

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

Closing Date: June 8, 2004

TRANSCRIPT OF PROCEEDINGS

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# State of West Virginia



## Certificate

*I, Joe Manchin, III, Secretary of State of the  
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 16, ARTICLES 13A OF THE WEST  
VIRGINIA CODE, AND CHAPTER 16, ARTICLES 13A OF THE 2003  
CUMULATIVE 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 10, 2004*

  
Secretary of State

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jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways. (1955, c. 135; 1967, c. 105; 1994, c. 61; 2001, c. 212.)

**Effect of amendment of 2001.** — Acts 2001, c. 212, effective July 13, 2001, substituted “the” for “such” throughout, substituted “the” for “said” throughout, inserted “fees” following “rates” throughout; in the first paragraph, inserted “and/or stormwater system” following “existing sewer system”, inserted “or stormwater system” following “such sewer system”; in the second paragraph, inserted “or stormwater” following “sewage”, inserted “or

stormwater facilities” following “sewer facilities”; in the fourth paragraph, added “or entire stormwater works” to the end; in the sixth paragraph, deleted “such” following “fixing” and “publication of”; in the eighth paragraph, deleted “such” preceding “rates” twice; and in the last paragraph, added the proviso.

**Applied** in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

**§ 16-13-24. Article to be construed liberally.**

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

**Quoted** in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

**ARTICLE 13A.**

**PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.**

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| <p>Sec.<br/>16-13A-1. Legislative findings.<br/>16-13A-1a. Jurisdiction of the public service commission.<br/>16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.<br/>16-13A-1c. General purpose of districts.<br/>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.<br/>16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.</p> | <p>Sec.<br/>16-13A-3a. Removal of members of public service board.<br/>16-13A-4. Board chairman; members' compensation; procedure; district name.<br/>16-13A-5. General manager of board.<br/>16-13A-6. Employees of board.<br/>16-13A-7. Acquisition and operation of district properties.<br/>16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.<br/>16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.<br/>16-13A-9a. Limitations with respect to foreclosure.</p> |
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**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.

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).

**§ 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

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1647 (1973).  
Note. — The  
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Iner, 149 W.  
; Shobe v.  
154 (1979).

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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

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

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 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

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 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.)

**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

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.)

**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. Atty 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

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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

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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.)

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**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

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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-

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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,

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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) 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.

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

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**§ 16-9F-3. Penalties.**

(a) Any person who knowingly violates the provisions of this article with a total quantity of less than two cartons of cigarettes shall, for the first offense, be punished by a civil penalty of no more than one thousand dollars, and for a second or subsequent offense involving a total quantity of less than two cartons of cigarettes shall be punished by a civil penalty of no more than five thousand dollars and the revocation for a period of six months of any business held by the person.

(b) Any person who knowingly violates the provisions of this article with a total quantity of two or more cartons of cigarettes shall, for the first offense, be punished by a civil penalty of no more than two thousand dollars, and for a second or subsequent offense involving a total quantity of two or more cartons of cigarettes shall be punished by a civil penalty of no more than fifty thousand dollars and the revocation for a period of one year of any business registration certificate held by the person. (2003, c. 246.)

**§ 16-9F-4. Enforcement.**

The attorney general, the prosecuting attorney for the county in which counterfeit cigarettes are found or any person who holds a valid permit under 26 U.S.C. § 5712 may bring an action in the circuit court of that county to prevent or restrain violations of this article by any person, or any person controlling that person. (2003, c. 246.)

**ARTICLE 13A.**

**PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.**

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| <p>Sec.<br/>16-13A-1c. General purpose of districts.<br/>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.<br/>16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.<br/>16-13A-5. General manager of board.<br/>16-13A-7. Acquisition and operation of district properties.<br/>16-13A-8. Acquisition and purchase of public</p> | <p>Sec.<br/>service properties; right of eminent domain; extraterritorial powers.<br/>16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.<br/>16-13A-14. Items included in cost of properties.<br/>16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.<br/>16-13A-24. Acceptance of loans, grants or temporary advances.<br/>16-13A-25. Borrowing and bond issuance; procedure.</p> |
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**§ 16-13A-1. L.**

Code of State Rules  
Department of public service  
effective September 1,

**§ 16-13A-1c. C**

Any territory of the state so situated otherwise and the properties supply tion services or a preservation of the be constituted a p this article. The v shall mean and in (1) The diversion distribution or fu private or other use collection, treatment or industrial was "landfills"); (3) the industrial, public, utilities or gas systems", or (5) the stormwater and "stormwater management. As used in this article stormwater system control or disposal natural water collection through and from limited to, any a ponds, drainage streams, gulches, dams, floodwalls, Provided, That the not include high water constructed, owned used in this article agement program operation, maintenance and includes, but runoff water quality, enforcement Provided, however

### § 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 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

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“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

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

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

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§ 16-13A-3.

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

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (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 the 2002, c. 272, effective June 7, 2002, in (a), 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, incorpo-

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rated 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 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 2002, c. 272, effective June 7, 2002, inserted "or town or other municipal corporation" in the 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 2002, c. 272, effective June 7, 2002, inserted "or stormwater" following "sewer" four times in the third paragraph, and made minor stylistic changes.

**§ 16-13A-7.**

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**§ 16-13A-8.**

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### § 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 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 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

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§ 16-13A-9

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**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 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

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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, 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 CSR4, effective July 21, 1996.

Rules and regulations for the government of sewer utilities, 150 CSR5, effective January 2, 1996.

Rules and regulations for the government of telephone utilities, 150 CSR6, effective October 10, 2000.

Rules and regulations for the government of water utilities, 150 CSR7, 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.

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

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, water quality improvement activities necessary to comply with all federal and state requirements; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (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 “stormwater systems or stormwater management systems” and “stormwater system or associated stormwater management system”. 2002, c. 272, effective June 7, 2002, inserted

**§ 16-13A-25.**

(a) Notwithstanding public service district provision of engineering revenue bonds or section thirteen 13A-24] of this a service commissi

(b) The public and approval for studies pursuant public service district directed to the co statement by the with chapter five ability to evaluate to: (1) Experience construction project forward an executive receiving approval

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(e) Unless the extensions or request public service district necessity from the of chapter twenty district is seeking

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**§ 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 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

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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 subdivision (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.

**ARTICLE 13C.**

**DRINKING WATER TREATMENT REVOLVING FUND ACT.**

**§ 16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.**

**Code of State Rules References.** — Drinking water treatment revolving fund, 64CSR49, effective June 1, 1998. Public water systems capacity development, 64CSR61, effective May 14, 1999.

**ARTICLE 19.**

**ANATOMICAL GIFT ACT.**

Sec. 16-19-2. Making, amending, revoking, and refusing to make anatomical gifts by individual.

**§ 16-19-2. Making, amending, revoking, and refusing to make anatomical gifts by individual.**

- (a) An individual who is at least eighteen years of age may:
  - (1) Make an anatomical gift for any of the purposes stated in subsection (a), section six [16-19-6] of this article;
  - (2) Limit an anatomical gift to one or more of those purposes; or
  - (3) Refuse to make an anatomical gift.
- (b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor is unable to sign a document of gift and intends to make an anatomical gift, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.
- (c) If a document of gift is attached to a donor's motor vehicle operator's or chauffeur's license, the document of gift must comply with subsection (b) of this

section. If a donor's motor vehicle operator's license is suspended, the donor's intention, or can

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# State of West Virginia



## Certificate

*I, Joe Manchin, III, Secretary of State of the  
State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 16, ARTICLES 13C OF THE WEST  
VIRGINIA CODE, AND CHAPTER 16, ARTICLES 13C OF THE 2003  
CUMULATIVE 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 10, 2004*

*Joe Manchin III*  
Secretary of State

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shall thereupon be authorized and empowered to charge and collect from each person connected to the project such rates and charges customarily paid by customers of such utility or governmental agency for similar wastewater or water services. All such agreements shall have terms of duration equal to or greater than the period necessary for the cost of the project to be paid in full, and may otherwise contain such terms and conditions as may be mutually agreed to by the parties, and shall be presented as part of the application to the public service commission required by section ten (c) [§ 16-13B-10(c)] hereof.

(b) Immediately upon the final payment of all assessment fees due under all assessment certificates issued in connection with a wastewater or water project constructed within an assessment district, the assessment district shall transfer and convey all of its right, title and interest in and to such project to the utility or governmental agency providing wastewater or water services, as the case may be. (1992, c. 150.)

**§ 16-13B-22. Liberal construction.**

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose hereof. (1992, c. 150.)

**ARTICLE 13C.**

**DRINKING WATER TREATMENT REVOLVING FUND ACT.**

<p>Sec. 16-13C-1. Definitions. 16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities. 16-13C-3. Drinking water treatment revolv-</p>	<p>Sec.  ing fund; duties of division of health and water development authority; set-aside accounts. 16-13C-4. Management of funds. 16-13C-5. Remedies to enforce payment. 16-13C-6. Construction of article.</p>
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**§ 16-13C-1. Definitions.**

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

(1) "Authority" means the water development authority provided for in section four [§ 22C-1-4], article one, chapter twenty-two-c of this code.

(2) "Capacity development" means the technical, managerial and financial capability of a public water system.

(3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

(4) "Disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the state.

(5) "Federal safe drinking water act" means the federal statute commonly known as the "Safe Drinking Water Act", 42 U.S.C. 300f et seq., as enacted, amended, and as may be subsequently amended.

(6) "Fund" means the West Virginia drinking water treatment revolving fund created in this article.

(7) "Instrumentality" means the division of health which has the primary responsibility for administering the fund and this article pursuant to requirements of the federal safe drinking water act.

(8) "Local entity" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation or other corporation organized and existing under the laws of the state which may construct and operate an eligible project.

(9) "Public water system" means that term as defined in section nine-a [§ 16-1-9a], article one, chapter sixteen of the code.

(10) "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(11) "Set-aside accounts" means those accounts that shall be set up for activities required by the federal Safe Drinking Water Act and the moneys for these accounts may be taken from the federal capitalization grant for these nonproject activities before the capitalization grant is deposited into the fund.

(12) "Small system" means a public water system serving ten thousand or fewer persons. (1997, c. 225; 1998, c. 170.)

**§ 16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.**

(a) The division of health shall act as the instrumentality that is hereby empowered to enter into capitalization agreements with the United States Environmental Protection Agency, to accept capitalization grant awards made under the federal safe drinking water act, and to direct the administration and management of the drinking water treatment revolving fund created in this article in accordance with the requirements of federal law.

(b) The division of health shall propose rules for legislative approval in accordance with provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of the code for the purpose of effecting the administration of the provisions of this article. The rules shall include, but are not limited to, establishing requirements for: (1) Capacity development; (2) environmental review; (3) disadvantaged community designation; (4) receipt and disbursement of fund moneys; and (5) establishment of a drinking water treatment revolving fund program to direct the financial management of the fund to water systems and establish the interest rates and repayment terms of the loans.

(c) Two percent of the annual federal capitalization grants made to this state shall be utilized to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal safe

drinking water act. The division of health shall enter into contracts to provide technical assistance services for small systems with such nonprofit organizations that: (1) Have a membership that represent at least twenty-five percent of the small systems of this state; and (2) have at least five years experience in providing on-site technical assistance to small systems.

(d) The division of health shall, in accordance with the provisions of the federal safe drinking water act, establish a program for loan subsidies to disadvantaged communities. Thirty percent of the annual federal capitalization grants made to this state shall be dedicated to the funding of projects for disadvantaged communities. (1997, c. 225.)

**§ 16-13C-3. Drinking water treatment revolving fund; duties of division of health and water development authority; set-aside accounts.**

(a) There is continued in the office of the state treasurer a permanent and perpetual special fund to be known as the "West Virginia drinking water treatment revolving fund". The fund shall be administered and managed in accordance with the provisions of the federal Safe Drinking Water Act. The division of health may draw all or a portion of those moneys available under capitalization agreements and with the capitalization grant awards from the United States environmental protection agency under the federal Safe Drinking Water Act and to deposit such moneys into the fund and the set-aside accounts.

(b) The fund, less the set-aside account moneys, shall be administered and managed by the water development authority under the direction of the division of health. The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purpose of establishing and maintaining a drinking water treatment revolving fund and set-aside accounts, all receipts from loans made from the fund, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans or provide other allowable financial assistance to eligible projects for public water systems, as described in the federal Safe Drinking Water Act.

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

(d) The authority shall propose legislative rules for promulgation in accordance with the provisions of article three [ §§ 29A-3-1 et seq. ], chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Moneys in the fund shall

not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

(f) Pursuant to the provisions of the federal Safe Drinking Water Act, set-aside accounts shall be set up in accounts separate from the drinking water treatment revolving fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems, local assistance, and other state activities permitted by the federal Safe Drinking Water Act. The division of health shall establish and administer the set-aside accounts as permitted by the federal Safe Drinking Water Act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program. (1997, c. 225; 1998, c. 170.)

**§ 16-13C-4. Management of funds.**

The authority shall manage the funds received pursuant to the provisions of this article for accounting purposes. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year and the cost thereof may be defrayed as administrative expense under provisions of this article. The audit shall be conducted by a certified public accountant and provide an auditor's opinion on the fund financial statements, a report on the internal controls and a report prepared in compliance with the provisions of the drinking water treatment revolving fund. (1997, c. 225.)

**§ 16-13C-5. Remedies to enforce payment.**

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

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

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

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

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

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

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

(b) The rights and remedies enumerated in this article are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1997, c. 225.)

**§ 16-13C-6. Construction of article.**

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effected. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling. (1997, c. 225.)

**ARTICLE 13D.**

**REGIONAL WATER AND WASTEWATER AUTHORITY ACT.**

- |   |  |
|---|--|
| <p>Sec.<br/>16-13D-1. Statement of purpose.<br/>16-13D-2. Definitions.<br/>16-13D-3. Joint exercise of powers by certain public agencies; agreements among agencies, contents; submission to public service commission; filing of agreement; prohibition against competition; retirement of bonds.<br/>16-13D-4. Furnishing of funds, personnel or services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation and treatment of water or wastewater; terms and conditions.<br/>16-13D-5. Declaration of authority organization, when quasi-governmental public corporation.<br/>16-13D-6. Governing body; appointments; terms of members, voting rights.<br/>16-13D-7. Meetings of governing body; annual audit.</p> | <p>Sec.<br/>16-13D-8. Powers of governing body.<br/>16-13D-9. Revenue bonds.<br/>16-13D-10. Items included in cost of properties.<br/>16-13D-11. Bonds may be secured by trust indenture.<br/>16-13D-12. Sinking fund for revenue bonds.<br/>16-13D-13. 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.<br/>16-13D-14. Statutory mortgage lien created; foreclosure thereof.<br/>16-13D-15. Rates and charges.<br/>16-13D-16. Refunding revenue bonds.<br/>16-13D-17. Exemption of bonds from taxation.<br/>16-13D-18. Bonds made legal investments.<br/>16-13D-19. Invalidity of part.<br/>16-13D-20. Article to be liberally construed.<br/>16-13D-21. Citation of article.</p> |
|---|--|

**§ 16-13D-1. Statement of purpose.**

It is the purpose of this article, to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and thereby to provide services and facilities to participating public agencies and to provide

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

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**VOLUME 5A**

2001 Replacement Volume

**2003 SUPPLEMENT**

*Including Acts passed through  
the 2003 Regular  
and First Extraordinary Sessions*

Prepared by the Editorial Staff of the Publisher

**Place in pocket of corresponding bound volume**



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10-32-01-3105-WV-05-00-V5A

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 subdivision (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.

ARTICLE 13C.

**DRINKING WATER TREATMENT REVOLVING FUND ACT.**

**§ 16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.**

**Code of State Rules References.** — Drinking water treatment revolving fund, 64 CSR 49, effective June 1, 1998.

Public water systems capacity development, 64 CSR 61, effective May 14, 1999.

ARTICLE 19.

**ANATOMICAL GIFT ACT.**

Sec. 16-19-2. Making, amending, revoking, and re-

fusing to make anatomical gifts by individual.

**§ 16-19-2. Making, amending, revoking, and refusing to make anatomical gifts by individual.**

- (a) An individual who is at least eighteen years of age may:
  - (1) Make an anatomical gift for any of the purposes stated in subsection (a), section six [16-19-6] of this article;
  - (2) Limit an anatomical gift to one or more of those purposes; or
  - (3) Refuse to make an anatomical gift.
- (b) An anatomical gift may be made only by a document of gift signed by the donor. If the donor is unable to sign a document of gift and intends to make an anatomical gift, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.
- (c) If a document of gift is attached to a donor’s motor vehicle operator’s or chauffeur’s license, the document of gift must comply with subsection (b) of this

section. If a donor’s motor vehicle operator’s license, the donor’s identification, or car

(d) A document of gift may be used to carry out the designee is not an anatomical gift to carry out

(e) An anatomical gift by a testator, who will is declaratory of public policy

(f) A donor may not make an anatomical gift by:

- (1) A signed document of gift;
- (2) An oral gift;
- (3) Any form of gift to a physician;
- (4) The document of gift;
- (g) The document of gift in the form provided in

(h) An anatomical gift is irrevocable after the donor’s death. [16-19-3] of this article shall be valid and effective

(i) An individual may not make an anatomical gift by or part

(1) A written document of gift;

(2) Any other form of anatomical gift;

(3) If the donor is unable to sign, the gift may be an

(j) In the absence of a part is not a gift under section

other parts

(k) In the absence of an amendment to this act, a gift. If the donor’s gift, the donor

(2000, c. 9; 2003, c. 184)

# ORDERS—Mason County Court, W. Va.

TERMS

May 20

19 74

CASO & HARRIS INC., SPENCER, W. VA. 22-ORDER MC 00915-C

## REVENUE SHARING FUND

No. 56	Smeltzer Nursery & Stone Yart	707.54
No. 57	Carolina Lumber & Supply Co.	214.45
No. 58	Zide's Sprot Shop	8.01
No. 59	Mason Aggregates, Inc.	509.76
No. 60	Carolina Lumber & Supply Co.	941.04
No. 61	Billy Daniel	464.40

This being the day, date and hour set for a public hearing regarding the creation of a public service district in Mason County, the following persons, all interested citizens of the county, appeared: John A. Hussell, Emma Boswell, Mrs. John A. Hussell, Mrs. Robert Boles, Mrs. Jack Jeffers, Mr. Robert Boles, Mr. and Mrs. R. O. Blain, Mr. Michael Whalen, Mrs. Clayton R. Hesson, Mrs. Clarence Hesson and Mr. George Crump. Also appearing were Mr. Michael Shaw, attorney, and Mr. Griffin Boggess, Farmers Home Administration. Mr. Shaw explained the procedure for creating a public service district which was followed by a period of comments and questions.

Mr. Jack Burdett, Carl Cook, Lida Garland and Vicki Keefer appeared before the Court and reported progress in obtaining a one-room schoolhouse for display, in connection with the Bi-Centennial Celebration.

Mr. Ray Hayes appeared before the Court and stated that he had accepted a job at \$500.00 per month with the Court at a previous meeting but had received no compensation as such and voiced his complaint regarding same.

It was moved by Mr. William Rardin, seconded by Mr. Adkins and passed by unanimous vote that two more basketball goals be purchased for recreational purposes.

The mowing of grass at the airport was discussed. It was moved by Mr. William Rardin that Straud McDermitt be hired to mow the airport grounds, seconded by Mr. Adkins, and passed by unanimous vote.

The statement of the account of Pantasote Plant Funds was presented before the Court, examined and ordered filed for the period ending April 30, 1974.

The proposal of H. D. Wallace to repair the iron fence at Mason County Memorial Park in the total amount of \$307.00 was presented and approved.

No further business claiming the attention of this Court, it is ordered said Court shall stand adjourned until Tuesday, May 28th at 2:00 p.m.

*William H. Rardin*  
William H. Rardin, SP, Committee Officer

*Clarence Adkins*  
Clarence Adkins, President Pro. Tem.

# ORDERS—Mason County Court, W. Va.

TERMS May 28 19 74

CASTO & HARRIS INC., SPENCER, W. VA. RE. ORDER NO. 30013-C

No. 22699	Oxford Chemicals	249.35
No. 22700	Sixty-Two Auto Sales	34.95
No. 22701	Weintrob Bros.	86.00
No. 22702	Geo. D. Barnard Co.	22.03
No. 22703	Pt. Pleasant Hardware	1.58
No. 22704	So. States Pt. Pleasant Coop.	2.00
No. 22705	Cleaning Supplies Co.	25.25
No. 22706	Mason Co. Insurance Agency	455.00
No. 22707	H. D. Wallace	307.00
No. 22708	Morgan's Inc.	39.48
No. 22709	Smith Plumbing & Heating	2.15
No. 22710	Hutchison Sanitary Supply	289.74
No. 22711	Casto & Harris Inc.	1376.12

### REVENUE SHARING FUND

No. 63	B & Q Machine & Repair Inc.	360.32
No. 64	The Pine Log Co.	100.00

The following estates, settlements, etc., were presented and approved:

Virginia L. Dotson Barrett - Executrix of the estate of William Amos Dotson, dec'd. Appointment.  
 Mervin Chapman - Administrator of the estate of Esther Marie Chapman, dec'd. Appointment.  
 Donna H. Lucas - Executrix of the estate of James E. Lucas, Sr., dec'd. Appointment.  
 Rev. Marvin Goodin - Minister to perform marriage ceremony in State of West Virginia.  
 Hobart Dewees - Administrator for the estate of Mary Emma Dewees, dec'd. Appointment.  
 Dollie Delva Sturgeon - Executrix of the estate of John W. Sturgeon, dec'd. Appointment.  
 Millard L. Downing - Minister to perform marriage ceremony in State of West Virginia.

The Clerk of the Court reported to the Court that receipts in the amount of \$179.22 were turned in at the Sheriff's Office for the week ending May 28, 1974 and the amount of \$62.00 for deposit to the Sheep and Dog Fund.

The following letter was received:

May 28, 1974

Mr. William Rardin, Jr.  
 %Mason County Court  
 Point Pleasant, W. Va. 25550

Dear Mr. Rardin:

Due to my Church activities I regret to say that I cannot stay on as a member of the Mason County Building Commission.

I appreciate being elected to the Commission, but find that I could not do my best with my other involvements in Church life, so please accept my resignation.

I shall always be concerned with the betterment of Point Pleasant and Mason County.

Sincerely,

/s/ Tally Hanna

Whereupon, it was duly moved by William Rardin, seconded by Clarence Adkins and passed by unanimous vote that Mr. Hanna's resignation be accepted and that David Eisel be named to fill the vacancy created by said resignation.

The applications of Judith Ann Derenberger and Louise W. Ferrell for notary public in the County of Mason were approved and ordered certified to the Governor of State of W. Va.

The Sheriff's monthly financial statement for the month ending April 30, 1974 was presented, examined and ordered filed.

It was duly moved by Mr. William Rardin, seconded by Clarence Adkins and passed by

# ORDERS—Mason County Court, W. Va.

TERMS \_\_\_\_\_ May 28 \_\_\_\_\_ 19 74 \_\_\_\_\_

COPY TO HARRIS INC., SPENCER, W. VA. BY ORDER NO. 50013-C

unanimous vote that the following order be entered:

Pursuant to Notice duly served by publication and posting, there came on for hearing before the Court, on Monday, May 20, 1974, at 2 o'clock P.M., the subject of the creation of a public service district in Mason County, West Virginia.

After consideration of all the comments by interested citizens present, a review of the relevant law, and an awareness of the need for extended and improved public service properties, the court doth find and determine that the construction or acquisition by purchase or otherwise, and maintenance, operation, improvement and extension of public service properties by a public service district will be conducive to the preservation of public health, comfort and convenience of said area.

It is, therefore, ordered that there is hereby created a public service district; the name of said public service district shall be the Mason County Public Service District; the territory of which is to be all of Mason County, West Virginia; provided, however, no city, incorporated town, other municipal corporation, or any geographic area presently served by a non-profit corporation, shall be included within the bounds of such district, except upon the adoption of a resolution of the governing body of such city, incorporated town, other municipal corporation, or other non-profit corporation consenting thereto.

It is further ordered that the following three persons, all of whom reside within such district, are appointed as members of the public service district board for terms as set out herein:

1. Richard Ord, for a term of 2 years
2. James Lewis, for a term of 4 years
3. Vitus Hartley, Jr., for a term of 6 years

It is further ordered that each member shall hold his office until a successor is duly appointed and qualified.

It is further ordered that said Board shall promptly organize and enter upon its duties pursuant to Chapter 16, Article 13A, Section 3, and succeeding sections of the Code of West Virginia.

Dated this the 28 day of May, 1974

ENTER: /s/ B. T. Robertson  
President

The following letter was received:

Dear Mr. Rardin:

In response to your request for financial aid we are pleased to inform you that the Secretary of Transportation has allocated the sum of \$90,000.00, under the terms of the Airport and Airway Development Act of 1970, to install obstruction lighting on Kyger Creek power plant stacks for the Mason County Airport, Point Pleasant West Virginia.

It is essential that you proceed with due diligence toward meeting the requirements for project approval and a Grant Offer. Your representative will be contacted by our Beckley Airports Field Office in the near future to establish a mutually acceptable schedule in order that a Grant Agreement may be executed as expeditiously as possible.

Sincerely,

/s/ For ROBERT H. STANTON  
Director

It was duly moved by William Rardin, seconded by Basil Robertson, and passed by unanimous vote that advertisements be run for the erection of a firehouse building, museum building and the moving of a one-room schoolhouse bids.

This day appeared Ray Hayes and presented a bill dated May 2, 1974 for time for last half of April in the amount of \$250.00.

ORDERS—Mason County Commission, W. Va.

796

SEP 18 07

TERMS \_\_\_\_\_ 19 \_\_\_\_\_

CLAYTON HARRIS INC., SPENCER, W. VA. RE. ORDER NO. 97936-92

Upon motion by Handley and unanimous agreement, the Commission executed a resolution to participate in a certified development community program.

Upon motion by Northup and unanimous agreement, the Commission allotted \$1,500.00 to the Homeless Shelter for the purchase of a new furnace.

✓ Upon motion by Northup and unanimous agreement, the Commission agreed to dissolve the Camp Conley Public Service District pursuant to WV State Code 16-13A-3 and to further dissolve the existing Public Service Board in Camp Conley Public Service District and to enlarge the existing territory and boundaries of the Mason County Public Service District to include the Camp Conley Public Service District.

Upon motion by Handley and unanimous agreement, the Commission adopted an ordinance to provide for the assignment of names to streets and roads in the county and the posting of street signs and building numbers in Mason County, West Virginia.

Upon motion by Handley and unanimous agreement, the Commission agreed to cancel the October 30, 1997 meeting.

The minutes from the previous meeting were approved as corrected with one correction and no omissions thereto. The minutes incorrectly listed Diana Johnson, Prosecuting Attorney, as being present. However, she was absent.

Bills and purchase orders were presented for approval, reviewed by the Commission and executed as required.

Upon motion by Northup and unanimous agreement, this meeting was adjourned.

Phyllis Arthur  
PHYLLIS ARTHUR, PRESIDENT

Rick J. Northup  
RICK J. NORTHUP, COMMISSIONER

Rick L. Handley  
RICK L. HANDLEY, COMMISSIONER

Diana N. Crowley  
DIANA N. CROWLEY, CLERK

STATE OF WEST VIRGINIA, MASON COUNTY CLERK'S OFFICE  
I, Diana N. Crowley, Clerk of the County Commission do hereby certify that this document is a true and correct copy and true to the original as presented to me for my hand and seal.  
Virginia, West Virginia, this 14th day of April, 1997.  
Diana N. Crowley, Clerk  
By Diana N. Crowley Deputy Clerk

# ORDERS—Mason County Commission, W. Va. 59-A

TERMS

19

708 HARRIS INC., SPENCER, W. VA. RE-ORDER NO 94727-90

THE COUNTY COMMISSION OF MASON COUNTY met in the Courthouse thereof on Thursday, April 30, 1998, at 6:00 p.m. for a public hearing on the matter of the merger/consolidation of the Mason County Public Service District and the Camp Conley Public Service District. Present were Phyllis A. Arthur, President, Rick J. Northup and Rick Handley, Commissioners and John D. Gerlach, County Administrator.

President Arthur called the meeting to order.

R. Michael Shaw, counsel for the Mason County Commission, presented the following letter to the Commission for review:

**R. MICHAEL SHAW, L.C.**

ATTORNEY AT LAW

610 MAIN STREET

P. O. BOX 3

POINT PLEASANT, WEST VIRGINIA 25550

TELEPHONE (304) 675-2669

FAX (304) 675-2654

29 April 1998

Mason County Commission  
Courthouse  
Point Pleasant, WV 25550

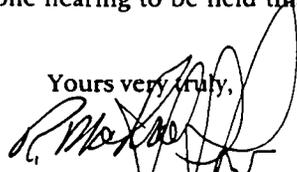
Re:

Dear Commissioners:

This letter is to confirm that I am employed by the Mason County Commission to represent the Commission and the Mason County Public Service District in the proposed merger of the Mason County Public Service District and the Camp Conley District. I want to make it very clear that I do not represent Camp Conley in this proposed merger or acquisition or consolidation or whatever we determine the proper term to be.

I look forward to the public hearing to be held this coming Thursday, April 30, 1998, at 6:00 P.M.

Yours very truly,



R. Michael Shaw

RMS:roc

xc: Public Service Commission  
Camp Conley

Mr. Shaw then presented the following affidavit for publication and affidavit for

posting for review:

AFFIDAVIT OF POSTING

STATE OF WEST VIRGINIA,

COUNTY OF MASON, TO-WIT:

Before me, the undersigned Notary Public, personally appeared Mary M. Rieger, who after being duly sworn, according to law, deposes and says:

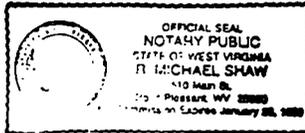
1. That I on April 21, 1998 did post the Order for a Public Hearing concerning the proposed consolidation of the Mason County Public Service District and the Camp Conley Public Service District in five (5) conspicuous places in and around Mason County, West Virginia

And further affiant saith naught, this the \_\_\_\_\_ day of April, 1998.

MARY M. RIEGER  
MARY M. RIEGER

Taken and subscribed before me in my said County and State this the 30 day of April, 1998.

My commission expires: 1-27-98



[Signature]  
Notary Public.

MICHAEL SHAW LC  
ATTORNEY AT LAW  
DONT PLEASANT W VA

Upon motion by Northup and unanimous agreement, the Commission agreed to expand the time frame for a judgment to be rendered by the administrative judge of the Public Service Commission for the merger/consolidation of the Mason County Public Service District and the Camp Conley Service District

Upon motion by Handley and unanimous agreement, the following order was approved for the merger/consolidation of the Mason County Public Service District and the Camp Conley Public Service District:

BEFORE THE COUNTY COMMISSION OF  
MASON COUNTY, WEST VIRGINIA

IN RE:

CONSOLIDATION OF THE MASON  
COUNTY PUBLIC SERVICE DISTRICT  
AND THE CAMP CONLEY PUBLIC  
SERVICE DISTRICT

COMES NOW, the Mason County Commission, by R. Michael Shaw, its attorney, and represents unto the Public Service Commission as follows:

1. That a public hearing has been scheduled by the Mason County Commission on the above-referenced consolidation matter for Thursday, April 30, 1998, at 6:00 P.M. in the Courthouse of Mason County, West Virginia, in Point Pleasant, West Virginia.
2. That after the Mason County Commission rules on the proposed consolidation in this proceeding, the Public Service Commission, itself, will hold a public hearing in the County in order to make a determination regarding its ruling.
3. That the time frame within which the Administrative Law Judge has been ordered to file his opinion is too restrictive in view of the proceedings which must go on prior to the Public Service Commission making a ruling.

59-D

# ORDERS—Mason County Commission, W. Va.

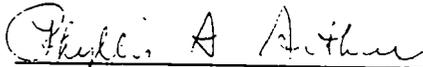
TERMS \_\_\_\_\_ 19 \_\_\_\_\_

FO & HARRIS INC., SPENCER, W. VA. ORDER NO 94727-90

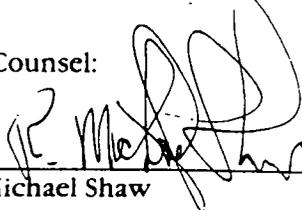
**WHEREFORE**, your Movant prays that the time frame within which the Administrative Law Judge in this proceeding must rule be expanded to allow your Movant the time to review and correct deficiencies in this filing and to allow for the Mason County Commission and the Public Service Commission to hold the two public hearings required in this proceeding.

**DATED** this the 30th day of April, 1998.

**ENTERED** this 30th day of April, 1998.

  
\_\_\_\_\_  
Mason County Commission

By Counsel:

  
\_\_\_\_\_  
R. Michael Shaw

BEFORE THE COUNTY COMMISSION OF  
MASON COUNTY, WEST VIRGINIA

IN RE:

CONSOLIDATION OF THE MASON  
COUNTY PUBLIC SERVICE DISTRICT  
AND THE CAMP CONLEY PUBLIC  
SERVICE DISTRICT

**WHEREAS**, the two above-referred Public Service Districts have advised the County Commission that the Districts desire to consolidate and merge their respective entities; and

**WHEREAS**, the law requires that this Commission enter an Order acknowledging the intention of the respective Commissions to so do; and

**WHEREAS**, the law further requires that the Commission schedule a public hearing on the proposed consolidation or merger for the purpose of giving the members of the public-at-large a right to comment with regard to the said consolidation or merger; and

**WHEREAS**, the respective Public Service Districts would not be changing their geographic identities other than the consolidation or merger thereof,

**NOW, THEREFORE**, it is ORDERED as follows:

1. That a public hearing is scheduled to be held on April 30, 1998, at 6:00 P.M. in the Office of the County Commission in the Courthouse in Point Pleasant, West Virginia. At said public hearing the

ORDERS—Mason County Commission, W. Va. 59-F

TERMS \_\_\_\_\_ 19 \_\_\_\_\_

W. B. HARRIS INC., SPENCER, W. VA. RE-ORDER NO. 94727-90

County Commission shall consider entering an Order consolidating and/or merging the Mason County Public Service District and the Camp Conley Public Service District.

2. This Order shall be published in the Point Pleasant Register at least ten (10) days prior to the aforesaid hearing date.

3. Copies of this Order shall be posted in five (5) conspicuous places in and about Mason County, West Virginia.

4. At the aforesaid public hearing, the County Commission shall give all persons the right to be heard and to state his or her opinion.

DATED this the 16th day of April, 1998.

ENTERED this 16th day of April, 1998.

Phillip A. Archer  
President, Mason County Commission

MICHAEL SHAW LC  
ATTORNEY AT LAW  
POINT PLEASANT W VA

ORDERS—Mason County Commission, W. Va.

59-6

TERMS \_\_\_\_\_ 19 \_\_\_\_\_

TO A HARRIS INC., SPANCO, W. VA. RE-ORDER NO 94727-90

LEGAL  
ORDER THE COUNTY COMMISSION OF MASON COUNTY, WEST VIRGINIA  
WHEREAS, the law requires that this Commission enter an Order acknowledging the intention of the respective Commissions to do so; and

above-referred Public Service Districts have advised the County Commission that the Districts desire to consolidate and emerge their respective entities; and  
WHEREAS, the law requires that this Commission enter an Order acknowledging the intention of the respective Commissions to do so; and

persons the right to be heard and to state his or her opinion.

DATED this the 16th day of April, 1998.  
ENTERED this 16th day of April, 1998.

Phyllis A. Arthur  
President, Mason County Comm.  
Signed authority in and for the said county of  
of April 1998, Christy Williams,

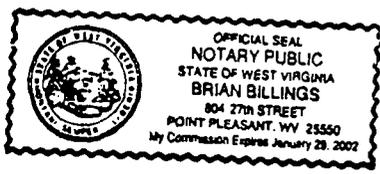
depose and say that she is employee  
general circulation, printed, published and  
Ohlinger and Christina  
Grimm, Maria Keathley,  
Dem, Brandon Flowers,  
ndermood, Rodney Bragg,  
Grimm, Amber Jendrick, Car-  
la McComas, Tyulter Fields,  
Chelsea Fowler,  
d newspaper for (1) one consecutive weeks, the  
made as aforesaid in the issue of twentieth day of  
Haven Elementary Principal  
Sciles has announced the hon-  
for the third grading period.  
NEW HAVEN  
20th day of April 1998.  
ll and Sarah Yester,  
Williamson,  
White, April Wildermuth,  
on Walls, Brandy Waugh,  
on, Amanda Uiterback,  
Michael

*Christy Williams*  
**relia**

Tak \_\_\_\_\_ before me in my said County, this 20th day of  
April \_\_\_\_\_ of the Waters

My commission expires January 29, 2002.  
Publication fee, \$32.76

Notary Public.  
*Brian Billings*



ORDERS—Mason County Commission, W. Va. 59-H

TERMS \_\_\_\_\_ 19 \_\_\_\_\_

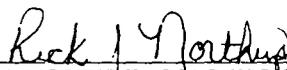
FO & HARRIS INC., SPENCER, W. VA. RE-ORDER NO 94727-90

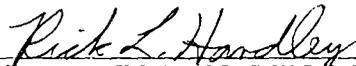
President Arthur opened the floor up for comments relative to said order. No comments were received.

Upon motion by Handley and unanimous agreement, the Commission agreed to proceed with the merger/consolidation according to law.

Upon motion by Handley and unanimous agreement, this meeting was adjourned.

  
\_\_\_\_\_  
PHYLLIS A. ARTHUR, PRESIDENT

  
\_\_\_\_\_  
RICK J. NORTHUP, COMMISSIONER

  
\_\_\_\_\_  
RICK L. HANDLEY, COMMISSIONER

  
\_\_\_\_\_  
DIANA N. CROMLEY, CLERK

ORIGINAL

ENTERED

CD 98M

Page

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

FINAL  
7-22-98

Entered: July 2, 1998

CASE NO. 97-1394-PSWD-PC

MASON COUNTY COMMISSION

Petition for consent and approval  
to merge and/or consolidate the  
Mason County Public Service  
District and Camp Conley Public  
Service District.

RECOMMENDED DECISION

PROCEDURE

On October 14, 1997, the Mason County Commission (Petitioner) filed a petition with the Public Service Commission seeking approval to merge and/or consolidate the Mason County Public Service District (Mason County) and the Camp Conley Public Service District (Camp Conley).

By Order dated November 3, 1997, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before May 12, 1998. By subsequent Order dated March 11, 1998, the decision due date of May 12, 1998, was extended until August 12, 1998.

On February 10, 1998, Staff Attorney Cassius H. Toon filed the Final Joint Staff Memorandum to which was attached the Final Internal Memorandum of Mr. James W. Boggess, Utilities Analyst II, Water and Wastewater Division.

Messrs. Boggess and Toon explained that the Mason County Commission had not submitted an Affidavit of Publication which showed that publication of the Petitioner's notice of public hearing had been published at least ten days but not more than forty days from the date of the County Commission's public hearing. Also no documentation was submitted to show that notices of the hearing had been posted in at least five places in the territory affected. Staff explained that the Mason County Commission must make proper publication and posting before a final recommendation could be made.

On May 21, 1998, Staff Attorney Toon filed the Further Final Joint Staff Memorandum to which was attached the Further Final Internal Memorandum of Mr. James W. Boggess, Utilities Analyst II, Water and Wastewater Division. The required documentation regarding publication and posting of notices for the County Commission's April 30, 1998 hearing was submitted. Messrs. Boggess and Toon explained that the Camp Conley Public Service District has been operating with two Board Members for some time and there is little interest in the community for a third. The two Board

MMW

Members wish to relinquish control of the Camp Conley Public Service District to Mason County, which the Board Members feel is better equipped to adequately maintain the water and sewer systems.

Staff further explained that Camp Conley Public Service District was created in 1959 to provide water and sewer service and was certificated in February 1961 by Commission Order in Case No. 5201. Upon Public Service Commission approval of the Mason County Commission Order in this case, the service boundaries of the Camp Conley Public Service District will be dissolved and the Mason County Public Service District will assume full operation and management of both the water and sewer systems. The Camp Conley Public Service District has a long-term indebtedness to the USDA Rural Development. The maturity date for the bonds is the year 2020. The balance of this debt is \$405,027, as of June, 1997. Mason County will adopt the current tariff of the Camp Conley Public Service District.

As of June 30, 1998, Camp Conley had cash assets as follows:

Cash and working funds	\$ 9,259
Temporary cash investments	121,625
Other investments	<u>27,400</u>
Total	\$158,284

Camp Conley had indicated to Staff that some of its cash assets would be extended to "get the system in shape" before turning it over to Mason County.

Staff further explained that, in Case No. 96-0240-PSD-S-PC, the Huntington Sanitary Board acquired the Monel Park Public Sewer Service District. Monel Park had accumulated significant cash assets. The Commission approved an agreement between the District and the Board which contains stipulations as to the disposition of those cash assets. (See Recommended Decision entered February 19, 1997, which became a final order of the Commission March 3, 1997). Staff had reviewed the agreement and recommended inclusion of some of the clauses in this take-over. The provisions for inclusion in this case are as follows:

- A. The cash assets of the Camp Conley Public Service District, other than the restricted bond reserve, shall be placed in an interest bearing account for repairs, replacements and extensions to Camp Conley. The accrued interest from this account remains part of the account.
- B. Mason County Public Service District shall adopt the Camp Conley Public Service District tariff and continue to charge Camp Conley's customers by this tariff. Mason County shall maintain a separate financial and statistical account of Camp Conley's operations.
- C. After all financial obligations of Camp Conley are met, any surplus cash shall be deposited into the restricted cash account as set forth in paragraph A.

Staff recommended that the petition for merger of the two public service districts be approved, subject to the conditions set forth herein.

By Order dated May 29, 1998, this matter was set for hearing to be held in the Council Chambers, City Building, Point Pleasant, West Virginia, on June 16, 1998. Said Order also provided that the Mason County Commission published a notice of hearing once in a newspaper duly qualified by the Secretary of State, published and of general circulation in Mason County. The proper affidavit of publication reflecting publication was made of the Notice of Hearing was provided by facsimile transmission received June 9, 1998.

The hearing was held as scheduled. The Mason County Commission appeared by its Administrator, Mr. John Gerlach. Commission Staff appeared by Staff Attorney Cassius H. Toon. No one appeared at the hearing in protest to the Mason County Commission's petition.

#### FINDINGS OF FACT

1. On October 14, 1997, the Mason County Commission filed a petition with the Public Service Commission seeking approval to merge and/or consolidate the Mason County Public Service District and the Camp Conley Public Service District. (See, Petition).

2. On May 21, 1998, Staff Attorney Toon filed the Further Final Joint Staff Memorandum to which was attached the Further Final Internal Memorandum of Mr. James W. Boggess, Utilities Analyst II, Water and Wastewater Division, in which Staff recommended approval of the merger since it appears that the Mason County Public Service District is better equipped to adequately maintain the Camp Conley water and sewer systems. (See Further Final Staff Memorandum filed May 21, 1998).

3. Staff explained that Camp Conley had cash assets in the amount of \$158,284 and recommended that the provisions set forth in Appendix A to this Order be applied to this transaction. (See Further Final Staff Memorandum filed May 21, 1998; Appendix A).

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge is of the opinion and finds that, since the Mason County Commission has substantially complied with the provisions of West Virginia Code §16-13A-2, and no one appeared at the hearing in protest to the petition after proper notice was given, the Order of the Mason County Commission can be approved, as unprotested.

2. The Staff recommended actions, as set forth in Appendix A to this Order should be implemented by the Mason County Public Service District in handling the cash assets of Camp Conley Public Service District.

#### ORDER

IT IS, THEREFORE, ORDERED that the May 8, 1998 Order of the Mason County Commission, filed on May 11, 1998, merging and consolidating the Mason County Public Service District and the Camp Conley Public Service District, be, and the same hereby is, approved.

IT IS FURTHER ORDERED that the Mason County Public Service District implement the Staff-recommended provisions set forth on Appendix A for handling the cash assets of the Camp Conley Public Service District.

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

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

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

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



Robert W. Glass  
Administrative Law Judge

RWG:dfs

MASON COUNTY COMMISSION  
CASE NO. 97-1394-PSWD-PC

STAFF-RECOMMENDED ACTIONS  
FOR USE BY THE MASON COUNTY PUBLIC SERVICE DISTRICT

- A. The cash assets of the Camp Conley Public Service District, other than the restricted bond reserve, shall be placed in an interest bearing account for repairs, replacements and extensions to Camp Conley. The accrued interest from this account remains part of the account.
  
- B. Mason County Public Service District shall adopt the Camp Conley Public Service District tariff and continue to charge Camp Conley's customers by this tariff. Mason County shall maintain a separate financial and statistical account of Camp Conley's operations.
  
- C. After all financial obligations of Camp Conley are met, any surplus cash shall be deposited into the restricted cash account as set forth in paragraph A.

Upon motion by Northup and unanimous agreement, the Commission agreed to the assigning of a cable franchise agreement from Rifkin and Associates to Interlink Communications.

Upon motion by Handley and unanimous agreement, the Commission entered into an agreement with Bell Atlantic for long distance service for pay phones in the Mason County Jail, in which the county will receive twenty percent of monies.

✓ Upon motion by Handley and unanimous agreement, the Commission agreed to designate the Mason County Public Service District as the county's sewer authority for all areas not having an existing sewer authority.

Upon motion by Handley and unanimous agreement, the Commission reappointed John Collins to the Building Commission for a three year term.

The Commission discussed a donation request from the Miss Mason County/Miss Point Pleasant scholarship pageant. The Commission agreed to check with the Prosecuting Attorney to see if they can grant the money.

Upon motion by Handley and unanimous agreement, the Commission approved the hiring of Chapman Technical Group as architect for the new health department.

Commissioner Handley discussed with the Commission a recent letter to the editor regarding the county financial statement. He requested that the writer be invited to a meeting in the near future to discuss this matter.

Mindy Kearns was present to express her desire to resign from her position on the Ambulance Authority Board. The Commission will appoint someone in her place at a later date.

Upon motion by Handley and unanimous agreement, the following Estate Appointments, Oath, Bond, Guardian Appointment, Order Appointing Fiduciary Commissioner, Waiver of Final Settlement, Minister To Perform Marriages, Commissioners Report of Claims and Annual Settlement, Final Settlements and Application for Correction of Erroneous Assessment were approved:

ORDERS—Mason County Commission, W. Va.

TERMS \_\_\_\_\_

NOV 19 1998

19

© HARRIS INC., SPENCER, W. VA. RE ORDER NO 94727-90

THE COUNTY COMMISSION OF MASON COUNTY met in the Courthouse thereof on Thursday, November 19, 1998, at 7:00 p.m. Present were Phyllis Arthur, President, Rick J. Northup and Rick L. Handley, Commissioners; Diana N. Cromley, Clerk, and John D. Gerlach, County Administrator.

President Arthur called the meeting to order. The Commission requested a moment of silence in remembrance of Dr. Sam McNeill who served as EOS Physician Director. Diana Cromley gave the opening prayer.

Nancy Baker of the Leon 4-H Club was represented by her mother to request assistance from the Commission to build a walking track behind the Leon Clinic. They have already received \$5,000.00 from the Jackson Foundation. They will need an additional \$2,800.00 to complete this project. The Commission agreed to ask the Prosecuting Attorney to research this matter and report her findings at a later date.

The Commission agreed to begin looking for a new EOS Physician Director.

The Commission agreed to ask the Mason County Fair Board to redo their bid procedure and begin doing formal bids on tractor and other equipment purchases.

Upon motion by Handley and unanimous agreement, the Commission executed a fuel farm contract for the Mason County Airport.

The Commission was informed that construction has begun on the front of the Annex Building to make it handicapped accessible.

The Commission was also informed that the AARP has no use for the blue van which was discussed at an earlier meeting. The Commission agreed to give the van to the maintenance department to replace the van they are currently using.

✓ The Commission announced that a public hearing would be held on December 17, 1998 at 6:30 p.m. to receive comment on the Mason County Public Service District being designated as a county-wide sewer authority for those who do not have one in place.

ORDERS—Mason County Commission, W. Va.

Book 42  
Page 364a

TERMS

DEC 11 1998

19

TO: HARRIS INC., SPENCER, W. VA. RE: ORDER NO. 94727-90

THE COUNTY COMMISSION OF MASON COUNTY met in the Courthouse thereof for a public hearing to seek the approval to designate the Mason County Public Service District as sewer authority for all areas of the county not presently served by an existing authority. Present were Phyllis A. Arthur, President; Rick J. Northup, Commissioner; John D. Gerlach, Administrator; and Randy Grinstead, Public Service District Manager.

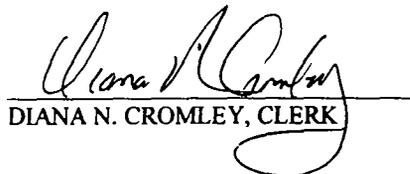
Sam Juniper, Point Pleasant resident, was the only member of the public present to discuss this issue with the Commission. Mr. Juniper spoke in opposition of the proposal inasmuch as he felt that the cost per month for taxpayers and those on fixed incomes would be too great.

A general discussion followed as Randy Grinstead and the Commission attempted to explain exactly what was being proposed and why there wouldn't be an initial direct cost to the taxpayers who were not serviced for sewer by the Mason County Public Service District.

With no further comments from the public, the Commission closed the public hearing.

  
PHYLLIS A. ARTHUR, PRESIDENT

  
RICK J. NORTHUP, COMMISSIONER

  
DIANA N. CROMLEY, CLERK

BOOK 42 PAGE 389  
ORDERS—Mason County Commission, W. Va.

TERMS \_\_\_\_\_

1999

FO & HARRIS INC., SPENCER, W. VA. REORDER NO. 94727-90

Upon motion by Arthur and unanimous agreement, the Commission agreed to sponsor an application for the walkways and a bike path in Point Pleasant Riverfront Park.

David Nibert was present to discuss the Gallipolis Ferry Community Center. He informed the Commission that his client was not offering his property for sale at this time. The Commission will meet with Mr. Nibert and his client as well as others in Gallipolis Ferry interested in this project and discuss it further in the future.

✓ Randy Grinstead and Gary Jarrell were present to discuss the matter of granting of sewer authority to the PSD.

Upon motion by Handley and unanimous agreement, the Commission gave sewer authority to the Mason County Public Service District all over the county except where the sewer system is already provided for by municipalities.

As requested by the Mason County 4-H Leaders, the Commission agreed to apply for a Jackson Foundation Grant for the basketball courts at the 4-H Campground.

Matt Musgrave requested that the County Commission purchase doors for the EMS building in Point Pleasant and that he would reimburse the Commission for the cost before June 30, 1999.

The Commission will check with the Prosecuting Attorney about this and discuss this matter at a later date.

Administrator Gerlach reported that he spoke with Coaxial Cable and asked them to attend a meeting of the County Commission to discuss concerns brought up at an earlier meeting. They agreed to attend either the January 28th meeting or a meeting in February but stated that they wanted to contact Sam Juniper personally to find out what type of problems he was having with his cable provider.

Commissioner Arthur stated that she wanted the Commission to consider hiring someone in the future for flood plain management, litter control and grant writing.

Upon motion by Handley and unanimous agreement, the following Estate Appointments and Appointment For A Minister To Perform Marriages were approved:

# ORDERS—Mason County Commission, W. Va.

JAN 28 1999

TERMS \_\_\_\_\_ 19 \_\_\_\_\_

© HARRIS INC., SPENCER, W. VA. RE ORDER NO 94727-90

Administrator Gerlach reported that Diana Johnson, Prosecuting Attorney, requested that the Commission reassign parking spaces to the employees of the Courthouse.

The Commission replied that they did not feel they had the right to assign spaces and the spaces should be taken on a first come first serve basis.

Administrator Gerlach reported that the Health Department ramp was completed except for the railing which will be installed soon.



Upon motion by Arthur and unanimous agreement, the Commission executed a resolution for granting sewer authority to the Mason County Public Service District.

Upon motion by Arthur and unanimous agreement, the Commission approved the first budget revision of the 1998-1999 fiscal year in the amount of \$179,555.00. A copy of said revision is attached hereto:

CID BR 1180 (Rev. 1989)

CONTROL NUMBER

Department of Tax and Revenue  
Chief Inspector Division  
P O Box 3102  
Charleston, WV 25331-3102

99 01 1 1 of  
FY FUND REV NO PG OF NC

### REQUEST FOR REVISION TO APPROVED BUDGET (§ 11-B-26a)

Mason County Commission  
GOVERNMENTAL ENTITY  
200 Sixth Street  
STREET OR P O BOX  
Point Pleasant WV 25550  
CITY ZIP CODE

RECEIPTS: (net each acct.)

ACCOUNT NUMBER	ACCOUNT CATEGORY	APPROVED AMOUNT	DEBIT (INCREASE)	CREDIT (DECREASE)	REVISED AMOUNT
299	Fund Balance	-0-	179,555		179,555

NET INCREASE/(DECREASE) 179,555

EXPENDITURES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT CATEGORY	APPROVED AMOUNT	DEBIT (INCREASE)	CREDIT (DECREASE)	REVISED AMOUNT
401	Co. Comm.	344,945	10,000		354,945
402	Co. Clk.	281,490	3,500		284,990
405	Pros. Atty.	209,794	12,000		221,794
406	Assessor	246,730	10,000		256,730
412	Ag. Agent	69,280	1,500		70,780
424	Ct. House	355,950	70,000		425,950
711	Emer. Sers.	44,621	21,700		66,321
712	911	304,126	28,355		332,481
716	Dog Warden	58,800	10,000		68,800

NET INCREASE/(DECREASE) 179,555

DEPARTMENT OF TAX AND REVENUE USE ONLY

POSTED \_\_\_\_\_ BY \_\_\_\_\_  
FOR THE STATE TAX COMMISSIONER BY:  
  
DIRECTOR: CHIEF INSPECTOR DIVISION

*Rick Northrup*  
AUTHORIZED SIGNATURE FOR GOVERNING BODY ENTITY APPROVAL DATE 02 2/4

COUNTIES ONLY  
TRANSFERS TO THE GENERAL FUND FROM SPECIAL FUNDS CREATED PURSUANT TO WEST VIRGINIA CODE § 7-1-9. MUST BE ACCOMPANIED BY PRIOR WRITTEN APPROVAL FROM THE STATE TAX COMMISSIONER

PLEASE NOTE: SUBMIT WHITE AND PINK COPIES TO DEPARTMENT OF TAX AND REVENUE. RETAIN YELLOW COPY AS RECORD OF SUBMISSION.

ORDERS—Mason County Commission, W. Va.

TERMS JAN 28 1999 19

TO HARRIS INC., SPENCER, W. VA. RE-ORDER NO 94727-90

SR: BR 1180S  
BUDGET REVISION REQUEST—SUPPLEMENT

CONTROL 99 01 1 2 of  
NUMBER FY FUND REV. NO. PAGE NO.

(net each acct.)

ACCOUNT NUMBER	ACCOUNT CATEGORY	APPROVED AMOUNT	DEBIT	CREDIT	REVISED AMOUNT
900	Parks & Rec.	12,500	2,500		15,000
904	Farm Museum	7,500	10,000		17,500

RICK NORTHUP, President  
POINT PLEASANT, WV



PHYLLIS A. ARTHUR, Commissioner  
NEW HAVEN, WV

DIANA N. CROMLEY, Clerk  
POINT PLEASANT, WV

RICK HANDLEY, Commissioner  
POINT PLEASANT, WV

THE COUNTY COMMISSION OF MASON COUNTY  
COURTHOUSE - 200 SIXTH STREET  
POINT PLEASANT, WEST VIRGINIA 25550

PHONE (304) 675-1110  
FAX (304) 675-4982

RESOLUTION

Whereas, the Mason County Commission is seeking to grant county-wide sewer authority to the Mason County Public Service District for all areas of the county not presently governed by an existing sewer authority;

Whereas, the Mason County Commission has complied with state law and conducted a public hearing on said matter and adequately posted notice of same;

Be it hereby resolved, that, the Mason County Commission does hereby grant the Mason County Public Service District sewer authority subject to the above stated condition and is asking for Public Service Commission approval of the same.

Given this the 28th day of January, 1999.

*Rick J. Northup*  
Rick J. Northup, President

*Phyllis A. Arthur*  
Phyllis A. Arthur, Commissioner

\_\_\_\_\_  
Rick L. Handley, Commissioner

TESTE: *Diana N. Cromley*  
Diana N. Cromley, Clerk

## PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

Entered: November 30, 1999FINAL  
12/20/99

CASE NO. 99-0273-PWD-PC

## MASON COUNTY COMMISSION

Petition for consent and approval to authorize Mason County Public Service District to provide county-wide sewer service to all areas of the county not presently governed by an existing sewer authority.

RECOMMENDED DECISION

On February 22, 1999, the Mason County Commission (County Commission) filed a petition for consent and approval to authorize the Mason County Public Service District to provide county-wide sewer service for all areas in the County not presently served by an existing sewer authority. Attached to the letter/petition was a certified copy of the County Commission's Order of January 28, 1999, adopting the modification.

On March 19, 1999, Staff Attorney Cecelia G. Jarrell filed an Initial Joint Staff Memorandum to which was attached the Initial Internal Memorandum prepared by Mr. Robert M. Hubbard, Senior Utilities Analyst, Water and Wastewater Division. Staff explained that the petition filed by the Mason County Commission seeks to authorize the Mason County Public Service District to provide county-wide sewer service for all areas not presently served by an existing sewer authority. The District is presently providing water service only and desires to additionally provide sewer service.

By Order dated March 22, 1999, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before September 20, 1999.

On April 16, 1999, the County Commission filed a certified copy of the minutes of its December 17, 1998 hearing at which it adopted the modification and information regarding the posting of notice for the December 1998 hearing.

On August 30, 1999, Staff Attorney Cecelia G. Jarrell filed the Final Joint Staff Memorandum to which was attached the Final Internal Memorandum prepared by Mr. Robert M. Hubbard, Senior Utilities Analyst, Water and Wastewater Division. Staff recommended approval of the petition to allow the Mason County Public Service District to provide

county-wide sewer service to all areas in the County that are not presently served by any city, municipality or any other existing sewer authority. However, in order to comply with the provisions of West Virginia Code §16-13A-2, which required that no city, incorporated town or municipal corporation shall be included within the boundaries of such a proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or municipal corporation consenting thereto, Staff recommended that the Mason County Commission amend its original resolution to exclude the municipalities of Point Pleasant, Mason, Leon, Hartford, Henderson and New Haven, West Virginia, and provide that sewer service may only be provided within any of these municipalities upon the adoption of a resolution of the governing body naming the Mason County Public Service District as its designated sewer service provider.

On September 10, 1999, Commission Staff filed a petition to extend the decision due date herein.

By Commission Order dated September 14, 1999, the Administrative Law Judge's decision due date of September 20, 1999, was extended until December 20, 1999.

On September 22, 1999, the Mason County Commission provided an amended resolution adopted on September 16, 1999, wherein it amended its original resolution to exclude the municipalities of Point Pleasant, Mason, Leon, Hartford, Henderson and New Haven, West Virginia, from the county-wide sewer authority granted to the Mason County Public Service District. (See resolution filed September 22, 1999).

By Order dated October 19, 1999, this matter was set for a hearing to be held in Point Pleasant, Mason County, on November 16, 1999. Said Order also required that the Mason County Commission give notice of the hearing to be held on November 16, 1999, by publishing a Notice of Hearing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Mason County.

The hearing was held as scheduled on November 16, 1999. The Mason County Commission appeared by its Administrator, Mr. John Gerlach. Commission Staff was represented by Staff Attorney Cecelia Jarrell. Mr. Gerlach presented a proper affidavit of publication reflecting that publication was made in accordance with the Commission's requirements.

No one appeared in protest to the petition. Ms. Jarrell explained that, since the Mason County Commission had taken action to amend its resolution specifically excluding the seven municipalities and it appears that all other procedural matters have been done properly, Staff recommended approval of the petition.

#### FINDINGS OF FACT

1. On February 22, 1999, the Mason County Commission filed a petition for consent and approval to authorize the Mason County Public Service District to provide county-wide sewer service for all areas in

Mason County not presently served by an existing sewer authority. (See petition).

2. On August 30, 1999, Staff Attorney Cecelia G. Jarrell filed the Final Joint Staff Memorandum to which was attached the Final Internal Memorandum prepared by Mr. Robert M. Hubbard, Senior Utilities Analyst, Water and Wastewater Division. Staff recommended that, in order for the Mason County Commission resolution to comply with the provisions of West Virginia Code §16-13A-2, the Mason County Commission amend its resolution to exclude the seven municipalities of Point Pleasant, Mason, Leon, Hartford, Henderson and New Haven, West Virginia, from the Mason County Public Service District and provide that the Mason County Public Service District may only become the sewer authority for these municipalities upon adoption of a resolution by the governing bodies of said municipalities naming the Mason County Public Service District as its designated sewer service provider. (See, Final Joint Staff Memorandum filed August 30, 1999).

3. The Mason County Commission amended its original order as recommended by Commission Staff. (See, amended resolution filed September 22, 1999).

4. By Order dated October 19, 1999, this matter was set for a hearing to be held in the Point Pleasant City Building, Point Pleasant, Mason County, on November 16, 1999. Said Order also required the Mason County Commission to give notice of the hearing to be held by publishing a Notice of Hearing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Mason County. (See Order dated October 19, 1999).

5. At the hearing held in this matter on November 16, 1999, a proper affidavit of publication was submitted in accordance with the Commission's requirements and no one appeared in protest to the County Commission petition. Staff explained that, because the Mason County Commission had amended its resolution to exclude the seven

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Page 3 of 3

municipalities in Mason County, and the matter had been properly published and posted, Commission Staff had no objection to the amended order. (See, Tr., p. 5).

### CONCLUSION OF LAW

Since the Mason County Commission has given proper notice of the hearing to be held in this matter on November 16, 1999, and no one appeared at the hearing to protest the petition, the amended resolution adopted by the Mason County Commission on September 16, 1999, can be approved.

### ORDER

IT IS, THEREFORE, ORDERED that the resolution of the Mason County Commission adopted on January 28, 1999, as amended on September 16, 1999, 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:mal  
990273aa.wpd

# ORDERS—Mason County Commission, W. Va.

TERMS \_\_\_\_\_

AUG 17 1998

19 \_\_\_\_\_

265

CASO & HANCOCK INC., SPENCER, W. VA. DE-ORDER NO 84727-90

THE COUNTY COMMISSION OF MASON COUNTY met in Special Session in the Courthouse thereof on Monday, August 17, 1998 at 4:00 p.m. to appoint members to the Public Service District. Present were Phyllis A. Arthur, President; Rick J. Northup and Rick Handley, Commissioners and John D. Gerlach, County Administrator.

Before appointing new members to the PSD, President Arthur introduced and congratulated the 1998 Fair Queen, Aimee Stover, first runner up, Kristen Keefer and second runner up, Kara Walbrown.

Matthew Clark, Attorney, appeared on behalf of Vitus Hartley, PSD Board Member. Mr. Clark addressed the Commission concerning Mr. Hartley's residential status and his desire to continue serving on the board.

The Commission stated that based on the Prosecuting Attorney's interpretation of the law, they had no other choice but to appoint new Board Members to the PSD that lived in the same service district.

Upon motion by Northup and unanimous agreement, the following members and terms were approved:

Charles "Chuck" Lanier	2 year term
William "Bill" Hughes	4 year term
Dorsel Keefer	6 year term

The Commission also instructed Administrator Gerlach to write a letter of appreciation to each of the outgoing board members for their outstanding service to Mason County.

STATE OF WEST VIRGINIA, MASON COUNTY CLERK'S OFFICE  
I, Diana N. Cromley, Clerk of the County Commission do hereby certify that this foregoing is a true and correct copy and transcript from the record of my office. Given under my hand and seal of the said county at Point Pleasant, West Virginia, this the 22<sup>nd</sup> day of July, 1999  
Diana N. Cromley, County Clerk of Mason County  
By: [Signature] Deputy

3

RICK NORTHUP, President  
POINT PLEASANT, WV

DIANA N. CROMLEY, Clerk  
POINT PLEASANT, WV



PHYLLIS A. ARTHUR, Commissioner  
NEW HAVEN, WV

RICK HANDLEY, Commissioner  
POINT PLEASANT, WV

**THE COUNTY COMMISSION OF MASON COUNTY**  
COURTHOUSE - 200 SIXTH STREET  
POINT PLEASANT, WEST VIRGINIA 25550

PHONE (304) 675-1110  
FAX (304) 675-4982

September 5, 2000

Randy Grinstead, Manager  
Mason County Public Service District  
101 Camden Avenue  
Point Pleasant, WV 25550

Dear Mr. Grinstead:

While meeting in regular session Thursday evening August 18, 2000 the Mason County Commission unanimously agreed to reappoint Chuck Lanier to the Mason County Public Service District Board.

If you need any further information, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink that reads "John D. Gerlach".

John D. Gerlach  
Administrator  
Mason County Commission

JDG:kj

RICK L. HANDLEY, President  
POINT PLEASANT, WV

DIANA N. CROMLEY, Clerk  
POINT PLEASANT, WV



PHYLLIS A. ARTHUR, Commissioner  
NEW HAVEN, WV

ROBERT C. BAIRD, Commissioner  
GALLIPOLIS FERRY, WV

**THE COUNTY COMMISSION OF MASON COUNTY**  
**COURTHOUSE - 200 SIXTH STREET**  
**POINT PLEASANT, WEST VIRGINIA 25550**

PHONE (304) 675-1110  
FAX (304) 675-4982

October 7, 2002

Randy Grinstead  
Mason County Public Service District  
101 Camden Avenue  
Point Pleasant, WV 25550

Dear Mr. Grinstead:

While meeting in regular session Thursday evening, August 15, 2002 the Mason County Commission reappointed William Hughes to the Mason County Public Service District. His new term will expire on August 17, 2008.

If you require any further information please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "John D. Gerlach".

John D. Gerlach  
Administrator  
Mason County Commission

JDG:kdh

State of West Virginia, County of Mason, to-wit

I, DORSAL KEEFER, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia; and that I will faithfully discharge the duties of the office of A MEMBER OF THE MASON COUNTY PUBLIC SERVICE DISTRICT

\_\_\_\_\_ in Mason County, West Virginia, for the term of said office commencing on

17TH day of AUGUST, 19 98, to the best of my skill and judgment. So

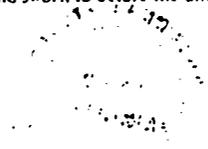
me God.

Dorsal Keefe

Subscribed and sworn to before the undersigned this 2ND day of SEPTEMBER, 19 98

Diane N. Cromley  
Clerk of the County Commission

Recorded  
Book/Date  
MASON COUNTY CLERK  
DATE/TIME RECORDED: 09/02/1998 08:34:31.3K  
LIST #: 50574 Type: OATHS  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUES: .00



STATE OF WEST VIRGINIA, MASON COUNTY CLERK'S OFFICE  
I, Diane N. Cromley, Clerk of the County Commission do hereby certify that this foregoing is a true and correct copy and transcript from the record of my office. Given under my hand and seal of the said county at Point Pleasant, West Virginia, this the 2nd day of September, 19 98  
By Diane N. Cromley, County Clerk of Mason County  
Morgan H. Soule Deputy

State of West Virginia, County of Mason, to-wit

I, MARY L. SMITH, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia; and that I will faithfully discharge the duties of the office of SECRETARY OF THE MASON COUNTY PUBLIC SERVICE DISTRICT BOARD OF DIRECTORS

in Mason County, West Virginia, for the term of said office commencing on 18TH day of JANUARY, 2001, to the best of my skill and Judgment. So

help me God.

Mary L. Smith

Subscribed and sworn to before the undersigned this 20TH day of FEBRUARY, 2001.

Clair A. Cowley, Clerk of the County Commission

RECORDED BOOK/PAGE MASON COUNTY CLERK DATE/TIME RECORDED: 02/20/2001 15:06:07:14 INST #: 66977 TYPED: 0611HS

State of West Virginia, County of Mason, to-wit

I, CHARLES R. LANIER, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia; and that I will faithfully discharge the duties of the office of MEMBER OF THE MASON COUNTY PUBLIC SERVICE DISTRICT

in Mason County, West Virginia, for the term of said office commencing on the 17TH day of AUGUST, 2000, to the best of my skill and Judgment. So

help me God.

Charles R. Lanier

Subscribed and sworn to before the undersigned this 20TH day of FEBRUARY, 2001.

Clair A. Cowley, Clerk of the County Commission

# State of West Virginia, County of Mason, to-wit

I, WILLIAM HUGHES, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia; and that I will faithfully discharge the duties of the office of MASON COUNTY PUBLIC SERVICE DISTRICT BOARD

\_\_\_\_\_ in Mason County, West Virginia, for the term of said office commencing on the 15TH day of AUGUST, ~~XX~~ 2002, to the best of my skill and Judgment. So help me God.

*William Hughes*

Subscribed and sworn to before the undersigned this 26TH day of FEBRUARY, ~~XX~~ 2004.



*Diana N. Cromley*  
Clerk of the County Commission

STATE OF WEST VIRGINIA,  
County of Mason, to-wit:  
I, DIANA N. CROMLEY, Clerk of the County Commission of said County, do hereby certify that the foregoing writing was this day produced to me in my said office and together with the certificate thereto annexed, was duly admitted to record therein.

Given under my hand this 26<sup>th</sup> day of February 2004.

*Diana N. Cromley*  
Clerk.

MASON COUNTY CLERK  
DATHS  
Date/Time: 02/26/2004 10:14  
Inst: 97949  
BOOK PAGE:  
MASON COUNTY

MASON COUNTY PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

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

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

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

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

ARTICLE II

PURPOSE

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

## ARTICLE III

### MEMBERSHIP

Section 1. The members of the Public Service Board of the District (the “Board”) shall be those persons appointed by The County Commission of Mason 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 July of each year thereafter, the Board shall instruct the Secretary to, and the Secretary shall, post, and leave posted throughout the year to which it applies, at the regular meeting place of the Board and at the Mason 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>Address</u>
Point Pleasant Register	200 Main Street Point Pleasant, WV 25550

A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed above, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail. In July of each year after the adoption of these Rules of Procedure, the Board shall review the above list and shall amend such list as needed, in the opinion of the Board, to reflect properly all the newspapers and other news media that customarily cover news of the area served by the Board. In addition, a copy of the agenda for each regularly scheduled meeting shall also be distributed to the news media by the Secretary not less than 72 hours before such regular meeting is to be held.

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

Rule No. 2. Notice of Special Meetings. Not less than 72 hours prior to the date set for any special meeting of the Board, the Board shall instruct the Secretary to, and the Secretary shall, post at the regular meeting place of the Board and at the Mason 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. He/She shall, together with the Secretary, sign the minutes of all meetings at which he/she shall preside. He/She shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon him/her by the Board, by these Rules of Procedure, or prescribed by law. He/She shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements, or other documents necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. If the 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. He/She shall, together with the Chairperson, sign the minutes of the meetings at which he/she is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other documents and papers of the Board. He/She shall also perform such other duties as may be required of him/her by law or as may be conferred upon him/her from time to time by the members of the Board.

Section 4. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him/her and shall prepare and submit 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 his/her term of office, the Treasurer shall promptly deliver all financial records of the District to his successor in office. He/She shall also perform such other duties as may be required of him/her by law or as may be conferred upon him/her from time to time by the members of the Board. The Treasurer shall furnish bond in an amount to be fixed by the Board for the use and benefit of the District.

Section 5. No money may be paid out by the District except upon an order signed by the 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.

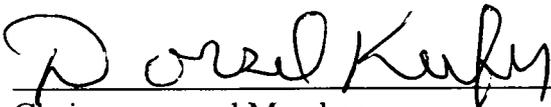
Section 6. The members and officers of the Board shall make available to the County Commission, at all times, all of its books and records pertaining to the District's operation, finances and affairs, for inspection and audit.

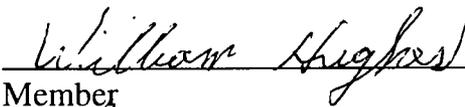
## ARTICLE VII

### 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 3<sup>rd</sup> day of June, 2004.

  
\_\_\_\_\_  
Chairperson and Member

  
\_\_\_\_\_  
Member

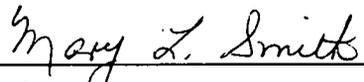
  
\_\_\_\_\_  
Member

CERTIFICATION

Certified a true copy of the Rules of Procedure duly adopted by the Board of Mason County Public Service District on June 3, 2004.

Dated this 8<sup>th</sup> day of June, 2004.

[SEAL]

  
Secretary

05/07/04  
100424/00307

## M I N U T E S

## MASON COUNTY PUBLIC SERVICE DISTRICT

February 19, 2004

Mr. Keefer called the meeting to order and conducted roll call. Attending were Phyllis Arthur, Harry S. Simpkins, James Kelsh, Keith Biggs, Donna McCoy, Dorsel Keefer, William Hughes, Charles Lanier, Randy Grinstead, DAvid Nibert and Mary Smith.

Mr. Keefer recognized Mrs. McCoy, who inquired regarding the current status of the Owl Hollow project. Mr. Grinstead informed her of the present status and future plans.

✓ Election of officers was the next item of business. A motion was made by Mr. Hughes to retain the present officers. It was seconded by Mr. Lanier. Thus, Mr. Keefer remains in the position of Chairman, Mr. Lanier is Treasurer and Mrs. Smith is Secretary. Unanimous in favor.

The Minutes of the January 15, 2004 Board meeting were approved by a motion made by Mr. Lanier and seconded by Mr. Hughes. Unanimous in favor.

Mr. Hughes made a motion, seconded by Mr. Lanier, to approve expenditures, as presented. Unanimous in favor.

Mr. Biggs was the next speaker and discussed the proposed sewer rate increase for the Camp Conley Division. Mr. Grinstead deferred to Mr. Kelsh to address the issues raised. After discussing the issue of sewer rate implementation versus deferment, a motion was made by Mr. Lanier to proceed with implementing the rate increase. Mr. Hughes seconded. Unanimous in favor.

Mr. Grinstead advised the Board that all work is now completed on the Letart No. 4 well and presented the closing documents for Board approval and signature. The essential documents consist of Requisition No. 4, a change order to increase the contract time frame by 717 days, and a Certificate of Substantial Completion. Mr. Keefer made the motion approving the documents and it was seconded by Mr. Lanier. Unanimous in favor.

Mr. Nibert discussed the impact to PSDs of various bills now before the Legislature.

Mr. Grinstead informed the Board that the Kanawha Valley Dragway has requested service before the Conglomo project gets underway and discussed methods to achieve this. The Board directed Mr. Grinstead to provide dollar figures on the different methods. A separate issue for another customer on Longdale Road involving Conglomo was also tabled, awaiting numbers.

Agenda Item 9, PSD Mapping Program, was tabled until the next meeting awaiting Board review of the proposal.

A motion was made by Mr. Lanier to start holding two Board meetings per month, on the first Thursday at 1:00 p.m. and the third Thursday at 6:00 p.m., effective March, 2004. Mr. Hughes seconded the motion. Unanimous in favor.

Mr. Nibert explained the reasons for design changes on the Camp Conley water project.

Mr. Grinstead updated the Board of Directors regarding divestment of bulk water purchaser EVans PSD.

Mr. Kelsh will review the O&M Agreement between the Camp Conley Division and the City of Pt. Pleasant.

The proposed O&M rate increase for Mason County was discussed. Mr. Grinstead noted that at that time, Camp Conley will become part of the Mason County PSD Tariff.

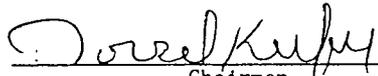
Mr. Grinstead discussed the status of the Conglomo I project and then informed the Board that we are checking on pursuing funding from the Region II Development Council to begin a follow-up project. Mr. Keefer made a motion that we pursue the funding from Region II for the Conglomo II project; Mr. Hughes seconded. Unanimous in favor.

Funding from the DEP is being sought to correct the situation at the sewer lagoon at Lakin in case the Regional Jail Authority cooperative working group cannot work forward.

Mr. Kelsh addressed the current issue before the PSC regarding Engineering Agreements and Prefiling Notice Requirements. After discussion, a motion was made by Mr. Lanier to join with other PSDs in commenting on the proposed procedures. Mr. Hughes seconded. Unanimous in favor.

There being no further business, Mr. Keefer made a motion to adjourn, seconded by Mr. Lanier.

Respectfully submitted,

  
Chairman

  
Secretary

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: December 23, 2003

CASE NO. 03-0824-PWD-PC-CN

MASON COUNTY PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to construct the Camp Conley water improvement project and petition for consent and approval of water purchase agreement with the City of Point Pleasant.

RECOMMENDED DECISION

On May 29, 2003, Mason County Public Service District filed an application for a certificate of convenience and necessity to construct and operate the Camp Conley water improvement project. The proposed project will replace the existing inadequate and deteriorated Camp Conley water treatment and distribution system with water purchased from the City of Point Pleasant and 17,000 feet of new distribution lines to serve 210 customers. Project costs are estimated not to exceed \$632,000.00. In order to support increased debt service and operation and maintenance expense associated with this project, the District requested that increased rates and charges be approved as well.

Notice of this application was filed with the Commission for proper prefiling notice on or about April 3, 2003, and published for public legal notice of prefiling on February 20 and 27, 2003, in the Point Pleasant Register, a newspaper, duly qualified by the Secretary of State, published and of general circulation in Mason County, West Virginia.

By a Notice of Filing entered by the Commission on May 30, 2003, the Applicant, Mason County Public Service District, was required to provide public legal notice of this application by publishing a copy of said Notice of Filing in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Mason County, West Virginia, and to make due return to the Commission of proper certification of publication. The prepared Notice contained the proposed increased rates and charges requested in support of this project and made provision for the filing of written statements of support, objection, protest or intervention in this matter.

On June 26, 2003, Commission Staff filed its Initial Joint Staff Memorandum in this matter. Staff pointed out that the District's proposed rate increase was approximately 4.5%, which would produce an additional \$62,138 in revenues, annually. Staff also advised the District of the Commission's new rule on direct notice of any proposed rate increase to sale for resale customers, of which the District has several.

By a Commission Referral Order entered July 9, 2003, this certificate case was referred to the Division of Administrative Law Judges for further proceedings with a decision due date of December 29, 2003.

On July 23, 2003, the Applicant filed a letter clarifying that the Mason County Public Service District, was a regular tariff customer of the City of Point Pleasant; therefore, no special water purchase agreement with the City was required. The City has stated that it is willing and able to furnish the District with water for this project.

Pursuant to notice, numerous letters of protest to any rate increase in support of this project were filed.

On October 17, 2003, Commission Staff filed its Final Joint Staff Memorandum in this matter. Pursuant to its review, Staff recommended that the Commission approve this project contingent upon the receipt of certain specified outstanding permits, approvals or waivers. Staff also recommended that the District be authorized to fund this project by acceptance of a loan from the State Drinking Water Treatment Revolving Fund in the amount of \$602,000, at an interest rate of 3% for a term of twenty (20) years, and by the use of \$30,000 in cash on hand. Attached to the Staff Memorandum was a proposed tariff amended to conform to the Applicant's requested increased rates and charges.

Also on October 17, 2003, the Applicant filed a letter stating that, although it had, on May 30, 2003, submitted the prepared Notice of Filing to the Point Pleasant Register for publication, the newspaper had failed to make the necessary publication at that time. The District had recently taken steps to obtain immediate publication and would be filing certification of publication as soon as it was available. The District also filed an affidavit demonstrating the direct mailing of the prepared Notice of Filing to its regular customers by First Class Mail and to its resale customers by certified mail, return receipt requested, on July 31, 2003.

On October 24, 2003, Mason County Public Service District, by Counsel, filed an affidavit of publication demonstrating publication of the prepared Notice of Filing on October 10, 2003, in the Point Pleasant Register, as required by the Notice of Filing entered on May 30, 2003. The protest period set out in the published Notice of Filing effectively expired on November 10, 2003.

On October 31, 2003, a copy of the State of West Virginia Office of Environmental Health Services, Permit No. 15,827, for the Camp Conley Water Project, was filed with the Commission.

On November 5, 2003, the District filed a formal response to the Final Joint Staff Memorandum previously filed on October 17, 2003. Included with this response were copies of the remaining permits, approvals or waivers requested by Staff, as well as the District's explanation of its revised funding request for this project.

By a Procedural Order issued November 6, 2003, this certificate application was scheduled for hearing to be held in Mason County. The Applicant was required to provide public legal notice of the hearing by causing to be published a prepared Notice of Hearing, attached to said Order, once a week for two (2) consecutive weeks in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Mason County and to make due return of proof of said publication.

On December 2, 2003, the Applicant, by counsel, filed a duly executed affidavit of publication demonstrating that the prepared Notice of Hearing had been published in the Point Pleasant Register newspaper on November 11 and 18, 2003, all in compliance with the Procedural Order issued November 6, 2003

The hearing convened as scheduled on November 19, 2003, with all parties in attendance. The Applicant, Mason County Public Service District was present in the person of its General Manager, Randy Grinstead, and was represented by its attorney, James V. Kelsh. The Staff of the Public Service Commission was present and represented by Staff Attorney Meyishi P. Blair. An accurate transcript of this proceeding consisting of thirty-seven (37) pages of testimony was filed with the Commission on December 2, 2003. No post-hearing briefs or memoranda of law were requested or filed.

On November 20, 2003, the Applicant filed a copy of the Construction Stormwater NPDES Permit, No. WV0115924, issued by the West Virginia Department of Environmental Protection for this project. This was the last outstanding permit needed to complete this application process.

#### EVIDENCE

At hearing, counsel for the Applicant stated that the District was no longer requesting a general increase in rates to support this project. The District currently has two different tariffs and, after consultation with Commission Staff, has agreed to increase rates only to its Camp Conley customers as a result of this project. The increase requested for the Camp Conley customers will be the same increased rate proposed in the original application and the District will use its available surplus to carry the project until a general rate case, with a class cost of service study, can be initiated. Ultimately, uniform rates will be established.

Further, the District has elected to become a tariff rated customer of the Town of Point Pleasant. Therefore, approval of a separate agreement between the District and the Town, as originally requested, is not necessary. (Tr. pp. 7-9).

When the floor was opened for statements of public protest, Keith Biggs, a former Board member of the Camp Conley Public Service District, made a statement. As a former Board member, Mr. Biggs gave a chronological history of this project, which was initiated by a request for funding made in May of 1997. The funding agency, the West Virginia Infrastructure and Jobs Development Council, suggested that the Camp Conley Public Service District merge with a larger utility and abandon its own production facility. Camp Conley merged with the Mason County Public Service District in July of 1998. A funding package was approved in September of 1999. Additionally, Mason County Public Service District decided to abandon the Camp Conley wells and to become a wholesale customer of the Town of Point Pleasant. The expected rate increase required for this construction has escalated significantly over the development of the project. Mr. Biggs believes that the old Camp Conley customers would be better served by merging directly with the Town of Point Pleasant, an effort he has pursued for two and a half years. Mr. Biggs believes that the Public Service Commission should order the separation of the Camp Conley customers from the Mason County Public Service District and merge them directly with the Town of Point Pleasant, eliminating the middleman markup by Mason County Public Service District. This would result in a lower rate for Camp Conley customers. (Tr. pp. 11-14). This concluded the statements of protest.

Commission Staff called Staff Engineer Jefferson E. Brady as its first witness. Mr. Brady conducted the engineering review of this certificate application and identified and sponsored the Final Joint Staff Memorandum previously filed on October 17, 2003, as an exhibit in this proceeding. The Staff Engineer explained the methodology and purpose of the engineering review conducted in this case. All permits and approvals had been filed for this project and the plans and specifications were consistent with the Commission's rules and regulations. Mr. Brady also indicated that a statement contained in the Staff Report (Final Internal Memorandum, page 5), that the plans and specifications were not completely in conformance with the Commission's rules and regulations was a typographical error and should be corrected. This project will improve service to 210 customers at a cost per customer of approximately \$3,010. The water system being replaced in this project dates from the 1920s, has significant pressure problems and is in need of replacement. Consequently, this project is both convenient and necessary. The Staff Engineer recommended that this project be approved and that a certificate of convenience and necessity be issued to the District. (Tr. pp. 15-22).

On cross-examination by the District's attorney, the Staff Engineer acknowledged a letter from the City of Point Pleasant's Water Plant Manager certifying that the City had adequate capacity to serve the Camp

Conley customers. The Engineer stated that he was satisfied that the City had sufficient capacity to supply this project. (Tr. pp. 22-23).

Commission Staff then called Utilities Analyst J. W. Flenner as its next witness. Mr. Flenner acknowledged his participation in the Staff review and report previously filed in this matter. Mr. Flenner explained that the Mason County Public Service District presently has two tariffs and keeps two separate sets of books. One set is for the merged Camp Conley customers and the other set is for all other customers. The District's Rule 42 exhibit submitted in this case contained the financial information for the Camp Conley customers only. The Staff-revised financial package is adequate to support the project. With its current surplus, the District has sufficient revenue to support the debt service associated with the project. Mr. Flenner believes that the project should be approved, as modified by Staff. (Tr. pp. 23-27). This concluded Staff's case-in-chief.

The Mason County Public Service District called its Manager, Randy Grinstead, as its witness. Mr. Grinstead explained that the Camp Conley system had several intrinsic problems due to tank elevation. System pressures are habitually low, with some customers experiencing only nine to eleven pounds of pressure. This affects many water-using appliances and offers no fire protection. The new project contains four new fire hydrants. Under its current administration, the City of Point Pleasant has made no effort to join the Camp Conley area to the City's water system. The City will, however, provide water to the District for its new Camp Conley project. The District has authorized the expenditure of \$94,000 in engineering costs in order to serve Camp Conley. The City has shown no inclination to assume this cost or intervene in this proceeding. Mr. Grinstead stated that the District's proposed increased Camp Conley rates were reasonable. (Tr. pp 29-36).

This concluded the testimony at hearing.

#### DISCUSSION

The residents of the Camp Conley area of Mason County are served by a water system that was constructed in the 1920s and is currently inadequate and failing. Once an independent utility, the Camp Conley Public Service District was recently merged with the Mason County Public Service District in order to facilitate the development of a project to replace this aging system. The proposed project, which is the subject of this certificate case, is adequately funded and appropriately designed to meet the needs of the Camp Conley customers. Commission Staff has, pursuant to its review of all aspects of this project, recommended approval of this application as both convenient and necessary. The District has now withdrawn its request for an overall District-wide rate increase to support the project and the initial number of public Protestants abated.

At hearing, only one Protestant appeared and made a statement of public protest. Mr. Biggs was a former Board member of the old Camp Conley Public Service District. He is well informed and, at first blush, his proposal to extend the City of Point Pleasant municipal water utility directly into the Camp Conley area sounds reasonable. Unfortunately, there is no evidence of record in this proceeding that either the City of Point Pleasant or the Mason County Commission is interested in such an effort. On the contrary, both the City of Point Pleasant and the Mason County Commission have, at various stages, cooperated in making the pending District project possible. The District's project is properly engineered, adequately funded and has received all regulatory waivers or approvals required. To stop the project now, on sheer speculation, no matter how well-intentioned, would be irresponsible and counter-productive.

For these reasons the Camp Conley water project will be approved and a certificate of convenience and necessity issued.

#### FINDINGS OF FACT

1. On May 29, 2003, Mason County Public Service District filed an application for a certificate of convenience and necessity to construct and operate the Camp Conley water improvement project. The proposed project will replace the existing inadequate and deteriorated Camp Conley water treatment and distribution system with water purchased from the City of Point Pleasant and with 17,000 feet of new distribution lines to serve 210 customers. Project costs are estimated not to exceed \$632,000.00. In order to support increased debt service and operation and maintenance expense associated with this project, the District requested that increased rates and charges be approved as well. (See application filed May 29, 2003).

2. Notice of this application was filed with the Commission for proper pre-filing notice on or about April 3, 2003, and published for public legal notice of pre-filing on February 20 and 27, 2003, in the Point Pleasant Register, a newspaper, duly qualified by the Secretary of State, published and of general circulation in Mason County, West Virginia. (See, affidavits of publication filed April 3, 2003).

3. Pursuant to a formal Notice of Filing entered May 30, 2003, the District provided public legal notice of this application by causing publication of the Notice of Filing on October 10, 2003, in the Point Pleasant Register, a newspaper duly qualified by the Secretary of State, published and of general circulation in Mason County, West Virginia, and by the direct mailing of the Notice of Filing to each of its regular customers on July 31, 2003. (See, affidavit of publication filed October 24, 2003; affidavit of direct mailing filed October 24, 2003).

4. Pursuant to public legal notice, numerous letters of public protest in opposition to higher rates in general, and especially higher

rates for non-project customers, were filed with the Executive Secretary. (See, Commission case file generally).

5. The Staff Office of Environmental Health Service has issued Permit No. 15,827, for the Camp Conley water project. (See, Permit filed October 31, 2003).

6. The Staff of the Public Service Commission has reviewed and confirmed that all permits and public agency approvals have been obtained and filed for this project. (See, Tr. pp. 18, 20, 22; letter and exhibits filed November 5, 2003).

7. This project will provide reliable, safe drinking water and fire protection to approximately 210 customers who are currently served by an inadequate and failing water distribution system. (See, Staff Exhibit No. 1; Tr. p. 21).

8. The District estimates that total cost of this project will be approximately \$632,000. The project will be financed by a \$602,000 State Revolving Fund Loan at three percent (3%) interest for a term of 20 years, and a cash surplus contribution from the District of \$30,000. Funding commitment letters from all sources have been received and reviewed by Commission Staff. (Staff Exhibit No. 1).

9. Commission Staff has recommended approval of the funding package proposed for this project. (See, Staff Exhibit No. 1).

10. Commission Staff has, pursuant to its review of the books, records and operations of the District, recommended increased rates and charges for the Camp Conley area customers of the District in support of this project and the District has agreed to same. (See, Staff Exhibit No. 1; Tr. pp. 7-8, 27).

11. Commission Staff has recommended that this certificate application be approved. (See, Staff Exhibit No. 1; Tr. pp. 20, 27).

12. At hearing, a single protestant appeared to discuss the developmental history of this project and to propose that the Camp Conley customers should be served directly by an extension from the City of Point Pleasant. However, there is no evidence of record that supports the reasonable probability of such an arrangement. (See, Tr. pp. 10-14; Protestant's Exhibit No. 1).

13. The City of Point Pleasant provides finished water for resale to the Mason County Public Service District and has certified that it has the excess capacity to serve this project when completed. (See, Applicant's Exhibit No. 1).

## CONCLUSIONS OF LAW

1. This project is necessary in that it will provide a modern, sanitary and reliable source of safe drinking water and fire protection to approximately 210 customers in the project territory.

2. This project is convenient in that it does not financially burden existing or new customers and is the only currently viable option to extend upgraded reliable public water service to this area.

3. This project is supported by an adequate and favorable financial package, which results in reasonable and adequate increased rates and charges, as recommended by Commission Staff and approved herein.

4. Under the facts and circumstances of this case, and the recommendation of Commission Staff, it is reasonable to approve the application filed herein on May 29, 2003, and to grant a certificate of convenience and necessity to the Mason County Public Service District to construct and operate the public water improvements detailed in that application.

## ORDER

IT IS, THEREFORE, ORDERED that the application filed herein on May 29, 2003, shall be approved, as amended, and a certificate of convenience and necessity to construct and operate the public water project detailed in said application shall be granted to the Mason County Public Service District.

IT IS FURTHER ORDERED that the Mason County Public Service District shall be authorized to charge and collect the increased rates and charges set out in the Staff-recommended tariff, attached hereto as Appendix A, for all service rendered on and after the date this project is certified as substantially complete by the District's project engineer.

IT IS FURTHER ORDERED that the Mason County Public Service District shall file with the Commission the original and at least five (5) copies of a proper tariff setting forth the rates hereby approved, within thirty (30) days of first use of these rates.

IT IS FURTHER ORDERED that the proposed project funding package, consisting of a loan from the West Virginia Water Development Authority in the amount of \$602,000, at an interest rate not to exceed three percent (3%) for a term of twenty (20) years, and \$30,000 in cash surplus to be contributed by the District, shall be approved for acceptance, execution and use by the Mason County Public Service District.

IT IS FURTHER ORDERED that, if the plans, scope or terms of financing of this project change, the District shall request a reopening

of this case and submit such changes for subsequent review and approval by the Public Service Commission prior to commencing construction. Final bid summaries and the project engineer's certification of substantial completion shall be provided to Commission Staff as soon as available. Likewise, the District shall provide Staff with a cash flow analysis under the approved funding package.

IT IS FURTHER ORDERED that this proceeding shall 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  
030824aa.wpd

APPENDIX A

MASON COUNTY PUBLIC SERVICE DISTRICT - WATER - CAMP CONLEY AREA  
CASE NO. 03-0824-PWD-PC-CN  
APPROVED RATES

APPLICABILITY

Application in territory formerly served by the Camp Conley Public Service District.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

METERED RATES

First	6,000 gallons bimonthly	\$6.39 per 1,000 gallons
Next	14,000 gallons bimonthly	\$4.67 per 1,000 gallons
Next	20,000 gallons bimonthly	\$4.28 per 1,000 gallons
Next	60,000 gallons bimonthly	\$3.36 per 1,000 gallons
All Over	100,000 gallons bimonthly	\$3.10 per 1,000 gallons

MINIMUM CHARGE

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

5/8-inch meter	\$ 38.34 bimonthly
3/4-inch meter	\$ 57.51 bimonthly
1 -inch meter	\$ 95.85 bimonthly
1-1/4-inch meter	\$ 134.19 bimonthly
1-1/2-inch meter	\$ 191.70 bimonthly
2 -inch meter	\$ 297.60 bimonthly
3 -inch meter	\$ 575.10 bimonthly
4 -inch meter	\$ 958.50 bimonthly
6 -inch meter	\$ 1,917.00 bimonthly
10 -inch meter	\$ 4,907.52 bimonthly
12 -inch meter	\$ 7,859.70 bimonthly

TAP FEE - \$300.00

RECONNECT CHARGE - \$15.00

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

INCREMENTAL LEAK ADJUSTMENT

\$0.42 per M. 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.

**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 20th day of January, 2004.

CASE NO. 03-0824-PWD-PC-CN

**MASON COUNTY PUBLIC SERVICE DISTRICT**

Application for a certificate of convenience and necessity to construct the Camp Conley water improvement project and petition for consent and approval of a water purchase agreement with the City of Point Pleasant.

**COMMISSION ORDER**

On May 29, 2003, Mason County Public Service District (District) filed an application for a certificate of convenience and necessity to construct and operate the Camp Conley water improvement project. In order to support increased debt service and operation and maintenance expense associated with this project, the District requested that increased rates and charges be approved as well.

In its application, the District stated that it had obtained a binding commitment letter from the Bureau for Public Health for a \$602,000.00 loan from the West Virginia Water Development Authority, Drinking Water Treatment Revolving Fund. (See Application, pp. 2-3.)

By a Commission Referral Order entered July 9, 2003, this certificate case was referred to the Division of Administrative Law Judges for further proceedings.

By Recommended Decision issued December 23, 2003, the assigned Administrative Law Judge approved, among other things, the proposed project funding package, consisting of a loan from the West Virginia Water Development Authority in the amount of \$602,000, at an interest rate not to exceed three percent (3%) for a term of twenty (20) years, and \$30,000 in cash surplus to be contributed by the District.

On January 7, 2004, the District filed exceptions to the Recommended Decision in which it stated that while the amount and terms of the loan were correctly stated, the source of the loan was not the Water Development Authority, but was the State Drinking Water Treatment Revolving Fund.

UPON CONSIDERATION, the Commission finds that it is appropriate to correct the name of the source of the project funding to read the State Drinking Water Treatment Revolving Fund.

ORDER

IT IS THEREFORE ORDERED that the fourth ordering paragraph of the Recommended Decision issued December 23, 2003, is hereby amended to read as follows:

IT IS FURTHER ORDERED that the proposed project funding package, consisting of a loan from the **State Drinking Water Treatment Revolving Fund** in the amount of \$602,000, at an interest rate not to exceed three percent (3%) for a term of twenty (20) years, and \$30,000 in cash surplus to be contributed by the District, shall be approved for acceptance, execution and use by the Mason County Public Service District.

IT IS FURTHER ORDERED that as amended, the Commission adopts the December 23, 2003, Recommended Decision.

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

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

A True Copy, Teste:



Sandra Squire  
Executive Secretary

ARC  
LFG/s  
030824ca.wpd



# West Virginia Infrastructure & Jobs Development Council

Public Members:

James D. Williams, Chairman  
St. Albans  
James L. Harrison, Sr., Vice Chairman  
Princeton  
Lloyd P. Adams, P.E.  
Wheeling  
Sheirl L. Fletcher  
Morgantown

980 One Valley Square  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire  
Executive Secretary

June 8, 1999

Randy Grinstead  
Mason County Public Service District  
101 Camden Avenue  
Point Pleasant, West Virginia 25550

Re: Water System Upgrade and Extension Project  
(Camp Conley) (Resubmittal) 97W-358

Dear Mr. Grinstead:

The West Virginia Infrastructure and Jobs Development Council (the "Council"), at its June 2, 1999 meeting, reviewed the Mason County Public Service District's (the "District") preliminary application regarding its proposed project to upgrade the existing Camp Conley distribution system and extend service to approximately 20 new customers. 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. The District may need to address certain issues raised in said comments as it proceeds with the project.

Upon consideration of the District's preliminary application, the Council recommends that the District pursue a Drinking Water Treatment Revolving Fund loan of \$557,000 and utilize a contribution from the District of \$30,000 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 this funding. **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 Susan J. Riggs at the above-referenced telephone number.

Sincerely,

James D. Williams

JDW/tb

Enclosure

cc: George E. Blum  
Katy Mallory, P.E.  
Michele Craig

DWTRF  
(03/26/02)

LOAN AGREEMENT

THIS DRINKING WATER TREATMENT REVOLVING FUND LOAN AGREEMENT (the "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 under the direction of the WEST VIRGINIA BUREAU FOR PUBLIC HEALTH, a division of the West Virginia Department of Health and Human Resources (the "BPH"), and the local entity designated below (the "Local Entity").

MASON COUNTY PUBLIC SERVICE DISTRICT

(Local Entity)

W I T N E S S E T H:

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

WHEREAS, pursuant to the provisions of Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a drinking water treatment revolving fund program (the "Program") to direct the distribution of loans to eligible Local Entities pursuant to the Safe Drinking Water Act;

WHEREAS, under the Act the BPH is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition §66.458 (1998)) and BPH has been awarded capitalization grants to partially fund the Program;

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

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

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

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

WHEREAS, the Local Entity is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a drinking water project and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Local Entity;

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

WHEREAS, the Local Entity has completed and filed with the Authority and BPH an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and BPH are willing to lend the Local Entity the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Entity with moneys held in the Fund, subject to the Local Entity's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Entity, BPH and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local entity," and "project" have the definitions and meanings ascribed to them in the Act or in the DWTRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and BPH to the Local Entity through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.4 "Local Act" means the official action of the Local Entity required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Entity pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Loan Agreement.

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

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

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

1.9 "Project" means the drinking water project hereinabove referred to, to be constructed or being constructed by the Local Entity in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Entity in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "DWTRF Regulations" means the regulations set forth in the West Virginia Code of State Regulations.

1.11 "System" means the drinking water system owned by the Local Entity, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this 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 Local Entity by the Consulting Engineers, the BPH and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Entity, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by BPH and the Authority.

2.4 The Local Entity agrees that the Authority and BPH and their respective duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Local Entity further agrees that the Authority and BPH and their respective duly authorized agents shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and BPH with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Entity shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Local Entity shall permit the Authority and BPH, acting by and through their directors or duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Local Entity shall submit to the Authority and BPH such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Local Entity agrees that it will permit the Authority and BPH and their respective agents to have access to the records of the Local Entity pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Local Entity shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract, as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Entity shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and BPH and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Entity, the Local Entity or (at the option of the Local Entity) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Entity, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Entity on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Entity must

also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Entity shall provide and maintain competent and adequate engineering services satisfactory to the Authority and BPH covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, BPH and the Local Entity at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Entity shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the DWTRF Regulations, to it within 60 days of the completion of the Project. The Local Entity shall notify BPH in writing of such receipt.

2.10 The Local Entity shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to BPH when the Project is 90% completed. The Local Entity shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Entity shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Local Entity shall notify BPH in writing of the certified operator employed at the 50% completion stage.

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

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

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

## ARTICLE III

### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and BPH to make the Loan is subject to the Local Entity's fulfillment, to the satisfaction of the Authority and BPH, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Local Entity shall have delivered to BPH and the Authority a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Entity shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(c) The Local Entity shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(d) The Local Entity shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided, that, if the Loan will refund an interim construction financing, the Local Entity must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and BPH shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit C;

(e) The Local Entity shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and BPH shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Entity shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the

Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and BPH shall have received an opinion of counsel to the Local Entity, which may be local counsel to the Local Entity, bond counsel or special PSC counsel but must be satisfactory to the Authority and BPH, to such effect;

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

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

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and BPH shall have received a certificate of the accountant for the Local Entity, or such other person or firm experienced in the finances of local entities and satisfactory to the Authority and BPH, to such effect; and

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

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the BPH, including the DWTRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated

from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Local Entity and the Local Entity shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Entity shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this 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 Local Entity by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, BPH and the Local Entity. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority.

3.5 The Local Entity understands and acknowledges that it is one of several local entities which have applied to the Authority and BPH for loans from the Fund to finance drinking water projects and that the obligation of the Authority to make any such loan is subject to the Local Entity's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Entity specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may purchase the bonds of other local entities set out in the State Project Priority List, as defined in the DWTRF Regulations. The Local Entity further specifically recognizes that all loans will be originated in conjunction with the DWTRF Regulations and with the prior approval of BPH or such later date as is agreed to in writing by the BPH.

3.6 The Local Entity shall provide BPH with the appropriate documentation to comply with the special conditions regarding the public release requirements established by federal and State regulations as set forth in Exhibit D attached hereto at such times as are set forth therein.

## ARTICLE IV

### Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Local Entity shall, as one of the conditions of the Authority and BPH to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Entity in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

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

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

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

(iv) That, except as otherwise required by State law or the DWTRF Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of the System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Entity shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues

of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and BPH;

(vi) That the Local Entity will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Local Entity will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Entity under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Local Entity will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Entity shall annually, within six months of the end of the fiscal year, cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and BPH. If the Local Entity receives \$300,000 or more (in federal funds) in a fiscal year, the audit shall be obtained in accordance with the Single Audit Act (as amended from time to time) and the applicable OMB Circular (or any successor thereto). Financial statement audits are required once all funds have been received by the Local Entity. The audit shall include a statement that the Local Entity is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Entity's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Entity shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance

of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and BPH within 30 days of adoption thereof;

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

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

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Entity may authorize redemption of the Local Bonds with 30 days written notice to BPH and the Authority;

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

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

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Entity will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Entity shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and BPH, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and BPH is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xx) That the Local Entity shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate its services to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore such services until all delinquent charges for the services of the System have been fully paid; and

(xxi) That the Local Entity shall submit all proposed change orders to the BPH for written approval. The Local Entity shall obtain the written approval of the BPH before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Entity shall obtain the written approval of the BPH before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

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

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the Authority monthly as required by the Local Entity to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Entity, the BPH and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined

in the DWTRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Entity. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

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

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

ARTICLE V

Certain Covenants of the Local Entity;  
Imposition and Collection of User Charges;  
Payments To Be Made by  
Local Entity to the Authority

5.1 The Local Entity hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Entity hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Local Entity hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Local Entity defaults in any 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 Local Entity hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Entity, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

ARTICLE VI

Other Agreements of the  
Local Entity

6.1 The Local Entity hereby acknowledges to the Authority and BPH its understanding of the provisions of the Act, vesting in the Authority and BPH certain powers, rights and privileges with respect to drinking water projects in the event of default by local entities in the terms and covenants of this Loan Agreement, and the Local Entity hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Entity shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

6.2 The Local Entity hereby warrants and represents that all information provided to the Authority and BPH 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 BPH 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 BPH by the Local Entity in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Entity has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act, the DWTRF Regulations or this Loan Agreement.

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

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

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

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

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

## ARTICLE VII

### Miscellaneous

7.1 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 Local Entity supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this 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.

7.3 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.

7.4 No waiver by any 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.

7.5 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.

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

7.7 This Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Entity from either the Authority or BPH;

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the BPH if the Local Entity has failed to deliver the Local Bonds to the Authority;

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

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

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

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.

MASON COUNTY PSD

[Name of Local Entity]

(SEAL)

By: *Corey Kufly*  
Its: Chairman

Attest:

Date: June 8, 2004

*May L. Smith*  
Its: Secretary

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

By: *Daniel B. Yeap*  
Its: Director

Attest:

Date: June 8, 2004

*Barbara B. Meadows*  
Its: Secretary-Treasurer

000832/00520  
03/26/02

EXHIBIT A

MONTHLY FINANCIAL REPORT

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

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

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

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Telephone

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1      You will need a copy of the current fiscal year budget adopted by the Local Entity to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $\$1,200/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 2      Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $\$900/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 3      Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Entity according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.
- Item 4      Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Entity.

**The Local Entity must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

**EXHIBIT B**

PAYMENT REQUISITION FORM

**EXHIBIT C**

FORM OF CERTIFICATE OF CONSULTING ENGINEER

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

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

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

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

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by BPH and any change orders approved by the Issuer, BPH and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least \_\_\_\_\_ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful

\_\_\_\_\_  
<sup>1</sup>If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of \_\_\_\_\_, Esq.] and delete

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 BPH and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof<sup>2</sup>, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the 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 approved by BPH; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

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

[SEAL]

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

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

\_\_\_\_\_  
"my firm has ascertained that".

<sup>2</sup>If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of \_\_\_\_\_ of even date herewith," at the beginning of (ix).

## EXHIBIT D

### SPECIAL CONDITIONS

The Local Entity agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with federal money, (1) the percentage of the total costs of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.



**EXHIBIT F**

OPINION OF BOND COUNSEL FOR LOCAL ENTITY

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311-1217

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

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of a (i) loan agreement dated \_\_\_\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Entity and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), and (ii) the issue of a series of revenue bonds of the Local Entity, dated \_\_\_\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the 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 principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning \_\_\_\_\_ 1, \_\_\_\_\_, and ending \_\_\_\_\_ 1, \_\_\_\_\_, all as set forth in the "Schedule Y" attached to the 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 Local Entity on \_\_\_\_\_, as supplemented by the supplemental resolution duly adopted by the Local Entity on \_\_\_\_\_ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the 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 Local Entity and is a valid and binding special obligation of the Local Entity, enforceable in accordance with the terms thereof.

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

3. The Local Entity is a duly organized and validly existing \_\_\_\_\_, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Entity and constitute valid and binding obligations of the Local Entity, enforceable against the Local Entity in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Entity to the Authority and are valid, legally enforceable and binding special obligations of the Local Entity, payable from the gross or net revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the gross or net revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$602,000  
Purchase Price of Local Bonds \$602,000

The Local Bonds shall bear no interest from the date of delivery to March 1, 2005. Commencing March 1, 2005, interest on the Local Bonds will accrue at the rate of 2% per annum. Commencing June 1, 2005, interest on and principal of the Local Bonds is payable quarterly, together with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Entity shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Entity shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Entity shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal and interest, if any, and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Local Entity's system as provided in the Local Act.

The Local Entity may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and BPH. The Local Entity shall request approval from the Authority and BPH in writing of any proposed debt which will be issued by the Local Entity on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Entity:

1) Water Revenue Bonds, Series 1981, dated January 22, 1981, issued in the original principal amount of \$1,100,000; 2) Water Revenue Bonds, Series 1987, dated June 25, 1987, issued in the original principal amount of \$610,000; 3) Water Revenue Bonds, Series 1997A,

dated September 25, 1997, issued in the original principal amount of \$1,440,000; 4) Water Revenue Bonds, Series 1997 B, dated September 25, 1997, issued in the original principal amount of \$818,000; 5) Water Revenue Bonds, Series 1999 A (United States Department of Agriculture), dated August 5, 1999, issued in the original principal amount of \$620,000; 6) Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program), dated June 28, 2000, issued in the original principal amount of \$960,000; and 7) Water Revenue Bonds, Series 2001 A (United States Department of Agriculture), dated March 16, 2001, issued in the original principal amount of \$375,000.

SCHEDULE Y

**\$602,000**

Mason County Public Service District

20 Years, 2.0% Interest Rate, 1.0% Administrative Fee

Closing Date: June 8, 2004

**Debt Service Schedule**

Part 1 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2004	-	-	-	-
12/01/2004	-	-	-	-
03/01/2005	-	-	-	-
06/01/2005	6,138.62	2.000%	3,010.00	9,148.62
09/01/2005	6,169.31	2.000%	2,979.31	9,148.62
12/01/2005	6,200.16	2.000%	2,948.46	9,148.62
03/01/2006	6,231.16	2.000%	2,917.46	9,148.62
06/01/2006	6,262.31	2.000%	2,886.30	9,148.61
09/01/2006	6,293.62	2.000%	2,854.99	9,148.61
12/01/2006	6,325.09	2.000%	2,823.52	9,148.61
03/01/2007	6,356.72	2.000%	2,791.90	9,148.62
06/01/2007	6,388.50	2.000%	2,760.12	9,148.62
09/01/2007	6,420.44	2.000%	2,728.17	9,148.61
12/01/2007	6,452.54	2.000%	2,696.07	9,148.61
03/01/2008	6,484.81	2.000%	2,663.81	9,148.62
06/01/2008	6,517.23	2.000%	2,631.38	9,148.61
09/01/2008	6,549.82	2.000%	2,598.80	9,148.62
12/01/2008	6,582.57	2.000%	2,566.05	9,148.62
03/01/2009	6,615.48	2.000%	2,533.14	9,148.62
06/01/2009	6,648.56	2.000%	2,500.06	9,148.62
09/01/2009	6,681.80	2.000%	2,466.82	9,148.62
12/01/2009	6,715.21	2.000%	2,433.41	9,148.62
03/01/2010	6,748.79	2.000%	2,399.83	9,148.62
06/01/2010	6,782.53	2.000%	2,366.09	9,148.62
09/01/2010	6,816.44	2.000%	2,332.17	9,148.61
12/01/2010	6,850.52	2.000%	2,298.09	9,148.61
03/01/2011	6,884.78	2.000%	2,263.84	9,148.62
06/01/2011	6,919.20	2.000%	2,229.41	9,148.61
09/01/2011	6,953.80	2.000%	2,194.82	9,148.62
12/01/2011	6,988.57	2.000%	2,160.05	9,148.62
03/01/2012	7,023.51	2.000%	2,125.11	9,148.62
06/01/2012	7,058.63	2.000%	2,089.99	9,148.62
09/01/2012	7,093.92	2.000%	2,054.70	9,148.62
12/01/2012	7,129.39	2.000%	2,019.23	9,148.62
03/01/2013	7,165.04	2.000%	1,983.58	9,148.62
06/01/2013	7,200.86	2.000%	1,947.75	9,148.61
09/01/2013	7,236.86	2.000%	1,911.75	9,148.61
12/01/2013	7,273.05	2.000%	1,875.57	9,148.62
03/01/2014	7,309.41	2.000%	1,839.20	9,148.61
06/01/2014	7,345.96	2.000%	1,802.65	9,148.61
09/01/2014	7,382.69	2.000%	1,765.92	9,148.61
12/01/2014	7,419.60	2.000%	1,729.01	9,148.61
03/01/2015	7,456.70	2.000%	1,691.91	9,148.61
06/01/2015	7,493.99	2.000%	1,654.63	9,148.62

**\$602,000**

Mason County Public Service District

20 Years, 2.0% Interest Rate, 1.0% Administrative Fee

Closing Date: June 8, 2004

**Debt Service Schedule**

Part 2 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2015	7,531.46	2.000%	1,617.16	9,148.62
12/01/2015	7,569.11	2.000%	1,579.50	9,148.61
03/01/2016	7,606.96	2.000%	1,541.66	9,148.62
06/01/2016	7,644.99	2.000%	1,503.62	9,148.61
09/01/2016	7,683.22	2.000%	1,465.40	9,148.62
12/01/2016	7,721.63	2.000%	1,426.98	9,148.61
03/01/2017	7,760.24	2.000%	1,388.37	9,148.61
06/01/2017	7,799.04	2.000%	1,349.57	9,148.61
09/01/2017	7,838.04	2.000%	1,310.58	9,148.62
12/01/2017	7,877.23	2.000%	1,271.39	9,148.62
03/01/2018	7,916.62	2.000%	1,232.00	9,148.62
06/01/2018	7,956.20	2.000%	1,192.42	9,148.62
09/01/2018	7,995.98	2.000%	1,152.64	9,148.62
12/01/2018	8,035.96	2.000%	1,112.66	9,148.62
03/01/2019	8,076.14	2.000%	1,072.48	9,148.62
06/01/2019	8,116.52	2.000%	1,032.09	9,148.61
09/01/2019	8,157.10	2.000%	991.51	9,148.61
12/01/2019	8,197.89	2.000%	950.73	9,148.62
03/01/2020	8,238.88	2.000%	909.74	9,148.62
06/01/2020	8,280.07	2.000%	868.54	9,148.61
09/01/2020	8,321.47	2.000%	827.14	9,148.61
12/01/2020	8,363.08	2.000%	785.54	9,148.62
03/01/2021	8,404.90	2.000%	743.72	9,148.62
06/01/2021	8,446.92	2.000%	701.70	9,148.62
09/01/2021	8,489.15	2.000%	659.46	9,148.61
12/01/2021	8,531.60	2.000%	617.02	9,148.62
03/01/2022	8,574.26	2.000%	574.36	9,148.62
06/01/2022	8,617.13	2.000%	531.49	9,148.62
09/01/2022	8,660.22	2.000%	488.40	9,148.62
12/01/2022	8,703.52	2.000%	445.10	9,148.62
03/01/2023	8,747.03	2.000%	401.58	9,148.61
06/01/2023	8,790.77	2.000%	357.85	9,148.62
09/01/2023	8,834.72	2.000%	313.89	9,148.61
12/01/2023	8,878.90	2.000%	269.72	9,148.62
03/01/2024	8,923.29	2.000%	225.32	9,148.61
06/01/2024	8,967.91	2.000%	180.71	9,148.62
09/01/2024	9,012.75	2.000%	135.87	9,148.62
12/01/2024	9,057.81	2.000%	90.80	9,148.61
03/01/2025	9,103.10	2.000%	45.52	9,148.62
<b>Total</b>	<b>\$602,000.00</b>	<b>-</b>	<b>\$129,889.30</b>	<b>\$731,889.30 *</b>

\*Plus \$811.82 one-percent administrative fee paid quarterly. Total fee paid over life of loan is \$64,945.60.

DWTRF 5-25-04 | SINGLE PURPOSE | 5/25/2004 | 2:18 PM

Ferris, Baker Watts, Inc.  
West Virginia Public Finance Office

**MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)**

2.4

**BOND RESOLUTION**

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MASON COUNTY PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF MASON COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$602,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA DWTRF PROGRAM); 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 AND RATIFYING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF MASON COUNTY 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, collectively, Chapter 16, Article 13A and Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended and in effect on the date of adoption of this Resolution.

"Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2004 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.

"Board" or "Governing Body" 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.

"Bond Registrar" or "Registrar" means the bank or other entity to be designated as such in 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 2004 A Bonds, the Prior Bonds and any additional Parity Bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

"BPH" means the West Virginia Bureau for Public Health, a division of the West Virginia Department of Health and Human Resources, or any other agency, board or department of the State that succeeds to the functions of the BPH.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 2004 A Bonds in substantially the form set forth in Section 3.10 hereof.

"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 2004 A Bonds for all or a portion of the proceeds of the Series 2004 A Bonds from the Authority and BPH.

"Code" means the Internal Revenue Code of 1986, as amended, including the Regulations promulgated pursuant thereto or any predecessors or successors thereto.

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

"Completion Date" means the completion date of the Project, as defined in the

DWTRF Regulations.

"Consulting Engineers" means Cerrone Associates, Inc., Wheeling, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System 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 1.03.E hereof to be a part of the cost of acquisition and construction of the Project.

"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.

"Depreciation Account" means the Depreciation Account established by the Prior Resolutions and continued by Section 5.01 hereof.

"DWTRF Regulations" means the regulations for the Program set forth in Title 64, Part 49 of the West Virginia Code of State Regulations.

"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.

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

"Government" means the United States of America, United States Department of Agriculture, Rural Utilities Service.

"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 or interest coupons stripped 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.

"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 purchased pursuant to Section 8.01 hereof) or any Tap Fees, as hereinafter defined.

"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.

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

"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 Mason County Public Service District, a public service district, public corporation and political subdivision of the State in Mason County, West Virginia, and includes the Governing Body.

"Loan Agreement" means the Drinking Water Treatment Revolving Fund Loan Agreement entered into by and between the Issuer and the Authority, on behalf of the BPH, providing for the purchase of the Series 2004 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 2004 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2004 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2004 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means Gross Revenues less Operating Expenses.

"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 and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the Costs), the Administrative Fee, fees and expenses of the Authority, the BPH, 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, notices 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 2004 A Bonds in the Supplemental Resolution.

"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.

"Prior Bonds" means, collectively, the Series 1981 Bonds, the Series 1987 Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1999 A Bonds, the Series 2000 A Bonds and the Series 2001 A Bonds.

"Prior Resolutions" means, collectively, the respective resolutions adopted by the Issuer, authorizing the Prior Bonds.

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

"Project" means the acquisition and construction of certain improvements and extensions to the System, a description of which is attached hereto as Exhibit A and incorporated herein by reference.

"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 rates of the System and the financing for the Project.

"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 certificate 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 owner 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;

(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.

"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.

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

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

"Reserve Accounts" means, collectively, the respective reserve accounts of the Series 2004 A Bonds and the Prior Bonds.

"Reserve Requirements" means, collectively, the respective reserve requirements of the Series 2004 A Bonds and the Prior Bonds.

"Resolution" means this Bond Resolution and all orders and resolutions supplemental hereto or amendatory hereof.

"Revenue Fund" means the Revenue Fund established by the Prior Resolutions and continued by Section 5.01 hereof.

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

"Series 1981 Bonds" means the Issuer's Water Revenue Bonds, Series 1981, dated January 22, 1981, issued in the original aggregate principal amount of \$1,100,000.

"Series 1987 Bonds" means the Issuer's Water Revenue Bonds, Series 1987, dated June 25, 1987, issued in the original aggregate principal amount of \$610,000.

"Series 1997 A Bonds" means the Issuer's Water Revenue Bonds, Series 1997 A, dated September 25, 1997, issued in the original aggregate principal amount of \$1,440,000.

"Series 1997 B Bonds" means the Issuer's Water Revenue Bonds, Series 1997 B, dated September 25, 1997, issued in the original aggregate principal amount of \$818,000.

“Series 1999 A Bonds” means the Issuer’s Water Revenue Bonds, Series 1999 A (United States Department of Agriculture), dated August 5, 1999, issued in the original aggregate principal amount of \$620,000.

“Series 2000 A Bonds” means the Issuer’s Water Revenue Bonds, Series 2000A (West Virginia DWTRF Program), dated June 28, 2000, issued in the original aggregate principal amount of \$960,000.

“Series 2001 A Bonds” means the Issuer’s Water Revenue Bonds, Series 2001 A (United States Department of Agriculture), dated March 16, 2001, issued in the original aggregate principal amount of \$375,000.

"Series 2004 A Bonds" means the Issuer’s Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), authorized to be issued hereby.

"Series 2004 A Bonds Construction Trust Fund" means the Series 2004 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2004 A Bonds Reserve Account" means the Series 2004 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2004 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 2004 A Bonds in the then current or any succeeding year.

"Series 2004 A Bonds Sinking Fund" means the Series 2004 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds of the Series 2004 A Bonds and the Prior Bonds.

"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 Series 2004 A Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by this Resolution to be set aside and held for the payment of or security for the Series 2004 A Bonds and the Prior

Bonds, including the Sinking Funds, the Reserve Accounts, the Depreciation Account 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.

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 is a public service district, public corporation and political subdivision of the State in Mason County of said State. The Issuer presently owns and operates a public waterworks system. However, the Issuer deems it necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be acquired and constructed the Project, in accordance with the plans and specifications prepared by the Consulting Engineer, which plans and specifications have been approved by the BPH.

B. The Issuer intends to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the Authority.

C. The estimated maximum cost of acquisition and construction of the Project is \$632,000, of which \$602,000 will be obtained from the Series 2004 A Bonds herein authorized and \$30,000 will be obtained from funds of the Issuer.

D. 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 Operating Expenses of the System, the principal of and interest on the Prior Bonds and the Series 2004 A Bonds and payments into all funds and accounts and other payments provided for herein and in the Prior Resolutions.

E. It is deemed necessary for the Issuer to issue the Series 2004 A Bonds in the aggregate principal amount of not more than \$602,000, to permanently finance the cost 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 2004 A Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2004 A Bonds Reserve Account; 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, any fees or expenses of the Authority and the BPH, including the Administrative Fee, commitment fees, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2004 A Bonds, and such other expenses as may be necessary or incident to the financing herein authorized, the acquisition and construction 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; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2004 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed part of the Costs of the Project.

F. The Series 2004 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. 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. Prior to the issuance of the Series 2004 A Bonds, the Issuer will obtain (i) a certificate of an

Independent Certified Public Accountant stating that the parity and coverage tests of the Prior Bonds have been met and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2004 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

G. The period of usefulness of the System after completion of the Project is not less than 20 years.

H. It is in the best interests of the Issuer that the Series 2004 A Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement, relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2004 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the Infrastructure Council and the obtaining of the PSC Order, the time for rehearing and appeal of which has expired or will have been waived prior to the issuance of the Series 2004 A Bonds.

J. The Project has been reviewed and determined to be technically and financially feasible by the Council.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Series 2004 A 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 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 Bonds, all of 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 and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$632,000, in accordance with the plans and specifications prepared by the Consulting Engineers, approved by the BPH and the Issuer and heretofore filed in the office of the Governing Body. The proceeds of the Series 2004 A 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, which are in an amount and otherwise compatible with the plan of financing submitted to the Program.

### 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 2004 A Bonds, funding the Series 2004 A Bonds Reserve Account, paying the Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any of such purposes, as shall be specified in the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2004 A Bonds of the Issuer. The Series 2004 A Bonds shall be issued as a single bond, designated as "Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program)," in the aggregate principal amount of not more than \$602,000, and shall have such terms as set forth hereinafter or in the Supplemental Resolution. The proceeds of the Series 2004 A Bonds remaining after funding of the Series 2004 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in the Series 2004 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2004 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2004 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 2004 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 2004 A Bonds shall be issued in the form of one 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 2004 A Bonds. The Series 2004 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

Section 3.03. Execution of Bonds. The Series 2004 A 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 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 Series 2004 A 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 3.10 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 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 Series 2004 A 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 Registered Owner 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 Registered Owner 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 registered Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to

the Bond Registrar, duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging the Bonds or transferring the Bonds is exercised, all such Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obligated to make any such exchange or transfer of Bonds during the period commencing on the fifteenth 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 Series 2004A 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 Registered Owner's furnishing proof of its ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2004 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Registered Owner of the Series 2004 A Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2004 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2004 A Bonds shall be secured 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 Prior Bonds. Such Net Revenues in an amount

sufficient to pay the principal of and interest on and other payments for the Series 2004 A Bonds and the Prior Bonds and to make payments into all funds and accounts provided for in this Resolution and the Prior Resolutions, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2004 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2004 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 and deliver the Series 2004 A Bonds to the original purchasers.

Section 3.10. Form of Bonds. The text of the Series 2004 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

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

KNOW ALL MEN BY THESE PRESENTS: That MASON COUNTY PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Mason 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 hereto as EXHIBIT A and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 200\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on EXHIBIT B. The interest and the Administrative Fee (as defined in the hereinafter described Resolution) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 200\_\_, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, 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 Resolution) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Resolution) on the 15<sup>th</sup> 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 Bureau

for Public Health (the "BPH") and in compliance with the Loan Agreement dated \_\_\_\_\_, 200\_\_, by and between the Issuer and the Authority, on behalf of the BPH.

This Bond is issued (i) to pay 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 and 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 16, Article 13C of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on \_\_\_\_\_, 200\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 200\_\_ (collectively, the "Resolution"), and is subject to all the terms and conditions thereof. 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 ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1981, DATED JANUARY 22, 1981, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,100,000; (2) WATER REVENUE BONDS, SERIES 1987, DATED JUNE 25, 1987, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$610,000; (3) WATER REVENUE BONDS, SERIES 1997 A, DATED SEPTEMBER 25, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,440,000; (4) WATER REVENUE BONDS, SERIES 1997 B, DATED SEPTEMBER 25, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$818,000; (5) WATER REVENUE BONDS, SERIES 1999 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED AUGUST 5, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$620,000; (6) WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$960,000; AND (7) WATER REVENUE BONDS, SERIES 2001 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 16, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$375,000 (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Resolution) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds, and from moneys in the reserve account created under the Resolution for this Bond (the "Series 2004 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 which 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 2004 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Resolution, 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 on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2004 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owners of this Bond, for the terms of which, reference is made to the Resolution. Remedies provided the Registered Owners of this 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 transferable, as provided in the Resolution, only upon the books of the Registrar by the Registered Owner, or 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 Resolution, shall be applied solely to the payment of the costs of acquisition and construction of the Project and the costs of issuance hereof as 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 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 upon 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 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.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, MASON COUNTY 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 \_\_\_\_\_, 200\_.

[SEAL]

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 A Bonds described in the within-mentioned Resolution 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

By \_\_\_\_\_  
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer 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; Authorization and Execution of Loan Agreement.

The Series 2004 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, ratified and approved. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and specifically incorporated into this Bond Legislation.

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

ARTICLE IV

[Reserved]

## ARTICLE V

### 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 from each other:

- (1) Revenue Fund (established by Prior Resolutions);
- (2) Depreciation Account (established by the Prior Resolutions);
- (3) Renewal and Replacement Fund (established by Prior Resolutions); and
- (4) Series 2004 A Bonds Construction Trust Fund.

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

- (1) Series 2004 A Bonds Sinking Fund; and
- (2) Series 2004 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer 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 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 and as provided in the Prior Resolutions.

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, each month, from the moneys in the Revenue Fund, (i) make the interest payments on the Prior Bonds in the amounts and on the dates required by the Prior Resolutions, and (ii) on the first day of each month, commencing 3 months prior to the first date of payment of interest on the Series 2004 A Bonds, for which

interest has not been capitalized or as required in the Loan Agreement, remit to the Commission for deposit in the Series 2004 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2004 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 2004 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.

(3) The Issuer shall next, each month, from the moneys in the Revenue Fund, (i) make the principal payments of the Prior Bonds in the amounts and on the dates required by the Prior Resolutions, and (ii) on the first day of each month, commencing 3 months prior to the first date of payment of principal of the Series 2004 A Bonds, remit to the Commission for deposit in the Series 2004 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2004 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 2004 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.

(4) The Issuer shall next, each month, from the moneys in the Revenue Fund, (i) make the reserve account payments into the Reserve Accounts of the Prior Bonds in the amounts and on the dates required by the Prior Resolutions, and (ii) on the first day of each month, commencing 3 months prior to the first date of payment of principal of the Series 2004 A Bonds, if not fully funded upon issuance of the Series 2004 A Bonds, remit to the Commission for deposit in the Series 2004 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2004 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2004 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2004 A Bonds Reserve Requirement.

(5) The Issuer shall next, each month, from the moneys in the Revenue Fund, make the payments into the Depreciation Account in the amounts and on the dates required by the Prior Resolutions.

(6) The Issuer shall next, 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, emergency repairs, improvements or extensions to the System; provided that, any deficiencies in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(7) 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, improvements, or extensions 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.

Moneys in the Series 2004 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2004 A Bonds as the same shall become due. Moneys in the Series 2004 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2004 A Bonds as the same shall come due, when other moneys in the Series 2004 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 2004 A Bonds Reserve Account (if fully funded in an amount equal to the Series 2004 A Bonds Reserve Requirement) shall be transferred, not less than once each year, to the Series 2004 A Bonds Construction Trust Fund during construction of the Project and thereafter, to the Series 2004 A Bonds Sinking Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2004 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2004 A Bonds Reserve Account which result in a reduction in the balance of such account to an amount below the Series 2004 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2004 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay any 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 Series 2004 A Bonds Sinking Fund or the Series 2004 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2004 A Bonds then Outstanding and all interest 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 2004 A 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 2004 A Bonds Sinking Fund and the Series 2004 A 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, the Issuer shall make the necessary arrangements whereby required payments into the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates hereunder.

Moneys in the Series 2004 A Bonds Sinking Fund and Series 2004 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2004 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required 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 Resolution.

C. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month), commencing with the payment set forth in Section 5.03.A.(2) hereof, remit to the Commission the Administrative Fee set forth in the Schedule Y attached to the Loan Agreement.

D. 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 5<sup>th</sup> day of each calendar month.

E. 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 shall be required by law, such excess shall be considered as Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

F. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar 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 then due. If required by the Authority, the Issuer shall make the necessary arrangements whereby payments to the Commission under this paragraph shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

G. 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.

H. 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 date; provided, that all deposits, including on account of deficiencies, shall be made in the order of priority set forth in Section 5.03A hereof, and no payment of lower priority shall be made if there exists a deficiency in a fund or account of higher priority.

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

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

## ARTICLE VI

### APPLICATION OF BONDS PROCEEDS

Section 6.01. Application of Bonds Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 2004 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2004 A Bonds, there shall first be deposited in the Series 2004 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 2004 A Bonds for the period commencing on the date of issuance of the Series 2004 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 2004 A Bonds, there shall be deposited with the Commission in the Series 2004 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution.

C. The remaining moneys derived from the sale of the Series 2004 A Bonds shall be deposited by the Issuer, as received from time to time, in the Series 2004 A Bonds Construction Trust Fund and shall be used solely to pay costs of the Project and until so expended, are hereby pledged as additional security for the Series 2004 A Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2004 A Bonds shall be used as directed by the Authority and the BPH.

Section 6.02. Disbursements from Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the BPH a report listing the specific purposes for which the proceeds of the Series 2004 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2004 A Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the BPH of the following:

(1) A "Payment Requisition Form," in the form attached to the Loan Agreement, in compliance with the construction schedule, and

(2) A certificate, signed by the Chairperson 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 disbursements theretofore made;

(B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a cost of the Project;

(C) Each of such costs has been otherwise properly incurred; and

(D) Payment for each of the items proposed is then due and owing.

Pending such application, moneys in the Series 2004 A 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 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 Registered Owner of the Series 2004 A Bonds. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the Registered Owner of the Series 2004 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as the Series 2004 A Bonds or the interest thereon are Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2004 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Registered Owner of the Series 2004 A Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2004 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 2004 A Bonds shall be secured 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 Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 2004 A Bonds and to make the payments into all funds and accounts 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 such payments as the same become due, and for the other purposes provided in this Resolution and the Prior Resolutions.

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 and approved in the PSC Order and such rates are hereby adopted.

So long as the Series 2004 A Bonds are Outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in

this Resolution and in compliance with the requirements of the Loan Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2004 A Bonds shall prove to be insufficient to produce the required sums set forth in this Resolution 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 Resolution 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. So long as the Series 2004 A Bonds are Outstanding and except as otherwise required by law or with the written consent of the Authority and the BPH, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay or redeem at or prior to maturity all the Bonds then Outstanding in accordance with Section 10.01 hereof. The proceeds from such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2004 A Bonds, immediately be remitted to the Commission for deposit in the Series 2004 A Bonds Sinking Fund, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and any interest, if any, on the Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission, unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, 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, pro rata, in the Depreciation Account and the Renewal and Replacement Fund with respect to the Bonds Outstanding. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine upon consultation with 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. 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, upon receipt of approval of the Registered Owners, if needed, be remitted by the Issuer to the Commission for deposit in the respective Sinking Funds and shall be applied only to the purchase or redemption of Bonds of the last maturities then Outstanding at prices not greater than the applicable redemption price, or, if not redeemable at par, then in the Depreciation Account and the Renewal and Replacement Fund, pro rata, with respect to the Bonds Outstanding. The payment of such proceeds into the Sinking Funds or the Depreciation Account and 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 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 or redeem prior to maturity 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. So long as the Series 2004 A Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2004 A Bonds; provided, however, that Parity Bonds may be issued as provided for in Section 7.07 hereof and in the Prior Resolutions (so long as the Prior Bonds are Outstanding). All obligations hereafter issued by the Issuer payable from the revenues of the System, except such 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 2004A 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 and in the Prior Resolutions 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 liens of the Series 2004 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2004 A Bonds and the interest thereon in this Resolution, or upon the System or any part thereof.

The Issuer shall give the Authority and the BPH prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the

System or from any grants for the System, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, no Parity Bonds shall be issued except in accordance with the terms of the Prior Resolutions. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided and with the prior written consent of the BPH and the Authority.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Prior Bonds and the Series 2004 A Bonds.

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

So long as the Prior Bonds held by the Government 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 Government, representing 75% of the then-outstanding principal indebtedness. In the event the foregoing limitation is waived or when the Prior Bonds held by the Government are no longer Outstanding, the following parity requirement shall be met:

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the

three 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 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 three succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer and approved by the 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 and approved by the PSC, the period for appeal of which has expired prior to issuance of 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 Registered Owners of the Series 2004 A Bonds and the Registered Owners of any Parity Bonds 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 respective liens on the revenues of the System and their respective source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of another series on a parity therewith. The Issuer 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 theretofore issued pursuant to this 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 Outstanding Bonds on such revenues. The Issuer 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 2004 A Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the 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 Issuer shall then be in full compliance with all the covenants, agreements and terms of this Resolution.

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

The Issuer shall permit the Authority and the BPH, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System, at all reasonable times, following completion of construction 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 Series 2004 A 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 in accordance with the rules and regulations of the PSC and the Bond Act. Separate control accounting records shall be maintained by the Issuer. 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 Issuer.

The Issuer shall file with the Authority and the BPH, and shall mail in each year to any Registered Owner of the Series 2004 A Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution and the status of all said funds and accounts.

(C) The amount of any 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 completely 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 Owners of the Series 2004 A Bonds, and shall submit such report to the Authority and the BPH. Such report shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Resolution and that the Gross Revenues 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 or the BPH, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Authority and the BPH, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the BPH with respect to the System pursuant to the Act.

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

Section 7.09. Rates. Prior to issuance of the Series 2004 A Bonds, approvals of equitable rates or charges for the use of and service rendered by the System shall have been obtained 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 reductions 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 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 Series 2004 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2004 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Reserve Requirements are on deposit respectively in the Series 2004 A Bonds Reserve Account and the Reserve Accounts for obligations on a parity with the Series 2004 A 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 on the Series 2004 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 2004 A Bonds.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall, annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the BPH within 30 days of the 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 BPH, the Authority and to any Registered Owner of any Bonds within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times

to the BPH, the Authority and any Registered Owner of any Bonds or anyone acting for and on behalf of such Registered Owner of any Bonds.

The Issuer shall, commencing on the date contracts are executed for the construction of the Project and for two years following the completion of the Project, each month complete a Monthly Financial Report, a form of which is attached to the Loan Agreement, and forward a copy of such report by the 10<sup>th</sup> day of each month to the Authority and the BPH.

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

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

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

The Issuer shall require the Consulting Engineers to submit a final Operation and Maintenance Manual, as defined in the DWTRF Regulations, to the BPH when the Project is 90% completed. The Issuer shall, at all times, provide operation and maintenance of the System in compliance with any and all State and federal standards. The Issuer shall employ qualified operating personnel, properly certified by the State, before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the BPH in writing of the certified operator employed at the 50% completion stage.

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, 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, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State or the rules and regulations of the PSC.

Whenever any fees, rates, rentals or other charges for the services or 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 any rules and regulations promulgated by the PSC applicable thereto, fees, 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 any rules and regulations promulgated by the PSC applicable thereto, discontinue and shut off the services and facilities of the System to all delinquent users of the services and facilities of the System, and will not restore such services of the System until all delinquent charges for the services and facilities 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 its 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. 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 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2004 A Bonds remain Outstanding, the Issuer shall, 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, if any, and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the System facilities 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 for every officer, member and employee of the Issuer 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 BPH and the Authority. 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 hereby covenants and agrees to 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 applicable laws, rules and regulations issued by the BPH, 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.

The Issuer has obtained all permits required by State and federal laws necessary for the acquisition and construction of the Project, all requisite orders and approvals from the PSC and the Infrastructure Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Series 2004 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. [Reserved].

Section 7.19. Statutory Mortgage Lien. For the further protection of the Registered Owners of the Series 2004 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, and shall take effect immediately upon delivery of the Series 2004 A Bonds; provided however, that the statutory mortgage lien in favor of the Registered Owners of the Series 2004 A Bonds shall be on a parity with the statutory mortgage lien in favor of the Registered Owners of the Prior Bonds.

Section 7.20. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all terms and conditions of the Loan Agreement, this Resolution and the Act. The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority, the BPH or other State, federal or local bodies in regard to the construction of the Project and the operation, maintenance and use of the System. Notwithstanding anything herein to the contrary, the Issuer shall provide the BPH with copies of all documents submitted to the Authority.

Section 7.21. Contracts; Public Releases. The Issuer shall, simultaneously with the delivery of the Series 2004 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

The Issuer shall submit all proposed change orders to the BPH for written approval. The Issuer shall obtain the written approval of the BPH before expending any proceeds of the Series 2004 A Bonds held in "contingency" as set forth in the Schedule B attached to the certificate of the Consulting Engineers. The Issuer shall also obtain the written approval of the BPH before expending any proceeds of the Series 2004 A Bonds made available due to bid or construction or project underruns.

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

Section 7.22. Securities Law 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).

## 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 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 8.01.

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, 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 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. The 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.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once a year, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records relating thereto so long as any of the Series 2004 A Bonds are Outstanding.

Section 8.02. Certificate as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2004 A Bonds as a condition to issuance of the Series 2004 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2004 A Bonds as may be necessary in order to maintain the status of the Series 2004 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2004 A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the Council or the BPH, as the case may be, from which the proceeds of the Series 2004 A Bonds are derived, to lose their status as

tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the Council or the BPH, to ensure compliance with the covenants and agreements set forth in this Section 8.02, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall furnish the Authority with information relating to the earnings on and the use of the proceeds of the Series 2004 A Bonds and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2004 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2004 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2004 A Bonds set forth in this Resolution, any Supplemental Resolution or in the Series 2004 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Bond Registrar, any 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 a default occurs under the Prior Resolutions or the Prior Bonds.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of the Series 2004 A Bonds 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, the Loan Agreement 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, provided that, that all rights and remedies of the Registered Owners of the Series 2004 A Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of the Series 2004 A Bonds may, by proper legal action, compel the performance of the duties of the Issuer under this Resolution 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 the 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, 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 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 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 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 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 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, 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 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 Resolution, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or

requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Series 2004 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then this Resolution and the pledge of Net Revenues and other moneys and securities pledged under this Resolution and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2004 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Modification or Amendment. Prior to issuance of the Series 2004 A Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2004 A Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2004 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2004 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest 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 Resolution may be amended without the consent of any Registered Owners as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2004 A Bonds from gross income of the Registered Owners thereof.

Section 11.02. Resolution Constitutes Contract. The provisions of this Resolution shall constitute a contract between the Issuer and the Registered Owners of the Series 2004 A Bonds and no change, variation or alteration of any kind of the provisions of this Resolution shall be made in any manner, except as in this Resolution 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 and the Series 2004 A Bonds.

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

Section 11.05. Conflicting Provisions Repealed; Prior Resolutions. Except for the Prior Resolutions, all orders or resolutions and 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 the Resolution and the Prior Resolutions, the Prior Resolutions shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

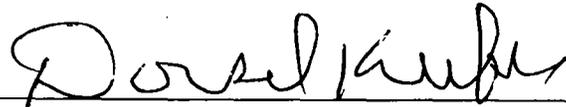
Section 11.06. Covenant of Due Procedure. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular 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 of the Governing Body shall have caused to be published in a newspaper of general circulation in each municipality in Mason County Public Service District and within the boundaries of the Issuer, a Class II legal advertisement stating:

- (a) The maximum amount of the Series 2004 A Bonds to be issued;
- (b) The maximum interest rate and terms of the Series 2004 A Bonds originally authorized hereby;
- (c) The public service properties to be acquired 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 Public Service Commission of West Virginia.

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

Adopted this 3rd day of June, 2004.



Chairperson



Member



Member

CERTIFICATION

Certified as a true copy of a Resolution duly adopted by the Public Service Board of Mason County Public Service District on the 3<sup>rd</sup> day of June, 2004.

Dated this 8<sup>th</sup> day of June, 2004.

[SEAL]

*May L. Smith*  
Secretary

## EXHIBIT A

### PROJECT DESCRIPTION

The Project consists of replacing the existing inadequate and deteriorated Camp Conley water treatment and distribution system with water purchased from the City of Point Pleasant and with 17,000 feet of new distribution lines to serve approximately 210 customers, together with all necessary appurtenant facilities.

05/07/04  
100424/00307

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

2.5

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE MASON COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA DWTRF PROGRAM); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; APPROVING THE LOAN AGREEMENT WITH RESPECT TO THE BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Governing Body") of Mason County Public Service District (the "Issuer") has duly and officially adopted a Bond Resolution on June 3, 2004 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATER FACILITIES OF MASON COUNTY PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$602,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA DWTRF PROGRAM); 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 AND RATIFYING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, 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 2004 A (West Virginia DWTRF Program), of the Issuer, in an aggregate principal amount not to exceed \$602,000 (the "Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Bonds, including all schedules and exhibits attached thereto (collectively, the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), all in accordance with Chapter 16, Article 13A and Chapter 16, Article 13C 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 herein provided for;

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

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

WHEREAS, the Governing Body deems it essential and desirable that this resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved, 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 MASON COUNTY 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 Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$602,000. The Bonds shall be dated the date of delivery, shall finally mature March 1, 2025, and shall bear interest at a rate of 2% per annum. The interest on and principal of the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2005, in the amounts set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Issuer hereby approves and shall pay the DWTRF Administrative Fee equal to 1% of the principal of the Bonds set forth in the Schedule Y attached to the Loan Agreement. The Bonds shall be subject to redemption upon the written consent of the Authority and the BPH, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the

Registered Owner of the Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the 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 application to the BPH and the Authority. The price of the Bonds shall be 100 % of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer hereby appoints and designates The Ohio Valley Bank Company, Point Pleasant, West Virginia, to serve as Registrar (the "Registrar") for the 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 Bonds under the Resolution.

Section 6. The Issuer hereby appoints and designates The Ohio Valley Bank Company, Point Pleasant, West Virginia, to serve as Depository Bank under the Resolution.

Section 7. Series 2004 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2004 A Bonds Sinking Fund as capitalized interest.

Section 8. Series 2004 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2004 A Bonds Reserve Account.

Section 9. The remaining proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Series 2004 A Bonds Construction Trust Fund, as received by the Issuer for payment of costs of the Project, including costs of issuance of the Bonds.

Section 10. 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 Bonds may be delivered to the Authority pursuant to the Loan Agreement on or about June 8, 2004.

Section 11. 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 12. 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 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 13. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project and the Chairperson is hereby authorized and directed to execute and deliver all such contracts.

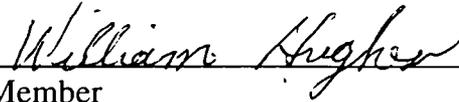
Section 14. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

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

Adopted this 3<sup>rd</sup> day of June, 2004.



Chairperson



Member



Member

CERTIFICATION

Certified as a true copy of a Supplemental Resolution duly adopted by the Public Service Board of Mason County Public Service District on the 3<sup>rd</sup> day of June, 2004.

Dated this 8<sup>th</sup> day of June, 2004.

[SEAL]

*Mary L. Smith*  
Secretary

05/26/04  
100424/00307

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

2.6

MINUTES ON ADOPTION OF BOND  
RESOLUTION AND SUPPLEMENTAL RESOLUTION

The undersigned duly appointed Secretary of the Public Service Board of Mason County Public Service District hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of said Public Service Board:

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The Public Service Board of Mason County Public Service District met in regular session, pursuant to notice duly posted, on the 3<sup>rd</sup> day of June, 2004, in Point Pleasant, West Virginia, at the hour of 1:00 p.m.

PRESENT:	Dorsel Keefer	-	Chairperson and Member
	Charles Lanier	-	Treasurer and Member
	William Hughes	-	Member
	Mary L. Smith	-	Secretary

ABSENT: None.

Dorsel Keefer, Chairperson, presided, and Mary L. Smith, 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.

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Thereupon, the Chairperson presented a set of amended Rules of Procedure for the Board and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Rules of Procedure be adopted and be in full force and effect on and from the date hereof.

Next, 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 MASON COUNTY PUBLIC SERVICE

DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$602,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA DWTRF PROGRAM); 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 AND RATIFYING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, 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 MASON COUNTY PUBLIC SERVICE DISTRICT WATER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA DWTRF PROGRAM); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; APPROVING THE LOAN AGREEMENT WITH RESPECT TO THE BONDS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, 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.

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Next, the Chairperson presented a proposed Resolution in writing approving the payment of invoices from proceeds of the Bonds. Thereupon, upon motion duly made and seconded, it was unanimously ordered that said Resolution be adopted and be in full force and effect on and from the date hereof.

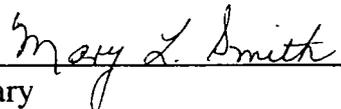
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There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

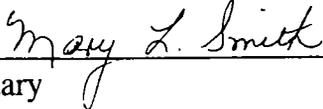
  
\_\_\_\_\_  
Chairperson

  
\_\_\_\_\_  
Secretary

CERTIFICATION

I hereby certify that the foregoing action of Mason County Public Service District remains in full force and effect and has not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 8<sup>th</sup> day of June, 2004.

  
Secretary

05/07/04  
100424/00307

# Point Pleasant Register

*Robert Redeker*

*300 Summers St. Suite 1030*

*Charleston WV  
25387*

ID NUMBER 550516314

39 words per. inch

3.51 an inch

TOTAL

*30 1/2*

Legal advertisement

*2-20-03*

*107.06*

*2-27-03*

*80.30*

*187.36*

### NOTICE OF PRE-FILING

State of West Virginia  
Public Service Commission  
Charleston

NOTICE IS HEREBY GIVEN that MASON COUNTY PUBLIC SERVICE DISTRICT ("District"), a public utility, has given notice to the Public Service Commission of its intent to file an Application for a Certificate of Convenience and Necessity ("Application") for the construction, operation and maintenance of a water system to serve approximately 183 customers in the area formerly served by Camp Conley Public Service District of Mason County, West Virginia.

The project will consist of approximately 17,000 feet of 2" through 8" water-line and one master meter vault with the costs of the project not to exceed \$632,000.00.

The District intends to finance the project by the issuing of revenue bonds through Drinking Water Treatment Revolving Fund Loan ("DWTRFL") in an amount not to exceed \$602,000.00 with the remaining funding for the project to be provided as contribution from the Mason County Public Service District. During construction, the utility

will not need to enter into an arrangement for interim financing.

The proposed project-related rates for the project are not to exceed the following: **METERED RATES**

First 8,000 gallons bimonthly \$8.39 per 1,000 gallons

Next 14,000 gallons bimonthly \$4.67 per 1,000 gallons

Next 20,000 gallons bimonthly \$4.28 per 1,000 gallons

Next 60,000 gallons bimonthly \$3.38 per 1,000 gallons

All over 100,000 gallons bimonthly \$3.10 per 1,000 gallons

**MINIMUM CHARGE**  
No bill will be rendered for less than the following amounts, according to the size of the meter installed:

5/8 inch meter - \$38.34 bimonthly

3/4 inch meter - \$57.51 bimonthly

1 inch meter - \$95.85 bimonthly

1 1/4 inch meter - \$134.19 bimonthly

1 1/2 inch meter - \$191.70 bimonthly

2 inch meter - \$297.60 bimonthly

3 inch meter - \$575.10 bimonthly

4 inch meter - \$956.56 bimonthly

6 inch meter - \$1,917.00 bimonthly

10 inch meter - \$4,907.52 bimonthly

12 inch meter - \$7,559.70 bimonthly

**INCREMENTAL LEAK ADJUSTMENT**  
\$0.42 per M gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible water leakage on the customer's side of the meter. This rate shall be

applied to all such unusual consumption above the customer's historical average usage.

**RESALE RATE-**  
\$2.89 PER 1,000 GALLONS

These rates represent the following increases:

**INCREASE (%)**  
Residential, 0.78, 3%

Commercial, 1.79, 3%

Industrial, 2.75, 3%

Resale, 280.85, 3%

Resale customers of Mason County Public Service District include Evans Public Service District, Gallipolis Ferry Water Association, J2Y95 Water Association, and the West Virginia American Water Company.

The proposed increased rates and charges will produce approximately \$52,138.00 annually.

In addition, an increase of approximately 4.5% in additional revenue, an increase of approximately 4.5%.

The increases shown are based on averages of all customers in the indicated class.

Individual customers may receive increases that are greater or less than average.

Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing.

Additionally, the following changes may also be applicable to new customers to be served by this Project:

**DELAYED PAYMENT PENALTY**

The above tariff is net.

On all current usage billings not paid within twenty (20) days ten percent (10%) will be added to the current amount unpaid. This delayed payment penalty is not interest and is only to be collected once for each month where it is appropriate.

**TAP FEE**  
Prior to construction adjacent to Customer's property \$100.00

Subsequent to construction adjacent to Customer's property \$300.00

**RECONNECT CHARGE** \$15.00  
**RETURNED CHECK CHARGE FOR INSUFFICIENT FUNDS**  
If a check received is returned by the bank for any reason, the bank's charge shall be the District's charge to the customer for such back check, but such charge to the customer shall not exceed fifteen (\$15.00) dollars.

Any increase in rates and charges will not become effective until authorized and approved by the Public Service Commission in the certificate of Convenience and Necessity Application. Following the filing of the form Application there will be an additional public notice and opportunity for the submission of public protest if it is anticipated that the form Application will be filed within 30 days of the publication of this notice.

Randy Grinstead

STATE OF WEST VIRGINIA

MASON COUNTY TO\_ WIT

Personally appeared before the undersigned authority in and  
 for the said County of Mason, this 27<sup>th</sup> day of Feb  
 2003, who being before me first duly sworn did depose and  
 say that she Elizabeth is an employee of the Register, a daily  
 newspaper of general circulation, printed, published and cir-  
 culated in said County that the legal notice hereto annexed.  
 was published in said newspaper for 2 consecutive  
 days/weeks, the first publication there of having been made  
 as aforesaid in the issue of the 20<sup>th</sup> day of Feb 2003  
 , and the last issue on the 27<sup>th</sup> day of Feb 2003

Elizabeth M. Bennett

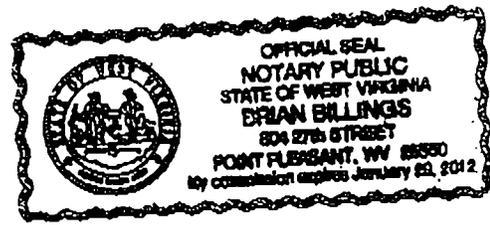
Taken subscribed and sworn to before me in my said County

this 27 day of Feb, 20 03

My commission expires Jan 29, 2012

[Signature]  
 Notary Public

Publication Fee \$ 187.36



# Point Pleasant Register

Francesca Tan

PO Box 619 Morgantown WV 26507

ID NUMBER 550516314

39 words per. inch

3.51 an inch

TOTAL

8 1/2

Legal advertisement

S-21-04

29.84

## MASON COUNTY PUBLIC SERVICE DISTRICT NOTICE OF REGULAR MEETING

The Public Service Board of Mason County Public Service District (the "District") will hold a regular meeting on June 3, 2004, at 1:00 p.m., prevailing time, at the District's office at 101 Camden Avenue, Point Pleasant, West Virginia, for the following purposes:

1. To consider and adopt a set of amended Rules of Procedure for the Board.

2. To consider and adopt a proposed Bond Resolution authorizing its Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), in the principal amount of \$602,000 (the "Bonds"), to pay the costs of acquisition and construction of certain improvement and extensions to the existing public water facilities of the District (the "Project") and the costs of issuance and related costs.

3. To consider and adopt a proposed Supplemental Resolution approving the terms and other provisions of the Bonds.

4. To consider and adopt a proposed Resolution approving the invoices in connection with Project for payment with proceeds of the Bonds.

5. To consider and approve all other documents and matters in connection with the financing and construction of the Project.

This meeting is open to the press and the public and any person interested may attend such meeting.

Mary Smith  
Secretary  
5/21

gjh

13B

STATE OF WEST VIRGINIA

MASON COUNTY TO\_ WIT

Personally appeared before the undersigned authority in and for the said County of Mason, this 21<sup>st</sup> day of May 2004, who being before me first duly sworn did depose and say that she Elizabeth is an employee of the Register, a daily newspaper of general circulation, printed, published and circulated in said County that the legal notice hereto annexed was published in said newspaper for 1 consecutive days/weeks, the first publication there of having been made as aforesaid in the issue of the 21<sup>st</sup> day of May 2004, and the last issue on the        day of        20      

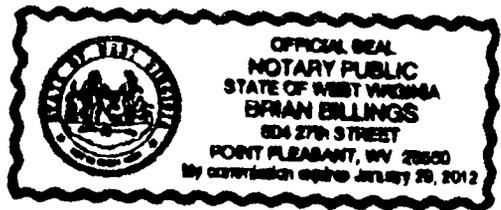
Elizabeth M. Burnett

Taken subscribed and sworn to before me in my said County this 21 day of May, 2004

My commission expires Jan 29, 2012

[Signature]  
Notary Public

Publication Fee \$ 29.84



NUMBER  
AR-1



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

No. AR-1

**SPECIMEN**  
\$602,000

KNOW ALL MEN BY THESE PRESENTS: That MASON COUNTY PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Mason County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, the sum of SIX HUNDRED TWO THOUSAND DOLLARS (\$602,000), 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 hereto as EXHIBIT A and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2005, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on EXHIBIT B. The interest and the Administrative Fee (as defined in the hereinafter described Resolution) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2005, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, 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 Resolution) hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Resolution) on the 15<sup>th</sup> 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 Bureau for Public Health (the "BPH") and in compliance with the Loan Agreement dated June 8,

2004, by and between the Issuer and the Authority, on behalf of the BPH.

This Bond is issued (i) to pay 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 and 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 16, Article 13C of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on June 3, 2004, and a Supplemental Resolution duly adopted by the Issuer on June 3, 2004 (collectively, the "Resolution"), and is subject to all the terms and conditions thereof. 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 ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S (1) WATER REVENUE BONDS, SERIES 1981, DATED JANUARY 22, 1981, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,100,000; (2) WATER REVENUE BONDS, SERIES 1987, DATED JUNE 25, 1987, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$610,000; (3) WATER REVENUE BONDS, SERIES 1997 A, DATED SEPTEMBER 25, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,440,000; (4) WATER REVENUE BONDS, SERIES 1997 B, DATED SEPTEMBER 25, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$818,000; (5) WATER REVENUE BONDS, SERIES 1999 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED AUGUST 5, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$620,000; (6) WATER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA DWTRF PROGRAM), DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$960,000; AND (7) WATER REVENUE BONDS, SERIES 2001 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 16, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$375,000 (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Resolution) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the registered owners of the Prior Bonds, and from moneys in the reserve account created under the Resolution for this Bond (the "Series 2004 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 which 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 2004 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Resolution, 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 on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2004 A Bonds Reserve Account, an amount equal to the maximum amount of principal and interest which will become due on this Bond in any year, and in the respective reserve accounts established for any other obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the Registered Owners of this Bond, for the terms of which, reference is made to the Resolution. Remedies provided the Registered Owners of this 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 transferable, as provided in the Resolution, only upon the books of the Registrar by the Registered Owner, or 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 Resolution, shall be applied solely to the payment of the costs of acquisition and construction of the Project and the costs of issuance hereof as 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 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 upon 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

AR-1

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 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.

AR-1

IN WITNESS WHEREOF, MASON COUNTY 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 June 8, 2004.

[SEAL]

*Doreen Kelly*  
\_\_\_\_\_  
Chairperson

**SPECIMEN**

ATTEST:

*Mary L. Smith*  
\_\_\_\_\_  
Secretary

**SPECIMEN**

AR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 A Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: June 8, 2004.

THE OHIO VALLEY BANK COMPANY, as Registrar

By Mario P. Salvatore  
Its Authorized Officer

AR-1

EXHIBIT A

RECORD OF ADVANCES

**SPECIMEN**

<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1) \$61,249	6/8/04	(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



**\$602,000**

Mason County Public Service District

20 Years, 2.0% Interest Rate, 1.0% Administrative Fee

Closing Date: June 8, 2004

**SPECIMEN**

**Debt Service Schedule**

Part 1 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2004	-	-	-	-
12/01/2004	-	-	-	-
03/01/2005	-	-	-	-
06/01/2005	6,138.62	2.000%	3,010.00	9,148.62
09/01/2005	6,169.31	2.000%	2,979.31	9,148.62
12/01/2005	6,200.16	2.000%	2,948.46	9,148.62
03/01/2006	6,231.16	2.000%	2,917.46	9,148.62
06/01/2006	6,262.31	2.000%	2,886.30	9,148.61
09/01/2006	6,293.62	2.000%	2,854.99	9,148.61
12/01/2006	6,325.09	2.000%	2,823.52	9,148.61
03/01/2007	6,356.72	2.000%	2,791.90	9,148.62
06/01/2007	6,388.50	2.000%	2,760.12	9,148.62
09/01/2007	6,420.44	2.000%	2,728.17	9,148.61
12/01/2007	6,452.54	2.000%	2,696.07	9,148.61
03/01/2008	6,484.81	2.000%	2,663.81	9,148.62
06/01/2008	6,517.23	2.000%	2,631.38	9,148.61
09/01/2008	6,549.82	2.000%	2,598.80	9,148.62
12/01/2008	6,582.57	2.000%	2,566.05	9,148.62
03/01/2009	6,615.48	2.000%	2,533.14	9,148.62
06/01/2009	6,648.56	2.000%	2,500.06	9,148.62
09/01/2009	6,681.80	2.000%	2,466.82	9,148.62
12/01/2009	6,715.21	2.000%	2,433.41	9,148.62
03/01/2010	6,748.79	2.000%	2,399.83	9,148.62
06/01/2010	6,782.53	2.000%	2,366.09	9,148.62
09/01/2010	6,816.44	2.000%	2,332.17	9,148.61
12/01/2010	6,850.52	2.000%	2,298.09	9,148.61
03/01/2011	6,884.78	2.000%	2,263.84	9,148.62
06/01/2011	6,919.20	2.000%	2,229.41	9,148.61
09/01/2011	6,953.80	2.000%	2,194.82	9,148.62
12/01/2011	6,988.57	2.000%	2,160.05	9,148.62
03/01/2012	7,023.51	2.000%	2,125.11	9,148.62
06/01/2012	7,058.63	2.000%	2,089.99	9,148.62
09/01/2012	7,093.92	2.000%	2,054.70	9,148.62
12/01/2012	7,129.39	2.000%	2,019.23	9,148.62
03/01/2013	7,165.04	2.000%	1,983.58	9,148.62
06/01/2013	7,200.86	2.000%	1,947.75	9,148.61
09/01/2013	7,236.86	2.000%	1,911.75	9,148.61
12/01/2013	7,273.05	2.000%	1,875.57	9,148.62
03/01/2014	7,309.41	2.000%	1,839.20	9,148.61
06/01/2014	7,345.96	2.000%	1,802.65	9,148.61
09/01/2014	7,382.69	2.000%	1,765.92	9,148.61
12/01/2014	7,419.60	2.000%	1,729.01	9,148.61
03/01/2015	7,456.70	2.000%	1,691.91	9,148.61
06/01/2015	7,493.99	2.000%	1,654.63	9,148.62



Ferris, Baker Watts, Inc.  
West Virginia Public Finance Office

**\$602,000**

Mason County Public Service District

20 Years, 2.0% Interest Rate, 1.0% Administrative Fee

Closing Date: June 8, 2004

**Debt Service Schedule**

Part 2 of 3

Date	Principal	Coupon	Interest	Total P+I
09/01/2015	7,531.46	2.000%	1,617.16	9,148.62
12/01/2015	7,569.11	2.000%	1,579.50	9,148.61
03/01/2016	7,606.96	2.000%	1,541.66	9,148.62
06/01/2016	7,644.99	2.000%	1,503.62	9,148.61
09/01/2016	7,683.22	2.000%	1,465.40	9,148.62
12/01/2016	7,721.63	2.000%	1,426.98	9,148.61
03/01/2017	7,760.24	2.000%	1,388.37	9,148.61
06/01/2017	7,799.04	2.000%	1,349.57	9,148.61
09/01/2017	7,838.04	2.000%	1,310.58	9,148.62
12/01/2017	7,877.23	2.000%	1,271.39	9,148.62
03/01/2018	7,916.62	2.000%	1,232.00	9,148.62
06/01/2018	7,956.20	2.000%	1,192.42	9,148.62
09/01/2018	7,995.98	2.000%	1,152.64	9,148.62
12/01/2018	8,035.96	2.000%	1,112.66	9,148.62
03/01/2019	8,076.14	2.000%	1,072.48	9,148.62
06/01/2019	8,116.52	2.000%	1,032.09	9,148.61
09/01/2019	8,157.10	2.000%	991.51	9,148.61
12/01/2019	8,197.89	2.000%	950.73	9,148.62
03/01/2020	8,238.88	2.000%	909.74	9,148.62
06/01/2020	8,280.07	2.000%	868.54	9,148.61
09/01/2020	8,321.47	2.000%	827.14	9,148.61
12/01/2020	8,363.08	2.000%	785.54	9,148.62
03/01/2021	8,404.90	2.000%	743.72	9,148.62
06/01/2021	8,446.92	2.000%	701.70	9,148.62
09/01/2021	8,489.15	2.000%	659.46	9,148.61
12/01/2021	8,531.60	2.000%	617.02	9,148.62
03/01/2022	8,574.26	2.000%	574.36	9,148.62
06/01/2022	8,617.13	2.000%	531.49	9,148.62
09/01/2022	8,660.22	2.000%	488.40	9,148.62
12/01/2022	8,703.52	2.000%	445.10	9,148.62
03/01/2023	8,747.03	2.000%	401.58	9,148.61
06/01/2023	8,790.77	2.000%	357.85	9,148.62
09/01/2023	8,834.72	2.000%	313.89	9,148.61
12/01/2023	8,878.90	2.000%	269.72	9,148.62
03/01/2024	8,923.29	2.000%	225.32	9,148.61
06/01/2024	8,967.91	2.000%	180.71	9,148.62
09/01/2024	9,012.75	2.000%	135.87	9,148.62
12/01/2024	9,057.81	2.000%	90.80	9,148.61
03/01/2025	9,103.10	2.000%	45.52	9,148.62
<b>Total</b>	<b>\$602,000.00</b>	-	<b>\$129,889.30</b>	<b>\$731,889.30</b>

\*Plus \$811.82 one-percent administrative fee paid quarterly. Total fee paid over life of loan is \$64,945.60.

AR-1

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:

\_\_\_\_\_

BOND REGISTER

2.9

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$602,000	June 8, 2004

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

The Ohio Valley Bank Company  
  
Authorized Representative

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

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

05/11/04  
100424/00307

M0385038.1

**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

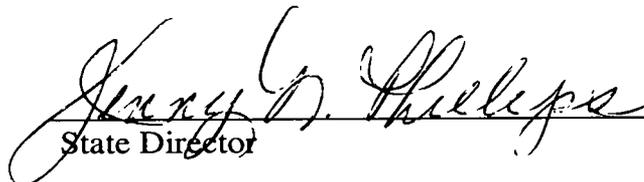
**MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)**

**CONSENT TO ISSUANCE OF PARITY BONDS**

The undersigned duly authorized representative of the United States of America, acting through the United States Department of Agriculture, Rural Development, Rural Utilities Service, the registered owner of the Prior Bonds, hereinafter defined and described, hereby (i) consents to the issuance of the Water Revenue Bonds, Series 2004, (West Virginia DWTRF Program) (the "Series 2004 A Bonds"), in the original aggregate principal amount of \$602,000, by Mason County Public Service District (the "Issuer"), under the terms of the resolutions authorizing the Series 2004 A Bonds (collectively, the "Resolutions"), on a parity with respect to liens, pledge and source of and security for payment with the issuer's Water Revenue Bonds, Series 1981; Water Revenue Bonds, Series 1987; Water Revenue Bonds, Series 1997 A; Water Revenue Bonds, Series 1999 A (United States Department of Agriculture); and Water Revenue Bonds, Series 2001 A (United States Department of Agriculture) (collectively, the "Prior Bonds"); (ii) waives any requirement 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 2004 A Bonds or the Resolution; and (iii) consents to any amendments made to the Prior Resolutions by the Resolution.

WITNESS my signature on this 8<sup>th</sup> day of June, 2004.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
RURAL DEVELOPMENT

  
State Director

[Http://www.rurdev.usda.gov/wv](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**

16



WEST VIRGINIA

**Water Development Authority**

Celebrating 30 Years of Service 1974 - 2004

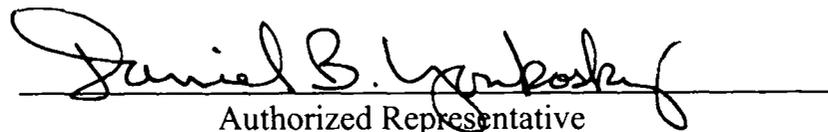
MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

CONSENT TO ISSUANCE OF PARITY BONDS

In reliance upon a certificate of the Issuer's 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 Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program) (the "Series 2004 A Bonds"), in the original aggregate principal amount of \$602,000, by Mason County Public Service District (the "Issuer"), under the terms of the resolutions authorizing the Series 2004 A Bonds, on a parity as to liens, pledge and source of and security for payment with the Issuer's Water Revenue Bonds, Series 1997 B, and Water Revenue Bonds, Series 2000 A (West Virginia DWTRF Program) (collectively, the "Prior Bonds").

WITNESS my signature on this 8<sup>th</sup> day of June, 2004.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
Authorized Representative

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.1

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. SAFE DRINKING WATER ACT
19. WETLANDS COVENANT
20. COUNTERPARTS

We, the undersigned CHAIRPERSON and the undersigned SECRETARY of the Public Service Board of Mason County Public Service District (the "Issuer") and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Mason County Public Service District Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), dated the date hereof (the "Bonds" or the "Series 2004 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning set forth in the Bond Resolution duly adopted by the Issuer on June 3, 2004, the Supplemental Resolution duly adopted by the Issuer on June 3, 2004 (collectively, the "Resolution"), and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), dated June 8, 2004 (the "Loan Agreement").

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 construction of the Project have been solicited 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 by the Issuer of the Loan Agreement. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Series 2004 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. 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 Prior Bonds have been met and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2004 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

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, 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; and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the orders of the Public Service Commission of West Virginia (the "PSC") entered on December 23, 2003, and January 20, 2004, in Case No.03-0824-PWD-PC-CN, granting 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 such orders has expired prior to the date hereof without any appeal having been filed. Such 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, 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 rates for the System, as approved by the PSC Order entered on December 23, 2003, in Case No. 03-0824-PWD-PC-CN, will become effective when the Project is substantially complete.

8. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Mason County Public Service District", and it is a public service district organized and existing under the laws of, and a public corporation and political subdivision of, the State of West Virginia in Mason County of said State. The governing body of the Issuer is its Board, consisting of three members, whose names and dates of termination of their current terms are as follows:

<u>Name</u>	<u>Date Of Termination Of Office</u>
Dorsel F. Keefer	August, 2004
William F. Hughes	August, 2008
Charles R. Lanier	August, 2006

The duly elected or appointed officers of the Board for 2004 are as follows:

Dorsel F. Keefer	-	Chairperson
Charles R. Lanier	-	Treasurer
Mary L. Smith	-	Secretary

The duly appointed and acting attorney for the Issuer is Casto & Casto, L.C., Point Pleasant, West Virginia. The duly appointed and acting PSC counsel for the Issuer is James V. Kelsh, Esquire, Charleston, West Virginia.

9. **LAND AND RIGHTS-OF-WAY:** All land in fee simple and all rights-of-way and easements necessary for the 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, and financing of the Project or the operation of 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 and 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 is a specimen of the Bond which, except as to execution and authentication, is identical in all respects with such Bond this day delivered to the Authority and being substantially in the form prescribed in the Resolution.

14. BOND PROCEEDS: On the date hereof, the Issuer received \$61,249 from the Authority and the BPH, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer 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. SAFE DRINKING WATER ACT: The Project as described in the Resolution complies with the Safe Drinking Water Act.

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 Mason County Public Service District on this 8<sup>th</sup> day of June, 2004.

[SEAL]

Signature

Official Title

Dorzel Kufny

Chairperson

Gay L. Smith

Secretary

Benny L. Lusk

Attorney

EXHIBIT A

See Specimen Bond (Tab No. 14).

06/01/04  
100424/00307

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.2

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Chairperson of the Public Service Board of Mason County Public Service District in Mason County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$602,000 Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), of the Issuer, dated June 8, 2004 (the "Bonds"), hereby certify as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Resolution duly adopted by the Issuer on June 3, 2004 (the "Bond Resolution"), authorizing the Bonds.

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

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on June 8, 2004, the date on which the Bonds are being physically delivered in exchange for 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.

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

5. The Bonds were sold on June 8, 2004, to the Authority, pursuant to a loan agreement dated June 8, 2004, by and between the Issuer and the Authority, on behalf of the BPH, for an aggregate purchase price of \$602,000 (100% of par), at which time, the Issuer

received \$61,249 from the Authority and the BPH, being the first advance of the principal amount of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying 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 of the Bonds and related costs.

7. 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. 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 shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Reserve Account 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 November, 2004. The acquisition and construction of the Project is expected to be completed by November, 2004.

8. The total cost of the Project is estimated at \$632,000. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Bonds	\$602,000
Issuer's Funds	<u>\$ 30,000</u>
Total Sources	<u>\$632,000</u>

USES

Costs of Project	\$621,800
Costs of Issuance	<u>\$ 10,200</u>
Total Uses	<u>\$632,000</u>

9. Pursuant to Article V of the Bond Resolution, the following special funds or accounts have been created (or continued pursuant to the Prior Resolutions):

- (1) Revenue Fund;
- (2) Depreciation Account;
- (3) Renewal and Replacement Fund;
- (4) Series 2004 A Bonds Construction Trust Fund;
- (5) Series 2004 A Bonds Sinking Fund; and
- (6) Series 2004 A Bonds Reserve Account.

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

(1) Bond proceeds in the amount of \$-0- will be deposited in the Series 2004 A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Bonds during acquisition and construction of the Project and for a period not to exceed six months following completion thereof.

(2) Bond proceeds in the amount of \$-0- will be deposited in the Series 2004 A Bonds Reserve Account.

(3) The balance of the proceeds of the Bonds will be deposited in the Series 2004 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Bonds and related costs.

11. Moneys held in the Series 2004 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2004 A Bonds Sinking Fund and Series 2004 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2004 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

12. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 5 months of the date hereof.

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

14. With the exception of the amount deposited in the Series 2004 A Bonds Sinking Fund for payment of interest, if any, on the Bonds and the amount deposited in the Series 2004 A Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 5 months from the date of issuance thereof.

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

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

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

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

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

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

21. The Bonds are not federally guaranteed.

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

23. The Issuer has either (a) funded the Series 2004 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2004 A Bonds Reserve Account which will be funded with equal

payments made on a monthly basis over a 10-year period until such Series 2004 A Bonds Reserve Account hold an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2004 A Bonds Reserve Account and the Series 2004 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

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

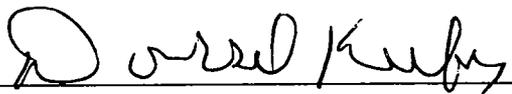
25. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

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

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

WITNESS my signature on this 8<sup>th</sup> day of June, 2004.

MASON COUNTY PUBLIC SERVICE DISTRICT

  
\_\_\_\_\_  
Chairperson

06/01/04  
100424/00307

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.3

CERTIFICATE OF SECRETARY  
AS TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly appointed Secretary of Mason County 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 Mason County Public Service District Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), 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 Mason County Creating and Enlarging the Issuer.
2. Orders of The County Commission of Mason 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. West Virginia Infrastructure and Jobs Development Council Approval Letter.
8. Loan Agreement.
9. Bond Resolution.
10. Supplemental Resolution.

11. Minutes of the Board Meeting on Adoption of Bond Resolution and Supplemental Resolution.
12. Affidavits of Publication regarding Notice of Borrowing and Notice of Meeting to Adopt Bond Resolution and Supplemental Resolution.
13. USDA Consent to Issuance of Parity Bonds.
14. WDA Consent to Issuance of Parity Bonds.
15. Environmental Health Services Permit.
16. Evidence of Insurance.



MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.4

CERTIFICATE OF CONSULTING ENGINEER

I, Manning Frymier, Registered Professional Engineer, West Virginia License No. 8497, of Cerrone Associates, Inc., Consulting Engineers, Wheeling, 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 Mason County Public Service District (the "Issuer"), to be constructed primarily in Mason County, West Virginia, which acquisition and construction are being permanently financed by the above-captioned bonds (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 8, 2004 (the "Resolution"), and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Bureau for Public Health (the "BPH"), dated June 8, 2004 (the "Loan Agreement").

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

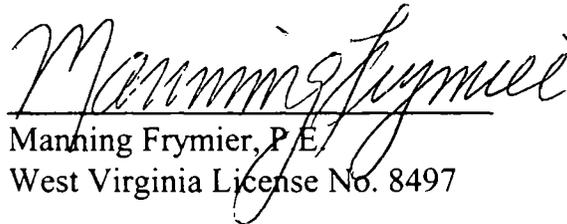
3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the BPH, and any change orders approved by the Issuer, the BPH and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 25 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, Casto & Casto, L.C., of even date herewith, 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 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 the Issuer's certified public accountant, Smith Cochran & Hicks, PLLC, of even date herewith, 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 BPH; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this 8<sup>th</sup> day of June, 2004.

[SEAL]

CERRONE ASSOCIATES, INC.

  
Manning Frymier, P.E.  
West Virginia License No. 8497

**MASON COUNTY PUBLIC SERVICE DISTRICT**

**SCHEDULE B - CAMP CONLEY WATER PROJECT**

Final Total Cost of Project, Sources of Funding and Cost of Financing

	Total	DWTRF	Mason County PSD
<b>A. Cost of Project</b>			
1. Construction	\$460,790.00	\$460,790.00	\$0.00
2. Engineering Fee			
a. Design	\$50,000.00	\$50,000.00	\$0.00
b. Inspection	\$38,000.00	\$38,000.00	\$0.00
c. Special Services	\$8,825.00	\$8,825.00	\$0.00
3. Legal	\$5,000.00	\$5,000.00	\$0.00
4. Administration	\$11,500.00	\$7,000.00	\$4,500.00
5. Sites and Other Lands	\$4,200.00	\$0.00	\$4,200.00
6. Contingency	\$35,360.00	\$22,185.00	\$13,175.00
7. Total of Lines 1 through 6	\$613,675.00	\$591,800.00	\$21,875.00
<b>B. Cost of Financing</b>			
8. Other Cost			
a. Bond Counsel	\$10,200.00	\$10,200.00	\$0.00
b. Accountant	\$8,125.00	\$0.00	\$8,125.00
c. Registrar	\$0.00	\$0.00	\$0.00
9. Total Cost of Financing	\$18,325.00	\$10,200.00	\$8,125.00
<b>Total Project Budget</b>	<b>\$632,000.00</b>	<b>\$602,000.00</b>	<b>\$30,000.00</b>

Dorel Kupus  
Governmental Agency

June 8, 2004  
Date:

Mammy Jymci  
Consulting Engineering

5/24/2004  
Date:



**Smith, Cochran & Hicks, P.L.L.C.**

**Certified Public Accountants**

Beckley Bridgeport Charleston Montgomery

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

June 8, 2004

**MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)**

Mason County Public Service District  
Point Pleasant, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

Ladies and Gentlemen:

We have reviewed the water rates of Mason County Public Service District (the "Issuer"), as approved by the order of the Public Service Commission of West Virginia, entered December 23, 2003, in Case No.03-0824-PWD-PC-CN, and the projected operating expenses and anticipated customer usage provided by Cerrone Associates, Inc., the consulting engineer of the Issuer. It is our 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 the payment of principal of and interest on the Issuer's Water Revenue Bonds, Series 1981, Water Revenue Bonds, Series 1987, Water Revenue Bonds, Series 1997 A, Water Revenue Bonds, Series 1997 B, Water Revenue Bonds, Series 1999 A (United States Department of Agriculture), Water Revenue Bonds, Series 2000A (West Virginia DWTRF Program), Water Revenue Bonds, Series 2001 A (United States Department of Agriculture) (collectively, the "Prior Bonds"), and Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program) (the "Series 2004 A Bonds").

It is further our opinion that 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 2004 A 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 2004 A Bonds, will 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 Prior Bonds and the Series 2004 A Bonds.

Very truly yours,

A handwritten signature in black ink, appearing to read "Todd F. Dingess". The signature is written in a cursive style with a large initial "T".

Todd F. Dingess, CPA

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.6

RECEIPT FOR BONDS

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 8<sup>th</sup> day of June, 2004, in Charleston, West Virginia, the Authority received the Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), of Mason County Public Service District (the "Issuer"), dated June 8, 2004, issued in the form of one bond, fully registered to the Authority, in the principal amount of \$602,000 and numbered AR-1 (the "Bonds").
2. At the time of 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 on this 8<sup>th</sup> day of June, 2004.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

  
\_\_\_\_\_  
Authorized Representative

05/07/04  
100424/00307

M0384197.1

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.7

RECEIPT FOR BOND PROCEEDS

The undersigned Chairperson of Mason County Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

On the 8<sup>th</sup> day of June, 2004, the Issuer received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as the original purchaser of the \$602,000 Mason County Public Service District Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), dated June 8, 2004 (the "Bonds"), of the sum of \$61,249, being a portion of the principal amount of the Bonds. The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer from time to time as construction proceeds to completion.

WITNESS my signature on this 8<sup>th</sup> day of June, 2004.

MASON COUNTY PUBLIC SERVICE DISTRICT

  
\_\_\_\_\_  
Chairperson

06/01/04  
100424/00307

M0384198.1

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.8

REQUEST AND AUTHORIZATION TO  
AUTHENTICATE AND DELIVER BONDS

The Ohio Valley Bank Company, as Registrar  
Point Pleasant, West Virginia

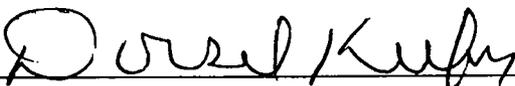
Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$602,000 Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), in the form of one bond, numbered AR-1, dated June 8, 2004 (the "Bonds"), of Mason County 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 3, 2004.

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

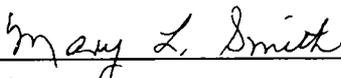
WITNESS my signature on this 8<sup>th</sup> day of June, 2004.

MASON COUNTY PUBLIC SERVICE DISTRICT

  
\_\_\_\_\_  
Chairperson

(SEAL)

Attest:

  
\_\_\_\_\_  
Secretary

05/11/04  
100424/00307

M0384199.1

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

3.9

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 8<sup>th</sup> day of June, 2004, by and between MASON COUNTY PUBLIC SERVICE DISTRICT, a public corporation (the "Issuer"), and THE OHIO VALLEY BANK COMPANY, Point Pleasant, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$602,000 Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program) (the "Bonds"), in the form of one bond, in fully registered form, pursuant to a Bond Resolution and a Supplemental Resolution adopted by the Issuer on June 3, 2004 (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 for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the 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:

Mason County Public Service District  
101 Camden Avenue  
Point Pleasant, West Virginia 25550  
Attention: Chairperson

REGISTRAR:

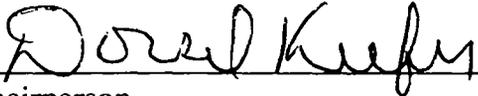
The Ohio Valley Bank Company  
328 Viand Street  
Point Pleasant, WV 25550  
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

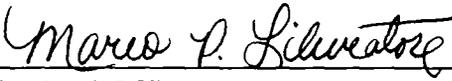
8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Resolution.

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 above-written.

MASON COUNTY PUBLIC SERVICE DISTRICT

  
\_\_\_\_\_  
Chairperson

THE OHIO VALLEY BANK COMPANY, as Registrar

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

05/11/04  
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EXHIBIT A

See Bond Resolution (Tab No. 10)

See Supplemental Resolution (Tab No. 11)

MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

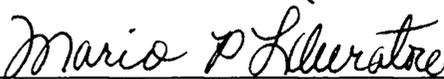
3.10

CERTIFICATE OF REGISTRATION OF BONDS

THE OHIO VALLEY BANK COMPANY, Point Pleasant, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), of Mason County Public Service District (the "Issuer"), dated June 8, 2004, in the principal amount of \$602,000, 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 8<sup>th</sup> day of June, 2004.

THE OHIO VALLEY BANK COMPANY,  
as Registrar

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

05/11/04  
100424/00307

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MASON COUNTY PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA DWTRF PROGRAM)

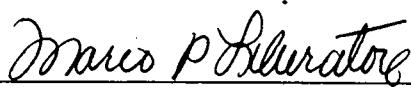
3.11

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

THE OHIO VALLEY BANK COMPANY, Point Pleasant, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution and a Supplemental Resolution adopted by Mason County Public Service District (the "Issuer") on June 3, 2004 (collectively, the "Resolution"), authorizing the issuance of the Issuer's Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), in the aggregate principal amount of \$602,000, dated June 8, 2004, and agrees to serve as Depository Bank, all as set forth in the Resolution.

WITNESS my signature on this 8<sup>th</sup> day of June, 2004.

THE OHIO VALLEY BANK COMPANY

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

05/11/04  
100424/00307

M0385039.1

**WV MUNICIPAL BOND COMMISSION**

Suite 500

8 Capitol Street, Charleston, WV 25301

(304) 558-3971

3.12

**NEW ISSUE REPORT FORM**

Date of Report: June 8, 2004

ISSUE: Mason County Public Service District Water Revenue Bonds, Series 2004 A  
(West Virginia DWTRF Program)

ADDRESS: 101 Camden Avenue, Point Pleasant, WV 25550 COUNTY: Mason

PURPOSE OF ISSUE: New Money  Refunding  Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: June 8, 2004 CLOSING DATE: June 8, 2004

ISSUE AMOUNT: \$602,000 RATE: 2%; Administrative Fee: 1%

1st DEBT SERVICE DUE: June 1, 2005 1st PRINCIPAL DUE: June 1, 2005

1st DEBT SERVICE AMOUNT: \$9,148.62 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: The Ohio Valley Bank Company ESCROW TRUSTEE: \_\_\_\_\_

Contact Person: Mario P. Liberatore Contact Person: \_\_\_\_\_

Phone: (304) 675-8660 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: West Virginia Bureau for Public Health

Contact Person: Randy Grinstead Contact Person: Walter Ivey, P.E.

Position: Manager Function: Manager, Infrastructure & Capacity Development

Phone: (304) 675-6399 Phone: (304) 558-2981

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: \_\_\_\_\_

FOR MUNICIPAL BOND COMMISSION USE ONLY:

Documents Required: \_\_\_\_\_

Transfers Required: \_\_\_\_\_

# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

815 QUARRIER STREET, SUITE 418

CHARLESTON, WEST VIRGINIA 25301-2616

TELEPHONE 304-558-2981

### PERMIT

(Water)  
PROJECT: Camp Conley Water Project PERMIT NO.: 15,827  
LOCATION: Camp Conley COUNTY: Mason DATE: 10-27-2003

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Mason County Public Service District  
101 Camden Avenue  
Point Pleasant, West Virginia 25550**

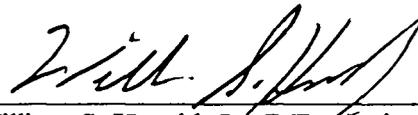
is hereby granted approval to: amend and modify Permit No. 15,024, issued September 19, 2001 for the Camp Conley water project. The permit will be extended to October 27, 2005.

**NOTE: This permit is contingent upon all unchanged conditions and requirements of Permit No. 15,024 remaining in effect.**

The Environmental Engineering Division of the St. Albans District Office (304-722-0611) 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

pc: Cerrone Associates, Inc.  
City of Point Pleasant  
James W. Ellars, P.E., PSC-Engineering Division  
Amy Swann, Public Service Commission  
Mason County Health Department  
OEHS-EED St. Albans District Office

CERTIFICATE OF LIABILITY INSURANCE

ADDITIONAL INSURED: MASON COUNTY PSD CAMP CONLEY DIVISION  
101 CAMDEN AVENUE  
POINT PLEASANT, WV 25550

CERTIFICATE NO: L 2750 - Nov 16, 1997

This certifies that the insured named above is an Additional Insured for the Coverage indicated below under General Liability Policy GL 6124043 and Automobile Policy CA 6612133 issued to the State of West Virginia by NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA.

COVERAGE PERIOD: Jul 1, 2003 to Jul 1, 2004 12:01 a.m. Eastern Time

COVERAGE AFFORDED: Comprehensive General Liability Insurance  
Personal Injury Liability Insurance  
Professional Liability Insurance  
Stop Gap Liability Insurance  
Wrongful Act Liability Coverage  
Comprehensive Auto Liability Coverage  
Auto Physical Damage Insurance  
Garagekeepers Insurance

LIMIT OF LIABILITY: \$1,000,000 each occurrence\*  
\*For all coverages combined. This limit is not increased if a claim is insured under more than one coverage or if claim is made against more than one insured.

SPECIAL LIMITS: The auto physical damage limit is the actual cash value of each vehicle subject to a deductible of \$1,000.

CLAIM REPORTING: Claims should be reported to:  
Claim Manager  
West Virginia Board of Risk & Insurance Management  
90 MacCorkle Avenue S.W.Suite 203  
South Charleston, West Virginia 25303

Claims Made Prior Acts Date: 11/16/1997

THE INSURANCE EVIDENCED BY THIS CERTIFICATE IS SUBJECT TO ALL OF THE TERMS, CONDITIONS, EXCLUSIONS AND DEFINITIONS IN THE POLICIES. IT IS A CONDITION PRECEDENT OF COVERAGE UNDER THE POLICIES THAT THE ADDITIONAL INSURED DOES NOT WAIVE ANY STATUTORY OR COMMON LAW IMMUNITY CONFERRED UPON IT.

BY: Bri Mills  
AUTHORIZED REPRESENTATIVE

DATED: November 20, 2003

AGENT OF RECORD: JIM LIVELY INSURANCE INC.  
POINT PLEASANT  
PO BOX 36  
POINT PLEASANT, WV 25550



CLOSING MEMORANDUM

3.15

**To:** Barbara Meadows  
Walter Ivey  
Sara Boardman  
David Nibert  
Samme Gee

**From:** Francesca Tan

**Date:** June 8, 2004

**Re:** Mason County Public Service District Water Revenue Bonds,  
Series 2004 A (West Virginia DWTRF Program)

---

**1. DISBURSEMENTS TO DISTRICT**

Payor: West Virginia Bureau for Public Health  
Source: Series 2004 A Bonds Proceeds  
Amount: \$61,249  
Date: June 8, 2004  
Form: Wire Transfer  
Payee: Mason County Public Service District  
Bank: The Ohio Valley Bank Company, Point Pleasant,  
West Virginia  
Routing No.: 044204370  
Account No.: 0529680  
Account: Series 2004 A Bonds Construction Trust Fund

06/01/04  
100424/00307

M0385041.1

June 8, 2004

Mason County Public Service District  
Point Pleasant, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: Mason County Public Service District Water Revenue Bonds,  
Series 2004 A (West Virginia DWTRF Program)

Ladies and Gentlemen:

We have served as bond counsel to Mason County Public Service District (the "Issuer") in connection with the issuance of its Water Revenue Bonds, Series 2004 A (West Virginia DWTRF Program), 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 8, 2004, 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 Bureau for Public Health (the "BPH"), 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 \$602,000, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2005, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds bear interest at the rate of 2% per annum and are subject to the Administrative Fee equal to 1% of the principal of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

Mason County Public Service District  
West Virginia Bureau for Public Health  
West Virginia Water Development Authority  
June 8, 2004

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 16, Article 13C of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying 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 3, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on June 3, 2004 (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.

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 a 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 BPH and cannot be amended so as to affect adversely the rights of the Authority and the BPH or diminish the obligations of the Issuer without the written consent of the Authority and the BPH.

Mason County Public Service District  
West Virginia Bureau for Public Health  
West Virginia Water Development Authority  
June 8, 2004

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 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 Prior Bonds, all in accordance with the terms of the Bonds and the Resolution.

6. 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.

7. 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 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,



05/26/04  
100424/00307

M0384208.1

**CASTO & CASTO, L.C.**  
**214 Fourth St.**  
**Pt. Pleasant, WV 25550**

*Carroll W. Casto (1925-1995)*

*Barry L. Casto*

*Tel. (304) 675-2050*

*Fax. (304) 675-2003*

*June 8, 2004*

Mason County Public Service District  
Point Pleasant, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

Jackson Kelly PLLC  
Charleston, WV

Re: Mason County Public Service District Water Revenue Bond,  
Series 2004 A ( West Virginia DWTRF Program)

Ladies and Gentlemen:

I am counsel to Mason County Public Service District (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned Bonds of the Issuer (the "Bonds"), a loan agreement for the Bonds, dated June 8, 2004, including all schedule 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 Bureau for Public Health (the "BPH"), a Bond Resolution duly adopted by the Public Service Board of the Issuer (the "Board"), on June 3, 2004, as supplemented by a Supplemental Resolution duly adopted on June 3, 2004 (collectively, the "Resolution"), orders of the County Commission of Mason County relating to the Issuer and the appointment of members of the Board and other documents relating to the Bonds and the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Loan Agreement and the Resolution when used herein.

I am of the opinion that:

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

2. The members and officers of the Board have been duly and properly appointed and elected, have taken the requisite oaths and are thereby authorized to act on behalf of the Issuer in their respective capacities.

3. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming the authorization, execution and delivery by the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

4. The Resolution has been duly adopted by the Board and is in full force and effect.

5. The execution and delivery of the Bonds and the Loans Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Resolution, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any 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, approval, orders and certificates from The County Commission of Mason County, the BPH and the West Virginia Infrastructure and Job Development Council. The Issuer has taken all actions required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges.

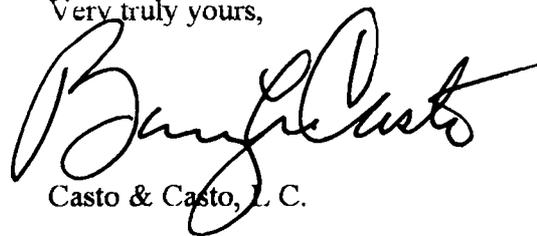
7. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transaction contemplated by the Loan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

Mason County Public Service District  
West Virginia Bureau for Public Health  
West Virginia Water Development Authority  
Jackson Kelly PLLC  
June 8, 2004  
Page 3

8. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Resolution and the Loan Agreement; (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

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

Very truly yours,



Casto & Casto, L.C.

**CASTO & CASTO, L.C.**  
**214 Fourth St.**  
**Pt. Pleasant, WV 25550**

*Carroll W. Casto (1925-1995)*  
*Barry L. Casto*

*Tel. (304) 675-2050*  
*Fax. (304) 675-2003*

*June 8, 2004*

Mason County Public Service District  
Point Pleasant, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

Jackson Kelly PLLC  
Charleston, WV

Re: Final Title Opinion for Mason County Public Service District

Ladies and Gentlemen:

I am counsel to Mason County Public Service District (the "Issuer") in connection with a proposed project to construct certain improvements and extensions to the existing public water facilities of the Issuer (the "Project"). I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Bureau for Public Health 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 construct, operate 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.
3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Cerrone Associates, Inc., the consulting engineers for the Project.
4. I have examined the records on the file in the Office of the Clerk of The County Commission of Mason 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 of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and

Mason County Public Service District  
West Virginia Bureau of Public Health  
West Virginia Water Development Authority  
Jackson Kelly PLLC  
June 8, 2004  
Page 2

maintenance for the life of the Project.

5. 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 Mason County to protect the legal title to interest of the Issuer.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bryan Casto". The signature is written in a cursive, flowing style with a large initial "B".

Casto & Casto, L C.

LAW OFFICES  
ROBERT R. RODECKER  
BB&T SQUARE  
300 SUMMERS STREET, SUITE 1230  
POST OFFICE BOX 3713  
CHARLESTON, WEST VIRGINIA 25337

ROBERT R. RODECKER  
RODECKER@MINDSPRING.COM

JAMES V. KELSH  
OF COUNSEL  
KELSHLAW@YAHOO.COM

AREA CODE 304  
343-1654  
FACSIMILE  
343-1657

June 8, 2004

Mason County Public Service District  
Point Pleasant, West Virginia

West Virginia Bureau for Public Health  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Jackson Kelly PLLC  
Charleston, West Virginia

Re: Mason County Public Service District  
Water Revenue Bonds, Series 2004A  
(West Virginia DWTRF Program)

Ladies and Gentlemen:

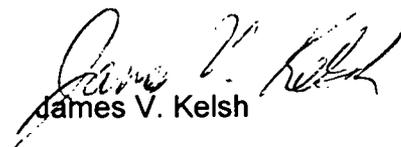
This law firm serves as counsel to Mason County Public Service District (the "Issuer") in connection with certain matters before the Public Service Commission of West Virginia (the "PSC"). As such counsel, I am of the opinion that:

1. The Issuer has received the PSC orders entered on December 23, 2003, and January 20, 2004, in Case No. 03-0824-PWD-PC-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 such orders has expired prior to the date hereof without any appeal having been filed. Such orders remain in full force and effect.

2. 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 Virginia, 1931, as amended, and has duly complied with the provision thereof.

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

Very truly yours,

  
James V. Kelsh

JVK/nal  
(masonpsd\campconley\2004\bondltr)