

FINDINGS OF FACT AND RECOMMENDATIONS  
OF LARRY J. KANE, HEARING OFFICER  
ON BEHALF OF  
THE STREAM POLLUTION CONTROL BOARD OF THE  
STATE OF INDIANA

IN THE MATTER OF THE PETITION OF )  
THE TOWN OF NEW PROVIDENCE AND THE )  
COUNTIES OF CLARK, FLOYD, AND )  
WASHINGTON, STATE OF INDIANA, TO ) CAUSE NO. B-323  
FORM AND ORGANIZE A REGIONAL WATER )  
DISTRICT PURSUANT TO INDIANA CODE )  
1971, 19-3-1.1, AS AMENDED )

Upon receipt of the petition of the Board of Trustees, Town of New Providence, and of the County Councils and Boards of Commissioners, Counties of Clark, Floyd, Harrison and Washington, Indiana, for the establishment of a regional water district pursuant to the provisions of IC 1971, 19-3-1.1, the Stream Pollution Control Board of the State of Indiana, pursuant to the provisions of IC 1971, 19-3-1.1-5, issued notice of hearing, to be published on Wednesday, January 21, 1976, and Wednesday, January 28, 1976, in the Salem Leader, the Jeffersonville Evening News, the New Albany Tribune, and the Corydon Democrat.

Hearing was held on January 29, 1976, in the Town Hall, New Providence, Indiana, with Larry J. Kane, Hearing Officer.

The Petitioners were represented by Mr. John M. Cregor, Attorney-at-Law, of Dongus, Stein, Cregor, Messick & Brown, Indianapolis, Indiana, and Mr. Virgil E. Bolly, Attorney-at-Law, of Bolly & Sedwick, Sellersburg, Indiana.

SUMMARY OF TESTIMONY

Emil Stark, President, Board of Trustees, Town of New Providence, testified that the Town Board of Trustees had discussed at length the proposed regional water district and are unanimous in agreement that a financial need, virtually an urgent need, exists for such a district. Presently, he stated, the town's municipal water works is selling water to Tri-County Water Corporation at a rate less than cost. The reorganization of the two water utilities into a regional water district would resolve an inter-utility rate impasse. He further testified that the Town is imminently near to default, if not already in default, on the bonds issued to the FHA for funding the construction of the reservoir and the water treatment plant.

Robert V. Green, Chairman, Board of Directors, Tri-County Water Corporation, testified that the Board of Directors at Tri-County Water Corporation have voted a resolution favoring the formation of the regional water district. As further testimony in favor of the proposed district, he stated that the Borden water treatment plant currently operates nearly 24 hours per day with little reserve water capacity at times, whereas the State Board of Health generally recommends that water treatment plant operation be limited to 12 hours per day with 18 hours per day as maximum; that the 850 present customers of the Tri-County Water Corporation, whose service area population is continuing to grow, together with the 200 customers of the Borden municipal water system exceed the design capacity of 650 customers at the Borden water treatment plant; that the Borden municipal water utility has insufficient resources to finance expansion of the water treatment plant; that the two water utilities could work as one unit with greater efficiency, particularly with regard to maintenance; and that the boundaries of the proposed district encompass the present service area of the two utilities and some slight additional area which could be serviced under reasonable expansion of the distribution system.

William F. Uhl, Sanitary Engineer, Indiana State Board of Health, reiterated Mr. Green's statement that the Borden water treatment plant operates nearly 24 hours per day, far in excess of the State Board of Health's guideline limiting operation to 12 hours per day, and stated that such around-the-clock operation leaves inadequate time for maintenance and repair. He further testified that as a result of the heavy demand on the Borden water treatment plant, the State Board of Health has requested a moratorium on further connection to or expansion of the distribution system.

Robert L. Isgrigg, Consulting Engineer, Environmental Consultants, Inc., testified that the Borden water treatment plant has a maximum design capacity of 455,000 gallons per day (on a 24 hour operational basis) and that output of the plant has averaged roughly 300,000 gallons per day with a peak output of 406,000 gallons per day. Such operating conditions, he stated, necessitate constant operator attention to maintain output. To adequately upgrade the plant to meet projected demand, he recommended nearly doubling the filtration capacity, which constitutes the present "limiting factor" in plant output, as well as adding sludge collection and handling facilities and expanding the building and wet well. To commensurately upgrade the distribution system, he stated that increased capacity in the major transmission mains and the addition of a ground storage reservoir along the main transmission line were of highest priority and that expansion of the system could be cost effective in certain areas. The cost of these improvements was estimated to be roughly \$275,000-\$300,000.

Wilbur K. Harmon, Chief of Community Programs, Farmers Home Administration, U.S. Department of Agriculture, testified that the Town of New Providence is currently in arrears on its bonded indebtedness to FHA for the construction funding for the Borden water treatment

plant and reservoir. The Tri-County Water Corporation, while current in payments on its notes to FHA for the cost of construction of the water distribution system, has not been able to adequately maintain the reserve accounts required by the Indiana Public Service Commission. While he could make no commitments at this time, he considered there to be a good possibility that FHA, through a combination of grants and loans, could provide the proposed water district with the necessary funds to refinance the current indebtedness of the two utilities and to finance the needed expansion of facilities. FHA has requested the formation of the proposed district as a prerequisite to any further financing from that agency.

Robert L. Strange, Materials Manager, Kimball Office Furniture Company, testified that his company was very supportive of creation of the proposed district since the furniture factory's operation was wholly dependent upon the Borden water supply for its fire protection system.

Several other citizens expressed their support and approval of the proposed water district; no opposition to the proposed district was evident. Approximately eighteen persons attended the hearing.

In addition to the oral testimony, a written statement expressing unequivocal support for the proposed district was received from Mr. Jack Jordan, former president of the Board of Trustees, Town of New Providence. Written statements were also submitted by Mr. Robert V. Green, Mr. Wilbur K. Harman, and Mr. Robert L. Isgrigg, the substantive contents of which were recapitulated in their respective oral testimonies, summarized above. Mr. William F. Uhl referred the Hearing Officer to various memoranda in the files of the State Board of Health in which he had previously discussed the need for the proposed district.

#### FINDINGS OF FACT

1. That the Board of Trustees of the Town of New Providence (commonly referred to as the Town of Borden) and the County Councils, with the approval of the respective Boards of County Commissioners, of the Counties of Clark, Floyd, and Washington, Indiana, and with the assent and approval of the County Council and Board of Commissioners of Harrison County, Indiana, filed their petition before the Indiana Stream Pollution Control Board for an order establishing a regional water district pursuant to the provisions of IC 1971, 19-3-1.1.
2. That the Stream Pollution Control Board, at its meeting on the 16th day of December, 1975, by motion duly made, seconded and unanimously passed, determined that the petition as filed was conditionally sufficient according to the criteria specified by IC 1971, 19-3-1.1, subject to the acquisition of all necessary signatures on said petition, and authorized the Technical Secretary to accept said petition when the necessary signatures were obtained and to then schedule a public hearing and appoint a hearing officer.

3. That on the 17th day of December, 1975, a petition with all necessary signatures was filed with the Technical Secretary, who subsequently appointed Larry J. Kane as Hearing Officer.
4. That notice of public hearing on said petition was published once each week for two consecutive weeks, specifically on January 21, 1976, and January 28, 1976, in the following newspapers of general circulation: The Jeffersonville Evening News (Clark County), the New Albany Tribune (Floyd County), the Corydon Democrat (Harrison County), and the Salem Leader (Washington County).
5. That a public hearing on said petition was held on the 29th day of January, 1976, in the Town Hall of the Town of New Providence, Indiana, and that said hearing location was within the proposed district.
6. That the name of the proposed district is the Borden-TriCounty Regional Water District, with its principal office in New Providence, Indiana. (Whenever appearing in these findings of fact, "Town of Borden" shall be synonymous with "Town of New Providence".)
7. That the purpose to be accomplished by said district shall be to provide a water supply for domestic, industrial, and public use to users within and without said district so as to promote the public health, safety, convenience and welfare of the residents of the proposed district.
8. That no political subdivision presently exists having the authority and economic capability for the treatment and distribution of water throughout the multi-county area encompassed by the proposed district.
9. That the proposed district is substantially coterminous with the present combined service areas of the Borden municipal water system and the Tri-County Water Corporation (hereinafter "Tri-County"), a not-for-profit corporation, although some additional territory is included which could reasonably be served with modest expansion of the existing distribution system. Contiguous portions of Clark, Floyd, and Washington Counties, together with a strip of Harrison County adjacent to Floyd and Washington Counties, are encompassed by said district.
10. That Tri-County currently purchases water for distribution from the Borden municipal water utility at a contractual rate inadequate to meet the expenses incurred by said municipal utility in the production of said water.
11. That the current aggregate user demand upon the Borden municipal water utility and Tri-County on the average, constitutes roughly two-thirds (2/3) of the Borden water treatment plant's twenty-four hour capacity, with peak aggregate demands equivalent to nearly 90% of said twenty-four hour capacity, and that such heavy demands necessitate operation of said plant far in excess of the twelve hours per day recommended as a general guideline by the Indiana State Board of Health, leaving inadequate time for proper maintenance and repair.

12. That, as a result of the current demands on the Borden water treatment plant, the State Board of Health has requested a moratorium on further connection to the water distribution system of the two utilities and, therefore, further economic growth and development in the area of the proposed district is inhibited.
13. That the total outstanding indebtedness of the Borden municipal water utility and Tri-County, which is proposed to be assumed by the regional water district, is approximately \$1,830,000. All but roughly \$20,000 of said indebtedness consists of obligations to the Farmers Home Administration, U.S.D.A. Presently, the Town of New Providence is delinquent by slightly more than \$61,000 on its retirement schedule for bonds issued to the FHA.
14. That the estimated cost of proposed improvements to and expansion of the water treatment plant and distribution system of the proposed district is approximately \$290,000.
15. That the physical assets, along with other property rights or interests appurtenant or incident thereto, of the Borden municipal water utility and Tri-County which are necessary to the operation of the proposed district are <sup>proposed</sup> to be transferred, by absolute conveyance, lease, or other appropriate method, to said district.
16. The proposed district appears to be economically feasible in view of the strong likelihood of sufficient funding from the FHA to refinance existing indebtedness and to finance the projected improvements and expansion of the water works.
17. That a rate study has been initiated to redesign the rate structure such that sufficient revenues will be generated for operation of the district.

#### RECOMMENDATIONS OF THE HEARING OFFICER

1. That the petition should be 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" be 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 district has been authorized to proceed, the Borden 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 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 prerequisite to the final effectuation of any transfer of assets to and any assumption of liabilities by said district.

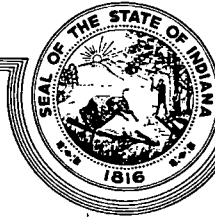
Dated at Indianapolis, Indiana, this 12<sup>th</sup> day of February, 1976.

Respectfully submitted,



Larry J. Kane, Hearing Officer

STATE OF INDIANA



INDIANAPOLIS 46206

STREAM POLLUTION CONTROL BOARD

1330 West Michigan Street  
633-5467

CERTIFIED MAIL

STATE OF INDIANA) )  
                                  ) SS:  
COUNTY OF MARION)

BEFORE THE STREAM POLLUTION  
CONTROL BOARD OF THE  
STATE OF INDIANA

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

NOTICE OF FILING OF FINDINGS OF FACT AND RECOMMENDATIONS

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

Mr. Virgil E. Bolly  
Bolly & Sedwick  
204 East Utica Street  
Sellersburg, Indiana 47172

You are hereby notified that on the 12th day of February, 1976, Larry J. Kane, Hearing Officer in the above-captioned cause, presented to and filed with the Stream Pollution Control Board the complete record of the proceedings heretofore held before him on said cause including his Findings of Fact and Recommendations.

A copy of said Findings of Fact and Recommendations is enclosed and made a part of this notice.

You are further notified that, in order to expedite the resolution of said cause at the request of the petitioners, herein, the Stream Pollution Control Board will consider said Findings of Fact and Recommendations at its meeting on February 17, 1976. Any objections to the entry of the recommended order may be filed with the Stream Pollution Control Board in accordance with IC 4-22-1-12.

Dated at Indianapolis, Indiana, this 13<sup>th</sup> day of February, 1976.

Very truly yours,

Oral H. Hert  
Technical Secretary

L. J. Kane  
Enclosure  
cc: Hearing Commissioner