

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 AUG 21 AM 8:51

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE
Protecting Texas by Reducing and Preventing Pollution

August 21, 2007

Ms. LaDonna Castañuela, 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. 2007-0275-UCR; Consideration of a request for a Commission order approving a contract designating water 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.

Dear Ms. Castañuela:

Transmitted herewith for filing with the Texas Commission on Environmental Quality (Commission or TCEQ) are the following items to be filed as backup materials for the September 5, 2007 agenda on a request for an order approving a contract designating water service areas between the City of Frisco and Terra Southwest, Inc.:

1. Proposed Order;
2. Agenda Executive Summary;
3. Caption
4. Staff memo detailing financial, managerial, and technical capabilities of Frisco to provide continuous and adequate service to the affected area;
5. Request for Commission order approving a Texas Water Code Section 13.248 agreement filed jointly by Frisco and Terra Southwest on June 13, 2005;
6. Texas Water Code, Section 13.248 amended agreement between Frisco and Terra Southwest executed on August 5, 2004;
7. Amended Map of the service area subject to the 13.248 agreement; and
8. Notices Mailed to Parties.

Please do not hesitate to contact me at (512) 239-1088 if you have any questions regarding this material. Thank you for your attention to this matter.

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30-10-07
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Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
August 21, 2007
Page 2

Respectfully submitted,



Shana L. Horton, Staff Attorney
Environmental Law Division

Enclosures

cc: Mr. Art Rodriguez
Mr. Jim Presley, System Manager, Terra Southwest, Inc.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



CHIEF CLERKS OFFICE

2007 AUG 21 AM 8:11

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.

The City of Frisco has received a request for water and sewer service in an area within the CCN area of Terra Southwest. Terra Southwest is unable to provide either water or service to the requested area in Denton County, Texas. On August 5, 2004, City of Frisco and Terra Southwest executed an agreement (the "Agreement") regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. The Agreement decertifies 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 decertifying 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:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission



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 _____

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 _____

For the Commission

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** August 21, 2007
THRU: LaDonna Castañuela, Chief Clerk
FROM: Shana Horton, Staff Attorney, Environmental Law Division
SUBJECT: TCEQ Docket No. 2007-0275-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the City of Frisco and Terra Southwest, Inc.

DESCRIPTION OF APPLICATION

Applicant: City of Frisco
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 Frisco, water certificate of convenience and necessity (CCN) No. 11772, and Terra Southwest, Inc., water CCN No. 11608, provide retail water service in Denton County, Texas. On August 5, 2004, the City of Frisco and Terra Southwest, Inc. entered into an agreement regarding their respective water service areas pursuant to section 13.248 of the Texas Water Code.

Under the agreement, Terra Southwest, Inc. will transfer 335 acres of its CCN area to the City of Frisco. The City of Frisco received a service request for water and sewer service in this area, and Terra Southwest, Inc. cannot provide sewer service and does not have water lines in the area.

There are no customers or facilities in the area being transferred.

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

The Texas Water Code 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.⁴ 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.⁵

The request to approve a 13.248 agreement is not subject to the notice provisions of section 291.106, Title 30 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to section 13.248 of the Texas Water Code 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 13.248 agreement filed by City of Frisco on June 13, 2005 (application no. 35118-C);

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon 2006).

² A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

³ *Id.* § 13.242(b).

⁴ *Id.* § 13.248; 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Env'tl. Quality, Contracts Valid and Enforceable). Section 13.248 states "[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."

⁵ TEX. WATER CODE § 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.

2. Agreement between the City of Frisco and Terra Southwest, Inc., executed on August 5, 2004;
3. Map of the service area subject to the 13.248 agreement submitted by City of Frisco; and
4. Financial, Managerial, and Technical analysis of City of Frisco to operate in the affected area.

STAFF RECOMMENDATION

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

STAFF CONTACTS

Shana Horton, Environmental Law Division (239-1088)

Tammy Holguin-Benter, Water Supply Division (239-6136)

CAPTION
CITY OF FRISCO
Application No. 35118-C

TCEQ Docket No. 2007-0275-UCR. Consideration of a request for a Commission order approving an agreement designating service areas between the City of Frisco (Frisco), water certificate of convenience and necessity (CCN) No. 11772, and Terra Southwest, Inc., water CCN No. 11608, in Denton County, Texas pursuant to section 13.248 of the Texas Water Code. Currently, Terra Southwest, Inc. holds a CCN that includes the area that is the subject of the agreement. Frisco received a service request for water service in the area, and Terra Southwest, Inc. does not have water lines in the area. Under the agreement, Terra Southwest, Inc. will transfer the portion of its CCN that covers this area to Frisco. No facilities are proposed to be transferred. (Shana Horton, Tammy Holguin-Benter)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Interoffice Memorandum

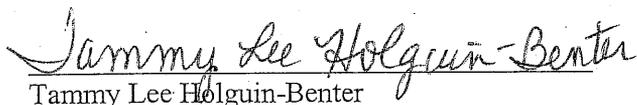
To: Shana Horton Date: March 6, 2007

Thru: Doug Holcomb, P.E., Section Manager, Water Supply Division

From: Tammy Benter, Team Leader, Utilities Financial Review Team

Subject: Contract Service Agreement Pursuant to the Texas Water Code Section 13.248 from the City of Frisco, Certificate of Convenience and Necessity (CCN) No. 11772 to acquire a portion of CCN No. 11608 from Terra Southwest, Inc., in Denton County, Application No. 35118-C

In completing a review of the City of Frisco's current financial, managerial and technical capability to provide continuous and adequate service for the additional area requested in this application, I reviewed the City of Frisco's 2005 Fiscal Year budget, Enterprise Funds Budget Summaries, Special Revenue Funds report and Debt Service Funds Budget Summary. I also reviewed the City of Frisco's historical enforcement information in CCEDS and all relevant fee information for the City of Frisco's water utility. During the course of this review, I found no outstanding enforcement actions or unpaid fee balances. From an analysis of these records, it is reasonably assured that the City of Frisco has the financial, and managerial and technical capability to provide continuous and adequate service to the area requested in this application.


Tammy Lee Holguin-Benter



APPLICATION FOR SALE, TRANSFER, OR MERGER OF A RETAIL PUBLIC UTILITY

Received

JUN 13 2005

Water Quality Application Team
*If known (See instructions)

*RN #

*CN # 11608

1. Proposed action of application (check all the boxes that apply):

Sale of All Portion of the Water system(s) under CCN No.: 11608
 Acquisition of Portion of the Sewer system(s) under CCN No.: _____
 Lease/Rental

Transfer of All Portion of the Certified water service area - CCN No.: _____
 Certified sewer service area - CCN No.: _____

If only a portion of a system or certificated service area is affected by this transaction, please specify the areas or subdivisions involved:

986 AC

and to:

Obtain a CCN for the transferee (purchaser)
 Amend the transferee's CCN No.: 11772
 Merge or consolidate public utilities
 Cancel CCN of the transferor (seller)

Received

FEB 16 2005

A-625-

Water Quality Application Team

2. Proposed effective date of this transaction:

DECEMBER 1, 2004

(Must be at least 120 days after completion of notice)

QUESTIONS 3 THROUGH 5 APPLY TO AND SHOULD BE COMPLETED ONLY BY THE TRANSFEROR, CURRENT SERVICE PROVIDER OR SELLER

3. For the current CCN holder or service provider please indicate:

A. Name: TERRA SOUTHWEST, INC.
(Individual, Corporation or Other Legal Entity)

who is a(n): Individual Corporation WSC HOA or POA Other: _____

B. Utility Name (if different than above): _____

Address: P.O. BOX 140 Telephone: 940-427-7444
ALVORD, TX 76225-0140

C. Contact person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney or accountant.

Name: JIM PRESLEY Title: SYSTEM MANAGE

Address: P.O. Box 140, ALVORD, TX 76225-0140 Telephone: 940-427-7444

4. About the last rate increase for the system or facilities being transferred:

A. What was the effective date of the last rate increase? N/A

B. Was notice of this increase provided to the Texas Natural Resource Conservation Commission or its predecessors Public Utility Commission or Texas Water Commission?

No.

Yes. Application/Docket Number: _____ Date: _____

5. Please provide a list of all customers affected by this transaction who have deposits held by the transferor or seller utility, if any, and include the following information (attach additional sheets if necessary):

Name and Address of utility customer	Date of Deposit	Amount of Deposit	Amount of unpaid interest on Deposit
<u>N/A</u>			

Within 30 days of the actual transaction date, and prior to the transfer of the certificate by the TNRCC, the seller must provide proof to the Commission that these customer deposits were returned to the customers or transferred to the purchasing utility. Proof should include a sworn affidavit.

QUESTIONS 6 THROUGH 13 REFER TO AND SHOULD BE COMPLETED BY THE TRANSFEREE OR PURCHASER

6. For the person or entity acquiring the facilities and/or CCN:

Applicant: CITY OF FRISCO, TEXAS

(Individual, Corporation, or Other Legal Entity)

Utility Name: SAME

(If different than above)

Utility Address: 6891 MAIN ST. FRISCO, TX 75034 Telephone: 972-335-5555

CCN Numbers held prior to the filing of this application: 11772

7. Check the appropriate box and provide information regarding the legal status of the transferee applicant:

- Individual
- Home or Property Owners Association
- Partnership; attach copy of partnership agreement
- Corporation; provide charter number as recorded with the Office of the Secretary of State
for Texas: _____
- Non-profit, member-owned, member-controlled Cooperative Corporation (Article 1434(a) Water Supply or
Sewer Service Corporation); provide charter
number: _____
- Municipally-owned utility
- District (MUD, SUD, WCID, etc.)
- County
- Other (please explain): _____

8. If the applicant is an *Individual* provide the following information. If not, skip to the next question.

Name: _____ Telephone: _____
Address: _____

9. If the applicant is other than an *Individual* provide the following information regarding the officers or partners of the legal entity applying for the transfer. You must complete either question 8. or question 9., whichever applies to the transferee applicant.

•Name: Mr. GEORGE PUREFOY Telephone: 972-335-5551
Address: 6891 MAIN STREET, FRISCO, TX 75034
Position: CITY MANAGER Ownership % (if applicable): _____

•Name: _____ Telephone: _____
Address: _____
Position: _____ Ownership % (if applicable): _____

•Name: _____ Telephone: _____
Address: _____
Position: _____ Ownership % (if applicable): _____

•Name: _____ Telephone: _____
Address: _____
Position: _____ Ownership % (if applicable): _____

- Attach additional sheet(s) if necessary -

Important: • If the applicant is a for-profit corporation, please provide a copy of the corporation's "Certification of Account Status" from the State Comptroller Office. This "Certification of Account Status" can be obtained from:

Comptroller of Public Accounts, Office Management
P. O. Box 13528, Capitol Station
Austin, Texas 78711
1-800-252-5555

• If the applicant is an Article 1434a water supply or sewer service corporation or other non-profit corporation, please provide a copy of the Articles of Incorporation and By-Laws.

10. Contact person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney or accountant.

Name: MR. SCOTT YOUNG Title: ASSIST. CITY MANAGE

Address: 6891 MAIN ST, FRISCO, TX 75034 Telephone: 972-335-5551

IF THERE ARE MORE THAN TWO PARTIES INVOLVED IN THIS TRANSACTION, PLEASE ATTACH SHEETS PROVIDING THE INFORMATION REQUIRED IN QUESTION 6 THROUGH QUESTION 10 FOR EACH PARTY

11. Please respond to each of the following questions. Attach additional sheets if necessary.

A. Describe the experience and qualifications of the applicant to provide adequate utility service:

CITY OF FRISCO
A LARGE MUNICIPALITY
"SUPERIOR" WATER SYSTEM

B. Has the applicant acquiring the CCN or facilities or an affiliated interest of the applicant been under enforcement action by the Texas Department of Health, the Commission, the Attorney General or EPA in the past for noncompliance with rules, orders or State Statutes?

<input type="checkbox"/>	Yes.
<input checked="" type="checkbox"/>	No.

If yes, please attach copies of any correspondence with these regulatory agencies concerning these enforcement actions and describe any actions and efforts to comply with those requirements.

C. Describe the source and availability of funds required to make the planned or required improvements to meet minimum requirements of the Texas Natural Resource Conservation Commission and ensure continuous and adequate service.

FULL FAITH & CREDIT OF THE MUNICIPALITY

D. Describe the anticipated impact of this transaction on the quality of utility service and explain any anticipated changes in the quality of service.

AN IMPROVEMENT

12. Please describe the nature of the proposed transaction:

TRANSFER OF SERVICE AREA

13. If the transferee applicant is an IOU and will be under the rate jurisdiction of the TNRCC, please provide the following information. Water supply or sewer service corporations and political subdivisions of the state should mark this section N/A.: **MUNICIPALITY**

A. • Total Purchase Price: _____

• Total Original Cost (as recorded on books of seller or merging entity): _____

• Accumulated Depreciation as of the proposed effective date of the transaction: _____

• Contributions in Aid of Construction:

-Specific surcharges approved by TNRCC: _____

-Revenues from explicit customer agreements: _____

-Developer Contributions (please explain): _____

-Other Contributions (please explain): _____

_____ Total Contributions in Aid of Construction: _____

• Net Book Value: _____

If the Original Cost or any of the above items has been established in a rate case proceeding by the PUC, the TWC or the TNRCC, please provide the Application/Docket Number and date:

Application/Docket Number: _____ Date: _____

If the applicant is not under the rate jurisdiction of the TNRCC, only the purchase price and information related to Contributions in Aid of Construction is required.

B. Please provide any other information concerning the nature of the transaction and consideration given if not explained elsewhere in the application (attach additional sheet(s) if necessary):

C. Complete the following proposed entries in books of purchasing (or surviving) company to record purchase or merger). Additional entries may be made, the following are suggested only, and not intended to pose descriptive limitations.

N/A MUNICIPALITY

Utility Plant in Service: _____
Plant Acquisition Adjustment: _____
Extraordinary Loss on Purchase: _____
Accumulated Depreciation of Plant: _____
Cash: _____
Notes Payable: _____
Mortgage Payable: _____
Others (please list): _____

As the purchaser, I understand that it is **my responsibility** in any future rate proceeding to provide written evidence and support for the original cost and installation date of all facilities used and useful for providing utility service.

Purchaser's Initials: _____ Date: _____

14. Please indicate the proposed effect of this transaction on the rates to be charged to the affected customers:

- All the customers will be charged the same rates as they were charged before the transaction.
- Some All customers will be charged different rates than they were charged before the transaction.

If so, please explain: _____

Applicant is an IOU and intends to file with the Commission or municipal regulatory authority an application to change rates of some/all of its customers as a result of this transaction. If so, please explain:

Other. Please explain: **NO CURRENT CUSTOMERS WITHIN AREA**

15. List all neighboring water and/or sewer utilities, cities, and political subdivisions providing the same service within two (2) miles of area affected by this proposed transaction. This information should be available from Applicant's licensed water operator or regional Texas Department of Health Office.

TOWN OF LITTLE ELM
CITY OF THE COLONY

PLEASE ANSWER QUESTIONS 16 THROUGH 22 FOR EACH PHYSICALLY DISTINCT SYSTEM WHICH IS BEING TRANSFERRED OR ACQUIRED ON A DIFFERENT SHEET

16. A. For Water Systems. TNRCC Public Water System Identification Number:

0	6	1	0	0	9	1
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B. For Wastewater Systems:

-TNRCC Discharge Permit Number:

W	Q																		
---	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

-Name of Permittee: _____

-Date of application to transfer Discharge Permit submitted: _____

-Date of application to transfer Discharge Permit approved by TNRCC: _____

17. A. Are any improvements required to meet TNRCC standards? Yes No

B. Is there a moratorium on new connections? Yes No

C. Provide details of each required major capital improvement to correct the deficiencies and meet the TNRCC standards (attach additional sheets if necessary):

Description of the required improvement	Schedule to Complete	Estimated Cost
N/A		

18. Does the system being transferred operate within the city limits of a municipality? Yes No

If yes, indicate the number of customers within the city limits: 0 Water _____ Sewer _____

Attach copy of franchise agreement or consent letter from the city.

19. Do you currently purchase water or sewer treatment capacity from another source? Yes No

Water Sewer Purchased on a () regular - () seasonal - () emergency basis

• Source: _____ % of total supply: _____

20. List the number of existing connections to be affected by this transaction:

Water:	Non Metered		2" meter		Sewer:	Residential connection		
	5/8" or 3/4" meter		3" meter			Commercial connection		
	1" meter		4" meter			Industrial connection		
	1 1/2" meter		Other _____"			Other _____		
Total Water connections:				0	Total Sewer connections			

21. Has the system reached 85% of its capacity based on TNRCC's minimum requirements?

Yes No

22. List the name, class, and license number of the operator that will be responsible for the system:

CITY OF FRISCO, PWS I.D. 0430005

23. Attach the following maps with each copy of the application: (All maps should include Applicant's name, address, and telephone number, and date of drawing or revision. All maps should be folded to 8 1/2 X 11")

a. One small scale map clearly showing affected service area. This map will assist TCEQ staff in locating the service area in relation to neighboring utility service areas. If the application is for the transfer of all or a portion of a CCN, the service area boundary should be delineated on a copy of the TCEQ official CCN map. If there is no current CCN, the service area should be delineated on a county map (Texas Highway Department 1" = 2 miles). The service area boundaries should conform to verifiable landmarks such as roads, creeks, railroads, etc. County maps may be obtained locally or from the Texas Department of Transportation, Map Scales, P. O. Box 5020, Austin, Texas 78763-5020, (512) 486-5014 and 486-5015. *A copy of the TCEQ official CCN map may be obtained by contacting the Utilities & Districts Section at 512/239-4691 or by mailing a written request to the following address:*

Texas Commission on Environmental Quality
 Water Supply Division
 Utilities & Districts Section
 MC-153
 P.O. Box 13087
 Austin, TX 78711-3087

b. One large scale map showing the proposed service area boundaries being sold, transferred, or merged and, if available, the existing and proposed facilities. Color coding should be used to differentiate existing from proposed facilities. Facilities and service area boundaries should be shown with such exactness that they can be located on the ground. Applicant should use U.S.G.S. 7 1/2-minute series, subdivision plat, engineer planning map, or other large scale map.

OATH FOR SELLER OR FORMER SERVICE PROVIDER

STATE OF Texas

COUNTY OF Collin

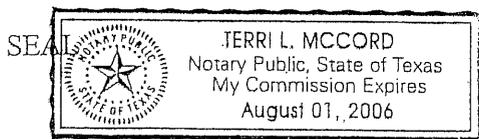
I, Jim Presley, being duly sworn, file this application for sale, lease, rental or merger or consolidation as _____ (indicate relationship to applicant) that is, owner, member of partnership, title as officer of corporation, or other authorized representative of applicant); that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I further state that I have provided to the purchaser or transferee a written disclosure statement about any contributed property as required under Section 13.301(f) and copies of any outstanding Orders of the Commission or Attorney General and have also complied with the notice requirements in Section 13.301(g) of the Water Code.

Jim Presley
AFFIANT
(Applicant's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the applicant or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State and County above-named, this 15th day of October, 2004.



Terri L. McCord
Notary Public

One copy of this page must be submitted for each utility involved in this transaction.

OATH FOR PURCHASER OR ACQUIRING ENTITY

STATE OF Texas

COUNTY OF Collin

I, George Purdy, being duly sworn, file this notice of intent to purchase, acquire, lease or rent, or merge or consolidate as City Manager of Ft. Worth, Texas (indicate relationship to applicant) that is, owner, member of partnership, title as officer of corporation, or other authorized representative of applicant); that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I am also authorized and do agree to be bound by and comply with any outstanding orders of the Commission or the Attorney General which have been issued to the system or facilities being acquired and recognize that I will be subject to administrative penalties or other enforcement actions if I do not comply.

George Purdy

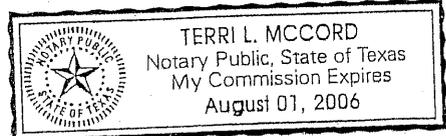
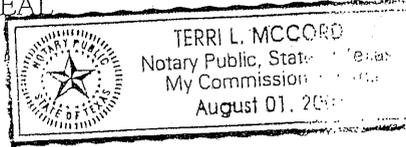
AFFIANT
(Applicant's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the applicant or its attorney, a properly verified Power of Attorney must be enclosed.

Applicant represents that all other parties to this transaction have been furnished copies of this completed application.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State and County above-named, this 15th day of September, 2004.

SEAL



Terri L. McCord

Notary Public

One copy of this page must be submitted for each utility involved in this transaction.

RM&R

RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.
ATTORNEYS AT LAW

TEXAS HERITAGE PLAZA · 102 WEST MORROW STREET, SUITE 103
GEORGETOWN, TEXAS 78626
PHONE (512) 930-1317 · FAX (512) 930-7742

Email: krussell@rmrlawfirm.com

July 14, 2005

Via hand delivery

Ms. Michelle Abrams
Texas Commission on Environmental Quality
Utilities & Districts Section
P.O. Box 13087, MC-153
Austin, Texas 78711-3087

RE: *Application of the City of Frisco for a Sales, Transfer or Merger of a Retail Public Utility, CCN No. 11772*

Dear Ms. Abrams,

In 2004, the City of Frisco ("City") filed an application, with exhibits, to amend its Water Certificate of Convenience and Necessity (CCN) No. 11772 by completing a Sales, Transfer, or Merger of a Retail Public Utility in Denton County. The above referenced application has been declared administratively complete.

The City and Terra Southwest, Inc ("Terra") have executed an agreement ("Agreement") that is compliant with Texas Water Code, Section 13.248. Because of the Agreement, the City no longer desires to proceed with the above-referenced proceeding. A copy of the Agreement is attached hereto as Exhibit A. The City instead, requests that the attached Agreement be deemed valid and enforceable under Texas Water Code § 13.248 and that the area addressed in the Agreement be transferred to the City's water CCN No. 11772. The City has included the filing fee of \$100.00 to be applied towards this 13.248 review. Based on this alternate transfer mechanism request, the City hereby withdraws its Sales, Transfer and Merger Application, form No. 10516.

Thank you for your attention to this matter.

Hand Delivery
Received

100.00 JUL 14 2005

Water Quality Application Team

Sincerely,

Kerry Russell by Faith Wright

Kerry E. Russell

**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 superseded 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.

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: Gay 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;

S 88°19'12" E, a distance of 255.26 feet to a ½ inch iron rod found for corner;

S 89°32'35" E, a distance of 132.98 feet to a ½ inch iron rod found for corner;

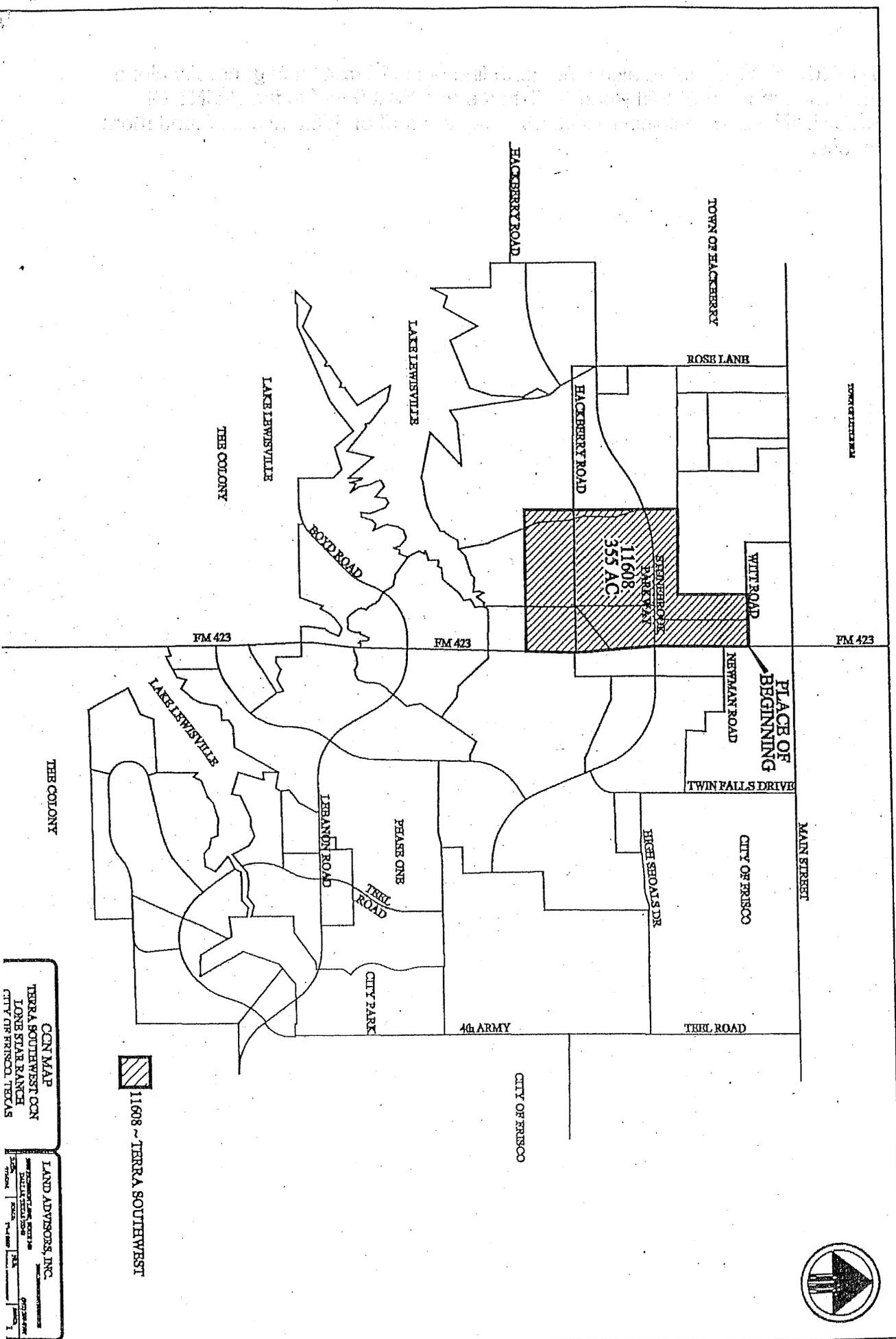
S 89°13'17" E, a distance of 329.21 feet to a ½ inch iron rod found for the northeast corner of said Tract IV, same being the most westerly northwest corner of aforesaid Tract I;

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.

11608 ~ TERRA SOUTHWEST
 355 AC
 11608
 355 AC

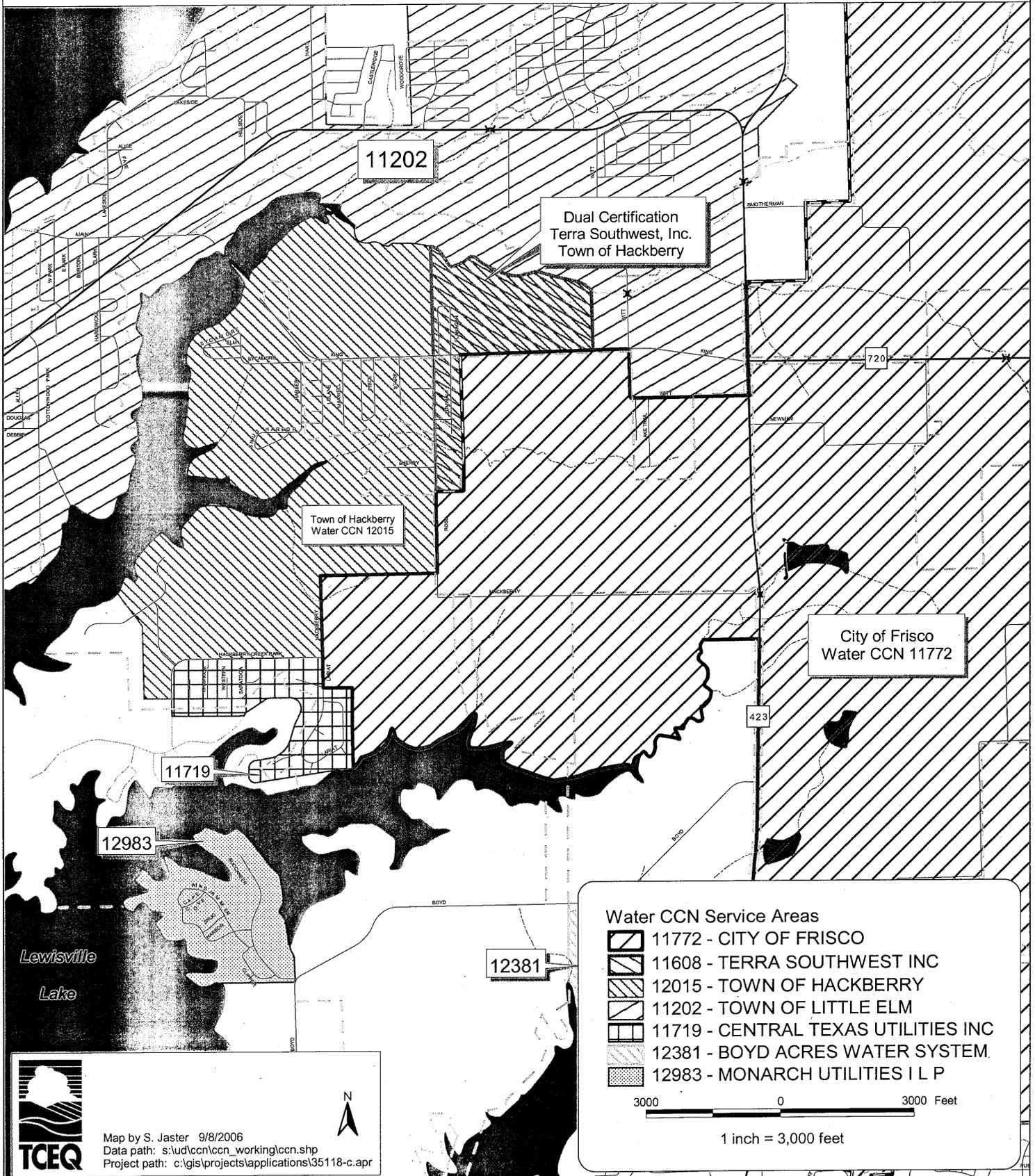


11608 ~ TERRA SOUTHWEST

CCN MAP
 TERRA SOUTHWEST CCN
 LONE STAR RANCH
 CITY OF ERISCO, TEXAS

LAND ADVISORS, INC.
 11608 ~ TERRA SOUTHWEST

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



Lewisville
 Lake



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



Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 21, 2007

For the City of Frisco:
Art R. Rodriguez
Russell & Rodriguez, LLP
102 West Morrow
Suite 103
Georgetown, Texas 78628

Terra Southwest, Inc.
Jim Presley, System Manager
P.O. Box 140
Alvord, Texas 76225-0140

Re: TCEQ Docket No. 2007-0275-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the City of Frisco and Terra Southwest, Inc.

Dear Sirs:

This letter is to inform you that the above referenced application has been set on the September 5, 2007 Agenda for consideration by the Texas Commission on Environmental Quality (TCEQ). Please see the attached notice. Also included are the Agenda back-up materials to be considered by the Commission.

Please feel free to call me at (512)239-1088, if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Shana L. Horton".

Shana L. Horton, Staff Attorney
Environmental Law Division

NOTICE OF AGENDA

TCEQ Docket No. 2007-0275-UCR.

APPLICATION: TCEQ Docket No. 2007-0275-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the City of Frisco ("Frisco" or "the City") and Terra Southwest, Inc. (Terra Southwest). The TCEQ will consider this application at:

1:00 p.m., Wednesday, September 5, 2007

Building E, Room 201s

12100 Park 35 Circle

Austin, Texas

TYPE OF REQUEST: The City of Frisco requests that the Commission issue an order approving an agreement designating service areas between the City of Frisco, water certificate of convenience and necessity (CCN) No. 11772, and Terra Southwest, Inc., water CCN No. 11608, in Denton County, Texas. Currently, Terra Southwest holds a CCN that includes the area that is the subject of the agreement. Frisco received a service request for water service in the area, and Terra Southwest does not have water lines in the area. Under the agreement, Terra Southwest will transfer the portion of its CCN that covers this area to Frisco. No facilities are proposed to be transferred. The Commissioners will consider whether to approve the agreement.

AUTHORITY: Texas Water Code Section 13.248; Title 30, Section 291.117 of the Texas Administrative Code.

INFORMATION: For information regarding the Agenda process, contact the TCEQ Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the TCEQ Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at this web site: www.tceq.state.tx.us.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD), at least one week prior to the hearing.

Issued August 21, 2007