

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPLICATION OF NORTHERN KENTUCKY)
WATER DISTRICT FOR A CERTIFICATE OF) CASE NO.
CONVENIENCE AND NECESSITY FOR THE) 2006-00315
CONSTRUCTION OF SUB DISTRICT F WATER MAIN)
EXTENSIONS, FINANCING AND SURCHARGE)

PETITION

Northern Kentucky Water District (Northern), by counsel, petitions the Commission for a rehearing pursuant to KRS 278.400 of a portion of its order issued on September 20, 2006. The District seeks an order allowing the formation of the subdistrict associated with the construction approved in the order.

The purpose of the subdistrict is to aggregate sufficient customers to make the extension of facilities to the residents of the affected areas feasible. There are limited areas in Campbell County that are unserved. Those areas are widely separated and sparsely populated. A map of the unserved areas of Campbell County is attached as exhibit 1. As can be seen, the estimated 1,300 households without access to a potable water distribution system are widely dispersed. By combining the proposed areas into subdistrict F, the District is able to provide water service to high density areas which helps spread the cost among sufficient customers to make the project financially feasible for the District and affordable to the residents. This is the same methodology the District has used for other

subdistrict projects. The alternative is the creation of three separate subdistricts, rather than the one proposed, which will increase the cost of each project, minimize the economies of scale and add an additional administrative expense in forming, tracking and accounting for each.

What seems to have been overlooked in the commission's analysis is the cost to the customers and the benefits associated with the proposed project. If approved, the customers in the areas designated as subdistrict F would pay the District's tariffed rate, plus \$30.00 per month for water service. This \$30.00 surcharge is the same as is typically applied to the District's other subdistricts. Because many of these customers are served by wells or cisterns, the \$30.00 per month surcharge is generally less than the cost of water deliveries per month.

In contrast to the relatively inexpensive cost of water service to customers based on the proposed subdistrict, there is a very large and often prohibitive cost to those residents if the subdistrict is not approved. The alternative to extending facilities to these residents by virtue of the subdistrict financing, is the extension of facilities pursuant to the District's main line extension tariff. That tariff allows the District to initiate the extension of mains, but only if the customer pays for 100 feet of the main extension based on the cost of an eight inch main. The cost each customer in the proposed subdistrict F would be forced to pay ranges from \$4,200.00 to \$5,200.00. That payment is a lump sum required to be made at the time of application for service.

The District believes that such payments are prohibitive for most residents and discourage the extension of potable water service, which has a direct impact on the public health by depriving unserved rural areas of safe, clean, readily accessible potable water.

Not only is the public health affected, the public policy of the Commonwealth is thwarted. In 2000, the Governor issued an Executive Order, which declared the policy of the Commonwealth to provide safe water to all Kentuckians by 2020. The District has attempted to meet the goal of this policy by aggressively seeking the funds and the opportunities to provide water to as many residents of its service area as possible. The subdistrict has been an effective vehicle for that purpose. If the commission refuses to continue to allow this successful use of subdistricts, there is a likelihood that future extensions to economically depressed and remote areas will cease. This is not consistent with the District's, County-Judge/Executives' or Commonwealth's efforts to provide water to every resident.

The only apparent reasons that the Commission rejected the subdistrict surcharge are failure to demonstrate that funds are dependent on certain economic characteristics of the residents and the lack of justification for aggregating customers from disparate areas. Both of those comments are contained in an order issued in Case No. 2000-171, dated July 31, 2000.

The first "condition" supposedly not met by the District is easily addressed and is really not even an issue in the case. The funds obtained in a number of prior subdistricts were predicated on the economic status of the affected areas' residents. The funds in this case are not so encumbered. This "condition" is not relevant to the funding of this proposed subdistrict.

The second "condition" requiring common utility plant or common geographic characteristics is also easily addressed. Although the Commission's order of May 31, 2000 does not specify what characteristics must be common to the residents or what other criteria

must be applied to meet the “common geographic characteristics”, all of the residents of the proposed subdistrict F share the same common geographic characteristics with each other and with the residents of the prior subdistricts: they are all rural, remote from existing water distribution facilities, lack fire protection and rely on wells or cisterns.

The District has submitted several applications for subdistricts subsequent to the order of May 31, 2000. The applications filed by the District have been fairly uniform in the information provided. In none of the cases for approval of a subdistrict subsequent to Case 2000-171 has the staff asked any question about the location of customers or the use of common facilities. These issues have simply not been relevant to the commission’s review of the applications or the commonality of the residents has been self evident. Most of the subdistricts formed have been widely dispersed. Maps of subdistricts C, D, E, and F are attached as exhibit 2. As can be seen from these maps, subdistrict F is no less contiguous than some of its immediate predecessors. In the cases filed or orders issued subsequent to the May 31, 2000 order in Case No. 2000-171, no specific information about geographic commonality has been sought in a data request or referenced in a subdistrict final order, until this case. See Case No. 2000-329, July 21, 2000; Case No. 2003-00167, July 18, 2003; Case No. 2003-00191, July 18, 2003

Given the Commission’s lack of attention to these issues in the cases filed between the issuance of the order of May, 2000 and the application filed in this case, the District was under the impression that there was no particular information critical to customer locale that had to be included in the application. The District filed an application in this case consistent with prior ones involving similar circumstances, customer locations and facilities. Even assuming that those facts were essential to the

approval of the application, the District was not given any opportunity to respond to the conclusion in the order of September 20th that it failed to prove the need for the subdistrict. The staff did not seek any clarification of any aspect of the application, except for two telephone calls from the Commission's attorney and the District's attorney about the funding of the proposed district. No written data request was submitted to the District about the customers and facilities. No indication was given to the District that the dormant issue of geographic commonality was again at the forefront of the staff's review of the subdistrict and no opportunity given to the District to justify the formulation of the subdistrict.

Because the commission has no specific filing requirements for this type of application and the District met the minimum requirements set by the staff for accepting the application, the District could only assume that it had filed all information necessary for the staff to proceed with its review of the application. Normally, if there are issues that need further explanation, a data request is submitted to the District. None was.

The only way for an applicant to know the issues in a particular case is through the issuance of data requests. It seems fundamentally unfair for the commission to selectively use an issue in some cases, but not in others of similar factual and legal status. Had the District known it was obligated to justify specific aspects of the application beyond what it had in the recent past, it could have provided the needed information. It is this lack of opportunity to respond to an issue that the District believes necessitates a rehearing. As the Court said in Utility Regulatory Commission v. Kentucky Water Service Company, Inc., Ky. App., 642 S.W.2d 591, 594 (1982):

“In view of the fact that the company...had been treating the money as retained earnings...and there had been no objection by the commission,

the company was led to believe that this was appropriate and had no way of knowing what the commission proposed to do... The company had no opportunity for a hearing to examine staff members performing the calculations, or to present oral arguments or evidence as to the propriety of the action prior to issuance of the order.”

In this rehearing, the District merely seeks the opportunity to respond to issues previously not raised in similar applications, but which were apparently critical to the rejection of this application. Given the recent lack of emphasis on these issues, it is only fair that the District be given the opportunity to provide the evidence the staff determined to be lacking or that the commission recognize that the District has satisfied the commonality of characteristics requirement and issue an order *sua sponte* authorizing the subdistrict.

The District provided an extensive explanation for the use of subdistricts in Case No. 2003-00224, Response 15b, Data Request of October 28, 2003, relevant portions of which are provided:

15 (b)... The Subdistrict customers are benefiting from extensions of water mains that would otherwise have not been feasible due to limited number of customers in the affected areas and excessive costs to make the extensions. These customers also benefited from grants or low interest loans available to areas containing a high percentage of low to moderate income families.

The surcharge paid by these customers merely reflects the cost of providing service to them. If the extensions to these customers had been made according to the District’s “50 foot policy”, the customers would have had to make substantial lump sum payments prior to construction. Most could no afford to do so. The surcharge, in effect, provides an installment payment plan for these customers, which allows the payment of that initial cost over a period of years. Because the surcharge is recalculated each year to reflect additional customers and reduction in debt costs, the financial impact is minimized.

The use of the surcharge allows extension of water to areas that the District would not serve due to excessive costs. By imposing the

surcharge, more residents are provided access to potable water, which improves public health and safety and reduces the overall cost of water. Most of the residents served in the Subdistrict have cisterns or haul water. The cost of water hauling is far greater than the cost being paid to the District for water.

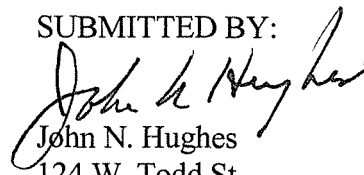
Additionally, the surcharge reflects the Commission's policy of placing the cost of new customers on those customers similar to a system development charge.

The general rate customers benefit from the revenue generated by the Subdistrict customers and from the lower debt cost that results from grants and government subsidized loans. There is no ratemaking or policy reason to change a system that has been in place since 1991 and which has allowed water to be provided to hundreds of residents that did not have access to potable water...

These same justifications previously accepted by the commission apply to subdistrict F. There is nothing in the order in this case that disputes these justifications, the commission's prior acceptance of subdistricts or the need for this proposed subdistrict.

Due to the lack of opportunity to address the issues raised in the final order relating to the financing of the proposed subdistrict, the District requests a rehearing.

SUBMITTED BY:



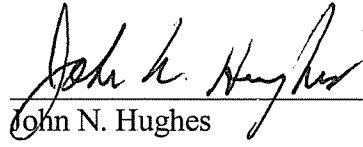
John N. Hughes
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ATTORNEY FOR NORTHERN
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CERTIFICATE OF SERVICE:

I certify that a copy of this Petition was served on the parties listed below by First Class mail the 3rd day of October, 2006.

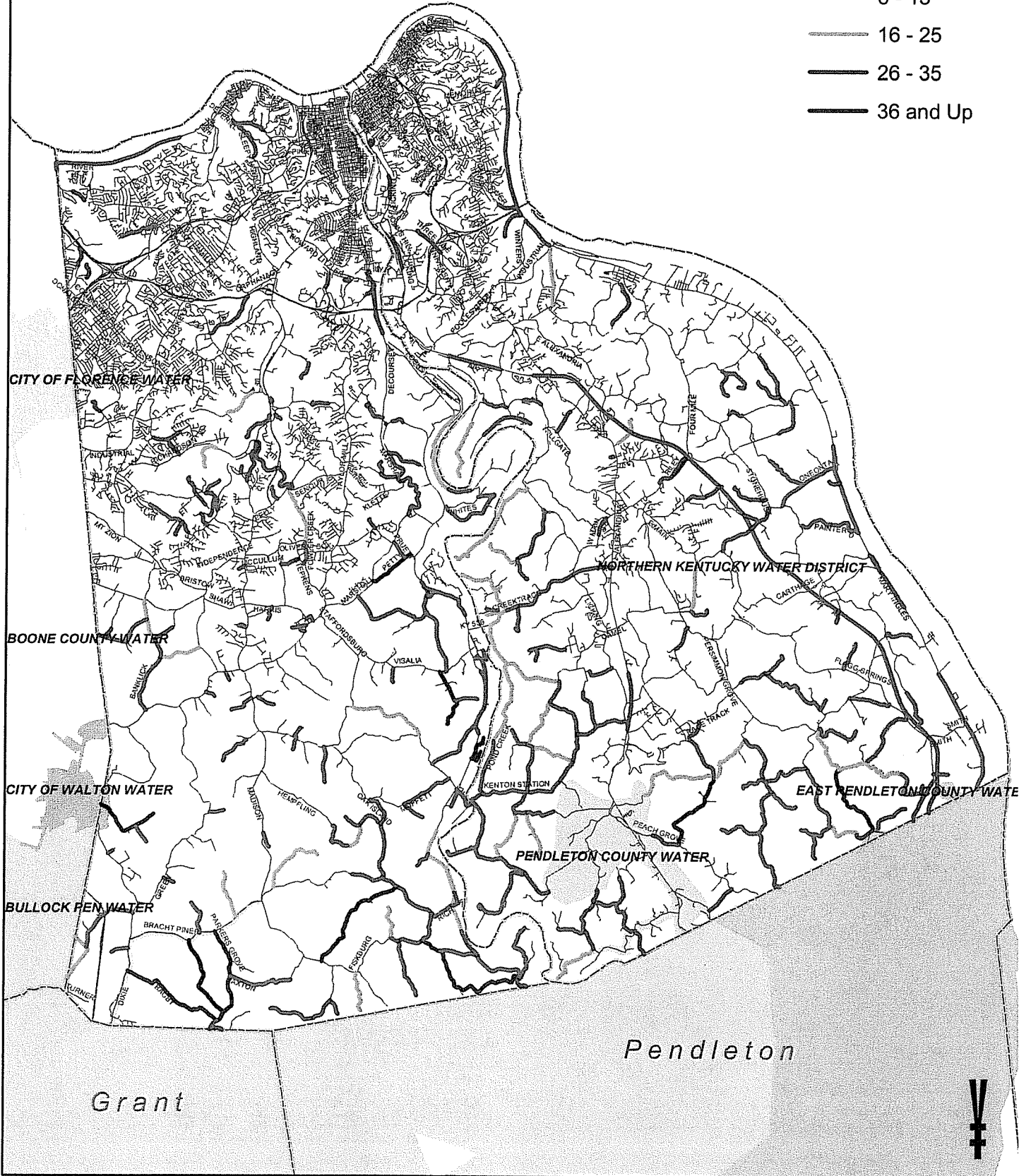
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John N. Hughes

NORTHERN KENTUCKY WATER DISTRICT UNSERVED AREAS

Households per Lin

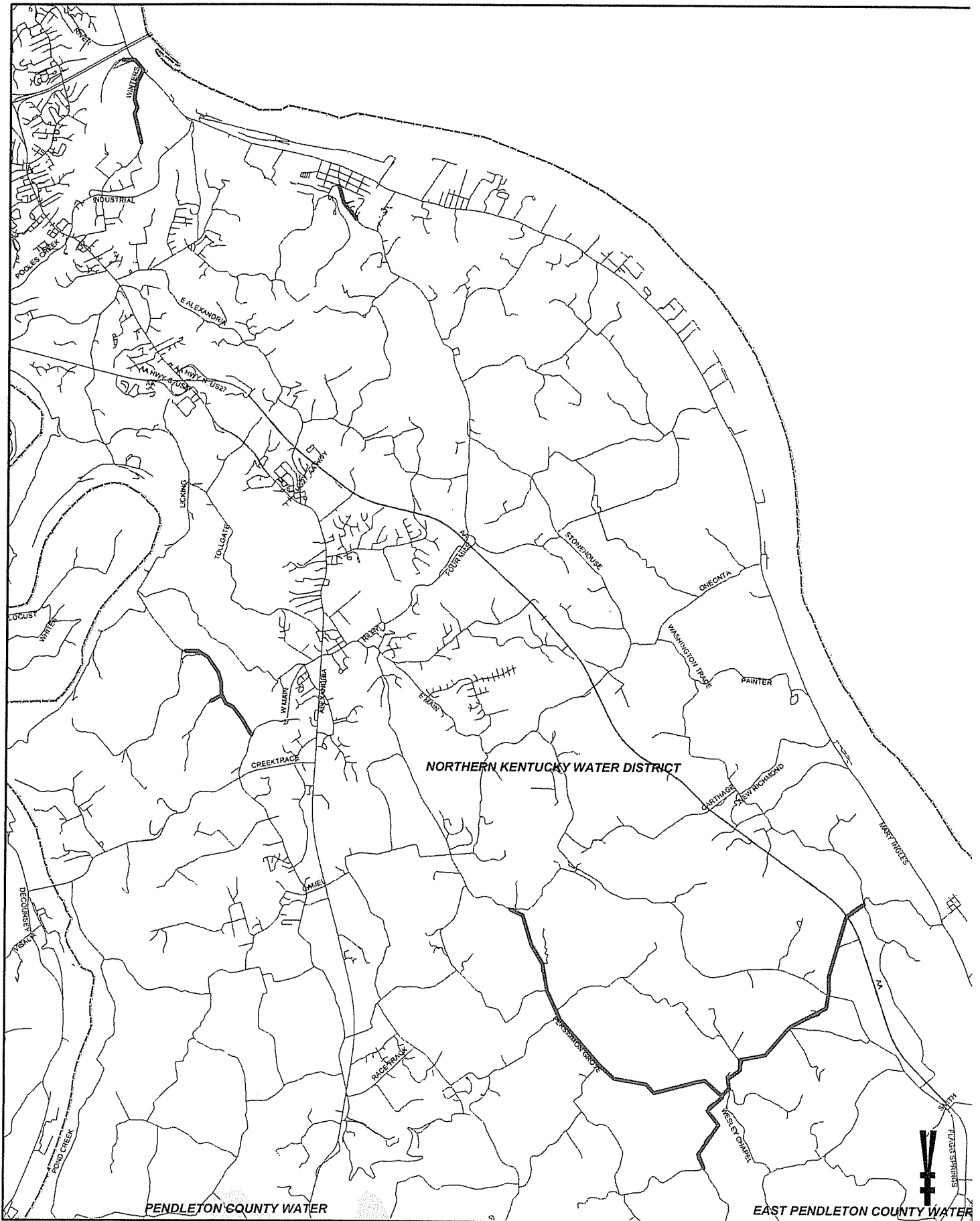
- 5 or Fewer
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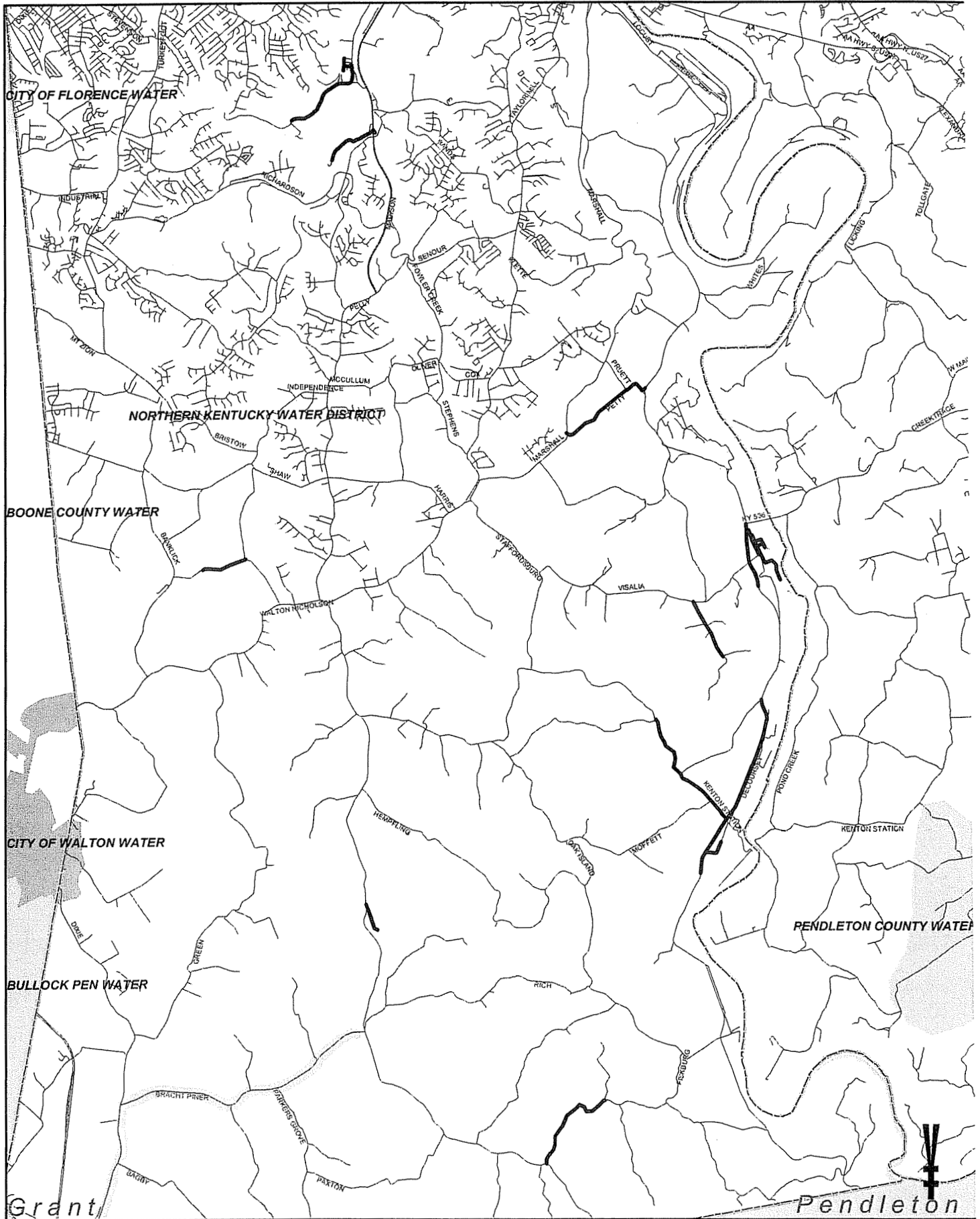
NORTHERN KENTUCKY WATER DISTRICT SUB DISTRICT C



NORTHERN KENTUCKY WATER DISTRICT SUB DISTRICT D



NORTHERN KENTUCKY WATER DISTRICT SUB DISTRICT E



NORTHERN KENTUCKY WATER DISTRICT SUB DISTRICT F

