

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*  
September 20, 2007

TO: Persons on the attached mailing list.

RE: City of Frisco and Terra Southwest, Inc.  
TCEQ Docket No. 2007-0275-UCR  
Certificates of Convenience and Necessity Nos. 11772 and 11608

### **Decision of the Commission on Application.**

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to grant the above-referenced matter. Enclosed with this letter is a copy of the Commission's order, Certificates of Convenience and Necessity, and map. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, as described below, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

### **Deadline for Filing Motion for Rehearing.**

A MFR must be received by the chief clerk's office no later than 20 days after the date a person is notified of the Commission's order on this matter. A person is presumed to have been notified on the third day after the date that this order is mailed.

An original and 11 copies of the motion must be sent to the chief clerk at the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

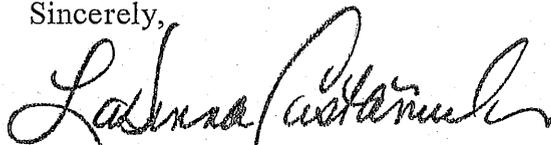
In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list. A certificate of service stating that copies of the motion was sent to those on the mailing list must also be sent to the chief clerk.

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH or official docket number assigned by the Commission; (3) the date of the order; and (4) a concise statement of each allegation of error.

Unless the time for the Commission to act on the motion is extended, the MFR is overruled by operation of law 45 days after a person is notified of the Commission's order on this matter.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance toll free at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/mr

Enclosure

MAILING LIST  
City of Frisco and Terra Southwest, Inc.  
TCEQ Docket No. 2007-0275-UCR  
CCN No. 11772

FOR THE APPLICANT:

Art R. Rodriguez  
Russell & Rodriguez, LLP  
102 West Morrow Street, Suite 103  
Georgetown, Texas 78626

City of Frisco  
6891 Main Street  
Frisco, Texas 75034

INTERESTED PERSONS:

Jim Presley, System Manager  
Terra Southwest, Inc.  
P.O. Box 140  
Alvord, Texas 76225

FOR THE EXECUTIVE DIRECTOR:

Shana Horton, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Tammy Holguin-Benter, Team Leader  
Texas Commission on Environmental Quality  
Water Supply Division MC- 153  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** approving an agreement designating service areas between the City of Frisco and Terra Southwest, Inc. pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2007-0275-UCR.

A request for a Commission order approving a contract designating service areas between the City of Frisco (Frisco) Certificate of Convenience and Necessity (CCN) No. 11772, and Terra Southwest, Inc. (Terra Southwest), CCN No. 11608, in Denton 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, Section 291.117 of the Texas Administrative Code.

On August 5, 2004, City of Frisco and Terra Southwest executed an agreement (the "Agreement") regarding their respective water service areas. The Agreement addresses the transfer of Terra Southwest's authority to provide water service to approximately 355 acres and provides that City of Frisco will be the sole provider of retail water service in that service area. There are no customers in the area to be transferred. The Agreement is attached to this Order.

Contracts between retail public utilities that designate 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. TEXAS WATER CODE §13.248.

The Commission held a hearing on the request at the September 5, 2007 agenda and found the request had merit.

The City of Frisco is capable of rendering continuous and adequate water service to every customer in the area covered by the Agreement. The decertification of Terra Southwest's authority to provide service in the affected area, which results in City of Frisco being the sole service provider remaining in the area, 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:

The Agreement addressing the transfer of portions of Terra Southwest's CCN No. 11608 and designating that retail water service shall be provided by City of Frisco, CCN No. 11772 in those areas, is hereby approved.

CCN No. 11608 in Denton County, held by Terra Southwest, Inc., is hereby amended in accordance with the Agreement.

CCN No. 11772 in Denton County, held by City of Frisco, is hereby amended in accordance with the Agreement.

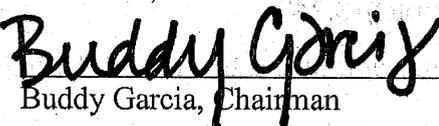
The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Denton County, Texas. The certificate amendment requested in this application is necessary for the service, accommodation, convenience, and safety of the public.

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: **SEP 13 2007**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Buddy Garcia, Chairman

AGREEMENT BETWEEN THE CITY OF FRISCO, TEXAS  
AND TERRA SOUTHWEST, INC.

This Agreement (the "Agreement") is executed between the City of Frisco, Texas ("City") and Terra Southwest, Inc. ("Terra Southwest") on the \_\_\_\_ day of \_\_\_\_\_, 2004.

WHEREAS, City is a home rule city organized in accordance with the laws of the State of Texas; and

WHEREAS, City owns a Certificate of Convenience and Necessity No. 11772; and

WHEREAS, Terra Southwest owns a Certificate of Convenience and Necessity No. 11608 ("CCN") to provide treated potable water supply service to portions of property generally located \_\_\_\_\_ on both a single service basis and a dual service basis, as more particularly described and depicted on Exhibit "A" (the "CCN Property"); and

WHEREAS, Terra Southwest desires to sell and City desires to acquire the portion of the CCN that is authorized on a single service basis as more particularly described and depicted on Exhibit "A"; and

WHEREAS, City and Terra Southwest desire to transfer, subject to approval by the Texas Commission on Environmental Quality ("TCEQ"), all of Terra Southwest's CCN that is authorized on a single service basis in consideration for monies paid by City; and

WHEREAS, City and Terra Southwest desire to make the agreement as set forth below.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, City and Terra Southwest hereby agree as follows:

1. Term. This Agreement shall remain valid and enforceable until superceded by subsequent written agreement.
2. Property Subject to the Agreement. The property that is the subject of this Agreement is all of Terra Southwest's CCN that is authorized on a single service basis, containing approximately 355 acres and more particularly described in the CCN Property attached as Exhibit "A".

3. Transfer of Water Utility Service Area.

3.1 Terra Southwest currently holds CCN No. 11608 that includes the property. Terra Southwest desires to transfer to City that portion of CCN No. 11608 that includes the property that is authorized on a single service basis. The parties agree that City will be entitled exclusively to the CCN upon the property. Terra Southwest agrees to amend its CCN No. 11608 to remove from the property its CCN.

3.2 City will pay Terra Southwest One Thousand and No/100 Dollars (\$1,000.00) per acre for Terra Southwest's agreement to amend its CCN No. 11608 to remove the property that is authorized on a single serve basis from its CCN and transfer the same to City (the "Funds"). City will pay the Funds to Terra Southwest upon the full execution of this Agreement and transfer the CCN to City.

3.3 Upon execution of this Agreement, City and Terra Southwest shall file a joint Sales, Transfer and Merger ("STM") application, prepared by the City, with the TCEQ to amend CCN No. 11608 and CCN No. 11772 to reflect transfer of the CCN upon the property to City. Terra Southwest shall support the STM application and will not object or otherwise attempt to defeat City's application(s) for a water or sewer CCN to serve the property.

3.4 City and Terra Southwest agree not to initiate legal action under 7 U.S.C. Section 1926(b) for any matter related to this Agreement.

3.5 Upon execution of this Agreement, Terra Southwest will take all steps necessary to secure approval of the service area transfer from the FMHA or any successor federal agencies.

4. Sale of Water. Frisco agrees to enter into negotiations with Terra Southwest to sell it water upon terms and conditions acceptable to both parties.

5. Default. In the event any party fails to comply with the terms of this Agreement, the other party has the right to enforce the terms of this Agreement by specific performance or by any other remedies available to the other party.

6. Miscellaneous.

a. This Agreement may not be assigned by any party without the written consent of the other party.

b. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

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JUL 30 04 12:50P

Jim Presley

P. 4  
P. 4

c. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

d. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

e. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

f. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

g. Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested addressed and delivered to the following:

to the City: George Purefoy  
City Manager  
6891 Main Street  
Frisco, Texas 75034

to Terra Southwest:  
P.O. BOX 140  
ALVORD, TEXAS 76225

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

h. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

i. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity,

illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

j. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

k. The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

CITY OF FRISCO, TEXAS,  
a municipal corporation

By: Cory Purdy Date: 8/05/04  
Its: City Manager

TERRA SOUTHWEST, INC.

By: Jim Presley Date: 7-30-04  
Its: President

LEGAL DESCRIPTION  
355 ACRE TERRA SOUTHWEST TRACT

BEING a tract of land situated in the David Blanton Survey, Abstract 1456, A. Sparks Survey, Abstract 1491, M.E.P. & P. RR. Co. Survey, Abstract 119, David E. Lawhorn Survey, Abstract 727, A.F. Smith Survey, Abstract 1194, B.B. & C. RR. Co. Survey, Abstract 171, B.B.B. & C. RR. Co. Survey, Abstract 179 & James Robertson Survey, Abstract 1507, Denton County, Texas and being all of a tract of land conveyed to 423 Phillips Ranch, Ltd., as evidence in a deed recorded in County Clerk's File No. 97-R006174, all of Tracts I, II, III and IV conveyed to said 423 Phillips Ranch, Ltd., as evidenced in a deed recorded in County Clerk's File No. 97-R0018404 and a portion of a called West Parcel, conveyed to said 423 Phillips Ranch, Ltd., as evidenced in a deed recorded in County Clerk's File No. 97-R0010168, all of the Real Property Records of Denton County, Texas (R.P.R.D.C.T.), and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch "BDD" capped iron rod set for the northeast corner of said Tract I, said corner also being the intersection of the centerline of Witt Road (no record found) with the west right of way line of F.M. Road 423 (a 90 foot wide right of way);

THENCE in a southerly direction, along the west right of way line of said F.M. Road 423, the following:

S 00°03'42" W, a distance of 2380.05 feet to a ½ inch iron rod found for the point of curvature of a curve to the left;

Along the arc of said curve to the left which has a central angle of 05°14'00", a radius of 5774.58 feet, and a chord which bears S 02°33'18" E, 527.26 feet and an arc distance of 527.44 feet to a 5/8 inch "BDD" capped iron rod set for the point of tangency of said curve;

S05°10'18" E, a distance of 1148.90 feet to an iron pipe found for the point of curvature of a curve to the right;

Along the arc of said curve to the right which has a central angle of 02°47'19", a radius of 5684.58 feet and a chord which bears S 03°46'38" E, 276.64 feet and an arc distance of 276.67 feet to an iron pipe found at the end of said curve;

S 41°15'49" W, a distance of 119.00 feet to a ½ inch iron rod found for corner;

S 00°03'42" W, a distance of 62.00 feet to a ½ inch iron rod found for the southeast corner of said Tract I;

N 89°49'36" E, a distance of 82.893 feet to a 5/8 inch "BDD" capped iron rod set for the point of curvature of a curve to the right, said curve being non-tangent at this point;

Along the arc of said curve to the right which has a central angle of 02°36'12", a radius of 5684.58 feet and a chord which bears S.00°26'36" W, 258.28 feet and an arc distance of 258.30 feet to a TXDoT monument found for the point of tangency of said curve;

S 01°44'42" W, a distance of 737.20 feet to a 5/8 inch iron rod found for corner;

S 07°27'20" W, a distance of 100.50 feet to a 5/8 inch iron rod found for corner;

S 89°47'09" E, a distance of 3456.20 feet to a point for corner;

N 0°03'30" W, a distance of 3853.45 feet to a point for corner;

S 89°19'25" E, a distance of 764.0 feet to a point for corner;

S 88°14'30" E, a distance of 154.67 feet to a ½ inch iron rod found for corner;

S88°19'12" E, a distance of 255.26 feet to a ½ inch iron rod found for corner;

S89°32'35" E, a distance of 132.98 feet to a ½ inch iron rod found for corner;

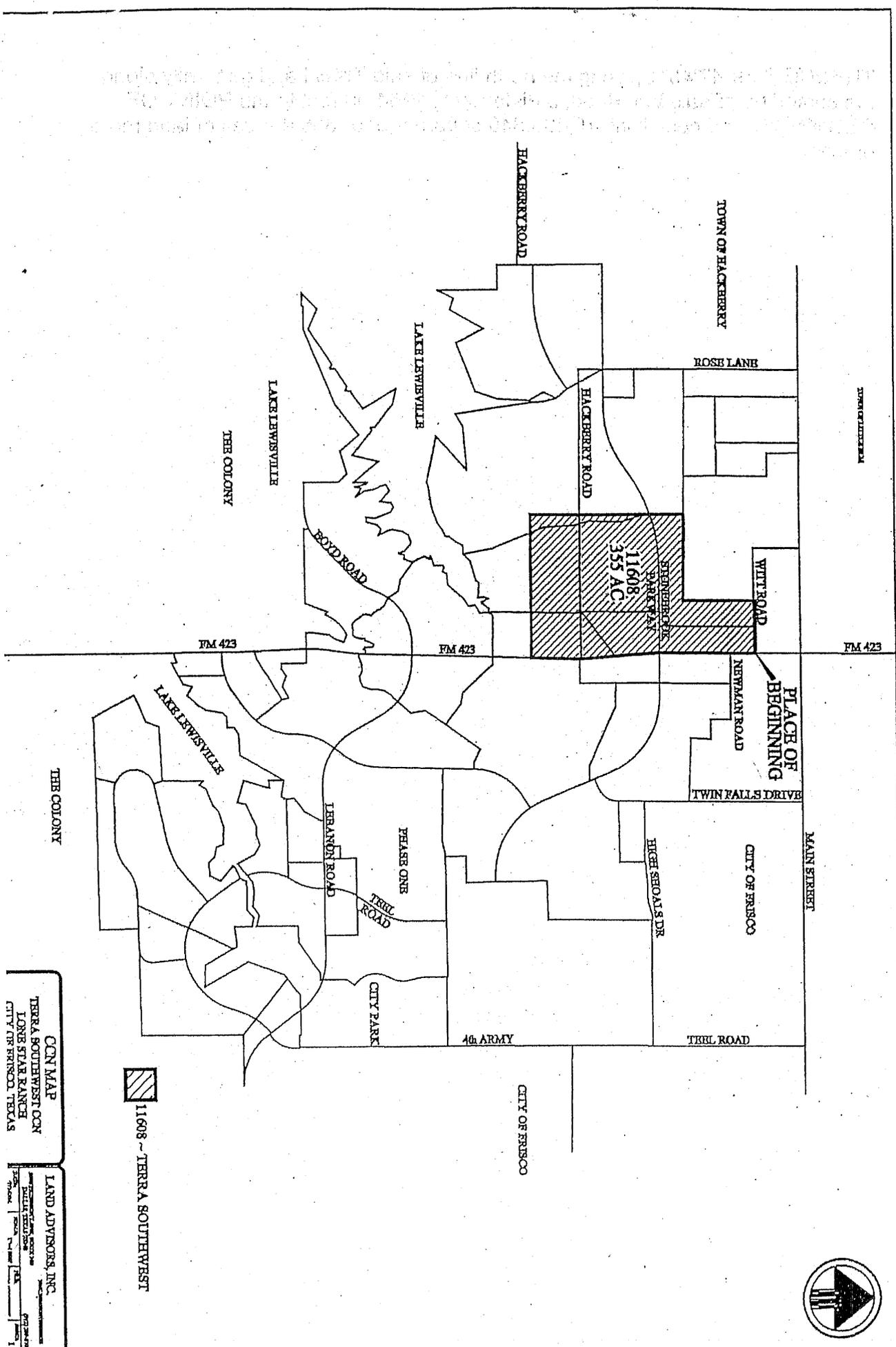
S89°13'17" E, a distance of 329.21 feet to a ½ inch iron rod found for the northeast corner of said Tract IV, same being the most westerly northwest corner of aforesaid Tract I;

THENCE S 88°10'28" E, along a north line of said Tract I, a distance of 461.77 feet to a ½ inch iron rod found for an inner ell corner of said Tract I;

THENCE N 00°14'38" W, along a west line of said Tract I, a distance of 1845.17 feet to a ½ inch iron rod found for the most northerly, northwest corner of said Tract I, same being in the center of aforesaid Witt Road;

THENCE S 89°47'43" E, along the north line of said Tract I and generally along the centerline of said Witt Road, a distance of 1264.09 feet to the POINT OF BEGINNING and containing 15,463,840 square feet or 355.0 acres of land more or less.

PRODUCTION OF THIS MAP WAS MADE BY THE TEXAS A&M UNIVERSITY SYSTEM, GEOGRAPHIC INFORMATION SYSTEMS CENTER, COLLEGE STATION, TEXAS 77843-3142. THE INFORMATION ON THIS MAP IS UNCLASSIFIED AND IS IN THE PUBLIC DOMAIN.



 11608 ~ TERRA SOUTHWEST

OCN MAP  
TERRA SOUTHWEST OCN  
LONG STAR RANCH  
CITY OF FRISCO, TEXAS

LAND ADVISORS, INC.  
11000 WEST 10TH STREET, SUITE 100  
DALLAS, TEXAS 75244  
PHONE: 972-241-1100  
FAX: 972-241-1101  
WWW.LANDADVISORS.COM



# Texas Commission On Environmental Quality

By These Presents Be It Known To All That

City of Frisco

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

## Certificate of Convenience and Necessity No. 11772

to provide continuous and adequate water utility service to that service area or those service areas in Collin and Denton Counties as by final order or orders duly entered by this Commission, which Order or Orders resulting from Application No. 35118-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Frisco to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this SEP 13 2007

*Buddy Gernix*  
For the Commission



# Texas Commission On Environmental Quality

By These Presents Be It Known To All That

**Terra Southwest, Inc.**

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

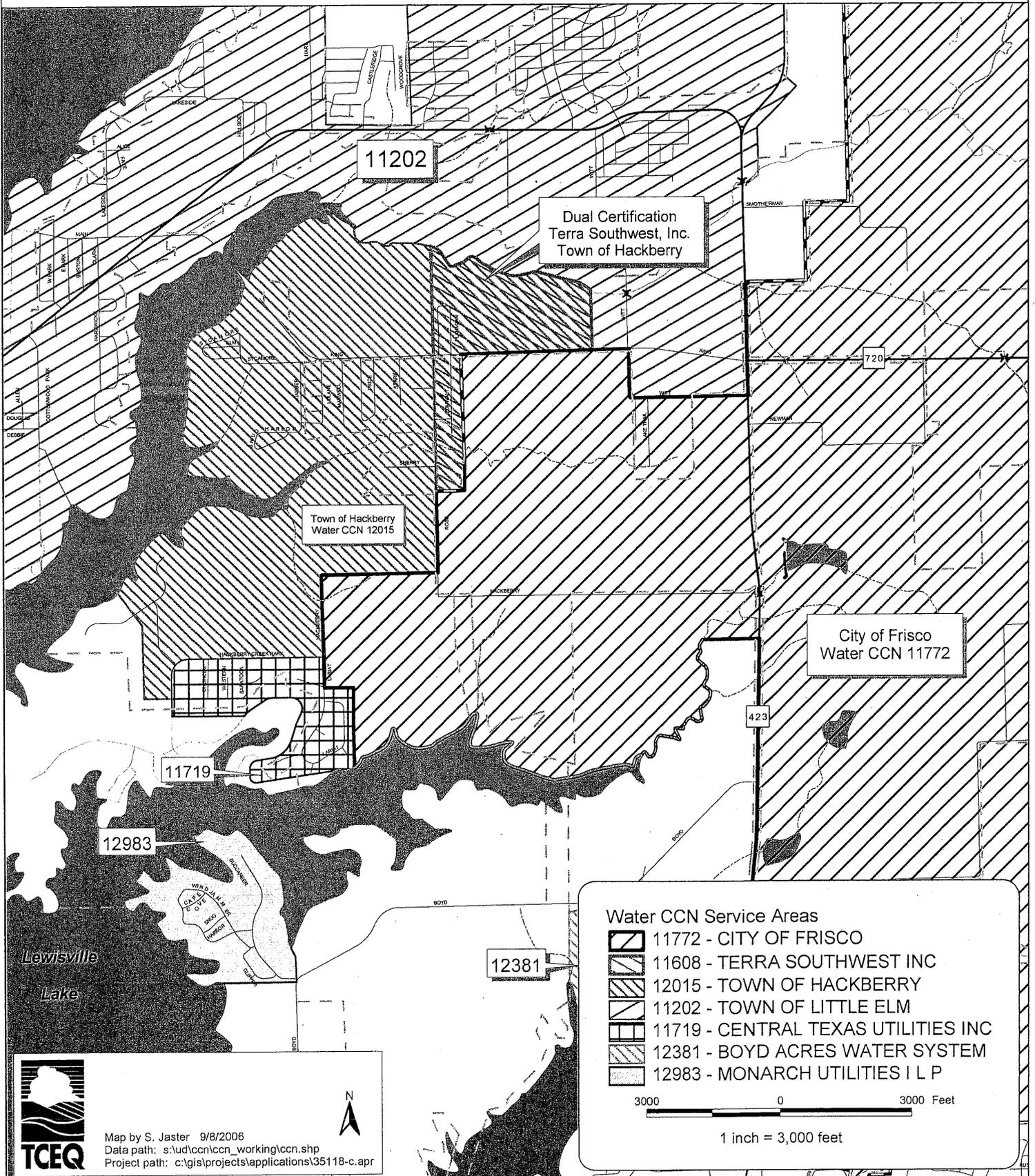
## Certificate of Convenience and Necessity No. 11608

to provide continuous and adequate water utility service to that service area or those service areas in Denton County as by final order or orders duly entered by this Commission, which Order or Orders resulting from Application No. 35118-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Terra Southwest, Inc., to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

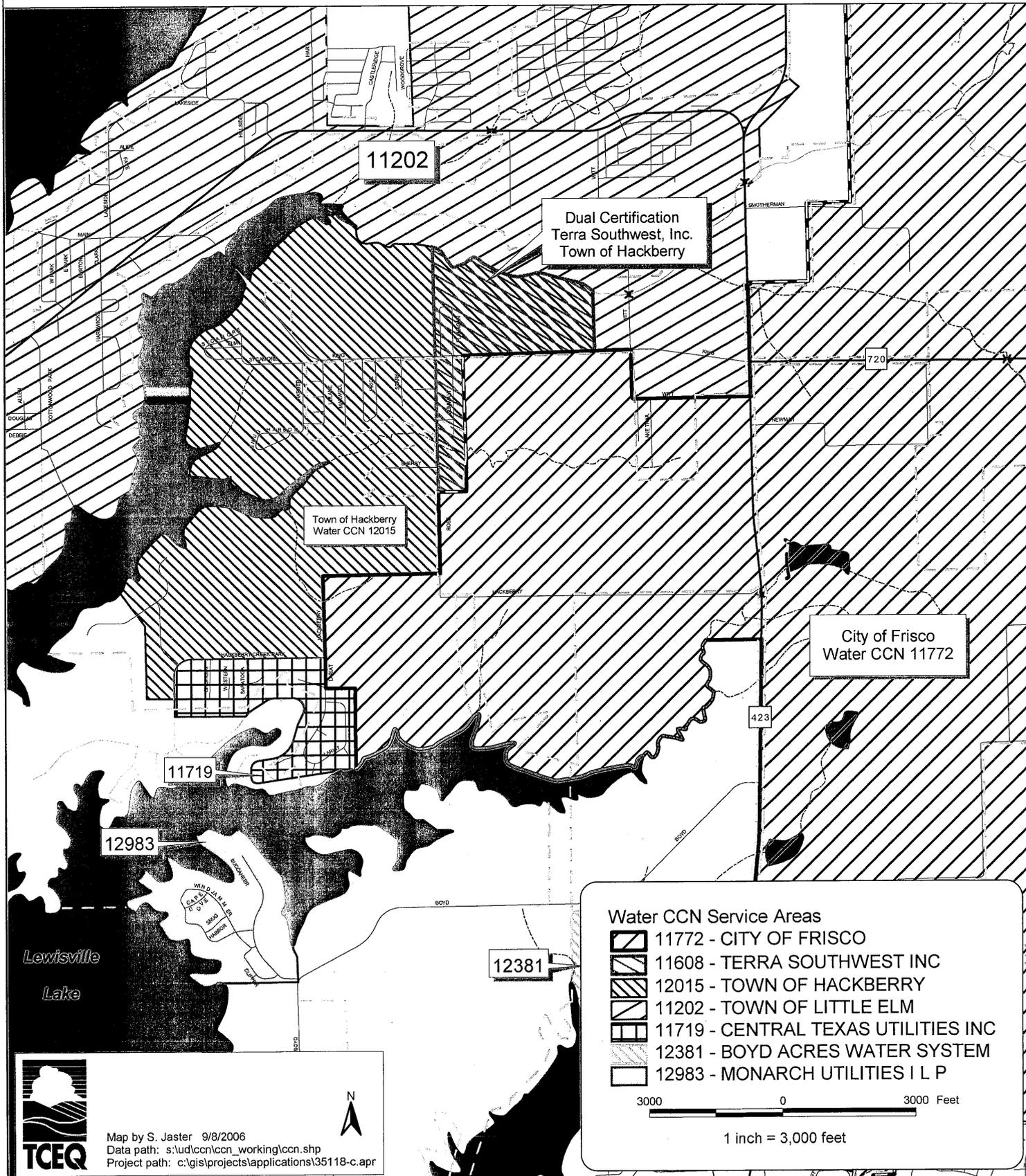
Issued at Austin, Texas, this SEP 13 2007

*Buddy Gorrix*  
For the Commission

City of Frisco / Terra Southwest, Inc. 13.248 Agreement  
 Portions of Water Service Area  
 Application No. 35118-C (Denton County)



City of Frisco / Terra Southwest, Inc. 13.248 Agreement  
 Portions of Water Service Area  
 Application No. 35118-C (Denton County)



Dual Certification  
 Terra Southwest, Inc.  
 Town of Hackberry

Town of Hackberry  
 Water CCN 12015

City of Frisco  
 Water CCN 11772

- Water CCN Service Areas**
-  11772 - CITY OF FRISCO
  -  11608 - TERRA SOUTHWEST INC
  -  12015 - TOWN OF HACKBERRY
  -  11202 - TOWN OF LITTLE ELM
  -  11719 - CENTRAL TEXAS UTILITIES INC
  -  12381 - BOYD ACRES WATER SYSTEM
  -  12983 - MONARCH UTILITIES I L P

3000 0 3000 Feet

1 inch = 3,000 feet



Map by S. Jaster 9/8/2006  
 Data path: s:\ud\ccn\ccn\_working\ccn.shp  
 Project path: c:\gis\projects\applications\35118-c.apr