UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA)
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

Closing Date: November 20, 2009

JACKSONKELLY
ATTORNEYS AT LAW PLLC

UNION PUBLIC SERVICE DISTRICT
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TRANSCRIPT OF PROCEEDINGS

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State of West Virginia

WATER DEVELOPMENT AUTHORITY

180 Association Drive, Charleston, WV 25311-1217
(304) 558-3612 - (304) 558-0299 (Fax)
Internet: www.wvwda.org - Email: contact@wvwda.org

PRECLOSING ATTENDANCE LIST

Date 11.19.09 Time 2P.M LGA Union PSD Program CW SRF

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Carol A. Cummings	WDA	304-558-3612	304-558-0299	ccummings@wvwda.org
Rose Brodersen	WV DEP	304 926 0499 x1608	304 926 0496	Rosalie.M.Brodersen@wv.gov
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MARK KAUFFELT	KAUFFELT & KAUFFELT	304-345-1272	304-345-1280	MKAUFFELT@wvdsl.net

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Jacob Pack Telephone 304 776-3131 E-Mail unionpublic@wirefire.com

Address 5110 West Washington Street, Cross Lanes, West Virginia 25313

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.

State of West Virginia

Certificate

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

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13A OF THE WEST VIRGINIA CODE, AND CHAPTER 16, ARTICLE 13A OF THE 2009 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

November 16, 2009

Natalie E Tennant

Secretary of State

.2d 891, 143 W.Va. 1.
s ⇐ 400

ARTICLE 13A

PUBLIC SERVICE DISTRICTS

Section

16-13A-1. Legislative findings.
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16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the Secretary of State.
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16-13A-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.
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16-13A-19. Statutory mortgage lien created; foreclosure thereof.
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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-25. Borrowing and bond issuance; procedure.

§ 16-13A-1. Legislative findings

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

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

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

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

Cross References

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

Administrative Code References

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

Library References

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

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

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1. Validity

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

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

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

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

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

2. In general

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

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

A county court may use Federal Revenue Sharing Funds for ordinary and necessary maintenance and operating expenses for sewage disposal, sanitation, and pollution abatement, and ordinary and necessary capital expenditures authorized by law but may not use such funds for matching purposes under any other federal-aid program. 55 W.Va. Op.Atty.Gen. 16 (June 27, 1973) 1973 WL 159152.

3. Construction and application

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

4. Eminent domain powers

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

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

5. Property of public service district

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

6. Rates and charges for service

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

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

Note 6

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

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

7. Creation and enforcement of liens

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

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

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

8. Admissibility of evidence

Extrinsic evidence relating to background and negotiations with regard to forming a public service district were not admissible in regard to construction of a contract for furnishing of water, where contract language was clear and unambiguous that district was to furnish water as customer should require. Berkeley County Public Service Dist. v. Vitro Corp. of America, 1968, 162 S.E.2d 189, 152 W.Va. 252. Evidence ⇐ 448

9. Costs

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

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

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

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

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

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

Acts 1986, c. 81.

Library References

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

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

Notes of Decisions

In general 1

1. In general

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

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

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

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That w... 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 perform its own study has one year from the date of election to present 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 h... the division of environmental protection shall offer their assistance and coop... ation 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 commiss... shall, by order, be approved, disapproved or modified by the publ... commission in accordance with rules promulgated by the public servi... mission and such order shall be implemented by the county commission.

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

Cross References

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

Library References

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

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

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

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

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

Library References

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Library References

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

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

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Creation of public service districts 2
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1. Validity

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

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

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

2. Creation of public service districts

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

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

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

3. District boundaries

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

4. Notice of hearing

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

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

5. Number of voters within district

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

6. Costs

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

7. Referendum

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Law Review and Journal Commentaries

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

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

Library References

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

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

Notes of Decisions

In general 1
Criminal responsibility of members 5
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Removal of members 4
Sale of water 6
Standard of care 2
Tort Claims Act 7

1. In general

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

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

2. Standard of care

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

3. Ministerial officers, generally

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

4. Removal of members

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

5. Criminal responsibility of members

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

6. Sale of water

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

7. Tort Claims Act

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

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

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

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

Library References

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

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

Notes of Decisions

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Ministerial officers, generally 2
Sufficiency of evidence 3

1. Criminal responsibility of members

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

2. Ministerial officers, generally

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

3. Sufficiency of evidence

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

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

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

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

(b) Salaries of the board members are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Library References

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

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

Notes of Decisions

In general 1

1. In general

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

§ 16–13A–5. General manager of board

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

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

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

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

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

Library References

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

§ 16–13A–6. Employees of board

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

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

Library References

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

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

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

possible when hiring laborers for public service district construction or 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.

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

Library References

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

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

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

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

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

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

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

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

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

Library References

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

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

Notes of Decisions

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1. Validity

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

Note 1

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

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

2. In general

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

3. Eminent domain powers

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

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

4. Valuation of property

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

5. Environmental assessment

Whether construction of sewage lagoons would constitute "nuisance" does not defeat Public Service Commission's (PSC) jurisdiction to issue certificate of public convenience and necessity; while PSC may assess environmental considerations, chief inquiry by PSC is need of public for project. Code, 24–2–11. Sexton v. Public Service Com'n, 1992, 423 S.E.2d 914, 188 W.Va. 305. Municipal Corporations ⇐ 708

6. Connections with sewers or drains

City, rather than sewer and water districts, was entitled to provide sewer and water services to newly developed tract that was within districts' boundaries, but was annexed to city, where such services were not previously furnished to tract. Code, 16–13A–8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ⇐ 712(1); Waters And Water Courses ⇐ 201

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

7. Public corporation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Law Review and Journal Commentaries

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

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

Library References

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

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

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Public service district liens 3
Rates and charges for service 4
Takings 2
Validity 1

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1. Validity

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

2. Takings

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

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

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

3. Public service district liens

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

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

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

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

4. Rates and charges for service

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

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

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

5. Notice of availability of sewer service

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

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

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

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

Acts 1982, c. 74.

Library References

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

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

§ 16–13A–10. Budget

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

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

Library References

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

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

Notes of Decisions

In general 1

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1. In general

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

§ 16–13A–11. Accounts; audit

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

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

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

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

Library References

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

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

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

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

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

Library References

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

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

§ 16–13A–13. Revenue bonds

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

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

Library References

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

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

Notes of Decisions

In general 1

1. In general

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

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

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

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

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

Library References

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

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

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

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

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

Acts 1953, c. 147.

Library References

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

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

United States Code Annotated

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

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

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

Acts 1953, c. 147.

Library References

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

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

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

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

Acts 1953, c. 147.

Library References

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

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

Notes of Decisions

In general 1

1. In general

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

§ 16–13A–18. Operating contracts

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

Acts 1953, c. 147.

Library References

Counties ⇐114.
Municipal Corporations ⇐328.
Westlaw Topic Nos. 104, 268.
C.J.S. Counties § 161.
C.J.S. Municipal Corporations §§ 1027 to 1029.

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

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

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

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

Library References

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

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

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

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

Acts 1953, c. 147.

Library References

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

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

Notes of Decisions

In general 1

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1. In general

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

§ 16–13A–20. Refunding revenue bonds

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

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

Acts 1953, c. 147.

Library References

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

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

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

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

Library References

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

Notes of Decisions

In general 2
Validity 1

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1. Validity

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

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

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

2. In general

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

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

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

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

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

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

Library References

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

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

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

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

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

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

Library References

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

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

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

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

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

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

Library References

Counties ⇐149.
Municipal Corporations ⇐864(3).
Westlaw Topic Nos. 104, 268.
C.J.S. Counties §§ 185, 187.
C.J.S. Municipal Corporations §§ 1583 to 1585, 1587.

Notes of Decisions

In general 1

1. In general

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

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

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

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

(1) Experience with the same engineering firm; or

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

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

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

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

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

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

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

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

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

Library References

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

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

Research References

ALR Library

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

Notes of Decisions

In general 1
Certificate of public convenience and necessity 2

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1. In general

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

2. Certificate of public convenience and necessity

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

West's

Annotated Code of West Virginia

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

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Chapter 16

2009
Cumulative Annual Pocket Part

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order issued by the Secretary of the Department of Environmental Protection or the Environmental Quality Board requiring the municipality to cease the pollution of any stream or waters is hereby authorized to establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing municipal sewer system and/or stormwater system, or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

(b) The rates, fees or charges shall be sufficient to all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection, treatment, purification and disposal of sewage or stormwater and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board, and for the operation, maintenance and repair of the entire works and system.

(c) The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the Municipal Bond Commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

(d) After the completion of the construction, the rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension, from time to time, of the entire sewer and works or entire stormwater works.

(e) No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

(f) After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing setting forth the proposed schedule of rates, fees or charges shall be given by publication of notice as a Class II–0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

(g) After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works and in the office of the clerk of the municipality. The schedule of rates, fees and charges shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(h) Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided: *Provided*, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

(i) If any rate, fee or charge is not paid within thirty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney's fee, may be recovered by the sanitary board of the municipality in a civil action in the name of the municipality.

(j) Any municipality exercising the powers given herein has the authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery or works necessary to comply with the order of the Secretary of the Department of Environmental

Protection or the Environmental Quality Board and the authority provided herein to establish, maintain and collect rates, fees 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 the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: *Provided*, 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 Secretary of the Department of Environmental Protection or the Environmental Quality Board and the rights, powers and duties of the municipality and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article.

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

(*l*) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. § 122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or actions are not contrary to any rules or orders of the Public Service Commission.

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

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

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

ARTICLE 13A

PUBLIC SERVICE DISTRICTS

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

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

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

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

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

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

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

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

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

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

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer

or stormwater service fees and charges: *Provided*, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: *Provided, however*, That any termination of water service must comply with all rules and orders of the Public Service Commission.

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

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

(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. § 122.26; (2) the district's authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is

located in the Municipal Separate Storm Sewer System's designated service area. It is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

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

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

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

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

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

United States Code Annotated

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

ARTICLE 13D

REGIONAL WATER AND WASTEWATER AUTHORITY ACT

§ 16–13D–11. Bonds may be secured by trust indenture

United States Code Annotated

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

ARTICLE 14

BARBERS AND COSMETOLOGISTS

Section
16–14–1 to 16–14–3. Repealed.

§§ 16–14–1 to 16–14–3. Repealed by Acts 2009, c. 175, eff. July 10, 2009

Historical and Statutory Notes

The repealed sections, which related to barbers and cosmetologists, were derived from:
Acts 1951, c. 155.
Acts 1959, c. 139.
Acts 1967, c. 22.
Acts 1977, c. 102.
Acts 1985, c. 32.
Acts 1992, c. 26.

ARTICLE 15

STATE HOUSING LAW

§ 16–15–1. Definitions

United States Code Annotated

American Dream Downpayment Act, see 42 U.S.C.A. § 12821.
Farm housing, see 42 U.S.C.A. § 1471 et seq.
Helping Hands for Homeownership Act, see 42 U.S.C.A. §§ 1472, 12805.
Housing and Community Development Act of 1974, see 42 U.S.C.A. § 5301 et seq.
Slum clearance and urban renewal, see 42 U.S.C.A. § 1441 et seq.

ARTICLE 18

SLUM CLEARANCE

§ 16–18–1. Short title

United States Code Annotated

Slum clearance and urban renewal, see 42 U.S.C.A. § 1441 et seq.

ARTICLE 19

REVISED ANATOMICAL GIFT ACT

Section
16–19–1. Short title.
16–19–2. Applicability.
16–19–3. Definitions.
16–19–4. Who may make anatomical gift before donor's death.
16–19–5. Manner of making anatomical gift before donor's death.
16–19–6. Amending or revoking anatomical gift before donor's death.
16–19–7. Refusal to make anatomical gift; effect of refusal.
16–19–8. Preclusive effect of anatomical gift, amendment, or revocation.
16–19–9. Who may make anatomical gift of decedent's body or part.
16–19–10. Manner of making, amending, or revoking anatomical gift of decedent's body or part.
16–19–11. Persons who may receive anatomical gift; purpose of anatomical gift.
16–19–12. Search and notification.
16–19–13. Delivery of document of gift not required; right to examine.
16–19–14. Rights and duties of procurement organization and others.
16–19–15. Coordination of procurement and use.
16–19–16. Prohibited acts; sale or purchase of parts prohibited.
16–19–17. Immunity.

State of West Virginia

Certificate

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

THIS IS A TRUE COPY OF CHAPTER 31, ARTICLE 15A OF THE WEST VIRGINIA CODE, AND CHAPTER 31, ARTICLE 15A OF THE 2009 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

November 16, 2009

Natalie E Tennant

Secretary of State

ARTICLE 15A

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

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

§31-15A-1. Short title

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

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

§ 31-15A-2. Definitions

For purposes of this article:

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

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

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

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

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

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

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

(h) "Emergency project" means a project which the council has determined: (1) Is essential to the immediate economic development of an area of the state; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business, and shall meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

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

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

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

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

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

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

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

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

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

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

acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

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

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

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

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

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

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

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

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

§ 31–15A–14. Termination or dissolution

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

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

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

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

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

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

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

(c) This section does not:

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

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

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

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

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

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

Historical and Statutory Notes

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

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

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

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

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

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

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

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

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

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

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 31-15A-22. Refunding revenue bonds

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

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

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

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

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

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

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

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

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

West's

Annotated Code of West Virginia

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

Chapters 31 to 31E

2009
Cumulative Annual Pocket Part

Replacing 2008 Pocket Part supplementing 2002 Main Volume

Includes laws through the 2009 Second Extraordinary Session

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Fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section or section eleven-a, article six, chapter five of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of section eleven-a, article six, chapter five of this code. The Education, Arts, Sciences and Tourism Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section and section eleven-a, article six, chapter five of this code. On or prior to May 1 of each year, commencing May 1, 2010, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the Education, Arts, Sciences and Tourism Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

(3) After the authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the Education, Arts, Sciences and Tourism Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(b) The authority shall expend sixty percent of the bond proceeds, net of issuance costs, reserve funds and refunding costs, for certified capital improvement projects at state institutions of higher education. The Higher Education Policy Commission shall submit a proposed list of projects which will receive funds from the bond proceeds to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state institutions of higher education which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(c) The authority shall expend the balance of the bond proceeds for certified projects at state parks, the capitol complex, other state facilities or tourism sites. The secretary of the department of administration, the director of the division of natural resources, the director of the West Virginia development office and a representative of the capitol building commission, other than the secretary of the department of administration, who shall be selected by the capitol building commission shall submit a proposed list of projects which will receive funds from the bond proceeds to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state parks, the state capitol complex, other state facilities or tourism sites which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

Acts 2009, 1st Ex. Sess., c. 14, eff. June 2, 2009.

ARTICLE 15A

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

Section		Section	
31–15A–3.	West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council.	31–15A–11.	Reservation of funds for projects and infrastructure projects.
31–15A–6.	Powers, duties and responsibilities of the council generally; comprehensive assessment.	31–15A–16.	Dedication of severance tax proceeds.
		31–15A–17a.	Infrastructure revenue bonds payable from A. James Manchin Fund.

§ 31–15A–3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council

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

(b) The council shall consist of thirteen members, including:

(1) The Governor or designee;

(2) The Executive Director of the Housing Development Fund or his or her designee;

(3) The director of the Division of Environmental Protection or his or her designee;

(4) The director of the Economic Development Authority or his or her designee;

(5) The Director of the Water Development Authority or his or her designee;

(6) The Director of the Division of Health or his or her designee;

(7) The chairman of the Public Service Commission or his or her designee; and

(8) Six members representing the general public: *Provided*, That there shall be at least one member representing the general public from each congressional district. No more than one member representing the general public may be a resident of the same county.

(c) The Governor shall appoint the public members of the Council who shall serve three-year staggered terms.

(d) The Commissioner of the Division of Highways, the Executive Director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the Chancellor of the Higher Education Policy commission and the Chancellor of the West Virginia Council for Community and Technical College Education serve as advisory members of the council. The advisory members shall be ex officio, nonvoting members of the Council.

(e) The Governor shall appoint the legislative members of the council: *Provided* That no more than three of the legislative members may be of the same political party.

(f) The Governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board.

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

(h) A member of the Council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the Council in a manner consistent with guidelines of the travel management office of the Department of Administration.

(i) The Council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the Economic Development Authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The Governor's civil contingent fund is not subject to council review with regard to projects or infrastructure projects funded through the Governor's Civil Contingent Fund.

(j) The Water Development Authority shall provide office space for the council and each governmental agency represented on the council shall provide staff support for the council in the manner determined appropriate by the council.

(k) The Council shall invite to each meeting one or more representatives of the United States Department of Agriculture, Rural Economic Community Development, the United States Economic Development Agency and the United States Army Corps of Engineers or any successors thereto. The council shall invite other appropriate parties as is necessary to effectuate the purposes of this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 2005, 1st Ex. Sess., c. 3, eff. Jan. 29, 2005; Acts 2009, c. 221, eff. April 10, 2009.

Historical and Statutory Notes

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

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

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

Acts 2009, c. 221, rewrote this section, which formerly read:

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

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

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

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

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

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

"(g) The council shall invite to each meeting one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall invite such other appropriate parties as is necessary to effectuate the purposes of this article."

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

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

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

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

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

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

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three-year period after the initial assessment and inventory is completed in 1996.

(c) The council shall study the viability of the consolidation of public service districts throughout the state. The council shall report their findings and conclusions on or before January 16, 1995 to the Governor, Speaker of the House of Delegates and President of the Senate.

Acts 1994, 1st Ex. Sess., c. 26; Acts 2009, c. 221, eff. April 10, 2009.

Historical and Statutory Notes

Acts 2009, c. 221, rewrote this section, which formerly read:

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

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

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

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

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

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

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

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

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

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

Historical and Statutory Notes

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

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

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

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

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) None of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the Division of Forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

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

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

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

Historical and Statutory Notes

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

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

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

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

ARTICLE 15C

BROADBAND DEPLOYMENT

Section		Section	
31–15C–1.	Legislative findings and purpose.	31–15C–4.	Powers and duties of the council generally.
31–15C–2.	Definitions.		
31–15C–3.	Broadband Deployment Council established; members of council; administrative support.	31–15C–5.	Creation of the Broadband Deployment Fund.

State of West Virginia

Certificate

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

THIS IS A TRUE COPY OF CHAPTER 22C, ARTICLE 2 OF THE WEST VIRGINIA CODE, AND CHAPTER 22C, ARTICLE 2 OF THE 2009 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

November 16, 2009

Natalie E Tennant

Secretary of State

ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

Section

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

§ 22C–2–1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Drainage facilities and projects;

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

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

(6) Other projects allowable under federal law.

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

United States Code Annotated

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

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

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

Acts 1994, c. 61.

Library References

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

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

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

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

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

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

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

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

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

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

Administrative Code References

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

Library References

Environmental Law ⇐179, 180, 216.
States ⇐127.
Westlaw Topic Nos. 149E, 360.
C.J.S. Health and Environment §§ 130, 172.
C.J.S. States §§ 386 to 387.

§ 22C–2–4. Annual audit

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

Acts 1994, c. 61.

Library References

Environmental Law ⇐179, 180, 216.
States ⇐121.
Westlaw Topic Nos. 149E, 360.
C.J.S. Health and Environment §§ 130, 172.
C.J.S. States §§ 322 to 323, 372.

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

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

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

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

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

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

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

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

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

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

Library References

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

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

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

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

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

Acts 1994, c. 61.

Administrative Code References

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

Library References

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

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

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

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

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

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

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

Library References

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

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

§ 22C–2–8. Conflicting provisions

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

Acts 1994, c. 61.

Library References

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

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

West's

Annotated Code of West Virginia

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

Chapters 22B to 23

2009
Cumulative Annual Pocket Part

Replacing 2008 Pocket Part supplementing 2006 Main Volume

Includes laws through the 2009 Second Extraordinary Session

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discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain public water facilities, stormwater systems or wastewater facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

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

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

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

ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

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

§ 22C–2–1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Drainage facilities and projects;

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

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

(6) Other projects allowable under federal law.

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

United States Supreme Court

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

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

United States Supreme Court

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

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

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

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

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

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

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

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

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

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

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

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

United States Supreme Court

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

ARTICLE 4

COUNTY AND REGIONAL SOLID WASTE AUTHORITIES

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

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

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

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

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this section by not lawfully disposing of his or her solid waste or failing to provide proper proof that he or she lawfully disposes of his or her solid waste at least once a month is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars or sentenced to perform not less than ten nor more than forty hours of community service, such as picking up litter, or both fined and sentenced to community service.

(b) The Solid Waste Management Board, in consultation and collaboration with the Public Service Commission, shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: *Provided*, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.

(c) The Public Service Commission, in consultation and collaboration with the Division of Human Services, shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of reducing solid waste collection fees to individuals who directly pay such fees and who receive public assistance from state or federal government agencies and are therefore limited in their ability to afford to pay for solid waste disposal. This report shall consider the individual's health and income maintenance and other relevant matters. This report shall also include recommended procedures for individuals or households to qualify for and avail themselves of a reduction in fees. This report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.

Acts 1994, c. 61; Acts 2007, c. 216, eff. March 10, 2007.

§ 22C-4-26. Approval of new Class A facilities by solid waste authorities

United States Supreme Court

Environmental regulation,
Solid waste, county flow control ordinances favoring public benefit corporation, Commerce Clause, see United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 2007, 127 S.Ct. 1786, 167 L.Ed.2d 655.

The Johnson-Watson Co., Dayton, Ohio—Charleston, W. Va.—M-8847

At a Regular Session of the County Court of Kanawha County, West Virginia, held at the Court House thereof on Saturday the first day of October, 1955. Present: Hubert Kelly, President, Bruce E. Bartlett and S. G. Smith, Sr., Commissioners thereof.

The Court met this day in regular session and there being no business to transact, adjourned until Monday the 3rd day of October, 1955 at 10:00 o'clock A. M.

Hubert Kelly
President

At a Regular Session of the County Court of Kanawha County, West Virginia held at the Court House thereof on Monday the 3rd day of August (October), 1955. Present: Hubert Kelly, President, Bruce E. Bartlett and S. G. Smith, Sr., Commissioners thereof.

IN RE: APPOINTMENT OF DR. C. KEITH LYONS AS PHYSICIAN FOR THE MENTAL HYGIENE COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA

It appearing to the County Court that Dr. Brainard Hines who was heretofore appointed as one of the Mental Hygiene Physicians of the Kanawha County Mental Hygiene Commission is now deceased and it is necessary that another competent physician be appointed, it is ordered that Dr. C. Keith Lyons be, and he hereby is appointed and is authorized to make examinations of persons suspected of being lunitics and brought before the mental hygiene commission of this County and report his findings to the said commission.

Ordered this Court adjourn until Tuesday the 4th day of October, 1955 at 10:00 o'clock A. M.

Hubert Kelly
President

October 4, 1955

The County Court of Kanawha County, West Virginia, met in regular session pursuant to law and to the rules of said Court at the County Court House, Charleston, West Virginia, at 11:00 o'clock A. M. The meeting was called to order and the roll being called there were present Hubert Kelly, President, presiding and the following named Commissioners:

Bruce E. Bartlett
S. Grover Smith, Sr.,

Absent:

None

This being the date fixed by prior action of the County Court for conducting the public hearing on the creation of the proposed Union Public Service District, as contemplated and provided for in a resolution and order adopted by the County Court on the 9th day of September, 1955, the President announced that all persons residing in or owning or having any interest in property in such proposed public service district desiring to be heard for or against the creation of said district would be heard and all such interested persons desiring to be heard were given full opportunity.

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

A RESOLUTION AND ORDER CREATING UNION PUBLIC SERVICE DISTRICT IN KANAWHA COUNTY, WEST VIRGINIA

WHEREAS, the County Court of Kanawha County, West Virginia did heretofore by a resolution and order adopted September 9th, 1955, fix a date for a public hearing on the creation of the proposed Union Public Service District and in and by said resolution and order provide that all persons residing in or having any interest in the proposed public service district might appear before the County Court at this meeting and have the opportunity to be heard for an against the creation of said district; and

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

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

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

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

"Beginning at a point in a Northerly direction 1,000 feet from the intersection of U. S. Route 35 and 40th Street Road, thence N. 77° 00' E. 19,000 feet, thence S. 40° 00' E. 5,500 feet, thence S. 55° 00' W. 4,900 feet to a point, thence S. 85°00' W. 10,000 feet to a point, thence S. 10°00' W. 3,500 feet to a point, thence S. 78°00' W. 4,000 feet to a point, thence N. 38° 00' W. 9,000 feet to a point N. 57°00' E. 2,000 feet to beginning.

Comprising the communities of Armour Creek, Lake Chaweva, Cross Lanes, Silver Lake, Hillsdale, Flatwoods, Walnut Valley Acres, Fairview and Rock Park as shown on a map prepared by J. H. Milam, Consulting Engineer, June, 1955.

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

Section 3. That the County Court of Kanawha County, West Virginia, has determined that the territory within Kanawha County, West Virginia, having the herein-

The Johnson-Watson Co., Dayton, Ohio—Charleston, W. Va.—M-4841

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

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

Aye: Hubert Kelly
Bruce E. Bartlett
S. Grover Smith, Sr.

Nay: None

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

S Grover Smith,Sr., introduced and caused to be read a proposed resolution and order, entitled:

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

WHEREAS, the County Court of Kanawha County, West Virginia, did heretofore by resolution and order adopted October 4th, 1955 create the Union Public Service District: and

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

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

Section 1. That the County Court of Kanawha County, West Virginia, hereby finds and determines that HIRAM KING, JOHN T. PAYNE, and MURRY G. McGUIRE, are persons residing within the Union Public Service District, and the aforesaid persons are hereby appointed as members of the Public Service Board of said district and their respective terms of office shall be as follows:

Hiram King, for a term of six years from the first day of the month in which this resolution and order is adopted;

John T. Payne, for a term of four years from the first day of the month in which this resolution and order is adopted; and

Murry G. McGuire, for a term of two years from the first day of the month in which this resolution and order is adopted.

Section 2. The aforesaid persons shall meet as soon as practicable, at the office of the Clerk of said County Court and shall qualify by taking an oath of office,

and thereafter said appointees constituting the initial public service Board of the Union Public Service District shall meet and organize in compliance with the provisions of Article 13A of Chapter 16 of the West Virginia Code.

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

Aye: Hubert Kelly
Bruce E. Bartlett
S. Grover Smith, Sr.

Nay: None

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

COUNTY COURT
LEVY ESTIMATE

Prescribed B y

TAX COMMISSIONER

STATE OF WEST VIRGINIA

FISCAL YEAR 1955-1956

KANAWHA COUNTY

THE LEVY ESTIMATE shall be made on this form Tuesday, August 2nd, 1955, and two certified copies thereof forwarded to the State Tax Commissioner, Charleston.

COUNTY COURT LEVY ESTIMATE

Chapter 132 Acts Regular Session 1939.

Section 9. Meeting of Local Levying Bodies. - Each locallevying body shall hold a session on the FIRST Tuesday in August for The transaction of business generally and particularly for the business herein required.

Section 10. Levy Estimate by County Court; Certification to Tax Commissioner and Publication. - The County Court shall, at the session provided for in section nine of this article, ascertain the fiscal condition of the county, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year upon the county as a whole and upon any district of the county for which the levies are laid by the county court;

(2) The interest, sinking fund and amortization requirements for the current fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, owing by the county as a whole and by any district;

(3) Other contractual indebtedness not bonded, legally incurred prior to the adoption of the tax limitation amendment, owing by the county as a whole and such debts owing by any district;

(4) All other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;

I, ALMA Y. KING, do hereby certify that this is a true copy from the original
Test: ALMA Y. KING, Clerk
Kanawha County Commission

KANAWHA COUNTY COMMISSION

Post Office Box 3627
Charleston, West Virginia 25336

Telephone (304) 357-0101
Fax (304) 357-0788

Henry C. Shores
Commissioner

W. Kent Carper
Commissioner

David J. "Dave" Hardy
Commissioner

September 15, 2005

Ms. Wilma Davis
106 Circle Drive
Cross Lanes, WV 25313

Dear Ms. Davis:

On behalf of the Kanawha County Commission, it is indeed a pleasure to inform you that you have been reappointed to the Union Public Service District.

It will be necessary to request your acceptance of this reappointment as soon as possible, and after accepting this reappointment, you must appear at the Kanawha County Commission office, before a Notary Public in and for the State of West Virginia, or the Office of the County Clerk to take your oath of office. An Officer's Oath has been enclosed for your convenience.

We look forward to having your continued service on the Kanawha County Planning Commission.

Sincerely,

W. Kent Carper
President

Henry C. Shores
Commissioner

Dave Hardy
Commissioner

WKC:HCS:DH/krm
Attachment

2005-510

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 15th day of September, 2005, the following order was made and entered:

SUBJECT: Reappointment of Wilma Davis to the Union Public Service District (*term expiration October 1, 2011*)

The following motion was offered by Dave Hardy, Commissioner:

The County Commission of Kanawha County, West Virginia, having been apprised of the expiration of the term of Wilma Davis, a member of the Union Public Service District, doth ORDER that Wilma Davis, 106 Circle Drive, Cross Lanes, West Virginia 25313, be reappointed to the Union Public Service District for a term expiring October 1, 2011.

It is further ORDERED that the said Wilma Davis shall appear at the office of the County Commission and shall qualify by taking the oath of office as required in Chapter 16, Article 13A, Section 3, of the Code of West Virginia, 1931, as amended.

The adoption of the foregoing motion having been moved by Dave Hardy, Commissioner, and duly seconded by Henry C. Shores, Commissioner, the vote thereon was as follows:

W. Kent Carper, President	AYE
Henry C. Shores, Commissioner	AYE
Dave Hardy, Commissioner	AYE

WHEREUPON, W. Kent Carper, President declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

W. Kent Carper, President

Henry C. Shores, Commissioner

Dave Hardy, Commissioner

Approved By: _____
County Attorney

KANAWHA COUNTY COMMISSION

Post Office Box 3627
Charleston, West Virginia 25336

Telephone (304) 357-0101
Fax (304) 357-0788

Henry C. Shores
Commissioner

W. Kent Carper
Commissioner

David J. "Dave" Hardy
Commissioner

September 25, 2003

Ms. Wilma Davis
Chairperson
5106 Barnette Drive
Cross Lanes, WV 25313

Dear Ms. Davis:

Attached is a copy of an Order passed by the Kanawha County Commission Re-appointing Dr. Charles Warner to your Board.

The Commission is appreciative of the work that your Board does in the community and will support you in any way they can. If you have any questions concerning this appointment or other matters, please feel free to call the Commission Office.

Sincerely,

W. Kent Carper
President

Henry C. Shores
Commissioner

Dave Hardy
Commissioner

WKC/HCS/DH:vlm

Attachment

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 25th day of September, 2003, the following order was made and entered:

SUBJECT: REAPPOINTMENT OF DR. CHARLES WARNER TO THE UNION PUBLIC SERVICE DISTRICT

The following motion was offered by DAVE HARDY, COMMISSIONER:

The County Commission of Kanawha County, West Virginia, having been apprised of the expiration of the term of Dr. Charles Warner, a member of the UNION PUBLIC SERVICE DISTRICT doth ORDER that Dr. Charles Warner of PO Box 7559, Cross Lanes, WV 25356, be reappointed to the UNION PUBLIC SERVICE DISTRICT for a term expiring October 1, 2009.

It is further ORDERED that the said shall appear at the office of the County Commission and shall qualify by taking the oath of office as required in Chapter 16, Article 13A, Section 3, of the Code of West Virginia, 1931, as amended.

The adoption of the foregoing motion having been moved by DAVE HARDY, Commissioner, and duly seconded by HENRY C. SHORES, Commissioner, the vote thereon was as follows:

W. Kent Carper, President	AYE
Henry C. Shores, Commissioner	AYE
Dave Hardy, Commissioner	AYE

WHEREUPON, W. Kent Carper, President declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

W. Kent Carper, President

Henry C. Shores, Commissioner

Dave Hardy, Commissioner

Approved By:

County Attorney

KANAWHA COUNTY COMMISSION

Post Office Box 3627
Charleston, West Virginia 25336

Telephone (304) 357-0101
Fax (304) 357-0788

Henry C. Shores
Commissioner

W. Kent Carper
Commissioner

David J. "Dave" Hardy
Commissioner

October 4, 2001

Mr. Wilma Davis, Chairwoman
5106 Barnette Drive
Cross Lanes, West Virginia 25313

Dear Ms. Davis:

Attached is a copy of the Order passed by the Kanawha County Commission reappointing Joe Williams to your Board. We are confident that this individual will continue to be a valuable member of your organization.

The Commission is appreciative of the work that your Board does in the community and will support you in anyway they can. If you have any questions concerning this reappointment or other matters, please feel free to call the Commission Office.

Sincerely,

W. Kent Carper
President

Henry C. Shores
Commissioner

Dave Hardy
Commissioner

WKC/HCS/DJH/jc

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 4th day of October, 2001, the following order was made and entered:

SUBJECT: REAPPOINTMENT OF JOE WILLIAMS TO THE UNION PUBLIC SERVICE DISTRICT

The following motion was offered by Henry C. Shores, Commissioner:

The County Commission of Kanawha County, West Virginia, having been apprised of the expiration of the term of Joe Williams a member of the Union Public Service District, doth ORDER that Joe Williams, 104 Orchard Drive, Nitro, West Virginia 25143, be reappointed to the Union Public Service District for a term expiring October 1, 2007.

It is further ORDERED that the said Joe Williams shall appear at the office of the County Commission and shall qualify by taking the oath of office as required in Chapter 16, Article 13A, Section 3, of the Code of West Virginia, 1931, as amended.

The adoption of the foregoing motion having been moved by Henry C. Shores, Commissioner, and duly seconded by Dave Hardy, Commissioner, the vote thereon was as follows:

W. Kent Carper, President	Aye
Henry C. Shores, Commissioner	Aye
Dave Hardy, Commissioner	Aye

WHEREUPON, W. Kent Carper, President declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

W. Kent Carper, President

Henry C. Shores, Commissioner

David J. Hardy, Commissioner

Approved By:

County Attorney

The Johnson-Watson Co., Dayton, Ohio—Charleston, W. Va.—N-8247

IN RE: PROPERTY OWNERS OF UNION DISTRICT, KANAWHA COUNTY, WEST VIRGINIA ASKING FOR THE CREATION OF A PUBLIC SERVICE DISTRICT.

The County Court of Kanawha County, West Virginia, met this day in Regular Session held this 9th day of September, 1955 at 10:00 A. M., pursuant to the call of Hubert Kelly, President, Bruce E. Bartlett, Commissioner and _____ Commissioner, said call being;

"To consider a petition of residents and property owners of Union District, Kanawha County, West Virginia, asking for the creation of a public service district in the area therein described, and to adopt a proposed resolution and enter a proper order fixing a date of hearing on the creation of a public service district in Union District, Kanawha County, West Virginia, as set forth in said petition and to provide for the publication of a notice of such hearing."

The meeting was called to order and the roll being called there were present Hubert Kelly, President, presiding, and the following named commissioners:

Bruce Bartlett
S. Grover Smith

And were absent:

None

Bruce Bartlett introduced and caused to be read a proposed resolution and order entitled:

"A resolution and order fixing a date of hearing on the creation of public service district within Kanawha County, West Virginia; and providing for the publication of a notice of such hearing",

and moved that all rules otherwise requiring deferred consideration be suspended and said proposed resolution and order be adopted.

Kelly seconded the motion and after due consideration the President put the question on the motion, and the roll being called the following voted:

Aye: H. Kelly
Bruce Bartlett
S. Grover Smith

Nay: None

Whereupon the president declared the motion duly carried and said resolution and order duly adopted on motion and vote, the meeting was thereupon adjourned.

PAUL E. WEHRLE, CLERK

By /s/ C. L. Samples
Deputy

/s/ Hubert Kelly
President

A Resolution and Order fixing a date of hearing on the creation of a proposed public service district within Kanawha County, West Virginia: and providing for the publication of a notice of such hearing.

WHEREAS, there has heretofore been filed in the office of the Clerk of the County Court of Kanawha County, West Virginia, a petition to this County Court, for the creation of a public service district within Kanawha County, West Virginia; and

WHEREAS, said County Court Clerk has presented such petition to this County Court at this meeting; and

WHEREAS, pursuant to the provisions of Article 13A of Chapter 16 of the West Virginia Code this County Court upon presentation of such petition is required to fix a date of hearing on the creation of the proposed public service district:

NOW, therefore, Be It and It Is Hereby Resolved and Ordered by the County Court Of Kanawha County, West Virginia, as follows:

Section 1. That the County Court of Kanawha County, West Virginia, hereby finds and declares that there has been filed in the office of the County Court Clerk and presented by said County Court Clerk to this County Court a petition for the creation of a public service district within Kanawha County, West Virginia, which petition contains a description sufficient to identify the territory to be embraced within the proposed public service district and the name of the proposed public service district and which petition has been signed by at least one hundred legal voters resident within and owning real property within the limits of the proposed public service district, and said County Court finds and declares that said petition in all respects meets the requirements of Article 13A of Chapter 16 of the West Virginia Code.

(b) Said petition, among other things, states as follows:

"The name and corporate title of said public Service district shall be the [illegible] District.".

(c) The territory to be embraced in said public service district shall be as follows:

Beginning at a point in a Northerly direction 1,000 feet from the intersection of U. S. Route 35 and 40th Street Road, thence N. 77° 00' E. 5,500 feet, thence S. 40° 00' E. 5,500 feet, thence S 55° 00' E. 5,500 feet to a point, thence S. 85° 00' W. 10,000 feet to a point, thence S. 10° 00' W. 3,500 feet to a point, thence S. 76° 00' W. 5,000 feet to a point, thence N. 38° 00' W. 9,000 feet to a Point of Beginning, 00' E. 2,000 feet to beginning.

comprising the communities of Armour Creek, Lake Chaweva, Cross Lanes, Silver Lake, Hillsdale, Flatwoods, Walnut Valley Acres, Fairview and Rocky Fork as shown on a map prepared by J. H. Milam, Consulting Engineer, June, 1955.

(c) The purpose of said public service district shall be to construct, or acquire by purchase or otherwise, and maintain, operate, improve and extend properties supplying water and sewerage services within such territory and also outside such territory to the extent permitted by law.

(d) The territory described above does not include within its limits the territory of any other public service district organized under Article 13a of Chapter 16 of the West Virginia Code, nor does such territory include within its limits any city, incorporated town or other municipal corporation.

Section 3. That on October 4, 1955, at the hour of 11:00 o'clock A. M., this County Court shall meet in the County Court House at Charleston, West Virginia for the purpose of conducting a public hearing on the creation of the proposed public service district at which time and place all persons residing in or owning or having any interest in property in the proposed public service district may appear before this County Court and shall have an opportunity to be heard for and against the creation of said district, and at such Hearing, this County Court shall considerand determine the feasibility of the creation of the proposed public service district.

Section 4. That the County Court Clerk is hereby authorized and directed to cause notice of such hearing in substantially the form hereinafter set out to be published on September 14, 1955, in the Charleston Daily Mail, a newspaper of general circulation published in Kanawha County.

Court Record of Orders SEPTEMBER REGULAR Term, A. D. 1955

The Johnson-Watson Co., Dayton, Ohio—Charleston, W. Va.—H-6247

NOTICE OF PUBLIC HEARING
ON CREATION OF UNION
PUBLIC SERVICE DISTRICT

Notice is hereby given that a legally sufficient petition has been filed with the Clerks of the County Court of Kanawha County, West Virginia, and has been presented to the County Court of Kanawha for the creation of a public service district within Kanawha County, for the purpose of constructing or acquiring by purchase or otherwise and the maintenance, operation, improvement and extension of public service properties supplying water and sewerage services within said district and also outside said district to the extent permitted by law; to be named "Union Public Service District" and having the following described boundaries:

Beginning at a point in a Northerly direction 1,000 feet from the intersection of U. S. Route 35 and 40th Street Road, thence 77° 00' E. 19,000 feet, thence S 40° 00' E. 5,500 feet, thence S. 55°00' W. 4,900 feet to a point, thence S. 85° 00' W. 10,000 feet to a point, thence S. 10° 00' W. 3,500 feet to a point, thence S. 76° 00' W. 4,000 feet to a point, thence N. 38° 00' W. 9,000 feet to a point, N. 57° 00' E. 2,000 feet to beginning.

Comprising the communities of Armour Creek, Lake Chaweva, Cross Lanes, Silver Lake, Hillsdale, Flatwoods, Walnut Acres, Fairview, and Rocky Fork as shown on map prepared by J. H. Milam, Consulting Engineer, June, 1955.

All persons residing in or owning or having any interest in property in said proposed public service district are hereby notified that the County Court of Kanawha County will conduct a public hearing on October 4, 1955 at 11:00 o'clock A.M. in the County Court House at Charleston, West Virginia, at which time and place all interested persons may appear before the County Court and shall have an opportunity to be heard for and against the creation of the proposed public service district.

By order of the County Court this day September 8, 1955

/s/ Paul E. Wehrle
County Court Clerk

Adopted by the County Court September 8, 1955

/s/ Hubert Kelly
President

Attest: Paul E. Wehrle, Clerk
/s/
By C. L. Samples
Deputy

I, ALMA Y. KING, do hereby certify that this is a true copy from the original
Teste: ALMA Y. KING, Clerk
Kanawha County Commission
Date 8-19-9 By [signature]
Deputy

STATE OF WEST VIRGINIA)
) SS
COUNTY OF KANAWHA)

I, Paul Wehrle, hereby certify that I am the duly qualified and acting Clerk of the County Court of Kanawha County, West Virginia, and that the foregoing constitutes a true, correct and complete transcript of the proceedings of said County Court as had under date of September 8, 1955, and a resolution and order then adopted relating to the proposed creation of The Union Public Service District, all as shown by the official records in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and the seal of said Court at Kanawha, West Virginia this September 8, 1955.

04716

OFFICER'S OATH

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

I, Wilma Davis, having been duly reappointed to the Union Public Service District, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgment, so help me, God.

Wilma Davis

Subscribed and sworn to before the undersigned, Notary Public of said County, this 15 day of Sept, 2005.

Janet L Searls
Notary Public

[NOTARIAL SEAL]

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
JANET L. SEARLS
KANAWHA COUNTY CLERK'S OFFICE
408 VIRGINIA STREET, EAST
CHARLESTON, WV 25301
My commission expires March 17, 2013

Recorded In FIDUC BK 265 PG 289, 09/19/2005 09:35:49 AMDeed Tax 0.00, Recording Fee 0.00, TOTAL 0.00
Vera J. McCormick, County Clerk, Kanawha County, WV

VERA J. McCORMICK, do hereby certify
that this is a true copy from the original.
Teste: VERA J. McCORMICK, Clerk
Kanawha County Commission
Date 9/23/05 By Heather Howard
Deputy

FIDUC 247 603
Recorded In Above Book and Page
12/18/2001 02:27:22 PM
Alma Y. King
County Clerk
Kanawha County, WV
Deed Tax 0.00
Recording Fee 0.00
TOTAL 0.00

025[illegible]

OFFICER'S OATH

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

I, Joe Williams, having been duly _____ to the office of Union Public Service District

do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgement, so help me, God.

Joe Williams
Signature

Subscribed and sworn to before the undersigned, Notary Public of said county, this 11th day of October, ~~19~~ 2001.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
PATRICIA E. LUCAS
KANAWHA CO. CLERK'S OFFICE
409 VIRGINIA STREET
CHARLESTON, WV 25301
My commission expires May 8, 2011

Alma Y. King, Clerk
Notary Public
Patricia E. Lucas

VERA J. McCORMICK, do hereby certify that this is a true copy from the original.
Teste, VERA J. McCORMICK, Clerk
Kanawha County Commission
Date 8/23/07 By Heather Herald
Deputy

FIDUC 256 300
Recorded In Above Book and Page
10/09/2003 12:49:57 PM
Alan Y. King
County Clerk
Kanawha County, WV

Deed Tax	0.00
Recording Fee	0.00
TOTAL	0.00

03471

OFFICER'S OATH

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

I, DR. CHARLES WARNER, having been duly RE-APPOINTED to the UNION PUBLIC SERVICE DISTRICT, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgment, so help me, God.

Dr Chas Warner

DR. CHARLES WARNER

Subscribed and sworn to before the undersigned, Notary Public of said County, this 9th **of** October **, 2003.**

Andrea N Dodd

Notary Public

(Commissioned by Andrea N Hensley)

My commission expires: March 17, 2013

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ANDREA N. HENSLEY
KANAWHA COUNTY CLERK'S OFFICE
409 VIRGINIA STREET, EAST
CHARLESTON, WV 25301
My commission expires March 17, 2013

VERA J. McCORMICK, do hereby certify that this is a true copy from the original.
Teste: VERA J. McCORMICK, Clerk
Kanawha County Commission.
Date 8/23/17 By Heather Heard
Deputy

ARTICLE I

OFFICES

The principal office. The place of business of Union Public Service District shall be at 5110 Washington Street, West Charleston, West Virginia, or at such other place as the Board of Commissioners may from time to time designate.

ARTICLE II

MEETINGS OF THE BOARD OF COMMISSIONERS

Section 1

Regular meetings. The regular meetings of the Board of Commissioners of Union Public Service District shall be held at its principal office, or at such other place as the Board of Commissioners may from time to time designate, on the second Tuesday of each month at 9:30 a. m. In the event that a majority of the Commissioners believe that a regular meeting, scheduled as aforesaid, will not be able to be duly convened due to a lack of a quorum, said Commissioners may re-set any such regular meeting to another time and/or place as may be informally agreed upon by said majority, provided, however, that all of the Commissioners must be notified in writing of any such change of time and/or place of a regular meeting at least three days prior to such meeting.

Section 2

Special meetings. A special meeting of the Board of Commissioners of Union Public Service District may be called by either the Chairman of the Board of Commissioners or by any two members of said Board acting together. Such meeting shall be held at the principal office of the District, unless called to be held at some other place.

Section 3

Notice of Meetings. Notice of all meetings of the Board of Commissioners, except the regular monthly meeting, shall be given by notice mailed to each of the Commissioners at least three days prior to such meeting, such notice to be addressed to the Commissioner at his last post office address appearing on the books of the District. It shall be the duty of each Commissioner to furnish to the Secretary of the District his regular post office address and immediately notify the Secretary in writing of any change therein. Notice of any meeting mailed to the last post office address so furnished by the Commissioner shall be sufficient notice hereunder.

Section 4

Waiver of Notice. Any meeting of the Board of Commissioners may be held by agreement in writing by all the Commissioners and where notice is required, the same may be waived in writing by all the Commissioners.

Section 5

Quorum. - Adjournments. At all meetings of the District's Commissioners, a quorum shall be constituted by the presence of at least two

of the three Commissioners or, in the event that more than three Commissioners are appointed to the District's Board by the County Court of Kanawha County, West Virginia, then a majority of the total number of Commissioners shall constitute a quorum. If a sufficient number of Commissioners are not present at the time and place appointed, those who do attend may adjourn from time to time until the meeting is regularly constituted.

Every meeting of the Commissioners may be adjourned from time to time until the completion of the business for which the meeting was called.

Section 6

Voting. Upon any question to be determined at a meeting of the Board of Commissioners, other than the election of officers, which is otherwise provided for in these by-laws, each Commissioner shall have one vote which must be personally exercised by him at said meeting. No voting by agent or by proxy shall be permitted. All such questions shall be determined by a majority vote of the Commissioners attending the meeting, provided a quorum is present.

Section 7

Record of Meetings. A written record shall be kept of the meetings of the Commissioners and the action taken at such meetings, which shall be verified by the signatures of the persons acting as Chairman and Secretary of the meeting.

ARTICLE III

OFFICERS AND AGENTS

Section 1

Election and appointment. The executive officers of the District shall be the Chairman, Treasurer and Secretary. The Treasurer and Secretary need not be members of the Board of Commissioners appointed by the County Court of Kanawha County, West Virginia.

Such officers shall be elected at the first meeting of the Commissioners and thereafter at the first meeting of each calendar year for each year thereafter. They shall hold office for one year or until their successors are elected and qualified, unless their respective terms of office are shortened at a regular meeting or special meeting of the Commissioners called for that purpose.

Section 2

A Commissioner shall receive the sum of one-twelfth of $500.00 as compensation for each regular monthly meeting of the Board of Commissioners that he, himself, attends in person.

The compensation of agents and employees of the District shall be prescribed by the Commissioners.

Section 3

Chairman. The Chairman shall be the chief executive officer of the District. He shall, if in attendance preside at all meetings of the Board

of Commissioners. He shall keep the Board of Commissioners fully informed as to the business of the District. He shall present at any meeting of the Commissioners, when called upon to do so, a report of the condition of the District and its affairs. And, he shall perform such other duties as may be assigned to him by the Board of Commissioners.

Section 4

Treasurer. The treasurer shall have custody of the District's funds and securities and shall keep full and accurate accounts of receipts and disbursements in the books of the District, and shall deposit all moneys and valuable effects of the District in its name and to its credit in such depositories as may be designated by the Board of Commissioners.

All funds of the District shall be disbursed in such manner as may be prescribed by the Board of Commissioners pursuant to Section 12, Article 13A, Chapter 16 of the Code of West Virginia, as amended.

Section 5

Secretary. The secretary shall attend all meetings of the Board and act as secretary thereof and keep a record of the proceedings of such meetings in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings to the other Commissioners. He shall be responsible for the establishment and maintenance of a system of recordkeeping for all activities carried on by the District, and he shall also perform such other duties as may be prescribed by the Board of Commissioners.

Section 6

Other Regulations. The Board of Commissioners shall have the power and authority to make such other regulations, not inconsistent with statutory law of the State of West Virginia and these by-laws, as it may deem expedient.

ARTICLE IV

ACCOUNTING

Section 1

Books of Account. The Board of Commissioners shall cause regular and correct books of account to be kept. Said books of account are to be audited, settled and balanced at least once a year by an independent certified public accountant. Said books of account shall show receipts from operation and application of the same.

ARTICLE V

INDEBTEDNESS

Section 1

The Commissioners, acting at either a regular or special meeting as provided herein, may empower any two officers of the District to borrow money for and in the name of the District, and to issue obligations for such borrowed money, and to incumber or mortgage any property, either real or personal, of the District, and to convey the same in trust to secure the payment of the District's obligations.

ARTICLE VI

INDEMNIFICATION OF COMMISSIONERS

Section 1

The District shall defend, indemnify, hold harmless, and in every way exonerate each person who shall at any time after October 28, 1968, serve as a Commissioner or Officer of the District from and against any and all claims and liabilities to which such person may become subject by reason of his being or having been a Commissioner or Officer of the District, or by reason of any action alleged to have been taken or omitted by him as such Commissioner or Officer, and shall exonerate, indemnify, reimburse and hold harmless each such person for all legal and other expenses reasonably incurred by him in connection with any such claim or liability; provided, however, that no such person shall be indemnified, exonerated, held harmless, or be reimbursed for any expense incurred in connection with any claim or liability arising out of his own wilful misfeasance, bad faith, gross negligence, or reckless disregard of the duties involved in the conduct of his office.

The rights accruing to any person under the foregoing provisions of article shall not exclude any other right to which he may be lawfully entitled, nor shall anything herein contained restrict the right of the District to indemnify or reimburse such person in any proper case even though not specifically herein provided for. The District, its individual Commissioners, Officers,

employees, and agents shall be fully protected in taking any action or making any payment under this article, or in refusing to do so, in reliance upon the advice of counsel.

ARTICLE VII

AUTHORIZATION BY STATUTORY AUTHORITY

Section 1

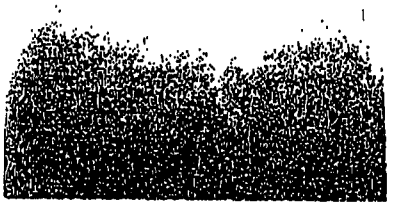
These by-laws are promulgated pursuant to Chapter 16-A of the Code of West Virginia, as amended, and all questions pertaining to the proper construction of these by-laws should be resolved by referring to said Chapter 16-A.

ARTICLE VIII

AMENDMENTS TO BY-LAWS

Section 1

These by-laws may be altered, amended or repealed and new by-laws may be adopted by a majority of the Commissioners present at any regular meeting or at any special meeting, if at least three days' written notice is given of intention to alter, amend, or repeal or to adopt new by-laws at such meeting.



UNION PUBLIC SERVICE DISTRICT

Regular Monthly Meeting Minutes

The regular monthly meeting of the Commissioners of Union Public Service District was held at the District's business office located at 5110 Washington Street, West, Cross Lanes, Kanawha County, West Virginia, on Wednesday, December 10, 2008, at 4:00 p.m.

Present were:

Wilma J. Davis, Chairperson
Dr. Charles Warner, Commissioner (Via Telephone)
Joe Williams, Commissioner
William D. Carter, General Manager
Earl Burks, Assistant General Manager
Jonathan Carpenter, Thrasher Engineering
Steve Hawkins, Resident

The meeting was called to order by Chairperson Davis. The minutes from the District's Emergency Meeting held on November 4, 2008, were circulated for review and approval. Upon motion made by Joe Williams and seconded by Dr. Charles Warner, it was moved that the minutes as circulated be approved. This motion was unanimously passed.

Under old business, Jonathan Carpenter of Thrasher Engineering provided the Commissioners with an update concerning the District's proposed Big Tyler/Little Tyler sewer expansion project and the upgrade of the District's 40th Street wastewater treatment facility After this report, no further action was taken with regard to this matter.

Project Requisition No. 13 regarding the District's BAN Loan at Putnam County Bank was presented to the Commissioners for review and approval. After reviewing the Requisition, it was moved by Joe Williams and seconded by Dr. Charles Warner that the Requisition as presented be approved and that the District's Chairperson be authorized to sign the Requisition requesting payment. This motion was unanimously passed.

This concluded items under old business and the District's Commissioners proceeded to agenda items under new business.

The first matter under new business was the election of officers for the calendar year 2009. Upon motion made by Dr. Charles Warner and seconded by Joe Williams, it was moved that the current officers retain their same positions as follows:

Chairperson - Wilma J. Davis
Secretary - Joe Williams
Treasurer - Dr. Charles Warner

A vote was taken and this motion was unanimously passed.

The Board then engaged in a discussion regarding employee appreciation. Upon motion made by Joe Williams and seconded by Dr. Charles Warner, it was moved that each of the District's employees, full and part-time, be given a $50.00 one-time bonus. This motion was unanimously passed.

Bill Carter, the District's General Manager, and Earl Burks, Assistant General Manager, gave a report on the District's general operations. After a discussion with the Board concerning operations, this concluded the items under new business.

There being no further business to discuss under either old or new business, a motion for adjournment was made by Joe Williams and seconded by Dr. Charles Warner. The meeting was adjourned upon passage of said motion. The District's regular monthly meeting for the month of January 2009 will be held on Wednesday, January 7, 2009, at 4:00 p.m., at the District's business office.

Joe Williams, Secretary

Wilma J. Davis, Chairperson

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 16th day of November, 2009.

CASE NO. 08-1369-PSD-CN (REOPENED)

UNION PUBLIC SERVICE DISTRICT
Application for a certificate of convenience and necessity to construct improvements to the District's 40th Street wastewater treatment facility and an extension of its wastewater collection lines.

COMMISSION ORDER

The Commission reopens this matter to revise the March 6, 2009 Recommended Decision as requested.

BACKGROUND

On August 12, 2008, the Union Public Service District ("Union"), applied for a certificate of convenience and necessity ("Certificate") to construct improvements to its 40th Street wastewater treatment plant ("WWTP") to extend its collection lines to approximately 318 additional customers and for approval of project financing. See, Application.

On March 6, 2009, the Administrative Law Judge ("ALJ") issued a Recommended Decision that became a final Commission Order on March 26, 2009, granting a Certificate to Union to upgrade the WWTP and extend its lines. The ALJ approved a financing package including a $4,171,000 loan from the Rural Utilities Service ("RUS") at 4.5% for 38 years and a private bond issue of $5,000,766 at a maximum interest rate of 7% for 30 years. The ALJ also approved additional rates including an immediate increase and additional post-construction rates. Finally, the Recommended Decision instructed Union to seek Commission approval for changes in project scope or financing. See, Recommended Decision.

On October 30, 2009, Union petitioned to reopen this matter for approval of changes to the Recommended Decision including (1) a $180,000 upgrade to telemetry at its existing pump stations, (2) a revised total project cost of $8,609,907 and (3) revised project funding to eliminate the private bond issue and replace that financing with $1,363,613 in funding under the American Recovery and Reinvestment Act of 2009 ("Stimulus") with 100% debt forgiveness over 20 years and a $3,074,294 loan from the West Virginia Department of Environmental Protection ("WV DEP") SRF loan fund at 0% interest for 20 years with a

1% administrative fee. Union noted that it received favorable bids on the project, allowing a reduction in total project costs. It also secured improved financing terms under the new funding package. Union also requested that the Commission allow it to seek a rate review on substantial completion of the project. See, Petition to Reopen.

On November 6, 2009, Union filed a copy of its Stimulus award letter.

Commission Staff recommended that the Commission approve the project revisions as Union requested. Staff also noted that its projected debt service for Union will fall from $629,042 to $383,515, prompting Staff to propose reduced post-project rates. See, November 9, 2009 Staff Memorandum.

DISCUSSION

The Commission finds that it should reopen this matter to grant the changes Union requested to its project scope and financing package. The reduced project cost and revised financing benefit ratepayers through lower debt service and thus lower rates. The telemetry upgrades will also assist Union in better system monitoring that will eventually translate into better reliability and lower maintenance costs. Finally, the Commission finds that it is reasonable to adopt the Staff recommendation to pass the reduced debt costs through to ratepayers by adopting the post-project rates attached to the Staff memorandum. Finally, the Commission notes that the March 6, 2009 Recommended Decision will remain in effect, except as modified by this Order.

FINDINGS OF FACT

1. The ALJ issued a Recommended Decision that became a final Commission Order, (1) granting Union a Certificate to upgrade its WWTP and extend its lines, (2) approving a financing package including a $4,171,000 RUS loan and a private bond issue of $5,000,766 and (3) approving additional post-construction rates. See, Recommended Decision.

2. Union petitioned to reopen this matter for approval of changes to the Recommended Decision including (1) an additional $180,000 to upgrade telemetry at its existing pump stations, (2) a revised total project cost of $8,609,907, (3) revised project funding to eliminate the private bond issue and replace that financing with $1,363,613 in Stimulus funding including 100% debt forgiveness and a $3,074,294 loan from the WV DEP SRF loan fund at 0% interest with a 1% administrative fee. See, Petition to Reopen.

3. Staff recommended that the Commission approve the project revisions as Union requested, but also recommended reduced post-project rates. See, November 9, 2009 Staff Memorandum.

4. Union debt service will fall from $629,042 to $383,515 because of the revised financing package. Id.

CONCLUSIONS OF LAW

1. Union must seek approval of changes in project scope or revisions to its financing package. See, March 6, 2009 Recommended Decision.

2. It is reasonable to reopen this matter and approve the proposed changes in project scope and financing because the changes allow additional construction at reduced cost.

3. The Staff recommended post-construction rates in Revised Exhibit B properly reflect reduced future debt service by Union.

ORDER

IT IS THEREFORE ORDERED that this case is reopened.

IT IS FURTHER ORDERED that the request to include telemetry upgrades at existing Union pump stations in the project for $180,000 is approved.

IT IS FURTHER ORDERED that the total project cost is revised to $8,609,907.

IT IS FURTHER ORDERED that the revised loan funding package including $1,363,613 in Stimulus funding with 100% loan forgiveness and a WV DEP SRF loan of $3,074,294 at 0% interest for a 20 year term, with a 1% administrative fee, is approved in lieu of the private bond issue approved in the March 6, 2009 Recommended Decision.

IT IS FURTHER ORDERED that if there are further changes in project plans, scope, financing or costs resulting in a modification of rates, Union must seek Commission approval of those changes.

IT IS FURTHER ORDERED that if there is a change in the project cost that does not affect rates, Union need not petition to reopen this case for further Commission approval. Instead, Union shall file an affidavit from its certified public accountant verifying that rates are not affected.

IT IS FURTHER ORDERED that the Commission adopts the revised post-construction rates Staff recommended and attached to this Order as Revised Exhibit B, effective for all service rendered by Union on and after substantial completion of the project.

IT IS FURTHER ORDERED that the March 6, 2009 Recommended Decision shall remain in effect in this matter, except as modified by this Order.

IT IS FURTHER ORDERED that Union file an original and five copies of a revised tariff reflecting the rates set forth in Revised Appendix B within thirty days of the date of substantial completion of the project.

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

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

A True Copy, Teste: Sandra Squire

Sandra Squire
Executive Secretary

MJM/ldd
081369ca.wpd

CASE NO. 08-1369-PSD-CN
UNION PUBLIC SERVICE DISTRICT
POST-PROJECT APPROVED TARIFF

APPLICABILITY
Applicable within the entire territory served.

AVAILABILITY
Available for general domestic, commercial, industrial and resale sewer service.

RATES (customers with metered water supply)

First	5,000 gallons used per month	$6.70 per 1,000 gallons
Next	15,000 gallons used per month	$5.43 per 1,000 gallons
All Over	20,000 gallons used per month	$4.43 per 1,000 gallons

MINIMUM CHARGE
No bill will be rendered for less than $13.40 per month, which is the equivalent of 2,000 gallons.

FLAT RATE CHARGE (Customers with non-metered water supply)
Equivalent of 4,500 gallons of water usage: $30.15

DELAYED PAYMENT PENALTY
The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

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

A tap fee of $150.00 will be charged to customers applying for service before construction is completed adjacent to customer's premises in connection with a certificate proceeding before the Public Service Commission of West Virginia. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of $350.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RETURNED CHECK CHARGE
A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

RULES PERTAINING TO SUBDIVISIONS
A. Each such subdivision must obtain the required approval of the Planning and Zoning Commission of Kanawha County.

B. The plans and sketches for the proposed sewer system shall meet all requirements of the Department of Health of West Virginia and shall be approved by the Division of Sanitary

Engineering.

C. The subdivider's sewer system shall itself be inspected by Union Public Service District; and, if approved by the Health Department of West Virginia, and the aforesaid Planning and Zoning Commission and Union Public Service District, the said District will accept a conveyance of the system and will be solely responsible for its future repair and maintenance.

DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills, in conjunction with a water service termination agreement with West Virginia-American Water Company, a disconnection fee of $25.00 shall be charged; or in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with West Virginia-American Water Company, is reconnected, a reconnection fee of $25.00 shall be charged.

LEAK ADJUSTMENT

$0.65 per 1,000 gallons is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on a customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SECURITY DEPOSIT

A deposit of $50.00 or 2/12ths of the average usage of the applicant's specific customer class, whichever is greater.

SURCHARGE FORMULA TO BE APPLIED IN CASES OF USERS PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to unusual users per year
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi = volume of wastewater from unusual users, in gallons per year
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD), in dollars per pound
Bi = weight of BOD from unusual users, in pounds per year
So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
Si = weight of total solids from unusual users, in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgement of the Union Public Service District, should not be introduced into the sewer system, need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the Union Public Service District's records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user, or refund given by Union Public Service District, as the case may be. Such audited figures will then be used for the

preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

SURCHARGE WHEN SURFACE DRAINAGE IS CONNECTED TO THE UNION PUBLIC SERVICE DISTRICT SANITARY SEWERAGE SYSTEM

An additional amount shall be charged where surface or ground water is introduced into the District's sanitary system where evidence of a violation exists.

APPLICABILITY

Whenever the Union Public Service District has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the District's sewer system, and such customer has failed to take appropriate action within thirty (30) days of receipt of a demand by the District in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times 0.0006233 \times C$$

S =	The surcharge in dollars
A =	The area under roof and/or the area of any other water collection surface connected to the District's sanitary sewer, in square feet.
R =	The measured monthly rainfall, in inches.
.000623 =	A conversion factor to change inches of rain x square feet of surface water to thousands of gallons of water.
C =	$6.70 per thousand gallons of metered water usage.

Union Public Service District shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing or on-site inspection that rain or surface water is being introduced into the District's sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the District's sanitary sewer system. Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

BULK TREATMENT RATES (Based on flow meter usage)

All leachate from the Kanawha Western Landfill
will be treated at the rate of $5.36 per 1,000 gallons

BULK TREATMENT RATES (Based on M gallons of wastewater transported for treatment to Union Public Service District)

All wastewater from Cadle Sanitary Service
will be treated at the rate of $5.36 per 1,000 gallons

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
3/26/2009

Entered: March 6, 2009

CASE NO. 08-1369-PSD-CN

UNION PUBLIC SERVICE DISTRICT,
a public utility, Kanawha County.
Application for a certificate of convenience and necessity to construct improvements to the District's 40th Street wastewater treatment facility and an extension of its wastewater collection lines.

RECOMMENDED DECISION

On August 12, 2008, the Union Public Service District (District or Applicant) filed an application with the Public Service Commission for a certificate of convenience and necessity to construct improvements to the District's 40th Street wastewater treatment facility and to construct an extension of its wastewater collection lines. According to the application, the improvements to the District's facility are needed to stay in compliance with the District's NPDES Permit. The extensions will provide necessary sanitary sewer service to residents in certain areas of the Big Tyler Road and Little Tyler Road and, thereby, alleviate ground water contamination and pollution to the surrounding streams. The extensions will serve approximately 318 new customers. The project will be completed through three (3) contracts. The total project cost will be approximately $9,171,766. The project is to be financed with a loan from the United States Department of Agriculture, Rural Utility Service, in an amount not to exceed $4,172,000 at an interest rate not to exceed 6% for a term not to exceed 40 years, and funding from a private bond issue in the amount of $5,000,766 at an interest rate not to exceed 6% for a term not to exceed 40 years. The District proposed an interim rate increase to meet certain operation and maintenance costs and to pay its existing bonded indebtedness. Along with the application, the District filed Rule 42 Exhibits for both pre-project and post-project operations; a proposed notice of filing; and project plans and specifications.

By Order dated August 13, 2008, the District was directed to give notice of the filing of its application, including the proposed pre-project increased sewer rates and charges, by publishing a copy of said Order once in a newspaper, duly qualified by the Secretary of State, published and in general circulation in Kanawha County, West Virginia, making due return to the Commission of a proper certification of publication immediately thereafter. Anyone interested in the application was given thirty days in which to file written protests or petitions to intervene. The Order further noted that, if no protests were received within the thirty-day period, the Commission could waive formal hearing

and grant the application based on the evidence submitted with the application and the Commission's review thereof.

On September 10, 2008, Staff Attorney Lisa L. Wansley filed an Initial Joint Staff Memorandum to which was attached a September 4, 2008 Initial Internal Memorandum prepared by Karen L. Buckley, Utilities Analyst II, Water and Wastewater Division, and Joe Marakovits, Technical Analyst III, Engineering Division. Staff reported that the District's accountant had conducted a Class Cost of Service Study and had changed the rate blocks. Customers using 1,000-2,000 gallons of water per month will have a 24.4% increase. Customers using the average 4,500 gallons of water per month will have a 6% pre-project increase. The average post-project increase for customers using 4,500 gallons of water per month will be 34.11%. According to the District's annual report for the fiscal year ending June 30, 2007, the operating revenues for the sewer system were $1,476,333. The project, estimated to cost $9,172,766, is to be financed by a $4,172,000 USDA Rural Utilities Service Loan at 6% interest for 40 years and a $5,000,766 private bond issue at 6% interest for 40 years. Staff noted that, in both the pre-project and post-project tariffs, the District has requested EFT, credit card and drop payment charges. Staff indicated that the requested charges would be evaluated given a recent Commission Order concerning those issues.

On September 12, 2008, the District filed a completed Tariff Form No. 6-B pursuant to Rule 10.3. of the Commission's Rules of Practice and Procedure (Procedural Rules) and an Affidavit of Publication from the Charleston Gazette, a newspaper published and generally circulated in Kanawha County, verifying that the required notice was published in that newspaper on August 21, 2008. The thirty-day protest period, based on the newspaper publication, expired on September 20, 2008. No protests or petitions to intervene were filed within the statutory thirty-day period.

By Order issued on September 24, 2008, the Commission referred this matter to the Division of Administrative Law Judges for a decision to be issued on or before March 10, 2009.

On October 29, 2008, the District filed a letter from the USDA confirming an RUS loan in the amount of $4,172,000. The District also filed a letter from Crews & Associates in which Crews & Associates indicted that it would be willing to serve as the underwriter for municipal bonds for the additional $5,000,766 in required project financing.

On October 29, 2008, the West Virginia Office of Environmental Health Services Permit No. 18,142 for the project was filed.

On November 10, 2008, the District filed an audit conducted for the District by John Blackwell, CPA, for the fiscal year beginning on July 1, 2007, and ending on June 30, 2008. The District requested that the Commission immediately authorize emergency rates for the District due to its failure to meet coverage requirements for its existing bonded indebtedness and a cash flow deficit. The District also requested that the due date for Staff's final recommendations be extended by thirty (30) days.

On November 12, 2008, Staff Attorney Wansley filed a Further Joint Staff Memorandum. Ms. Wansley stated that Staff supported the District's request for an emergency rate increase.

By Commission Order dated November 13, 2008, the decision due date for the Division of Administrative Law Judges was extended until April 8, 2009.

On November 14, 2008, the District filed another request for emergency rates and charges.

On November 21, 2008, Staff Attorney Wansley filed a Further Joint Staff Memorandum to which was attached a November 19, 2008 Interim Internal Memorandum prepared by Ms. Buckley and Mr. Marakovits. Commission Staff reported that the District is operating at a deficit of $63,862 with a debt coverage of 96.65% and that an emergency interim rate increase was warranted. Staff determined that a 5.5% increase in current rates was required for a positive cash flow and for the District to meet its bond coverage requirement of 110% since all of the District's reserves are fully funded. Accordingly, Commission Staff recommended an interim across-the-board increase of 5.5% to the District's current rates and charges. The District's current rates provide for a minimum monthly charge of $12.90 and a flat rate charge of $21.80 for customers with well water. Based on Staff's interim rates, a minimum charge per month will be $13.60 and a flat rate charge per month will be $23.00. Staff's interim rates provide a cash flow surplus of $13,012 and debt coverage of 110.91%. Staff recommended that its interim emergency rates and charges become effective immediately.

By Interim Recommended Decision dated November 26, 2008, emergency interim rates for the District were approved. The District was required to publish a copy of the Notice of Interim Rate Increase once in a newspaper duly qualified by the Secretary of State, published and of general circulation in Kanawha County, making due return to the Commission of an affidavit of publication as soon as it was received.

On December 5, 2008, Staff Attorney Wansley filed the Further Joint Staff Memorandum to which was attached the December 4, 2008 Internal Memorandum prepared by Ms. Buckley and Mr. Marakovits. Staff reported on its efforts to obtain information necessary to prepare final recommendations. Staff anticipated filing its final report no later than December 17, 2008.

By Commission Order dated December 5, 2008, the District's request to waive the fifteen-day period of time in which a party may file exceptions to the Interim Recommended Decision was granted.

On December 11, 2008, the District filed a health permit, a listing of operation and maintenance expenses, a preliminary engineering report and a design manual.

On December 17, 2008, the District filed a letter from Crews & Associates, the underwriter for the proposed project.

On December 17, 2008, Staff Attorney Wansley filed the Further Joint Staff Memorandum which represented that Staff's final memorandum would be filed once it was received by Legal Staff.

On December 22, 2008, Staff Attorney Wansley filed the Final Joint Staff Memorandum to which was attached the December 19, 2008 Staff Report prepared by Ms. Buckley and Mr. Marakovits. Staff reported that the District's application for a certificate of convenience and necessity included both non-project and project-related sewer rate increases. The District proposed to construct certain improvements to its 40th Street wastewater facility and to extend its wastewater collection lines to certain areas within its existing boundaries. The District requested an approximately 13% non-project rate increase in revenues based on a Rule 42 completed by Griffith and Associates, Inc. The District also requested an approximately 40% increase in revenues for its project costs. The District wanted the pre-project rates to become effective as soon as possible so that it could meet certain operation and maintenance costs and pay its existing bonded indebtedness. By Interim Recommended Decision dated November 26, 2008, the District was granted an emergency rate increase of 5.5%.

The District owns and operates two (2) sewage treatment facilities and gravity collection systems which serve approximately 4,600 customers in Cross Lanes, Rocky Fork and the surrounding areas. Technical Staff recommended $268,600 in special equipment purchases to be funded with a 5-year loan at 4.70% interest. Technical Staff also reviewed ordinary plant additions for the past five (5) years and recommended an annual amount of $56,010 to fund recurring plant additions such as new taps, vehicles, office equipment, miscellaneous tools, system equipment and main extensions. Technical Staff also recommended an annual adjustment to this average to account for additional improvements that must be made to the five (5) existing pump stations in the amount of $5,725 per station. Amortized over three (3) years, the adjustment is $11,450. The total recommended surplus for capital improvements is $67,460 ($56,010 plus $11,450).

As part of the rate case, Technical Staff prepared allocation factors for a sewer Class Cost of Service Study (CCOSS). Staff noted that, in the test year, the sanitary flow for Cadle Sanitary Company, one of the District's five (5) industrial customers, was estimated. Cadle paid a flat rate based on the estimate. Staff recommended that, in accordance with Rule 3.1 of the Commission's Sewer Rules, the District require Cadle to install a sewage flow meter to accurately measure the wastewater entering the District's sanitary collection system.

The District's certificate application proposed to construct additional sewer mains and a small grinder pump station to serve an additional 318 customers along Big Tyler and Little Tyler Roads and to upgrade the existing 40th Street wastewater treatment facility. The proposed project consists of three (3) contracts with an estimated construction cost of $9,172,766. Staff opined that the estimated construction costs, which amount to $1,812 per customer, appear to be reasonable for the proposed project.

The need for the project is adequately documented. The upgrade to the District's existing 40th Street treatment plant is necessary to

increase treatment capacity, quality and efficiency. The extension of sewer service will eliminate raw or partially treated sewage discharges in the Big Tyler and Little Tyler Road areas.

On October 27, 2008, the West Virginia Office of Environmental Health Services issued Permit No. 18,142 for construction of the project. The NPDES permit modification has not yet been issued. Technical Staff's review of the plans and specifications has found no conflicts with the Commission's Sewer Rules and Regulations regarding engineering requirements.

Operation and maintenance expenses are estimated to increase $48,314 due to the project. This amount includes $45,019 for power and $3,295 for uncollectible accounts. Technical Staff recommended approval of the projected O&M expenses.

The District's current bonds are fully funded.

The District had many billing problems which required Staff to make several per books adjustments to correct the billing classes.

Staff recommended an approximate 8% non-project rate increase to the District's revenues and an additional approximate 43% increase in revenues related to the project. Based on Staff's CCOSS, Staff developed rates and charges which will begin to bring the District's rates towards a cost basis. Residential customers are subsidizing commercial customers. Staff's recommended rates allow for a subsidy from the other customer classes. Future rate increases should gradually shift commercial rates toward a cost basis. The District's current minimum bill based on the going level emergency rate increase is $13.60 per 2,000 gallons, while the flat rate for 4,500 gallons is $23.00. The District proposed a minimum charge of $16.05 per 3,000 gallons and a flat rate charge of $23.10. Staff's recommended rates and charges provide for a minimum bill of $14.14 (based upon 2,000 gallons) and a bill based upon 4,500 gallons of $24.14. Based on Staff's cash flow analysis, Staff recommended a surplus of $68,250 (which includes a renewal and replacement (R&R) reserve of $42,399) and debt service coverage of 125.47%.

Staff recommended denial of the District's request to add a bank charge to its tariff due to the Commission's decision in Bradley Public Service District, Case No. 08-0304-PSD-T.

Staff recalculated the leak adjustment rate to be $0.65 per 1,000 gallons.

In summary, Staff recommended the following: (1) approval of an approximate eight percent (8%) increase in metered sales revenues to be generated by Staff-recommended #1 rates and charges; (2) approval of the Staff-recommended #1 capital addition surplus of $68,250 (R&R reserve of $42,399 plus surplus of $25,851); (3) approval of the District's application for a certificate of convenience and necessity to construct certain improvements to its 40th Street wastewater facility and to extend its wastewater collection lines to certain areas within its existing boundaries in the amount of $9,171,766; (4) approval of project financing of a $4,171,000 RUS loan at 4.5% for 38 years and a $5,000,766 bond issue

through Crews and Associates at an interest rate not to exceed seven percent (7%) for thirty (30) years; (5) approval of an approximate 43% increase in metered sales revenues over the Staff-recommended #1 rates and charges to be generated by the Staff-recommended #2 rates and charges; (6) approval of the Staff-recommended #2 rates and charges; (7) approval of the Staff-recommended #2 capital addition surplus of $68,115 (R&R reserve of $60,667 plus surplus of $7,448); and (8) the District require the Cadle Sanitary Company to install a sewage flow meter to accurately measure the wastewater entering the District's sanitary collection system.

By Procedural Order dated January 28, 2009, the District was required to immediately file an affidavit of publication of interim rates.

On January 30, 2009, the District filed an Affidavit of Publication reflecting that the Notice of Interim Rate Increase was published on December 9, 2008, in the Charleston Gazette, a newspaper, duly qualified by the Secretary of State, published and of general circulation in Kanawha County, West Virginia.

As of the date of this Order, no letters of protest have been filed concerning either the project itself, the District's proposed rates or the interim emergency rates. Additionally, the District has not filed any objections to the Final Joint Staff Memorandum or to the Staff-recommended rates.

DISCUSSION

The rates recommended by Commission Staff in this case to address the District's current costs of operation appear to be reasonable and were designed to cover the District's O&M expenses and debt service requirements and, accordingly, will be approved. Additionally, based upon a review of the District's certificate application and Commission Staff's written recommendations set forth in the Final Joint Staff Memorandum with attachment dated December 22, 2008, it is clear that the District's proposed upgrade of the 40th Street treatment plant is needed to increase treatment capacity, quality and efficiency. Additionally, the extension of sewer service is necessary in order to eliminate raw or partially treated sewage discharges in the Big Tyler and Little Tyler Road areas. Accordingly, the District's certificate application will be approved.

The financing for the proposed project, consisting of a loan from the United States Department of Agriculture, Rural Utility Service, in the amount of $4,171,000, at an interest rate of 4.5% for a term of 38 years, and funding from a private bond issue in the amount of $5,000,766, at an interest rate not to exceed 7% for a term of 30 years, is reasonable and will be approved. The Staff-recommended post-project rate increase will provide sufficient, but not more than sufficient, revenue to cover the District's O&M expenses and all of the District's debt service requirements and will be approved.

FINDINGS OF FACT

1. On August 12, 2008, the Union Public Service District filed an application for a certificate of convenience and necessity to construct improvements to the District's 40th Street wastewater treatment facility and to construct an extension of its wastewater collection lines. The proposed project will be financed by an RUS loan in the amount of $4,171,000, at an interest rate of 4.5% for a term of 38 years, and funding from a private bond issue in the amount of $5,000,766 at an interest rate not to exceed 7% for a term of 30 years. The funding has been committed. (See, application filed August 12, 2008; Commitment letters filed October 29, 2009).

2. The District proposed a 6% pre-project increase and a 34.11% post-project increase for customers with the average consumption of 4,500 gallons of water per month. (See, application filed August 12, 2008).

3. On September 12, 2008, the District filed an Affidavit of Publication reflecting that, in compliance with the Commission's August 13, 2008 Order, the Notice of Filing had been published on August 21, 2008, in the Charleston Gazette, a newspaper duly qualified by the Secretary of State, published and of general circulation in Kanawha County, West Virginia. (See, affidavit of publication filed September 12, 2008).

4. By Interim Recommended Decision dated November 26, 2008, an interim across-the-board rate increase of 5.5% to current rates was approved, subject to refund. (See, Interim Recommended Decision entered November 26, 2008).

5. The improvements proposed to the District's treatment plant will keep that facility in compliance with the District's NPDES permit. (See, application filed August 12, 2008; Final Joint Staff Memorandum and attachment filed December 22, 2008).

6. The areas to which the sewer lines will be extended currently have no public sewer service. The areas currently suffer from ground water contamination and pollution in area streams. The line extensions should eliminate the discharge of raw or partially treated sewage in these areas. (See, application filed August 12, 2008; Final Joint Staff Memorandum and attachment filed December 22, 2008).

7. Commission Staff recommended that the District be granted a certificate of convenience and necessity to construct the sewer treatment plant upgrade and to extend sewer service at issue herein, and that the project financing, consisting of a loan from the United States Department of Agriculture, Rural Utility Service, in the amount of $4,171,000 at an interest rate of 4.5% for a term of 38 years, and funding from a private bond issue, in the amount of $5,000,766, at an interest rate not to exceed 7% for a term of 30 years, be approved. (See, Final Joint Staff Memorandum with attachment filed December 22, 2008).

8. At going-level, the District's current rates and charges are generating a cash flow deficit of $(95,440) and a debt service coverage of only 102.98%. The District's outstanding bond documents require it to maintain debt service coverage of 110%, since the District's reserve

requirements are fully funded. (See, Staff Report filed December 22, 2008; annual audit for 2007-2008, filed November 10, 2008).

9. After review and investigation, to address current going-level revenue requirements, Commission Staff recommended rates which will result in a minimum bill of $14.14 based upon 2,000 gallons and a bill of $24.14, based upon 4,500 gallons. The Staff-recommended going-level rates should produce a cash flow surplus of $68,250 (including an R&R of $42,399) and debt service coverage of 125.47%. (See, Final Joint Staff Memorandum with attachment filed December 22, 2008).

10. After review and investigation, to address increases associated with the District's proposed project, Commission Staff recommended rates which will result in a minimum bill of $15.00 based upon 2,000 gallons and a bill of $33.75 based upon 4,500 gallons. The Staff-recommended rates should produce a cash flow surplus of $68,115 (including an R&R of $60,667) and debt service coverage of 116.19%. (See, Final Joint Staff Memorandum with attachment filed December 22, 2008).

11. No protests were filed to the project, the District's proposed rates or the interim emergency rates. (See, case file generally).

12. The Office of the Executive Secretary served the Staff recommendations upon the District along with a letter in which the District was cautioned that failure to respond to Staff's recommendations may result in a decision in the case based upon the original failing and the other documents in the case file without further notice or hearing. (See, letter filed December 22, 2008).

13. As of the date of this Order, the District did not object to the Final Joint Staff Memorandum or to the Staff-recommended rates. (See, case file generally).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to Union Public Service District to construct certain improvements to its 40th Street wastewater facility and to extend its wastewater collection lines to certain areas within its existing boundaries.

2. It is reasonable to approve the financing for the project, which consists of a $4,171,000 RUS loan at 4.5% for 38 years and a $5,000,766 private bond issue through Crews and Associates at an interest rate not to exceed 7% for 30 years.

3. The Staff-recommended No. 1 rates, attached hereto as Appendix A, are sufficient, but not more than sufficient, to cover the District's current operation and maintenance expenses, taxes other than income taxes, debt service requirements and routine capital additions. Accordingly, the Staff-recommended No. 1 rates should be approved for use by the District for all services rendered on and after the date that this Recommended Decision becomes final.

4. The Staff-recommended No. 2 rates, attached hereto as Appendix B, are sufficient, but not more than sufficient, to cover the District's operation and maintenance expenses, taxes other than income taxes, debt service requirements and routine capital additions, including the additional expenses and debt service requirements generated by the project certificated herein. Accordingly, the Staff-recommended No. 2 rates should be approved to become effective for all services rendered by the District on and after the date of substantial completion of the project certificated herein.

ORDER

IT IS, THEREFORE, ORDERED that the application filed herein on August 12, 2008, by Union Public Service District for a certificate of convenience and necessity to construct certain improvements to its 40th Street wastewater facility and to extend its wastewater collection lines to certain areas within its existing boundaries be, and hereby is, granted, contingent upon the District receiving an NPDES permit modification from the West Virginia Department of Environmental Protection.

IT IS FURTHER ORDERED that the financing of the project, consisting of a $4,171,000 Rural Utilities Service loan, at an interest rate of 4.5% for 38 years, and a $5,000,766 private bond issue through Crews and Associates, at an interest rate not to exceed 7% for 30 years, be, and it hereby is, approved.

IT IS FURTHER ORDERED that the pre-project Staff-recommended increased rates and charges, attached hereto as Appendix A, be, and hereby are, approved for use by Union Public Service District for all services rendered on and after the date that this Recommended Decision becomes final.

IT IS FURTHER ORDERED that the post-project Staff-recommended increased rates and charges, attached hereto as Appendix B, be, and hereby are, approved for use by Union Public Service District for all services rendered by the District on and after the date of substantial completion of the project certificated herein.

IT IS FURTHER ORDERED that Union Public Service District file an original and at least five (5) copies of a revised tariff reflecting the rates set forth in Appendix A within thirty (30) days of the date that this Recommended Decision becomes a final order of the Commission. Additionally, the District shall file an original and at least five (5) copies of a revised tariff reflecting the rates set forth in Appendix B within thirty (30) days of the date of substantial completion of the project certificated herein.

IT IS FURTHER ORDERED that Union Public Service District file the certificate of substantial completion from its engineer for the project certificated herein as soon as it becomes available.

IT IS FURTHER ORDERED that Union Public Service District file a copy of the engineer's certified tabulation of bids for this project within ten (10) days of the bid opening date.

IT IS FURTHER ORDERED that, if there are any changes in the plans, scope or financing of the project, Union Public Service District obtain Commission approval of such changes prior to commencing construction.

IT IS FURTHER ORDERED that, if there are any changes in project costs which do not affect rates, Union Public Service District file herein an affidavit duly executed by a certified public accountant verifying that the District's rates and charges are not affected.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, Union Public Service District comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that the District require Cadle Sanitary Company to install a sewage flow meter to accurately measure the wastewater entering the District's sanitary collection system from Cadle's facilities, pursuant to Rule 3.1 of the Commission's Rules and Regulations for the Government of Sewer Utilities.

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

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

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

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

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

Deborah Yost VanDervort
Administrative Law Judge

DYV:s:cdk
081369ab.wpd

CASE NO. 08-1369-PSD-CN
UNION PUBLIC SERVICE DISTRICT
PRE-PROJECT APPROVED TARIFF

APPLICABILITY
Applicable within the entire territory served.

AVAILABILITY
Available for general domestic, commercial, industrial and resale sewer service.

RATES (customers with metered water supply)

First	2,000 gallons used per month	$7.07	per 1,000 gallons
Next	3,000 gallons used per month	$4.00	per 1,000 gallons
Next	15,000 gallons used per month	$3.74	per 1,000 gallons
All Over	20,000 gallons used per month	$3.50	per 1,000 gallons

MINIMUM CHARGE
No bill will be rendered for less than $14.14 per month, which is the equivalent of 2,000 gallons.

FLAT RATE CHARGE (Customers with non-metered water supply)
Equivalent of 4,500 gallons of water usage: $24.14

DELAYED PAYMENT PENALTY
The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

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

A tap fee of $150.00 will be charged to customers applying for service before construction is completed adjacent to customer's premises in connection with a certificate proceeding before the Public Service Commission of West Virginia. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of $350.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RETURNED CHECK CHARGE
A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

RULES PERTAINING TO SUBDIVISIONS
A. Each such subdivision must obtain the required approval of the Planning and Zoning Commission of Kanawha County.

B. The plans and sketches for the proposed sewer system shall meet all requirements of the Department of Health of West Virginia and shall be approved by the Division of Sanitary Engineering.

C. The subdivider's sewer system shall itself be inspected by Union Public Service District; and, if approved by the Health Department of West Virginia, and the aforesaid Planning and Zoning Commission and Union Public Service District, the said District will accept a conveyance of the system and will be solely responsible for its future repair and maintenance.

DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills, in conjunction with a water service termination agreement with West Virginia-American Water Company, a disconnection fee of $25.00 shall be charged; or in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with West Virginia-American Water Company, is reconnected, a reconnection fee of $25.00 shall be charged.

LEAK ADJUSTMENT

$0.51 per 1,000 gallons is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on a customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SECURITY DEPOSIT

A deposit of $50.00 or 2/12ths of the average usage of the applicant's specific customer class, whichever is greater.

SURCHARGE FORMULA TO BE APPLIED IN CASES OF USERS PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to unusual users per year
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi = volume of wastewater from unusual users, in gallons per year
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD), in dollars per pound
Bi = weight of BOD from unusual users, in pounds per year
So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
Si = weight of total solids from unusual users, in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgement of the Union Public Service District, should not be introduced into the sewer system, need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the Union Public Service District's records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user, or refund given by Union Public Service District, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

SURCHARGE WHEN SURFACE DRAINAGE IS CONNECTED TO THE UNION PUBLIC SERVICE DISTRICT SANITARY SEWERAGE SYSTEM

An additional amount shall be charged where surface or ground water is introduced into the District's sanitary system where evidence of a violation exists.

APPLICABILITY

Whenever the Union Public Service District has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the District's sewer system, and such customer has failed to take appropriate action within thirty (30) days of receipt of a demand by the District in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times 0.0006233 \times C$$

S = The surcharge in dollars
A = The area under roof and/or the area of any other water collection surface connected to the District's sanitary sewer, in square feet.
R = The measured monthly rainfall, in inches.
.0006233 = A conversion factor to change inches of rain x square feet of surface water to thousands of gallons of water.
C = $7.00 per thousand gallons of metered water usage.

Union Public Service District shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing or on-site inspection that rain or surface water is being introduced into the District's sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the District's sanitary sewer system. Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

BULK TREATMENT RATES (Based on flow meter usage)

All leachate from the Kanawha Western Landfill will be treated at the rate of $4.50 per 1,000 gallons

BULK TREATMENT RATES (Based on M gallons of wastewater transported for treatment to Union Public Service District)

All wastewater from Cadle Sanitary Service will be treated at the rate of $4.50 per 1,000 gallons

CASE NO. 08-1369-PSD-CN
UNION PUBLIC SERVICE DISTRICT
POST-PROJECT APPROVED TARIFF

APPLICABILITY
Applicable within the entire territory served.

AVAILABILITY
Available for general domestic, commercial, industrial and resale sewer service.

RATES (customers with metered water supply)

First	5,000 gallons used per month	$7.50 per 1,000 gallons
Next	15,000 gallons used per month	$6.07 per 1,000 gallons
All Over	20,000 gallons used per month	$4.96 per 1,000 gallons

MINIMUM CHARGE
No bill will be rendered for less than $15.00 per month, which is the equivalent of 2,000 gallons.

FLAT RATE CHARGE (Customers with non-metered water supply)
Equivalent of 4,500 gallons of water usage: $33.75

DELAYED PAYMENT PENALTY
The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

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

A tap fee of $150.00 will be charged to customers applying for service before construction is completed adjacent to customer's premises in connection with a certificate proceeding before the Public Service Commission of West Virginia. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of $350.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

RETURNED CHECK CHARGE
A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of $25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

RULES PERTAINING TO SUBDIVISIONS
A. Each such subdivision must obtain the required approval of the Planning and Zoning Commission of Kanawha County.

B. The plans and sketches for the proposed sewer system shall meet all requirements of the Department of Health of West Virginia and shall be approved by the Division of Sanitary Engineering.

C. The subdivider's sewer system shall itself be inspected by Union Public Service District; and, if approved by the Health Department of West Virginia, and the aforesaid Planning and Zoning Commission and Union Public Service District, the said District will accept a conveyance of the system and will be solely responsible for its future repair and maintenance.

DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills, in conjunction with a water service termination agreement with West Virginia-American Water Company, a disconnection fee of $25.00 shall be charged; or in the event the delinquent sewer bill is collected by the water company, an administrative fee of $25.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with West Virginia-American Water Company, is reconnected, a reconnection fee of $25.00 shall be charged.

LEAK ADJUSTMENT

$0.65 per 1,000 gallons is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on a customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SECURITY DEPOSIT

A deposit of $50.00 or 2/12ths of the average usage of the applicant's specific customer class, whichever is greater.

SURCHARGE FORMULA TO BE APPLIED IN CASES OF USERS PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to unusual users per year
Vo = average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi = volume of wastewater from unusual users, in gallons per year
Bo = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD), in dollars per pound
Bi = weight of BOD from unusual users, in pounds per year
So = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
Si = weight of total solids from unusual users, in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgement of the Union Public Service District, should not be introduced into the sewer system, need not be handled by it. The results of the preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the Union Public Service District's records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user, or refund given by Union Public Service District, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

SURCHARGE WHEN SURFACE DRAINAGE IS CONNECTED TO THE UNION PUBLIC SERVICE DISTRICT SANITARY SEWERAGE SYSTEM

An additional amount shall be charged where surface or ground water is introduced into the District's sanitary system where evidence of a violation exists.

APPLICABILITY

Whenever the Union Public Service District has discovered that a customer's roof drain, downspout, storm sewer or similar facilities conducting surface water have been connected to the District's sewer system, and such customer has failed to take appropriate action within thirty (30) days of receipt of a demand by the District in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times 0.0006233 \times C$$

S = The surcharge in dollars
A = The area under roof and/or the area of any other water collection surface connected to the District's sanitary sewer, in square feet.
R = The measured monthly rainfall, in inches.
.0006233 = A conversion factor to change inches of rain x square feet of surface water to thousands of gallons of water.
C = $7.00 per thousand gallons of metered water usage.

Union Public Service District shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing or on-site inspection that rain or surface water is being introduced into the District's sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the District's sanitary sewer system. Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules of the Public Service Commission of West Virginia.

BULK TREATMENT RATES (Based on flow meter usage)
All leachate from the Kanawha Western Landfill
will be treated at the rate of $6.00 per 1,000 gallons

BULK TREATMENT RATES (Based on M gallons of wastewater transported for treatment to Union Public Service District)
All wastewater from Cadle Sanitary Service
will be treated at the rate of $6.00 per 1,000 gallons

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street S.E.
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

July 30, 2009

Wilma Davis, Chairperson
Union Public Service District
P.O. Box 7350
Cross Lanes, WV 25313

RE: Union Public Service District
Authorization to Advertise
SRF No. C-544417

Dear Ms. Davis:

You are hereby authorized to advertise for bids. Please refer to our approval letter on the plans and specifications regarding any technical requirements to be met prior to opening bids.

You are reminded that you are required to take affirmative steps to assure that disadvantaged business enterprises are used when possible.

The project should, as a minimum, be posted in newspapers as a Class II legal advertisement not less than 30 days prior to the date on which bids are to be received. A copy of the legal advertisement should be sent to John Rogers.

When the project is advertised the following statements must appear in the advertisement for bids:

"DBE REQUIREMENTS

Each bidder must fully comply with the Disadvantaged Business Enterprises, and Affirmative Action requirements, as identified in the contract documents.

The Bidder agrees to make "positive efforts" to subcontract a portion of the total value of the contract to Disadvantaged Business Enterprises. This shall be done

in compliance with the six (6) good faith efforts as outlined in 40 CFR 33.301. Failure to demonstrate positive efforts to do so may lead to rejection of bids. For the purpose of this program, the term "subcontract" includes all construction, modification, and service work contracted for by the bidder in the execution of the work under this contract.

NONDISCRIMINATION IN EMPLOYMENT

Bidders on this work will be required to comply with the President's Executive Order No. 11246. The requirements for bidders and contractors under this order are explained in the specifications."

SUSPENSION AND DEBARMENT

Recipient shall not entertain the use of businesses that are listed on the "Excluded Parties List System at www.epls.gov. in accordance with 2 CFR Part 1532 and Subpart B and C of 2 CFR Part 180.

In addition, the following agencies must be supplied with a copy of the legal advertisement of your project for distribution:

Small Business Administration 405 Capitol Street, Suite 412 Charleston, West Virginia 25301	OR	Small Business Administration 320 West Pike, Suite 330 Clarksburg, West Virginia 26301

Enclosed is a copy of the SRF "Application for a Construction Loan". This completed application must be submitted to our office no later than 10 calendar days after the receipt of bids in order to allow sufficient time for review approval and processing. In addition the following documents must be submitted prior to establishing a loan closing date:

Accountant's Certification

Should you have any questions in the interim, please contact John at (304) 926-0499 extension #1602 or John.R.Rogers@wv.gov.

Sincerely,

Mike Johnson, P.E.
Program Manager
Clean Water SRF Program

MJ/jr

Enclosure

cc: Ms. Samme Gee, Jackson & Kelly
Thrasher Engineering
Tracey Rowan, USDA-RUS
Griffith & Associates

West Virginia Infrastructure & Jobs Development Council

Public Members:
Mark Prince, Chairman
Hurricane
Dwight Calhoun, Vice Chairman
Petersburg
C. R. "Rennie" Hill, III
Beckley
Timothy Stranko
Morgantown

300 Summers Street, Suite 980
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Katy Mallory, PE
Executive Secretary

Katy.Mallory@verizon.net

March 3, 2004

Bill Carter
Union Public Service District
P.O. Box 7350
Charleston, West Virginia 25356

Re: Union Public Service District
Sewer Project 2003S-776

Dear Mr. Carter:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the Union Public Service District's (the "District") revised preliminary application regarding its proposed project to upgrade the existing 40th Street Wastewater Treatment Plant to increase capacity and extend service to the Tyler Mountain area along Big Tyler Road and Little Tyler Road (the "Project").

Based on the findings of the Sewer Technical Review Committee, the Infrastructure Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The District should carefully review the enclosed comments of the Sewer Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the revised preliminary application, the Infrastructure Council recommends that the District pursue a $5,015,000 Water Development Authority and/or Clean Water State Revolving Fund loan and a $1,000,000 Corps of Engineer grant to fund this $6,015,000 project. Please contact the Water Development Authority office at 558-3612, the Department of Environmental Protection office at 558-0641 and the Corps of Engineers office at 529-5644 for specific information on the steps the District needs to follow to apply for these funds. The Infrastructure Council has forwarded this application to the Corps of Engineers for their review. **Please note that this letter does not constitute funding approval from these agencies.**

If you have any questions regarding this matter, please contact Katy Mallory at 558-4607.

Sincerely,

Mark Prince

Enclosure
cc: Mike Johnson, DEP (w/o enclosure)
Bernie Yonkosky, WDA (w/o enclosure)
Dan Bailey, COE
Region III Planning & Development Council
Thrasher Engineering, Inc.

UNION PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)
SEWER REVENUE BONDS, SERIES 2009 C
(WVCWSRF PROGRAM)

BOND RESOLUTION

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UNION PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWER FACILITIES OF UNION PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF $1,363,613 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WVCWSRF PROGRAM/ARRA) AND $3,074,294 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS SERIES 2009 C (WVCWSRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF UNION PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution (together with any order or resolution supplemental hereto or amendatory hereof (as hereinafter defined), or both, the "Bond Legislation") is adopted pursuant to the provisions of (i) Chapter 16, Article 13A and (ii) Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

A. Union Public Service District (the "Issuer") is a public service district, public corporation and political subdivision of the State of West Virginia in Kanawha County of said State.

B. The Issuer presently owns and operates the System (as hereinafter defined). However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements to the System, a description of which is attached hereto as Exhibit A and incorporated herein by reference (collectively, the "Project"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the West Virginia Department of Environmental Protection (the "DEP").

C. The Issuer intends to permanently finance a portion of the costs of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund pursuant to the Act.

D. Simultaneously herewith, the Issuer is issuing its Sewer Revenue Bonds, Series 2009 A to be authorized by the Series 2009 A Resolution, in the aggregate principal amount of $4,172,000 to pay the entire outstanding principal and all accrued interest on the Issuer's Sewerage System Design Notes, Series 2007 A (Putnam County Bank), dated August 7, 2007, in the original principal amount of $550,000, issued to temporarily finance a portion of the costs of design of the Project and to finance the remainder of the cost of the Project.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amount of $4,437,907, in two series, being the (1) Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), in the aggregate principal amount of $1,363,613 (the "Series 2009 B Bonds"), and the (2) Sewer Revenue Bonds, Series 2009 C (WVCWSRF Program), in the aggregate principal amount of $3,074,294 (the "Series 2009 C Bonds") (the Series 2009 B Bonds and the Series 2009 C Bonds collectively, the "Series 2009 Bonds"), to permanently finance the costs of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof, if any. Said costs shall be deemed to include the cost of acquisition or construction of any public service properties and any improvements and extensions thereto, the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2009 Bonds prior to and during acquisition and installation of the Project and for a period not exceeding 6 months after completion of acquisition and installation of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or installation of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 Bonds or the repayment of indebtedness incurred by the

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

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

G. It is in the best interests of the Issuer that its Series 2009 B Bonds and Series 2009 C Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA assistance agreement by and among the Issuer, the Authority and the DEP, the agreement in form satisfactory to the respective parties (the "ARRA Assistance Agreement"), approved hereby if not previously approved by resolution of the Issuer.

H. The Series 2009 Bonds shall be issued on a parity with the First Lien Bonds (as hereinafter defined) and the Series 2009 A Bonds with respect to liens, and senior and prior to the Second Lien Bonds (as hereinafter defined), pledge and source of and security for payment and in all other respects. The Issuer has met the parity and coverage requirements of the First Lien Bonds and the Prior Resolutions (as hereinafter defined) and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. Prior to the issuance of the Series 2009 Bonds, the Issuer will obtain (1) the certificate of an Independent Certified Public Accountant stating that the parity and coverage tests of the First Lien Bonds have been met; (2) the written consent of the Registered Owners (as hereinafter defined) of the First Lien Bonds to the issuance of the Series 2009 Bonds on a parity with the First Lien Bonds and (3) the written consent of the Registered Owners of the Second Lien Bonds to the issuance of the 2009 Bonds senior and prior to the Second Lien Bonds. Other than the Prior Bonds (as hereinafter defined), there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

I. The estimated revenues to be derived in each year following completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest, if any, on the Series 2009 Bonds, the Series 2009 B Bonds and the Prior Bonds, and to make payments into all funds and accounts and other payments provided for herein.

J. The Issuer has complied with all requirements of West Virginia law and the ARRA Assistance Agreement relating to authorization of the Project, including without limitation, the acquisition, installation and operation of the Project and the System and issuance of the Series 2009 Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the Council and the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2009 Bonds or such final order will not be subject to appeal or rehearing.

K. The Project has been reviewed and determined to be technically and financially feasible by the Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2009 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, (i) Chapter 16, Article 13A and (ii) Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of adoption hereof.

"ARRA Assistance Agreement" means the ARRA Assistance Agreement heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 B Bonds and Series 2009 B Bonds from the Issuer by the Authority, being substantially in the form attached hereto as Exhibit B, with such changes, insertions and omissions, if any, as may be approved by the Chairperson; and the execution of such final ARRA assistance agreement by the Chairperson shall be conclusive evidence of such approval.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP and the Council under the Act.

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

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

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

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

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

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

"Closing Date" means the date upon which there is an exchange of the Series 2009 Bonds for all or a portion of the proceeds of the Series 2009 Bonds from the Authority.

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

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

"Consulting Engineers" means Thrasher Engineering, Wheeling, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System or portion thereof in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

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

"CWSRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"DEP" means the West Virginia Department of Environmental Protection or any other agency, board or department of the State that succeeds to the functions of the DEP.

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

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

"First Lien Bonds" means, collectively, Issuer's (1) Sewer Revenue Bonds, Series 1991 A dated August 28, 1992, issued in the original aggregate principal amount of $2,139,656, (2) Sewer Revenue Bonds, Series 1991 B dated August 28, 1992, issued in the original aggregate principal amount of $4,229,604, and (3) Sewer Revenue Bonds, Series 1996 A dated April 4, 1996, issued in the original principal amount of $344,416.

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

"Governing Body" or "Board" means the public service board of the Issuer, as it may now or hereafter be constituted.

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

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

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

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

"Issuer" means Union Public Service District, a public service district, public corporation and political subdivision of the State of West Virginia in Kanawha County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts.

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

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the

foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

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

"Paying Agent" means the Commission or other entity designated as such for the Series 2009 Bonds in the Supplemental Resolution.

"Prior Bonds" means, collectively, the First Lien Bonds and the Second Lien Bonds.

"Prior Bonds Sinking Funds" means the Sinking Funds established for the Prior Bonds by the Prior Ordinances.

"Prior Bonds Reserve Accounts" means the Reserve Accounts established for the Prior Bonds by the Prior Ordinances.

"Prior Resolutions" means, collectively, the Resolutions authorizing the Prior Bonds.

"Project" means the Project as described in Section 1.02B hereof.

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

(a) Government Obligations;

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

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

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

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

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

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

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

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

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

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

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

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

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in the Reserve Accounts of the Series 2009 Bonds, the Series 2009 A Bonds and the Prior Bonds.

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

"Second Lien Bonds" means the Issuer's Sewer Revenue Bonds, Series 1991 C dated August 28, 1992, issued in the original aggregate principal amount of $237,602.

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

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

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

"Series 2009 A Bond Resolution" means the bond resolution authorizing the Series 2009 A Bonds.

"Series 2009 A Bonds" means the Sewer Revenue Bonds, Series 2009 A (United States Department of Agriculture), of the Issuer, issued in the original aggregate principal amount of $4,172,000, authorized to be issued simultaneously with the Series 2009 Bonds by the Series 2009 A Bond Resolution.

"Series 2009 A Bonds Reserve Account" means the Series 2009 A Bonds Reserve Account established by the Series 2009 A Bond Resolution.

"Series 2009 B Bonds" means the Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA), of the Issuer, authorized by this Resolution.

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

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

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

"Series 2009 C Bonds" means the Sewer Revenue Bonds, Series 2009 C (WVCWSRF Program), of the Issuer, authorized by this Resolution.

"Series 2009 C Bonds Reserve Account" means the Series 2009 C Bonds Reserve Account authorized to be established by Section 5.02 hereof

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

"Series 2009 C Bonds Sinking Fund" means the Series 2009 C Bonds Sinking Fund authorized to be established by Section 5.02 hereof

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

"SRF Administrative Fee" means any administrative fee required to be paid under the ARRA Assistance Agreement for the Series 2009 B Bonds and Series 2009 C Bonds.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers

specifically to the supplemental resolution or resolutions authorizing the sale of the Series 2009 Bonds; provided that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2009 Bonds, and no so included, may be included in another Supplemental Resolution.

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

"System" means the complete public service properties of the Issuer for the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of sewer to or for the public for industrial, public, private or other uses as presently existing in its entirety or any integral part thereof, and shall include the Project and any additions, improvements and extensions thereto hereafter constructed or acquired for said system from any sources whatsoever.

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

Additional terms and phrases are defined in this Resolution as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF THE PROJECT

Section 2.01. Authorization of the Project. There is hereby authorized and ordered the implementation of the Project at an estimated cost of not to exceed $8,609,907, which includes the acquisition and installation of the Project in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and installation of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority, the DEP and the Council.

The cost of the Project is estimated not to exceed $8,609,907, of which an amount not to exceed $4,172,000 will be obtained from proceeds of the Series 2009 A Bonds, an amount not to exceed $1,363,613 will be obtained from proceeds of the Series 2009 B Bonds and an amount not to exceed $3,074,294 will be obtained from proceeds of the Series 2009 C Bonds.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest, if any, on the Series 2009 Bonds, funding the Reserve Account for the Series 2009 C Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2009 Bonds of the Issuer. The Series 2009 Bonds shall be issued in two series, each as a single bond, designated respectively as "Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA)," in the principal amount not to exceed $1,363,613 and as "Sewer Revenue Bonds, Series 2009 C (WVCWSRF Program/ARRA)" in the principal amount not to exceed $3,074,294, and each Series shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 Bonds remaining after funding of the Reserve Accounts therefore (if funded from Bond proceeds) and capitalizing interest, if any, on the Series 2009 Bonds, shall be deposited in or credited to the Series 2009 Bonds Project Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

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

Unless otherwise provided by the Supplemental Resolution, the Series 2009 Bonds shall be issued in the form of a single bond, for each series fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2009 Bonds. The Series 2009 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

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

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

Section 3.04. Authentication and Registration. The Bond Registrar for the Series 2009 Bonds shall be the bank or other entity designated as such in the Supplemental Resolution and its successors and assigns. No Series 2009 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2009 Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability. Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2009 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that such Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Series 2009 Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in

writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

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

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

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

Section 3.08. Bonds Secured by Pledge of Net Revenues: Lien Positions with Respect to Prior Bonds. The payment of the debt service of the Series 2009 B Bonds and the Series 2009 C Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the lien on such Net Revenues in favor of the Holders of the Series 2009 A Bonds and the First Lien Bonds and senior and prior to the lien on the Net Revenues in favor of the Holders of the Second Lien Bonds. Such Net

Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 Bonds, the Series 2009 A Bonds and the First Lien Bonds and to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

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

A. If other than the Authority, a list of the names in which the Series 2009 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2009 Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the ARRA Assistance Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2009 Bonds.

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

[Remainder of Page Intentionally Blank]

(FORM OF SERIES 2009 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

No. BR-I $1,363,613

KNOW ALL MEN BY THESE PRESENTS: The ___ of _____, 2009, that UNION PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of ONE MILLION THREE HUNDRED SIXTY-THREE THOUSAND SIX HUNDRED THIRTEEN DOLLARS ($1,363,613), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing _____, 20__, to and including _____, 20__, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments, if any, of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated _____, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewer facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West

Virginia, including particularly Chapter 16, Article 13A and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on November 18, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 18, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1991 A, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,139,656; (2) SEWER REVENUE BONDS, SERIES 1991 B, DATED AUGUST 28, 1991, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $4,229,604; (3) SEWER REVENUE BONDS, SERIES 1996 A, DATED APRIL 4, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $344,416 (COLLECTIVELY, THE "FIRST LIEN BONDS"); (4) SEWER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,172,000 (THE "SERIES 2009 A BONDS"); AND (5) SEWER REVENUE BONDS, SERIES 2009 C (WVCWSRF PROGRAM), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,074,294 (THE "SERIES 2009 C BONDS").

THIS BOND IS ISSUED SENIOR AND PRIOR TO LIENS, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT WITH THE ISSUER'S SEWER REVENUE BONDS, SERIES 1991 C, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $237,602 (THE "SECOND LIEN BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2009 A Bonds, the Series 2009 C Bonds and the First Lien Bonds, from any monies in the reserve account authorized to be created under the Bond Legislation for the Bonds (the "Series 2009 B Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues

of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to, on a parity with or junior to the Bonds, including the Series 2009 A Bonds, the Series 2009 C Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Inc., Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

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

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

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, UNION PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal, if any, to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL, IF ANY]

_____
Chairperson

ATTEST:

_____
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2009.

UNITED BANK, INC.,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____ Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

(FORM OF SERIES 2009 C BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 C
(WVCWSRF PROGRAM)

No. CR-1 $3,074,294

KNOW ALL MEN BY THESE PRESENTS: The _____ day of _____ 2009, that UNION PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Kanawha 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 THREE MILLION SEVENTY-FOUR THOUSAND TWO HUNDRED NINETY-FOUR DOLLARS ($3,074,294), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____, 20__, to and including _____, 20__, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee of 0.25% (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____, 20__, as set forth on said EXHIBIT B.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated _____, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewer facilities of the Issuer (the "Project"); [(ii) to fund a reserve account for the Bonds of this Series (the "Bonds")] and (iii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewer facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and

in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on November 18, 2009, and a Supplemental Resolution duly adopted by the Issuer on November 18, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1991 A, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,139,656; (2) SEWER REVENUE BONDS, SERIES 1991 B, DATED AUGUST 28, 1991, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $4,229,604; (3) SEWER REVENUE BONDS, SERIES 1996 A, DATED APRIL 4, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $344,416 (COLLECTIVELY, THE "FIRST LIEN BONDS"); (4) SEWER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,172,000 (THE "SERIES 2009 A BONDS"); AND (5) SEWER REVENUE BONDS, SERIES 2009 B (WVCWSRF PROGRAM/ARRA), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,363,613 (THE "SERIES 2009 B BONDS").

THIS BOND IS ISSUED SENIOR AND PRIOR TO LIENS, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT WITH THE ISSUER'S SEWER REVENUE BONDS, SERIES 1991 C, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $237,602 (THE "SECOND LIEN BONDS" AND TOGETHER WITH THE FIRST LIEN BONDS, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2009 A Bonds, the Series 2009 B Bonds and the First Lien Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 C Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 C Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish

and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to, on a parity with or junior to the Bonds, including the Series 2009 A Bonds, the Series 2009 B Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Inc., Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

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

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

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, UNION PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal, if any, to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL, IF ANY]

_____
Chairperson

ATTEST:

_____
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2009.

UNITED BANK, INC.,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of ARRA Assistance Agreement. The Series 2009 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the ARRA Assistance Agreement. If not so authorized by previous resolution, the Chairperson is specifically authorized and directed to execute the ARRA Assistance Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, and the Secretary is directed to affix the seal of the Issuer, if any, attest the same and deliver the ARRA Assistance Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The ARRA Assistance Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation. Without limiting the generality of the foregoing, the Issuer hereby specifically approves Schedules X and Y attached to the ARRA Assistance Agreement, and a certified copy of this Resolution, indicating such approval, shall be submitted to the Authority.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

(1) Revenue Fund (established by Prior Resolution);

(2) Renewal and Replacement Fund (established by Prior Resolution); and

(3) Series 2009 Bonds Project Fund;

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued) or authorized to be created upon any requirement therefor with and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

(1) Prior Bonds Sinking Funds (established by Prior Resolution);

(2) Prior Bonds Reserve Accounts (established by Prior Resolution);

(3) Series 2009 A Bonds Reserve Account;

(4) Series 2009 B Bonds Sinking Fund;

(5) Series 2009 B Bonds Reserve Account;

(6) Series 2009 C Bonds Sinking Fund;

(7) Series 2009 C Bonds Reserve Account;

Section 5.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order of priority:

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

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and (i) remit to the Commission, as appropriate, the amounts required to pay interest on the First Lien Bonds in the amounts and on the dates required by the Prior Resolutions and (ii) remit amounts required to pay interest on the Series 2009 A Bonds in the manner prescribed by the Series 2009 A Resolution.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission, as appropriate, the amounts required to pay principal on the First Lien Bonds, as required by the Prior Resolutions; (ii) make the principal payments on the Series 2009 A Bonds in the manner prescribed by the Series 2009 A Resolution; (iii) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date; and (iv) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 C Bonds, if any, for deposit in the Series 2009 C Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 C Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 C Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission, as appropriate, the amounts required by the Prior Resolutions for deposit in the respective Reserve Accounts for the First Lien Bonds (other than the Series 2009 A Bonds) in the amounts and on the dates required by the Prior Resolutions, and remit the amounts required by the Series 2009 A Resolution for deposit in the Series 2009 A Reserve Account in the manner prescribed in the Series 2009 A Resolution; (ii) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, if not fully funded upon issuance of the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 B Bonds Reserve Requirement; and (iii) remit to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2009 C Bonds, if not fully funded upon issuance of the

Series 2009 C Bonds, for deposit in the Series 2009 C Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 C Bonds Reserve Requirement, if any; provided that, no further payments shall be made into the Series 2009 C Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 C Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Resolutions and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Sinking Fund for the Second Lien Bonds the amount required by the Prior Resolutions to pay principal of the Second Lien Bonds.

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Reserve Account for the Second Lien Bonds the amount required by the Prior Resolutions to pay principal of the Second Lien Bonds.

Monies in the Series 2009 B Bonds Sinking Fund and the Series 2009 C Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2009 B Bonds and the Series 2009 C Bonds, respectively, as the same shall become due. Monies in the Series 2009 B Bonds Reserve Account and the Series 2009 C Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2009 B Bonds and the Series 2009 C Bonds, respectively, as the same shall come due, when other monies in the Series 2009 B Bonds Sinking Fund and the Series 2009 C Bonds Sinking Fund, respectively, are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2009 B Bonds Sinking Fund, the Series 2009 B Bonds Reserve Account, the Series 2009 C Bonds Sinking Fund, and the Series 2009 C Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during installation of the Project, be deposited in the respective Bond Project Fund, and following completion of installation of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest

payment, if any, due on the Series 2009 B Bonds and the Series 2009 C Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2009 B Bonds Reserve Account and the Series 2009 C Bonds Reserve Account which result in a reduction in the balance therein to below the respective Reserve Requirements shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2009 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 B Bonds Sinking Fund, the Series 2009 B Bonds Reserve Account, the Series 2009 C Bonds Sinking Fund, or the Series 2009 C Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the respective aggregate principal amount of the Series 2009 B Bonds and the Series 2009 C Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 B Bonds Sinking Fund, the Series 2009 B Bonds Reserve Account, the Series 2009 C Bonds Sinking Fund, and the Series 2009 C Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2009 B Bonds Sinking Fund, the Series 2009 B Bonds Reserve Account, the Series 2009 C Bonds Sinking Fund, and the Series 2009 C Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof

The Series 2009 B Bonds Sinking Fund, the Series 2009 B Bonds Reserve Account, the Series 2009 C Bonds Sinking Fund, and the Series 2009 C Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 B Bonds and the Series 2009 C Bonds, respectively, under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest, if any, and reserve account payments with respect to the Series 2009

Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the SRF Administrative Fee as set forth in the Schedule Y attached to the ARRA Assistance Agreement for the Series 2009 C Bonds.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the ARRA Assistance Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the respective parties shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder. Also if on any monthly payment date the revenues are insufficient to place the required amount in each of the accounts described in Subsections (A)(3) or (4), respectively, the deposits into each of the accounts shall be made in proportion to the amounts due.

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

ARTICLE VI

BOND PROCEEDS; PROJECT DISBURSEMENTS

Section 6.01. Application of Bond Proceeds: Pledge of Unexpended Proceeds. From the monies received from the sale of the Series 2009 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 B Bonds, there shall first be deposited with the Commission in the Series 2009 B Bonds Sinking Fund, the amount, if any set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 B Bonds for the period commencing on the date of issuance of the Series 2009 B Bonds and ending 6 months after the estimated date of completion of installation of the Project.

B. From the proceeds of the Series 2009 C Bonds, there shall first be deposited with the Commission in the Series 2009 C Bonds Sinking Fund, the amount, if any set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 C Bonds for the period commencing on the date of issuance of the Series 2009 C Bonds and ending 6 months after the estimated date of completion of construction of the Project.

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

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

E. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2009 B Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Project Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2009 B Bonds.

G. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2009 C Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Project Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2009 C Bonds.

H. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2009 Bonds shall be applied as directed by the DEP.

Section 6.02. Disbursements From the Bond Project Fund.

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

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 Bonds Project Fund shall be made only after submission to and approval from the DEP, of a completed and signed "Payment Requisition Form," a form of which is attached to the ARRA Assistance Agreement for the Series 2009 Bonds, in compliance with the construction schedule.

Pending such application, monies in the respective Bond Project Funds shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2009 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2009 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds Not to be Indebtedness of the Issuer. The Series 2009 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by the Bond Legislation. No Registered Owner of the Series 2009 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Bonds. The payment of the debt service of the Series 2009 B Bonds and the Series 2009 C Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the lien on such Net Revenues in favor of the Holders of the Series 2009 A Bonds and First Lien Bonds and senior and prior to the lien on the net Revenues in favor of the Registered Owners of the Second Lien Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2009 Bonds, the Series 2009 A Bonds and the Prior Bonds and to make all other payments provided for in this Bond Legislation and the Prior Resolutions, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and shall provide an opinion of counsel to the Issuer of such effect. Such rates and charges shall be sufficient to comply with the requirements of the ARRA Assistance Agreement and the Issuer shall supply a certificate of certified public accountant to such effect.

So long as the Series 2009 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the ARRA Assistance Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2009

Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the ARRA Assistance Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the ARRA Assistance Agreement.

The Issuer covenants not to reduce its approved customer rates for at least 18 months after completion of the Project or (a) until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses or (b) new rates have been established by order of the Public Service Commission of West Virginia. The Issuer shall notify the Authority and the DEP of any action to reduce rates during the 18 months following completion of the Project.

Section 7.05. Sale of the System. So long as the Series 2009 Bonds, the Series 2009 A Bonds and the Prior Bonds are outstanding and except as otherwise required by law or with the written consent of the DEP, the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2009 Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, and, with the written permission of the DEP, the Authority and the Council, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2009 Bonds. Any balance remaining after the payment of the Series 2009 Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by

resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amount required to be paid into said fund by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2009 Bonds, the Series 2009 A Bonds and the Prior Bonds; provided, however, that Parity Bonds may be issued as provided for in Section 7.07 hereof and in the Prior Resolutions (so long as the First Lien Bonds are Outstanding). All obligations issued by the Issuer after the issuance of the Series 2009 Bonds and payable from the revenues of the System, except such additional parity bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2009 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all finds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

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

The Issuer shall give the DEP, the Authority and the Council prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the First Lien Bonds and the Series 2009 A Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Resolution shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 Bonds pursuant to this Bond

Legislation, without the prior written consent of the Authority, the DEP and the Council and without complying with the conditions and requirements herein provided.

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

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

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

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer and approved by the Public Service Commission of West Virginia, the time for appeal of which shall have expired prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 2009 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 Bonds.

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

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

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

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to

inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the DEP, the Council, the Authority, or any other original purchaser of the Series 2009 Bonds, and shall mail in each year to any Holder or Holders of the Series 2009 Bonds, requesting the same, an annual report containing the following:

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with the applicable 0MB Circular and the Single Audit Act, or any successor thereto), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2009 Bonds, and shall submit said report to the DEP, the Council and the Authority, or any other original purchaser of the Series 2009 Bonds. Such audit report submitted to the DEP, the Authority and the Council shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the ARRA Assistance Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

The Issuer shall permit the DEP, the Authority and the Council, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of installation of the Project, the Issuer shall also provide the DEP, the Authority and the Council, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the DEP, the Authority and the Council with respect to the System pursuant to the Act.

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

Section 7.09. Rates. So long as the Prior Bonds are outstanding, any requirement for rates set forth in the Prior Resolutions shall be met. Prior to the issuance of the Series 2009 Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 2009 Bonds, including the First Lien Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2009 B Bonds Reserve Account, the Series 2009 C Reserve Account and the reserve accounts for obligations on a parity with or junior to the Series 2009 Bonds, including the Prior Bonds and the Series 2009 A Bonds, are funded at least at the requirement therefore, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 2009 Bonds, including the First Lien Bonds and the Series 2009 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.04.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by

resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the DEP, the Authority and the Council within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the DEP, the Authority and the Council and to any Holder of any Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP, the Authority and the Council and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the ARRA Assistance Agreement, and forward a copy of such report to the DEP, the Authority and the Council by the 10th day of each month.

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

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

The Issuer shall require the Consulting Engineers to submit Recipient Record Drawings, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the ARRA Assistance Agreement for the Series 2009 B Bonds as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the Site Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all State and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the ARRA Assistance Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider, subject to any

required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. Except as required by law, the Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

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

(I) FIRE, LIGHTNING, VANDALISM. MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the ARRA Assistance Agreement, during installation 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 installation contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will

be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

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

The Issuer shall also require all contractors engaged in the installation of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the ARRA Assistance Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the sewerage facilities portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other

method approved by the State Division of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project and all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project, the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal and the Issuer shall provide an opinion of counsel to such effect.

Section 7.18. Reserved.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2009 Bonds and shall be on a parity with the First Lien Bonds and the Series 2009 A Bonds and senior and prior to the Second Lien Bonds.

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

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

Section 7.21. Reserved.

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

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2009 Bonds held in "contingency" as set forth in the respective schedules attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP and the Council before expending any proceeds of the Series 2009 Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

ARTICLE VIII

INVESTMENT OF FUNDS

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2009 Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 Bonds as a condition to issuance of the Series 2009 Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2009 Bonds as may be necessary in order to maintain the status of the Series 2009 Bonds as public purpose bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2009 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the Council or the DEP, as the case may be,

from which the proceeds of the Series 2009 Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the Council or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2009 Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

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

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2009 Bonds; or

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

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

(4) If default occurs with the Prior Bonds or the Series 2009 A Bonds.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2009 Bonds shall be on a parity with the Holders of the Prior Bonds and the Series 2009 A Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and

installation of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2009 Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 Bonds, this Resolution may be amended or supplemented in any way by a Supplemental Resolution. Following issuance of the Series 2009 Bonds, no material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein respectively pledged therefore without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2009 Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

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

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

Section 11.05. Conflicting Provisions Repealed. All orders or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed, provided that, in the event of any conflict between this Resolution and the Prior Resolutions, the Prior Resolutions shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been

performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairperson, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Resolution shall take effect immediately following adoption and the public hearing.

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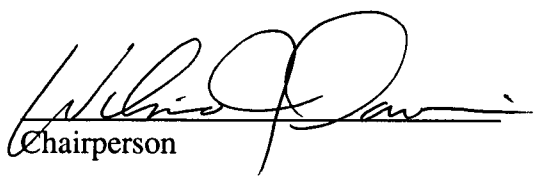
Adopted this 18th day of November, 2009.



Chairperson

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of UNION PUBLIC SERVICE DISTRICT on the 18th day of November, 2009.

Dated: November 20, 2009.

[SEAL, IF ANY]

Secretary

EXHIBIT A

PROJECT DESCRIPTION

The Project consists of the construction of improvements to the District's 40th Street wastewater treatment facility and the construction of an extension of its wastewater collection lines, together with all appurtenant facilities.

EXHIBIT B

ARRA Assistance Agreement included in bond transcript as Document 2.5.

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C (WEST VIRGINIA CWSRF PROGRAM)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE UNION PUBLIC SERVICE DISTRICT SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA CWSRF/ARRA), SEWER REVENUE BONDS, SERIES 2009 C (WEST VIRGINIA CWSRF PROGRAM); DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board of Union Public Service District (the "Issuer") has duly and officially passed a Bond Resolution on November 18, 2009 (the "Bond Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWER FACILITIES OF UNION PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF $1,363,613 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WVCWSRF PROGRAM/ARRA) AND $3,074,294 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS SERIES 2009 C (WVCWSRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING

FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance when used herein;

WHEREAS, the Bond Resolution provides for the issuance of Sewer Revenue Bonds, Series 2008 B (WVCWSRF Program/ARRA), in an aggregate principal amount of $1,363,613 (the "Series 2009 B Bonds") and Sewer Revenue Bonds, Series 2008 C (WVCWSRF Program), in an aggregate principal amount not to exceed $3,074,294 (the "Series 2009 C Bonds" and together with the Series 2009 B Bonds, the "Bonds"), and has authorized the execution and delivery of the ARRA assistance agreements relating to the Series 2009 B Bonds and the Series 2009 C Bonds, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia department of Environmental Protection (the "DEP") (the "ARRA Assistance Agreement"), all in accordance with Chapter 16, Article 13A and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Bond Resolution it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of each series of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Issuer desires to issue the Bonds pursuant to the Ordinance;

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the ARRA Assistance Agreement be approved, executed and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF UNION PUBLIC SERVICE DISTRICT, AS FOLLOWS:

Section 1. Pursuant to the Bond Resolution, there are hereby authorized to issue the following Bonds of the Issuer:

A. Series 2009 B Bonds. Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA) of the Issuer, shall be in the form of a single bond, numbered BR-1, shall be issued in the principal amount of $1,363,613, shall be dated such date, shall finally mature no later than September 1, 2021, shall bear no interest. The principal and interest of the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2011, in the amounts as set forth in the Schedule Y attached to the ARRA Assistance Agreement and incorporated in and made a part of the Series 2009 B Bonds. The Series 2009 B Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2009 B Bonds.

B. Series 2009 C Bonds. Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF) shall be in the form of a single bond, numbered CR-l, in the principal amount of $3,074,294. The Series 2009 C Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2031, and shall bear no interest. The principal of the Series 2009 C Bonds shall be payable quarterly by forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2011, to and including September 1, 2031, and in the amounts as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Series 2009 C Bonds. The Series 2009 C Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2009 C Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Series 2009 C Bonds set forth in the "Schedule Y" attached to the ARRA Assistance Agreement.

Section 2. The Issuer hereby appoints and designates City National Bank, Cross Lanes, West Virginia, to serve as Depository Bank for the Bonds under the Ordinance.

Section 3. The Municipal Bond Commission (the "Commission") is appointed as Paying Agent for the Bonds.

Section 4. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Resolution.

Section 5. The ARRA Assistance Agreement and the execution and delivery by the Chairperson thereof shall be and the same are hereby authorized, approved, and directed. The Chairperson shall execute and deliver the ARRA Assistance

Agreement with such changes, insertions and omissions as may be approved by the Chairperson. The execution of the ARRA Assistance Agreement by the Chairperson shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the ARRA Assistance Agreement relating to the issuance and sale of the Bonds, including the payment of all necessary fees and expenses in connection therewith.

Section 6. The Issuer hereby appoints and designates United Bank, Inc., to serve as Registrar (the "Registrar") for the Bonds under the Bond Resolution and approves and accepts the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Chairperson, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 7. The Chairperson is hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Resolution approved and provided for, to the end that the Bonds may be delivered to the West Virginia Water Development Authority pursuant to the ARRA Assistance Agreement on or about November 20, 2009.

Section 8. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Resolution held by the Depository Bank until expended, in money market accounts secured by a pledge of direct obligations of, or obligations the timely payment of principals of and interest on which is guaranteed by, the United States of America, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer.

Section 9. The Issuer shall serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer shall not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority (the "Authority"). Following completion of the Project the Issuer shall certify to the Authority the number of customers added to the System.

Section 10. The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 11. The Special Conditions of the ARRA Assistance Agreement are attached as Exhibit A and are incorporated into this Supplemental Resolution.

Section 12. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 13. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

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Adopted this 18th day of November, 2009.

UNION PUBLIC SERVICE DISTRICT

Its: Chairperson

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of Union Public Service District on the 18th day of November, 2009.

Dated this 20th day of November, 2009.

[SEAL]

Secretary

EXHIBIT A

SPECIAL CONDITIONS

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

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP.

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

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

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

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of

specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American

Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

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

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond funded by ARRA funds shall be designated "Series [2009] B" and shall contain "(WVCWSRF Program/ARRA)" in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

RESOLUTION OF THE PUBLIC SERVICE BOARD OF UNION PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING TO THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWER FACILITIES OF THE DISTRICT AND AUTHORIZING PAYMENT THEREOF

WHEREAS, Union Public Service District (the "District") has reviewed the invoices attached hereto and incorporated herein by reference relating to the completion of acquisition and construction of certain improvements and extensions to the existing public sewer system of the District to be financed in part by the proceeds of the District's Sewer Revenue Bonds, Series 2009 A (United States Department of Agriculture), Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA) and the Sewer Revenue Bonds, Series 2009 C (WVCWSRF Program), and by other sources, and finds as follows:

(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 now due and owing.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF UNION PUBLIC SERVICE DISTRICT AS FOLLOWS:

There is hereby authorized and directed the payment of the attached invoices as summarized as follows:

Vendor		Amount
Jackson Kelly PLLC	$	44,500.00
Thrasher Engineering, Inc.	$	192,500.00
Thrasher Engineering, Inc.	$	5,000.00
H. Wyatt Hanna, III	$	17,304.50
David C. Casto	$	2,200.00
United Bank	$	500.00
Union PSD	$	46,500.01
Putnam County Bank (2007 Note)	$	485,693.91
	$	794,198.42

Adopted by the Public Service Board of the District at a meeting held on the 18th day of November, 2009.

Chairperson

[SEAL]

Secretary

{C1633931.1}

SRF-ARRA/PSD
(04/02/09)

ARRA ASSISTANCE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND ARRA ASSISTANCE AGREEMENT (the "ARRA Assistance Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

UNION PUBLIC SERVICE DISTRICT (C-544417/2003S-776)
(Local Government)

W I T N E S S E T H:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, the United States Congress has provided additional capitalization grant funding under the Clean Water Act through the American Recovery and Reinvestment Act of 2009 (the "ARRA");

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act and the ARRA;

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

WHEREAS, the ARRA provides that at least fifty percent (50%) of the funds provided through the capitalization grant be provided as negative interest loans or principal forgiveness (the "ARRA Assistance");

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act, the ARRA and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

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

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

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

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

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with

moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

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

1.10 "SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

1.11 "System" means the wastewater treatment facility owned by the Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this ARRA Assistance Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Local Government by the Consulting Engineers, the DEP and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

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

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

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

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

2.6 The Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent

(100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Record Drawings, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this ARRA Assistance Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Local Government, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to DEP and the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward such forms to DEP in compliance with the Local Government's construction schedule.

2.14 The Local Government shall serve the additional customers at the location(s) as set forth in Schedule X. The Local Government shall not reduce the amount of additional customers served by the project without the prior written approval of the Authority Board. Following completion of the Project the Local Government shall certify to the Authority the number of customers added to the System.

2.15 The Local Government shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Local Government shall have delivered to the Authority and DEP a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this ARRA Assistance Agreement;

(c) The Local Government shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Local Government must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(e) The Local Government shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(g) The Local Government shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountant for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this ARRA Assistance Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government including rules, regulations and procedures promulgated under the Clean Water Act and/or the ARRA, it is hereby agreed that the Authority shall make the Loan to the Local Government and the Local Government shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this ARRA Assistance Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of

execution of this ARRA Assistance Agreement by the Authority or such later date as is agreed to in writing by DEP.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans from the Fund to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this ARRA Assistance Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the prior approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

ARTICLE IV

Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) unless waived or modified by Schedule X and to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on

the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System (or eliminating any deficiencies in the Reserve Account, if applicable); and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Local Government has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the net or gross revenues of the System as provided in the Local Act;

(ii) Unless waived in Schedule X, that the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum

amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Local Government shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and DEP; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Local Government will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Government shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and DEP within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Local Government and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for all Local Bonds;

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month. The Local Government shall authorize the Commission to electronically sweep the monthly payments from its general revenue fund or by such other means as the Authority shall direct in writing;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider; and

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees

paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

ARTICLE V

Certain Covenants of the Local Government; Imposition and Collection of User Charges; Payments To Be Made by Local Government to the Authority

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this ARRA Assistance Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this ARRA Assistance Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this ARRA Assistance Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this ARRA Assistance Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this ARRA Assistance Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this ARRA Assistance Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this ARRA Assistance Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act, the SRF Regulations or this ARRA Assistance Agreement.

6.3 The Local Government hereby agrees to give the Authority and DEP prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

ARTICLE VII

Miscellaneous

7.1 Schedules X and Y shall be attached to this ARRA Assistance Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this ARRA Assistance Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this ARRA Assistance Agreement, and this ARRA Assistance Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This ARRA Assistance Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this ARRA Assistance Agreement.

7.4 No waiver by any party of any term or condition of this ARRA Assistance Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this ARRA Assistance Agreement.

7.5 This ARRA Assistance Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.6 By execution and delivery of this ARRA Assistance Agreement, notwithstanding the date hereof, the Local Government specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.7 This ARRA Assistance Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iv) unless waived or modified by Schedule X, payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this ARRA Assistance Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the State legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the outstanding amount of the Loan made by the Authority and DEP is not terminated due to such non-funding on any balance of the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this ARRA Assistance Agreement included in its budget. Non-appropriation or non-funding of the Loan shall not be considered an event of default under this ARRA Assistance Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this ARRA Assistance Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

UNION PUBLIC SERVICE DISTRICT

(SEAL)

By: _____
Its: Chairman
Date: November 20, 2009

Attest:

_____
Its: Secretary

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

By: _____
Its: Acting Director
Date: November 20, 2009

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: November 20, 2009

Attest:

_____
Its: Secretary-Treasurer

{C1630451.1}

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

Name of Local Government
Name of Bond Issue(s)_____
Type of Project _____**Water**_____**Wastewater**
Fiscal Year _____**Report Month**_____

Item	Current Month	Total Year To Date	Budget Year To Date	Budget Year To Date Minus Total Year To Date
1. Gross Revenues				
2. Operating Expenses				
3. Bond Payments:				
Type of Issue				
Clean Water SRF				
Drinking Water TRF				
Infrastructure Fund				
Water Development Authority				
Rural Utilities Service				
Economic Development Administration				
Other (Identify)				
_____				
_____				
4. Renewal and Replacement Fund Deposits				

_____

Name of Person Completing Form

_____

Address

_____

Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of $1,200 are anticipated to be received for the year, each month the base would be increased by $100 ($1,200/12). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of $900 are anticipated to be incurred for the year, each month the base would be increased by $75 ($900/12). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____

(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the ARRA Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit

A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) the Issuer has received the Buy American Certificate from each contractor; (x) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the ARRA Assistance Agreement; (xi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

By _____
West Virginia License No.

[SEAL]

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (x).

EXHIBIT E

SPECIAL CONDITIONS – ARRA FUNDED PROJECTS

The Local Government shall include the following covenants in its bond authorizing documents:

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and as approved by DEP. New systems shall submit the asset management plan to DEP when the Project is complete. Existing systems shall submit the asset management plan to DEP within six months following completion of the Project.

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL

guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond shall be designated "Series [2009] B" and shall contain "(WVCWSRF Program/ARRA)" in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved customer rates for at least eighteen months after completion of the Project or (a) until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses or (b) new rates have been established by order of the Public Service Commission. The Local Government shall notify the Authority and the DEP of any action to reduce rates during the eighteen months following completion of construction of the Project.

T. CLOSING CONDITIONS – The closing is contingent upon the receipt by DEP and the Authority of an acceptable final title opinion and a final PSC Order approving the borrowing and establishing rates.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Local Government] on [Date].

Sinking Fund:	
Interest	$
Principal	$
Total:	$
Reserve Account:	$

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Ladies and Gentlemen:

We are bond counsel to _____ (the "Local Government"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a ARRA assistance agreement dated _____, ____, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental

resolution duly adopted by the Local Government on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the ARRA Assistance Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the ARRA Assistance Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The ARRA Assistance Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

3. The Local Government is a duly organized and validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the ARRA Assistance Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net

or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

A. Series A Bonds (CWSRF Base Program)

Principal Amount of Local Bonds $3,074,294
Purchase Price of Local Bonds $3,074,294

The Local Bonds shall bear no interest. Commencing December 1, 2011, principal of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal only and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government:

(i) Union Public Service District Sewer Revenue Bonds, Series 1991 A dated August 28, 1992, issued in the original aggregate principal amount of $2,139,656;

(ii) Union Public Service District Sewer Revenue Bonds, Series 1991 B dated August 28, 1992, issued in the original aggregate principal amount of $4,229,604;

(iii) Union Public Service District Sewer Revenue Bonds, Series 1996 A dated April 4, 1996, issued in the original principal amount of $344,416; and

(iv) Union Public Service District Sewer Revenue Bonds, Series 1991 C dated August 28, 1992, issued in the original aggregate principal amount of $237,602.

Number of New Customers to Be Served: 264
Location: Areas of Big Tyler Road and Little Tyler Road

B. Series B Bonds (ARRA)

Principal Amount of Local Bonds $1,363,613
Purchase Price of Local Bonds $1,363,613

The Local Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Local Bonds. Principal forgiveness shall begin on December 1, 2011 and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached hereto and incorporated herein by reference.

The Local Bonds are fully registered in the name of the Authority.

The Local Government shall make monthly payments into the Renewal and Replacement Fund as required by Section 4.1 of this Agreement for at least the term of the Local Bonds.

The Local Government shall notify the Authority and the Council of any proposed bond indebtedness secured by the revenues of the System.

SCHEDULE Y
DEBT SERVICE SCHEDULE

	20 Years			
	0% Interest Rate, 1% Administrative Fee			
	Dated Date		11/20/09	
	Delivery Date		11/20/09	
				Series C
Period Ending	**Principal**		**Interest**	**Debt Service**
11/20/09				
12/1/11	38,429			38,429
3/1/12	38,429			38,429
6/1/12	38,429			38,429
9/1/12	38,429			38,429
12/1/12	38,429			38,429
3/1/13	38,429			38,429
6/1/13	38,429			38,429
9/1/13	38,429			38,429
12/1/13	38,429			38,429
3/1/14	38,429			38,429
6/1/14	38,429			38,429
9/1/14	38,429			38,429
12/1/14	38,429			38,429
3/1/15	38,429			38,429
6/1/15	38,429			38,429
9/1/15	38,429			38,429
12/1/15	38,429			38,429
3/1/16	38,429			38,429
6/1/16	38,429			38,429
9/1/16	38,429			38,429
12/1/16	38,429			38,429
3/1/17	38,429			38,429
6/1/17	38,429			38,429
9/1/17	38,429			38,429
12/1/17	38,429			38,429
3/1/18	38,429			38,429
6/1/18	38,429			38,429
9/1/18	38,429			38,429
12/1/18	38,429			38,429
3/1/19	38,429			38,429
6/1/19	38,429			38,429
9/1/19	38,429			38,429
12/1/19	38,429			38,429
3/1/20	38,429			38,429
6/1/20	38,429			38,429
9/1/20	38,429			38,429
12/1/20	38,429			38,429
3/1/21	38,429			38,429
6/1/21	38,429			38,429
9/1/21	38,429			38,429

	20 Years			
	0% Interest Rate, 1% Administrative Fee			
	Period Ending	**Principal**	**Interest**	**Debt Service**
	12/1/21	38,429		38,429
	3/1/22	38,429		38,429
	6/1/22	38,429		38,429
	9/1/22	38,429		38,429
	12/1/22	38,429		38,429
	3/1/23	38,429		38,429
	6/1/23	38,429		38,429
	9/1/23	38,429		38,429
	12/1/23	38,429		38,429
	3/1/24	38,429		38,429
	6/1/24	38,429		38,429
	9/1/24	38,429		38,429
	12/1/24	38,429		38,429
	3/1/25	38,428		38,428
	6/1/25	38,428		38,428
	9/1/25	38,428		38,428
	12/1/25	38,428		38,428
	3/1/26	38,428		38,428
	6/1/26	38,428		38,428
	9/1/26	38,428		38,428
	12/1/26	38,428		38,428
	3/1/27	38,428		38,428
	6/1/27	38,428		38,428
	9/1/27	38,428		38,428
	12/1/27	38,428		38,428
	3/1/28	38,428		38,428
	6/1/28	38,428		38,428
	9/1/28	38,428		38,428
	12/1/28	38,428		38,428
	3/1/29	38,428		38,428
	6/1/29	38,428		38,428
	9/1/29	38,428		38,428
	12/1/29	38,428		38,428
	3/1/30	38,428		38,428
	6/1/30	38,428		38,428
	9/1/30	38,428		38,428
	12/1/30	38,428		38,428
	3/1/31	38,428		38,428
	6/1/31	38,428		38,428
	9/1/31	38,429		38,429
		3,074,294	*	**3,074,294**
	*Plus a quarterly administrative fee of $3,890.89 for a total Administrative expense of $311,271.20			

	10 Years			
	Dated Date	11/20/09		
	Delivery Date	11/20/09		
				Series B
Period Ending	Debt Service		Principal Forgiveness	
11/20/09				
12/1/11	-34,091		-34,091	
3/1/12	-34,091		-34,091	
6/1/12	-34,091		-34,091	
9/1/12	-34,091		-34,091	
12/1/12	-34,091		-34,091	
3/1/13	-34,091		-34,091	
6/1/13	-34,091		-34,091	
9/1/13	-34,091		-34,091	
12/1/13	-34,091		-34,091	
3/1/14	-34,091		-34,091	
6/1/14	-34,091		-34,091	
9/1/14	-34,091		-34,091	
12/1/14	-34,090		-34,090	
3/1/15	-34,090		-34,090	
6/1/15	-34,090		-34,090	
9/1/15	-34,090		-34,090	
12/1/15	-34,090		-34,090	
3/1/16	-34,090		-34,090	
6/1/16	-34,090		-34,090	
9/1/16	-34,090		-34,090	
12/1/16	-34,090		-34,090	
3/1/17	-34,090		-34,090	
6/1/17	-34,090		-34,090	
9/1/17	-34,090		-34,090	
12/1/17	-34,090		-34,090	
3/1/18	-34,090		-34,090	
6/1/18	-34,090		-34,090	
9/1/18	-34,090		-34,090	
12/1/18	-34,090		-34,090	
3/1/19	-34,090		-34,090	
6/1/19	-34,090		-34,090	
9/1/19	-34,090		-34,090	
12/1/19	-34,090		-34,090	
3/1/20	-34,090		-34,090	
6/1/20	-34,090		-34,090	
9/1/20	-34,090		-34,090	
12/1/20	-34,090		-34,090	
3/1/21	-34,090		-34,090	
6/1/21	-34,090		-34,090	
9/1/21	-34,091		-34,091	
	-1,363,613		**-1,363,613**	

UNION PUBLIC SERVICE DISTRICT

Special Meeting Minutes

A Special Meeting of the Commissioners of Union Public Service District was held at the District's business office located at 5110 Washington Street, West, Cross Lanes, Kanawha County, West Virginia, on Wednesday, November 18, 2009, at 10:00 a.m.

Present were:

Wilma J. Davis, Chairperson
Dr. Charles Warner, Commissioner (Via Telephone)
Joe Williams, Commissioner
William D. Carter, General Manager
Earl Burks, Assistant General Manager
Jacob Pack, Office Manager
H. Wyatt Hanna, III, Attorney
Tracey Rowan, US Dept. Of Agriculture, RUS
Samme Gee, Esquire

The Special Meeting was called to order by Chairperson Davis. Noting a quorum, and that there was no old business on the meeting agenda, the Board proceeded to new business. The first item concerned Amendment No. 1 to the Letter of Conditions the District had received from the United States Department of Agriculture, Rural Utility Service, with regard to the District's loan with that agency for the proposed Big Tyler/Little Tyler extension project and upgrade of the 40th Street wastewater treatment plant facility. Tracey Rowan, a representative of RUS, circulated the Amendment and a proposed letter from the District to meet all loan conditions. After a brief presentation by Ms. Rowan, it was moved by Joe Williams and seconded by Dr. Charles Warner that the Amendment and the letter be approved and that the District's Chairperson, Wilma J. Davis, be authorized to sign the documents on behalf of the District. This Motion was unanimously passed.

The Board then proceeded to the next item on the agenda under New Business. Samme Gee, Esquire, the District's Bond Counsel, with Jackson

Kelly, presented a series of bond resolutions which were read by title. The first resolution was as follows: RESOLUTION AUTHORIZING THE PAYMENT OF THE UNION PUBLIC SERVICE DISTRICT SEWERAGE SYSTEM DESIGN NOTES, SERIES 2007 A (PUTNAM COUNTY BANK) AND THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWER FACILITIES OF UNION PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN $4,172,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO. After an explanation of the Bond Resolution by Ms. Gee, it was moved by Joe Williams and seconded by Dr. Charles Warner, that the Bond Resolution as presented be approved and that the District's Chairperson, Wilma J. Davis, Joe Williams, as Secretary, and Dr. Charles Warner be authorized to sign the document on behalf of the District. This Motion was unanimously passed.

Ms. Gee next presented a Supplemental Resolution titled SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE UNION PUBLIC SERVICE DISTRICT SEWER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DESIGNATING A DEPOSITORY BANK AND MAKING OTHER PROVISIONS AS TO THE BONDS. After an explanation by Ms. Gee of this Supplemental Resolution, it was moved by Joe Williams and seconded by Dr. Charles Warner, that this Supplemental Bond Resolution as presented be approved and that the District's Chairperson, Wilma J. Davis, Joe Williams, as Secretary, and Dr. Charles Warner be authorized

to sign the document on behalf of the District. This Motion was unanimously passed.

Ms. Gee then presented a Resolution titled RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWER FACILITIES OF UNION PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE DISTRICT OF $1,363,613 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WVCWSRF PROGRAM/ARRA) AND $3,074,294 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS SERIES 2009 C (WVCWSRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING ARRA ASSISTANCE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO. After an explanation of this Bond Resolution by Ms. Gee, it was moved by Joe Williams and seconded by Dr. Charles Warner, that the Bond Resolution as presented be approved and that the District's Chairperson, Wilma J. Davis, Joe Williams, as Secretary, and Dr. Charles Warner be authorized to sign the document on behalf of the District. This Motion was unanimously passed.

Ms. Gee then proceeded to read by title the following Supplemental Resolution: SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE UNION PUBLIC SERVICE DISTRICT SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA CWSRF/ARRA), SEWER REVENUE BONDS, SERIES C (WEST VIRGINIA CWSRF PROGRAM); DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS. After an

explanation by Ms. Gee of the Supplemental Resolution, it was moved by Joe Williams and seconded by Dr. Charles Warner, that the Supplemental Bond Resolution as presented be approved and that the District's Chairperson, Wilma J. Davis, Joe Williams, as Secretary, and Dr. Charles Warner be authorized to sign the document on behalf of the District. This Motion was unanimously passed.

The Board was then provided with a Resolution designating United Bank, Inc., as Registrar for the subject bonds. After an explanation of the Resolution by Ms. Gee, it was moved by Joe Williams and seconded by Dr. Charles Warner, that the Resolution as presented by approved and that the District's Chairperson, Wilma J. Davis, Joe Williams, as Secretary, and Dr. Charles Warner be authorized to sign the document on behalf of the District. This Motion was unanimously passed.

A Sweep Resolution concerning the monthly debt service payments on the bonds was presented with an explanation being provided by Ms. Gee. After discussion, it was moved by Dr. Charles Warner and seconded by Joe Williams that the District authorize the Sweep Resolution as presented and that the District's Chairperson, Wilma J. Davis, be authorized to sign the Sweep Resolution on behalf of the District. This Motion was unanimously passed. A copy of said Sweep Resolution is attached hereto and made a part of these meeting minutes for all pertinent purposes.

A Resolution was then presented to the District Board concerning certain invoices totaling $794,198.42 relating to the District's project and authorizing payment thereof. Upon motion made by Joe Williams and seconded by Dr. Charles Warner, it was moved that the Resolution be approved and that the District's Chairperson, Wilma J. Davis, and Joe Williams be authorized to sign the document on behalf of the District. This Motion was unanimously passed. A copy of the Resolution is attached

hereto and made a part of these meeting minutes for all pertinent purposes.

Upon motion made by Joe Williams and seconded by Dr. Charles Warner, it was moved that the meeting be recessed in order to permit the Commissioners to sign all of the necessary documents. This Motion was unanimously passed and the meeting was recessed.

After the recess, it was moved by Joe Williams and seconded by Dr. Charles Warner that the Board return to the regular order of business as specified on the Special Meeting agenda.

There being no further business to discuss under either old or new business, a motion for adjournment was made by Joe Williams and seconded by Dr. Charles Warner. The meeting was adjourned upon passage of said motion.

Joe Williams, Secretary

Wilma J. Davis, Chairperson

RESOLUTION OF THE PUBLIC SERVICE BOARD OF UNION PUBLIC SERVICE DISTRICT APPROVING INVOICES RELATING TO THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWER FACILITIES OF THE DISTRICT AND AUTHORIZING PAYMENT THEREOF

WHEREAS, Union Public Service District (the "District") has reviewed the invoices attached hereto and incorporated herein by reference relating to the completion of acquisition and construction of certain improvements and extensions to the existing public sewer system of the District to be financed in part by the proceeds of the District's Sewer Revenue Bonds, Series 2009 A (United States Department of Agriculture), Sewer Revenue Bonds, Series 2009 B (WVCWSRF Program/ARRA) and the Sewer Revenue Bonds, Series 2009 C (WVCWSRF Program), and by other sources, and finds as follows:

(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 now due and owing.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF UNION PUBLIC SERVICE DISTRICT AS FOLLOWS:

There is hereby authorized and directed the payment of the attached invoices as summarized as follows:

Vendor		Amount
Jackson Kelly PLLC	$	44,500.00
Thrasher Engineering, Inc.	$	192,500.00
Thrasher Engineering, Inc.	$	5,000.00
H. Wyatt Hanna, III	$	17,304.50
David C. Casto	$	2,200.00
United Bank	$	500.00
Union PSD	$	46,500.01
Putnam County Bank (2007 Note)	$	485,693.91
	$	794,198.42

Adopted by the Public Service Board of the District at a meeting held on the 18th day of November, 2009.

Chairperson

[SEAL]

Secretary

SWEEP RESOLUTION

WHEREAS, Union Public Service District (the "Issuer") a public service district, public corporation and political subdivision of the State of West Virginia;

WHEREAS, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

WHEREAS, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

WHEREAS, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

WHEREAS, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer sweeping the Issuer's account.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1) The monthly debt service payments on the Bonds, as set forth in Exhibit A, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A in such form and at such directions as are provided by the MBC.

2) The Chairperson and Secretary are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond debt service and reserve fund payments.

3) This resolution shall be effective immediately upon adoption.

Adopted this 18th day of November, 2009.

(Authorized Officer)

EXHIBIT A

List each bond issue and the Bank account number from which the electronic transfer will be made.

Bond Issue	Bank Account Information – Last 4 Digits	Monthly Amount
Series 1991 A Sinking Fund	2644	
Series 1991 A Reserve Account	2644	
Series 1991 B Sinking Fund	2644	
Series 1991 B Reserve Account	2644	
Series 1991 C Sinking Fund	2644	
Series 1991 C Reserve Account	2644	
Series 1996 A Sinking Fund	2644	
Series 1996 A Reserve Account	2644	
Series 2009 A Reserve Account	2644	
Series 2009 C Sinking Fund	2644	
Series 2009 C Reserve Account	2644	

Required:

Email for main contact: unionpublic@wirefire.com

West Virginia Municipal Bond Commission

Suite 500
8 Capitol Street
Charleston, WV 25301
(304) 558-3971

Direct Debit Authorization Form

Please complete the following information

Entity Name Union Public Service District

Address 5110 West Washington Street, Cross Lanes, WV 25313

Phone Number (304) 776-3131

I hereby authorize the West Virginia State Treasurer's Office to remove funds from the bank accounts listed below in order to make payments to the West Virginia Municipal Bond Commission.
In the event of a change of bank account numbers, I will notify the West Virginia State Treasurer's Office and the Municipal Bond Commission as soon as possible. I will provide a reasonable amount of time for the change to occur. I understand that a transaction might be reversed or corrected in the event of an error.

Account Nickname	Bank Name	Bank Routing #	Bank Account#
Operations and Maintenance	City National Bank	051904524	3000002644

Signature of Authorized Person | Chairperson (Title) | November 20, 2009 (Date)

{C1633928.1}

CHARLESTON NEWSPAPERS
P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS

LEGAL ADVERTISING INVOICE

INVOICE DATE	11/09/09
ACCOUNT NBR	005346106
SALES REP ID	0022
INVOICE NBR	622240001

BILLED TO

UNION PUBLIC SERVICE DISTRIC
5110 W. WASHINGTON STREET, PO BOX
CHARLESTON WV 25356 USA

Please return this portion with your payment. AMOUNT PAID: _____

Make checks payable to: Charleston Newspapers

CHARLESTON NEWSPAPERS
P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS
FEIN 55-0676079

INVOICE DATE	11/09/09
ACCOUNT NBR	005346106
SALES REP ID	0022
INVOICE NBR	622240001

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ISSUE DATE	AD TYPE	PUB	DESCRIPTION REFERENCE NBR PURCHASE ORDER #	AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
11/06	LEG	GZ	Notice of Special Me 622240001	0406445	1X0725 7.25	8.82	63.95	63.95
			TOTAL INVOICE AMOUNT					63.95

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

I, Lanara Legg of

THE CHARLESTON GAZETTE,

do solemnly swear that the legal notice of:
Notice of Special Meetin

was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:
11/06/09-11/06/09

Subscribed and sworn to before me this 10 day of November.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LYNN R. FIELDER
253 FRAZIER WAY
SCOTT DEPOT, WV 25560
My commission expires December 11, 2016

Lynn R Fielder
Notary Public of Kanawha County, West Virginia

UNION PUBLIC SERVICE DISTRICT

NOTICE OF SPECIAL MEETING

The **Public Service Board of Union Public Service District (the "District") will hold a regular meeting on Wednesday, November 18, 2009, at 10:00 a.m.,** prevailing time, at the District's office at 5110 West Washington Street, Cross Lanes, West Virginia, for the following purposes:

1. To consider and adopt a proposed Bond Resolution authorizing its Sewer Revenue Bonds, Series 2009 A (United States Department of Agriculture), in the aggregate principal amount not to exceed $4,172,000 (the "Series 2009 A Bonds"), to pay the costs of extensions and improvements to the existing public sewerage facilities of the District (the "Project"), the costs of paying the District's Sewerage System Design Notes, Series 2007 A (Putnam County Bank) and the costs of issuance and related costs.

2. To consider and adopt a proposed Bond Resolution authorizing its Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF/ARRA) (the "Series 2009 B Bonds") and Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF) (the "Series 2009 C Bonds"), to pay the costs of the Project and costs of issuance and related costs.

3. To consider and adopt proposed Resolutions approving the terms and other provisions of the Series 2009 A Bonds, Series 2009 B Bonds and Series 2009 C Bonds.

4. To consider and adopt proposed Resolutions approving the invoices in connection with the Project for payment with proceeds of the Series 2009 A Bonds, Series 2009 B Bonds and Series 2009 C Bonds.

5. To consider and approve all other documents and matters in connection with the financing and construction of the Project.

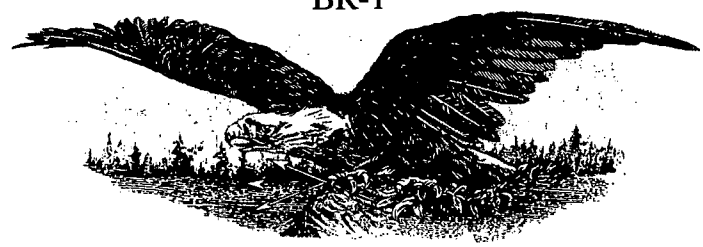
This meeting is open to the press and the public and any person interested may attend such meeting.

/s/Joe Williams
Secretary

(406445)

NUMBER

BR-1



SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WVCWSRF PROGRAM/ARRA)

No. BR-1 $1,363,613

KNOW ALL MEN BY THESE PRESENTS: The 20th of November, 2009, that UNION PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Kanawha County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of ONE MILLION THREE HUNDRED SIXTY-THREE THOUSAND SIX HUNDRED THIRTEEN DOLLARS ($1,363,613), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2011, to and including September 1, 2021, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

This Bond shall bear no interest. Principal installments, if any, of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated November 20, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewer facilities of the

Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewer facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on November 18, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 18, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1991 A, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,139,656; (2) SEWER REVENUE BONDS, SERIES 1991 B, DATED AUGUST 28, 1991, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $4,229,604; (3) SEWER REVENUE BONDS, SERIES 1996 A, DATED APRIL 4, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $344,416 (COLLECTIVELY, THE "FIRST LIEN BONDS"); (4) SEWER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,172,000 (THE "SERIES 2009 A BONDS"); AND (5) SEWER REVENUE BONDS, SERIES 2009 C (WVCWSRF PROGRAM), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $3,074,294 (THE "SERIES 2009 C BONDS").

THIS BOND IS ISSUED SENIOR AND PRIOR TO LIENS, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT WITH THE ISSUER'S SEWER REVENUE BONDS, SERIES 1991 C, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $237,602 (THE "SECOND LIEN BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2009 A Bonds, the Series 2009 C Bonds and the First Lien Bonds, from any monies in the reserve account authorized to be created under the Bond Legislation for the Bonds

(the "Series 2009 B Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to, on a parity with or junior to the Bonds, including the Series 2009 A Bonds, the Series 2009 C Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Inc., Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, UNION PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal, if any, to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL, IF ANY]

SPECIMEN
Chairperson

ATTEST:

SPECIMEN
Secretary

NUMBER

BR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: November 20, 2009.

UNITED BANK, INC.,
as Registrar

SPECIMEN

Authorized Officer

NUMBER

BR-1

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$ 221,895	11/20/09	(19)	$	
(2)	$		(20)	$	
(3)	$		(21)	$	
(4)	$		(22)	$	
(5)	$		(23)	$	
(6)	$		(24)	$	
(7)	$		(25)	$	
(8)	$		(26)	$	
(9)	$		(27)	$	
(10)	$		(28)	$	
(11)	$		(29)	$	
(12)	$		(30)	$	
(13)	$		(31)	$	
(14)	$		(32)	$	
(15)	$		(33)	$	
(16)	$		(34)	$	
(17)	$		(35)	$	
(18)	$		(36)	$	

TOTAL $_____

NUMBER

BR-1

EXHIBIT B
DEBT SERVICE SCHEDULE

	10 Years		
	Dated Date	11/20/09	
	Delivery Date	11/20/09	
			Series B
Period Ending	Debt Service		Principal Forgiveness
11/20/09			
12/1/11	-34,091		-34,091
3/1/12	-34,091		-34,091
6/1/12	-34,091		-34,091
9/1/12	-34,091		-34,091
12/1/12	-34,091		-34,091
3/1/13	-34,091		-34,091
6/1/13	-34,091		-34,091
9/1/13	-34,091		-34,091
12/1/13	-34,091		-34,091
3/1/14	-34,091		-34,091
6/1/14	-34,091		-34,091
9/1/14	-34,091		-34,091
12/1/14	-34,090		-34,090
3/1/15	-34,090		-34,090
6/1/15	-34,090		-34,090
9/1/15	-34,090		-34,090
12/1/15	-34,090		-34,090
3/1/16	-34,090		-34,090
6/1/16	-34,090		-34,090
9/1/16	-34,090		-34,090
12/1/16	-34,090		-34,090
3/1/17	-34,090		-34,090
6/1/17	-34,090		-34,090
9/1/17	-34,090		-34,090
12/1/17	-34,090		-34,090
3/1/18	-34,090		-34,090
6/1/18	-34,090		-34,090
9/1/18	-34,090		-34,090
12/1/18	-34,090		-34,090
3/1/19	-34,090		-34,090
6/1/19	-34,090		-34,090
9/1/19	-34,090		-34,090
12/1/19	-34,090		-34,090
3/1/20	-34,090		-34,090
6/1/20	-34,090		-34,090
9/1/20	-34,090		-34,090
12/1/20	-34,090		-34,090
3/1/21	-34,090		-34,090
6/1/21	-34,090		-34,090
9/1/21	-34,091		-34,091
	-1,363,613		**-1,363,613**

NUMBER

BR-1

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____ Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

NUMBER

CR-1

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 C
(WVCWSRF PROGRAM)

No. CR-1 $3,074,294

KNOW ALL MEN BY THESE PRESENTS: The 20th day of November 2009, that UNION PUBLIC SERVICE DISTRICT, a public service district, public corporation and political subdivision of the State of West Virginia in Kanawha 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 THREE MILLION SEVENTY-FOUR THOUSAND TWO HUNDRED NINETY-FOUR DOLLARS ($3,074,294), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2011, to and including September 1, 2031, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee of 1.0% (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2011, as set forth on said EXHIBIT B.

This Bond shall bear no interest. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement by and among the Issuer, the Authority and the DEP, dated November 20, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewer facilities of the

Issuer (the "Project"); [(ii) to fund a reserve account for the Bonds of this Series (the "Bonds")] and (iii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewer facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Resolution duly adopted by the Issuer on November 18, 2009, and a Supplemental Resolution duly adopted by the Issuer on November 18, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS (EXCEPT FOR DESIGNATED TRUST FUNDS AND ACCOUNTS), WITH THE ISSUER'S: (1) SEWER REVENUE BONDS, SERIES 1991 A, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,139,656; (2) SEWER REVENUE BONDS, SERIES 1991 B, DATED AUGUST 28, 1991, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF $4,229,604; (3) SEWER REVENUE BONDS, SERIES 1996 A, DATED APRIL 4, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $344,416 (COLLECTIVELY, THE "FIRST LIEN BONDS"); (4) SEWER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,172,000 (THE "SERIES 2009 A BONDS"); AND (5) SEWER REVENUE BONDS, SERIES 2009 B (WVCWSRF PROGRAM/ARRA), DATED NOVEMBER 20, 2009, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,363,613 (THE "SERIES 2009 B BONDS").

THIS BOND IS ISSUED SENIOR AND PRIOR TO LIENS, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT WITH THE ISSUER'S SEWER REVENUE BONDS, SERIES 1991 C, DATED AUGUST 28, 1991, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $237,602 (THE "SECOND LIEN BONDS" AND TOGETHER WITH THE FIRST LIEN BONDS, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series

2009 A Bonds, the Series 2009 B Bonds and the First Lien Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 C Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2009 C Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to, on a parity with or junior to the Bonds, including the Series 2009 A Bonds, the Series 2009 B Bonds and the Prior Bonds; provided however, that so long as there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of United Bank, Inc., Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is

created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, UNION PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairperson and its corporate seal, if any, to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL, IF ANY]

SPECIMEN

Chairperson

ATTEST:

SPECIMEN

Secretary

NUMBER

CR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 C Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: November 20, 2009.

UNITED BANK, INC.,
as Registrar

Authorized Officer

NUMBER

CR-1

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) $		(19) $	
(2) $		(20) $	
(3) $		(21) $	
(4) $		(22) $	
(5) $		(23) $	
(6) $		(24) $	
(7) $		(25) $	
(8) $		(26) $	
(9) $		(27) $	
(10) $		(28) $	
(11) $		(29) $	
(12) $		(30) $	
(13) $		(31) $	
(14) $		(32) $	
(15) $		(33) $	
(16) $		(34) $	
(17) $		(35) $	
(18) $		(36) $	

TOTAL $_____

NUMBER

CR-1

EXHIBIT B
DEBT SERVICE SCHEDULE

	20 Years				
	0% Interest Rate, 1% Administrative Fee				
		Dated Date		11/20/09	
		Delivery Date		11/20/09	
					Series C
	Period Ending	**Principal**		**Interest**	**Debt Service**
	11/20/09				
	12/1/11	38,429			38,429
	3/1/12	38,429			38,429
	6/1/12	38,429			38,429
	9/1/12	38,429			38,429
	12/1/12	38,429			38,429
	3/1/13	38,429			38,429
	6/1/13	38,429			38,429
	9/1/13	38,429			38,429
	12/1/13	38,429			38,429
	3/1/14	38,429			38,429
	6/1/14	38,429			38,429
	9/1/14	38,429			38,429
	12/1/14	38,429			38,429
	3/1/15	38,429			38,429
	6/1/15	38,429			38,429
	9/1/15	38,429			38,429
	12/1/15	38,429			38,429
	3/1/16	38,429			38,429
	6/1/16	38,429			38,429
	9/1/16	38,429			38,429
	12/1/16	38,429			38,429
	3/1/17	38,429			38,429
	6/1/17	38,429			38,429
	9/1/17	38,429			38,429
	12/1/17	38,429			38,429
	3/1/18	38,429			38,429
	6/1/18	38,429			38,429
	9/1/18	38,429			38,429
	12/1/18	38,429			38,429
	3/1/19	38,429			38,429
	6/1/19	38,429			38,429
	9/1/19	38,429			38,429
	12/1/19	38,429			38,429
	3/1/20	38,429			38,429
	6/1/20	38,429			38,429
	9/1/20	38,429			38,429
	12/1/20	38,429			38,429
	3/1/21	38,429			38,429
	6/1/21	38,429			38,429
	9/1/21	38,429			38,429

20 Years

0% Interest Rate, 1% Administrative Fee

Period Ending	Principal		Interest	Debt Service
12/1/21	38,429			38,429
3/1/22	38,429			38,429
6/1/22	38,429			38,429
9/1/22	38,429			38,429
12/1/22	38,429			38,429
3/1/23	38,429			38,429
6/1/23	38,429			38,429
9/1/23	38,429			38,429
12/1/23	38,429			38,429
3/1/24	38,429			38,429
6/1/24	38,429			38,429
9/1/24	38,429			38,429
12/1/24	38,429			38,429
3/1/25	38,428			38,428
6/1/25	38,428			38,428
9/1/25	38,428			38,428
12/1/25	38,428			38,428
3/1/26	38,428			38,428
6/1/26	38,428			38,428
9/1/26	38,428			38,428
12/1/26	38,428			38,428
3/1/27	38,428			38,428
6/1/27	38,428			38,428
9/1/27	38,428			38,428
12/1/27	38,428			38,428
3/1/28	38,428			38,428
6/1/28	38,428			38,428
9/1/28	38,428			38,428
12/1/28	38,428			38,428
3/1/29	38,428			38,428
6/1/29	38,428			38,428
9/1/29	38,428			38,428
12/1/29	38,428			38,428
3/1/30	38,428			38,428
6/1/30	38,428			38,428
9/1/30	38,428			38,428
12/1/30	38,428			38,428
3/1/31	38,428			38,428
6/1/31	38,428			38,428
9/1/31	38,429			38,429
	3,074,294	*		3,074,294

*Plus a quarterly administrative fee of $3,890.89 for a total Administrative expense of $311,271.20

NUMBER

CR-1

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

WEST VIRGINIA MUNICIPAL BOND COMMISSION
1207 Quarrier Street, Suite 401
Charleston, WV 25301
(304) 558-3971

2.10(A)
NEW ISSUE REPORT FORM
Date of Report: November 20, 2009

ISSUE: Union Public Service District Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA)

ADDRESS: 5110 West Washington St., Cross Lanes, WV 26314 COUNTY: Kanawha

PURPOSE OF ISSUE: New Money X
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: November 20, 2009 CLOSING DATE: November 20, 2009

ISSUE AMOUNT: $1,363,613 RATE: 0% / 0% Admin Fee

1st DEBT SERVICE DUE: N/A 1st PRINCIPAL DUE: N/A

1st DEBT SERVICE AMOUNT: $ N/A PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: _____
Contact Person: Samme L. Gee, Esquire Contact Person: _____
Phone: (304) 340-1318 Phone: (304) _____

CLOSING BANK: City National Bank ESCROW TRUSTEE: _____
Contact Person: Charles Nuckles Contact Person: _____
Phone: (304) 776-7904 Phone: _____

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WVDEP
Contact Person: William Carter Contact Person: Rosalie Brodersen
Position: General Manager Function: Program Manager
Phone: (304) 776-3131 Phone: (304) 558-0637
E-Mail: unionpublic@wirefire.com

DEPOSITS TO MBC AT CLOSE: _____ Accrued Interest: $_____
_____ Capitalized Interest: $_____
By _____ Wire _____ Reserve Account: $_____
_____ Check _____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire _____ To Escrow Trustee: $_____
_____ Check _____ To Issuer: $_____
_____ IGT _____ To Cons.Invest.Fund $_____
_____ To Other: _____ $_____

NOTES: Bonds are 100% principal forgiveness.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

WEST VIRGINIA MUNICIPAL BOND COMMISSION
1207 Quarrier Street, Suite 401
Charleston, WV 25301
(304) 558-3971

2.10(B)
NEW ISSUE REPORT FORM
Date of Report: November 20, 2009

ISSUE: Union Public Service District Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program)

ADDRESS: 5110 West Washington St., Cross Lanes, WV 26314 COUNTY: Kanawha

PURPOSE OF ISSUE: New Money X
Refunding _____ Refunds issue(s) dated: _____

ISSUE DATE: November 20 , 2009 CLOSING DATE: November 20, 2009

ISSUE AMOUNT: $3,074,294 RATE: 0% / 1.0% Admin Fee

1st DEBT SERVICE DUE: December 1, 2011 1st PRINCIPAL DUE: December 1, 2011

1st DEBT SERVICE AMOUNT: $38,429 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: _____
Contact Person: Samme L. Gee, Esquire Contact Person: _____
Phone: (304) 340-1318 Phone: (304) _____

CLOSING BANK: City National Bank ESCROW TRUSTEE: _____
Contact Person: Charles Nuckles Contact Person: _____
Phone: (304) 776-7904 Phone: _____

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WVDEP
Contact Person: William Carter Contact Person: Rosalie Brodersen
Position: General Manager Function: Program Manager
Phone: (304) 776-3131 Phone: (304) 558-0637
E-Mail: unionpublic@wirefire.com

DEPOSITS TO MBC AT CLOSE: _____ Accrued Interest: $_____
_____ Capitalized Interest: $_____
By _____ Wire _____ Reserve Account: $_____
_____ Check _____ Other: _____ $_____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire _____ To Escrow Trustee: $_____
_____ Check _____ To Issuer: $_____
_____ IGT _____ To Cons.Invest.Fund $_____
_____ To Other: _____ $_____

NOTES: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

BOND REGISTER 2.11(A)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF PROGRAM/ARRA)

Bond Number	Principal Amount	Date of Bond
No. BR-1	$1,636,613	November 20, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Signature of Registrar:

United Bank, Inc.

_____
Authorized Representative

_____

_____

_____

BOND REGISTER 2.11(B)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

Bond Number	Principal Amount	Date of Bond
No. CR-1	$3,074,294	November 20, 2009

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Signature of Registrar:

United Bank, Inc.

Authorized Representative

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. MEETINGS
10. INSURANCE
11. ARRA ASSISTANCE AGREEMENT
12. SPECIMEN BOND
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. LAND AND RIGHTS-OF-WAY
16. CONFLICTS OF INTEREST
17. PROCUREMENT OF ENGINEERING SERVICES
18. VERIFICATION OF SCHEDULE A
19. CLEAN WATER ACT
20. COUNTERPARTS

We, the undersigned CHAIRPERSON and the undersigned SECRETARY of the Public Service Board of Union Public Service District in Kanawha County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), numbered BR-1, dated the date hereof, in the principal amount of $1,363,613, and the Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program), numbered CR-1, dated the date hereof, in the principal amount of $3,074,294 (collectively, the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Resolution duly passed by the Issuer on November 18, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 18, 2009 (collectively, the "Resolution"), and the ARRA Assistance Agreements by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection ("DEP"), dated November 20, 2009 (the "ARRA Assistance Agreement").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project as described in the Resolution (the "Project"), the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer or the Governing Body; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the ARRA Assistance Agreement. The Issuer has met all conditions set forth in the ARRA Assistance Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Bonds are issued on a parity with the Series 2009 A Bond and the First Lien Bonds (as defined in the Resolution) and senior and prior to the Second Lien Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has obtained (i) the certificate of an Independent Certified Public

Accountant stating that the coverage and parity tests of the First Lien Bonds are met; (ii) the written consent of the registered owners of the First Lien Bonds to the issuance of the Bonds on a parity with the First Lien Bonds and (iii) the written consent of the Registered Owners of the Second Lien Bonds to the issuance of the Bonds senior and prior to the Second Lien Bonds. Other than the First Lien Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the terms and provisions of the Prior Bonds and the Prior Resolutions.

5. SIGNATURES AND DELIVERY: The undersigned Chairperson and Secretary are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Chairperson did officially sign all of the Bonds, consisting upon original issuance of a single Bond, dated the date hereof, by his manual signature; the undersigned Secretary did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; and the Secretary did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the ARRA Assistance Agreement.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the Administrative Law Judge entered on March 6, 2009, as made final by the PSC on March 26, 2009, in Case No. 08-1369-PSD-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the rates for the System and the financing for the Project. The time for appeal of the Order has expired prior to the date hereof without any appeal having been filed. Such Order remains in full force and effect. The rates of the System, as approved by the PSC Order entered on March 26, 2009, in Case No. 08-1369-PSD-CN, will become effective when the Project is substantially complete.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Union Public Service District." The Issuer is a public service district and a public corporation presently existing under the laws of, and a political subdivision of, the State of West Virginia in Kanawha County of said State. The governing body of the Issuer is its Public Service Board, consisting of three duly appointed, qualified and acting members, whose names and dates of termination of their current terms are as follows:

Name	Date Of Termination Of Office
Wilma Davis	October 1, 2011
Joe Williams	October 1, 2013
Dr. Charles Warner	October 1, 2009

The duly elected or appointed officers of the Board for 2009 are as follows:

Wilma Davis	Chairperson
Dr. Charles Warner	Secretary
Joe Williams	Treasurer

The duly appointed and acting attorney for the Issuer is H. Wyatt Hanna, III, Esquire, South Charleston, West Virginia.

8. MEETINGS: All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction and financing of the Project or the operation of the System were authorized or adopted at meetings of the Board duly and regularly or specifically called and held pursuant to the Rules of Procedure of the Board and all applicable statutes and a quorum of duly elected or appointed, qualified and acting members of the Board was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Resolution and the ARRA Assistance Agreement. All insurance for the Systems required by the Resolution and the ARRA Assistance Agreement is in full force and effect.

10. ARRA ASSISTANCE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the ARRA Assistance Agreement are true and correct in all material respects as if made on the date hereof; (ii) the ARRA Assistance Agreement does not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the ARRA Assistance Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein

not misleading; and (iv) the Issuer is in compliance with the ARRA Assistance Agreement.

The Issuer will serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer will not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority (the "Authority"). Following completion of the Project the Issuer will certify to the Authority the number of customers added to the System.

11. SPECIMEN BOND: Attached hereto as Exhibit A and Exhibit B are specimens of the Bonds which are identical in all respects with the Bonds this day delivered to the Authority and being substantially in the forms prescribed in the Resolution.

12. BOND PROCEEDS: On the date hereof, the Issuer received $221,895 from the Authority and the DEP, being a portion of the principal amount of the Bonds and more than a de minimus amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

13. PUBLICATION AND PUBLIC HEARING ON BOND RESOLUTION: Upon adoption of the Resolution, an abstract thereof, determined by the Board to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in the West Virginia Gazette, one qualified newspaper of general circulation in Kanawha County, together with a notice to all persons concerned, stating that the Resolution had been adopted and that the Issuer contemplated the issuance of the Bonds described in the Resolution, stating that any person interested may appear before the Board at the public hearing held at a public meeting of the Board on September 17, 2009, at 10 a.m., prevailing time, for the at the Issuer's office at 5110 West Washington Street, Cross Lanes, West Virginia, and present protests, and stating that a certified copy of the Resolution were on file at the office of the Secretary of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Board and the Resolution became finally adopted, enacted and effective as of the date of such public hearing and remains in full force and effect.

14. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate

for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

15. CONFLICTS OF INTEREST: No member, officer or employee of the Board of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Resolution, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

17. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineers.

18. VERIFICATION OF SCHEDULE B: The final amended Schedule B attached to the Certificates of Consulting Engineer, with the signature of the Chairperson and the Consulting Engineers, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

19. CLEAN WATER ACT: The Project as described in the Resolution complies with Sections 208 and 303(e) of the Clean Water Act.

20. COUNTERPARTS: This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of Union Public Service District on this 20th day of November, 2009.

[SEAL]

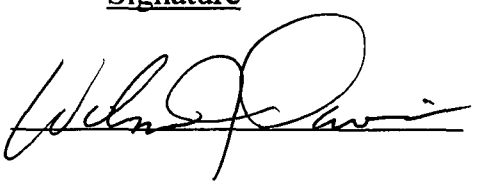
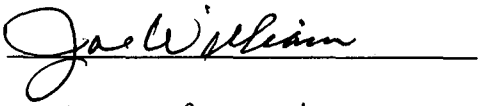
Signature	Official Title
	Chairperson
	Secretary
	Attorney

EXHIBIT A

See 2009 B Specimen Bond (Tab No. 15(A))

EXHIBIT B

See 2009 C Specimen Bond (Tab No. 15(B))

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE AS TO USE OF PROCEEDS

On this 20th day of November, 2009, the undersigned Chairperson of Union Public Service District in Kanawha County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of $1,363,613 aggregate principal amount of Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), of the Issuer, dated November 20, 2009 (the "Series 2009 B Bonds") and $3,074,294 aggregate principal amount of Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program) (the "Series 2009 C Bonds" and together with the Series 2009 B Bonds, the "Bonds"), all dated November 20, 2009, hereby certify as follows:

1. I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Bond Resolution duly passed by the Issuer on November 18, 2009, as supplemented by the Supplemental Resolution passed by the Issuer on November 18, 2009 (collectively, the "Bond Resolution"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on November 20, 2009, the date on which the Bonds are to be physically delivered in exchange for a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. The Series 2009 B Bonds were sold on November 20, 2009, to the Authority, pursuant to ARRA assistance agreement dated November 20, 2009, by and among the Issuer, the Authority, and the DEP, for an aggregate purchase price of $1,363,613 (100% of par value), at which time, the Issuer received $221,895 from the Authority and the DEP, being the first advance of the principal of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

5. The Series 2009 C Bonds were sold on November 20, 2009, to the Authority, pursuant to ARRA assistance agreement dated November 20, 2009, by and among the Issuer, the Authority, and the DEP, for an aggregate purchase price of $3,074,294 (100% of par value), at which time, the Issuer received $-0- from the Authority and the DEP, being the first advance of the principal of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2009 B Bonds and Series 2009 C Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain improvements and extensions to the existing public sewer facilities of the Issuer (the "Project"); and (ii) paying costs of issuance of the Bonds and related costs. Simultaneously herewith, the Issuer is issuing its Sewer Revenue Bonds, Series 2009 A to be authorized by the Series 2009 A Resolution, in the aggregate principal amount of $4,172,000 to pay the entire outstanding principal and all accrued interest on the Issuer's Sewerage System Design Notes, Series 2007 A (Putnam County Bank), dated August 7, 2007, in the original principal amount of $550,000, issued to temporarily finance a portion of the costs of design of the Project and to finance the remainder of the cost of the Project.

7. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures for costs of the Project shall commence immediately and proceed with due diligence to completion and, with the exception of proceeds deposited in the reserve account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of acquisition and construction of the Project on or before June 30, 2011. The acquisition and construction of the Project is expected to be completed by June 30, 2011.

8. The total cost of the Project is estimated to be $8,609,907, including the costs to be paid with proceeds from the Series 2009 A Bonds issued simultaneously with the Bonds. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Series 2009 A Bonds	$4,172,000.00
Proceeds of the Series 2009 B Bonds	$1,363,613.00

Proceeds of the Series 2009 C Bonds	$3,074,294.00
Total Sources	$8,609,907.00

USES

Payment of Series 2007 A Bond	$ 485,693.91
Costs of Project	$8,067,213.09
Costs of Issuance	$ 57,000.00
Total Uses	$8,609,907.00

9. Pursuant to the Bond Resolution, the following special funds or accounts have been created (or continued pursuant to the Prior Bond Resolutions):

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Series 2009 Bonds Construction Trust Fund;

(4) Prior Bonds Sinking Fund;

(5) Series 2009 B Bonds Sinking Fund;

(6) Series 2009 C Bonds Sinking Fund;

(7) Prior Bonds Reserve Account;

(8) Series 2009 B Bonds Reserve Account;

(9) Series 2009 C Bonds Reserve Account.

10. Pursuant to the Bond Resolution, the proceeds of the Bonds will be deposited as follows:

(1) Series 2009 B Bond proceeds in the amount of $-0- will be deposited in the Series 2009 B Bonds Reserve Account.

(2) The balance of the proceeds of the Series 2009 B Bonds will be deposited in the Series 2009 Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and

construction of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

(3) Series 2009 C Bond proceeds in the amount of $-0- will be deposited in the Series 2009 C Bonds Reserve Account.

(4) The balance of the proceeds of the Series 2009 C Bonds will be deposited in the Series 2009 Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and construction of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

11. Moneys held in the Series 2009 B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2009 B Bonds Reserve Account (if equal to the Series 2009 B Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, during acquisition and construction of the Project, deposited into the 2009 Bonds Construction Trust Fund, and following completion of the Project, will be deposited in the Sewer Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

12. Moneys held in the Series 2009 C Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2009 C Bonds Reserve Account (if equal to the Series 2009 C Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, during acquisition and construction of the Project, deposited into the 2009 Bonds Construction Trust Fund, and following completion of the Project, will be deposited in the Sewer Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

13. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 12 months of the date hereof.

14. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

15. With the exception of the amount deposited in the Series 2009 B Bonds Reserve Account and the Series 2009 C Bonds Reserve Account, if any, all of the

proceeds of the Bonds will be expended on the Project within 12 months from the date of issuance thereof.

16. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

17. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

18. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

19. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

20. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

21. The Issuer shall use the proceeds of the Bonds solely for the costs of acquisition and construction of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

22. The Bonds are not federally guaranteed.

23. The Issuer has retained the right to amend the Bond Resolution authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain governmental or public purpose bonds.

24. The Issuer has either (a) funded the Series 2009 B Bonds Reserve Account and the Series 2009 C Bonds Reserve Account at the maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2009 B Bonds Reserve Account and the Series 2009 C Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until the Series 2009 B Bonds Reserve Account and the Series 2009 C Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2009 B Bonds Reserve Account and the Series 2009 C Bonds Reserve Account and the Series 2009 B Bonds Sinking Fund and the Series 2009 C Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Bonds and will not be available to pay costs of the Project.

25. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Bonds.

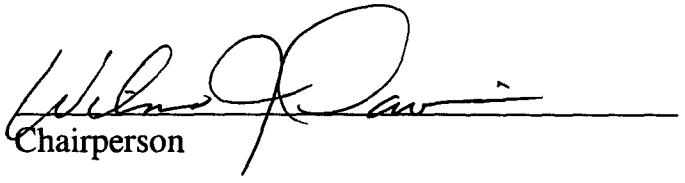
26. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

27. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

28. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature as of the date first written above.

UNION PUBLIC SERVICE DISTRICT



Chairperson

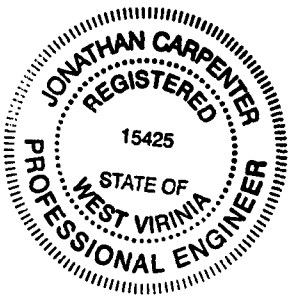
governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 40 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A, and in reliance upon the opinion of H. Wyatt Hannah, Esquire, of even date herewith, all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project, to the extent the plans were prepared by my firm, and operation of the System; (ix) in reliance upon the certificate of the Issuer's certified public accountant, Michael D. Griffith, CPA, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the ARRA Assistance Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; (xi) attached hereto as Exhibit A are the final amended "Schedule B - Total Cost of Project, Sources of Funds and Cost of Financing" for the Bonds associated with the Project; and (xii) all contractors to be awarded contracts for the construction of the Project have submitted affidavits indicating such contractor has a drug free workplace plan pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

4. I have received the Buy American Certification from the contractor responsible for performing the construction work for the Project.

5. The Project will serve 264 new customers.

WITNESS my signature and seal on this 20th day of November, 2009.

[SEAL]



THRASHER ENGINEERING

Jonathan Carpenter, P.E.
West Virginia License No. 15425

EXHIBIT A

[Schedule B]

10/27/2009

Union PSD Post bid costs

SCHEDULE B (Indicate other sources)

		TOTAL	ARRA LOAN	SRF, 0%, 1% adm, 20 yr	RUS Loan & Grant	TOTAL
A.	COST OF PROJECT:					
1	CONSTRUCTION					
	Contract #1 Breckenridge	3,388,000	0	1,651,250	1,836,750	3,388,000
	Contract #2 Rover	1,340,863	1,340,863			1,340,863
	Contract #3 Rover	1,343,044		1,343,044		1,343,044
	Scada change order	180,000		180,000		180,000
	subtotal	6,251,907	1,340,863	3,074,294	1,836,750	6,251,907
2	TECHNICAL SERVICES					
	Basic	635,000			635,000	635,000
	Special/Other Svcs	154,000			154,000	154,000
	Resident Inspection	300,000			300,000	300,000
	Amendment	50,000			50,000	50,000
3	LEGAL & FISCAL					
	Legal	70,000			70,000	70,000
	Accountant	25,000			25,000	25,000
4	ADMINISTRATIVE					
	Electric Svc	20,000			20,000	20,000
	Permits & Fees	10,000			10,000	10,000
	WV DOH Insp & Bond	30,000			30,000	30,000
	Interim Interest	40,000			40,000	40,000
	Interest during Construction	355,000			356,000	355,000
5	Sites & Other Lands					
	Activity	0				0
	Acquisition	50,000			50,000	50,000
6	CONTINGENCY - Construction	437,000			437,000	437,000
	Project contingency	125,000			125,000	125,000
7	TOTAL	8,552,907	1,340,863	3,074,294	4,137,750	8,552,907
B	COST OF FINANCING					
8	Funded Reserve	0				0
9	Registrar fees	500	500			500
10	Bond Counsel	56,500	22,250		34,250	56,500
11	Cost of Financing	57,000	22,750	0	34,250	57,000
12	TOTAL Cost of Project	8,609,907	1,363,613	3,074,294	4,172,000	8,609,907
C	SOURCES OF FUNDS					
13	State Grants					0
14	Other sources				4,172,000	0
15	net proceeds from Bond Issuance		1,363,613	3,074,294	4,172,000	

11-20-09

Authorized Representative Date

11/20/09

Consulting Engineer Date

November 20, 2009

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

Union Public Service District
Cross Lanes, WV 25314

West Virginia Water Development Authority
Charleston, WV 25311

West Virginia Department of Environmental Protection
Charleston, WV 25311

Jackson Kelly PLLC
Charleston, WV 25301

United States Department of Agriculture
Rural Utility Service
Parkersburg, WV 26102

Ladies and Gentlemen:

We have reviewed the sewer rates of Union Public Service District (the "Issuer"), and the projected operating expenses and anticipated customer usage provided by Thrasher Engineering, the consulting engineer of the Issuer. It is our opinion that such rates are sufficient (i) to provide for all operating expenses of the public sewer facilities of the Issuer (the "System"), and (ii) to leave a balance each fiscal year equal to at least 115% of the maximum amount required in any succeeding fiscal year for the payment of principal of and interest on the Issuer's Sewer Revenue Bonds, Series 2009 A (United States Department of Agriculture), Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA) and Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program) (collectively, the "Bonds") and all other obligations secured by or payable from revenues of the System on a parity with the Bonds, including the Issuer's Sewer Revenue Bonds, Series 1991 A, Sewer Revenue Bonds, Series 1991 B, and Sewer Revenue Bonds, Series 1996 A (collectively, the "Prior Bonds").

Is further our opinion that (i) the Net Revenues for the fiscal year following the year in which the Bonds are to be issued will be at least 120% of the average annual debt service on the Prior Bonds and the Bonds; and (ii) the Net Revenues actually derived from the System

Michael D. Griffith, CPA, AFI
michaelgriffithcpa@verizon.net
950 Little Coal River Road Alum Creek, WV 25003
Phone: (304) 756.3600 Facsimile: (304) 756.2911

during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Bonds, will not be less than 115% of the maximum debt service in any succeeding year on the Prior Bonds and the Bonds.

The Issuer is current on all payment to the funds and accounts established under the Bond Resolutions, including RUS reserve accounts.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Bonds.

Very truly yours,

Michael D. Griffith, CPA, AFI
Griffith & Associates, PLLC

MDG/dk

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

RECEIPT FOR BONDS

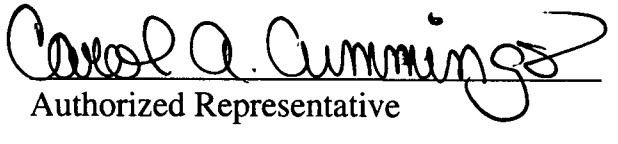
The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 20th day of November, 2009, in Charleston, West Virginia, the Authority received the entire original issue of $1,363,613 in aggregate principal amount of the Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), of Union Public Service District (the "Issuer"), dated November 20, 2009, issued in the form of one bond, fully registered to the Authority, and numbered BR-1, and $3,074,294 in aggregate principal amount of Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program), of the Issuer, dated November 20, 2009, issued in the form of one bond, fully registered to the Authority, and numbered CR-1 (together, the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the Chairperson of the Issuer and attested by the Secretary of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 20th day of November, 2009.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY



Authorized Representative

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

RECEIPT FOR BOND PROCEEDS

On this 20th day of November, 2009, the undersigned Chairperson of Union Public Service District (the "Issuer"), for and on behalf of the Issuer, hereby certifies that the Issuer has received on the date hereof from the West Virginia Water Development Authority (the "WDA"), the sum of $221,895, being the first advance on Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), of Union Public Service District (the "Issuer"), dated November 20, 2009, issued in the form of one bond, fully registered to the Authority, and numbered BR-1, and the sum of $-0-, being the first advance on Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program), of the Issuer, dated November 20, 2009, issued in the form of one bond, fully registered to the Authority, and numbered CR-1 (together, the "Bonds"). The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer by the WDA from time to time as construction progresses.

WITNESS my signature as of the date first written above.

UNION PUBLIC SERVICE DISTRICT

Chairperson

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

REQUEST AND AUTHORIZATION TO
AUTHENTICATE AND DELIVER THE BONDS

November 20, 2009

United Bank, Inc., as Registrar
Charleston, West Virginia

Ladies and Gentlemen:

We herewith hand to you, duly executed, the $1,363,613 Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), in the form of one bond, numbered BR-1, dated November 20, 2009, and the $3,074,294 Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program) in the form of one bond, numbered CR-1, dated November 20, 2009 (the "Sewer Bonds"), of Union Public Service District (the "Issuer"), authorized to be issued under and pursuant to a Bond Resolution duly passed by the Issuer on November 18, and a Supplemental Resolution duly adopted by the Issuer on November 18, 2009.

You are hereby requested and authorized to register, authenticate and deliver the Sewer Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

UNION PUBLIC SERVICE DISTRICT

Chairperson

(SEAL)

Attest:

Secretary

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 20th day of November, 2009, by and between UNION PUBLIC SERVICE DISTRICT, a public service district and public corporation (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $1,363,613 Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), in the form of one bond, numbered BR-1, in fully registered form and its $3,074,294 Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program) in the form of one bond, numbered CR-1, in fully registered form (collectively, the "Sewer Bonds"), pursuant to a Bond Resolution duly passed by the Issuer on November 18, 2009, and a Supplemental Resolution duly adopted November 18, 2009 (collectively, the "Resolution");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Resolution, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Resolution provide for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Resolution and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Resolution and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and

carry out the powers and duties of Registrar for the Bonds, all as set forth in the Resolution, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Resolution with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Resolution shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Resolution will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

Union Public Service District
5110 Washington Street
Cross Lanes, WV 25314

Attention: Chairperson

REGISTRAR:

United Bank, Inc.
500 Virginia Street, East
Charleston, WV 25301
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

UNION PUBLIC SERVICE DISTRICT

~~Mayor~~ Clerk

UNITED BANK, INC.

Authorized Officer

EXHIBIT A

See Bond Resolution (Tab No. 9)
See Supplemental Resolution (Tab No. 10)

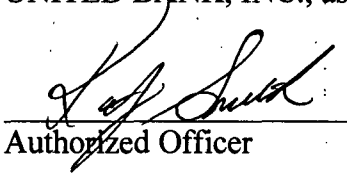
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE OF REGISTRATION OF BONDS

UNITED BANK, INC., Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), of Union Public Service District (the "Issuer"), dated November 20, 2009, in the principal amount of $1,363,613, and numbered BR-1, and Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program) of the Issuer, dated November 20, 2009, in the principal amount of $3,074,294, and numbered CR-1, was registered as to principal in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 20th day of November, 2009.

UNITED BANK, INC., as Registrar



Authorized Officer

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

CITY NATIONAL BANK, Charleston, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution of Union Public Service District (the "Issuer"), passed by the Issuer on November 18, 2009, a Supplemental Resolution adopted by the Issuer on November 18, 2009 (collectively, the "Resolution"), authorizing the issuance of Union Public Service District Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), in the aggregate principal amount of $1,363,613 and Union Public Service District Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program), in the aggregate principal amount of $3,074,294, all dated November 20, 2009, and agrees to serve as Depository Bank, all as set forth in the Resolution.

Witness my signature on this 20th day of November, 2009.

CITY NATIONAL BANK

Charla E. Nuckles

Authorized Officer

NOV. 19. 2009 9:54AM CITY NATIONAL BANK NO. 690 P. 2

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE OF SECRETARY
AS TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

On this 20th day of November, 2009, the undersigned duly appointed Secretary of Union Public Service District (the "Issuer") hereby certifies that the copies of the following documents being delivered in connection with the closing of the above-referenced bonds (the "Bonds"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted or approved by the Public Service Board (the "Board") of the Issuer and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Orders Creating and Enlarging the Issuer.
2. Orders Appointing the Members of the Board.
3. Oaths of Office of the Board Members.
4. Rules of Procedure.
5. Minutes of Current Year Organizational Meeting.
6. Public Service Commission Order.
7. USDA Letter of Conditions, Closing Letter and Loan Resolution.
8. Infrastructure Council Approval Letter.
9. ARRA Assistance Agreement.
10. Minutes of Board Meeting regarding Adoption of USDA Loan Resolution.
11. USDA and CWSRF Bond Resolutions and related Supplemental Resolutions.
12. Minutes of Meeting regarding Adoption of Resolutions.

13. Affidavits of Publication regarding Notice of Borrowing and Notice of Meeting to Adopt Bond Resolutions and Supplemental Resolutions.

14. Environmental Health Services Permit.

15. Evidence of Insurance.

WITNESS my signature and the official seal of the Issuer as of the date first written above.

UNION PUBLIC SERVICE DISTRICT

[SEAL]

Secretary

RECEIVED
2008 OCT 28 PM 3 24
W VA PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE

State of West Virginia
OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL & WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301
Telephone (304) 558-2981

PERMIT

(Sewer)
PROJECT: 40th Street WWTP Upgrade **PERMIT NO.:** 18,142
Big & Little Tyler Mountain Roads Sewer Extensions

LOCATION: Cross Lanes **COUNTY:** Kanawha **DATE:** 10-27-2008

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

Union Public Service District
P. O. Box 7350
Cross Lanes, West Virginia 25313

is hereby granted approval to: install approximately 30,990 LF of 8" and 10,186 LF of 6" sewer line; necessary manholes and cleanouts; one (1) grinder pump station; and approximately 52 LF of 1.5" force main. Also, to upgrade and expand the existing 40th Street 0.60 MGD wastewater treatment plant to a 0.90 MGD plant with major improvements to consist replacement of the existing influent pump station pumps with two (2) 700 to 1,250 G.P.M. pumps; replacing the existing headworks with new screening and grit removal/handling equipment; upgrading the aeration system piping for the existing two (2) contact/stabilization basins; adding two (2) 13.33 ft. X 24 ft. X 14.83 ft. contact basins and two (2) 22 ft. X 24 ft. X 14,83 ft. stabilization basins to the existing two (2) contact/stabilization basins; replacing the existing aeration blowers with two (2) new blowers; eliminating existing clarifier Nos. 3 & 4 and replacing with four (4) 12 ft. X 25 ft. X 11.06 ft. clarifiers (Nos. 3, 4, 5 and 6) with mechanical solids removal equipment (keeping the existing clarifiers Nos. 1 & 2); replacing the existing sludge return pump station with a new 400 to 938 G.P.M. duplex station; upgrading the existing non-potable water system by replacing the existing pump with a new 300 G.P.M. pump; adding a new office/garage building and demolishing the old office building; and all necessary piping, valves, controls and appurtenances.

The new sewage collection facilities are to serve 283 customers along Big Tyler Mountain Road and Little Tyler Mountain Road in the Union Public Service District. The wastewater treatment facilities are to serve approximately 4990 customers in the Union Public Service District.

NOTE: **This permit is contingent upon maintaining a minimum ten (10) feet horizontal separation between sewer and water lines and a minimum 18" vertical separation between crossing sewer and water lines, with the water line to be over the sewer line.**

The Environmental Engineering Division of the **St. Albans District Office (304) 722-0611** is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:cls

pc: Thrasher Environmental, Inc.
Katheryn Emery, P.E., DEP
James W. Ellars, P.E.
Amy Swann, PSC
Kanawha-Charleston Health Department
OEHS-EED St. Albans DO

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2008 OCT 29 PM 3 24
W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

ACORD CERTIFICATE OF LIABILITY INSURANCE

INSURED COPY | DATE (MM/DD/YY) 11/17/09

PRODUCER
WV BOARD OF RISK & INSURANCE MGT.
90 MACCORKLE AVE. SW, SUITE 203
SOUTH CHARLESTON, WV 25303

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Union Public Service District
P O Box 7350
Cross Lanes, WV 25356

INSURER A: NATIONAL UNION FIRE CO OF PITTSBURGH, PA
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE [X] OCCUR X WRONGFUL ACT X PROFESSIONAL GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	L2685	07/01/2009	07/01/2010	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 0 $ INCLUDED $ N/A $ N/A
A	AUTOMOBILE LIABILITY ANY AUTO X ALL OWNED AUTOS X SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS		07/01/2009	07/01/2010	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
	EXCESS LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	$ $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY STOPGAP		07/01/2009	07/01/2010	WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $
B	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

SUBJECT TO THE PROVISIONS, CONDITIONS AND EXCLUSIONS OF THE POLICIES LISTED ABOVE, IT IS AGREED THAT THE CERTIFICATE HOLDER IS AN "ADDITIONAL INSURED" WITH RESPECTS TO:

Combined waterworks & sewer system revenue bonds, Series 2009A

CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER LETTER: | CANCELLATION

WV Water Development Authority
180 Association Drive
Charleston WV 25311

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Jerry D. Gladwell

ACORD 25-S (7/97)
C:\FMPRO\CERTPROS.WEB

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18UNIONPUB

ACORD™ EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY): 11/17/2009

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

PRODUCER NAME, CONTACT PERSON AND ADDRESS
BB&T-Carson Insurance Services
601 Tennessee Avenue
Charleston, WV 25302

PHONE (A/C, No, Ext): 304 346-0806
FAX (A/C, No): 888 751 3002
E-MAIL ADDRESS: SStogden@bbandt.com

COMPANY NAME AND ADDRESS
Cincinnati Insurance Company
P.O. Box 145496
Cincinnati, OH 45250-5496

NAIC NO: 10677

IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH

CODE: | SUB CODE:
AGENCY CUSTOMER ID #: 534764

POLICY TYPE

NAMED INSURED AND ADDRESS
Union Public Service District Board of Commissioners
P O Box 7350
Cross Lanes, WV 25356

LOAN NUMBER | POLICY NUMBER: CPP0835713

EFFECTIVE DATE: 01/01/2009 | EXPIRATION DATE: 01/01/2012 | ☐ CONTINUED UNTIL TERMINATED IF CHECKED

ADDITIONAL NAMED INSURED(S)

THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION (Use REMARKS on Page 2, if more space is required)

☒ BUILDING OR ☐ BUSINESS PERSONAL PROPERTY

LOCATION/DESCRIPTION
See Remarks

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

PERILS INSURED: ☐ BASIC | ☐ BROAD | ☒ SPECIAL | ☐

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: $ 122,000 Building DED: $1,000

	YES	NO	N/A	
☐ BUSINESS INCOME ☐ RENTAL VALUE				If YES, LIMIT: ☐ Actual Loss Sustained; # of months
BLANKET COVERAGE Building	X			If YES, indicate value(s) reported on property identified above: $ 726,000
TERRORISM COVERAGE				Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?				
IS DOMESTIC TERRORISM EXCLUDED?				
LIMITED FUNGUS COVERAGE				If YES, LIMIT: DED:
FUNGUS EXCLUSION (IF "YES", specify organization's form used)				
REPLACEMENT COST	X			
AGREED VALUE	X			Building
COINSURANCE	X			If Yes, 90 % Building
EQUIPMENT BREAKDOWN (If Applicable)				If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg				
- Demolition Costs				If YES, LIMIT: DED:
- Incr. Cost of Construction				If YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)				If YES, LIMIT: DED:
FLOOD (If Applicable)				If YES, LIMIT: DED:
WIND/HAIL (If Subject to Different Provisions)				If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS				

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ADDITIONAL INTEREST

☐ MORTGAGEE | ☐ CONTRACT OF SALE
☐ LENDERS LOSS PAYABLE | ☒ Additional Insured

NAME AND ADDRESS

WV Water Development Authority
180 Association Drive
Charleston, WV 25311

LENDER SERVICING AGENT NAME AND ADDRESS

AUTHORIZED REPRESENTATIVE
Stephen B. Stogden

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EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)

****Blanket Coverage Information****

Blanket #1 Building Amt: 726,000 Ded: $1,000

*** Commercial Property Policy Level Coverages ***

Location #: 1 5110 Washington Street Charleston, WV 25301 Office

Location #: 2 Rocky Fork Road Cross Lanes, WV Lab, Pump House, Storage House, Compressor House, Belt Press Building, Equipment & Piping, Telemetry Tower and Fence

Location #: 3 40th Street Cross Lanes, WV Compressor House, Equipment & Piping, Chlorine Building, Storage & Generator Bldg, Telemetry Tower and Fence

Location #: 4 Bailey Road Cross Lanes, WV Lift Station and Telemetry Tower

Location #: 5 Koontz Drive Cross Lanes, WV 25326 Pump House, Telemetry Tower (Lower) and Telemetry Tower (Upper)

Location #: 6 Beechvale Cross Lanes, WV 25326 Pump House

Location #: 7 Goff Mountain Road Cross Lanes, WV 25326 Pump House and Telemetry Tower

Location #: 8 Lower Beach Cross Lanes, WV 25326 Pump House

Location #: 9 Upper Koontz; Koontz Drive Cross Lanes, WV 25326 Pump House

Location #: 10 Upper Beach Cross Lanes, WV 25326 Pump House

Location #: 11 Koontz Christian School; Koontz Drive Cross Lanes, WV 25326 Pump House

Location #: 12 Goff Mountain Road Cross Lanes, WV 25326 Pump House and Telemetry Tower

Location #: 13 Koontz Drive Cross Lanes, WV 25326 Pump House

Location #: 14 Beach Cross Lanes, WV 25326 Pump House

Location #: 15 Lakeshore Drive Cross Lanes, WV 25313 Telemetry Tower Station 1, 2 and 3

Location #: 16 Linda Vista Drive Cross Lanes, WV 25313 Telemetry Tower

Radio/TV Antenna - Limit: 44,000 / Deductible: $1,000

*** Commercial Property Location Specific Coverages ***

Business Interruption/Extra Expense Limit #1: 10,000

****** Description of Operations ******
WV Water Development Authority is included as additional insured with respects to the Combined Waterworks & Sewer System Revenue Bonds, Series 2009A. Includes all structures listed on Locations #1 through 16.

WEST VIRGINIA
Water Development Authority
Celebrating 34 Years of Service 1974 - 2008

UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)
UNION PUBLIC SERVICE DISTRICT
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

CONSENT TO ISSUANCE OF PARITY BONDS

In reliance upon a certificate of John D. Blackwell, an independent certified public accountants and Jackson Kelly PLLC, bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewer Revenue Bonds, Series 2009 A (United States Department of Agriculture), in the original principal amount of $4,172,000, Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), in the original aggregate principal amount of $1,363,613 and the Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program), in the original aggregate principal amount of $3,074,294 (collectively the "Series 2009 Bonds") by Union Public Service District (the "Issuer"), under the terms of the ordinance and resolution authorizing the Series 2009 Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewer Revenue Bonds, Series 1991 A, Sewer Revenue Bonds, Series 1998 A and Combined Waterworks and Sewerage System Revenue Bonds, Series 1996 A and senior to with respect to liens, pledge and source of an security for payment for the Issuer's Sewer Revenue Bonds, Series 1991 C.

WITNESS my signature on this 20th day of November, 2009.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Authorized Representative

{C1604215.1}

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wwda.org

JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

CLOSING MEMORANDUM

To: **Jacob Pack**
Samme Gee
Rose Brodersen
Carol Cummings

From: **Ryan White**

Date: **November 20, 2009**

Re: **UNION PUBLIC SERVICE DISTRICT**
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA CWSRF/ARRA),
SEWER REVENUE BONDS, SERIES 2009 C
(WEST VIRGINIA CWSRF PROGRAM)

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1. DISBURSEMENTS TO DISTRICT

Payor:	West Virginia Department of Environmental Protection
Source:	Series 2009 B Bonds Proceeds
Amount:	$221,895
Date:	November 20, 2009
Form:	Wire
Payee:	Union Public Service District
Bank:	City National Bank Charleston, WV
ABA:	051904524
Account #:	8005310803
Contact:	Charles Nuckles 304-776-7904

SWEEP RESOLUTION

WHEREAS, Union Public Service District (the "Issuer") a public service district, public corporation and political subdivision of the State of West Virginia;

WHEREAS, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

WHEREAS, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

WHEREAS, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

WHEREAS, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer sweeping the Issuer's account.

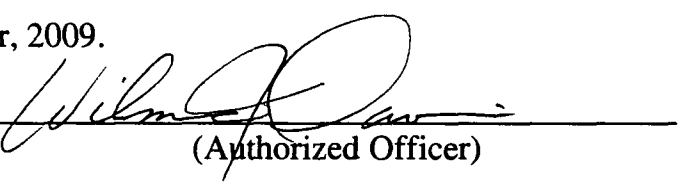
NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1) The monthly debt service payments on the Bonds, as set forth in Exhibit A, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A in such form and at such directions as are provided by the MBC.

2) The Chairperson and Secretary are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond debt service and reserve fund payments.

3) This resolution shall be effective immediately upon adoption.

Adopted this 18th day of November, 2009.



(Authorized Officer)

American Recovery and Reinvestment Act of 2009 (ARRA)

Project Certification

Program: West Virginia Clean Water State Revolving Fund

Project: Union Public Service District, Kanawha County

Description:

Wastewater treatment plant improvements to increase capacity at the 40th Street plant and sewer extensions in the Little Tyler and Big Tyler areas to serve an additional 250 customers whose sewage will be treated at the Rocky Fork wastewater treatment plant.

Total Project Cost

$8,609,907

ARRA Assistance Provided

$1,363,613

I hereby certify that the above project has received the full review and vetting required by federal law and that the investment of federal and state funds in this infrastructure project is an appropriate use of taxpayer dollars.

This certification will be posted on the Governor's website and linked to the federal ARRA website www.recovery.gov

Randy C. Huffman, Cabinet Secretary

12/28/09
Date

dep
west virginia department of environmental protection

JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

4.1(A)

November 20, 2009

Union Public Service District
5110 West Washington Street
Cross Lanes, WV 26314

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: Union Public Service District Sewer Revenue Bonds,
Series 2009 B (West Virginia CWSRF Program/ARRA)

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Union Public Service District (the "Issuer"), a public service district and public corporation created and existing under the laws of the State of West Virginia, of its $1,363,613 Sewer Revenue Bonds, Series 2009 B (West Virginia CWSRF Program/ARRA), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of an ARRA Assistance Agreement dated as of the date hereof, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are originally issued in the form of one Bond, registered to the Authority, bearing no interest and subject to principal forgiveness on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2011, to and including September 1, 2021, all as set forth in

the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly. Chapter 16, Article 13A and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewer facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and the Bond Resolution duly passed by the Issuer on November 18, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 18, 2009 (collectively, the "Bond Resolution"), pursuant to and under which Act and the Bond Resolution the Bonds are authorized and issued, and the ARRA Assistance Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Resolution and the ARRA Assistance Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Resolution and the ARRA Assistance Agreement when used herein. Based upon the foregoing, and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district, public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Bond Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the DEP and cannot be amended by the Issuer so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

3. The Bond Resolution and all other necessary ordinances and resolutions have been duly and effectively adopted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms.

The Bond Resolution contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the ARRA Assistance Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Bond Resolution and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment from the Net Revenues with the Issuer's First Lien Bonds (as defined in the Bond Resolution), the Series 2009 A Bonds and the Series 2009 C Bonds (as those terms are defined in the Bond Resolution) issued simultaneously herewith, all in accordance with the terms of the Bonds and the Bond Resolution.

5. The Bonds are, under the Act, exempt from taxation by the State of West Virginia and the other taxing bodies of the State. The Bonds bear no interest.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the ARRA Assistance Agreement and the Bond Resolution, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion and the application of equitable remedies in appropriate cases.

We have examined the executed and authenticated Bond numbered BR-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

Jackson Kelly PLLC

JACKSON KELLY PLLC

JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
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November 20, 2009

Union Public Service District
5110 West Washington Street
Cross Lanes, WV 26314

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: Union Public Service District Sewer Revenue Bonds,
Series 2009 C (West Virginia CWSRF Program)

Ladies and Gentlemen:

We have served as bond counsel to Union Public Service District ("the Issuer"), a public service district and public corporation, in connection with the issuance of its Sewer Revenue Bonds, Series 2009 C (West Virginia CWSRF Program), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) an ARRA assistance agreement for the Bonds dated November 20, 2009, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are issued in the principal amount of $3,074,294, in the form of one bond, registered as to principal and interest to the Authority, will bear no interest, and with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing December 1, 2011, all as set forth in the Schedule Y attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF

Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the ARRA Assistance Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewer facilities of the Issuer (the "Project); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Resolution duly passed by the Issuer on November 18, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 18, 2009 (collectively, the "Bond Resolution"), pursuant to and under which Act and Bond Resolution the Bonds are authorized and issued, and the ARRA Assistance Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Resolution and the ARRA Assistance Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Resolution and in the ARRA Assistance Agreement when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly organized and presently existing public service district, public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Bond Resolution and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.

3. The ARRA Assistance Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the

Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Bond Resolution and adopted all other necessary resolutions in connection with the issuance and sale of the Bonds. The Bond Resolution constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the ARRA Assistance Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's First Lien Bonds (as that term is defined in the Bond Resolution), Series 2009 A Bonds and the Series 2009 B Bonds (as those terms are defined in the Bond Resolution) issued simultaneously herewith, all in accordance with the terms of the Bonds and the Bond Resolution.

6. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

No opinion is given herein as to the effect upon enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated Bond numbered CR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

Jackson Kelly PLLC

H. Wyatt Hanna, III

ATTORNEY AT LAW

P.O. BOX 8070 • SOUTH CHARLESTON, WEST VIRGINIA 25303
(304) 744-3150 • FAX (304) 744-3157

November 20, 2009

Union Public Service District
5110 West Washington Street
Cross Lanes, WV 26314

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25304

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322

RE: Union Public Service District
Sewer Revenue Bonds, Series 2009B
(West Virginia CWSRF/ARRA),
Sewer Revenue Bonds, Series 2009C
(West Virginia CWSRF Program)

Ladies and Gentlemen:

I am counsel to Union Public Service District, Kanawha County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC, as Bond Counsel, relating to the above captioned bonds of the Issuer (the "Bonds"), an ARRA assistance agreement for the Bonds, dated November 20, 2009, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "Dep"), A Bond Resolution duly passed by the Issuer on November 18, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on November 18, 2009, (collectively, the "Bond Resolution"). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the ARRA Assistance Agreement and the Bond Resolution of the Issuer when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing public service district, public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to enact the Bond Resolution, all under the Act and other applicable provisions of law.

2. The ARRA Assistance Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the DEP and the Authority, constitutes valid and binding agreements of the Issuer, enforceable in accordance with the terms.

3. The Chair, Secretary and members of the Public Service Board of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

4. The Bond Resolution has been duly adopted and enacted bythe Issuer and is in full force and effect.

5. The execution and delivery of the Bonds and the ARRA Assistance Agreement and the consummation of the transactions contemplated by the Bonds, the ARRA Assistance Agreement and the Bond Resolution, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any ordinance, resolution, order, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

6. The Issuer has received a Recommended Decision of an Administrative Law Judge dated March 6, 2009, as made final by the PSC in Case No. 08-1369-PSD-CN on March 26, 2009, and an Order of the PSC dated November 16, 2009, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the March 26, 2009, Order has expired prior to the date hereof. The time for appeal of the November 16, 2009, Order which supplements the March 26, 2009, Order has not expired but the Issuer does not plan to appeal such Order.

7. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the DEP, the West Virginia Infrastructure and Jobs Development Council and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

8. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the ARRA Assistance Agreement, the Bonds and the Bond Resolution, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

9. I will determine that all successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet with requirements of the Act, the Bond Resolution and the ARRA Assistance Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

10. The contracts contain language requiring the contractors to provide affidavits from all contractors and subcontractors indicating that each contractor and subcontractor have a drug free workplace policy pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, a amended. The contractor has submitted a plan to implement the drug free workplace policy prior to the awarding of the contract pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Sincerely,

H. Wyatt Hanna, III

HWHIII/rb

cc: Union PSD

H. Wyatt Hanna, III

ATTORNEY AT LAW

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November 20, 2009

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West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322

RE: Union Public Service District
Final Title Opinion

Ladies and Gentlemen:

I am counsel to Union Public Service District, Kanawha County, West Virginia (the "Issuer") in connection with a proposed project to construct certain extensions, additions, betterments and improvements to the existing public sewer facilities of the Issuer (the "Project"). I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") for the Project.

Please be advised of the following:

1. I am of the opinion that the Issuer is a public service district and a public corporation duly created by the County Commission of Kanawha County, West Virginia, validly existing and possessed with all the powers and authority granted to public service districts under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the DEP.

2. The Issuer has obtained all necessary permits and approvals for the construction of the Project.

3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Thrasher Engineering, the consulting engineer for the Project.

4. I have examined the records on file in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project, subject to the following exceptions:

   A. Richard Bass, Ronald Bass, Thomas H. Bass, and Mitchell H. Bromwell, the known heirs at law of Sadie Shawver Cadle, deceased, and the Unknown Heirs at Law of William K. Bass, deceased, Tax Map 29, Parcel 86, Deed Book 1587, Page 328, Union District, Plan Sheet No. 14, Case No. 09-MISC-416 in the Circuit Court of Kanawha County, West Virginia (Judge King).

   B. Kenneth R. Edwards and Jeanette W. Edwards, Tax Map 28, Parcel 135, Deed Book 1714, Page 668, Union District, Plan Sheet No. 9, and, Tax Map 28, Parcel 145.2, Deed Book 2065, Page 332, Union District, Plan Sheet No. 9, Case No. 09-MISC-414 in the Circuit Court of Kanawha County, West Virginia (Judge Bailey).

   C. Ray H. Mariani, Tax Map 29, Parcel 10, Deed Book 734, Page 176, Union District, Plan Sheet No. 11, Case No. 09-MISC-417 in the Circuit Court of Kanawha County, West Virginia (Judge Stucky).

   D. Paul David Stover, Margaret Ann Stover, Brenda Sue Butcher, and Charlotte Marie Williams, Tax Map 23, Parcel 31.3, Deed Book 2427, Page 474, Union District, Plan Sheet No. 4, Case No. 09-MISC-415 in the Circuit Court of Kanawha County, West Virginia (Judge Zakaib).

E. Frances N. Gambrel, Tax Map 29, Parcel 85.3, Deed Book 2366, Page 828, Union District, Plan Sheet No. 13. A condemnation action has not been initiated at this time due to the fact that Ms. Gambrel has granted the Union Public Service District a written right of entry for the subject property.

F. Mary A. Roberts, Tax Map 29, Parcel 85.4, Deed Book 2366, Page 831, Union District, Plan Sheet No. 13. A condemnation action has not been initiated at this time due to the fact that Ms. Roberts has granted the Union Public Service District a written right of entry for the subject property.

Rights of Entry have been obtained for each of these properties permitting the District an immediate entry upon each specific property so that construction of this project will not be affected.

5. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Kanawha County to protect the legal title to and interest of the Issuer.

Sincerely,

H. Wyatt Hanna, III

HWHIII/rb

cc: Union PSD