



# State Funding Of The Bluegrass Water Supply Commission

Research Report No. 428

Program Review And Investigations Committee

# Kentucky Legislative Research Commission

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# **State Funding Of The Bluegrass Water Supply Commission**

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### **Research Report No. 428**

### **Legislative Research Commission**

Frankfort, Kentucky

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## **Abstract**

The Bluegrass Water Supply Commission (BWSC) was formed in 2004 in an effort to establish a regional water supply network in Central Kentucky. Current BWSC member municipalities are Berea, Cynthiana, Frankfort, Georgetown, Lancaster, Lexington-Fayette County, Nicholasville, Paris, and Winchester. The Kentucky American Water Company was an unofficial partner in the regional water supply effort. BWSC has received \$1.8 million in state appropriations: \$900,000 in 2005 (HB 267) and a second \$900,000 in 2006 (HB 380). BWSC received a \$30,000 grant from the Kentucky River Authority in 2005. The commission borrowed \$165,000 each from the Kentucky League of Cities and Kentucky Association of Counties. HB 4, enacted in 2009, allowed funds from the second \$900,000 appropriation to be used to retire BWSC's debt. Because loan proceeds had been used as a source of the local matching required for the first \$900,000 appropriation, in effect, state funds from one year were used as matching for state funds from another year. BWSC had difficulty securing adequate capital funding for a large-scale water infrastructure project. Kentucky American ended up doing a water supply project, which was initially proposed in a 2004 feasibility study, on its own. BWSC reconvened in 2010 to reevaluate its focus. In 2012, BWSC paid off two outstanding loans and began allocating remaining funds from the second state appropriation to assist member municipalities with water infrastructure projects.



## Foreword

The Legislative Research Commission was established in 1948 to provide the staffing essential to the smooth and efficient operation of the Kentucky General Assembly. Over the course of the last 70 years, this organization has evolved into today's LRC: a multifaceted organization filling the many needs of a modern state legislature. As Kentuckians, we are fortunate to have hundreds of knowledgeable and dedicated professionals who provide high levels of analysis, legislative support, and customer service.

The staff of the Program Review and Investigations Committee perform the important work of monitoring and evaluating governmental programs throughout the commonwealth. At the direction of the committee, they undertake a number of Research Reports every year, focusing on specific, well-defined questions of public policy.

Such work is done in collaboration with the community and within LRC. Program Review staff thank officials and staff of the Kentucky River Authority for their cooperation and assistance. The assistance of staff at the Bluegrass Area Development District, especially Executive Director David Duttlinger, is appreciated. Linda Bridwell at Kentucky American Water provided valuable information. Staff thank Damon Talley and Tom Calkins for providing records of the Bluegrass Water Supply Commission's activities. Staff would also like to acknowledge the efforts of former Program Review graduate fellows Ashleigh Hayes, Brad Mackin, and Kate Vail.

Thank you for your interest in this publication, and thank you to everyone who made this report possible.



David A. Byerman  
Director

Legislative Research Commission  
Frankfort, Kentucky  
July 14, 2016





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## Summary

The Bluegrass Water Supply Commission (BWSC) was formed in 2004 under KRS 74.420 to 74.520 by the Lexington-Fayette Urban County Government. The other initial members of the commission were the cities of Cynthiana, Frankfort, Georgetown, Lancaster, Mount Sterling, Nicholasville, Paris, and Winchester. Berea joined in 2007. Mount Sterling left in 2011.

According to its bylaws, the mission of the commission is to ensure adequate potable water supply and treatment reliability under any condition(s) to member utilities. BWSC will maximize utilization of the Kentucky River as a raw water source, maintain reasonable rates, and ensure compliance with all water quality and other regulations.

BWSC and Kentucky American Water Company planned to partner to fund the construction of a new water treatment facility and grid network that would distribute additional water supply to regional municipalities. The joint construction projects never materialized because BWSC could not obtain sufficient capital funding. Based on findings from the 2004 feasibility study, Kentucky American constructed a new water treatment facility at Pool 3 on its own at a total cost of approximately \$164 million.

As shown in the table below, more than \$2 million in state appropriations and grants has been awarded the commission. Of this total, the commission did not receive a \$250,000 grant because it lapsed.

### State Funding Awarded To The Bluegrass Water Supply Commission

Grant/Appropriation (Fiscal Year)	Amount	Status
Kentucky River Authority (2005)	\$30,000	Spent
HB 267 (2005)	900,000	Spent
Community Economic Growth Grant (2007)	250,000	Lapsed
HB 380 (2007), amended by HB 4 (2009)	900,000	20.4% remaining balance as of Jan. 13, 2016
Total	\$2,080,000	

Source: Financial record attachments to Bluegrass Water Supply Commission meeting minutes.

The commission also obtained funding through loan agreements with the Kentucky Municipal Finance Corporation, which is administered by the Kentucky League of Cities, and the Kentucky Association of Counties Leasing Trust. Each loan was for \$165,000, for a total of \$330,000. BWSC retired the loans in May 2012, at a cost of \$354,232 including accrued interest.

BWSC was granted \$900,000 as part of HB 267 for preconstruction activities associated with proposed BWSC water infrastructure projects. A local funding match of \$200,000 was required as part of the grant agreement. Part of the matching was paid for from the loans from the Kentucky Municipal Finance Corporation and the Kentucky Association of Counties Leasing Trust.

The terms of the appropriation listed the Kentucky Infrastructure Authority as the grantor, the Kentucky River Authority as the grantee, and BWSC as the subgrantee. BWSC was established and organized as a local entity, so it is not required to follow Kentucky's Model Procurement Code and is not under the purview of the Finance and Administration Cabinet or the Government Contract Review Committee.

The table below shows HB 267 expenditures per payee. More than one-half of the funding went to an engineering firm and the commission's general counsel. Nearly 15 percent of the funds went to Bluegrass Area Development District for administrative services.

#### 2005 HB 267 Expenditures Per Payee

Payee	Amount	% Of Total
O'Brien & Gere Engineers	\$323,575	29.4%
Damon Talley PSC	302,149	27.4
Kentucky American Water	171,000	15.5
Bluegrass Area Development District	160,756	14.6
Seven other payees	144,112	13.1
Total	\$1,101,592	100.0%

Source: Bluegrass Water Supply Commission draw request documents submitted to the Kentucky Infrastructure Authority.

The Community Economic Growth grant was a component of the funding strategy for the Phase I project proposed by BWSC, which was construction of a water transmission pipeline from the Frankfort area to a location along the Fayette County/Scott County line. The grant was restricted for use during the 12 months of FY 2007. There is no record that BWSC used these funds. According to the master agreement, the funds would have reverted to the Governor's Office for Local Development.

In 2006, the General Assembly appropriated via HB 380 a second \$900,000 to BWSC for water project engineering. The terms of the grant specified the development of a water supply grid. The funding remained unused until 2012.

HB 4, enacted in the 2009 Extraordinary Session, allowed funding from the \$900,000 appropriated by HB 380 to be used for the repayment of debt incurred by BWSC. Because loans were a source of the local matching required for the first \$900,000 appropriation (HB 267), in effect, state funds from one year were used to provide local matching for state funds from another year.

The commission has maintained funds in its account through FY 2016. The purpose and aim of the commission evolved following a period of inactivity from July 2008 to April 2010. The BWSC board has met infrequently since April 2010.

BWSC is providing partial funding for projects for six municipalities:

- Berea (\$100,000 BWSC allocation)
- Cynthiana (\$50,000)
- Frankfort (\$100,000)
- Lancaster (\$100,000)
- Nicholasville (\$100,000)
- Paris (\$90,000)

At the October 18, 2012, BWSC meeting, board members reconsidered BWSC's focus. All BWSC members voted to allow original member municipalities the opportunity to submit projects that would be awarded funding based on merit. On January 9, 2013, BWSC board members voted unanimously to provide funding to larger water connectivity and supply projects for member municipalities. As of January 2016, there is nearly \$184,000 remaining of the state-appropriated HB 380/HB 4 funds.



## State Funding Of The Bluegrass Water Supply Commission

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The mission of the Bluegrass Water Supply Commission (BWSC) includes ensuring adequate water supply for its members under any conditions. Commission members are Berea, Cynthiana, Frankfort, Georgetown, Lancaster, Lexington-Fayette County, Nicholasville, Paris, and Winchester.

The Bluegrass Water Supply Commission (BWSC) was formed in 2004 under KRS 74.420 to 74.520 by the Lexington-Fayette Urban County Government.<sup>1</sup> The other initial members of the commission were the cities of Cynthiana, Frankfort, Georgetown, Lancaster, Mount Sterling, Nicholasville, Paris, and Winchester. Berea joined in 2007. Mount Sterling left in 2011.

According to its bylaws, the mission of the commission is to ensure

adequate potable water supply and treatment reliability under any condition(s) to member utilities. BWSC will maximize utilization of the Kentucky River as a raw water source, maintain reasonable rates, and ensure compliance with all water quality and other regulations.

Kentucky American Water Company, an investor-owned water utility serving Fayette County and portions of surrounding counties, has been a working partner of the commission but is prohibited by statute from being an official member.

### Major Conclusions

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This report has four major conclusions.

This report has four major conclusions.

- The Bluegrass Water Supply Commission received \$1,830,000 in state funding from FY 2005 to FY 2007: two \$900,000 appropriations and one \$30,000 grant.
- Legislation enacted in 2009 allowed the commission to use funding from the second \$900,000 appropriation to pay off debt. Because loans were a source for local matching required for the first \$900,000 appropriation, in effect, state funds from one year were used to provide local matching for state funds from another year.
- The commission was unable to construct large-scale water utility projects that it had proposed because it was unable to get capital funding on acceptable terms. Initially, the commission and the Kentucky American Water Company cooperated in the proposal to build a water treatment facility and pipeline to increase the water supply for central Kentucky. Kentucky American ended up doing the project on its own.

- Beginning in 2012, the commission has been allocating remaining funds from the second \$900,000 appropriation for member municipalities' water projects.

## Overview Of Funding

### State Funding

More than \$2 million in state appropriations and grants was awarded to BWSC from FY 2005 to FY 2007, including \$250,000 that lapsed and was not used.

As indicated in Table 1, more than \$2 million in state appropriations and grants was awarded to the commission from fiscal year 2005 to fiscal year 2007. Of this total, the commission did not receive a \$250,000 grant because it lapsed.

**Table 1**  
**State Funding Awarded To The Bluegrass Water Supply Commission**

Grant/Appropriation (Fiscal Year)	Amount	Status	Use/Outcome
Ky. River Authority (2005)	\$30,000	Spent	
HB 267 (2005)	900,000	Spent	Preconstruction for Phase I project*
Community Economic Growth Grant (2007)	250,000	Lapsed	Deadline passed
HB 380 (2007) and HB 4 (2009)	900,000	20.4% remaining balance as of Jan. 13, 2016	Supplemental funding for members' water projects
<b>Total</b>	<b>\$2,080,000</b>		

\*Phase 1 was proposed construction of a water transmission pipeline from the Frankfort area to a location along the Fayette County/Scott County line.

Source: Financial record attachments to BWSC meeting minutes.

In 2005, the Kentucky River Authority awarded a \$30,000 grant to BWSC for financial assistance for initial planning of construction of water distribution projects.

In February 2005, the Kentucky River Authority awarded a \$30,000 grant to the commission to provide financial assistance in planning and financing a water distribution system in the Bluegrass Region as a backup water supply system for emergencies and to promote effective use of production facilities.<sup>2</sup>

BWSC paid approximately \$23,000 to the Flint Group in 2005, primarily for financial management and federal grant writing assistance, but also for lobbying. This effort to obtain capital funding was unsuccessful.

BWSC paid \$23,214.70 from the 2005 grant to the Flint Group. Funding was mainly used for financial management and assistance with applying for federal grants, but some funding was used to “[e]ducate members of Congress ...” and “state elected officials.”<sup>3</sup> The Flint Group was registered as a federal lobbyist on behalf of BWSC in 2005.<sup>4</sup> The primary focus was acquiring capital funding through federal grants, specifically State and Tribal Assistance grants. This effort was unsuccessful.



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BWSC borrowed \$330,000 in 2005: \$165,000 each from the Kentucky League of Cities and the Kentucky Association of Counties.

In 2005, the commission entered into loan agreements with the Kentucky Municipal Finance Corporation, which is administered by the Kentucky League of Cities, and the Kentucky Association of Counties Leasing Trust. Each loan was for \$165,000, for a total of \$330,000. BWSC retired the loans in May 2012 at a cost of \$354,232 including accrued interest.

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As part of the 2004-2006 biennium budget, HB 267 appropriated \$900,000 to BWSC. The funds were to be used for preconstruction activities and property acquisition associated with proposed BWSC water infrastructure projects.

As part of the 2004-2006 biennium budget, HB 267 appropriated \$900,000 to the commission.<sup>5</sup> The terms of the appropriation listed the Kentucky Infrastructure Authority as the grantor, the Kentucky River Authority as the grantee, and BWSC as the subgrantee. The funds were to be used for preconstruction activities such as routing and engineering studies and property acquisition associated with proposed BWSC water infrastructure projects. A local funding match of \$200,000 was required as part of the grant agreement. Part of the matching was paid for from the loans from the Kentucky Municipal Finance Corporation and the Kentucky Association of Counties Leasing Trust.

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BWSC received a \$250,000 Community Economic Growth grant that was restricted for use within FY 2007 for the purpose of property acquisition. The funds were not used and reverted to the state.

The Community Economic Growth grant was a component of the funding strategy for the Phase I project proposed by BWSC, which was construction of a water transmission pipeline from the Frankfort area to a location along the Fayette County/Scott County line. BWSC originally sought \$1 million in grant funds from a pool of \$10 million, but the proposed amount was deemed too high by the Governor's Office for Local Development.<sup>a</sup> The office later authorized \$250,000 for property acquisition by BWSC. The grant was restricted for use during FY 2007.<sup>6</sup> There is no record that BWSC used these funds. According to the master agreement, the funds would have reverted to the Governor's Office for Local Development.

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In 2006, the General Assembly appropriated a second \$900,000 to BWSC via HB 380. The terms of the grant specified the development of a water supply grid. BWSC did not have adequate capital funding to construct a grid at that time. The funding remained unused until 2012.

In 2006, the General Assembly appropriated via HB 380 a second \$900,000 to BWSC for water project engineering. The terms of the grant specified the development of a water supply grid. BWSC did not have the necessary capital funding at the time to proceed with construction. The funding remained unused until 2012. Funds for the grant were administered by the Kentucky River Authority.

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<sup>a</sup> It is now the Department for Local Government.

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HB 4, enacted in 2009, allowed funding from the second \$900,000 appropriation to be used for repayment of debt incurred by BWSC. Loans were a source for the local matching required for the first \$900,000 appropriation, so state funds from one year were used to provide local matching for state funds from another year.

HB 4, enacted in the 2009 Extraordinary Session, allowed funding from the HB 380 appropriation of \$900,000 to be used for the repayment of debt incurred by BWSC. Because loans were a source of the local matching required for the first \$900,000 appropriation from HB 267, in effect, state funds from one year were used to provide local matching for state funds from another year.

### **Membership Fees**

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From FY 2002 to FY 2008, BWSC collected \$231,000 in membership fees.

From FY 2002 to FY 2008, BWSC collected \$231,000 in membership fees according to financial reports provided by the commission.

BWSC members deemed “major” paid \$5,000 annually; those classified as “minor” contributed \$2,500. Major members were Frankfort, Georgetown, Lexington-Fayette Urban County Government, Nicholasville, and Winchester. Kentucky American Water Company also contributed at the major rate. Each of the major members made membership fee contributions to BWSC from FY 2002 to FY 2007. Only two of these members paid dues to BWSC in 2008 according to financial records provided, and there is no record of fee collection thereafter.

Minor members paying dues to the commission were Cynthiana, Lancaster, Mount Sterling, and Paris. Berea was also a minor member but paid dues only in FY 2008.

## **Origin Of The Bluegrass Water Supply Commission**

### **Bluegrass Water Supply Consortium**

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SB 409, enacted in 2000, increased area development districts' responsibility for development of water project strategies to prepare for potential water shortages. The Bluegrass Area Development District (Bluegrass ADD) partnered with Utilities Round Table Group and coordinated an alliance of central Kentucky water utilities that would become the Bluegrass Water Supply Consortium.

During the 1990s, representatives from the cities of: Frankfort, Georgetown, Nicholasville, Paris, and Winchester formed the Utilities Round Table Group, which conducted quarterly meetings to address potential water supply issues that could face the region during drought conditions. In 1999, drought adversely affected water supplies throughout Kentucky. SB 409, enacted in 2000, increased area development districts' responsibility for developing water project strategies to prepare for potential water shortages. In response, the Bluegrass Area Development District (Bluegrass ADD) partnered with the Utilities Round Table Group and coordinated an alliance of central Kentucky water utilities that would become the Bluegrass Water Supply Consortium. The consortium formed in 1999/2000 and had as many as 18 members in 2004.<sup>7</sup>

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In February 2004, Bluegrass ADD, in association with the consortium, released the Water System Regionalization Feasibility Study. The study was funded by grants from the Environment Protection Agency and the Kentucky Infrastructure Authority. The total cost of the study was approximately \$450,000.

**Water System Regionalization Feasibility Study.** In February 2004, Bluegrass ADD, in association with the consortium, released the Water System Regionalization Feasibility Study. The study included options to address water supply issues facing central Kentucky brought on by drought.<sup>8</sup> The study was funded by grants from the Environmental Protection Agency and the Kentucky Infrastructure Authority. The total cost of the study was approximately \$450,000.<sup>9</sup>

O'Brien & Gere Engineers Inc. prepared the feasibility study with the objectives of

- optimizing regional water supplies by constructing a grid network of pipelines to connect member utilities,
- making available highly reliable sources of additional water supply,
- developing a cost-effective financial plan that apportions costs fairly,
- implementing a fair and flexible management/ownership strategy, and
- communicating the findings of the study.<sup>10</sup>

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The feasibility study identified more than 40 water supply strategies for the region. The top three proposals were purchasing water from the city of Louisville, constructing a water treatment facility on the Ohio River, and constructing a water treatment facility at Kentucky River Pool 3 that would be supplemented by raw water from the Ohio River.

The feasibility study, in combination with previous studies, identified more than 40 water supply strategies for the region. After ranking these options based on evaluation criteria that took into account the overall efficiency of each option, the top three proposals were

- purchasing water from the city of Louisville,
- constructing a water treatment facility on the Ohio River at either Maysville or Warsaw, and
- constructing a water treatment facility at Kentucky River Pool 3 that would be supplemented by raw water from the Ohio River.<sup>11</sup>

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The water purchase agreement with the city of Louisville was deemed the lowest-cost option in the short run, but when factoring in all evaluation criteria, the Kentucky River Pool 3 option had the highest overall score.

After taking into account estimates of total cost, it was determined that a water purchase agreement with Louisville was the lowest-cost option in the short term, but when factoring in all evaluation criteria, the Kentucky River Pool 3 with supplemental supply from the Ohio River option had the highest overall score.<sup>12</sup>

The feasibility study stated that members of the consortium should commit to purchase a portion of the water capacity made available by the construction of proposed water treatment facilities and grid network in order to provide "security for the issuance of bonds to build the facilities."<sup>13</sup> Consortium members signed nonbinding commitments for 31.755 million gallons per day spread across 11 members, with the bulk of the commitment coming from

Kentucky American Water Company at 22 million gallons per day. The estimated cost was \$400,000 to \$500,000 annually per million gallons per day of committed capacity.

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The study called for the formation of a regional water commission.

The study also called for the formation of a regional water commission that would secure capital and project planning funding, manage the construction of jointly owned water treatment facilities and a grid network connecting members, and provide management and operations of the newly constructed facilities.

### **History And Operation Of The Commission**

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BWSC was formed in 2004. It is governed by a board of commissioners. Each member municipality is represented by one commissioner.

The Bluegrass Water Supply Commission was formed on August 24, 2004. It is governed by a board of commissioners. Each member municipality is represented by one commissioner. Commissioners are appointed by the mayor with approval by the city council or commission of member municipalities. The board has maintained a ratio of seven utility officials to two or three elected officials since forming in 2004.

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BWSC planned to finance debt for future projects through wholesale water sales to member utilities.

Upon legal formation, all debts incurred and legal obligations from that point forward would be the sole responsibility of the commission. BWSC planned to finance the debt for future projects through wholesale water sales to member utilities, while maintaining the right of the board to determine the rates charged.

The commission adopted bylaws in November 2004.<sup>14</sup> Commissioners serve 4-year terms and, in accordance with KRS 74.505, were permitted to receive compensation that would not exceed \$500 per year. The commissioners never voted to receive compensation.<sup>15</sup>

According to the bylaws, ex-officio members of the commission would be any entity or city-owned water utility that entered a water purchase agreement with BWSC. The Kentucky River Authority, the Kentucky Infrastructure Authority, and the Governor's Office for Local Development were also given ex-officio status on the commission due to the roles those entities served in facilitating state funding. Ex-officio members have no voting rights within the commission.

## Other Participants

Damon Talley provided legal counsel and services as a consultant for the feasibility study of 2004. Talley served as general counsel for BWSC from its formation to July 2008.

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The Kentucky River Authority provided a lump-sum \$30,000 grant to BWSC in 2005. The authority provided oversight of the \$1.8 million appropriated to the commission.

The Kentucky River Authority, attached to the Finance and Administration Cabinet for administrative purposes, provided a lump-sum \$30,000 grant in 2005 to BWSC to finance initial planning of proposed water infrastructure projects. The authority provided oversight of the HB 267 and HB 380/HB 4 funds appropriated to the commission. The authority was an ex-officio member of the commission from January 2005 to July 2008.

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The Kentucky Infrastructure Authority served as grantor of the first \$900,000 appropriation to BWSC (HB 267).

The Kentucky Infrastructure Authority, which is attached to the Department for Local Government, served as grantor of the HB 267 appropriation to BWSC. The authority processed the draw requests for funds from this appropriation from January 2006 to January 2008.

Bluegrass ADD provided administrative functions for the commission. Don Hassall, director of infrastructure development of the Bluegrass ADD, served as the general manager of the commission.<sup>16</sup>

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February 2005 BWSC meeting minutes state that Bluegrass ADD transferred more than \$20,000 to BWSC from an account belonging to the consortium.

According to BWSC's February 2005 meeting minutes, Bluegrass ADD transferred the remaining funds from an account belonging to the Bluegrass Water Supply Consortium to the commission treasurer.<sup>17</sup> The total amount transferred was \$20,414.35.

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Kentucky American Water Company was a working partner with BWSC and attended commission meetings.

**Kentucky American Water Company And The Public Service Commission.** Kentucky American Water Company participated in BWSC meetings and was seen as a partner in constructing the proposed facilities and grid network. According to the commission's bylaws, Kentucky American would have become an ex-officio member of the commission had Kentucky American and BWSC entered into a long-term wholesale water supply agreement.

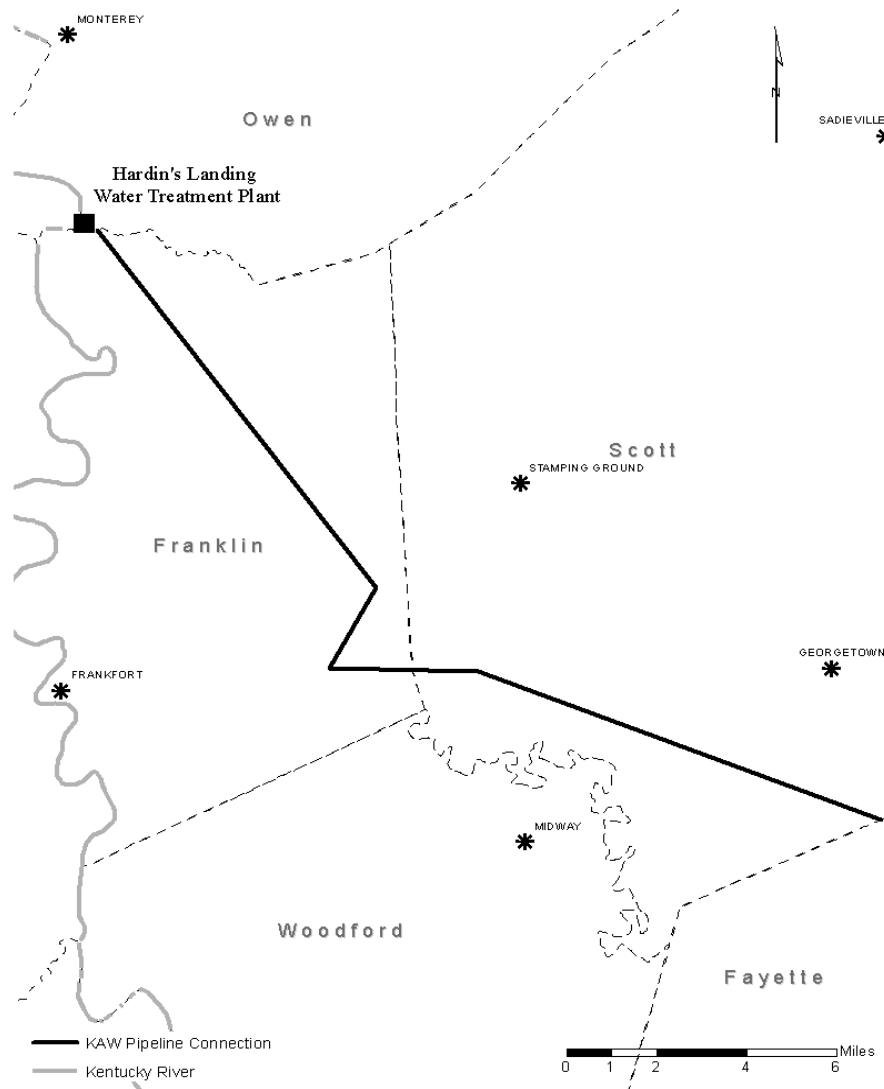
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At the March 2006 meeting, Kentucky American announced its decision to proceed with the Pool 3 water treatment facility.

During an informal conference of the Public Service Commission (PSC) held on March 14, 2006, Kentucky American announced its decision to proceed with the Pool 3 treatment facility at the Owen County and Franklin County line shown in Figure A. The conference minutes state that Kentucky American "[was] concern[ed] about meeting the needs of its customers, especially its large industrial customers such as Toyota."<sup>18</sup> The PSC had ordered

Kentucky American to resolve the central Kentucky water supply deficit in a previous case (PSC Case No. 93-434).

**Figure A**  
**Kentucky American Water Treatment Facility And Transmission Line**



Source: Program Review staff compilation of Kentucky Geography Network data.

Successful negotiations between BWSC and Kentucky American would depend on BWSC's acquiring necessary financing for a partnership.

The BWSC general counsel stated that water treatment plant construction plans depended on financing and that funding was an issue.<sup>19</sup> At the time, Kentucky American and BWSC had not reached an agreement for a solution. Successful negotiations between Kentucky American and BWSC were dependent on BWSC's acquiring the necessary financing for a partnership.

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After the 2006 PSC conference, Kentucky American and BWSC continued to negotiate regarding cooperative efforts to address water supply issues facing the region. No agreement was reached. Based on findings from the 2004 feasibility study, Kentucky American constructed a water treatment facility at Pool 3 on its own at a total cost of approximately \$164 million.

After the 2006 PSC conference, Kentucky American and BWSC continued to negotiate cooperative efforts to address the water supply needs of the region. Kentucky American and BWSC explored options of jointly owning the new water treatment facility, as well as water purchase agreements of the additional supply of water the treatment facility would generate. No agreement was reached. Based on findings from the 2004 feasibility study, Kentucky American constructed a new water treatment facility at Pool 3 on its own at a total cost of approximately \$164 million.<sup>20</sup>

## How State Appropriations Were Spent

### Procurement Of Services

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For an entity to be obligated to follow the Model Procurement Code, it must be established as a governmental body by either the state executive branch or General Assembly. BWSC was not, and it does not follow the Model Procurement Code. It does adhere to KRS Chapter 424, which guides public notices.

BWSC paid for contracted services from multiple vendors from 2005 through 2008. Bluegrass ADD handled the administrative duties of procurement and contracting on behalf of BWSC. BWSC was established and organized as a local entity, so it is not required to follow Kentucky's Model Procurement Code and is not under the purview of the Finance and Administration Cabinet or the Government Contract Review Committee. For an entity to be obligated to follow the Model Procurement Code, it must be established as a governmental body by the state executive branch or the General Assembly. Local entities have the choice to either adopt the Model Procurement Code or use KRS Chapter 424, which establishes procedures for public notices. BWSC does not follow the Model Procurement Code.

According to a memorandum of law prepared by BWSC General Counsel Damon Talley:

The BWSC was established as a water commission pursuant to the provisions of KRS 74.420 to KRS 74.520 .... [I]t was created and established, pursuant to KRS 74.440, by the Mayor of the Lexington-Fayette Urban County Government ("Lexington Mayor"), acting in his capacity as Chief Executive Officer.<sup>21</sup>

Per statute, BWSC was not obligated to solicit for professional services through competitive bidding. In some cases, BWSC issued either a request for proposals (RFP) or a request for qualifications (RFQ) for professional services. BWSC also obtained services through other formal agreements. In two instances BWSC paid municipalities for incurred engineering costs.

Three services were solicited with RFPs.

- RR Consultants provided a routing study in 2005, which was paid for in 2006.
- Public Financial Management provided financial advisory services in 2005.
- The Flint Group provided lobbying services in 2005.

Two services were solicited with RFQs.

- O'Brien & Gere provided ongoing engineering and planning studies and consultation (originally contracted through Bluegrass ADD).
- Damon Talley provided ongoing legal services.

Three services were obtained through other formal agreements.

- Bluegrass ADD provided ongoing administrative services.
- Kentucky American provided additional engineering design services for the Pool 3 treatment facility in 2007.
- CDP Engineers provided grant administration services in 2006 and 2008.

Two services were obtained and paid for by other municipalities that were reimbursed by BWSC:

- Frankfort Plant Board "Water Treatment Plant and Distribution System Evaluation" (2006)
- Evaluation of the City of Versailles' water systems to provide emergency water to BWSC at the Kentucky American connection at Huntertown Road (2006)

### **HB 267 Appropriation Of \$900,000**

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HB 267 appropriated \$900,000 to BWSC. The grant assistance agreement was finalized in October 2005. The last state expenditure was in January 2008.

As part of the 2004-2006 biennium budget, HB 267 appropriated \$900,000 to BWSC. The grant assistance agreement was finalized in October 2005. The commission received the first draw from the grant through the Kentucky Infrastructure Authority in January 2006. BWSC made 10 draw requests over the course of 2 years, with the final draw request occurring in January 2008.

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Funding for the tasks performed for this stage of BWSC's efforts was more than \$1.1 million, which includes the first \$900,000 state appropriation.

Table 2 indicates funds paid out per payee. Funding for the tasks performed for this stage of BWSC's efforts was more than \$1.1 million, which includes the first \$900,000 state appropriation and matching funds. More than one-half of the funding from HB 267 went to an engineering firm and an attorney. The appendix of this report details these expenditures. Nearly 15 percent of the funds went to Bluegrass ADD.



**Table 2**  
**HB 267 Expenditures Per Payee**

<b>Payee</b>	<b>Amount</b>	<b>% Of Total</b>	<b>Cumulative %</b>
O'Brien & Gere Engineers	\$323,575	29.4%	29.4%
Damon Talley PSC	302,149	27.4	56.8
Kentucky American Water	171,000	15.5	72.3
Bluegrass Area Development District	160,756	14.6	86.9
RR Consultants LLC	88,350	8.0	94.9
Frankfort Plant Board	34,000	3.1	98.0
CDP Engineers	7,369	0.7	98.7
Kentucky Infrastructure Authority	4,500	0.4	99.1
Ludwig, Blair & Bush PLLC	3,750	0.3	99.4
Kentucky Association of Counties	3,375	0.3	99.7
City of Versailles	2,768	0.3	100.0
<b>Total</b>	<b>\$1,101,592</b>	<b>100.0%</b>	

Note: Funding includes local matching.

Source: Bluegrass Water Supply Commission draw request documents submitted to the Kentucky Infrastructure Authority.

More than \$300,000 (more than 29 percent of the funds) was paid to O'Brien & Gere Engineers Inc. for Phase I construction planning. The Phase I construction project was the proposed construction of a water transmission pipeline from the Frankfort area to a location along the Fayette/Scott County line.

**O'Brien & Gere Engineers.** More than 29 percent of the funds, \$323,375, was paid to O'Brien & Gere Engineers Inc., which served as the primary engineering firm during Phase I construction planning. The Phase I construction project was the proposed construction of a water transmission pipeline from the Frankfort area to a location along the Fayette/Scott County line southeast of Georgetown. The initial plan was to secure a water purchase agreement by which Frankfort would sell excess water supply to Kentucky American. As other components of the proposed grid were constructed, water would be sold by BWSC to other member utilities. According to the cost estimates from August 2005, the total estimated cost of the Phase I project was approximately \$30 million.<sup>22</sup>

The expenditures from the HB 267 grant that were paid to O'Brien & Gere were for five tasks:

- Provision of program management services other than Phase I engineering design work. Assistance with water purchase negotiations with the Frankfort Water Plant Board and Kentucky American Water. Expenditures for this task order were \$14,997.
- Provision of management support and consultation related to Phase I preconstruction efforts. The scope later included work on a Phase I rerouting study. Expenditures for this task order were \$129,862.
- Provision of various services including the development of a decision tree pertaining to Phase I efforts, participation in

permitting agency meetings, development of grid water quality and operations guidelines, development of project phasing options with refined cost estimates, and assisting with the identification of potential sites for a water treatment plant facility. Expenditures for this task order were \$77,099.

- Provision of a listing of potential properties for a proposed water treatment facility in northern Franklin County near the Pool 3 location on the Kentucky River. Expenditures for this task order were \$38,368.
- Provision of a summary of water supply alternatives other than the Kentucky River. Development of a partnership proposal with Kentucky American concerning the proposed water treatment facility at Pool 3. Expenditures for this task order were \$63,249.

The deliverables O'Brien & Gere provided to BWSC were the following:

- Work session presentation to BWSC at Blue Licks State Park, March 9-10, 2005, covering 2006 budget, review of the RFP for the Phase I Pipeline Routing Study, a review of major obstacles to implementation beyond FY 2006, and beginning the strategic planning process
- Water quality letters sent to Nicholasville, Frankfort, Kentucky American, Winchester, Richmond, and Versailles in May 2005
- Water quality work session presentation to BWSC, July 18, 2005, detailing disinfection by-products, chloramine as a secondary disinfectant, and "decision tree"
- Activity report to BWSC, September 7, 2005
- Unit cost analysis for BWSC's proposed water system, December 12, 2005
- Strategy session presentation to BWSC, November 28, 2005, highlighting strategic issues of financing project, ownership options, and partnership with Kentucky American
- Program manager's status report, December 19, 2005
- Strategy session presentation to BWSC, February 3, 2006, exploring issues involving a partnership with Kentucky American and outlining a draft proposal for partnership with Kentucky American
- Program manager's status report, April 24, 2006
- Preliminary analysis and review of alternative sources of water supply and potential approaches to meet BWSC's short-term goals, January 21, 2007
- Analysis of lowest-cost alternative water supply, June 4, 2007

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More than \$300,000 (more than 27 percent of the total funds for this phase of the project) was paid to Damon Talley, who served as general counsel for the commission.

**General Counsel Damon Talley.** Damon Talley, who served as general counsel for BWSC, was paid \$303,149, more than 27 percent of the total funds for this phase of the project. The invoices provided by Talley included \$276,750 for legal services from January 2005 to July 2008. Mr. Talley invoiced 1,845 hours of work during this period at \$150 per hour. Services provided included

- preparing loan negotiations and agreements with the Kentucky Municipal Finance Corporation and the Kentucky Association of Counties Leasing Trust;
- preparing a memorandum of agreement and a grant assistance agreement between the Kentucky Infrastructure Authority, Kentucky River Authority, and BWSC for HB 267 and HB 380 appropriations to the commission;
- preparing grant documents and negotiating the Community Economic Growth grant awarded to the commission;
- negotiating with Kentucky American concerning the proposed joint effort to construct a water treatment facility at Pool 3 on the Kentucky River;
- negotiating water purchase agreements between member municipalities and between BWSC and Kentucky American; and
- reviewing materials and producing responses pertaining to Public Service Commission cases 2001-00117 and 2007-00134 that pertained to Kentucky American's task of addressing water supply for its customers, and case 2004-00507 that addressed public private partnerships of utilities in Kentucky.

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Legal work on Public Service Commission cases accounted for nearly 39 percent of the total paid to Talley from the first \$900,000 appropriation. Participation in BWSC commission and BWSC committee meetings totaled nearly 35 percent of the legal service hours paid from HB 267 funds.

Table 3 provides a categorized breakdown of the legal services performed by Talley. Work on the Public Service Commission cases accounted for nearly 39 percent of the total hours paid to Talley from this appropriation. Preparation of materials for and participation in BWSC commission and BWSC committee meetings accounted for nearly 35 percent of the total paid for legal counsel. The remaining 26 percent of legal services hours were devoted to

- conferences and meetings with the Kentucky River Authority and Kentucky Infrastructure Authority;
- negotiations and the development of an agreement between Kentucky American and BWSC pertaining to the potential construction of a shared water treatment facility;
- receipt and review of RFPs, RFQs, and development of agreements with vendors paid from this appropriation;
- continued negotiations pertaining to the obtainment of additional loans and other financing options on behalf of BWSC; and

- work on grant assistance agreements for both \$900,000 appropriations granted to the commission.

**Table 3**  
**Legal Services Performed By Damon Talley Paid For With HB 267 Funds**

Category	Hours	% Of Total	Cumulative %
Public Service Commission cases	711.3	38.6%	38.6%
BWSC meetings	640.7	34.7	73.3
Conferences with Kentucky River Authority, Kentucky Infrastructure Authority, and Governor's Office for Local Development	77.4	4.2	77.5
Negotiations with Kentucky American	76.3	4.1	81.6
Procurement and agreements	74.6	4.0	85.6
Loans and other financing	34.4	1.9	87.5
Grant assistance agreements	31.1	1.7	89.2
All other services	199.2	10.8	100.0
Total	1845.0	100.0	

Source: Bluegrass Water Supply Commission draw request documents submitted to the Kentucky Infrastructure Authority.

Talley also provided invoices totaling \$13,355 for reimbursement of expenses for travel, lodging, postage, and production of copies related to BWSC business. There was an invoice for \$10,000 relating to the purchase of an option on a piece of land as a potential water treatment facility location and an invoice of \$2,043.50 for reimbursement of legal services provided by McNamara & Jones concerning real property matters in Franklin and surrounding counties.

Kentucky American provided a modification of the plans for the new water treatment facility it was building that included a 20 percent capacity expansion. The total cost of the modification was \$171,000.

**Kentucky American Water Company.** As part of the negotiations between BWSC and Kentucky American that took place after the 2006 PSC hearing, Kentucky American provided a modification of the plans for the new water treatment facility it was building that included a 20 percent capacity expansion from 20 million gallons per day to 25 million gallons per day at the request of BWSC. The total cost for this modification was \$171,000.

Bluegrass ADD received \$160,756 to serve as the primary provider of administrative functions for BWSC. Don Hassall, director of infrastructure development of Bluegrass ADD, served as general manager of BWSC. Invoices did not provide much detail for this spending.

**Bluegrass Area Development District.** Bluegrass ADD received \$160,756 to serve as the primary provider of administrative functions for BWSC. Don Hassall, the director of infrastructure development of Bluegrass ADD, served as the general manager of BWSC. Services provided were invoiced by Bluegrass ADD as "staff salary and burden," "direct project costs," and "indirect and shared costs." The invoices provided by Bluegrass ADD provided no details on how funds were spent within the three categories.

Bluegrass ADD also received \$2,830.03 for a position schedule bond and to cover the remaining balance of a previous invoice.<sup>b</sup>

The total invoiced for staff salary and burden was \$107,869.44, paid from HB 267 funds. According to Bluegrass ADD, employees who performed work pertaining to this grant indicated hours worked on this project on their timesheets using accounting codes developed by Bluegrass ADD.<sup>23</sup>

Direct project costs totaled \$13,677.87 and were considered costs that were directly charged to efforts supported by the grant on behalf of BWSC.

Indirect project costs summed to \$36,379.23, and were defined as “pooled” costs that benefitted all programs operated by Bluegrass ADD.<sup>24</sup> Indirect costs include salary and benefits for the human resources director, chief financial officer, executive director, and information technology staff of Bluegrass ADD.

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Bluegrass ADD continued to provide administrative support for BWSC after all HB 267 funds were expended. BWSC paid Bluegrass ADD nearly \$29,000 for its services from February 2008 to April 2012. Since May 2012, Bluegrass ADD has provided services to BWSC at no cost.

Bluegrass ADD continued to provide administrative support for BWSC after all HB 267 funds were expended. BWSC paid Bluegrass ADD nearly \$29,000 for services from February 2008 to April 2012. Since May 2012, Bluegrass ADD has continued to provide services to BWSC at no charge.<sup>25</sup>

**Other Payees.** RR Consultants was paid \$88,350 on January 6, 2006, for a routing/siting study to determine the best placement of a water transmission line with booster pump station that would transfer water from Frankfort to Kentucky American Water in north Lexington.

The Frankfort Plant Board was reimbursed \$34,000 for its “Water Treatment Plant and Distribution System Evaluation” on October 6, 2006.

The remaining payments of \$21,762, 2 percent of the total for the period, went to five entities:

- CDP Engineers was paid \$7,369 for grant administration for HB 267.
- The Kentucky Infrastructure Authority was paid \$4,500.
- Ludwig, Blair & Bush PLLC was paid \$3,750 to produce a chart of accounts and assistance with FY 2005 and FY 2006 financial audits of BWSC.

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<sup>b</sup> A position schedule bond insures against loss caused by dishonest acts by employees. A Bluegrass ADD bylaw requires such a bond.

- KACo All Lines Fund was paid \$3,375 as a FY 2007 installment for an insurance policy.
- The City of Versailles was paid \$2,768 for work on a hydraulic model performed by GRW Engineers Inc.

### **HB 380/HB 4 Appropriation Of \$900,000**

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The loans issued to BWSC in 2005 from the Kentucky Municipal Finance Corporation and the Kentucky Association of Counties Leasing Trust came due in 2010. The principal amount of each loan was \$165,000. The \$900,000 HB 380 appropriation was amended by HB 4 in 2009 to allow it to be used for repayment of debt incurred by BWSC. In May 2012 BWSC retired these loans with appropriated funds at a cost of \$354,232 including accrued interest.

Two 5-year loans issued to BWSC in 2005 from the Kentucky Municipal Finance Corporation and the Kentucky Association of Counties Leasing Trust came due and were payable by April and July 2010. The principal amount of each loan was \$165,000. The \$900,000 appropriation originally allocated in HB 380 in 2006 was amended by HB 4 in the 2009 Extraordinary Session to allow for the repayment of debt incurred by BWSC. BWSC met in April 2010 and discussed loan repayment and freeing up the \$900,000 grant, but no action was taken. The loan payments were allowed to lapse and became past due. BWSC met in June 2011 and again discussed loan repayment and the use of the second appropriation. The commission's general counsel prepared a memorandum of agreement and resolution that would enable BWSC to receive the appropriated grant through the Kentucky River Authority. BWSC used appropriated grant funds to retire the Kentucky Municipal Finance Corporation and the Kentucky Association of Counties Leasing Trust loans in May 2012 at a cost of \$354,232 including accrued interest.

The original memorandum of agreement period for the HB 4 grant was April 1, 2012, to June 30, 2012. BWSC and the Kentucky River Authority have received extensions for each fiscal year up to the present. With assets split between the remainder of the second \$900,000 appropriation and BWSC's checking account balance, BWSC assets totaled \$689,011 as of October 18, 2012.

Meeting minutes from October 18, 2012, show that the focus of BWSC had changed. It would no longer be a prospective regional water supply entity. However, \$545,768 of the HB 380/HB 4 appropriation remained.

### **Change In Focus**

The commission has maintained funds in its account through FY 2016. The purpose and aim of the commission evolved following a period of inactivity from July 2008 to April 2010. Although the BWSC board has met infrequently since April 2010, the Bluegrass ADD Area Water Management Council continues to

meet quarterly to review water supply projects for the Kentucky Infrastructure Authority. Leaders from water districts, water associations, and private utilities are all voting members of the council.

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A combination of factors beginning in 2005 and lasting to 2008 led to BWSC's no longer being a viable regional water supply entity. The commission was unable to secure capital funding. The building of the Pool 3 facility by Kentucky American in 2008 alleviated central Kentucky's water supply issues.

A combination of factors in 2005 to 2008 led to BWSC's no longer being a viable regional water supply entity. BWSC was unable to secure capital funding at acceptable terms for a large infrastructure project. Although loans were made available through the Kentucky League of Cities and the Kentucky Association of Counties that could potentially fund a regional water supply network, the associated debt obligations were not considered feasible by member municipalities. By late 2007, the Great Recession affected government resources and made capital funding scarce. Kentucky American built the Pool 3 water treatment facility on its own anyway beginning in 2008, alleviating central Kentucky's water supply issues.

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For BWSC to move beyond the planning and feasibility stage, it needed significant capital funding.

For BWSC to move beyond the planning and feasibility stage, it needed significant capital funding. According to BWSC meeting minutes from May 21, 2007, the estimated needed financial assistance for water grid expansion included \$25 million from state sources and \$35 million from federal sources.<sup>26</sup>

### Continuing Projects

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At the October 18, 2012, BWSC meeting, board members reconsidered BWSC's mission. All BWSC members voted to allow original member municipalities the opportunity to submit projects that would be awarded funding based on merit. Submissions of prospective projects were entered through the Water Resource Information System.

At BWSC's October 18, 2012, meeting, board members reconsidered its mission. All BWSC members voted to allow original member municipalities to submit projects that would be awarded funding based on merit. Submissions of prospective projects were entered through the Water Resource Information System. This is a database of water projects hosted and administered by the Kentucky Infrastructure Authority that is used by local, regional, and state agencies. BWSC required that project submissions "focus on [water] interconnectivity and on meeting the original goals of the BWSC." The checking account balance continues to serve as BWSC's working fund account.

Table 4 shows the overall cost of each project, the municipality receiving funding, and the proposed amount to be contributed by BWSC.

**Table 4**  
**BWSC Funding Contributions**  
**To Regional Water Connectivity Projects**

<b>Municipality</b>	<b>Project Cost Estimate</b>	<b>BWSC Contribution</b>	<b>Remaining Balance*</b>
Frankfort	\$1,700,000	\$100,000	\$0
Berea	7,000,000	100,000	0
Nicholasville	786,000	100,000	24,664
Cynthiana	50,000	50,000	21,538
Paris	90,000	90,000	37,553
Lancaster	12,240,455	100,000	100,000
<b>Total</b>	<b>\$21,866,455</b>	<b>\$540,000</b>	<b>\$183,755</b>

\*As of January 2016.

Source: Bluegrass Water Supply meeting minutes, Oct. 18, 2012, and Bluegrass Water Supply Commission invoices submitted to the Kentucky River Authority.

On January 9, 2013, BWSC board members voted unanimously to provide funding for larger water connectivity and supply projects for member municipalities. Six projects have been funded with a \$540,000 total contribution by BWSC.

On January 9, 2013, BWSC board members voted unanimously to provide funding for larger water connectivity and supply projects for member municipalities. Frankfort has a water interconnectivity project in the works for which BWSC is covering a small portion of the cost. The Highway 1685 Water Line Interconnectivity Project is set to install approximately 1.8 miles of 16-inch waterline to help improve regional interconnectivity. Frankfort has withdrawn all its BWSC funds.

Berea submitted a proposal to BWSC for funding to complete a new reservoir on Owsley Fork. The reservoir project is to provide Berea with a supplemental supply of raw water and the option to pump excess for storage via a new pipeline. Berea has withdrawn all its BWSC funds.

The BWSC-approved project in Nicholasville connects the Jessamine-South Elkhorn Water District with the city of Nicholasville through a new 12-inch main and booster pump station. The booster pump station allows water to be pumped in either direction so that the district, which is connected to Kentucky American, can receive water from Nicholasville when needed. Nicholasville will be able to receive water from Kentucky American through the same station and pipeline. As of FY 2016, Nicholasville has used 75 percent of its BWSC funds toward the project.

Cynthiana is determining the feasibility of building a connection pipeline to Millersburg and Carlisle. The project is in the study phase, and Cynthiana has withdrawn less than half of its requested funds from BWSC.



BWSC is funding a preliminary study evaluating the cost and needed infrastructure to connect Paris with Kentucky American in Lexington. The connection corridor is located along highway US 68. The pumping station and pipeline would be used to provide emergency water supply to Paris. BWSC is funding the entire feasibility study. Paris has withdrawn less than half of its BWSC funds.

Lancaster is seeking to build a new water treatment facility on the Kentucky River to replace its existing plant. The current water treatment plant produces 2.1 million gallons per day, while the new one will produce 4 million gallons per day to meet greater demand in Garrard and Lincoln Counties. The project would also include repairs to existing structures and facilities. Lancaster has not withdrawn any BWSC funds for the project.

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By FY 2016, all projects had drawn funding from BWSC allotments except for the city of Lancaster.

By FY 2016, all projects had drawn funding from BWSC allotments except for the city of Lancaster. Table 4 shows the amounts drawn by member municipalities from BWSC funds, along with remaining balances.

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At the end of FY 2016, there was \$183,755 remaining of state-appropriated funds from HB 380/HB 4.

At the end of FY 2016, there was \$183,755 remaining of state-appropriated funds from HB 380/HB 4. The Kentucky River Authority is required to renew the memorandum of agreement from which BWSC funds are dispersed. Since a remaining balance existed at the end of FY 2016, the authority renewed the memorandum of agreement and will continue to provide oversight of state-appropriated BWSC expenditures.



## Appendix

### Payments By BWSC To O'Brien & Gere Engineers Inc. And Damon Talley From The HB 267 Appropriation

#### O'Brien & Gere Engineers Inc.

O'Brien & Gere Engineers Inc., which served as the primary engineering firm for BWSC, was paid \$323,575.34 from the HB 267 appropriation. O'Brien & Gere submitted 33 invoices, spread across 5 task orders, for services performed from May 2005 to March 2008.

The expenditures from the HB 267 appropriation that were paid to O'Brien & Gere were for five tasks:

1. Provision of program management services other than Phase I engineering design work. Assistance with water purchase negotiations with the Frankfort Water Plant Board and Kentucky American Water. (\$14,997)
2. Provision of management support and consultation related to Phase I preconstruction efforts. The scope later included work on a Phase I rerouting study. (\$129,862)
3. Provision of various services including the development of a decision tree pertaining to Phase I efforts, participation in permitting agency meetings, development of grid water quality and operations guidelines, development of project phasing options with refined cost estimates, and assisting with the identification of potential sites for a water treatment plant facility. (\$77,099)
4. Provision of a listing of potential properties for a proposed water treatment facility in northern Franklin County near the Pool 3 location on the Kentucky River. (\$38,368)
5. Provision of a summary of water supply alternatives other than the Kentucky River. Development of a partnership proposal with Kentucky American concerning the proposed water treatment facility at Pool 3. (\$63,249)

The following table summarizes O'Brien & Gere's invoices for nine draw requests for HB 267 funds.

**HB 267 Funds Paid To O'Brien & Gere**

Draw Request	Invoice Date	Task					Invoice Total
		1	2	3	4	5	
1	5/14/2005	\$14,997	\$0	\$0	\$0	\$0	\$14,997
	6/17/2005	0	19,993	0	0	0	19,993
	7/13/2005	0	3,990	7,309	0	0	11,299
	8/5/2005	0	991	15,550	0	0	16,541
	9/10/2005	0	6,861	15,056	0	0	21,917
	10/7/2005	0	2,300	9,627	0	0	11,927
	11/3/2005	0	3,920	12,168	0	0	16,088
	12/8/2005	0	3,195	13,055	0	0	16,250
		14,997	41,250	72,765	0	0	129,013
2	1/13/2006	0	3,343	4,147	0	0	7,489
	2/10/2006	0	3,245	0	9,418	0	12,663
		0	6,588	4,147	9,418	0	20,152
3	3/13/2006	0	1,071	0	4,450	0	5,521
	4/11/2006	0	6,989	0	150	0	7,139
	5/12/2006	0	5,125	0	1,661	0	6,786
	6/9/2006	0	3,385	0	1,059	0	4,444
	7/10/2006	0	3,386	0	1,050	1,600	6,036
	8/12/2006	0	10,219	0	0	18,660	28,879
		0	30,174	0	8,370	20,260	58,804
5	9/14/2006	0	2,768	0	600	6,799	10,167
	10/7/2006	0	1,960	130	0	9,775	11,864
	11/27/2006	0	2,160	0	600	8,832	11,592
		0	6,888	130	1,200	25,406	33,624
6	1/16/2007	0	3,112	0	0	10,810	13,922
	2/16/2007	0	2,100	0	6,450	2,100	10,650
	3/15/2007	0	462	0	2,550	1,172	4,184
	4/5/2007	0	1,842	58	0	500	2,400
	5/11/2007	0	3,196	0	450	1,500	5,146
		0	10,712	58	9,450	16,082	36,302
7	7/12/2007	0	3,278	0	2,100	1,500	6,878
	8/10/2007	0	1,362	0	0	0	1,362
	9/14/2007	0	1,602	0	4,200	0	5,802
		0	6,243	0	6,300	1,500	14,043
8	10/15/2007	0	3,820	0	2,850	0	6,670
	11/12/2007	0	4,100	0	150	0	4,250
	12/21/2007	0	3,126	0	0	0	3,126
		0	11,046	0	3,000	0	14,046
9	1/14/2008	0	1,306	0	300	0	1,606
10	2/12/2008	0	3,861	0	0	0	3,861
	3/19/2008	0	11,794	0	330	0	12,124
		0	15,655	0	330	0	15,985
<b>Total</b>		<b>\$14,997</b>	<b>\$129,862</b>	<b>\$77,099</b>	<b>\$38,368</b>	<b>\$63,249</b>	<b>\$323,575</b>

Note: Amounts are rounded to the nearest dollar.

Source: Bluegrass Water Supply Commission draw request documents submitted to the Kentucky Infrastructure Authority.

### **General Counsel Damon Talley**

Damon Talley, who serves as general counsel of BWSC, was paid more than \$302,000 from the HB 267 appropriation. Fourteen invoices for legal services and reimbursed expenses from January 2005 to February 2008 were distributed across six draw requests. In total, Talley was paid nearly \$277,000 for 1,845 hours of legal services conducted, more than \$13,000 for reimbursed expenses such as mileage and postage, \$10,000 for a land option payment for a potential water treatment facility location, and a \$2,044.50 reimbursement for legal services provided by McNamara & Jones.

The following table summarizes 14 invoices paid over six draw requests.

**HB 267 Funds Paid To Damon Talley Per Draw Request  
Invoices For Services Provided From January 2005 To February 2008**

Draw Request	Invoice Date	Legal Services	Expenses	Other	Invoice Total
5	3/31/2005	\$13,920	\$677	\$0	\$14,597
	6/30/2005	9,705	553	0	10,258
	9/30/2005	10,815	749	0	11,564
	12/31/2005	15,930	822	0	16,752
	3/31/2006	16,830	786	0	17,616
	6/30/2006	12,825	840	2,044	15,709
	7/14/2006	0	0	10,000	10,000
	12/31/2006	30,600	1,747	0	32,347
		110,625	6,175	12,044	128,844
6	4/30/2007	25,515	1,346	0	26,861
7	6/30/2007	9,990	346	0	10,336
	8/31/2007	34,365	1,907	0	36,272
		44,355	2,253	0	46,608
8	10/31/2007	29,340	1,052	0	30,392
9	12/31/2007	32,595	1,003	0	33,598
10	3/28/2008	34,320	1,526	0	35,846
Total		\$276,750	\$13,355	\$12,044	\$302,149

Note: Amounts are rounded to the nearest dollar.

Source: Bluegrass Water Supply Commission draw request documents submitted to the Kentucky Infrastructure Authority.

**Draw Request 5 (Disbursed January 2007)**

Eight invoices totaling \$128,843.85 were included in draw request 5 covering January 2005 to December 2006.

Direct labor costs for 737.5 hours of legal services totaled \$110,625. According to the invoices provided, billed labor included

- attending BWSC board and committee meetings;
- preparing a memorandum of agreement between BWSC and Kentucky American;
- preparing loan proposals with the Kentucky League of Cities and Kentucky Association of Counties;
- participating in workshops held by BWSC in March 2005;
- reviewing and preparing materials for Public Service Commission (PSC) case 2001-117;
- reviewing the scope of deliverables proposed by RR Consultants;
- preparing and reviewing a grant assistance agreement with the Kentucky Infrastructure Authority, the Kentucky River Authority, and BWSC;
- attending a Kentucky River Authority meeting in October 2005 to get a resolution adopted for the HB 267 appropriation;
- reviewing RFQs submitted by engineering firms;
- reviewing the proposed budget for the HB 267 appropriation;
- reviewing RFPs for financial advisory services;
- reviewing statutes and procedures concerning Berea joining BWSC;

- conferring with the Kentucky Association of Counties concerning borrowing additional funds;
- attending a strategy meeting with O'Brien & Gere in February 2006;
- reviewing and preparing materials concerning a potential public private partnership between BWSC and Kentucky American;
- preparing for informal PSC conference in March 2006 for PSC case 2001-117;
- reviewing RFPs for auditing services;
- reviewing legal briefs concerning PSC case 2006-197;
- receiving and reviewing HB 380 documents for second \$900,000 appropriation; and
- attending a Kentucky River Authority meeting to obtain approval of grant assistance agreement and resolution for the second \$900,000 appropriation.

Invoices for this draw request included \$6,175.35 for reimbursement of expenses, which primarily covered reimbursement for mileage, with smaller amounts for copies and postage.

Talley was reimbursed \$2,043.50 for legal fees and expenses paid to the law firm McNamara & Jones for its assistance with property matters in Franklin and surrounding counties.

Talley was paid \$10,000 in July 2006 as reimbursement for a land option payment for a potential water treatment facility location.

#### **Draw Request 6 (Disbursed May 2007)**

One invoice for legal services and expenses for January 2007 to April 2007 totaled \$26,860.56.

Talley billed 170.1 hours totaling \$25,515 for this period. Work included

- attending BWSC board and committee meetings,
- amending the project budget for the first \$900,000 appropriation,
- drafting an executive order to schedule a public hearing for the City of Berea's request to join BWSC,
- a conference with the Governor's Office for Local Development and the Kentucky Infrastructure Authority for the Community Economic Growth grant and the Fund F program,
- meetings with Public Financial Management concerning cost estimates for various phases of proposed projects,
- telephone conferences and meetings with BWSC members concerning strategy and focus of the commission,
- participating in a presentation to the central Kentucky caucus in February 2007,
- presentations to the Frankfort Plant Board and the Georgetown Municipal Water and Sewer Service, and
- preparing an outline of motion to intervene in PSC case 2007-134.

Invoices for this draw request included \$1,345.56 for reimbursement of expenses, which were primarily for reimbursement of mileage.

**Draw Request 7 (Disbursed October 2007)**

There were two invoices included in draw request 7 for legal services and expenses from May 2007 to August 2007 totaling \$46,607.86.

Legal services for these invoices totaled \$44,355 for 295.7 hours. Work performed during this phase of the project included

- attending BWSC board and committee meetings,
- reviewing materials pertaining to the PSC order granting BWSC intervenor status in case 2007-134,
- a conference with a property owner and his attorney in Frankfort in May 2007,
- attending a presentation by the Louisville Water Company at a Frankfort Plant Board meeting,
- research and preparation of materials for an information request from the attorney general,
- attending a May 25, 2007, Kentucky River Authority meeting to encourage the authority to adopt a resolution supporting a regional water treatment facility at the Pool 3 location on the Kentucky River,
- reviewing and responding to an open records request from the Kentucky Resources Council,
- attending a bond counsel conference in Louisville in June 2007,
- attending conferences with O'Brien & Gere and Kentucky River Authority officials in July 2007,
- producing an outline of questioning and dictated draft of first set of interrogatories for the Louisville Water Company, and
- responding to discovery requests submitted by the Louisville Water Company.

Reimbursement for expenses totaled \$2,252.86 for these invoices, with mileage reimbursement as the primary expense.

**Draw Request 8 (Disbursed January 2008)**

One invoice covering legal fees and expenses for September 2007 to October 2007 totaled \$30,391.76.

Talley listed 195.6 hours of legal services that totaled \$29,340 on this invoice. Services provided included

- attending BWSC board and committee meetings,
- reviewing materials and preparing responses for PSC case 2007-134,
- researching the Louisville Water Company's legal authority to extend water lines and provide water service in central Kentucky,
- reviewing the Kentucky River Authority's answers to the Louisville Water Company discovery request,
- attending a joint strategy meeting between Kentucky American and BWSC in September 2007,
- attending PSC public meetings, and
- a conference and preparation of a preliminary draft agreement between Kentucky American and BWSC in October 2007.



There were \$1,051.76 in expenses listed on this invoice, with mileage reimbursement as the primary expense.

### **Draw Request 9 (Disbursed February 2008)**

One invoice for November 2007 to December 2007 totaled \$33,598.35.

There were 217.3 hours of legal services documented in this invoice that totaled \$32,595.

Services included

- attending BWSC board and committee meetings;
- a conference with the City of Paris to discuss a “take or pay” contract;
- working on an agreement with Kentucky American;
- jointly presenting with Kentucky American before the Frankfort Plant Board;
- receiving and reviewing rebuttal testimony on behalf of the attorney general’s office;
- attending an informal conference concerning PSC case 2007-134;
- participating in a PSC hearing on November 26-28, 2007;
- attending a December 2007 Kentucky River Authority meeting to report on the PSC hearing and the agreement between Kentucky American and BWSC; and
- conducting legal research on issues raised by PSC that included the possibility of the Lexington-Fayette Urban County Government issuing tax-exempt revenue bonds for the benefit of Kentucky American.

Reimbursable expenses totaled \$1,003.35 for this invoice, and were primarily for mileage reimbursement.

### **Draw Request 10 (Disbursed May 2008)**

One invoice for legal services and expenses for January 2008 to February 2008 totaled \$35,846.12.

The invoice listed 228.8 hours of legal work that totaled \$34,320. Services provided included

- attending BWSC board and committee meetings,
- drafting responses required by PSC,
- conferencing with O’Brien & Gere and Kentucky American concerning a grid connection to the City of Winchester, and
- reviewing options pertaining to the City of Winchester’s proposal.

Reimbursable expenses totaled \$1,526.12 for this invoice, with mileage reimbursement being the primary expense.



## Endnotes

- <sup>1</sup> Lexington-Fayette Urban County Government Executive Order 2004-002, Aug. 24, 2004.
- <sup>2</sup> Kentucky. Kentucky River Authority. Master Agreement M-05038322. Jan. 31, 2005. Web. May 10, 2016.
- <sup>3</sup> Bluegrass Water Supply Commission. Agreement With the Flint Group. Feb. 1, 2005.
- <sup>4</sup> United States. Clerk of the House of Representatives. Legislative Resource Center. *Lobbying Report*. Jan. 1-June 30, 2005, and July 1-Dec. 31, 2005. Web. May 24, 2016.
- <sup>5</sup> Kentucky. Kentucky Infrastructure Authority. Grant assistance agreement WX21067002. Feb. 28, 2006. Web. May 10, 2016.
- <sup>6</sup> Kentucky. Governor's Office for Local Development. Memorandum of Agreement M-06091831. 2006. Web. May 10, 2016.
- <sup>7</sup> Bluegrass Area Development District. *Water System Regionalization Feasibility Study*. Prepared by O'Brien & Gere Engineers Inc. Feb. 27, 2004.
- <sup>8</sup> Ibid.
- <sup>9</sup> Duttlinger, David. Response to "Bluegrass Water Supply Commission (Legislative Research Commission) questions submitted by email." Message to Joel Thomas. May 9, 2016. Email.
- <sup>10</sup> Bluegrass Area Development District. *Water System Regionalization Feasibility Study*. Prepared by O'Brien & Gere Engineers Inc. P. 1. Feb. 27, 2004.
- <sup>11</sup> Ibid., P. 3.
- <sup>12</sup> Ibid., P. 3.
- <sup>13</sup> Ibid., P. 4.
- <sup>14</sup> Bluegrass Water Supply Commission. Bylaws of BWSC. Nov. 22, 2004.
- <sup>15</sup> Talley, Damon. Response to "BWSC Bylaws." Message to Chris Riley. May 27, 2016.
- <sup>16</sup> Bluegrass Area Development District. *Annual Report*. P. 28. 2005; Bluegrass Water Supply Commission. Minutes of Bluegrass Water Supply Commission. Winchester. Jan. 24, 2005.
- <sup>17</sup> Bluegrass Water Supply Commission. Minutes of Bluegrass Water Supply Commission. Winchester. Feb. 21, 2005.
- <sup>18</sup> Kentucky. Public Service Commission. Intra-Agency Memorandum Regarding Case No. 2001-00117, April 27, 2006. Web. May 10, 2016.
- <sup>19</sup> Ibid.
- <sup>20</sup> Mead, Andy. "After years of planning and controversy, water plant opens." *Lexington Herald-Leader*. Oct. 20, 2010. Web. May 10, 2016.
- <sup>21</sup> Talley, Damon. "Procurement Opinion." Message to Joel Thomas. June 29, 2012. Email.
- <sup>22</sup> Bluegrass Water Supply Commission. Minutes of Bluegrass Water Supply Commission. Mount Sterling. Aug. 15, 2005.
- <sup>23</sup> Duttlinger, David. Response to "Bluegrass Water Supply Commission (Legislative Research Commission) questions submitted by email." Message to Joel Thomas. May 9, 2016. Email.
- <sup>24</sup> Ibid.
- <sup>25</sup> Duttlinger, David. Bluegrass Area Development District. Personal interview. May 24, 2016.
- <sup>26</sup> Bluegrass Water Supply Commission. Minutes of Bluegrass Water Supply Commission. High Bridge. May 21, 2007.