

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
AUG 01 2016
PUBLIC SERVICE
COMMISSION

In the matter of:

THE APPLICATION OF THE MOUNTAIN)
WATER DISTRICT FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY)
TO CONSTRUCT AND FINANCE PURSUANT)
TO KRS 278.023)

Case No. 2016-00266

Response to Attorney General's Initial Data Request

The Mountain Water District (the "District"), by counsel, hereby files its Response to the Attorney General's Initial Data Request, dated July 26, 2016, as follows:

Q 1. Reference Exhibit D of Mountain Water District's application to the "Final Project Budget and Plan of Construction Contract Award" which is listed as "Exhibit A" of the Summit Engineering letter.

- a. Mountain Water District budgets \$62,156.00 in Non-Construction Costs for "Design/Bidding/Administration." Provide individual budgets for design, bidding, and administration.
- b. Mountain Water District budgets \$76,511.00 in Non-Construction Costs for "Resident Inspection." Provide a breakdown of the spending for resident inspection.

WITNESS: Jody G. Hunt, P.E., Senior Project Engineer, Summit Engineering, Inc., 265 Hambley Boulevard, Suite 100, Pikeville, Kentucky 41501, Phone: (606) 432-1447, Ext. 315, email: jhunt@summit-engr.com

RESPONSE: 1(a)

Engineers are paid by the United States Department of Agriculture, acting through Rural Development ("RD") rate scale. The Mountain Water District agreement with engineers is 85% of the RD rate. This portion of engineering fees is based on a lower percentage because parts of the design were completed on a previous project. This fee is 49.5% of the RD rate. The individual budgets for design, bidding, and administration are as follows:

Design (70% of Total)	\$43,509.20
Bidding (10% of Total)	\$6,215.60
Construction Administration (20% of Total)	<u>\$12,431.20</u>
Total	\$62,156.00

RESPONSE: 1(b)

Resident Inspection Services was calculated using the RD rate scale for determining engineering fees. No rate deduction was applied due to the complexity and size of the project. The following illustrates the calculated fees for Resident Inspection Services:

Estimated Construction Costs (PER Exhibit C)	\$1,527,150
Calculated Allowable RD Percentage for Inspection Services	5.073%
Actual Percentage Used to Calculate Inspection Services	5.010%
$\$1,527,150 * 5.010\% = \$76,511$ (Rounded Up)	

The Resident Inspection Services will be invoiced monthly as a percentage of construction completed.

Q 2. Mountain Water District's application indicates that \$900,000 of funding will be received from State Mining Mitigation Funds.

- a. Advise whether these are the same funds referred to in Exhibit D of the application, in Summit Engineering's letter, as funds from "a coal company."
- b. Provide initial requests for State Mining Mitigation Funds.
- c. Provide documentation of the funding agreement and any conditions placed on these funds.

WITNESS: Jody G. Hunt, P.E., Senior Project Engineer, Summit Engineering, Inc., 265 Hambley Boulevard, Suite 100, Pikeville, Kentucky 41501, Phone: (606) 432-1447, Ext. 315, email: jhunt@summit-engr.com

RESPONSE: 2(a)

Yes, these are the same funds referred to in Exhibit D of the application, in Summit Engineering's letter, as funds from "a coal company." McCoy Elkhorn Coal Incorporation provided the State Mining Mitigation Funds.

RESPONSE: 2(b)

The Mountain Water District did not request State Mining Mitigation Funds. The McCoy Elkhorn Coal Incorporation provided the funds through the Department of Mine Reclamation and Enforcement (“DMRE”).

RESPONSE: 2(c)

Please see that attached Agreed Order and letters from Mr. Charles Baird to Mr. Tony Wilder and Mr. Randall K Taylor concerning the DMRE funds (See **Exhibit “A”** attached hereto). The Mountain Water District is unaware of any conditions placed on these funds.

Q 3. Reference Exhibit D of Mountain Water District’s application on page 2 of the “Preliminary Engineering Report” under “ITEM 2 – PROJECT PLANNING AREA.” It states that Abandoned Mine Lands reviewed the Summit Engineering report and determined that only the Hurricane Creek section of the Ridgeline Road project would be eligible for AML funds. However, other application materials state that \$500,000 in funding will be provided by AML.

- a. Confirm that Abandoned Mine Lands has determined that Pompey Creek portion of the project is now eligible for AML funds.
- b. Provide documentation of the funding agreement and any conditions placed on these funds.

WITNESS: Jody G. Hunt, P.E., Senior Project Engineer, Summit Engineering, Inc., 265 Hambley Boulevard, Suite 100, Pikeville, Kentucky 41501, Phone: (606) 432-1447, Ext. 315, email: jhunt@summit-engr.com

RESPONSE: 3

Portions of the project were deemed eligible as it affects the reliability of potable water to the following AML funded and served areas: Ridgeline Road, Hurricane Branch, Fedscreek – Mouthcard, Ferrells Creek and Harless Creek. The Upper Pompey Water Supply Project was specifically divided into two distinct contracts to clearly define which portion or Contract was AML eligible (Contract 1 AML) and which portion or Contract was not (Contract 2).

RESPONSE: 3(a)

Please see the attached letter dated June 25, 2015 from Mr. Robert F. Scott, Director Division of Abandoned Mine Lands (See **Exhibit “B”** attached hereto).

RESPONSE: 3(b)

Please see the attached letter previously mentioned in Response 3(a), Purchase Order from the 33rd Annual Grant, and executed Memorandum Of Agreement (See **Exhibit "C"** attached hereto).

Q 4. Mountain Water District's Instruction to Bidder's required bidders to supply written evidence establishing qualifications, including evidence of previous experience and present commitments. Provide the references submitted by H2O Construction as the selected bidder and indicate any experience with similar projects.

WITNESS: Jody G. Hunt, P.E., Senior Project Engineer, Summit Engineering, Inc., 265 Hambley Boulevard, Suite 100, Pikeville, Kentucky 41501, Phone: (606) 432-1447, Ext. 315, email: jhunt@summit-engr.com

RESPONSE: 4

H2O Construction has extensive experience with water line installations. H2O Construction has completed numerous projects for the Mountain Water District, City of Pikeville, and the Department of Highways. A sample list is provided outlining their experience with similar projects as well as an equipment inventory list (See **Exhibit "D"** attached hereto).

Q 5. On Page 2 of the "Preliminary Engineering Report" provided in Exhibit D, it is indicated that 100 of the 118 houses in the Ridgeline Road project planning area were interviewed.

- a. How many of those interviewed were among the estimated 33 residences served by the Pompey Creek phase?
- b. Has Mountain Water District confirmed that those households are likely to connect to the new water lines?
- c. Is there a local ordinance allowing residents to choose not to hook up to the new water lines if they have a functioning well?
- d. Provide interviewer's notes or other documentation of the interviews.

WITNESS: Jody G. Hunt, P.E., Senior Project Engineer, Summit Engineering, Inc., 265 Hambley Boulevard, Suite 100, Pikeville, Kentucky 41501, Phone: (606) 432-1447, Ext. 315, email: jhunt@summit-engr.com

RESPONSE: 5

The original Ridgeline Road (AML) Groundwater Contamination Study was completed in 2008. The 100 residents in the Ridgeline Road project planning area were interviewed as part of the groundwater contamination study.

RESPONSE: 5(a)

Please see the attached Table 1 of the Summary of Groundwater Inventory Activities Ridgeline Road (AML) Groundwater Contamination Study. There were 25 Households interviewed in Upper Pompey (See **Exhibit "E"** attached hereto).

RESPONSE: 5(b)

The Mountain Water District has not confirmed that those households are likely to connect to the new waterlines. The District expects all households to connect to the new water line due to wells going dry as a result of mining (See attached Table 2 Interview Summary) and McCoy Elkhorn delivering water to residents for a number of years. (See attached letter from Mr. Charles Baird dated July 13, 2015.

RESPONSE: 5(c)

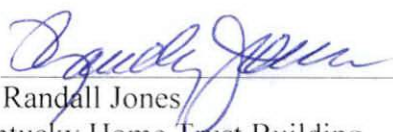
There is no a local ordinance in effect requiring a resident to connect to a potable water line once one is made available. Therefore, residents may elect to not hook up to the new water lines if they have a functioning well.

RESPONSE: 5(d)

Please see the attached Table 2 of the Ridgeline Road (AML) Groundwater Contamination Study Groundwater Interview Summary (See **Exhibit "F"** attached hereto).

Respectfully Submitted:

Rubin & Hays

By 
W. Randall Jones
Kentucky Home Trust Building
450 South Third Street
Louisville, Kentucky 40202
Telephone: (502) 569-7525
Fax: (502) 569-7555
Email: wrjones@rubinhays.com

Certificate of Service and Filing

The undersigned Counsel to the Mountain Water District, in Case No. 2016-00266, hereby certifies (i) that an original and ten copies of the foregoing were served and filed, via hand delivery, to Ms. Talina Mathews, Executive Director of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and (ii) that true and accurate copies of the foregoing were mailed via the United States Postal Service, first class, postage prepaid to:

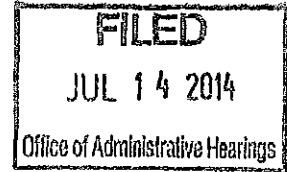
Honorable Andy Beshear
Kentucky Attorney General
1024 Capital Center Drive
Suite 200
Frankfort, Kentucky 40601-8204

On this August 1, 2016.



W. Randall Jones, Esq.
Rubin & Hays

**COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
FILE NO. FOV/PAC-28755-039
PERMIT NO. 898-5616
NON-COMPLIANCE NO. 530676
CITIZEN'S REQUEST FOR INSPECTION**



NOS. 07-05-0144, 05-05-0248, 06-05-0202, 07-05-0160, 07-05-0162 & 05-05-0247

**FILE NO. FOV-40362-039
PERMIT NO. 898-5616
NON-COMPLIANCE NO. 532851
CITIZEN'S REQUEST FOR INSPECTION**

NOS. 07-05-0144, 05-05-0248, 06-05-0202, 07-05-0160, 07-05-0162 & 05-05-0247

McCoy ELKHORN COAL CORPORATION

PETITIONER

V.

AGREED ORDER

ENERGY AND ENVIRONMENT CABINET

RESPONDENT

WHEREAS, the Petitioner, McCoy Elkhorn Coal Corporation (hereinafter "McCoy Elkhorn"), is a Kentucky corporation authorized to conduct surface coal mining and reclamation operations in the Commonwealth of Kentucky by virtue of being the holder of Surface Coal Mining and Reclamation Operations Permit No. 898-5616 (hereinafter the "Permit"), which authorizes underground mining operations in Pike County, Kentucky; and

WHEREAS, the Respondent, Energy and Environment Cabinet (hereinafter "Cabinet"), is an executive agency of the Commonwealth of Kentucky charged with the statutory duty of enforcing the laws of the Commonwealth relating to surface coal

mining as set forth in KRS Chapter 350 and the regulations promulgated pursuant thereto; and

WHEREAS, McCoy Elkhorn was issued Notice of Non-Compliance No. 530676 on July 9, 2007 for, among others, violation of 405 KAR 18:060 (General Hydrologic Requirements) for failure to minimize disturbance to the general hydrologic balance in the permitted area and/or adjacent areas to prevent material damage by adversely impacting several wells used for domestic water supplies; and

WHEREAS, the violation of 405 KAR 18:060 cited in Notice of Non-Compliance No. 530676 was cited as “non-correctable,” but was followed by a written letter which set out the water replacement requirements of 405 KAR 18:060, Section 12, to-wit, provision of drinking water on an emergency basis within 48 hours, provision of a temporary water supply connected to the existing plumbing within two weeks, and provision of a permanent water supply within two years, for the failure of which further enforcement action would be taken; and

WHEREAS, McCoy Elkhorn was issued Notice of Non-Compliance No. 532851 on August 7, 2009 for violation of 405 KAR 18:060 (General Hydrologic Requirements — failure to replace water supply) for failure to provide a permanent water supply to the affected residents within two years of the date of notification by the Cabinet that McCoy Elkhorn’s mining activities adversely affected the water supplies of Shawn Adkins, Ronald Adkins, Scott Mullins, Erman Gene Warrix and Billy Warrix; and

WHEREAS, McCoy Elkhorn timely challenged both Notice of Non-Compliance Nos. 530676 and 532851 (collectively the “Non-Compliances”) before the Cabinet’s Office of Administrative Hearings, which actions have remained pending while the parties have attempted to reach some resolution of the subject environmental and public safety concerns; and

WHEREAS, McCoy Elkhorn has worked with various Federal and State governmental agencies to procure a public water supply to Upper Pompey Creek in Pike County, Kentucky, to provide a public water supply to Upper Pompey Creek which, when installed, would provide public water service to the persons cited in the Non-Compliances and numerous other persons who live in the vicinity of Upper Pompey Creek; and

WHEREAS, on or about July 2, 2012, McCoy Elkhorn paid the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) (the "Escrow Funds") to Baird and Baird, P.S.C.'s Trust Account, such funds which were to be made available as a contribution toward the cost of completing the installation of a public water supply which was anticipated to be additionally funded with monies received from certain Federal and State agencies. The above Escrow Funds are still being held by Baird and Baird, P.S.C. in its Trust Account; and

WHEREAS, McCoy Elkhorn has agreed to contribute additional sums to be used for installing the public water supply by depositing such additional monies in Baird and Baird P.S.C.'s Trust Account to be held by Baird and Baird, P.S.C. and distributed pursuant to the terms set forth in this Agreed Order; and

WHEREAS, the Cabinet and McCoy Elkhorn desire to resolve the Non-Compliances without the necessity of further litigation;

NOW, THEREFORE, in consideration of the premises contained herein and the promises to be performed hereinafter, the parties hereby consent to the entry of this Agreed Order and agree as follows:

1. McCoy Elkhorn neither admits nor denies the violations cited in the Non-Compliances relating to alleged violation of 405 KAR 18:060. McCoy Elkhorn admits the validity of all other violations set forth in the Non-Compliances. McCoy Elkhorn

agrees the Non-Compliances shall be used for history points and the assessment of future penalties in conformity with 405 KAR 7:095, if applicable, and for all other purposes allowed by law. Nothing contained herein shall be deemed an admission by McCoy Elkhorn that it caused or was otherwise responsible for the violations cited in the Non-Compliances for the alleged violation of 405 KAR 18:060, and McCoy Elkhorn is entering into this Agreed Order to avoid further litigation expense and to participate in providing a public water supply to the residents of Upper Pompey Creek in Pike County, Kentucky.

2. McCoy Elkhorn agrees to remit an additional sum of \$750,000.00 (hereinafter the "Additional Escrowed Funds") to Baird and Baird's Trust Account, making a total of One Million Dollars (\$1,000,000.00) which shall be available for the construction of a permanent public water supply for those individuals whose water wells were identified in the Non-Compliances as being adversely impacted by McCoy Elkhorn's mining operations and for such other purposes as hereinafter set forth.

3. Baird and Baird, P.S.C., upon receipt of the Additional Escrowed Funds, shall notify the Cabinet in writing of the receipt of such monies, at which time the Cabinet agrees to abate the Non-Compliances and terminate any assessment related to the violations of 405 KAR 18:060.

Upon receipt of the Mine Inspection Report abating the Non-Compliances, Baird and Baird, P.S.C. shall remit by check from its Trust Account made payable to the Kentucky State Treasurer the sum of Nine Hundred Thousand Dollars (\$900,000.00) from the Escrow Funds and the Additional Escrow Funds deposited by McCoy Elkhorn in the Trust Account and shall deliver the same to Steve Hohmann, Commissioner, within ten (10) days of the Non-Compliances being abated, or within five (5) days from the entry of this Agreed Order in the Office of Administrative Hearings, whichever shall

last occur. The above funds shall be held by the Department for Natural Resources, shall be identified, marked and accounted for the purposes herein described. McCoy Elkhorn hereby relinquishes all right, title and interest in and to said funds and said funds shall be expended by the Cabinet for the construction and installation of a permanent public water supply.

4. The \$100,000.00 remaining in Baird and Baird's Trust Account shall first be utilized by McCoy Elkhorn to pay for the installation of water service from the public water line to each dwelling and to pay all incidental costs associated therewith, not only for the individuals who are listed in the Non-Compliances but certain other individuals to whom McCoy Elkhorn has been providing water. After the payment for the cost of running the water lines to each such dwelling, Baird and Baird P.S.C. shall have the right to pay an attorney fee from such remaining funds not to exceed \$10,000.00. McCoy Elkhorn shall divide and distribute the remaining funds equally among all individuals who have been furnished by McCoy Elkhorn with water prior to the date of this Agreed Order who shall include the persons identified in the Non-Compliances and such other persons and such payments shall be deemed by the Cabinet to fully satisfy McCoy Elkhorn's obligation under 405 KAR 18:060. In the event any person does not accept their proportionate part of the remaining funds, Baird and Baird P.S.C. shall continue to hold that portion of such funds in its Trust Account, and shall make such funds available when requested by such person.

5. McCoy Elkhorn agrees to continue providing temporary water supplies to those individuals identified in the Non-Compliances until such time as the permanent public water supply becomes available to those individuals.

6. The penalty assessments for all violations written in Non-Compliance No. 53-0676 and Non-Compliance No. 53-2851 shall be terminated without penalty.

7. Compliance with the terms of this Agreed Order shall constitute a satisfactory disposition of the Non-Compliances and the proposed civil penalty relating to the alleged violations cited pursuant to 405 KAR 18:060, General Hydrologic Requirement.

8. McCoy Elkhorn waives all rights to any further administrative or judicial review regarding the Non-Compliances.

9. McCoy Elkhorn agrees that upon entry of this Agreed Order with the Office of Administrative Hearings, the referenced administrative actions shall be dismissed with prejudice without the necessity of further Motion or an Order of the Hearing Officer.

10. This Agreed Order pertains to and resolves only the violations specifically set forth in the Non-Compliances and does not pertain to any other Notice of Non-Compliance or other enforcement documents issued by the Department for Natural Resources.

11. This Agreed Order shall be construed in accordance with the laws of the Commonwealth of Kentucky and shall not be modified, except in writing, as agreed to by all parties.

12. The Franklin Circuit Court shall have jurisdiction over any action brought to enforce the terms of this Agreed Order.

13. This Agreed Order shall be of no force or effect unless and until it is signed by the Secretary of the Energy and Environment Cabinet or his designee.

14. Upon entry of this Agreed Order and the timely payment by Baird and Baird, P.S.C. of the sums required to be paid to the Kentucky State Treasurer, the Non-Compliances shall be abated and the Non-Compliances shall not be an impediment in any regard to McCoy Elkhorn obtaining bond release relating to the

Permit. Notwithstanding the above, the provisions set forth in numerical paragraph 5 of this Agreed Order requiring McCoy Elkhorn to continue to supply water shall be binding upon McCoy Elkhorn and its successors or assigns, and all McCoy Elkhorn's Surface Coal Mining Reclamation and Operation Permits shall be issued conditionally on the compliance with such requirement, except Permit Nos. 836-5607, 836-5608, 836-5609, 836-5624, 858-0240, 860-5371, 860-5372, 860-5373, 898-0818, 898-4031, 898-4243, 898-4244, 898-8144, 898-9012, 898-9106 and 898-9114 which McCoy Elkhorn has heretofore committed to transfer to other entities.

AGREED TO BY:

MCCOY ELKHORN COAL CORPORATION

By: Randall K. Taylor
Its: President

7/10/14
Date

Charles J. Baird
Hon. Charles J. Baird
Counsel for McCoy Elkhorn Coal Corporation

7/10/14
Date

APPROVAL RECOMMENDED BY:

S. Bradford Smock
S. Bradford Smock
Counsel for Energy and Environment Cabinet

7/11/14
Date

Billy A. Ratliff
Billy Ratliff, Director
Division of Mine Reclamation and Enforcement

7/11/14
Date

Steve Hohmann

Steve Hohmann, Commissioner
Department for Natural Resources

7/11/14

Date

Diane Schuler Fleming

Diane Schuler Fleming, Deputy Executive Director
Office of General Counsel

7.11.14

Date

C. Michael Haines

C. Michael Haines, Executive Director
Office of General Counsel

7.11.14

Date

HAVE SEEN:

Steve Blanton

Hon. Steve Blanton, Hearing Officer
Office of Administrative Hearings

7/11/14

Date

ORDER

Upon recommendation of the Department for Natural Resources, Division of Mine Reclamation and Enforcement, and the Office of General Counsel, the foregoing AGREED ORDER is hereby entered as a final Order of the Energy and Environment Cabinet this the 14th day of July, 2014.

ENERGY AND ENVIRONMENT CABINET


LEONARD K. PETERS, SECRETARY

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2014, a true and accurate copy of the foregoing AGREED ORDER was mailed, postage prepaid, to:

Hon. Charles J. Baird
Baird & Baird, P.S.C.
P.O. Box 351
Pikeville, Kentucky 41502

McCoy Elkhorn Coal Corporation
1148 Long Fork Road
Kimper, Kentucky 41539-9703

and was hand-delivered to:

S. Bradford Smock
Energy and Environment Cabinet
Office of General Counsel
#2 Hudson Hollow
Frankfort, Kentucky 40601


DOCKET COORDINATOR

Distribution:
Division of Mine Reclamation and Enforcement
Pikeville Regional Office

BGD
file

Interested persons:

ERMAN GENE WARRIX
P O BOX 301
RACOON KY 41557

JOHNNY SMITH
1173 UPPER POMPEY ROAD
RACOON KY 41557

RONALD ADKINS
P O BOX 2951
PIKEVILLE KY 41502

STEVIE J & GLENDA HARRIS
P O BOX 11271
PIKEVILLE KY 41502

JACKIE & SHARON HARRIS
58 LYNN LANE
RACOON KY 41557

SHAWN ADKINS
PO BOX 292
RACOON KY 41557

BAIRD & BAIRD, P.S.C.

ATTORNEYS AT LAW

162 SECOND STREET
P.O. BOX 351
PIKEVILLE, KENTUCKY 41502

606-437-6276

FAX 606-437-6383

OR 606-437-5372

www.bairdandbaird.com

WILLIAM J. BAIRD (1913-1987)
WILLIAM J. BAIRD, III
JOHN H. BAIRD
CHARLES J. BAIRD
RUSSELL H. DAVIS, JR.
LOIS A. KITTS
VIRGINIA BAIRD
JEFFREY D. DAMRON
WILLIAM J. BAIRD, IV
DAVID L. BAIRD
SARAH K. MCGUIRE
RYAN M. STRATTON

JAMES B. RATLIFF
M. KATHRYN MANIS
JAMES M. KENNEDY

LEXINGTON OFFICE:
841 CORPORATE DRIVE

SUITE 101
LEXINGTON, KENTUCKY 40503
859-224-7750
FAX 859-224-1031

August 7, 2015

Via E-Mail Only

Mr. Tony Wilder, Commissioner
(tony.wilder@ky.gov)

**RE: UPPER POMPEY CREEK
PIKE COUNTY, KY**

Dear Tony:

I hope this letter finds you well. I spoke with Roy Sawyers of Mountain Water District earlier this week and he requested that I contact you to advise that Mountain Water District would like to begin this Project "sooner than later". DMRE is holding \$900,000.00 that has been approved to apply toward the cost of the Project and OSM and Mountain Water District have reached an agreement for an additional \$500,000.00 in funding for a total of \$1,400,000.00. The above amount, together with ARC's Grant in the amount of \$500,000.00 will allow the Project to be completely funded.

Mountain Water District would like to begin work on the Project and it is willing to do so if there was some "written commitment" from ARC (or whomever) to fund the additional \$500,000.00. Roy felt it would take several more months before the funding was obtained and MWD would like to go ahead and order the supplies and put the Project out for bid.

Mr. Tony Wilder
August 7, 2015
Page Two

Please advise if the above is a possibility. As you know, these folks have been without water for quite some time and the sooner they get relief, the better.

Thank you for your usual kind assistance. The Project would have never happened without you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles".

Charles J. Baird

CJB/lwg

6-18-12 ms

BAIRD & BAIRD, P.S.C.

ATTORNEYS AT LAW

162 SECOND STREET
P.O. BOX 351
PIKEVILLE, KENTUCKY 41502

606-437-6276
FAX 606-437-6383
OR 606-437-5372
www.bairdandbaird.com

JAMES B. RATLIFF
M. KATHRYN MANIS
JAMES M. KENNEDY

LEXINGTON OFFICE:
841 CORPORATE DRIVE
SUITE 101
LEXINGTON, KENTUCKY 40503
859-224-7750
FAX 859-224-1031

WILLIAM J. BAIRD (1913-1987)
WILLIAM J. BAIRD, III
JOHN H. BAIRD
CHARLES J. BAIRD
RUSSELL H. DAVIS, JR.
LOIS A. KITTS
VIRGINIA BAIRD
JEFFREY D. DAMRON
WILLIAM J. BAIRD, IV
DAVID L. BAIRD
SARAH K. MCGUIRE

June 14, 2012

Mr. Randall K. Taylor, President
McCoy Elkhorn Coal Corporation
1148 Long Fork Road
Kimper, KY 41539

**Re: McCoy Elkhorn Coal Corporation
Permit No. 898-5616 - Non-Compliance No. 53-2851
Escrow Account for McCoy Elkhorn Coal Corporation's
Contribution to Construction of Waterline to Serve
Upper Pompey Creek Residents**

Dear Mr. Taylor:

As you know, McCoy Elkhorn Coal Corporation (MECC) was written Non-Compliance No. 53.2851 (the "NC") on August 7, 2009, for failing to provide a permanent water supply to various residents of Upper Pompey Creek in Pike County, Kentucky. We filed a Petition for Review with the Office of Administrative Hearings on or about August 13, 2009, contesting the validity of the NC and we have been writing and obtaining extensions to abate the same ever since the NC was written.

Mountain Water District (MWD), the public water authority in Pike County, has estimated the cost of providing a public water supply to Upper Pompey Creek to the persons cited in the NC and numerous other persons (the "Project") in the amount of \$1,435,387.00 (the "Estimate").

The Estimate included \$110,000.00 for design, bidding and administration and also included a contingency of \$11,500.00.

Mr. Randall K. Taylor
June 14, 2012
Page Two

The design and right of way acquisition have already been completed and paid for. The Kentucky Legislature in 2012 appropriated \$808,000.00 for another water project and we are hopeful that this money can be reassigned to this Project.

MECC has agreed to contribute the sum of \$250,000.00 toward the cost of completing the Project, and the Department for Mine Reclamation and Enforcement (DMRE) has indicated that it desires that MECC pay the money into an escrow account so that such money will be segregated and available for use at the time the construction contract is awarded, and DMRE and MECC have agreed for the \$250,000.00 (the "Escrow Funds") to be paid by MECC into Baird and Baird, PSC's (B&B) "Trust Account" to be held by B&B under the following terms:

1. MECC shall pay the sum of \$250,000.00 to B&B, such sums to be deposited in B&B's Trust Account and disbursed to MWD upon B&B receiving assurances and evidence in writing from MWD that sufficient funds, together with the Escrow Funds, are in hand and available to complete the Project and upon B&B receiving written authorization from MECC to disburse the Escrow Funds to MWD.
2. B&B shall not be obligated to invest the Escrow Funds.
3. B&B shall have no liability for any loss or damage that MECC may claim to have by reason of B&B's distribution of the Escrow Funds to MWD upon presentment of evidence in writing to B&B advising B&B that MWD has contracted to have the Project completed and that MWD has funds sufficient to complete the Project, subject to B&B first receiving authorization from MECC to do so. Notwithstanding the above, B&B shall be liable to MECC for its gross negligence or willful misconduct; however, in no event shall B&B be responsible for any special or consequential damages.
4. B&B may rely upon and shall not be liable for acting or refraining from acting upon written notice, instruction or request furnished to it hereunder and believed to it to be genuine and to have been signed or presented by MWD and MECC.
5. In the event the Escrow Funds are not disbursed by B&B to MWD within 360 days of the date of this letter agreement or upon receiving written notice

Mr. Randall K. Taylor
June 14, 2012
Page Three

from MECC to repay the Escrow Funds to MECC prior to disbursement to MWD, B&B shall pay the Escrow Funds to MECC. B&B shall also repay to MECC the Escrow Funds in the event that the \$808,000.00 appropriated by the Kentucky Legislature for the other water Project as described above are not reassigned to be used for the Project within one-hundred and twenty (120) days of the date of this letter.

6. B&B's obligations shall terminate upon it either paying the Escrow Funds to MWD pursuant to Section 1 above or upon repayment of the Escrow Funds to MECC pursuant to Section 5 above.

If you are agreeable with the above please acknowledge your agreement by signing at the indicated place below and returning an original of this letter to me.

Please advise if you have any questions.

Very truly yours,

BAIRD AND BAIRD, PSC

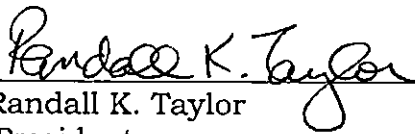
By: 
Charles J. Baird, President

CJB/lwg

cc: G. Lynn Colley

HAVE SEEN & AGREED TO:

MCCOY ELKHORN COAL CORPORATION

By: 
Randall K. Taylor
Its: President

630.0138:/Randall Taylor Ltr. 7



**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR NATURAL RESOURCES**

Steven L. Beshear
Governor

Division of Abandoned Mine Lands
2521 Lawrenceburg Road
Frankfort, Kentucky 40601
www.ky.gov

Leonard K. Peters
Secretary

Steve Hohmann
Commissioner

June 25, 2015

Mr. Ancie Casey Chairman
Mountain Water District
6332 Zebulon Road, Ky. Hwy. 119
Pikeville, Ky. 41501

Dear Mr. Casey:

Enclosed is the Memorandum of Agreement that will provide the funding needed for the design & construction of the Upper Pompey Water supply Project that includes: Interconnection line between Johnican Creek and Raccoon Creek via Ridgeline Road, to route 194 potable water service to Upper Pompey, areas of Raccoon Creek, and Ridgeline Road. A maximum of Nine Hundred Thousand Dollars (\$900,000.00) is being provided via this Agreement. The performance period will run from June 01, 2015 thru June 30, 2017. Please review the Agreement, obtain the indicated signatures, and return the document to this Division. A fully executed Agreement will be provided to you as soon as it is available.

Your attention is particularly directed to the various reporting requirements of the agreement. These requirements are mandatory and your failure to comply with any of them will jeopardize the project funding.

- Establishment of a separate bank account for Project funds.
- Establishment of a Project Identification Code.
- Monthly submission of Project status and financial reports. These are to be submitted by the 15th of the following month.
- Submission for Division review and approval of contracts with other governmental entities or private companies relating to the performance of Project Design, Resident Construction Inspection and Professional Construction Oversight of the project.
- Submission for Division review and approval Project Hydraulic Analyses and Profiles.
- Submission for Division review and approval a set of Preliminary Plans and Specifications.
- Submission of any Archaeological Survey pertaining to Project-related disturbances (3 copies).
- Submission of Final Plans and Specifications (2 copies).
- Submission of detailed Project Cost Estimate.
- Submission for Division Review Construction Bid Tabulations and Notices of Award.
- Compliance with Minimum wage requirements of 10.10/ hour.

June 25, 2015

- Submission for Division Review Resident Inspectors Daily Reports and Progress Meeting and Minutes.
- Submission of As-Built Plans.
- Submission of Final-Close Out Report of Project.

Please contact Mark Meade or me at (502) 564-2141 if you have any concerns or comments.

Sincerely,



Robert F. Scott, Director
Division of Abandoned Mine Lands

RFS/MM/AL/PB

Attachments

Kentucky Commonwealth of Kentucky

PURCHASE ORDER

IMPORTANT
 Show Doc ID number on all packages, invoices and correspondence.

Doc Description: PIKE CO SYSTEMS IMPROVEMENTS 33AG	
Doc ID No: PO2 128 1500004770 1	Procurement Folder: 3845191
Procurement Type: MOA/PSC Exception	
Administered By: Bath Wilson	Cited Authority: KRS45A.690(1)(D)11
Telephone: 502-564-2141	Issued By: Bath Wilson

C O N T R A C T O R	MOUNTAIN WATER DISTRICT
	6332 ZEBULON ROAD
	KY HWY 119
	PIKEVILLE KY 41501
	US

Effective From: 2015-05-01 Effective To: 2017-06-30

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	PIKE CO SYSTEMS IMPROVEMENTS 33AG		0.00		0.00000	500,000.00	500,000.00

Extended Description

This Memorandum of Agreement will provide funding in the amount of Five Hundred Thousand Dollars (\$500,000.00) from the 33rd Annual Grant for the design and construction of the Pike County Systems Improvements Water Supply Project that affects the reliability of potable water to the following AML funded and served areas: Ridgeline Road / Hurricane Branch, Fedcreek-Mouthcard, Ferris Creek and Harless Creek. The Pike County Systems Improvements waterline project will interconnect Raccoon Creek and Johnican areas, via Ridgeline Road to Ky. Hwy. 194. This project will provide for the enhancement to three (3) existing pump stations, add a new pump station, a 20,000 gallon water storage tank, and various valves and fitting improving service and reliability into those areas listed above. The project will be constructed entirely in Pike County and will be operated by the Mountain Water District. The completed project will additionally involve the installation of approximately, 13,600 linear feet of 6 inch ductile iron main line, a pressure reducing vault, a master meter, and various valves and blow-offs. The project will ensure greater reliability to nearly 1,300 AML water supplied households. The project will be bid and awarded to maximize the availability of funding.

B I L L T O	257749	S H I P T O	257749
	DIVISION OF AML - FRANKFORT		DIVISION OF AML - FRANKFORT
	2521 OLD LAWRENCEBURG RD		2521 OLD LAWRENCEBURG RD
	FRANKFORT KY 40601		FRANKFORT KY 40601
	US		US

Total Order Amount: 500,000.00

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PIKE COUNTY SYSTEM IMPROVEMENTS 33rd AG AML WATER SUPPLY PROJECT

Scope of Services:

WHEREAS, groundwater contamination studies known as the "Ridgeline Road / Hurricane Creek Road, Fedscreek-Mouthcard, Ferrells Creek, Harless Creek AML Groundwater Contamination Studies" performed by Summit Engineering Co. and the Kentucky Division of Abandoned Mine Lands personnel that included: Ridgeline Road / Hurricane Creek Road, Fedscreek-Mouthcard, Ferrells Creek, Harless Creek found that groundwater in those designated areas located in Pike County, Kentucky have been impacted by AML-eligible mining; and

WHEREAS, the study identified impacts from pre-law and interim coal mining as factors contributing to the reported groundwater problem; and

WHEREAS, approximately 1300 residences located in the study areas described above are within the affected areas, and a vast majority of those were found to be AML-eligible and

WHEREAS, the Cabinet and Mountain Water District hereafter referred to as the "Sub Recipient" shall enter into a Master Agreement Order which will provide funds for, among other things, the preparation of plans and specifications, and construction of potable water services into the above-referenced affected area; and

WHEREAS, the Cabinet and the Sub Recipient wish to begin preparations for

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improvements of water service into the previously described area, to provide further relief to the AML-affected residents;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality and sufficiency of which is hereby acknowledged by the parties to this AGREEMENT, the Cabinet and the Sub Recipient hereby COVENANT AND AGREE as follows:

OBLIGATIONS OF THE CABINET

The Cabinet shall undertake the following obligations:

When requested to do so, the Cabinet shall forward the written report of any archaeological survey to the Kentucky Heritage Council and the Office of State Archaeology, University of Kentucky, for review.

The Cabinet shall review and concur, if acceptable, with proposed contracts for preparation of plans and specifications prepared by: Summit Engineering.

The Cabinet shall provide Request for Payment forms to the Sub Recipient.

The Cabinet shall participate in monthly progress meetings, as necessary, and review monthly project financial and status reports received from the Sub Recipient.

The Cabinet shall process payments to the Sub Recipient promptly after receipt of monthly Requests for Payment and progress reports.

The Cabinet shall participate in the final inspection of the Project.

The Cabinet shall provide an affidavit form entitled, "Campaign Finance Law

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Compliance" to be included in the bid documents.

The Cabinet has been awarded a Federal grant to be used toward completion of the Project, and the following information pertains to that award:

Catalog of Federal Domestic Assistance (CFDA) Number: 15.252,

CFDA Title: Abandoned Mine Lands Reclamation (AMLR) Program,

Award Name and Grant Number: Kentucky Division of Abandoned Mine Lands,

33 Annual Grant Year

Federal Awarding Agency: Office of Surface Mining Reclamations and Enforcement,
Department of the Interior

Applicable Compliance Requirements: Additional compliance requirements for this Project are contained in Circular A-133, a copy of which the Cabinet has provided to the Sub Recipient.

OBLIGATIONS OF THE SUB RECIPIENT

The Sub Recipient shall undertake the following obligations:

The Sub Recipient has or shall provide to the Cabinet completed design drawings, technical specifications and other construction-related documents in both paper and

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electronic format.

The Sub Recipient has or shall submit the necessary contract documents to the Cabinet's Division of Water for its review and approval in accordance with Chapter 224 of the Kentucky Revised Statutes. The Sub Recipient shall obtain all other required permits or certifications.

The Sub Recipient shall comply with the provisions of Section 106 of the National Historical Preservation Act of 1966, as amended (16 U.S.C.&470); Executive Order No. 11593, which relates to the identification and protection of historic properties; and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. && 469(a)(1) et. seq). In particular, an archaeological survey shall be performed for all areas, such as tank sites and pump stations, proposed for disturbance outside the highway rights-of-way, unless the site and access thereto have previously been disturbed. Three copies of the written report resulting from such an archaeological survey shall be submitted to the Cabinet's Division of Abandoned Mine Lands.

The Sub Recipient shall provide adequate construction supervision during the period of contract performance. The Sub Recipient shall provide a copy of any contract for construction supervision to the Cabinet's Division of Abandoned Mine Lands for review and approval prior to execution.

The Sub Recipient shall submit, on a monthly basis, a Project status report to the

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Cabinet's Division of Abandoned Mine Lands. The report shall include a financial report prepared while construction activities are ongoing. A "Request for Payment" form with an itemization of eligible Project costs attached shall accompany monthly reports. The County Judge Executive, Mayor, District Chairman, or his or her designee shall sign the Request for Payment forms.

The Sub Recipient shall establish a special Project identification code for all work performed under this AGREEMENT and records shall be maintained of all related work, whether performed by the Sub Recipient, other governmental agencies, or private companies.

The Sub Recipient shall establish a separate bank account of Federal receipts, and shall submit monthly bank statements to the Cabinet as follows: Kentucky Division of Abandoned Mine Lands 2521 Lawrenceburg Road, Frankfort, Kentucky 40601.

The Sub Recipient has or shall submit Tabulation of Construction Bids and any Notices of Award to the Division of Abandoned Mine Lands.

The Sub Recipient and any of its subcontractors shall maintain records in accordance with 30 C.F.R. 886.24, which is incorporated into this AGREEMENT by reference. Project-related records shall be available for inspections and audit by the Cabinet.

The Sub Recipient shall submit copies of Resident Inspector Daily Reports and

Progress Meeting Minutes to the Division of Abandoned Mine Lands.

The Sub Recipient shall submit As-Built plans upon completion of the Project.

The Sub Recipient shall submit a written "close-out" report for the Project citing any problems occurring during the performance period of the contract, and the resolution of any problems.

The Sub Recipient shall schedule a "final" inspection with the Cabinet upon completion of Project construction work.

The Sub Recipient shall procure all engineering or construction contracts in accordance with applicable state and federal laws and regulations. Specifically, The Sub Recipient agrees to comply with all pertinent provisions of KRS 45A, "Kentucky Model Procurement Code".

The Sub Recipient shall have an audit performed in accordance with OMB Circular A-133, "Audits of State and Local Governments". A copy of the audit shall be provided to the Cabinet within 30 days after completion of the audit, but no later than nine months after the end of the audit period.

The Sub Recipient shall obtain prior Cabinet approval for acquisition of equipment under this MOA. Requests for equipment acquisition authorization, other than that implicit to the water supply project, shall be submitted to: Division of Abandoned Mine Lands 2521 Lawrenceburg Road Frankfort, Kentucky 40601.

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The Sub Recipient shall require all consultants and contractors to carry Workers Compensation and Public Liability Insurance, with single limit coverage of at least \$1,000,000.00. Proof of insurance shall be submitted to the Cabinet upon request.

The Sub Recipient has or shall submit the names of the low bidder for the construction contract and all subcontracts to the Cabinet so that the Cabinet may conduct an Office of Surface Mining Applicant Violator System review. The Cabinet may reject the low bidder or any subcontractor if the review identifies the low bidder or subcontractor as a mining violator. The Sub Recipient shall provide the Cabinet with a copy of each contractor/subcontractor's federal ID#, mailing address and phone number.

43CFR12 is incorporated by reference.

The Sub Recipient shall require each bidder to sign and submit to the Division of Abandoned Mine Lands a Campaign Finance Law Compliance affidavit in accordance with KRS 45A.110 and KRS 45A.115. Failure by the bidder to provide the affidavit shall be grounds for disqualification.

The Sub Recipient shall retain all records relating to the Project until such records are audited by the Cabinet, or for three years after submitting the close-out report to the federal Office of Surface Mining, whichever first occurs. The Sub Recipient shall advise the Cabinet in writing if the Project is to be administered by another governmental entity on its behalf and the Project-related records will be maintained at an alternate site.

The Sub Recipient shall cooperate fully with the Cabinet in order to facilitate the obligations set out in this AGREEMENT including, but not limited to, allowing the Cabinet to inspect all records pertaining to the project at any time.

The Sub Recipient shall complete the project no later than June 30, 2017, unless the Cabinet grants a written extension.

MUTUALITY OF OBLIGATIONS

The obligations imposed upon the parties to this AGREEMENT are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this AGREEMENT is necessary. The failure of any party to fulfill any of its obligations under this AGREEMENT shall constitute a breach of this AGREEMENT, and shall entitle the other party to commence appropriate legal or equitable action to enforce its rights under this AGREEMENT, unless the fulfillment of such obligation is waived or modified by the affected party. All waivers shall be in writing, signed by the affected party, and a waiver of one breach shall not constitute a waiver of any other breach.

In the event of a material breach by either party to this AGREEMENT, the other party may terminate this AGREEMENT, as provided in paragraph 8 herein, without further obligation to the other party. The rights of the parties to this AGREEMENT to pursue remedies for breach of any of the provisions hereof shall survive the termination,

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expiration, or cancellation of this AGREEMENT.

Except as otherwise provided to this AGREEMENT, the parties to this AGREEMENT shall be solely responsible for any costs incurred in fulfilling their obligations under this AGREEMENT.

TERM OF AGREEMENT

This AGREEMENT shall be effective on May 01, 2015 or upon approval by the Government Contract Review Subcommittee if that constitutes a different date, and shall expire on June 30, 2017, or upon the final completion of the Project as specified in Sections 1 and 2 of this AGREEMENT, whichever first occurs, unless extended in writing by the parties or terminated earlier in accordance with the terms hereof.

ASSURANCES

The parties shall comply with:

The Common Rule, which is incorporated by reference into this AGREEMENT.

The Anti-Drug Abuse Act (P.L. 100-690), which requires recipients of Federal funds to certify that they have met requirements designed to promote a drug-free workplace.

Federal statutes relating to nondiscrimination, including but not limited to:

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Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;

Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex;

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of age;

The Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

§§ 523-527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;

Any other nondiscrimination statute(s) that apply to this AGREEMENT.

Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), which provide for fair and equitable treatment of

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persons displaced or whose property is acquired as a result of federal or federally-assisted programs.

The Hatch Act (5 U.S.C. && 1501-1508 and 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

The Copeland Act (40 U.S.C. & 276(c) and 18 U.S.C. & 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. && 327-333), regarding labor standards for federally-assisted construction sub-agreements.

The flood insurance purchases requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000.00 or more.

The parties shall further:

Comply with environmental quality control measures pursuant to the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order No. 11514;

Notify violating facilities pursuant to Executive Order no. 11990;

Protect wetlands pursuant to Executive Order no. 11990;

Evaluate flood hazards in flood plains in accordance with Executive Order No. 11988;

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Ensure actions comply with state implementation plans under Section 176(c) of the Clean Air act of 1955, as amended (42 U.S.C. && 7401 et seq.);

Protect underground sources of drinking water pursuant to the Safe Drinking Water Act of 1974, as amended (P.L. 93-523);

Comply with the Endangered Species Act of 1973, as amended (P.L. 93-205); and

Comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. && 1270 et seq).

The parties shall comply with the Executive Branch Code of Ethics (KRS Chapter 11A) and all state statutes relating to nondiscrimination.

The parties certify, by the signatures of duly authorized representatives hereinafter affixed, that they are legally entitled to enter into this AGREEMENT and that they shall not be violating, either directly or indirectly, any conflict of interest statute of the Commonwealth of Kentucky by performance of this AGREEMENT. Further, the parties promise that they presently have no conflict of interest, in any manner or degree, with the performances of services required to be performed under this AGREEMENT, and that no persons having any such conflict of interest shall be employed.

CHOICE OF LAW AND FORUM

All questions as to the execution, validity, interpretation, construction, and performance

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of this AGREEMENT or any of its terms shall be governed by the laws of the Commonwealth of Kentucky.

Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this AGREEMENT shall be filed in the Franklin Circuit Court of the Commonwealth of Kentucky.

METHOD OF PAYMENT

The maximum amount of compensation to the Sub Recipient from the Cabinet pursuant to this AGREEMENT is \$500,000.00 (Five Hundred and Thousand Dollars), unless subsequently amended in writing. Any funds not expended pursuant to this AGREEMENT shall revert to or remain with the Cabinet. The Sub Recipient shall be reimbursed only for actual expenses incurred pursuant to this AGREEMENT. Payment shall be based on the percentage of the project that has been completed at the time that the request for payment is made.

Payments on this instrument shall not be authorized for services rendered after Government Contract Review Subcommittee disapproval of this instrument, unless the decision of the Committee is overridden by the Secretary of the Finance and Administration Cabinet or the agency head, if the agency has been granted delegation

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authority.

The parties agree that the Cabinet's funds are appropriated by the United States Congress from funds allocated to Kentucky pursuant to Section 402(g)(2) of Public Law 95-87. The parties further agree and understand that this AGREEMENT will only become effective upon approval of the Project by the U.S. Office of Surface Mining (OSM). The Catalog of Federal Domestic Assistance number for this Project is CFDA#15-252.

Memorandum of Agreement Terms and Conditions

Cancellation clause:

Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

Funding Out Provision:

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

Reduction in Contract Worker Hours:

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized

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representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

Effective Date:

All Memorandum of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.
Contract clause:

Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Sep 2013)

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L.112-239) and FAR 3.908.
- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

EFFECTIVE DATE: all grants and contracts issued on or after July 1, 2013 through January 1, 2017.

<http://www.gpo.gov/fdsys/pkg/USCODE-2012-title41/pdf/USCODE-2012-title41-subtitlef-div5nc-chap-12-sec4712.pdf>

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Violation of tax and employment laws:

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached

Discrimination

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal

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regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of

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September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Notifications:

All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing and sent to the following: 2521 Lawrenceburg Road Frankfort KY 40601

Vendor (DUNS #:180555187)

Agency: Mountain Water District

Approvals:

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

Mountain Water District:

I hereby acknowledge that I was informed of, understand, and agree to comply with applicable compliance requirements, as set forth in this MEMORANDUM OF AGREEMENT. I further acknowledge receipt of circular A-133 requirements from the Energy and Environment Cabinet.

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Mountain Water District:

I hereby acknowledge that I was informed of, understand, and agree to comply with applicable compliance requirements, as set forth in this MEMORANDUM OF AGREEMENT. I further acknowledge receipt of circular A-133 requirements from the Energy and Environment Cabinet.

AGREED TO BY:

Arcie Casey Date 4-29-15

Arcie Casey, Chairperson (printed)

APPROVED AS TO FORM AND LEGALITY:

Daniel P. Stratton Date 4-29-15

Daniel P. Stratton, Attorney Mountain Water District

ENERGY AND ENVIRONMENT CABINET:

APPROVAL RECOMMENDED BY:

Steve Hohmann Date 5/5/15

Steve Hohmann
Commissioner,
Department for Natural Resources

APPROVED AS TO FORM AND LEGALITY:

C. Michael Haines Date 5-12-15

C. Michael Haines Executive Director,
Office of Legal Services

AGREED TO BY:

Leonard K. Peters Date 5-15-15

Leonard K. Peters, Secretary
Energy and Environment Cabinet

Job	Owner	Engineer	Contract Amount	Est. Cost to Complete	t. Completion Date
Deskins Curve Utility Relocation	MWD	Bell Engineering	\$514,000.00	\$0.00	6/1/2016
Johns Creek Pump Station Relocation	MWD	Summit Engineering	\$900,140.00	\$0.00	5/30/2016
Marion Branch Water Supply Project	city of Pikeville	Summit Engineering	\$2,737,216.00	\$0.00	6/15/2016
Upike Earthwork Project	Upike	Summit Engineering	\$1,546,000.00	\$0.00	1/20/2017
Millard School Utililties	Pike County BOE	Summit Engineering	\$705,880.00	\$0.00	6/1/2016

TABLE 1
SUMMARY OF GROUNDWATER INVENTORY ACTIVITIES
RIDGELINE ROAD (AML) GROUNDWATER CONTAMINATION STUDY

Study Area	Name	Households		
		Counted	Interviewed	Sampled
1	Opossum Branch of Raccoon Creek	12	2	0
2	Upper Pompey	29	25	6
3	Jonican Branch	47	45	10
4	Hurricane Creek	36	25	8
5	Left Fork of Grapevine	6	3	1
TOTAL		130	100	25

NOTES: Nine already served on Lynn Lane on Opossum Branch
Three already served on Left Fork of Grapevine

TABLE 2
RIDGELINE ROAD (AML) GROUNDWATER CONTAMINATION STUDY
GROUNDWATER INTERVIEW SUMMARY

RESIDENT'S DESCRIPTION											RESIDENT'S COMMENTS	NOTES
MAP ID	SUPPLY TYPE	WATER USE	TOTAL DEPTH (ft)	DEPTH OF STANDING WATER (ft)	TREATMENT (Y / N)	QUANTITY (S / U)	QUALITY (B / G)	ODOR (Y / N)	COLOR (Y / N)	CONNECT TO PUBLIC SUPPLY (Y / N / M)		
1	DW	N/A	825	0	N/A	U	N/A	N/A	N/A	Y		TWO WELLS DRY DUE TO MINING SAME WELL AS MAP ID # 1
2												
3	DW	DD	650		N	S	B	N	Y	Y	DINGY COLOR	NO WELL
4	N/A	N/A			N/A	U	N/A	N/A	N/A	Y	GOOD BEFORE WENT DRY	WELL DRY
5	DW	N/A	265	0	N	S	G	N	N	Y	IRON WATER	WELL DRY
6	DW	N/A	500	0	N	U	B	N	Y	M	RUSTY COLOR	WELL NOT IN USE
7	DW	N/A	500	250	Y	S	B	N	Y	M	WATER STINKS	
8	DW	DND			N	U	B	Y	Y	Y	IRON AND SULFUR WATER	
9	DW	DND			N	U	B	Y	Y	Y	IRON WATER	
10	DW	DND	70		N	S	B	Y	Y	Y		
11	DW	DND			N	S	B	N	Y	Y		
12												
13	DW	DD	85	55	Y	S	B	Y	N	M	LITTLE ODOR BEFORE SOFTENER ADDED	SAME WELL AS MAP ID # 11
14												
15	DW	DND	68		N	S	B	N	Y	M	IRON WATER	SAME WELL AS MAP ID # 15
16	DW	DD			N	S	G	N	N	Y	GOOD WATER	
17												
18	DW	DD	203	100	N	S	B	N	Y	Y	LITTLE BIT OF IRON	
19	DW	DND	75		N	S	B	Y	Y	Y	IRON AND SULFUR WATER	
20	DW	DND	75		N	S	B	Y	Y	M	IRON WATER	
21	DW	DND	35		N	S	B	Y	Y	Y	IRON AND SULFUR WATER	
22	DW	DND			N	S	B	Y	Y	M	IRON WATER	
23	DW	DD	85		Y	S	B	N	N	N	LITTLE IRON	
24	DW	DND	200		Y	U	B	Y	Y	Y	IRON AND SULFUR WATER	
25	DW	DND	105	5	N	U	B	Y	Y	Y	IRON AND SULFUR WATER	
26	DW	DND	55		Y	S	B	Y	Y	Y	IRON WATER	SAME WELL AS MAP ID # 24
27	DW	DD	80		N	S	B	Y	Y	Y	IRON WATER	
28												
29												
30	DW	DND	85		Y	S	B	Y	Y	Y	IRON WATER	SAME WELL AS MAP ID # 27
31	N/A	N/A			N/A	N/A	N/A	N/A	N/A	N/A		SAME WELL AS MAP ID # 30
32	DW	DD			N	S	G	N	N	N	GOOD WATER	
33	DW	DND	100		N	S	B	Y	Y	Y	IRON WATER	
34	DW	DND	110		N	U	G	N	N	Y	GOOD	
35	DW	DND	140	65	N	U	B	Y	Y	Y	SULFUR WATER	

TABLE 2
 RIDGELINE ROAD (AML) GROUNDWATER CONTAMINATION STUDY
 GROUNDWATER INTERVIEW SUMMARY

MAP ID	SUPPLY TYPE	WATER USE	TOTAL DEPTH (ft)	DEPTH OF STANDING WATER (ft)	TREATMENT (Y/N)	RESIDENT'S DESCRIPTION						CONNECT TO PUBLIC SUPPLY (Y/N/M)	RESIDENT'S COMMENTS	NOTES	
						QUANTITY (S/U)	QUALITY (B/G)	ODOR (Y/N)	COLOR (Y/N)						
36	DW	N/A	212	0	N	U	B	Y	N	Y	Y	SULFUR WATER	WELL DRY		
37	DW	N/A	288	0	N/A	N/A	N/A	N/A	N/A	N/A	Y		NO WATER HIT WHEN DRILLED		
38	HD	N/A			N/A	U	N/A	N/A	N/A	N/A	Y		WELL DRY		
39	DW	N/A	200	0	N	U	B	Y	Y	Y	Y	JELLY TYPE WATER	2 WELLS, BOTH DRY		
40	HD	N/A			N/A	U	N/A	N/A	N/A	N/A	Y		WELL DRY		
41	DW	DD	90		N	S	G	N	N	N	M				
42	DW	DD	225		N	U	B	Y	Y	Y	Y				
43														SAME WELL AS MAP ID # 44	
44	DD	DD	90		N	S	G	Y	N	Y	Y				
45	DW	DD	405		N	U	G	N	N	Y	Y				
46	N/A	N/A			N/A	N/A	N/A	N/A	N/A	N/A	N/A			NO WELL ON PROPERTY	
47	DW	DND	235	120	N	U	B	Y	N	Y	Y				
48	DW	N/A			N/A	N/A	N/A	N/A	N/A	N/A	Y			SMELLS LIKE GAS AT TIMES	
49	DW	N/A	675	0	N/A	N/A	N/A	N/A	N/A	N/A	Y				
50	DW	DND	26		N	U	B	Y	Y	Y	Y				
51	DW	DND	300		Y	U	B	Y	Y	Y	Y			ORANGE COLOR: ROTTEN EGG SMELL	
52	DW	DND	90		Y	U	B	Y	Y	Y	Y			BLACK PARTICLES; SULFUR ODOR	
53	DW	N/A	90	0	N	S	B	Y	Y	Y	Y				
54	DW	N/A	360	0	N/A	U	N/A	N/A	N/A	N/A	Y			WELL DRY: SUNK DUE TO MINING	
55	DW	N/A	128	0	N/A	U	N/A	N/A	N/A	N/A	Y			WELL DRY: SUNK DUE TO MINING	
56	DW	DND			N	S	B	Y	Y	Y	Y			WELL DRY: SUNK DUE TO MINING	
57	HD	N/A	26		N/A	U	N/A	N/A	N/A	N/A	Y				
58	DW	DND	65		N	S	B	Y	Y	Y	Y			SAME WELL AS MAP ID # 60	
59															
60	DW	DD	98		N	S	B	Y	Y	Y	M				
61	DW	DND	80		N	S	B	Y	N	M	M			BLACK PARTICLES AT TIMES	
62	DW	DND	80		N	S	B	Y	N	M	M			BLACK PARTICLES AT TIMES	
63	DW	DND	45		N	S	B	Y	Y	M	M				
64	DW	DD			N	S	B	N	N	Y	Y			TURNS SHOWERS AND FIXTURES ORANGE	
65	DW	DD	96		N	S	G	N	N	M	M			GOOD WATER	
66	DW	DND			N	S	B	Y	Y	Y	Y			REDDISH COLOR; SULFUR; NASTY FILM	
67															
68	DW	DND	75		N	S	B	Y	Y	Y	Y			HARD WATER	
69	DW	DD	60		N	S	G	N	N	N	N			GOOD WATER	
70															SAME WELL AS MAP ID # 69

**TABLE 2
RIDGELINE ROAD (AML) GROUNDWATER CONTAMINATION STUDY
GROUNDWATER INTERVIEW SUMMARY**

MAP ID	SUPPLY TYPE	WATER USE	TOTAL DEPTH (ft)	DEPTH OF STANDING WATER (ft)	RESIDENT'S DESCRIPTION					CONNECT TO PUBLIC SUPPLY (Y/N/M)	RESIDENT'S COMMENTS	NOTES
					TREATMENT (Y/N)	QUANTITY (S/U)	QUALITY (B/G)	ODOR (Y/N)	COLOR (Y/N)			
71	DW	DND	75	40	N	U	B	Y	Y	Y	IRON WATER	
72	N/A	N/A			N/A	N/A	N/A	N/A	N/A	N/A		
73	DW	DND	60	40	N	S	B	N	Y	Y	IRON WATER	VACANT
74	DW	DND	53		Y	S	B	N	Y	Y	REDDISH COLOR	
75												SAME WELL AS MAP ID # 74
76												SAME WELL AS MAP ID # 77
77	DW	DND	30		N	S	B	Y	Y	Y	IRON WATER	
78	DW	DD	70		Y	S	B	Y	Y	M	IRON WATER	
79	HD	DD			N	S	G	N	N	N	GOOD WATER	
80	DW	DND	90		N	U	B	Y	Y	Y	IRON WATER	
81	DW	DND	75		Y	S	B	Y	Y	Y	IRON WATER	
82	DW	DD	65		N	S	B	N	N	Y	IRON WATER	
83	DW	DD	500		N	S	B	N	Y	M	SULFUR WATER	
84	DW	DND	100		N	S	B	Y	Y	Y	IRON WATER	
85	DW	DD			N	S	G	N	N	Y	GOOD WATER	
86												SAME WELL AS MAP ID # 87
87	DW	DND	100		N	S	B	Y	Y	Y	IRON AND SULFUR WATER	
88												SAME WELL AS MAP ID # 89
89	DW	DND	100		N	U	B	Y	Y	Y	IRON WATER	
90	DW	DND	150		Y	S	B	Y	Y	Y	IRON AND SULFUR WATER	
91	DW	DND	200		Y	S	B	Y	Y	Y	SULFUR WATER	
92	DW	DND	180		N	S	B	Y	Y	Y	IRON WATER	
93	DW	DND			Y	S	B	Y	Y	Y	IRON AND SULFUR WATER	
94	DW	DND			Y	S	B	Y	Y	Y	IRON AND SULFUR WATER	
95												SAME WELL AS MAP ID # 96
96	DW	DD	125		N	S	G	N	N	Y	LITTLE IRON	
97	DW	DND	48		N	S	B	Y	Y	Y	IRON AND SULFUR WATER	
98	DW	DD	170	75	Y	S	B	Y	Y	Y		
99	DW	DND	70		Y	S	B	Y	Y	Y	IRON WATER	
100	DW	DD	100		Y	S	B	Y	Y	Y	GOOD WATER	

Shading indicates sampled well
 DW = Drilled Well
 HD = Hand Dug Well
 DD = Domestic Water Use
 DND = Does Not Drink; Water used as non-potable supply
 S = Satisfactory
 U = Unsatisfactory

B = Bad
 G = Good
 Y = Yes
 N = No

BAIRD & BAIRD, P.S.C.

ATTORNEYS AT LAW

162 SECOND STREET
P.O. BOX 351
PIKEVILLE, KENTUCKY 41502

606-437-6276

FAX 606-437-6383

OR 606-437-5372

www.bairdandbaird.com

JAMES B. RATLIFF
M. KATHRYN MANIS
JAMES M. KENNEDY

LEXINGTON OFFICE:
841 CORPORATE DRIVE
SUITE 101

LEXINGTON, KENTUCKY 40503
859-224-7750
FAX 859-224-1031

WILLIAM J. BAIRD (1913-1987)
WILLIAM J. BAIRD, III
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DAVID L. BAIRD
SARAH K. MCGUIRE
RYAN M. STRATTON

July 13, 2015

Via E-Mail Only

Mr. Roy Sawyers
(rsawyers@mtwater.org)

Re: Upper Pompey Water Project

Dear Roy:

I hope this letter finds you well. There are two dwellings located on Upper Pompey Road/Old Opossum Fork Road which are owned and occupied by Nola Coleman and Wanda Thacker. I am attaching for your attention a USGS Map showing the above dwellings and also an aerial photograph. It appears the dwellings are .11 miles off Ridgeline Road.

These people have not had water for quite some time and McCoy Elkhorn has been delivering water to them for a number of years. It is essential that the waterline be run to these dwellings when the waterline is installed. If this is not in the "plan", please advise and we need to do everything we can to include them in the plan.

Once you have had the opportunity of reviewing this email and the attachments give me a call so we can discuss the same.

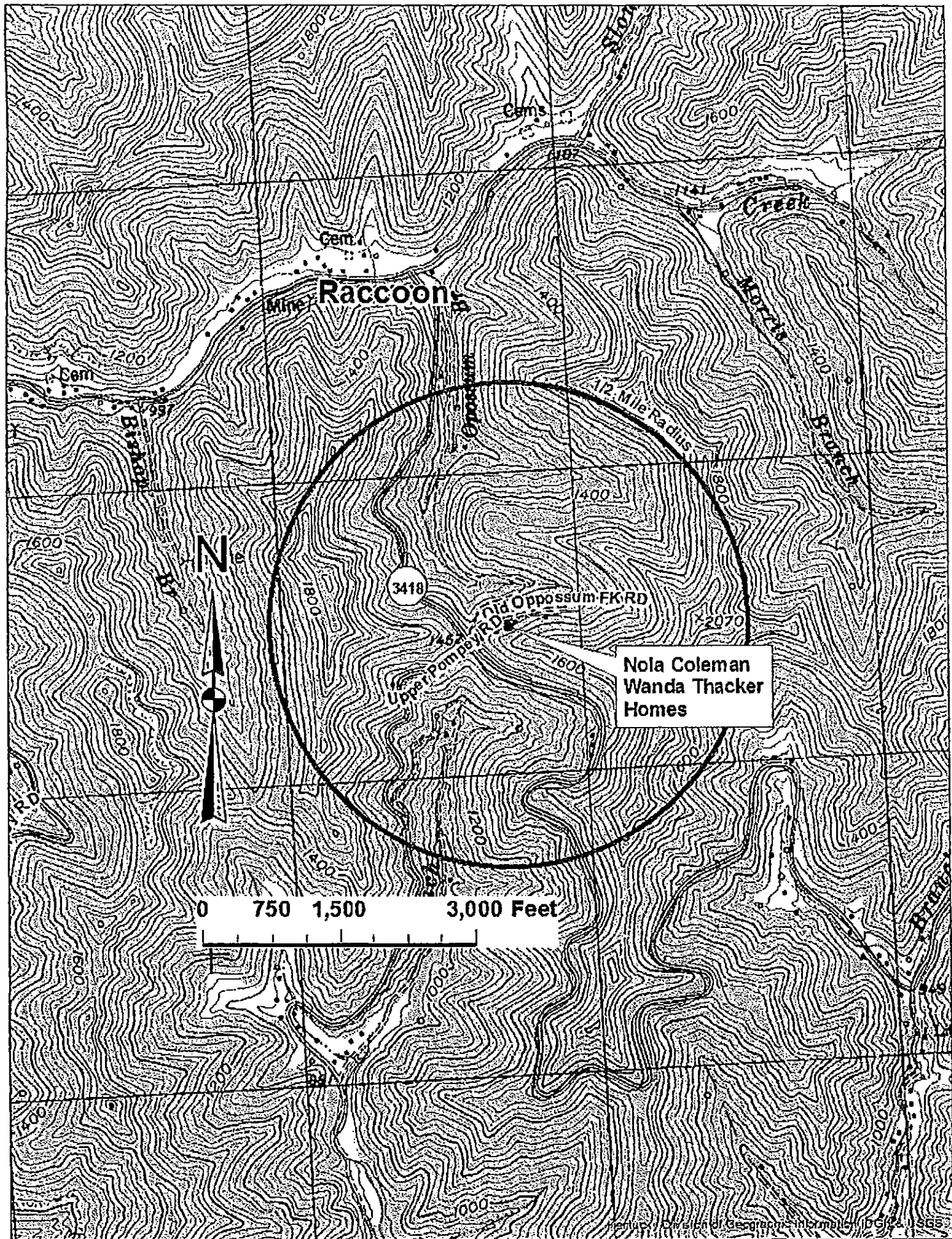
Thank you for your usual kind assistance.

Very truly yours,



Charles J. Baird

CJB/lwg
Attachments
630.0138:/Roy Sawyers Ltr. 5



Raccoons

Nola Coleman
Wanda Thacker
Homes

0 750 1,500 3,000 Feet