

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF MONROE COUNTY)	
WATER DISTRICT FOR AUTHORIZATION)	
TO ENTER AN ASSISTANCE AGREEMENT)	
WITH THE KENTUCKY INFRASTRUCTURE)	
AUTHORITY AND FOR A CERTIFICATE OF)	CASE NO. 2015-00315
PUBLIC CONVENIENCE TO CONSTRUCT A)	
WATER TREATMENT FACILITY,)	
ELEVATED STORAGE TANK, AND WATER)	
TRANSMISSION AND DISTRIBUTION)	
MAINS)	

**MOTION FOR ACCEPTANCE OF FILING OR,
IN THE ALTERNATIVE, FOR A DEVIATION**

Pursuant to 807 KAR 5:001, Sections 15 and 22, Monroe County Water District (“Monroe District”) moves the Public Service Commission to accept for filing its Application as filed on February 25 and supplemented on March 1, 2016, or in the alternative, to authorize a deviation from 807 KAR 5:001, Section 15(2)(b), to permit the acceptance of Monroe District’s Application without certain permits from the U.S. Army Corps of Engineers (“USACE”) and Kentucky Department of Highways (“Highways Department”).

In support of its motion, Monroe District states:

1. On February 19, 2016, Monroe District submitted its application for authorization to enter into an Assistance Agreement with the Kentucky Infrastructure Authority (“KIA”) to borrow an amount not to exceed \$15,564,032 and for a certificate of public convenience and necessity for the construction of a regional water treatment plant, associated facilities, a 600,000 gallon elevated water storage tank, and transmission mains.

2. On February 26, 2016, the Public Service Commission advised Monroe District by letter that the Application failed to conform to 807 KAR 5:001, Section 4(13) and Section 15(2)(b). In a telephone conversation with Monroe District's counsel on February 26, 2016, Commission Staff identified with greater specificity the perceived deficiencies in Monroe District's Application. Monroe District's counsel subsequently wrote to the Public Service Commission to confirm this list of deficiencies.¹

3. With respect to the Application's failure to conform with 807 KAR 5:001, Section 4(13), Monroe District on March 1, 2016 submitted a revised copy of the plans for the proposed facilities that contained the signed and dated stamp of the Kentucky professional engineer who prepared the plans.² It also filed a revised copy of the specifications for the proposed water lines that clearly showed the signed and dated stamp of a professional engineer licensed in the state of Kentucky.³ The Application now conforms to 807 KAR 5:001, Section 4(13).

4. Regarding the Application's compliance with 807 KAR 5:001, Section 15(2)(b), Commission Staff found that the Application did not contain permits from USACE and the Highways Department and, therefore, failed to conform to that regulation.

5. Monroe District respectfully submits that 807 KAR 5:001, Section 15(2)(b) requires only that an application for a certificate of public convenience and necessity contain the permits that that applicant has obtained to commence construction of the proposed facilities and identify any remaining permits that remain to be obtained and that Monroe District has complied with this requirement.

¹ Letter from Gerald Wuetcher, counsel for Monroe District, to James W. Gardner, Acting Executive Director, Kentucky Public Service Commission (Feb. 29, 2016).

² Exhibits 3, 5 and 7 to the Application. The original exhibits contained the preparing engineer's stamp, but the stamp was not signed and dated

³ Exhibit 6 to the Application. The preparing engineer, who is licensed in the states of Tennessee and Kentucky, inadvertently affixed his Tennessee stamp on the original version of the specifications.

a. KRS 278.020(1) does not require an applicant to obtain all permits necessary for the construction of the proposed facilities prior to applying for a certificate. Rather, it expressly envisions that necessary licenses and permits may be obtained after the issuance of a certificate. It states in pertinent part:

Unless exercised within one (1) year from the grant thereof, **exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent**, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate [emphasis added].

If the time period for exercising a certificate does not begin to run until all approvals and permits have been obtained, clearly there is no requirement that all approvals must be obtained prior to the filing of an application for a certificate of public convenience and necessity.

b. The Public Service Commission has on numerous occasions accepted an application for filing when the applicant had not at the time of its application obtained all other required permits and licenses. For example, in Case No. 2014-00252,⁴ East Kentucky Power Cooperative, Inc. acknowledged in its application for a certificate of public convenience and necessity to construct an ash landfill that it lacked certain permits and stated:

Pursuant to 807 KAR 5:001 Section 15(2)(b), EKPC states that it has submitted various federal and state permit applications which are outlined in detail in the Direct Testimony of Jerry B. Purvis. EKPC is working toward receipt of all necessary permits and expects approvals in 2014-15.⁵

⁴ Case No. 2014-00252, *Application of East Kentucky Power Cooperative, Inc. For A Certificate of Public Convenience and Necessity For Construction of An Ash Landfill at J.K. Smith Station, the Removal of Impounded Ash From William C. Dale Station For Transport to J.K. Smith and Approval of A Compliance Plan Amendment For Environmental Surcharge Recovery* (Ky. PSC filed Sept. 8, 2014).

⁵ Case No. 2014-00252, *supra*, Application at 23 (filed Sept. 8, 2014).

The absence of these permits did not render the application deficient, but rather the Public Service Commission accepted the application for filing without comment.⁶ The Public Service Commission has in several cases accepted an application when the applicant had at the time of the application's filing not obtained all necessary permits and approvals **and subsequently issued a certificate while the applicant's request for other permits and regulatory approvals were still pending.**⁷

c. Monroe District identified in its Application all permits and regulatory approvals that are required for the proposed facilities and included a copy of each permit and regulatory approval that it had obtained as of the date of the Application's submission.⁸ It noted that it had applied for or was preparing to apply for the remaining permits.

6. If the Public Service Commission determines that 807 KAR 5:001, Section 15(2)(b) requires Monroe District's Application to contain the two permits in question, good cause exists to authorize a deviation from that requirement and to accept the Application in its current form for filing.

a. Monroe District requires a permit under 33 USC §§ 404 and 1344 to construct and deposit material into the Cumberland River and certain streams and waterways

⁶ Letter from Linda Faulkner, Director, Filings Division, Kentucky Public Service Commission, to Mark David Goss, counsel for East Kentucky Power Cooperative, Inc. (Sept. 17, 2014) (filed in record of Case No. 2014-00252).

⁷ Case No. 96-562, *Application of Kentucky CGSA, Inc. For Issuance of a Certificate of Public Convenience and Necessity To Construct An Additional Cell Site In Louisville, Kentucky For The Provision of Domestic Cellular Radio Telecommunications Service to the Public In Jefferson County and the Louisville MSA* (Ky. PSC Mar. 12, 1998); Case No. 2000-367, *Application of Crown Communication Inc. and Cellco Partnership D/B/A Verizon Wireless For Issuance of a Certificate of Public Convenience and Necessity to Construct A Wireless Communications Facility at 1210 Outer Loop, Louisville, Kentucky 40219 in the Wireless Communications License Area in the Commonwealth of Kentucky in the County of Jefferson* (Ky. PSC Dec. 3, 2001); Case No. 2000-365UAC, *Crown Communication Inc. and Kentucky CGSA, Inc. For Issuance of a Certificate of Public Convenience and Necessity to Construct A Wireless Communications Facility At 1568 Cynthiana Road, Paris, KY 40361 in the Wireless Communications License Area in the Commonwealth of Kentucky in the County of Bourbon Site Name: Peacock* (Ky. PSC May 7, 2002); Case No. 2004-00053, *Application of Bellsouth Mobility, LLC, D/B/A Cingular Wireless - Kentucky For Issuance of a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility at 630 Suggs Road, Carlisle, Kentucky in the Wireless Communications License Area in the Commonwealth of Kentucky in the County of Nicholas Site Name: Blue Licks* (Ky. PSC Apr. 26, 2005).

⁸ Application at ¶¶ 22 and 23.

located between the proposed raw water intake and the proposed water treatment plant. Monroe District has acted in a reasonable and diligent manner to obtain this permit prior to the filing of its Application. Monroe District originally obtained the required permit from the USACE in 2011, but the permit expired before Monroe District could obtain the necessary funding for the proposed facilities. On February 19, 2015, it applied for a new permit. *See* Exhibit 1. Its application was considered completed as of September 1, 2015. Issuance of the required permit, however, has been delayed because of negotiations between the USACE and certain agencies of Kentucky state government. A USACE representative advised Monroe District's project engineer by e-mail on February 26, 2016 that these negotiations had been completed, a memorandum of agreement had been entered, and that the requested permit should be issued shortly. *See* Exhibit 2. As soon as Monroe District receives this permit, it will file a copy of the permit with the Public Service Commission.

b. As some of the proposed water mains will be located in the right-of-way of state highways, KRS 177.106 requires Monroe District to obtain an encroachment permit from the Highways Department prior to any excavation of those rights-of-way. As part of its application for an encroachment permit, Monroe District must agree to indemnify the Highways Department from all claims and demands arising out of proposed work and present evidence of such indemnification. This evidence consists of a certificate of insurance to cover the liability to the Highways Department, a payment bond to ensure payment of any penalties assessed to Monroe District, and a performance bond to guarantee the performance of the permitted work.⁹

c. To avoid the expense of obtaining its own insurance or performance bond, Monroe District will rely upon those of the selected project contractor. Monroe District,

⁹ See 603 KAR 5:150; Commonwealth of Kentucky Transportation Cabinet, *Permits Guidance Manual*, PE 203 (July 2013), <http://transportation.ky.gov/Organizational-Resources/Policy%20Manuals%20Library/Permits.pdf>.

however, cannot provide evidence of this insurance coverage or performance bond until it enters into a construction contract with that contractor. Reasonable business practice requires that Monroe District not assume the obligations of such a contract until the Public Service Commission has issued a certificate of public convenience and necessity for the proposed project. Hence, Monroe District cannot complete the application for the required encroachment permit until a certificate of public convenience and necessity is issued for the project. As soon as the certificate is obtained, Monroe District will file a copy of the permit with the Public Service Commission.

d. Delaying the acceptance of the Application until Monroe District obtains the remaining permits will pose an unnecessary hardship and expense on Monroe District, will likely result in Monroe District in losing favorable bids on the project and require new requests for bids.

e. To the extent that the Public Service Commission requires assurance that Monroe District will not commence construction without these permits and that the permits will not materially alter the project as presented in Monroe District's Application, the Public Service Commission can condition the its issuance of any certificate upon Monroe District obtaining these permits and filing a copy with it.

WHEREFORE, Monroe District requests that the Public Service Commission:

1. Accept the Application, as supplemented by the filing of March 1, 2016, for filing as of March 1, 2016; or, in the alternative,

2. Authorize Monroe District to deviate from 807 KAR 5:001, Section 15(2)(b), to permit the acceptance of Monroe District's Application without certain permits from USACE and the Highways Department and accept the Application for filing.

Dated: March 3, 2016

Respectfully submitted,

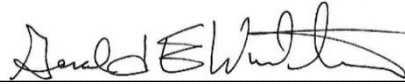


Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine St. Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3017
Fax: (859) 259-3517
gerald.wuetcher@skofirm.com

Counsel for Monroe County Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Monroe District's March 3, 2016 electronic filing of this Motion is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on March 3, 2016; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of the Application will be delivered to the Commission on or before March 5, 2016.



Gerald E. Wuetcher

STIGALL ENGINEERING ASSOCIATES, INC.

4117 Hillsboro Pike, Suite 206 • Nashville, Tennessee 37215 • Telephone: 615-460-7515 • Facsimile: 615-460-7517

February 19, 2015

Ms. Deborah T. Tuck, Regulatory Specialist
Operations Division
Department of the Army
Nashville District, Corps of Engineers
3701 Bell Road
Nashville, Tennessee 37214


Re: Monroe County Water District
COE File No. 2006-02390
SEA Project No. 0323

Dear Ms. Tuck:

It appears that the Monroe County water District is getting close to obtaining the funding required to construct the referenced work. The scope and components of the referenced project are unchanged however, on behalf of the District, we respectfully request an updated Department of the Army (DA) permit for the work as the original permit expired March 18, 2012 (copy enclosed). FYI, the work covered by File No. 2010-00528 is complete.

We and the District appreciate your assistance and please let me know if you have any questions for need additional information.

Sincerely,
STIGALL ENGINEERING ASSOCIATES, INC.


Robert D. Stigall, P.E.
President

Enclosure

RDS/mac



REPLY TO
ATTENTION OF:
Regulatory Branch

DEPARTMENT OF THE ARMY
NASHVILLE DISTRICT, CORPS OF ENGINEERS
3701 Bell Road
NASHVILLE, TENNESSEE 37214
July 27, 2011

SUBJECT: File No. 2006-02390; Proposed Municipal Raw Water Intake (two lines) and Transmission Lines [Proposed Excavation and Minor Fill] at Cumberland River Mile 393.8R, in Association with Construction of a Water Treatment Plant with a Backwash Discharge at Sulphur Creek Mile 1.2L; Numerous Stream Crossings of Little Sulphur Creek, Sulphur Creek, Mill Creek, Town Creek, and Curtis Branch; Construction and/or Modification of Upland Appurtenances Involving Pump Stations and Water Storage Tanks, Tompkinsville, Monroe County, Kentucky

Mr. Robert D. Stigall
Stigall Engineering Associates, Inc.
4117 Hillsboro Pike, Suite 206
Nashville, TN 37215-2728

Dear Mr. Stigall:

This is in response to the application requesting a Department of the Army (DA) permit for the proposed subject work by the Monroe County Water District.

The existing facilities serving Monroe County Water District are inadequate for the existing demand. The proposal would also allow the District to meet the growing demand within the county and surrounding vicinity. This request would serve the Monroe County Water District and the City of Fountain Run (Fountain Run Water District No. 1) in Monroe County. The raw water supply request involves a daily average 1.7 million gallons per day (MGD), operational to a maximum of 2.87 MGD. Construction of the transmission lines would involve 17 crossings of streams within both the Nashville and Louisville District Regulatory jurisdictional boundaries. The Louisville Regulatory Branch was consulted on this project and they deferred jurisdiction to the Nashville District, with no objections. The appurtenant upland facilities and/or activities do not require a DA permit.

Based upon the information submitted to this office, to the extent the U.S. Army Corps of Engineers has jurisdiction over discharge of fill material associated with the work, we have determined that the work has been previously permitted under authority of DA Nationwide Permit (NWP) #12, Utility Line Activities, which became effective March 19, 2007. The notification that the work is approved under the NWP mentioned above is valid until March 18, 2012 unless the NWP is modified, suspended, or revoked. If you commence or are under contract to commence this activity before that date, you will have twelve months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

The proposed work consists of the excavation and minor fill associated with construction of two intake lines (Section 10/404). The entrenched stream crossings (#s 1, 2, 5-10 and 17) involve the deposition of fill material (Section 404). The stream crossings (#s 3, 4, and 11-16) that involve horizontal/directional bore do not require a DA permit. The work must be constructed in accordance with the plans submitted with your application and enclosed conditions. It should be noted that if you fail to comply with any of the conditions, this authorization may be modified, suspended, or revoked and an individual permit may be required pursuant to 33 CFR 330.5(d).

The proposed water withdrawal request has been evaluated simultaneously for impacts upon hydrology, hydraulics, water quality, water temperature, biological integrity and water supply resources of the Cumberland River Basin. Due to the drawdown of Lake Cumberland (Wolf River Dam), the dam provides normal water releases at a minimum of 500 cubic feet per second (cfs). Under normal lake operations, efforts are made to maintain a minimum daily release of at least 1000 cfs (average in a 24 hour period). Further, due to Congressional prohibition, the Corps is unable to perform a Water Reallocation Study of Lake Cumberland, so that the Corps may effectively and adequately provide and track water use within the Cumberland River Basin. Therefore, the Corps is unable to guarantee releases of water to support the applicant's water supply needs. However, the Corps has determined that the 500 cfs provided, although not guaranteed, is adequate to meet the applicant's need at this time. There will be no formal contractual agreement with the applicant to guarantee water releases and/or collect fees for water storage reallocation and/or usages at this time. Should the flow of the Cumberland River be inadequate for demand, the applicant has indicated that they can rely on the Mill Creek water supply during those low flow or drought periods.

Prior to construction, you are also responsible for obtaining any other federal, state, and/or local permits, approvals, or authorizations. It is noted that the Kentucky Division of Water (KDOW) indicated within our interagency coordination that the intake construction activities would meet the General (Water Quality) Certification for NWP #12, which is valid until March 19, 2012. The Inter-Basin and Water-Withdrawal Permits were issued August 4, 2010. You must comply with all conditions of the state certifications. It appears that the applicant may likely need to renew these permits if the work cannot be accomplished prior to the expiration dates. *The DA permit is not valid unless you also receive the appropriate corresponding water quality certification(s).*

If changes in the location or plans of the work are necessary, revised plans should be submitted promptly to this office. No deviation should be made in the approved plans without first obtaining approval from this office.

We appreciate your awareness of our regulatory program. If you have any questions, please contact me at the above address, telephone (615) 369-7518 or email deborah.t.tuck@usace.army.mil.

Special Conditions
FN 2006-02390

The special permit conditions are necessary to comply with federal law, while affording appropriate and practicable environmental protection. The following special conditions are included in the DA permit:

1. The work must be in accordance with the plans and information submitted in support of the proposed work. You must have a copy of this permit available on the site and ensure that all contractors are aware of its conditions and abide by them.
2. Temporary cofferdams must be utilized for use during construction of the intakes and transmission lines to keep the work within the waterways "in the dry". This would involve the use of sandbags or similar methods for stream crossing pipeline work. Sheet piles would be utilized for the intake work. All temporary structures associated with the construction of these facilities shall be removed from the waterways and the channels shall be restored to preconstruction contours. While the work must be separated from flow, it shall not impede normal flows and/or navigation where applicable. Only a portion of the stream/river channels shall be impeded during construction activities of intake/pipeline placement. In-stream work should not exceed one-half of the channel width. In-river work should not exceed one-third of the navigable waterway.
3. All excavated material shall be removed upland, properly contained and stabilized to prevent reentry into the waterway.
4. The work must conform to the U.S. Fish and Wildlife (USFWS) Memorandum of Agreement dated April 1, 2011 to reduce adverse effects to the federally-listed endangered Indiana bat (*Myotis sodalis*).
5. You have proposed and agree to directional/horizontal drill stream crossings that are equal or greater than 20' in width, as part of the agreement with USFWS, to reduce potential adverse effects to the federally-listed Gray bat (*Myotis grisescens*).
6. Water withdrawals are limited to currently approved levels as stated in the Kentucky Division of Water, Water Withdrawal Permit.
7. The intake must be located in a pool at a sufficient depth to prevent drawing in air. The maximum (instantaneous) pumping rate should not exceed 8 cfs, while also not exceeding the daily maximum rate of 2.8 MGD (4 cfs).
8. The Corps has no formal obligation to release water from Wolf River Dam for this water withdrawal.



**US Army Corps
of Engineers
Nashville District**

Nationwide Permit Conditions

The following General Conditions must be followed in order for any authorization by NWP to be valid:

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the US Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. (c) The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.
2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. **Migratory Bird Breeding Areas.** Activities in waters of the US that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is related to a shellfish harvesting activity authorized by NWP 4 and 48.
6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows.** To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g. stream restoration or relocation activities).
10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the US during periods of low-flow or no-flow.
13. **Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and revegetated, as appropriate.
14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
15. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, US Forest Service, US Fish and Wildlife Service).
16. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
17. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-

federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS, the District Engineer may add species-specific regional endangered species conditions to the NWP.

(b) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA, in the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Webpages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties. No activity which may affect historic properties listed or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Prospective permittees should beware that section 110k of the NHPA (16 USC 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur.

19. Designated Critical Resource Waters. Critical resource waters including state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment. (a) Discharges of dredged or fill material into waters of the US are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The activity must be constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e. on site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

21. Water Quality Certification. The activity must comply with case specific conditions added by the Corps or by the state, Indian Tribe, or USEPA in its section 401 Water Quality Certification. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal water is constructed under NWP14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre.

23. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with NWP verification, the permittee may transfer the NWP verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the NWP verification must be attached to the letter, and the letter must contain the following statement: When the structures or work authorized by this NWP are still in existence at the time the property is transferred, the terms and conditions of this NWP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below:

Transferee

Date

24. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification form is included with this verification.

25. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

Further Information:

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.



US Army Corps
of Engineers.

Nashville District

Nationwide Permit

No. 12, Utility Line Activities

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access

fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit.



ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Ernie Fletcher
Governor

Teresa J. Hill
Secretary

Capital Plaza Tower
500 Mero Street, 5th Floor
Frankfort, Kentucky 40601
Phone: (502) 564-5525
Fax: (502) 564-3354
www.eppc.ky.gov

General Certification--Nationwide Permit # 12 Utility Line Activities

This General Certification is effective March 19, 2007, in conformity with the requirements of Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341), as well as Kentucky Statute KRS 224.16-050.

Agricultural operations, as defined by KRS 224.71-100(1) conducting activities pursuant to KRS 224.71-100 (3), (4), (5), (6), or (10) are deemed to have certification if they are implementing an Agriculture Water Quality Plan pursuant to KRS 224.71-145.

For all other operations, the Commonwealth of Kentucky hereby certifies under Section 401 of the Clean Water Act (CWA) that it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 5, established pursuant to Sections 301, 302, 304, 306 and 307 of the CWA, will not be violated for the activity covered under NATIONWIDE PERMIT 12, namely Utility Line Activities, provided that the following conditions are met:

1. This general Water Quality Certification is limited to the crossing of intermittent and perennial streams by utility lines. The length of a single utility line stream crossing shall not exceed twice the width of the stream. This document does not authorize the installation of utility lines in a linear manner within the stream channel or below the top of the stream bank.
2. The construction of permanent or temporary access roads will impact less than 300 linear feet of intermittent and perennial streams and less than one acre of jurisdictional wetlands.
3. The provisions of 401 KAR 5:005 Section 8 are hereby incorporated into this General Water Quality Certification. Namely, "Sewer lines shall be located at least 50 feet away from a stream which appears as a blue line on a USGS 7 ½ minute topographic map except where the sewer alignment crosses the stream. The distance shall be measured from the top of the stream bank. The cabinet may allow construction within the 50' buffer if adequate methods are used to prevent soil from entering the stream. Gravity sewer lines and force mains that cross streams shall be

General Certification--Nationwide Permit # 12
Utility Line Activities
Page Two

constructed by methods that maintain normal stream flow and allow for a dry excavation. Water pumped from the excavation shall be contained and allowed to settle prior to re-entering the stream. Excavation equipment and vehicles shall operate outside of the flowing portion of the stream. Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream." The provisions of this condition shall apply to all types of utility line stream crossings.

4. The activities do not result in any permanent changes in pre-construction elevation contours in waters or wetlands or stream dimension, pattern or profile.
5. Utility line construction projects through jurisdictional wetlands shall not result in conversion of the area to non-wetland status.
6. Stream impacts covered under this nationwide permit and undertaken by those persons defined as an agricultural operation under the Agricultural Water Quality Act must be completed in compliance with the Kentucky Agricultural Water Quality Plan.
7. ~~The activity will not occur within waters of the Commonwealth identified by the Kentucky Division of Water as Outstanding State or National Resource Waters, Cold Water Aquatic Habitat, or Exceptional Waters.~~
8. ~~Activities that do not meet the conditions of this general certification require an individual Section 401 water quality certification.~~
9. Activities qualifying for coverage under this general water quality certification are subject to the following conditions:
 - Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in construction from entering the watercourse.
 - Removal of riparian vegetation in the utility line right-of-way shall be limited to that necessary for equipment access. Effective erosion and sedimentation control measures must be employed at all times during the project to prevent degradation of waters of the Commonwealth. Site regrading and reseeding will be accomplished within 14 days after disturbance.
 - To the maximum extent practicable, all in stream work under this certification shall be performed during low flow.

General Certification--Nationwide Permit # 12
Utility Line Activities
Page Three

- Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances where such in stream work is unavoidable, then it shall be performed in such a manner and duration as to minimize turbidity and disturbance to substrates and bank or riparian vegetation.
- Any fill shall be of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters and/or cause violations of water quality standards. If riprap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created because of its placement.
- If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when work will be done.
- Removal of existing riparian vegetation should be restricted to the minimum necessary for project construction.
- Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the Kentucky Division of Water shall be notified immediately by calling 800/928-2380.

Non-compliance with the conditions of this general certification or violation of Kentucky state water quality standards may result in civil penalties.

This general certification will expire on March 19, 2012, or sooner if the USACE makes significant changes to this nationwide permit.



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

DIVISION OF WATER

200 FAIR OAKS LANE, 4TH FLOOR

FRANKFORT, KENTUCKY 40601

www.kentucky.gov

August 4, 2010

Richard Ross
Monroe Co Water District
205 Capp Harlan Rd
Tompkinsville, KY 42167

Water Withdrawal Permit #1652
Activity ID Number: APE20090005

Dear Mr. Ross:

Thank you for your application for a new water withdrawal permit. This letter accompanies permit #1652 which authorizes withdrawals from River Mile 393.7 of the Cumberland River located in Monroe County with geographic coordinates of latitude 36° 41' 27"N longitude 85° 34' 06"W.

In accordance with this permit, water withdrawals are limited to the following rates from the specified location:

Jan. <=1.7 MGD (MA)	April <=2.0 MGD (MA)	July <=2.7 MGD (MA)	Oct. <=2.6 MGD (MA)
Feb. <=1.7 MGD (MA)	May <=2.2 MGD (MA)	Aug. <=2.8 MGD (MA)	Nov. <=2.1 MGD (MA)
March <=1.7 MGD (MA)	June <=2.6 MGD (MA)	Sept. <=2.8 MGD (MA)	Dec. <=2.7 MGD (MA)

Please refer to the enclosed permit which specifies all conditions associated with this withdrawal, including monitoring and compliance requirements.

The issuance of this permit does not release you from the obligation of obtaining any and all other permits that may be required by this Division or other regulatory agencies.

If you have any questions, please contact Chris Yeary or Rita Hockensmith at (502) 564-3410.

Issued this 4th of August 2010

By: E. Paulette Akers
E. Paulette Akers, Manager
Watershed Management Branch
Division of Water

EPA:cz
Enclosure
cc: Columbia Regional Office



Wuetcher, Gerald

From: Robert Stigall <rstigall@bellsouth.net>
Sent: Tuesday, March 01, 2016 9:23 AM
To: Roger Recktenwald; Wuetcher, Gerald
Subject: Fw: [EXTERNAL] Monroe County KY Permit (UNCLASSIFIED//FOUO)

FYI, perhaps this is of benefit (received Friday the 26th of February)

-----Original Message-----

From: Tuck, Deborah T LRN
Sent: Friday, February 26, 2016 3:50 PM
To: Robert Stigall
Subject: RE: [EXTERNAL] Monroe County KY Permit (UNCLASSIFIED//FOUO)

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY

Hey there!

Yes, the MOA has been signed by all parties. I just sent the environmental document to my supervisor for review. I will hopefully have you a final decision by next week!

Yay!

Deborah T. Tuck
Regulatory Specialist
U.S. Army Corps of Engineers
3701 Bell Road
Nashville, TN 37214
Ph: (615) 369-7518
Fx: (615) 369-7501

Email: deborah.t.tuck@usace.army.mil

Internet (Regulatory Branch)

<http://www.lrn.usace.army.mil/Missions/Regulatory.aspx>

Internet (Nashville District Corps) <http://www.lrn.usace.army.mil/>

Facebook: <http://www.facebook.com/nashvillecorps>

We would appreciate your feedback on how we are performing our duties. Our automated Customer Service Survey is located at <http://per2.nwp.usace.army.mil/survey.html>.

Thank you for taking the time to visit this site and complete the survey.

-----Original Message-----

From: Robert Stigall [<mailto:rstigall@bellsouth.net>]
Sent: Friday, February 26, 2016 3:12 PM
To: Tuck, Deborah T LRN <Deborah.T.Tuck@usace.army.mil>
Subject: [EXTERNAL] Monroe County KY Permit

Hi Debbie, I hope all is good in your world. Could you give me a status update regarding the Monroe County Water District (KY) permit? Last I heard from Roger it was making it's way for signatures?

-Robert

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY