

ORDINANCE NO. 81-7

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE ANACONDA COMPANY CONCERNING THE TRANSFER OF AND THE USE OF THE WATERS OF SPA LAKE

Be it ordained by the City of Russellville that whereas it is the best interest of the City of Russellville to approve the terms of and enter into an Agreement with The Anaconda Company concerning the transfer of and the use of the waters of Spa Lake, and said Agreement is attached hereto and marked as Exhibit "1" and incorporated herein by reference as though copied in full;

NOW, THEREFORE, the Agreement attached hereto is approved and the City of Russellville shall become a party thereto and that Everett Daniel, Mayor of the City of Russellville, and Peggy Jenkins, Clerk of the City of Russellville, are authorized and directed to execute same on behalf of the City of Russellville.

PASSED FIRST READING: 6-16-81

PASSED SECOND READING: 6-17-81

ADOPTED: _____

APPROVED: 

MAYOR

ATTEST: 

CLERK

AGREEMENT

THIS AGREEMENT made and entered into this the 17th day of June, 1981, by and between City of Russellville, Logan County, Kentucky, a municipal corporation existing as a political subdivision under the constitution and laws of the Commonwealth of Kentucky, (hereinafter referred to as RUSSELLVILLE), and The Anaconda Company, a Delaware corporation, which has been authorized to do business in the Commonwealth of Kentucky, (hereinafter referred to as ANACONDA); and by and between City of Lewisburg, Logan County, Kentucky, a municipal corporation existing as a political subdivision under the constitution and laws of the Commonwealth of Kentucky (hereinafter referred to as LEWISBURG), and The Anaconda Company, a Delaware corporation, which has been authorized to do business in the Commonwealth of Kentucky, (hereinafter referred to as ANACONDA),

THAT WHEREAS RUSSELLVILLE and LEWISBURG are the owners of a flood protection water facility known as Spa Lake which is located in Logan County, Kentucky, and copies of documents relative to Spa Lake are attached hereto and marked as follows:

Exhibit 1

Exhibit "A" - as built plans

Exhibit "B" - Project Agreement with United
States Department of Agriculture
Soil Conservation Service

Exhibit "C" - Agreement between Russellville and
Lewisburg

Exhibit "D" - Operation and maintenance agreement
with United States Department of
Agriculture Soil Conservation Service

Exhibit "E" - Copy of Resolution and copy of Bond
issued by Russellville now owned by
Farmers Home Administration;

AND WHEREAS the flood protection facility known as Spa Lake impounds sufficient water to provide water at an average rate of six million gallons per day and engineering studies have been made to determine the present and anticipated needs of RUSSELLVILLE and LEWISBURG and this analysis attached marked Exhibit "F", reflects that a sufficient portion of the average daily water supply is surplus for present and projected needs of LEWISBURG and RUSSELLVILLE.

AND WHEREAS the construction of a PIPELINE by ANACONDA as hereinafter described will facilitate the delivery of water from Spa Lake to RUSSELLVILLE and LEWISBURG;

AND WHEREAS said Spa Lake was constructed to provide water to attract industrial growth to Logan County, Kentucky, and ANACONDA has ultimate needs for a large quantity of water for the construction, operation, maintenance and

expansion of a hot rolling mill (hereinafter "MILL") to be constructed on a site near Epley Station in Logan County, Kentucky, and ANACONDA desires to construct a pumping station at Spa Lake and a pipe line (hereinafter referred to as "PIPELINE") from Spa Lake to the MILL to provide such water supply;

AND WHEREAS the construction, operation and maintenance of said MILL by ANACONDA will provide additional employment and other economic benefits through industrial growth to LEWISBURG, RUSSELLVILLE and Logan County, Kentucky;

AND WHEREAS if the PIPELINE as shown in Exhibit "G" attached hereto is constructed, said PIPELINE would have ultimate capacity for transporting water to meet all of the needs of ANACONDA to 3.4 million gallons per day and 1.4 million gallons per day for LEWISBURG and RUSSELLVILLE as provided in Exhibit "F"; 1.4 million gallons is sufficient to provide 2.5 times the present residential use of RUSSELLVILLE and LEWISBURG and should permit 200% expansion for other growth in LEWISBURG and 138% for other growth for RUSSELLVILLE;

NOW THEREFORE, for and in consideration of their mutual promises, and the installation of PIPELINE by ANACONDA, the parties hereto do contract and agree as follows:

(1) LEWISBURG will purchase or otherwise acquire the property required for the construction, installation, expansion, maintenance and operation of the pumping station, inlet and outlet pipes and necessary easements to install the PIPELINE as shown in Exhibit "G" and the pipelines as shown in Exhibit "H" (excepting therefrom the tap and pipeline for RUSSELLVILLE to Herndon Lake), and it is agreed that said easements shall be at least 30 feet in width to provide for the construction, installation, operation and maintenance of both the PIPELINE and the pipelines described above to be buried to a depth of at least 30 inches to the top of the PIPELINE and pipelines and ANACONDA will pay LEWISBURG for the reasonable purchase price of said easements for PIPELINE.

(2) LEWISBURG and RUSSELLVILLE shall execute all necessary deeds for the conveyance of the property required for the construction, installation, maintenance and operation of the pumping station, inlet pipes and outlet pipes and the PIPELINE as shown in Exhibit "G" attached hereto. The deeds shall convey fee simple title to ANACONDA describing sufficient real property including rights of ingress and egress to permit ANACONDA to conveniently construct, operate, expand and maintain the pumping station with its outlet and inlet pipes, and the conveyance will be limited only by those contractual require-

ments previously agreed to between the United States Department of Agriculture Soil Conservation Service and LEWISBURG and RUSSELLVILLE. The conveyance shall be subject to the lien of a bond issue in the amount of Two Hundred Forty Thousand Four Hundred Dollars (\$240,400.00). ANACONDA agrees to pay the annual repayment charges imposed upon RUSSELLVILLE and LEWISBURG only until RUSSELLVILLE and LEWISBURG become obligated to make repayment otherwise than by reason of ANACONDA'S use of water from Spa Lake; otherwise RUSSELLVILLE and LEWISBURG agree to pay according to the terms of the bond issue. Deeds for easements for the PIPELINE obtained by LEWISBURG shall transfer any and all rights obtained to ANACONDA. Appropriate instruments will be executed granting LEWISBURG and RUSSELLVILLE the right to the use of the easements consistent with the terms of this Agreement.

(3) ANACONDA will initially install, own, operate and maintain a pumping station, outlet and inlet pipes and the PIPELINE from Spa Lake to the MILL as shown in Exhibit "G" with adequate pumps to meet the needs of the MILL and the present water requirements of LEWISBURG as set forth in Exhibit "F". Any additional pumping capacity required by RUSSELLVILLE or LEWISBURG shall be purchased by RUSSELLVILLE or LEWISBURG, approved by ANACONDA, and installed by ANACONDA at RUSSELLVILLE or LEWISBURG cost in ANACONDA'S pumping station and operated and maintained by ANACONDA

for a charge including, but not limited to, depreciation, and the cost of energy and maintenance to be paid by RUSSELLVILLE or LEWISBURG; ANACONDA will have the obligation to provide at its cost on an as-needed basis replacement pumps in good working order.

(4) RUSSELLVILLE and LEWISBURG do hereby assign, sell, grant and convey to ANACONDA, its successors and assigns forever, the water and the right to take away and use the water in Spa Lake in quantities sufficient to construct, operate and maintain the MILL as presently planned and any expansion thereof up to a maximum of 3,400,000 gallons during any one day. Information concerning water usage shall be furnished by ANACONDA to RUSSELLVILLE and LEWISBURG on a monthly basis.

(5) LEWISBURG shall have the right to utilize the easements and ditches used in the construction of the PIPELINE by ANACONDA for its use and purpose in laying such raw water lines and treated water lines as it shall require as shown in Exhibit "H" attached hereto. Provided, however, that LEWISBURG shall install its water lines in accordance with a schedule to be prepared by ANACONDA to assure cooperation to the extent possible in the installation of pipelines while the PIPELINE is being installed.

(6) RUSSELLVILLE shall have the right to make a single tap and attach a single water line to the PIPELINE at the point which it deems appropriate at any time which it deems

appropriate, provided it gives written notice to ANACONDA at least ninety days prior to commencing installation of such tap, and cooperates with ANACONDA in minimizing adverse effects to ANACONDA'S operations from such installation. All costs for such water line tap-on shall be borne solely by RUSSELLVILLE and RUSSELLVILLE agrees to promptly return the land and PIPELINE to its original condition after the tap is installed.

(7) ANACONDA does by these presents hereby agree to use its best efforts to pump water for LEWISBURG and RUSSELLVILLE through said system when same is requested by either or both of said cities limited by the capacity of the system and the provisions of paragraphs 4 and 8 hereof. ANACONDA shall be reimbursed by LEWISBURG and/or RUSSELLVILLE for a share of the direct costs of the repair and maintenance of the system as shown on Exhibit "G" at such time as either LEWISBURG or RUSSELLVILLE or both begin to use water from said system. These costs shall be apportioned equitably as computed on a monthly basis using both the average and peak water demands of each - ANACONDA, LEWISBURG and RUSSELLVILLE; however, LEWISBURG shall not bear any part of maintenance expenses for the PIPELINE south of the point where their water line joins the PIPELINE.

(8) The parties agree that in the event of a condition of force majeure such as drought, any act of God or other event beyond the control of ANACONDA, LEWISBURG or RUSSELLVILLE that curtails the delivery of or the supply of water from Spa Lake an apportionment of the remaining water supply will be made by LEWISBURG, RUSSELLVILLE and ANACONDA during said period of emergency, Water from Spa Lake required for residential, fire protection and health facilities for LEWISBURG and RUSSELLVILLE shall receive priority in any apportionment. Industrial and commercial water requirements existing in Lewisburg on June 1, 1981, and all ANACONDA MILL requirements shall be satisfied, and only thereafter shall other water requirements be provided. To insure ANACONDA'S priority of use of water during such critical periods this apportionment shall continue for the life of the MILL. RUSSELLVILLE agrees to maintain the existing capacity of its water system and existing supply sources and in the event of a condition of force majeure to first use all water available to it from all presently existing sources as of June 1, 1981, before using water from Spa Lake. The terms of this contract shall not be construed to grant any additional privileges or otherwise affect the present customers of RUSSELLVILLE'S water system such as the various county water districts that are not residents of RUSSELLVILLE.

In the event of abandonment of the PIPELINE for any reason by ANACONDA, its successors or assigns, ANACONDA will offer to sell the PIPELINE to LEWISBURG and RUSSELLVILLE for a price based upon ANACONDA's book value or the cost of replacement of a water line to meet LEWISBURG'S and RUSSELLVILLE'S existing water requirements in a condition similar to the condition of the line at that time, whichever is less. Upon making such offer ANACONDA will be relieved of any responsibility for operating and maintaining the PIPELINE.

(9) ANACONDA, its successors and assigns shall have a right to use this water only for a purpose in connection with the construction, expansion, operation and maintenance of its MILL and related industrial uses.

(10) ANACONDA shall maintain the Spa Lake waters as necessary to keep same free of algae and vegetative growth that would affect the flow of water. ANACONDA shall obtain all permits from the state of Kentucky required for the pumping of raw water to a municipal system, and this facility shall be constructed, operated and maintained to comply with these pumping requirements.

(11) LEWISBURG and RUSSELLVILLE make no representations as to the quality or quantity of the water in Spa Lake.

(12) The rights created by this contract shall be binding upon all parties hereto, their successors and

assigns forever, and said rights may be granted, assigned, sold, let and sublet by all parties without necessity of obtaining any approval from the parties to this agreement.

(13) ANACONDA agrees to save LEWISBURG and RUSSELLVILLE harmless from any liability by reason of personal injuries or property damage that might arise from the construction, ownership, or operation of the PIPELINE.

WITNESS the hands of the parties the day and date first above written.

CITY OF RUSSELLVILLE

By *Ernest Daniel*
Mayor

ATTEST:

Robert J. Jenkins
Clerk

CITY OF LEWISBURG

By *Warren M. Reynolds*
Mayor

ATTEST:

Marion Phillips
Clerk

THE ANACONDA COMPANY

By _____

ATTEST:

STATE OF KENTUCKY

COUNTY OF LOGAN

I, _____, a Notary Public, in and for the state and county aforesaid, certify that the foregoing Agreement was produced before me by _____, Mayor of the City of Russellville, Logan County, Kentucky, and _____, Clerk of the City of Russellville, Logan County, Kentucky, and acknowledged and delivered by them to be their voluntary act and deed as officers of said municipal corporation.

Witness my hand this ___ day of _____ 1981.

NOTARY PUBLIC,
LOGAN COUNTY, KY

My commission expires: _____.

STATE OF KENTUCKY

COUNTY OF LOGAN

I, _____, a Notary Public in and for the state and county aforesaid, certify that the foregoing Agreement was produced before me by _____, Mayor of the City of Lewisburg, Logan County, Kentucky, and _____, Clerk of the City of Lewisburg, Logan County, Kentucky, and acknowledged and delivered by them to be their voluntary act and deed as officers of said municipal corporation.

Witness my hand this _____ day of _____, 1981.

NOTARY PUBLIC,
LOGAN COUNTY, KY

My commission expires: _____.

STATE OF KENTUCKY

COUNTY OF _____

I, _____, a Notary Public, in and for the state and county aforesaid, certify that the foregoing Agreement was produced before me by _____, in his capacity as _____ of The Anaconda Company, and by _____ in his capacity as _____ of The Anaconda Company, and acknowledged and delivered by them to be the properly authorized act and deed of said corporation and not in conflict with the Articles of Incorporation or By-Laws or any other requirements of said corporation.

Witness my hand this ___ day of _____, 1981.

NOTARY PUBLIC, _____ COUNTY, KY

My commission expires: _____.