

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST OF BREATHITT COUNTY WATER )  
DISTRICT TO ESTABLISH AN EMERGENCY ) CASE NO.  
RATE TO THE CITY OF BUCKHORN ) 2010-00035  
PURSUANT TO KRS 278.170 )

O R D E R

Breathitt County Water District ("Breathitt District") has applied for authorization to charge a reduced rate for wholesale water service to the city of Buckhorn ("Buckhorn") based on a water shortage emergency. Finding that the action in question is consistent with KRS 278.170(2), the Commission grants the application.

Breathitt District, a water district organized pursuant to KRS Chapter 74, distributes water to approximately 516 customers in Breathitt County.<sup>1</sup> It is a utility subject to the Commission's jurisdiction.<sup>2</sup>

Buckhorn, a city of the sixth class,<sup>3</sup> is located in northern Perry County and purchases its water supply for resale from the city of Hazard ("Hazard"). On December 19, 2009, a rock and mud slide damaged water mains in Hazard's water

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<sup>1</sup> Annual Report of Breathitt County Water District to the Public Service Commission of Kentucky for the Year Ending December 31, 2008 at 5 and 27.

<sup>2</sup> KRS 278.015.

<sup>3</sup> KRS 81.010(6).

distribution system.<sup>4</sup> In the following weeks, the condition of Hazard's water mains further deteriorated, forcing Hazard to temporarily discontinue water service to Buckhorn.<sup>5</sup> On January 6, 2010, Governor Beshear declared a state of emergency for Hazard and Perry County.<sup>6</sup>

To restore water service to the residents of Buckhorn, Buckhorn entered into an emergency agreement with Breathitt District on January 13, 2010, by which it would purchase water from Breathitt District for \$2.50 per 1,000 gallons for the duration of the emergency. A service connection was established on January 17, 2010. Three days later, Breathitt District notified the Commission of service being rendered.<sup>7</sup>

Breathitt District currently charges a rate of \$9.95 per 1,000 gallons to all customers. It does not have a rate for wholesale water service. KRS 278.160(2) prohibits a utility from charging or collecting "from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed rate schedules." KRS 278.170(2), however, permits a utility to "grant free or reduced rate service for the purpose of providing relief in the case of flood, epidemic, pestilence or other calamity." While a utility must generally notify the

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<sup>4</sup> Dori Hjalmarson, *Buckhorn, Vicco Lose Water Service as Perry County Emergency Continues*, Lexington Herald-Leader, Jan. 6, 2010, available at 2010 WL 204518.

<sup>5</sup> Dori Hjalmarson, *Workers Find and Fix Major Leak*, Lexington Herald-Leader, Jan. 7, 2010, available at 2010 WL 283220.

<sup>6</sup> Exec. Order 2010-026, Jan. 6, 2010, available at <http://apps.sos.ky.gov/Executive/Journal/ejimages/2010-MISC-2010-0026-206619.pdf>.

<sup>7</sup> The initial notification was received via facsimile by the Commission's General Counsel's Office on January 20, 2010. A copy of the facsimile is attached as an appendix to this Order.

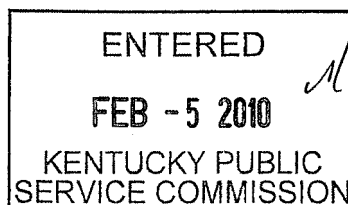
Commission and obtain its agreement prior to providing free or reduced-rate service, it may do so without Commission approval in the case of an emergency. Where service is provided in response to an emergency without prior Commission approval, the utility must notify the Commission within five days after rendering the service.

In the present case, the Commission finds that Breathitt District has complied with KRS 278.170(2) and is authorized to provide emergency service to Buckhorn at a reduced rate of \$2.50 per 1,000 gallons. Breathitt District acted to provide relief to Buckhorn and its residents after state and local officials had declared a state of emergency. The lack of water to hundreds of individuals posed potential health risks and significant public hardship. Breathitt District acted in response to an emergency and provided timely notice to this Commission of the reduced rate.

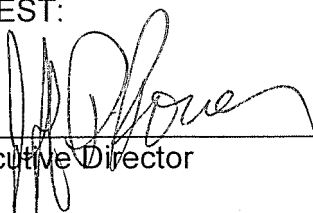
IT IS THEREFORE ORDERED that:

1. Breathitt District is authorized to charge a reduced rate of \$2.50 per 1,000 gallons for emergency water service to Buckhorn.
2. The reduced rate shall be effective only during the emergency, as specified in the contract between the parties.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2010-00035 DATED FEB - 5 2010



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FACSIMILE TRANSMITTAL SHEET

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TO:  
General Counsel

FROM:  
Shannon Moore

COMPANY:

DATE:  
1/20/2010

FAX NUMBER:  
502-564-7279

TOTAL NO. OF PAGES INCLUDING COVER:  
5

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

YOUR REFERENCE NUMBER:

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URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

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NOTES/COMMENTS:

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1137 Main Street, Suite 305, Jackson, KY 41339  
Phone (606)-666-3800 ext. 250  
Fax (606)-666-2860  
e-mail [breathittwater@yahoo.com](mailto:breathittwater@yahoo.com)



# Breathitt County

*Making Breathitt County*

## Water District

A Better Place One Drop at a Time.

January 19, 2010

Public Service Commission  
Jeff Derouen  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602

Dear Mr. Derouen:

This letter is to inform the Public Service Commission of a Declaration of Emergency that was proclaimed by Governor Brashear for the City of Hazard and Perry County. The City of Hazard is unable to supply their customer water at this time due to major leaks. They have shut off supply to the northern part of Perry County until problems can be resolved. The Village of Buckhorn is in northern Perry County and borders the southern end of Breathitt County. The Village of Buckhorn supplies approximately 300 residences including a K-12 school, a state resort park, and a children's home.

Due to the current water situation in this community, it has been without water for four weeks. In an effort to help our fellow Kentuckians within Perry and Breathitt Counties, we have made an emergency connection between Breathitt County Water District and the Village of Buckhorn. This emergency connection was established on January 17, 2010 with EPA approval and observer on site to oversee the connection to ensure safety on both systems. We insure the Commission that this will not affect any of the existing customers of Breathitt County Water District. This connection was made in compliance with KRS 278.170 Section 2 which state that an emergency supply can be made without Commission approval withstanding a letter within five days of connection.

Breathitt County Water District held an emergency meeting to approve this contract between the two systems for an emergency connection. Because the Breathitt County Water District does not have a wholesale rate established with the Commission, the BCWD Board voted and approved to sell water at a rate \$2.50 per thousand gallons. We are confident that this price will cover all cost incurred to supply water to these residence.

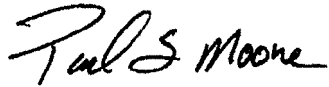
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1137 Main Street, Suite 305, Jackson, KY 41339  
Phone (606) 666-3800 ext. 250  
Fax (606) 666-2860  
Email [breathittwater@yahoo.com](mailto:breathittwater@yahoo.com)

Attached is copy of sale agreement between our two systems.

Please feel free to contact me at your convenience if you have any questions or concern regarding this situation in our community.

Sincerely,

A handwritten signature in black ink that reads "Paul S. Moore". The signature is written in a cursive style with a large initial "P" and "M".

Paul S. Moore, Superintendent  
Breathitt County Water District

## **WATER PURCHASE CONTRACT**

This Water Purchase Contract for the sale and purchase of potable water is entered into as of the 13<sup>th</sup> day of January, 2010, between the BREATHITT COUNTY WATER DISTRICT, a governmental entity organized and established under KRS Chapter 74, et. Seq., of 1137 Main Street, Jackson, Kentucky 41339, hereinafter referred to as the "Seller" and the VILLAGE of BUCKHORN, KENTUCKY, a Kentucky Municipal Body, of Buckhorn, Kentucky 41721, hereinafter referred to as the "Buyer,"

### **WITNESSETH**

**Whereas**, an Emergency Situation has arisen in the supply of potable water available to the Buyer, due to a disruption in service to Buyer from it's current supplier, the City of Hazard, and the Buyer is in need of temporarily purchasing water for supply to its customers from the Seller, until full service is restored by the City of Hazard, and

**Whereas**, the Seller owns and operates a water supply and distribution system with a capacity currently capable of serving the present customers of the Seller's system and the number of water users to be served by the said Buyer during the duration of this emergency situation, and

**Whereas**, by vote of the Breathitt County Water District Board of Commissioners, at a duly called emergency meeting held on January 5, 2010, did approve the sale of water to the Buyer in accord with the terms set forth below, and did authorize the Chairman to execute this document; and

**Whereas**, the City Counsel of the Village of Buckhorn by vote of the majority of the Council, at a duly called meeting held on January \_\_\_\_\_, 2010, did authorize the purchase of water to the Seller in accord with the terms set forth below, and the did authorize the Mayor to execute this document; and

**Now, therefore**, in consideration of the foregoing and the mutual agreements hereinafter set forth,

**THE SELLER AGREES to sell unto the BUYER and the BUYER agrees to purchase from the SELLER the water needed to supply its system and customers throughout the duration of the Emergency Situation (until full service is restored by the City of Hazard, or other supply arrangements are made), at the rate of \$2.50 per thousand gallons.**

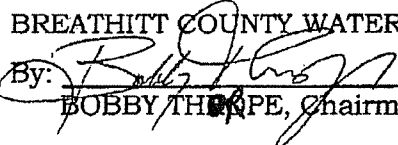


Further, it is understood by the parties that if the provision of water to the Buyer by Seller during this Emergency Situation, results in the inability of the Seller to provide service to its current customers at the current supply level and quality, then the Seller has the option to limit or end the supply of water to the Buyer after giving a minimum of three (3) days notice to the Buyer.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in six (6) counterparts, each of which shall constitute an original.

Seller:

BREATHITT COUNTY WATER DISTRICT

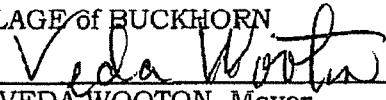
By:   
BOBBY THORPE, Chairman

Attest:

By: \_\_\_\_\_  
EVA FUGATE, Secretary

Buyer:

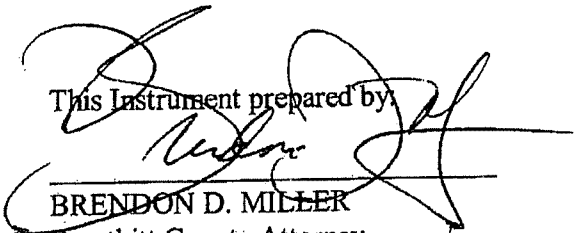
VILLAGE of BUCKHORN

By:   
VEDA WOOTON, Mayor

Attest:

By:   
ROBIN GABBARD, City Clerk

This Instrument prepared by

  
BRENDON D. MILLER  
Breathitt County Attorney  
1149 Main Street  
Jackson, Kentucky 41339

Paul Shannon Moore  
Superintendent  
Breathitt County Water District  
1137 Main Street  
Suite 305  
Jackson, KY 41339