

*Law Offices of*  
**COLLINS & ALLEN**  
*P. O. Box 475*  
*Salyersville, Kentucky 41465*

**RECEIVED**

APR 14 2010

PUBLIC SERVICE  
COMMISSION

*John C. Collins*  
*Gregory D. Allen*

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*Phone (606) 349-1382*  
*Fax (606) 349-1322*

April 12, 2010

Hon. Gerald E. Wuetcher  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40602-0615

Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40602-0615

Mary Stephens, Esq.  
Energy and Environment Cabinet  
Division of Law  
First Floor  
200 Fair Oaks Lane  
Frankfort, KY 40601

David Edward Spenard, Esq.  
Assistant Attorney General  
Office of the Attorney General  
Suite 200  
1024 Capital Center Drive  
Frankfort, KY 40601-8204

John C. Collins, Esq.  
P. O. Box 475  
Salyersville, KY 41465

Mr. Billy J. Rowe, Sr.  
HC 60, Box 255  
Salyersville, KY 41465

Re: Case No. 2008-00443  
Magoffin County Water District/City of Salyersville

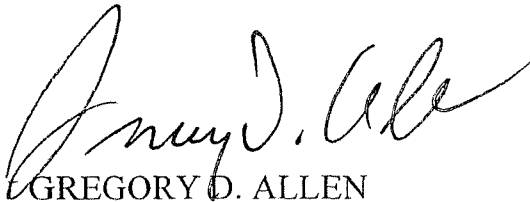
Dear Mr. Wuetcher:

Pursuant to the ongoing duty to supplement information requested and supplemental responses in the above referenced case, and in further response to your letter dated October 12, 2009, I am enclosing herewith copies of Emergency Water Supply Agreements recently completed between Magoffin County Water District and Prestonsburg City Utilities Commission, Paintsville Utilities Commission, and the Morgan County Water District. I have also enclosed herewith a Consent and Release Agreement entered into between Salyersville Water and Sewage District and the Magoffin County Water District as it relates to the Emergency Water Supply Agreement filed herein between Prestonsburg City Utilities Commission and the Magoffin County Water District. The Magoffin County Water District entered into each of these Emergency Water Supply Agreements in their continued efforts to provide safe water for the customers in Magoffin County, Kentucky and to be more prepared in the event of untimely droughts or disasters as has occurred in the recent past.

If you have any further questions or need further information, please feel free to contact me at your convenience.

Very truly yours,

COLLINS & ALLEN



GREGORY D. ALLEN  
ATTORNEY FOR MAGOFFIN  
COUNTY WATER DISTRICT

GDA:sgH

Enclosure

RECEIVED

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION  
CASE NO. 2008-00443

APR 14 2010

PUBLIC SERVICE  
COMMISSION

IN RE: THE MATTER OF AN INVESTIGATION IN TO THE  
ADEQUACY OF THE WATER SUPPLY OF  
THE CITY OF SALYERSVILLE WATER DISTRICT

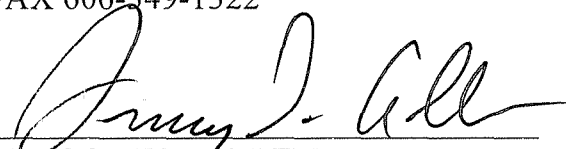
**SUPPLEMENTAL RESPONSE BY MAGOFFIN COUNTY WATER  
DISTRICT RELATING TO CONTRACTS ENTERED  
INTO BY MAGOFFIN COUNTY WATER DISTRICT  
FOR EMERGENCY WATER SUPPLY**

\* \* \* \* \*

Comes now the Magoffin County Water District, by counsel, and in compliance with its ongoing duty to supplement earlier responses filed in this case files herewith a copy of the contracts entered into by and between Magoffin County Water District and 1) the Morgan County Water District; 2) Prestonsburg City's Utilities Commission; and 3) Paintsville Utilities Commission, for the agreement to furnish emergency water supply to Magoffin County, Kentucky. Attached hereto is a copy of the Emergency Water Supply Agreement from those three area water supply utilities or commissions and attached Consent and Release Agreement which is part of the Emergency Water Supply Agreement entered into with the Prestonsburg City's Utilities Commission.

COLLINS & ALLEN  
P. O. BOX 475  
SALYERSVILLE, KY 41465  
PHONE 606-349-1382  
FAX 606-349-1322

BY:

  
GREGORY D. ALLEN

**CERTIFICATE**

This is to certify that a true and correct copy of the foregoing was this the 13<sup>th</sup>

day of April, 2010, mailed postage prepaid to the following:

Hon. Gerald E. Wuetcher  
Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

Ms. Sandy Gruzesky  
Division of Water  
Energy and Environment Cabinet  
200 Fair Oaks Lane, Fourth Floor  
Frankfort, KY 40601

Hon. Mary Stephens  
Office of General Counsel  
200 Fair Oaks Lane, First Floor  
Frankfort, KY 40601

DEP Division of Water  
Frankfort Office Park  
14 Reilly Road  
Frankfort, KY 40601

Hon. John C. Collins  
Collins & Allen  
P. O. Box 475  
Salyersville, KY 41465

Salyersville Water & Sewer  
401 College Street  
Salyersville, KY 41465

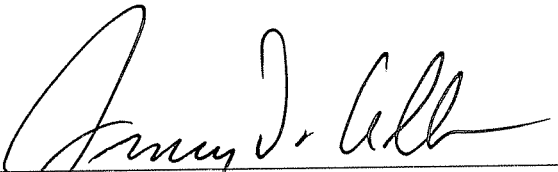
Billy J. Rowe, Sr.  
HC 60, Box 255  
Salyersville, KY 41465

Hon. A. David Blankenship  
Blankenship Law Office  
328 E. Court Street  
Prestonsburg, KY 41653  
Counsel for Paintsville Utilities Commission

Hon. David Edward Spenard  
Assistant Attorney General  
Office of the Attorney General  
Utility & Rate Intervention Division  
1024 Capital Center Drive  
Suite 200  
Frankfort, KY 40601-8204

the original to:

Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40602-0615

  
GREGORY D. ALLEN

CONSENT AND RELEASE AGREEMENT

THIS AGREEMENT, made and entered into this 26 day of MARCH, 2010 by and between Salyersville Water & Sewer, currently having offices located at 401 College Street, Salyersville, Kentucky 41465 ("Salyersville") and Magoffin County Water District, currently having offices located at 749 PARKWAY DRIVE SALYERSVILLE, KY 41465 ("Magoffin County").

WITNESSETH:

WHEREAS, Magoffin County is currently under-serving its water customers during periods of peak demand and needs a supplemental supply of potable water.

WHEREAS, Magoffin County has previously entered into a Water Purchaser Agreement dated January 26, 1983, as amended, with Salyersville for the delivery of all of its needs for potable water.

That the parties hereto, for and in consideration of this Agreement hereinafter set out, to be paid, kept and performed, hereby agree as follows:

1. Salyersville hereby agrees and consents to Magoffin County entering into an emergency water supply agreement with the Prestonsburg City's Utilities Commission ("Prestonsburg") for the delivery of emergency water supply to Magoffin County.

2. Salyersville hereby releases Magoffin County from its obligations under its existing Water Purchase Agreement with Salyersville to purchase all its requirements for potable water, so that Magoffin County may purchase water as needed on an emergency basis from Prestonsburg, and expressly authorizes Magoffin County to enter into an Emergency Water Supply Agreement with Prestonsburg.

joint 5/16

3. The term "emergency basis" shall mean whenever, in the ~~sole~~ opinion of <sup>Magoffin County</sup> Magoffin County, that Salyersville cannot deliver sufficient quantities of potable water to meet the needs of Magoffin County. The term "potable water" shall mean water safe for human consumption and that satisfies state and federal water quality standards.

4. Upon execution, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

5. This Consent and Release is given for the benefit of the parties hereto and Prestonsburg, an intended third-party beneficiary.

6. The parties hereto state that all the remaining terms of the Water Purchaser Agreement dated January 26, 1983, as amended, shall remain in effect, and are hereby ratified and confirmed.

7. This Agreement may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers or agents to execute this Agreement the day and year first above written.

MAGOFFIN COUNTY WATER DISTRICT

ATTEST:

BY:

CHAIRMAN

SECRETARY

SALYERSVILLE WATER & SEWER

BY:

STANLEY HOWARD, MAYOR

## EMERGENCY WATER SUPPLY AGREEMENT

THIS AGREEMENT, made and entered into this 22<sup>nd</sup> day of March,  
2009, by and between the PRESTONSBURG CITY'S UTILITIES COMMISSION  
2009  
("Prestonsburg") and MAGOFFIN COUNTY WATER DISTRICT ("Magoffin Co.").

### WITNESSETH:

WHEREAS, Magoffin Co. is currently under serving its water customers during periods of peak demand and needs a supplemental supply of potable water.

That the parties hereto, for and in consideration of the covenants of this Agreement hereinafter set out, to be paid, kept and performed, hereby agree as follows:

1. Water Delivery Points. Prestonsburg agrees to furnish emergency water supply service to Magoffin Co. during the term of this contract at a newly constructed point of delivery located on Highway 114, Magoffin County, Kentucky ("Delivery Point") and Magoffin Co. agrees to purchase potable treated water meeting applicable purity standards of the Kentucky Department of Health.
2. Maximum and Minimum Quantities of Water. Prestonsburg shall deliver and Magoffin Co. shall purchase quantities of water not to exceed 200,000 gallons per day of twenty-four hours, and not to exceed 6,000,000 gallons per month in the aggregate through the Delivery Points. Prestonsburg shall have the right to install equipment to restrict the flow of water on an hourly basis or establish temporary shut-offs to restrict the flow so that the quantities can be limited to the contract maximums set forth herein. It shall be the sole responsibility of Magoffin Co. to control its customer load so that the water flow at the Delivery Point need not be restricted. Magoffin Co. shall not be required to take a minimum quantity at any time.



3. Metering Equipment and Testing. Magoffin Co. agrees to furnish, install, operate and maintain at its own expense at the New Delivery Point, the necessary metering equipment, including a meter house or pit and required devices of standard type for properly measuring the quantity of water delivered to Magoffin Co.. Magoffin Co. shall calibrate the metering equipment at the Delivery Point whenever requested by Prestonsburg, but not more frequently than four times every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water delivered shall be adjusted to the amount delivered in the corresponding period immediately prior to the failure. An appropriate official of Magoffin Co., at all reasonable times, shall have access to the meters for the purpose of verifying its readings. Likewise, an appropriate official of Prestonsburg, at all reasonable times, shall have access to meters for the purpose of verifying its readings. Upon installation, the ownership of the meter and related equipment at the Delivery Point shall be transferred to Prestonsburg. After the transfer, Magoffin Co. shall pay all expenses to maintain said meter and related equipment.

4. Statement of Water Supplied. Prestonsburg agrees to furnish Magoffin Co., once each month, a statement of the quantity of water furnished Magoffin Co. during the applicable billing period.

5. Payment Policy. Payment shall be made in accordance with Prestonsburg's customer payment policy ("Payment Policy"), as it may be modified pursuant to public notice from time to time, which is attached as Exhibit "A".

6. Rate Schedule. Magoffin Co. agrees to pay Prestonsburg, according to Prestonsburg's Payment Policy, for water delivered in accordance with this Agreement at the following rates for each metered delivery point:

(a) The rate for all gallons of water delivered monthly hereunder shall be \$2.50 per \$1,000 gallons; and

(b) Service which requires booster pump service for delivery of the water also shall include a surcharge of \$.10 per booster pump per 1,000 gallons.

7. Rate Schedule Modifications. All rates set forth in this Agreement shall be adjusted annually on the anniversary date of this Agreement to compensate Prestonsburg for any documented increase in variable costs for the production and delivery of potable water.

8. Termination. This contract shall commence on the date hereof and continue for a period of ten (10) years. This Agreement may be extended or renewed by the parties, if they mutually agree, upon such terms and conditions as agreed upon by the Parties. If neither party gives notice of termination at the expiration of this agreement, it shall renew automatically on a month-to-month basis. Thereafter, either party may terminate this agreement upon thirty (30) day notice.

9. Fire Protection and System Reliability. Prestonsburg shall not be responsible in any way for the failure of Magoffin Co. to furnish sufficient water for fire protection purposes, or sufficient water storage tanks for system reliability purposes, and Magoffin Co. shall indemnify Prestonsburg from any such claims related thereto.

10. Indemnification. Each party shall indemnify the other party, its employees, and agents from all claims, demands, and liabilities of any kind relating to or arising out of this Agreement, except to the extent such claims, demands, or liabilities result from or arise out of the negligence of party being indemnified.

11. Chlorination. Magoffin Co. shall be responsible for any chlorination of the water furnished by Prestonsburg if such chlorination is required by the Magoffin County Department of Health or any other Federal or State governmental policy.

12. Interruptible Service. If Prestonsburg does not have a sufficient supply of water to supply its customers, then Prestonsburg at its sole discretion may reduce or terminate service hereunder at any time.

13. Force Majeure. All obligations of either party with respect to service hereunder shall be excused without liability during the pendency of any condition of force majeure. Force majeure shall include any act, event or condition beyond the reasonable control of the party claiming force majeure, and shall include, but not be limited to, any act of God, act of terrorism, fire, storm, earthquake, freezing condition, wind, flood, drought, snow, water used to fight fires, line breaks,

environmental release, breakage of or delay in receiving parts, equipment or supplies, or shortage thereof, strike or lockout, or any act, event or requirement of any governmental law, regulation or entity. Force majeure shall not include routine line leakage or financial inability to pay, and shall not excuse payment for services rendered by Prestonsburg, including the payment of Magoffin Co.'s minimum bill, if any.

14. Notices. All notices and other communications provided hereunder shall be in writing and shall be delivered personally or transmitted by registered or certified mail, return receipt requested or by a recognized overnight courier service. Such notice shall be deemed to have been given at the time of personal delivery or upon receipt thereof, as reflected on the signed certificate or delivery statement of the courier service. Notice must be delivered or sent to the party at the following address or to such other address as a party may have designated by notice:

TO PRESTONSBURG:      Prestonsburg City's Utilities Commission  
   2560 South Lake Drive  
   Prestonsburg, Kentucky 41653

TO MAGOFFIN CO.:      Magoffin County Water District  
   Box 490  
   Salyersville, Kentucky 41465

15. Amendment. This Agreement may be amended in writing only, duly signed by both parties, and will be governed by and construed in accordance with Kentucky law.

16. Binding Effect and Benefit. Upon execution, the Agreement will inure to the benefit of and be binding upon the parties hereto and their respective

heirs, personal representatives, successors and assigns, subject to regulatory approval as set forth below; provided, however, neither this Agreement nor any rights and obligations hereunder may be assigned, or transferred by operation of law, or by order of the Public Service Commission by Magoffin Co. without the written consent of Prestonsburg.

17. Severability. The terms and provisions of this Agreement shall not be severable, and in the event that any term or provisions hereof is held to be invalid or unenforceable, the remaining terms or provisions hereof shall be invalid and unenforceable, and Prestonsburg shall have no further obligation hereunder.

18. Regulatory Jurisdiction. Nothing in this Agreement shall subject Prestonsburg to regulation by the Kentucky Public Service Commission (“KY PSC”). To the extent the KY PSC exercises jurisdiction over any aspect of this Agreement, Prestonsburg shall remain free, at its option, to withdraw without penalty or other obligation from this Agreement upon providing thirty (30) days written notice to Magoffin Co..

19. Wholesale Services Prohibited. Magoffin Co. shall not resell at wholesale water supplied hereunder so as to make Prestonsburg, directly or indirectly, a wholesale supplier to any other water system.

20. Non-Waiver. Prestonsburg’s failure to exercise any of its rights hereunder at any time will not operate as a waiver of its right to exercise same at any other time(s).

21. Right of First Refusal. Prestonsburg shall have a right of first refusal to acquire all or a portion of Magoffin Co.’s entire water or sewer systems and

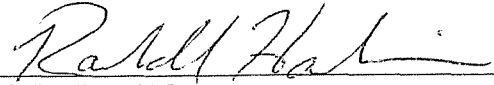
related facilities, if offered by Magoffin Co. to any third party, on the same terms and conditions as the offer to such third party.

22. Counterparts. This Agreement may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized officers or agents to execute this Agreement the day and year first above written.

MAGOFFIN COUNTY WATER DISTRICT

ATTEST:

BY:   
CHAIRMAN

  
SECRETARY

PRESTONSBURG CITY'S UTILITIES  
COMMISSION

BY:   
DAVID M. ELLIS, SUPERINTENDENT

ATTEST:

  
JIM CALHOUN, CHAIRMAN

EMERGENCY WATER PURCHASE AGREEMENT

BETWEEN

PAINTSVILLE UTILITIES COMMISSION

AND

MAGOFFIN COUNTY WATER DISTRICT

THIS EMERGENCY WATER PURCHASE AGREEMENT is made and entered into this the 29 day of March, ~~2009~~<sup>10</sup>, by and between **PAINTSVILLE UTILITIES COMMISSION**, a governmental agency of the City of Paintsville, Kentucky, hereinafter referred to as "Seller" and the **MAGOFFIN COUNTY WATER DISTRICT**, a water district created and existing under the Laws of the Commonwealth of Kentucky, hereinafter referred to as "Purchaser";

WITNESSETH:

**WHEREAS**, the Seller is a governmental agency of the City of Paintsville and provides water and sewer service to the citizens of Johnson County and other areas;

**WHEREAS**, the Purchaser is a water district which was organized and established under the provisions of Chapter 273 of the Kentucky Revised Statutes;

**WHEREAS**, the Purchaser is in need of an emergency water supply;

**WHEREAS**, the Seller has water lines in the vicinity of Magoffin County and is willing to provide Purchaser with an emergency water supply subject to the provisions below;

WHEREAS, by resolution duly adopted on \_\_\_\_\_, 2009 by the Seller's Commission, this Agreement was approved and the Seller's General Manager was authorized to execute this Agreement for and on behalf of the Seller; and

WHEREAS, by resolution adopted on \_\_\_\_\_, 2009 by the Purchaser's Board of Directors, this Agreement was approved and the Purchaser's Superintendent was authorized to execute this Agreement for and on behalf of the Purchaser;

NOW THEREFORE, in consideration of all the foregoing and the mutual terms and conditions expressed herein, the Seller and the Purchaser agree as follows:

**1. QUALITY AND QUANTITY OF WATER**

Seller agrees to furnish the Purchaser at the point of delivery hereinafter specified, during the term of this Agreement, potable, treated water meeting applicable purity standards of all appropriate state and federal regulatory agencies in times of emergency as defined in Paragraph 2 below and in quantities to be determined and controlled by Seller's water available in excess of the quantities necessary to serve Seller's retail customers. Should Seller not have water available in excess of the quantities necessary to serve Seller's retail customers, Seller has no obligation to provide water to Purchaser for the duration of the lack of excess water.

**2. DEFINITION OF EMERGENCY**

Emergency means any situation or event, natural or manmade, which impairs Purchaser's water supply reserve or system such that (1) there is a disruption of the normal water supply functions to Purchaser's customers and (2) in order to protect the public health, an immediate supply of water is necessary.



### 3. RESTRICTION ON RESALE OF WATER

The water made available under this Agreement is only for use by retail customers (i.e. consumers) of the Purchaser and may not be sold on a wholesale basis to any other utility.

### 4. TERM

The term of this Agreement shall be for a period of one (1) year and shall automatically renew each year thereafter for a successive one-year term.

### 5. TERMINATION

Either party may terminate this Agreement at any time by giving written notice to the other party. Termination of this Agreement shall not prejudice the rights, nor relieve the obligations, accrued to the date of termination.

### 6. POINT OF DELIVERY

The water will be furnished to the Purchaser through one four-inch Omni meter located on U.S. 460 near the Johnson County/Magoffin County line. Purchaser shall be solely responsible for the financing, procurement and installation of all necessary water lines from its existing system to the Johnson County/Magoffin County line where Purchaser shall make connection with the Seller's water system in accordance with the Seller's system specifications. It shall also be the obligation and responsibility of Purchaser to purchase and install a water meter, at a location to be determined by Seller, to measure the water flow to Purchaser. Upon installation of said water lines, Purchaser agrees to convey ownership of said lines to Seller, and Seller shall adopt said lines into its existing system. Seller also reserves the right to install, at its own cost, a water meter on

the Johnson County side of the county line, to measure water flow in addition to the meter Purchaser installs.

**7. DECLARING AN EMERGENCY SITUATION**

Water will be available only for emergency purposes as defined in Paragraph 2 above. The procedure for declaring an emergency shall be as follows. Purchaser shall notify Seller of its intention to declare a water emergency and shall inform Seller of the nature and cause of the emergency, the number of customers affected by the emergency, the anticipated amount of water needed to abate the emergency and the anticipated duration of the emergency. Upon receipt of the information from Purchaser, should Seller concur a water emergency situation exists, Seller shall advise Purchaser of its concurrence and shall sell water to Purchaser in quantities to be determined and controlled by Seller's water available in excess of the quantities necessary to serve Seller's retail customers. Should Seller not have water available in excess of the quantities necessary to serve Seller's retail customers, Seller has no obligation to provide water to Purchaser for the duration of the lack of excess water.

**8. OPERATION OF SYSTEM**

The Seller shall, at all times, operate and maintain its water system in an efficient manner and shall take such action as may be reasonably necessary to perform its obligations under this Agreement. Temporary or partial failures to deliver water, when water is available in excess of the quantities necessary to serve Seller's other customers, shall be remedied with all possible dispatch upon discovery of any unknown breaks or unintentional disruptions of service lines. If and when discovered, the Seller shall inform

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the Purchaser, by telephone, or by facsimile transmission, of the nature and extent of such temporary or partial failure to deliver water.

**9. INITIAL WHOLESALE BILLING RATE**

The initial billing rate shall be \$ 2.50 per 1,000 gallons of water. This rate is a discounted wholesale rate reflective of Seller's current cost of providing water service to the Purchaser at the point of delivery described in Paragraph 6 above. It is expressly understood that Seller is in the process of designing and constructing a new water treatment plant and the rate given herein shall lapse upon completion of said water treatment plant and the rate given herein shall lapse upon completion of said water treatment plant and the completion of a new cost of service rate study.

**10. RATE MODIFICATIONS**

The wholesale rate to be charged by the Seller to the Purchaser may be increased if the Seller's cost of providing water service to the Purchaser increases, including, but not limited to the completion of the new water treatment plant described in Paragraph 9.

**11. EFFECTIVE DATE OF RATE MODIFICATIONS**

The effective date of any rate modification shall be at least thirty (30) days after the Seller proposes to adopt the new rate.

**12. NO LEAK ADJUSTMENT**

Because the Purchaser is a wholesale customer and not a retail customer, the Purchaser shall not be entitled to any leak adjustments.

**13. BILLING AND PAYMENT PROCEDURE**

The Seller shall furnish the Purchaser, not later than the 4<sup>th</sup> day of each month, with an itemized statement of the amount of water furnished the Purchaser at the point of delivery during the preceding month and the cost thereof. The Purchaser shall pay

those charges not later than the 15<sup>th</sup> day of each month. A ten percent (10%) late payment penalty shall be assessed if any portion of the bill remains unpaid after the due date. In addition, any amount remaining unpaid after the last day of the month shall be deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum until paid.

#### 14. DISPUTED BILL

If a portion of any bill is in a bona fide dispute, the undisputed amount shall be paid when due. In the event either party is entitled to all or any portion of the disputed amount, such party shall also be entitled to interest on such amount at twelve percent (12%) per annum. In any dispute relating to the payment of money, the prevailing party shall be reimbursed by the non-prevailing party for the reasonable costs of resolving such disputes, including reasonable attorney and consulting fees. Use of the above procedure shall not be deemed an event of default under this Agreement.

#### 15. INDEMNIFICATION

It is agreed and understood that Purchaser shall fully and completely and unconditionally indemnify and hold harmless Seller for any claims or causes of action asserted against Seller for providing emergency water to Purchaser and any and all claims or causes of action arising out of this Agreement.

#### 16. EFFECTIVE DATE AND CONTINGENCIES

The parties acknowledge that this Agreement shall not become effective until it has been reviewed by the PSC. The Effective Date of this Agreement shall be the date the Agreement is approved by PSC. The term of this Agreement shall be measured from the Effective Date.

## 17. NOTICES

If at any time either party desires or is required to give notice to the other party pursuant to the terms of this Agreement, such notice shall be in writing and shall be hand-delivered or mailed by certified mail, return receipt requested. Notice shall be effective upon receipt. Notices shall be given to the parties at the following addresses or such other place as each party shall designate by similar notice:

(A) As to the Seller:

Paintsville Utilities Commission  
137 Main Street  
Post Office Box 630  
Paintsville, Kentucky 41240  
Attention: General Manager

(B) As to the Purchaser:

Magoffin County Water District  
P.O. Box 490  
Salyersville, Kentucky 41465  
Attention: Superintendent

## 18. RESPONSE TO NOTICES

At any time either party desires or is required to respond to any notice given pursuant to Paragraph 17, such response shall be made in the manner prescribed by Paragraph 17 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

## 19. PARAGRAPH HEADINGS

The descriptive headings of the various paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

## 20. FORCE MAJEURE

Seller's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, drought, acts of God, governmental restrictions, power failures, or damage or destruction of any waterlines, or component equipment, or other machinery, shall not be deemed a breach of this Agreement.

**21. ENTIRE AGREEMENT; SEVERABILITY**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained therein. Any prior agreements concerning this subject matter are hereby revoked and rescinded. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless and until it is reduced to writing and signed by both parties. Should any provision of this Agreement be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless such invalid or unenforceable provision substantially alters the benefits of the Agreement for either party.

**22. NON-WAIVER**

Any waiver at any time by either party hereto of its rights with respect to the other party or with respect to any matter arising under in connection with this Agreement shall not be considered a waiver of any such rights or matters at any subsequent time.

**23. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement shall not be assigned by either party without the written consent of the other party, which consent shall not be

unreasonably withheld, unless such assignment or transfer is to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure where substantially all such properties are acquired by such a successor empowered by law and financially able to effect the purposes of this Agreement which it must assume and, thereafter, be exclusively responsible for the performance of the terms of this Agreement to be performed by either party hereunder.

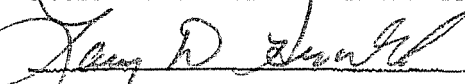
24. PURCHASER'S SUCCESSOR

In the event of any occurrence rendering the Purchaser incapable of performing under this Agreement, any successor of Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the Purchaser and the terms of this Agreement shall be binding upon the successor in interest.

IN WITNESS WHEREOF, the parties hereto, acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

PAINTSVILLE UTILITIES COMMISSION

BY:

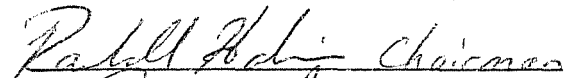


ITS:



MAGOFFIN COUNTY WATER DISTRICT

BY:



ITS:



COMMONWEALTH OF KENTUCKY  
COUNTY OF Magoffin

I, Shirley Borders, Notary Public for the County aforesaid, do certify that the foregoing Emergency Water Purchase Agreement was this day produced to me in said County and duly acknowledged before me by Larry Herald, as General Manager of the Paintsville Utilities Commission, on behalf of the Paintsville Utilities Commission, on this the 26 day of March, ~~2009~~ 2010

Shirley Borders  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

April 25, 2010

COMMONWEALTH OF KENTUCKY  
COUNTY OF Johanna

I, Belva J. Jones, Notary Public for the County aforesaid, do certify that the foregoing Emergency Water Purchase Agreement was this day produced to me in said County and duly acknowledged before me by Larry D. Herald as Superintendent of the Magoffin County Water District, on behalf of the Magoffin County Water District, on this the 29 day of March, ~~2009~~ 2010

Belva J. Jones  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 23, 2013



Agreement

Between  
Morgan County Water District  
And  
Magoffin Co. Water District

This Agreement by and between the Magoffin Co. Water District and the Morgan County Water District is to establish and define mutual obligations for a WATER PURCHASE CONTRACT signed the 5th day of April 2010. The items of understanding are as follows:

- The term of this Agreement shall be renewable annually on the anniversary as indicated by the date of signing.
- The Morgan County Water District agrees to sell Magoffin Co. Water District a portion of the water designated to them by Cave Run Water Commission Water Purchase Agreement enacted on June 8, 2009. During the term of this contract the water provided to <sup>MCHP Dist.</sup> Campden will be potable water meeting applicable purity standards of the Kentucky Department of Natural Resources and Environmental Protection, in such quantity as required not to exceed 1,200,000 gallons per month.
- The Master Meter shall be read daily by Magoffin Co. Water and such consumption reported to the Morgan County Water District. The Morgan County Water District shall read the meter on the 15<sup>th</sup> day of each month and furnish Magoffin, no later than the 5<sup>th</sup> day of the following month an itemized statement detailing sales. Magoffin Co. Water agrees to pay the Morgan County Water District, no later than the 15<sup>th</sup> day of the month for water delivered at the rate of \$2.85 per thousand gallons of water.

In Witness Whereof, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed this 5th day of April 2010.

ATTEST

Helli Litteral

SELLER: Morgan County Water District

D. C. C. C.  
Board Chairman

ATTEST

Randy Selton

PURCHASER: Magoffin Co. Water

Labell Hahn  
Board Chairman