

RESOLUTION
090915-1

WHEREAS, the Luzerne County Flood Protection Authority (Authority) is a municipal authority incorporated pursuant to appropriate action of the governing body of the County of Luzerne, Pennsylvania (County), and is existing under and is governed by provisions of the Municipal Authorities Act of 1945, approved May 2, 1945, P.L. 382 as amended and supplemented (the Act), of the Commonwealth of Pennsylvania; and

WHEREAS, the Authority executed a Project Cooperation Agreement (Agreement) with the Department of the Army (Government) for the implementation of the Wyoming Valley Levee Raising Project (Project) on October 23, 1996; and

WHEREAS, the Agreement required the Authority for so long as the Project remains authorized to operate, maintain, repair, replace, and rehabilitate the flood control features and any of the original and modified existing Federal flood protection project features in the communities of Wilkes-Barre/Hanover Township, Plymouth, Kingston/Edwardsville and Swoyersville/Forty Fort regardless of whether they are modified by the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the Government prepared OMRR&R Manual and any subsequent amendments thereto; and

WHEREAS, since 1996 the County has funded all construction costs and operation and maintenance costs of the Project; and

WHEREAS, the County has not included any operation and maintenance costs in its 2009 Budget for the Project; and

WHEREAS, the Municipal Authorities Act Section 5607 allows the Authority to fix, alter, charge, and collect rates and other charges in the areas served by its facilities at reasonable and uniform rates to be determined exclusively by it for the purpose of providing for the payment of the expenses of the Authority, the construction, improvement, repair, maintenance and operation of its facilities and properties; and

WHEREAS, it has been determined by the Authority that the most effective and efficient means of fulfilling that responsibility would be through adoption of a system of fees ("Fees") to be paid by and periodically remitted by those properties within the County who receive a direct benefit from the protection afforded by the project as shown on Exhibit "A"; and

WHEREAS, it is appropriate to assess penalty and interest for the payment of Fees that are not paid in a timely manner; and

WHEREAS, it is necessary for the Authority to provide a process for the collection of the Fees, penalty and interest; and

WHEREAS, the collection of late or delinquent Fees, penalties and interest (hereinafter singly or jointly referred to as a "Claim" or "Claims") constitutes a demand on the resources of the Authority; and

WHEREAS, Act 1 of 1996 (hereinafter "Act 1") and Act 20 of 2003 (hereinafter "Act 20") amend the Pennsylvania Municipal Claim and Tax Lien Law (hereinafter the "Act"), the Act of May 16, 1923, PL 207, as amended, 53 P.S. §7101, et.seq. to permit a Authority as that term is defined in the Act, to recover charges, expenses, fees, interest, penalty, reasonable attorney fees, costs and commissions in connection with the collection of Claims from the persons and/or property responsible for such Claims; and

WHEREAS, §1, §3, and §9 of the Act, as amended, 53 P.S. §§7101, 7106, and 7143, respectively, permit the Authority to recover as part of each unpaid Claim, among other things, various charges, expenses and fees, interest, penalty, attorney fees, costs and commissions, relating to the failure to pay the Claims promptly and the subsequent enforced collection of such Claims; and

WHEREAS, the Authority desires to exercise all such legal authority in order to encourage timely payment and collection of Claims, and to reduce, if not eliminate, the expense associated with the enforced collection and servicing of its Claims.

NOW, THEREFORE, BE IT RESOLVED that the Authority adopts the above referenced map and a Fee structure based on a tiered schedule of rates marked as Exhibit "B" and that the Authority hereby authorizes staff to undertake all necessary processes and procedures for adoption and implementation of a Fee system imposing fees as required to support and finance the operation and maintenance of the Project effective with the 2009 calendar year.

That the aforesaid Fees shall be billed annually and mailed to the owner of each subject property at his last known addresses.

That the annual Fee shall be paid within sixty (60) days of the billing date without penalty or additional cost.

That if the Fee is not paid within sixty (60) days of billing it shall be deemed delinquent. That pursuant to the Municipal Claim and Tax Lien Law of 1923, as amended (53 P.S. 7101 et seq.), ("the Act") the Authority shall assess a one time penalty of ten percent (10%) of the amount of the unpaid Fee still outstanding on the 61st day after billing.

That the term "Claim" as used herein shall be defined by section 7101 and 7106 of the Act.

That pursuant to the Act:

a) All sums paid or incurred by the Authority to file, preserve and collect unpaid Fees, including but not limited to, Prothonotary and Sheriff fees, postage expenses, title search expenses, fees for non-sheriff's service of process, investigation of the

whereabouts of interested parties and other necessary expenses shall constitute reimbursable charges, expenses and fees and shall be charged to and become a part of the amount of each delinquent Claim; and

b) All assessed penalty shall be charged to and become a part of each delinquent Claim; and

c) Interest at a rate of ten percent (10%) per annum shall be collectable on all Claims from the date that a Claim is filed as a lien; and

d) All charges, expenses, fees, costs and commissions agreed to be paid by the Authority by contract to a third-party collector for the collection of delinquent Claims shall be charged to and become a part of the amount of each delinquent Claim collected.

That partial payments received by or on behalf of the Authority shall be applied to an outstanding Claim in the following order:

- 1) First, to current Claim amounts due; and
- 2) Second, to the commissions to be paid to third-party collectors for delinquent Claim amounts; and
- 3) Third, to the unpaid interest owed on liened Claims; and
- 4) Fourth, to the unpaid balance of a delinquent Claim (which shall include the face or principal amount of the delinquent Claim plus all charges, expenses, costs and fees, penalty, and attorney fees).

That the Authority has determined it to be in its best interest to retain a collector of the Fees and to perform the administration and enforcement of the Fees under this Resolution; and

That the Authority is hereby authorized to execute an Agreement with a collector for the aforesaid purpose.

That the Authority does hereby accept the Schedule of Costs attached hereto as Exhibit "C", and authorize the assessment of costs of collection pursuant to the Act and this Resolution. The collector is hereby authorized to retain the costs of collection in the recovery of said delinquent Fees as set forth on the attached Schedule of Costs which may be modified from time to time as necessary by the Authority.

That if any one or more of the provisions or terms of this Resolution shall be held invalid for any reason whatsoever, then, such provision or terms shall be deemed severable from the remaining provisions or terms of this Resolution to the maximum extent possible and shall in no way affect the validity or enforceability of any other provisions hereof.

That prior Resolutions are hereby repealed in whole or in part to the extent inconsistent herewith.

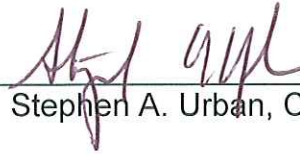
This Resolution was approved by motion and vote of the Authority Board at its regular monthly meeting held on September 15, 2009.

ATTEST:

**LUZERNE COUNTY FLOOD
PROTECTION AUTHORITY**

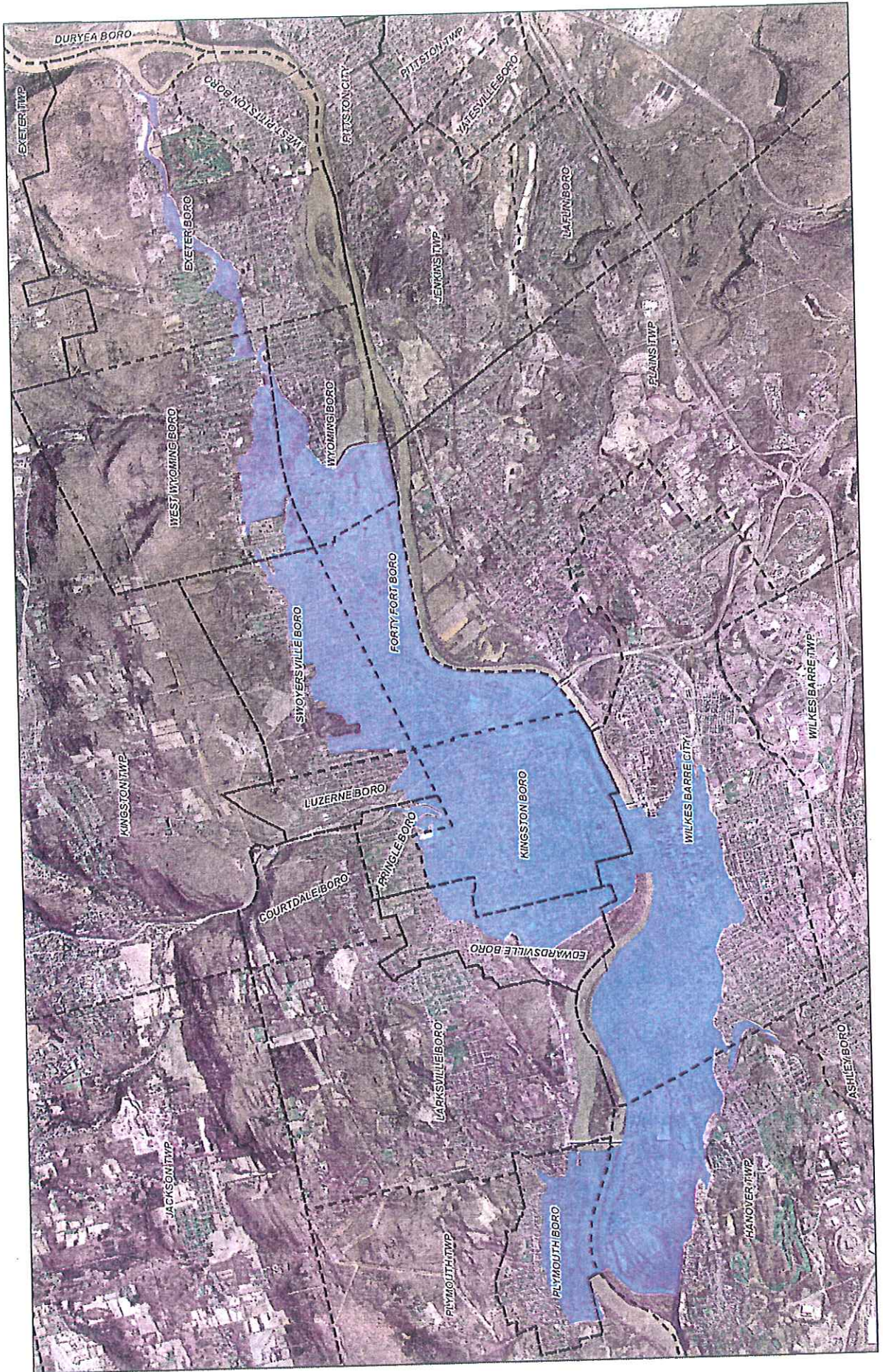


Adrian F. Merolli, Secretary



Stephen A. Urban, Chairman

Agnes Area, Levee Protected



**Levee Fees
2009**

Residential	Annual Fee
R1 – Residential properties with assessments less than \$100,000	\$46.85
R2 – Residential properties with assessments equal to or greater than \$100,000	\$93.70
Commercial/Industrial/Tax Exempt	
CIT1 – Properties with assessments less than \$250,000	\$225.48
CIT2 – Properties with assessments equal to or greater than \$250,000 but less than \$750,000	\$450.96
CIT3 – Properties with assessments greater than \$750,000	\$676.44

COST SCHEDULE

September 15, 2009

Delinquent Fee Notice	\$30.00
Pre-lien Notice	\$30.00 Plus Certified mail fee
Preparation of Filing of Lien	\$50.00 Plus filing fee
Preparation of Civil Complaint	\$50.00 Plus filing fee