

**CRAWFORD & BAXTER, P.S.C. RECEIVED**

ATTORNEYS AT LAW  
523 Highland Avenue  
P.O. Box 353  
Carrollton, Kentucky 41008

JUN 30 2005  
PUBLIC SERVICE  
COMMISSION

James M. Crawford  
Ruth H. Baxter  
Elizabeth Chandler Lester

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June 29, 2005

\*\* Overnight Mail \*\*

Commonwealth of Kentucky  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

RE: Howard B. Keen vs. Carroll County Water District #1  
Case No. 2004-00348

Dear Public Service Commission:

Enclosed you will find the original and ten (10) copies of the following documents for filing with regard to the above styled case:

1. Direct Testimony of James L. Smith;
2. Direct Testimony of Fred Marsh; and,
3. Direct Testimony of Bobby Noble.

Sincerely,

CRAWFORD & BAXTER, P.S.C.

  
Ruth H. Baxter

RHB/dmp

Enclosures

cc: Hon. William K. Fulmer, II (w/enclosures)  
Mr. James L. Smith, Manager, CCWD #1, (w/enclosures)

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
JUN 30 2005  
PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

HOWARD B. KEEN )

COMPLAINANT )

VS. )

CASE NO. 2004-00348

CARROLL COUNTY WATER DISTRICT NO. #1 )

DEFENDANT )

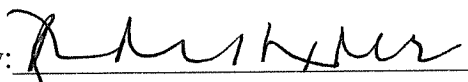
**DIRECT TESTIMONY OF JAMES L. SMITH**  
**ON BEHALF OF CARROLL COUNTY WATER DISTRICT #1**

\*\* \*\* \* \* \* \* \*

RESPECTFULLY SUBMITTED,

CRAWFORD & BAXTER, P.S.C.  
ATTORNEYS AT LAW  
523 Highland Avenue  
P.O. Box 353  
Carrollton, Kentucky 41008  
Phone: (502) 732-6688  
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E-mail Address: CBJ523@aol.com

Attorneys for Defendant  
Carroll County Water District #1

By:   
Ruth H. Baxter

1 Q. Please state your name and business address.

2 A. My name is James L. Smith. My business address in P.O. Box 350, Ghent, Kentucky  
3 41045.

4 Q. Who is your employer and what is your job title?

5 A. I have been the Manger of the Carroll County Water District #1 since 1994.

6 Q. What is the purpose of your testimony?

7 A. In my testimony, I will discuss my dealings with Howard Keen in regard to the so-  
8 called "Fairview Road Water Line Extension", and my attempts to obtain an  
9 easement from him.

10 Q. Are you familiar with the so-called "Fairview Road Water Line Extension"?

11 A. Yes, I am personally familiar with the project.

12 Q. Was a public meeting held in regard to the so-called "Fairview Road Water Line  
13 Extension"?

14 A. Yes, after engineering was completed on the waterline, a public meeting was held  
15 early in 2003 at the Fitzgerald Restaurant on Highway #355 near Fairview in Owen  
16 County, Kentucky.

17 Q. What was the purpose of the public meeting?

18 A. The meeting was held to answer questions about the waterline extension and to  
19 request easements from property owners.

20 Q. Who was present at the public meeting on behalf of the Carroll County Water District  
21 #1?

22 A. I was present together with Fred Marsh of Sieco-Strand Engineers. Sieco-Strand  
23 Engineers provided the engineering for the project. Mr. Fred Marsh was the Project

1           Manager.

2    Q.    Who else was present at the public meeting?

3    A.    Several land owners and residents living along the route of the proposed Fairview  
4           Road Water Line Extension were present together with Mr. Howard Keen. I spoke  
5           generally to everyone present about the proposed waterline and the need for  
6           easements.

7    Q.    Did anyone speak personally and directly to Mr. Keen that afternoon about the  
8           Fairview Road Water Line Extension?

9    A.    Yes, Mr. Fred Marsh spoke directly to Mr. Keen about the project and obtaining an  
10           easement from him to run the water line along the same side of Clay Lick Road as  
11           Mr. Keen's property is located.

12   Q.    Did you ever speak personally and directly to Mr. Keen about the project and  
13           obtaining an easement from him?

14   A.    Yes, several days after the public meeting, I spoke by phone to Mr. Keen.

15   Q.    What was discussed in that phone conversation?

16   A.    I spoke directly with him about the route of the proposed waterline extension. I  
17           explained that the water district needed to obtain an easement from him to run the  
18           waterline along the same side of Clay Lick Road as his property is located. I  
19           explained to Mr. Keen the likely additional cost to the water district and to him if he  
20           refused to grant the water district an easement and the waterline extension had to be  
21           run along the opposite side of Clay Lick Road from where his property is located.  
22           I explained to him that if the waterline was run on the opposite side of Clay Lick

1 Road the water district would have to bore back under the road to provide him  
2 service and that there would be additional costs incurred by him.

3 Q. What response did Mr. Keen have to your explanation?

4 A. Mr. Keen said that he guessed he would just have to pay the additional costs if that  
5 was required. He said he would not grant the water district an easement because he  
6 was afraid there would be damage during construction to an old cistern/well located  
7 on his property.

8 Q. What response to his concern about the cistern/well did you make, if any?

9 A. I explained that I did not believe there would be any damage to his cistern/well by  
10 construction, and we could possibly cross the road at a different location on his  
11 property farther from the cistern/well.

12 Q. After your explanation, did Mr. Keen change his position about granting an easement  
13 across his property?

14 A. No.

15 Q. Did the water district receive any further communication from Mr. Keen about the  
16 matter?

17 A. Yes, several days after the public meeting, Mr. Keen sent an undated easement along  
18 with a letter dated March 12, 2003 (see Exhibit "6" Carroll County Water District #1  
19 Answers to Interrogatories) to Mr. Fred Marsh making it clear he would not grant an  
20 easement for the waterline to run "on the right side of Clay Lick Road" which is the  
21 side of Clay Lick Road where his property is located. Mr. Marsh delivered said  
22 undated easement and letter to the offices of the Carroll County Water District #1 .

1           On or around February 26, 2004, the Water District received a check for \$465.00  
2           from Mr. Keen (see Exhibit "7" Carroll County Water District #1 Answers to  
3           Interrogatories).

4    Q.    What response, if any, did you or anyone on behalf of the Water District make to Mr.  
5           Keen?

6    A.    On March 31, 2004, I sent Mr. Keen a letter acknowledging receipt of his check and  
7           requesting clarification as to whether he wanted the Water District to proceed with  
8           the meter connection given the additional costs that would be associated with the  
9           road bore back to his property.

10   Q.    What response, if any, did you receive from Mr. Keen?

11   A.    I received a letter dated April 13, 2004, from Attorney William K. Fulmer, II, a copy  
12           of which is attached hereto as Exhibit "1". I also received a letter dated October 19,  
13           2004, from Attorney William K. Fulmer, II, a copy of which is attached as Exhibit  
14           "2".

15   Q.    Does this conclude your testimony?

16   A.    Yes.

**WILLIAM K. FULMER, II**  
*Attorney at Law*  
7289 Burlington Pike  
Florence, Kentucky 41042  
Office - (859) 282-3500  
Facsimile - (859) 282-3212

April 13, 2004

James L. Smith  
Carroll County Water District #1  
PO Box 350  
Ghent, Kentucky 41045

**RE: Howard B. Keen, new meter on Clay's Lick**

Dear Mr. Smith:

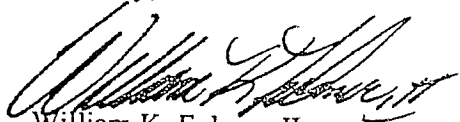
Howard Keen brought your letter of March 31, 2004 to my office for review. From a factual standpoint, I am puzzled about your contention that because Mr. Keen refused to give an easement you are charging him for a bore back to his property. In paragraph 6 the Rules and Regulations state in pertinent part::

In cases where a landowner has refused to give easement to cross his property and the District had to cross the road to avoid the property, the District may charge owner for the road bore back to his property in addition to a regular meter connection fee if and when a request is made for water service.

My survey of your installation on Clay Lick reveals that the water district crossed Fairview to lay the line on Clay Lick. Regardless of the easement, your district would have had to cross Fairview to lay the line. So my question is how did the district cross the road to avoid Mr. Keen's property?

Paragraph 6 does not apply to Mr. Keen's situation, therefore, the connection fee tendered should be sufficient.

Sincerely,

  
William K. Fulmer, II

WKF:jaa

**COPY**

**EXHIBIT "1"**



e-mail wkfl1@fuse.net

# WILLIAM K. FULMER, II

Attorney and Counselor at Law

7289 Burlington Pike  
Florence, Kentucky 41042  
Telephone 859.282-3500  
Fax 859.282-3212

October 19, 2004

James Smith  
Manager  
Carroll County Water District #1  
205 Main Cross  
P.O. Box 330  
Ghent, KY 41045

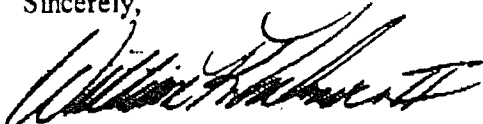
**IN RE: HOWARD B. KEEN vs. CARROLL CO. WATER DISTRICT #1,  
KENTUCKY PUBLIC SERVICE COMMISSION CASE NO. 2004-00348**

Dear Mr. Smith:

Received the October 15, 2004 Order from the Public Service Commission. By now it would appear that we both fully understand each other's position in regard to this matter. It would appear to me that the most cost effective way of dealing with this matter for the Water District is to grant Mr. Keen's desire to have a water hook up at normal cost. For your information Mr. Keen had stopped payment on the previous check that he had forwarded to you. Upon your agreement to my offer to settle or otherwise compromise this matter I will have an additional check sent to the water district.

Please advise me as to your position.

Sincerely,



William K. Fulmer, II

WKF/ap

cc: Howard Keen

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EXHIBIT "2"



VERIFICATION

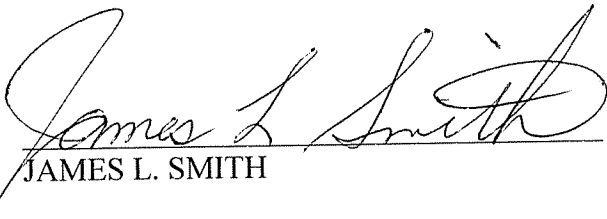
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2 COMMONWEALTH OF KENTUCY )  
3 ) SS:  
4 COUNTY OF CARROLL )

5

6 The undersigned, James L. Smith, being duly sworn, deposes and says he is the Manager of  
7 the Carroll County Water District #1, that he has personal knowledge of the matters set forth in  
8 the foregoing testimony, and that the answers contained therein are true and correct to the best  
9 of his information, knowledge and belief.

10

  
\_\_\_\_\_  
JAMES L. SMITH

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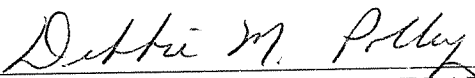
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14 Subscribed and sworn to before me, a Notary Public in and before said County and State, this

15 28th day of June, 2005.

16 My commission expires: 10.13.2005

17

  
\_\_\_\_\_  
NOTARY PUBLIC, KY STATE AT LARGE

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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

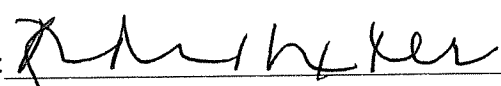
HOWARD B. KEEN )  
 )  
COMPLAINANT )  
 )  
VS. ) CASE NO. 2004-00348  
 )  
CARROLL COUNTY WATER DISTRICT NO. #1 )  
 )  
DEFENDANT )

DIRECT TESTIMONY OF FRED MARSH  
ON BEHALF OF CARROLL COUNTY WATER DISTRICT #1

\*\* \*\* \* \* \* \*\* \*\*

RESPECTFULLY SUBMITTED,  
  
CRAWFORD & BAXTER, P.S.C.  
ATTORNEYS AT LAW  
523 Highland Avenue  
P.O. Box 353  
Carrollton, Kentucky 41008  
Phone: (502) 732-6688  
Facsimile: (502) 732-6920  
E-mail Address: CBJ523@aol.com

Attorneys for Defendant  
Carroll County Water District #1

By:   
Ruth H. Baxter

1 Q. Please state your name and address.

2 A. My name is Fred Marsh, P.O. Box 106, Hanover, Indiana 47243.\

3 Q. Who is your employer?

4 A. I am presently employed by Strand Company. I was previously employed by Sieco  
5 Engineers. Sieco was purchased by Strand. I started work with Sieco in 1961 and  
6 continue to be employed by that company's successor Strand Company.

7 Q. What is your job title?

8 A. I am a Project Manager.

9 Q. What involvement did you and/or Sieco-Strand have with the so-called "Fairview  
10 Road Water Line Extension"?

11 A. Sieco Engineers did the engineering work for the project. During the project, Sieco  
12 was purchased by Strand Company. I was the Project Manager for the "Fairview  
13 Road Water Line Extension" on behalf of Sieco-Strand.

14 Q. Have you worked on numerous water projects in the capacity of a Project Manager  
15 over the years?

16 A. Yes, and I am very familiar with water line extensions and the construction work  
17 associated with same.

18 Q. What is the purpose of your testimony?

19 A. In my testimony, I will discuss our attempts to obtain an easement from Mr. Keen.

20 Q. Are you familiar with the so-called "Fairview Road Water Line Extension"?

21 A. Yes, I am very familiar with the project.

22 Q. Did you attend a public meeting held in regard to the so-called "Fairview Road Water  
23 Line Extension"?

- 1 A. Yes, after engineering was completed on the waterline, a public meeting was held  
2 early in 2003 at the Fitzgerald Restaurant on Highway #355 near Fairview in Owen  
3 County, Kentucky.
- 4 Q. What was the purpose of the public meeting?
- 5 A. The meeting was held to answer questions about the waterline extension and to  
6 request easements from property owners.
- 7 Q. Who was present at the public meeting on behalf of the Carroll County Water District  
8 #1?
- 9 A. Manager Jim Smith was present on behalf of the Carroll County Water District. I  
10 was present on behalf of Sieco-Strand Engineers. Sieco-Strand Engineers provided  
11 the engineering for the project.
- 12 Q. Who else was present at the public meeting?
- 13 A. Several land owners and residents living along the route of the proposed Fairview  
14 Road Water Line Extension were present together with Mr. Howard Keen.
- 15 Q. Did anyone speak personally and directly to Mr. Keen that afternoon about the  
16 Fairview Road Water Line Extension?
- 17 A. Yes, I spoke directly to Mr. Keen about the project and obtaining an easement from  
18 him to run the water line along the same side of Clay Lick Road as Mr. Keen's  
19 property was located.
- 20 Q. Did you ever speak personally and directly to Mr. Keen after the date of the public  
21 meeting about the project and obtaining an easement from him?
- 22 A. Yes, I spoke to Mr. Keen on the telephone a day or two after the public meeting. We

1           again discussed the project and his concerns about same. I also spoke to him about  
2           obtaining an easement from him.

3    Q.    What concerns about the project did Mr. Keen express to you?

4    A.    Mr. Keen said he would not grant the water district an easement because he was  
5           afraid there would be damage during construction to an old cistern/well located on  
6           his property.

7    Q.    What response to his concern about the cistern/well did you make, if any?

8    A.    I explained to him there would be no damage to his cistern/well by construction and,  
9           if there were damages, the water district would be responsible for the costs of same.

10   Q.    When you spoke with Mr. Keen at the public meeting and in your subsequent  
11          telephone conversation, did you explain to him that if he failed to grant an easement  
12          to the water district and the waterline had to be run on the opposite side of the road  
13          the possible effect to him in obtaining water service?

14   A.    Yes, I explained to Mr. Keen that running the water line on the opposite side of the  
15          road would be more costly to the water district. I also explained if he refused to grant  
16          the water district an easement and he wanted water service it would be more costly  
17          to him. I told him if the waterline extension had to be run along the opposite side of  
18          Clay Lick Road from where his property is located, the water district would have to  
19          bore back under the road to provide him with water service and there would be  
20          additional costs incurred by him over and above the normal cost of a water service.

21   Q.    What response did Mr. Keen have to your explanation?

22   A.    Mr. Keen indicated that he would not change his position and grant the district an

1           easement.

2       Q.    Did you receive any further communication from Mr. Keen about the matter.

3       A.    Yes, several days after the public meeting, Mr. Keen sent me an undated easement  
4           along with a letter dated March 12, 2003, (see Exhibit "6", Carroll County Water  
5           District #1 Answers to Interrogatories). I delivered the undated easement and letter  
6           to the offices of the Carroll County Water District #1.

7       Q.    In your professional opinion, has the water district incurred additional costs because  
8           of Mr. Keen's refusal to grant it an easement?

9       A.    Yes, the water district, in my opinion, has incurred additional costs as a result of Mr.  
10          Keen's refusal to grant it an easement in the approximate amount of \$2,500.00 to  
11          \$3,000.00.

12      Q.    Does this conclude your testimony?

13      A.    Yes.

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**VERIFICATION**

COMMONWEALTH OF KENTUCY )  
 ) SS:  
COUNTY OF CARROLL )

The undersigned, Fred Marsh, being duly sworn, says that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.

*Fred Marsh*  
\_\_\_\_\_  
FRED MARSH

Subscribed and sworn to before me, a Notary Public in and before said County and State, this the 28th day of June, 2005.

My commission expires: 10-13-2005

*Debbi M. Polley*  
\_\_\_\_\_  
NOTARY PUBLIC, KY STATE AT LARGE

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
JUN 30 2005  
PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

HOWARD B. KEEN )

COMPLAINANT )

VS. )

CARROLL COUNTY WATER DISTRICT NO. #1 )

DEFENDANT )

CASE NO. 2004-00348

**DIRECT TESTIMONY OF BOBBY NOBLE**  
**ON BEHALF OF CARROLL COUNTY WATER DISTRICT #1**

\*\* \*\* \* \* \*

RESPECTFULLY SUBMITTED,

CRAWFORD & BAXTER, P.S.C.  
ATTORNEYS AT LAW  
523 Highland Avenue  
P.O. Box 353  
Carrollton, Kentucky 41008  
Phone: (502) 732-6688  
Facsimile: (502) 732-6920  
E-mail Address: CBJ523@aol.com

Attorneys for Defendant  
Carroll County Water District #1

By: 

Ruth H. Baxter



1 Q. Please state your name and business address.

2 A. My name is Bobby Noble. My business address in P.O. Box 350, Ghent, Kentucky  
3 41045.

4 Q. Who is your employer and what is your job title.

5 A. I am employed by the Carroll County Water District #1 in the capacity of a Systems  
6 Operator.

7 Q. How long have you worked for Carroll County Water District #1?

8 A. I have been employed by the Water District since 1984.

9 Q. What is the purpose of your testimony?

10 A. In my testimony, I will discuss my dealings with Howard Keen in regard to the so-  
11 called "Fairview Road Water Line Extension", and my attempts to obtain an  
12 easement from him.

13 Q. Are you familiar with the so-called "Fairview Road Water Line Extension"?

14 A. Yes, I am personally familiar with the project. I worked on the project for the Water  
15 District.

16 Q. Did you ever speak personally and directly to Mr. Keen about the Fairview Road  
17 Water Line Extension?

18 A. Yes, sometime shortly after the public meeting on the Fairview Road Water Line  
19 Extension was held in 2003, I spoke on the phone to Mr. Keen.

20 Q. What was discussed in that phone conversation?

21 A. I spoke directly with him about the route of the proposed waterline extension. I  
22 explained that the water district needed to obtain an easement from him to run the  
23 waterline along the same side of Clay Lick Road as his property is located. I

1 explained to Mr. Keen the additional cost to the water district and to him if he  
2 refused to grant the water district an easement and the waterline extension had to be  
3 run along the opposite side of Clay Lick Road from where his property is located.  
4 I explained to him that if the waterline was run on the opposite side of Clay Lick  
5 Road the water district would have to bore back under the road to provide him  
6 service and there would be additional costs incurred by him.

7 Q. What response did Mr. Keen have to your explanation?

8 A. Mr. Keen expressed concern that if he granted an easement his land would not be  
9 returned to essentially the same condition as it was prior to construction and  
10 installation of the water line. I assured him that the land would be returned after  
11 construction of the waterline to essentially the same condition as it was prior to  
12 construction. Mr. Keen indicated he would sign the easement if he felt comfortable  
13 this would be the case. I advised Mr. Keen I would call him after construction of the  
14 waterline began and let him come and inspect the actual construction, clean up and  
15 restoration of the land back to its original condition.

16 Q. What was his response?

17 A. He agreed.

18 Q. Did you ever call Mr. Keen and ask him to come and view construction of the  
19 project?

20 A. Yes, after construction of the Fairview Road Water Line Extension began, I called  
21 Mr. Keen to invite him at a mutually agreeable time to the project site so he could  
22 inspect same.

1 Q. What was Mr. Keen's response?

2 A. Mr. Keen said that he was not going to grant the water district an easement. He said  
3 he would not allow the water district or anyone on its behalf on his property.

4 Q. Did you have any further contact with Mr. Keen about the project?

5 A. No.

6 Q. Does this conclude your testimony?

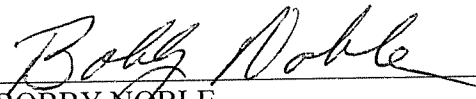
7 A. Yes.

VERIFICATION

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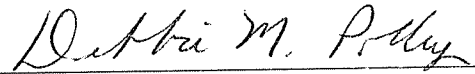
COMMONWEALTH OF KENTUCY )  
 ) SS:  
COUNTY OF CARROLL )

The undersigned, Bobby Noble, being duly sworn, deposes and says he is an employee of the Carroll County Water District #1, that he has personal knowledge of the matters set forth in the foregoing testimony, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
BOBBY NOBLE

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 28th day of June, 2005.

My commission expires: 10.13.2005

  
NOTARY PUBLIC, KY STATE AT LARGE