

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST OF FOUNTAIN RUN WATER)	
DISTRICT FOR APPOINTMENT OF)	CASE NO. 2010-00027
COMMISSIONERS)	

O R D E R

Fountain Run Water District (“Fountain Run District”) has advised the Commission in writing of the existence of vacancies on Fountain Run District’s Board of Commissioners due to the expiration of the terms of three incumbents and has requested that the Commission appoint the incumbents to fill these vacancies. By this Order, we grant the request.

Fountain Run District, a water district organized in 1963 pursuant to KRS Chapter 74, owns and operates facilities that distribute water for compensation to approximately 540 customers in Monroe, Allen and Barren counties, Kentucky.¹ As of December 31, 2009, Fountain Run District had total assets and other debits of \$1,960,811.² For the calendar year ending December 31, 2009, it had total operating revenues of \$233,166.³

A five-member board of commissioners administers Fountain Run District and has the statutory responsibility to “control and manage” the water district’s affairs.⁴ The

¹ *Annual Report of Fountain Run Water District to the Public Service Commission of Kentucky for the Year Ended December 31, 2009 (“Annual Report”)* at 4, 5 and 21.

² *Annual Report* at 12.

³ *Id.* at 9.

⁴ KRS 74.020(1).

County Judge/Executives of Monroe, Allen and Barren counties appoint the water district commissioners with the approval of the fiscal court of the appropriate county.⁵ Pursuant to KRS 74.020(1), the terms of the members of a water district's board of commissioners are staggered.⁶

Fountain Run District reports that the terms of Fountain Run District Commissioners John Downing, Raven Propes, and Ronnie Smith expired in November 2004. Since the expiration of their terms, the Monroe County Judge/Executive has not acted to appoint a successor despite written requests from the water district for such action. On January 25, 2010, Joe Cornwell, the present chairman, requested that the Commission fill the vacant terms.⁷ He and Fountain Run District's other remaining commissioner recommended that Mr. Downing, Mr. Propes, and Mr. Smith be reappointed to fill the vacant positions.

On February 26, 2010, we initiated this proceeding to fill the existing vacancies. To ensure notice to all persons with a significant interest in this matter, the Commission ordered that Fountain Run District, Monroe County Judge/Executive Wilbur Graves,

⁵ KRS 74.020(1)(b). When the water district was created, Fountain Run District's territory was exclusively within Monroe County. The Monroe County Judge/Executive appointed the three members of the water district's board of commissioners. It was subsequently extended to portions of Allen and Barren counties. In November 1987, Monroe County Fiscal Court approved the expansion of Fountain Run District's Board of Commissioners from three members to five members. Reversing course three years later, Monroe County Fiscal Court reduced the number of commissioners to three. Currently, Fountain Run District has five members. The County Judge/Executives of Barren County and Allen County have each appointed a member to Fountain Run District's Board of Commissioners to serve with the three members whom the Monroe County Judge/Executive appoints. The record of this proceeding does not contain sufficient evidence to show when these additional members were added to Fountain Run District's Board or the basis for both additions.

⁶ See KRS 74.020(1)(a) ("Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the Court").

⁷ Mr. Cornwell wrote the Commission to request Commission assistance in the reappointment of Commissioners. The Commission considers this letter as an application to make appointments to fill the vacancies.

Monroe County Fiscal Court, Mr. Downing, Mr. Propes, and Mr. Smith be made parties to this proceeding. We further directed Mr. Downing, Mr. Propes, and Mr. Smith to provide information regarding their personal backgrounds and afforded all parties the opportunity to nominate additional persons to fill the existing vacancies. Mr. Downing, Mr. Propes, and Mr. Smith have responded to the Commission's directives to provide information.

Pursuant to KRS 74.020(1)(a), a county judge/executive appoints water district commissioners with the approval of the county's fiscal court. KRS 74.020(4), however, provides that the Commission shall fill a vacancy on the board of commissioners "if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court."

The Commission finds that three vacancies currently exist on Fountain Run District's Board of Commissioners. We also find that the vacancies have existed for longer than 90 days. The Appendix to this Order lists the past appointments to Fountain Run District's Board of Commissioners and the current vacancies to the extent that the Commission has been able to document them.⁸

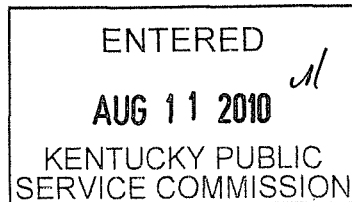
⁸ Our review of these appointments indicates that, at some point, the Monroe County Judge/Executive and Monroe County Fiscal Court failed to comply with KRS 74.020(4) when making appointments. Monroe County Fiscal Court created Fountain Run District on March 2, 1964. The water district's first commissioners were appointed on that date. As the persons initially appointed to serve on Fountain Run District's Board of Commissioners had terms ending one or more years from March 2, their successors' terms should also end on that date. In the mid-1980s, the County Judge/Executive, with the approval of Fiscal Court, erroneously made appointments whose terms differed from the originally established terms. On November 18, 1987, Monroe County Fiscal Court expanded the membership of Fountain Run District's Board of Commissioners to provide for two additional commissioners. The terms of these new appointees ended on November 17. On November 21, 1990, Monroe County Fiscal Court reduced the membership of the Board of Commissioners to three members. In filling the vacancies that currently exist on Fountain Run District's Board of Commissioners, the Commission has returned to the original term periods and has assumed that the two positions eliminated by the Fiscal Court's action in 1990 were the first positions whose terms expired.

Based upon our review of the evidence of record, we find no information to suggest that any of the candidates are unqualified to serve in the designated positions. We further find that each of the candidates resides within Fountain Run District's territory and possesses adequate education, business skills, and experience to perform the duties of water district commissioner and that each should be appointed and approved to fill the position that he currently holds as a holdover incumbent.

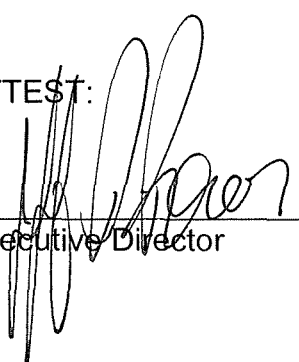
IT IS THEREFORE ORDERED that:

1. Raven Propes is appointed to fill an existing vacancy on Fountain Run District's Board of Commissioners. His term shall expire March 2, 2014.
2. Ronnie Smith is appointed to fill an existing vacancy on Fountain Run District's Board of Commissioners. His term shall expire March 2, 2012.
3. John Downing is appointed to fill an existing vacancy on Fountain Run District's Board of Commissioners. His term shall expire November 17, 2011.

By the Commission



ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2010-00027 DATED **AUG 11 2010**

Year	Monroe County WD Commissioner 1	Monroe County WD Commissioner 2	Monroe County WD Commissioner 3	Monroe County WD Commissioner 4	Monroe County WD Commissioner 5
1964	James Hughes - Appt 3/2/1964 Term ended 3/2/1966	B.C. Goad Appointed 3/2/1964 – 3 years Term ended 3/2/1967	Robert Eaton Appointed 3/2/1964 – 4 years Term ended 3/2/1968	Until 11/18/1987 Fountain Run WD Board of Commissioners composed of only 3 members	Until 11/18/1987 Fountain Run WD Board of Commissioners composed of only 3 members
1965	James Hughes Term ended 3/1/1970	B.C. Goad Reappointed 6/29/1970 Term ended 3/1/1971	Robert Eaton Reappointed 6/29/1970 Term ended 3/1/1972		
1966	James Hughes Term ended 3/1/1970	B.C. Goad Term ended 3/2/1975	Robert Eaton Term ended 3/2/1976		
1967	James Hughes Reappointed 6/29/1970 Term ended 3/2/1974	B.C. Goad Term ended 3/2/1979	Robert Eaton Term ended 3/2/1980		
1968	James Hughes Term ended 3/2/1978	Willie Allen Term ended 3/2/1983	Duell Cherry Ernie Cook Term ended 3/2/1984		
1969	James Hughes Term ended 3/2/1978	Willie Allen Reappt 2/16/1986 Term ended 3/2/1987	Ed Carter Shirley Carter - Appt 11/19/1986 H.E. Carter – Appt 11/18/1987 Term ended 3/2/1988		
1970	James Hughes Term ended 3/2/1978	Willie Allen - Reappt 4/22/1987 E.W. Bryant - Appt 11/18/1987 Term ended 3/2/1991	Abe Cross - Appt 4/20/1988 Term ended 3/2/1992		
1971	James Hughes Term ended 3/2/1978		Abe Cross - Reappt 4/15/1992 D. Howard - Appt 11/18/1992 Term ended 3/2/1996		
1972	Wallace Stokely Term ended 3/2/1982		D. Howard - Reappt 4/17/1996 Mark Tracy - Appt 12/2/1997 Term ended 3/2/2000		
1973	Randall Strode Term ended 3/2/1986		M. Tracy - Reappt 4/19/2000 Ronnie Smith - Appt 11/20/2003 Term ended 3/2/2004		
1974	James Hughes Term ended 3/2/1978				
1975	James Hughes Term ended 3/2/1978				
1976	James Hughes Term ended 3/2/1978				
1977	James Hughes Term ended 3/2/1978				
1978	Wallace Stokely Term ended 3/2/1982				
1979	Wallace Stokely Term ended 3/2/1982				
1980	Wallace Stokely Term ended 3/2/1982				
1981	Wallace Stokely Term ended 3/2/1982				
1982	Randall Strode Term ended 3/2/1986				
1983	Randall Strode Term ended 3/2/1986				
1984	Randall Strode Term ended 3/2/1986				
1985	Randall Strode Term ended 3/2/1986				
1986	Randall Strode Term ended 3/2/1986				
1987	Duel Cherry Term ended 3/2/1986				
1988	Jane Brooks - Appt 11/18/1987 H.G. Franklin - Appt 6/15/1988 Term ended 3/2/1990				
1989	Jane Brooks - Appt 11/18/1987 H.G. Franklin - Appt 6/15/1988 Term ended 3/2/1990				
1990	L. Murley - Appt 2/21/1990 Term ended 3/2/1994				
1991	Odell Brooks - Appt 11/18/1992 Term ended 3/2/1994				
1992	Odell Brooks - Appt 11/18/1992 Term ended 3/2/1994				
1993	Odell Brooks - Appt 11/18/1992 Term ended 3/2/1994				
1994	O. Brooks - Reappt 10/19/1995 Term ended 3/2/1998				
1995	O. Brooks - Reappt 10/19/1995 Term ended 3/2/1998				
1996	O. Brooks - Reappt 10/19/1995 Term ended 3/2/1998				
1997	O. Brooks - Reappt 10/19/1995 Term ended 3/2/1998				
1998	O. Brooks - Reappt 11/17/1998 Term ended 3/2/2002				
1999	O. Brooks - Reappt 10/17/2001 Term ended 3/2/2002				
2000	O. Brooks - Reappt 10/17/2001 Term ended 3/2/2002				
2001	O. Brooks - Reappt 10/17/2001 Term ended 3/2/2002				
2002	Ravin Propes - Appt 1/28/2004 Term ended 3/2/2006				
2003	Ravin Propes - Appt 1/28/2004 Term ended 3/2/2006				

Year	Monroe County WD Commissioner 1	Monroe County WD Commissioner 2	Monroe County WD Commissioner 3	Monroe County WD Commissioner 4	Monroe County WD Commissioner 5
2004	Ravin Propes - Appt. 1/28/2004 Term ended 3/2/2006	<p>On 11/21/1990 Monroe County Fiscal Court reduced the number of members on Fountain Run WD Board of Commissioners from 5 to 3. This position is the first term that expired after Monroe County Fiscal Court's action.</p>	<p>Ronnie Smith - serving as holdover incumbent Term ended 3/2/2008</p> <p>Ronnie Smith – presently serving as holdover incumbent Term ends 3/2/2012</p>	<p>On 11/21/1990 Monroe County Fiscal Court reduced the number of members on Fountain Run WD Board of Commissioners from 5 to 3. This position is the second term that expired after Monroe County Fiscal Court's action.</p>	<p>J. Downing - serving as holdover incumbent Term ended 11/17/2007</p> <p>J. Downing – presently serving as holdover incumbent Term ends 11/17/2011</p>
2005					
2006	Ravin Propes - serving as holdover incumbent Term ended 3/2/2010				
2007					
2008					
2009					
2010	Ravin Propes – presently serving as holdover incumbent Term ends 3/2/2014				
2011					
2012					
2013					
2014					

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Chairman
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