

\$579,740  
OAKLAND PUBLIC SERVICE DISTRICT, WEST VIRGINIA  
WATER REVENUE BOND  
SERIES 1995

DISTRIBUTION LIST

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United National Center  
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United National Bank  
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OAKLAND PUBLIC SERVICE DISTRICT

\$579,740 Water Revenue Bonds, Series 1995

Closing: June 28, 1995

TRANSCRIPT LIST

1. Grant Letter for Small Cities Block Grant
2. County Commission Orders regarding Creation of Oakland Public Service District (the "District")
3. County Commission Orders regarding Appointment of Board Members
4. Oaths of Office of Board Members
5. Rules of Procedure
6. Bond Resolution adopted on June 21, 1995
7. Notice and Minutes of Meeting on Adoption of Bond Resolution
8. Affidavit of Publication of Notice of Meeting
9. Loan Agreement between West Virginia Water Development Authority and the District
10. Combined Certificate of the District and its Counsel on:
  1. Award of Bonds
  2. No Litigation
  3. Governmental Approvals
  4. No Adverse Financial Change; Indebtedness
  5. Signatures, Etc.
  6. Certification of Copies of Documents
  7. Incumbency and Official Name
  8. Delivery and Payment
  9. Land and Rights of Way
  10. Meetings, Etc.
  11. Contractors' Insurance, Etc.
  12. Loan Agreement
  13. Conflicts of Interest
  14. Grants
  15. Terms
  16. No Federal Guaranty
  17. IRS Information Return
  18. Specimen Bonds
11. Engineer's Certificate

12. Rate Resolution approved by the District and Tariff
13. Public Service Commission Certificate of Convenience and Necessity
14. Wheeling National Bank's Consent to Issuance of Parity Bonds
15. Certified Public Accountant's Certificate
16. Specimen Bond
17. Registrar's Agreement
18. Acceptance of Duties of Depository Bank
19. Acceptance of Duties of Registrar
20. Request and Authorization as to Authentication and Delivery of the Bond.
21. Certificate of Registration of Bond
22. Notice of Delivery of Bond
23. Health Permit
24. Cross-Receipt for Bond and Bond Proceeds
25. Financing Statements
26. Non-Arbitrage Certificate
27. Issuer's Counsel Opinion
28. Non-Arbitrage Opinion
29. Bond Counsel Opinion
30. IRS Form 8038-G
31. Municipal Bond Commission New Issue Report Form
32. Certified Copy of Statutory Authority

The closing of the sale of \$579,740 in aggregate principal amount of the Oakland Public Service District, Water Revenue Bonds, Series 1995, will take place at the offices of the West Virginia Water Development Authority, 1201 Dunbar Avenue, Dunbar, West Virginia, at 1:00 p.m., Eastern Time, on June 28, 1995. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document which references an Exhibit or Schedule to be attached thereto shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.

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STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

GASTON CAPERTON  
GOVERNOR

September 4, 1992

The Honorable John Sorrenti  
President  
Hancock County Commission  
102 Court Street  
New Cumberland, West Virginia 26047

Dear Commissioner Sorrenti:

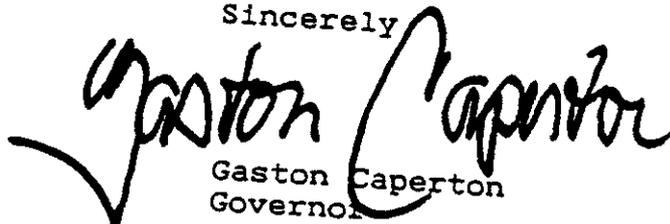
On November 19, 1991, the Hancock County Commission was awarded a Small Cities Block Grant in the amount of \$750,000 for the construction of the Hudson Hill and North Fork Road water project.

In order to most effectively utilize the limited dollars available, \$375,000 was committed from our fiscal year 1991 Small Cities allocation with an additional commitment to evaluate your progress and provide the remaining \$375,000 from our future funding.

Since the progress report indicates that you will not need the additional \$375,000 until the next program year, we will delay the award of second-half funds until such time as they are needed and will roll the \$375,000 commitment into the fiscal year 1993 SCBG allotment.

If you have any questions, please do not hesitate to contact Debbie Legg of my Community Development Division at 558-4010.

Sincerely

  
Gaston Caperton  
Governor

GC:dls



STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

GASTON CAPERTON  
GOVERNOR

July 26, 1993

The Honorable David O. Miller  
President  
Hancock County Commission  
102 Court Street  
New Cumberland, West Virginia 26047

Dear Commissioner Miller:

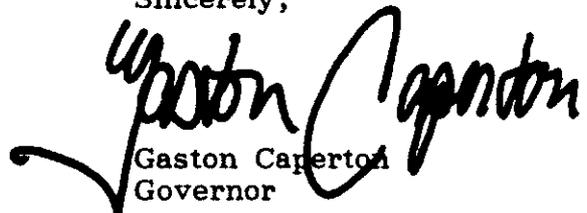
On November 19, 1991, the Hancock County Commission received a commitment of \$750,000 in Small Cities Block Grant (SCBG) funds for the Hudson Hill/Northfork Road water line extension.

The SCBG award was based upon your immediate need for funds; and, therefore, only \$375,000 was made available from the FY1991 allocation, with a commitment to evaluate your progress and provide the remaining funding from future allocations.

Based upon the Hancock County Commission's ability to proceed with this worthwhile community development project, I am committing the remaining \$375,000 from the FY1993 Small Cities allocation. Your existing SCBG contract will be amended to include the additional funds.

It is with great pleasure that I am able to work with you to make this improvement a reality.

Sincerely,

  
Gaston Caperton  
Governor

GC:dls

cc: ✓ Region XI

RECEIVED  
JUL 28 1993

B. H. J. PLANNING COMMISSION



IN THE COUNTY COURT OF HANCOCK COUNTY, WEST VIRGINIA

BE IT REMEMBERED, that Heretofore, to-wit, at a regular meeting of said County Court, held at the Courthouse of said County, on the 2nd day of October, 1967, among others, the following proceedings were had, to-wit:

ORDER CREATING THE OAKLAND )  
PUBLIC SERVICE DISTRICT, )  
HANCOCK COUNTY, WEST VIRGINIA )

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This 2nd day of October, 1967, pursuant to a legal notice published in the Hancock County Courier, a newspaper of general circulation in Hancock County, West Virginia, on the 14th day of September, 1967, that a hearing would be held regarding the creation of the Oakland Public Service District, the Hancock County Court considered the petition requesting the creation for water service of the Oakland Public Service District as shown on the map filed herewith and described as follows:

All that certain land situate in Clay and Butler Districts, Hancock County, West Virginia, and more particularly described as follows: Beginning at the point where the north line of King's Creek Road intersects with the east line of West Virginia State Route 2; thence along the east line of West Virginia State Route 2 in a northerly direction to the point where Ballantine Hill Road intersects with said highway; thence along the south side of Ballantine Hill Road in an easterly direction to and along Bell Hill Road and Chapman Road; thence in a southerly direction along Ross Road; thence in an easterly direction along Shreeves Road unto the Pennsylvania State Line; thence in a southerly direction along the Pennsylvania State Line to the point where said line intersects with King's Creek Road; thence along the north boundary of King's Creek Road to the place of beginning.

Several residents of the above area appeared and expressed their views regarding the petition, and there being no objection to the creation of a public service district for water service in said area, the Court is of the opinion that said action will be conducive to the preservation of public health, comfort, and convenience of such area and doth hereby order that and doth create the Oakland Public Service District for the purpose of water services in accordance with the boundaries described above.

ALL OF WHICH is ACCORDINGLY ADJUDGED and ORDERED.

ENTER

Hancock County Court

By *Jack Evans*  
President



N O T I C E

TO ALL RESIDENTS in and near the areas of Hudson Hill, Sun Valley and Wylie Ridge (also known as Swearingen Hill) in Butler and Clay Districts, Hancock County, West Virginia:

On the 9<sup>th</sup> day of September, 1974, at 4:15 o'clock P.M., a hearing will be held before the County Court of Hancock County, West Virginia, for the purpose of amending the Order of said Court, entered the 2nd day of October, 1967, amending said Order to enlarge the purposes of the Oakland Public Service District, to enable the latter district to collect, treat, purify or dispose of liquid or solid wastes, sewage or industrial wastes, as contemplated by Chapter 16, Article 13A, Section 1 and 2, as amended, of the West Virginia Code. The territorial limits of the Oakland Public Service District are more particularly bounded and described as follows:

All that certain land situate in Clay and Butler Districts, Hancock County, West Virginia, and more particularly described as follows: Beginning at the point where the north line of King's Creek Road intersects with the east line of West Virginia State Route 2; thence along the east line of West Virginia State Route 2 in a northerly direction to the point where Ballantine Hill Road intersects with said highway; thence along the south side of Ballantine Hill Road in an easterly direction to and along Bell Hill Road and Chapman Road; thence in a southerly direction along Ross Road; thence in an easterly direction along Shreeves Road unto the Pennsylvania State Line; thence in a southerly direction along the Pennsylvania State Line to the point where said line intersects with King's Creek Road; thence along the north boundary of King's Creek Road to the place of beginning.

At which time you may appear to be heard, for or against the enlargement of the purposes for said district.

Dated this 19<sup>th</sup> day  
of August, 1974.

HANCOCK COUNTY COURT

BY

*Joseph Manning*  
President

PUBLISH AUGUST 23, 1974  
BILL: OAKLAND PUBLIC SERVICE DISTRICT

LEONARD J. TOST  
Attorney at Law  
3308 Main Street  
Weirton, West Virginia 26062



Executed the within ~~summons and complaint~~ <sup>Notice</sup> within Hancock County, West Virginia this 23rd day of August 1974 by delivering a true copy thereof in writing to the within named

By posting a copy of the same to the front door of his usual place of abode ~~the Hancock County Courthouse~~ the Hancock County Courthouse

in person  
Frank A. Rocchio  
Sheriff Hancock County  
By T. Wansick His Deputy

SHERIFF'S RETURN PERSONAL

Executed the within ~~summons and complaint~~ <sup>notice</sup> within Hancock County, West Virginia this 23rd day of August 1974 by delivering a true copy thereof in writing to the within named

By posting a copy of the same to the front door of his usual place of abode ~~the Oakland Vol. Fire Dept.~~ the Oakland Vol. Fire Dept.

in person  
Frank A. Rocchio  
Sheriff Hancock County  
By T. Wansick His Deputy

Executed the within ~~summons and complaint~~ <sup>notice</sup> within Hancock County, West Virginia this 23rd day of August 1974 by delivering a true copy thereof in writing to the within named

By posting a copy of the same to the front door of his usual place of abode ~~the Sun Valley Grocery~~ the Sun Valley Grocery

in person  
Frank A. Rocchio  
Sheriff Hancock County  
By T. Wansick His Deputy

SHERIFF'S RETURN PERSONAL

Executed the within ~~summons and complaint~~ <sup>notice</sup> within Hancock County, West Virginia this 23rd day of August 1974 by delivering a true copy thereof in writing to the within named

By posting a copy of the same to the front door of his usual place of abode ~~the Square Dance and Western Shop~~ the Square Dance and Western Shop

in person  
Frank A. Rocchio  
Sheriff Hancock County  
By T. Wansick His Deputy

SHERIFF'S RETURN PERSONAL

Executed the within ~~summons and complaint~~ <sup>notice</sup> within Hancock County, West Virginia this 23rd day of August 1974 by delivering a true copy thereof in writing to the within named

By posting a copy of the same to the front door of his usual place of abode ~~the Sutton's Oak Lane Service Station~~ Sutton's Oak Lane Service Station

in person  
Frank A. Rocchio  
Sheriff Hancock County  
By T. Wansick His Deputy

SHERIFF'S RETURN PERSONAL

Executed the within ~~summons and complaint~~ <sup>Notice</sup> within Hancock County, West Virginia, this 23rd day of August 1974 by delivering a true copy thereof in writing to the within named posting a copy of the same to the front door of his usual place of abode.

OAKLAND PRESBYTERIAN CHURCH

in person  
Frank A. Rocchio  
Sheriff Hancock County  
By C. B. Grant His Deputy



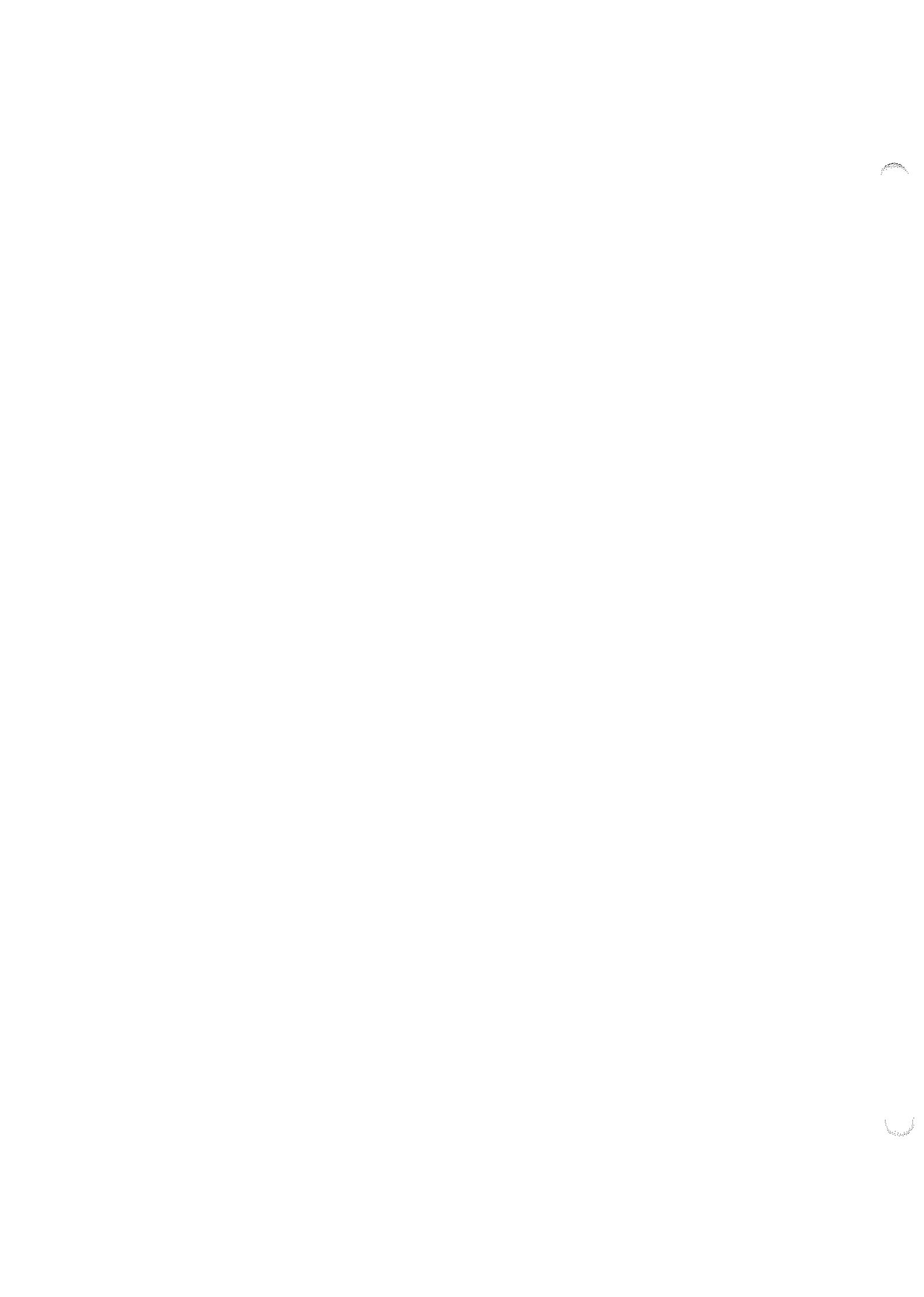
IN THE COUNTY COURT OF HANCOCK COUNTY, WEST VIRGINIA.

BE IT REMEMBERED, that Heretofore, to-wit, at a regular meeting of the County Court of Hancock County, West Virginia, held at the Court House of said County, on the 19th day of August, 1974, among others, the following proceedings were had, to-wit:

ORDER AMENDING THE ORDER OF THIS COURT)  
ENTERED THE 2nd DAY OF OCTOBER, 1967, )  
AMENDING THE ORDER OF OCTOBER 2, 1967, )  
TO ENLARGE THE PURPOSE OF THE OAKLAND )  
PUBLIC SERVICE DISTRICT TO ENABLE THE )  
LATTER DISTRICT TO COLLECT, TREAT, )  
PURIFY OR DISPOSE OF LIQUID OR SOLID )  
WASTES, SEWAGE OR INDUSTRIAL WASTES, )  
AS CONTEMPLATED BY CHAPTER 16, ARTICLE )  
13A, SECTIONS 1 and 2, AS AMENDED, OF )  
THE WEST VIRGINIA CODE. )

On this 19th day of August, 1974, the County Court of Hancock County, West Virginia, upon its own motion by order duly adopted, proposes to amend its Order of October 2, 1967 (the Order of October 2, 1967, having provided for the creation of the Oakland Public Service District) amending said Order to enlarge the purposes of the Oakland Public Service District to enable the latter to collect, treat, purify or dispose of liquid or solid wastes, sewage or industrial wastes, as contemplated by Chapter 16, Article 13A, Sections 1 and 2, as amended, of the West Virginia Code. The territorial limits of the Oakland Public Service District are more particularly bounded and described as follows:

All that certain land situate in Clay and Butler Districts, Hancock County, West Virginia, and more particularly described as follows: Beginning at the point where the north line of King's Creek Road intersects with the east line of West Virginia State Route 2; thence along the east line of West Virginia State Route 2 in a northerly direction to the point where Ballantine Hill Road intersects with said highway; thence along the south side of Ballantine Hill Road in an easterly direction to and along Bell Hill Road and Chapman Road; thence in a southerly direction along Ross Road; thence in an easterly direction along Shreeves Road unto the Pennsylvania State Line; thence in a southerly direction along the Pennsylvania State Line to the point where said line intersects with King's Creek Road; thence along the north boundary of King's Creek Road to the place of beginning.



IT IS, THEREFORE, ACCORDINGLY ADJUDGED and ORDERED that there shall be a hearing at the Hancock County Court House in New Cumberland, Hancock County, West Virginia, on the 9<sup>th</sup> day of September, 1974, at 4:15 o'clock P.M., in regard to the enlargement of the purposes of the said public service district, which hearing shall be no more than forty (40) days, nor less than twenty (20) days from the date of the entry of this Order, the date of the entry of this Order being the 19<sup>th</sup> day of August, 1974.

AND IT IS FURTHER ADJUDGED and ORDERED that the Clerk of the County Court of Hancock County, West Virginia, shall cause Notice of such hearing, and the time and place thereof, said Notice to set forth the purpose of said hearing, and shall contain a description of the Oakland Public Service District.

IT IS FURTHER ADJUDGED and ORDERED that said Notice be given by publication, at least once in a newspaper of general circulation, published in Hancock County, West Virginia, at least ten (10) days prior to the date of said hearing. It is further ADJUDGED and ORDERED that the costs of the publication of said Notice be paid by the Oakland Public Service District. It is further ADJUDGED and ORDERED that the Clerk of the County Court of Hancock County, West Virginia, post in at least five (5) conspicuous places within the territorial confines of the Oakland 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 (10) days before said hearing.

All persons residing in and owning, or having any interest in property situate within the confines of said Oakland Public Service District, shall have an opportunity to be heard, for or against, the enlargement of the purposes of said District.

ALL OF WHICH IS ACCORDINGLY ADJUDGED and ORDERED.

ENTER THIS THE 19th DAY OF AUGUST, 1974.

HANCOCK COUNTY COURT

BY Joseph McCombs  
President

LEONARD J. TOST  
Attorney at Law  
3308 Main Street  
Weirton, West Virginia 26062



IN THE COUNTY COURT OF HANCOCK COUNTY, WEST VIRGINIA

BE IT REMEMBERED, that at a regular meeting of said County Court, held at the Court House of said County, on the 9th day of September, 1974, among others, the following proceedings were had, to-wit:

ORDER AMENDING THE ORDER OF THIS COURT)  
ENTERED THE 2nd DAY OF OCTOBER, 1967, )  
AMENDING THE ORDER OF OCTOBER, 1967, )  
TO ENLARGE THE PURPOSE OF THE OAKLAND )  
PUBLIC SERVICE DISTRICT TO ENABLE THE )  
LATTER DISTRICT TO COLLECT, TREAT, )  
PURIFY OR DISPOSE OF LIQUID OR SOLID )  
WASTES, SEWAGE OR INDUSTRIAL WASTES, )  
AS CONTEMPLATED BY CHAPTER 16, ARTICLE )  
13A, SECTIONS 1 and 2, AS AMENDED, OF )  
THE WEST VIRGINIA CODE. )

On the 9th day of September, 1974, appeared Leonard J. Tost, counsel for the Oakland Public Service District, and tendered to said Court a certificate of publication executed on behalf of the publisher of the Weirton Daily Times, a newspaper of general circulation in Hancock County, West Virginia, wherein said publication notice was given of the time, date and place of this meeting; said notice having been published in the Weirton Daily Times the 23rd day of August, 1974; counsel did further tender for filing a duplicate original of said notice with six (6) separate returns of the Sheriff of Hancock County, West Virginia, endorsed thereon, evidencing the posting of said notice upon the front door of the Hancock County Court House as well as the posting of said notice at five (5) different conspicuous places situated within the territorial confines of the Oakland Public Service District, the posting by the Sheriff having been done the 23rd day of August, 1974, all of which was done pursuant to the Order and direction of this Court made and entered therein the 19th day of August, 1974.

THEREFORE, it is ADJUDGED and ORDERED that said certification of publication as well as the duplicate original of said notice with the returns of the Sheriff of Hancock County, West Virginia endorsed thereon, both of which set forth

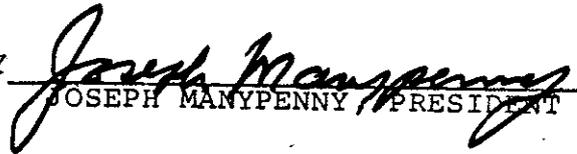


the time, date and place of the meeting be and the same are,  
accordingly, filed.

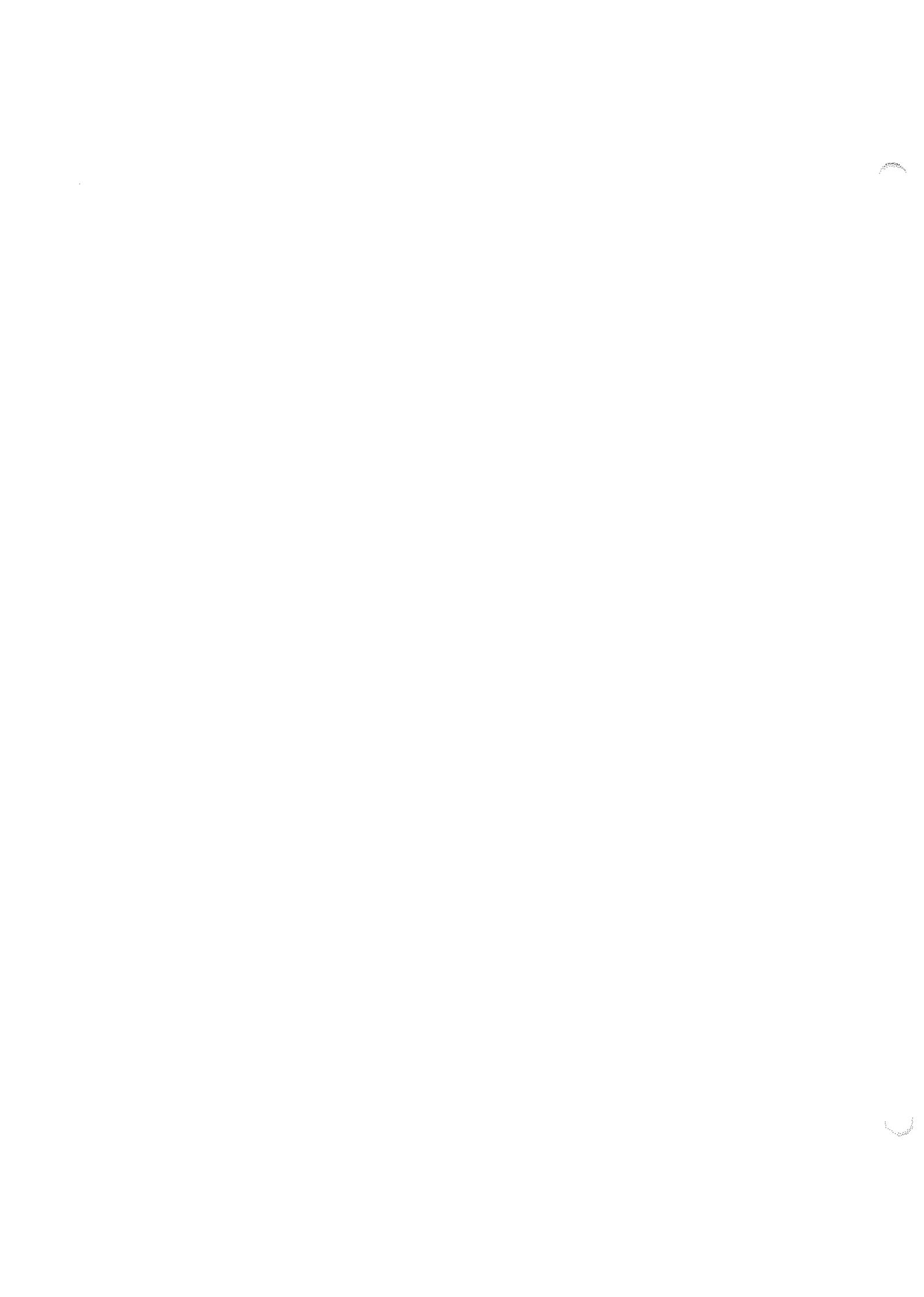
ENTER this 9th day of September, 1974.

HANCOCK COUNTY COURT

BY

  
JOSEPH MANYPENNY, PRESIDENT

LEONARD J. TOST  
Attorney at Law  
3308 Main Street  
Weirton, West Virginia 26062



IN THE COUNTY COURT OF HANCOCK COUNTY, WEST VIRGINIA

BE IT REMEMBERED, that at a regular meeting of said County Court, held at the Court House of said County, on the 9th day of September, 1974, among others, the following proceedings were had, to-wit:

ORDER AMENDING THE ORDER OF THIS COURT)  
ENTERED THE 2nd DAY OF OCTOBER, 1967, )  
AMENDING THE ORDER OF OCTOBER 2, 1967, )  
TO ENLARGE THE PURPOSE OF THE OAKLAND )  
PUBLIC SERVICE DISTRICT TO ENABLE THE )  
LATTER DISTRICT TO COLLECT, TREAT, )  
PURIFY OR DISPOSE OF LIQUID OR SOLID )  
WASTES, SEWAGE OR INDUSTRIAL WASTES, )  
AS CONTEMPLATED BY CHAPTER 16, ARTICLE )  
13A, SECTIONS 1 and 2, AS AMENDED, OF )  
THE WEST VIRGINIA CODE. )

On the 9th day of September, 1974, pursuant to a legal notice published in the Weirton Daily Times, on the 23rd day of August, 1974, and further pursuant to said notice being posted in at least five (5) conspicuous places within the territorial confines of the afterdescribed Oakland Public Service District, the Hancock County Court considered its own motion to enlarge the purposes of the Oakland Public Service District to enable the latter District to collect, treat, purify or dispose of liquid or solid wastes, sewage or industrial wastes, as contemplated by Chapter 16, Article 13A, Sections 1 and 2, as amended, of the West Virginia Code. The territorial limits of the Oakland Public Service District are more particularly bounded and described as follows:

All that certain land situate in Clay and Butler Districts, Hancock County, West Virginia, and more particularly described as follows: Beginning at the point where the north line of King's Creek Road intersects with the east line of West Virginia State Route 2; thence along the east line of West Virginia State Route 2 in a northerly direction to the point where Ballantine Hill Road intersects with said highway; thence along the south side of Ballantine Hill Road in an easterly direction to and along Bell Hill Road and Chapman Road; thence in a southerly direction along Ross Road; thence in an easterly direction along Shreeves Road unto the Pennsylvania State Line; thence in a southerly direction along the Pennsylvania State Line to the point where said line intersects with King's Creek Road; thence along the north boundary of King's Creek Road to the place of beginning.

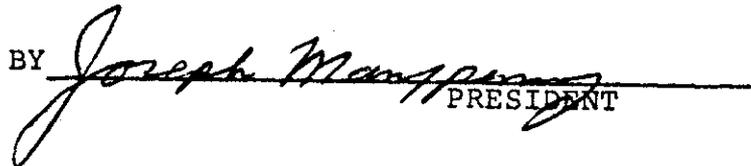


Thereupon, a Petition was presented to the Court by Mr. R. Anthony DiBacco, protesting the motion, which Petition the Court did accept, filing same without passing upon the validity, authenticity, or the genuineness of the signatures affixed thereon

Thereupon, being of the opinion that the enlargement of the purpose of the Oakland Public Service District enabling said District to collect, treat, purify or dispose of liquid or solid wastes, sewage or industrial wastes, will be conducive to the preservation of public health, comfort and convenience of such area, the Court does, accordingly, ADJUDGE and ORDER that the purpose of the Oakland Public Service District, as set forth by Order of this Court bearing date the 2nd day of October, 1967, be, and the same is amended to enlarge the purposes of the Oakland Public Service District to include and permit collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes as contemplated by Chapter 16, Article 13A, Sections 1 and 2, as amended, of the West Virginia Code.

ENTER this 16th day of September, 1974.

HANCOCK COUNTY COURT

BY  PRESIDENT

LEONARD J. TOST  
Attorney at Law  
3308 Main Street  
Weirton, West Virginia 26062



IN THE COUNTY COMMISSION OF HANCOCK COUNTY, WEST VIRGINIA

ORDER TO ENLARGE THE AREA SERVICED BY THE )  
OAKLAND PUBLIC SERVICE DISTRICT )  
IN HANCOCK COUNTY, WEST VIRGINIA )

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This 18th day of August, 1994, came the Oakland Public Service District Board members regard to the above and determined that the description of the Oakland Public Service District was incorrect, and the correct description of the proposed Oakland Public Service District is the following:

All the certain land situate in Clay and Butler Districts, Hancock County, West Virginia, and more particularly described as follows: Beginning at the point where the north line of King's Creek Road intersects with the east line of West Virginia's State Route 2; thence along the east line of West Virginia State Route 2 in a northerly direction to the southern most extension of the New Cumberland, West Virginia, municipal water service, thence along the south eastern water service of the City of New Cumberland, West Virginia to a point where it intersects with Hardins Run Road unto the Pennsylvania State Line; thence in a southerly direction along the Pennsylvania State Line to the point where said line intersects with King's Creek Road; thence along the north boundary of King's Creek Road to the place of beginning.

IT IS, THEREFORE, ACCORDINGLY ADJUDGED and ORDERED that there shall be a new hearing at the Hancock County Courthouse in New Cumberland, Clay District, Hancock County, West Virginia, on the 15th day of September, 1994, at 2:30 o'clock p.m., on the enlargement of said Public Service District, which date is no more than forty (40) days nor less than twenty (20) days from the date of the entry of this Order.

AND IT IS FURTHER ADJUDGED and ORDERED that the Clerk of the County Commission of Hancock County, West Virginia, shall cause notice of such hearing and the time and place thereof, and setting forth a description of all the territory proposed to be included therein, and that said notice be given by publication at least once in a newspaper of general circulation published in Hancock County at least ten (10) days prior to said hearing, the costs of which said publication shall be paid by the County Commission out of contingent funds or any other funds available or made available for this purpose.

All persons residing in and owning or having any interest in property in said Oakland Public Service District as proposed to be created shall have an opportunity to be heard for or against its creation.

ALL of WHICH is ACCORDINGLY ADJUDGED and ORDERED.

ENTER

Hancock County Commission

By Edward O. Miller  
President

N O T I C E

To all residents in and near the areas near Hudson Hill, Lyon Road, North Fork Road, Sun Valley, and Wylie Ridge (also known as Swearingen Hill.)

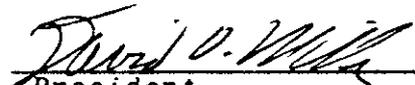
On Thursday, September 15, 1994, a hearing will be held at 2:30 o'clock p.m. before the Hancock County Commission on enlarging the area serviced by the Oakland Public Service District for water service, which district will be more particularly bounded and described as follows:

All the certain land situate in Clay and Butler Districts, Hancock County, West Virginia, and more particularly described as follows: Beginning at the point where the north line of King's Creek Road intersects with the east line of West Virginia's State Route 2; thence along the east line of West Virginia State Route 2 in a northerly direction to the southern most extension of the New Cumberland, West Virginia, municipal water service, thence along the south eastern water service of the City of New Cumberland, West Virginia to a point where it intersects with Hardins Run Road; thence in an easterly direction along Hardins Run Road unto the Pennsylvania State Line; thence in a southerly direction along the Pennsylvania State Line to the point where said line intersects with King's Creek Road; thence along the north boundary of King's Creek Road to the place of beginning.

At which time you may appear to support or object to the creation of said Oakland Public Service District.

Hancock County Commission

By

  
\_\_\_\_\_  
President

Publish:

Hancock County Courier - September 8th

Weirton Daily Times - September 2, 9th

Bill: The Hancock County Commission

PLEASE SEND TEAR SHEET FOR PROMPT PAYMENT

**IN THE COUNTY COMMISSION OF HANCOCK COUNTY, WEST VIRGINIA**

**BE IT REMEMBERED**, that heretofore, at a regular meeting of said County Commission of Hancock County, held at the Courthouse of said County, on the 15th day of September, 1994, among others, the following proceedings were had, to-wit:

**ORDER EXPANDING THE METES AND BOUNDS ]  
OF THE OAKLAND PUBLIC SERVICE DISTRICT, ]  
HANCOCK COUNTY, WEST VIRGINIA ]**

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This 15th day of September, 1994, pursuant to a legal notice published in the Hancock County Courier and the Weirton Daily Times, newspapers of general circulation in Hancock County, West Virginia, on the 2nd, 8th, and 9th of September, 1994, that a hearing would be held regarding the expansion of the metes and bounds of the Oakland Public Service District, the Hancock County Commission considered the petition requesting the expansion of said metes and bounds of the Oakland Public Service District described as follows:

All the certain land situated in Clay and Butler Districts, Hancock County, West Virginia, and more particularly described as follows: Beginning at the point where the north line of King's Creek Road intersects with the east line of West Virginia's State Route 2; thence along the east line of West Virginia State Route 2 in a northerly direction to the southern most extension of the New Cumberland, West Virginia, municipal water service, thence along the south eastern water service of the City of New Cumberland, West Virginia to a point where it intersects with Hardins Run Road; thence in a easterly direction along Hardins Run Road unto the Pennsylvania State Line; thence in a southerly direction along the Pennsylvania State Line to the point where said line intersects with King's Creek Road; thence along the north boundary of King's Creek Road to the place of beginning.

One resident of the Hardins Run Area approached the Commission with concerns. The Commission tabled action till October 6, 1994 until the concerns of the resident could be addressed by the Oakland Public Service District Board.

**BE IT RESOLVED**, that on the 6th day of October, 1994, it having been determined that the concerns of the resident had been based on confusion of another project of the

Oakland Public Service District, the resident withdrew said objection to the expansion of the metes and bounds of the Oakland Public Service District.

**BE IT ORDERED**, that on the 6th day of October, 1994, the County Commission of Hancock County is of the opinion that said action will be conducive to the preservation of public health, comfort, and convenience of such area and do hereby order that and do expand the metes and bounds of the Oakland Public Service District for the purpose of water services in accordance with the boundaries as described above.

**ALL OF WHICH IS ACCORDINGLY ADJUDGED AND ORDERED THIS THE 6TH DAY OF OCTOBER, 1994.**

ENTER:

HANCOCK COUNTY COMMISSION

By David O. Miller  
David O. Miller, President



cc: [unclear]



# HANCOCK COUNTY COMMISSION

**DAVID O. MILLER** PRESIDENT  
**DAVID L. CLINE** COMMISSIONER  
**JOHN J. SORRENTI** COMMISSIONER

May 21, 1993

Mr. Ed Flowers  
Rd#1  
102 Meadowood Drive  
New Cumberland, WV 26047

Dear Mr. Flowers:

The Hancock County Commission is pleased to inform you that you were appointed to serve on the Oakland Public Service District at our regularly scheduled meeting held on May 20, 1993.

You will be filling the unexpired term of Dan McIntosh which will expire on August 31, 1998.

It will be necessary for you to appear in the County Clerk's Office to take the oath and sign the oath book for this appointment. Please bring this correspondence with you at that time so they will have the necessary appointment information.

The Commission believes that you will be a great addition to the Public Service District.

Sincerely,

*David O. Miller*  
David O. Miller, President

*John J. Sorrenti*  
John J. Sorrenti, Commissioner

*David L. Cline*  
David L. Cline, Commissioner

DOM/JJS/DLC:caj

cc: Michele Dennis, Office Manager  
Oakland Public Service District



**DAVID L. CLINE** PRESIDENT  
**JOHN J. SORRENTI** COMMISSIONER  
**GEORGE J. KOURCE** COMMISSIONER

February 17, 1995

Mr. Curt Lemley  
106 Oak Drive  
New Cumberland, West Virginia 26047

Dear Curt,

At our February 16, 1995 meeting you were re-instated to the Oakland Public Service District Board.

The commissioners will be in the office on February 23, 1995 and Commissioner Cline would like to request if you could meet with him on that date at 2:30 p.m.

If you have any questions please feel free to call me.

Sincerely,

*Sharon L. Ulbricht*  
Sharon L. Ulbricht  
Administrative Assistant/Operations

SLU/pif



# HANCOCK COUNTY COMMISSION

DAVID L. CLINE PRESIDENT

JOHN J. SORRENTI COMMISSIONER

GEORGE J. KOURCE COMMISSIONER

March 22, 1995

Mr. Norm Allison  
Rt. 1 box 137 W  
New Cumberland, West Virginia 26047

Dear Norm,

This letter is to inform you that at the Hancock County Commissioner's regular meeting on March 16, 1995 you were re-appointed to the Oakland Public Service District Board.

Please take this letter to the County Clerk's Office and sign the oath book as soon as possible. Your new term will expire on September 20, 2000.

The Commission appreciates the time and effort that you have given while being active on this board. We wish you the best of luck in your new term.

Sincerely,

David L. Cline, President

John J. Sorrenti, Commissioner

George J. Kource, Commissioner

Attest:

  
Eleanor Straight, County Clerk

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**OATH OF OFFICE**

**State of West Virginia, Hancock County, to-wit:**

I, Norm Allison do solemnly swear that I will support the Constitution of the United States, and of this State; and I further swear that I will faithfully discharge the duties of my office of board member, Oakland Public Service district

Beginning on the 16th day of March 19 95, and ending on the 20th day of September 1995 ~~2000~~, to the best of my skill and judgment, so help me God.

*Norm Allison*

Sworn to and subscribed before the undersigned Eleanor Straight in and for the County of Hancock, State of West Virginia, by the said Norm Allison

this 5th day of April A. D. 19 95  
*Eleanor Straight*

OATH OF OFFICE

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

I, Ed Flowers do solemnly swear that I will support the Constitution of the United States, and of this State; and I further swear that I will faithfully discharge the duties of my office Oakland Public Service District

Beginning on the 20th day of May 19 93, and ending on the 31st day of August 19 98, to the best of my skill and judgment,

so help me God.

Ed Flowers

Sworn to and subscribed before the undersigned Eleanor Straight in and for the County of Hancock, State of West Virginia, by the said Ed Flowers this 24th day of May A. D., 19 93

Eleanor Straight

STATE OF VIRGINIA, HANCOCK COUNTY, VIRGINIA, BY RECORDER OF DEEDS

OATH OF OFFICE

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

I, Curtis E. Lenley do solemnly swear that I will support the Constitution of the United States, and of this State; and I further swear that I will faithfully discharge the duties of my office of board member, Oakland Public Service district

Beginning on the 16th day of February 19 95, and ending on the 21st day of September 2000, to the best of my skill and judgment, so help me God.

X Curtis E. Lenley

Sworn to and subscribed before the undersigned Eleanor Straight in and for the County of Hancock, State of West Virginia, by the said Curtis E. Lenley this 24th day of February A.D. 19 95

Eleanor Straight

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RULES OF PROCEDURE

OAKLAND PUBLIC SERVICE DISTRICT

ARTICLE I

Name and Place of Business

Section 1. Name: OAKLAND PUBLIC SERVICE DISTRICT

Section 2. The principal office of this Public Service District will be located at R.D. 1, Box 166R, Weirton, WV 26062

? Section 3. The Common Seal of the District shall consist of two concentric circles between which circles shall be inscribed Oakland Public Service District, and in the center "seal" as follows:

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

ARTICLE II

Purpose

This District is organized exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended.

ARTICLE III

Membership

Section 1. The members of the Public Service Board of this District shall be those persons appointed by the County Commission of Hancock County, who shall serve for such terms as may be specified in the order of the County Commission.

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

## ARTICLE IV

### Meetings of the Public Service Board

Section 1. The members of the Public Service Board of this District shall hold regular monthly meetings on the 3rd Wednesday of each month at such place and hour as the members shall determine from time to time. If the day stated shall follow a legal holiday, the meeting shall be held on the following day. Special meetings of the Public Service Board may be called at any time by the Chairman or by a quorum of the board.

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

Section 3. No notice shall be required for regular meetings. Notice in writing of each special meeting of the membership shall be given to all members by the Secretary by mailing the same to the last known post office addresses of the members at least three (3) days before the date fixed for such meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting. However, if all the members are present, they may hold a special meeting at any time and at any place without notice and may consider any business that comes before them. Notice of any special meeting may be waived in writing by all of the members.

## ARTICLE V

### Officers

Section 1. The Officers of the Public Service Board shall be a Chairman, Secretary and Treasurer. The Chairman shall be elected from the members of the Public Service Board. The Secretary and Treasurer need not be members of the Public Service Board, and may be the same person.

Section 2. The Officers of the Public Service Board shall be elected each year by the members at the first meeting held in the month of January of such year. The Officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the Officers shall be filled by the members of the Public Service Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected as hereinabove provided.

## ARTICLES VI

### Duties of Officers

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Public Service Board. He shall, together with the Secretary, sign the minutes of all meetings at which he shall preside. He

shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon him by the Board, by these bylaws, or prescribed by law. He shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. If the Chairman is absent from any meeting, the remaining members of the Board shall select a temporary Chairman.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. He shall, together with the Chairman, sign the minutes of the meetings at which he is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other writings and papers of the Board. He shall also perform such other duties as he may have under law by virtue of his office or as may be conferred upon him 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 and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board.

## ARTICLE VII

### Amendments to Rules of Procedure

These Rules of Procedures may be altered, changed, amended or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present vote for the amendment; but no such change, alteration, amendment or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment or addition and a clear statement of the substance thereof be included in the written notice calling such meeting.

CERTIFICATION

I, Ed Flowers, Secretary of the Public Service Board of the Oakland Public Service District, hereby certify that the foregoing is a true and correct copy of the Rules of Procedure of said Public Service Board. I further certify that such Rules of Procedure remain in full force and effect and have not been amended or repealed.

WITNESS my signature on this June 28 day of June, 1995

Ed Flowers  
Secretary



OAKLAND PUBLIC SERVICE DISTRICT

RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SERVICE PROPERTIES THROUGH THE ISSUANCE OF WATER REVENUE BONDS, SERIES 1995, OF THE OAKLAND PUBLIC SERVICE DISTRICT, IN THE AMOUNT OF \$579,740, TO FINANCE THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS TO A PUBLIC WATER SYSTEM; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BONDS; PROVIDING STATUTORY LIEN ON REVENUES AND SYSTEM; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO SUCH BONDS; PROVIDING FOR THE ADOPTION, RATIFICATION, APPROVAL AND COLLECTION OF RATES AND CHARGES FOR THE PUBLIC WATER SYSTEM; AND PROVIDING GENERAL TERMS AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT.

BE IT ORDAINED AND RESOLVED BY THE PUBLIC SERVICE BOARD OF OAKLAND PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

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

A. Oakland Public Service District (the "Issuer") is a public corporation and political subdivision of the State of West Virginia in Hancock County.

B. The Issuer presently owns and operates a water system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer and surrounding areas that there be constructed certain additions, betterments and improvements for the existing water system of the Issuer, consisting of acquisition and construction of new lines within the district, together with all appurtenant facilities (the "Project") which constitute properties for the necessary, dependable, effective and efficient purification of water, the disposal of liquid and solid wastes harmful to the public health and safety removed from such water, to improve water and stream quality, and to assist and cooperate with governmental agencies in achieving such purposes (the existing water facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$1,329,740, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds and all sinking funds, reserve accounts and other payments provided for herein, all as such terms are hereinafter defined, as well as the payments on the 1989 Loan referenced herein.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds in the total aggregate principal amount of \$579,740 (the "Bonds") to finance the cost of the construction and improvement to the System in the manner hereinafter provided.

E. The estimated maximum cost of construction and acquisition of the Project is \$1,329,740, of which \$579,740 will be obtained from the sale of the Bonds and \$750,000 from a Small Cities Block Grant hereinafter defined. The cost of such acquisition and construction shall be deemed to include but not limited to the cost of all property rights, easements and franchises deemed necessary or convenient therefor; amounts which may be deposited in the Series 1995 Bond Reserve Account; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise, capitalized interest, administrative expense, commitment fees, fees of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

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

G. The Issuer has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), and upon review thereof, the Authority has indicated its willingness to lend the Issuer \$579,740 through the purchase of revenue bonds of the Issuer with moneys held by the Authority hereinafter defined, subject to the Issuer's satisfaction of certain legal and other requirements of the Program, hereinafter defined.

H. It is in the best interests of the Issuer that the Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement to be entered into between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority or as shall be approved by a Supplemental Resolution (hereinafter defined).

I. There is a prior obligation of the Issuer being the Wheeling National Bank loan dated June 5, 1989, made pursuant to a Loan Agreement (the "Loan Agreement") in the original aggregate principal amount of \$183,500 (the "1989 Loan"). The Bonds hereby authorized will be on a parity with the 1989 Loan as to lien and source of payment pursuant to the consent thereto to be given by Wheeling National Bank.

J. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Bonds or such final order will not be subject to appeal. The Project is not subject to review by the Infrastructure Council on the basis of having its financing in place prior to the adoption of such legislation.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall

be for the equal benefit, protection and security of the registered owners of the Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Chairman of the Issuer or any acting Chairman duly appointed by the Governing Body.

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

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

"Bond Registrar" means the bank or other entity designated herein or in any 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" or "Bonds originally authorized hereby" or similar phrases mean, collectively, the not more than \$579,740 in aggregate principal amount of Series 1995 Bonds, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted and authorized by this Bond Legislation.

"Chairman" means the Chairman of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Bonds for the proceeds representing the purchase of the Bonds by the Authority.

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

"Construction Fund" means the Construction Fund established by Section 4.01 hereof.

"Consulting Engineers" means Kelley, Gidley, Blair & Wolfe, Inc., Parkersburg, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

"Debt Service" means the scheduled amount of interest and

amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Depository Bank" means the bank designated as such herein or in a Supplemental Resolution or letter, and its successors and assigns.

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

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

"Governing Body" means the Public Service Board of the Issuer, as may hereafter be constituted.

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

"Grant Agreement" means a written commitment for the payment of the Small Cities Block Grant, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant is to be paid to the Issuer.

"Grant Receipts" means all moneys received by the Issuer on account of the Small Cities Block Grant.

"Grants" means, collectively, the Small Cities Block Grant and any Other Grants.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 7.01 hereof) or any Tap Fees, as hereinafter defined.

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

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

"Issuer" means Oakland Public Service District, in Hancock County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" shall mean the Loan Agreement to be entered into between the Authority and the Issuer providing for the purchase of the Bonds from the Issuer by the Authority, the form of which may be approved, and the execution and delivery by the Issuer authorized and directed or ratified by a Supplemental Resolution.

"Net Proceeds" means the face amount of the Series 1995 Bond, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 1995 Bond 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 1995 Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"1989 Loan" means the \$183,500 loan made by Wheeling National Bank to the Issuer as evidenced by the Loan Agreement dated May 5, 1989, between Wheeling National Bank and the Issuer.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund established by Section 4.01 hereof.

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

"Other Grants" means any grant other than the Small Cities Block Grant hereafter received by the Issuer to aid in financing any Costs.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, as well as the outstanding 1989 Loan, 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 IX hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders or any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitation prescribed by Section 6.07 hereof.

"Paying Agent" means the Municipal Bond Commission, its successors and assigns.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Program" means the West Virginia Water Development Authority Act

program, under which the Authority purchases the water revenue bonds of local governmental entities satisfying certain legal and other requirements with funds on deposit with the Authority pursuant to the provisions of Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended.

"Project" means the acquisition and construction of certain additions, betterments and improvements to the existing water facilities of the Issuer, consisting generally of an extension of such facilities to Hudson Hill and North Fork Road within Oakland Public Service District and all appurtenant facilities.

"Public Service Board" means Public Service Board of the Issuer.

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

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as Primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest

in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6, of the West Virginia Code of 1931, as amended; provided, that investments by such fund on behalf of the Issuer shall be restricted to Qualified Investments other than that described in this paragraph (h); and

(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.

"Rebate Fund" means the Rebate Fund established by Section 4.01 hereof.

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

"Registrar" means United National Bank, its successors and assigns.

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 4.01 hereof.

"Revenue" or "System Revenue Fund" means the Revenue or System Revenue Fund established under Section 4.01 hereof.

"Secretary" means the Secretary or Acting Secretary of the Issuer.

"Series 1995 Bond or Bonds" means the \$579,740 in aggregate principal amount of Water Revenue Bonds, Series 1995 of the Issuer.

"Series 1995 Bond Reserve Account" means the Series 1995 Bond Reserve Account established in the Series 1995 Bond Sinking Fund pursuant to Section 4.02 hereof.

"Series 1995 Bond Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1995 Bond in the then current or any succeeding year.

"Series 1995 Bond Sinking Fund" means the Series 1995 Bond Sinking Fund established by Section 4.02 hereof.

"Small Cities Block Grant" means the grant from the Department of Housing and Urban Development Small Cities Block Grant in the amount of \$750,000 pursuant to the commitment therefor.

"State" means the State of West Virginia.

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

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds, or any other obligations of the Issuer, including the Renewal and Replacement Fund, the Reserve Account and the Series 1995 Bond Reserve Account, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means all facilities and other property of every nature, real and personal, now or hereafter owned, held or used in connection with the water system; and shall also include any and all additions, extensions, improvements, properties, or other facilities at any time acquired or constructed for the water system after completion of the Project.

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF CONSTRUCTION AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition of the Project. There is hereby authorized the construction and acquisition of the Project, at an estimated cost of \$1,329,740 in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article IV hereof. The Issuer has received bids or entered into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Authority.

## 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 funding a reserve account for the Bonds, paying capitalized interest, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Bonds and related costs, or any of such purposes, as determined by a Supplemental Resolution, there shall be issued negotiable Bonds of the Issuer, in an aggregate principal amount of \$579,740. Said Bonds shall be issued in one series, to be designated, "Water Revenue Bonds, Series 1995" in the aggregate principal amount of \$579,740, shall have such terms as set forth hereinafter or in any Supplemental Resolution. The proceeds of the Bonds remaining after funding of the Series 1995 Bond Reserve Account (if funded from Bond proceeds) and capitalized interest, if any, shall, subject to Section 5.02 hereof, be deposited in or credited to the Construction Fund established by Section 4.01 hereof.

Section 3.02. Terms of Bond. The Bond shall be a single registered bond numbered R-1. The Bond shall bear interest at such rate or rates, not exceeding 6.75% per annum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer may prescribe herein or in a Supplemental Resolution. The Bond shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bond shall be paid by check or draft of the Paying Agent mailed to the registered

owner thereof at the address as it appears on the books of the 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 a Supplemental Resolution, the Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, representing the aggregate principal amount, and shall mature in principal installments, all as may be provided in a Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Holder for other fully registered Bonds of the same series 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 and at such interest rates and shall be payable as determined by a Supplemental Resolution.

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

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any 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 Bond shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting any of said Bond shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

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

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be 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. Bond not to be Indebtedness of the Issuer. The Bond shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1995 Bond Reserve Account. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Bonds or the interest thereon.

Section 3.08. Bond Secured by Pledge of Net Revenues. The payment of the debt service of the Series 1995 Bond shall be secured by a lien on the Net Revenues derived from the System on a parity with that of the 1989 Loan. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bond and the 1989 Loan and to make the payments into the funds and accounts established herein are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as the same become due. At closing, the Independent Certified Public Accountants will deliver a Certificate describing the Issuer's ability to make payments owed on the Bond and the 1989 Loan.

Section 3.09. Parity with 1989 Loan. The lien on the revenues of the System and the pledge of such revenues provided and stated in Section 3.08 above in favor of the Series 1995 Bond are on a parity with the lien thereon and pledge thereof in favor of the 1989 Loan.

Section 3.10. Form of Bond. The text of the Bond shall be in substantially the following forms, 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:

(SPECIMEN BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
OAKLAND PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1995

No. R-1

Date: \$579,740  
June 28, 1995

KNOW ALL MEN BY THESE PRESENTS: That OAKLAND PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia, located in Hancock 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 Five Hundred Seventy-Nine Thousand Seven Hundred Forty and 00/100 Dollars (\$579,740.00), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest due on each installment shall run from the original date of delivery of the Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning October 1, 1995. Principal and interest installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal and interest on this Bond are payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of United National Bank, Charleston, West Virginia (the "Registrar"), on the 15th day of the month next preceding such 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 at par, but only with the written consent of the Authority and upon the terms and conditions prescribed by and otherwise in compliance with the Loan Agreement by and between the Issuer and the Authority, dated June 28, 1995.

This Bond is issued (i) to pay a portion of the costs of construction of certain extensions, additions, betterments and improvements to the existing public water facilities of the Issuer (the "Project"); (ii) to pay capitalized interest on the Bond during the construction of the Project and for a period of not more than six (6) months after completion; and (iii) to pay certain costs of issuance hereof and related costs. The existing water system of the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is herein called the "System". This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and a Resolution duly adopted and enacted by the Issuer and effective June 21, 1995 (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 Bond under the Resolution.

THIS BOND IS ON A PARITY AS TO LIEN AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S 1989 LOAN DATED MAY 5, 1989, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$183,500, OWED TO WHEELING NATIONAL BANK (the "PRIOR DEBT").

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, from moneys in the Reserve Account created under the Resolution for the Bond (the "Series 1995 Bond Reserve Account") and unexpended proceeds of the 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 a corporate 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 1995 Bond Reserve Account and unexpended proceeds of the 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, to pay principal and interest on the 1989 Loan, and to leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond, as hereinafter defined, and all other obligations secured by a lien on or payable from such net revenues prior to or on a parity with the Bond including the Prior Debt, provided however, that so long as there exists in the Series 1995 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on a parity with the Bond including the Prior Debt, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%). The Issuer has entered into certain further covenants with the registered owners of the Bond for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the 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 by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law and that the amount of this Bond, together with all other obligations of 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 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.

IN WITNESS WHEREOF, OAKLAND PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary and has caused this Bond to be dated June 28, 1995.

OAKLAND PUBLIC SERVICE DISTRICT

[SEAL]

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

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 1995 Bond 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 \_\_\_\_, 1995

UNITED NATIONAL BANK, as Registrar

By: \_\_\_\_\_  
Assistant Vice President

SCHEDULE A  
SCHEDULE OF ANNUAL DEBT SERVICE

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 of the within Bond of said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(Assignor)

Witnessed in the presence of:

\_\_\_\_\_

Section 3.11. Sale of Bond; Ratification of Execution of Loan Agreement with Authority; Incorporation of Terms. The Bond shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Chairman is specifically authorized and directed to execute the Loan Agreement in substantially the form attached hereto as "Exhibit A" and made a part hereof, with such changes, insertions and omissions as may be approved by the Chairman, the execution of which shall be conclusive evidence of such approval, 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, as the same may be amended and/or supplemented, and the terms and provisions thereof are herein incorporated by reference thereto.

Section 3.12. "Amended Schedule A" Filing. Within sixty (60) days following the Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds thereof.

Section 3.13. Certificate of Consulting Engineers. Prior to the issuance of the Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement 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, the Project is adequate for the purposes for which it was designed, and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project.

#### ARTICLE IV

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

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund or System Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund;
- (4) Construction Fund; and
- (5) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with the Paying Agent. The following special funds or accounts are hereby created with the Paying Agent:

- (1) Series 1995 Bond Sinking Fund;
  - (a) Within the Series 1995 Bond Sinking Fund, the Series 1995 Bond Reserve Account.

##### Section 4.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the System Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the

Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first each month transfer from the Revenue Fund to the Operation and Maintenance Fund the amount necessary and sufficient to pay current Operating Expenses.

(2) So long as the 1989 Loan remains outstanding and unpaid or until provision for payment of the 1989 Loan and the interest thereon has been made in full by deposit of the necessary funds, Issuer shall remit to Wheeling National Bank or any successor thereto the sums required to provide for payment of principal of and interest on the 1989 Loan.

(3) The Issuer shall, simultaneously with the disbursement made under (2) above, (i) on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Bonds, apportion and set apart out of the Revenue Fund and remit to the Paying Agent, for deposit in the Series 1995 Bond Sinking Fund, a sum equal to 1/6 of the amount of interest which will become due on said Bond on the next ensuing semiannual interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1995 Bond Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Bond, apportion and set apart out of the Revenue Fund and remit to the Paying Agent for deposit in the Series 1995 Bond Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Bond on the next ensuing principal payment date: provided that, in the event the period to elapse between the date of such initial deposit in the Series 1995 Bond Sinking Fund and the next annual principal payment date is less than 13 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Series 1995 Bond, if not fully funded upon issuance of the Bond, apportion and set apart out of the Revenue Fund and remit to the Paying Agent for deposit in the Series 1995 Bond Reserve Account, an amount equal to 1/120 of the Series 1995 Bond Reserve Requirement; provided, that no further payment shall be made into the Series 1995 Bond Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1995 Bond Reserve Requirement.

(5) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Series 1995 Bond 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 VII 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 the Series 1995 Bond 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.

Moneys in the Series 1995 Bond Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, as the same shall become due. Moneys in the Series 1995 Bond Reserve Account shall be used only for the purpose of paying principal of and interest on the Bond, as the same shall come due, when other moneys in the attendant Series 1995 Bond Sinking Fund are insufficient therefor, and for no other purpose.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 1995 Bond Sinking Fund and Series 1995 Bond Reserve Account shall be returned, not less than once each year, by the Paying Agent to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the respective Series of Bonds, and then to the next ensuing principal payments due thereon.

Except with respect to transfers to the Rebate Fund permitted hereunder, any withdrawals from the Series 1995 Bond Reserve Account which result in a reduction in the balance of the Series 1995 Bond Reserve Account to below the Series 1995 Bond Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full, to the Series 1995 Bond Sinking Fund for payment of debt service on the Series 1995 Bond.

As and when additional Bonds ranking on a parity with the Bond are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum provided and required to be paid into the concomitant Sinking Fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from such Sinking Fund.

The Issuer shall not be required to make any further payments into the Series 1995 Bond Sinking Fund or into the Series 1995 Bond Reserve Account therein when the aggregate amount of funds in said Series 1995 Bond Sinking Fund and Series 1995 Bond Reserve Account are at least equal to the aggregate principal amount of the Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Paying Agent is hereby designated as the fiscal agent for the administration of the Series 1995 Bond Sinking Fund created hereunder, and all amounts required for said Series 1995 Bond Sinking Fund shall be remitted to the Paying Agent from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Series 1995 Bond Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Paying Agent with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Series 1995 Bond Reserve Account shall be invested and reinvested by the the Paying Agent in accordance with Section 7.01 hereof.

The Series 1995 Bond Sinking Fund, including the Series 1995 Bond Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. 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 any payments of principal and interest owed on the 1989 Loan 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 the Series 1995 Bond Sinking Fund, including the Series 1995 Bond Reserve Account therein and the Renewal and Replacement Fund during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. So long as the 1989 Loan is outstanding, such Surplus Revenues shall be used to prepay principal owed on the 1989 Loan and to redeem the Bonds, on a pro rata basis, or for any lawful purposes of the Issuer.

C. The Issuer shall remit from the Revenue Fund to the Registrar, the Paying Agent or the Depository Bank, on such dates as the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Registrar's fees, the Paying Agent's fees and the Depository Bank's charges then due. The Issuer shall also remit from the Revenue Fund to the Authority, on such dates as the Authority shall require, the Issuer's allocable share of the reasonable administrative expenses, if any, incurred by the Authority.

D. United National Bank is hereby designated the Depository Bank. The Issuer appoints United National Bank as Registrar for the Bonds, and the Municipal Bond Commission is hereby designated as Paying Agent for the Bonds.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund 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.

F. 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 revenues which are available shall be used to pay principal and interest owed on the 1989 Loan and the Bonds on a pro rata basis and the deficiency shall be made up in subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03 and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

ARTICLE V

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 5.01. Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1995 Bond, there shall be deposited with the Paying Agent in the Series 1995 Bond Reserve Account \$0 for funding of the Series 1995 Bond Reserve Account.

B. Next, from the proceeds of the Series 1995 Bond, there shall be deposited with the Paying Agent in the Series 1995 Bond Sinking Fund \$39,133.00 for payment of interest on the Bonds during construction of the Project and for a period of not more than six (6) months after completion.

C. Next, from the proceeds of the Series 1995 Bond, and subject to Section 5.02 below, there shall first be credited to the Construction Fund and then paid, any and all borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project, including interest accrued thereon to the date of such payment, not otherwise paid from funds of the Issuer.

D. The remaining moneys derived from the sale of the Bonds shall be deposited with the Depository Bank in the Construction Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 5.02.

E. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Construction Fund and shall comply with all requirements with respect to the disposition of the Construction Fund set forth in the Bond Legislation. Moneys in the Construction Fund shall be used solely to pay Costs of the Project and until so expended, are hereby pledged as additional security for the Series 1995 Bond.

Section 5.02. Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly.

Disbursements from the Construction Fund, except for the costs of issuance of the Bonds, which shall be made upon request of the Issuer, shall be made only after submission to the Depository Bank of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

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

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

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

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction Fund shall be presumed by the Depository Bank to be

made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Construction Fund, if any, to the Series 1995 Bond Reserve Account, and if the Series 1995 Bond Reserve Account is fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter, apply such moneys in full, first to the next ensuing interest payments, if any, due on the respective Series of Bonds and thereafter to the next ensuing principal payments due thereon.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bond. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Section 6.02. Bonds Not to be Indebtedness of the Issuer. The Bonds shall be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 1995 Bond issued hereunder shall be secured forthwith by a first lien on the Net Revenues derived from the operation of the System on a parity with that of the 1989 Loan.

The Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds and the 1989 Loan and to make the payments into the Series 1995 Bond Sinking Fund, including the Series 1995 Bond Reserve Account therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds and the 1989 Loan as the same become due, and for the other purposes provided in the Bond Legislation.

Section 6.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved by the West Virginia Public Service Commission and confirmed in a Rate Resolution to be adopted by the Issuer.

Section 6.05. Sale of the System. Except as otherwise required by state law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds

to be realized shall be sufficient to pay fully all the Outstanding indebtedness or to effectively repay the 1989 Loan and defease the Bonds in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Outstanding indebtedness, immediately be remitted to the Paying Agent for deposit in the Series 1995 Bond Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Paying Agent to apply such proceeds to the payment of principal at maturity of and interest on the Outstanding indebtedness. Any balance remaining after the payment of all the Outstanding indebtedness and interest thereon shall be remitted to the Issuer by the Paying Agent 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 in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property 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 with the written consent of the Authority, be remitted by the Issuer to the Paying Agent for deposit in the Series 1995 Bond Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Series 1995 Bond Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Outstanding indebtedness without the prior approval and consent in writing of the Authority and the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the Authority and the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 6.06 and in Section 6.07, the Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally 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 Bonds and the 1989 Loan. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations

are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1995 Bonds and the 1989 Loan; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Series 1995 Bond Reserve Account and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds and the 1989 Loan, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the 1989 Loan and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

Section 6.07. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Bonds issued pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1995 Bond, and, so long as the 1989 Loan is outstanding, on a parity therewith.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

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

- (1) The Bonds then Outstanding and the 1989 Loan;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received,

in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

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

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 1995 Bonds and the 1989 Loan 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 1995 Bonds and the 1989 Loan.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds and the 1989 Loan then outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

B. Notwithstanding the foregoing, or any provision of Section 6.06 to the contrary, Additional Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 6.07 but only with the consent of Wheeling National Bank with respect to the 1989 Loan.

C. Notwithstanding the foregoing, in no event shall the Issuer be permitted to issue such Additional Bonds unless there is first obtained by the Issuer the written consent of the Authority and of Wheeling National Bank to the issuance of bonds on a parity with the Bonds and the 1989 Loan.

Section 6.08. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Authority and any

Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

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

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Outstanding Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation and that Local Government Revenues are adequate to meet operation/maintenance expenses and debt service requirements.

The Issuer shall also, during construction of the Project and for two years following the completion of the Project, complete a Monthly Financial Report, as described in the Loan Agreement, and forward a copy by the 10th of each month to the Authority.

Section 6.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay

Operating Expenses and to make the prescribed payments into the funds created hereunder for the Bonds and for payment of the 1989 Loan. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System; (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; and (iii) otherwise comply with the rate covenant set forth in the Loan Agreement for the 1989 Loan so long as the 1989 Loan remains outstanding; provided that, in the event that amounts equal to or in excess of the Series 1995 Bond Reserve Requirement are on deposit respectively in the Series 1995 Bond Reserve Account and reserve accounts for obligations prior to or on a parity with the Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate resolution described in Section 6.04.

Section 6.10. Operating Budget and Audit. 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 reserves and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the 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 the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall, within 30 days of the adoption thereof, mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bond, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority and to any Holder of any Bond, or anyone acting for and on behalf of such Holder of any Bonds.

In addition, the Issuer shall annually cause the records of the System to be audited by an Independent Certified Public Accountant, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Bond Legislation and the Loan Agreement.

Section 6.11. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority and

the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

Section 6.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid, to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 6.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class: and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(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 said Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

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

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, to the extent available at reasonable cost to the Issuer.

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

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 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.

C. 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. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 6.16. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and State requirements and standards.

The Issuer will obtain all permits required by State and federal laws for the acquisition and construction of the Project and all orders and approvals from the West Virginia Public Service Commission necessary for the acquisition and construction of the Project and the operation of the System.

Section 6.17. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Bond are used for private business use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bond during the term thereof is, under the terms of the Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a private business use or in payments in respect of property used or to be used for a private business use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a private business use, and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Bond are used for a private business use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bond during the term thereof is, under the terms of the Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said private business use or in payments in respect of property used or to be used for said private business use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said private business use, then said excess over said 5% of Net Proceeds of the Bond used for a private business use shall be used for a Private Business Use related to the governmental use of the Project, or if the Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such private business use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 6.18. Compliance with Loan Agreement. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement.

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

Section 6.19. Statutory Mortgage Lien. For the further protection of the holder of the Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bonds.

Section 6.20. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

Section 6.21. Securities 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, annual operating related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, (240, 15c2-12)).

## ARTICLE VII

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 7.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and re-invested by the the Paying Agent, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01.

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are outstanding.

Section 7.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "Arbitrage Bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely

filing of a Federal Information Return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 7.03. Tax Certificate and Rebate. In accordance with Section 148(f)(4)(C) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Bonds are issued will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(C) of the Code and the Regulations promulgated thereunder. For purposes of this Section 7.03 and for purposes of applying Section 148(f)(4)(C) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this Section 7.03 and Section 148(f)(4)(C) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity, and an entity formed (or, to the extent provided by the Chairman, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(C) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer shall take the following actions:

(i) the Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation;

(ii) the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the

event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. To the extent not so performed by the Authority, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate in order to assure compliance with this Section 7.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 7.03 in accordance with the requirements of Section 148(f) of the Code or such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes; and

(iii) the Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Bonds subject to rebate. The Issuer shall furnish to the Authority such information with respect to earnings on all moneys constituting "Gross Proceeds" of the Bonds (as such term is defined in the Code) from time to time as the Authority may request. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority.

#### ARTICLE VIII

##### DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any of the 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 Bonds set forth in this Bond Legislation, or the Loan Agreement, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Depository Bank, Registrar, or the Paying Agent or a Holder of a Bond; or

(3) If a Event of Default occurs under the 1989 Loan; or

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

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of Outstanding Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all

rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto including the 1989 Loan, 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 Outstanding 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 Outstanding Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Outstanding Bonds, or the rights of such Registered Owners. All such rights and remedies are on a parity with the rights and remedies afforded Wheeling National Bank under the 1989 Loan.

Section 8.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bond any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bond and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bond. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owner of such Bond and the curing and making good of any Event of Default with

respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE IX

### DEFEASANCE

Section 9.01. Defeasance of Series 1995 Bond. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Series 1995 Bond, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1995 Bond only the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1995 Bond shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1995 Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1995 Bond shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All the Series 1995 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the the Paying Agent or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Paying Agent at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1995 Bond on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Paying Agent pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1995 Bond provided, that any cash received from such principal or interest payments on such securities deposited with the Paying Agent or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bond on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Paying Agent or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66.2/3% or more in principal amount of the Series 1995 Bond so affected and then Outstanding and the Authority; provided, that no change shall be made in the maturity of any Bond or

the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Bonds from gross income of the holders thereof.

Section 10.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 10.03. 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, any Supplemental Resolution or the Bond.

Section 10.04. Headings, Etc. The headings and captions 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 10.05. Conflicting Provisions Repealed. All orders or resolutions and or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed except for any provisions in any orders or resolutions issued with respect to the 1989 Loan which impose greater obligations upon the Issuer than those described herein.

Section 10.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 10.07. Notice of Meeting. Prior to adoption hereof, notice of the meeting at which this Bond Legislation was to be considered was published at least ten days in advance thereof in a qualified newspaper published and of general circulation in Oakland Public Service District.

Section 10.08. Effective Date. This Resolution shall take effect immediately following its approval.

Adopted this 21st day of June, 1995.

OAKLAND PUBLIC SERVICE DISTRICT

By:   
Chairman, Public Service Board

*Ed Flower*  
Member, Public Service Board

*Lucretia Fenley*  
Member, Public Service Board

CERTIFICATION

The attached is certified as a true copy of a Resolution duly enacted by the Public Service Board of Oakland Public Service District on the 21st day of June, 1995.

Dated: June 21, 1995.

[SEAL]

*Ed Flowers*

Secretary



### LEGAL NOTICE

Please be advised that the Oakland Public Service District (the "District"), at a special meeting scheduled for 3:00 p.m. on the 21st day of June, 1995, to be held at the District's offices at Wylie Ridge Road, Weirton, West Virginia, will consider for passage a Bond Resolution titled as follows: Resolution Authorizing the Acquisition and Construction of Public Service Properties Through the Issuance of Water Revenue Bonds, Series 1995, of the Oakland Public Service District, in the Amount of \$579,740, to Finance the Acquisition and Construction of Improvements to a Public Water System; Defining and Prescribing the Terms and Provisions of the Bonds; Providing Generally for the Rights and Remedies and Security of the Holders of the Bonds; Providing Statutory Lien on Revenues and System; Approving and Ratifying a Loan Agreement Relating to Such Bonds; Providing for the Adoption, Ratification, Approval and Collection of Rates and Charges for the Public Water System; and Providing General Terms and Providing When this Resolution Shall Take Effect.

This notice is given pursuant to the provisions of West Virginia Code §6-9A-6 which provides that no bond issue approved by a governing body may be annulled under this section if notice of the meeting at which such bond issue is to be considered was given at least ten (10) days prior to such meeting by a Class I legal advertisement published in accordance with the provisions of §59-3-1 in a qualified newspaper having a general circulation in the geographic area represented by the governing body.

All those interested in the Resolution described above are

advised to appear at said meeting to offer any comments for the Public Service Board's consideration in connection with their deliberations on and consideration of the Bond Resolution.

Given under my hand this 9 day of June 1995.

Oakland Public Service District

By: Norm Allison  
Chairman

# OAKLAND PUBLIC SERVICE DISTRICT

P.O. BOX 2058  
WEIRTON, WV 26062  
PHONE 304 797-8353

June 21, 1995

Curt made a motion to open the meeting. Ed seconded the motion. Norm opened the meeting of the Oakland Public Service District's board members. In attendance were Kim Weaver, William Bragg, Mark Colantonio, Cindy Jones Francis Newbrough, Art Pauley, and Cindy DiAntonio.

The first thing Kim wanted to discuss was the Dept of Highways Permit Bond. As you know we are required to get a \$50,000 permit bond for the Dept of Highways Right of Way. We sent out letters to insurance companies to submit proposals. We did get one proposal back. Ed made a motion to accept the proposal, Curt seconded the motion, Norm carried the motion. Kim mentioned that we need to officially adopt the new rates from the PSC. Ed made a motion to adopt the new rates. Curt seconded the motion. Norm carried the motion. Kim said that she has been working on the easements and she is down to the Cullie easement but they would like to know if we could dig the ditch in the alley and then they would take care of running the pipe themselves, it will cost \$3/ft for 300 ft. They are giving us the right of way for that area. Curt made a motion to accept Cullie's proposal. Ed seconded the motion. Norm carried the motion.

At this time Bill Bragg took the floor. He is here to discuss the bond resolution. The closing is scheduled for Wednesday, June 28th in the WDA's office in Dunbar, WV. The resolution is authorizing the acquisition & construction of public service properties to the issuance of water revenue bonds for the QPSD in the amount of \$579,740.00. And hence the acquisition and construction of improvements to the public water system. The resolution further provides for the creation of the funds and accounts that are necessary to construct the water system, and to operate and maintain it. At this time Mr. Bragg wants the board to consider in the form of an amendment to the resolution itself, the appointment of the municipal bond commission to be the paying agent. Also, designating both a registrar and an authenticating agent and a depository bank. Mr. Bragg and Kim Weaver has discussed this with the United National Bank and they are willing to serve as the registrar and the authenticating agent. They will sign the original bond to identify the officials of this public service board and to identify that they are authorized to sign the bond, issue the bonds and sell them to the WDA. They will do this for a fee of \$500 annually. They are also willing to serve as the depository bank (to receive the proceeds from the sale of the bonds in the amount of \$579,740.00) Ed made a motion to accept the resolution and that the United National Bank will serve as the registrar, authenticating agent and as the depository bank. Curt seconded the motion. Norm carried the motion. Kim informed the board that they need to sign the signature card for the checking acct and that only 2 signatures will be needed to approve payments. At this time Mr. Bragg needs the board to sign the resolution and also to sign multiple signature pages that will be used at the closing in Dunbar on June 28th. He also wants them to sign a notice of delivery of bond.

Kim questioned the board if assurity has ever paid a loss on our behalf? The board replied that no losses have ever been paid by the assurity company. At this time Kim wanted to go over vouchers that she has with the board. Voucher #23 is from Frankovitch & Anetakis for \$174.50 for legal services thru April 30th. Voucher #24 is to reimburse OPSD for payment of legal ads, \$246.50. Voucher #25 is from Brooke-Hancock Planning & Development Council for administrative services from January '95-March '95 for \$3828.00. Voucher #26 is for Eleanor Straight for copy fees of the Wargacki deed, \$10. Voucher #27 is from Weirton Daily Times in the amount of \$22.50 for a legal notice to advertise the bond resolution. This voucher is actually reimbursing the OPSD. Voucher #28 is from Frankovitch & Anetakis for legal services for the month of May, \$1140.40. Voucher #29 is from John Wargacki for the purpose of the tank site, \$1000. Voucher #30 is for the \$1 easements, the amount is not to exceed \$40. Curt made a motion to pay Vouchers 23 thru 30. Ed seconded the motion. Norm carried the motion.

Kim needs the board to sign the WDA loan application. Harry Pitts sent copies of the bid tabulation, so we can start processing the paper work and everything is a go. So we can go ahead and issue the two contractors the notice of award. Curt made a motion to award Contract I to James White Construction Co and Contract II to Caldwell Tanks to be effective as of June 29th. Ed seconded the motion. Norm carried the motion. Kim announces that we need to set up a pre-construction conference. The board decided to have the conference on Thursday, June 29th at 3pm.

Norm announces that he would like to have the Darrahs to state their purpose for being at this meeting. They want to get water for the area above the Serbian Picnic Grounds, there are 7 homes in that area. Curt said that this area is not in the Hudson Hill/Northfork Rd project. Kim said that it may be feasible for them to get water, she will have to talk to the engineer. Curt said that we don't have the money to do this right now. Kim took their name & phone number and she said that she will talk to the engineer and he will have to do a cost estimate and get back with them.

At this time the board returns to their agenda. Ed made a motion to accept the minutes from the previous meeting dated on May 17th, May 24th and June 8th. Curt seconded the motion. Norm carried the motion. Ed made a motion to accept the payables. Curt seconded the motion. Norm carried the motion. Under announcements we need to order new water bills, our supply is down to 1 box. Ed made a motion to order new water bills. Curt seconded the motion. Norm carried the motion. We need to order saddles, coppersettters, sleeves, lid assemblies, and pipe. We also need to order meters, and permaloc. Curt made a motion to buy 24 meters at this time and to order the other supplies. Ed seconded the motion. Norm carried the motion. Curt made a motion when scheduling meetings they are to be at 3pm or later. Ed seconded the motion. Norm carried the motion.

Cindy informs the board that she has not received any complaints this month. Norm questions on how the plant is running. Francis replied the we needs to order a tank of aquamag. Norm asked Curt how the distribution system is. He replied that the Birch Ln extension is in and we have taps going in already. Norm asked how the flushing went. Francis replied there were no problems, the lines were filthy. They did not do Sun Valley because of the valve. We did receive a bid from National Road for the 4" valve for \$1069. Francis said he was waiting for the specifications from National Rd before we could get other bids. Ed made a motion that we get another bid on the valve. Curt seconded the motion. Norm carried the motion. Norm asked if the fire hydrant is in on Rainey Hill. Cindy replied that Carl is putting

taps in at this time. Francis replied that when he asked Carl he keeps saying next week, but it never is next week.

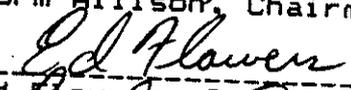
Norm states that we are at a point where we are going to have to hire another employee. The question is the job description. Ed said that he was in favor of hiring Art full time, at 8 hours a day. Norm has questions pertaining to the number of hours, money, and Francis's job description. Norm is in favor of a 40 hour work week instead of an 8 hr work day. Norm stated that he would like Art to keep away from overtime as much as possible at this time. Curt told Art that things may have to be changed from time to time, we appreciate that you would be flexible. Art said that it would be best if for the next couple of months him and Francis work together doing meter readings. He is unsure of where everything is right now. The board replied that they had no problem with that. Ed is concerned if this will interfere with Francis's job. Curt and Norm reply that this will have no affect on Francis. If Francis wants to take a day off or a vacation, it is in Art's 40 hours work week that he will take over for him.

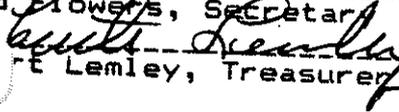
At this time Art wanted to discuss the distribution system. He says that during the short time he has been here looking at the system there are alot of things that need work. The valves need exercised, alot of valves need located, some of the meter pits need to be replaced. Art said that he will prepare a daily work sheet to show the work that he did for a certain day. Art questioned the seven year meter testing. Cindy said that she has a list of meters that need changed. Art said that he is not certified to do meter testing, but he has access to get his certificate thru New Cumberland. Norm questioned whether or not if we have the funds to pay Art for full time. Cindy said we could swing it. Curt made a motion to hire Art full time at an 8 hour day. Ed seconded the motion. Norm carried the motion. Curt made a motion to raise the mileage to whatever the federal rate is. Ed seconded the motion. Curt made a motion that Francis and Art read the meters together for two months until Art learns the system. Ed seconded the motion. Norm carried the motion. Ed said that we got all our stuff back from Mark.

Under new business we have to discuss the budget. Norm asked Cindy if she has worked on it yet. Cindy replied that she has never worked on a budget before. Francis said that he will assist her on working on the budget. Norm told Cindy to call the PSC and find out when the budget is due. Ed asked how we are doing financially. Cindy told him that he has copies of the balances for both checking accounts listed in his minutes, all he has to do is read. Norm told Curt that he is in charge when He and Ed go to Dunbar next week.

After no other business was at hand Ed made a motion to adjourn the meeting. Curt seconded the motion. Norm adjourned the meeting. The next meeting will be Thursday, June 29th for the pre-construction meeting.

  
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Norm Allison, Chairman

  
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Ed Flowers, Secretary

  
-----  
Art Lemley, Treasurer



State of Ohio,  
Steubenville,  
Jefferson County, ss.

**TINA M. KING**

being sworn, says she is

**bookkeeper**

of **THE HERALD-STAR**, a News-  
paper published, and of general  
circulation in said County and  
City, and that the Notice, of  
which the annexed is a true copy,  
was published in said newspaper

once on June 9, 1995

*Tina M. King*

Sworn to and subscribed before

me this 9th day of

June, 19 95

Printer's fees \$22.50

Card No. 010545

SEANELL, Notary Public  
State of Ohio

My Commission Expires **APR 7 1999**

*Seannell*

## PUBLIC NOTICES

**NOTICE TO CONTRACTORS  
1995 CITY STREET SEAL PROGRAM. CONTRACT NO. 95-105**

Sealed proposals shall be received at the office of the Steubenville City Manager until June 21, 1995, at 12:00 noon local time, for furnishing the materials and performing the labor for the slurry sealing of designated streets in Steubenville, Ohio. All bids will be publicly opened and read aloud. All work will include, but not be limited to the following:

Cleaning and sealing streets with slurry seal surface treatment, as per specifications.

The following streets are included in the contract and represent approximately 110,000 square yards of work:

**Slurry Seal Surface Treatment:**

Alexander from Pico to Alexander (E); Bellevue from Lawson Bldg. to Ridge; Braybarton from Sunset to & including Circle; Broadway from Estelle to Columbia; Buckeye from University to E. Terminus; Fays from W Corp Limit to Efts; Fourth from Railroad Bldg. to Washington; Garfield from Rosemont to Etta; Hill from Spring to South; Johnson from St. Charles to Sunset; Lawson from Adams to Bridge; Lincoln Blvd. from Lincoln to Arden; Ninth from Washington to North; North from Fifth to Fourth; North from Ninth to Seventh; Parkview from Franciscan (W) to Parkview; Prospect from Lincoln to E. Terminus; Shady from Wilma to Braybarton; Sherman from Franklin to N. Terminus; Slack from Fourth to Third; South from Terrace to Eighth; Terri from Braybarton to N. Terminus; Third from Adams to Dock; Wells from SR7 to Slack; Wilma from Shady to Sunset; W. Argonne from W. of Stratford to Sunset.

Contract documents including drawings and specifications are on file at the Steubenville Public Works Building, 238 South Lake Erie Avenue, Steubenville, Ohio as prepared by the Division of Engineering Ohio and may be obtained by depositing a non-refundable amount of ten dollars (\$10.00) with the City of Steubenville for each set of documents so obtained.

Bids shall be on a unit price basis and shall be in writing on proposal blanks furnished by the city engineer.

A Certified Check or Bank Draft, payable to the order of the City of Steubenville, negotiable United States Government Bonds, in an amount equal to ten percent (10%) of the bid together with a consent of surety, or a satisfactory bid bond, executed by the bidder, in an amount equal to one hundred percent (100%) of the estimated cost of the project shall accompany the bid.

The successful bidder will be required to furnish and pay for a satisfactory performance and payment bond or bonds.

Attention is called to the fact that no less than the minimum salaries and wages, as set forth in the contract documents, must be paid on this project, and that the contractor must insure that employees and applicants for employment are not discriminated against because of their race, creed, color, sex or national origin.

Completion date for this project is September 15, 1995.

The City of Steubenville, reserves the right to reject any or all bids, or to waive any informalities in the bidding.

Bids may be held by the City of Steubenville, for a period not to exceed thirty (30) days from the date of the opening of bids, for the purpose of reviewing the bids and investigating the qualifications of the bidders, prior to awarding of the contract.

**CITY OF STEUBENVILLE  
GARY DuFOUR  
City Manager**

6-2,9,16, 1995 Adv.

**NOTICE TO BIDDERS**

Sealed bids for installation only of heating/cooling units at the Jeffco Training Center, 2530 Cherry Avenue, Steubenville, Ohio will be received in duplicate by the Superintendent of the Jefferson County Mental Retardation and Developmental Disabilities Program, 256 John Scott Highway, Steubenville, Ohio 43952, no later than 10:00 a.m. Friday, June 2, 1995.

All bids must be identified by marking sealed envelope - **BID - INSTALLATION ONLY - HEATING/COOLING AT JEFFCO TRAINING CENTER.** The bids will be publicly opened and read aloud immediately thereafter in the Office of the Superintendent. Bids will be reviewed by the Board at a later date.

Specifications may be obtained from the Office of the Superintendent, Jefferson County Board of Mental Retardation and Developmental Disabilities, 256 John Scott Highway, Steubenville, Ohio.

A certified check or bank draft in the amount of Five Percent (5%) of the total amount of the bid, payable to the Jefferson County Mental Retardation and Developmental Disabilities Program shall be submitted with each bid, or a satisfactory bid bond furnished by a solvent surety company authorized to do business in the State of Ohio in an amount equal to Five Percent (5%) of the bid may be furnished in lieu of the certified check or bank draft.

The certified check, bank draft or bid bond shall be forfeited to the Jefferson County Mental Retardation and Deve-

lopmental Disabilities Program as a measure of liquidated damages should the bidder fail to refuse to execute the contract within ten (10) days after written notification from the Board of the acceptance of his bid. The bid bond or check of the unsuccessful bidders will be returned when an award is made; that of the successful bidder will be returned when the contract and the bond are approved.

If, at the determination of the Board, the acceptance of the lowest bid is not in the best interest of all concerned, said Board may accept another bid so opened.

The Jefferson County Board of Mental Retardation and Developmental Disabilities reserves the right to reject any or all bids and to waive all informalities in the bidding.

**BY ORDER OF THE JEFFERSON COUNTY BOARD OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES. Richard P. Planenschmidt, Superintendent.**  
6-2,9,16, 1995 Adv.

**NOTICE TO CONTRACTORS**

**1995 CITY STREET HOT-MIX PROGRAM, CONTRACT NO. 95-100.**

Sealed proposals shall be received at the office of the Steubenville City Manager until June 14, 1995, at 12:00 noon local time, for furnishing the materials and performing the labor for the resurfacing by method of hot-mix asphalt concrete on designated streets in Steubenville, Ohio. All bids will be publicly opened and read aloud. All work will include, but not be limited to the following:

Removal of existing asphalt concrete by milling where indicated.

Cleaning, tacking, and paving streets with asphalt concrete, as per specifications.

Adjusting to grade valve boxes, manholes and catch basins, as specified.

The following streets are included in the contract:

Carnegie from Euclid to Arlington; Cherry from Hollywood to Gramercy; Cleveland from W. of Hollywood to East Terminus; Country Club from Scioto to Lovers Lane; Gramercy from Harvard Blvd. to Cherry; Harvard from Cleveland to Cherry; Scioto from Pine Valley to Fairway.

The following streets are add alternates:

Fifth from Franklin to Ross; Franklin from RR Tracks to Fifth Plus Fourth Area; Hollywood from Plaza Lot to Sunset; Lincoln Blvd. from Alton to End of Concrete; North from Sixth to Fifth.

Contract documents including drawings and specifications are on file at the Steubenville Public Works Building, 238 South Lake Erie Avenue, Steubenville, Ohio as prepared by the Division of Engineering Ohio and may be obtained by depositing a non-

refundable amount of ten dollars (\$10.00) with the City of Steubenville for each set of documents so obtained.

Bids shall be on a unit price basis and shall be in writing on proposal blanks furnished by the city engineer.

A Certified Check or Bank Draft, payable to the order of the City of Steubenville, negotiable United States Government Bonds, in an amount equal to ten percent (10%) of the bid together with a consent of surety, or a satisfactory bid bond, executed by the bidder, in an amount equal to one hundred percent (100%) of the estimated cost of the project shall accompany the bid.

The successful bidder will be required to furnish and pay for a satisfactory performance bond or bonds.

Attention is called to the fact that no less than the minimum salaries and wages, as set forth in the contract documents, must be paid on this project, and that the contractor must insure that employees and applicants for employment are not discriminated against because of their race, creed, color, sex or national origin.

Completion date for this project is September 29, 1995.

The City of Steubenville, reserves the right to reject any or all bids, or to waive any informalities in the bidding.

Bids may be held by the City of Steubenville, for a period not to exceed thirty (30) days from the date of the opening of bids, for the purpose of reviewing the bids and investigating the qualifications of the bidders, prior to awarding of the contract.

**CITY OF STEUBENVILLE  
GARY DuFOUR  
City Manager  
PAMELA ORLANDO  
Clerk of Council**

5-26; 6-2,9, 1995 Adv.

**PUBLIC NOTICE**

Please be advised that the Oakland Public Service District (the "District"), at a special meeting scheduled for 3:00 p.m. on the 21st day of June, 1995, to be held at the District's offices at Wylie Ridge Road, Weirton, West Virginia, will consider for passage a Bond Resolution titled as follows: Resolution Authorizing the Acquisition and Construction of Public Service Properties Through the Issuance of Water Revenue Bonds, Series 1995, of the Oakland Public Service District, in the Amount of \$579,740, to Finance the Acquisition and Construction of Improvements to a Public Water System; Defining and Prescribing the Terms and Provisions of the Bonds; Providing Generally for the Rights and Remedies and Security of the Holders of the Bonds; Providing Statutory Lien on Revenues and Systems; Approv-

ing and Ratifying a Loan Agreement Relating to Such Bonds; Providing for the Adoption, Ratification, Approval and Collection of Rates and Charges for the Public Water System; and Providing General Terms and Providing When this Resolution Shall Take Effect.

This notice is given pursuant to the provisions of West Virginia Code §6-9A-6 which provides that no bond issue approved by a governing body may be annulled under this section if notice of the meeting at which such bond issue is to be considered was given at least ten (10) days prior to such meeting by a Class I legal advertisement published in accordance with the provisions of §59-3-1 in a qualified newspaper having a general circulation in the geographic area represented by the governing body.

All those interested in the Resolution described above are advised to appear at said meeting to offer any comments for the Public Service Board's consideration in connection with their deliberations on and consideration of the Bond Resolution.

Given under my hand this 9th day of June, 1995.

**OAKLAND PUBLIC SERVICE DISTRICT**

**By: Norman Allison,  
Chairman**

6-9, 1995 Adv.

**ORDINANCE NO. 1995-47**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF STEUBENVILLE TO ENTER INTO AN AGREEMENT FOR MEMBERSHIP IN THE REGIONAL COUNCIL OF GOVERNMENTS AND THE REGIONAL INCOME TAX AGENCY.**

**MAY 30, 1995  
PAMELA L. ORLANDO  
Clerk of Council**

6-9, 1995 Adv.

**ORDINANCE NO. 1995-48**

**AN ORDINANCE AMENDING CHAPTER 191 OF THE CODIFIED ORDINANCES OF THE CITY OF STEUBENVILLE.**

**MAY 30, 1995  
PAMELA L. ORLANDO  
Clerk of Council**

6-9, 1995 Adv.

**ORDINANCE NO. 1995-50**

**AN ORDINANCE CREATING SECTION 351.16 OF THE CODIFIED ORDINANCES OF THE CITY OF STEUBENVILLE.**

**MAY 30, 1995  
PAMELA L. ORLANDO  
Clerk of Council**

6-9, 1995 Adv.

**ORDINANCE NO. 1995-51  
AN ORDINANCE AMENDING SECTION 1185.23(a) OF THE CODIFIED ORDINANCES OF THE CITY OF STEUBENVILLE.**

**MAY 30, 1995  
PAMELA L. ORLANDO  
Clerk of Council**

6-8, 1995 Adv.



LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), and the governmental agency designated below (the "Governmental Agency").

OAKLAND PUBLIC SERVICE DISTRICT

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(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 20, Article 5C, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered to make loans to governmental agencies for the acquisition or construction of water development projects by such governmental agencies and to issue water development revenue bonds of the State of West Virginia (the "State") to finance, in whole or in part, by loans to governmental agencies, one or more water development projects, all subject to such provisions and limitations as are contained in the Act;

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

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to construct, operate and improve a water development project, as defined by the Act, and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

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

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

WHEREAS, having reviewed the Application and made all findings required by Section 5 of the Act and having available sufficient funds therefor, the Authority is willing to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with proceeds of certain water development revenue bonds of the State issued by the Authority pursuant to and in accordance with the provisions of the Act and a certain general revenue bond resolution adopted by the Board of the Authority (the "General Resolution"), as supplemented, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Authority's water development loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "water development revenue bond," "cost," "governmental agency," "water development project," "wastewater facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political sub-divisions, and designated in the Application and any qualified successor thereto.

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

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

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

and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

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

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

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

2.10 The Governmental Agency agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

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

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

### ARTICLE III

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

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

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

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

(c) The Governmental Agency shall either have received bids or entered 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 financing of construction, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority shall have received a certificate of the Consulting

Engineers to such effect the form of which certificate is attached hereto as Exhibit A;

(d) No Loan shall be made for the purpose of refinancing any outstanding long-term indebtedness of a Governmental Agency unless an opinion of counsel is received by the Authority to the effect that such refinancing is permitted by the Act and the Resolution, and that such refinancing will not cause a violation of any covenant, representation or agreement of the Authority contained in the Resolution or Tax Regulatory Agreement with respect to the exclusion of the interest on the Bonds from gross income of the holder thereof for federal income tax purposes;

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

(f) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") 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 shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

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

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

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsection 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the

accountants for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, 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 shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of water development projects and satisfactory to the Authority, to such effect, such certificate to be in form and substance satisfactory to the Authority, and evidence satisfactory to the Authority of such irrevocably committed grants.

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

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

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

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied

to the Authority for loans to finance water development projects and that the obligation of the Authority to make any such loan is subject to the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the right of the Authority to make such loans to other governmental agencies as in the aggregate will permit the fullest and most timely utilization of such proceeds to enable the Authority to pay debt service on the water development revenue bonds issued by it. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available funds sufficient to purchase all the Local Bonds and that, prior to such execution, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available. The Governmental Agency further specifically recognizes that during the last 90 days of a period to originate Loans from its water development revenue bond proceeds, the Authority may execute Loan Agreements, commit moneys and close Local Bond sales in such order and manner as it deems in the best interest of the Program.

#### ARTICLE IV

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

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

(a) That the revenues generated from the operation of the System will be used monthly, in the order of priority listed, as set forth on Schedule Y attached hereto and incorporated herein by reference. The gross revenues of the System shall always be used for purposes of the System.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the gross or net revenues from the System, as more fully set forth in Schedules X and Y attached hereto;

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

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

(iv) That, except as otherwise required by State law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

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

(vii) That the Governmental Agency will not render any free services of the System;

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

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

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

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority, which report shall include a statement that the Governmental Agency is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Governmental Agency's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(xii) That the Governmental Agency shall annually adopt a detailed 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 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, 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 Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the

Authority, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

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

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

(xvii) That the Governmental Agency shall take any and all action, or shall refrain from taking any action, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for Federal income tax purposes of interest on the Authority's water development revenue bonds;

(xviii) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached to the Loan Application, 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, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project;

(xix) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider; and

(xx) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that

term is defined in the Code) from time to time as the Authority may request.

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

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

4.3 An Origination Fee Account shall be established with the Trustee to hold the portion of the proceeds of any Loan established to fund an Origination Fee. Amounts on deposit in an Origination Fee Account shall belong to the Governmental Agency receiving the related Loan, but such amounts may only be disbursed from the Account to pay the Origination Fee as and when required to satisfy the requirements of the State's Revolving Fund program established pursuant to Title VI of the Water Quality Act of 1987 or for such other purposes as the Authority may approve in writing.

4.4 The principal of the Loan shall be repaid by the Governmental Agency annually on the day and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a semiannual basis as provided in said Schedule X.

4.5 The Loan shall bear interest from the date of the delivery to the Authority of the Local Bonds until the date of payment thereof, at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

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

4.7 The Governmental Agency agrees to pay from time to time, as required by the Authority, the Governmental Agency's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be as determined by the Authority and shall include without limitation Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for the water development revenue bonds. The Authority shall provide both the Governmental Agency and the trustee for the water development revenue bonds with a schedule of such fees and charges, and the Governmental Agency shall pay such fees and charges on the dates indicated directly to the trustee. The Governmental Agency hereby specifically authorizes the Authority to exercise the powers granted it by Section 9.06 of the General Resolution.

4.8 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the Authority's bonds.

4.9 As long as the Authority is the owner of any of the Local Bonds outstanding, the Governmental Agency shall not redeem any of such Local Bonds outstanding without the written consent of the Authority, and any such redemption of Local Bonds authorized by the Authority shall provide for the payment of interest to the first allowable redemption date for the applicable water development revenue bonds, the redemption premium payable on the applicable water development revenue bonds redeemable as a consequence of such redemption of Local Bonds and the costs and expenses of the Authority in effecting any such redemption, all as further prescribed by Section 9.11 of the General Resolution. Nothing in this Loan Agreement shall be construed to prohibit the Authority from refunding applicable water development revenue bonds, and such refunding need not be based upon or result in any benefit to the Governmental Agency.

#### ARTICLE V

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

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in

the Local Act and in compliance with the provisions of Subsection 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 minimum sums set forth in the Local Act, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under Section 6a of the Act, including without limitation the right to impose, enforce and collect directly charges upon users of the System.

## ARTICLE VI

### Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby acknowledges to the Authority its understanding of the provisions of the Act, vesting in the Authority certain powers, rights and privileges with respect to water development projects in the event of default by governmental agencies in the terms and covenants of loan agreements, and the Governmental Agency hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Governmental Agency 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 At the option of the Authority, the Governmental Agency shall issue and sell to the Authority additional, subordinate bonds to evidence the Governmental Agency's obligation to repay to the Authority any grant received by the Governmental Agency from the Authority in excess of the amount to which the Governmental Agency is entitled pursuant to applicable policies or rules and regulations of the Authority. Also at the option of the

Authority, the Governmental Agency may issue and sell to the Authority additional, subordinate bonds for such purposes as may be acceptable to the Authority.

6.3 The Governmental Agency hereby warrants and represents that all information provided to the Authority 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 shall have the right to cancel all or any of its obligations under this Loan Agreement if (a) any representation made to the Authority by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of this Loan Agreement.

6.4 The Governmental Agency hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority for the planning or design of the Project, and such repayment shall be a condition precedent to the Authority's making the Loan.

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

6.6 Notwithstanding Section 6.5, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

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

6.8 The Governmental Agency hereby agrees to file with the Authority upon completion of acquisition and construction of

the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency are set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedule X shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.3 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.

7.4 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.

7.5 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.6 This Loan Agreement merges and 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.

7.7 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be

specifically enforced or subject to a similar equitable remedy by the Authority.

7.8 This Loan Agreement shall terminate upon the earlier of:

(i) the end of ninety (90) days after the date of execution hereof by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority pursuant to Section 6.3 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority.

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.

Oakland Public Service District  
[Proper Name of Governmental Agency]

(SEAL) *Pending next*  
*E.F.*

By: *Norm Allison*  
Its: Chairman

Attest:  
*Ed Flower*

Date: June 28, 1995

Its: Secretary

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

(SEAL)

By: *Daniel B. Lyubasky*  
Director

Attest:  
*Barbara B Meadows*  
Secretary-Treasurer

Date: June 28, 1995

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

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

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, \_\_\_\_\_, hereby certify that my firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (herein called the "Project") of \_\_\_\_\_ (the "Issuer") to be constructed primarily in \_\_\_\_\_ County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the \_\_\_\_\_ passed by the \_\_\_\_\_ of the Issuer on \_\_\_\_\_, 19\_\_\_\_, effective \_\_\_\_\_, 19\_\_\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority") dated \_\_\_\_\_, 19\_\_\_\_.

1. The Bonds are being issued for the purpose of \_\_\_\_\_  
\_\_\_\_\_ (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least forty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors 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 by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the \_\_\_\_\_ of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b)(ii) of the Loan Agreement, (vi) that 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 irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

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

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

[SEAL]



EXHIBIT B

[Opinion of Bond Counsel for Governmental Agency]

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority  
1201 Dunbar Avenue  
Dunbar, West Virginia 25064

Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated \_\_\_\_\_, 19\_\_\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, 19\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$\_\_\_\_\_, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable April 1 and October 1 of each year, beginning \_\_\_\_\_ 1, 19\_\_, at the respective rate or rates and with principal payable in installments on October 1 in each of the years, all as follows:

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
-------------	--------------------	----------------------

The Local Bonds are issued for the purpose of \_\_\_\_\_  
\_\_\_\_\_ and 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 enacted by the Governmental Agency on \_\_\_\_\_ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Governmental Agency without the consent of the Authority.
3. The Governmental Agency is a duly organized and presently existing \_\_\_\_\_, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.
4. The Governmental Agency has legally and effectively enacted the Local Act and all other necessary \_\_\_\_\_ in connection with the issuance and sale of the Local Bonds. 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 are valid and legally enforceable special obligations of the Governmental Agency, payable from the [net] revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the [net] revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.
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,



EXHIBIT C

Monthly Financial Report

\_\_\_\_\_  
[Name of Governmental Agency]

\_\_\_\_\_  
[Name of Bond Issue]

Fiscal Year - \_\_\_\_

Report Month: \_\_\_\_\_

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR TO</u> <u>DATE</u>	<u>BUDGET YEAR</u> <u>TO DATE</u>	<u>DIFFERENCE</u>
1. <u>ITEM</u> Gross Revenues Collected				
2. Operation and Maintenance Expense				
3. Other Bond Debt Payments (including Reserve Fund deposits)				
4. Bond Payments (include Reserve Fund deposits)				
5. Renewal and Replacement Fund Deposit				
6. Funds available for capital construction				

Witnesseth my signature this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

[Name of Governmental Agency]

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

ABB0017F



WDA-5X  
(May 1993)

SCHEDULE X  
DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$ 579,740  
Purchase Price of Local Bonds \$ 579,740

Interest on the Local Bonds is payable on April 1 and October 1 in each year, beginning with the first semiannual interest payment date after delivery of the Local Bonds to the Authority, until the Local Bonds are paid in full, at the rate of 6.75 % per annum. Principal of the Local Bonds is payable on October 1 in each year as set forth on Exhibit 1 attached hereto and incorporated herein by reference.

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

Wheeling National Bank, dated May 5, 1989, issued in the original principal amount of \$183,500.

As of the date of the Loan Agreement, the Local Bonds are subordinate as to source of and security for payment to the following obligations:



WEST VIRGINIA WATER DEVELOPMENT AUTHORITY 1994 SERIES A LOCAL LOAN PROGRAM

BOND DEBT SERVICE

Oakland Public Service District  
Water Revenue Bonds, Series 1995

\$579,740

Dated Date 6/28/1995  
Delivery Date 6/28/1995

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
Jun 28, 1995	-	-	-	-	-
Oct 1, 1995	-	-	-	-	-
Apr 1, 1996	-	-	10,109.22	10,109.22	10,109.22
Oct 1, 1996	-	-	19,566.23	19,566.23	-
Apr 1, 1997	3,568.00	6.750%	19,566.23	23,134.23	42,700.46
Oct 1, 1997	-	-	19,445.81	19,445.81	-
Apr 1, 1998	3,809.00	6.750%	19,445.81	23,254.81	42,700.62
Oct 1, 1998	-	-	19,317.25	19,317.25	-
Apr 1, 1999	4,066.00	6.750%	19,317.25	23,383.25	42,700.50
Oct 1, 1999	-	-	19,180.02	19,180.02	-
Apr 1, 2000	4,341.00	6.750%	19,180.02	23,521.02	42,701.04
Oct 1, 2000	-	-	19,033.52	19,033.52	-
Apr 1, 2001	4,634.00	6.750%	19,033.52	23,667.52	42,701.04
Oct 1, 2001	-	-	18,877.12	18,877.12	-
Apr 1, 2002	4,947.00	6.750%	18,877.12	23,824.12	42,701.24
Oct 1, 2002	-	-	18,710.16	18,710.16	-
Apr 1, 2003	5,280.00	6.750%	18,710.16	23,990.16	42,700.32
Oct 1, 2003	-	-	18,531.96	18,531.96	-
Apr 1, 2004	5,637.00	6.750%	18,531.96	24,168.96	42,700.92
Oct 1, 2004	-	-	18,341.71	18,341.71	-
Apr 1, 2005	6,017.00	6.750%	18,341.71	24,358.71	42,700.42
Oct 1, 2005	-	-	18,138.63	18,138.63	-
Apr 1, 2006	6,424.00	6.750%	18,138.63	24,562.63	42,701.26
Oct 1, 2006	-	-	17,921.82	17,921.82	-
Apr 1, 2007	6,857.00	6.750%	17,921.82	24,778.82	42,700.64
Oct 1, 2007	-	-	17,690.40	17,690.40	-
Apr 1, 2008	7,320.00	6.750%	17,690.40	25,010.40	42,700.80
Oct 1, 2008	-	-	17,443.35	17,443.35	-
Apr 1, 2009	7,814.00	6.750%	17,443.35	25,257.35	42,700.70
Oct 1, 2009	-	-	17,179.63	17,179.63	-
Apr 1, 2010	8,341.00	6.750%	17,179.63	25,520.63	42,700.26
Oct 1, 2010	-	-	16,898.12	16,898.12	-
Apr 1, 2011	8,904.00	6.750%	16,898.12	25,802.12	42,700.24
Oct 1, 2011	-	-	16,597.61	16,597.61	-
Apr 1, 2012	9,506.00	6.750%	16,597.61	26,103.61	42,701.22
Oct 1, 2012	-	-	16,276.78	16,276.78	-
Apr 1, 2013	10,147.00	6.750%	16,276.78	26,423.78	42,700.56
Oct 1, 2013	-	-	15,934.32	15,934.32	-
Apr 1, 2014	10,832.00	6.750%	15,934.32	26,766.32	42,700.64
Oct 1, 2014	-	-	15,568.74	15,568.74	-
Apr 1, 2015	11,563.00	6.750%	15,568.74	27,131.74	42,700.48
Oct 1, 2015	-	-	15,178.49	15,178.49	-
Apr 1, 2016	12,344.00	6.750%	15,178.49	27,522.49	42,700.98
Oct 1, 2016	-	-	14,761.88	14,761.88	-
Apr 1, 2017	13,177.00	6.750%	14,761.88	27,938.88	42,700.76
Oct 1, 2017	-	-	14,317.16	14,317.16	-
Apr 1, 2018	14,066.00	6.750%	14,317.16	28,383.16	42,700.32
Oct 1, 2018	-	-	13,842.43	13,842.43	-
Apr 1, 2019	15,016.00	6.750%	13,842.43	28,858.43	42,700.86
Oct 1, 2019	-	-	13,335.64	13,335.64	-
Apr 1, 2020	16,029.00	6.750%	13,335.64	29,364.64	42,700.28
Oct 1, 2020	-	-	12,794.66	12,794.66	-
Oct 1, 2020	17,111.00	6.750%	12,794.66	29,905.66	42,700.32



## BOND DEBT SERVICE

Oakland Public Service District  
Water Revenue Bonds, Series 1995

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
Apr 1, 2021	-	-	12,217.16	12,217.16	-
Oct 1, 2021	18,266.00	6.750%	12,217.16	30,483.16	42,700.32
Apr 1, 2022	-	-	11,600.69	11,600.69	-
Oct 1, 2022	19,499.00	6.750%	11,600.69	31,099.69	42,700.38
Apr 1, 2023	-	-	10,942.59	10,942.59	-
Oct 1, 2023	20,816.00	6.750%	10,942.59	31,758.59	42,701.18
Apr 1, 2024	-	-	10,240.05	10,240.05	-
Oct 1, 2024	22,221.00	6.750%	10,240.05	32,461.05	42,701.10
Apr 1, 2025	-	-	9,490.10	9,490.10	-
Oct 1, 2025	23,721.00	6.750%	9,490.10	33,211.10	42,701.20
Apr 1, 2026	-	-	8,689.51	8,689.51	-
Oct 1, 2026	25,322.00	6.750%	8,689.51	34,011.51	42,701.02
Apr 1, 2027	-	-	7,834.89	7,834.89	-
Oct 1, 2027	27,031.00	6.750%	7,834.89	34,865.89	42,700.78
Apr 1, 2028	-	-	6,922.60	6,922.60	-
Oct 1, 2028	28,855.00	6.750%	6,922.60	35,777.60	42,700.20
Apr 1, 2029	-	-	5,948.74	5,948.74	-
Oct 1, 2029	30,803.00	6.750%	5,948.74	36,751.74	42,700.48
Apr 1, 2030	-	-	4,909.14	4,909.14	-
Oct 1, 2030	32,882.00	6.750%	4,909.14	37,791.14	42,700.28
Apr 1, 2031	-	-	3,799.37	3,799.37	-
Oct 1, 2031	35,102.00	6.750%	3,799.37	38,901.37	42,700.74
Apr 1, 2032	-	-	2,614.68	2,614.68	-
Oct 1, 2032	37,471.00	6.750%	2,614.68	40,085.68	42,700.36
Apr 1, 2033	-	-	1,350.03	1,350.03	-
Oct 1, 2033	40,001.00	6.750%	1,350.03	41,351.03	42,701.06
	579,740.00		1,052,995.20	1,632,735.20	1,632,735.20



BOND SUMMARY STATISTICS

Oakland Public Service District  
Water Revenue Bonds, Series 1995

Dated Date	6/28/1995
Delivery Date	6/28/1995
Last Maturity	10/01/2033
Arbitrage Yield	6.751177%
True Interest Cost (TIC)	6.751177%
Net Interest Cost (NIC)	6.750000%
All-In TIC	6.751177%
Average Coupon	6.750000%
Average Life (years)	26.908
Duration of Issue (years)	12.079
Par Amount	579,740.00
Bond Proceeds	579,740.00
Total Interest	1,052,995.20
Net Interest	1,052,995.20
Total Debt Service	1,632,735.20
Maximum Annual Debt Service	42,701.26
Average Annual Debt Service	42,676.59
Underwriter's Fees (per \$1000)	
Average Takedown	-
Other Fee	-
Total Underwriter's Discount	-
Bid Price	100.000000

	TIC	All-In TIC	Arbitrage Yield
Par Value	579,740.00	579,740.00	579,740.00
+ Accrued Interest	-	-	-
+ Premium (Discount)	-	-	-
- Underwriter's Discount	-	-	-
- Cost of Issuance Expense	-	-	-
- Other Amounts	-	-	-
Target Value	579,740.00	579,740.00	579,740.00
Target Date	6/28/1995	6/28/1995	6/28/1995
Yield	6.751177%	6.751177%	6.751177%



SCHEDULE Y  
REVENUES

In accordance with Subsection 4.1(a) of the Loan Agreement, the revenues generated from the operation of the System will be used monthly, in the order of priority listed, as follows:

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by an outstanding local resolution, indenture or other act or document, as reflected on Schedule X to the Loan Agreement, and beginning seven (7) months prior to the first date of payment of interest on the Local Bonds from revenues and thirteen (13) months prior to the first date of payment of principal of the Local Bonds, respectively, to provide debt service on the Local Bonds by depositing in a sinking fund one-sixth (1/6) of the interest payment next coming due on the Local Bonds and one-twelfth (1/12) of the principal payment next coming due on the Local Bonds and, beginning thirteen (13) months prior to the first date of payment of principal of the Local Bonds, if the Reserve Account was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit) in an amount equal to the Reserve Requirement, by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) (or such other amount as shall be acceptable to the Authority and as shall fund the Reserve Account over not more than ten (10) years) 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;
- (iv) to provide debt service on and requisite reserves for any subordinate indebtedness of the Governmental Agency held or owned by the Authority; and

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

SCHEDULE Z

Additional and Supplemental Definitions

1. "Local Statute" means Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended.
2. "System" means the public service properties for the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses, owned by the Governmental Agency, and any improvements or extensions thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

Additional Conditions and Covenants

1. As a condition precedent to the Authority's making the Loan, the Governmental Agency shall have obtained, among other permits required, a permit from the West Virginia Bureau of Public Health.
2. The Local Act shall contain a covenant substantially as follows:

That the Governmental Agency will, to the full extent permitted by applicable law and the rules and regulations of the PSC, discontinue and shut off the services and facilities of the System to all users of services of the System delinquent in payment of charges for the services of the System and will not restore the services of the System until all delinquent charges for the services of the System have been fully paid.
3. Subject to any prior or parity obligations described in Schedules X and Y attached to the Loan Agreement, the net revenues derived from the operation of the System are pledged to the payment of the principal of and interest on the Local Bonds.
4. The paying agent for the Local Bonds shall be the West Virginia Municipal Bond Commission or any successor to the functions thereof.

5. As a condition precedent to the Authority's making the Loan, the Governmental Agency shall deliver to the Authority a certificate representing the following:

- (a) The Governmental Agency expects to enter into a contract within six months of the date thereof for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2-1/2 percent of the estimated total Project cost financed with proceeds from the sale of the Local Bonds or \$100,000;
- (b) Work with respect to the construction of the Project will proceed with due diligence to completion. Construction is expected to be completed within three years from the date of issuance of the Authority's water development revenue bonds;
- (c) All of the proceeds from the sale of the Local Bonds which will be used for payment of costs of the Project will be expended for such purpose within three years from the date of issuance of the Authority's water development revenue bonds; and
- (d) The Governmental Agency does not expect to sell or otherwise dispose of the Project, in whole or in part, prior to the last maturity date of the Local Bonds.



\$579,740

OAKLAND PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 1995

CERTIFICATE OF:

1. AWARD OF BONDS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES, ETC.
6. CERTIFICATION OF COPIES OF DOCUMENTS
7. INCUMBENCY AND OFFICIAL NAME
8. DELIVERY AND PAYMENT
9. LAND AND RIGHTS OF WAY
10. MEETINGS, ETC.
11. CONTRACTORS' INSURANCE, ETC.
12. LOAN AGREEMENT
13. CONFLICTS OF INTEREST
14. GRANTS
15. TERMS
16. NO FEDERAL GUARANTY
17. IRS INFORMATION RETURN
18. SPECIMEN BONDS

We, the undersigned CHAIRMAN and the undersigned SECRETARY of the Public Service Board (the "Governing Body") of the OAKLAND PUBLIC SERVICE DISTRICT of Hancock County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with Oakland Public Service District, Water Revenue Bonds, Series 1995, No. R-1, in the principal amount of \$579,740, bearing interest at the rate of 6.75% per annum, which is dated on the date hereof (the "Bonds").

1. **AWARD OF BONDS:** The entire issue of the Bonds has been duly awarded to West Virginia Water Development Authority (the "Purchaser"), pursuant to the Bond Resolution of the Issuer adopted by the Public Service Board of the Issuer on June 21, 1995 (the "Bond Resolution").

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 the issuance and delivery of the Bonds, nor questioning the proceedings and authority by which the Issuer authorized the issuance and sale of 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 and officers thereof to their respective offices; nor questioning the construction, acquisition or operation of the water system of the Issuer (the "System") being financed out of the proceeds of sale of the Bonds or for the pledge of the Net Revenues from said System.

3. **GOVERNMENTAL APPROVALS:** All applicable approvals and certificates required by law for construction and operation of the System have been duly and timely obtained and remain in full force and effect. This includes a Certificate of Convenience and Necessity from the West Virginia Public Service Commission awarded pursuant to Case No. 94-544-PWD-CN.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since the approval by the Purchaser of a loan to assist in acquisition and construction of the System.

The Issuer does not have outstanding any obligation payable from and entitled to any lien on the revenues of the System except for a loan made by Wheeling National Bank to the Issuer, evidenced by a Loan Agreement dated May 5, 1989, in the original principal amount of \$183,500.

5. SIGNATURES, ETC.: The undersigned CHAIRMAN and SECRETARY did, for the Issuer on the date hereof, officially execute and seal the Bonds with the official corporate seal of the Issuer, an impression of which seal is on this certificate above our signatures and said officers are the duly elected, qualified and serving officers as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer.

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

Orders of County Commission creating and expanding Issuer and appointing members to Governing Body.

Rules of Procedure of Governing Body.

Rate Resolution

Public Service Commission Certificate of Convenience and Necessity

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Oakland Public Service District" and its principal office and place of business are in Hancock County, West Virginia. The governing body of the Issuer is its Public Service Board consisting of three members whose names and dates of termination of current terms of office are as follows:

<u>Name</u>	<u>Date of Termination of Office</u>
Norman Allison	September 20, 2000
Ed Flowers	August 31, 1998
Curtis E. Lemley	September 21, 2000

The names of the duly elected, qualified and acting Chairman and Secretary of the Governing Body are as follows:

Chairman - Norman Allison  
Secretary - Ed Flowers

The duly appointed and acting Attorney for the Issuer is Mark Colantonio.

8. DELIVERY AND PAYMENT: On the date hereof, the Bonds were delivered to the Purchaser at Dunbar, West Virginia, by the undersigned Chairman, and at the time of such delivery, the Bonds had been duly and fully executed and sealed on behalf of the Issuer in accordance with the above-mentioned Bond Resolution. United National Bank, acting as Registrar, did officially authenticate and deliver the Bond, numbered R-1, to the Purchaser, pursuant to the Loan Agreement and the Bond Resolution.

At the time of delivery of the Bond, a payment was received by the undersigned Chairman, being the principal amount of the Bonds. Interest on the Bonds at the rate of 6.75% per annum is payable from the date hereof. The Bond proceeds have been deposited in accordance with the terms of the Bond Resolution.

9. LAND AND RIGHTS OF WAY: All land in fee simple and all rights of way and easements necessary for the construction, operation and maintenance of the System have been acquired or can and will be acquired by purchase, or if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties

which may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

10. MEETINGS, ETC.: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the construction, acquisition, operation and financing of the System were authorized or adopted at meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, and a quorum of duly appointed, qualified and acting members of the Governing Body was present and acting at all times during all such meetings.

11. CONTRACTORS' INSURANCE, ETC.: All contractors will be required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Resolution.

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

13. CONFLICTS OF INTEREST: No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer and the sale of any land, materials, supplies or services to the Issuer, or to any contractor supplying the Issuer, relating to the Bonds, the authorizing document 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.

14. GRANTS: The Issuer's Grant is in full force and effect.

15. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning as in the Bond Resolution of the Issuer and the Loan Agreement.

16. NO FEDERAL GUARANTY: The Bonds are not, in whole or in part, and will not be, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

17. IRS INFORMATION RETURN: On the date hereof, the undersigned Chairman did officially sign a properly completed IRS Form 8038-G and will cause such executed Form 8038-G to be filed in a timely manner with the Internal Revenue Service Center, Philadelphia, Pennsylvania.

18. SPECIMEN BONDS: Attached hereto as Exhibit A is a specimen Bonds which, except as to execution and authentication, are identical in all respects with such Bonds this day delivered to the Authority and being substantially in the form prescribed in the Resolution.

WITNESS our signatures and the official corporate seal of OAKLAND PUBLIC SERVICE DISTRICT on this 28th day of June, 1995.

(CORPORATE SEAL)

SIGNATURE

Norm Allison

Ed Flowers

[Signature]

OFFICIAL TITLE

Chairman, Public Service Board

Secretary, Public Service Board

Attorney for Issuer



CERTIFICATE OF CONSULTING ENGINEER

Oakland Public Service District  
\$579,740 Water Revenue Bonds, Series 1995

I, Harry W. Pitts, Registered Professional Engineer, West Virginia License No. 2702, of Kelley, Gidley, Blair & Wolfe, Inc., Consulting Engineers, Parkersburg, West Virginia, hereby certify that my firm is engineer for the acquisition and construction of an expansion to the existing water system of Oakland Public Service District (the "Issuer") to be constructed in Hancock County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the Resolution adopted by the Public Service Board of the Issuer on June 21, 1995, effective on June 21, 1995, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), dated June 28, 1995.

1. The Bonds are being issued for the purpose of expanding the existing water system on Hudson Hill and along North Fork Road (the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least forty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the Public Service Board of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) (ii) of the Loan Agreement, (vi) 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 irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this 23<sup>rd</sup> day of June 1995.

KELLEY, GIDLEY, BLAIR & WOLFE, INC.

By: Harry W. Pitts  
West Virginia License No. 2702  
[SEAL]



EXHIBIT A

DATE: June 22, 1995

AMENDED SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: Oakland Public Service District  
 TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

A. Cost of Project

1.	Construction		
2.	Technical Services	\$ 908,959	
3.	Legal and Fiscal	\$ 133,300	
4.	Administrative (Includes audit/acct.)	\$ 25,000	
5.	Site and Other Lands	\$ 75,125	
6.	Step I and/or Step II (Design) or Other Loan Repayment (Specify Type: _____)	\$ 12,500	
7.	Interim Financing Costs	\$ -0-	
8.	Contingency	\$ -0-	
9.	Total of Lines 1 through 8	\$ 129,473	\$ 1,284,357

B. Sources of Funds

10.	Federal Grants: <sup>1</sup> (Specify Source)	_____	\$ _____
11.	State Grants: (Specify Source)	Small Cities	\$ 750,000
		Block Grant	\$ _____
		_____	\$ _____
		_____	\$ _____
12.	Other Grants: (Specify Source)	_____	\$ _____
13.	Any Other Source <sup>2</sup> (Specify)	_____	\$ _____
14.	Total of Lines 10 through 13		\$ 750,000
15.	Net Proceeds Required from Bond Issue (Line 9 less Line 14)		\$ 534,357

<sup>1</sup> Attach supporting documentation not previously submitted. If not yet available, state such and expectations as to availability.

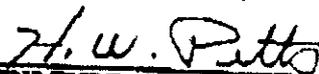
<sup>2</sup> For example, interest earnings during construction, if applicable. Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation if available (if not yet available, state such and expectations as to availability).

C. Cost of Financing

16. Capitalized Interest (Construction period plus six months)	\$ 39,133	
17. Funded Reserve Account <sup>1</sup>	\$ -0-	
18. Other Costs <sup>2</sup> Bond Counsel	\$ 6,250	
19. Total Cost of Financing (Lines 16 through 18)		\$ 45,383
20. Size of Bond Issue (Line 15 plus Line 19)		\$ 579,740

Additional or explanatory material may be provided on additional sheets attached to Amended Schedule A.

  
SIGNATURE OF AUTHORIZED  
OFFICER OF APPLICANT

  
SIGNATURE OF ENGINEER

<sup>1</sup> Consult with bond counsel and the Authority before assuming a funded reserve.

<sup>2</sup> For example, fees of bond counsel for the Governmental Agency.



OAKLAND PUBLIC SERVICE DISTRICT, a public utility  
(Name of Utility)

OF

Weirton, West Virginia  
(Location of Office)

# Rates, Rules and Regulations for Furnishing WATER AT

(C) Wylie Ridge Area and areas of Hancock County known as Hudson  
Hill, North Fork Road and Golden Key (Lyons Road), WV.

(C) Indicates change

Filed with THE PUBLIC SERVICE COMMISSION  
OF  
WEST VIRGINIA

Issued May 17, 1995

When operational Effective, 19

Issued by authority of an Order  
of the Public Service Commission  
of West Virginia in Case No. 94-0544-PWD-CN,  
dated May 17, 1995.

Issued by OAKLAND PUBLIC SERVICE DISTRICT  
(Name of Utility)

By *Norm Allison*

Chairman

un

pa  
n  
a

Applicable in entire territory served.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, industrial and sales for resale.

RATE

(C)(R) First 2,000 gallons used per month \$3.14 per 1,000 gallons  
(C)(A) All over 2,000 gallons used per month \$5.84 per 1,000 gallons

(R) MINIMUM CHARGE

No bill will be rendered for less than the following amount according to the size of the meter installed, to wit:

5/8-inch meter	\$ 6.28 per month
3/4-inch meter	9.45 per month
1 -inch meter	15.70 per month
1-1/2-inch meter	31.40 per month
2 -inch meter	50.25 per month
3 -inch meter	94.20 per month

TAP FEE

Applicable to all size services: \$250.00

RECONNECTION FEE

Ten Dollars (\$10.00) will be charged for reconnection fee.

DELAYED PAYMENT PENALTY

The above schedule 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 to be collected only once for each bill.

- (A) Indicates advance
- (C) Indicates change
- (R) Indicates reduction



**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 26th day of June, 1995.

CASE NO. 94-0544-PWD-CN (Reopened)

OAKLAND PUBLIC SERVICE DISTRICT,  
a public utility.

Petition to reopen water certificate  
application and for approval of revised  
financing incidental thereto.

FINAL ORDER

On May 17, 1995, a recommended decision was entered on an October 13, 1994 application from Oakland Public Service District for a certificate of convenience and necessity to construct a water distribution system, booster pump station, and an elevated 100,000 gallon water storage tank to serve the rural areas of Hancock County known as Hudson Hill, North Fork and Golden Key (Lyons Road). The recommended decision, which became the final order of the Commission on June 6, 1995, also approved financing for the project in question and rates and charges incidental thereto.

The recommended decision provided that should the scope of the proposed project or the financing for the proposed project change in any respect, Oakland Public Service District was required to petition the Commission to reopen the proceeding and obtain approval of any such changes before commencing construction.

On June 22, 1995, the Commission received, via telecopier, a motion from counsel for Oakland Public Service District, to reopen the water certificate application in Case No. 94-0544-PWD-CN and for approval of revised financing. As part of the May 17, 1995 recommended decision, the Commission approved a loan from the Water Development Authority in an amount not to exceed \$579,740, for a term not to exceed 40 years and at an interest rate not to exceed 8%. In its June 22, 1995 petition, Oakland Public Service District advised the Commission that the Water Development Authority loan will be issued at an annual interest rate of 6.75%, with the bond closing scheduled for Wednesday, June 28, 1995.

The June 22, 1995 petition was submitted to Commission Staff for review and comment. By Joint Staff Memorandum received June 23, 1995, Cassius H. Toon, Staff Attorney, recommended that the revised financing sought by Oakland Public Service District be approved. Attached to Mr. Toon's memorandum was an internal memorandum from Charles Knurek, Utility Financial Analyst, Public Service District Division. Mr. Knurek noted that the annual revenue requirements previously used by Commission Staff to develop rates for the project in this application included an annual debt service requirement, principal and interest, of \$48,600. This debt service was based on a Water Development Authority loan at an annual interest rate of 8%. Commission Staff also included a debt service reserve requirement of \$4,860 that represents 10% of the annual debt service. Oakland Public Service District has obtained a commitment of funds from the Water Development Authority at an annual interest



rate of 6.75%. The annual debt service requirement for the loan at 6.75% would be \$42,700, as opposed to \$48,600. The annual debt service reserve requirement would also be adjusted to reflect an annual requirement of \$4,270 as opposed to \$4,860. The net effect would be a reduction in the District's annual revenue requirements of \$6,490.

Commission Staff recommended approval of the District's revised project financing of a Water Development Authority loan at 6.75%. Commission Staff is not recommending an adjustment to the previously approved rates at this time, but did recommend that the District request a review of its annual revenue requirements and rate structure following a year of operations after completion of the project in question.

Based upon the foregoing, the Commission is of the opinion that Case No. 94-0544-PWD-CN should be reopened and that Oakland Public Service District should be authorized to proceed with its June 28, 1995 closing with the West Virginia Water Development Authority for a \$579,740 loan, for a term not to exceed 40 years and at an interest rate of 6.75%.

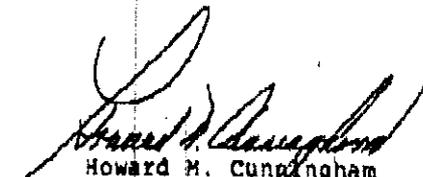
IT IS, THEREFORE, ORDERED that Case No. 94-0544-PWD-CN, be, and it hereby is, reopened.

IT IS FURTHER ORDERED that Oakland Public Service District, a public utility, be, and it hereby is, authorized to accept a loan from the West Virginia Water Development Authority in an amount not to exceed \$579,740, for a term not to exceed 40 years and at an interest rate of 6.75%.

IT IS FURTHER ORDERED that Oakland Public Service District be, and it hereby is required to request a review of its annual revenue requirements and rate structure following a year of operations after the completion of the project covered by Case No. 94-0544-PWD-CN.

IT IS FURTHER ORDERED that the Commission's Executive Secretary mail a copy of this order to all parties of record by United States First Class Mail.

A True Copy, Teste:

  
Howard M. Cunningham  
Executive Secretary

HMC/s



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: May 17, 1995

**FINAL**

6/6/95

CASE NO. 94-0544-PWD-CN

OAKLAND PUBLIC SERVICE DISTRICT,

Application for a certificate of convenience and necessity to construct a water distribution system, booster pump station, and an elevated 100,000 gallon water storage tank to serve the rural areas of Hancock County known as Hudson Hill, North Fork and Golden Key (Lyons Road), and for approval of financing and rates and charges incidental thereto.

RECOMMENDED DECISION

PROCEDURE

On October 13, 1994, Oakland Public Service District (District), a public utility, Weirton, Hancock County, filed an application with the Public Service Commission, pursuant to West Virginia Code (Code) §24-2-11, for a certificate of convenience and necessity to construct a water distribution system, a booster pump station and an elevated 100,000-gallon water storage tank to serve rural areas of Hancock County known as Hudson Hill, North Fork Road and Golden Key (Lyons Road); for approval of financing; and for approval of rates and charges incidental to providing such service.

On October 3, 1994, the Commission directed the District to publish the Notice of Filing, once, in a newspaper duly qualified by the Secretary of State, published and generally circulated in Hancock County. Pursuant thereto, on November 21, 1994, the District filed a publication affidavit indicating that the Notice of Filing had been published as directed on October 14, 1994, and again on October 21, 1994, in The Herald Star, a newspaper published in Steubenville, Ohio, but presumably circulated in Hancock County, West Virginia. The Notice of Filing provided that, if no substantial protests were filed within thirty (30) days, the Commission may waive formal hearing and grant the certificate, based upon its review of the evidence submitted with the application. No protests to the Notice of Filing have been received; however, numerous protests were received to the pre-filing notice, published on July 2, 1994, and on July 9, 1994, in the Weirton Daily Times, a newspaper published and generally circulated in Hancock County.

On December 12, 1994, Staff Attorney Cassius H. Toon, Esquire, filed the Final Joint Staff Memorandum, dated December 12, 1994, in this



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: May 17, 1995

CASE NO. 94-0544-PWD-CN

OAKLAND PUBLIC SERVICE DISTRICT,

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proceeding, indicating that, once Commission Staff had completed its investigation, it would render a further final recommendation.

Pursuant to all of the above, on January 20, 1995, the Administrative Law Judge (ALJ) issued a Procedural Order holding that the District had not substantially complied with the publication requirements for the Notice of Filing, because the Notice of Filing was published in a Steubenville, Ohio newspaper. West Virginia Code §59-3-1, et seq., provides that legal advertisements must be published in a newspaper published in the State of West Virginia. Upon information, the ALJ believed that the Notice of Filing may have been published in the Weirton Daily Times since the Weirton Daily Times recently was purchased by and actually is published by the same publishing company that publishes The Herald Star. Considering this, the ALJ held that the numerous protests to the pre-filing notice would constitute substantial protests to the Notice of Filing, thereby effectively curing the publication requirement defect. However, the ALJ directed the District to publish a Notice of Hearing in the Weirton Daily Times and to obtain an affidavit of publication from the Weirton Daily Times, not the Steubenville newspaper, to be certain that legal notice requirements have been fulfilled. Additionally, the ALJ established a procedural schedule to process and resolve this matter, including a March 10, 1995 hearing date.

On March 10, 1995, the ALJ held the hearing as scheduled. The District appeared at the hearing by counsel, Mark A. Colantonio, Esquire, and Commission Staff appeared by counsel, Staff Attorney Cassius H. Toon, Esquire. Several of the District's customers appeared at the hearing in person, pro se, and, after hearing the testimony from the District and Commission Staff, indicated that they no longer wished to testify, or to protest the proposed project or the rates. (Tr., pp. 42-46).

The District presented the testimony of four witnesses and presented five exhibits. Commission Staff presented the testimony of two witnesses and presented one exhibit. Each party also filed a Post-Hearing Exhibit. The parties waived their rights, pursuant to Code §24-1-9(b), to file proposed findings of fact and conclusions of law, or briefs, in this proceeding.

#### EVIDENCE

The first witness to testify on behalf of the District was Jolene Zuros, an employee of the (local) Health Department. Ms. Zuros testified that she had studied the 50-some homes in the proposed Hudson Hill service area, and she found that, of the 32 homes that she surveyed, 23 had unfit water supplies due to improper well construction and due to the presence of coliform bacteria. She also opined that the proposed North Fork Road service area had similar problems with its water supply. Finally, she opined that the proposed project would alleviate all of the problems that the Health Department had found in the proposed service areas. (Tr., pp. 7-9).

The next witness to testify on the District's behalf was Kim Weaver, the Project Administrator for the Brooke-Hancock-Jefferson Metropolitan

Planning Commission. Ms. Weaver testified that she was familiar with all aspects of the proposed project. She indicated that, when the project first was proposed, the District sought split rates, i.e., rates structured so that the new customers to be served by the proposed project would have to pay higher rates than the District's existing customers. She indicated, however, that the District, after reviewing the Staff-recommended rates, which include a single rate structure for all customers, now is willing to accept the Staff-recommended rates. (Tr., pp. 10-11).

Ms. Weaver estimated that the proposed project would cost \$1,329,740. She stated that the project would be funded with a \$750,000 Small Cities Block (SCB) Grant and with a \$579,740 West Virginia Water Development Authority (WDA) loan. She indicated that the District had received approval from the funding agencies for this grant and loan. She sponsored District Exhibit Nos. 1 and 2, documentation demonstrating application for and approval of the WDA loan. (Tr., pp. 11-13; District Exhibit Nos. 1 and 2).

The next witness to testify on behalf of the District was Delane Randolph, the District's Project Engineer. He indicated that he had designed the project, and that he had submitted plans for the project with the certificate application. He briefly described the project as comprising an extension of the District's water distribution system, extending from Lyons Road to Hudson Hill and North Fork Road, utilizing approximately 26,000 feet of water mains. He stated that the District would construct a booster station and a 100,000-gallon storage tank near where the extension begins, and that it would construct a pressure-reducing station just northeast of North Fork Road. He opined that this project would supply all of the proposed customers with a reasonably efficient and adequate water supply, and with sufficient water quantity and pressure to support fire protection service. He opined that, with the proposed fire hydrants, the District's proposed customers would receive reduced fire insurance premiums. (Tr., pp. 15-18).

Mr. Randolph opined that the proposed plans were designed by following generally accepted engineering practices and procedures for designing water systems. He opined that the proposed design was the most cost-effective design. He estimated that the proposed water distribution system would cost approximately \$779,000, and the storage tank would cost approximately \$200,000. He indicated that the project also would require operation and maintenance (O&M) expenses of approximately \$28,954 annually. He also included a \$96,137 construction contingency in his estimate, or about 10% of the estimated project cost. (Tr., pp. 18-19).

The District's counsel offered District Exhibit No. 3, a copy of a publication affidavit indicating that the Notice of Hearing had been published in The Herald-Star. Mr. Colantonio indicated that he would send a Post-Hearing Exhibit on behalf of the District to show that the Notice of Hearing actually had been published in the Weirton Daily Times. (Tr., pp. 20-22).

The final witness to testify on behalf of the District was Mark Bischoff, a certified public accountant, the District's Project Accountant. He indicated that he had prepared the District's Rule 42 Exhibit.

He stated that, after reviewing the Staff-recommended rates, he agreed with Commission Staff's rate analysis, i.e., he acknowledged that the single rate for all customers would be fair, and that it would produce sufficient revenue to cover the District's O&M expenses and its debt service requirements. He sponsored District Exhibit No. 4, a revised Rule 42 Exhibit which Mr. Bischoff prepared in response to the Commission Staff's recommendation, and District Exhibit No. 5, signed statements from residents who want the proposed service. He acknowledged that Commission Staff has recommended increasing the District's revenue requirement from the District's proposed amount of \$180,888, to \$206,433, and he opined that Commission Staff's proposed level is correct. He explained that Commission Staff had the benefit of a later test year than he did when he originally prepared the District's Rule 42 Exhibit, and he also explained that the proposed interest rate for the WDA loan had increased, from 6.75% to 8%, from the time when he first had prepared the District's Rule 42 Exhibit until the time that the WDA approved the loan. He concluded by opining that the rates proposed by Commission Staff, which the District is willing to accept, would provide a cash flow debt service coverage of 111%. (Tr., pp. 23-31).

The first witness to testify on behalf of Commission Staff was Utility Engineer Robert L. Skiles, Jr., Public Service District Division. He co-sponsored Staff Exhibit No. 1, the Final Internal Staff Memorandum, dated March 2, 1995, from Utility Financial Analyst Charles Knurek and himself, with Commission Staff's Class Cost of Service Study (Study) attached to the Memorandum. He indicated that Staff Exhibit No. 1 contains no errors and is an accurate reflection of Commission Staff's recommendation in this matter. (Tr., pp. 33-34).

Mr. Skiles explained what a class cost of service study is and how he had developed the Commission Staff's Study for the instant proceeding. He explained that the purpose of the Study is to develop a basis to design rates which reflect the cost of service for each class of customers, so that each class of customers would pay its fair share of providing service, and so that no one class of customers would be unduly subsidizing another customer class. He indicated that he used factors developed by the American Waterworks Association to prepare the Study. He finally indicated that the Study was used by Mr. Knurek to develop an appropriate rate structure which would generate sufficient revenues to cover the District's revenue requirement, and a rate structure which would be fair and reasonable for each customer class. He opined that the project had been properly engineered according to generally accepted engineering standards and practices. He recommended that the application for a certificate of convenience and necessity be approved; that financing be approved for the District to borrow up to \$579,740, at an annual percentage rate not to exceed 8%, for a term not to exceed 40 years; and that, if the interest rate for the WDA loan should be something other than 8%, or if the term should be for something other than 40 years, the District should be required to notify Commission Staff so that the rates can be modified. Finally, he recommended that the Staff-recommended rates should become effective once the proposed project has been completed. (Tr., pp. 33-36; Staff Exhibit No. 1).

The final witness to testify on behalf of Commission Staff was Utility Financial Analyst Charles Knurek, Public Service District Division. He also co-sponsored Staff Exhibit No. 1. He indicated that one mathematical error was contained in his computations and repeated at several locations in Staff Exhibit No. 1, and he corrected this error with his testimony. He indicated that he would file corrected financial statements as a Post-Hearing Exhibit. He explained the Staff-recommended rates first by indicating that the District had proposed and published separate rates for the District's new customers as a result of this project. He indicated that the District had proposed a rate of \$7.67 per 1,000 gallons for the first 3,000 gallons; \$6.86 per 1,000 gallons for the next 7,000 gallons; \$5.16 per 1,000 gallons for the next 10,000 gallons; \$3.64 for the next 30,000 gallons; and \$2.54 for all over 50,000 gallons, with a \$23.01 minimum bill. He clarified that Commission Staff had taken a different approach, i.e., by utilizing the Study, Commission Staff had designed a single rate structure for all of the District's customers, rather than a separate rate for the new customers. He recommended that the minimum bill usage be lowered from 3,000 gallons to 2,000 gallons; that the first rate block should be \$3.14 per 1,000 gallons for the first 2,000 gallons used; and that the only other rate block should be \$5.84 for all water used over 2,000 gallons. He opined that the Staff-recommended minimum bill would be \$6.28 per month. He emphasized that the Staff-recommended rates would not differentiate between the District's existing customers and its new customers as a result of the proposed project. (Tr., pp. 37-41; Staff Exhibit No. 1). The Staff-recommended revenue requirement is \$212,044; it would cover O&M expenses; and it would provide a cash flow debt service coverage ratio of 112.32%. (See, Staff Post-Hearing Exhibit).

The District's Post-Hearing Exhibit, a publication affidavit, was filed on April 20, 1995, and it clarified that the Notice of Hearing had been published as directed on February 13, 1995, and on February 20, 1995, in the Weirton Daily Times, a newspaper published and generally circulated in the City of Weirton, Hancock County, West Virginia. (See, District Post-Hearing Exhibit).

Commission Staff's Post-Hearing Exhibit, filed on March 17, 1995, contained the mathematical computational corrections testified about at the hearing by Mr. Knurek. The corrections did not change the Staff-recommended rates as set forth at the hearing. (See, Staff Post-Hearing Exhibit).

#### DISCUSSION

The ALJ has considered all of the above, and he holds that the District's application for a certificate of convenience and necessity should be granted; that the financing for the project should be approved; and that the Staff-recommended rates should be approved. Since the Health Department established that the project would resolve a health hazard in the proposed service area; since the project has been properly engineered; and since Commission Staff has recommended approving the project, the ALJ holds that public convenience and necessity require the proposed project, and the application should be granted.

The financing for the project has been fully funded and secured through a \$579,740 WDA loan, with an interest rate not to exceed 8% for a term not to exceed 40 years, and through a \$750,000 SCB Grant. Commission Staff has recommended approving the proposed financing. For these reasons, the ALJ will approve the proposed financing for the project.

The ALJ observes that the Staff-recommended rates reflect a rate structure entirely different than the existing rate structure, and entirely different than the proposed rate structure as set forth in the Notice of Filing. The existing rates are structured in declining blocks so that customers using larger quantities of water pay less per unit than customers using smaller quantities. The District proposed a rate structure with two schedules, i.e., one schedule for its existing customers, with no change in existing rates, and a second schedule with a declining block rate structure for the new customers to be added as a result of the proposed project. The rates proposed by the District for these new customers are higher than the rates for its existing customers. On the other hand, the Staff-recommended rates do not differentiate between the District's existing customers and its new customers to be served by the project. Also, the Staff-recommended rates incorporate a rate structure that does not have declining rate blocks, i.e., the rate per 1,000 gallons for the first 2,000 gallons of water used is \$3.14, and the rate for all water used over 2,000 gallons is \$5.84 per 1,000 gallons. Essentially, Commission Staff has recommended a rate change as a result of this certificate case that will affect the rates of all of its customers.

In a recent case, West Virginia-American Water Company, Case No. 94-0138-W-42T, by Commission Order entered on March 17, 1995, the Commission held that a general notice that rates would be increased is sufficient to warn all classes of customers that, as a result of a pending case, rates could be increased in a different manner than originally proposed by the utility's notice, if deemed appropriate after hearing or review.

The District has accepted the Staff-recommended rates; no one has protested these rates; and these rates will generate sufficient revenues to cover the District's O&M expenses and debt service requirements. No one at the hearing protested the project or the proposed rates. Notice of the hearing was properly published. For all of the reasons stated above, the ALJ will grant the application; will approve the proposed financing; and will approve the Staff-recommended rates.

#### FINDINGS OF FACT

1. Oakland Public Service District filed an application with the Commission, pursuant to Code §24-2-11, for a certificate of convenience and necessity to construct a water distribution system, a booster pump and an elevated 100,000-gallon water storage tank to serve rural areas of Hancock County known as Hudson Hill, North Fork Road and Golden Key (Lyons Road); for approval of financing for the proposed project; and for approval of the rates and charges necessary to provide the proposed service. (See, Application, filed October 13, 1994).

2. The District published a Notice of Prefiling in the Weirton Daily Times, a newspaper published and generally circulated in Hancock County. The District also may have published the Notice of Filing in the Weirton Daily Times, but the publication affidavit indicates that it was published in The Herald Star, a newspaper published and generally circulated across the Ohio River in Steubenville, Ohio. Many protests were filed to the Notice of Prefiling, and the ALJ considered these to be protests to the Notice of Filing. (See, Commission's file; Procedural Order issued January 20, 1995).

3. The District published the Notice of Hearing in the Weirton Daily Times, on February 13, 1995, and on February 20, 1995. (See, District's Post-Hearing Exhibit).

4. The proposed service area has an unfit water supply, including the presence of coliform bacteria. The proposed project would correct this problem. (See, Testimony of Jolene Zuros, Tr., pp. 7-9).

5. The District originally proposed separate, higher rates for the new customers to be added by the proposed project. Now the District has accepted the Staff-recommended rates. (See, Testimony of Kim Weaver, Tr., pp. 10-11; Mark Bischoff, Tr., pp. 23-31).

6. The project is estimated to cost \$1,329,740, including \$779,000 for the water distribution system, \$200,000 for the storage tank, and a construction contingency of \$96,137. O&M expenses would be \$28,954. (See, Testimony of Kim Weaver, Tr., pp. 11-13; Delane Randolph, Tr., pp. 18-19).

7. The District has financing commitments for the project consisting of a \$579,740 WDA loan, at an interest rate not to exceed 8% and for a term not to exceed 40 years, and a \$750,000 SCB Grant. (See, Testimony of Kim Weaver, Tr., pp. 11-13).

8. The project will utilize approximately 26,000 feet of water mains; will include a booster station, a 200,000-gallon tank and a pressure-reducing station; and will provide sufficient water quantity and pressure to adequately serve the proposed customers and to provide fire protection service. (See, Testimony of Delane Randolph, Tr., pp. 15-18).

9. The project has been designed according to generally accepted engineering principles. (See, Testimony of Delane Randolph, Tr. pp. 18-19; Robert L. Skiles, Jr., Tr., pp. 33-36).

10. The District has accepted the Commission Staff's proposed revenue requirement because it was based upon a more recent test year, and because the WDA loan's interest rate has increased from 6.75% to 8%. (See, Testimony of Mark Bischoff, Tr., pp. 23-31).

11. Commission Staff prepared a Class Cost of Service Study and based its rate structure upon this Study. (See, Testimony of Robert L. Skiles, Jr., Tr., pp. 33-36; Charles Knurek, Tr., pp. 37-41; Staff Exhibit No. 1; Staff Post-Hearing Exhibit).

12. Commission Staff has recommended granting the application for a certificate of convenience and necessity; approving the proposed financing, provided that the term of the loan is 40 years and the loan's interest rate is 8%; and approving the Staff-recommended revenue requirement and Staff-recommended rates. (See, Testimony of Robert L. Skiles, Jr., Tr., pp. 33-36; Charles Knurek, Tr., pp. 37-41; Staff Exhibit No. 1).

13. The Staff-recommended rates do not differentiate between the District's existing customers and its proposed customers. Rather, based upon its Study, the Staff-recommended rates have only two rate blocks and charge the same rates for all customers. (See, Testimony of Charles Knurek, Tr., pp. 37-41; Staff Exhibit No. 1; Staff Post-Hearing Exhibit).

14. The Staff-recommended revenue requirement is \$212,044, which would cover all O&M expenses and provide a 112.32% cash flow debt service coverage. (See, Staff Post-Hearing Exhibit).

#### CONCLUSIONS OF LAW

1. For all of the reasons set forth in Finding of Fact Nos. 2, 3, 4, 6, 7, 8, 9 and 12, it is reasonable to conclude that public convenience and necessity require the project, and the application should be approved.

2. For all of the reasons set forth in Finding of Fact Nos. 6, 7 and 12, it is reasonable to approve the proposed financing, provided that the WDA loan is for a term not to exceed 40 years and at an interest rate not to exceed 8%.

3. For all of the reasons set forth in Finding of Fact Nos. 10, 12 and 14, it is reasonable to approve the Staff-recommended revenue requirement.

4. For all of the reasons set forth in Conclusion of Law No. 3 and Finding of Fact Nos. 5, 11, 12, 13 and 14, it is reasonable to approve the Staff-recommended rates.

#### ORDER

IT IS, THEREFORE, ORDERED that the application filed with the Commission on October 13, 1994, by the Oakland Public Service District, pursuant to Code §24-2-11, for a certificate of convenience and necessity to construct and operate a water distribution system, a booster pump station and a 200,000-gallon water storage tank, to serve rural areas of Hancock County known as Hudson Hill, North Fork Road and Golden Key (Lyons Road), be, and it hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, comprised of a WDA loan in an amount not to exceed \$579,740, for a term not to exceed 40 years and at an interest rate not to exceed 8%, and a \$750,000 SCB Grant, be, and it hereby is, approved.

IT IS FURTHER ORDERED that the Staff-recommended revenue requirement, attached hereto as Appendix A, be, and it hereby is, approved, for all service rendered once the proposed project becomes operational.

IT IS FURTHER ORDERED that the Staff-recommended rates, attached hereto as Appendix B, be, and they hereby are, approved, for all of the District's customers for all service provided once the proposed project becomes operational.

IT IS FURTHER ORDERED that, within ten (10) days after the proposed project becomes operational, the District shall file with the Commission a proper tariff setting forth the rates and charges hereby approved.

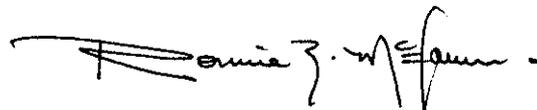
IT IS FURTHER ORDERED that, should the scope of the proposed project or the financing for the proposed project change in any respect, the District first must petition the Commission and obtain approval of such change before beginning construction.

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.



Ronnie Z. McCann  
Administrative Law Judge

RZM:mal



## APPENDIX A

OAKLAND PUBLIC SERVICE DISTRICT  
CASE NO. 94-0544-PWD-CNREVENUE REQUIREMENTS

Cash Available:	
Operating Revenues	
Sales Revenue	\$206,920
Other Operating Revenues	<u>5,124</u>
Total Cash Available	\$212,044
Cash Requirements:	
Operation & Maintenance Expenses	\$115,716
Taxes Other Than Income Taxes	<u>1,974</u>
Cash Requirements Before Debt Service	\$117,690
Cash Available for Debt Service	\$ 94,354
Debt Service Requirements:	
Interest	\$ 71,121
Principal	<u>12,866</u>
Subtotal	\$ 84,007
Reserve Requirement	<u>\$ 4,860</u>
Total Debt Service Requirements	\$ 88,867
Remaining Cash Surplus	\$ 5,487
Coverage Ratio	112.32%

OAKLAND PUBLIC SERVICE DISTRICT  
CASE NO. 94-0544-PWD-CN

APPROVED RATES

Applicable in entire territory served.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, industrial and sales for resale.

RATE

First 2,000 gallons used per month \$3.14 per 1,000 gallons  
All over 2,000 gallons used per month \$5.84 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, to wit:

5/8-inch meter	\$ 6.28 per month
3/4-inch meter	9.45 per month
1 -inch meter	15.70 per month
1-1/2-inch meter	31.40 per month
2 -inch meter	50.25 per month
3 -inch meter	94.20 per month

TAP FEE

Applicable to all size services: \$250.00

RECONNECTION FEE

Ten Dollars (\$10.00) will be charged for reconnection fee.

DELAYED PAYMENT PENALTY

The above schedule 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 to be collected only once for each bill.

OAKLAND PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 1995

CONSENT TO ISSUANCE OF PARITY BONDS AND PARITY LIEN

Wheeling National Bank, a national banking association (the "Bank"), entered into a Loan Agreement, dated May 5, 1989, with Oakland Public Service District (the "District"), for a loan by the Bank to the District in the original principal amount of \$183,500 (the "1989 Loan"), which 1989 Loan is secured by a lien on the revenues of the District. The Bank does hereby consent to the issuance by the District of parity water revenue bonds, in the amount of \$579,740 (the "Series 1995 Bonds"), to be sold to the West Virginia Water Development Authority. The Bank hereby further consents that the Series 1995 Bonds may be payable from the revenues of the water system of the District and otherwise secured on a parity with the 1989 Loan.

WITNESS my signature this 23 day of June, 1995.

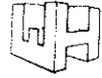
WHEELING NATIONAL BANK

By: Michael Blyer

Its: Vice President







\$579,740

OAKLAND PUBLIC SERVICE DISTRICT  
Water Revenue Bonds,  
Series 1995

CERTIFIED PUBLIC ACCOUNTANTS' CERTIFICATE

Wiseman Hutzell & Co., Certified Public Accountants, have reviewed the water service rates which were adopted by the Oakland Public Service District (the "District"), pursuant to a Rate resolution adopted by the District on June 21, 1995 (the "Rate Resolution"). It is our opinion that the schedule of rates set forth in the Rate Resolution are adequate to pay operation and maintenance expenses of the System, as defined in the Resolution, hereinafter defined, to pay principal and interest on the 1989 Loan made to the District by Wheeling National Bank, to pay the principal of and interest on the Bonds, and to meet the one hundred fifteen percent (115%) debt service coverage requirement as provided in the Bonds and the Resolution adopted by the Public Service Board of the District and effective on June 21, 1995, and that such rates are sufficient to comply with the provisions of the Loan Agreement entered into between the District and the West Virginia Water Development Authority on June 28, 1995.

WITNESS our signature as of this 28th day of June, 1995.

*Wiseman Hutzell & Co.*  
WISEMAN HUTZELL & CO.  
CERTIFIED PUBLIC ACCOUNTANTS  
Wheeling, West Virginia

June 28, 1995



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
OAKLAND PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1995

No. R-1

\$579,740

Date:

June 28, 1995

KNOW ALL MEN BY THESE PRESENTS: That OAKLAND PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia, located in Hancock 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 Five Hundred Seventy-Nine Thousand Seven Hundred Forty and 00/100 Dollars (\$579,740.00), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest due on each installment shall run from the original date of delivery of the Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning October 1, 1995. Principal and interest installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal and interest on this Bond are payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of United National Bank, Charleston, West Virginia (the "Registrar"), on the 15th day of the month next preceding such 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 at par, but only with the written consent of the Authority and upon the terms and conditions prescribed by and otherwise in compliance with the Loan Agreement by and between the Issuer and the Authority, dated June 28, 1995.

This Bond is issued (i) to pay a portion of the costs of construction of certain extensions, additions, betterments and improvements to the existing public water facilities of the Issuer (the "Project"); (ii) to pay capitalized interest on the Bond during the construction of the Project and for a period of not more than six (6) months after completion; and (iii) to pay certain costs of issuance hereof and related costs. The existing water system of the Issuer, together with the Project, and any further

extensions, additions, betterments or improvements thereto is herein called the "System". This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and a Resolution duly adopted and enacted by the Issuer and effective June 1, 1995 (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 Bond under the Resolution.

THIS BOND IS ON A PARITY AS TO LIEN AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE ISSUER'S 1989 LOAN DATED MAY 5, 1989, IN THE ORIGINAL PRINCIPAL AMOUNT OF \$183,500, OWED TO WHEELING NATIONAL BANK (the "PRIOR DEBT").

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, from moneys in the Reserve Account created under the Resolution for the Bond (the "Series 1995 Bond Reserve Account") and unexpended proceeds of the 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 a corporate 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 1995 Bond Reserve Account and unexpended proceeds of the 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, to pay principal and interest on the 1989 Loan, and to leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond, as hereinafter defined, and all other obligations secured by a lien on or payable from such net revenues prior to or on a parity with the Bond including the Prior Debt, provided however, that so long as there exists in the Series 1995 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on a parity with the Bond including the Prior Debt, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%). The Issuer has entered into certain further covenants with the registered owners

of the Bond for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the 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 by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law and that the amount of this Bond, together with all other obligations of 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 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.

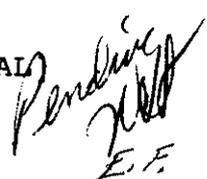
All provisions of the Resolution, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, OAKLAND PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its corporate seal to be hereunto affixed and attested by its Secretary and has caused this Bond to be dated June 28, 1995.

OAKLAND PUBLIC SERVICE DISTRICT

By:   
Chairman

[SEAL]

  
E.F.

ATTEST:

Ed F. [Signature]  
Secretary

**SPECIMEN**

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 1995 Bond 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 28, 1995

UNITED NATIONAL BANK, as Registrar

By: *[Signature]*  
Assistant Vice President

## SCHEDULE A

### BOND DEBT SERVICE

Oakland Public Service District  
Water Revenue Bonds, Series 1995

\$579,740

Dated Date           6/28/1995  
Delivery Date       6/28/1995

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
Jun 28, 1995	-	-	-	-	-
Oct 1, 1995	-	-	10,109.22	10,109.22	10,109.22
Apr 1, 1996	-	-	19,566.23	19,566.23	-
Oct 1, 1996	3,568.00	6.750%	19,566.23	23,134.23	42,700.46
Apr 1, 1997	-	-	19,445.81	19,445.81	-
Oct 1, 1997	3,809.00	6.750%	19,445.81	23,254.81	42,700.62
Apr 1, 1998	-	-	19,317.25	19,317.25	-
Oct 1, 1998	4,066.00	6.750%	19,317.25	23,383.25	42,700.50
Apr 1, 1999	-	-	19,180.00	19,180.00	-
Oct 1, 1999	4,341.00	6.750%	19,180.00	23,521.02	42,701.04
Apr 1, 2000	-	-	19,033.52	19,033.52	-
Oct 1, 2000	4,634.00	6.750%	19,033.52	23,667.52	42,701.04
Apr 1, 2001	-	-	18,877.12	18,877.12	-
Oct 1, 2001	4,947.00	6.750%	18,877.12	23,824.12	42,701.24
Apr 1, 2002	-	-	18,710.16	18,710.16	-
Oct 1, 2002	5,280.00	6.750%	18,710.16	23,990.16	42,700.32
Apr 1, 2003	-	-	18,531.96	18,531.96	-
Oct 1, 2003	5,637.00	6.750%	18,531.96	24,168.96	42,700.92
Apr 1, 2004	-	-	18,341.71	18,341.71	-
Oct 1, 2004	6,017.00	6.750%	18,341.71	24,358.71	42,700.42
Apr 1, 2005	-	-	18,138.63	18,138.63	-
Oct 1, 2005	6,424.00	6.750%	18,138.63	24,562.63	42,701.26
Apr 1, 2006	-	-	17,921.82	17,921.82	-
Oct 1, 2006	6,857.00	6.750%	17,921.82	24,778.82	42,700.64
Apr 1, 2007	-	-	17,690.40	17,690.40	-
Oct 1, 2007	7,320.00	6.750%	17,690.40	25,010.40	42,700.80
Apr 1, 2008	-	-	17,443.35	17,443.35	-
Oct 1, 2008	7,814.00	6.750%	17,443.35	25,257.35	42,700.70
Apr 1, 2009	-	-	17,179.63	17,179.63	-
Oct 1, 2009	8,341.00	6.750%	17,179.63	25,520.63	42,700.26
Apr 1, 2010	-	-	16,898.12	16,898.12	-
Oct 1, 2010	8,904.00	6.750%	16,898.12	25,802.12	42,700.24
Apr 1, 2011	-	-	16,597.61	16,597.61	-
Oct 1, 2011	9,506.00	6.750%	16,597.61	26,103.61	42,701.22
Apr 1, 2012	-	-	16,276.78	16,276.78	-
Oct 1, 2012	10,147.00	6.750%	16,276.78	26,423.78	42,700.56
Apr 1, 2013	-	-	15,934.32	15,934.32	-
Oct 1, 2013	10,832.00	6.750%	15,934.32	26,766.32	42,700.64
Apr 1, 2014	-	-	15,568.74	15,568.74	-
Oct 1, 2014	11,563.00	6.750%	15,568.74	27,131.74	42,700.48
Apr 1, 2015	-	-	15,178.49	15,178.49	-
Oct 1, 2015	12,344.00	6.750%	15,178.49	27,522.49	42,700.98
Apr 1, 2016	-	-	14,761.88	14,761.88	-
Oct 1, 2016	13,177.00	6.750%	14,761.88	27,938.88	42,700.76
Apr 1, 2017	-	-	14,317.16	14,317.16	-
Oct 1, 2017	14,066.00	6.750%	14,317.16	28,383.16	42,700.32
Apr 1, 2018	-	-	13,842.43	13,842.43	-
Oct 1, 2018	15,016.00	6.750%	13,842.43	28,858.43	42,700.86
Apr 1, 2019	-	-	13,335.64	13,335.64	-
Oct 1, 2019	16,029.00	6.750%	13,335.64	29,364.64	42,700.28
Apr 1, 2020	-	-	12,794.66	12,794.66	-
Oct 1, 2020	17,111.00	6.750%	12,794.66	29,905.66	42,700.32

## BOND DEBT SERVICE

Oakland Public Service District  
Water Revenue Bonds, Series 1995

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
Apr 1, 2021	-	-	12,217.16	12,217.16	-
Oct 1, 2021	18,266.00	6.750%	12,217.16	30,483.16	42,700.32
Apr 1, 2022	-	-	11,600.69	11,600.69	-
Oct 1, 2022	19,499.00	6.750%	11,600.69	31,099.69	42,700.38
Apr 1, 2023	-	-	10,942.59	10,942.59	-
Oct 1, 2023	20,816.00	6.750%	10,942.59	31,758.59	42,701.18
Apr 1, 2024	-	-	10,240.05	10,240.05	-
Oct 1, 2024	22,221.00	6.750%	10,240.05	32,461.05	42,701.10
Apr 1, 2025	-	-	9,490.10	9,490.10	-
Oct 1, 2025	23,721.00	6.750%	9,490.10	33,211.10	42,701.20
Apr 1, 2026	-	-	8,689.51	8,689.51	-
Oct 1, 2026	25,322.00	6.750%	8,689.51	34,011.51	42,701.02
Apr 1, 2027	-	-	7,834.89	7,834.89	-
Oct 1, 2027	27,031.00	6.750%	7,834.89	34,865.89	42,700.78
Apr 1, 2028	-	-	6,922.60	6,922.60	-
Oct 1, 2028	28,855.00	6.750%	6,922.60	35,777.60	42,700.20
Apr 1, 2029	-	-	5,948.74	5,948.74	-
Oct 1, 2029	30,803.00	6.750%	5,948.74	36,751.74	42,700.48
Apr 1, 2030	-	-	4,909.14	4,909.14	-
Oct 1, 2030	32,882.00	6.750%	4,909.14	37,791.14	42,700.28
Apr 1, 2031	-	-	3,799.37	3,799.37	-
Oct 1, 2031	35,102.00	6.750%	3,799.37	38,901.37	42,700.74
Apr 1, 2032	-	-	2,614.68	2,614.68	-
Oct 1, 2032	37,471.00	6.750%	2,614.68	40,085.68	42,700.36
Apr 1, 2033	-	-	1,350.03	1,350.03	-
Oct 1, 2033	40,001.00	6.750%	1,350.03	41,351.03	42,701.06
	579,740.00		1,052,995.20	1,632,735.20	1,632,735.20

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 of the within Bond of said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_ 19\_\_.

**SPECIMEN**

\_\_\_\_\_  
(Assignor)

Witnessed in the presence of:

\_\_\_\_\_



## REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 28th day of June, 1995, by and between OAKLAND PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia (the "Issuer"), and UNITED NATIONAL BANK, a national banking association, having its principal office in Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$579,740 aggregate principal amount of Water Revenue Bonds, Series 1995, in fully registered form (the "Bond"), pursuant to a Resolution adopted by the Issuer and effective on June 21, 1995, 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 the appointment by the Issuer of a Registrar for the Bond; 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 the Registrar, all as set forth in the Resolution, such duties including, among other things, the duties to authenticate, register and deliver the Bond upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bond from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar, from time to time, reasonable compensation for services rendered and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement the 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 sixty (60) days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER:                   Oakland Public Service District  
                          Attention: Chairman  
                          RD1, Box 166R  
                          Weirton, WV 26062

REGISTRAR:               United National Bank  
                          Attention: Kathy Smith  
                          United National Center  
                          Charleston, WV 25301

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bond in accordance with the Resolution and instructions provided by the Issuer and the Purchaser thereof.

IN WITNESS WHEREOF, OAKLAND PUBLIC SERVICE DISTRICT and UNITED NATIONAL BANK have caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day, month and year first above-written.

OAKLAND PUBLIC SERVICE DISTRICT

By: *Norm Allison*  
Chairman

UNITED NATIONAL BANK

By: *Kate Smith*  
Assistant Vice President

Exhibit A

See Resolution (Tab No. 6)

IN WITNESS WHEREOF, OAKLAND PUBLIC SERVICE DISTRICT and UNITED NATIONAL BANK have caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day, month and year first above-written.

OAKLAND PUBLIC SERVICE DISTRICT

By: Norm Allison  
Chairman

UNITED NATIONAL BANK

By: Karl Smith  
Assistant Vice President

1

2



\$579,740

OAKLAND PUBLIC SERVICE DISTRICT

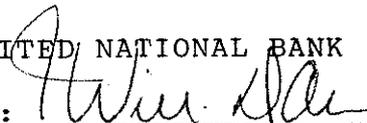
Water Revenue Bonds,  
Series 1995

ACCEPTANCE OF DUTIES AS DEPOSITORY BANK

United National Bank, a national association, at its office located in Weirton, Hancock County, West Virginia, hereby accepts appointment as Depository Bank in connection with a Resolution of Oakland Public Service District (the "District"), duly adopted by the Public Service Board of the District (the "Board") and effective on June 21, 1995 (the "Resolution"), authorizing issuance of the Oakland Public Service District, Water Revenue Bonds, Series 1995, dated June 28, 1995, in the aggregate principal amount of \$579,740, and agrees to perform all duties of Depository Bank in connection with the Construction Fund, all as set forth in the Resolution.

Witness my signature as of the 28th day of June, 1995.

UNITED NATIONAL BANK

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

President Weirton Office



\$579,740

OAKLAND PUBLIC SERVICE DISTRICT

Water Revenue Bonds,  
Series 1995

ACCEPTANCE OF DUTIES AS REGISTRAR

United National Bank, a national banking association, with its principal office located in Charleston, Kanawha County, West Virginia, hereby accepts appointment as Registrar in connection with a Resolution of the Oakland Public Service District (the "District") duly adopted by the Public Service Board of the District (the "Board") and effective on June 21, 1995, (the "Resolution"), authorizing issuance of Oakland Public Service District, Water Revenue Bonds, Series 1995, dated June 28, 1995, in the aggregate principal amount of \$579,740 and agrees to perform all duties of Registrar as set forth in the Resolution.

Witness my signature as of the 28th day of June, 1995.

UNITED NATIONAL BANK

By:

  
Assistant Vice President



REQUEST AND AUTHORIZATION AS TO AUTHENTICATION  
AND DELIVERY OF THE BOND

June 28, 1995

United National Bank  
United National Center  
Charleston, WV 25301

Gentlemen:

We herewith hand to you, duly executed, \$579,740 Oakland Public Service District, Water Revenue Bonds, Series 1995, in the form of one bond, numbered R-1 (the "Bond") of the Oakland Public Service District (the "District"), authorized to be issued under and pursuant to the Resolution, duly adopted by the Public Service Board of the District (the "Board") and effective on June 21, 1995.

You are hereby requested and authorized to authenticate and register the Bond and to deliver the Bond on behalf of the District to the West Virginia Water Development Authority, the original purchaser thereof, upon receipt by the District of \$579,740, representing the proceeds of the Bond.

OAKLAND PUBLIC SERVICE DISTRICT

By: *Norm Allison*  
Chairman

(SEAL)

Attest:

*Ed Flowers*  
Secretary



\$579,740

OAKLAND PUBLIC SERVICE DISTRICT

Water Revenue Bonds,  
Series 1995

CERTIFICATE OF REGISTRATION OF BOND

I, Kathy Smith, Assistant Vice President of United National Bank, as Registrar (the "Registrar"), under a Registrar's Agreement between the Registrar and Oakland Public Service District (the "District") dated as of the date hereof, hereby certify that on the 28th day of June, 1995, the bond of the District in the principal amount of \$579,740 designated "Oakland Public Service District Water Revenue Bonds, Series 1995", and numbered R-1, dated as of the date hereof, was registered as to principal and interest in the name of "West Virginia Water Development Authority" on the books of the Registrar kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature as of the 28th day of June, 1995.

UNITED NATIONAL BANK,  
as Registrar

By:

  
Assistant Vice President



OAKLAND PUBLIC SERVICE DISTRICT

P.O. BOX 2058  
WEIRTON, WV 26062  
PHONE 304 797-8353

June 21, 1995

West Virginia Water Development  
Authority  
1201 Dunbar Avenue  
Dunbar, WV 25064

NOTICE OF DELIVERY OF BOND

Pursuant to Paragraph 3.4 of the Loan Agreement between the West Virginia Water Development Authority and Oakland Public Service District, you are hereby notified that the District can deliver the Bond on any date on or after June 28, 1995.

OAKLAND PUBLIC SERVICE DISTRICT

By:   
Chairman



# State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CHARLESTON, WEST VIRGINIA 25301

815 QUARRIER STREET, SUITE 415

RECEIVED

JUL 7 1994 TELEPHONE (304) 553-2981

KELLEY, GIDLEY, BLAIR & WOLFE, INC.  
AND ASSOCIATES  
CONSULTING ENGINEERS

## PERMIT

(Water)

PROJECT: Hudson Hill & North Fork Roads Water Line

PERMIT NO: 12,065

LOCATION: Weirton

COUNTY: Hancock

DATE: 6/28/94

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms and other essential information that

Oakland Public Service District  
P.O. Box 2062  
Weirton, West Virginia 26062

is hereby granted approval to install approximately 24,020 LF of 8" and 920 LF of 6" water mains; one (1) 50 GPM water booster pump station; one (1) 100,000 gallon elevated water storage tank and all necessary valves and appurtenances with water to be provided by the Oakland Public Service District.

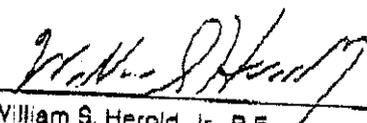
Facilities are to serve approximately 102 customers along Hudson Hill and North Fork Roads in the Oakland Public Service District.

NOTE: This permit is contingent upon: 1) All new water mains being disinfected, flushed and bacteriologically tested, prior to use; and 2) Maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum eighteen (18) inches vertical separation between crossing sewer and water lines with the water line above the sewer line.

The Environmental Engineering Division of the Wheeling District Office (telephone 238-1145) is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms and other information submitted to the West Virginia Bureau of Public Health.

FOR THE DIRECTOR



William S. Herold, Jr., P.E.  
Assistant Director  
Environmental Engineering Division

WSH:cmh  
pc: Kelley, Gidley, Blair & Wolfe, Inc.  
Amy Swann, PSC, PSD Division  
Hancock County Health Department  
DEHS Wheeling District Office



\$579,740

OAKLAND PUBLIC SERVICE DISTRICT

Water Revenue Bonds,  
Series 1995

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned Daniel B. Yonkosky, Director of the West Virginia Water Development Authority (the "WDA"), and Norman Allison, Chairman of Oakland Public Service District, Hancock County, West Virginia (the "Issuer"), hereby certify as follows:

1. On the 28th day of June, 1995, the WDA received the entire original issue in aggregate principal amount of \$579,740 of the Water Revenue Bonds, Series 1995, of the Issuer (the "Bond"). The Bond, as so received on original issuance, is dated June 28, 1995, and is issued as Bond Number R-1, in the denomination of \$579,740.

2. At the time of such receipt of the Bond, the Bond had been executed by Norman Allison, as Chairman of the Issuer, by his manual signature, and by Ed Flowers, as Secretary of the Issuer, by his manual signature, and the official seal of the Issuer had been imprinted upon the Bond.

3. The Issuer has received and hereby acknowledges receipt from the WDA, as the original purchaser of the Bond, of \$579,740 being the entire proceeds of the Bond.

IN WITNESS WHEREOF, this receipt has been signed and delivered on behalf of the West Virginia Water Development Authority and Oakland Public Service District, Hancock County, West Virginia, has caused this receipt to be executed by its Chairman, as of the 28th day of June, 1995.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

By: Daniel B. Yonkosky  
Director

OAKLAND PUBLIC SERVICE DISTRICT

By: Norm Allison  
Chairman



This FINANCING STATEMENT is presented to a filing office for filing pursuant to the Uniform Commercial Code.

1. Debtor(s) (Last Name First) and address(es)  
**Oakland Public Service District**  
RDI, Box 1648  
Martins, WV 26007

Secured Party(ies) and address(es)  
**West Virginia Water Development Authority**  
1281 Dunbar Avenue  
Martins, WV 26007

2. Maturity date (If any) **10/1/2031**

For Filing Officer (Date, Time, Number, and Filing Office)  
JUL 3 11:07 AM '95  
CLEAN CREDIT DIVISION  
HANCOCK COUNTY VA

4. This financing statement covers the following types of property:  
**Statutory mortgage lien on public service properties of the District and the West Revenues of the System, as provided in the Bond Association of the District, as amended, adopted and effective on June 21, 1995, authorizing the issuance of \$579,740 Water Revenue Bonds, Series 1995, of the District, on a parity as to lien and source of and security for payment with a loan made to the District by Wheeling National Bank on May 5, 1995, in the original principal amount of \$100,000.**

5. Assignee(s) of Secured Party and Address(es)  
RD  
VA

This finance statement is filed in connection with a public bond issue of Oakland Public Service District, Hancock County, WV

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check  if so)  
 already subject to a security interest in another jurisdiction when it was brought into the state  
 which is proceeds of the original collateral described above in which a security interest was perfected  
Check  if covered;  Proceeds of Collateral are also covered;  Proceeds of Collateral are also covered. No. of additional Sheets presented.

Filed with:  
**Hancock County Clerk**

By: **Oakland Public Service District**  
Signature(s) of Debtor(s)  
(2) Filing Officer Copy-Numerical

**West Virginia Water Development**  
Signature(s) of Secured Party(ies)  
**Director**  
Title  
(For Use In Most States)

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:

1. Debtor(s) (Last Name First) and address(es)  
**Oakland Public Service District**  
P.O. Box 1662  
Wairton, WV 26062

2. Secured Party(ies) and address(es)  
**West Virginia Water Development Authority**  
1701 Dunbar Avenue  
Dunbar, WV 25064

3. Maturity date (if any) **10/1/20**

For Filing Officer (Date, Time, Number, and Filing Office)

**0425078**

**95 JUN 29 PM 3:35**

**WV SEC. OF STATE FILED**

3. Assignee(s) of Secured Party and Address(es)

4. This financing statement covers the following types (or items) of property:

**Statutory mortgage lien on public service properties of the District and the Net Revenues of the System, as provided in the Bond Resolution of the District, as amended, adopted and effective on June 21, 1995, authorizing the issuance of \$379,740 Water Revenue Bonds, Series 1995, of the District, on a parity as to lien and source of and security for payment with a loan made to the District by Wheeling National Bank on May 5, 1989, in the original principal amount of \$181,500.**

**This finance statement is filed in connection with a public bond issue of Oakland Public Service District, Hancock County, WV**

The statement is filed without the debtor's signature to perfect a security interest in collateral. (check  if so)

already subject to a security interest in another jurisdiction when it was brought into this state.

which is proceeds of the original collateral described above in which a security interest was perfected.

Check  if covered.  Proceeds of Collateral are also covered.  Product of Collateral are also covered.

Filed with:

**WV Secretary of State**

No. of additional Sheets presented:

**Oakland Public Service District**

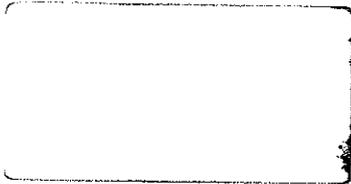
**West Virginia Water Development Auth.**

*Tom Allison* Chairman  
Signature(s) of Debtor(s)

*Dan B... ..* Director  
Signature(s) of Secured Party(ies)

(2) Filing Officer Copy-Numerical

(For Use In Most States)





\$579,740

OAKLAND PUBLIC SERVICE DISTRICT

Water Revenue Bonds, Series 1995

NON-ARBITRAGE CERTIFICATE

I, Norman Allison, Chairman of the Public Service Board of Oakland Public Service District, Hancock County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of Water Revenue Bonds, Series 1995, in the aggregate principal amount of \$579,740, of the Issuer, dated June 28, 1995 (the "Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations (the "Code"). I am one of the officers of the Issuer charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer.

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

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on June 28, 1995, the date on which the Bonds are to be physically delivered in exchange for the issue price thereof, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Resolution pursuant to which the Bonds are issued, the Issuer has covenanted to make no use of the proceeds of the Bonds which would cause the Bonds to be an "arbitrage bond" within the meaning of the Code.

6. The Bonds were sold on June 28, 1995, to West Virginia Water Development Authority ("WDA" or the "Purchaser"), for an aggregate purchase price of \$579,740 (100% of par).

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purpose of (i)

permanently financing the cost of acquisition and construction of certain additions, betterments and improvements to the existing water system of the Issuer (the "Project"); (ii) to pay capitalized interest; and (iii) paying costs of issuance and other costs in connection therewith.

8. The total cost of the Project is estimated at \$1,329,740. Sources and uses of funds for the Project are as follows:

SOURCES

Bond Proceeds	\$579,740
Small Cities Block Grant	750,000
Total Sources	<u>\$1,329,740</u>

Design, Acquisition, Administration and Construction of Project	\$1,284,357
Capitalized Interest	39,133
Costs of Issuance	6,250
Total Uses	<u>\$1,329,740</u>

The amount of Project costs is estimated to be greater than the gross proceeds of the Bonds. Except for the proceeds of the Bonds and the funds described above, no other funds of the Issuer will be available to meet costs of the Project, and no balances are available to meet such costs in any account which may, without appropriate action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

9. Pursuant to Article IV of the Resolution, the following special funds or accounts have been created:

- (1) Revenue Fund or System Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund;
- (4) Construction Fund;
- (5) Rebate Fund; and
- (6) Series 1995 Bond Sinking Fund;
  - (a) Within the Series 1995 Bond Sinking Fund, the Series 1995 Bond Reserve Account.

10. Pursuant to the Resolution, the proceeds of the Bonds will be deposited in the Construction Fund 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 Revenue Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of construction of the Project. To the extent required, all investment earnings on moneys in the Reserve

Fund will be annually withdrawn therefrom and deposited into the Construction Fund until completion of the Project, and thereafter will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied in full, first to the next ensuing interest payment, if any, due on the Bonds, and then to the next ensuing principal payment due thereon.

12. Except for the Series 1995 Bond Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Bonds, or which are pledged as collateral for Bonds, and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds, if the Issuer encounters financial difficulties. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts or other investment-type property producing a yield in excess of the yield on the Bonds, have been or will be pledged to payment of the Bonds. Any amounts deposited in the Series 1995 Bond Reserve Account from time to time by the Issuer will not exceed the maximum annual principal and interest on the Bonds and will not exceed one hundred twenty-five percent (125%) of average annual principal and interest on the Bonds. Amounts in the Series 1995 Bond Reserve Account, not to exceed ten percent (10%) of the proceeds of the Bonds, if invested, will be invested without yield limitation. The establishment of the Series 1995 Bond Reserve Account is required by the Purchaser, is vital to its purchase of the Bonds and is reasonably required to assure payments of debt service on the Bonds.

13. The Issuer has entered into a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of two and one half percent (2 1/2%) of the estimated total Project cost financed with proceeds from the sale of the Bonds or \$100,000. Acquisition, construction and equipping of the Project will proceed with due diligence to completion and 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 March 1, 1996. Construction of the Project is expected to be completed within seven (7) months.

14. The Issuer will comply with the provisions of the Code for which the effective date precedes the date of delivery of the Bonds to the Purchaser.

15. Any money deposited in the Revenue Fund for payment of the principal and interest on the Bonds will be spent within a 13-month period beginning on the date of receipt, and any moneys received from the investment of amounts held in the Revenue Fund will be spent within a 1-year period beginning on the date of receipt.

16. All the proceeds of the Bonds which were used for the payment of costs of the Project will be expended for such purposes within three (3) years from September 27, 1994.

17. The amounts designated as costs of issuance of the Bonds consist only of costs which are directly related to and necessary for the issuance of the Bonds.

18. All property financed with the proceeds of the Bonds will be held for Federal income tax purposes by (or on behalf of) a qualified governmental unit.

19. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

20. No more than ten percent (10%) of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than five percent (5%) of the proceeds of the Bonds have been or will be used to make or finance loans to, any person who is not a governmental unit.

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

22. The Issuer shall use the proceeds of the Bonds solely for the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

23. The Issuer shall not permit at any time or times any of the proceeds of the Bonds, or any other funds of the Issuer, to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bond" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

24. The Bonds, in whole or in part, will not be, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

25. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the Bonds.

26. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code. The yield on the Bonds is six and 75/100 percent (6.75%).

27. The Issuer has either (a) funded the Reserve Fund in 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 Reserve Fund which will be funded with equal payments on a monthly basis over a ten (10) year period until such Reserve Fund holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Reserve Fund and the Revenue Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

28. The Issuer shall submit to WDA, within fifteen (15) days following the end of the Issuer's bond year, a certified copy of its rebate calculation, but if the Issuer qualifies for the small governmental issuer exception to rebate, or any other exception thereto, then the Issuer shall submit to WDA, a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

29. The Issuer will rebate to the United States the amount, if any, required by the Code and will take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

30. The Issuer covenants and agrees to comply with the rebate requirements of the Code, if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds. In addition, the Issuer has covenanted to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code and has covenanted to take such actions, and refrain from taking such actions, as may be necessary to fully comply with Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of the Resolution authorizing issuance of the Bonds.

31. Goodwin & Goodwin is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

32. The Issuer expects that no part of the Project financed by the Bonds will be sold or otherwise disposed of prior to the last maturity date of the Bonds.

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

Dated this 28th day of June, 1995.

OAKLAND PUBLIC SERVICE  
DISTRICT

By:   
Chairman, Public Service Board



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**ATTORNEYS AT LAW**

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June 28, 1995

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CARL FRANKOVITCH  
JOHN H. KAMLOWSKY

ADMITTED TO PRACTICE IN

\* WEST VIRGINIA

\*\* PA AND WV

† PA, WV AND OHIO

†† PENNSYLVANIA

West Virginia Water Development Authority  
1201 Dunbar Avenue  
Dunbar, WV 25064

Oakland Public Service District  
R.D. 1, Box 166R  
Weirton, WV 26062

Re: \$579,740 Oakland Public Service District,  
Water Revenue Bonds, Series 1995

Gentlemen:

As attorney for Oakland Public Service District, Hancock County, West Virginia (the "District"), I have examined the record of proceedings relating to the issue of Oakland Public Service District, Water Revenue Bonds, Series 1995 (the "Bonds") and have considered the validity of the bond issue. In this connection, I have examined and am familiar with the constitution and statutes of the State of West Virginia, including Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended, the Orders of Hancock County Commission creating and expanding the District, related minutes and a certified copy of the Resolution passed by the District (the "Resolution"), a copy of the certificate of convenience and public necessity issued by the West Virginia Public Service Commission, the water rates necessary to pay for the Bonds as described in the Resolution, copies of contracts and other documents relating to the funding and approval for the project by the District, including, but not limited to, the construction contract, plans and specifications, other documents relating to the project, and other documents incidental and material to the issuance by the District of the Bonds. From such familiarity and examination, I am of the opinion as follows:

1. The District is a duly created and presently existing public corporation and political subdivision of the State of West Virginia with full power and authority to construct and acquire and to operate and maintain the Water System and to issue and sale the Bonds, all under the provisions of Chapter 16, Article 13A (the "Act"), of the Code of West Virginia of 1931, as amended, and other applicable provisions of law.

2. The District, through its Board, has legally and effectively adopted the Resolution and has duly authorized the issuance and delivery of the Bonds to the West Virginia Water Development Authority, and the Chairman of the Board is duly and lawfully entitled to and authorized to execute the Bonds.

3. The Bonds constitute a valid and legally enforceable special obligation of the District secured by and payable solely from a parity lien on and pledge of the net revenue of the System on parity with the loan made by Wheeling National Bank as described in the Resolution, all in accordance with the terms of the Bonds and the Resolution.

4. The District, through its Board, has legally and effectively adopted the Water Rates necessary to make the payments on the Bonds for the rates described in the Resolution, and it has lawfully enacted and has filed a tariff which has been approved by the West Virginia Public Service Commission for the water rates that are described within the Resolution.

5. The District has received, or there have been entered, all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the District, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from The County Commission of Hancock County and the Public Service Commission of West Virginia, and the District has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received the Final Order of the Public Service Commission of West Virginia entered on May 17, 1995, in Case No. 94-0544-PWD-CN, among other things, granting to the District a certificate of convenience and necessity for the Project, approving rates and charges for the services of the System, and consenting to the issuance of the Bonds and the financing for the Project, as amended by Final Order dated June 26, 1995, approving financing of the Project. The District does not intend to appeal the June 26, 1995 Final Order and believes that the Staff will not appeal.

6. The District, through its Board, has legally and effectively adopted all other resolutions, contracts and agreements that are necessary to comply with all provisions of the Resolution before the Bonds may be issued and delivered and so that the Bonds can, in fact, be lawfully issued and delivered.

7. The execution and delivery of the Bonds and the enactment of the Resolution and compliance with the provisions of them will not conflict with nor constitute a breach of or default under any agreement or other instrument known to us to which the District is a party, or any court order or consent decree known to us to which the District is subject, or any law or administrative regulation to which the District is subject.

West Virginia Water Development Authority

June 28, 1995

Page 3

8. All authorization, consents, approvals and reviews by governmental bodies or regulatory authorities then required for the District's adoption, execution or performance of the Bonds, and the Resolution has been obtained or affected, and we have no reason to believe that the District will be unable to obtain or affect any additional such authorizations, consents or approvals that may be required in the future for performances of any of them by the District.

9. To our knowledge, there is no action, suit, proceeding or investigation at law or in equity by any court, public board or body, pending or threatened against or affecting the District or any member of the Board, and no facts exist relating to the composition of the Board or the exercise of their duties, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the validity of the Bonds or the Resolution.

The foregoing opinion is qualified to the extent that the enforceability of the liens, pledges and terms set forth in the Bonds and in the Bond Resolution may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally.

Very truly yours,

FRANKOVITCH & ANETAKIS



MARK A. COLANTONIO

MAC/dp



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P. O. BOX 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
304/372-2651

June 28, 1995

REPLY TO: Charleston

West Virginia Water Development Authority  
1201 Dunbar Avenue  
Dunbar, WV 25604

Oakland Public Service District  
RD1, Box 166R  
Weirton, WV 26062

Oakland Public Service District Water  
Revenue Bonds  
Series 1995

Gentlemen:

We have examined a transcript of proceedings relating to the issuance of Water Revenue Bonds, Series 1995 in the amount of \$579,740 (the "Bonds"), of the Oakland Public Service District (the "Issuer"), and a "Non-Arbitrage Certificate" executed by the Chairman of the Issuer on this date.

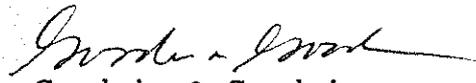
Based upon such Certificate, we are of the opinion that the facts, estimates and circumstances set forth therein are sufficient to satisfy the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), to support the conclusion that the Bonds are not an "arbitrage bond" as therein defined. While we have undertaken no independent investigation or verification of the statements, expectations or representations set forth in such Certificate, no matters have come to our attention which make unreasonable or incorrect such statements, expectations or representations.

Accordingly, it is our opinion that, under existing statutes, regulations, rulings and court decisions, the Bonds are not an "arbitrage bond" as so defined.

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The opinions set forth above are subject to the condition that the Issuer comply with all requirements of the Code relating to arbitrage that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be (or continue to be) excludable from gross income for federal income tax purposes. Failure to comply with such requirements could cause the interest on the Bonds to be so included in gross income retroactive to the date of issuance of the Bonds. The Issuer has covenanted to comply with all such requirements.

Very truly yours,

  
Goodwin & Goodwin



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June 28, 1995

P. O. BOX 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
304/372-2651

REPLY TO:  
Charleston

West Virginia Water Development Authority  
1201 Dunbar Avenue  
Dunbar, WV 25064

Gentlemen:

We are bond counsel to Oakland Public Service District (the "District"), a public corporation and political subdivision of the State of West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated June 28, 1995, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the District and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of revenue bonds of the District, dated June 28, 1995 (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$579,740, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable April 1 and October 1 of each year, beginning October 1, 1995, at the rate set forth in Exhibit A incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purpose of expanding the District's existing water system to Hudson Hill and along North Fork Road and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and the Bond Resolution duly adopted by the District on June 21, 1995 (the "Local Act"), pursuant to and under which Act and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that 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.

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In connection with the issuance of the Local Bonds, the District has executed a Non-Arbitrage Certificate, dated as of the date hereof (the "Non-Arbitrage Certificate"), which among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Local Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the District and is a valid and binding special obligation of the District enforceable in accordance with the terms thereof.

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

3. The District is a duly organized and presently existing public service district with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The District has legally and effectively adopted the Local Act and all other necessary resolutions in connection with the issuance and sale of the Local Bonds. 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 are valid and legally enforceable special obligations of the District, payable from the net revenues of the System referred to in the Local Act and secured by a first lien on and pledge of the net revenues of said System on parity with a loan made to the District by Wheeling National Bank pursuant to a Loan Agreement dated May 5, 1989, in the original principal amount of \$183,500, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

GOODWIN & GOODWIN

6. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Local Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Local Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth above are subject to the condition that the District comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Local Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Local Bonds set forth in the Local Act and the Non-Arbitrage Certificate, and other certificates delivered in connection with the Local Bonds. Failure to comply with certain of such Code provisions or such certifications, covenants and representations could cause the interest on the Local Bonds to be includable in gross income retroactive to the date of issuance of the Local Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Local Bonds.

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

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 an 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,



Goodwin & Goodwin

## SCHEDULE A

### BOND DEBT SERVICE

Oakland Public Service District  
Water Revenue Bonds, Series 1995

\$579,740

Dated Date           6/28/1995  
Delivery Date       6/28/1995

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
Jun 28, 1995	-	-	-	-	-
Oct 1, 1995	-	-	10,109.22	10,109.22	10,109.22
Apr 1, 1996	-	-	19,566.23	19,566.23	-
Oct 1, 1996	3,568.00	6.750%	19,566.23	23,134.23	42,700.46
Apr 1, 1997	-	-	19,445.81	19,445.81	-
Oct 1, 1997	3,809.00	6.750%	19,445.81	23,254.81	42,700.62
Apr 1, 1998	-	-	19,317.25	19,317.25	-
Oct 1, 1998	4,066.00	6.750%	19,317.25	23,383.25	42,700.50
Apr 1, 1999	-	-	19,180.02	19,180.02	-
Oct 1, 1999	4,341.00	6.750%	19,180.02	23,521.02	42,701.04
Apr 1, 2000	-	-	19,033.52	19,033.52	-
Oct 1, 2000	4,634.00	6.750%	19,033.52	23,667.52	42,701.04
Apr 1, 2001	-	-	18,877.12	18,877.12	-
Oct 1, 2001	4,947.00	6.750%	18,877.12	23,824.12	42,701.24
Apr 1, 2002	-	-	18,710.16	18,710.16	-
Oct 1, 2002	5,280.00	6.750%	18,710.16	23,990.16	42,700.32
Apr 1, 2003	-	-	18,531.96	18,531.96	-
Oct 1, 2003	5,637.00	6.750%	18,531.96	24,168.96	42,700.92
Apr 1, 2004	-	-	18,341.71	18,341.71	-
Oct 1, 2004	6,017.00	6.750%	18,341.71	24,358.71	42,700.42
Apr 1, 2005	-	-	18,138.63	18,138.63	-
Oct 1, 2005	6,424.00	6.750%	18,138.63	24,562.63	42,701.26
Apr 1, 2006	-	-	17,921.82	17,921.82	-
Oct 1, 2006	6,857.00	6.750%	17,921.82	24,778.82	42,700.64
Apr 1, 2007	-	-	17,690.40	17,690.40	-
Oct 1, 2007	7,320.00	6.750%	17,690.40	25,010.40	42,700.80
Apr 1, 2008	-	-	17,443.35	17,443.35	-
Oct 1, 2008	7,814.00	6.750%	17,443.35	25,257.35	42,700.70
Apr 1, 2009	-	-	17,179.63	17,179.63	-
Oct 1, 2009	8,341.00	6.750%	17,179.63	25,520.63	42,700.26
Apr 1, 2010	-	-	16,898.12	16,898.12	-
Oct 1, 2010	8,904.00	6.750%	16,898.12	25,802.12	42,700.24
Apr 1, 2011	-	-	16,597.61	16,597.61	-
Oct 1, 2011	9,506.00	6.750%	16,597.61	26,103.61	42,701.22
Apr 1, 2012	-	-	16,276.78	16,276.78	-
Oct 1, 2012	10,147.00	6.750%	16,276.78	26,423.78	42,700.56
Apr 1, 2013	-	-	15,934.32	15,934.32	-
Oct 1, 2013	10,832.00	6.750%	15,934.32	26,766.32	42,700.64
Apr 1, 2014	-	-	15,568.74	15,568.74	-
Oct 1, 2014	11,563.00	6.750%	15,568.74	27,131.74	42,700.48
Apr 1, 2015	-	-	15,178.49	15,178.49	-
Oct 1, 2015	12,344.00	6.750%	15,178.49	27,522.49	42,700.98
Apr 1, 2016	-	-	14,761.88	14,761.88	-
Oct 1, 2016	13,177.00	6.750%	14,761.88	27,938.88	42,700.76
Apr 1, 2017	-	-	14,317.16	14,317.16	-
Oct 1, 2017	14,066.00	6.750%	14,317.16	28,383.16	42,700.32
Apr 1, 2018	-	-	13,842.43	13,842.43	-
Oct 1, 2018	15,016.00	6.750%	13,842.43	28,858.43	42,700.86
Apr 1, 2019	-	-	13,335.64	13,335.64	-
Oct 1, 2019	16,029.00	6.750%	13,335.64	29,364.64	42,700.28
Apr 1, 2020	-	-	12,794.66	12,794.66	-
Oct 1, 2020	17,111.00	6.750%	12,794.66	29,905.66	42,700.32

## BOND DEBT SERVICE

Oakland Public Service District  
Water Revenue Bonds, Series 1995

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
Apr 1, 2021	-	-	12,217.16	12,217.16	-
Oct 1, 2021	18,268.00	6.750%	12,217.16	30,483.16	42,700.32
Apr 1, 2022	-	-	11,600.69	11,600.69	-
Oct 1, 2022	19,499.00	6.750%	11,600.69	31,099.69	42,700.38
Apr 1, 2023	-	-	10,942.59	10,942.59	-
Oct 1, 2023	20,816.00	6.750%	10,942.59	31,758.59	42,701.18
Apr 1, 2024	-	-	10,240.05	10,240.05	-
Oct 1, 2024	22,221.00	6.750%	10,240.05	32,461.05	42,701.10
Apr 1, 2025	-	-	9,490.10	9,490.10	-
Oct 1, 2025	23,721.00	6.750%	9,490.10	33,211.10	42,701.20
Apr 1, 2026	-	-	8,689.51	8,689.51	-
Oct 1, 2026	25,322.00	6.750%	8,689.51	34,011.51	42,701.02
Apr 1, 2027	-	-	7,834.89	7,834.89	-
Oct 1, 2027	27,031.00	6.750%	7,834.89	34,865.89	42,700.78
Apr 1, 2028	-	-	6,922.60	6,922.60	-
Oct 1, 2028	28,855.00	6.750%	6,922.60	35,777.60	42,700.20
Apr 1, 2029	-	-	5,948.74	5,948.74	-
Oct 1, 2029	30,803.00	6.750%	5,948.74	36,751.74	42,700.48
Apr 1, 2030	-	-	4,909.14	4,909.14	-
Oct 1, 2030	32,882.00	6.750%	4,909.14	37,791.14	42,700.28
Apr 1, 2031	-	-	3,799.37	3,799.37	-
Oct 1, 2031	35,102.00	6.750%	3,799.37	38,901.37	42,700.74
Apr 1, 2032	-	-	2,614.68	2,614.68	-
Oct 1, 2032	37,471.00	6.750%	2,614.68	40,085.68	42,700.36
Apr 1, 2033	-	-	1,350.03	1,350.03	-
Oct 1, 2033	40,001.00	6.750%	1,350.03	41,351.03	42,701.06
	579,740.00		1,052,995.20	1,632,735.20	1,632,735.20



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LAW OFFICES  
**GOODWIN & GOODWIN**  
P. O. BOX 2107  
1500 ONE VALLEY SQUARE  
CHARLESTON, WEST VIRGINIA 25328-2107  
304/346-7000  
TELECOPIER 304/344-9692

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
304/485-2345

P. O. BOX 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
304/372-2651

REPLY TO:

**Charleston**

June 28, 1995

Via Certified Mail-Return Receipt  
Requested No. Z 316 456 032

Director  
Internal Revenue Service  
Philadelphia, PA 19255

Re: \$579,740 Oakland Public Service District,  
Water Revenue Bonds, Series 1995

Gentlemen:

Enclosed is a Form 803-G filed on behalf of Oakland Public Service District, West Virginia, which provides the information required by Section 149(e) of the Internal Revenue Code of 1986, as amended. We have also enclosed a file copy to be returned to our office (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope.

Sincerely yours,

*W. K. Bragg, Jr.*

William K. Bragg, Jr.

WKB:rdb  
Enclosures

**READER:**  
Complete items 1 and/or 2 for additional services.  
Complete items 3, and 4a & b.  
Put your name and address on the reverse of this form so that we can return this card to you.  
Attach this form to the front of the mailpiece, or on the back if space is not permitted.  
If a "Return Receipt Requested" stamp is on the mailpiece below the article number, the return receipt will show to whom the article was delivered and the date received.

I also wish to receive the following services (for an extra fee):  
1.  Addressee's Address  
2.  Restricted Delivery  
Consult postmaster for fee.

Article Addressed to:  
Director  
Internal  
Philadelphia, PA

4a. Article Number  
7-316456-032

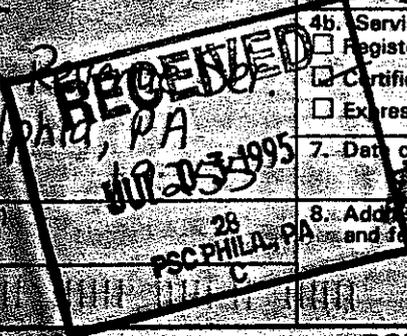
4b. Service Type  
 Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

7. Date of Delivery

Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

Signature (Agent)



Thank you for using Return Receipt Service.

Form **8038-G**

**Information Return for Tax-Exempt Governmental Obligations**

(Rev. May 1993)  
Department of the Treasury  
Internal Revenue Service

Under Internal Revenue Code section 149(e)  
See separate instructions.

OMB No 1545-0720

(Use Form 8038-GC if the issue price is under \$100,000.)

**Part I Reporting Authority**

If Amended Return, check here

1 Issuer's name <b>Oakland Public Service District</b>		2 Issuer's employer identification number <b>55 0531996</b>	
3 Number and street (or P.O. box if mail is not delivered to street address) <b>RD 1, Box 166R</b>		Room/suite	4 Report number <b>019 95 - 1</b>
5 City, town, state, and ZIP code <b>Weirton, WV 26062</b>			6 Date of issue <b>6/28/95</b>
7 Name of issue <b>\$579,740 Oakland Public Service District, Water Revenue Bonds, Series 1995</b>			8 CUSIP Number <b>None</b>

**Part II Type of Issue (check applicable box(es) and enter the issue price)**

9 <input type="checkbox"/> Education (attach schedule—see instructions)	<p style="text-align: center;"><b>ISS RECEIVED</b> <b>070395</b> REC'D MAU - PA</p>	Issue price
10 <input type="checkbox"/> Health and hospital (attach schedule—see instructions)		\$
11 <input type="checkbox"/> Transportation		
12 <input type="checkbox"/> Public safety		
13 <input type="checkbox"/> Environment (including sewage bonds)		
14 <input type="checkbox"/> Housing		
15 <input checked="" type="checkbox"/> Utilities		<b>579,740</b>
16 <input type="checkbox"/> Other. Describe (see instructions) ▶		
17 If obligations are tax or other revenue anticipation bonds, check box <input type="checkbox"/>		
18 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>		

**Part III Description of Obligations**

	(a) Maturity date	(b) Interest rate	(c) Issue price	(d) Stated redemption price at maturity	(e) Weighted average maturity	(f) Yield	(g) Net interest cost
19 Final maturity	<b>10/1/2033</b>	<b>6.75%</b>	<b>\$40,001</b>	<b>Par</b>			
20 Entire issue			<b>\$579,740</b>	<b>Par</b>	<b>26.908 years</b>	<b>6.751%</b>	<b>6.75 %</b>

**Part IV Uses of Original Proceeds of Bond Issue (including underwriters' discount)**

21 Proceeds used for accrued interest	21	
22 Issue price of entire issue (enter amount from line 20, column (c))	22	<b>\$579,740</b>
23 Proceeds used for bond issuance costs (including underwriters' discount)	23	<b>6,250</b>
24 Proceeds used for credit enhancement	24	<b>0</b>
25 Proceeds allocated to reasonably required reserve or replacement fund	25	<b>0</b>
26 Proceeds used to refund prior issues	26	<b>0</b>
27 Total (add lines 23 through 26)	27	<b>6,250</b>
28 Nonrefunding proceeds of the issue (subtract line 27 from line 22 and enter amount here)	28	<b>\$573,490</b>

**Part V Description of Refunded Bonds (complete this part only for refunding bonds)**

29 Enter the remaining weighted average maturity of the bonds to be refunded ▶ \_\_\_\_\_ years

30 Enter the last date on which the refunded bonds will be called ▶ \_\_\_\_\_

31 Enter the date(s) the refunded bonds were issued ▶ \_\_\_\_\_

**Part VI Miscellaneous**

32 Enter the amount of the state volume cap allocated to this issue ▶ \_\_\_\_\_

33 Enter the amount of the bonds designated by the issuer under section 149(b)(3)(B)(ii) (small issuer exception) ▶ \_\_\_\_\_

34 Pooled financings:

a Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units ▶ \_\_\_\_\_

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box  and enter the name of the issuer ▶ **W.Va. Water Development Authority** and the date of the issue ▶ **Sept. 27, 1994**

35 If the issuer has elected to pay a penalty in lieu of rebate, check box

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Please Sign Here

*Norman Allison* 6/28/95  
Signature of officer Date

**Norman Allison, Chairman**  
Type or print name and title



**WV MUNICIPAL BOND COMMISSION**

812 Quarrier Street,  
Suite 300  
Charleston, WV 25301  
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: June 28, 1995  
(See Reverse for Instructions)

-----  
ISSUE: \$579,740 Oakland Public Service District,  
Water Revenue Bonds, Series 1995  
ADDRESS: P.O. Box 2058  
Weirton, WV 26062 COUNTY: Hancock  
PURPOSE: New Money X  
OF ISSUE: Refunding \_\_\_\_\_ Refunds issue(s) dated:  
ISSUE DATE: June 28, 1995 CLOSING DATE: June 28, 1995  
ISSUE AMOUNT: \$579,740 RATE: 6.75 % (NIC)  
1st DEBT SERVICE DUE: Oct. 1, 1995 1ST PRINCIPAL DUE: Oct. 1, 1996  
1ST DEBT SERVICE AMOUNT: \$10,109.22 PAYING AGENT: Municipal  
Bond Commission  
-----

BOND COUNSEL: Goodwin & Goodwin LENDER'S COUNSEL: Jackson & Kelly  
Contact Person: W. K. Bragg, Jr. Contact Person: Samme L. Gee  
Phone: 346-7000 Phone: 340-1318

REGISTRAR: United National Bank LENDER: WV Water Dev. Auth.  
Contact Person: Kathy Smith Contact Person: Daniel B. Yonkosky  
Phone: 348-8427 Phone: 558-3612

KNOWLEDGEABLE ISSUER CONTACT:  
Contact Person: Norm Allison  
Position: Chairman  
Phone: 797-8353

DEPOSITS TO MBC AT CLOSE:

Accrued Interest: \$ \_\_\_\_\_  
X Capitalized Interest: \$ 39,133.00  
By \_\_\_\_\_ Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
X Check \_\_\_\_\_ Other: \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:

To Escrow Trustee: \$ \_\_\_\_\_  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ To Cons. Invest. Fund: \$ \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_ Other: \$ \_\_\_\_\_

Notes: \_\_\_\_\_  
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**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

DOCUMENTS  
REQUIRED: \_\_\_\_\_  
TRANSFERS  
REQUIRED: \_\_\_\_\_





**Textbooks.** — Administrative Law in West Virginia (Neely), § 3.07. 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.

- | Sec.  | Sec.  |
|---|---|
| 16-13A-1. Legislative findings.   | 16-13A-9a. Limitations with respect to foreclosure.   |
| 16-13A-1a. Jurisdiction of the public service commission.   | 16-13A-10. Budget.  |
| 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.   | 16-13A-11. Accounts; audit.   |
| 16-13A-1c. General purpose of districts.  | 16-13A-12. Disbursement of district funds.  |
| 16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state. | 16-13A-13. Revenue bonds.   |
| 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.   | 16-13A-14. Items included in cost of properties.  |
| 16-13A-3a. Removal of members of public service board.  | 16-13A-15. Bonds may be secured by trust indenture.   |
| 16-13A-4. Board chairman; members' compensation; procedure; district name.  | 16-13A-16. Sinking fund for revenue bonds.  |
| 16-13A-5. General manager of board.   | 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. |
| 16-13A-6. Employees of board.   | 16-13A-18. Operating contracts.   |
| 16-13A-7. Acquisition and operation of district properties.   | 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.  |
| 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.  | 16-13A-19. Statutory mortgage lien created; foreclosure thereof.  |
| 16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.  | 16-13A-20. Refunding revenue bonds.   |
|   | 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.   |
|   | 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.         |
|   | 16-13A-23. Validation of acts and proceedings of public service boards.   |
|   | 16-13A-24. Acceptance of loans, grants or temporary advances.   |

## § 16-13A-1

## PUBLIC HEALTH

Sec.

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

**Editor's notes.** — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

**Constitutionality of article.** — 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).

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).

**And 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).

**Public service districts are "public utilities."** 50 Op. Att'y Gen. 447 (1963).

**Hence, 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*, 365 S.E.2d 395 (W. Va. 1987).

## § 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 com-

mission 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.)

**Purpose found in order creating district and in hearings.** — 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.

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.

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).

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.)

### § 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 [June 6, 1986] 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 shall have 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 department of health and the department of natural resources 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 shall have 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 and regulations promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81.)

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

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

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

The county commission of any county may, on its own motion by order duly adopted or upon the recommendation of the public service commission, propose the creation of such public service district within such county, setting forth in such order a description, including metes and bounds, sufficient to

identify the territory to be embraced therein and the name of such proposed district, or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which 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 [June 6, 1986], no new public service district shall be created under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules and regulations 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 such 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 such 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 such proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or other municipal corporation consenting.

Such 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 such territory is situated in more than one county, then such petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of such 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 such county at the first regular meeting after such filing or at a special meeting called for the consideration thereof.

When the county commission of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in such county on the creation 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 such 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 such 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 such 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 such hearing. In all cases where proceedings for the creation of such 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 such 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.

All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation 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 such 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 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 such area or that the creation 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 the district as amended. 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 expansion, merger or other means, it shall refuse to enter an order creating the proposed district and shall enter an order expanding, merging or consolidating the area with an existing public service district, in accordance with rules and regulations adopted by the public service commission for such purpose: Provided, That no expansion 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 expanded 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, expanding, merging or consolidating the district:

Provided, however, That within ten days after the entry of an order creating, expanding or merging 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 and regulations relating to such filings and the approval, disapproval or modification of county commission orders for creating, expanding, merging or consolidating districts.

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 establish 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 with like effect as if a district were being created. The commission shall at all times attempt to bring about the expansion 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. 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.)

**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).**

**And 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).**

**District need not be created by general**

**law. — 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).**

**Voters may not force referendum as to continuing or abolishing district. — 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 dis-**

trict should be continued or abolished. 52 Op. Att'y Gen. 33 (1966).

**Certain provisions mandatory, but provisions for setting time of hearing and giving notice directory.** — 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).

**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).

**Relative powers of commission and voters in area.** — (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 sub-

ject 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.

**"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.

**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.

**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.

Cited in *State v. Neary*, 365 S.E.2d 395 (W. Va. 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 shall thereafter be 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 department of natural resources and the department of 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 such 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 not less than eighteen thousand shall be entitled to appoint one member of the board, and each such 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 shall thereby 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 shall equal or exceed three, then no further members shall be appointed to the board and the members shall be and constitute the board of the district.

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, which three members shall become members of and constitute the board of the district without any further act or proceedings.

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, and the additional member or members shall thereupon become members of the board; 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, shall be and constitute 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, shall be conclusively considered to be 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 and regulations promulgated by the public service commission.

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, and 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 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 chairman 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 the 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 chairman, secretary and treasurer hereof, 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.)

**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 municipal corporation in 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).

**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.

**Furnishing water to border residents in neighboring state.** — See Op. Att'y Gen., June 26, 1975.

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

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

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

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be 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. Salaries of each of its board members shall be as follows: For districts with fewer than six hundred customers, each board member shall receive fifty dollars per attendance at regular monthly meetings and thirty dollars per attendance at additional special meetings, total salary not to exceed nine hundred dollars per annum; for districts with six hundred customers or more but fewer than two thousand customers, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed eighteen hundred dollars per annum; and for districts with two thousand customers or more, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed three thousand 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. 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 and regulations of the board. 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 by section three [§ 6-9A-3], article nine-a, chapter six of this code. A majority of the members constituting the board also constitute a quorum to do business. 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 such change shall be effective from and after filing 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. 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.)

**§ 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 five 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 provisions 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.)

**§ 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.)

District may exercise control over sewers where ownership is unknown unincorporated areas. 45 Op. Att'y Gen. 506 (1953).

Valid grant of power of 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).

**§ 16-13A-9. Rules and regulations; 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 issu-

ance 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 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 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 shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: 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 and regulations 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 non-payment 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 shall have 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, regulations 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 department of 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 department 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 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 department 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, 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 department of 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 department of 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 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 two [§ 20-5A-2], article five-a, chapter twenty, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the department of natural resources, as prescribed by section seven [§ 20-5A-7], article five-a, chapter twenty 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.)

**Effect of amendment of 1989.** — The amendment in the first paragraph, added the present fourth through seventh sentences, and added the proviso at the end of the last sentence; substituted "shall covenant" for "may covenant" in the first sentence of the second paragraph, and substituted "users" for "user's" near the end of the third paragraph.

**Lien not a deprivation of property without due process.** — 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).

**Requiring connections with sewer facilities.** — 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.

**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*, 386 S.E.2d 483 (W. Va. 1989).

**When duty arises.** — 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.*, 301 S.E.2d 601 (W. Va. 1983) (construing this section prior to 1980 and 1981 amendments).

**§ 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.)

**§ 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

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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.)

**§ 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 resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (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.

**Effect of amendment of 1989.** — The amendment substituted "eighteen percent" for

"twelve percent" in the second sentence and "nineteen percent" for "thirteen percent" in the fifth sentence; and made a minor punctuation change.

#### § 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

**§ 16-13A-16**

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forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (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.** — Abolition of the procedural distinctions between law and equity, Rule 2.

Receivers, Rule 66.

Application of rules to writ of mandamus, Rule 81(a)(5).

Effect of rules on jurisdiction and venue, 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 reve-

nue 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 all 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 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.)

**§ 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.** — Abolition of the procedural distinctions between law and equity, Rule 2.

The provision granting to bondholders 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.)

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 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 required. — 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 shall constitute 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, shall be 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 state department of health and the state water resources board shall remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is declared to be 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 shall be 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.)

**Tax exemption constitutional.** — 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., 301 S.E.2d 601 (W. Va. 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 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 [January 29, 1960], for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

*Editor's notes.* — As to designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

**§ 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 [March 13, 1965], by any county court of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)

Editor's notes. — As to designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

**§ 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.)

**§ 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 sections 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. 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.

Sixty days prior to making formal application for said certificate, the public service district shall prefile with the public service commission its plans and supporting information for said 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 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 same;

(d) The anticipated rates which will be charged by the 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 [§ 24-1-1 et seq.] of this code, or may withhold such consent and approval for the protection of the public interest.

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

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

ARTICLE 14.

BARBERS AND BEAUTICIANS.

- Sec.  
16-14-1. Jurisdiction over barbers and beauticians; powers and duties of director of health.  
16-14-2. Barbering, beauty culture and manicuring defined.

- Sec.  
16-14-3. Regulations to be promulgated by board of health; enforcement.  
16-14-4 to 16-14-17. [Repealed.]

**Editor's notes.** — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

**Michie's Jurisprudence.** — For a general treatment of barbering and beauty culture, see 3A M.J., Barbers and Beauticians.

# WEST VIRGINIA CODE

*ANNOTATED*

## VOLUME 5

*1991 Replacement*

### 1994 Cumulative Supplement

**Including Acts passed during the 1994 Regular Session and  
the 1994 First Extraordinary Session**

Prepared by the Editorial Staff of the Publishers

*Under the Supervision of*

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for the collection and/or treatment and the repair, alteration and necessary to comply with such environmental protection or the construction, maintenance and repair of such works and matters, and is independent of any other provision of this article insofar as such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds: Provided, however, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

Effect of amendment of 1994. — The amendment substituted "director of the division of environmental protection or the environmental quality board" for "chief of the division of water resources or the state water resources board" twice preceding the two provisions and for "state water resources board" once in each proviso; substituted "municipal bond commission" for "state sinking fund commission"; deleted "however" in the first proviso; and made other minor changes.

collect rates or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds: Provided, however, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

Effect of amendment of 1994. — The amendment substituted "director of the division of environmental protection or the environmental quality board" for "chief of the division of water resources or the state water resources board" twice preceding the two provisions

and for "state water resources board" once in each proviso; substituted "municipal bond commission" for "state sinking fund commission"; deleted "however" in the first proviso; and made other minor changes.

### ARTICLE 13A.

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

Sec.	Sec.
16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.	16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.	16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.

### § 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.)

Effect of amendment of 1994. — The amendment substituted "bureau of public health" for "department of health"; substituted "division of environmental protection" for "de-

partment of natural resources"; deleted "and regulations" following "rules" in the last sentence; and made stylistic changes.

**§ 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 such 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 such 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.

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, which three members become members of the board of the district without any further act or proceedings.

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; 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

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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.

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, and 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 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.)

Effect of amendment of 1994. — The amendment, in the second paragraph, substituted "bureau of public health" for "department of health," and substituted "division of environmental protection" for "department of natural resources"; in the third paragraph, deleted

"not" prior to "less than eighteen thousand," deleted "shall thereby" prior to "become members," and substituted "so appointed are" for "shall be and constitute"; deleted "and constitute" prior to "the board of the district" in the fourth paragraph; deleted "additional" prior to

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"member or members" in the fifth paragraph;  
 deleted "and regulations" following "rules" in  
 the seventh paragraph; deleted "the" prior to  
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 graph; and made stylistic changes.  
 Compensation of board members for

performing additional duties prohibited.  
 — Board members of a public service district  
 could not be compensated for performing the  
 duties of treasurer and/or secretary, or for read-  
 ing meters for the public service district. Op.  
 Att'y Gen., July 14, 1988, No. 2.

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

Compensation of board members for  
 performing additional duties prohibited.  
 — Board members of a public service district  
 could not be compensated for performing the

duties of treasurer and/or or secretary, or for  
 reading meters for the public service district.  
 Op. Att'y Gen., July 14, 1988, No. 2.

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

Nuisance is element of just compensa-  
 tion. — 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).

Procedure for affixing compensable in-  
 terests. — 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 judg-  
 ment for such property interests. Affixing the  
 value of the property taken is the function of  
 the trier of fact in an eminent domain proceed-  
 ing. *Sexton v. Public Serv. Comm'n*, 188 W. Va.  
 305, 423 S.E.2d 914 (1992).

#### § 16-13A-9. Rules; service rates and charges; discontinu- ance of service; required water and sewer con- nections; lien for delinquent fees.

The board may make, enact and enforce all needful rules and regulations in  
 connection with the acquisition, construction, improvement, extension, man-  
 agement, 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 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

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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 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.)

**Effect of amendment of 1994.** — The amendment substituted "bureau of public health" for "department of health" throughout the section; deleted "and regulations" following "reasonable rules" in the first paragraph and following "all rules" in the second paragraph; and made stylistic changes.

**Sewage lagoons 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).

**§ 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.)

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**§ 16-13A-2.**

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**§ 16-13A-2.**

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**Effect of amendment of 1994.** — The amendment substituted "bureau of public health, the division of environmental protection and the environmental quality board" for

"state department of health and the state water resources board"; deleted "declared" preceding "a public instrumentality"; and made stylistic changes.

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

**Permissible borrowing by public service districts.** — The borrowing by public service districts of money from counties and/or munic-

ipalities, 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.**

**Certificate of necessity and convenience.** — 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).

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).

**Eminent domain not subject to public service commission review.** — Although

**ARTICLE 13B.**

**COMMUNITY IMPROVEMENT ACT.**

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

- and laying assessments; report on project completion; permits.
- 16-13B-11. Construction of projects; assessments; corner lots, etc.
- 16-13B-12. Apportionment and assessment of cost.
- 16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.
- 16-13B-14. Method of paying for cost of project; how assessments may be evidenced.
- 16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.
- 16-13B-16. No liability of state, county, municipality and assessment district.
- 16-13B-17. Payment of assessment fees; releases.
- 16-13B-18. Liens; recording notice of liens; suit for enforcement; priority.
- 16-13B-19. Reassessment for void, irregular or omitted assessments.
- 16-13B-20. How additional territory may be added to assessment district.
- 16-13B-21. Operation and maintenance of

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P. O. BOX 349  
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RIPLEY, WEST VIRGINIA 25271  
304/372-2651

REPLY TO:

Charleston

August 28, 1995

Mr. R. Witter Hallen, Executive Director  
West Virginia Municipal Bond Commission  
812 Quarrier Street, Suite 300  
Charleston, WV 25301

Re: \$579,740 Oakland Public Service District,  
West Virginia, Water Revenue Bonds,  
Series 1995

Dear Mr. Hallen:

Enclosed please find the transcript which has been bound for your reference and use in connection with the above-referenced bond issue. We enjoyed working with you with respect to this matter and look forward to working with you again in the near future.

If you have any questions concerning the materials contained in this transcript, please feel free to contact me.

Sincerely yours,



William K. Bragg, Jr.

WKB:rdb  
Enclosure