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*[Handwritten signatures and initials]*

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF INDIANA-AMERICAN )  
WATER COMPANY INC. ("INDIANA- )  
AMERICAN") AND THE TOWN OF NEW )  
WHELAND, INDIANA ("NEW WHELAND") )  
FOR APPROVAL AND AUTHORIZATION OF: )  
(A) THE ACQUISITION BY INDIANA- )  
AMERICAN OF NEW WHELAND'S UTILITY )  
PROPERTIES (THE "NEW WHELAND )  
SYSTEM") IN JOHNSON COUNTY, INDIANA )  
(THE "NEW WHELAND AREA"), IN )  
ACCORDANCE WITH THE PURCHASE )  
AGREEMENT THEREFORE; (B) APPROVAL )  
OF ACCOUNTING AND RATE BASE )  
TREATMENT; (C) APPLICATION OF INDIANA- )  
AMERICAN'S RATES AND CHARGES FOR )  
PETITIONER'S JOHNSON COUNTY )  
OPERATION TO WATER SERVICE RENDERED )  
BY INDIANA-AMERICAN IN THE AREA )  
SERVED BY THE NEW WHELAND )  
OPERATION; (D) ALL NECESSARY LICENSES, )  
PERMITS, AND FRANCHISES FOR INDIANA- )  
AMERICAN TO PROVIDE WATER SERVICE IN )  
THE NEW WHELAND AREA; (E) )  
APPLICATION OF INDIANA-AMERICAN'S )  
DEPRECIATION ACCRUAL RATES TO SUCH )  
ACQUIRED PROPERTIES; AND (F) THE )  
SUBJECTION OF THE ACQUIRED )  
PROPERTIES TO THE LIEN OF INDIANA- )  
AMERICAN'S MORTGAGE INDENTURE. )

CAUSE NO. 43883

APPROVED: MAR 15 2012

ORDER OF THE COMMISSION

**Presiding Officers:**

**Carolene Mays, Commissioner**

**David Veleta, Administrative Law Judge**

On April 14, 2010, Joint Petitioners, Indiana-American Water Company, Inc. ("Indiana-American") and the Town of New Whiteland ("New Whiteland" or "Town") filed their Joint Petition with the Indiana Utility Regulatory Commission ("Commission") in this matter. On April 14, 2010, Joint Petitioners filed their prepared testimony and exhibits constituting their case-in-chief. On July 23, 2010, the Indiana Office of Utility Consumer Counselor ("OUCC") filed the testimony of Margaret A. Stull and Edward R. Kaufman. Joint Petitioners' evidence in this Cause included its response to the Commission's Docket Entry dated August 16, 2010.

Pursuant to notice of hearing duly given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, an evidentiary hearing in this Cause was held at 10:00 a.m. on August 19, 2010 in Room 222, PNC Center, 101 W. Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared and participated in the evidentiary hearing. No members of the general public appeared.

On March 2, 2011, the Commission issued an Order denying Joint Petitioners' proposed accounting treatment and ordering Joint Petitioners to notify the Commission within thirty (30) days of the Order of their intent to provide additional evidence in this Cause and to provide a proposed procedural schedule for the submission of additional evidence. On April 1, 2011, Joint Petitioners filed their Notice of Intention to File Additional Evidence. An Attorneys' Conference was held on May 26, 2011 to address the scheduling of further proceedings. The parties requested the Commission schedule a Technical Conference to address issues related to contributions in aid of construction ("CIAC"). A Technical Conference was held at 9:30 a.m. on July 22, 2011.

On October 17, 2011, Joint Petitioners submitted supplemental testimony and exhibits. On December 22, 2011, the parties filed a Joint Stipulation and Settlement Agreement (the "Settlement Agreement") along with supporting testimony and schedules.

Based upon the applicable law and evidence, the Commission now finds:

**1. Notice and Jurisdiction.** Due, legal and timely notice of the public hearings conducted herein was given by the Commission as required by law. Indiana-American is a "public utility" within the meaning of that term in Indiana Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by law. New Whiteland is a municipality located in Johnson County, Indiana. On March 16, 2002, New Whiteland withdrew from the jurisdiction of the Commission for purposes of rates and charges and financing. The Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

**2. Joint Petitioners' Characteristics.** Indiana-American is an operating public utility incorporated under the laws of the State of Indiana, with its principal office and place of business at 555 East County Line Road, Greenwood, Indiana. Indiana-American is engaged in the provision of water utility service to the public in and around numerous communities throughout the State of Indiana, including Johnson County. Indiana-American also provides sewer utility service in Wabash and Delaware Counties. Indiana-American has charter power and authority to engage in the business of providing such water and sewer utility service under indeterminate permits and franchises, licenses and permits heretofore duly acquired. Indiana-American owns, operates, manages and controls, plant, property, equipment and facilities for the production, treatment, transmission, distribution and sale of water for residential, commercial, industrial, other public authority, and sale for resale purposes, for the provision of public and private fire protection service and for the provision of sewer service.

New Whiteland owns and operates water utility properties (the “New Whiteland System”) serving approximately 2,100 individually metered customers. The New Whiteland System abuts Indiana-American’s existing distribution system in its Johnson County Operation.

**3. Relief Requested.** Joint Petitioners request that the Commission (1) approve accounting and rate base treatments that reflect the full revised purchase price plus transaction costs in net original cost rate base; (2) grant such approvals as may be necessary to consummate the acquisition of the New Whiteland System by Indiana-American and permit the operation thereof by Indiana-American; (3) find that public convenience and necessity require water service by Indiana-American in the areas now served by the New Whiteland System; (4) on and after the closing, authorize Indiana-American to charge customers currently served by the New Whiteland System the then-current rates and charges and apply the same rules and regulations for water service and private and public fire service applicable in Indiana-American’s Johnson County Operations on file with and approved by the Commission, as the same are in effect from time to time; (5) authorize Indiana-American to record an amount equal to the revised purchase price plus transaction costs as the net original cost of the utility assets to be acquired; and (6) authorize Indiana-American to apply its existing depreciation accrual rates to the New Whiteland System.

**4. Description of New Whiteland System.** As stated in the direct testimony of Jeffrey C. Henson, Indiana-American’s Senior Business Development Manager, New Whiteland owns and operates a water system serving approximately 2,100 customers in an area south of Greenwood in Johnson County. New Whiteland is a wholesale customer of Indiana-American, receiving water supplied through a connection at US 31 between Greenwood and Franklin, Indiana. The distribution system consists of approximately 25 miles of mains (ranging from 2- to 12-inch), 182 fire hydrants and 2 elevated tanks (capacities of 100,000 and 500,000 gallons). All customer accounts are metered. The New Whiteland System is currently operated by employees of New Whiteland.

**5. Evidence Presented.**

(a) Joint Petitioners’ Evidence. A summary of the evidence presented by the Parties at the August 19, 2010 hearing was included in the Commission’s March 2, 2011 Order in this Cause. That summary of evidence is incorporated herein.

(b) Joint Petitioners’ Supplemental Evidence. In the Commission’s Order in this Cause dated March 2, 2011, the Commission determined that CIAC should be excluded from the rate base associated with the purchase of the New Whiteland System upon which Indiana-American should be authorized to earn a return. The Commission further determined that it could not, based on the evidence, make a finding of how much CIAC should be excluded because New Whiteland does not record any CIAC on its books and the Joint Petitioners had not made an effort to estimate the amount of CIAC. As a result, the Commission determined that it could not approve Indiana-American’s requested accounting treatment and invited the Joint Petitioners to submit additional evidence estimating the amount of CIAC in the New Whiteland System.

Jeffrey W. Birk, a CPA and Independent Consultant for New Whiteland, provided an analysis of the amount included in the original appraisal that is CIAC if New Whiteland recorded CIAC on its books and records. Mr. Birk computed a net CIAC in the amount of \$464,131 as of the end of 2010. He explained that given the passage of time since the original Purchase Agreement between Indiana-American and New Whiteland was executed and the inability to satisfy the conditions to closing as stated therein, a new purchase agreement will need to be executed and a new appraisal conducted. He testified that assuming the purchase price is no less than \$4,110,869 (the previous purchase price of \$4,575,000 less net CIAC of \$464,131), and assuming the Commission grants Indiana-American's requested approvals, New Whiteland is prepared to start the public process, re-engage the appraisers, conduct the public hearing and provide an opportunity for a referendum should one be requested. Mr. Birk stated that there have been no major additions to the New Whiteland System and therefore the appraisers should be able to rely upon the value that they previously determined for purposes of updating for CIAC.

Jeffrey C. Henson, Senior Business Development Manager for Indiana-American, provided supplemental testimony describing Joint Petitioners' proposed treatment of CIAC and their requested relief. Mr. Henson explained that the same appraisers who conducted the last appraisal are expected to conduct a new appraisal based on the prior appraisal but excluding the net CIAC amount determined by Mr. Birk. He stated that at a minimum to reach a new agreement with New Whiteland, the revised purchase price must be no less than the reduced level determined by Mr. Birk and Indiana-American that it can record its required investment as net original cost rate base. He testified that New Whiteland is only willing to commence the process if the Commission first issues an order in this Cause approving the transfer and granting the relief sought in the Joint Petitioners' petition. He explained that given the expensive, controversial, tedious and potentially confusing nature of the process for sale of a municipal system, neither Joint Petitioner wishes to undertake this difficult local public process if they cannot obtain the requested regulatory approvals. Accordingly, Joint Petitioners first want Commission determination on their requested relief before commencing the process.

**6. Settlement Agreement.** The Settlement Agreement entered into by all of the Parties in this Cause is attached hereto and incorporated herein by reference. The Settlement Agreement presents a resolution of all matters pending before the Commission in this Cause which all parties agree is reasonable. More specifically, the Settlement Agreement provides that Indiana-American shall be authorized to consummate the acquisition of the New Whiteland System by Indiana-American and permit the operation thereof by Indiana-American pursuant to an asset purchase agreement to be entered into between New Whiteland and Indiana-American, including all necessary licenses, permits and franchises to provide utility service through the New Whiteland System following closing. In addition, Indiana-American shall be authorized to: (1) on and after the closing, charge customers currently served by the New Whiteland System the then-current rates and charges applicable to water utility service provided by Indiana-American in its Johnson County Operation on file with and approved by the Commission, as the same are in effect from time to time; (2) apply the same rules and regulations for water service and private and public fire service applicable in Indiana-American's Johnson County Operation on file with and approved by the Commission, as the same are in effect from time to time; (3) book an amount for net original cost rate base equal to the newly determined appraised value plus transaction costs, provided the newly determined appraised value does not exceed \$4,025,000 (if

it exceeds that amount and the parties proceed to close anyway, the inclusion of any amount in excess of the stipulated revised purchase price would be addressed in a future rate case), effectively allowing Indiana-American to recover a return for ratemaking purposes equal to its weighted cost of capital as applied to the revised purchase price and to recover through depreciation expense the full revised purchase price; and (4) following the closing, apply its depreciation accrual rates approved by the Commission in Cause No. 43081.

The Settlement Agreement states that the parties agree that resolution of the individual issues are reasonable for purposes of compromise and as part of the overall settlement package.

## 7. Commission Discussion and Findings.

(a) Settlement Agreement. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330,331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

As set forth below, the Commission finds that the Settlement Agreement is reasonable and in the public interest and the authority and obligations proposed therein should be approved. With regard to future citation of this Order, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, 1997 Ind. PUC LEXIS 459 (IURC March 19, 1997).

(b) Public Convenience and Necessity. The evidence demonstrates that the New Whiteland System can be easily integrated into Indiana-American’s existing system. The public now served by the New Whiteland System will benefit from Indiana-American’s financing capability, management and technical expertise. New Whiteland System customers and Indiana-American customers will benefit from the increased number of customers over which fixed costs will be spread. New Whiteland System customers will gain access to many programs that Indiana-American uses to ensure customer satisfaction. Based on the evidence of record, the Commission finds that the acquisition and operation of the New Whiteland System by Indiana-American is supported by public convenience and necessity and is in the public interest.

Furthermore, following the closing, Indiana-American shall be authorized to serve in the areas currently served by the New Whiteland System.

(c) Rates and Rules. Indiana-American currently has on file with the Commission a schedule of rates and charges and rules and regulations applicable to water utility service provided by Indiana-American in the Johnson County Operation. Consistent with the parties' agreement, we find that, on and after the closing, Indiana-American's generally applicable rates and charges for water service and private and public fire service applicable in Indiana-American's Johnson County Operation on file with and approved by the Commission should apply to services provided by Indiana-American through the New Whiteland System, as the same are in effect from time to time.

(d) Accounting Treatment. Indiana Code §§ 8-1-2-12 and -14 give the Commission authority over the accounting procedures utilized by public utilities in Indiana. Indiana-American proposes that it be permitted to book an amount for net original cost rate base equal to the revised purchase price of \$4,025,000 plus reasonable transaction costs, with the inclusion of any amount in excess of the stipulated revised purchase price to be addressed in a future rate case. This would effectively allow Indiana-American to recover a return for ratemaking purposes equal to its weighted cost of capital as applied to the revised purchase price and to recover through depreciation expense the full revised purchase price.

(e) Depreciation Rates. We find that Indiana-American's existing depreciation accrual rates approved by the Commission in Cause No. 43081 on November 21, 2006 and as included in the calculation of rates approved in Cause No. 43187 should be applied on and after the closing date of the acquisition to depreciable property purchased from New Whiteland pursuant to an asset purchase agreement.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:**

1. The Settlement Agreement shall be and hereby is approved in its entirety.
2. Public convenience and necessity require the acquisition and operation of the New Whiteland System by Indiana-American, and Indiana-American shall be and hereby is granted an indeterminate permit to provide water service in the area served by the New Whiteland System effective upon consummation of the acquisition by Indiana-American of the New Whiteland System.
3. Joint Petitioners are hereby authorized to consummate the acquisition of the New Whiteland System by Indiana-American and permit the operation thereof by Indiana-American, including all necessary licenses, permits and franchises to provide utility service through the New Whiteland System following closing.
4. On and after the closing, Indiana-American is hereby authorized to charge customers currently served by the New Whiteland System the then-current rates and charges and apply the same rules and regulations for water service and private and public fire service

applicable in Indiana-American's Johnson County Operation on file with and approved by the Commission, as the same are in effect from time to time.

5. Indiana-American is hereby authorized to reflect the acquisition of the New Whiteland System on its books and records as of the closing by making the accounting and journal entries described in Finding No. 7(c) above.

6. The revised purchase price plus transaction costs shall be reflected as the original cost of the acquired property, as described in Finding No. 7(c) above, which shall be used for accounting, depreciation and rate base valuation purposes after closing.

7. Indiana-American shall be and hereby is authorized to apply its depreciation accrual rates on and after the closing date of the acquisition to depreciable property purchased from New Whiteland.

8. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

**APPROVED: MAR 15 2012**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**



**Brenda A. Howe**  
**Secretary to the Commission**

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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<p>FILED          December 22, 2011          INDIANA UTILITY          REGULATORY COMMISSION</p>
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CAUSE NO. 43883

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement is entered into between Joint Petitioner Indiana-American Water Company, Inc. ("Indiana American") and the Office of Consumer Counselor ("OUCC"). For purposes of settling the issues with respect to the requested approvals sought in this Cause, Indiana American and the OUCC agree that the terms and conditions set forth below represent a fair and reasonable resolution of all issues, subject to incorporation into a final order of the Indiana Utility Regulatory Commission ("Commission") without any

modification or condition that is not acceptable to Indiana American or the OUCC. Indiana American and the OUCC stipulate as follows:

1. The relief requested by Joint Petitioners subject to the modifications provided herein should be granted. Indiana American and the OUCC stipulate to the issuance by the Commission of a final order in the form attached hereto as Attachment A.

2. Indiana American should be authorized to consummate the acquisition by Indiana American of the water utility properties owned by the Town of New Whiteland (the "New Whiteland System") and thereafter Indiana American should be permitted to operate the same. All necessary licenses, permits and franchises to provide utility services through the New Whiteland System following closing should be issued and authorized to Indiana American.

3. On and after the closing, Indiana American should be permitted to charge customers currently served by the New Whiteland System the then-current rates and charges applicable to water utility service provided by Indiana American in its Johnson County Operation on file and approved by the Commission, as the same are in effect from time to time.

4. Indiana American should be permitted to apply the same rules and regulations for water service and private and public fire service applicable to Indiana American's Johnson County operation on file with and approved by the Commission, as the same are in effect from time to time.

5. Indiana American should be permitted to book an amount not to exceed \$4,025,000 plus reasonable transaction costs for net original cost rate base, effectively allowing Indiana America to recover a return for ratemaking purposes equal to its weighted cost of capital

as applied to the lesser of the purchase price plus reasonable transaction costs or \$4,025,000 plus reasonable transaction costs and to recover the same through depreciation expense.

6. Following the closing, Indiana American should be permitted to apply its depreciation accrual rates approved by the Commission in Cause No. 43081 to the properties comprising the New Whiteland System.

7. Indiana American and the OUCC stipulate that all evidence that has been filed in this Cause with respect to the relief provided herein is admissible in evidence and that such evidence constitutes a sufficient evidentiary basis for a Commission Order approving this Stipulation. Indiana American and the OUCC waive cross-examination of each other's respective witnesses.

8. If this Stipulation is not approved in its entirety by the Commission, Indiana American and the OUCC stipulate that the terms herein shall not be admissible in evidence or discussed by any party in a subsequent proceeding. Moreover, the concurrence of Indiana American and the OUCC with the terms of this Stipulation is expressly predicated upon the Commission's approval of this Stipulation in its entirety by issuance of the Order in the form set forth in Attachment A without any material modification or any material condition deemed unacceptable by either of them. If the Commission does not approve the Stipulation in its entirety or makes modifications to the final order in a fashion which is unacceptable to either party, the Stipulation shall be null and void and shall be deemed withdrawn, upon notice in writing by either of them within 15 days after the date of the final order that any modification made by the Commission is unacceptable to it. In the event the Stipulation is withdrawn, Indiana

American and the OUCC will request that an attorneys' conference be convened to establish a procedural schedule for the continued litigation of this proceeding.

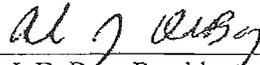
9. Indiana American and the OUCC stipulate that this Stipulation reflects a fair, just and reasonable resolution and compromise for purpose of settlement, and is agreed upon without prejudice and the ability of any party to propose a different term in future proceedings.

10. As set forth in the Order in *Re Petition of Richmond Power & Light*, Cause No. 40434, p. 10, Indiana American and the OUCC stipulate and request the Commission to incorporate as part of its final order that this Stipulation, or the order approving it, not be cited as precedent by any person or deemed an admission by any party of any other proceeding except as necessary to enforce its terms before the Commission, or any court of competent jurisdiction on these particular issues. This Stipulation is solely the result of compromise in the settlement process. Both Indiana American and the OUCC have entered this Stipulation solely to avoid further disputes and litigation with the attended inconvenience, risks and expenses.

11. The undersigned represent and stipulate that they are fully authorized to execute this Stipulation on behalf of their designated clients who will be bound thereby.

Respectfully submitted,

Indiana-American Water Company, Inc.



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Alan J. DeBoy, President



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Nicholas K. Kile, Atty No. 15203-53  
Hillary J. Close, Attorney No. 25104-49  
Jeffrey M. Peabody, Attorney No. 28000-53  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Telephone: (317) 231-7768  
Facsimile: (317) 231-7433

Attorneys for Petitioner  
Indiana-American Water Company, Inc.

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Daniel M. LeVay, Atty No. \_\_\_\_\_  
Indiana Office of Utility Consumer  
Counselor  
PNC Center  
Suite 1500 South  
115 West Washington Street  
Indianapolis, Indiana 46204  
[dlevay@oucc.in.gov](mailto:dlevay@oucc.in.gov)  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov)

Attorney for the Indiana Office of Utility  
Consumer Counselor

Respectfully submitted,

Indiana-American Water Company, Inc.

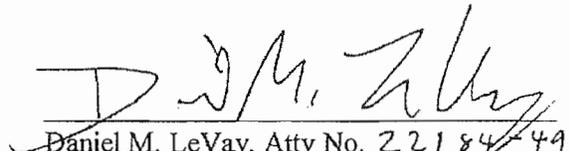
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Nicholas K. Kile, Atty No. 15203-53  
Hillary J. Close, Attorney No. 25104-49  
Jeffrey M. Peabody, Attorney No. 28000-53  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Telephone: (317) 231-7768  
Facsimile: (317) 231-7433

Attorneys for Petitioner  
Indiana-American Water Company, Inc.



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Daniel M. LeVay, Atty No. ~~22184-49~~  
Indiana Office of Utility Consumer  
Counselor  
PNC Center  
Suite 1500 South  
115 West Washington Street  
Indianapolis, Indiana 46204  
dlevay@oucc.in.gov  
infomgt@oucc.in.gov

Attorney for the Indiana Office of Utility  
Consumer Counselor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this <sup>22<sup>nd</sup></sup>~~th~~ day of December, 2011, by electronic mail, upon the following counsel of record:

(OUCC)  
Daniel M. LeVay  
Indiana Office of Utility Consumer Counselor  
PNC Center  
Suite 1500 South  
115 West Washington Street  
Indianapolis, Indiana 46204  
dlevay@oucc.in.gov  
infomgt@oucc.in.gov

Lee Robbins, Attorney No. 10907-49  
Williams Barrett & Wilkowski  
600 N Emerson Avenue  
PO Box 405  
Greenwood, IN 46142

  
\_\_\_\_\_  
Nicholas K. Kile