

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF POSSIBLE	)	
VACANCY ON THE BOARD OF	)	CASE NO.
COMMISSIONERS OF BIG SANDY WATER	)	2019-00187
DISTRICT	)	

ORDER

By letter dated September 12, 2018, the Boyd County Judge Executive, Steve Towler, informed the Commission that there was a vacancy on the Big Sandy Water District Board of Commissioners as a result of the expiration of the term of Larry Shockey on September 9, 2018.<sup>1</sup> Mr. Towler indicated that he had appointed a water district commissioner to fill Mr. Shockey's seat on the board but that Boyd Fiscal Court had thus far refused to approve his recommendation. By a letter dated December 7, 2018, the Boyd County Attorney, Daniel King III, informed the Commission that Mr. Shockley's seat on the board of the Big Sandy Water District had not been filled.<sup>2</sup> However, Mr. King noted that a new county judge/executive and three new county commissioners were scheduled to take office in January 2019 and requested that the Commission forgo any action to fill the vacancy on the board of the Big Sandy Water District until they had a chance to convene and discuss the matter. Mr. Shockley's seat on the Big Sandy Water District Board of Commissioners remains vacant.

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<sup>1</sup> A copy of the letter is attached as part of Appendix A.

<sup>2</sup> A copy of the letter is attached as part of Appendix A.

KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

Here, based on the information received from the former county judge/executive and the county attorney, the position on the Big Sandy Water District Board of Commissioners vacated by Mr. Shockley was not filled within 90 days following the expiration of his term. If the vacancy has remained unfilled for more than 90 days, the Commission has exclusive authority to fill the position pursuant to KRS 74.020(4). Accordingly, the Commission finds that this proceeding should be initiated to confirm that a vacancy did exist for more than 90 days on the Big Sandy Water District Board of Commissioners and, if so, to fill the position.

The Commission will make Big Sandy Water District a party to this case and request that it provide certain information, which is set forth in a data request attached hereto as Appendix B. The Commission also will request, by separate letter, that the Marshall County Clerk file copies of the meeting minutes of the Boyd County Fiscal Court appointing the Commissioner whose term reportedly expired on September 7, 2018. If the Commission finds that a vacancy existed for more than 90 days, we will then proceed to identify qualified candidates for appointment to those positions.

To ensure that a wide range of candidates are considered, the Commission will permit all interested persons the opportunity to nominate candidates for the position(s) and will then determine whether each of these candidates meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates that meet these requirements, which is best suited to sit on the Big Sandy Water District Board of Commissioners. The Commission also will direct that a copy of this Order be served upon the Boyd County Judge/Executive, the Boyd County Fiscal Court, the Boyd County Attorney, and Big Sandy Water District's Board of Commissioners to notify them of this proceeding.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether a vacancy existed on the Big Sandy Water District's Board of Commissioners for more than 90 days.
2. Big Sandy Water District is made a party to this proceeding.
3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.
4.
  - a. The information requested in Appendix B to this Order is due within 14 days of entry of this Order. Responses to requests for information shall be appropriately bound, tabbed, and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record, and the original and five copies to the Commission.
  - b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person

supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. A party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party refuses to furnish all or part of the requested information that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. A party filing a document containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the document so that personal information cannot be read.

5. Service of all documents shall be made in accordance with 807 KAR 5:001, Section 4(8).

6. The Executive Director shall serve a copy of this Order upon the Boyd County Judge/Executive, the members of the Boyd County Fiscal Court, the Boyd County Attorney, and the Big Sandy Water District's Board of Commissioners.

By the Commission



ATTEST:

A handwritten signature in blue ink, appearing to read "Owen R. Purson". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director

Case No. 2019-00187

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2019-00187 DATED **JUL 10 2019**

ONE PAGE TO FOLLOW



# BOYD COUNTY FISCAL COURT



STEVE W. TOWLER, Judge Executive

C. PHILLIP HEDRICK  
County Attorney

JOHN R. GREER  
County Commissioner  
District 1

TOM JACKSON  
County Commissioner  
District 2

CARL TOLLIVER  
County Commissioner  
District 3

ED RADJUNAS  
Deputy Judge Executive

PATRICIA A. BALL  
County Treasurer

VALERIE N. SMITH  
Economic Development

September 12, 2018

Gwen R. Pinson, Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Blvd.  
Frankfort, KY 40602-0615

RECEIVED

SEP 17 2018

PUBLIC SERVICE  
COMMISSION

RE: Big Sandy Water District  
Notice of Vacancy

Dear Ms. Pinson,

Notice is hereby given that as of September 9, 2018, there is a vacancy on the Big Sandy Water District Board of Commissioners as a result of the expiration of the term of Mr. Larry Shockey. I have made a recommendation to the Boyd Fiscal Court yesterday, September 11, as to an appointment to fill the aforesaid vacancy and the court failed to approve the recommendation. It is therefore anticipated the vacancy will not be filled within the ninety (90) days following the creation of the vacancy thus requiring action by the Public Service Commission to fill the vacancy per KRS 74.020 (4).

Big Sandy Water District is located at 18200 State Route 3, Catlettsburg, KY 41129. The District's phone number is (606) 928 2075.

Thank you.

Steve Towler  
Boyd County Judge Executive

Cc: Big Sandy Water District  
18200 State Route 3  
Catlettsburg, KY 41129

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00187 DATED **JUL 10 2019**

1. List the name of each current Big Sandy Water District Commissioner and the date on which their term expires.
2. Provide a map of Big Sandy Water District's territory.
3. Provide the ordinances and resolutions of Boyd County Fiscal Court that establish North Marshall Water District's territorial boundaries.
4. Provide all orders of the Boyd County Judge/Executive that address the appointments to the Big Sandy Water District's current Board of Commissioners.
5. Provide all orders of the Boyd County Judge/Executive that address appointments to the Big Sandy Water District Board of Commissioners to replace the commissioner whose term allegedly expired on September 7, 2017.
6. Provide all correspondence with the Boyd County Judge/Executive regarding the expiration of the term of the commissioner whose term allegedly expired on September 7, 2018.



\*Big Sandy Water District  
18200 Kentucky Route #3  
Catlettsburg, KY 41129

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Catlettsburg, KY 41129