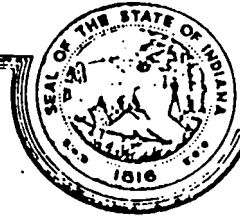


STATE OF INDIANA



INDIANAPOLIS 46206

STREAM POLLUTION CONTROL BOARD

1330 West Michigan Street  
633-5467

STATE OF INDIANA

COUNTY OF MARION

SS:

IN THE MATTER OF THE PETITION  
OF THE TOWN OF NEW PROVIDENCE  
AND THE COUNTIES OF CLARK, FLOYD  
AND WASHINGTON, STATE OF INDIANA,  
TO FORM AND ORGANIZE A REGIONAL  
WATER DISTRICT PURSUANT TO INDIANA  
CODE 1971, 19-3-1.1, AS AMENDED

Cause No. B-323

FINAL ORDER AND DETERMINATION

RESOLVED: That the Findings of Fact and Recommendations of Larry J. Kane, Hearing Officer, on the above-captioned matter, as modified, which are adopted and incorporated herein by reference, show that the organization of the proposed Borden-TriCounty Regional Water District complies with the conditions of IC 19-3-1.1, as amended, for the creation of a regional water district.

NOW, THEREFORE, IT IS ORDERED BY THE STREAM POLLUTION CONTROL BOARD OF THE STATE OF INDIANA:

1. That the petition is approved pursuant to IC 19-3-1.1-5(a).
2. That a regional water district to be known as the "Borden - TriCounty Regional Water District" is organized as an independent political entity of the State of Indiana and as a body corporate and political.
3. That the purpose to be accomplished by said water district is to provide a water supply for domestic, industrial, and public use to users within and without said district.
4. That the water district shall include contiguous portions of Clark, Floyd, Washington and Harrison Counties, as more particularly described in Exhibit A of the petition, including the incorporated area of the Town of New Providence, Indiana.
5. That the district be governed by a Board of Trustees comprising nine (9) members to be appointed as follows:
  - A. (1) Three (3) members appointed by the Board of Trustees of the Town of New Providence, Indiana;

(2) One (1) member appointed by the Board of Commissioners of Clark County, Indiana;

(3) One (1) member appointed by the County Council of Clark County, Indiana;

(4) One (1) member appointed by the Board of Commissioners of Floyd County, Indiana;

(5) One (1) member appointed by the County Council of Floyd County, Indiana;

(6) One (1) member appointed by the Board of Commissioners of Washington County, Indiana; and

(7) One (1) member appointed by the County Council of Washington County, Indiana.

B. Each member shall serve a four-year term except the initial Board of Trustees shall serve as follows:

(1) The appointments by the Board of Trustees of the Town shall serve two (2) years.

(2) The appointments by the boards of commissioners shall serve three (3) years.

(3) The appointments by the county councils shall serve four (4) years.

C. Terms of the original appointees shall expire on the first day of January in the year in which their original appointments terminate. Thereafter, as the terms expire, each new appointment shall be for a term of four (4) years. In the event of delay in appointment the member of the Board of Trustees whose term has expired shall hold over until the proper body has made a new appointment.


6. That the Board of Trustees shall provide sufficient bond for all officers, trustees or employees who shall handle or accept funds of the district. Said bond, as a minimum, shall be in an amount equal to, plus ten percent (10%) of, those funds anticipated to be received by the district, divided by six (6), which amount shall be determined annually by the Board of Trustees.

7. That within six months from the date of this order the district shall file with the Stream Pollution Control Board of the State of Indiana a detailed plan for the construction and operation of the district's facilities pursuant to IC 19-3-1.1-5(a).

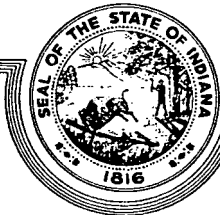
8. That, until such time that said plan has been approved by the Stream Pollution Control Board and the Environmental Management Board, and the district has been authorized to proceed, the Borden (New Providence) municipal water utility and the Tri-County Water Corporation shall continue to operate under their respective organizational structures and identities.
9. That, upon the qualification of its board of trustees and the election of its officers, the district shall be vested with and subject to all rights, powers, and duties authorized under IC 19-3-1.1, as amended, subject to the following limitations to remain in effect until the approval by the Stream Pollution Control Board of the plan specified in Paragraph Seven (7) above: the district, the Town of New Providence and Tri-County Water Corporation may investigate and take necessary action preliminary to effectuating a sale or other transfer of the assets of the two existing utilities to said district, the assumption of the indebtedness of the two utilities by said district, and the execution of agreements with the FHA for the refinancing of any assumed indebtedness or the financing of any new construction, but shall refrain from the final and actual effectuation of any transfer of assets, assumption of liabilities or execution of financial agreements; provided, however, that the above limitations shall not be construed to preclude said district from accepting any grant from or incurring any reasonable liability to the FHA or other source for the purpose of preparing the plan specified in Paragraph Seven (7) above or of undertaking the above-listed preliminary activities.
10. That, in the transfer of assets from the two existing utilities to the district and in the assumption of the indebtedness of the two utilities by the district, the district shall make proper and adequate provisions for protecting the rights and interests of the two utilities in said assets and of the FHA and other holders of outstanding bonds and obligations issued to fund the two existing utilities. In recognition of its role as principal financier of said two existing utilities and, prospectively, of said district, the consent and approval of the FHA shall be obtained as a pre-requisite to the final effectuation of any transfer of assets to and any assumption of liabilities by said district.

Dated at Indianapolis, Indiana, this 23<sup>rd</sup> day of February, 1976.

ATTEST:

  
\_\_\_\_\_  
Ralph C. Pickard  
Acting Technical Secretary  
Stream Pollution Control Board  
of the State of Indiana

STATE OF INDIANA



INDIANAPOLIS 46206

STREAM POLLUTION CONTROL BOARD

1330 West Michigan Street  
633-5467

February 25, 1976

CERTIFIED MAIL

Mr. John M. Cregor  
Dongus, Stein, Cregor, Messick & Brown  
One Indiana Square, Suite 2075  
Indianapolis, Indiana 46204

Dear Mr. Cregor:

Re: Borden-TriCounty Regional Water District  
Cause No. B-323

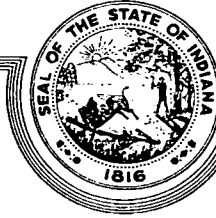
Enclosed is the Final Order of the Stream Pollution Control Board of the State of Indiana on the above-captioned matter which said Board resolved to issue at its regularly scheduled meeting on February 17, 1976.

Very truly yours,

  
Ralph C. Pickard  
Acting Technical Secretary

LJKane/nb  
Enclosure  
cc: Hearing Commissioner

STATE OF INDIANA



INDIANAPOLIS 46206

STREAM POLLUTION CONTROL BOARD  
April 25, 1977

1330 West Michigan Street  
633-5467

Mr. John M. Cregor  
Dongus, Cregor, Messick & Brown  
One Indiana Square, Suite 2075  
Indianapolis, Indiana 46204

Dear Mr. Cregor:

Re: Borden-TriCounty Regional Water District  
Cause No. B-324

You are hereby notified that the Stream Pollution Control Board of the State of Indiana, during its meeting which was held on April 19, 1977, considered the request that portions of Section 5 of the Final Order and Determination made in the above Cause and mailed to you on February 25, 1976, be amended.

After mature consideration, the Board, upon motion made, duly seconded, and unanimously passed:

RESOLVED: That Section 5A be amended to read:

"(2) One (1) member (not a resident of New Providence) appointed by the Board of Commissioners of Clark County, Indiana;

"(3) one (1) member (not a resident of the Town of New Providence) appointed by the County Council of Clark County, Indiana;"

A complete copy of Section 5, which contains these amendments and is marked as Exhibit A, is attached hereto and made a part of this letter.

Dated at Indianapolis, Indiana, this 25<sup>th</sup> day of April, 1977.

Sincerely,

Oral H. Hert  
Technical Secretary

cc: Virgil Bolly, Esq.  
Hearing Commissioner

X

3/1/77

DONGUS, CREGOR, MESSICK & BROWN  
LAWYERS

ONE INDIANA SQUARE, SUITE 2075  
INDIANAPOLIS, INDIANA 46204

TELEPHONE (317) 632-6315

SIDNEY STEIN, P.C.  
OF COUNSEL

GUSTAV H. DONGUS  
JOHN M. CREGOR  
ROBERT M. MESSICK  
PAUL E. BROWN  
DOUGLAS E. CREGOR

April 18, 1977

RECEIVED

APR 18 1977

STATE BOARD OF HEALTH  
OFFICE OF THE HEARING COMMISSIONER

Stream Pollution Control Board  
State of Indiana  
1330 West Michigan Street  
Indianapolis, Indiana 46206

Re: Order of February 23, 1976, establishing the Borden-TriCounty Regional Water District (Cause No. B-323)

Attention: Mr. William Christen, Attorney

Dear Sir:

Request is hereby made for a clarification in the referenced Order by inserting in Rhetorical Paragraph 5A the following words, to-wit: "(not a resident of the Town of New Providence)" after the word "member" where it appears in both subparagraph (2) and (3).

The undersigned together with Virgil E. Bolly were the attorneys for the establishment of the Borden-TriCounty Regional Water District and were attorneys for the Town of New Providence in regard to its water utility. The New Providence Town Board and other interested persons in planning for the establishment of the District directed the attorneys to request in the Petition that there be three members of the Board of Trustees of the Regional Water District from the Town and two members from each of the three counties. It was agreed that three members from the Town were sufficient to give proportional representation to the Town.

Members of the Board of Trustees of the District have brought to the attention of the undersigned that he and Virgil Bolly made an error in the wording of Rhetorical Paragraph 10 of the Petition, which was the wording adopted by the Stream Pollution Control Board in the referenced Order. These persons have pointed out that it is possible for the Board of Commissioners or the County Council, or both, of Clark County to appoint residents of the Town of New Providence because the Town is within Clark County whereas it was agreed at the time of preparing the Petition that representation on the Board of three members from the Town would be fair and equitable.

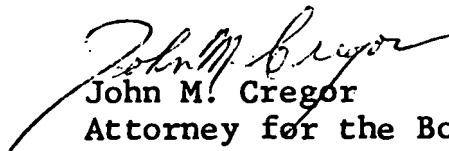
Stream Pollution Control Board  
April 18, 1977  
Page 2.

The undersigned and his co-attorney regret their error in so drafting the Petition and request on behalf of the Town of New Providence and the other petitioners that Rhetorical Paragraph 5 of the referenced Order be restated as aforesaid to express correctly the desire of petitioners. Several members of the Board of Trustees of the District have expressed great concern about the possible non-proportional representation on the Board of Trustees which could result from the Order as it presently exists and are unwilling to proceed further until the Order can be clarified.

This clarification of the referenced order would make no substantive change. A copy of Rhetorical Paragraph 5 of the Order as proposed is enclosed as Exhibit "A" to this letter.

Action at the April 19th meeting would be greatly appreciated so that the District can proceed with its proposed bond issue on May 12th to refinance the existing debt it is assuming from the Town and the Tri-County Water Corporation and to provide for improvements and extensions.

Yours very truly,



John M. Cregor  
Attorney for the Borden-TriCounty  
Regional Water District

JMC:rkm  
Enclosure

5. That the district be governed by a Board of Trustees comprising nine (9) members to be appointed as follows:

A. (1) Three (3) members appointed by the Board of Trustees of the Town of New Providence, Indiana;

(2) One (1) member (not a resident of the Town of New Providence) appointed by the Board of Commissioners of Clark County, Indiana;

(3) One (1) member (not a resident of the Town of New Providence) appointed by the County Council of Clark County, Indiana;

(4) One (1) member appointed by the Board of Commissioners of Floyd County, Indiana;

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JOHN W. MEAD  
TRENT THOMPSON  
MARK D. CLARK

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P. O. BOX 488

SALEM, INDIANA 47167-0468

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FAX (812) 883-2207

WALTER G. MEAD  
(1879-1976)

WILLIS C. MEAD  
(1914-1992)

May 26, 1993

Mr. Chip Landman  
**WATER POLLUTION CONTROL BOARD**  
105 South Meridian Street  
Post Office Box 6015  
Indianapolis, Indiana 46206-6015

**Re: Borden Tri-County Regional Water District**

Dear Mr. Landman:

This is a followup to a conversation I had with you in April of this year concerning questions posed to me by the Board of Directors of Borden Tri-County Regional Water District. I am the attorney who represents the water district.

Borden Tri-County Regional Water District was created under an order issued from the Stream Pollution Control Board. I have enclosed a copy of the order along with a copy of an amendment to the original order dated April 25, 1977, relating to the appointment of the Board of Trustees for the district.

Pursuant to the existing order, the board consists of nine members, three of which are appointed by the Town Board of the town of New Providence (Borden). The remaining members of the Board of Trustees are appointed by the Board of Commissioners and County Council of Clark, Washington, and Floyd counties as set forth in the enclosed order. Based upon the growth of the water district, which has been substantial, the board estimates that less than ten percent of the district's customers reside within the corporate boundaries of the town of New Providence, yet one-third of the board members are appointed by the Town Board of New Providence. The board requested that I contact you to determine if it would be possible to seek a modification of the order to reduce the board from nine members to seven members and provide that the town of New Providence would have the right to appoint one member and the respective county councils and county commissioners would have the right to appoint one member as presently provided. The Board of Trustees feels such a makeup of the board would be much more representative of the customer base that what now exists.

The board also questioned me as to whether or not the Board of Trustees, by way of by-law, or the Water Pollution Control Board, by way of amendment to the order, could require that

Mr. Chip Landman  
May 26, 1993  
Page Two

all members of the Board of Trustees be residents and customers of the district. I reviewed with the board the provisions of Indiana Code 13-3-2-5 § (d), which in the last sentence provides that the appointed trustees need not be residents of the district. I was uncertain whether the order could be amended or whether the Board of Trustees could, by way of by-law, require the governmental bodies to appoint only persons who in fact are residents and customers of the district. Any guidance you could give the district in that regard would be greatly appreciated.

After you have had an opportunity to review this letter and the enclosures, the district would appreciate receiving your position concerning the possibility of amending the order as it relates to the number of trustees and who has the authority to make the appointment and also as it relates to the possibility of requiring that all board members be residents and customers of the district.

Thanking you in advance for your consideration of this matter, I am

Respectfully,

**MEAD, MEAD & THOMPSON**



TRENT THOMPSON

TT/ljk

Enclosures

[BORDEN/A.LANDMAN]