

WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond,
Series 1994

Date of Closing: August 26, 1994

WARM SPRINGS PUBLIC SERVICE DISTRICT

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Series 1994

TRANSCRIPT OF PROCEEDINGS

CLOSING DATE: AUGUST 26, 1994

I. Organizational Documents

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The closing of the sale of \$1,423,158 Warm Springs Public Service District Sewer Revenue Bond, Series 1994, dated August 26, 1994, to the West Virginia Water Development Authority will take place at the offices of the West Virginia Water Development Authority, Dunbar, West Virginia, at 1:00 p.m. on August 26, 1994. No document shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered.

ABB050B3



CERTIFICATE

I, Ken Hechler, 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 1994 CUMULATIVE SUPPLEMENT TO THE WEST VIRGINIA CODE AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

TWENTY-FOUR day of
AUGUST 1994



Ken Hechler
Secretary of State.

Textbooks. — Administrative Law in West Virginia (Neely), § 3.07.
 Applied in City of Morgantown v. Town of Star City, 156 W. Va. 529, 195 S.E.2d 166 (1973).

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

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

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

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

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| | 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. |

Sec.

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

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

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

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

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

Public service districts are "public utilities." 50 Op. Att'y Gen. 447 (1963).

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

Cited in *Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968); *State v. Neary*, 365 S.E.2d 396 (W. Va. 1987).

§ 16-13A-1. Legislative findings.

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

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

mission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts. (1953, c. 147; 1980, c. 60; 1986, c. 81.)

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

The county courts (now county commissions) may not supersede the authority delegated by them to public service districts created in accordance with the provisions of

this article. Op. Att'y Gen., June 27, 1973.

A public service district, which was created only for the purposes of furnishing water services, has no power to condemn real estate for sewerage facilities. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

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

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

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

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

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

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

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

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section [June 6, 1986] each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study shall have one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority

basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the department of health and the department of natural resources shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission shall have six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules and regulations promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81.)

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

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

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

The county commission of any county may, on its own motion by order duly adopted or upon the recommendation of the public service commission, propose the creation of such public service district within such county, setting forth in such order a description, including metes and bounds, sufficient to

identify the territory to be embraced therein and the name of such proposed district, or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section [June 6, 1986], no new public service district shall be created under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules and regulations promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not such territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where such territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of such proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or other municipal corporation consenting.

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

When the county commission of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of such action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service

district is located shall cause notice of such hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create the district as amended. If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by expansion, merger or other means, it shall refuse to enter an order creating the proposed district and shall enter an order expanding, merging or consolidating the area with an existing public service district, in accordance with rules and regulations adopted by the public service commission for such purpose: Provided, That no expansion of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such expanded service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, expanding, merging or consolidating the district:

Provided, however, That within ten days after the entry of an order creating, expanding or merging or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules and regulations relating to such filings and the approval, disapproval or modification of county commission orders for creating, expanding, merging or consolidating districts.

The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or establish or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply with like effect as if a district were being created. The commission shall at all times attempt to bring about the expansion or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article. A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81.)

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

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

District need not be created by general

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

Voters may not force referendum as to continuing or abolishing district. — There is no authority for voters, by written protest or otherwise, to force a referendum upon the issue of whether or not a created public service dis-

trict should be continued or abolished. 52 Op. Att'y Gen. 33 (1966).

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

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

Relative powers of commission and voters in area. — (1) Only the county commission has the affirmative authority to create, enlarge or reduce a public service district; (2) in the absence of any action by a county commission, the requisite number of qualified voters in the affected geographic area may petition a county commission to create, enlarge or reduce a public service district, and, that upon the filing of such petition, a hearing shall be held thereon; (3) the county commission may, in its discretion, refuse to act in an affirmative manner upon such formal petition for creation, enlargement or reduction of such public service district, which action is not sub-

ject to protest or public referendum; (4) the county commission may, on its own motion or on the basis of such proper petition, enter an order creating, enlarging or reducing a public service district, which such action and order are subject to a hearing requiring proper notice, and a formal protest and public referendum depending upon the number of qualified voters who protest such action. Op. Att'y Gen., Nov. 13, 1975.

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

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

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

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

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

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

From and after the date of the adoption of the order creating any public service district, it shall thereafter be a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal

corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

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

Each city, incorporated town or other municipal corporation having a population of more than three thousand but not less than eighteen thousand shall be entitled to appoint one member of the board, and each such city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed shall thereby become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district shall equal or exceed three, then no further members shall be appointed to the board and the members shall be and constitute the board of the district.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members shall become members of and constitute the board of the district without any further act or proceedings.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to

make the number of members of the board equal three, and the additional member or members shall thereupon become members of the board; and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, shall be and constitute the board of the district. A person may serve as a member of the board in one or more public service districts.

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

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules and regulations promulgated by the public service commission.

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

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

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

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

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

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

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

Furnishing water to border residents in neighboring state. — See Op. Att'y Gen., June 26, 1975.

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

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

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

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

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

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. Salaries of each of its board members shall be as follows: For districts with fewer than six hundred customers, each board member shall receive fifty dollars per attendance at regular monthly meetings and thirty dollars per attendance at additional special meetings, total salary not to exceed nine hundred dollars per annum; for districts with six hundred customers or more but fewer than two thousand customers, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed eighteen hundred dollars per annum; and for districts with two thousand customers or more, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed three thousand dollars per annum. The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules and regulations of the board. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided by section three [§ 6-9A-3], article nine-a, chapter six of this code. A majority of the members constituting the board also constitute a quorum to do business. The members of the board are not personally liable or responsible for any obligations of the district or the board but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

§ 16-13A-5. General manager of board.

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

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

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

§ 16-13A-6. Employees of board.

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

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

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than five thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [§ 16-13A-2] of this article in the

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

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

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

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

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

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

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

District may exercise control over sewers where ownership is unknown unincorporated areas. 45 Op. Att'y Gen. 506 (1953).

Valid grant of power of eminent domain.

— The grant of power of eminent domain to

public service districts by this section is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

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

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issu-

ance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules and regulations promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the non-payment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district

providing water and sewer service to its customers shall have the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules, regulations and orders of the public service commission.

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

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer

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

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

Anything in this section to the contrary notwithstanding, any establishment, as defined in section two [§ 20-5A-2], article five-a, chapter twenty, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the department of natural resources, as prescribed by section seven [§ 20-5A-7], article five-a, chapter twenty of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174.)

Effect of amendment of 1989. — The amendment in the first paragraph, added the present fourth through seventh sentences, and added the proviso at the end of the last sentence; substituted "shall covenant" for "may covenant" in the first sentence of the second paragraph, and substituted "users" for "user's" near the end of the third paragraph.

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

Requiring connections with sewer facilities. — The boards of public service districts have no authority to require potential users who live outside the boundaries of the districts, but within the 10-mile limit, to hook onto the

district's sewer facilities. *Op. Att'y Gen.*, July 8, 1976.

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

When duty arises. — Owners, tenants, or occupants have a duty under this section to pay rates and charges for the district sewer facilities from and after the date of receipt of notice (now 30 days after receipt) that such facilities are available. *Rhodes v. Malden Pub. Serv. Dist.*, 301 S.E.2d 601 (W. Va. 1983) (construing this section prior to 1980 and 1981 amendments).

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

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

§ 16-13A-10. Budget.

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

§ 16-13A-11. Accounts; audit.

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

forwarded within thirty days of submission to the county commission and to the public service commission.

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

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

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

§ 16-13A-13. Revenue bonds.

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated

as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (1953, c. 147; 1970, cc. 11, 12; 1970, 1st Ex. Sess., c. 2; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1989, c. 174.)

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

Effect of amendment of 1989. — The amendment substituted "eighteen percent" for

"twelve percent" in the second sentence and "nineteen percent" for "thirteen percent" in the fifth sentence; and made a minor punctuation change.

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

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

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

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting

forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (1953, c. 147.)

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

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

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

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to

enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided. (1953, c. 147.)

Rules of Civil Procedure. — Abolition of the procedural distinctions between law and equity, Rule 2.

Receivers, Rule 66.

Application of rules to writ of mandamus, Rule 81(a)(5).

Effect of rules on jurisdiction and venue, Rule 82.

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

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

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

§ 16-13A-18. Operating contracts.

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

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

In any case where a public service district owns a water, sewer or gas system, and all the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon approval by the public service commission of West Virginia.

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

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

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

Rules of Civil Procedure. — Abolition of the procedural distinctions between law and equity, Rule 2.

The provision granting to bondholders a

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

§ 16-13A-20. Refunding revenue bonds.

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

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

Combination of two outstanding bond issues into one refunding bond issue may well be restricted by the use of the singular

language in this section. Op. Att'y Gen., July 8, 1976.

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

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

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

Tax exemption constitutional. — The tax exemption granted to the property, income, and bonds of the district does not violate W. Va. Const., art. X, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

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

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

All acts and proceedings taken by any county court of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect [January 29, 1960], for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

Editor's notes. — As to designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

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

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect [March 13, 1965], by any county court of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)

Editor's notes. — As to designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

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

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

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

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of sections thirteen, twenty or twenty-four [§§ 16-13A-13, 16-13A-20 or 16-13A-24] of this article, without the prior consent and approval of the public service commission. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four [§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

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

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

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

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

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

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four [§ 24-1-1 et seq.] of this code, or may withhold such consent and approval for the protection of the public interest.

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

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

ARTICLE 14.

BARBERS AND BEAUTICIANS.

Sec.

16-14-1. Jurisdiction over barbers and beauticians; powers and duties of director of health.

16-14-2. Barbering, beauty culture and manicuring defined.

Sec.

16-14-3. Regulations to be promulgated by board of health; enforcement.

16-14-4 to 16-14-17. [Repealed.]

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

Michie's Jurisprudence. — For a general treatment of barbering and beauty culture, see 3A M.J., Barbers and Beauticians.

WEST VIRGINIA CODE

ANNOTATED

VOLUME 5

1991 Replacement

1994 Cumulative Supplement

**Including Acts passed during the 1994 Regular Session and
the 1994 First Extraordinary Session**

Prepared by the Editorial Staff of the Publishers

Under the Supervision of

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Place in pocket of corresponding bound volume

THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

1994

works for the collection and/or treatment, and the repair, alteration and maintenance, and any other work which may be necessary to comply with such order. The governing body shall create, by ordinance, and hold any part or all of the responsibility for the completion of said construction, to be a municipal bond commission by the issuance of bonds for the purposes of construction and operation in connection therewith; and after the completion of the construction, the rates shall be sufficient in each year for the payment of the costs and expenses of operation and maintenance, from time to time, of the works, and the charges shall be established until such time as the principal users of the works and owners thereof, by and others shall have had an opportunity to be heard on the proposed rates or charges. After the hearing, the ordinance setting forth the proposed schedule of rates and charges, with the provisions of article three of the code, and the publication area for the first publication shall be made at least ten days before the hearing. After such hearing, the ordinance establishing the rates and charges, as amended, shall be placed in the office of the sanitary board and a copy of such works, and also in the office of the governing body, shall be open to inspection by all persons interested, established for any class of users or premises thereafter, without the necessity of any hearing. If any rates or charges may be made in connection with such change or readjustment be made, and if no hearing or notice is given, and if no hearing is held is not paid within thirty days of the effective date of, together with a penalty of ten percent of the amount may be recovered by the sanitary board by a civil action in the name of the governing body exercising the powers given herein to provide, equip, operate, repair and maintain, and any other work necessary to comply with such order for the collection and/or treatment, and the repair, alteration or the environmental protection or the environmental protection herein to establish, maintain and

collect rates or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds: Provided, however, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

Effect of amendment of 1994. — The amendment substituted "director of the division of environmental protection or the environmental quality board" for "chief of the division of water resources or the state water resources board" twice preceding the two provi-

visions and for "state water resources board" once in each proviso; substituted "municipal bond commission" for "state sinking fund commission"; deleted "however" in the first proviso; and made other minor changes.

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

Sec.		Sec.	
16-13A-1b.	County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.	16-13A-9.	Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.
16-13A-3.	District to be a public corporation and political subdivision; powers thereof; public service boards.	16-13A-21.	Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.

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

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission

shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81; 1994, c. 61.)

Effect of amendment of 1994. — The amendment substituted "bureau of public health" for "department of health"; substituted "division of environmental protection" for "department of natural resources"; deleted "and regulations" following "rules" in the last sentence; and made stylistic changes.

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

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

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district who possess certain educational, business

service commission shall on basis, with those counties or consolidation of public establishing the priority bureau of public health and offer their assistance and completion by the public submitted to the appropriate county commission has six the public service commis- sion present such plan to the or conducted by the county service commission study, fied by the public service ed by the public service y the county commission.

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order creating any public al subdivision of the state, a taxes. Each district may nal, in its corporate name, seal and may enter into luding contracts with any oration located within or supply of water for the unicipal corporation, and epair and extension of any rovement or extension by ally owned public service er municipal corporation act shall extend beyond a ded therein for a renewal nd comply with the rights the municipalities for the

vested in and exercised by ee members, who shall be ain educational, business

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

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

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members become members of the board of the district without any further act or proceedings.

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

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population

§ 16-13A-3

PUBLIC HEALTH

stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission.

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

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

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

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

Effect of amendment of 1994. — The amendment, in the second paragraph, substituted "bureau of public health" for "department of health," and substituted "division of environmental protection" for "department of natural resources"; in the third paragraph, deleted

"not" prior to "less than eighteen thousand," deleted "shall thereby" prior to "become members," and substituted "so appointed are" for "shall be and constitute"; deleted "and constitute" prior to "the board of the district" in the fourth paragraph; deleted "additional" prior to

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to the contrary, whenever section two (§ 16-13A-2) of this act and members shall end on the day of the year. The county commission shall be authorized by the public service

of the first board shall be fixed by the board. If the term of two years, a like number of members shall be appointed for six months which the appointments are made as aforesaid shall meet at the time which entered the order creating the board and shall qualify by the time the member or members of the board shall be provided in section three-a

red term within thirty days, the board shall be appointed for terms of six months until successors have been appointed and shall be appointed in the same manner as provided in the same act.

Following the first appointments after the first day of January of each year, the board shall be appointed by the board. The members of the board shall be appointed by the board. Duplicate records shall be filed with the minutes of all board actions. All funds of the public service district shall be authorized or approved by the board. The board shall have the duty of performing the duties appertaining to the office of the board as shall be prescribed by the board. The amount to be fixed by the board

secretary and treasurer thereof, and at all times, all of its books and records and affairs, for inspection monthly. (1953, c. 147; 1965, c. 146, c. 81; 1994, c. 61.)

or to "less than eighteen thousand," shall thereby" prior to "become members and substituted "so appointed are" for "and constitute"; deleted "and constitute" or "the board of the district" in the seventh paragraph; deleted "additional" prior to

"member or members" in the fifth paragraph; deleted "and regulations" following "rules" in the seventh paragraph; deleted "the" prior to "name out on orders" in the penultimate paragraph; and made stylistic changes.

Compensation of board members for

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

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

Compensation of board members for performing additional duties prohibited. — Board members of a public service district could not be compensated for performing the

duties of treasurer and/or secretary, or for reading meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

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

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

Procedure for affixing compensable interests. — Public service commission, in the absence of specific statutory authority, is not

empowered to determine whether particular property interests acquired or to be acquired by a utility are compensable in an eminent domain action, or to render any type of monetary judgment for such property interests. Affixing the value of the property taken is the function of the trier of fact in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

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

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises

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

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

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l facilities furnished to any premises, the aggregate thereof. Facilities furnished by the either the applicant is applicant is a tenant, owner or owners of the premises for service shall secure the payment of amount as provided in pay service rates and termination of may be made by the has been remitted to the services or facilities the same become due as well as the user of the the owner, user and and charges are fully on notice of any said the board may, under permission, shut off and of either water or gas request of the owner to discontinue water and services or facilities within sixty days after the

city, city, incorporated public service district included for water facilities or other kind of facilities, public and such publicly owned or municipal corporations contract with each other for the nonpayment of contracts entered into by be submitted to the public service district providing to terminate water bills. Where one or other public service district of the sewer district or service experiences is included within the public service, upon the delinquent account, shall

terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

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

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

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of

equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

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

Effect of amendment of 1994. — The amendment substituted "bureau of public health" for "department of health" throughout the section; deleted "and regulations" following "reasonable rules" in the first paragraph and following "all rules" in the second paragraph; and made stylistic changes.

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

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

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

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§ 16-13A-2

Permissible b districts. — The districts of money

§ 16-13A-2

Certificate o nience. — Under district must first convenience and or construct pub. Public Serv. Com S.E.2d 914 (1992) Eminent don service commi

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Effect of amendment of 1994. — The amendment substituted "bureau of public health, the division of environmental protection and the environmental quality board" for

"state department of health and the state water resources board"; deleted "declared" preceding "a public instrumentality"; and made stylistic changes.

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

Permissible borrowing by public service districts. — The borrowing by public service districts of money from counties and/or munic-

ipalities, as evidenced by a note, is permissible borrowing under this section. Op. Att'y Gen., May 6, 1988, No. 27.

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

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

Eminent domain not subject to public service commission review. — Although

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

ARTICLE 13B.

COMMUNITY IMPROVEMENT ACT.

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

- and laying assessments; report on project completion; permits.
- 16-13B-11. Construction of projects; assessments; corner lots, etc.
- 16-13B-12. Apportionment and assessment of cost.
- 16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.
- 16-13B-14. Method of paying for cost of project; how assessments may be evidenced.
- 16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.
- 16-13B-16. No liability of state, county, municipality and assessment district.
- 16-13B-17. Payment of assessment fees; releases.
- 16-13B-18. Liens; recording notice of liens; suit for enforcement; priority.
- 16-13B-19. Reassessment for void, irregular or omitted assessments.
- 16-13B-20. How additional territory may be added to assessment district.
- 16-13B-21. Operation and maintenance of

ORDER

WHEREAS, on the 23rd day of January, 1970, a public hearing was held before the County Court of Morgan County, West Virginia, to consider the matter of the creation of Warm Springs Public Service District, pursuant to an order of said Court dated December 18, 1969, at which meeting divers persons residing in or having an interest in property within the said District appeared and were heard for and against the creation of the said District; and

WHEREAS, notice of the time and place of said meeting was duly published in The Morgan Messenger, a newspaper of general circulation in Morgan County, and posted as required by law, and an affidavit of publication and posting by the publisher of The Morgan Messenger has been duly filed in the said Court; and

WHEREAS, the resolution of the Council of the Town of Bath, a municipal corporation situated within the bounds of the said Public Service District, consenting to the creation of the said District, has been duly filed in the said Court; and

WHEREAS, no written petition in opposition to the creation of the said District has been filed with the said Court; and

WHEREAS, the Court is of the opinion that the proposed Public Service District will be conducive to the preservation of public health, comfort, and convenience of the area included within the said District;

NOW THEREFORE, the County Court of Morgan County, West Virginia, pursuant to the authority vested in it by Article 13A, chapter 16 of the West Virginia Code, as amended, does hereby order that a Public Service District for the purpose of constructing, acquiring, maintaining, operating, improving, and extending a sanitary sewage system for the collection, treatment, and purification of sewage and industrial waste is hereby created; that the name of the said Public Service District shall be WARM SPRINGS PUBLIC SERVICE DISTRICT; and, that the bounds of the said Public Service District, which covers a portion of the watershed of Warm Spring Run and lies in a portion of the Bath Magisterial District of Morgan County and contains within its bounds the Town of Bath, a municipal corporation, are as follows:

- beginning at a point on Warm Springs Ridge N 39° 36' 55" - W 76° 13' 11" thence
1. S 63° 35' E 3150 feet to a point N 39° 38' 30" - W 78° 12' 34" thence
 2. S 27° 40' W 6910 feet to a point N 39° 37' 28" - W 78° 13' 15" thence
 3. S 77° 20' E 2275 feet to a point N 39° 37' 24" - W 78° 12' 45" thence
 4. S 33° 40' W 3175 feet to a point N 39° 37' 10" - W 78° 13' 10" in the center of primary road 9 thence
 5. S 46° 25' W 4015 feet to a point N 39° 36' 55" - W 76° 13' 16" in the center of secondary road 36/4 thence
 6. N 54° 05' W 2810 feet to a point N 39° 37' 00" - W 78° 14' 15" to a point on Warm Springs Ridge thence with the crest of Warm Springs Ridge
 7. N 24° 25' E 12,785 feet to the point of beginning containing 1.636 square miles.

IT IS FURTHER ORDERED That the following named persons are hereby appointed the members of the Public Service Board of said District:

- Lewis F. Heiner to serve for a term of two years expiring February 1, 1972;
- Burton C. English to serve for a term of four years expiring Feb. 1, 1974; and
- Earle T. Andrews to serve for a term of six years expiring Feb. 1, 1976; or until their successors have been appointed and qualified.

Done at Berkeley Springs, West Virginia, this 5 day of February, 1970.

Paul C. Swain
President.

Resolution of the Council of the Town of Bath,

The Council approved a motion by Councilman Shockley, seconded by Jackson, that the Town of Bath consent to the creation by the Morgan County Court of the Warm Springs Public Service District and to become a part of the said District.

L. F. Heiner
Mayor

The Court not having dispatched all of the business coming before it, adjourned until Monday, February 9, 1970.

[Handwritten signature]

CERTIFICATION

ate of West Virginia,
ounty of Morgan, to-wit:

I, Clyde M. Graham, Clerk of the County Court of Morgan County,
st Virginia, do hereby certify that the foregoing writing, hereto
nixed, bearing date on the 5th day of Feb., 1970, is a
ue copy of The "Order" creating the Warm Springs Public Service
District.

aken from the records in my office in Commissioners Record
Book No. 18,
age 310.

Given under my hand and official seal this 14th day of September,
77.

Clyde M. Graham
Clerk of the County Court of
Morgan County, West Virginia

T. E. Shufflebarger, Jr.
T. E. Shufflebarger, Jr.
President
Morgan County Commissioner

Richard G. Gay
Richard G. Gay
County Commissioner

Glen R. Stotler
Glen R. Stotler
County Commissioner

ATTEST: Ralph N. Shambaugh
Clerk of the County Commission

The County Commission not having dispatched all of the business coming before it adjourned until July 20, 1989.

President

July 20, 1989

The County Commission met this day in regular session with Glen R. Stotler and Richard G. Gay present. The meeting was opened by Deputy Cowles.

Bills were ordered paid out of the General County Fund:	Ck. #71-80, 84, 86, 87, 90-94, 96-97, 99-113	\$ 29,115.13
Bills were ordered paid out of the Coal Severance Fund:	Ck. #1	187.59
Bills were ordered paid out of the Mor.Co. Industrial Park Fund:	Ck. #4	68.99
Bills were ordered paid out of the Magistrate Court Fund:	Ck. #1-3	156.00
Bills were ordered paid out of the General School Fund:	Ck. #1	12,377.13

Members of the Morgan County Rescue Service - Steve McBee, Jay Steiner, Kenneth Butts, Chuck Lopp, Bob Stotler, Beth Stotler, Ron Ebert, Richard Michael and others appeared before the County Commission to discuss closing of the emergency room night shift at the hospital. Steve McBee, spokesman for the group, expressed concerns of potential problems in operating the rescue service if all calls are to be transported to the Winchester Hospital.

Current rescue squad vehicle inventory is as follows:

- 1973 Chevrolet Suburban - rescue vehicle
- 1981 Ford Van
- 1985 Ford Box Van

COURT ORDER

The County Commission appointed Charles Lopp as County Coroner.

A request by Virgil Falloon to enter onto industrial park property to perform aqua-culture studies was presented to the Commission by Robert Hawvermale, Industrial Parks Administrator. Upon recommendation from Prosecuting Attorney Charles Trump, the County Commission denied this request due to the potential liability problems in allowing entrance during construction. The Commission directed Bill Clark to write to Mr. Falloon to explain their reason for denial and invite him to make this request again near the end of construction.

On a Richard Gay/Glen Stotler motion, the County Commission entered an order to withdraw the request previously submitted to the Public Service Commission granting water and sewer authority to Wara Springs Public Service District for the industrial park property. Their request for sewage service remains in effect.

The Morgan County Commission hereby authorizes the Sheriff's Department to move the evidence room from the old jail building.

The Morgan County Commission hereby reappoints the following members to the Special Communication Committee in charge of the county communications system at the Morgan County War Memorial Hospital:

- 1) Ira McIntyre, representing S. Morgan Volunteer Fire Department
- 2) James D. Clark, Jr., representing Berkeley Springs Volunteer Fire Department
- 3) Larry Mann, representing Great Cacapon Volunteer Fire Department
- 4) Daniel Duckwall, representing Morgan County Rescue Service
- 5) Charles Lopp, representing Morgan County War Memorial Hospital
- 6) Kenneth Butts, liaison representative for the Morgan County Commission
- 7) C. Dwan McBee, representing the public.
- 8) George Brooks, representing the public.

These appointments will expire July 30, 1990.

The Morgan County Commission hereby appoints Thomas R. Swain to the Morgan County Planning Commission. The appointment is effective immediately and will expire July 30, 1992.

The County Commission met this day with T. E. Shufflebarger, Jr., and Richard Gay present. The meeting was opened by Deputy Sue Sherrard.

The Morgan County Commission met as a Board of Equalization and Review.

County Planner, Bill Clark, reported to the County Commission the Planning Commission's decision to accept the amendments to the subdivision regulations as amended by the County Commission at their February 2 meeting. On a Richard Gay/Tom Shufflebarger motion, the County Commission adopted the amendments to the Morgan County Subdivision Regulations.

County Planner, Bill Clark, presented to the County Commission a copy of the Morgan County Planning Commission Bonding and Escrow Policy for their review.

At 10:45 a.m. the County Commission entered into an Executive Session to discuss county finances on a Richard Gay/Tom Shufflebarger motion. They reconvened to regular session at 12:15 p.m.

Kermit Billups, Larry Englande, and Buck Landry, representatives from Legg Mason, appeared before the County Commission to discuss restructure of the 1979 Mortgage Revenue Bond Issue. Prosecuting Attorney Charles Trump attended this portion of the meeting. After discussion and comparison of the restructuring proposals previously submitted, the County Commission decided, on a Richard Gay/Tom Shufflebarger motion, to accept the proposal submitted to the Morgan County Commission by Legg Mason Wood Walker, Inc., and adopted a resolution appointing underwriter and bond counsel for the restructure transaction. This obligation is conditional on the underwriter delivering to issuer the minimum net amount of \$700,000 at no cost to issuer. This obligation is in effect for 90 days from February 23, 1989, and represents no obligation on the part of Morgan County or the State of West Virginia.

The County Commission not having dispatched all of the business coming before it adjourned until February 28, 1989.

J. E. Shufflebarger, Jr. President

February 28, 1989

The County Commission met this day with all members present. The meeting was opened by Deputy Dale Davis.

The Morgan County Commission met as a Board of Equalization and Review.

At 10:00 a.m. the County Commission entered into an Executive Session to hold an incompetency hearing for Cora Virginia Fox. A recording of the hearing is on file in the County Clerk's Office.

The County Commission reconvened to regular session at 10:30 a.m.

Dorthea Robinette appeared before the County Commission to request a homestead exemption previously dismissed by the County Assessor. She stated that she would remain a resident of Morgan County and possessed a West Virginia driver's license. On a Glen Stotler/Richard Gay motion, the County Commission declared Dorthea Robinette exempt from homestead real property tax.

Thurman Whisner appeared before the County Commission to discuss the need for a water and sewer system in the village of Great Cacapon. He volunteered to donate his time to perform preliminary design of such a project. He said he would need aerial photography and other technical information from the County. The Commission welcomed his proposal and agreed to provide the necessary information for this study.

At 11:30 a.m. the County Commission held a public hearing to grant water authority to the Warm Springs Public Service District at the U. S. Route 522 Industrial Park site. There were no negative comments from the public.

Rob Campbell, Morgan County Sanitarian, and Max Fisher, District Sanitarian, appeared before the County Commission to discuss operation of the Morgan County Health Department. They presented budget information for 1988 and 1989. A list of potential board of health members was also presented to the Commission. Rob Campbell stated that he had talked to Dr. Helsley about being a county health officer and found him receptive. The County Commission agreed that arrangements should be made to establish a Morgan County Board of Health for fiscal year beginning July 1, 1989.

The County Commission approved a contract with Bonded Applicators of Maryland, Inc., for the replacement of roofs on the courthouse, annex, and the jail, for the contract price of \$18,750.

February 28, 1989

COURT ORDER

The Morgan County Commission, having met the requirements of the West Virginia Code 16-13A-2, by motion, duly adopted, this 28th day of February, amended the scope of activities of the Warm Springs Public Service District to allow for provision of water authority. The authority will include the area encompassing the U. S. Route 522 Industrial Park, more particularly described as follows:

Parcel #1 - Beginning at an existing concrete monument in the eastern right-of-way line of U. S. Route 522 and running thence with said monument sitting south of an unnamed access road to Colonial Village and running thence with said access road S. 78 degrees 11' 57" E. 854.93 feet to an existing rebar; thence, with the lands of Colonial Village Trust Agreement S. 36 degrees 45' 11" W. 349.50 feet to an existing rebar; thence, S. 46 degrees 54' 11" E. 1180.92 feet to an existing concrete monument; thence, S. 50 degrees 44' 10" E. 625.44 feet to an existing tree stump; thence, with the lands of Colonial Village S. 34 degrees 56' 05" W. 280.00 feet to a planted stone; thence, with a new line of division N. 72 degrees 52' 27" W. 2388.53 feet to an existing concrete monument in the eastern right-of-way line of U. S. Route 522; thence, with said right-of-way N. 64 degrees 11' 10" W. 5.01 feet to an existing concrete monument; thence, with a curve to the left having a radius of 575.00 feet, central angle of 4 degrees 47' 37" chord bearing and distance of N. 22 degrees 58' 53" E. 48.00 feet to an existing concrete monument; thence, N. 20 degrees 40' 00" E. 791.66 feet to the place of beginning containing 47.13 acres more or less.

Parcel #2 - Beginning at an existing concrete monument in the eastern right-of-way line of U. S. Route 522 and running thence with said right-of-way line N. 27 degrees 09' 15" E. 756.99 feet to a point; thence, S. 62 degrees 50' 45" E. 5.00 feet to a point; thence, N. 26 degrees 55' 25" E. 451.22 feet to an existing concrete monument; thence, with a new line of division S. 72 degrees 52' 27" E. 2,388.53 feet to a point; thence, with the lands of Colonial Village S. 34 degrees 56' 05" W. 745.51 feet to a planted stone; thence, with the lands of Coolfont Development Company S. 05 degrees 35' 31" W. 183.89 feet to an existing concrete monument; thence, with the lands of Largent N. 79 degrees 56' 58" W. 2,429.32 feet to the place of beginning containing 55.80 acres more or less.

T. E. Shufflebarger, Jr.

T. E. Shufflebarger, Jr.

President

Morgan County Commission

Richard G. Gay

Richard G. Gay

County Commissioner

Glen R. Stotler

Glen R. Stotler

County Commissioner

ATTEST: Ralph N. Shambaugh
Ralph N. Shambaugh
Clerk of the County Commission

The County Commission not having dispatched all of the business coming before it adjourned on March 7, 1989.

 President

March 7, 1989

The County Commission met this date in regular session with all members present. The meeting was opened by Deputy Sue Sherrard.

Bills were ordered paid out of the General County Fund:	Ck. #'s 3013 - 3046	\$36,974.00
Bills were ordered paid out of the Coal Severance Fund:	Ck. #31	16,000.00
Bills were ordered paid out of the Magistrate Court Fund:	Ck. #41	25,000.00
Bills were ordered paid out of the Industrial Park Fund:	Ck. #23 & 24	1,000.00

At 10:00 a.m. Mrs. John Douglas, representing the Morgan County Library, appeared before the County Commission to request that 40% of the allocable amount of County Hotel/Motel Tax be dedicated to Morgan County Public Library each time distribution is made by the County Commission. Mrs. Douglas also requested the County Commission release to the Library the \$1,000 financial contribution they anticipate receiving for this fiscal year.

Richard Gay suggested that a policy be made on how they should handle closing the Courthouse due to bad weather. On a Richard Gay/Glen Stotler motion, the County Commission decided that Tom Shufflebarger would make the decision to close the Courthouse due to inclement weather. A memo to all county employees is to be sent regarding this decision.

The County Commission approved the following Project Notification and Review documents:

- 1) Housing Services Project
- 2) Housing Preservation Grant

The County Commission will meet on March 20 at 4:30 p.m. to discuss the county budget.

At 11:05 the County Commission entered into an Executive Session to discuss the jail situation.

The County Commission reconvened to regular session at 11:30 a.m.

The County Commission appointed Stephen Mathias as Special Fiduciary Commissioner for the Estate of Herbert Mathias.

T. E. Shufflebarger, Jr.
T. E. Shufflebarger, Jr.
President
Morgan County Commission

Richard G. Gay
Richard G. Gay
Morgan County Commissioner

Glen R. Stotler
Glen R. Stotler
County Commissioner

ATTEST: Ralph N. Shambaugh
Ralph N. Shambaugh
Clerk of the County Commission

The County Commission approved the Request for Funds for the Governor's Highway Safety Program for the period from October through December, 1988.

The County Commission requested a revision to the approved budget for 1988-89 to be sent to the State Commissioner for approval.

The County Commission not having dispatched all of the business coming before it adjourned until February 2, 1989.

 President

February 2, 1989

The County Commission met this day with all members present. They met as a Board of Equalization and Review. The meeting was opened by Deputy Sue Sherrard.

Louise Everett, Peg Shockey, and Polly Miller of Morgan County Extension Homemakers appeared before the County Commission to discuss litter control in Morgan County. Mrs. Everett, spokesperson for the group, described the West Virginia Adopt a Highway Program and expressed their interest in creating a Recycling Pilot Program for Morgan County. On a Glen Stotler/Richard Gay motion, the County Commission agreed to participate in the Litter Control Program and sponsor an application for a recycling program grant from the Department of Natural Resources.

Helena Moser, Joan Gordon, and Steve Abe, representing the Town of Paw Paw, appeared before the County Commission to discuss land pricing and indebtedness concerning the industrial park projects. Richard Hawvermale, Robert Hawvermale, George McVey and Charles Trump were present at the meeting. The County Commission reviewed their agreement with the Town of Paw Paw as prepared for the EDA grant application. Richard Hawvermale described the intent of the agreement. After discussion, it was decided that 40% of the Paw Paw land sale revenues would be applied toward the County debt and 100% of the Berkeley Springs land sale revenue would be applied to the debt until grant indebtedness is satisfied. Further discussion of this issue may be necessary.

At 11:00 a.m. the County Commission discussed the proposed amendments to the Morgan County Subdivision Regulations. Tom Shufflebarger read aloud the amendments as proposed. On a Richard Gay/Glen Stotler motion, the County Commission approved the proposed amendments with the exception of Item 4, Section 11.2, Para. 2 Roads. The Commission then opened the floor for discussion of Item 4. Comments in favor of and against the changing of road grade standards from 12% to 10% on subdivision main roads and 15% to 12% on subdivision side roads were heard and discussed. A letter from Danny Clark, Berkeley Springs Volunteer Fire Department Chief, expressing concerns of the Fire Department on road requirements, was presented to the County Commission by Philip Kasecker.

On a Glen Stotler/Tom Shufflebarger motion, the County Commission voted to reconsider the prior motion approving the proposed amendments and approved the amended Section 11.2 Para. 2 Roads, as follows: "All roads must be accessible year-round by school buses, fire trucks, service trucks, and passenger cars. Main roads are limited to 12% maximum grade and must have a road surface at least 18 feet wide, plus two foot wide shoulders on each side. Side roads are limited to 13% grade and must have a road surface at least 16 feet wide plus two foot wide shoulders on each side. They shall be constructed as heavy duty roads as a minimum."

As stated by Commissioner Gay, the Commissioners are amending the proposed amendments, as it is the general consensus that a 12% road grade is accessible by emergency vehicles would be safe for traffic in Morgan County subdivisions. According to West Virginia Code 8-24-22, a written statement of the reasons for the amendments to the proposals must be sent to the Planning Commission for their review.

Betty Moss, Charles Williams, and Charles Trump appeared before the County Commission to discuss obtaining office space for the Circuit Clerk and the Prosecuting Attorney. The County Commission decided that the Prosecuting Attorney could utilize the two east offices of the County Extension Office and the Circuit Clerk could utilize the offices currently used by RSVP. All parties agreed with the decision.

Ken Pack and Brenda Wrye, representatives of the Community Action Agency, appeared before the County Commission to update the Commissioners on their progress with programs administered in Morgan County. Pack informed the Commissioners that office space had been obtained from War Memorial Hospital.

On a Glen Stotler/Richard Gay motion, the County Commission duly ordered that water authority be granted to the Warm Springs Public Service District for the industrial park located on U. S. Route 522. A hearing was set for February 28 at 11:30 a.m. A proper description of the industrial park is as follows:

February 2, 1989 Meeting (Continued)

Parcel #1 - Beginning at an existing concrete monument in the eastern right-of-way line of U. S. Route 522, said monument setting south of an unnamed access road to Colonial Village and running thence with said access road S. 78 degrees 11' 57" E. 854.93 feet to an existing rebar; thence, with the lands of Chambers Trust Agreement S. 36 degrees 45' 11" W. 349.50 feet to an existing rebar; thence, S. 46 degrees 59' 54" E. 1186.92 feet to an existing concrete monument; thence, S. 50 degrees 44' 10" E. 622.44 feet to an existing tree stump; thence, with the lands of Colonial Village S. 34 degrees 56' 05" W. 280.11 feet to a point; thence, with a new line of division N. 72 degrees 52' 27" W. 2388.53 feet to an existing concrete monument in the eastern right of way line of U. S. Route 522; thence, with said right-of-way line N. 64 degrees 35' 24" W. 5.01 feet to an existing concrete monument; thence, with a curve to the left having a radius of 5760.00 feet, central angle of 4 degrees 47' 37" chord bearing and distance of S. 20 degrees 58' 53" E. 481.77 feet to an existing concrete monument; thence, N. 20 degrees 40' 00" E. 71.13 feet to the place of beginning containing 47.13 acres more or less.

Parcel #2 - Beginning at an existing concrete monument in the eastern right-of-way line of U. S. Route 522 and running thence with said right-of-way line N. 27 degrees 09' 15" E. 756.99 feet to a point; thence, S. 62 degrees 50' 45" E. 5.00 feet to a point; thence, N. 26 degrees 55' 25" E. 451.22 feet to an existing concrete monument; thence, with a new line of division S. 72 degrees 52' 27" E. 2,388.53 feet to a point; thence, with the lands of Colonial Village S. 34 degrees 56' 05" W. 745.51 feet to a planted monument; thence, with the lands of Coolfont Development Company S. 05 degrees 35' 31" W. 183.89 feet to an existing concrete monument; thence, with the lands of Largent N. 79 degrees 56' 58" W. 2,429.32 feet to the place of beginning containing 55.80 acres more or less.

The County Commission not having dispatched all of the business coming before it adjourned until February 7, 1989.

T. E. Shufflebarger, Jr.
President

February 7, 1989

The County Commission met this day as a Board of Equalization and Review, and also in regular session, with T. E. Shufflebarger, Jr., and Glen Stotler present. The meeting was opened by Deputy Brenda McChesney.

The Morgan County Commission met as a Board of Equalization and Review.

Richard Stoecker and Linda Fallon, representing Morgan Arts Council, appeared before the County Commission to discuss upcoming projects of the council and submitted their request for funding from the Morgan County Hotel/Motel Tax. The County Commission agreed to consider the request.

Sheriff William Spitzer appeared before the County Commission to discuss the status of his police department and the use of the offices above the Sheriff's Department.

COURT ORDER

The County Commission appointed Odrey Effland and Richard Harrington to the Morgan County Solid Waste Authority Board of Directors.

The County Commission approved a Project Notification and Review Document for the Environmental Protection Agency.

Gary Goller appeared before the County Commission to present estimated county assessment values.

The County Commission adjourned from regular session and entered an executive session to discuss county personnel.

February 7, 1989

COURT ORDER

The Morgan County Commission hereby appoints Richard Harrington to the Morgan County Solid Waste Authority Board of Directors for a four-year term ending July 1, 1992.

T. E. Shufflebarger, Jr.
T. E. Shufflebarger, Jr.
President
Morgan County Commission

Richard G. Gay
Richard G. Gay
County Commissioner

Glen R. Stotler
Glen R. Stotler
County Commissioner

ATTEST: Ralph N. Shambaugh
Ralph N. Shambaugh
Clerk of the County Commission

The Morgan County Commission accepted and approved the resignation of Deputy Melody Lea Sherrard as Deputy in the Morgan County Sheriff's Department, effective November 30, 1988.

The Morgan County Commission not having dispatched all of the business coming before it adjourned until December 8, 1988.

J. Z. Shufflebarger, Jr., Pres

December 8, 1988

The County Commission met this day in regular session with T. E. Shufflebarger, Jr., and J. Brown Norton present. The meeting was opened by Deputy Sue Sherrard.

Bills were ordered paid out of the General County Fund:	Ck. #'s 2579 - 2615	\$ 11,900.00
Bills were ordered paid out of the Coal Severance Fund:	Ck. #27	1,000.00
Bills were ordered paid out of the Magistrate Court Fund:	Ck. #36	2,000.00
Bills were ordered paid out of the General School Fund:	Ck. #16	2,000.00
Bills were ordered paid out of the Dog & Kennel Fund:	Ck. #33	2,000.00
Bills were ordered paid out of the Morgan Co. Ind. Park Fund:	Ck. #11- 13	2,000.00

At 10:00 a.m. the County Commission opened bids for roof replacement for the Morgan County Jail, Morgan County Courthouse and Courthouse Annex. The companies that submitted bids were: G. A. Largent and Associates, Inc., and Gregory's, Inc.

Robert Hauvermale appeared before the County Commission to discuss the budget for the proposed Industrial Parks.

At 2:00 p.m. a Public Hearing was held for the enlargement of the Warm Springs Public Service District. Public comment in favor of the expansion was heard. On a Brown Norton/Tom Shufflebarger motion, the County Commission approved the enlargement of the Warm Springs Public Service District. The enlargement will include the Warm Springs Drainage area and the U. S. 522 Industrial Park.

The County Commission meeting was changed to December 22, 1988. The County Commission will meet December 22, 1988, to canvass votes for the Special Levy Election.

The County Commission discussed the need for appointments to the District 6 Board of Health.

The County Commission approved the following Region 9 Project Notification and Review documents:

- 1) Clean Lakes Program
- 2) Rural Health Initiative Grant/Migrant Program Grant
- 3) WV Pilot Unit Management Program
- 4) WV Family Planning Program

COURT ORDER

The Morgan County Commission, having met the requirements of the West Virginia Code 16-23A-2, by motion, duly adopted, this 8th day of December, to enlarge the Warm Springs Public Service District. The enlargement will include the Warm Springs drainage area and the U. S. Route 522 Industrial Park more particularly described as follows:

Beginning at a corner to the existing boundary to the Warm Springs Public Service District, which point lies in or near West Virginia State Route 9 and is located at the Latitude 39 degrees 37' 10" N. and Longitude 78 degrees 13' 10" W.; thence, running east with said Route 9,

S. 70 degrees 45' 22" E., 1200.32 feet, more or less, to the intersection of said Route 9 and New Hope Road; thence, running east with said Route 9,

N. 50 degrees 22' 26" E., 3128.49 feet, more or less, to the point where the watershed line of Warm Springs Run crosses said Route 9; thence, following the watershed line of Warm Springs Run, which is approximated by the following courses and distances:

- S. 35 degrees 16' 59" E., 1188.18 feet, thence.
- S. 20 degrees 43' 20" W., 3858.30 feet to a point near New Hope Road, thence.
- S. 45 degrees 13' 42" W., 3240.80 feet; thence.
- S. 41 degrees 19' 30" E., 589.26 feet to a point near Johnsons Mill Road; thence.
- S. 19 degrees 42' 09" W., 2612.09 feet; thence.
- N. 83 degrees 35' 06" W., 709.33 feet; thence.
- S. 27 degrees 30' 34" W., 5563.12 feet; thence, crossing W. Va. County Route 13.
- N. 58 degrees 41' 40" W., 1260.45 feet; thence.
- S. 28 degrees 31' 45" W., 3798.49 feet; thence.
- N. 68 degrees 51' 36" W., 1599.72 feet; thence.
- S. 28 degrees 35' 46" W., 2093.66 feet; thence.
- N. 77 degrees 59' 50" W., 1019.33 feet; thence.
- S. 53 degrees 41' 06" W., 2144.32 feet to a point near the intersection of U. S. Route 522 and Shirley Drive; thence.
- S. 25 degrees 50' 16" W., 319.03 feet to a point near said Route 522; thence.
- N. 85 degrees 05' 11" W., 1498.48 feet to a point on the top of Warm Springs Ridge; thence, with the top of Warm Springs Ridge,

N. 21 degrees 49' 28" E., 7342.15 feet; thence, with the top of Warm Springs Ridge, N. 25 degrees 39' 46" E., 14,323.25 feet to a point in the line of the existing boundary of said District, and in the center of said Route 9; thence, leaving the watershed of Warm Springs Run, and with the existing boundary of said District,

S. 23 degrees 25' 37" W., 2900.00 feet, more or less; thence, with the existing boundary of said District, S. 54 degrees 29' 58" E., 2787.83 feet; thence, with the existing boundary of said District, N. 46 degrees 40' 00" E., 3980.98 feet to the point of beginning and containing 2,878 acres.

0 square miles, more or less.

S. 522 Industrial Park, more particularly described as follows:

Parcel #1 - Beginning at an existing concrete monument in the eastern right of way line of U. S. Route 522. ... containing 47.13 acres more or less.

Parcel #2 - Beginning at an existing concrete monument in the eastern right of way line of U. S. Route 522. ... beginning containing 55.80 acres more or less.

T. E. Shufflebarger, Jr.
T. E. Shufflebarger, Jr.
President
Morgan County Commission

J. Brown Norton
J. Brown Norton
County Commissioner

Glen R. Stotler
County Commissioner

ATTEST: Ralph N. Shambaugh
Ralph N. Shambaugh
Clerk of the County Commission

The County Commission not having dispatched all of the business coming before it adjourned until December 22, 1988.

[Signature] President

December 12, 1988

At 10:00 a.m. the County Commission met for the opening of sealed bids for the 522 and Paw Paw Industrial Parks. All members were present.

Bids from the following companies were opened and read aloud:

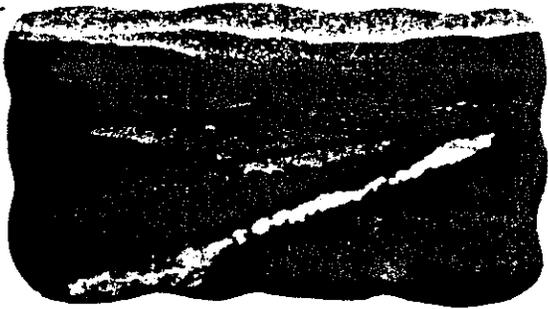
Table with 2 columns: Bidder Name and Amount. Rows include 522 Industrial Park Bids (C. W. Hetzer, I. A. Construction, Buckley-Lages, Inc., Jack Alvarez) and Paw Paw Industrial Park Bids (I. A. Construction, Jack Alvarez).

On a Glen Stotler/Tom Shufflebarger motion, the County Commission awarded bids to C. W. Hetzer for the construction of the 522 Industrial Park and I. A. Construction for the Paw Paw Industrial Park. A decision on the use of the project deductive alternatives and project cost overruns will be made at a later date.

The County Commission not having dispatched all of the business coming before it adjourned until December 22, 1988.

[Signature] President

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6



Morgan County Commission

P.O. Box 28
Berkeley Springs, West Virginia 25411
258-2797

-COMMISSIONERS-

T.E. SHUFFLEBARGER, JR.
104 HAGEMAN STREET
BERKELEY SPRINGS
WV 25411
258-1584

RICHARD G. GAY
202 CONGRESS STREET
BERKELEY SPRINGS
WV 25411
258-1966

GLEN R. STOTLER
P.O. BOX 515
BERKELEY SPRINGS
WV 25411
258-3540

July 19, 1990

COURT ORDER

The Morgan County Commission, by motion, duly adopted, proposes to enlarge the Warm Springs Public Service District. The enlargement will include the Great Cacapon Annex more particularly described as follows;

Beginning at the mouth of Wiggins Run at the southern low water line of the Potomac River; thence, up the center of Wiggins Run to the west right of way line of West Virginia State Route 9; thence, south along the west right of way line of West Virginia State Route 9, 1800 feet; thence, crossing said Route 9 and Tonoloway Ridge, s. 42 degrees E. (bearing based on True North) to the center of the Cacapon River; thence, down the center of the Cacapon River to its mouth, at the southern low water line of the Potomac River; thence, up the Potomac River in a westerly direction with the southern low water line to the point of beginning, and containing 0.90 square miles, more or less.

Glen R. Stotler
President
Morgan County Commission

Richard G. Gay
County Commissioner

T.E. Shufflebarger, Jr.
County Commissioner

ATTEST:

Ralph N. Shambaugh
Clerk of the County Commission

GREAT CACAPON QUADRANGLE
WEST VIRGINIA-MARYLAND
7.5 MINUTE SERIES (TOPOGRAPHIC)

732 17°30' 734 2 350 000 FEET (N. VA.)



WARM SPRINGS PUBLIC SERVICE DISTRICT

RESOLUTION ESTABLISHING RULES BY WHICH THE TIME AND PLACE OF ALL REGULARLY SCHEDULED MEETINGS AND THE TIME, PLACE AND PURPOSE OF ALL SPECIAL MEETINGS ARE TO BE MADE AVAILABLE, IN ADVANCE, TO THE PUBLIC AND NEWS MEDIA AND PROVIDING WHEN THIS RESOLUTION AND SUCH RULES SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF WARM SPRINGS PUBLIC SERVICE DISTRICT:

Section 1. Statutory Mandate for These Rules. The rules established in and by this resolution are mandated by and promulgated pursuant to Article 9A, Chapter 6 of the Code of West Virginia, 1931, as last amended (herein called the "Act"), and other applicable provisions of law.

Section 2. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) Section 3 of the Act requires each governing body, as defined in the Act, to promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(B) The Public Service Board (herein called the "Board") of Warm Springs Public Service District (herein called the "District") is a governing body within the meaning of the Act.

(C) Accordingly, it is hereby ordered that the rules set out in Section 3 hereof be promulgated and established as Rules of Procedure of the Board.

Section 3. Rules. The following are hereby promulgated and established as Rules of Procedure of the Board of the District:

Rule No. 1. Except as provided in Rule No. 3, notice of every regularly scheduled meeting of the Board shall be given by posting on the door of the regular meeting place of the Board, or, at the place near the main entrance to such regular meeting place customarily used for posting similar notices, not less than five (5) but not more than ten (10) days prior to the date of such regularly scheduled meeting, a notice stating the time and place, including the room, if known, of such meeting.

As soon as practical after the posting of such notice, but not less than five (5) days prior to the date of such regularly scheduled meeting, a notice identical to that posted shall be distributed to each of the newspapers, television stations, radio stations and other news media listed below:

Morgan Messenger

WCST Radio Station

The Board of the District shall semiannually review the above list and shall amend such list as needed, in the opinion of the Board, to reflect properly all the newspapers, television stations, radio stations and other news media that customarily cover news of the area lying within the District.

. Contemporaneously with the distribution of said notices to the news media, a notice identical to that posted shall be sent to the Clerk of the County Commission of Morgan County, with instructions for the Clerk to post such notice at the place in the courthouse in which legal notices customarily are posted. In addition, a notice identical to that posted shall be made a part of the minutes of the meeting for which such notice was given.

Rule No. 2. Except as provided in Rule No. 3, notice of any special meeting of the Board shall be given by posting on the door of the regular meeting place of the Board, or at the place near the main entrance to such regular meeting place customarily used for posting similar notices, not less than four (4) but not more than eight (8) days prior to the date set for such special meeting, a notice stating the time, place, including the room, if known, and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

As soon as practical after the posting of such notice, but not less than four (4) days prior to the date set for such special meeting, a notice identical to that posted shall be distributed to each of the newspapers, television stations, radio stations and other news media listed in Rule No. 1 hereof. Amendments made to said list as provided for in said Rule No. 1, shall be incorporated by reference in this Rule No. 2.

Contemporaneously with the distribution of said notice to the news media, a notice identical to that posted shall be sent to each member of the Board. Also contemporaneously with the distribution of said notices to the news media, a notice identical to that posted shall be sent to the Clerk of the County Commission of Morgan County, with instructions for the Clerk to post such notice at the place in the courthouse in which legal notices customarily are posted. In addition, a notice identical to that posted shall be made a part of the minutes of the meeting for which said notice was given.

Rule No. 3. A meeting of the Board may be held without the notice to the public and news media required by Rule No. 1 and Rule No. 2 hereof only in the event of an emergency requiring

immediate official action. The existence of such emergency requiring immediate official action shall be attested to in a certificate by the chairman of the Board describing such emergency and setting forth the reason or reasons immediate official action is required, which certificate shall be made a part of the minutes of such emergency meeting.

Section 4. Conflicting Provisions Repealed. All resolutions rules and orders, or parts thereof, in conflict with the provisions of this resolution are, to the extent of such conflicts, hereby repealed.

Section 5. Effective Time. This resolution and the rules promulgated hereby shall take effect immediately upon the adoption hereof.

Adopted July 24 , 1978.

Lewis F. Hemen
Chairman of Public Service Board

Burton C. English
Member

Member



Morgan County Commission

P.O. Box 28
Berkeley Springs, West Virginia 25411

258-2797

-COMMISSIONERS-

T.E. SHUFFLEBARGER, JR.
106 HAGEMAN STREET
BERKELEY SPRINGS
WV 25411
258-1584

RICHARD G. GAY
202 CONGRESS STREET
BERKELEY SPRINGS
WV 25411
258-1966

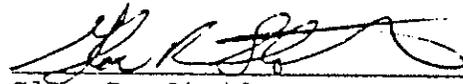
GLEN R. STOTLER
P.O. BOX 515
BERKELEY SPRINGS
WV 25411
258-3540

January 23, 1992

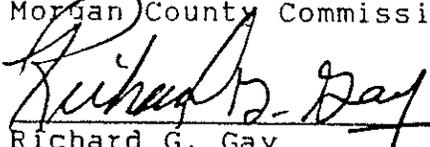
COURT ORDER

The Morgan County Commission hereby appoints Raymond Lawyer to the Warm Springs Public Service District to fill the vacancy created by the resignation of Jerry McGraw.

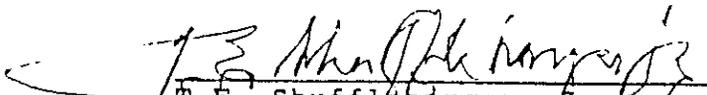
This appointment is effective immediately and will expire February 1, 1992.



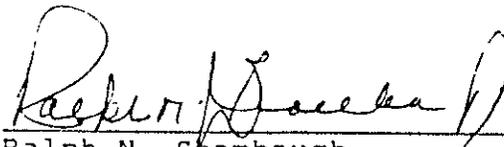
Glen R. Stotler
President
Morgan County Commission



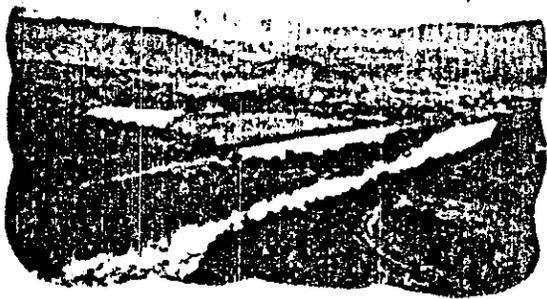
Richard G. Gay
County Commissioner



T.E. Shufflebarger, Jr.
County Commissioner

ATTEST: 

Ralph N. Shambaugh
Clerk of the County Commission



Morgan County Commission

P.O. Box 28
Berkeley Springs, West Virginia 25411
258-2797

-COMMISSIONERS-

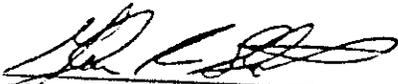
T.E. SHUFFLEBARGER, JR. 106 HAGEMAN STREET BERKELEY SPRINGS WV 25411 258-1584	RICHARD G. GAY 202 CONGRESS STREET BERKELEY SPRINGS WV 25411 258-1966	GLEN R. STOTLER P.O. BOX 515 BERKELEY SPRINGS WV 25411 258-3540
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January 23, 1992

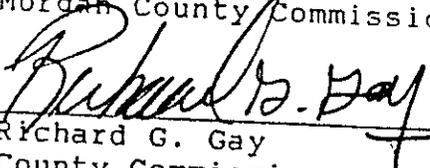
COURT ORDER

The Morgan County Commission hereby reappoints Raymond Lawyer to the Warm Springs Public Service District.

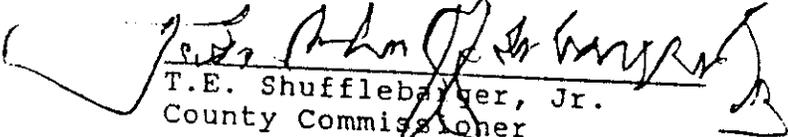
This appointment is effective immediately and will expire February 1, 1998.



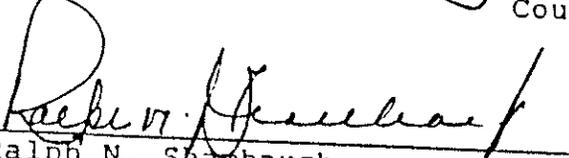
 Glen R. Stotler
 President
 Morgan County Commission



 Richard G. Gay
 County Commissioner



 T.E. Shufflebarger, Jr.
 County Commissioner

ATTEST: 

 Ralph N. Shambaugh
 Clerk of the County Commission



Morgan County Commission

P.O. Box 28
Berkeley Springs, West Virginia 25411
258-2797

-COMMISSIONERS-

T.E. SHUFFLEBARGER, JR.
106 HAGEMAN STREET
BERKELEY SPRINGS
WV 25411
258-1884

RICHARD G. GAY
202 CONGRESS STREET
BERKELEY SPRINGS
WV 25411
258-1966

GLEN R. STOTLER
P.O. BOX 515
BERKELEY SPRINGS
WV 25411
258-2329

April 9, 1991

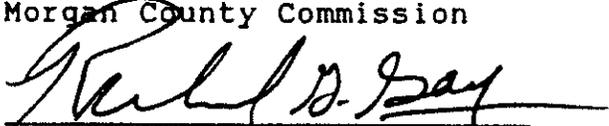
COURT ORDER

The Morgan County Commission hereby appoint Phil Maggio to the Warm Springs Public Service District to fill the vacancy created by the resignation of Ronald Reeder.

This appointment is effective immediately and will expire February 1, 1996.

Absent

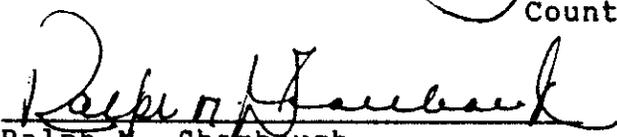
Glen R. Stotler
President
Morgan County Commission



Richard G. Gay
County Commissioner



T.E. Shufflebarger, Jr.
County Commissioner

ATTEST: 
Ralph N. Shambaugh
Clerk of the County Commission

OATH OF OFFICE AND CERTIFICATE

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

I, Earle T. Andrews, do solemnly swear that I will support the Constitution of the United State of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of member of the public service board of Warm Springs Public Service District to the best of my skill and judgement, SO HELP ME GOD.

Earle T. Andrews

Subscribed and sworn to before me in said County and State this 23rd day of February, 1988.

Joyce Elaine McPeak

Notary Public
My Commission Expires Jan. 3, 1993

CERTIFICATION

I, Ralph N. Shambaugh, Clerk of the County Commission of Morgan County, West Virginia, hereby certify that the foregoing order is a true and accurate copy of the Oath of Office signed by the member of the public service board of Warm Springs Public Service District on Feb. 23, 1988.

Given under my hand this 23rd day of February, 1988.

Ralph N. Shambaugh

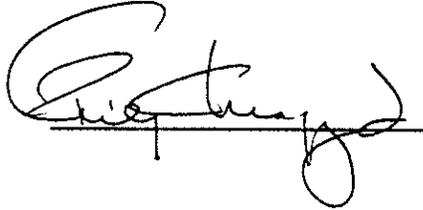
Ralph N. Shambaugh, County Clerk

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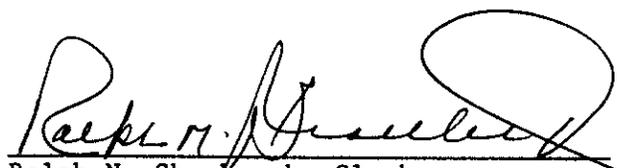
OATH OF OFFICE AND CERTIFICATE

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

I, Philp C. Maggio, Jr., do solemnly swear
that I will support the Constitution of the United States and the
Constitution of the State of West Virginia, and that I will faith-
fully discharge the duties of the office of Warm Spring Public Service District
to the best of my skill and judgement, SO HELP ME GOD.



Subscribed and sworn to before me in said County and State this
18th day of March, 1994.



Ralph N. Shambaugh, Clerk
Morgan County Commission
Morgan County, West Virginia

OATH OF OFFICE AND CERTIFICATE

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

I, Raymond Lawyer, do solemnly swear
that I will support the Constitution of the United States and the
Constitution of the State of West Virginia, and that I will faith-
fully discharge the duties of the office of Warm Springs Public Service District
to the best of my skill and judgement, SO HELP ME GOD.

Raymond H. Lawyer

Subscribed and sworn to before me in said County and State this
16th day of March, 1994.

Ralph N. Shambaugh
Ralph N. Shambaugh, Clerk
Morgan County Commission
Morgan County, West Virginia

LOAN AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND LOAN AGREEMENT (the "Loan 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 DIVISION OF ENVIRONMENTAL PROTECTION, a division of the West Virginia Department of Commerce, Labor and Environmental Resources (the "DEP"), and the local government designated below (the "Local Government").

WARM SPRINGS PUBLIC SERVICE DISTRICT
(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 construction, acquisition and improvement of wastewater treatment facilities;

WHEREAS, pursuant to the provisions of Chapter 20, Article 5I, 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;

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 and DEP has been awarded capitalization grants to partially fund the Program;

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 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 construct, operate and improve a wastewater treatment project and to finance the cost of constructing or acquiring 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 Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and 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 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 Loan 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 Loan Agreement.

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

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

1.8 "Program" means the 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 Loan Agreement as they are used.

ARTICLE II

The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Local 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 Loan Agreement and of 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, at 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.

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. 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 resident 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 resident 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 Recipient As-Built Plans, 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 agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Local Government agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 25% 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 construction of the Project and for two years following the completion of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 10th of each month to 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 a copy of each Form to DEP in compliance with the Local Government's construction schedule.

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 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 Loan 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 financing of construction, 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") necessary for the construction of the Project and operation of the System, 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, 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 Subsection 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountants 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 Loan 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, 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 Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local 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 set forth in Exhibit E hereto.

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 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 Loan 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 approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions established by federal and state regulations as set forth in Exhibit E hereto at such times as are set forth in Exhibit E.

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 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. The revenues generated from the operation of the System will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

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

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

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

Provided that if the Local 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 the net revenues from the System;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the reserve account established for the payment of debt service on the Local Bonds is funded (whether by Local Bond proceeds, monthly deposits or otherwise) 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 will 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 be sold, mortgaged, leased or otherwise disposed of 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 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 any Local Bond owner 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 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 the Local Government is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Government's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

(xii) That the Local Government shall annually adopt a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority 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 for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding 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 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 West Virginia Municipal Bond Commission (the "Commission") its required interest, principal and reserve fund 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 to the Authority by the 5th day of such calendar month;

(xvii) That the Commission shall serve as paying agent for all Local Bonds;

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

(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, the Project is adequate for the purposes for which it was designed and the funding plan as submitted to the Authority is

sufficient to pay the costs of acquisition and construction of the Project; and

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

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, sale and delivery of the Local Bonds shall be approved without qualification by 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 Authority 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 Loan 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, as set forth in the Local Act and in compliance with the provisions of Subsection 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the minimum sums set forth in the Local Act, the 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 so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The 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 directly charges upon users 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 local governments in the terms and covenants of loan agreements, 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 Loan Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and 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 SRF Regulations or this Loan Agreement.

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

6.4 The Local Government hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Local Government fails to make any such rebates as required, then the Local Government shall pay any and all penalties, obtain a waiver from the Internal Revenue

Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

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

6.6 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 Project, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

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

ARTICLE VII

Miscellaneous

7.1 Schedule Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Local 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 Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.4 No waiver by any party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of

the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.5 This Loan Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.6 By execution and delivery of this Loan 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 Loan Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

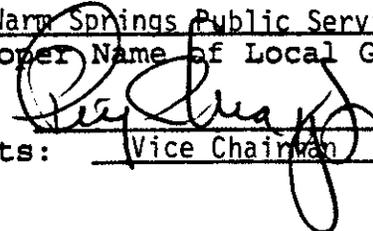
(ii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iii) 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 Loan Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the 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 amount of the Loan made by the Authority and DEP as set forth in (iii) above is not terminated due to such non-funding on any balance on the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this Loan Agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default under the Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

Warm Springs Public Service District
[Proper Name of Local Government]

(SEAL)

By: 
Its: Vice Chairman

Attest:

Date: 7/15/94

Raymond H. Sawyer
Its Secretary

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: Maureen A. Scott

Its: Chief, Office of Water Resources

Date: 7-19-94

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel R. York
Its: Director

Attest:

Date: July 11, 1994

Barbara B. Meadows
Secretary-Treasurer

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS
25th day of August, 1992.

BY: Dawn E. Wayfield
Attorney General
DEPUTY ATTORNEY GENERAL



EXHIBIT A

Certificate of Performance
for
Publicly Owned Treatment Works

I. As required by the Clean Water Act under Title VI, Section 602(b)(6), and the Loan Agreement, the Local Government does hereby certify that it has :

- a. Provided to the WV DEP written notification of the actual date of initiation of operation. This date of initiation was on the _____ day of _____, 19____.
- b. Utilized the services of _____,
our prime engineer who either:
 - _____ Supervised our project construction; and/or
 - _____ Provided architectural and engineering services during construction.

For a period of twelve (12) months following the initiation of operations, the prime engineer provided the following services:

- 1) Directed project operation and maintenance; and
- 2) Trained operating personnel and prepared the required curricula and training materials, and revised the operation and maintenance manual(s); and
- 3) Advised the Local Government on the status of the project meeting performance standards.

II. The Local Government, having access to and control of all the necessary data, and having monitored the construction of this project, hereby certifies that the project built under this Loan Agreement meets:

- a. The specifications for which the project was planned, designed, and built.
- b. The effluent limitations contained in its NPDES permit, if applicable.

Local Government Name

Local Government Representative's Name and Title

Date

EXHIBIT B

[Form of Monthly Financial Report]

[Name of Local Government]

[Name of Bond Issue]

Fiscal Year - _____

Report Month: _____

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

Witnesseth my signature this _____ day of _____, 19__.

[Name of Local Government]

By: _____
Authorized Officer

EXHIBIT C

PAYMENT REQUISITION FORM

(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 that my firm is engineer for the acquisition and construction of _____ to the system (herein called the "Project") of _____ (the "Issuer") to be constructed primarily in _____ County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the _____ passed by the _____ of the Issuer on _____, 19____, effective _____, 19____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated _____, 19____.

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

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the _____ of the Issuer are sufficient to comply with the provisions

of Subsection 4.1(b) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and (vii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this _____ day of _____, 19____.

By _____

West Virginia License No. _____

[SEAL]

EXHIBIT E

[Special Conditions]

The recipient agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations 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.

2. Sewer Extensions

The approvable plans for lift station improvement and the sewer extension through change orders will be submitted to the DEP no later than 50% physical construction completion.

3. Public Service Commission (PSC):

The District must refile the revised project cost (based upon revised Schedule A) and inclusion of additional sewer lines with the PSC to amend the current order prior to loan closing.

EXHIBIT F

[Monthly Payment Form]

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

Re: [Name of bond issue]

Dear Sirs:

The following deposits were made to the West Virginia
Municipal Bond Commission on behalf of [Local Government] on
_____, ____.

Sinking Fund:

Interest \$ _____

Principal \$ _____

Total: \$ _____

Reserve Fund: \$ _____

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
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Gentlemen:

We are bond counsel to _____
(the "Local Government"), a _____.

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

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

The Local Bonds are issued for the purpose of _____
_____ and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____
_____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly enacted by the Local Government on _____ (the "Local

Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government enforceable in accordance with the terms thereof.

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

3. The Local Government is a duly organized and presently existing _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

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

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

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	\$1,423,158.00
Purchase Price of Bonds	\$1,423,158.00

Interest on the Bonds shall be zero percent from the date of delivery ~~to and including~~ ----- Principal and ~~interest~~ on the Bonds is payable quarterly, commencing December 1, 1995, at a rate of 0% per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has ~~{no other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds}~~ or [provide list of outstanding debt]. *

The Local Government shall submit its payments monthly to the West Virginia Municipal Bond Commission with instructions that the West Virginia Municipal Bond Commission will make quarterly payments to the West Virginia Water Development Authority at such address as is given to the Bond Commission in writing by the Authority. If the Reserve Fund 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 Bond Commission. The Local Government shall instruct the Bond 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 Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal ~~and interest~~ and such Bonds shall grant the Authority a [first] lien on the net revenues of the Local Government's system.

The Local Government may prepay the 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 Bonds which request must be filed at least 60 days prior to the intended date of issuance.

*Farmers Home Administration - Sewer Revenue Bonds, Series 1977, issued October 14, 1977, in the original principal amount of \$1,326,000.

Farmers Home Administration - Sewer Revenue Bonds, Series 1989, issued August 3, 1989, in the original principal amount of \$300,000.

SCHEDULE Y

Warm Springs PSD				
SRF				
DEBT SERVICE SCHEDULE				
DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
9/01/1995	-	-	-	-
12/01/1995	17,790.00	-	-	17,790.00
3/01/1996	17,790.00	-	-	17,790.00
6/01/1996	17,790.00	-	-	17,790.00
9/01/1996	17,790.00	-	-	17,790.00
12/01/1996	17,790.00	-	-	17,790.00
3/01/1997	17,790.00	-	-	17,790.00
6/01/1997	17,790.00	-	-	17,790.00
9/01/1997	17,790.00	-	-	17,790.00
12/01/1997	17,790.00	-	-	17,790.00
3/01/1998	17,790.00	-	-	17,790.00
6/01/1998	17,790.00	-	-	17,790.00
9/01/1998	17,790.00	-	-	17,790.00
12/01/1998	17,790.00	-	-	17,790.00
3/01/1999	17,790.00	-	-	17,790.00
6/01/1999	17,790.00	-	-	17,790.00
9/01/1999	17,790.00	-	-	17,790.00
12/01/1999	17,790.00	-	-	17,790.00
3/01/2000	17,790.00	-	-	17,790.00
6/01/2000	17,790.00	-	-	17,790.00
9/01/2000	17,790.00	-	-	17,790.00
12/01/2000	17,790.00	-	-	17,790.00
3/01/2001	17,790.00	-	-	17,790.00
6/01/2001	17,790.00	-	-	17,790.00
9/01/2001	17,790.00	-	-	17,790.00
12/01/2001	17,790.00	-	-	17,790.00
3/01/2002	17,790.00	-	-	17,790.00
6/01/2002	17,790.00	-	-	17,790.00
9/01/2002	17,790.00	-	-	17,790.00
12/01/2002	17,790.00	-	-	17,790.00
3/01/2003	17,790.00	-	-	17,790.00
6/01/2003	17,790.00	-	-	17,790.00
9/01/2003	17,790.00	-	-	17,790.00
12/01/2003	17,790.00	-	-	17,790.00
3/01/2004	17,790.00	-	-	17,790.00
6/01/2004	17,790.00	-	-	17,790.00
9/01/2004	17,790.00	-	-	17,790.00
12/01/2004	17,790.00	-	-	17,790.00
3/01/2005	17,790.00	-	-	17,790.00
6/01/2005	17,789.00	-	-	17,789.00
9/01/2005	17,789.00	-	-	17,789.00
12/01/2005	17,789.00	-	-	17,789.00
3/01/2006	17,789.00	-	-	17,789.00
6/01/2006	17,789.00	-	-	17,789.00
9/01/2006	17,789.00	-	-	17,789.00
12/01/2006	17,789.00	-	-	17,789.00
3/01/2007	17,789.00	-	-	17,789.00
6/01/2007	17,789.00	-	-	17,789.00
9/01/2007	17,789.00	-	-	17,789.00
12/01/2007	17,789.00	-	-	17,789.00

Warm Springs PSD

DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
3/01/2008	17,789.00	-	-	17,789.00
6/01/2008	17,789.00	-	-	17,789.00
9/01/2008	17,789.00	-	-	17,789.00
12/01/2008	17,789.00	-	-	17,789.00
3/01/2009	17,789.00	-	-	17,789.00
6/01/2009	17,789.00	-	-	17,789.00
9/01/2009	17,789.00	-	-	17,789.00
12/01/2009	17,789.00	-	-	17,789.00
3/01/2010	17,789.00	-	-	17,789.00
6/01/2010	17,789.00	-	-	17,789.00
9/01/2010	17,789.00	-	-	17,789.00
12/01/2010	17,789.00	-	-	17,789.00
3/01/2011	17,789.00	-	-	17,789.00
6/01/2011	17,789.00	-	-	17,789.00
9/01/2011	17,789.00	-	-	17,789.00
12/01/2011	17,789.00	-	-	17,789.00
3/01/2012	17,789.00	-	-	17,789.00
6/01/2012	17,789.00	-	-	17,789.00
9/01/2012	17,789.00	-	-	17,789.00
12/01/2012	17,789.00	-	-	17,789.00
3/01/2013	17,789.00	-	-	17,789.00
6/01/2013	17,789.00	-	-	17,789.00
9/01/2013	17,789.00	-	-	17,789.00
12/01/2013	17,789.00	-	-	17,789.00
3/01/2014	17,789.00	-	-	17,789.00
6/01/2014	17,789.00	-	-	17,789.00
9/01/2014	17,789.00	-	-	17,789.00
12/01/2014	17,789.00	-	-	17,789.00
3/01/2015	17,789.00	-	-	17,789.00
6/01/2015	17,789.00	-	-	17,789.00
9/01/2015	17,789.00	-	-	17,789.00
TOTAL	1,423,158.00	-	-	1,423,158.00

YIELD STATISTICS

Accrued Interest from 09/01/1995 to 09/01/1995...	-
Average Life.....	10.125 YEARS
Bond Years.....	14,409.28
Average Coupon.....	-
Bond Yield for Arbitrage Purposes.....	-
True Interest Cost (TIC).....	-
Effective Interest Cost (EIC).....	-

MINUTES
WARM SPRINGS PUBLIC SERVICE DISTRICT
JANUARY 21, 1994

A postponed regular meeting of the Public Service Board of the Warm Springs Public Service District was held on Friday, January 21, 1994, at the Morgan County Courthouse, Berkeley Springs, West Virginia, at 3:30 p.m.

Members present were Earle T. Andrews, Phil Maggio, and Raymond Lawyer. Also in attendance were Rodney Hovermale, Mike Crawford and Dean Perry. Mr. Andrews called the meeting to order at 3:45 p.m.

The first matter of business was the approval of the Minutes of the December 8, 1993, meeting. The Minutes were approved upon a motion by Mr. Maggio.

The next matter of business was the approval of the invoices received since the last meeting. The following twenty-two operating invoices were approved for payment upon a motion by Mr. Lawyer:

1. C & P Telephone(12/19-1/18)	\$ 355.68
2. Potomac Edison(11/24-12/27)	1,698.80
3. Blue Flame(Tkt.#81895 12/22)	30.40
4. Panhandle Pipe(Inv.#85363 12/29)	17.74
5. Panhandle Pipe(Inv.#85370 12/22)	198.07
6. B.S. Water Dept.(Jan.rent/meter books)	525.00
7. B.S. Water Dept.(reconnects/water)	553.60
8. Thomas Scientific(Inv.#94003 1/04)	119.06
9. Morgan Sanitation(dumpster 12/93)	100.00
10. Biedler's Electric(Inv.#186287, belts, 1/06)	86.70
11. Smith-Nadenbousch(Inv.#297255 Surety Bond)	100.00
12. Bath Auto(Inv.#14449,14455, plugs, 12/1)	11.30
13. Morgan Messenger(Public Notice/DEP Notice 12/15)	31.69
14. Appalachian Software(annual fee 1/94-12/94)	650.00
15. MD Biochemical(Inv.11L1057 12/14)	711.30
16. Polymer Systems(Inv.#10254 12/17)	1,210.25
17. Harmison & Savasten(legal, right-of-ways)	1,470.00
18. John Deere Leasing(Jan. rental)	355.47
19. Unifirst Corp.(12/13-1/03)	118.80
20. WV Dept. of Transportation(gas, 11/08-11/30)	103.81
21. Dawson's Home Center(Inv.#74277 12/16)	

1.99

This being the first meeting of the new year, the election of officers was in order. Mr. Andrews expressed his desire that the officers remain the same as last year. He also indicated that a search should be done to find a qualified replacement for him, although he wanted to remain involved in PSD activities. The previous slate of officers was reinstated upon a motion by Mr. Lawyer as follows:

Chairman-Earle T. Andrews
Vice Chairman-Phil Maggio
Secretary/Treasurer-Raymond Lawyer

Mr. Maggio brought the Board up to date on the preparation for the PSC hearing scheduled for January 31. He and Mr. Hovermale had met with Dick Klein and John Kunkle and talked with T.D Kauffelt on January 18 to plan our case. Mr. Maggio will represent the Board in testifying for the implementation of a \$1,000 Capital Cost Improvement Fee.

The Board considered amending the Sewer Use Resolution to provide for a maximum distance that a premises can be located from the sewer line beyond which the PSD would not require connection to the sewer line. No action was taken.

A policy for closing the PSD office in inclement weather was discussed. Mr. Lawyer indicated that bank employees are not paid for days missed for snow. It is difficult to achieve a policy that is fair to everyone. Mr. Hovermale will have the responsibility to determine the policy.

Mike Crawford of Berkeley Land Survey was representing Dean Perry concerning the development of Shirley Farm West on Route 522 south. A small diameter, variable grade, septic tank effluent collection system is being proposed to transport the developments' wastewater to a recirculating filter treatment system. The developer wants assurance from the PSD that this collection system will be connected to the District's collection lines when they are eventually extended to this property. Mr. Maggio expressed the following concerns: 1-there would be septic wastewater introduced into a long gravity pipeline, 2-there would be maintenance required for the septic tanks, 3-there may be problems associated with fees and charges for sewer service when the District starts accepting the wastewater. Mr. Crawford asked for a letter from the District outlining the requirements the development needs to meet to be acceptable to the District. The Board will need to study this issue more thoroughly before a letter could be issued.

A draft alternate main line extension agreement was discussed, but no action was taken.

The meeting was adjourned upon a motion by Mr. Lawyer.

Earl F. Andrews

Chairman

Raymond H. Sawyer

Secretary

MINUTES
WARM SPRINGS PUBLIC SERVICE DISTRICT
MARCH 9, 1994

A regular meeting of the Public Service Board of the Warm Springs Public Service District was held on Wednesday, March 9, 1994, at the Morgan County Courthouse, Berkeley Springs, West Virginia, at 3:30 p.m.

Members present were Phil Maggio and Raymond Lawyer. Also in attendance were Craig Miller (W.VA. Public Service Commission), Dale and Allen Truax, and Rodney Hovermale. Mr. Maggio called the meeting to order at 3:40 p.m.

The first matter of business was the approval of the Minutes of the February 9 regular meeting and February 23 special meeting. The Minutes were approved upon a motion by Mr. Lawyer.

The next matter of business was the approval of the invoices received. The following fifteen operating invoices were approved upon a motion by Mr. Lawyer:

1. AT & T(2/20-2/28)	\$ 4.54
2. B.S. Water Dept.(March rent/book/reconnect)	585.00
3. Rick's Welding(Inv.#2328 2/2 pins)	15.00
4. Morgan Sanitation(February dumpster)	100.00
5. Dawson's H.C.(Tkt.#76570,76835 2/20,2/22)	132.95
6. C & P Telephone Co.(2/29-3/18)	356.26
7. Potomac Edison(1/26-2/25)	1,678.33
8. Overnite Corp.(Tkt.#286741, 10/26)	66.19
9. Unifirst Corp.(2/7-2/28, uniforms)	89.10
10. John Deere Leasing(March rental)	358.75
11. Rick's Welding(Inv.#62794, gear box)	1,406.87
12. Dennis Shaffer(12/14, 12/27;excavation)	720.00
13. Landis Office(Inv.#281255, 2/26)	74.72
14. Polymer Systems(Inv.#10364, 2/18)	1,219.28
15. Thomas Scientific(Inv.#940471, 2/16)	215.04

Mr. Maggio brought everyone up to date on the extension of sewer lines into Dale Truax's 25 lot development named Laurel Terrace on Williams Street east of Laurel Avenue. Although the District was aware of a plan for the sewer system extension in 1990, there is no record or recollection of a request for sewer service or payment of any tap fees. Since a house has now been built on one of the lots, there are two methods of extending the sewer lines; the Public Service Commission's Rule 5.03 which entitles the developer to a reimbursement for future connections directly to the extension, or an alternate extension agreement which has to be approved by the PSC. The District has been working on an alternate extension agreement for some time and the current version would require a fee of \$1,000 per residential equivalent. Mr. Truax said that he had requested sewer service in 1990 and was approved by the Health Department and WSPSD. He felt that the payment of all the tap fees up front and the \$1,000 capital cost improvement fee should not apply. Mr. Hovermale read the District's letter of October 16, 1990, stating that the District would accept the development's wastewater upon satisfactory

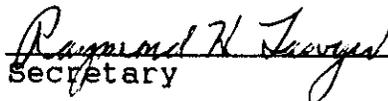
completion of the collection system. It was noted that this letter was only a letter of intent that would allow Mr. Truax to apply for a Health Department permit. The District and Mr. Truax will search their files for any record of an application or payment of a tap fee. Mr. Truax will meet with Mr. Maggio and Mr. Hovermale at 2 p.m. tomorrow to make arrangements for the first phase to be done by the District under the 5.03 rule.

The four page draft of an alternate main line extension agreement was discussed. A motion by Mr. Lawyer to adopt this agreement and submit it to the PSC for approval was passed. A copy of the agreement is attached and made a part of these Minutes.

A motion by Mr. Lawyer authorizing Phil Maggio to execute all FmHA, SRF, WDA, and bond documents on the District's behalf for the financing and construction of Contracts 1 and 2, the line extension in the Route 522 corridor and the downtown replacements, was passed.

The meeting was adjourned at 5:45 p.m. upon a motion by Mr. Lawyer.


Vice-Chairman


Secretary

\$1,423,158 WARM SPRINGS PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 1994

BOND RESOLUTION

\$1,423,158 WARM SPRINGS PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 1994

BOND RESOLUTION

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EXHIBIT A -- Description of Project
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WARM SPRINGS PUBLIC SERVICE DISTRICT

BOND RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS, ADDITIONS, EXTENSIONS AND BETTERMENTS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF WARM SPRINGS PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE OF NOT MORE THAN \$1,423,158 IN AGGREGATE PRINCIPAL AMOUNT OF WARM SPRINGS PUBLIC SERVICE DISTRICT SEWER REVENUE BOND, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BOND; RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION RELATING TO SAID BOND; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BOND; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF WARM SPRINGS PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.02. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

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

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

"Authorized Officer" means the Chairman of the Governing Body of the Issuer or any other person duly appointed as such by the Governing Body.

"Bank" means the bank to be set forth in a resolution supplemental hereto.

"Board" means the public service board of the Issuer and shall include the membership of the Board as may hereafter be duly constituted as the legal successors to the present membership or any other authority vested with and authorized to exercise the powers of the Issuer.

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

"Bond Register" means the books of the Issuer as hereinafter defined, maintained by the Bond Registrar as hereinafter defined for the registration and transfer of the Bonds.

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

"Bonds" means the Bonds originally authorized hereby, and any pari passu additional bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

"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.

"Certificate of Authentication and Registration" means the certificate of authentication and registration on the Bonds in substantially the form set forth in the Bond Forms contained herein.

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

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

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

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

"Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01.

"Consulting Engineers" means Kelley, Gidley, Blair & Wolfe, Inc., West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of sewerage systems or facilities that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Costs" or "Costs of the Project" or any similar phrase means those costs described in Section 1.04I hereof to be a part of the cost of construction and acquisition of the Project.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Series 1994 Bonds, as hereinafter defined, during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"DEP" means the West Virginia Division of Environmental Protection.

"Depository Bank" means a bank eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC, as hereinafter defined, which Depository Bank shall be named in the Supplemental Resolution, and any successor thereto.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Bonds, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

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

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

"Governing Body" or "Board" means the public service board of the Issuer, as it is now or may hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, including (i) such obligations which have been stripped from their unmatured interest coupons, interest coupons stripped from such obligations and receipts or certificates evidencing payments from such obligations or interest coupons stripped from such obligations, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations

issued to refund in whole or in part the Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior obligations and which are deemed to become proceeds of the Bonds ratably as original proceeds of the Bonds, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds [as referenced in clauses (i) through (iii) above] of the Bonds, which are held in any fund to the extent that the Issuer reasonably expects to see such other fund to pay Debt Service;

(v) Amounts in the Reserve Account and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital

assets (including Qualified Investments, as hereinafter defined), or any Tap Fees, as hereinafter defined.

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

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income under Section 103 of the Code for federal income tax purposes.

"Issuer" or "District" means the Warm Springs Public Service District, a public corporation and political subdivision of the State.

"Loan Agreement" means the Water Pollution Control Revolving Fund Loan Agreement dated July 11, 1994, by and among the Authority, the DEP and the Issuer providing for the purchase of the Bonds from the Issuer by the Authority which is attached as Exhibit B hereto and incorporated herein by reference.

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Account. For purposes of the Private Business use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

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

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System, as hereinafter defined and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs of Project, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent, other than those capitalized as part of the Costs of Project,

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.

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean the not more than \$1,423,158 in aggregate principal amount of Sewer Revenue Bond, Series 1994 issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

"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 moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents, notices or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.08 hereof.

"Paying Agent" means the Commission.

"Prior Bonds" means the District's Sewer Revenue Bonds, Series 1977, dated August 15, 1978, issued in the principal amount of \$1,326,000 and Sewer Revenue Bond, Series 1989 dated August 3, 1989, issued in the principal amount of \$300,000.

"Prior Resolutions" means the resolutions passed by the Board of the Issuer on October 14, 1977 and August 3, 1989, as thereafter amended or supplemented with respect to the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to

such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Program" shall mean the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by the DEP.

"Project" shall mean the wastewater treatment facility project described in Exhibit A attached hereto, constituting extensions, additions, betterments and improvements to the existing sewerage system of the Town.

"PSC" means the Public Service Commission of West Virginia and any successors to the functions thereof.

"PSC Order" means the recommended decision of the PSC in Case No. 93-0526-PSD-CN which was entered by the Administrative Law Judge on March 2, 1994, and which became the final Commission order on April 15, 1994, as such order may be supplemented or amended from time to time.

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

(a) Government Obligations;

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

(c) Any bond, debenture, note, participation certificate or other similar obligation 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;

(d) 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, shall be secured by a pledge of Government Obligations, provided, that such Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time account or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time account;

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

(f) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (d) 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 paid repurchase agreements, and provided further that the owner of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(g) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia State Board of Investments pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended; and

(h) Advance-Refunded Municipal Bonds.

"Rebate Fund" means the fund created pursuant to Section 8.03 hereof.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 5.01(3).

"Reserve Account" means the account in the Sinking Fund, as hereafter defined, created by Section 5.02(1)(a) hereof.

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

"Resolution" shall mean the Prior Resolutions, as supplemented by this Resolution and as further amended or supplemented. Unless the context clearly requires a different meaning, reference to "this Resolution" in the Prior Resolutions shall mean the Prior Resolutions.

"Revenue Fund" means the Revenue Fund established by Section 5.01.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

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

"Sinking Fund" means the Sinking Fund established by Section 5.02(1) hereof.

"State" means the State of West Virginia.

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

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

"System" means the public service properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, owned by the Issuer, and any improvements or extensions thereto, both within and without the boundaries of the District.

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

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Bonds, produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

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

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

Section 1.03. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the Registered Owners of the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and the covenants and agreements herein set forth to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owners of any and all such Bonds, all of which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Findings. It is hereby found, determined and declared as follows:

A. The Issuer is a public corporation and political subdivision of the State in Morgan County, West Virginia.

B. The Issuer presently owns and operates a sewage treatment plant or plants and some or all of the collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes (herein referred to as the "System").

C. The acquisition and construction of the System was financed, in part, with the proceeds from \$1,326,000 in principal amount of the Issuer's Sewer Revenue Bonds dated August 15, 1978 and \$300,000 in principal amount of the Issuer's Sewer Revenue Bond dated August 3, 1989, authorized pursuant to the Prior Resolutions.

D. The Prior Bonds of the Issuer are Outstanding in the approximate principal amount as of March 17, 1994 at \$1,080,793.76 and \$290,666.26, respectively.

E. The Issuer derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

F. It is deemed necessary and desirable for the health and welfare of the inhabitants of the District that there be constructed certain improvements and extensions to the existing System of the District, consisting of the Project, at an estimated cost of \$1,423,158 in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and has an estimated useful life in excess of twenty (20) years.

G. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Bonds and all sinking fund, reserve account and other payments provided for herein, in the Supplemental Resolution and in the PSC Order, and the principal of, interest on and all other payments required for the Prior Bonds.

H. The estimated maximum cost of the construction and acquisition of the Project is \$1,423,158, of which \$1,423,158 will be permanently obtained from the Bonds herein authorized. The District may obtain such grants and contributions from other sources as may be necessary to pay Costs.

I. It is deemed necessary for the Issuer to issue its sewerage revenue bonds in the total aggregate principal amount of not more than \$1,423,158 to permanently finance a portion of the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest on the Original Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project; amounts which may be deposited in the Reserve Account; engineering, fiscal agents and legal expenses; expenses for estimates of cost and revenue; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Authority or DEP and any defaulted interest thereon, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Original

Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Original Bonds or the repayment of the indebtedness incurred by the Issuer for such purposes shall be deemed part of the Cost of the Project.

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

K. It is in the best interests of the Issuer that the Bond be sold to the Authority pursuant to the terms and provisions of the Loan Agreement. The Issuer has received, or will receive prior to the Bond closing date, written consent from the owner of the Prior Bonds, to issue the Bonds on a parity with the lien of the Prior Bonds.

L. The Original Bonds shall be issued with a lien on the Net Revenues of the System on a parity with the lien held by the registered owners of the Prior Bonds.

M. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the construction, acquisition and operation of the Project and the System and the issuance of the Bonds, or will have so complied prior to issuance of any Bonds, including, among other things and without limitation, the obtaining of the PSC Order, the time for rehearing and appeal of which have expired prior to the date hereof.

N. The Issuer will not permit, at any time, any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

O. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds.

P. The Bonds will not be federally guaranteed within the meaning of the Code.

Q. It is reasonably anticipated that all proceeds of the Original Bonds will be spent within two years from the date of issuance.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION
AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition of the Project. There is hereby authorized the acquisition and construction of the Project in accordance with plans and specifications therefor prepared by the Consulting Engineers.

The Issuer has received bids or entered into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Program.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BOND; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bond. For the purposes of paying the costs, not otherwise provided, of the construction and acquisition of the Project, funding a reserve account for the Bonds, and paying certain costs of issuance and related costs, or any of such purposes as shall be specified in the Supplemental Resolution, there shall be issued negotiable bonds of the Issuer in an aggregate principal amount of not more than \$1,423,158. Said Bond shall be issued as one bond to be designated "Warm Springs Public Service District Sewer Revenue Bond, Series 1994". The Original Bond shall be dated as of the date of delivery thereof, shall bear such interest, shall mature at such times, not exceeding twenty-one (21) years after the date of issuance, and in such amount as shall be set out in Schedule X to the Loan Agreement and the Supplemental Resolution. The Original Bond 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 Original Bond shall be as set forth on Schedule Y to the Loan Agreement. The Original Bond shall contain such other terms, provisions, conditions and limitations, all as provided by this Resolution and the Loan Agreement and as the Governing Board of the Issuer shall prescribe by resolution (or by supplemental or amendatory Resolution of said Governing Board as said Governing Board shall determine) adopted in connection with the sale of such Original Bond.

The Bond shall be payable as to principal at the principal office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bond shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, provided, that so long as the Authority is the owner thereof, interest on the Original Bonds may be paid by wire transfer or other methods satisfactory to the Issuer, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Original Bond shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a payment record attached, representing the aggregate principal amount, and shall mature in principal installments, all as provided in the Loan Agreement and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Bondholder

for other fully registered Bond in aggregate principal amount equal to the amount of said Bond then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bond; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bond may be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bond shall be dated as of the date specified in said Supplemental Resolution and shall bear interest from such date.

Section 3.02. [Reserved]

Section 3.03. Additional Terms of Bond. In addition to the terms set forth in Section 3.01 hereof and in anticipation of the sale of the Bond to the Authority, the District covenants that the Bond shall comply in all respects with the provisions of the Loan Agreement and of any resolution of the Authority and/or DEP.

Section 3.04. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Vice Chairman, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bond so signed and sealed have been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bond shall hold the proper office in the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized.

Section 3.05. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in Section 3.10, shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.06. Negotiability, Transfer and Registration.

Subject to the provisions for transfer of registration set forth below, the Bond shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bond shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Bond shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remain Outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bond.

The Bond shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Registered Owner or his duly authorized attorney.

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

Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the 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 proof of its ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be 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.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the Issuer, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.08. Bond not to be Indebtedness of the Issuer. The Bond shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Reserve Account. No Holder or Owners of any of the Bond shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Bond or the interest thereon.

Section 3.09. Bond Secured by Pledge of Net Revenues. The payment of the debt service on all the Original Bonds shall be secured forthwith equally and ratably with each other and the Prior Bonds by a shared first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established and as established in the Prior Resolutions, are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

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

[Form of Series 1994 Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
WARM SPRINGS PUBLIC SERVICE DISTRICT
SEWER REVENUE BOND, SERIES 1994

No. R-1

\$1,423,158

KNOW ALL MEN BY THESE PRESENTS: That WARM SPRINGS PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Morgan 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 Four Hundred Twenty-Three Thousand One Hundred Fifty Eight Dollars (\$1,423,158), 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 installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning December 1, 1995, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate of zero percent (0%) per annum as set forth on said Exhibit B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the 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 DEP and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated July 11, 1994, among the Authority, the DEP and the Issuer.

This Bond is issued (i) to pay costs of acquisition and construction of a certain improvements, additions, extensions and betterments to the existing wastewater treatment system of the Issuer (the "Project"), and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Resolution duly enacted by the Issuer on the ___ day of August, 1994, and a Supplemental Resolution adopted by the Issuer on the

___ day of August, 1994 (collectively called the "Resolution"), and is subject to all the terms and conditions thereof. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE PRIOR BONDS, AS DEFINED IN THE RESOLUTION.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, as defined in the Resolution, on a parity with the lien of the Prior Bonds, to be derived from the operation of the System, moneys in the Reserve Account created under the Resolution and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient 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 120% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity with or prior to the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year and in the reserve account for the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Resolution, only upon the books of the Registrar by the Registered Owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or its attorney duly authorized in writing.

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

The use of any proceeds of this Bond for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetlands to produce an agricultural commodity will constitute an Event of Default under the Resolution as defined and set forth therein.

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

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

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

IN WITNESS WHEREOF, WARM SPRINGS PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Vice Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated August _____, 1994.

[SEAL]

Vice Chairman

ATTEST:

Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1994 Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: August _____, 1994

CITIZENS NATIONAL BANK OF BERKELEY
SPRINGS, as Registrar

By _____
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>
(1) \$		(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	
<hr/>			
Total \$ _____			

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

Form of Assignment

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

Section 3.11. Sale of Original Bonds; Ratification and Execution of Loan Agreement with Authority and DEP. The Bonds shall be sold to the Authority pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Vice Chairman is specifically authorized and directed to execute the Loan Agreement and the Secretary is directed to affix the seal of the Issuer thereto, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery of the Loan Agreement is hereby authorized, ratified and approved.

Section 3.12. Original Bonds are Issued as Parity Bonds. The Original Bonds shall be issued on a parity with the Prior Bonds, in accordance with the Prior Resolutions. Prior to the issuance of the Original Bonds, the Issuer shall receive the written approval of the issuance of the Bonds on a parity with the Prior Bonds from the owner of the Prior Bonds.

Section 3.13. Certificate of Consulting Engineers. Prior to the issuance of the Original Bonds, the Issuer must obtain the certificate of the Consulting Engineers in the form attached to the Loan Agreement to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the DEP and the Authority, the Project is adequate for the purposes for which it was designed, and the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of acquisition and construction of the Project.

ARTICLE IV

[Reserved]

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts were either established by the Prior Resolutions or are created hereby and shall be held by the Depository Bank:

- (1) Revenue Fund (when the Prior Bonds are no longer Outstanding);
- (2) Operation and Maintenance Fund (when the Prior Bonds are no longer Outstanding);
- (3) Renewal and Replacement Fund;
- (4) Bond Construction Trust Fund; and
- (5) Rebate Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

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

Section 5.03. System Revenues; Flow of Funds. A. As long as the Prior Bonds are outstanding, the entire Gross Revenues shall be deposited pursuant to the terms of the Prior Resolutions. When the Prior Bonds are no longer Outstanding, 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 Resolution and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner therein and herein provided.

(1) The Issuer shall, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and pay the amounts required by the Prior Resolutions to be deposited in the Prior Bonds Sinking Fund for payment of the principal of and interest on the Prior Bonds, and (i) simultaneously therewith, commencing 4 months prior to the first date of payment of interest on the Bonds

for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Bonds Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on said Bonds on the next ensuing quarterly interest payment date; provided, that, in the event the period to elapse between the date of such initial deposit in the Bonds Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date, and (ii) on the first day of each month, commencing 4 months prior to the first date of payment of principal on the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on said 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 Bonds Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

The Issuer shall complete the "Monthly Payment Form," the form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its remittance check to the Authority by the 5th day of such calendar month.

(3) The Issuer shall next transfer from the Revenue Fund and pay to the Commission the amounts required by the Prior Resolutions to be deposited in the Prior Bonds Reserve Account and on the first day of each month, commencing 3 months prior to the first date of payment of principal of the Bonds, if not fully funded upon issuance of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Reserve Account, an amount equal to 1/120 of the Reserve Requirement; provided, that no further payments shall be made into the Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement.

(4) The Issuer shall next, from the moneys remaining in the Revenue Fund, on the first day of each month, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of 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 the reserve account established with respect to the Prior Bonds or in the Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due. Moneys in the Reserve Account in the Sinking Fund shall be used only for the purpose of paying principal of or interest on the Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. Except for the funds required to be deposited in the Rebate Fund, all investment earnings on moneys in the Reserve Account shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, to the Sinking Fund.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to an amount below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Fund for payment of debt service on the Bonds have been made in full.

B. As and when additional Bonds ranking on a parity with the Original Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay any interest on such additional Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Account in an amount equal to the Reserve Requirement.

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

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

Moneys in the Reserve Account shall be invested and reinvested by the Commission in accordance with Article VIII hereof.

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

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Fund, including the Reserve Account therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the Issuer.

D. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any Depository Bank's charges then due. The Issuer shall also remit from the Revenue Fund to the Authority, on such dates as the Authority and the DEP shall require, the Issuer's allocable share of reasonable administrative expenses of the Authority relating to the Program, if any.

E. The moneys in excess of the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the 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.

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

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

Section 5.04. Excess Bond Proceeds. The Issuer shall place any excess proceeds from the Original Bonds not required by the Project in the Reserve Account. To the extent the Revenue Fund is funded at the required level, any excess Bond proceeds shall be deposited into the Revenue Fund and applied to the next principal payment on the Bond.

ARTICLE VI

APPLICATION OF ORIGINAL BOND PROCEEDS, FUNDS AND ACCOUNTS

Section 6.01. Application of Original Bond Proceeds. From the moneys received from time to time from the sale of any or all of the Original Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Bonds, there shall be deposited with the Commission, as holder of the Reserve Account created for the Prior Bonds, \$71,158 for deposit in the Bonds Reserve Account.

B. The remaining moneys derived from the sale of the Original Bonds shall be deposited by the Issuer as received from time to time in the Bond Construction Trust Fund established in Section 5.01(4) hereof.

C. The Depository Bank shall act as a trustee and fiduciary for the Bondholders with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in this Resolution. Except with respect to any transfers to the Rebate Fund, moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Bonds.

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

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) A "Payment Requisition Form," attached to the Loan Agreement as Exhibit C, and

(2) A certificate, signed by the Vice Chairman and the Consulting Engineers, stating:

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

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

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

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

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, 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 set forth in the Prior Resolutions shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds as if they were set forth in full in this Resolution. In addition to the other covenants, agreements and provisions of this Resolution, the Issuer hereby covenants and agrees with the owners of the Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds, or the interest thereon, is Outstanding and unpaid.

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

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Original Bonds issued hereunder shall be secured forthwith equally and ratably with the Prior Bonds by a first lien on the Net Revenues derived from the operation of the System. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized and to make the payments into the respective Sinking Fund, including the Reserve Account therein, and all other payments provided for in this Resolution and the Prior Resolutions are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds and the Prior Bonds as the same become due, and for the other purposes provided in the Resolution.

Section 7.04. Rates. Prior to issuance of the Original Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder and under the Prior Resolutions. 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. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 120% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Prior Bonds and the Bonds; provided that, in the event that an amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and the reserve account for the Prior Bonds is funded at least at the requirement provided for in the Prior Resolutions, respectively, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Original Bonds and the Prior Bonds.

The Issuer hereby adopts the rates and charges set forth in the PSC Order and attached hereto as Exhibit C and incorporated herein by reference.

Section 7.05. Completion, Operation and Maintenance; Schedule of Cost. The Issuer will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in the Resolution.

Upon completion of the Project, the Issuer shall file with the Authority a schedule in substantially the form of Amended Schedule A to the Program loan application, setting forth the actual costs of the Project and sources of funds therefor.

Section 7.06. Sale of the System. Except as otherwise required by law or the Prior Resolutions, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully or redeem at or prior to maturity all the Prior Bonds and the Bonds Outstanding, or to effectively defease this Resolution in accordance with Sections 10.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall be immediately remitted to the Commission for deposit in the appropriate Sinking Funds, and

the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds about to mature and to the redemption prior to maturity at the earliest date permitted hereby and at the redemption price, of all other Outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall, upon receipt of approval of the Registered Owners, if needed, be remitted by the Issuer to the Commission for deposit in the appropriate Sinking Fund and shall be applied only to the purchase or redemption of Bonds of the last maturities then Outstanding at prices not greater than the applicable redemption price, or, if not redeemable, par, or otherwise in the Renewal and Replacement Fund. The payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Resolution.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions

of such properties, shall be in excess of \$50,000 and insufficient to pay or redeem prior to maturity all Bonds then Outstanding without the prior approval and consent in writing of the Owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66 2/3%) in amount of the Prior Bonds and the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Registered Owners of the Prior Bonds and the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. So long as any of the Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that Parity Bonds may be issued as provided for in Section 7.08 hereof. All obligations hereafter issued by the Issuer payable from the revenues of the System, except such Parity Bonds, shall contain an express statement that such obligations are junior and prior, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such prior obligations shall be issued unless all payments required to be made into the Reserve Account and the Renewal and Replacement Fund at the time of the issuance of such prior obligations have been made and are current.

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

Section 7.08. Parity Bonds. A. No Parity Bonds payable out of the Net Revenues of the System may be issued without the prior written consent of the Authority and DEP, and as long as the Prior Bonds are outstanding, the written consent of the holder of the Prior Bonds. No Parity Bonds payable out of the revenues of the System shall be issued after the issuance of any Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.

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

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (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 to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional Parity Bonds, shall not be less than one hundred twenty percent (120%) of the maximum debt service in any succeeding year on the following:

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

The "estimated average increased annual net revenues to be received in each of the three (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 any increase in rates enacted by the Issuer, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Secretary prior to the issuance of such additional Parity Bonds.

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such net revenues such additional net revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Accountants as stated in a certificate jointly made and signed by the Consulting Engineers and the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

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

All the covenants and other provisions of this Resolution (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Original Bonds and the owners of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. All the Bonds, regardless of the time or times of their issuance shall rank equally with respect to their respective liens on the revenues of the System, and their respective sources 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 created in this Resolution required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Outstanding Prior Bonds and the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Resolution and the Prior Resolutions on account of the Prior Bonds and the Bonds then Outstanding, and any other payments provided for in this Resolution or the Prior Resolutions, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Resolution.

B. Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be Outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

With the written consent in advance of the Authority and DEP and anything to the contrary in this Section 7.08 notwithstanding, Parity Bonds may be authorized and issued by the Issuer pursuant to Supplemental Resolution solely to complete the Project as described in the Issuer's Program application to the Authority and DEP in accordance with the plans and specifications,

in the event that the Original Bonds should be insufficient, together with other funds lawfully available therefor, to pay all costs of acquisition and construction of the Project; provided, however, that, prior to the issuance of such Parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the Secretary a certificate to the effect that additional funds are necessary for such purpose. All such Parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such Parity Bonds shall be in years and amounts suggested by the Authority.

Section 7.09. Insurance and Construction Bonds. The Issuer will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Issuer will 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 the DEP, so long as the Authority is the Owner of the Bonds. The Issuer will itself, or will require each contractor and subcontractor to, obtain and 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, to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their interests may appear, in accordance with the Loan Agreement, during construction of the Project in the full insurable value thereof. In time of war, the Issuer shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Resolution and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The Issuer shall carry such other insurance as is required by the Authority and DEP and as set forth in the Loan Agreement, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the Issuer.

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price

of the portion of the Project covered by the particular contract as security for the faithful performance of such contract.

Section 7.10. Consulting Engineers. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the 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. Such resident engineer shall certify to the Authority, the DEP and the Issuer 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 Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, 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, the form of which is attached as Exhibit A to the Loan Agreement, and is incorporated herein by reference, 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 SRF Regulations, to the DEP when the Project is 90% completed. The Issuer agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

Section 7.11. Compliance With Loan Agreement, Rules and Regulations. The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreement and to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 7.12. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department,

agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The Issuer further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 7.14. No Competing Franchise. To the extent allowable by law, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.15. Books, Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the

System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the Loan Agreement or Grant Receipts or other sources of financing for the Project.

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

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

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the PSC and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Council shall direct.

The Issuer shall file with the Consulting Engineers and the Authority and DEP, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

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

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

(C) The amount of any Prior Bonds, Bonds, or other obligations Outstanding and secured by a lien on the Net Revenues of the System.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Resolution, and shall submit said report to the Authority and the DEP. The report of said audit shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and the Loan Agreement and that the Issuer's revenues are adequate to meet its operation and maintenance expenses and debt service requirements.

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

The Issuer shall, during construction of the Project, complete Payment Requisition Forms, the form of which is attached to the Loan Agreement as Exhibit C and is incorporated herein by reference, and forward a copy to the DEP in compliance with the Issuer's construction schedule.

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 Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.16. Operating Budget. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP

within thirty days of the adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds who shall file his address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Section 7.17. Mandatory Connection. The mandatory use of the sewerage facilities portion of the System is essential and necessary to protect and preserve the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and 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 Department 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 sewerage facilities portion of the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matter from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the sewerage facilities portion of the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the sewerage facilities portion 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 sewerage facilities portion of 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 7.18. Compliance with Loan Agreement. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The Issuer shall use the Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be solely operated as a public purpose and as local governmental activity of the Issuer.

B. PRIVATE ACTIVITY BOND COVENANT. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

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

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

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

F. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludible from gross income for federal income tax purposes, and will not take any actions, or fail to take any

actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 7.20. Statutory Mortgage Lien. For the further protection of the Bondholders, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and on a parity with the lien of the Prior Bonds, and shall take effect immediately upon delivery of the Bonds and shall be for the benefit of all Owners of the Bonds.

Section 7.21. Compliance. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP 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.

ARTICLE VIII

INVESTMENT OF FUNDS; NON-ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01 and in Sections 8.02 and 8.03.

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

Section 8.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return) with respect to the Bonds so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Rebate of Excess Investment Earnings to the United States. A. CREATION OF FUNDS. There are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Resolution, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Resolution on account of the Bonds other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than \$100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the Issuer shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day in the event that such last day is not a business day, or such earlier date as may be required under the Code or the Loan Agreement, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to the Construction Trust Fund until completion of the Project, and thereafter to the Revenue Fund.

B. DUTIES OF ISSUER IN GENERAL. The Issuer shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 15 days following the last day of the first Bond Year, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 15 days following the last day of each Bond Year and within 15 days following the date of the retirement of the Bonds, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the Issuer in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause (A)(i) of the definition of Excess Investment Earnings, the aggregate amount earned on

Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Bonds shall be determined based on the actual Yield of the Bonds during the period between the Closing Date for the Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Bonds, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than \$100,000.

D. PAYMENT TO THE UNITED STATES. The Issuer shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The Issuer shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Bonds, the Issuer shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Original Bonds from gross income for federal income tax purposes.

E. FURTHER OBLIGATIONS OF ISSUER. The Issuer shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the Issuer shall assure that investment transactions are on an arm's length basis

and the Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The Issuer shall keep, and retain for a period of 6 years following the retirement of the Bonds, records of the determinations made pursuant to this Section 8.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 8.03, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the Issuer further covenants to comply with all Regulations from time to time in effect and applicable to the Bonds, as may be necessary in order to fully comply with Section 148(f) of the Code.

I. REPORTING TO AUTHORITY. The Issuer shall furnish to the Authority and DEP, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority or DEP.

J. AMENDMENTS TO THIS SECTION. Notwithstanding any of the provisions herein to the contrary, the Issuer agrees to amend the provisions of this Section from time to time at the direction of the Authority in order to insure continuing compliance with Section 8.02 hereof.

Section 8.04. Restriction of Yield and Bond Proceeds. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

Section 8.05. Wetlands Covenant. The Issuer shall not use any Bond proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. Failure to comply

with this covenant shall constitute an Event of Default under Section 9.01(2) of this Resolution.

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 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Resolution, any Supplemental Resolution or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Construction Trust Fund Depository Bank, the Bond Registrar, any Paying Agent or a Holder of a Bond; or

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

(4) An "Event of Default" as defined in the Prior Resolutions.

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 rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and this Resolution relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action at law or bill in equity enjoin any acts in violation of the Resolution with respect to the Bonds, or the rights of such Registered Owners.

Section 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 this Resolution and the Act, including 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 default in the payment of interest on any Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in the Resolution other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the Issuer of such default, any Bondholder 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 on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of the Resolution and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint

protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System. The provisions of this section shall be subject to the Prior Resolutions and to the parity rights of the Prior Bonds.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Owners of all Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then the pledge of Net Revenues and other moneys and securities pledged under this Resolution and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

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

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Resolution.

No material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of sixty-six and two-thirds percent (66 2/3%) or more in principal amount of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the revenues of the System without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Resolution 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 excludibility of interest on the Bonds and the Notes from the gross income of the Owners thereof.

Section 11.02. Resolution Constitutes Contract.

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

Section 11.03. Severability of Invalid Provisions.

If any section, paragraph, clause or provision of this Resolution should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution, the Supplemental Resolution and the Bonds.

Section 11.04. Headings, Etc.

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

Section 11.05. Conflicting Provisions.

All orders or resolutions and parts thereof in conflict with the provisions of this Resolution, except the Prior Resolutions, are, to the extent of such conflict, hereby repealed.

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 Vice Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

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

Adopted this 10th day of August, 1994.

WARM SPRINGS PUBLIC SERVICE DISTRICT



Vice Chairman, Public Service Board



Member, Public Service Board

Member, Public Service Board

ABB050E5

CERTIFICATION

Certified as a true copy of a Resolution adopted by the Public Service Board of Warm Springs Public Service District on the 10th day of August, 1994.

Dated: August 26, 1994.

[SEAL]

Raymond V. Sawyer
Secretary, Public Service Board

EXHIBIT A

DESCRIPTION OF PROJECT

The Project will enlarge and upgrade the District's sewer system by (a) constructing a sewer line extension along U.S. Route 522 South of approximately 7,000 feet of sewer line, with manholes, junction boxes and other materials incident thereto from Morgan Square to Route 13 and (b) replacing approximately 3,700 feet of sewer line, with manholes, junction boxes and other materials incident thereto within the presently sewerred area of Berkeley Springs (Bath).

EXHIBIT B

LOAN AGREEMENT

[See Tab 6]

EXHIBIT C

First 3,000 Gallons	\$5.85/1,000
Next 4,000 Gallons	5.48/1,000
Next 5,000 Gallons	4.90/1,000
Next 8,000 Gallons	4.24/1,000
All over 20,000 Gallons	3.80/1,000

with an average bill based on 4,500 gallons not to exceed \$25.77
and with a minimum monthly bill estimated not to exceed \$17.55.
On all accounts not paid in full within 20 days of the date of the
bill, 10% will be added to the net amount shown.

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE WARM SPRINGS PUBLIC SERVICE DISTRICT SEWER REVENUE BOND, SERIES 1994, DESIGNATING A REGISTRAR, PAYING AGENT, DEPOSITORY BANK, AND CONSTRUCTION TRUST FUND DEPOSITORY BANK; APPROVING LOAN AGREEMENTS WITH RESPECT TO THE BOND; AND MAKING OTHER PROVISIONS AS TO THE BOND.

WHEREAS, the Public Service Board of the Warm Springs Public Service District (the "District") duly and officially adopted a Bond Resolution on August 10, 1994 (the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF WARM SPRINGS PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE OF NOT MORE THAN \$1,423,158 IN AGGREGATE PRINCIPAL AMOUNT OF WARM SPRINGS PUBLIC SERVICE DISTRICT SEWER REVENUE BOND, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SAID BOND; RATIFYING A LOAN AGREEMENT WITH THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY AND THE WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION RELATING TO SAID BOND; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SAID BOND; AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, the Resolution provides for the issuance of the Warm Springs Public Service District Sewer Revenue Bond, Series 1994 (the "Bond") in aggregate principal amount not to exceed \$1,423,158, all in accordance with Chapter 16, Article 13A, of the Code of West Virginia, 1931, as amended, (the "Act"), and the terms of the Loan Agreement (the "Loan Agreement") entered into among the District, the West Virginia Division of Environmental Protection (the "DEP") and the West Virginia Water Development Authority (the "Authority"), but requires that the dates, interest rates, maturities, sale prices and other terms of the Bond should be established by a supplemental resolution;

WHEREAS, the Bond is proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Public Service Board (the "Board") of the District deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices, the maturity dates, the redemption provisions, the interest rates, and the interest and principal dates of the Bond be fixed hereby in the manner stated herein; that the Loan Agreement be approved; and that other matters relating to the Bond be herein provided for.

WHEREAS, capitalized terms not otherwise defined shall have the meanings given such terms in the Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE WARM SPRINGS PUBLIC SERVICE DISTRICT:

Section 1. Pursuant to the Resolution, the Act, and this Supplemental Resolution, the Bond shall be in the aggregate principal amount of \$1,423,158, with the following provisions:

(A) The Bond shall be originally issued in the form of a single bond, numbered R-1, in the principal amount of \$1,423,158. The Bond shall be dated the date of delivery thereof, shall bear interest at the rate of zero percent (0%) per annum from the date of delivery through the 20 year life of the loan, which principal shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year commencing December 1, 1995, shall be subject to redemption upon the written consent of the Authority and DEP, upon payment of the outstanding principal and interest thereon, and subject to the other requirements provided in the Loan Agreement, as long as the Authority shall be the registered owner(s) of the Bond.

(B) The Bond shall be sold to the Authority in accordance with the terms of the Loan Agreement at a price equal to 100% of the principal amount thereof.

Section 2. All other provisions relating to the Bond shall be as provided in the Resolution, and the Bond shall be in substantially the form provided in the Resolution with such changes, insertions and omissions as may be approved by the Vice Chairman of the District. The execution of the Bond by the Vice Chairman shall be conclusive evidence of such approval.

Section 3. The District does hereby ratify, approve and accept the Loan Agreement including the "Schedule X" attached thereto, a copy of which is incorporated herein by reference, and the execution and delivery by the Vice Chairman of the Loan Agreement and the performance of the obligations contained therein, on behalf of the District have been and are hereby authorized, approved and directed.

Section 4. The District hereby continues the appointment of Citizens National Bank of Berkeley Springs, Berkeley Springs,

West Virginia, as the Depository Bank, as provided in the Resolution.

Section 5. The District hereby appoints and designates Citizens National Bank of Berkeley Springs, Berkeley Springs, West Virginia, as Registrar for the Bond and as an alternative, if said Bank is unable or unwilling to serve in such capacity, the District hereby appoints and designates One Valley Bank, National Association, Charleston, West Virginia, as back-up Registrar for the Bond.

Section 6. The District hereby appoints and designates the West Virginia Municipal Bond Commission (the "Commission"), Charleston, West Virginia as Paying Agent for the Bond.

Section 7. The Vice Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, required or desirable in connection with the Bond hereby and by the Resolution approved and provided for, to the end that the Bond may be delivered to the Authority pursuant to the Loan Agreement on or about August 26, 1994.

Section 8. The financing of the Project in part with proceeds of the Bond is in the public interest, serves a public purpose of the District and will promote the health, welfare and safety of the residents of the District.

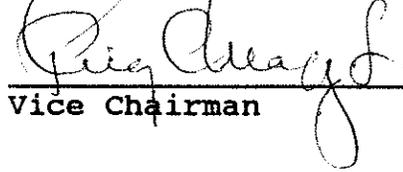
Section 9. The District hereby directs the Depository Bank to initially invest all monies in the funds and accounts established under the Bond Resolution in Qualified Investments further directed by the District.

Section 10. The District shall not permit at any time or times any of the proceeds of the Bond or any other funds of the District to be used directly or indirectly in a manner which would result in the exclusion of the Bond from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bond as a "private activity bond" within the meaning of the Code. The District will take all actions necessary to comply with the Code and/or Treasury Regulations promulgated thereunder.

Section 11. This Supplemental Resolution shall be effective immediately upon adoption.

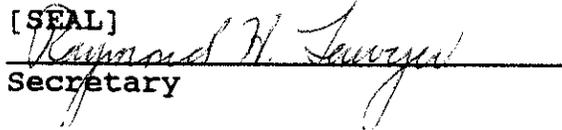
Dated: August 10, 1994

WARM SPRINGS PUBLIC SERVICE DISTRICT



Vice Chairman

[SEAL]



Secretary

AHH005D2

MINUTES
WARM SPRINGS PUBLIC SERVICE DISTRICT
AUGUST 10, 1994

A regular meeting of the Public Service Board of the Warm Springs Public Service District was held on Wednesday, August 10, 1994, at the Morgan County Courthouse in Berkeley Springs, West Virginia, at 3:30 p.m.

Members present were Phil Maggio and Raymond Lawyer. Also in attendance were Rex Matts, Don Hoover, Mary Clare Eros, and Rodney Hovermale. Mr. Maggio chaired the meeting.

The first matter of business was the approval of the Minutes of the July 20, 1994, meeting. The Minutes were approved upon a motion by Mr. Lawyer.

The next matter of business was the approval of the invoices received since the last meeting. After discussion, the following fifteen operating invoices were approved for payment upon a motion by Mr. Lawyer:

1. Alan Sigel(7/11 steam power rental)	\$ 75.00
2. Unifirst Corp.(8/08, uniforms)	29.70
3. Hunters HW(7/5-7/21,paint,switch,clamp)	13.88
4. ASI(7/7 & 7/21 system training)	910.19
5. REIC(7/31, sludge analysis)	1203.30
6. Cox,Allemong(5/16-7/15, line ext.,GL)	410.00
7. H. B. Mellott(7/22, stone)	97.94
8. Fischer/Porter(8/3, charts)	173.33
9. Bell Atlantic(7/19-8/18)	364.40
10. GHS Excav.(stone, Biser & Warren St.)	590.00
11. Rick's Welding(sewer truck repair)	97.50
12. Potomac Edison(6/25-7/27)	1461.04
13. REIC(7/18, sludge analysis)	170.00
14. Panhandle Pipe(6 in. saddle, etc.)	475.35
15. State Auto(truck ins. 9/11/94-9/11/95)	502.88

A sewer connection request for a proposed house on Blackwood Street by Rex Matts was discussed. It was Mr. Matts' position that a main line extension was not necessary to bring sewer service to the seven lots that he proposes to consolidate into one lot. Mr. Maggio noted that there was at least a distance of 100 feet between the PSD mains on either Martinsburg Road or Ewing Street and Mr. Matts' property lines. According to PSC rules there would have to be a main extension from the present line to Mr. Matts' property and continue on for the full frontage of the lots that will be built on. However, it was decided that the PSD would construct a line at Mr. Matts' expense to lot 11 from Martinsburg Road provided

that lots 5, 6, 7, 8, 9, 10, 11, and 14 are legally combined into one parcel and Blackwood Street is closed and becomes part of the parcel. Mr. Matts will complete the main line extension agreement and Mr. Hovermale will provide a list of materials required for the extension so that the cost can be estimated. Approval for a single residence connection was granted by the Board.

The Board also considered two connection requests from the DEP's Leaking Underground Storage Tank Division. Two pretreatment units will be installed to process groundwater from the vicinity of Roy's Service Center for a period of two or three years. Mr. Hovermale reported that the initial flow into the PSD sewers will be substantial, but should drop off to residential equivalents. Two sewer connections were approved.

Mary Clare Eros of Jackson & Kelly(PSD's Bond Counsel) read the Bond Resolution for the WSPSD Sewer Revenue Bond, Series 1994, and then discussed each section. Mr. Maggio asked about the disposition of excess funds on page 33 and if the zero per cent interest rate can be revoked at a later date. After consulting Samme Gee in the Charleston office, it was felt that it is unlikely there will be excess bond funds, but any excess funds would go to the Reserve Account and would reduce future principle payments. The zero per cent interest rate will be locked-in at loan closing and cannot be subsequently changed. Ms. Eros also read the Supplemental Resolution which continues the ongoing relationship with Citizens National Bank as the depository bank.. Either CNB or One Valley Bank can act as registrar.

Mr. Lawyer made a motion to pass the Bond Resolution for the 1994 Series Bond in an amount not to exceed \$1,423,158. The motion was passed with two aye votes. Mr. Lawyer then made a motion to pass the Supplemental Bond Resolution. The motion was passed with two aye votes.

The Great Cacapon sewer project was discussed. Mr. Hovermale reported that Mr. and Mrs. Park agreed to the phase II archeological study on their proerty. Mr. Maggio indicated that Mr. Clark was hesitant to sign the permission and asked Mr. Hovermale to call him.

The Board discussed the claim for damages in a building at 308 Wilkes Street owned by John and Sabrina Adams. The PSD was asked by both Mr. Adams and the Town of Bath to clean out a storm culvert in front of the building. After the only pipe in the catch basin was cleaned with the Distirct's high pressure water truck, the owners discovered water damage inside the building. Apparently the floor drains in the building are directly tied to the drain pipe exiting the catch basin. The District's insurance company is

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 22nd day of August, 1994.

CASE NO. 93-0526-PSD-CN (Reopened)

WARM SPRINGS PUBLIC SERVICE DISTRICT,
a public utility.

Petition to reopen sewer certificate application and for approval of additional improvements and additional borrowings incidental thereto.

FINAL ORDER

On March 2, 1994, a recommended decision was entered on Case No. 93-0526-PSD-CN which approved an application filed August 16, 1993, by Warm Springs Public Service District (District) to enlarge and upgrade its sewerage system. On March 11, 1994, Warm Springs Public Service District filed exception to the aforesaid recommended decision, and, by order entered by the Commission on April 15, 1994, said exceptions were denied and the March 2, 1994 recommended decision was adopted as the final order of the Commission.

On August 5, 1994, T. D. Kauffelt, Esq., counsel for the District, filed a petition to reopen this proceeding and for Commission approval of construction of additional projects in the system and additional borrowing in the amount of \$1,423,158. Mr. Kauffelt advised the Commission that the District was able to obtain a loan agreement with the West Virginia Water Development Authority and the West Virginia Division of Environmental Protection in which the agencies proposed to loan the District an amount of \$1,423,158. Due to the lack of interest charges, the District was able to finance the additional borrowing, over what had been previously approved by the Commission, without an increase in the rates previously authorized.

The District advised the Commission that there is a need to continue in the upgrading of its facilities, and, therefore, as the District is able to borrow the additional funds, without an increase in rates, there are nine (9) proposals, totaling \$220,917 for additional work. The nine (9) proposals were set forth in an exhibit attached to Mr. Kauffelt's petition. It is proposed that, upon the acceptance of the low bid, the additional construction will be done as change orders to the contract that will be accepted by the District. The construction costs contained in the attached exhibit to the petition totaling \$220,917 is based on the prices contained in the low bid to be accepted by the District for the earlier, already-approved work. All of this has been approved by the Division of Environmental Protection, subject to Commission approval.

The August 5, 1994 petition was submitted to Commission Staff for review and comment. By Joint Staff Memorandum, received August 19, 1994, Meyishi P. Blair, Esq., counsel for Commission Staff, noted that West Virginia Code Section 16-13A-25 requires the District to receive Commission approval prior to borrowing loans or accepting grants. Since the additional moneys to be borrowed will not cause an increase in customer rates and charges but will be utilized to finance improvements to the District's system that will enhance service to the customers and since the work proposed to be done as outlined in the August 5, 1994 petition does not substantially alter the previously approved project, it is the recommendation of Commission Staff that both the August 5, 1994 petition to reopen and the regulatory approvals sought by said petition be granted.

Attached to Ms. Blair's memorandum was a memorandum from Robert M. Hubbard, Senior Utilities Analyst, and Robert L. Skiles, Jr., P.E., Utility Engineer, Public Service District Division, recommending that the August 5, 1994 petition for increased project costs and increased borrowing be approved.

Based upon the foregoing, the Commission concludes that Case No. 93-0526-PSD-CN should be reopened and that the August 5, 1994 petition filed by Warm Springs Public Service District should be granted.

FINDINGS OF FACT

1. On August 5, 1994, Warm Springs Public Service District, a public utility, filed a petition to reopen Case No. 93-0526-PSD-CN, for the purpose of constructing additional improvements to its sewer system and for approval of additional borrowings incidental thereto. (See August 5, 1994 petition).

2. The August 5, 1994 petition was submitted to Commission Staff for review and comment. By Joint Staff Memorandum, received August 19, 1994, from Meyishi P. Blair, Esq., Counsel for Commission Staff, Commission Staff recommended that said petition be granted. (See, Joint Staff Memorandum received August 19, 1994).

CONCLUSION OF LAW

Since the additional moneys to be borrowed by Warm Springs Public Service District will not cause an increase in customer rates and charges, but will be utilized to finance improvements to the District's system that will enhance service to its customers, and since the work proposed to be done as outlined in the August 5, 1994 petition does not substantially alter the previously approved project, the Commission is of the opinion that said petition should be approved.

ORDER

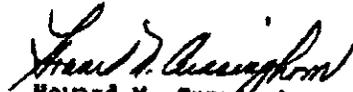
IT IS, THEREFORE, ORDERED that Case No. 93-0526-PSD-CN be, and it hereby is, reopened.

IT IS FURTHER ORDERED that Warm Springs Public Service District, a public utility, be, and it hereby is, granted authority to borrow \$1,423,158 from the West Virginia Water Development Authority and the West Virginia Division of Environmental Protection, substantially in the terms and conditions contained in the District's August 5, 1994 petition.

IT IS FURTHER ORDERED that Warm Springs Public Service District, a public utility, be, and it hereby is, granted authority to construct nine (9) additional projects as outlined in its August 5, 1994 petition.

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

A True Copy, Teste:


Howard N. Cunningham
Executive Secretary

HMC/esk

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 15th day of April, 1994.

CASE NO. 93-0526-PWD-CN

WARM SPRINGS PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to construct and upgrade its sewage facilities in Morgan County, and for approval of rates, charges, and financing and for approval of a capital improvement fee of \$1,000.

ORDER ADOPTING RECOMMENDED DECISION AS FINAL ORDER

The procedural history of this case appears in the recommended decision dated March 2, 1994. In that decision, the Administrative Law Judge (ALJ) concluded that:

1. The District's request for an improvement fee should be denied since said fee is, in essence, a tap fee of a magnitude not allowed by the Commission.
2. The District's request for a tap fee should be denied since the average cost of installing a tap is not higher than the current charge of \$250 and, taps are not cost based.
3. The District's request to have its rate increase effective immediately should be denied since interim financing for the District's sewerage project is in place, and the District presented no evidence to support an immediate need.

On March 11, 1993, the District filed exceptions on grounds that since grants are now scarce and growth is accelerating, a capital improvement fee, charged to new customers of its system, is a fair and equitable way to accumulate funds to lessen the impact that necessary capital improvement projects have on the District's rates and charges.

The District also argues that its request for the imposition a tap fee would only reflect, at the most, the actual cost of the tap, and that there is no reason why the fee for a tap should not reflect actual cost. Moreover, the District states that the fee would only deal with new construction, and it would only be charged at the time when individuals are building new homes. Further, the District maintains that a capital improvement fee and a tap fee would permit a district with limited resources to continue to grow and provide service to ever-increasing numbers; and they would make expansion pay

immediately, there will have been almost two years of inadequate rates which could mean postponement of maintenance, and other matters detrimental to the District's operation for lack of funds." Exceptions, p. 6. In Greenbrier Public Service District No. 1, Case No. 79-128-S-CN, 67ARPCWV 1092, we made it clear that we would consider placing rates into effect prior to the completion of a construction project where there is a showing that any delay would set back the construction schedule and would further increase its costs, which would in turn create future rates that would be prohibitive for ratepayers of ordinary means. The District herein made no such showing. Accordingly, its request to have the rates placed into effect immediately should be, and was, properly rejected.

Finally, in view of the foregoing discussion, we see no need for oral presentation. Accordingly, we shall deny the request for oral argument.

FINDINGS OF FACT

1. The District presented no evidence which would justify the imposition of a capital improvement fee. Further, the evidence suggests that growth has slowed in Morgan County.
2. The District's request for a tap fee is exorbitant when compared to the tap fee approved by the Commission in Northern Wayne.
3. The District states that its request for a tap fee is based on the actual cost of a tap fee.
4. Apart from its repetition of mere speculation, the District made no effort to demonstrate that there is an immediate need for funds.

CONCLUSION OF LAW

Based on the foregoing discussion and findings, it is reasonable and appropriate for the Commission to adopt the recommended decision as a final order of this Commission.

ORDER

IT IS, THEREFORE, ORDERED that the recommended decision entered March 2, 1994, in the above styled matter, be and is hereby, adopted as a final order of this Commission.

IT IS FURTHER ORDERED that the exceptions filed by Warm Springs Public Service District be, and the same are hereby, denied.

IT IS FURTHER ORDERED that Warm Springs Public Service District's request for oral argument be, and is hereby, denied.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: March 2, 1994

CASE NO. 93-0526-PSD-CN

WARM SPRINGS PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to construct and upgrade its sewerage facilities in Morgan County, and for approval of rates, charges, and financing and for approval of a capital improvement fee of \$1,000.

RECOMMENDED DECISION

PROCEDURE

On August 16, 1993, Warm Springs Public Service District (Warm Springs or the District) filed with the Public Service Commission (the Commission), pursuant to West Virginia Code §24-2-11, a duly certified application for a certificate of convenience and necessity to construct and upgrade its sewerage facilities in Morgan County, and for approval of the following: financing for the project, increases in rates and the tap fee, and institution of a capital improvement fee of \$1,000.

On August 17, 1993, the Commission issued a Notice of Filing and also a Further Notice of Filing, which superseded the Notice of Filing. The August 17, 1993 Order directed the District to publish the Further Notice of Filing and provided that, if no substantial protests to the application were filed within thirty (30) days after date of publication, the Commission might waive formal hearing and grant the application based upon its review of the evidence submitted with the application.

On September 12, 1993, the District filed an Affidavit of Publication establishing that the Further Notice of Filing was published in The Morgan Messenger on August 25, 1993, consistent with the requirements of said notice. No protests were received.

On September 21, 1993, the Commission Referral Order was entered in this proceeding, referring this matter to the Division of Administrative Law Judges (ALJ Division) for decision on or before March 11, 1994.

On September 30, 1993, the undersigned ALJ issued a Procedural Order establishing a procedural schedule for this matter, including setting it for hearing on December 10, 1993.

On December 2, 1993, Commission Staff filed a Further Final Joint Staff Memorandum, recommending approval of the proposed certificate of convenience and necessity and approval of the financing conditioned upon the submission of documentation of confirmation of the funding. Staff further recommended approval of the proposed rates and charges, with the

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To	Lori Bekovic		
From	TD Kauffelt		
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Dept.			
Phone #	345-1272		
Fax #	345-1280		

exceptions of the requested \$350 tap fee and \$1000 capital cost improvement fee. That is, Staff thought no increase in the District's \$250 tap fee was warranted and rejected the District's request for an improvement fee. Staff further opined that it would be prudent to cancel the hearing because, if the District accepted Staff's recommendations, none would be necessary since no protests had been filed. The District was provided opportunity to respond. In a Procedural Order of December 6, 1993, the undersigned ALJ cancelled the hearing scheduled for December 10, 1993, stating that, should the District object to the Staff recommendations on the merits of this matter, a hearing could be rescheduled by further order.

By letter dated December 9, 1993, and received December 10, 1993 from the District's counsel, T.D. Kauffelt, the District stated that it did not accept the Staff recommendations in regard to the capital cost improvement fee and requested that a hearing thereon be scheduled as soon as possible. Accordingly, on December 10, 1993, the undersigned ALJ issued a Procedural Order setting this matter for hearing in Charleston on January 4, 1994.

On December 14, 1993, the District moved for the hearing to be rescheduled to be held in Berkeley Springs because of local interest in the matter as evidenced by appearance of individuals at the previously scheduled, cancelled and unnoticed hearing of December 10, 1993, and because the District could more easily present its case in Berkeley Springs. The request was granted by Procedural Order of December 17, 1993, and the hearing was rescheduled for hearing at 2:00 p.m. on Monday, January 31, 1994, in the County Commissioners' Courtroom, Morgan County Courthouse, Berkeley Springs, West Virginia. Moreover, because of the local interest the District had referred to, the District was required to have published a Notice of Hearing.

Hearing was held as scheduled. Thereat Staff was represented by Staff Attorney Meyishi Blair and the District was represented by Mr. Kauffelt. The District initially submitted an affidavit of publication establishing that the Notice of Hearing was published in The Morgan Messenger on January 12, 1994. (Warm Springs Exh. 4). The District presented the testimony of eight witnesses, Richard Klein, John Kunkle, Wellington Jones, Len Palmer, Robert Campbell, J.R. Hawvermale, Philip Maggio, Jr., and Rodney Hovermale. Commission Staff presented the testimony of two witnesses, Robert Skiles, Jr., and Robert Hubbard. Ray Wall, Howard Trittipoe, and Lester Gordon made sworn public statements. At the close of hearing this matter was submitted for a decision, pending the receipt of the transcript, briefs, and Commission Staff review of certain documents presented post-hearing. The transcript was filed February 16, 1994, and briefs from both parties were received February 23, 1994.

EVIDENCE

The first witness called was Mr. Klein, a civil engineer, who did the facilities planning for the proposed project and the design work. (Tr. 10). He explained that there are two parts to the project: improving the sewer system in downtown Berkeley Springs, and extending sewer service south of town on Route 522. (Tr. 10-12). The downtown project would

consist of replacing approximately 1,600 feet of the main interceptor that crosses the town, along with replacing between 1600 and 1700 feet of smaller, eight-inch pipe, and other pipe and appurtenances. He stated that the downtown project is needed because of tremendous leakage in the system; that the treatment plant is designed for an average of 400,000 gallons of sewage per day; that, due to the high level of inflow and infiltration (I/I), the plant is presently operating at that capacity; and that with the replacement of the old pipe it is thought that the I/I can be reduced by 30%, so that the plant would be operating at approximately 60,000 to 70,000 gallons below full capacity. (Tr. 13-14, 18). He also stated that the District has an ongoing, fairly substantial rainspout program in further effort to lower the I/I. (Tr. 19). Regarding the extension south of town, he stated that it would consist of laying 6000 feet of pipe down the Route 522 corridor and that presently the potential commercial and residential customers in the project area have no sewer system at all, relying instead on septic tanks, some of which are failing and causing pollution. (Tr. 14, 18-19). He stated that the cost estimates for the downtown project are approximately \$450,000 and for the extension approximately \$590,000. (Tr. 15).

Mr. Kunkle, a certified public accountant, testified that he had prepared the District's Rule 42 exhibit in this matter. (Tr. 20-21, Warm Springs Exh. 5). He explained that the pro forma figures shown in that exhibit reflect the anticipated new customers and the additional financing costs of the project. (Tr. 22). He testified that the project will be financed by borrowing from the State Revolving Fund, at 3% interest, and that the proposed rates will furnish adequate funds for the District's debt service along with a cash surplus of \$5000 for capital additions and betterments. (Tr. 22-23).

Mr. Jones, Engineer Director of the Sanitation Authority of Frederick County, Virginia, which provides water and sewer service in that county, testified that that authority charges its customers two types of fees, a sewer fee based on water consumption, and a connection fee, which has three parts, an availability charge, a local facilities charge, and a lateral fee. For a residential-size meter those connection charges are, respectively, \$1425, \$400, and \$1115. (Tr. 28). Where a developer installs the lateral lines, the lateral fee is \$40. (Tr. 29). On cross-examination, he stated that the average monthly bill for sewer is \$17.03. He did not know the per capita income of residents of Frederick County. He stated that the law in Virginia does not require that charges be based primarily on the cost of providing services, nor does it require that the economy of the state be considered when rates are set. (Tr. 32).

Mr. Palmer, Executive Director of Washington County Sanitary District in Hagerstown, Maryland, testified that customers of the nineteen sanitary subdistricts in the Hagerstown area that his agency oversees are required to pay allocation fees, which are capital improvement fees, varying from a low of \$500 to a high of \$3,800 per residential unit, and additionally the customer is required to pay construction costs for bringing the line from the main to his property. (Tr. 36-39). The funds are used for paying debt service for improvements, and kept in escrow until needed. (Tr. 38, 52). The result is a low rate structure. (Tr. 39). Generally, the charges are financed as part of the cost of a new home. (T. 41). The

medium incomes of the areas included in the district vary from a low of \$13,000 per household to \$28,000. (Tr. 42). He stated that since October 1993, when an individual comes into the system, he can finance the charges over five years with interest to the authority. (Tr. 42). He clarified that the charges were only for new connections, not when an individual buys a house from another. (Tr. 47-48). He further demonstrated how the proposal would be implemented by stating that, if an apartment building with four apartments were being built, four allocation fees would be paid. (Tr. 49).

Mr. Campbell, Sanitarian for the Morgan County Health Department, testified that the extension project has been needed for years, for there have been septic tank failures and neither the soil conditions nor the sizes of the plots in the area are suitable for septic systems. (Tr. 54, 56, 60). He testified that the growth in population in the area is slow but steady, since the location is at the outer limits for daily commuting to Washington, D.C., but people have weekend places there. (Tr. 61).

Mr. Hawvermale, a member of the Morgan County Planning Commission, supported the \$1,000 improvement fee, opining that, whenever expansion of a sewer system is needed in West Virginia, either rate increases are necessary, requiring old customers to pay for service to new customers, or a new public service district must be formed, which is why there is such a proliferation of public service districts in West Virginia. (Tr. 65). Mr. Hawvermale testified that the median income in Morgan County is \$28,000, higher than the state average. (Tr. 65). When on cross-examination he was asked whether he was aware that, if the District's charges were approved, new customers would have to pay \$1,400, the improvement fee plus the requested \$350 tap fee and a \$50 deposit, he replied that he himself would "love it," for such charge would be less than the cost of installing one's own septic tank, between \$3000 and \$4000. (Tr. 66-69).

Mr. Maggio, Chairman of the Board of Directors of the District, supported the improvement fee, stating that, otherwise, in order to realize projects that will be needed in the future, spiralling rates will be needed, which he did not consider fair to those already in the system. (Tr. 73-74). Noting that the requested rate increases would satisfy the debt created by these projects, he stated that the District wished to put the money collected as improvement fees in escrow so that, in the event that the treatment plant reaches capacity and require improvements, a further rate increase can be avoided, although the funds might very well be insufficient to cover all such future expenses. (Tr. 74). However, "it will soften the blow in the future to the existing users." (Tr. 74). He stated that the District had the long-range plan of adding a clarifier at the plant to expand its capacity a further 200,000 gallons. (Tr. 80). Asked on cross-examination why not utilize alternate extension agreements, he replied that such are used, but they cannot be imposed, for they are voluntary agreements only. (Tr. 86-87). Pressed on cross-examination, he clarified that, under the proposed fee structure, if a developer is building an apartment complex, he would have to pay as many improvement fees as there are units in that complex. (Tr. 89). Regarding an individual connecting his house to the system, he conceded that the total \$1400 would have to be paid, but he argued that the \$1100 additional charge is a lot cheaper than a septic system. (Tr. 90). When Ms. Blair

responded that the proper comparison is between the individual who in the past has been able to get service for \$300, he replied that the reality is that other customers help pay for that individual to receive service. (Tr. 92). He stated that the District thought it imperative that new customers contribute to the cost of their infrastructure, as opposed to spreading that cost over people who have already paid for debt service for, in some cases, fifteen or twenty years. (Tr. 92-93). Asked why new customers should pay the improvement fees and also the rates and charges that older customers pay, since rolled into those rates is the debt service incurred for the older customers, he responded that that was why the funds would not be used to pay old debt and rather would be put in a separate account to pay for future expansion. Also asked why he thought the plant would reach capacity soon since, with implementation of the downtown project, the I/I would be reduced, he opined that full capacity could be reached by adding the 110 new taps already requested. (Tr. 95). Finally, he stated that, with usage of the equivalent residential unit system, whereby a resident pays one improvement fee and a commercial entity may pay several, depending on amount of usage, each is paying his fair share. (Tr. 95).

Mr. Klein was then recalled to the stand. He stated that he had prepared a report on the improvement fee wherein he reported the growth in Morgan County, which was at 25.32% during the 1970's and at 13.23% during the 1980's. (Tr. 99, Warm Springs Exh. 6). He opined that the treatment plant will have to be expanded sooner or later and the beauty of the improvement fee is its flexibility, for if growth slows, the funds sit in escrow, but are available if needed. (Tr. 99, 100). He opined that utilizing separate development agreements could lead to a discriminatory policy, for only some developments would be covered by such, but that with the improvement fee each individual pays the same. (Tr. 100, 101). He stated that the individual building an individual home affects the capacity of a treatment plant to the same degree as another individual buying a home in a subdivision being developed by a developer. (Tr. 107).

Mr. Hovermale, the District's Manager, testified that he compiled a list of the last twelve taps that had been installed by the District, and that the average cost was \$642 per tap. The two highest costs, \$1282 and \$1507, were due to the fact that the taps were on the opposite side of the road from the property, requiring cutting of concrete. (Tr. 113). He stated that only one was below \$350, being \$332. (Tr. 114). Asked about the District's efforts to stop the introduction of improper water into the sewage system, he stated that the District has smoke-tested twice and is getting results, for it is imposing a surcharge on those residents who do not cease the practice. (Tr. 116). The District agreed to supply for Staff post-hearing review the work orders of the twelve taps Mr. Hovermale had discussed. (Tr. 117).

Ms. Blair first called Mr. Skiles, a Utility Engineer for the Public Service District Division of the Commission. (Tr. 118-119). Entered into evidence as Staff Exhibit 1 was a Final Staff Internal Memorandum dated November 23, 1993, which he had prepared, wherein he had described the projects, its costs, totalling \$1,050,000, and had opined that both parts of the project are necessary, from an engineering perspective. The memorandum also stated the following:

In its application the District has requested a "capital improvement" fee of \$1,000 to be charged to every new customer connected to the District's system. Capital improvement, or impact fees, are usually an amount of money paid by a developer to a public service district for each house that will be constructed within his development. The purpose of the payment is to provide the District with funds to offset what a large development costs a district. Such fees are placed in escrow by the district until such time as capacity needs to be increased by rebuilding.

This type of fee is approved on a contract by contract basis as part of an alternate main extension plan only in areas of rapid growth. The threat of loss of capacity due to large developments, where many large developments are foreseen, must exist. Warm Springs Public Service District has not demonstrated that numerous large developments are anticipated. Neither is there any supporting information to show how the \$1,000 figure was arrived at. Therefore, Staff cannot recommend approval of the District's request at this time.

Asked why he was against the improvement fee, Mr. Skiles explained that traditionally the Commission approves negotiated agreements between a public service district and a developer to construct lines within a development. "A developer planning a very large development, or even a series of small developments, has a much more severe impact upon a utility's system than the average, normal residential customer." (Tr. 123). He stated that the average residential customer has a far lesser ability to get the \$1,400 to pay for the services than the developer and he had no problem with charging a fee to all developers because a developer is out to make a profit, nor would it be discriminatory to do so because a developer is not a customer. (Tr. 123, 125). He also noted that, with an improvement fee, new customers would be paying for lines that do not benefit them while old customers would escape paying for such lines. (Tr. 126). On cross-examination he was asked whether there was any real difference between the residents paying and the developer paying, since the developer adds the cost of the improvement fee onto the cost of the house, he admitted that ultimately the customer, not the developer, would pay the fee. (Tr. 127-128).

The final witness was Mr. Hubbard, a Senior Utilities Analyst for the Public Service District Division of the Commission. Entered into evidence was a Final Staff Internal Memorandum dated November 29, 1993, that he wrote. (Staff Exh. 2). Included therein is the following:

The proposed project is to be totally financed through issuance of Sewer Revenue Bonds to the Water Development Authority for financing through the West Virginia Pollution Control Revolving Fund at an interest rate not to exceed 3% for a period not to exceed 20 years. The loan will be repaid by equally amortized monthly payments of \$5,823, or an annual payment equal to \$69,979. Also required is a debt service reserve for an annual amount equal to \$6,989 and a renewal and replacement reserve for an annual amount equal to \$2,023.

Interim financing, if needed, is to be in the form of a line of credit in the amount of \$250,000. Staff notes that an amount of \$6,504 has been included in the project budget for a capitalized interest. Documentation of confirmation for all funding including interim financing has not yet been received by the Commission.

Mr. Hubbard testified that, since the writing of the memorandum, the District had provided confirmation of the funding. (Tr. 135). He confirmed that Staff maintained the further recommendations given in the memorandum that the certificate of convenience and necessity be approved, as well as the financing and the rates and charges, excepting the proposed improvement fee and the increase in the tap fee, and that those approved rates and charges become effective upon completion of the project, stating that such effective date was appropriate since the District has adequate funding and interim financing in place. (Tr. 135). He finally confirmed the final recommendation of the memorandum, that the matter be reopened in one year from the date the District begins operations to determine if rates need adjustment. (Tr. 135).

The statements from the public can be summarized as follows: Mr. Wall and Mr. Gordon were of the opinion that those individuals who would benefit from the extension should pay for it totally. Mr. Wall stated that the 28% rate increase that is proposed is too high for those who live in the town, opining that a \$5.00 per month increase would be too much for the elderly on fixed incomes in the town. (Tr. 144-147, 150). Mr. Trittipoe supported the construction of the project. (Tr. 148-149).

DISCUSSION

It was clear from Mr. Kauffelt's letter of December 9, 1993, that the District was only contesting the Staff's recommendation regarding the improvement fee and, accordingly, the Notice of Hearing announced a "public hearing for the purpose of receiving relevant evidence on whether the District should be allowed to charge a \$1,000 capital cost improvement fee[.]" Nevertheless, at hearing the District further contested the Staff recommendations that the tap fee not be raised from \$250 to \$350 and that the rate increase be implemented only upon completion of the project, thereby raising two further issues.

The primary issue in this matter is whether the District should be allowed to institute the improvement fee. First, it should be clarified how the improvement fee would be implemented. While at one point in its brief the District claims that "the fee only applies to new construction," (Brief of Warm Springs at 3), that is clearly not true. Rather, as the record supports and the Brief of Warm Springs states at page 1, the proposed fee would "be collected from every new customer who connects to the District's sewer system[.]" including those potential customers along Route 522 South who presently have septic systems. Accordingly, it is also not true that, in every instance, the cost could be absorbed and therefore financed as part of the "overall cost of the construction project." (Brief of Warm Springs at 3). Rather, anytime the District would extend service into an area where individuals already live, those residents would have to pay the fee. Moreover, it must be emphasized

that, while the District seeks to institute the fee by requiring the residents along Route 522 to pay it, along with all other new customers, the fee in no way will be paying for the extension along Route 522 because those costs are covered by the 28% rate increase that the District requested and Staff supports. Rather, the funds the fee would generate would be put in escrow for future improvements, particularly to expand the capacity of the treatment plant.

Accordingly, the improvement fee is simply a large tap fee, the funds from which are to be set aside in escrow for future improvements, and it must be rejected on the basis that the Commission does not allow such high tap fees. Staff is correct in stating that the Commission has made its philosophy regarding tap fees very clear, as stated in Northern Wayne County Public Service District, Case No. 92-1038-PSD-42T (March 26, 1993),

[T]he Commission has long had a policy of requiring tap fees which are significantly less than the costs of the tap. Tap fees are simply not cost based. In the absence of capacity constraints on existing plant, current customers receive benefits when new customers are added to a utility. High tap fees discourage individuals from using a sanitary sewer system. For reasons of public health, we should encourage wide use of available sanitary sewer systems. The suggested \$2,000 tap fee is excessive and violates the Commission's long standing policy requiring reasonable tap fees which do not act as a disincentive to hook onto a sanitary sewer system. The suggested tap fee must be rejected. The Commission will continue its policy and require the District to retain its tap fee of \$250 as approved in its certificate case.

Further comments are in order, nevertheless. The Staff argues that the District has failed to show that its "facilities are in danger of reaching capacity some time in the near future warranting, perhaps, such a fee[.]" contending that the District did not show that the population of the area was rapidly growing or that the plant would reach capacity soon, particularly since reduction of the I/I effected by the downtown project would allow the plant to process more true sewage. (Staff Brief at 3-4). In fact, the District's justification relies on the proof that there is steady growth in the area, not the type of proof Staff suggests. That is, the District believes that, as long as there is continued growth in the area, even if not rapid, improvements will be needed, even if not in the very near future, and that the funds collected as improvement fees could be used to make those improvements when they are needed rather than the District's having to cover the costs of all such improvements by raising rates.

Additionally, the District may be correct that there may be some discrimination between new customers created by implementing extension agreements, causing those buying from developers to ultimately pay for the extension costs which the developers paid, while those residents who build individual homes escape such costs. However, the Staff is correct that a far greater inequity would be created between new customers paying the improvement fee and those whose taps were installed prior to the fee's implementation. The following reasoning is persuasive:

[T]he current rates that the District's customers are paying and any rate established pursuant to this certificate proceeding goes to arrest the current debt and any additional debt that the District will be saddled with as a result of this certificate case. Notwithstanding any of this, the District advocates that only future customers, without qualification, should at least pay \$1000 for the system's future expansion although these same customers by virtue of paying a monthly sewer charge will help pay toward debt that the District has already outstanding on its books. Stated another way, the new customers will help pay for the old debt and plant. However, without any help from the District's old customers, the new customers alone, through the capital improvement fee, will pay for the plant expansion that may or may not reach fruition.

(Staff Brief at 11). In short, the new customers will not be paying for construction that benefits themselves alone; rather, they will be paying for future improvements that will benefit the old customers also, without such contribution from the old customers. Further, by paying the same rates as the old customers, they will be helping pay for facilities and improvements made in the past, some of which do not benefit them. Such inequity can be avoided by following the well-settled policy of requiring all customers, new and old, to pay for all expansions and improvements as they arise by charging all customers the same rates sufficient to cover those costs.

It is questionable whether the issues raised at hearing are appropriately before the undersigned. However, because no objection was made at hearing to their consideration and they are discussed in the Staff's brief, they are here addressed, although summary dismissal of them is found appropriate.

Regarding the increase in the tap fee, as the Staff argued and as discussed with regard to the improvement fee, tap fees are not intended to cover the full cost of installation of the taps. The Staff brief also reveals that the given costs of the taps were inflated, for the work orders included labor costs, which cannot be considered as part of the cost of installing a tap since the work is carried out by regular employees of the District, whose salaries are part of the regular maintenance and operation costs and are already included in sewer rates. After disallowance of the amounts attributed to labor, the average cost for installing the taps was \$201.23, below the current tap fee of \$250. (See Staff Brief at 14-15).

Regarding whether the rates should be effective immediately or upon completion of the project, the District argues,

[T]he Administrative Law Judge should note that the financial basis for this case is based on the test year ending June 30, 1992. If the rates are made effective immediately, there will have been almost two years of inadequate rates which could mean postponement of maintenance, and other matters detrimental to the District's operation, for lack of funds.

However, the Staff correctly demonstrated that interim financing for the project is in place and that no emergency need for funds to be generated by an immediate rate increase has been shown. Indeed, the District's brief does not even assert that maintenance has actually been postponed but rather speculates that such may be so. Finally, the recommended rates include the expenses and final debt service for the two projects, which will not become actual expenses for the District until the project is complete and operational. If the District believes that it needs a rate increase to cover routine expenses, the Commission's normal rate increase procedures are available to it. Accordingly, the Staff recommendation will be accepted.

FINDINGS OF FACT

1. On August 16, 1993, Warm Springs Public Service District, Berkeley Springs, Morgan County, filed an application, duly verified, for a certificate of convenience and necessity to upgrade its sewerage facility in downtown Berkeley Springs by replacing approximately 3,700 feet of sewer line, plus manholes and other appurtenances, and to construct a sewer line extension along U.S. Route 522 South of Berkeley Springs consisting of approximately 7,000 feet of sewer line. (See Application filed August 16, 1993).

2. The downtown part of the project is designed to decrease the high level of inflow and infiltration that is presently caused by leakage and the Route 522 extension will provide service to residents presently using septic systems, some of which are failing and causing pollution, and also to future customers, both residential and business. (See Tr. 10-19).

3. The Notice of Filing was published in The Morgan Messenger on August 25, 1993, and no protests were filed. (See Affidavit of Publication filed September 12, 1993).

4. The estimated total cost for the project is \$1,100,000, including construction costs of \$756,517, to be financed by issuance of Sewer Revenue Bonds to the Water Development Authority for financing through the West Virginia Pollution Control Revolving Fund at an interest rate not to exceed 3% for a period not to exceed 20 years, payable in equal amortized monthly payments of \$5,823, or annual payments equal to \$69,979. Also available is interim financing in the form of a line of credit in the amount of \$250,000. (See Application filed August 16, 1993, and Staff Exh. 2).

5. The District requested approval of the Commission to increase its rates by approximately 28% as follows:

First	3,000 gallons	\$5.85 per thousand gallons
Next	4,000 gallons	5.48 per thousand gallons
Next	5,000 gallons	4.90 per thousand gallons
Next	8,000 gallons	4.24 per thousand gallons
All over	20,000 gallons	3.80 per thousand gallons

Minimum Bill: \$17.55.

6. The District also requested that the Commission approve increasing the tap fee from \$250 to \$350 and implementing an improvement fee of \$1,000 to be charged to every new customer connected to the District's system. (See Application filed August 16, 1993).

7. The Staff recommended that the application for a certificate of convenience and necessity be approved, and also recommended approval of the rates, to become effective at the completion of the project, and the funding. The Staff recommended that the District not be allowed to implement the improvement fee or to raise its tap fee. (See Staff Exhs. 1 and 2, Tr. 123-126, 135).

8. With the exclusion of costs attributed to labor carried out by employees of the District, which cannot appropriately be considered as part of the cost of installing taps, the average cost for installing the twelve taps discussed at hearing is \$201.23, below the District's present tap fee. (See Staff's Brief at 13-14).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the proposed project. The application filed August 16, 1993, by Warm Springs Public Service District accordingly should be approved. See W.Va. Code §24-2-11.

2. Because no protest was filed to the proposed rates and the Staff recommends their approval, the requested rates should be approved.

3. As discussed at pages 8 and 9 of this decision, the requested improvement fee is, in essence, a tap fee of a magnitude not allowed by the Commission. See Northern Wayne County Public Service District, Case No. 92-1038-PSD-42T (March 26, 1993).

4. The requested increase in the District's tap fee must be disapproved. The average cost of installing a tap is not higher than the present \$250 charged therefor and, in any case, taps are not cost-based. See Finding of Fact 8, and Northern Wayne County Public Service District, Case No. 92-1038-PSD-42T (March 26, 1993).

5. All further recommendations of the Staff are reasonable, and therefore should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application filed August 16, 1993, by the Warm Springs Public Service District to enlarge and upgrade its sewerage system be, and it hereby is, approved.

IT IS FURTHER ORDERED that the proposed funding, including the interim funding, be, and it hereby is, approved.

IT IS FURTHER ORDERED that the requested rates and charges, with the exceptions of the requested increase in the District tap fee and the requested improvement fee of \$1,000, be, and they hereby are, approved, and that the rates becomes effective upon completion of the project.

IT IS FURTHER ORDERED that the Warm Springs Public Service district file with the Commission's Tariff Office a tariff reflecting the rates and charges here approved, along with the Schedule 2 Flat Rate of \$25.77 per month approved in Warm Springs Public Service District, Docket No. 93-0603-PSD-T (October 12, 1993).¹

IT IS FURTHER ORDERED that, if there is a change in any of the terms, conditions or scheduling of the project, or the financing of the project, the Warm Springs Public Service District notify the Public Service Commission and file for Commission approval of any such revision.

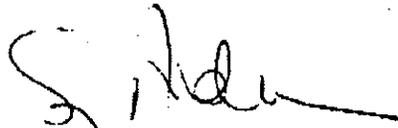
IT IS FURTHER ORDERED that this matter be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary 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.



Sunya Anderson
Administrative Law Judge

SA:dfs

¹The Flat Rate provided on Schedule 2 of the District's tariff on file with the Commission is "\$20.13 per month," although in Warm Springs Public Service District, Case No. 93-0603-PSD-T (October 12, 1993), the Schedule 2 Flat Rate of \$25.77 per month was approved. (See Staff Exh. 2).

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA CHARLESTON

Entered by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, in the City of Charleston on the 17th day of August, 1993.

CASE NO. 93-0526-PSD-CN WARM SPRINGS PUBLIC SERVICE DISTRICT, a public utility, Berkeley Springs, Morgan County.

Application for a certificate of convenience and necessity to construct and upgrade its sewage facilities in Morgan County, and for approval of rates and financing and for approval of a capital improvement fee of \$1,000.

FURTHER NOTICE OF FILING

WHEREAS, on August 16, 1993, Warm Springs Public Service District, a public utility, Berkeley Springs, Morgan County, filed an application, duly verified, for a certificate of convenience and necessity to enlarge and upgrade its sewerage facility by (a) constructing a sewer line extension along U.S. Route 522 South of approximately 7,000 feet of sewer line, with manholes, junction boxes and other materials incident thereto from Morgan Square to Route 13 and (b) replacing approximately 3,700 feet of sewer line with manholes, junction boxes, and other materials incident thereto, within the presently sewer area of Berkeley Springs (Bath), Morgan County; and

WHEREAS, Warm Springs Public Service District estimates that construction costs will be \$756,512 and total project cost, including construction, will be \$1,100,000. The District contemplates financing the project through the issuance of its Sewer Revenue Bonds in the aggregate principal amount of not to exceed \$1,100,000, to the Water Development Authority for financing through the West Virginia Pollution Control Revolving Fund bearing interest at a rate not to exceed 3% and with maturities not to exceed 20 years, and in part from fees to be charged to customers of the project, and if available, revenues to be generated from the project prior to completion of construction. Interim financing in the form of a line of credit of \$250,000 may be needed and approval thereof is requested; and

WHEREAS, Warm Springs Public Service District seeks authority to increase its rates and charges to support the project. The proposed rates designed to produce annual revenue of \$1,206,000 are as follows:

First 3,000 gallons \$2.00 per thousand gallons. Next 4,000 gallons \$4.48 per thousand gallons. Next 5,000 gallons 4.90 per thousand gallons. Next 6,000 gallons 4.24 per thousand gallons. All over 20,000 gallons \$3.80 per thousand gallons. Minimum Bill: \$17.55. Tap Fee: \$350; and

WHEREAS, the District's treatment plant is now at or near capacity. In order to have funds available to finance the expansion of its systems which will be necessitated by population growth in Morgan County, and to keep the District's rates low over the long term, the District wishes to institute a \$1,000 capital improvement fee to be charged to every new customer connected to the District's system. The funds collected through this fee would be segregated and used only for capital improvements.

Pursuant to Section 24-2-11, West Virginia Code, IT IS ORDERED that Warm Springs Public Service District, a public utility, give notice of the filing of said application by publishing a copy of this order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Morgan County making due return to the Commission of proper certification of publication immediately after publication. Anyone desiring to make objection to said application must do so in writing within thirty (30) days after the publication of this notice to P.O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that if no protests are received within said 30-day period, the Commission may waive formal hearing and grant the application of

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY that a legal publication

Public Service Commission

placed by

Warm Springs Public Service District

appeared for 1 consecutive weeks in THE MORGAN MESSENGER, a newspaper published in Berkeley Springs, W.Va., in its issue beginning

August 25 1993

and ending

August 25 1993

THE MORGAN MESSENGER

Per J. Warren Bugeja Publisher - Editor

Words 796.25

Charge \$ 39.81

ed on the evidence submitted with said ap-
plication and its review thereof.
As True Copy Teste
Howard M. Cunningham
Executive Secretary
8-25-1m
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

UNITED STATES
DEPARTMENT OF
AGRICULTURE

FARMERS
HOME
ADMINISTRATION

Federal Building, Room 320
75 High Street
Morgantown, WV 26505-7500

Warm Springs Public Service District
Sewer Revenue Bond,
Series 1994

Mr. Mike Johnson
State of West Virginia
Division of Environmental Protection
Office of Water Resources
617 Broad Street
Charleston, WV 25301

Mr. Daniel B. Yonkosky, Director
West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, WV 25064

Dear Messrs. Johnson and Yonkosky:

Notwithstanding anything to the contrary which may be provided in the Resolutions (the "Prior Resolution") of the Warm Springs Public Service District (the "District") adopted October 14, 1977, authorizing issuance of \$1,326,000 Sewer Revenue Bonds, Series 1977 and August 3, 1989, authorizing issuance of \$300,000 Sewer Revenue Bond, Series 1989 (collectively, the "Prior Bonds"), the undersigned State Director for the United States of America, Farmers Home Administration, as sole registered holder of the Prior Bonds, hereby consents to the issuance of the District's Sewer Revenue Bond, Series 1994 in the original aggregate principal amount of \$1,626,000, on a parity with respect to the liens, pledge and source of and security for payment, with the Prior Bonds, under the terms of the Bond Resolution authorizing such Series 1994 Bond, and hereby waives any requirements imposed by the Prior Bonds or the Prior Resolutions, regarding the issuance of parity bonds which are not met by the Series 1994 Bond. The principal balance due on the Prior Bonds as of March 17, 1994 is \$1,080,793.76 and \$290,666.26, respectively, and the District is current with respect to all payments required on the Prior Bonds.

Dated this 17th day of March, 1994.

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION



State Director

Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond,
Series 1994

CERTIFICATE OF:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. PUBLIC SERVICE COMMISSION ORDER; RATES
7. INCUMBENCY AND OFFICIAL NAME
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. LOAN AGREEMENT
12. SPECIMEN BOND
13. CONFLICTS
14. CLEAN WATER ACT

We, the undersigned VICE CHAIRMAN and the undersigned SECRETARY of the Public Service Board of the Warm Springs Public Service District (the "District"), and the undersigned ATTORNEY for the District, hereby certify in connection with the single, fully registered Warm Springs Public Service District Sewer Revenue Bond, Series 1994, numbered R-1, dated the date hereof, in the principal amount of \$1,423,158 (the "Bond"), as follows:

1. TERMS: All capitalized words and terms used in this Certificate and not otherwise defined herein shall have the same meaning as in the Bond Resolution duly adopted by the Public Service Board (the "Board") of the District on August 10, 1994, and the Supplemental Resolution adopted by the Board of the District on August 10, 1994 relating to the Bond (collectively, the "Resolution"), and the Loan Agreement (the "Loan Agreement") entered into among the District, the West Virginia Division of Environmental Protection (the "DEP") and the West Virginia Water Development Authority (the "Authority"), dated July 11,, 1994.

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting the issuance and delivery of the Bond; nor questioning the proceedings and authority by which the Board of the District authorized the issuance and sale of the Bond; nor affecting the validity of the Bond or any provisions made or authorized for the payment thereof;

nor questioning the existence of the District or the title of the members or officers of the District or of the Board thereof to their respective offices; nor questioning the construction and acquisition of the improvements and extensions to the existing sewage collection and transportation facilities of the District financed in part by the proceeds of sale of the Bond (herein called the "Project"), nor operation by the District of the Project (said existing facilities, the Project and any further extensions, additions, improvements or betterments thereto, herein collectively called the "System"), nor challenging the collection or use of the revenues of the System.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals and certificates required by law for construction of the Project, operation of the System, and issuance of the Bond have been duly and timely obtained and remain in full force and effect, and competitive bids for construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the District since August 10, 1994. Further, there has been no adverse change in the status of any grant necessary to finance the acquisition and construction of the Project, as more fully described in the Resolution.

The District issued \$1,326,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1977, dated August 15, 1978 and \$300,000 in aggregate principal amount of Sewer Revenue Bond, Series 1989, dated August 3, 1989 (collectively, the "Prior Bonds") to the Farmers Home Administration ("FmHA") of which \$1,080,793.76 and \$290,666.26, respectively, as of March 17, 1994, is outstanding as of the date hereof. The District is in full compliance with the covenants and provisions of the Prior Bonds and the Prior Resolutions. The District has received the written consent for the issue of the Bond on a parity with the Prior Bonds.

5. SIGNATURES: The undersigned Vice Chairman and Secretary are the duly elected or appointed, qualified and serving officers of the Board of the District as indicated by the official titles opposite their signatures below, and were duly authorized to execute and seal the Bond for the District. The seal impressed upon the Bond and this Certificate is the duly authorized, proper and only seal of the District. Due to health problems of the Chairman, the Board by Resolution authorized the Vice Chairman to execute all documents as acting chairman.

6. PUBLIC SERVICE COMMISSION ORDER; RATES: The undersigned Attorney hereby certifies that the District has filed

any information with the Public Service Commission of West Virginia (the "PSC") and taken all other action required to maintain the Final Order ated April 15, 1994, of the PSC issued in Case No. 93-0526-PSD-CN, which grants a certificate of convenience and necessity, approves the sale of the Bond and approves the District's rates, in full force and effect, and has taken all other action required by applicable law. On August 10, 1994, the Board adopted by resolution the rates which were approved by the PSC.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the District is "Warm Springs Public Service District," and it is a public corporation and political subdivision of the State of West Virginia, organized and existing under the laws of said State in Morgan County. The governing body of the District is its Public Service Board, consisting of three (3) members, whose names and dates of commencement and termination of terms of office during this Bond proceeding are as follows:

<u>Name</u>	<u>Title</u>	<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Earl T. Andrews*	Chairman	2/1/88	2/1/94
Philip C. Maggio, Jr.	Vice Chairman	4/9/91	2/1/96
Raymond H. Lawyer	Secretary	1/23/92	2/1/98

At the organizational meeting, the following were duly elected and qualified as officers of the Board: Philip C. Maggio, Jr., Vice Chairman and Raymond H. Lawyer, Secretary.

*Mr. Andrews continues to serve on the Board by statute until The County Commission of Morgan County re-appoints Mr. Andrews or his successor.

C. William Harmsion, Esq., whose signature appears hereon is the duly appointed and acting Attorney for the District.

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

9. MEETINGS: All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the District in any way connected with the construction, acquisition, operation and financing of the Project were authorized or adopted at meetings of the Board duly and regularly or specially called and held pursuant to all applicable statutes and the rules of procedure of the Board, and a quorum of duly appointed, qualified and acting members of the Board was present and acting at all times during all such meetings.

10. INSURANCE: The District will maintain or, as appropriate, will require all contractors to maintain Worker's Compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Resolution and the Loan Agreement.

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

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

13. CONFLICTS: No officer or employee of the District has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the District or to any contractor supplying the District, relating to the Bond, the Loan Agreement and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

14. CLEAN WATER ACT: The Project as described in the Resolution complies with Sections 208 and 303(e) of the Clean Water Act, as amended.

WITNESS our signatures and the official corporate seal of the Warm Springs Public Service District on this 26th day of August, 1994.

[SEAL]

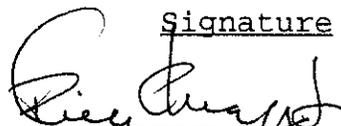
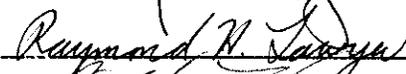
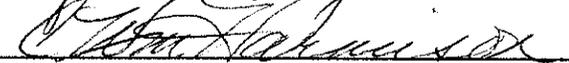
<u>Signature</u>	<u>Official Title</u>
 _____	Vice Chairman
 _____	Secretary
 _____	Attorney

ABB0509D

EXHIBIT A

EXHIBIT A

UNITED STATES OF AMERICA
 STATE OF WEST VIRGINIA
 WARM SPRINGS PUBLIC SERVICE DISTRICT
 SEWER REVENUE BOND, SERIES 1994

No. R-1

\$1,423,158

KNOW ALL MEN BY THESE PRESENTS: That WARM SPRINGS PUBLIC SERVICE DISTRICT, a public corporation and political subdivision of the State of West Virginia in Morgan 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 Four Hundred Twenty-Three Thousand One Hundred Fifty Eight Dollars (\$1,423,158), 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 installments on the 1st day of March, the 1st day of June, the 1st day of September and the 1st day of December in each year beginning December 1, 1995, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference, with interest on each installment at the rate of zero percent (0%) per annum as set forth on said Exhibit B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

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 Division of Environmental Protection ("DEP") and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement dated July 11, 1994, among the Authority, the DEP and the Issuer.

This Bond is issued to pay costs of acquisition and construction of a certain improvements, additions, extensions and betterments to the existing wastewater treatment system of the Issuer (the "Project"), (ii) to fund a debt service reserve fund, and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), a Resolution duly enacted by the Issuer on the 10th day of August, 1994, and a Supplemental Resolution adopted by the Issuer on the 10th day of August, 1994 (collectively called the "Resolution"), and is subject to all the terms and conditions thereof. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

THIS BOND RANKS EQUALLY AS TO LIEN AND SECURITY WITH THE PRIOR BONDS, AS DEFINED IN THE RESOLUTION.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues, as defined in the Resolution, on a parity with the lien of the Prior Bonds, to be derived from the operation of the System, moneys in the Reserve Account created under the Resolution and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient 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 amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest, if any, on all obligations on a parity with or prior to the Bonds including the Prior Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest, if any, which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year and in the reserve accounts for the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Resolution. Remedies provided the registered owners of the Bonds are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Resolution, only upon the books of Citizens National Bank of Berkeley Springs, Berkeley Springs, 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, shall be applied solely to the payment of the costs of the Project described in the Resolution, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

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

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

IN WITNESS WHEREOF, WARM SPRINGS PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Vice Chairman and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated August 26, 1994.

[SEAL]

SPECIMEN
[Signature]
Vice Chairman

ATTEST:

SPECIMEN
[Signature]
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1994 Bonds described in the within-mentioned Resolution and has been duly registered in the name of the Registered Owner set forth above, as of the date set forth below.

Date: August 26, 1994

CITIZENS NATIONAL BANK OF BERKELEY
SPRINGS, as Registered

By Thomas Robert
Its Authorized Officer

"SPECIMEN"

EXHIBIT A

RECORD OF ADVANCES

Amount	Date	Amount	Date
(1) \$ 102,503	8/26/94	(7) \$	
(2) \$		(8) \$	
(3) \$		(9) \$	
(4) \$		(10) \$	
(5) \$		(11) \$	
(6) \$		(12) \$	

"SPECIMEN"

Total \$ _____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

Warm Springs PSD

SRF

DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	DEBT SERVICE
9/01/1995	-	-	-	-
12/01/1995	17,790.00	-	-	17,790.00
3/01/1996	17,790.00	-	-	17,790.00
6/01/1996	17,790.00	-	-	17,790.00
9/01/1996	17,790.00	-	-	17,790.00
12/01/1996	17,790.00	-	-	17,790.00
3/01/1997	17,790.00	-	-	17,790.00
6/01/1997	17,790.00	-	-	17,790.00
9/01/1997	17,790.00	-	-	17,790.00
12/01/1997	17,790.00	-	-	17,790.00
3/01/1998	17,790.00	-	-	17,790.00
6/01/1998	17,790.00	-	-	17,790.00
9/01/1998	17,790.00	-	-	17,790.00
12/01/1998	17,790.00	-	-	17,790.00
3/01/1999	17,790.00	-	-	17,790.00
6/01/1999	17,790.00	-	-	17,790.00
9/01/1999	17,790.00	-	-	17,790.00
12/01/1999	17,790.00	-	-	17,790.00
3/01/2000	17,790.00	-	-	17,790.00
6/01/2000	17,790.00	-	-	17,790.00
9/01/2000	17,790.00	-	-	17,790.00
12/01/2000	17,790.00	-	-	17,790.00
3/01/2001	17,790.00	-	-	17,790.00
6/01/2001	17,790.00	-	-	17,790.00
9/01/2001	17,790.00	-	-	17,790.00
12/01/2001	17,790.00	-	-	17,790.00
3/01/2002	17,790.00	-	-	17,790.00
6/01/2002	17,790.00	-	-	17,790.00
9/01/2002	17,790.00	-	-	17,790.00
12/01/2002	17,790.00	-	-	17,790.00
3/01/2003	17,790.00	-	-	17,790.00
6/01/2003	17,790.00	-	-	17,790.00
9/01/2003	17,790.00	-	-	17,790.00
12/01/2003	17,790.00	-	-	17,790.00
3/01/2004	17,790.00	-	-	17,790.00
6/01/2004	17,790.00	-	-	17,790.00
9/01/2004	17,790.00	-	-	17,790.00
12/01/2004	17,790.00	-	-	17,790.00
3/01/2005	17,790.00	-	-	17,790.00
6/01/2005	17,789.00	-	-	17,789.00
9/01/2005	17,789.00	-	-	17,789.00
12/01/2005	17,789.00	-	-	17,789.00
3/01/2006	17,789.00	-	-	17,789.00
6/01/2006	17,789.00	-	-	17,789.00
9/01/2006	17,789.00	-	-	17,789.00
12/01/2006	17,789.00	-	-	17,789.00
3/01/2007	17,789.00	-	-	17,789.00
6/01/2007	17,789.00	-	-	17,789.00
9/01/2007	17,789.00	-	-	17,789.00
12/01/2007	17,789.00	-	-	17,789.00
3/01/2008	17,789.00	-	-	17,789.00
6/01/2008	17,789.00	-	-	17,789.00
9/01/2008	17,789.00	-	-	17,789.00
12/01/2008	17,789.00	-	-	17,789.00
3/01/2009	17,789.00	-	-	17,789.00
6/01/2009	17,789.00	-	-	17,789.00
9/01/2009	17,789.00	-	-	17,789.00
12/01/2009	17,789.00	-	-	17,789.00
3/01/2010	17,789.00	-	-	17,789.00
6/01/2010	17,789.00	-	-	17,789.00
9/01/2010	17,789.00	-	-	17,789.00
12/01/2010	17,789.00	-	-	17,789.00
3/01/2011	17,789.00	-	-	17,789.00
6/01/2011	17,789.00	-	-	17,789.00
9/01/2011	17,789.00	-	-	17,789.00
12/01/2011	17,789.00	-	-	17,789.00
3/01/2012	17,789.00	-	-	17,789.00
6/01/2012	17,789.00	-	-	17,789.00
9/01/2012	17,789.00	-	-	17,789.00
12/01/2012	17,789.00	-	-	17,789.00
3/01/2013	17,789.00	-	-	17,789.00
6/01/2013	17,789.00	-	-	17,789.00
9/01/2013	17,789.00	-	-	17,789.00
12/01/2013	17,789.00	-	-	17,789.00
3/01/2014	17,789.00	-	-	17,789.00
6/01/2014	17,789.00	-	-	17,789.00
9/01/2014	17,789.00	-	-	17,789.00
12/01/2014	17,789.00	-	-	17,789.00
3/01/2015	17,789.00	-	-	17,789.00
6/01/2015	17,789.00	-	-	17,789.00
9/01/2015	17,789.00	-	-	17,789.00
TOTAL	1,423,158.00	-	-	1,423,158.00

Form of Assignment

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

In the presence of:

"SPECIMEN"

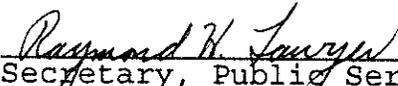
WARM SPRINGS PUBLIC SERVICE DISTRICTCERTIFICATE OF SECRETARY AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

I, the undersigned Raymond H. Lawyer, Secretary of the Public Service Board (the "Board") of Warm Springs Public Service District (the "District"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of \$1,423,158 Warm Springs Public Service District Sewer Revenue Bond, Series 1994 (the "Bond"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the District and delivered in the transcript of proceedings, that said documents have been duly adopted or entered by the Board, 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. Rules of Procedure.
2. Order of The County Commission of Morgan County (the "County Commission") creating the District.
3. Orders of the County Commission appointing current Board members.
4. Oaths of Office of Board members.
5. Loan Agreement dated July 11, 1994.
6. Minutes of 1994 organizational meeting of the Board.
7. Minutes of the August 10, 1994, meeting of the Board, wherein the Bond Resolution and the Supplemental Resolution with respect to the Bond were adopted.
8. Bond Resolution.
9. Supplemental Resolution.
10. Copy of the Public Service Commission of West Virginia ("PSC") Final Order, Case No. 93-0526-PSD-CN, dated April 15, 1994 granting the District a Certificate of Convenience and Necessity, Setting Rates, and Approving the Financing.

11. Copy of the PSC Final Order dated August 22, 1994,
Approving the Increased Financing Amount.

WITNESS my signature and the official seal of the Warm
Springs Public Service District as of the 26th day of August, 1994.



Secretary, Public Service Board,
Warm Springs Public Service District

(SEAL)

ABB05087

WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond,
Series 1994

CERTIFICATE OF CONSULTING ENGINEER

I, Richard W. Klein, Registered Professional Engineer, West Virginia License No. 7624, of Kelley, Gidley, Blair & Wolfe, Inc., Charles Town, West Virginia, hereby certify that my firm is engineer for the construction and acquisition of certain improvements and extensions to the existing sewerage collection system (herein called the "Project") of Warm Springs Public Service District (the "District") to be constructed primarily in Morgan County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bond") of the District. Capitalized words not defined herein shall have the meaning set forth in the Bond Resolution adopted by the Public Service Board of the District on August 10, 1994, and the Loan Agreement by and among the District, the West Virginia Division of Environmental Protection (the "DEP") and the West Virginia Water Development Authority (the "Authority") dated July 11, 1994.

1. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting that the Authority and DEP purchase the Bond (the "Application") and the Project has been approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (iii) the District has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy and the District intends to enter into contracts with respect to said bids on or about August 30, 1994, (iv) the District has obtained or has pending all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the Public Service Board of the District and approved by the Public Service Commission of West Virginia are sufficient to comply with the provisions of the Loan Agreement and the Prior Resolutions, and (vi) the net proceeds of the Bond, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the

costs of construction and acquisition of the Project as set forth in the Application. Attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this 26th day of August, 1994.

KELLEY, GIDLEY, BLAIR & WOLFE, INC.

[SEAL]



ABB050A4

By *Richard W. Klein*
Richard W. Klein
License No. 7624

SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: Warm Springs Public Service District

ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS
AND COST OF FINANCING

A. Cost of Project

1. Construction	\$ 722,780
2. Technical Services	\$ 217,514
3. Legal and Fiscal	\$ 30,000
4. Administrative	\$ 7,000
* 5. Site and Other Lands	\$ 0
* 6. Step I and/or Step II (Design) or Other Loan Repayment (Specify Type: _____)	\$ 12,000
7. Interim Financing Costs	\$ 5,928
8. Contingency	\$ 341,778
9. Total of Lines 1 Through 8	\$ _____

\$ 1,337,000

B. Sources of Funds

10. Federal Grants: ¹	\$ _____
(Specify Sources) _____	\$ _____
11. State Grants: ¹	\$ _____
(Specify Sources) _____	\$ _____
_____	\$ _____
_____	\$ _____
12. Other Grants: ¹	\$ _____
(Specify Sources) _____	\$ _____
13. Any Other Source ²	\$ _____
(Specify) _____	\$ _____
14. Total of Lines 10 Through 13	\$ _____
15. Net Proceeds Required from Bond Issue (Line 9 Less than 14)	\$ _____

\$ -0-

\$ 1,337,000

C. Cost of Financing

16. Capitalized Interest	\$ _____
(Construction period plus six months)	\$ _____
17. Funded Reserve Account: ³	\$ 71,158
18. Other Costs: ⁴	\$ 15,000
_____	\$ _____
19. Total Cost of Financing (lines 16 through 18)	\$ 86,158
20. Size of Bond Issue (Line 15 plus Line 19)	\$ 1,423,158

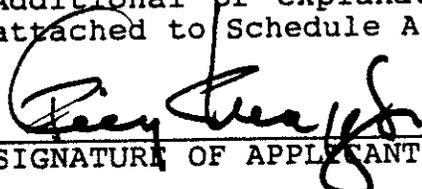
\$ 86,158

\$ 1,423,158

* not allowable for State Revolving Fund Assistance

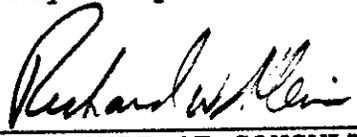
1. Attach supporting documentation, if available. If not yet available, state such.
2. For example, interest earnings during construction, if applicable. Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation if available.
3. Consult with bond counsel and the Authority before assuming a funded reserve.
4. For example, fees of bond counsel for the Governmental Agency.

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



SIGNATURE OF APPLICANT

DATE: 8.26.99



SIGNATURE OF CONSULTING ENGINEER

DATE: 8/26/99

CERTIFICATE DESIGNATING AUTHORIZED
SIGNATORIES FOR CONSULTING ENGINEER

TO: Citizens National Bank of Berkeley Springs
As Construction Trust Fund Depository Bank
212 South Washington Street
Berkeley Springs, WV 25411

Re: Warm Springs Public Service District
Sewer Revenue Bond, Series 1994

To Whom It May Concern:

The following individuals are hereby designated as authorized signatories for the purpose of the Certificate required by Section 6.02 of the Bond Resolution for the above-referenced bond:

Richard W. Klein

WITNESS my signature this 26th day of August, 1994.

KELLEY, GIDLEY, BLAIR & WOLFE, INC.

By

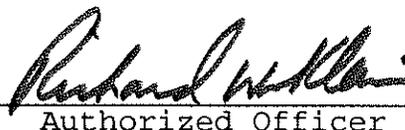

Authorized Officer

ABB05093



WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond,
Series 1994

CERTIFICATE OF ACCOUNTANT AS TO COVERAGE

Cox, Allemong, Nichols, Certified Public Accountants, have reviewed the sewer service rates which were adopted by the Warm Springs Public Service District (the "District") and which were approved in the Final Order of the Public Service Commission of West Virginia granting the District a Certificate of Convenience and Necessity, approving the financing of the Project and approving the rates, dated April 15, 1994, and customer usage material provided by the District. It is our opinion that the rates are adequate to pay operation and maintenance expenses (collectively, the "Resolution"), to pay the principal and interest on the Bond and the Prior Bonds, and to meet the debt service coverage requirements of the Bond Resolution and Supplemental Resolution adopted by the Public Service Board (the "Board") of the District on August 10, 1994 for the System, as supplemented, and said rates will generate revenues sufficient to comply with the provisions of the Loan Agreement entered into among the District, the West Virginia Division of Environmental Protection and the West Virginia Water Development Authority on July 11, 1994, and the provisions of the Prior Resolutions. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Resolution.

WITNESS our signature as of this 26th day of August, 1994.

Cox Allemong Nichols, CPAs

Martinsburg, West Virginia
August 26, 1994

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 26th day of August, 1994, by and between WARM SPRINGS PUBLIC SERVICE DISTRICT, a public corporation organized and existing under the laws of, and a political subdivision of, the State of West Virginia (the "Governmental Agency"), and CITIZENS NATIONAL BANK OF BERKELEY SPRINGS, Berkeley Springs, West Virginia, a national bank (the "Registrar").

WHEREAS, the Governmental Agency has, contemporaneously with the execution hereof, issued and sold its \$1,423,158 Warm Springs Public Service District Sewer Revenue Bond, Series 1994 (the "Bond"), in the form of one fully registered bond, pursuant to a Bond Resolution and a Supplemental Resolution duly adopted August 10, 1994 (collectively, the "Resolution");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Resolution, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Resolution provides for an appointment by the Governmental Agency of a Registrar for the Bond; and

WHEREAS, the Governmental Agency 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 Governmental Agency 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 Bond, all as set forth in the Resolution, such duties including, among other things, the duties to authenticate, register and deliver Bond upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest on the Bond 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 Governmental Agency advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Governmental Agency with appropriate records of all transactions carried out by it as Registrar and to furnish the Governmental Agency 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 Governmental Agency 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 Governmental Agency.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Governmental Agency hereby agrees to pay to the Registrar, from time to time, the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection with this Registrar's Agreement.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Resolution with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Resolution, the terms of the Resolution shall govern.

6. The Governmental Agency 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:

GOVERNMENTAL AGENCY: Warm Springs Public Service District
P. O. Box 456
Berkeley Springs, WV 25411
Attention: Vice Chairman

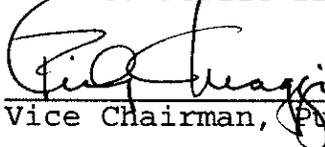
REGISTRAR: Citizens National Bank of Berkeley
Springs
212 S. Washington Street
Berkeley Springs, WV 25411
Attention: Trust Department

The Governmental Agency 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 Bond in accordance with the Resolution.

IN WITNESS WHEREOF, WARM SPRINGS PUBLIC SERVICE DISTRICT and CITIZENS NATIONAL BANK OF BERKELEY SPRINGS, Berkeley Springs, West Virginia, have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

WARM SPRINGS PUBLIC SERVICE DISTRICT

By: 
Vice Chairman, Public Service Board

CITIZENS NATIONAL BANK OF BERKELEY SPRINGS
Berkeley Springs, West Virginia

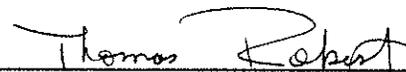
By: 
Thomas Rokisky
Executive Vice President

ABB050B6

EXHIBIT A

[SEE TABS 8 and 9]

WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond,
Series 1994

ACCEPTANCE OF DUTIES OF DEPOSITORY BANK

Citizens National Bank of Berkeley Springs, a national bank, with its principal office in Berkeley Springs, West Virginia, hereby accepts appointment as the Depository Bank in connection with a Bond Resolution duly adopted by the Public Service Board (the "Board") of the Warm Springs Public Service District on August 10, 1994 and the Supplemental Resolution adopted by the Board of the District on August 10, 1994, (collectively, the "Resolution") authorizing issuance of the Warm Springs Public Service District Sewer Revenue Bond, Series 1994, dated August 26, 1994, in the aggregate principal amount of \$1,423,158 (the "Bond") and agrees to perform all duties of the Depository Bank in connection with such Bond, all as set forth in said Resolution.

Witness my signature as of the 26th day of August, 1994.

CITIZENS NATIONAL BANK OF BERKELEY
SPRINGS,
Berkeley Springs, West Virginia

By: Thomas Rokisky
Thomas Rokisky
Executive Vice President

REQUEST AND AUTHORIZATION AS TO AUTHENTICATION
AND DELIVERY OF THE BOND

August 26, 1994

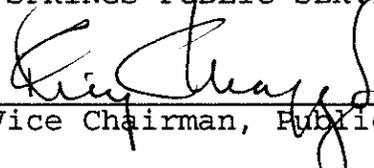
Citizens National Bank of Berkeley Springs
212 S. Washington Street
Berkeley Springs, WV 25411

Ladies and Gentlemen:

We herewith hand to you duly executed \$1,423,158 Warm Springs Public Service District Sewer Revenue Bond, Series 1994 (the "Bond"), authorized to be issued under and pursuant to the Bond Resolution, duly adopted by the Public Service Board (the "Board") of the Warm Springs Public Service District (the "District") on August 26, 1994 and a Supplemental Resolution adopted by the Board on August 26, 1994 (collectively, the "Resolution").

You are hereby requested and authorized to register, authenticate and deliver the Bond on behalf of the District to the West Virginia Water Development Authority.

WARM SPRINGS PUBLIC SERVICE DISTRICT

By: 
Vice Chairman, Public Service Board

(SEAL)

Attest:

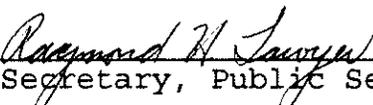

Secretary, Public Service Board

ABB050E8

WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond,
Series 1994

CERTIFICATE OF REGISTRATION OF BONDS

I, Thomas Rokisky, Executive Vice President for Citizens National Bank of Berkeley Springs, Berkeley Springs, West Virginia, as Registrar (the "Registrar") for the above-captioned bond of the Warm Springs Public Service District (the "District"), hereby certify that on the 26th day of August, 1994, the bond, in the principal amount of \$1,423,158 designated "Warm Springs Public Service District Sewer Revenue Bond, Series 1994" (the "Bond"), numbered R-1, and dated as of the date hereof, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the District kept for that purpose at our office, by a duly authorized officer on behalf of Citizens National Bank of Berkeley Springs, Berkeley Springs, West Virginia, as Registrar.

WITNESS my signature as of the 26th day of August, 1994.

CITIZENS NATIONAL BANK OF BERKELEY
SPRINGS
Berkeley Springs, West Virginia,
as Registrar

By Thomas Rokisky
Executive Vice President

BOND REGISTER

CITIZENS NATIONAL BANK OF BERKELEY SPRINGS,
Berkeley Springs, West Virginia,
as Bond Registrar
for
Warm Springs Public Service District
Sewer Revenue Bond,
Series 1994

Bondholder	Bond Number	Registration Amount	Date	Authorized Officer
West Virginia Water Development Authority Dunbar, WV 25064	R-1	\$1,423,158	August 26, 1994	TFR

ABB05085

WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond, Series 1994

RECEIPT FOR BOND

The undersigned, Barbara B. Meadows, Secretary-Treasurer of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 26th day of August, 1994, in Dunbar, West Virginia, the Authority received the entire original issue of \$1,423,158 in aggregate principal amount of Warm Springs Public Service District Sewer Revenue Bond, Series 1994 (the "Bond"), said Bond being dated the 26th day of August, 1994, and issued in the form of one bond, fully registered to the Authority, and numbered R-1.

2. At the time of receipt of such Bond, it had been executed by Philip C. Maggio, Jr., as Vice Chairman of the Public Service Board of the District, by manual signature, and attested by Raymond H. Lawyer, as Secretary of the Public Service Board of the District, by manual signature, and the official seal of said District had been impressed upon the Bond.

IN WITNESS WHEREOF, Barbara B. Meadows duly signed and delivered this receipt on behalf of the West Virginia Water Development Authority on the 26th day of August, 1994.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By: Barbara B Meadows
Secretary-Treasurer

WARM SPRINGS PUBLIC SERVICE DISTRICT

\$1,423,158 Sewer Revenue Bond,
Series 1994

RECEIPT FOR BOND PROCEEDS

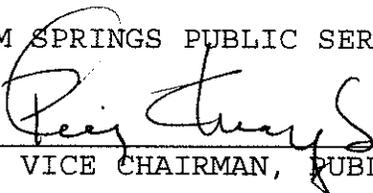
The undersigned Philip C. Maggio, Jr., Vice Chairman of the Public Service Board of the Warm Springs Public Service District (the "District"), hereby certifies as follows:

1. The District has received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as original purchaser of the \$1,423,158 Warm Springs Public Service District Sewer Revenue Bond, Series 1994, of \$102,503 being the first advance under the bond in the amount of \$1,423,158 (100% of par value) with the remainder to be advanced from time to time up to \$1,423,158.

IN WITNESS WHEREOF, the Warm Springs Public Service District has caused this receipt to be executed by the Vice Chairman of its Public Service Board on this 26th day of August, 1994.

WARM SPRINGS PUBLIC SERVICE DISTRICT

By



VICE CHAIRMAN, PUBLIC SERVICE BOARD

AGENCY: ENVIRONMENTAL PROTECTION
 TOTAL: \$102,503.00
 TRANSACTION INVOICE
 ID NUMBER & REFERENCE
 1001002489 1

WARRANT #: 8-1530991

DATE: 08/08/94
 AMOUNT
 \$102,503.00

INVOICE DATE
 PURCHASE ORDER

If you have questions concerning the above, please call 304-759-0506.

REMOVE DOCUMENT ALONG THIS PERFORATION



CTL # 2258858

VOID UNLESS PRESENTED FOR PAYMENT WITHIN SIX MONTHS

State of West Virginia
 STATE CAPITOL, CHARLESTON
 WARRANT # 8-1530991

WARM SPRINGS PSD

AUGUST 08, 1994

PAY TO THE ORDER OF

8 1530991

*****\$102,503.00**

WEST VIRGINIA TREASURY

⑈ 8 153099 ⑈ ⑈ 05 ⑈ 902322⑈ 02 ⑈ 095 ⑈ 9 ⑈

Larrie Bailey
STATE TREASURER

Alan B Hamer III
AUDITOR



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1201 Greenbrier Street
Charleston, WV 25311-1088

August 4, 1994

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Laidley EH McCoy
Deputy Director

Rodney Hovermale, Manager
Warm Springs PSD
P.O. Box 456
Berkeley Springs, WV 25411

CERTIFIED RETURN RECEIPT REQUESTED

RE: WV/NPDES Permit No. WV0027707

Dear Mr. Hovermale:

This letter serves as Modification No. 1 of your existing WV/NPDES Water Pollution Control Permit No. WV0027707, issued the 4th day of February 1994.

After review and consideration of the information submitted with Permit Modification Application No. WV0027707-B dated the 13th day of July 1994, and the associated plans and specifications approved by the Construction Assistance Branch on the 14th day of March 1994, the subject permit is modified as follows:

To acquire, construct, install, operate, and maintain approximately 1,700 linear feet of 15 inch sewer line, 1,500 linear feet of eight (8) inch sewer line, 475 linear feet of six (6) inch sewer line, 20 manholes, and all necessary appurtenances. This portion of the project (Contract No. 1) is to replace existing sewer lines in the downtown area of Berkeley Springs.

Also, to acquire, construct, install, operate, and maintain approximately 6,600 linear feet of eight (8) inch sewer line, 1,000 linear feet of six (6) inch sewer line, 30 manholes and all necessary appurtenances. This portion of the project (Contract No. 2) to complete the line extension south on Route 522.

Rodney Hovermale
Page 2
August 4, 1994

The sewer collection system replacement and extension shall be constructed in accordance with the plans and specifications approved on the 14th day of March 1994. A further description of these documents is presented as follows:

Plans and Specifications:

Prepared by: Kelley, Gidley, Blair, and Wolfe
P.O. Box 1071
Charles Town, WV 25414

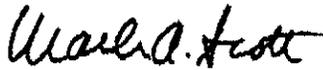
Title: Warm Springs Public Service District
Berkeley Springs Sewer System Improvement and
Interceptor Replacement
Contract No. 1

Warm Springs Public Service District
Sanitary Sewer Line Extension
Route 522 South
Contract No. 2

All other terms and conditions of the subject permit shall remain in effect and unchanged.

Sincerely,

OFFICE OF WATER RESOURCES



Mark A. Scott
Chief

MAS:rb1

WV MUNICIPAL BOND COMMISSION
 Suite 337 Building 3
 1800 Washington St. E
 State Capitol Complex
 Charleston, WV 25305
 (304) 348-3971

NEW ISSUE REPORT FORM

Date of Report: August 26, 1994

(See Reverse for Instructions)

ISSUE: \$1,423,158 Warm Springs Public Service District Sewer Revenue Bond, Series 1994

ADDRESS: 103 Wilkes Street, Berkeley Springs, WV 25411 COUNTY: Morgan

PURPOSE: New Money Refunding Refunds issue(s) dated: _____

ISSUE DATE: August 26, 1994 CLOSING DATE: August 26, 1994

ISSUE AMOUNT: \$ 1,423,158 RATE: 0%

1st DEBT SERVICE DUE: December 1, 1995 1st PRINCIPAL DUE: December 1, 1995

1st DEBT SERVICE AMOUNT: \$17,790 PAYING AGENT: Municipal Bond Commission

ISSUERS
 BOND COUNSEL: Jackson & Kelly
 Contact Person: Samme L. Gee
 Phone: 340-1318

UNDERWRITERS
 BOND COUNSEL: N/A
 Contact Person: _____
 Phone: _____

CLOSING BANK: Citizens National Bank of Berkeley Springs
 Contact Person: Thomas Rokisky
 Phone: 258-1520

ESCROW TRUSTEE: N/A
 Contact Person: _____
 Phone: _____

KNOWLEDGEABLE ISSUER CONTACT
 Contact Person: Rodney Hovermale
 Position: Manager
 Phone: 258-4118

OTHER: N/A
 Contact Person: _____
 Function: _____
 Phone: _____

DEPOSITS TO MBC AT CLOSE:

By _____ Wire	_____ Accrued Interest:	\$ _____
<input checked="" type="checkbox"/> Check	_____ Capitalized Interest:	\$ _____
	<input checked="" type="checkbox"/> Reserve Account:	\$ <u>71,158</u>
	_____ 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: _____

BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED
IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

DATE		AMOUNT	

WARM SPRINGS PUBLIC SERVICE DISTRICT
CONSTRUCTION ACCOUNT
BERKELEY SPRINGS, W. VA. 25411

377

August 26 19⁹⁴ 69-435
522

PAY
TO THE W. VA. Municipal Bond Commission
ORDER OF

\$ 71,158.00

Seventy-one thousand one hundred fifty-eight and 00/100 ----- DOLLARS

CITIZENS NATIONAL BANK
BERKELEY SPRINGS, W.VA.

Raymond H. Sawyer
Ray Sawyer

⑆052204359⑆

4111212 411

JACKSON & KELLY

ATTORNEYS AT LAW

1600 LAIDLEY TOWER

P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000

TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

August 26, 1994

4.1

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40565
TELEPHONE 606-255-9500

2945 MEADOWBROOK ROAD
CLARKSBURG, WEST VIRGINIA 26330
TELEPHONE 304-842-1933

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

1660 LINCOLN STREET
DENVER, COLORADO 80284
TELEPHONE 303-837-0003

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-6088

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

West Virginia Division of
Environmental Protection
617 Broad Street
Charleston, West Virginia 25301

Re: \$1,423,158 Warm Springs Public Service District
Sewer Revenue Bond, Series 1994

Ladies and Gentlemen:

We are bond counsel to Warm Springs Public Service District (the "Governmental Agency"), a duly organized and presently existing public corporation under the laws of the State of West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement, dated July 11, 1994, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Governmental Agency, the West Virginia Division of Environmental Protection (the "DEP") and the West Virginia Water Development Authority (the "Authority"), and (ii) the issue of the Warm Springs Public Service District Sewer Revenue Bond, Series 1994 of the Governmental Agency, dated August 26, 1994 (the "Bond"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bond is in the principal amount of \$1,423,158, issued in the form of one bond registered as to principal to the Authority, with principal payable March 1, June 1, September 1, and December 1 of each of the year, beginning December 1, 1995, at the respective rate all as set forth in Exhibit B incorporated in and made a part of the Bond.

The Bond is issued for the purposes of paying a portion of the costs of acquiring and constructing certain improvements and extensions to the existing public sewerage system for the Governmental Agency, and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Local Statute"), under which the Bond is issued, and the Loan Agreement that has been undertaken, including all schedules and exhibits to the Loan Agreement. The Bond has been authorized by a bond resolution (the "Resolution") and a Supplemental Resolution duly passed by the Governmental Agency on August 10, 1994 (collectively the "Local Act"), which contain provisions and covenants substantially in the form of those set forth in the Loan Agreement. The Bond is subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency enforceable in accordance with the terms thereof.

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

3. The Governmental Agency is a duly organized and presently existing public corporation with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Bond, all under the Local Statute and other applicable provisions of law.

4. The Governmental Agency has legally and effectively adopted the Local Act and all other necessary resolutions and orders in connection with the issuance and sale of the Bond.

5. The Bond is valid and legally enforceable special obligations of the Governmental Agency, payable from the net revenues of the System referred to in the Local Act and are secured by a first lien on and pledge of the net revenues of said System on a parity as to security and source of payment with the District's outstanding Sewer Revenue Bonds, Series 1977 and Sewer Revenue Bond, Series 1989.

West Virginia Water Development Authority
West Virginia Division of Environmental
Protection

August 26, 1994

Page 3

6. The Governmental Agency has reserved the right to issue additional bonds ranking on a parity with the Bond, as provided in the Local Act.

7. The Bond is, by the Local Statute, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

It is to be understood that the rights of the holders of the Bond and the enforceability of the Bond and the Local Act may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that such enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined executed 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,

Jackson & Kelly

ABB050F1

HARMISON & SAVASTEN
ATTORNEYS AT LAW
105 NORTH WASHINGTON STREET
BERKELEY SPRINGS, W. VA. 25411

C. W. Harmison
David H. Savasten

Area Code 304
Telephone 258-2063
Fax 258-4476

August 26, 1994

Warm Springs Public Service District
P. O. Box 456
Berkeley Springs, WV 25411

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

State of West Virginia
Division of Environmental Protection
Office of Water Resources
617 Broad Street
Charleston, WV 25301

Jackson & Kelly
P. O. Box 553
Charleston, West Virginia 25322

RE: \$1,423,158 Warm Springs Public Service
District Sewer Revenue Bond, Series 1994

Gentlemen:

I am counsel to the Warm Springs Public Service District (the "District"). As such counsel, I have examined copies of the approving opinion of Jackson & Kelly, as bond counsel, relating to the above-captioned Bond, a Bond Resolution adopted by the Public Service Board (the "Board") of the District on August 10, 1994, as supplemented by a Supplemental Resolution adopted by the Board of the District on August 10, 1994 (collectively, the "Resolution"), the Loan Agreement dated July 11, 1994, and other documents relating to the above-captioned Bond of the District. Terms used in said opinions and Resolution and not otherwise defined herein have the same meanings herein.

I am of the opinion that:

1. The District was duly and legally created and the members of the Board of the District were duly and properly elected or appointed and are thereby authorized to act on behalf of the District.

2. The Resolution has been duly adopted by the District and is in full force and effect.

3. The District has received all the necessary permits licenses, approvals and authorizations that are presently obtainable to construct the Project.

4. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bond, the operation of the System or the collection of Revenues or the pledge of Net Revenues to the bond.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "C. William Harmison".

C. William Harmison

CWH/sml

LAW OFFICES

KAUFFELT & KAUFFELT

803 KANAWHA VALLEY BUILDING

CHARLESTON, WEST VIRGINIA 25301

(304) 345-1272

T. D. KAUFFELT
JAMES D. KAUFFELT
MARK E. KAUFFELT

MAILING ADDRESS
P. O. BOX 3082
CHARLESTON, WV 25331
FAX (304) 345-1280

August 26, 1997

Public Service Board
Warm Springs Public Service District
P. O. Box 456
Berkeley Springs, W. Va. 25411

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, W. Va. 25064

West Virginia Division of
Environmental Protection
617 Broad Street
Charleston, W. Va. 25301

Jackson & Kelly
1600 Laidley Tower
P. O. Box 553
Charleston, W. Va. 25322

Re: \$1,423,158 Warm Springs Public
Service District Water Revenue
Bond, 1994 Series

Ladies and Gentlemen:

I have served as counsel to Warm Springs Public Service District (the "District") in regard to certain matters concerning the Public Service Commission of West Virginia (the "PSC"). I was active in obtaining the District's Certificate of Convenience and Necessity granted by the Recommended Decision of the PSC dated March 2, 1994, which became the Final Order of the PSC on April 15, 1994. I am also familiar with the rates adopted by the Board of the District on August 10, 1994. Pursuant to the above-noted documents, I am of the opinion as follows:

1. The Issuer has received a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia (Case No. 93-0526-PSD-CN) and said Certificate is in full force and effect. The time for appeal of the Final Order of the PSC has expired prior to the date hereof.

2. The rates adopted on August 10, 1994, were duly adopted by the Board of the Issuer and will become effective upon the award of contracts for the Project.

3. The Issuer has the authority under Article 13A of Chapter 16 of the Code of West Virginia, 1931, as amended, to adopt the rates which have been approved by the Public Service Commission and the revenues from said rates may be used to pay the debt service on the above-noted bonds and the operation and maintenance cost of the system.

This opinion may be relied upon as if addressed to all counsel.

Very truly yours,



T. D. Kauffelt

TDK:gw