

BIRCH RIVER PUBLIC SERVICE DISTRICT

**Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)**

BOND RESOLUTION

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BIRCH RIVER PUBLIC SERVICE DISTRICT

RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC WATERWORKS SYSTEM OF BIRCH RIVER PUBLIC SERVICE DISTRICT, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF NOT MORE THAN \$630,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF BIRCH RIVER 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 Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law. Birch River Public Service District (the "Issuer") is a public corporation, public service district and political subdivision of the State of West Virginia in Nicholas and Clay Counties of said State, duly created pursuant to the Act by The County Commission of Nicholas.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer currently owns and operates a public waterworks system and desires to finance and acquire, construct, operate and maintain certain additional public service properties consisting of additions, improvements and extensions to such existing waterworks facilities with all appurtenant facilities, within the boundaries of the Issuer to be owned and operated by the Issuer.

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered that there be constructed and designed certain additions, improvements and extensions to the existing waterworks facilities of the Issuer, consisting construction of extension of the existing water distribution

system (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The existing waterworks facilities of the Issuer, together with the Project and any further additions, improvements or extensions thereto, are herein called the "System." The design of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bonds (hereinafter defined) and all funds and accounts and other payments provided for herein.

D. The estimated maximum cost of the Project is \$5,034,888 of which \$630,000 will be obtained from the proceeds of sale of the Series 2009 A Bonds, herein authorized, \$1,352,076 will be obtained as a grant from the Purchaser and approximately \$3,052,812 will be obtained from an Abandoned Mine Lands grant.

E. It is necessary for the Issuer to issue its Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), in the aggregate principal amount of \$630,000 (the "Series 2009 A Bonds"), to permanently finance a portion of the cost of such acquisition and construction in the manner herein provided. The cost of such acquisition and construction shall be deemed to include, without being limited to, the acquisition and construction of the Project; the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest on the Series 2009 A Bonds prior to, during and for six months after completion of such design of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and other expenses necessary or incident to determining the feasibility or practicability of the Project, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized; provided that, reimbursement to the Issuer for any amounts expended by it for the repayment of indebtedness incurred for costs of the Project by the Issuer shall be deemed costs of the Project.

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

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds as to liens, pledge and source of and security for payment being the Issuer's Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000 (the "Series 1998 Bonds" or "Prior Bonds"). Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which rank prior to or on a parity with the Series 2009 A Bonds as to liens, pledge and/or source of and security for payment.

The Issuer is not in default under the terms of the Prior Bonds, or the resolutions authorizing issuance of the Prior Bonds or any document in connection therewith, and has complied with all requirements of all the foregoing with respect to the issuance of parity bonds or has obtained a sufficient and valid consent or waiver thereof.

H. It is in the best interest of the Issuer that the Series 2009 A Bonds be sold to the Purchaser, pursuant to the terms and provisions of the Letters of Conditions, dated June 15, 2007, and all amendments thereto, if any (collectively, the "Letter of Conditions").

I. The Issuer has complied with all requirements of law relating to the authorization of the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2009 A Bonds, or will have so complied prior to issuance of the Series 2009 A Bonds, including, among other things and without limitation, obtaining a certificate of public convenience and necessity and approval of the financing and necessary user rates and charges from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or shall have been duly waived or otherwise provided for.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 A Bonds by those who shall be the Registered Owner of the same from time to time, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the Series 2009 A Bonds.

Section 1.04. Definitions. In addition to capitalized terms defined elsewhere herein, the following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Chapter 16, Article 13A of the West Virginia Code of 1931, as amended.

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

"Bond Registrar" means the Issuer, which shall usually so act by its Secretary.

"Bonds" means, collectively, the Series 2009 A Bonds and the Prior Bonds.

"Chairman" means the Chairman of the Governing Body.

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

"Consulting Engineer" means E.L. Robinson Engineering Company, Beckley, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Costs" or "Costs of the Project" means those costs described in Section 1.02 (F) hereof.

"Depository Bank" means United Bank, Inc., Summersville, West Virginia, a bank or trust company which is a member of FDIC (herein defined), and its successors and assigns.

"Facilities" or "waterworks facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"FDIC" means the Federal Deposit Insurance Corporation.

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

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

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

"Grants" means, collectively, all grants committed for the Project.

"Herein" or "herein" means in this Bond Legislation.

"Issuer," "Borrower" or "District" means Birch River Public Service District, a public service district, a public corporation and a political subdivision of the State of West Virginia, in Nicholas and Clay Counties, West Virginia, and includes the Governing Body.

"Letter of Conditions" means, collectively, the Letter of Conditions of the Purchaser dated June 15, 2007, and all amendments thereto, if any.

"Minimum Reserve" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

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

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the Project and the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the Project and the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed one-sixth of the budgeted Operating Expenses stated above for the current year as working capital, and language herein requiring payment of Operating Expenses means also retention of not to exceed such sum as working capital; provided that, all monthly amortization

payments upon the Bonds and into all funds and accounts have been made to the last monthly payment date prior to the date of such retention.

"Prior Bonds" means the Series 1998 Bonds.

"Prior Resolution" means, collectively, the resolutions of the Issuer, respectively, adopted authorizing the issuance of the Prior Bonds.

"Project" shall have the meaning stated in Section 1.02B above.

"Purchaser" or "Government" means United States Department of Agriculture, Rural Utilities Service, and any successor thereof, acting for and on behalf of the United States of America.

"Qualified Investments" means and includes any of the following, to the extent such investments are permitted by law:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC (hereinbefore defined) or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged

either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service or Standard & Poor's Corporation.

"Registered Owners," "Bondholders," "Holders of the Bonds" or any similar term means any person who shall be the registered owner of the Bonds.

"Resolutions" means, collectively, the Prior Resolutions and the Bond Legislation.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

"Series 1998 Bonds" means the Issuer's Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000.

"Series 2009 A Bonds" means the Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), authorized hereby to be issued pursuant to this Bond Legislation.

"Series 2009 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

"System" means the complete public waterworks system of the Issuer, presently existing in its entirety or any integral part thereof, and shall include the Project and any improvements and extensions thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

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 neuter gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Chairman or the Secretary shall mean that such Bonds, certificate or other document may be executed or attested by an Acting Chairman or Acting Secretary.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of \$5,034,888, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body.

The estimated maximum cost of the Project is \$5,034,888 of which \$630,000 will be obtained from the proceeds of sale of the Series 2009 A Bonds, herein authorized, \$1,352,076 will be obtained as a grant from the Purchaser and approximately \$3,052,812 will be obtained from an Abandoned Mine Lands grant.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BONDS

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions of the Bond Legislation, the Series 2009 A Bonds of the Issuer, to be known as "Water Revenue Bonds, Series 2009 A (United States Department of Agriculture)", are hereby authorized to be issued in the aggregate principal amount of \$630,000, for the purpose of (i) financing a portion of the cost of the acquisition and construction of the Project, and (ii) paying certain costs of issuance and related costs not otherwise provided for.

Section 3.02. Description of Bonds. The Series 2009 A Bonds shall be issued in single form, numbered AR-1, only as a fully registered Bond, and shall be dated the date of delivery thereof. The Series 2009 A Bonds shall bear interest from the date of delivery, payable monthly at the rate of 4.125% per annum, and shall be sold for the par value thereof. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$2,741, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond.

The Series 2009 A Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the respective Bond forms hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Bonds. The Series 2009 A Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2009 A Bonds, and the right to principal of and stated interest on the Series 2009 A Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Series 2009 A Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Series 2009 A Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

No registration of transfer of the Series 2009 A Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2009 A Bonds.

Section 3.04. Bond Registrar. The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, sufficient books for the registration and transfer of the Series 2009 A Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 2009 A Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 2009 A Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2009 A Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Series 2009 A Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2009 A Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Execution of Bonds. The Series 2009 A Bonds shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2009 A Bonds shall cease to be such officer of the Issuer before the Series 2009 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. The Series 2009 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2009 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bonds or in lieu of and substitution for the Bonds destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2009 A Bonds so surrendered shall be canceled and held for the account of the Issuer. If the Series 2009 A Bonds shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 2009 A Bonds shall be secured forthwith by a first lien on the Net Revenues derived from the System, on a parity with the Prior Bonds. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Series 2009 A Bonds and the Prior Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2009 A Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bond. Subject to the provisions hereof, the text of the Series 2009 A Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$630,000

No. AR-1

Date: _____

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of _____ (\$630,000), plus interest on the unpaid principal balance at the rate of _____% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ _____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond is issued to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer, and (ii) to pay costs of issuance and related costs.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolutions and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"), and a Resolution of the Borrower duly adopted _____, 2009, authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY, AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, WITH THE BORROWER'S WATER REVENUE BONDS, SERIES 1998 (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 5, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$434,000 (THE "SERIES 1998 BONDS" OR "PRIOR BONDS").

In accordance with the requirements of the United States Department of Agriculture, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

BIRCH RIVER PUBLIC SERVICE DISTRICT
(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Chairman:

P.O. Box 218
(P.O. Box No. or Street Address)

Birch River, West Virginia 26610
(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

Secretary:

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, 20____.

In the presence of:

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. A. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created (or continued if established by Prior Resolution) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund (established by Prior Resolution);
- (2) Reserve Fund (established by Prior Resolution for the Series 1998 Bonds);
- (3) Renewal and Replacement Fund (established by Prior Resolution as "Depreciation Reserve" and hereby renamed); and
- (4) Series 2009 A Bonds Project Construction Account.

B. Establishment of Funds and Accounts with Commission. The following special funds or accounts are created (or continued if established by Prior Resolution) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and from each other:

- (2) Series 2009 A Bonds Reserve Account.

Section 4.02. Bond Proceeds; Project Construction Account. The proceeds of the sale of the Series 2009 A Bonds shall be deposited upon receipt by the Issuer in the Series 2009 A Bonds Project Construction Account. The monies in the Series 2009 A Bonds Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Monies in the Series 2009 A Bonds Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Monies in the Series 2009 A Bonds Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will additionally transfer from the Series 2009 A Bonds Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Series 2009 A Bonds if there are not sufficient Net Revenues to make such monthly payment.

Pending application as provided in this Section 4.02, money and funds in the Series 2009 A Bonds Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Series 2009 A Bonds Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.03. Covenants of the Issuer as to System Revenues and Funds. So long as any of the Series 2009 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2009 A Bonds Reserve Account, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Series 2009 Bonds remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the Holders of the Series 2009 A Bonds as follows:

A. **REVENUE FUND.** The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited as collected by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Resolutions 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 provided in the Resolutions.

B. **DISPOSITION OF REVENUES.** All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority, subject to the provisions of the Prior Resolutions not otherwise modified herein:

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

(2) The Issuer shall next, each month, on or before the due date thereof, transfer from the Revenue Fund and simultaneously remit (i) to the National Finance Office the amount required by the Prior Resolutions to pay the interest on the Prior Bonds; and (ii) to the National Finance Office the amount required to pay interest on the Series 2009 A Bonds.

(3) The Issuer shall next, each month, transfer from the Revenue Fund and simultaneously, on or before the due date thereof, remit (i) to the National Finance Office the amount required by the Prior Resolutions to pay the principal of the Prior Bonds; and (ii) remit to the National Finance Office, commencing 24 months following the date of delivery of the Series 2009 A Bonds, the amount required to amortize the principal of the Series 2009 A Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Depository

Bank the amounts required by the Prior Resolutions to be deposited in the Reserve Account for the Prior Bonds; and (ii) beginning on the date specified by the purchaser, but in any event not later than the 24th monthly anniversary of the Closing Date, and continuing on each monthly anniversary of the Closing Date thereafter, transfer from the Revenue Fund and remit to the Commission, for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 10% of the monthly payment amount, until the amount in the Series 2009 A Bonds Reserve Account equals the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided that, any deficiencies in any Reserve Accounts (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Whenever the money in the Series 2009 A Bonds Reserve Account shall be sufficient to prepay the Series 2009 A Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Series 2009 A Bonds at the earliest practical date and in accordance with applicable provisions hereof.

The Commission is hereby designated as the Fiscal Agent for the administration of the Series 2009 A Bonds Reserve Account. All amounts required for the Series 2009 A Bonds Reserve Account will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

The Revenue Fund shall constitute a Trust Fund and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Series 2009 A Bonds and the interest thereon, on a parity with the Prior Bonds.

The Series 2009 A Bonds Reserve Account shall constitute a trust fund and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Series 2009 A Bonds and the interest thereon.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2009 A Bonds and the Prior Bonds, in accordance with the respective principal amounts then Outstanding.

Subject to the Prior Resolutions, the Commission shall keep the monies in the Series 2009 A Bonds Reserve Account invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Bond Legislation shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia Board of Treasury Investments. Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. Earnings from monies in the Series 2009 A Bonds Reserve Account, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually by the Commission to the Issuer and deposited in the Revenue Fund.

C. CHANGE OF DEPOSITORY BANK. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

D. USER CONTRACTS. The Issuer shall, prior to delivery of the Series 2009 A Bonds, provide evidence that there will be at least 450 bona fide users upon the System on completion, in full compliance with the requirements and conditions of the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Depository Bank and the Commission such additional sums as shall be necessary to pay the charges and fees of the Depository Bank or the Commission then due.

F. INVESTMENT OF EXCESS BALANCES. The monies in excess of the sum insured by FDIC in any of such funds or accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State of West Virginia.

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

ARTICLE V

GENERAL COVENANTS, ETC.

Section 5.01. General Statement. So long as the Series 2009 A Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2009 A Bonds Reserve Account sums sufficient to prepay the entire remaining unpaid principal of the Series 2009 A Bonds, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenant between the Issuer and the Holder of the Series 2009 A Bonds.

Section 5.02. Rates. So long as the Prior Bonds are outstanding, the Issuer will maintain rates as required in the Prior Resolutions. So long as the Series 2009 A Bonds are outstanding, the Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Series 2009 A Bonds and the Prior Bonds and sufficient to make the payments required herein into all funds and accounts and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 5.03. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of the System or any part thereof, except as provided in the Prior Resolutions. The System will not be sold without the prior written consent of the Purchaser so long as the Series 2009 A Bonds are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.04. Issuance of Additional Parity Bonds or Obligations. No additional Parity Bonds or obligations payable out of any of the Revenues of the System shall be issued, except with the prior written consent of the Purchaser. No Parity Bonds shall be issued after issuance of the Series 2009 A Bonds unless the provisions contained in the Prior Resolution respecting issuance of Parity Bonds have been satisfied.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the

acquisition or construction of additions extensions, improvements or betterments to the System or refunding any outstanding Bonds, or both such purposes.

So long as the Series 2009 A Bonds and the Prior Bonds are Outstanding, no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

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

The foregoing limitation may be waived or modified by the written consent of the Holders of the Prior Bonds, representing 75% of the then-outstanding principal indebtedness.

Section 5.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Series 2009 A Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(b) PUBLIC LIABILITY INSURANCE, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Series 2009 A Bonds.

(c) VEHICULAR PUBLIC LIABILITY INSURANCE, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF THE DISTRICT ELIGIBLE THEREFOR AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds have been or will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' compensation coverage shall be maintained as required by the laws of the State of West Virginia.

(e) FLOOD INSURANCE to be procured, to the extent available at reasonable cost to the Issuer; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

(f) FIDELITY BONDS will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in such amount as may be requested by the Purchaser from time to time.

(g) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Series 2009 A Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06. Statutory Mortgage Lien. For the further protection of the Holder of the Series 2009 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, on a parity with the Prior Bonds, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Series 2009 A Bonds.

Section 5.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

- (a) Failure to make payment of any monthly amortization installment upon the Series 2009 A Bonds at the date specified for payment thereof;
- (b) Failure to duly and punctually observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Series 2009 A Bonds or herein, or violation of or failure to observe any provision of any pertinent law; and
- (c) If a default occurs with respect to the Prior Bonds or the Prior Resolutions.

Section 5.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default, appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct; provided that, all rights and remedies of the Holders of the Prior Bonds shall be on a parity with the Series 2009 A Bonds.

Section 5.09. Fiscal Year; Budget. While the Series 2009 A Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 1st day

of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 5.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 5.12. Books and Records; Audits. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Series 2009 A Bonds are outstanding.

Section 5.14. No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

ARTICLE VI

RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consistent with the provisions hereof, shall be as set forth in the Recommended Decision entered on February 13, 2009 which became Final Order of the Public Service Commission of West Virginia on March 5, 2009, in Case No. 08-1895-PWD-CN and are incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have all remedies and powers provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holder of the Series 2009 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2009 A Bonds, the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2009 A Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

Except through such direct payment to the Holder of the Series 2009 A Bonds, the Issuer may not defease the Series 2009 A Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 7.02. Modification or Amendment. The Bond Legislation may not be modified or amended after final passage without the prior written consent of the Purchaser.

Section 7.03. Delivery of Bonds. The Chairman, Secretary and Treasurer of the Governing Body are hereby authorized and directed to cause the Series 2009 A Bonds, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Series 2009 A Bonds.

Section 7.05. Conflicting Provisions Repealed. The Prior Resolutions and all parts thereof not expressly hereby changed shall continue in full force and effect and this Bond Legislation shall be supplemental to the Prior Resolutions.

All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47) or the Prior Resolutions.

Section 7.06. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 7.07. 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 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 7.08. Effective Date. This Resolution shall take effect immediately upon its adoption.

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Adopted this 15th day of October, 2009.

BIRCH RIVER PUBLIC SERVICE DISTRICT

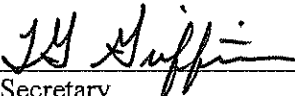
By: Curtis E. Davis
Its: Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of BIRCH RIVER PUBLIC SERVICE DISTRICT on the 15th day of October, 2009.

Dated: October 19, 2009.

[SEAL]


Secretary

02.16.09
073720.00001

BIRCH RIVER PUBLIC SERVICE DISTRICT

Water Revenue Bond, Series 1998

BOND RESOLUTION

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BIRCH RIVER PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ISSUANCE OF \$434,000
WATER REVENUE BOND, SERIES 1998, OF BIRCH RIVER
PUBLIC SERVICE DISTRICT, TO FINANCE THE COST, NOT
OTHERWISE PROVIDED, OF ACQUISITION AND
CONSTRUCTION OF NEW PUBLIC WATERWORKS
FACILITIES; DEFINING AND PRESCRIBING THE TERMS
AND PROVISIONS OF THE BOND; PROVIDING
GENERALLY FOR THE RIGHTS AND REMEDIES OF AND
SECURITY FOR THE HOLDER OF THE BOND; AND
PROVIDING WHEN THIS RESOLUTION SHALL TAKE
EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE
BOARD OF BIRCH RIVER 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 Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law. Birch River Public Service District (the "Issuer") is a public corporation and public service district and political subdivision of the State of West Virginia in Nicholas and Braxton Counties of said State, duly created pursuant to the Act by The County Commission of Nicholas County.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer does not currently own or operate a public waterworks system. The Issuer desires to finance and acquire, construct, operate and maintain certain public service properties consisting of a water distribution system within the boundaries of the Issuer to be owned and operated by the Issuer.

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered, that there be acquired and constructed an eight inch water line along West Virginia Route 19/40 and Route 19 from Flatwoods-Canoe Run Public Service District to Birch River, including a high speed booster pump station, a 150,000 gallon storage tank, fire hydrants, and all necessary appurtenant facilities (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed with the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The Project and any further extensions or improvements thereto constituting waterworks facilities, are herein called the "System." The Issuer will purchase water from Flatwoods-Canoe Run Public Service District pursuant to a water purchase contract between the Issuer and Flatwoods-Canoe Run Public Service District. The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bond (as hereinafter defined) and all debt service, reserve fund and other payments provided for herein.

D. The estimated maximum cost of the acquisition and construction of the Project is \$2,109,000, of which \$434,000 will be obtained from the proceeds of sale of the Bond herein authorized, \$925,000 from a grant by the Purchaser (as hereinafter defined), and \$750,000 from a grant by the Appalachian Regional Commission.

E. It is necessary for the Issuer to issue its water revenue bond in the principal amount of \$434,000 to finance a portion of the cost of such acquisition and construction in the manner hereinafter provided. The cost of such acquisition and construction shall be deemed to include, without being limited to, the cost of acquisition and construction of the Project; the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest on the Bond prior to, during and for 6 months after completion of such acquisition or construction; engineering, fiscal agents and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the Project, administrative expense, and such other expenses as may be necessary or incident to the financing authorized hereby and the acquisition or construction of the properties and the placing of same in operation; provided, that reimbursement to the Issuer for any

amounts expended by it for the repayment of indebtedness incurred for costs of the Project by the Issuer shall be deemed costs of the Project.

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

G. There are no outstanding bonds or obligations of the Issuer which will rank prior to or on a parity with the Bond as to liens, pledge and/or source of and security for payment.

H. It is in the best interest of the Issuer that the Bond be sold to the Purchaser, pursuant to the terms and provisions of a Letter of Conditions dated December 22, 1994, and all amendments thereto, if any (collectively, the "Letter of Conditions").

I. The Issuer has complied with all requirements of law relating to the authorization of the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Bond, or will have so complied prior to issuance of the Bond, including, among other things and without limitation, the consent and approval, pursuant to the Act and other applicable provisions of law, of the issuance of the Bond, the acquisition and construction of the Project, the imposition of rates and charges, and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or shall have been duly waived or otherwise provided for.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bond by those who shall be the Registered Owner of the same from time to time, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the Bond.

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

"Act" means Chapter 16, Article 13A of the West Virginia Code of 1931, as amended.

"Bond" means the Water Revenue Bond, Series 1998, authorized hereby to be issued pursuant to this Bond Legislation.

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

"Bond Registrar" means the Issuer, which shall usually so act by its Secretary.

"Chairman" means the Chairman of the Governing Body.

"Consulting Engineer" means Haworth, Meyer & Boleyn, Inc., South Charleston, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Depository Bank" means Bank of Gassaway, Gassaway, West Virginia, a bank or trust company which is a member of FDIC (herein defined), and its successors and assigns.

"Facilities" or "waterworks facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"FDIC" means the Federal Deposit Insurance Corporation.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

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

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

"Herein" or "herein" means in this Bond Legislation.

"Issuer," "Borrower" or "District" means Birch River Public Service District, a public service district and public corporation and political subdivision of the State of West Virginia, in Nicholas and Braxton Counties, West Virginia, and includes the Governing Body.

"Letter of Conditions" means, collectively, the Letter of Conditions of the Purchaser dated December 22, 1994, and all amendments thereto, if any.

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

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed 1/6th of the budgeted Operating Expenses stated above for the current year as working capital, and language herein requiring payment of Operating Expenses means also retention of not to exceed such sum as working capital, provided that all monthly amortization payments upon the Bond and into the Reserve Fund and the Depreciation Account have been made to the last monthly payment date prior to the date of such retention.

"Project" shall have the meaning stated in Section 1.02B above.

"Purchaser" or "Government" means United States Department of Agriculture, Rural Utilities Service (formerly Farmers Home Administration), and any successor thereof, acting for and on behalf of the United States of America.

"Qualified Investments" means and includes any of the following, to the extent such investments are permitted by law:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

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

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

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

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

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

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service or Standard & Poor's Corporation.

"Registered Owner," "Bondholder," "Holder of the Bond" or any similar term means any person who shall be the registered owner of the Bond.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

"State" means the State of West Virginia.

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

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neuter gender shall include any other gender; and any requirement for execution or attestation of the Bond or any certificate or other document by the Chairman or the Secretary shall mean that such Bond, certificate or other document may be executed or attested by an Acting Chairman or Acting Secretary.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of \$2,109,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bond hereby authorized shall be applied as provided in Article IV hereof.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BOND

Section 3.01. Authorization of Bond. Subject and pursuant to the provisions of the Bond Legislation, the Bond of the Issuer, to be known as "Water Revenue Bond, Series 1998," is hereby authorized to be issued in the aggregate principal amount of not exceeding \$434,000 for the purpose of permanently financing a portion of the cost of the acquisition and construction of the Project.

Section 3.02. Description of Bond. The Bond shall be issued in single form, numbered R-1, only as a fully registered Bond, and shall be dated the date of delivery thereof. The Bond shall bear interest from the date of delivery, payable monthly at the rate of 4.5% per annum, and shall be sold for the par value thereof.

The Bond shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the Bond form hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Bond. The Bond shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Bond, and the right to principal of and stated interest on the Bond, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

No registration of transfer of the Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Bond.

Section 3.04. Bond Registrar. The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, sufficient books for the registration and transfer of the Bond, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Bond initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Bond as hereinbefore provided.

The Bond Registrar shall accept the Bond for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Bond shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Bond shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Bond shall cease to be such officer of the Issuer before the Bond so signed and sealed has been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bond shall hold the proper office in the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized.

Section 3.06. Bond Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Bond Secured by Pledge of Net Revenues. The payment of the debt service of the Bond shall be secured forthwith by a first lien on the Net Revenues derived from the System, in addition to the statutory mortgage lien on the System hereinafter provided for. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bond, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as the same become due.

Section 3.08. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

BIRCH RIVER PUBLIC SERVICE DISTRICT

WATER REVENUE BOND, SERIES 1998

\$434,000

No. R-1

Date: _____

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of FOUR HUNDRED THIRTY-FOUR THOUSAND DOLLARS (\$434,000), plus interest on the unpaid principal balance at the rate of 4.5% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ _____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and

shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing the cost of improvements and extensions to the existing waterworks system (the "System") of the Borrower, is payable solely from and secured by the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation, nor shall the Borrower be obligated to pay the same or interest thereon except from the special fund so provided.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolution and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"), and a resolution of the Borrower duly adopted authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary-Treasurer, all as of the date hereinabove written.

BIRCH RIVER PUBLIC SERVICE DISTRICT

[CORPORATE SEAL]

Chairman, Public Service Board
Rt. 3, Box 6A
Birch River, West Virginia 26610

ATTEST:

Secretary-Treasurer, Public Service Board

(Form of)

RECORD OF ADVANCES

AMOUNT		DATE	AMOUNT		DATE
(1)	\$	10/05/98	(19)	\$	
(2)	\$		(20)	\$	
(3)	\$		(21)	\$	
(4)	\$		(22)	\$	
(5)	\$		(23)	\$	
(6)	\$		(24)	\$	
(7)	\$		(25)	\$	
(8)	\$		(26)	\$	
(9)	\$		(27)	\$	
(10)	\$		(28)	\$	
(11)	\$		(29)	\$	
(12)	\$		(30)	\$	
(13)	\$		(31)	\$	
(14)	\$		(32)	\$	
(15)	\$		(33)	\$	
(16)	\$		(34)	\$	
(17)	\$		(35)	\$	
(18)	\$		(36)	\$	

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto
the within Bond and does hereby irrevocably constitute and appoint
_____, Attorney to transfer the said Bond
on the books kept for registration of the within Bond of the said Issuer with full power of
substitution in the premises.

Dated: _____, _____.

In the presence of:

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

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

- (1) Revenue Fund;
- (2) Reserve Fund;
- (3) Depreciation Account; and
- (4) Project Construction Account.

Section 4.02. Bond Proceeds; Project Construction Account. The proceeds of the sale of the Bond shall be deposited upon receipt by the Issuer in the Project Construction Account. The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Moneys in the Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will additionally transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

Pending application as provided in this Section 4.02, money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.03. Covenants of the Issuer as to System Revenues and Funds.

So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Bond remaining unpaid, together with interest accrued to the date of such payment, the Issuer further covenants with the holder of the Bond as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the 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 provided in the Resolution.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall first, each month, pay from the moneys in the Revenue Fund all current Operating Expenses.

(2) The Issuer shall next, each month, on or before the due date of payment of each installment on the Bond, transfer from the Revenue Fund and remit to the National Finance Office designated in the Bond (or such other place as may be provided pursuant to the Bond), the amounts required to pay the interest on the Bond, and to amortize the principal of the Bond over the life of the Bond issue.

(3) The Issuer shall next, each month, on each date that payment is made as set forth in (2) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Reserve Fund, $\frac{1}{2}$ of $\frac{1}{12}$ th of $\frac{1}{10}$ th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bond in any year, until the amount in the Reserve Fund equals such maximum amount (the "Minimum Reserve"). After the Minimum Reserve

has been accumulated in the Reserve Fund, the Issuer shall, on each date that payment is made as set forth in (3) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Account, $\frac{1}{2}$ of $\frac{1}{12}$ th of $\frac{1}{10}$ th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bond in any year, so long as the Bond is outstanding, to the Depreciation Account established with the Depository Bank, provided, however, that in the event additional monies shall be required to maintain the Minimum Reserve in the Reserve Fund, payment of monies to the Depreciation Account as provided in this paragraph shall not be made and such payments shall be made to the Reserve Fund until the Minimum Reserve is contained therein, at which time payments to the Depreciation Account shall resume. Moneys in the Reserve Fund shall be used solely to make up any deficiency for monthly payments of the principal of and interest on the Bond to said National Finance Office (or other place provided) as the same shall become due or for prepayment of installments on the Bond, or for mandatory prepayment of the Bond as hereinafter provided, and for no other purpose.

(4) The Issuer shall next, each month, on each date that payment is made as set forth in (2) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Depreciation Account, $\frac{1}{2}$ of $\frac{1}{12}$ th of $\frac{1}{10}$ th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bond in any year. Moneys in the Depreciation Account shall be used first to make up any deficiencies for monthly payments of principal of and interest on the Bond as the same become due, and next to restore to the Reserve Fund any sum or sums transferred therefrom. Thereafter, and provided that payments into the Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Depreciation Account may be withdrawn by the Issuer and used for extraordinary repairs and for replacements of equipment and improvements for the System, or any part thereof.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, moneys remaining therein and not permitted to be retained therein, if any,

may be used to prepay installments of the Bond, or for any lawful purpose.

Whenever the money in the Reserve Fund shall be sufficient to prepay the Bond in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Bond at the earliest practical date and in accordance with applicable provisions hereof.

The Depository Bank is hereby designated as the Fiscal Agent for the administration of the Reserve Fund and the Depreciation Account herein provided, and all amounts required for the Reserve Fund and the Depreciation Account will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such fund.

The Revenue Fund, the Reserve Fund and the Depreciation Account shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bond and the interest thereon, but the Depository Bank shall not be a trustee as to such funds.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Depository Bank, at the direction of the Issuer, shall keep the moneys in the Reserve Fund and the Depreciation Account invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Bond Legislation shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia State Board of Investments. 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 interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually into the Revenue Fund by the Depository Bank.

C. CHANGE OF FISCAL AGENT. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank and Fiscal Agent if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

D. USER CONTRACTS. The Issuer shall, prior to delivery of the Bond, provide evidence that there will be at least 195 bona fide full-time users upon the Project on completion, in full compliance with the requirements and conditions of the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Depository Bank then due.

F. INVESTMENT OF EXCESS BALANCES. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in any of such funds or accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State of West Virginia.

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

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

Section 4.04. Interim Construction Financing. In order to pay certain costs of the Project pending receipt of proceeds of the grants and advances of principal of the Bond, the Issuer may issue and sell its interim construction notes in an aggregate principal amount not to exceed \$500,000 (the "Notes"). The Notes shall be in the form of a line of credit from a commercial bank or other lender, and the Issuer is hereby authorized to enter into a credit agreement, with such bank or other lender. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the credit agreement.

The Notes shall be special obligations of the Issuer payable as to principal and interest solely from proceeds of the Bond or the grants. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer, if any, is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth herein.

ARTICLE V

GENERAL COVENANTS, ETC.

Section 5.01. General Statement. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Bondholder.

Section 5.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bond and sufficient to make the payments required herein into the Reserve Fund and the Depreciation Account and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 5.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.04. Issuance of Additional Parity Bonds or Obligations. No additional parity bonds or obligations payable out of any of the Revenues of the System shall be issued after the issuance of the Bond pursuant hereto, except with the prior written consent of the Purchaser.

Section 5.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

A. Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value thereof. In the event

of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

B. Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Bond.

C. Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

D. Workers' Compensation Coverage for All Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds have been or will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' compensation coverage shall be maintained as required by the laws of the State of West Virginia.

E. Flood Insurance to be procured, to the extent available at reasonable cost to the Issuer; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

F. Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount of \$50,000 upon the treasurer, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser.

G. Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Bond is outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06. Statutory Mortgage Lien. For the further protection of the Holder of the Bond, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Bond.

Section 5.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

A. Failure to make payment of any monthly amortization installment upon the Bond at the date specified for payment thereof; and

B. Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Bond or herein, or violation of or failure to observe any provision of any pertinent law.

Section 5.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 5.09. Fiscal Year; Budget. While the Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 1st day of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 5.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 5.12. Books and Records; Audits. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 5.14. No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

ARTICLE VI

RATES, ETC.

Section 6.01. Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consonant with the provisions hereof, shall be as set forth in the Commission Order of the Public Service Commission of West Virginia, entered on May 15, 1998, Case No. 95-0395-PWD-CN, which Commission Order is incorporated herein by reference as a part hereof.

 B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

 C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have all remedies and powers provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

 D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

 E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

 F. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Payment of Bond. If the Issuer shall pay or there shall otherwise be paid, to the Holder of the Bond, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Bond, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Bond, shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 7.02. Modification or Amendment. Prior to issuance of the Bond, this Resolution may be amended or supplemented in any way by resolution. Following issuance of the Bond, no resolution amendatory hereof or supplemental hereto, shall be made without the prior written consent of the Purchaser.

Section 7.03. Delivery of Bond. The Chairman and Secretary-Treasurer of the Governing Body are hereby authorized and directed to cause the Bond, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 7.05. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

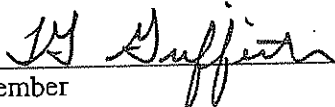
Section 7.06. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 7.07. 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 Chairman, Vice-Chairman, Secretary-Treasurer 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 7.08. Effective Time. This Resolution shall take effect immediately upon its adoption.

Adopted: October 5, 1998.


Chairman


Member

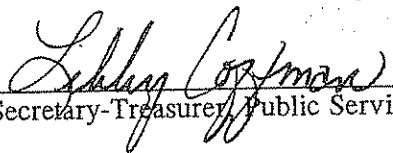

Member

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board
of BIRCH RIVER PUBLIC SERVICE DISTRICT on the 5th day of October, 1998.

Dated: October 5, 1998.

[SEAL]


Secretary-Treasurer Public Service Board

10/01/98
073720/98001

BIRCH RIVER PUBLIC SERVICE DISTRICT

WATER REVENUE BOND, SERIES 1998

\$434,000

No. R-1

Date: October 5, 1998

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of FOUR HUNDRED THIRTY-FOUR THOUSAND DOLLARS (\$434,000), plus interest on the unpaid principal balance at the rate of 4.5% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$1,993.00, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing the cost of improvements and extensions to the existing waterworks system (the "System") of the Borrower, is payable solely from and secured by the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation, nor shall the Borrower be obligated to pay the same or interest thereon except from the special fund so provided.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolution and upon surrender and

cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the West Virginia Code, as amended (the "Act"); and a resolution of the Borrower duly adopted authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary-Treasurer, all as of the date hereinabove written.

BIRCH RIVER PUBLIC SERVICE DISTRICT

[CORPORATE SEAL]

Chairman, Public Service Board
Rt. 3, Box 6A
Birch River, West Virginia 26610

ATTEST:

Secretary-Treasurer, Public Service Board

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$	10/05/98	(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

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

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

Dated: _____, _____.

In the presence of:

10/01/98
073720/98001



**United States Department of Agriculture
Rural Development
West Virginia State Office**

October 19, 2009

Birch River Public Service District
Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

TO WHOM IT MAY CONCERN:

The undersigned duly authorized representative of the United States of America, acting through the Rural Utilities Service, United States Department of Agriculture, the present holder of the Prior Bonds, hereinafter defined and described, hereby (a) consents to the issuance of the Water Revenue Bonds, Series 2009 A (United States Department of Agriculture), in the original aggregate principal amount of \$630,000 (the "Bonds"), by Birch River Public Service District (the "Issuer"), under the terms of the bond resolution authorizing the issuance of the Bonds (the "Resolution"), on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000 (the "Series 1998 Bonds" or "Prior Bonds") and (b) waives any requirements imposed by the Prior Bonds or the resolution authorizing the Prior Bonds (collectively, the "Prior Resolutions"), regarding the issuance of parity bonds which are not met by the Bonds or the Resolution, and (c) consents to any amendments made to the Prior Resolutions by the Resolution.

WITNESSETH my signature on this 19th day of October, 2009.



State Director

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).



**United States Department of Agriculture
Rural Development
West Virginia State Office**

October 15, 2009

Curtis Davis, Chairman
Birch River Public Service District
P. O. Box 218
Birch River, WV 26610

RE: Amendment No. 2 to
Letter of Conditions

Dear Mr. Davis:

This letter, with Attachment No. 1 amends the letter of conditions dated February 8, 2009 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RD loan in the amount of \$630,000, an initial RD grant in the amount of \$729,000 a subsequent RD grant in the amount of \$623,076 and other funding in the amount of \$3,052,811.83 for a total project cost of \$5,034,887.83. The other funding is planned in the form of a grant from the West Virginia Department of Environmental Protection's Abandoned Mine Land Program.

Subject to the requirements noted herein, all of the conditions of the March 20, 2007 and February 8, 2009 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4838
Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

If the conditions set forth in this letter are not met within six (6) months from the date hereof, USDA, Rural Development reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the Public Service District still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, our agency reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,



BOBBY LEWIS
State Director

Enclosures

cc: Stephen Wetherbee, Area Director
Attention: Teresa Miller, Area Specialist
Beckley, WV

Smith, Cochran & Hicks, CPAs
405 Capital Street, Suite 908
Charleston, WV 25301

Ray Tilley, P.E.
E. L. Robinson Engineering
207 Brookshire Lane
Beckley, WV 25801

Steptoe & Johnson, PLLC
Attorneys at Law
✓ P. O. Box 1588
Charleston, WV 25326

Thomas R. Michael, Attorney at Law
P. O. Box 250
Lost Creek, WV 26385

WVDEP-Abandoned Mine Lands & Reclamation
6010 5th Street, S.E. Box 20
Charleston, WV 25304

Project Construction Budget

<u>PROJECT COST</u>	<u>RUS SUB GRANT</u>	<u>AML</u>	<u>RUS GRANT</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
CONSTRUCTION	\$399,742.22	\$3,052,811.83	\$ 579,000	\$ 330,375	\$ 4,361,929.05
CONST. CONTINGENCY	\$ 80,033.65				\$ 80,033.65
LAND & RIGHTS			\$ 20,000		\$ 20,000
LEGAL FEES				\$ 25,000	\$ 25,000
BOND COUNSEL				\$ 15,000	\$ 15,000
ACCOUNTING				\$ 7,500	\$ 7,500
ENGINEERING FEES	\$ 69,000		\$ 130,000	\$ 196,000	\$ 395,000
Basic - \$ 245,000					
Insp. - \$ 130,000					
Special - \$ 20,000					
INTEREST				\$ 51,125	\$ 51,125
PERMITS				\$ 5,000	\$ 5,000
TECHNICAL SERVICES	\$ 40,000				\$ 40,000
PROJECT CONTG.	\$ 34,300.13				\$ 34,300.13
TOTAL	\$ 623,076	\$3,052,811.83	\$ 729,000	\$ 630,000	\$5,034,887.83



United States Department of Agriculture
Rural Development
West Virginia State Office

February 8, 2008

Curtis Davis, Chairman
Birch River Public Service District
P.O. Box 218
Birch River, WV 26610

RE: Amendment No. 1 to the
Letter of Conditions

Dear Mr. Davis:

This letter, with Attachment No. 1 amends the letter of conditions dated June 15, 2007 and further establishes conditions which must be understood by you before further consideration may be given to your application. The grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an initial RUS loan in the amount of \$630,000, an initial RUS grant in the amount of \$729,000, a subsequent RUS grant in the amount of \$623,076, and other funding in the amount of \$2,024,924, for a total project cost of \$4,007,000. The other funding is planned in the form of a grant from the West Virginia Department of Environmental Protection's Abandoned Mine Lands Program.

Subject to the requirements noted herein, all of the conditions of the June 15, 2007 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

75 High Street Federal Building • Suite 320 • Morgantown, WV 26505-7500
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Enclosed are the following:

Attachment No. 1 – Project Construction Budget (All Copies).

The conditions referred to above are as follows:

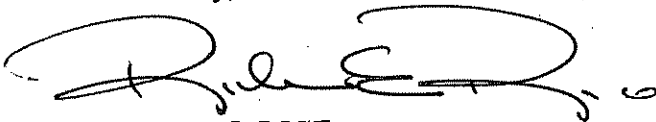
1. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided to RUS (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

Form RD 1940-1	"Request for Obligation of Funds"
RUS Bulletin 1780-12	"Water or Waste System Grant Agreement"
Form RD 1942-46	"Letter of Intent to Meet Conditions"

If the conditions set forth in this letter are not met within twelve (12) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the twelve month period and it is determined the Public Service District still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,



RICKIE E. RICE
State Director

Enclosures

cc: Area Director
Attention: Rural Development Specialist (RUS)
Beckley, WV

Ray Tilley, P.E.
E. L. Robinson
207 Brookshire Lane
Beckley, WV 25801

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Thomas R. Michael, Attorney at Law
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WVDEP-Abandoned Mine Lands & Reclamation
6010 5th Street, S.E. Box 20
Charleston, WV 25304

Attachment No. 1 to Letter of Conditions
For: Birch River Public Service District
Date: February 8, 2008

Project Construction Budget

<u>PROJECT COST</u>	<u>RUS SUB</u> <u>GRANT</u>	<u>AML</u>	<u>RUS GRANT</u>	<u>RUS LOAN</u>	<u>TOTAL</u>
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PROJECT CONTG.	\$ 28,790		\$ 35,990	\$ 28,584	\$ 93,364
TOTAL	\$ 623,076	\$ 2,024,924	\$ 729,000	\$ 630,000	\$ 4,007,000



United States Department of Agriculture
Rural Development
West Virginia State Office

June 15, 2007

Curtis Davis, Chairman
Birch River Public Service District
P.O. Box 218
Birch River, WV 26610

Dear Mr. Davis:

This letter, with Attachments 1 through 14 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$630,000, an RUS grant in the amount of \$729,000, and other funding in the amount of \$2,608,000, for a total project cost of \$3,967,000. The other funding is planned in the form of a grant from the West Virginia Department of Environmental Protection's Abandoned Mine Lands program and a grant from the state.

The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted. Enclosed are the following:

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist for Birch River Public Service District (All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)

75 High Street Federal Building, Suite 320, Morgantown, WV 26505-7500
Phone: (304) 284-4860 • Fax: (304) 284-4893 • TDD: (304) 284-4836 • Web: <http://www.rurdev.usda.gov/wv>

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- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)
- Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)
- Attachment No. 7 - RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Project with RUS Financial Assistance"
- Attachment No. 8 - Government Auditing Standards (Revision 2003) (Accountant Copy)
- Attachment No. 9 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"
- Attachment No. 10 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"
- Attachment No. 11 - Birch River Public Service District Water Users Agreement (Applicant and Attorney Copies)
- Attachment No. 12 - Declination Statement (Applicant and Attorney Copies)
- Attachment No. 13 - Sample Credit Agreement (Applicant Copy)
- Attachment No. 14 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.125% interest rate and a monthly amortization factor of .00435, which provides for a monthly payment of \$2,741. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account, which equals 10% of your monthly payment each month until you accumulate the equivalent of one annual installment on your loan.

You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of RUS if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of equal priority, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond resolution which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-12 and RUS Bulletin 1780-27 which are mentioned later.

3. Users - This conditional commitment is based upon you providing evidence that you will have at least 450 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of 214 signed user agreements and a signed certification from you that identifies and attests to the number of users actually connected to and using the PSD's existing water system, which is to be partially replaced by the new system, at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Water Users Agreement (RUS Bulletin 1780-9) will be used. Each user signing an agreement must make a user contribution of \$50. Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a "Service Declination Statement." A guide "Service Declination Statement" is attached for your use. If a potential user refuses to sign either a user agreement or a declination statement, the individual making the contact for the PSD should complete the declination statement for that potential user and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service. Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the water service of the existing system (paying monthly bills), (2) signed user agreements, (3) signed service declination statements, (4) records evidencing user contributions having been paid, (5) a map locating each potential user's property in the new service area identifying it by number, (6) a list of all signed bona fide users numbered so as to be a cross-reference with the map, and (7) a list of all declination statements numbered so as to be a cross-reference with the map.

4. Bond Counsel Services - The services of a recognized bond counsel are required. The bond counsel will prepare the form of resolution to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. E-510, "Standard Form of Agreement between Owner and Engineer for Professional Services" (Funding Agency Edition) should be used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.

6. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, “Legal Services Agreement” is enclosed for your use.
7. Accounting Services – It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:
 - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).
 - b. Prior to loan/grant closing, your accountant must certify that the accounts and records as required by your bond resolution have been established and are operational.

The Accountant's Agreement should be submitted to RUS for review. Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

RUS regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your PSD. The attached booklets, “Government Auditing Standards (Revised 2003)” (Attachment No. 8), and RUS Bulletins 1780-30 and 1780-31 (Attachment Nos. 9 and 10) outline audit requirements.

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$500,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
 - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.

- b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the PSD already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
 - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
 - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions. The attorney's legal opinion should include a certification that all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and West Virginia State Code Chapter 54 have been met in the acquisition of both real property and rights-of-way. Such requirements may include, but are not limited to, distributing informational material to all affected property owners, and completing appraisals of the affected properties.
 - e. On the day of loan closing, the PSD's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the PSD has already acquired real property(s) (land or facilities), the PSD's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
 - Railroads
 - State Department of Health
 - Department of Environmental Protection
 - Corps of Engineers
 - Public Land Corporation

10. Public Service Commission Approvals - You must obtain the following from the West Virginia Public Service Commission:

- a. A Certificate of Convenience and Necessity.
- b. Approval of user charges that are acceptable to you and the Rural Utilities Service.
- c. Approval of financing for the project's proposed financing arrangements.

The "Rule 42" Exhibit to be attached to the Public Service Commission application must contain at least the information shown in Attachment No. 1. A copy of the Public Service Commission application and its "Rule 42" Exhibit must be provided for review.

11. Insurance and Bonding Requirements - Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:

- a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
- b. Workers' Compensation - In accordance with appropriate State laws.
- c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time.

The minimum coverage acceptable to RUS once your project is in operation will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).

- d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
 - i. If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
 - ii. Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special

flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

- e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications --

- a. The contract documents should consist of the following:
 - i. EJCDC Document No. C-521, 2002 Edition, "Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price" and EJCDC Document No. C-710, 2002 Edition, "Standard General Conditions of the Construction Contract -- Funding Agency Edition" and Attachments. The EJCDC document is issued under copyright and cannot be provided by RUS.
 - ii. "RUS Supplemental General Conditions."

RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance," is enclosed for use by your engineer in the preparation of the contract documents (Attachment No. 7).

- b. The contract documents must provide, as a minimum, the following insurance:
 - i. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the PSD and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
 - ii. Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
 - iii. Workers' Compensation - In accordance with applicable State laws.

- c. The contract documents and final plans and specifications must be submitted to RUS for approval.
 - d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.
13. State Prevailing Wage Law - You should ensure that all requirements of Article 5A of the West Virginia State Prevailing Wage Law, "Wages for Construction of Public Improvements" are met during construction of the project.
14. Interim Financing - Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. A copy of the proposed agreement should be provided for RUS review. A Sample Credit Agreement is attached for your use in meeting this requirement (Attachment No. 13).
15. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your PSD, over 30 day periods. Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

Public Bodies – Interest earned on grant funds in excess of \$100 per year will be submitted to RUS at least quarterly as required in 7 CFR 3016.

The PSD will establish a separate fund, to be known and hereafter referred to as the Construction Account, with a lending institution insured by the Federal Deposit Corporation. The account shall be used solely for the purpose of paying the costs of the project as outlined in the construction budget. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account. All deposits in excess of \$100,000 will be secured by a collateral pledge in accordance with Treasury Circular Number 176.

The PSD must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

16. Water Purchase Contract - You propose to purchase treated water from Flatwoods-Canoe Run PSD; therefore, you must enter into a Water Purchase Contract. Form RD 442-30 must be used unless you receive an exception from RUS.
17. Other Project Funds - Prior to advertisement for construction bids, you must provide evidence showing the approval of any other project funds. This evidence should include a copy of the funding award. Prior to award of the contract(s) to

the contractor(s), you must provide evidence that the other project funds are available for expenditure. This evidence should consist of at least a letter from the funding agency stating the funds are available for expenditure.

18. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

Form RD 1940-1 - "Request for Obligation of Funds"
 RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"
 RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"
 Form RD 400-1 - "Equal Opportunity Agreement"
 Form RD 400-4 - "Assurance Agreement"
 Form AD 1047 - "Certification Regarding Debarment - Primary"
 Form AD 1049 - "Certification Regarding Drug-Free Workplace"
 Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
 FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
 Standard Form LLL - "Disclosure of Lobbying Activities" (If Applicable)
 Certification of Compliance
 Form RD 1942-46, "Letter of Intent to Meet Conditions"

19. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan and grant docket when it is forwarded to the USDA - Rural Development State Office with a request for loan closing instructions to be issued.

20. Upon receipt of the loan and grant docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RUS project funds will be considered to be RUS grant funds and refunded to RUS. If the amount of unused RUS project funds exceeds the RUS grant, that part would be RUS loan funds.

If the conditions set forth in this letter are not met within twelve (12) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the twelve-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely yours,

for 
 ROBERT M. STEPTOE, III
 State Director

Enclosures

cc: Rural Development Specialist
 Beckley, WV

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 E.L. Robinson
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WVDEP – Abandoned Mine Lands
 & Reclamation
 6010 5th Street, S.E., Box 20
 Charleston, WV 25304-2345

Project Construction Budget

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EQUIPMENT					\$ -
PROJECT CONTG.	\$ 28,790		\$ 35,990	\$ 28,584	\$ 93,364
TOTAL	\$ 583,076	\$ 2,024,924	\$ 729,000	\$ 630,000	\$ 3,967,000

Rates

Available for general domestic, commercial, and industrial service.

First	3,000	gallons @	\$9.10	per M gallons
Over	3,000	gallons @	\$9.10	per M gallons
Next		gallons @		per M gallons

Minimum Charge

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

5/8" x 3/4"	meter	\$ 27.30	per month
3/4"	meter	\$ 40.95	per month
1"	meter	\$ 68.25	per month
1 1/2"	meter	\$ 136.50	per month
2"	meter	\$ 218.40	per month
3"	meter	\$ 409.50	per month
4"	meter	\$ 682.50	per month
6"	meter	\$ 1,365.00	per month
8"	meter	\$ 2,184.00	per month

Minimum Monthly Bill \$27.30 for 3,000 gallons

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, water service to the customer will be discontinued. Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

Prior to Construction - \$50.00

After the start of construction, there shall be a charge of \$200.00 for connection to the system.

Reconnection Charge

\$20.00

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached

Birch River Public Service District
OPERATING BUDGET

OPERATING INCOME

Metered Sales	\$ 195,367	
Penalties	\$ 3,336	
Other Income	\$ 5,947	
Reconnect Fees		
TOTAL OPERATING INCOME		<u>\$ 204,650</u>

NON OPERATING INCOME

Interest income	\$ 11	
TOTAL NON OPERATING INCOME		<u>\$ 11</u>

TOTAL INCOME

\$ 204,661

EXPENSES

O & M	\$ 138,477	
Taxes		
TOTAL EXPENSES		<u>\$ 138,477</u>

INCOME AVAILABLE FOR D/S (A)

\$ 66,184

DEBT SERVICE

Existing Bond P & I (B)	\$ 23,916	
Proposed Bond P & I (B)	\$ 32,892	
TOTAL DEBT SERVICE		<u>\$ 56,808</u>

DEBT SERVICE RESERVE

Debt Service Reserve*	\$ 5,681	
TOTAL DEBT SERVICE RESERVE		<u>\$ 5,681</u>

SURPLUS (DEFICIT)

\$ 3,695

DEBT COVERAGE (A/B)

\$ 1.17

Based on RUS loan of \$630,000 @ 4.125% for 38 years

Attachment No. 1 to Letter of Conditions
 For: Birch River Public Service District
 Date: June 15, 2007

Birch River Public Service District
 USE AND INCOME ANALYSIS
 EXISTING SYSTEM

Blocking	Cust.	Gal/ Mo.	Minimum Bills	First 3,000	Over 3,000	TOTAL REVENUE
0-3000	164	286.50	165			
Over 3,000	72	487.75		216.00	271.75	
Monthly Total	236.00	774.25	164.50	216.00	271.75	
Proposed Rates			\$ 27.30	\$ 9.10	\$ 9.10	
Monthly Revenues			\$ 4,490.85	\$ 1,965.60	\$ 2,472.93	\$ 8,929.38
Annual Revenues			\$ 53,890.20	\$ 23,587.20	\$ 29,675.10	\$ 107,152.50
Annual Revenue			\$107,152.50			
Adjustment Factor			1.00593988			
Adjusted Annual Revenue			\$107,789			

Birch River Public Service District
USE AND INCOME ANALYSIS
"IDENTIFIED EXTENSION AREAS"

Blocking	Cust.	Gall/ Mo.	Minimum Bills	FIRST 3,000	OVER 3,000	TOTAL REVENUE
0-3,000	150	397.5	150			
Over 3,000	64	352		192	160	
Monthly Total	214	749.5	150	192	160	
Proposed Rates			\$ 27.30	\$ 9.10	\$ 9.10	
Monthly Revenues			\$ 4,095.00	\$ 1,747.20	\$ 1,456.00	\$ 7,298.20
Annual Revenues			\$ 49,140.00	\$ 20,966.40	\$ 17,472.00	\$ 87,578.40

214 if 80% of potential customers

It is assumed that 150 customers will use 3,000 gallons or less and 64 customers will use 5,500 gallons

**UNITED STATES DEPARTMENT OF AGRICULTURE
 RURAL UTILITIES SERVICE
 Water and Waste Processing Checklist**

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
SF 424.2	Application for Federal Assistance	3	1780.31(b)	Applicant		Have	3
	DUNS Number	1		Applicant		Have	3
	CAIVRS Number	1		RUS		Have	CPAP Form
	Public Notice of Intent to File App./ Env. Notice	3	1780.19(a) 1794	Applicant		Have	3
Bulletin 1780-22	Applicant Eligibility Certification/ Other Credit Certification	1	1780.33(d)	Applicant		Have	3
	Bond Ordn. or Resol. On Outstanding Debts	1	1780.33(e)	Applicant/ Attorney		Have	5
	Bonds or Notes Outstanding Debt	1	1780.33(e)	Applicant/ Attorney		Have	2
	Audit for last year of operation	1	1780.33(e)	Applicant/ Accountant		Have	1
	Staff Review Financial Statements	1	S.I. 1780.2	RUS		Have	1
	Agreement between Owner & Engineer	3	1780.39(b)	Applicant/ Engineer		Have	6
EJCDC No. 1910-1-FA							

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	Applicant/ Attorney		Have	5
	Site Visit		S.I. 1780-2	RUS			3
	Processing Conference	1	1780.39(a)	RUS		Have	3
	Environmental Report	2	1794	Applicant		Have	3
	Environmental Assessment	2	1794	RUS/ Engineer		Have	3
	FONSI/ Evidence of Publication	1	Exhibit 1 RUS 1794 News Ad	RUS/ Applicant		Have	3
Bulletins 1780-2 1780-3	Preliminary Engineering Report	2	1780.33(c)	Engineer		Have	6
	Staff Engineer PER Review	1	1780.33(c)	RUS		Have	3
	Bill Analysis for existing system(s)	2	1780.33(c)	Applicant/ Engineer		Have	8
	Projected Bill Analysis for New Users	2	1780.33(c)	Applicant/ Engineer		Have	8
	Statement reporting the <u>total</u> number of <u>potential</u> users		1780.33(c)	Applicant/ Engineer		Have	8
	Rate Tariff	2	1780.33	Applicant		Have	8
	Applicant's IRS Tax Number(TIN)	1	1780.33(g)	Applicant		Have	3

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Agency Determination on the Availability of "Other Credit" with Documentation	1	1780.7(d)	RUS		Have	3
	Documentation on Service Area	1	1780.11	RUS		Have	3
Bulletin 1780-1	Project Selection Criteria	2	1780.17	RUS		Have	1
	Letter of Conditions	7	1780.41 (a)(5)	RUS		Have	3
AD 1049	Certification Regarding Drug-Free Workplace	1	1780.33(h)	Applicant		Have	5
	Minutes Adopting Drug-Free Workplace Program	1	LOC	Applicant			5
Exhibit A / A-1	Certifications Regarding Lobbying	2	1780.33(h)	Applicant		Have	2
CPAP Form	Project Information	3	1780.41(a)	RUS		Have	1
CPAP Form	Underwriting Information	3	1780.33(h)	RUS Applicant		Have	3
RD 1940-1	Request for Obligation of Funds	4	1780.41(a)	RUS/ Applicant		Have	2
Bulletin 1780-12	Association Water or Sewer System Grant Agreement	2	1780.45(c)	RUS/ Applicant		Have	2

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
RD 1942-46	Letter of Intent to Meet Conditions	2	1780.41 (a)(6)	Applicant		Have	3
AD 1047	Certification Regarding Debarment (Primary)	1	1780.33(h)	Applicant		Have	5
	Relationships/ Associations with Agency Employees	1	1780.1(f)	RUS		Have	3
RD 1910-11	Applicant Certification, Federal Collection Policies	1	1780.33(h)	Applicant		Have	3
Bulletin 1780-27	Loan Resolution	1	1780.45 (a)(2)	Applicant		Have	5
RD 400-1	Equal Opportunity Agreement	1	1901-E	Applicant		Have	6
RD 400-4	Assurance Agreement	1	1901-E	Applicant		Have	3
	Legal Services Agreement with Bond Counsel	1	1780.39 (b)(3)	Applicant/ Bond Counsel		Have	5
	Agreement for Accounting Services	1	1780.39 (b)(2)	Applicant/ Accountant		Have	5
	Water Users Agreement (Copy)	1	1780.39 (c)(3)	Applicant			5
	Exception for Metering Devices	1	1780.57(m)	Applicant/ RUS			5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Evidence of Users:						
	1. Map of Users with each identified by number	1	LOC	Applicant			Separate File
	2. List of Signed Users Numbered to Map	1	LOC	Applicant			5
	3. List of Declination Statements Numbered to Map	1	LOC	Applicant			5
	4. Evidence of Tap Fees Being Paid	1	LOC	Applicant			5
	5. Having Users Agreements and Declination Statements Available		LOC	Applicant			
	6. Certification Relative to Existing Users	1	LOC	Applicant			5
	Verification of Users	1	1780.44(b)	RUS			3
RD 442-30	Water Purchase Contract	1	1780.62/ 1780.63	Applicant/ Attorney/ RUS			5
	Accountant's Certification	1	LOC	Applicant/ Accountant			3
	RUS Review of Accounting Records	1	S.I. 1780-4 (1)(ii)	RUS			3

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Copy of PSC Rule 42 Exhibit	1	State	Attorney/ Accountant			3
Lender Agreement/ Bulletin 1780-10/ 1780-10a	Interim Financing Documenta- tion	1	1780.39(d)	Applicant/ RUS			1
	DOH Permit	1	1780.15(d)	Applicant			6
	Railroad Permit	1	1780.15(d)	Applicant			6
	Public Land Corp. Permit	1	1780.15(d)	Applicant			6
	Corps of Engineers Permit	1	1780.15(d)	Applicant			6
	Dept. of Health Approval	1	1780.15(d)	Engineer			6
	Dept. of Environmental Protection Permit	1	1780.15(d)	Engineer			6
	Contract Docu- ments, Plans & Specifi- cations	2	1780.61(a)	Engineer			Separate File
	Agency Deter- mination on Procurement	1	1780.70(d)	RUS			6
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			5
	Right-of-Way Map	1	1780.44(g)	Engineer			Separate File
	Deeds and/or Options		1780.44.(g)	Applicant/ Attorney			5

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Narrative Opinion from Attorney	1	1780.44(g)	Attorney			5
	Waiver of Title Defects Letter	1	1780.44(g)	RUS			5
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Attorney			5
	Review of Outstanding Judgment	1	1780.7(g)	RUS/ Attorney			3
	Operation and Maintenance Agreement	1	1780.39 (b)(4)	Applicant			5
	Evidence of "Other Funds"	1	1780.44(f)	Applicant			2
N/A	Evidence of Applicant Contribution	1	1780.44(f)	Applicant			2
SF 3881	Electronic Funds Transfer Payment Enrollment Form	1	31 CFR 208	Applicant/ Financial Institution			2
	Positive Program to Encourage Connections when Completed	1	1780.39 (c)(5)	Applicant		HAVE	5
RD 442-10	Appraisal Report	1	1780.44(g)	RUS			8

Form Number	Document or Action	Number Needed	Procedure Reference	Provided By	Target Date	Date Received	File Position
	Documentation Relative to Health or Sanitary Hazards	1	1780.1 (c)(1) 1780.13 (b)(1)	RUS/State Health Department			2
	PSC Approval	1	1780.15(b)	Applicant/ Attorney			6
	Bid Tabulation	1	1780.61(b)	Engineer			6
	OGC Closing Instructions	1	1780.44(h)	RUS			5
	S/O Closing Instructions	1	1780.44(h)	RUS			5
RD 1927-10	Final Title Opinion	1	1780.44 (g)(2)	Applicant/ Attorney			5
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Separate File
RD 400-8	Compliance Review	1	1780.44(c)	RUS			5
	Liability Insurance	1	1780.39(g)	Applicant			7
N/A	Workers' Compensation Certificate	1	1780.39(g)	Applicant			7
N/A	Flood Insurance Policy	1	1780.39(g)	Applicant			7
440-24	Fidelity Bond	1	1780.39(g)	Applicant			7
1924-16	Record of Pre-Construction Conference	1	1780.76(a)	RUS/ Engineer			6

<u>Form Number</u>	<u>Document or Action</u>	<u>Number Needed</u>	<u>Procedure Reference</u>	<u>Provided By</u>	<u>Target Date</u>	<u>Date Received</u>	<u>File Position</u>
AD 1048	Certification Regarding Debarment (Contractor)	1 each	1780.33(h)	All Appropriate Vendors			5
	OGC Final Opinion	1	1780.45(g)	RUS			5

Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants"

§1780.80 General.

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, referred to as bonds in this subpart) and other necessary loan documents.

§1780.81 Policies related to use of bond counsel.

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of \$100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

- (a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;
- (b) It must be established that not using bond counsel will produce significant savings in total legal costs;
- (c) The local attorney must be able and experienced in handling this type of legal work;
- (d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;
- (e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in §1780.94; and
- (f) Closing instructions must be issued by OGC.

§1780.82 [Reserved]

§1780.83 Bond transcript documents

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

- (a) Copies of all organizational documents;
- (b) Copies of general incumbency certificate;
- (c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;
- (d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;
- (e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;
- (f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;
- (g) Specimen bond, with any attached coupons;
- (h) Attorney's no-litigation certificate;
- (i) Certified copies of resolutions or other documents pertaining to the bond award;
- (j) Any additional or supporting documents required by bond counsel;
- (k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates;
- (l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of Section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§1780.84 and 1780.86 [Reserved]

§1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) First preference - Form RD 440-22, "Promissory Note". Refer to paragraph (b) of this section for methods of various frequency payment calculations.

(b) Second preference - single instruments with amortized installments. A single instrument providing for amortized installments which follows Form RD 440-22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) Monthly payments. Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) Semiannual payments. Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) Annual payments. Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) Third preference - single instruments with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) Fourth preference - serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of §1780.94. Provisions for application of payments will be the same as those set forth in paragraph (c)(2)(ii) of this section.

(e) Coupon bonds. Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of §1780.94.

§1780.88 [Reserved]

§1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

§1780.90 Multiple advances of Agency funds using temporary debt instruments.

When none of the instruments described in §1780.87 are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

- (a) The date from which each advance will bear interest;
- (b) The interest rate as determined by §1780.13;
- (c) A payment schedule providing for interest on outstanding principal at least annually; and
- (d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

§§1780.91 - 1780.93 [Reserved]**§1780.94 Minimum bond specifications.**

The provisions of this section are minimum specifications only and must be followed to the extent legally permissible.

(a) **Type and denominations.** Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.

(b) **Bond registration.** Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of "United States of America" and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

(c) **Size and quality.** Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(d) **Date of bond.** Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(e) **Payment date.** Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(1) If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(2) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(3) If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(f) **Extra payments.** Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(1) For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

(2) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(3) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

(4) For assessment bonds, see paragraph (k) of this section.

(g) The place of payments on bonds purchased by the Agency will be determined by the Agency.

(h) **Redemptions.** Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) Additional revenue bonds. Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120 percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

(j) Precautions. The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than the Agency, may post the date and amount of each advance or repayment on the instrument.

(3) Provisions that amend covenants contained in RUS Bulletins 1780-27 or 1780-28.
[Revision 2, 06/04/99]

(4) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) Assessment bonds. When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) Multiple debt instruments. The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

RUS Instruction 1780

§1780.95 Public bidding on bonds.

Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.

§§1780.96 - 1780.100 [Reserved]

SPECIMEN

UNITED STATES OF AMERICA
BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$630,000

No. AR-1

Date: October 19, 2009

FOR VALUE RECEIVED, BIRCH RIVER PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of SIX HUNDRED AND THIRTY THOUSAND DOLARS (\$630,000), plus interest on the unpaid principal balance at the rate of 4.125% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$2,741, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly

or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond is issued to (i) pay a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the existing public waterworks system of the Issuer, and (ii) to pay costs of issuance and related costs.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Resolutions and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 16, Article 13A of the

West Virginia Code, as amended (the "Act"), and a Resolution of the Borrower duly adopted October 15, 2009, authorizing issuance of this Bond (the "Resolution").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY, AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, WITH THE BORROWER'S WATER REVENUE BONDS, SERIES 1998 (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 5, 1998, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$434,000 (THE "SERIES 1998 BONDS" OR "PRIOR BONDS").

In accordance with the requirements of the United States Department of Agriculture, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IN WITNESS WHEREOF, BIRCH RIVER PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

[CORPORATE SEAL]

BIRCH RIVER PUBLIC SERVICE DISTRICT
(Name of Borrower)

Curtis E. Platts
(Signature of Executive Official)

Chairman:

P.O. Box 218
(P.O. Box No. or Street Address)

Birch River, West Virginia 26610
(City, State and Zip Code)

ATTEST:

14 [Signature]
(Signature of Attesting Official)

Secretary:

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
249,167.61			
(1) ~~\$258,668.60~~	October 19, 2009	(19)	
(2)		(20)	
(3)		(21)	
(4)		(22)	
(5)		(23)	
(6)		(24)	
(7)		(25)	
(8)		(26)	
(9)		(27)	
(10)		(28)	
(11)		(29)	
(12)		(30)	
(13)		(31)	
(14)		(32)	
(15)		(33)	
(16)		(34)	
(17)		(35)	
(18)		(36)	

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, 20____.

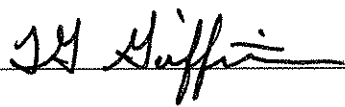
In the presence of:

BIRCH RIVER PUBLIC SERVICE DISTRICT
WATER REVENUE BONDS, SERIES 2009 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$630,000

REGISTRATION BOOKS

(No writing on these Books except by the Issuer as Registrar)

Bond No.	Date of Registration	In Whose Name Registered	Signature of Secretary of Registrar
AR-1	October 19, 2009	United States Department of Agriculture	



**STEPTOE &
JOHNSON**
P L L C
ATTORNEYS AT LAW

Chase Tower, Eighth Floor

P.O. Box 1588

Charleston, WV 25326-1588

(304) 353-8000 (304) 353-8180 Fax

www.steptoeljohnson.com

Writer's Contact Information

October 19, 2009

Birch River Public Service District
Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

Birch River Public Service District
Birch River, West Virginia

United States Department of Agriculture
Beckley, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Birch River Public Service District in Nicholas and Clay Counties, West Virginia (the "Issuer"), of its \$630,000 Water Revenue Bonds, Series 2009 A (United States Department of Agriculture) dated the date hereof (the "Bonds"), pursuant to Chapter 16, Article 13A of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Resolution duly adopted by the Issuer on October 15, 2009 (the "Bond Legislation"). We have examined the law and such certified copies of proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon the representations of the Issuer contained in the Bond Legislation and in the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The Issuer is duly created and validly existing as a public service district and as a public corporation and a political subdivision of the State of West Virginia with full power to adopt and enact the Bond Legislation, perform the agreements on its part contained therein and issue and sell the Bonds, all under the Act and other applicable provisions of law.
2. The Bond Legislation has been duly and effectively adopted and enacted by the Issuer and constitutes a valid and binding obligation of the Issuer enforceable upon the Issuer.
3. Pursuant to the Act, the Bond Legislation creates a valid lien on the funds pledged by the Bond Legislation for the security of the Bonds, on a parity with the Issuer's Water Revenue Bonds, Series 1998 (United States Department of Agriculture), dated October 5, 1998, issued in the original aggregate principal amount of \$434,000 (the "Series 1998 Bonds" or "Prior Bonds").

4. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and binding special obligations of the Issuer, payable solely from the sources provided therefor in the Bond Legislation.

5. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

6. The Bonds are, under the Act, exempt from taxation by the State of West Virginia, and the other taxing bodies of the State, and interest on the Bonds is exempt from personal income taxes and corporate net income taxes imposed directly thereon by the State of West Virginia.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Bond Legislation and the liens and pledges set forth therein may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that the enforcement thereof may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,


STEPTOE & JOHNSON PLLC

LAW OFFICE

Thomas R. Michael
ATTORNEY AT LAW
P.O. BOX 250
LOST CREEK, WEST VIRGINIA, 26385-0250

PHONE 304-745-5904

FAX 304-745-5907

EMAIL tom_michael@yahoo.com

October 19, 2009

Birch River Public Service District
Water Revenue Bonds, Series 2009 A
(United States Department of Agriculture)

Birch River Public Service District
Birch River, West Virginia

United States Department of Agriculture
Beckley, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to Birch River Public Service District, a public service district in Braxton, Nicholas and Clay Counties, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a resolution of the Issuer duly adopted October 15, 2009 (the "Resolution"), other documents and papers relating to the Issuer and the above-captioned Bonds of the Issuer (the "Bonds") and documents and orders of The County Commission of Nicholas County relating to the creation of the Issuer and the appointment of members of the Public Service Board of the Issuer. All capitalized terms used in the Resolution and not otherwise defined herein shall have the same meanings as defined in the Resolution when used herein.

I am of the opinion that:

1. The Issuer is duly created and validly existing as a public service district and as a public corporation and political subdivision of the State of West Virginia.

2. The members and officers of the Public Service Board of the Issuer have been duly, lawfully and properly appointed and elected, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

3. The Resolution has been duly adopted by the Issuer and is in full force and effect.

4. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds and the Resolution, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

5. All permits, licenses, approvals, consents, certificates, orders, exemptions and authorizations necessary for the due creation and valid existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges have been entered and/or received, including, without limitation, all requisite orders, certificates, consents and approvals from The County Commission of Nicholas County and the Public Service Commission of West Virginia, and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has duly published a notice of the acquisition and construction of the Project, the issuance of the Bonds and related matters, as required under Chapter 16, Article 13A, Section 25 of the West Virginia Code of 1931, as amended, and has duly complied with the provisions thereof.

6. 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 board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds or the Resolution, the acquisition and construction of the Project, the operation of the System, or the validity of the Bonds, or the collection or pledge of the Net Revenues therefor.

Very truly yours,

A handwritten signature in black ink, reading "Thomas R. Michael". The signature is written in a cursive, flowing style.

THOMAS R. MICHAEL, ESQUIRE

02.16.09
073720.00001

CH4909779.1

WV MUNICIPAL BOND COMMISSION

8 Capitol Street
Terminal Building, Suite 500
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORMDate of Report: 19-Oct-09

ISSUE: Birch River Public Service District
Water Revenue Bonds, Series 2009 A (United States Department of Agriculture)

ADDRESS: P.O. Box 218, Birch River, West Virginia 26610 COUNTY: Nicholas

PURPOSE OF ISSUE:New Money: x

Refunding: _____

REFUNDS ISSUE(S) DATED: NAISSUE DATE: 19-Oct-09CLOSING DATE: 19-Oct-09ISSUE AMOUNT: \$630,000RATE: 4.125%1ST DEBT SERVICE DUE: NA1ST PRINCIPAL DUE NA1ST DEBT SERVICE AMOUNT NAPAYING AGENT: Issuer**BOND COUNSEL:**

Firm: Stephoe & Johnson PLLC
Contact: John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL

Firm: _____
Contact: _____
Phone: _____

CLOSING BANK:

Bank: United Bank, Inc
Contact: _____
Phone: _____

ESCROW TRUSTEE:

Firm: _____
Contact: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT

Contact: T.G. Griffith
Position: Secretary
Phone: (304) 332-5367

OTHER:

Agency: United States Department of Agriculture
Contact: Teresa A. Miller
Position: Rural Development Specialist
Phone: (304) 253-9597

DEPOSITS TO MBC AT CLOSE

By: _____	Wire	Accrued Interest:	\$ _____
_____	Check	Capitalized Interest:	\$ _____
_____		Reserve Account:	\$ _____
_____		Other:	\$ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE

By: _____	Wire	To Escrow Trustee	\$ _____
_____	Check	To Issuer	\$ _____
_____	IGT	To Cons. Invest. Fund	\$ _____
_____		To Other:	\$ _____

NOTES: Monthly debt service payments will be made by the District directly to the National Finance Office.
The Municipal Bond Commission will only hold the Series 2009 A Reserve Account. The first payment into the Reserve Account is due 24 months from the date of closing.

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS REQUIRED: _____
TRANSFERS REQUIRED: _____