amounts advanced thereunder, commencing 30 days following the date of delivery of the Bonds and continuing on the corresponding day of each month for the first 24 months after the date of the Bonds, and thereafter, on the corresponding day of each month in installments of principal and interest on the Bonds in the aggregate amount of \$9,163, except that the final installment on the Bonds shall be paid at the end of 40 years from the date of the Bonds in the sum of the unpaid principal and interest due on the date thereof.

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

WITNESS my signature as of the date first written above.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
AGRICULTURE, RURAL UTILITIES SERVICE


Authorized Representative

05/12/05
101090/00308

M0421965.1

26 B

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

3.6(C)

RECEIPT FOR SERIES 2005 C BONDS

On this 17th day of June, 2005, the undersigned authorized representative of the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), for and on behalf of the Government, hereby certifies as follows:

1. On the date hereof, the undersigned received for and on behalf of the Government, the Water Revenue Bonds, Series 2005 B (United States Department of Agriculture) (the "Bonds"), of Lubeck Public Service District (the "Issuer"), dated June 17, 2005, issued in the form of one bond in the principal amount of \$472,000, and numbered BR-1. The Bonds bear interest at the rate of 4.25% per annum, payable in monthly installments on the amounts advanced thereunder, commencing 30 days following the date of delivery of the Bonds and continuing on the corresponding day of each month for the first 24 months after the date of the Bonds, and thereafter, on the corresponding day of each month in installments of principal and interest on the Bonds in the aggregate amount of \$2,091, except that the final installment on the Bonds shall be paid at the end of 40 years from the date of the Bonds in the sum of the unpaid principal and interest due on the date thereof.

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

WITNESS my signature as of the date first written above.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
AGRICULTURE, RURAL UTILITIES SERVICE


Authorized Representative

05/12/05
101090/00308

M0456385.1

26C

3.7

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

RECEIPT FOR BOND PROCEEDS

On this 17th day of June, 2005, the undersigned Chairperson of Lubeck Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

1. The Issuer received from the West Virginia Water Development Authority (the "Authority"), as the original purchaser of the \$1,573,000 Lubeck Public Service District Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated June 17, 2005 (the "Series 2005 A Bonds"), the sum of \$222,320, being a portion of the principal amount of the Series 2005 A Bonds. The Issuer understands that the remaining proceeds of the Series 2005 A Bonds will be advanced to the Issuer by the Authority and the West Virginia Infrastructure and Jobs Development Council from time to time as construction proceeds to completion.

2. The Issuer received from the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), as the original purchaser of the \$2,068,300 Lubeck Public Service District Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), dated June 17, 2005 (the "Series 2005 B Bonds"), the sum of \$6,500, being a portion of the principal amount of the Series 2005 B Bonds. The Issuer understands that the remaining proceeds of the Series 2005 B Bonds will be advanced to the Issuer by the Government from time to time as construction proceeds to completion.

3. The Issuer received from the Government, as the original purchaser of the \$472,000 Lubeck Public Service District Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), dated June 17, 2005 (the "Series 2005 C Bonds"), the sum of \$1,600, being a portion of the principal amount of the Series 2005 C Bonds. The Issuer understands that the remaining proceeds of the Series 2005 C Bonds will be advanced to the Issuer by the Government from time to time as construction proceeds to completion.

WITNESS my signature as of the date first written above.

LUBECK PUBLIC SERVICE DISTRICT


Chairperson

06/03/05
101090/00308

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND)

3.8

REQUEST AND AUTHORIZATION TO
AUTHENTICATE, REGISTER AND DELIVER THE SERIES 2005 A BONDS

WesBanco Bank, Inc.
Wheeling, West Virginia

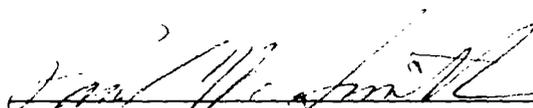
Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$1,573,000 Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the form of one bond, numbered AR-1, dated June 17, 2005 (the "Bonds"), of Lubeck Public Service District (the "Issuer"), authorized to be issued under and pursuant to a Bond Resolution and a Supplemental Resolution duly adopted by the Issuer on June 15, 2005.

You are hereby requested and authorized to authenticate, register and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

WITNESS our signatures on this 17th day of June, 2005.

LUBECK PUBLIC SERVICE DISTRICT


Chairperson

(SEAL)

Attest:


Secretary

05/23/05
101090/00308

M0411642.1

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND)

3.9

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 17th day of June, 2005, by and between LUBECK PUBLIC SERVICE DISTRICT, a public corporation (the "Issuer"), and WESBANCO BANK, INC., Wheeling, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$1,573,000 Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated June 17, 2005 (the "Bonds"), in the form of one bond, numbered AR-1, in fully registered form, pursuant to a Bond Resolution and a Supplemental Resolution adopted by the Issuer on June 15, 2005 (collectively, the "Resolution");

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 Resolution, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Resolution provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Resolution and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Resolution 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 Resolution, 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 exclusion of interest on the Bonds from gross income for federal income tax purposes, 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 heretofore agreed by the parties and set forth in the attached invoice.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Resolution with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Resolution, the terms of the Resolution 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 Resolution 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 address:

ISSUER:

Lubeck Public Service District
P.O. Box 700
Washington, WV 26181
Attention: Chairperson

REGISTRAR:

WesBanco Bank, Inc.
1 Bank Plaza
Wheeling, WV 26003
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate, register and deliver the Bonds in accordance with the Resolution.

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 date first written above.

LUBECK PUBLIC SERVICE DISTRICT



Chairperson

WESBANCO BANK, INC.



Authorized Officer

EXHIBIT A

See Bond Resolution (Tab No. 11)

See Supplemental Resolution (Tab No. 12)

05/23/05
101090/00308

M0411644.1



23-May-05

INVOICE

TO: Lubeck Public Service District
C/o Francesca Tan with Jackson & Kelly

RE: Lubeck Public Service District Water Revenue Bond
Series 2005 A

Invoice for: One Time Registrar Fee Lubeck Public Service District	\$	500.00
---	----	--------

Total due 6/17/05	\$	<u>500.00</u>
-------------------	----	---------------

Remit to the attention of:

WesBanco Trust & Investment Services
Attn: Wendy Pagot, Trust Administration
One Bank Plaza
Wheeling, WV 26003

Ref:
Lubeck Public Service District Water Revenue Bond 2005A

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND)

3.10

CERTIFICATE OF REGISTRATION OF THE SERIES 2005 A BONDS

WESBANCO BANK, INC., Wheeling, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of Lubeck Public Service District (the "Issuer"), dated June 17, 2005, in the principal amount of \$1,573,000, numbered AR-1, was registered as to principal and interest, 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 Registrar.

WITNESS my signature on this 17th day of June, 2005.

WESBANCO BANK, INC.,
as Registrar



Authorized Officer

05/23/05
101090/00308

M0411647.1

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

3.11

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

WESBANCO BANK, INC., Parkersburg, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution and a Supplemental Resolution adopted by Lubeck Public Service District (the "Issuer") on June 15, 2005 (collectively, the "Resolution"), authorizing issuance of the Issuer's Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), and Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), in the respective aggregate principal amounts of \$1,573,000, \$2,068,300 and \$472,000, all dated June 17, 2005, and agrees to serve as Depository Bank, all as set forth in the Resolution.

WITNESS my signature on this 17th day of June, 2005.

WESBANCO BANK, INC.



Authorized Officer

05/09/05
101090/00308

M0411649.1

WEST VIRGINIA MUNICIPAL BOND COMMISSION

Suite 500
8 Capitol Street, Charleston, WV 25301
(304) 558-3971

3.12(A)

NEW ISSUE REPORT FORM

Date of Report: June 17, 2005

ISSUE: Lubeck Public Service District Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund)

ADDRESS: P.O. Box 700, Washington, WV 26181 COUNTY: Wood

PURPOSE OF ISSUE: New Money X
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: June 17, 2005 CLOSING DATE: June 17, 2005

ISSUE AMOUNT: \$1,573,000 RATE: 3%

1st DEBT SERVICE DUE: March 1, 2007 1st PRINCIPAL DUE: March 1, 2007

1st DEBT SERVICE AMOUNT: \$26,219.10 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: _____
Contact Person: Samme L. Gee, Esquire Contact Person: _____
Phone: (304) 340-1318 Phone: _____

CLOSING BANK: WesBanco Bank, Inc. ESCROW TRUSTEE: _____
Contact Person: Randy Law Contact Person: _____
Phone: (304) 480-2540 Phone: _____

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WV Infrastructure & Jobs Development Council
Contact Person: James Cox Contact Person: Katy Mallory, P.E.
Position: Manager Function: Executive Secretary
Phone: (304) 863-3341 Phone: (304) 558-4607

DEPOSITS TO MBC AT CLOSE: _____ Accrued Interest: \$ _____
Capitalized Interest: \$ _____
By _____ Wire _____ Reserve Account: \$ _____
_____ Check _____ Other: _____ \$ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire _____ To Escrow Trustee: \$ _____
_____ Check _____ To Issuer: \$ _____
_____ IGT _____ To Cons. Invest. Fund \$ _____
_____ To Other: _____ \$ _____

NOTES: The Series 2005 A Bonds Reserve Account will be funded over 10 years.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

June 17, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Internal Revenue Service
Internal Revenue Service Center
Ogden, Utah 84201

Re: Lubeck Public Service District Water Revenue Bonds,
Series 2005 A (West Virginia Infrastructure Fund)
JK Reference No. 101090/00308

Ladies and Gentlemen:

Enclosed herewith are (i) a completed and executed Internal Revenue Service Form 8038-G and (ii) a file copy thereof with regard to the above-captioned issue. Please file the original in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,


Samme L. Gee

SLG:lp
Enclosure

cc: James Cox (w/enc.)

05/06/05
101090/00308

M0411668.1

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)
 ► See separate instructions.

OMB No. 1545-0720

Caution: If the issue price is under \$100,000, use Form 8038-GC.

Part I Reporting Authority If Amended Return, check here

1 Issuer's name Lubeck Public Service District	2 Issuer's employer identification number 55 0455342
3 Number and street (or P.O. box if mail is not delivered to street address) P.O. Box 700	Room/suite
5 City, town, or post office, state, and ZIP code Washington, West Virginia 26181	4 Report number 3 01
7 Name of issue Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund)	6 Date of issue June 17, 2005
9 Name and title of officer or legal representative whom the IRS may call for more information Samme L. Gee, Esq.	8 CUSIP number N/A
	10 Telephone number of officer or legal representative (304) 340-1318

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11 <input type="checkbox"/> Education	11
12 <input type="checkbox"/> Health and hospital	12
13 <input type="checkbox"/> Transportation	13
14 <input type="checkbox"/> Public safety	14
15 <input checked="" type="checkbox"/> Environment (including sewage bonds)	15 1,573,000
16 <input type="checkbox"/> Housing	16
17 <input type="checkbox"/> Utilities	17
18 <input type="checkbox"/> Other. Describe ►	18
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are BANs, check box <input type="checkbox"/>	
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>	

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	12/1/2026	\$ 1,573,000	\$ 1,573,000	12.571 years	3.0222270 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22	0
23 Issue price of entire issue (enter amount from line 21, column (b))	23	1,573,000
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	30,000
25 Proceeds used for credit enhancement	25	0
26 Proceeds allocated to reasonably required reserve or replacement fund	26	0
27 Proceeds used to currently refund prior issues	27	0
28 Proceeds used to advance refund prior issues	28	0
29 Total (add lines 24 through 28)	29	30,000
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	1,543,000

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ► _____ years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded ► _____ years

33 Enter the last date on which the refunded bonds will be called ► _____

34 Enter the date(s) the refunded bonds were issued ► _____

Part VI Miscellaneous

35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) ► _____

36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions) ► _____

b Enter the final maturity date of the guaranteed investment contract ► _____

37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units ► _____

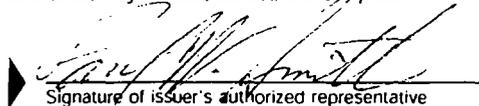
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box and enter the name of the issuer ► _____ and the date of the issue ► _____

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box

40 If the issuer has identified a hedge, check box

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign Here  **June 17, 2005** **Paul Smith, Chairman**

Signature of issuer's authorized representative Date Type or print name and title



State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

815 QUARRIER STREET, SUITE 418

CHARLESTON, WEST VIRGINIA

TELEPHONE 304-558-2981

JUN 2003
25301-26467

(Water) **PERMIT**

PROJECT: Water Distribution System Improvements And Air Stripper At Water Treatment Plant PERMIT NO.: 15,676

LOCATION: Lubeck COUNTY: Wood DATE: 6-23-03

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Lubeck Public Service District
Post Office Box 700
Washington, West Virginia 26181**

is hereby granted approval to: install approximately 3,500 LF of 12", 11,200 LF of 10", 5,850 LF of 8" and 200 LF of 6" and 4" water line; one (1) 160 G.P.M. duplex water booster station (near Homewood tank site); one (1) flow control valve station (Homewood/Larkmead service area); a new altitude valve at the New England Ridge storage tank; refurbish the existing altitude valve at the River Hill tank site; one (1) new 200,000 gallon elevated water storage tank (Larkmead); one (1) 621,000 gallon water storage tank (Wildwood); one (1) 531,000 gallon storage tank (River Hill); one (1) 200,000 gallon water storage tank (South); add a 2.4 M.G.D. air stripper at the Lubeck Public Service District water treatment plant; and all necessary valves, controls and appurtenances. The existing River Hill tanks and the hydro-pneumatic booster station at the Homewood tank site will be demolished. The New England Ridge and South tanks will initially be operated with a lower volume to allow for a 20% daily turn-over in order to assure adequate water quality.

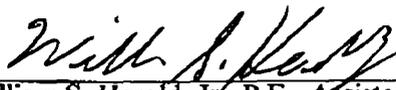
Facilities serve the Lubeck Public Service District.

NOTE: This permit is contingent upon: 1) All new water line and water storage tanks being flushed, disinfected 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 above the sewer line; and 3). All new water storage tanks are to be enclosed by a minimum six (6) feet high fence with a locking gate.

The Office of Environmental Health Services Wheeling District Office, telephone (304) 238-1145, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR


William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:sec

cc: Burgess & Niple, Limited
James W. Ellars, P.E., PSC-Engineering Division
Amy Swann, PSC
Wood County Health Department
OEHS-EED Wheeling District Office



State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

815 QUARRIER STREET, SUITE 418

CHARLESTON, WEST VIRGINIA 25301-2616

TELEPHONE 304-558-2981

PROJECT: (Water Well)
New Water Well

PERMIT

PERMIT NO.: 15,677

LOCATION: Lubeck

COUNTY: Wood

DATE: 6-23-03

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Lubeck Public Service District
Post Office Box 700
Washington, West Virginia 26181**

is hereby granted approval to: install one (1) 2" diameter observation well. Also, to install one (1) 24" outer casing and 12" inner casing production supply well. The production supply well is to be constructed according to the WV Bureau for Public Health's "Design Standards for Public Water Supply Systems," with particular attention to Section 4.3.3.11, Grouting Requirements. Well construction is to be performed by a WV Certified Water Well Contractor. The well water shall be tested for any chemical, radiological and microbiological contaminants, as required by the WV Bureau for Public Health's "Public Water Systems" regulations.

Facilities are to serve the Lubeck Public Service District.

NOTE: It is the well owner's responsibility that the well log, all yield and drawdown test results, and a 2,000' radius potential contamination source survey (see pages 12-14 in pamphlet "WV Wellhead Protection Program" for recording potential sources of contamination) are submitted to the Wellhead Protection Program, Environmental Engineering Division, WV Bureau for Public Health, 815 Quarrier Street, Suite 418, Charleston, WV 25301, within 30 calendar days after the well is drilled.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR


William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:sec

pc: Burgess and Niple, Limited
James W. Ellars, P.E., PSC-Engineering
Amy Swann, PSC
Wood County Health Department
OEHS-EED Wheeling District Office
Source Water Protection Unit

Description and location of covered property.

Item 002

BLANKET BUILDING AND BUSINESS PERSONAL PROPERTY
AT LOCATIONS SCHEDULED BELOW.

	Limit Of Coverage	Valuation	Theft Coverage
BLANKET Building	\$13,323,050 Coinsurance 90%	RC	See Location Schedule
BLANKET Business Personal Property	Incl W Bldg Coinsurance 90%	RC	See Location Schedule

Business Income

Blanket Earnings
And Expenses

Your Property Protection deductible per event is \$250 unless another amount is shown here: \$1,000.

Name of Insured Policy Number GP09312894 Effective Date
 LUBECK PUBLIC SERVICE DISTRICT Processing Date 08/16/04 10:49 001

35

CC: 000 D559
* M: 00 I. 000 T: 001
* 7 B O O 2 GP09312894 5717

CC: 000 D559
OO T: 001
M: 001
7 B O O 2 GP09312894 5763

CONTRACTOR'S EQUIPMENT PROTECTION COVERAGE SUMMARY

The **St Paul**

This Coverage Summary shows the limit and extent of your Contractor's Equipment Protection.

Coverage Summary

indicates applicable.

Scheduled equipment

Limit of coverage

See schedule attached Schedule on file \$ 202,120

Unscheduled equipment you own or have in your care that is used in your business, but no more than \$ for any one item. \$

Unscheduled equipment leased or rented from others that is used in your business, but no more than \$ for any one item. \$

Catastrophe limit \$ 202,120

Your Rates

Scheduled Equipment per \$100 of value
Unscheduled Equipment you own per \$100 of value
Unscheduled Equipment you lease or rent from others per \$100 of rental fees
Deposit and minimum annual premium (included in premium on Introduction page)

Your Deductible

\$ 1,000 All Coverages All Coverages Except As Indicated Below
\$
\$
\$

Increased Additional Benefits Coverage

Employee Tools increased to: \$ any one employee maximum any one loss
 Rental Expenses increased to: \$ any one day maximum any one loss

Name of Insured

Policy Number GP09312894

Effective Date

LUBECK PUBLIC SERVICE DISTRICT

Processing Date 08/16/04 10:49 001

* 7 8 0 0 2 9 0 9 3 1 2 8 9 4 5 7 7 5 * M: 00 1: 000 T: 001 * C: 000 D559

**PUBLIC ENTITY GENERAL LIABILITY PROTECTION
COVERAGE SUMMARY**



This Coverage Summary shows the limits of coverage that apply to your Public Entity General Liability Protection. It also lists those endorsements, if any, that must have certain information shown for them to apply.

Limits Of Coverage

General total limit.	\$	2,000,000
Products and completed work total limit.	\$	2,000,000
Personal injury each person limit.	\$	1,000,000
Advertising injury each person limit.	\$	1,000,000
Each event limit.	\$	1,000,000
<i>Failure to supply limit.</i>	\$	500,000
<i>Medical expenses limit.</i>	\$	0
<i>Premises damage limit.</i>	\$	100,000
<i>Sewer back-up limit.</i>	\$	100,000

Named Endorsement Table

Important Note: Only endorsements that must have certain information shown for them to apply are named in this table. The required information follows the name of each such endorsement. Other endorsements may apply too. If so, they're listed on the Policy Forms List.

Name of Insured	Policy Number GP09312894	Effective Date
LUBECK PUBLIC SERVICE DISTRICT	Processing Date 08/16/04	10:49 001

CLOSING MEMORANDUM

3.16

To: James Cox
Katy Mallory
Virginia McDonald
Barbara Meadows
Samme Gee

From: Francesca Tan

Date: June 17, 2005

Re: Lubeck Public Service District Water Revenue Bonds,
Series 2005 A (West Virginia Infrastructure Fund),
Series 2005 B (United States Department of Agriculture) and
Series 2005 C (United States Department of Agriculture)

1. DISBURSEMENTS TO DISTRICT

- A. Payor: West Virginia Infrastructure Fund
Source: Series 2005 A Bonds Proceeds
Amount: \$222,320
Date: June 17, 2005
Form: Wire Transfer
Payee: Lubeck Public Service District
Bank: WesBanco Bank, Inc.
Routing No.: 051500562
Account No.: 312531530
Account: Series 2005 A Bonds Construction Trust Fund
- B. Payor: United States Department of Agriculture
Source: Series 2005 B Bonds Proceeds
Amount: \$6,500
Date: June 17, 2005
Form: Electronic Funds Transfer
Payee: Lubeck Public Service District
Bank: WesBanco Bank, Inc.
Routing No.: 051500562
Account No.: 312502579
Account: Series 2005 B and C Bonds Construction Trust Fund

C. Payor: United States Department of Agriculture
Source: Series 2005 C Bonds Proceeds
Amount: \$1,600
Date: June 17, 2005
Form: Electronic Funds Transfer
Payee: Lubeck Public Service District
Bank: WesBanco Bank, Inc.
Routing No.: 051500562
Account No.: 312502579
Account: Series 2005 B and C Bonds Construction Trust Fund

05/27/05
101090/00308

June 17, 2005

Lubeck Public Service District
Washington, West Virginia

West Virginia Infrastructure and Jobs Development Council
Charleston, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Re: Lubeck Public Service District Water Revenue Bonds,
Series 2005 A (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

We have served as bond counsel to Lubeck Public Service District (the "Issuer") in connection with the issuance of its Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds, dated June 17, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of \$1,573,000, in the form of one bond, registered as to principal and interest to the Authority, with interest at the rate of 3% per annum, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2007, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds.

M0411703.1

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Resolution duly adopted by the Issuer on June 15, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 15, 2005 (collectively, the "Resolution"), pursuant to and under which Act and Resolution the Bonds are authorized and issued, and the Loan Agreement is 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 Resolution and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution and the Loan Agreement when used herein.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in

accordance with the terms thereof.

3. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority and the Council or diminish the obligations of the Issuer, without the written consent of the Authority and the Council.

4. The Issuer has legally and effectively adopted the Resolution and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. 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 a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1990 A, Water Revenue Bonds, Series 1997, Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), and Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), issued concurrently herewith, and senior and prior with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1990 B, all in accordance with the terms of the Bonds and the Resolution.

6. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds is excludable from gross income for federal income tax purposes pursuant to the Code and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that the interest thereon be, or continue to be, excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Resolution and

Lubeck Public Service District
West Virginia Infrastructure and Jobs Development Council
West Virginia Water Development Authority
June 17, 2005
Page 4

the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. The Issuer has covenanted to comply with all such requirements. Failure to comply with certain of such Code requirements or such certifications, covenants and representations may cause the interest on the Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds other than as expressly set forth herein.

7. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

No opinion is given herein as to the effect upon the enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

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,



05/12/05
101090/00308

June 17, 2005

Lubeck Public Service District
Washington, West Virginia

United States Department of Agriculture,
Rural Utilities Service
Parkersburg, West Virginia

Re: Lubeck Public Service District Water Revenue Bonds,
Series 2005 B (United States Department of Agriculture)

Ladies and Gentlemen:

We have served as bond counsel to Lubeck Public Service District (the "Issuer") in connection with the issuance of its Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the issuance of the Bonds. The Bonds are issued in the principal amount of \$2,068,300, in the form of one bond and bear interest from the date hereof, on the amount advanced thereunder, at the rate of 4.25% per annum.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and have been authorized by a Bond Resolution duly adopted by the Issuer on June 15, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 15, 2005 (collectively, the "Resolution"). The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt

Lubeck Public Service District
United States Department of Agriculture
June 17, 2005
Page 2

the Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Issuer has legally and effectively adopted the Resolution and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1990 A, Water Revenue Bonds, Series 1997, Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), and Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), issued concurrently herewith, and senior and prior with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1990 B, all in accordance with the terms of the Bonds and the Resolution.

4. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

No opinion is given herein as to the effect upon the enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed Bond numbered BR-1 and in our opinion, the form of said Bond and its execution are regular and proper.

Very truly yours,



June 17, 2005

Lubeck Public Service District
Washington, West Virginia

United States Department of Agriculture
Rural Utilities Service
Parkersburg, West Virginia

Re: Lubeck Public Service District Water Revenue Bonds,
Series 2005 C (United States Department of Agriculture)

Ladies and Gentlemen:

We have served as bond counsel to Lubeck Public Service District (the "Issuer") in connection with the issuance of its Water Revenue Bonds, Series 2005 C (United States Department of Agriculture), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the issuance of the Bonds. The Bonds are issued in the principal amount of \$472,000, in the form of one bond and bear interest from the date hereof, on the amount advanced thereunder, at the rate of 4.25% per annum.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and have been authorized by a Bond Resolution duly adopted by the Issuer on June 15, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 15, 2005 (collectively, the "Resolution"). The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Resolution when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district and is a public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt

Lubeck Public Service District
United States Department of Agriculture
June 17, 2005
Page 2

the Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Issuer has legally and effectively adopted the Resolution and all other necessary resolutions in connection with the issuance and sale of the Bonds. The Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and a pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1990 A, Water Revenue Bonds, Series 1997, Water Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), and Water Revenue Bonds, Series 2005 B (United States Department of Agriculture), issued concurrently herewith, and senior and prior with respect to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1990 B, all in accordance with the terms of the Bonds and the Resolution.

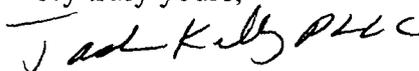
4. Under the Act, the Bonds and the interest thereon are exempt from taxation by the State of West Virginia and the other taxing bodies of the State.

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

No opinion is given herein as to the effect upon the enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed Bond numbered CR-1 and in our opinion, the form of said Bond and its execution are regular and proper.

Very truly yours,



RICHARD A. HAYHURST
ATTORNEY AT LAW

Lubeck Public Service District,
West Virginia Infrastructure and
Jobs Development Council,
West Virginia Water Development
Authority,
United States Department of
Agriculture - Rural Utilities
Service,
Jackson Kelly PLLC

-3-

June 17, 2005.

Issuer, a breach of or default under any resolution, agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates, registrations and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for the use of the System, including, without limitation, all requisite permits, approvals, orders and certificates from The County Commission of Wood County, the Council, the West Virginia Bureau for Public Health and the Public Service Commission of West Virginia (the "PSC"). The Issuer has taken all actions required for the imposition of the rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received the PSC Orders entered on April 5, 2004, June 3, 2004, and June 14, 2005, in Case No. 03-1473-PWD-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal of the April 5, 2004, Order and the June 3, 2004, Order has expired prior to the date hereof. The time for appeal of the June 14, 2005, Order has not expired on the date hereof. However, the parties to such Order have stated that they do not intend to appeal such Order. All three Orders are in full force and effect.
7. The Issuer has duly published the required notice with respect to, among other things, the amount of the Bonds to be issued, the interest rate and terms of the Bonds, the Project to be acquired or constructed, the cost of the Project, the anticipated user rates and charges and the date that a formal application for a certificate of public convenience and necessity is to be filed with the PSC in accordance with Chapter 16, Article 13A, Section 25 of the Code of West

RICHARD A. HAYHURST
ATTORNEY AT LAW

Lubeck Public Service District,
West Virginia Infrastructure and
Jobs Development Council,
West Virginia Water Development
Authority,
United States Department of
Agriculture - Rural Utilities
Service,
Jackson Kelly PLLC

-4-

June 17, 2005.

Virginia 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 Loan Agreement, the Bonds and the Resolution, the acquisition or construction of the Project, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.
9. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based on my review of the contracts, the surety bonds and the policies or other evidences of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet with the requirements of the Act, the Resolution and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Yours very truly,


Richard A. Hayhurst.

RAH/23.

RICHARD A. HAYHURST
ATTORNEY AT LAW
POST OFFICE BOX 86
PARKERSBURG, WEST VIRGINIA 26102-0086
414 MARKET STREET

RICHARD A. HAYHURST
ANDREW C. WOOFER, III

AREA CODE 304
TELEPHONE 422-1445
FACSIMILE 428-2674

June 17, 2005,
Our 34th Year.

Lubeck Public Service District,
Washington, West Virginia.

West Virginia Infrastructure and Jobs Development Council,
Charleston, West Virginia.

West Virginia Water Development Authority,
Charleston, West Virginia.

Jackson Kelly, PLLC,
Charleston, West Virginia.

Ladies and Gentlemen:

In re: Lubeck Public Service District Water Revenue Bonds,
Series 2005A (West Virginia Infrastructure Fund),
Series 2005B (United States Department of Agriculture) and
Series 2005C (United States Department of Agriculture).

I am counsel to Lubeck Public Service District (the "Issuer") in connection with a proposed project to acquire and construct certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"). I have provided this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council for the Project. Please be advised of the following:

1. The Issuer is a duly created and validly existing public service district possessed with all the powers and authority granted to public service districts under the laws of the State of West Virginia to acquire, construct and maintain the Project as approved by the West Virginia Bureau for Public Health.
2. The Issuer has obtained all necessary permits and approvals for the construction of the Project.

RICHARD A. HAYHURST
ATTORNEY AT LAW

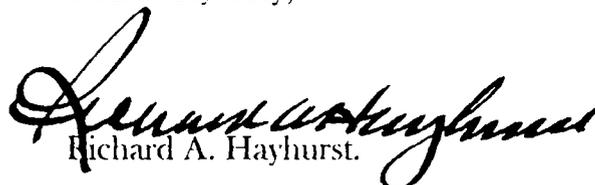
Lubeck Public Service District,
West Virginia Infrastructure and
Jobs Development Council,
West Virginia Water Development
Authority,
Jackson Kelly PLLC

-2-

June 17, 2005.

3. I have examined the records on file in the Office of the Clerk of the County Commission of Wood County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate or interest in all the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.
4. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Wood County, West Virginia, to protect the legal title to and interest of the Issuer.

Yours very truly,


Richard A. Hayhurst.

RAH/23.

Partion 5

Form RD 1927-10
(Rev. 7-98)

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
FARM SERVICE AGENCY

FORM APPROVED
OMB NO. 0575-0147

FINAL TITLE OPINION

LOAN APPLICANT Lubeck Public Service District	ADDRESS OR PROPERTY COVERED BY THIS OPINION Entire Water System - See Schedule A	
APPLICANT FOR TITLE EXAMINATION Rural Development - Parkersburg	COUNTY Wood	STATE West Virginia

I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to June 17, 2005, at 9:30 a.m. (including the time of filing the current security instrument).
(Date) p.m.

II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:

A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in Lubeck Public Service District

as fee simple titleholder
(Joint tenants, tenants by the entirety, etc.)

B. The United States of America holds a valid first contractual lien on said property as required by Rural Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on N/A,
(Priority) (Mortgage, etc.) (Date)
at a.m. and is recorded in N/A
p.m. (Book, page, and office)

C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.

III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

- Loan by Rural Utilities Services on April 2, 1990
- Water Development Authority Bonds Series 1990-A
- Water Development Authority Bonds Series 1990-B
- Lubeck Public Service District Water Revenue Bond Series 2005-A
- Lubeck Public Service District Water Revenue Bond Series 2005-B
- Lubeck Public Service District Water Revenue Bond Series 2005-C

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.

- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

June 17, 2005

(Date)


(Attorney's signature)

Post Office Box 86
Parkersburg, West Virginia 26102-0086
(Address, include ZIP Code)

Attachments

Schedule A
To USDA Form RD 1927-10 (Rev. 7-98)

Permits approved by the West Virginia Department of Transportation, Division of Highways, dated December 8, 2003, and May 20, 2004.

Water line and temporary construction easements for the project from the following persons with the following recording date(s):

Robert Harper - 2/8/05
Parrish - 10/01/04
Williams - 3/20/1986
Williams - 7/6/04
Benson - 9/12/1980
Benson - 9/12/1980
Pigott - 9/12/1980
Pigott - 9/12/1980
Pigott - 9/12/1980
Thomas Knox - 7/12/04
Steven Knox - 7/12/04
Sole - 7/23/04
Morgan - 6/2/04
Padden - 7/6/04

Eminent Domain proceedings against the following persons, with right-of-entry granted on the January 14, 2005:

1. Jeffrey D. Harper, Ramona L. Harper, Robert S. Russell, Gail A. Russell, Walter R. Butcher, Jr., Trustee, The Williamstown National Bank and K. D. Merritt.
2. Curtis E. Lemon, Evelyn R. Lemon, Randall E. Snider, William G. Powell, Community Bank of Parkersburg and K. D. Merritt.
3. Herbert R. Bailey, Lillian L. Bailey and K. D. Merritt.

Already owned properties

Tank Sites:

<u>Date of Acquisition</u>	<u>Deed Book/Page</u>	<u>Grantor(s)</u>	<u>Size of Lot</u>
September 4, 1986	852/865	Robert I. & Barbara Jean Parsons	10,700 ft ² plus easement
March 18, 2004	1065/152	Roger Lee & Norma Lee Roberts	0.230 Ac. plus easements

September 22, 1960	451/259	Thomas J. & Marie C. Krick & Henry P. & Ethel Krick	6600 ft ² plus easements
May 11, 1990	885/109	Clair W. & Doris Lucas	10,002 ft ² plus easement
June 25, 1985	820/256	County Commission of Wood County	0.44 Acres, plus easements

Water Plant and Office:

July 19, 1985	821/306	C.M. & Rowena Boso	13.53 Acres, fee
---------------	---------	--------------------	------------------

Pressure Reduction Station:

November 16, 1990	891/619	C. M. & Rowena Boso	0.01 Acre
-------------------	---------	---------------------	-----------

Well Field Properties:

August 31, 1985	823/532	A. Sherrill & Teresa Harless	10.5716 Ac., 5.1116 Ac. and easements
March 12, 1990	883/94	A. Sherrill & Teresa Harless	8.668 Acres
July 23, 1992	910/108	William & Geraldine Harless & Shirley Jean & Richard Moellendick	10.035 Acres
December 11, 1997	980/334	William & Geraldine M. Harless & Shirley Jean & Richard L. Moellendick	1.10 Acres

Booster Station:

September 25, 1974	647/3	Unit, Inc.	0.385 Acres
--------------------	-------	------------	-------------

Various transmission and distribution line easements

Position 5

Form RD 442-22
(Rev. 10-96)UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENTFORM APPROVED
OMB NO. 0575-0015

OPINION OF COUNSEL RELATIVE TO RIGHTS-OF-WAY

Date June 17, 2005

Dear Sir:

I have reviewed the action taken by Lubeck Public Service District (hereinafter called the "Corporation") in obtaining a right-of-way for the construction, operation, and maintenance of the facilities to be installed, repaired, or enlarged with the proceeds of a loan made or insured by, and/or a grant from Rural Development to the Corporation. I have examined the right-of-way instruments, permits, or licenses obtained from landowners, public bodies, and public utilities and made such searches of the public records necessary to determine the legal sufficiency of the instruments covered by the "Right-of-way Certificate," executed by the Corporation on February 24, 2005. I also have examined the "Right-of-way Map" to determine whether continuous and adequate land and rights-of-way are owned or have been acquired by the instruments covered in the "Right-of-way Certificate."

Based on the foregoing examination, and to the best of my knowledge, information, and belief, I am of the opinion that:

- A. The legal instruments by which the Corporation has acquired said rights-of-way (a) are in appropriate and due legal form and adequately confer upon the Corporation the necessary rights-of-way for the construction, operation, and maintenance of its facilities in their present or proposed location, and such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the facilities, and (b) have each been properly recorded in the appropriate public land records of each County in which any of the land affected thereby is situated. Such consents, releases, or subordinations from lienholders recommended by me or required by Rural Development have been obtained.
- B. The legal instruments referred to above give unto the Corporation a continuous and adequate right-of-way to permit the construction, operation, and maintenance of the Corporation's facilities except as below noted.
- C. Exceptions: None.

Very truly yours,



Richard A. Hayhurst

Attorney for Lubeck Public Service District

Post Office Box 86

Parkersburg, West Virginia 26102-0086

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, STOP 7602, 1410 Independence Avenue, S.W., Washington, D.C. 20250-7602. Please DO NOT RETURN this form to this address. Forward to the local USDA office only. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

LUBECK PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS,
SERIES 2005 A (WEST VIRGINIA INFRASTRUCTURE FUND),
SERIES 2005 B (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2005 C (UNITED STATES DEPARTMENT OF AGRICULTURE)

Closing Date: June 17, 2005

TRANSCRIPT OF PROCEEDINGS

<u>DOCUMENT NO.</u>	<u>DESCRIPTION</u>	<u>INDEX NO.</u>
<u>I. Organizational Documents</u>		
1.1	Certified copies of Chapter 16, Article 13A and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.	1
1.2	Orders of The County Commission of Wood County Creating and Enlarging Lubeck Public Service District (the "Issuer").	2
1.3	Orders of The County Commission of Wood County Appointing Members of the Public Service Board of the Issuer (the "Board").	3
1.4	Oaths of Office of the Board Members.	4
1.5	Rules of Procedure.	5
1.6	Minutes of Current Year Organizational Meeting.	6
<u>II. Authorizing Documents</u>		
2.1	Public Service Commission Order.	7
2.2	Infrastructure Council Approval Letter.	8

2.3	Infrastructure Council Loan Agreement.	9
2.4	USDA Letter of Conditions, Closing Letter and Loan Resolution.	10
2.5	Bond Resolution.	11
2.6	Supplemental Resolution.	12
2.7	Minutes of Board Meeting regarding Adoption of USDA Loan Resolution.	13
2.8	Minutes of Board Meeting regarding Adoption of Bond Resolution and Supplemental Resolution.	14
2.9	Affidavits of Publication regarding Notice of Borrowing and Notice of Meeting to Adopt Bond Resolution and Supplemental Resolution.	15
2.10	Specimen Bonds.	16
2.11	Bond Registers.	17
2.12	1990 and 1997 Bond Resolutions.	18
2.13	WDA Consent to Issuance of Bonds.	19
2.14	USDA Consent to Issuance of Bonds.	20
	<u>III. Certificates, Receipts and Other Documents</u>	
3.1	General Certificate and Certificate of No Litigation.	21
3.2	Certificate as to Arbitrage.	22
3.3	Certificate of Secretary as to Truth and Accuracy of Documents Delivered.	23
3.4	Certificate of Consulting Engineer.	24
3.5	Certificate of Accountant.	25

3.6	Receipt for Bonds.	26
3.7	Receipt for Bond Proceeds.	27
3.8	Request and Authorization to Authenticate, Register and Deliver the Series 2005 A Bonds.	28
3.9	Registrar's Agreement.	29
3.10	Certificate of Registration of the Series 2005 A Bonds.	30
3.11	Acceptance of Appointment As Depository Bank.	31
3.12	Municipal Bond Commission New Issue Report Forms.	32
3.13	IRS Information Return (Form 8038-G) for Series 2005 A Bond and Transmittal Letter.	33
3.14	Environmental Health Services Permit.	34
3.15	Evidence of Insurance.	35
3.16	Closing Memorandum.	36

IV. Opinions

4.1	Opinion of Jackson Kelly PLLC, Bond Counsel, on Series 2005 A Bonds.	37
4.2	Opinion of Jackson Kelly PLLC, Bond Counsel, on Series 2005 B Bonds.	38
4.3	Opinion of Jackson Kelly PLLC, Bond Counsel, on Series 2005 C Bonds.	39
4.4	Opinion of Counsel to Issuer.	40
4.5	Final Title Opinion.	41

05/16/05
101090/00308