# DAMON R. TALLEY, P.S.C.

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Damon R. Talley

June 23, 2014

Mr. Jeff Derouen Executive Director Public Service Commission PO Box 615 Frankfort, KY 40602

RE: Case No. 2013-00252 Louisville Water Company Hardin County Water District No. 2

Dear Mr. Derouen:

Enclosed for filing on behalf of the Hardin County Water District No. 2 are the original and ten (10) copies of the Notice of Filing of the USDA-RD Letter of Conditions dated May 5, 2014.

Yours truly, DAMON R. TALLEY, P.S.C.

DAMON R. TALLEY, ATTORNEY FOR HARDIN COUNTY WATER DISTRICT NO. 2

DRT:ms

Enclosures

cc: Hardin County Water District No. 2 Louisville Water Company

14/HCWD2/Derouen Letter - 6-23-14

RECEIVED

JUN 2 5 2014

PUBLIC SERVICE COMMISSION

Attorney At Law

# **COMMONWEALTH OF KENTUCKY**

# BEFORE THE PUBLIC SERVICE COMMISSION RECEIVED

In the Matter of:

JUN 25 2014 PUBLIC SERVICE

INVESTIGATION INTO THE PROPOSED ) WATER PURCHASE AGREEMENT BETWEEN ) LOUISVILLE WATER COMPANY AND )CASE NO. 2013-00252 HARDIN COUNTY WATER DISTRICT NO. 2 )

# NOTICE OF FILING

# OF

# **USDA-RD LETTER OF CONDITIONS**

1. Hardin County Water District No. 2, by counsel, hereby gives notice that it has filed a copy of the Letter of Conditions dated May 5, 2014 from the United States Department of Agricultural, Rural Development (the "USDA-RD") in the record in this proceeding. A copy of the Letter of Conditions is attached hereto and incorporated herein by reference.

2. Hardin County Water District No. 2 is facing a December 5, 2014 **deadline** (210 days from May 5, 2014) for meeting the conditions set forth in the USDA-RD Letter of Conditions. Failure to meet this deadline jeopardizes the USDA-RD funding commitment.

3. The USDA-RD Letter of Conditions is being filed in this proceeding to alert the Commission of the December 5, 2014 **deadline** and to give the Commission adequate time to complete its investigation into the reasonableness and lawfulness of the Water Purchase Agreement between Louisville Water Company (the "LWC") and Hardin County Water District No. 2. 4. USDA-RD Letter of Conditions is a conditional commitment letter whereby USDA-RD agrees to provide a long-term loan in the amount of \$5,000,000 to Hardin County Water District No. 2 if certain conditions are met. The purpose of the proposed financing by USDA-RD is to fund a substantial portion of the cost of constructing several miles of a 24-inch diameter water transmission main to connect Hardin County Water District No. 2's water distribution system to the LWC's water distribution system (the "LWC Connection Project"). The estimated cost of the LWC Connection Project is \$15,000,000.

5. The USDA-RD funding commitment completes the funding package for the LWC Connection Project. All the other funding sources were already (and still are) in place prior to receiving the USDA-RD Letter of Conditions.

6. Upon completion, the LWC Connection Project will enable LWC to provide a reliable, supplemental source of potable water to Hardin County Water District No. 2. This supplemental supply of water will enable Hardin County Water District No. 2 to satisfy its obligation to provide adequate service to its customers as required by KRS 278.010(14) for many, many years to come.

7. The Water Purchase Agreement between LWC and Hardin County Water District No. 2, which is the subject of this proceeding, sets forth the terms and conditions whereby LWC will supply potable water to Hardin County Water District No. 2.

8. Hardin County Water District No. 2 must obtain a Certificate of Public Convenience and Necessity from the Commission before commencing construction of the LWC Connection Project.

-2-

9. Ordering paragraph 4 of the Commission's July 3, 2014 Order, which established this proceeding, prohibits Hardin County Water District No. 2 from taking any "action to implement the provisions of the proposed water purchase agreement until completion of this proceeding without express Commission approval." Now that Hardin County Water District No. 2 faces a deadline, this prohibition places it in a very untenable position.

10. Because of the fast approaching December 5, 2014 deadline, Hardin County Water District No. 2 urges the Commission to expedite its resolution of this proceeding.

This  $\frac{2}{2}$  day of June, 2014.

DAMON R. TALLEY, P.S.C. P. O. Box 150 Hodgenville, KY 42748-0150 drtalley@windstream.net (270) \$58-3187 FAX (270) 35879560

DAMON R. TALLEY, ATTORNEY FOR HARDIN COUNTY WATER DISTRICT NO. 2

14/HCWD2/Notice of Filing 6-23-14



. . .

Rural Development May 5, 2014

Kentucky State Office

TTY 859.224.7422

771 Comente Drive	Mike Bell, Chairman
771 Corporate Drive,	Hardin County Water District No. 2
Suite 200	
Lexinaton, KY	PO Box 970
	Elizabethtown, Kentucky 42702
40503	Enzabelinown, Kenlucky 42702

Voice 859.224.7300 Dear Ch Fax 859.224.7425

Dear Chairman Bell:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area office staff of USDA Rural Development. Any changes in project cost, source of funds, scope of services or any other significant changes in the project or applicant must be reported to and approved by USDA Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application. It should also be understood that Rural Development is under no obligation to provide additional funds to meet an overrun in construction costs.

This letter is not to be considered as loan approval or as a representation as to the availability of funds. The docket may be completed on the basis of a RUS loan not to exceed \$5,000,000; an Base Realignment Authority Committee grant (BRAC) in the amount of \$5,000,000; a Kentucky Infrastructure Authority Grant (KIA) in the amount of \$500,000; and an applicant cash contribution in the amount of \$4,500,000.

If Rural Development makes the loan, the interest rate will be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing, unless the applicant otherwise chooses. The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given to your application.

The "Letter of Intent to Meet Conditions" must be executed within three weeks from the date of this letter or it becomes invalid unless a time extension is granted by Rural Development.

If the conditions set forth in this letter are not met within 210 days from the date hereof, Rural Development reserves the right to discontinue the processing of the application.

In signing Form RD 1942-46, "Letter of Intent to Meet Conditions," you are agreeing to complete the following as expeditiously as possible:

RECEIVED MAY 1 5 DATE

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint\_filing\_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

1. Number of Users and Their Contribution:

There shall be 16,916 water users, of which all are existing users. The Area Director will review and authenticate the number of users <u>prior to advertising for construction bids</u>.

# 2. Drug-Free Work Place:

Prior to grant closing, the District will be required to execute Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I - For Grantees Other Than Individuals."

# 3. <u>Repayment Period</u>:

The loan will be scheduled for repayment over a period not to exceed 40 years from the date of the Bond. Principal payment will not be deferred for a period in excess of two years from the date of the Bond. Payments will be in accordance with applicable KRS, which requires interest to be paid semi-annually (January 1st and July 1st) and principal will be due on or before the first of January. Rural Development may require the District to adopt a supplemental payment agreement providing for monthly payments of principal and interest so long as the bond is held or insured by RUS. Monthly payments will be approximate amortized installments.

# 4. <u>Recommended Repayment Method</u>:

Payments on this loan shall be made using the Preauthorized Debit (PAD) payment method. This procedure eliminates the need for paper checks and ensures timely receipt of RD loan payments. To initiate PAD payments, Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," should be signed by the District to authorize the electronic withdrawal of funds from your designated bank account on the exact installment payment due date. The Area Director will furnish the necessary forms and further guidance on the PAD procedure.

# 5. <u>Reserve Accounts</u>:

Reserves must be properly budgeted to maintain the financial viability of any operation. Reserves are important to fund unanticipated emergency maintenance, pay for repairs, and assist with debt service should the need arise.

The District will be required to deposit \$2,270 per month into a "Funded Debt Reserve Account" until the account reaches \$272,400. The deposits are to be resumed any time the account falls below the \$272,400.

The required monthly deposits to the Reserve Account and required Reserve Account levels are in addition to the requirements of the District's prior bond resolutions.

The monthly deposits to the Reserve Account are required to commence with the first month of the first full fiscal year after the facility becomes operational.

The District also needs to fund an account for short-lived assets by depositing a sum of \$4,000 monthly into the account. The funds in the short-lived asset account may be

used by the District as needed to replace or add short-lived assets in the District's water system. This short-lived asset reserve amount replaces any previous short-lived assets requirements previously set with any prior RUS loan.

#### 6. <u>Security Requirements</u>:

A pledge of gross water revenue will be provided in the Bond Resolution. Bonds shall rank on a parity with existing bonds, if possible.

If this is not possible, the bond will be subordinate and junior to the existing bonds, in which case the District will be required to abrogate its right to issue additional bonds ranking on a parity with the existing bonds, so long as any unpaid indebtedness remains on this bond issue.

#### 7. Land Rights and Real Property:

The District will be required to furnish satisfactory title, easements, etc., necessary to install, maintain and operate the facility to serve the intended users. <u>The pipelines will</u> <u>be on private rights-of-way where feasible</u>. Easements and options are to be secured prior to advertising for construction bids.

# 8. Organization:

The District will be legally organized under applicable KRS which will permit them to perform this service, borrow and repay money.

The District must maintain a current registration of their Dun and Bradstreet Data Universal Numbering System (DUNS) number in SAM.gov (System for Award Management) in order to receive federal loan and grant financial assistance. This registration must be updated/renewed at least annually.

# 9. Business Operations:

The District will be required to operate the system under a well-established set of resolutions, rules and regulations. A budget must be established annually and adopted by the District after review by Rural Development. At no later than loan pre-closing, the District will be required to furnish a prior approved management plan to include, as a minimum, provisions for management, maintenance, meter reading, miscellaneous services, billing, collecting, delayed payment penalties, disconnect/reconnect fees, bookkeeping, making and delivering required reports and audits.

# 10. Accounts, Records and Audits:

The District will be required to maintain adequate records and accounts and submit annual budgets and year-end reports (annual audits)/statistical and financial reports, quarterly and annually, in accordance with subsection 1780.47 of RUS Instruction 1780.

The District shall be required to submit a copy of its audit agreement for review and concurrence by Rural Development prior to pre-closing the loan.

11. Accomplish Audits for Years in Which Federal Financial Assistance is Received:

The District will accomplish audits in accordance with OMB Circular A-133, during the years in which federal funds are received. The District will provide copies of the audits to the Area Office and the appropriate Federal cognizant agency as designated by OMB Circular A-133.

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12. Insurance and Bonding:

The following insurance and bonding will be required:

- A. Adequate Liability and Property Damage Insurance including vehicular coverage, if applicable, must be obtained and maintained by the District. The District should obtain amounts of coverage as recommended by its attorney, consulting engineer and/or insurance provider.
- B. Worker's Compensation The District will carry worker's compensation insurance for employees in accordance with applicable state laws.
- C. Fidelity Bond The District will provide Fidelity Bond Coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of coverage required for all RUS loans is \$400,000.
- D. Real Property Insurance The District will obtain and maintain adequate fire and extended coverage on all structures including major items of equipment or machinery located in the structures. The amounts of coverage should be based on recommendations obtained by the District from its attorney, consulting engineer and/or insurance provider. Subsurface lift stations do not have to be covered except for the value of electrical and pumping equipment therein.
- E. Flood Insurance The District will obtain and maintain adequate coverage on any facilities located in a special flood and mudslide prone areas.
- 13. Planning and Performing Development:
  - A. The engineer should not be authorized to commence work on final plans and specifications until a determination has been made that the project can be planned and constructed within the estimated cost shown in paragraph "22" of this letter. The engineer may then proceed to develop final plans and specifications to be completed no later than 180 days from this date, and prepare bid documents. The Area Director is prepared to furnish the necessary guide to follow so as to keep the project plans and documents within our guidelines and requirements. The project should not be advertised for construction bids until all easements and enforceable options have been obtained, and total funds are committed or available for the project.

- B. The following documents will be submitted to Rural Development for review and must be concurred in by Rural Development prior to advertisement for construction bids:
  - 1. Final plans, specifications and bid documents.
  - 2. Applicant's letter on efforts to encourage small business and minority-owned business participation.
  - 3. Legal Service Agreements.
  - 4. Engineering Agreements.

Revision in these documents will be subject to Rural Development concurrence. Any agreements, contracts, etc. not reviewed and approved by Rural Development will not be eligible for payment from project funds or revenues from facilities financed by this Agency.

Prior to receipt of an authorization to advertise for construction bids, the District will obtain advance clearance from Bond Counsel regarding compliance with KRS 424 pertaining to publishing of the advertisement for construction bids in local newspapers and the period of time the notice is required to be published.

#### 14. Civil Rights & Equal Opportunity:

You should be aware of and will be required to comply with other federal statute requirements including but not limited to:

A. <u>Section 504 of the Rehabilitation Act of 1973</u>:

Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.

#### B. Civil Rights Act of 1964:

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All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d <u>et seq.</u>) and Subpart E of Part 1901 of this Title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by paragraph 1901.202(e) of this Title.

C. The Americans with Disabilities Act (ADA) of 1990:

This Act (42 U.S.C. 12101 <u>et seq.</u>) prohibits discrimination on the basis of disability in employment, state and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by state and local public entities that provide services, programs, and activities. Title III of the Act

applies to facilities owned, leased, or operated by private entities that accommodate the public.

D. Age Discrimination Act of 1975:

This Act (42 U.S.C. 6101 <u>et seq.</u>) provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Rural Development financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

15. <u>Closing Instructions</u>:

The Office of General Counsel, our Regional Attorney, will be required to write closing instructions in connection with this loan. Conditions listed therein must be met by the District.

16. Compliance with Special Laws and Regulations:

The District will be required to conform to any and all state and local laws and regulations affecting this type project.

17. Treatment Plant and System Operator:

The District is reminded that the treatment plant and system operator must have an Operator's Certificate issued by the State.

- 18. Prior to Pre-Closing the Loan, the District Will Be Required to Adopt:
  - A. Form RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)."
  - B. Form RD 400-1, "Equal Opportunity Agreement."
  - C. Form RD 400-4, "Assurance Agreement."
  - D. Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transaction."
  - E. Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."
  - F. RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans."
  - G. RUS Bulletin 1780-22, "Eligibility Certification."

#### 19. Refinancing and Graduation Requirements:

The District is reminded that if at any time it shall appear to the Government that the District is able to refinance the amount of the RUS indebtedness then outstanding, in whole or in part, by obtaining a loan from commercial sources at reasonable rates and terms, upon the request of the Government, the District will apply for and accept such loan in sufficient amount to repay the Government.

#### 20. Commercial Interim Financing:

The District will be required to use commercial interim financing for the project during construction for the RUS loan portion of the financing, if available at reasonable rates and terms.

Before the loan is closed, the District will be required to provide Rural Development with statements from the contractor, engineer and attorneys that they have been paid to date in accordance with their contract or other agreements and, in the case of the contractor, that he has paid his suppliers and sub-contractors.

# 21. Disbursement of Project Funds:

A construction account for the purpose of disbursement of project funds (RUS) will be established by the District prior to start of construction. The position of officials entrusted with the receipt and disbursement of RUS project funds will be covered by a "Fidelity Bond," with USDA Rural Development as Co-Obligee, in the amount of construction funds on hand at any one time during the construction phase.

For each "construction account" as established, if the amount of RUS loan and grant funds plus any applicant contributions or funds from other sources to be deposited into the account are expected to exceed \$250,000 at any time, the financial institution will secure the amount in excess of \$250,000 by pledging collateral with the Federal Reserve Bank in an amount not less than the excess in accordance with 7 CFR, 1902.7(a).

During construction, the District shall disburse project funds in a manner consistent with subsection 1780.76 (e) of RUS Instruction 1780. Form RD 1924-18, "Partial Payment Estimate," or similar form approved by Rural Development, shall be used for the purpose of documenting periodic construction estimates, and shall be submitted to Rural Development for review and acceptance. Prior to disbursement of funds by the District, the Board of Directors shall review and approve <u>each</u> payment estimate. <u>All bills and</u> vouchers must be approved by Rural Development prior to payment by the District.

Form RD 440-11, "Estimate of Funds Needed for 30-Day Period Commencing \_\_\_\_\_," will be prepared by the District and submitted to Rural Development in order that a periodic advance of federal cash may be requested.

Borrowers receiving federal loan and/or grant funds by EFT will have funds directly deposited to a specified account at a financial institution with funds being available to the recipient on the date of payment. The borrower should complete Form SF-3881, "Electronic Funds Transfer Payment Enrollment Form," for each account where funds

will be electronically received. The completed form(s) must be received by Rural Development at least thirty (30) days prior to the first advance of funds.

Monthly audits of the District's construction account records shall be made by Rural Development.

#### 22. Cost of Facility:

Breakdown of Costs:

Development		\$ 11,989,000
Land and Rights		50,000
Legal		60,000
Engineering		1,202,000
Interest		250,000
Environmental		100,000
Administrative		49,000
Contingencies		1,300,000
-	TOTAL	\$ 15,000,000

Financing:

RUS Loan	\$ 5,000,000
BRAC Grant	5,000,000
KIA Grant	500,000
Applicant Contribution	<u>4,500,000</u>
	TOTAL \$ 15,000,000

#### 23. Commitment of Other Project Funds:

This Letter of Conditions is issued contingent upon a firm commitment being in effect prior to advertising for construction bids for the BRAC grant in the amount of \$5,000,000; for the KIA grant in the amount of \$500,000; and the availability of the applicant contribution in the amount of \$4,500,000.

# 24. Use of Remaining Project Funds:

The applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining project funds will be considered to be BRAC/KIA grant funds and refunded in proportion to participation in the project. If the amount of unused project funds exceeds the grants, that part would be RUS loan funds.

#### 25. Proposed Operating Budget:

You will be required to submit to Rural Development a copy of your proposed annual operating budget that supports the proposed loan repayment prior to this agency giving you written authorization to proceed with the bidding phase. The operating budget should be based on a typical year cash flow, subject to completion of this project in the first full year of operation. Form RD 442-7, "Operating Budget," or similar form may be utilized for this purpose.

#### 26. Rates and Charges:

Rates and charges for facilities and services rendered by the District must be at least adequate to meet cost of maintaining, repairing and operating the water system and meeting required principal and interest payments and the required deposits to debt service and/or depreciation reserve.

Water rates will be at least:

5/8" x ¾" First Next All Over	Meter: 2,000 498,000 500,000	gallons @ \$ gallons @ \$ gallons @ \$	18.50 Minimum Bill. 5.15 per 1,000 gallóns. 2.90 per 1,000 gallons.
1" Meter: First Next All Over	5,000 495,000 500,000	gallons @ \$ gallons @ \$ gallons @ \$	33.95 Minimum Bill. 5.15 per 1,000 gallons. 2.90 per 1,000 gallons.
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8" Meter First Next All Over	150,000 350,000 500,000	gallons @ \$ gallons @ \$ gallons @ \$	780.70 Minimum Bill. 5.15 per 1,000 gallons. 2.90 per 1,000 gallons.

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#### 27. Water Purchase Contract:

The District will submit a Water Purchase Contract for approval by Rural Development before advertising for construction bids. If the contract is not on Form RD 442-30, "Water Purchase Contract," the contract will require approval by our Regional Attorney. The contract must meet the requirements of subsection 1780.62 of RUS Instruction 1780.

#### 28. Compliance with the Bioterrorism Act:

Prior to pre-closing the loan, the District will provide a certification they have completed a Vulnerability Assessment (VA) and prepared an emergency response plan (ERP) as required by the Safe Drinking Water Act (SDWA).

#### 29. Floodplain Construction:

The District will be required to pass and adopt a Resolution or amend its By-Laws whereby the District will deny any water service to any future customer wishing to build on or develop property located within a designated floodplain. If a customer or developer requests service for construction in a designated floodplain, the customer or developer must provide evidence and a justification for approval by the District and Rural Development officials that there are no other alternatives to construction or development within the designated floodplain. The community must be a participant in the National Flood Insurance Program (NFIP) and the customer or developer must obtain the required permits prior to the tap on restrictions being waived.

#### 30. <u>Mitigation Measures</u>:

- A. The project shall be in compliance with all requirements noted in the Governor's Office for Local Development letter dated October 4, 2013, from Ms. Lee Nalley.
- B. The line design and construction shall be accomplished in a way that will leave flood plains and farmland without effect after construction is complete. The Army Corps of Engineers Nationwide Permit No. 12 applies to all floodplain and wetland utility line construction.
- C. Any excavation by Contractor that uncovers a historical or archaeological artifact shall be immediately reported to Owner and a representative of

Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the State Historic Preservation Officer (SHPO).

- D. The design and construction shall be in compliance with all local, state and federal environmental statutes, regulations and executive orders applicable to the project.
- E. Best Management Practices shall be incorporated into the project design, construction, and maintenance.
- 31. Final Approval Conditions:

Final approval of this assistance will depend on your willingness, with the assistance of all your co-workers, to meet the conditions of this letter in an orderly and systematic manner. Then too, final approval will depend on funds being available.

If you desire to proceed with your application, the Area Director will allot a reasonable portion of time to provide guidance in application processing.

Sincerely. homan THOMAS G. FERN

State Director

Enclosures

cc: Area Director - Columbia, Kentucky Area Manager – Elizabethtown, Kentucky Lincoln Trail ADD - Elizabethtown, Kentucky Stoll Keenon Ogden - Louisville, Kentucky Kenvirons Engineering - Frankfort, Kentucky Damon Talley - Hodgenville, Kentucky PSC - ATTN: Jeff Derouen - Frankfort, Kentucky