

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2007 OCT 18 PM 4:11

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

*Protecting Texas by Reducing and Preventing Pollution*

October 18, 2007

Ms. LaDonna Castanuela, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-105  
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2007-0864-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Austin and the City of Manor.

Dear Ms. Castanuela:

Transmitted herewith for filing with the Texas Commission on Environmental Quality ("Commission") are the following items to be filed as backup material for the November 7, 2007 agenda on a request for an order approving contracts designating service areas between the City of Austin and the City of Manor ("Manor").

1. Proposed Order;
2. Agenda Executive Summary;
3. Request for a Commission order approving Texas Water Code §13.248 agreements filed by City of Austin for transfer of water service area between the City of Austin and Manor;
4. Texas Water Code §13.248 Agreement between Austin and Manor; and
5. Map of the areas covered by the Agreement.
6. Certificates of Convenience and Necessity.

Please do not hesitate to contact me at (512)239-0144 if you have any questions regarding this material. Thank you for your attention to this matter.

TCEQ Docket No. 2007-0864-UCR  
October 18, 2007  
Page 2

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Pinar Dogru", written over a horizontal line.

Pinar Dogru, Staff Attorney  
Environmental Law Division

Enclosures

cc: mailing list

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**TO:** Texas Commission On Environmental Quality      **DATE:** October 18, 2007  
**THRU:** LaDonna Castañuela, Chief Clerk  
**FROM:** Environmental Law Division  
**SUBJECT:** Consideration of a request for a Commission order approving a contract designating service areas between City of Austin ("Austin") and the City of Manor ("Manor").

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### DESCRIPTION OF APPLICATION

Applicant: The City of Austin  
Regulated Activity: Retail water utility service  
Type of Application: Request for a Commission Order approving a contract  
Commission Action: Hearing regarding approval of the contract  
Authority: Texas Water Code §13.248 and 30 Texas Administrative Code § 291.117

### FACTUAL BACKGROUND

The City of Austin, Texas, water certificate of convenience and necessity, ("CCN") No. 11322, and City of Manor ("Manor"), water CCN No. 10947, provide retail water service in Travis County, Texas. On March 2, 2006, by written correspondence, Austin and Manor agreed to an arrangement under Section 13.248 of the Water Code, whereby Manor would allow Austin to provide retail water service in an area that is entirely within Austin's extraterritorial jurisdiction (ETJ) but certified to Manor.

Under the Agreement, Manor would transfer to Austin approximately 1,040 acres of service area approximately three miles south of Manor, adjacent to FM 973 that is located within Austin's ETJ.

### LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public

without first having obtained from the Commission a CCN.<sup>1</sup> A municipality is not required to obtain a CCN to provide retail water service.<sup>2</sup> However, a municipality may not provide service to areas that are outside of its corporate boundaries, but that are within the CCN of another retail public utility, without first obtaining written consent from that retail public utility.<sup>3</sup>

The TWC and TCEQ rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.<sup>4</sup> A transfer of a water or sewer system that also includes the transfer of customers and/or facilities may, in some cases, also require separate Commission approval for the transfer of customers and/or facilities.<sup>5</sup>

The request to approve a 13.248 agreement is not subject to the notice provisions of 30 Texas Administrative Code § 291.106, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to TWC § 13.248 with the appropriate notice under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

#### BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the Staff's recommendation:

1. Request for a Commission order approving the following agreement: Texas Water Code 13.248 agreement filed by Austin on April 11, 2006 (Application No. 35326-C);
2. Agreement between the City of Austin and City of Manor executed by written correspondence on March 2, 2006;
3. Map of the service area subject to the 13.248 agreement submitted by the City of Austin; and

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<sup>1</sup> TEX. [WATER] CODE ANN. § 13.242(a) (Vernon 2006).

<sup>2</sup> A municipality is a "retail public utility" under TWC § 13.002(19), but is not a "utility" under § 13.002(23). Therefore, the TWC § 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

<sup>3</sup> § 13.242(b).

<sup>4</sup> § 13.248; *see also* 30 TEX. ADMIN. CODE § 291.117 (West 2006). TWC § 13.248 states that, "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

<sup>5</sup> § 13.301. The section requires that some applicants also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

4. Financial, Managerial, and Technical analyses of the City of Austin and City of Manor to operate in their respective affected areas.

#### STAFF RECOMMENDATION

Based on the facts stated in the application and the supporting documentation submitted by the City of Austin, Staff supports the request for a Commission order approving a contract designating service areas between the City of Austin and City of Manor. Staff has confirmed that parties are retail public utilities with active water CCNs and that the area the parties are seeking to transfer is either certificated or dually certificated to one or both parties receiving the CCN. Further, staff is satisfied that the City of Austin possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred.

#### STAFF CONTACTS

Pinar Dogru, Environmental Law Division (239-0144)  
Lisa Fuentes, Water Supply Division (239-6117)

Docket No. 2007-0864-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the City of Austin ("Austin"), water certificate of convenience and necessity ("CCN") No. 11322 and the City of Manor ("Manor"), water CCN No. 10947, in Travis County, Texas pursuant to Section 13.248 of the Texas Water Code. Under the Agreement, Manor will transfer approximately 1,040 acres of service area to Austin. (Pinar Dogru, Lisa Fuentes)

**AN ORDER** approving a contract designating service areas between the City of Austin and the City of Manor in Travis County, Texas pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2007-0864-UCR.

A request for a Commission order approving the contract designating service areas between the City of Austin ("Austin"), water certificate of convenience and necessity ("CCN") No. 11322 and City of Manor ("Manor"), water CCN No. 10947 in Travis County, Texas, was presented to the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Section (§) 13.248 of the Texas Water Code and Title 30, § 291.117 of the Texas Administrative Code.

On March 2, 2006, by written correspondence, Austin and Manor agreed to an arrangement under § 13.248 of the Water Code, whereby Manor would allow Austin to provide retail water service in an area that is located entirely within Austin's extraterritorial jurisdiction ("ETJ") but certificated to Manor. Under the Agreement, Manor would transfer approximately 1,040 acres of service area to Austin.

Under the TWC §13.248, contracts between retail public utilities that designate areas and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

The Commission held a hearing regarding approval of Agreement between Austin and the

City of Manor at the November 7, 2007 agenda and found that the request had merit.

Austin and Manor are each capable of rendering continuous and adequate water service to the customers in their respective areas covered by the Agreement. The CCN transfer contemplated in the aforementioned Agreement is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Agreement transferring a portion of Manor's CCN to Austin and designating that retail water service shall be provided by Austin in the designated area, is hereby approved.
2. CCN No. 11322 held by the City of Austin and CCN No. 10947 held by the City of Manor in Travis County, are hereby amended in accordance with the Agreement.
3. The Executive Director is directed to redraw the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Travis County, Texas.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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For the Commission

**Request for a Commission Order  
Approving a TWC § 13.248 agreement**

35326-C



# City of Austin

Austin Water Utility, P. O. Box 1088, Austin, Texas 78767 512-972-0444

RECEIVED

APR 11 2006

TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY

600135198  
101208072

April 11, 2006

Michelle Abrams  
Utilities & Districts Section  
Water Supply Division  
Texas Commission on Environmental Quality  
P O Box 13087  
Austin, TX 78711-3087

RECEIVED  
8/00  
APR 14 2006  
A-048-6  
UTILITIES & DISTRICTS  
SECTION

RE: Manor Proposed CCN Release

Dear Ms Abrams,

The Austin Water Utility ("AWU") is requesting a transfer of certificate of convenience and necessity ("CCN") pursuant to section 13.248 of the Texas Water Code for a portion of the City of Manor ("Manor") CCN No. 10947 to the AWU CCN No. 11322.

Enclosed you will find the required attachments.

- Letter agreement between AWU and Manor;
- Map reflecting the area to be transferred, the City's ETJ and corporate limits;
- Large scale CCN map;
- Financial Statement;
- Digital Data;
- Required application fee.

If additional information is required or should you have any questions, please notify me by email at [lisa.martinez@ci.austin.tx.us](mailto:lisa.martinez@ci.austin.tx.us) or by phone at 972-0444.

Sincerely,

Lisa M. Martinez, CPM  
Contract Administrator  
Wholesale Services  
Austin Water Utility  
City of Austin

Enclosures

# **Agreement**



# City of Austin

Austin Water Utility, P.O. Box 1088, Austin, TX 78767 512-972-0118

March 2, 2006

Phil Tate  
City Manager  
City of Manor  
201 E. Parsons  
P.O. Box 387  
Manor, TX 78653-0387

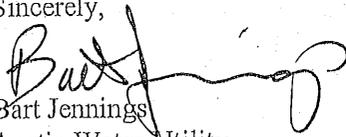
Dear Mr. Tate:

Pursuant to our conversation, the Austin Water Utility discovered there is an area approximately three miles south of the City of Manor ("Manor") adjacent to FM 973 that is entirely located within the City of Austin's ("Austin") extraterritorial jurisdiction but is currently certificated to Manor (see the attached map).

As I understand, section 13.248 of the Texas Water Code allows utilities to make arrangements related to the provision of service within a utility's certificate of convenience and necessity. I understand Manor is willing to allow Austin to provide retail water service to this area as long as Austin pays the administrative fees associated with the section 13.248 transaction at the Texas Commission on Environmental Quality. If you concur with my understanding, please sign below and return the original to my office.

I greatly appreciate your cooperation in this matter and hope that we can continue to strengthen the working relationship between our two cities. If you have any further concerns, please call me at 972-0118. Thank you.

Sincerely,

  
Bart Jennings  
Austin Water Utility

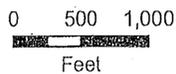
Concurrence:



Phil Tate, City Manager  
City of Manor



-  Area to be released to Austin (1,040 acres)
-  City of Austin ETJ
-  City of Austin
-  SH 130 Centerline



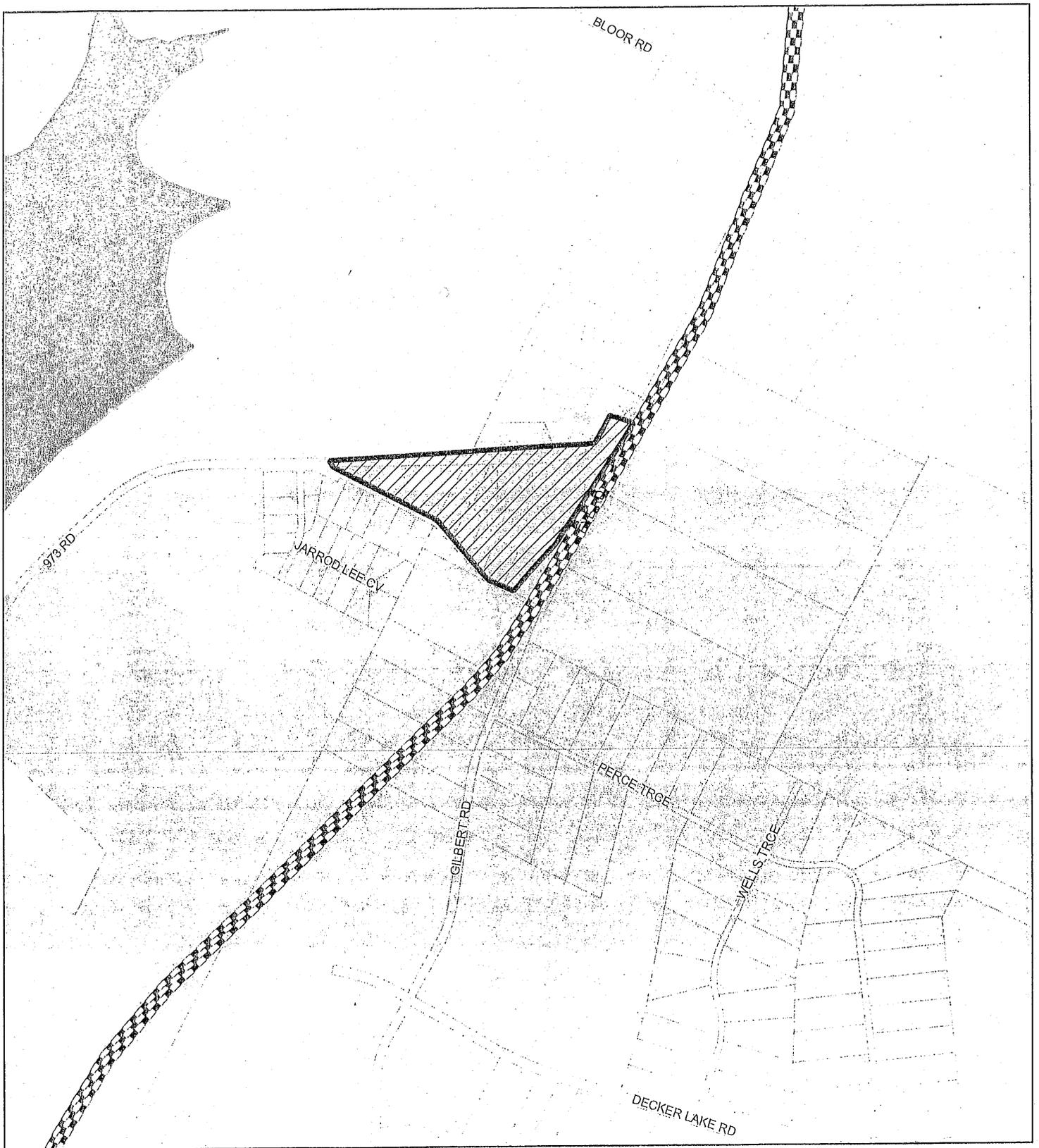
City of Austin  
Austin Water Utility



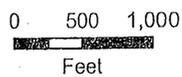
March 3, 2006

## Manor Proposed CCN Release

Produced by Systems Analysis Division



-  Area to be released to Austin (1,040 acres)
-  City of Austin ETJ
-  City of Austin
-  SH 130 Centerline



City of Austin  
Austin Water Utility



March 3, 2006

# Manor Proposed CCN Release

Produced by Systems Analysis Division

This map has been produced by the City of Austin for its needs and purposes and is not warranted for any other use. No warranty is made by the City regarding its accuracy or completeness.



WRS-227  
 TRAVIS COUNTY

City of Manor  
 Water Service Area  
 CCN No. 10947  
 App. No. 33632-C  
 Scale: 1" = 1 mile  
 4-25-02

11 101 RAY 21

# **Financial, Managerial, and Technical Analysis**

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Environmental Law Division **Date:** August 20, 2007  
**Thru:** Lisa Fuentes/Tammy Benter  
**From:** Dan Smith *DS*  
**Subject:** Contract Service Agreement Pursuant to Texas Water Code Section 13.248, from the City of Austin, Certificate of Convenience and Necessity (CCN) No. 11322, to Transfer a Portion of CCN No. 10947 from the City of Manor in Travis County; Application No. 35326-C

CN: 600135198 RN: 101208072

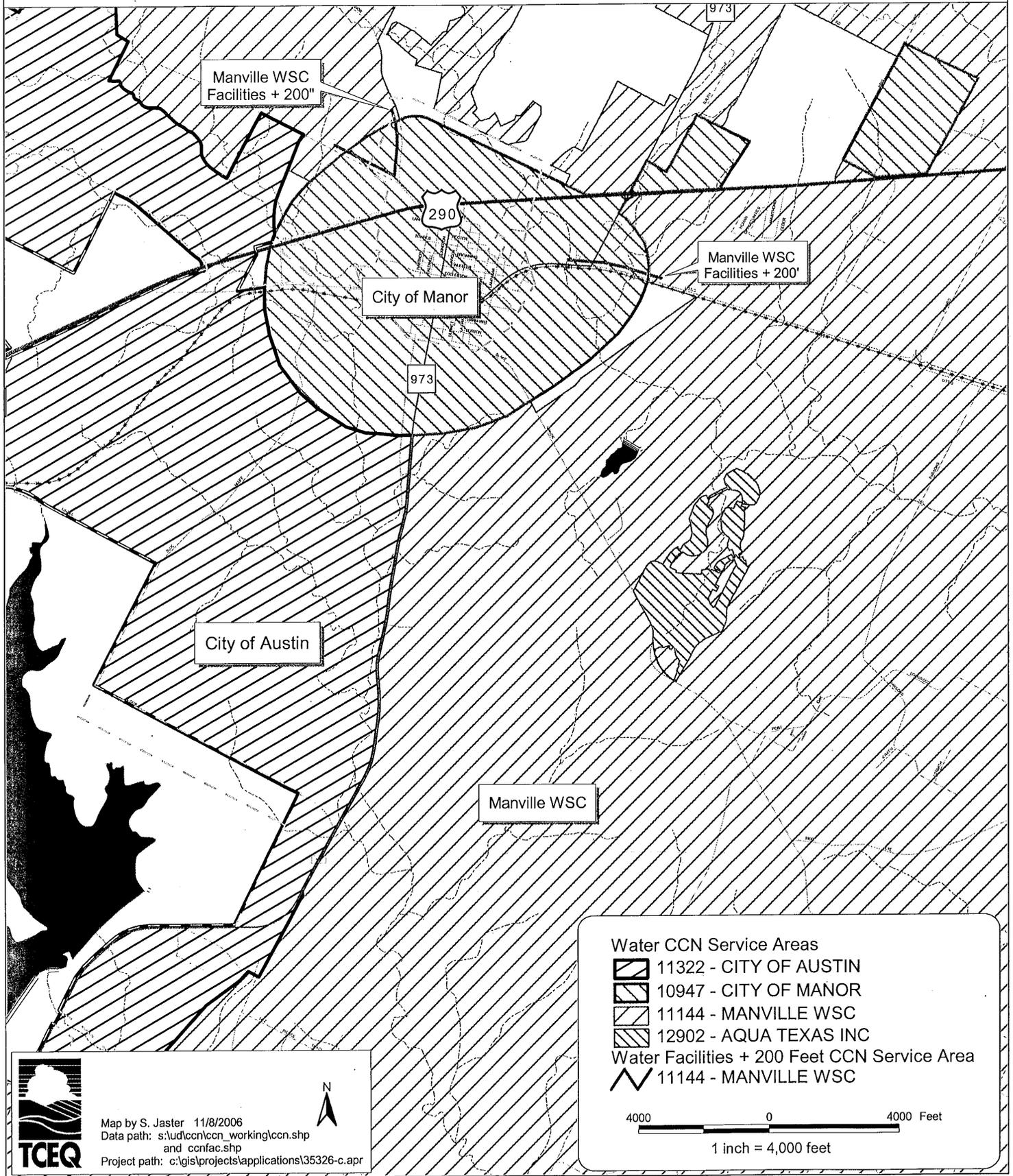
In my opinion, Austin has demonstrated adequate financial, managerial and technical capability to provide service to the area contracted for transfer.

Signed: *Dan Smith* Date: August 20, 2007

I have reviewed available records of the City of Austin, including a copy of the Texas Municipal Report. It shows that for the fiscal year ended September 30, 2005, the debt service coverage ratio for water and wastewater operations improved from 1.55:1 to 1.73:1, meaning they have increased their reserve and ability to secure additional bond funding. Moody's upgraded the water and wastewater revenue bonds in November, 2005 from A2 to A1, and Standard and Poor's rating continues to be A. This information provides support for a determination of adequate financial capability to provide service to the requested area of 1,040 acres.

# Map

City of Austin / City of Manor 13.248 Agreement  
 Portion of Water Service Areas  
 Application No. 35326-C (Transferred a Portion of CCN No. 10947 from City of Manor)  
 Travis County



Map by S. Jaster 11/8/2006  
 Data path: s:\ud\ccn\working\ccn.shp  
 and ccfac.shp  
 Project path: c:\gis\projects\applications\35326-c.apr

Water CCN Service Areas

- 11322 - CITY OF AUSTIN
- 10947 - CITY OF MANOR
- 11144 - MANVILLE WSC
- 12902 - AQUA TEXAS INC

Water Facilities + 200 Feet CCN Service Area

- 11144 - MANVILLE WSC

4000 0 4000 Feet  
 1 inch = 4,000 feet