

## RESOLUTION NO. 2003-4

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF LA PINE WATER DISTRICT, DESCHUTES COUNTY, OREGON WATER REVENUE BOND NO. 1, IN THE PRINCIPAL SUM OF \$2,826,500, TO THE UNITED STATES OF AMERICA FOR THE PURPOSE OF PROVIDING A PORTION OF THE COSTS OF ACQUISITION, CONSTRUCTION, EXTENSION AND IMPROVEMENT OF A WATER SYSTEM WITHIN AND WITHOUT THE BOUNDARIES OF THE LA PINE WATER DISTRICT, DESCHUTES COUNTY, OREGON; PROVIDING FOR THE FORM AND TERMS OF SAID BOND, AUTHORIZING THE PAYMENT OF SAME, AND DECLARING AN EMERGENCY.

WHEREAS, the Board of Commissioners of the La Pine Water District, Deschutes County, Oregon (the "District") has been duly authorized by Resolution No. 2001-5, dated December 4, 2001 to issue a Water Revenue Bond No. 1 in an amount not to exceed the sum of \$2,826,500, in excess of any existing bond issue, for the acquisition, construction, extension and improvement of a water system within and without the District, hereinafter called "Facility"; and,

WHEREAS, notice of revenue bond authorization was published December 5, 2001 in *The Bulletin*, a newspaper of general circulation in the District in the same manner as other public notices of the District; and,

WHEREAS, on or about February 4, 2002, the Board of Commissioners found that no petitions were filed requesting the District to refer the matter to a vote; and

WHEREAS, the District staff has been directed to proceed in accordance with law to issue the bond, and concurrently therewith and subsequent thereto the District has commenced negotiations with the United States of America hereinafter called "Government," for financial assistance to construct said Facility; and,

WHEREAS, said Government has indicated a desire to consider said financial assistance and as a result, it is necessary to cause the execution and delivery of an installment bond or other evidence of indebtedness to secure any loan or loans made, or insured, by the Government and to comply with any requirements, terms, and conditions prescribed by the Government or by Government regulations and to execute contracts or enter into agreements and to take any and all other action as may be necessary, incidental or appropriate to finance, construct, complete, equip, extend or improve the Facility for and on behalf of the District; now, therefore,

The La Pine Water District, Deschutes County, Oregon, resolves as follows:

**Section 1.** It is necessary to defray a portion of the costs of constructing and equipping the Facility by obtaining a loan made by the Government in accordance with the applicable provisions of the Rural Development Act of 1972, it being determined by the Government that the District is unable to obtain sufficient credit elsewhere to finance the Facility taking into consideration prevailing private and cooperative rates and terms concurrently available.

**Section 2.** That the District borrow \$2,826,500 and issue as evidence thereof a Water Revenue Bond No. 1 for the full principal amount of the loan. The bond shall be dated with the date of delivery thereof, and shall be in substantially the following form:

UNITED STATES OF AMERICA  
State of Oregon  
Deschutes County  
La Pine Water District

Water Revenue Bond No. 1

KNOW ALL MEN BY THESE PRESENTS: The La Pine Water District, Deschutes County, Oregon, hereinafter called the "Borrower," hereby acknowledges itself indebted and for value received, promises to pay to the order of the United States of America hereinafter called the "Government," the principal sum of Two Million Eight Hundred Twenty-Six Thousand Five Hundred Dollars (\$2,826,500), plus interest on the unpaid principal balance at the rate of four and fifty hundredths percent (4.50%) per annum. The said interest shall be payable in the following installments on or before the following dates:

The sum of \$173,548 on the 24<sup>th</sup> day of November, 2004, and the sum of \$173,548 annually thereafter on the 24<sup>th</sup> day of November until the principal and said interest are fully paid, except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable thirty (30) years from the date of this bond.

All or part of the outstanding bond installments may be paid in inverse order on any interest payment date without premiums.

This bond shall be registered as to principal and interest in the name of the United States of America in an appropriate book in the Office of the Recorder of the Borrower, each registration to be noted on the Registration Certificate attached hereto by said Recorder and no transfer hereof shall be valid unless made on said book and similarly noted on the Registration Certificate.

Both the principal and interest shall be paid to the United States of America as such registered owner at the office of the Rural Utilities Service serving Deschutes County, Oregon.

This bond is a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

Default hereunder shall constitute default under any other instrument evidencing a debt of Borrower owing to or insured by the Government or securing or otherwise relating to such a debt, and default under any other such instrument shall constitute default hereunder upon default and Government at Its option may declare all or any part of said indebtedness immediately due and payable.

This bond is given as evidence of a loan to Borrower made by the Government pursuant to the Rural Development Act of 1972, as amended, and shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

This bond is authorized by virtue of Resolution No. 2001-5 adopted by the District Board of Commissioners on December 4, 2001, notice of which was duly published as provided by law, and by virtue of Resolution No. 2003-4 of Borrower, duly passed by the Board of Commissioners of said Borrower on November 11, 2003, and pursuant to ORS 288.805 et seq., the Uniform Revenue Bond Act, the Constitution and Laws of the State of Oregon, and laws amendatory thereof and supplemental thereto.

This bond and the interest thereon are payable solely from the unobligated net revenues of the water utility system of Borrower, and neither this bond nor the payment of interest impose any general liability upon said Borrower for the payment thereof out of any moneys other than net revenues of the water utility system. It is hereby covenanted by the Borrower that so long as this bond shall be outstanding and unpaid, or until there shall have been set apart solely for that purpose sums sufficient to pay when due the entire principal sum together with interest accrued, or to accrue thereon, the Board of Commissioners of the Borrower shall fix and collect charges for water services, such as to provide revenue sufficient to pay, as the same shall become due, the principal and interest of this bond, in addition to paying, as the same become due, the necessary expenses of operating, maintaining, renewing and replacing the water utility system of said Borrower, and appropriate reserve funds for such purposes and all other obligations and indebtedness payable out of the revenues of said system.

This bond is exchangeable at the sole expense of the Borrower at any time, upon ninety (90) days' written notice, at the request of the registered owner hereof, and upon surrender of this bond to Borrower at the Office of the Borrower for registered bonds of the denomination of \$5,000.00 each, or integral multiples thereof, in the aggregate principal amount equal to the unpaid principal amount of this bond, and bearing interest on the unpaid principal balance at the rate of four and fifty hundredths percent (4.50%) per annum.

It is hereby certified and declared that all acts, conditions and things required to exist, happen, and be performed precedent to and in the issuance of this bond have existed, have happened, and have been performed in due time, form and manner as required by law, that the amount of this bond, together with all obligations of the Borrower does not exceed any limits prescribed by the Constitution and Statutes of the State of Oregon and resolutions and ordinances of Borrower.

IN WITNESS WHEREOF, the La Pine Water District, Deschutes County, Oregon, has caused this bond to be manually signed by the President of said District and attested by the Secretary/Treasurer of said District, all on the 24<sup>th</sup> day of November, 2003.

**La Pine Water District**  
Deschutes County, Oregon

\_\_\_\_\_  
BarbeAnn Nelson-Dodson, President

ATTEST:

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Brian Earls, Secretary/Treasurer

**[The following registration certificate to be printed a separate page.]**

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Water Revenue Bond No. 1 Registration Certificate

Date: November 24, 2003

Registered in name of:

**United States of America,**

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Brian Earls, Secretary/Treasurer

**Section 3.** The unobligated net revenues of the Facility, after payment of the ordinary operation and maintenance expenses thereof, hereby is pledged to the payment of the principal of and interest upon the said bond.

The funds derived from such sources shall be carried by the Secretary/Treasurer of the District in a separate book account to be designated La Pine Water District Water Bond Fund and shall be expended only in the payment of the principal of and interest on said La Pine Water District, Deschutes County, Oregon Water Revenue Bond No. 1, until all of said obligations and any that may be issued to refund them have been fully paid and redeemed or until the provisions for payment or redemption thereof has been made.

**Section 4.** The Secretary/Treasurer shall be the custodian of all funds of the Facility and all funds shall be deposited in a bank which is a member of the Federal Deposit Insurance Corporation. The Secretary/Treasurer shall execute a Fidelity Bond in an amount not less than \$173,548 with a surety company approved by Government and the amount thereof shall not be reduced without the prior written consent of Government. The Secretary/Treasurer is hereby directed to establish the following accounts into which the current funds of the Facility bond proceeds, the revenues from the Facility and other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the bond hereby authorized remains unpaid.

**a. Construction Account.** The proceeds of the bond hereby authorized and any interim financing acquired shall be deposited in the Construction Account. Amounts in the Construction Account exceeding \$100,000.00 shall be secured by the depository bank in advance in accordance with State and Federal law or deposited in the Oregon Local Government Investment Pool. Withdrawal from the Construction Account shall be made only by check signed by the Secretary/Treasurer as authorized by the Board of Commissioners, countersigned by the President or other authorized District official and only for the purposes for which said bond was signed as specified in the estimate of costs. The District's share of any liquidated damages and other moneys paid by defaulting contractors of their sureties will be deposited in the Construction Account to assure completion of the project. When the construction of the Facility has been completed or all construction costs have been paid for in full, any balance remaining in the Construction Account shall be used to pay outstanding installments on the bond in inverse order without premium. The Construction Account shall then be closed.

**b. Revenue Account.** As soon as the Facility becomes revenue producing, the gross revenues shall be set aside into a separate account to be designated the Revenue Account, and moneys so deposited therein shall be expended and used only in the manner and order as follows:

**i. Operations and Maintenance Account (bookkeeping account).**

There shall be set aside and deposited each month, before any other expenditures therefrom, a sufficient portion of the moneys in the Revenue Account to pay the reasonable and necessary current expenses of operating and maintaining the Facility for the current month.

**ii. Debt Service Account (bookkeeping account).**

After the transfer required in item 1 above, there shall be transferred each month from the Revenue Account, before any other expenditures or transfer therefrom, and deposited in the Debt Service Account for payment of the annual installment of the bond, a sum equal to at least one-twelfth of the annual installment becoming due on the next succeeding bond payment date. If the District for any reason shall fail to make such monthly deposit, then an amount equal to the deficiency shall be set apart and deposited in the Debt Service Account out of the gross revenues in the ensuing month or months, which amount shall be in addition to the regular monthly deposit required during each succeeding month or months.

Whenever there shall accumulate in the Debt Service Account amounts in excess of the requirements during the next twelve months for paying principal and interest on outstanding bond installments, and in the Operation and Maintenance Account and the Reserve Account hereinafter established, amounts in excess of the requirements thereof, such excess may be used by the District to make prepayments on the bond.

**iii. Reserve Account (bookkeeping account).**

Out of the balance of income and revenue in the Revenue Account remaining after the transfers required in item i and ii above have been made, there shall be set aside and deposited in the Reserve Account the sum of \$17,355 annually until there is accumulated in that fund the sum of \$173,548, after which no further deposits need be made into said account except to replace withdrawals. The Reserve Account shall be used and disbursed only for the purpose of paying the cost of repairing or replacing any damage to the Facility which may be caused by any unforeseen catastrophe and when necessary for the purpose of making payments of principal and interest on the bond hereby authorized in the event the amount of the Debt Service Account is insufficient to meet such payments. Whenever disbursements are made from said account, said deposits shall be resumed until there is again accumulated the amount of \$173,548, at which time deposits may be again discontinued.

**Section 5.** The District covenants and agrees that so long as the bond hereby remains unpaid:

a. It will indemnify the Government for any payments made or losses suffered by the Government as a result of or in connection with the Facility.

b. It will comply with applicable State laws and regulations and continually operate and maintain the Facility in good condition.

c. It will impose and collect such rates and charges for use of the Facility that gross revenues will be sufficient at all times to provide for the operation and maintenance thereof and the payments on the bond hereby authorized and the maintenance of the various funds herein created; that all use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the District; and that no free use of the Facility will be permitted.

d. It will maintain complete books and records relating to the operation of the Facility and its financial affairs and will cause such books and records to be audited annually at the end of each fiscal year and an audit report prepared, and will furnish Government, without request, a copy of each annual audit report. At all reasonable times Government shall have the right to inspect the Facility and the records, account and data of the District relating thereto.

e. It will maintain such insurance coverage as may be required by Government.

f. It will not borrow money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility exclusive of normal maintenance without obtaining the prior written consent of the Government.

g. It will not dispose of or transfer its title to the Facility or any part thereof, including lands and interest in lands, by sale, mortgage, lease, or other encumbrance, without obtaining prior written consent of Government.

h. It covenants for the benefit of the owners of the bond to comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") which are required for bond interest to be excluded from gross income for federal income tax purposes, except for certain taxes on corporations, unless the District obtains an opinion of nationally recognized bond counsel that such compliance is not required for the interest paid on the bond to be so excluded. The District makes the following specific covenants with respect to the Code:

i. The District shall not take any action or omit any action, if it would cause the bond to become an "arbitrage bond" under Section 148 of the Code and shall pay any rebates to the United States which are required by Section 148(f) of the Code.

ii. The District shall operate the Facility financed with the bond so that the bond is not a private activity bond within the meaning of Section 141 of the Code.

i. The covenants, representations, and warranties contained in this Resolution and each supplemental and amending resolution adopted pursuant to this Resolution and any covenants, representations, and warranties in the closing documents relating to each series of bonds issued pursuant to this Resolution and such supplemental and amending resolutions shall constitute contracts with the Government of each such series of bonds, and shall be enforceable by the Government.

**Section 6.** If at any time it shall appear to the Government that the District is able to refinance the amount of the bond then outstanding, in whole or in part, by obtaining a loan for such purpose from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the District will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

**Section 7.** The District hereby designates the bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code. The District covenants not to so designate tax-exempt obligations in the current calendar year in an aggregate amount of more than \$10,000,000. The District (and all subordinate entities thereof, if any) does not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the current calendar year.

**Section 8.** The District has general taxing powers. No portion of the bond proceeds will be used to finance property which is used in the trade or business of nongovernments, or is loaned to nongovernments. The bond is not a "private activity bond" within the meaning of Section 141 of the Code. At least ninety-five percent of the net proceeds of the bond will be used for financing water system improvements which will be owned and operated by the District. The District (and all subordinate entities thereof, if any) does not reasonably expect to issue tax-exempt obligations in the current calendar year which have an aggregate face amount of more than \$5,000,000. Accordingly, under Section 148(f)(4)(c) of the Code, no rebate to the United States is required to be paid in connection with the bond.

**Section 9.** The President and the Secretary/Treasurer are hereby authorized and directed to execute for and on behalf of the District, Form RD 400-1, "Equal Opportunity Agreement," Form RD 400-4, "Assurance Agreement," as required by the provisions of Title VI of the Civil Rights Act of 1964, Form RD 1942-47, "Loan Resolution," Form RD 442-21, "Right-of-Way Certificate," Form RD 1942-46, "Letter of Intent to Meet Conditions," Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts," Form RD 1924-18, "Partial Payment Estimate," Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions," Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility

and Voluntary Exclusion - Lower Tier Covered Transactions," and if an RD development grant is involved, RUS Bulletin 1780-12, Water and Waste System Grant Agreement, Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants)," and other documents, agreements and certificates necessary for the execution and delivery of the bond.

**Section 10.** The Board of Commissioners desires and deems it necessary and advisable for the immediate preservation of the health, peace, and safety of the District that this Resolution become effective at once, for the reason that the water facilities of said District are inadequate to meet its needs and plans for the acquisition, construction, extension improvements must be commenced at once to be ready for use as soon as possible and, therefore, an emergency is hereby declared to exist and this Resolution shall be in full force and effect from and after its passage and approval.

Adopted on this 11<sup>th</sup> day of November, 2003.

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BarbeAnn Nelson-Dodson, President

Attested:

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Brian Earls, Secretary