

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOE CONLEY)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2007-00373
)	
MAGOFFIN COUNTY WATER)	
DISTRICT AND RANDALL HARDIN)	
)	
DEFENDANTS)	

O R D E R

On August 13, 2007, Joe Conley filed a formal complaint against Magoffin County Water District ("Magoffin District") in which he alleges that Magoffin District Commissioner Randall Hardin is ineligible to serve as a member of Magoffin District's Board of Commissioners because his residence is not within the water district's territory. The Commission, on its own motion, included Mr. Hardin as a defendant in the case.¹ Magoffin District filed a motion to dismiss on March 3, 2008.

Magoffin District, a water district organized under KRS Chapter 74, owns and operates facilities that distribute water to approximately 3,395 customers in Magoffin and Floyd counties.²

¹ Order of August 22, 2007 at 1.

² Report of Magoffin County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2006, at 47.

On March 8, 2007, Magoffin County Judge/Executive Charles Hardin appointed Randall Hardin to the Magoffin District Board of Commissioners and Magoffin County Fiscal Court approved this appointment. Mr. Hardin's term expires on February 28, 2009.³ Mr. Hardin resides at 403 Bluegrass Road, Salyersville, Kentucky.

The Commission may remove a water district board member for good cause.⁴ KRS 74.020(1)(a) requires that all members of a water district's board of commissioners "be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established."⁵ If a water district commissioner's residence does not comply with this statutory requirement, the Commission has good cause to remove that commissioner.

Mr. Conley has provided the Commission with an order of the Magoffin County Court, which delineates the territory of the district as of November 2, 1974. This order provides that the Magoffin District's territory consists of "[a]ll that land in Magoffin County, Kentucky, lying outside the present city limits of the City of Salyersville, Kentucky." The parties have not provided nor has the Commission found any additional orders of the Magoffin County Judge/Executive that amend Magoffin District's boundaries.

³ See Magoffin District's Response to Commission Staff's Data Request at 24 (filed Nov. 8, 2007).

⁴ KRS 74.455.

⁵ There is no statutory requirement that a commissioner's residence is served by the water district of which he is a board member. See Ky. OAG 84-228 (1984).

Mr. Conley and Mr. Hardin have admitted no knowledge of Salyersville's boundaries as of November 2, 1974. The Commission has located correspondence from the Salyersville City Clerk that indicates that Salyersville's boundaries remained unchanged from March 10, 1934 to December 24, 1979.⁶

The Commission has located a Kentucky Department of Transportation map, last updated on June 18, 1973, that traces Salyersville boundaries and shows Bluegrass Road as outside those boundaries.⁷ This map was also used as a base for a map included in the Regional Comprehensive Water and Sewer Plan for the Big Sandy Area Development District from 1973. This water system map was prepared by Howard K. Bell, Consulting Engineers, Inc. in November 1972.⁸ Both maps reflect the same boundaries for Salyersville.

As the complainant, Mr. Conley bears the burden of proof.⁹ To date, he has not produced any information to demonstrate that Mr. Hardin resides outside Magoffin

⁶ Letter from Carlotta Howard, Salyersville City Clerk, to Secretary of State (April 13, 1981)(copy attached as Appendix A).

⁷ Map of Kentucky Department of Transportation attached as Appendix B.

⁸ Regional Comprehensive Water and Sewer Plan and E-mail from Jane Minder, Reference Librarian, Ky. Department for Libraries and Archives, to Gerald Wuetcher, Assistant General Counsel, Public Service Commission (Feb. 15, 2008) attached as Appendix C.

⁹ See East Clark County Water Dist. v. City of Winchester, Case No. 2005-00322 at 2 (Ky. P.S.C. Apr. 3, 2006).

District's territory and is thus ineligible to serve on Magoffin District's Board of Commissioners.¹⁰

After review of the maps that are appended to this Order, the Commission makes the following preliminary findings:

1. Magoffin District is a water district organized under KRS Chapter 74.
2. KRS 74.020(1)(a) requires all members of a water district's board of commissioners to "be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established."
3. Randall Hardin is a member of the Magoffin District Board of Commissioners.
4. Mr. Hardin resides at 403 Bluegrass Road, Salyersville, Kentucky.
5. Magoffin District's territory includes all land in Magoffin County lying outside Salyersville's boundaries as of November 2, 1974.¹¹
6. On November 2, 1974, Bluegrass Road was located outside Salyersville's boundaries and within Magoffin County.

¹⁰ In its motion to dismiss, Magoffin District cites and attaches an order of February 14, 2008 of the Magoffin County Fiscal Court that would establish Magoffin District's boundaries as they existed on November 2, 1974. The order, however, is ineffective to establish those boundaries for two reasons. First, the geographical coordinates detailing the boundaries are located in Knott County and not Magoffin County. Second, a fiscal court does not have the authority to make factual findings, such as the previous boundaries of a water district, with respect to events that have previously occurred. Since the proposed boundaries would include portions of Salyersville, the city's consent must also be obtained before the proposed boundaries can be made effective.

¹¹ Magoffin District has also represented that it has territory in Floyd County, but did not provide any orders of the Floyd County Judge/Executive that identify those territorial boundaries.

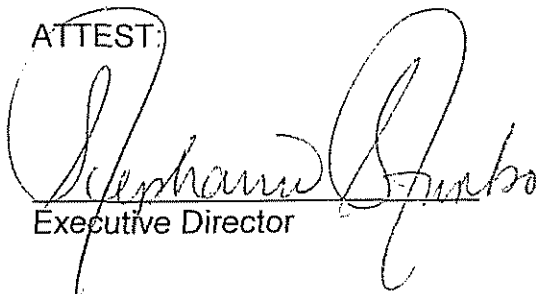
7. Bluegrass Road currently lies within Magoffin District's territory.
8. Mr. Hardin resides within Magoffin District's territory and is eligible to serve as a member of Magoffin District's Board of Commissioners.

IT IS THEREFORE ORDERED that:

1. All parties shall have 15 days from the date of this Order to file written objections to the preliminary findings set forth above. Such objections shall clearly state the basis for each objection and shall be accompanied by supporting documentary evidence.
2. Failure to submit an objection to these findings shall be deemed as a waiver of any objection to these findings.

Done at Frankfort, Kentucky, this 24th day of March, 2008.

By the Commission

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00373 DATED MARCH 24, 2008

City of Salyersville

SALYERSVILLE, KY. 41465

606/349-2409

SECRETARY OF STATE
RECEIVED

APR 15 1981

COMMONWEALTH OF KENTUCKY

To: Secretary of State
From: Salyersville City Clerk
Date: April 13, 1981
Subject: Updating Incorporation

In compliance with KRS 81.045 (SB 22), the City of Salyersville respectfully submits the following documents for upgrading of our incorporation records.

1) Name of City

The City of Salyersville was originally given the name of Adamsville in honor of "Uncle Billy Adams," one of the original pioneers who donated the land where the first Magoffin County Courthouse was built. Later, when Samuel Salyer was serving as a State Legislator, the name of the town was changed to Salyersville. The exact date of these transitions is unknown.

2) Date of Incorporation

March 2, 1867, is the date which is recorded in the Acts of the General Assembly when Salyersville was chartered a town. However, records in the County Court Clerk's office indicate the original town plat was on file as early as October 5, 1866, at the time the courthouse was erected. Magoffin County was created in 1860 and some records speak of Salyersville as early as 1858, although I have been unable to find any evidence to verify this.

3) Present Classification

Salyersville is a Fourth Class City with the 1980 census showing a population of 1,352.

4) Present Boundaries

We have had three annexations to the City since it was originally created. The first annexation bore no date, but listed a total population of only 450. The second annexation was dated March 10, 1934. Our latest territory to be annexed was on December 24, 1979, and is reflected on the map which I have enclosed.

I do hope this will satisfy the requirements in meeting SB 22, but if more information is needed, please contact me.

Sincerely,

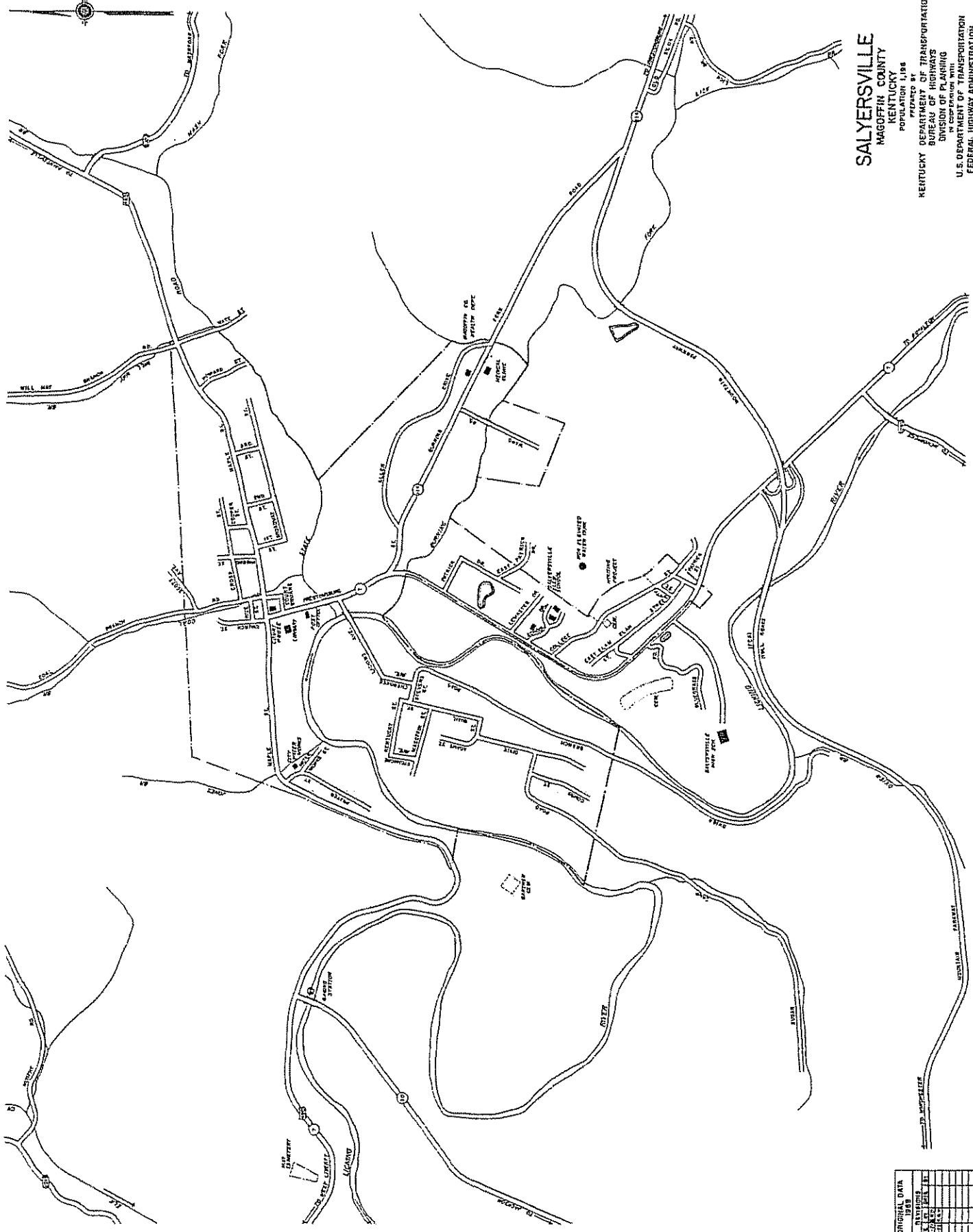
Carlotta Howard
Carlotta Howard
City Clerk

Magoffin County

Estab. Feb 22, 1860 by Acts

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00373 DATED MARCH 24, 2008



SALYERSVILLE
 MAGOFFIN COUNTY
 KENTUCKY

POPULATION 1,184
 PREPARED BY
 KENTUCKY DEPARTMENT OF TRANSPORTATION
 BUREAU OF HIGHWAYS
 DIVISION OF PLANNING
 IN COOPERATION WITH
 U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION

ORIGINAL DATA
 1958

REVISIONS	DATE	BY

UNITS: METERS AND KILOMETERS OF DISTANCES BY
 1:25,000 AND 1:50,000 SCALE MAPS

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00373 DATED MARCH 24, 2008

Osterloh, Todd (PSC)

From: Wuetcher, Jerry (PSC)
Sent: Friday, February 15, 2008 1:25 PM
To: Osterloh, Todd (PSC); Rowles, Ruth A (PSC)
Subject: FW: Map of Salyersville

Attachments: SCN_20080215081602_001.pdf

From: Minder, Jane (KDLA)
Sent: Friday, February 15, 2008 9:35 AM
To: Wuetcher, Jerry (PSC)
Subject: Map of Salyersville

Mr. Wuetcher,

Attached is a copy of a 1972 map showing the boundaries of Salyersville. I was able to locate it in a 1973 plan for water and sewer improvements in that area. I hope these dates are close enough to your 1974 request.

As the last page notes it is based on the a Highway Department map. Unfortunately I could not locate that map so I hope the one showing the water system will do.



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602_001.pdf (84...

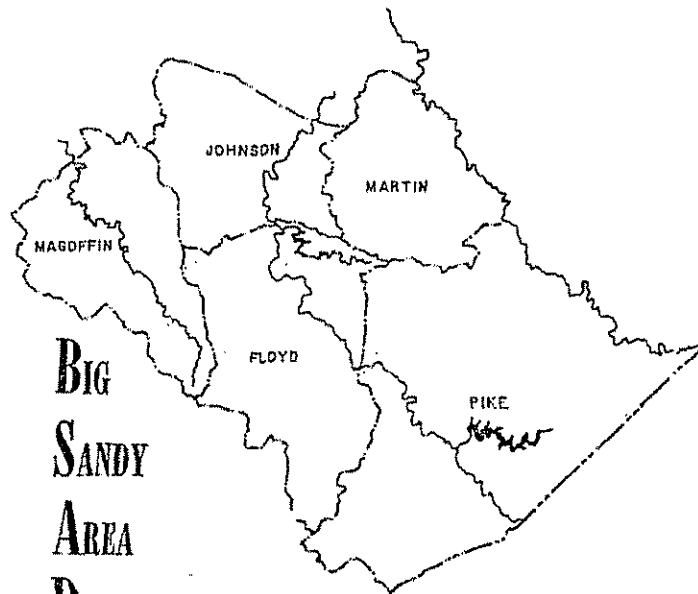
The scanned image here had to be reduced. I am going to send you a full size copy through messenger mail.

I hope this is helpful in your research. Thank your for using Ask-a-Librarian,

Jane Minder
Reference Librarian
State Library Services
KY Dept. for Libraries and Archives
Ask a Librarian: <http://www.kdla.ky.gov/research/asklib.htm>

73 564

REGIONAL COMPREHENSIVE WATER AND SEWER PLAN



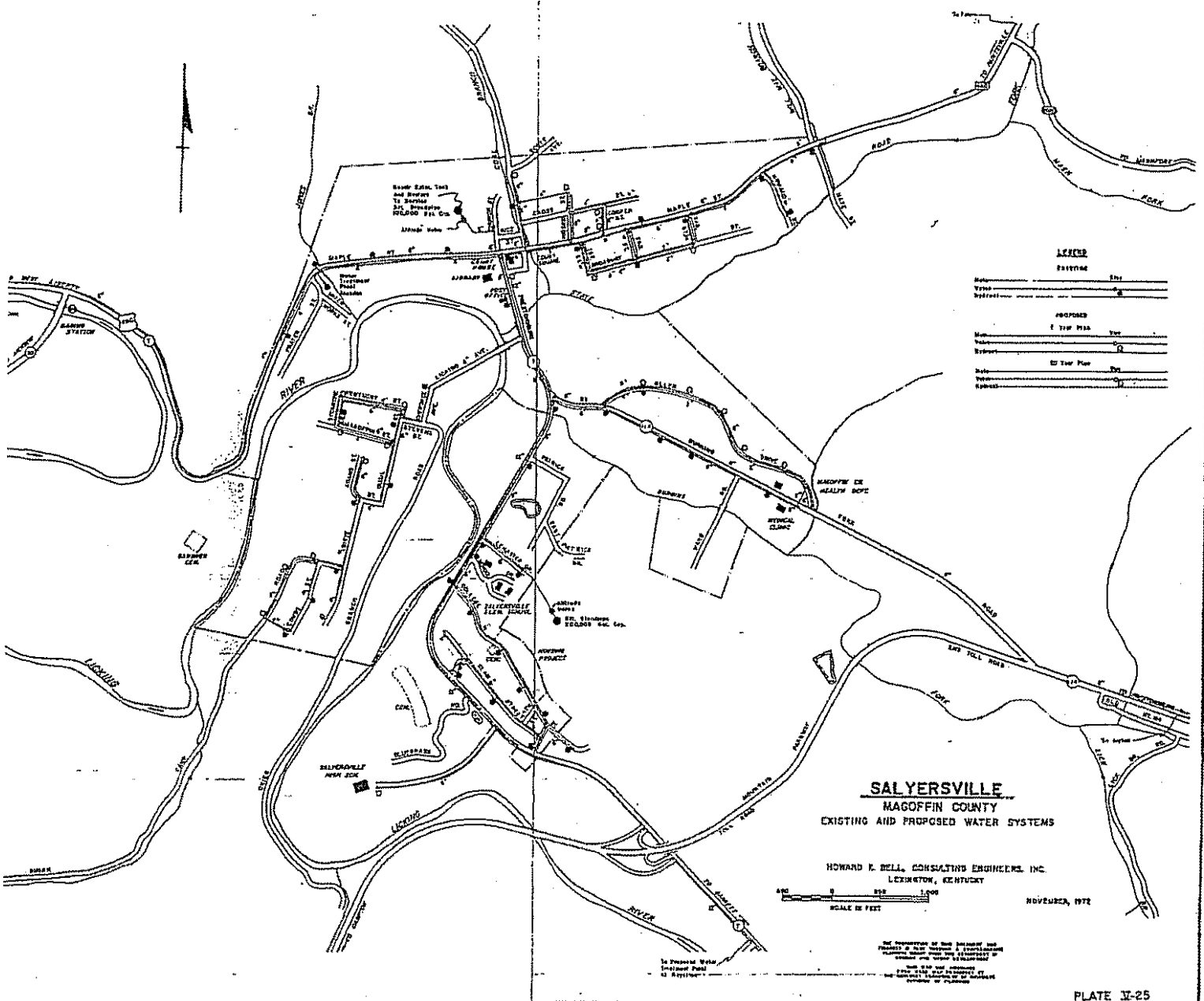
**BIG
SANDY
AREA
DEVELOPMENT
DISTRICT**

DIVISION OF ARCHIVES AND RECORDS
DEPARTMENT OF LIBRARY AND ARCHIVES
851 EAST MAIN STREET
FRANKFORT, KENTUCKY 40601

HOWARD K. BELL, CONSULTING ENGINEERS, INC.
LEXINGTON, KENTUCKY

1973

✓



LEGEND

EXISTING	
Water	—
Sanitary	—
Storm	—

PROPOSED	
Water	—
Sanitary	—
Storm	—

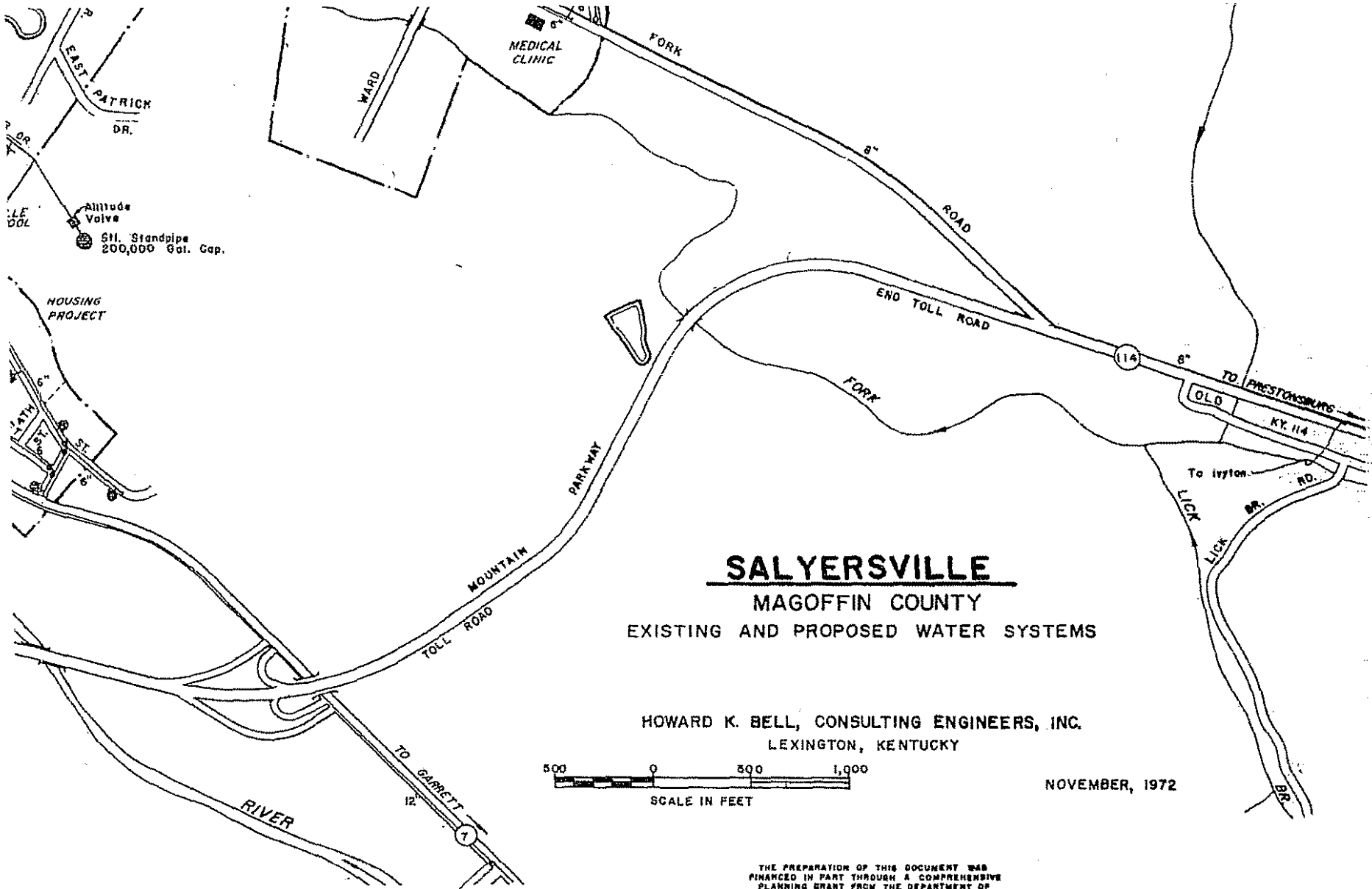
SALYERSVILLE
 MAGOFFIN COUNTY
 EXISTING AND PROPOSED WATER SYSTEMS

HOWARD F. BELL, CONSULTING ENGINEERS, INC.
 LEXINGTON, KENTUCKY



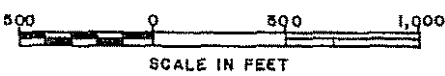
NOVEMBER, 1972

The representation of lines, symbols and figures on this plan is for information only and does not constitute a contract. The engineer assumes no responsibility for the accuracy of the information shown on this plan. The user of this plan assumes all responsibility for the accuracy of the information shown on this plan.



SALYERSVILLE
MAGOFFIN COUNTY
 EXISTING AND PROPOSED WATER SYSTEMS

HOWARD K. BELL, CONSULTING ENGINEERS, INC.
 LEXINGTON, KENTUCKY



NOVEMBER, 1972

To Proposed Water
 Treatment Plant
 At Royallon

THE PREPARATION OF THIS DOCUMENT WAS
 FINANCED IN PART THROUGH A COMPREHENSIVE
 PLANNING GRANT FROM THE DEPARTMENT OF
 HOUSING AND URBAN DEVELOPMENT

THIS MAP WAS PREPARED
 FROM BASE MAP FURNISHED BY
 THE KENTUCKY DEPARTMENT OF HIGHWAYS
 DIVISION OF PLANNING