

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SHARON CLINKENBEARD)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 96-230
)	
NICHOLAS COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Nicholas County Water District ("Nicholas Water") is hereby notified that it has been named as defendant in a formal complaint filed on May 21, 1996, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Nicholas Water is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 6th day of June, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Brearholt
Chairman

E. J. K.
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

D. Halls
Executive Director

RECEIVED
MAY 21 1996
PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of :)
)
SHARON CLINKENBEARD)
) **COMPLAINANT**)
)
vs.)
)
NICHOLAS COUNTY WATER DISTRICT)
) **DEFENDANT**)

96-230

COMPLAINT

The complaint of Sharon Clinkenbeard respectfully shows:

- (a) Sharon Clinkenbeard is a resident of 570 Myers Road, Nicholas County, Carlisle, Kentucky.
- (b) Nicholas County Water District is a public utility with central office at 364 East Main Street, Nicholas County, Carlisle, Kentucky.
- (c) That:
 - (1) On March 25, 1996 by memo, the Defendant through counsel, has unreasonably and without authority demanded that the Complainant move her structure which is partially constructed over a waterline through her property or risk termination of water service. Exhibit 'A'
 - (2) The Complainant had constructive notice of the unusual route of the waterline through her property which leaves the road right-of-way and goes onto her

property (Exhibit 'B', easement; and Exhibit 'C', drawing), but did not have actual notice when she began expansion of her dwelling.

(3) On September 21, 1996, while in the initial planning stage, the Complainant visited the Nicholas County Water Board office and talked with the Manager, Boogie Hall, and backhoe operator, Grant Paynte, about moving the water meter that was near her dwelling so that she could expand the entire front of her dwelling. Complainant, still without actual knowledge of the location of the waterline, decided that the \$2500 quoted cost was more than she wanted to pay, so she decided only to expand one-half of the front of her residence and not disturb the water meter.

(4) On October 19, 1996 after the floor and walls of the expansion were complete and the remainder of the construction materials were purchased and on the site, Ms. Clinkenbeard was informed by the resident tenants in her dwelling that their water had been cut off by the Nicholas County Water District because she had started construction over a waterline. (Ms. Clinkenbeard visited the Water Board and this was inaccurate; service was terminated for nonpayment).

(5) On October 20, 1996, Jerry Jolly, the carpenter on the project, returned to the Nicholas County Water District office and talked with the Manager, Ms. Hall. He was assured that if he would remove a large concrete slab from underneath the wooden structure (a former porch), construction could continue.

(6) On November 1, 1996, after the roof was added to the expansion, Ms. Clinkenbeard received a registered letter from Ms. Hall, dated October 27, 1996, demanding that the structure be removed. Exhibit 'D'

(7) Construction was terminated for about one month while negotiations proceeded, then with advice of this counsel, construction resumed again, Exhibits 'E' and 'F', because Ms. Clinkenbeard was compelled by prior arrangements to

move to the subject dwelling, and because she had several thousand dollars of construction materials that would deteriorate in the rapidly approaching winter.

(d) Complainant, Sharon Clinkenbeard, has several bases for her complaint as follows:

(1) The Nicholas County Water Board is being selectively unreasonable. The Defendant has refused to allow Ms. Clinkenbeard to reroute the waterline around her expanded home. In a meeting at the Nicholas County Water Board office on November 9, 1996, attended by Ms. Clinkenbeard, Jerry Jolly and this attorney, Billy Conway in an lot almost adjacent to Ms. Clinkenbeard, was told he could alter the water main as needed to allow his driveway to proceed up a high embankment to a new home he was building, while Ms Clinkenbeard was not to be allowed to bypass the water main around her building. As an example of a lame reason why she was not to be allowed to move the waterline, Jim Simons, now chairman of the board of directors, stated that the subject water line contained asbestos, and one mile of line would have to be removed and disposed of to allow Ms. Clinkenbeard's bypass.

(2) Alternatively, there is no authority either in the easement or the KAR regulations to keep Ms. Clinkenbeard from occupying the area above the subject waterline. The structure is over approximately ten feet of four inch welded black iron pipe. Ms. Clinkenbeard has not and is not denying the Nicholas County Water Board access to any of its equipment on her property. The only scenario in which the expanded building can affect the operation of the Defendant water company is if there were a rupture in the line under the building, then the line would have to be replaced anyway, and could just as easily be replaced with a bypass.

(3) The Defendant should be estopped from tacitly approving the subject building expansion and then deciding to require it be removed.

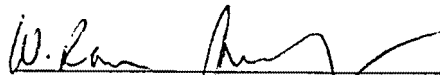
WHEREFORE, Complainant asks that:

(a) Ms. Clinkenbeard be allowed to maintain her dwelling in the present location.

- (b) Alternatively, that Ms. Clinkenbeard be allowed to construct at her expense a bypass water line around her expanded structure.
- (c) And that the Nicholas County Water District be restrained from terminating the water service to 570 Myers Road, Carlisle during the pendency of the PSC's decision on this complaint.

Dated at Carlisle, Kentucky this 20th day of May, 1996.


SHARON CLINKENBEARD


W. RONNIE AMBURGEY
Attorney at Law
106 West Main Street
Carlisle, KY 40311
(606) 289-5600

CERTIFICATION

I hereby certify that I have hand-delivered a true and copy of the foregoing Complaint to the Hon. Dawn C. Letcher, Attorney for the Nicholas County Water District, at her office, 103 W. Main Street, Carlisle, Kentucky, this 20th day of May, 1996.

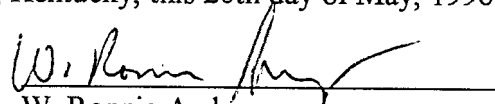

W. Ronnie Amburgey
Attorney

EXHIBIT 'A'

RICHARDSON, SMITH & HUGHES, P.S.C.

ATTORNEYS AT LAW
P. O. BOX 1040 • MAIN STREET
OWINGSVILLE, KENTUCKY 40360

P. O. BOX 224
103 WEST MAIN STREET
CARLISLE, KENTUCKY 40311

LESLIE RICHARDSON SMITH
PAULA RICHARDSON HUGHES
JOHN D. HUGHES, OF COUNSEL
DAWN CURRAN LETCHER
JULIE S. WILLIAMSON

March 25, 1996

OFFICE LOCATION / TELEPHONE
OWINGSVILLE (606) 674-6337
CARLISLE (606) 289-6800
FAX (606) 674-6090

Hon. W. Ronnie Amburgey
Attorney at Law
106 W. Main Street
Carlisle, KY 40311

Re: Nicholas County Water District/Clinkenbeard


Dear Ronnie:

I have been requested by the Nicholas County Water Board to further correspond with you regarding Sharon Clinkenbeard. As you will recall, Ms. Clinkenbeard constructed an addition to 570 Myers Road, Carlisle. Of course, this addition was constructed over a water distribution main line, a refusal of/neglect to provide reasonable access to premises, a violation of Public Service Commission regulations. Ms. Clinkenbeard was verbally advised by water district personnel NOT to build over the main line prior to her proceeding with the project. Then on October 27, 1995, the district sent to Ms. Clinkenbeard a certified letter indicative of the fact that she would be required to move the structure in question in order that the district may remain in compliance with Public Service Commission regulations.

Even though Ms. Clinkenbeard had received adequate notice of the district's position on this matter, she proceeded to erect the addition over the line in question. In accordance with your correspondence dated December 19, 1995, you indicated that due to prior arrangements concerning her former residence coupled with the inclement weather, Ms. Clinkenbeard was "compelled" to complete the structure. At that time, you proposed two alternatives to removal of the structure, neither of which has been accepted by the district. The board has directed me to inform you that Ms. Clinkenbeard must move any portion of the structure that lies over the subject water line within sixty (60) days of the date of this correspondence.

I will anxiously await your reply. Should Ms. Clinkenbeard fail to comply with the above-stated mandates, the district will be forced to terminate her water service.

Sincerely,



Dawn Curran Letcher
Attorney at Law

DCL/kdr

HOLLAR, O. L. & REBECCA

EXHIBIT 'B'

(23)

353

TO: RIGHT OF WAY EASEMENT

(\$1.00)

NICHOLAS COUNTY WATER DISTRICT

Ex

Deed
BOOK
62

KNOW ALL MEN BY THESE PRESENTS, that O. L. Hollar and Rebecca Hollar, his wife, hereinafter called Grantors, in consideration of one dollar (\$1.00) and other good and valuable consideration paid by The Nicholas County Water District, hereinafter called the Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, and convey to said Grantee, its successors, and assigns, a perpetual easement with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove a water main and appurtenances to be a part of the distribution system of the Nicholas County Water District, which water main shall be of such dimension character, and construction, and to be used in such a manner, as the Grantee may determine, along, through, under, across and upon the following described land owned by Grantors in Nicholas County, State of Kentucky:

Beginning at a point in the O. L. Hollar and Omar Hunt property line (fence), said point being at or near the Omar Hunt and O. L. Hollar property corner (fence); thence across the property of O. L. Hollar, N 65 deg E 610 feet, more or less, to a point; thence N 40 deg E 165 feet, more or less, to a point in the O. L. Hollar and Calvin Minton property line (fence), said point being 106 feet, more or less, measured in a southerly direction along said property line from the O. L. Hollar and Calvin Minton property corner (@ the Ky. Rte. 36 R/W line)

This being a portion of the same property which was conveyed to O. L. Hollar and Rebecca Hollar by Claude and Pearlle Fields by deed dated 1st day of January 1945, recorded in Deed Book 48, page 317, Nicholas County Clerk's Office.

Grantors agree that Grantee shall have the right of ingress and egress over Grantor's adjacent lands for the purpose for which the above-mentioned rights are granted.

The consideration recited herein shall constitute payment in full for all damages sustained by Grantors by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantors' premises. This Agreement together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the Grantee, its successors, and assigns. The Grantors covenant that they are the owners of the above described lands and that said lands are free and clear of all encumbrances and liens and that they will warrant generally the said title.

Rebecca Hollar joins herein for the purpose and does waive and release her potential right of dower in the premises hereby conveyed, and she together with her husband, O. L. Hollar hereby jointly and severally waive and release all homestead rights which they or either of them may have herein.

IN WITNESS WHEREOF, THE said Grantors have executed this instrument this 6th day of February, 1967.

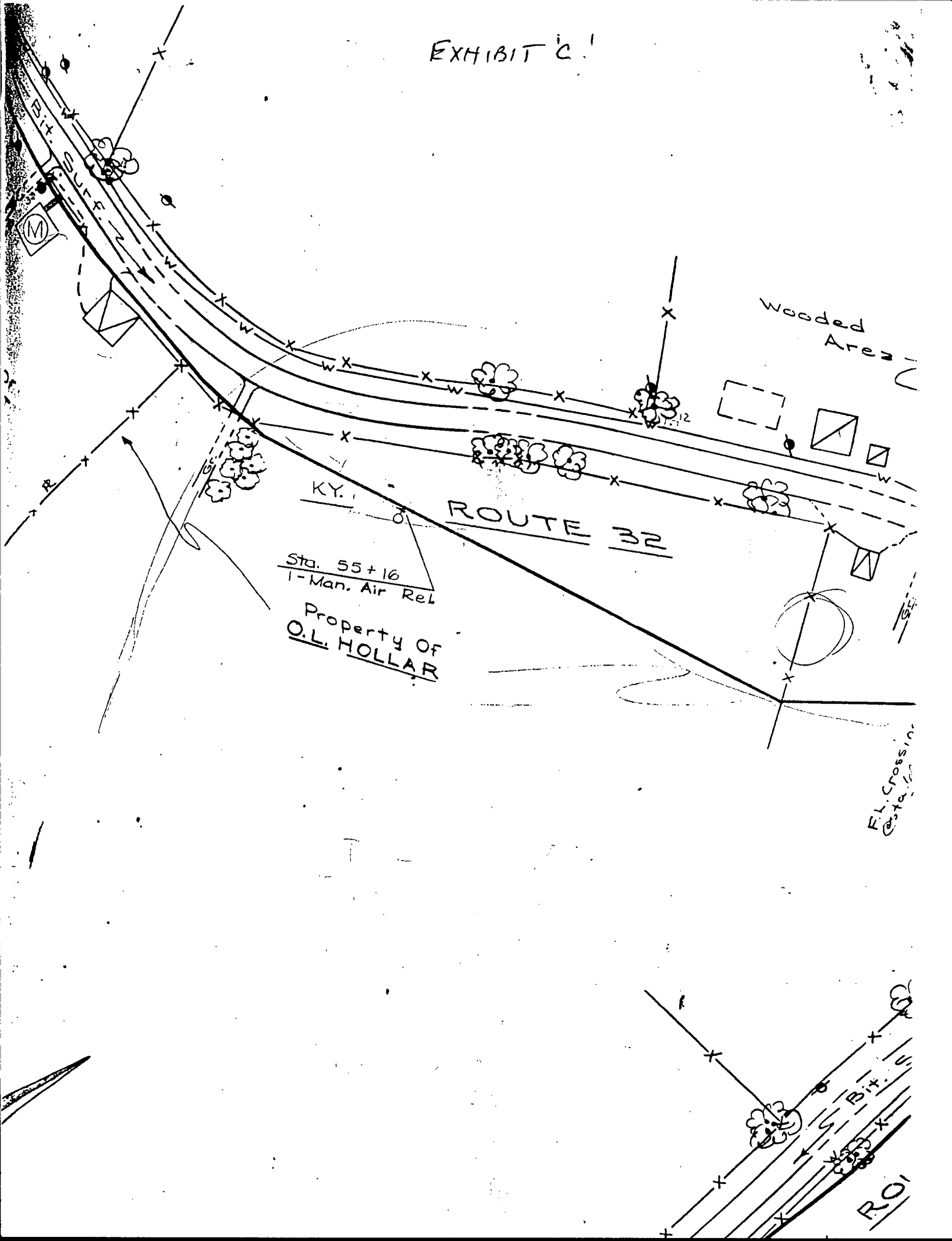
Prepared by Charles M. Cox, Attorney

O. L. Hollar
Rebecca Hollar

STATE OF KENTUCKY
COUNTY OF NICHOLAS SCT.

I, the undersigned, a Notary Public, in and for the State and County aforesaid, do hereby certify that the foregoing Right-of-Way Easement from O. L. Hollar and Rebecca Hollar, his wife, to Nicholas County Water District was this day produced

EXHIBIT 'C'



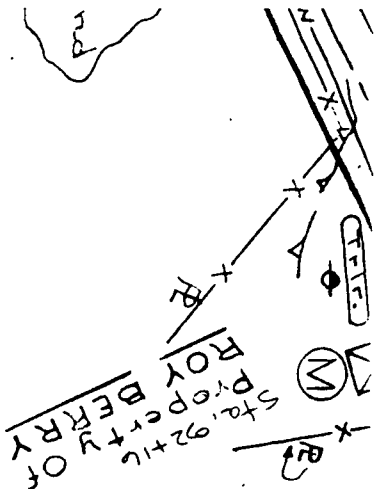
Wooded Area

ROUTE 32

Sta. 55+16
1-Man. Air Rel
Property of
O.L. HOLLAR

FL. Crossing

R.O.I.



AS CONSTRUCTED

LIT. OF ALTON

118 Suggs Rd.
 Carlisle, KY 40311
 606-269-2003

**PLANS FOR
 WATER DISTRIBUTION SYSTEM
 NICHOLAS COUNTY WATER DISTRICT**

DRAWN: R C M
CHECKED: C B G
TRACED: R C M
APPROVED: W M M

SCALE:
 1" = 100'

4" MAIN ALONG KY ROUTE 32

REVISIONS	
DATE	DESCRIPTION

**HOWARD K. BELL
 CONSULTING ENGINEERS, INC.
 LEXINGTON, KENTUCKY**

DATE JUNE 1966 **SHEET NO.** 3 OF 21

EXHIBIT 'D'

NICHOLAS COUNTY WATER DISTRICT
P.O. BOX 304
CARLISLE, KY 40311

October 27, 1995

Sharon Clinkenbeard
126 Shepherd Hills
Carlisle, KY 40311

RE: STRUCTURE SITUATED ON NICHOLAS COUNTY WATER DISTRICT LINE

Dear Ms. Clinkenbeard:

Please be advised that the addition you have added to dwelling located at 570 Myers Rd. is located on the Nicholas County Distribution main line. You were advised by Grant Paynter and me not to erect this addition for this reason. I am enclosing for your review a copy of the easement the Nicholas County Water District has on the above described property. /s/ [unclear]

In order to be in compliance with this easement, and Public Service Commission regulations, this structure must be removed since it is located directly on the main line. Failure to comply will result in termination of service from the Nicholas County Water District and civil action.

Please advise this office in writing within ten (10) days of your intentions to correct this matter.

Thank you for your cooperation.

Respectfully,

Boogie Hall

Boogie Hall/Mgr. Nicholas County Water District

copy: File
Public Service Commission

JIM JOHNSON - PSC

NO REG THAT SAYS CANNOT BUILD IN EASEMENT
- SCARE TACTIC BY WATER BOARD

NO ASBESTOS INSULATION IN THE WATER LINE

EXHIBIT 'E'

W. Ronnie Amburgey
Attorney at Law
106 W. Main Street
Carlisle, KY 40311

Phone (606) 289-5600

Fax (606) 289-6607

November 10, 1995

Ms. Boogie Hall, Manager and
Directors
Nicholas County Water District
364 E. Main Street
Carlisle, KY 40311

COPY

In re: Memo of October 27, 1995 (Hall to Clinkenbeard)
Dwelling at 570 Myers Road

Dear Ms. Hall and Directors:

The subject easement in Deed Book 62 at page 353 is an affirmative easement allowing the Nicholas County Water District to do certain things on Ms. Clinkenbeard's land. It is not one of the rare negative easements that require Ms. Clinkenbeard to do or not do anything. In my opinion, it cannot be used as a source of law to prevent Ms. Clinkenbeard from building over the water line in question.

Jim Johnson at the Public Service Commission stated via phone on November 10, 1995 that he had no knowledge of any regulation that prevented a landowner from building over a water line easement. Neither did a cursory search of the KAR (Kentucky Administrative Regulations) turn up any such regulation. Mr. Johnson also stated that he had no knowledge of any asbestos insulation or asbestos fiber pipe used in or on underground water lines, but that the PSC's name was often used as a scare tactic by local officials to force customers to comply with their orders. This is consistent with my 25+ years as a chemical engineer, including eight years with a major asbestos miner and consumer (in another division).

Unless you can produce some legal authority for your position in the subject 10/27/95 memo in ten (10) days, I shall advise Ms. Clinkenbeard to finish and

occupy her structure over the water line at 570 Myers Road. Any attempt to cut off water to the site or to force demolition, absent this authority, will be result in a civil action and restraining order.

Yours very truly,

A handwritten signature in cursive script, appearing to read "W. Ronnie Amburgey".

W. Ronnie Amburgey

WRA: ba

xc: Mr. Garvey Curtsinger
Ms. Sue Kirby
Mr. Sam Reynolds
Mr. Jim Simons
Ms. Sharon Clinkenbeard

EXHIBIT 'F'

W. Ronnie Amburgey
Attorney at Law
106 W. Main Street
Carlisle, KY 40311

FILE

Phone (606) 289-5600

Fax (606) 289-6607

December 19, 1995

Hon. Dawn Letcher
103 West Main Street
Carlisle, KY 40311

Re: Nicholas County Water District/Clinkenbeard

Dear Dawn:

In an effort to settle the above named dispute Ms. Sharon Clinkenbeard proposes as follows:

1. That the perpetual easement in gross granted to the Nicholas County Water District by O.L. and Rebecca Hollar recorded in Deed Book 62 Page 353 be modified with a new writing that covenants Ms. Clinkenbeard and her successors and assigns forever to, at their own cost, install a bypass loop in the Myers Station Road water main around the Clinkenbeard structure, if such loop should become necessary for maintenance of the said water line in the future. Further, Ms. Clinkenbeard and her successors and assigns would covenant to refrain from building any new structures over the said water main.

2. Alternatively, Ms. Clinkenbeard will immediately proceed with installing a by-pass loop around her structure over the Myers Station Road water main at her own expense. The work would be done to Nicholas County Water District specifications by Mr. Jackie Randolph. The tie-in at each end of the loop would be accomplished by the Nicholas County Water District personnel.

Ms. Clinkenbeard has been forced to occupy her structure at 570 Myers Road because of prior arrangements concerning her former residence. Also, the building materials stored at the construction site were deteriorating. All this coupled with impending winter weather has compelled her to complete her structure. If it becomes necessary to remove the part of the structure from over the water main, the entire structure will be moved as a unit.

Sincerely,


W. Ronnie Amburgey

WRA:ksb

cc: Ms. Sharon Clinkenbeard