

**COUNTY COMMISSION
FAYETTE COUNTY, WEST VIRGINIA**

RESOLUTION NO. 2018- 004

Withdrawing Fayette County, West Virginia from the “Memorandum of Understanding” dated December 3, 2001 between the Plateau Action Network and Various Federal, State and Local Governmental Entities;

and

FORMALLY COMMENDING THE PLATEAU ACTION NETWORK, INC. for Exceptional Service and Commitment to the Present and Future Generations of the Public within Fayette County by Its Past and Continuing Efforts to Secure the Restoration and Preservation of Adequate Protection of the Public Health, Safety, Welfare and the Environment within the Wolf Creek Watershed of Fayette County, West Virginia

WHEREAS, the Plateau Action Network, Inc. (hereinafter: “PAN”) is an incorporated, non-profit association of local citizens that since its founding in 1997 has had an interest in and abiding commitment to working towards and responsibly advocating for the goal of restoring to its original pristine condition the currently environmentally-impaired water quality of Wolf Creek and other New River tributaries in the area of and surrounding Fayette County, West Virginia; and

WHEREAS, on February 13, 2002, PAN and the West Virginia Department of Environmental Protection (hereinafter: “WVDEP”), utilizing settlement proceeds obtained from

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civil lawsuit that was brought by the Town of Fayetteville and WVDEP to redress contamination of Wolf Creek in Fayette County allegedly caused and contributed to by past and present owners and operators of coal mining sites and facilities at the Summerlee mining site near Fayetteville, WV, jointly created “The Wolf Creek Environmental Trust” to: **primarily**, “pay and/or defray the long term costs of treatment of acid mine drainage from the Summerlee Site near Summerlee, Fayette County, West Virginia;” and, **secondarily**, “fund the costs of additional water quality and/or recreational projects at or near Wolf Creek, but, not necessarily in the Wolf Creek watershed basin;” and

WHEREAS, on December 3, 2001 at the request of **WVDEP** and **PAN**, Fayette County, by Resolution of the Fayette County Commission, together with numerous Federal, State and local governmental entities, entered into a “Memorandum of Understanding” (hereinafter: “**MOU**”) to jointly address efforts to abate contamination of the waters of Wolf Creek from both point and non-point sources of pollution entering those “waters of the state;” and

WHEREAS, all of the governmental entities that were signatory to that **MOU** therein and then agreed that **PAN** would “Act as the primary local sponsor for the various projects to be initiated to reclaim, abate, or enhance the water quality of Wolf Creek” and that **PAN** “Will take the lead role in the development of an overall watershed management plan;” and

WHEREAS, subsequent to the agreement of Fayette County to enter into the **MOU**, the State of West Virginia enacted West Virginia Code Sections 7-1-3ff and 7-1-3kk conveying to the Fayette County Commission full authority to: **(1)** adopt ordinances regulating the removal and clean-up of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is determined to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force; and **(2)** enact ordinances, issue orders and take other appropriate and necessary actions for the elimination of hazards to public health and safety in Fayette County, and to abate or cause to be abated anything which the Fayette County Commission determines to be a public nuisance in or affecting Fayette County; and

WHEREAS, in exercise of its authority under WV Code §§ 7-1-3ff and 7-1-3kkk, at its publicly-noticed meeting on September 29, 2017, the Fayette County Commission announced the formation of the Environmental and Public Health Protection Unit (hereinafter: “**EPHPU**”) within the Office of the Fayette County Prosecuting Attorney, the mission of which is to provide timely, competent and effective Environmental and Public Health Protection legal advice and, where appropriate, civil and criminal enforcement services to the Fayette County Commission, the Fayette County Prosecuting Attorney, and, when authorized, to all appropriate Fayette County Officers, Offices, Agencies, Boards and Authorities; and

WHEREAS, the Fayette County Commission by Formal Resolution adopted at its publicly-noticed meeting on September 29, 2017 formally referred to **Larry Harrah, Esq., the duly-elected Prosecuting Attorney of Fayette County**, and to the **EPHPU**, under his direct supervision, the following matters:

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the diligent and aggressive prosecution of the civil and criminal claims available to his office or the Fayette County Commission against any person, entity, or governmental unit (or any indemnitor, guarantor, or insurer of any such person, entity, or governmental unit) that the Fayette County Prosecuting Attorney has reasonable grounds to believe is or may be legally liable for causing, creating, contributing to, or maintaining any condition of public nuisance or any imminent and substantial endangerment to the Public Health, Safety, or Welfare within Fayette County for all available legal and equitable relief determined to be necessary and proper promptly to secure appropriate and comprehensive abatement of any endangerments to the Public Health that have or are adversely impacting, or may in the future adversely impact, the Public, and any members of it; including:

- (2) the contamination of Wolf Creek, including the soils, surface waters and groundwaters within the Wolf Creek Watershed;
- (3) the contamination of Arbuckle Creek, including the soils, surface waters and groundwaters within the Arbuckle Creek Watershed; and

WHEREAS, the Fayette County Commission, having received the advice of the Fayette County Prosecuting Attorney, has determined that the proper discharge of its legal authority and responsibility under the Public Nuisance Doctrine of this State conveyed to it by the Sovereign in WV Code §§ 7-1-3ff and 7-1-3kk should and must be governed solely by: (1) the laws of the State of West Virginia and the duly-enacted Ordinances, Rules and Orders of Fayette County; and (2) the terms of the Oath of Office entered into by the elected and appointed officers of Fayette County; wholly unburdened by any potentially contrary or conflicting contractual or other commitments.

NOW, THEREFORE, BE IT RESOLVED by majority vote of the Fayette County Commission that Fayette County, West Virginia hereby withdraws entirely from the **MOU** it entered into on December 3, 2001 with WVDEP, PAN, and numerous Federal, State and local governmental entities.

NOW, THEREFORE, BE IT FURTHER RESOLVED by majority vote of the Fayette County Commission that FAYETTE COUNTY, WEST VIRGINIA FORMALLY RECOGNIZES AND COMMENDS THE PLATEAU ACTION NETWORK, INC. FOR ITS EXCEPTIONAL SERVICE AND COMMITMENT TO THE PRESENT AND FUTURE GENERATIONS OF THE PUBLIC WITHIN FAYETTE COUNTY BY ITS PAST AND CONTINUING EFFORTS TO SECURE THE RESTORATION AND PRESERVATION OF ADEQUATE PROTECTION OF THE PUBLIC HEALTH, SAFETY, WELFARE AND THE ENVIRONMENT WITHIN THE WOLF CREEK WATERSHED OF FAYETTE COUNTY, WEST VIRGINIA

IT IS SO RESOLVED, ORDERED, AND DONE with the majority vote of the Fayette County Commission, by the County Commission of Fayette County, West Virginia this 17 th

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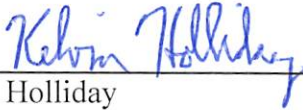
day of August 2018.

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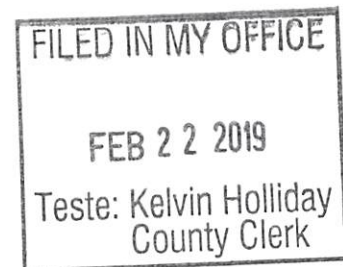
By: 

Hon. Matthew D. Wender, M.B.A.
Its President

ATTEST:



Kelvin E. Holliday
County Clerk, Fayette County, West Virginia



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