

January 31, 2008

VIA HAND DELIVERY

Ms. LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, MC-105
Building F, 1st Floor
Austin, Texas 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 JAN 31 PM 4: 20
CHIEF CLERKS OFFICE

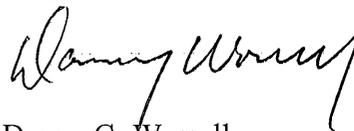
Re: Travis County District Court's "Order on Motion to Reconsider
Order to Remand to Agency to Consider Material New Evidence"
in the matter of Consideration of a Petition from Lerin Hills
Development Company LLC for the Creation of Lerin Hills
Municipal Utility District; TCEQ Docket No. 2006-0969-DIS

Dear Ms. Castañuela:

Enclosed for filing please find an original and eleven copies of Lerin Hills Municipal
Utility District's Response to Requestors' Initial Pleading on Remand in the above-referenced
matter. Please file-stamp and return to our messenger the enclosed additional copy.

Thank you for your assistance on this matter, and if you have any questions, please do not
hesitate to contact me.

Very truly yours,



Danny G. Worrell

Enclosures

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55150.1

cc: Service List

2008 JAN 31 PM 4: 21

CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2006-0969-DIS

In Re: Travis County District Court's §
"Order on Motion to Reconsider Order §
to Remand to Agency to Consider Material §
New Evidence" in the Matter of §
Consideration of a Petition from Lerin Hills §
Development Company, L.L.C. for the §
Creation of Lerin Hills Municipal Utility §
District §

BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

**LERIN HILLS MUNICIPAL UTILITY DISTRICT'S
RESPONSE TO REQUESTORS' INITIAL PLEADING ON REMAND**

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MUNICIPAL UTILITY DISTRICT

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BEFORE THE TEXAS CHIEF CLERKS OFFICE
COMMISSION ON
ENVIRONMENTAL QUALITY

**LERIN HILLS MUNICIPAL UTILITY DISTRICT'S
RESPONSE TO REQUESTORS' INITIAL PLEADING ON REMAND**

TO THE HONORABLE COMMISSIONERS:

Comes now Lerin Hills Municipal Utility District ("the District"), and files this Response to Requestors' Initial Pleading on Remand ("Requestors' Initial Pleading"), and in accordance with the General Counsel's letter of December 14, 2007, and the Travis County District Court's Order of December 4, 2007 ("the Order"), offers the following evidence and arguments demonstrating that none of the Requestors are affected persons on the basis of the evidence on remand relating to the District's alleged efforts to seek groundwater withdrawal authorizations or on any other legal basis.

I. INTRODUCTION

The District was created by the Commission's Order, filed with the Commission's Chief Clerk on November 22, 2006 ("the TCEQ Order"), finding that the District "is feasible, practicable, necessary and would be a benefit to the land to be included in the proposed District." See Attachment A, TCEQ Order (Nov. 22, 2006), p. 1.¹ The District was created to provide water, sewer, and drainage service to the proposed development within the District (hereinafter,

¹ The petition to create the District was made by Abel Godines on behalf of Lerin Hills, Ltd., a Texas limited partnership. Mr. Godines is President of Lerin Hills, Ltd. and Manager of Lerin Development Company, L.L.C., which is the general partner of Lerin Hills, Ltd. Together, they are referred to here as "Lerin Hills" or "the Developer."

"the Development"), a planned 866-acre development located near Boerne, Texas. Since its creation, the District has called, held and canvassed a confirmation, permanent directors, and bond elections and has held meetings of its Board of Directors as necessary to conduct the District's business. The District's next meeting is expected to be in February or March 2008, at which it will call its May 2008 election and consider approval of the transfer of the Developer's surface water supply contract with the Guadalupe-Blanco River Authority ("GBRA").

Since the District's creation by the Commission in November 2006, Requestors have taken every imaginable step to delay and thwart the District's development. Two of the three Requestors, Tapatio Springs Service Company ("Tapatio Springs") and Edgar Blanch, are competitors of Lerin Hills. Tapatio Springs admits that it is a competing service provider; Tapatio Springs is also affiliated with a competing nearby residential development. Blanch admits that he is a developer in direct competition with the District's Developer. The interest of these competitors in this municipal utility district ("MUD") creation proceeding is not to protect groundwater levels in the region. Instead, their goal is to halt a competing residential development. As Chairman White noted when the Commissioners first considered the petition to create the District, the Commission must be careful not to allow state regulations to be used as tools to unfairly disadvantage one competitor over another:

Part of my hesitancy, I'm very willing to say, has to do with issues really outside our jurisdiction that I don't want to indirectly--for the State to indirectly influence, and that-- You know, development is competitive. And that's great, as far as I'm concerned. And there are all--all manner of utilizing State requirements, totally unrelated to development and healthy private competition about that, to use that to influence that. And I want to, whenever possible, avoid the State influencing that circle.

Requestors' Initial Pleading, Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 22, lines 10-20.

II. PROCEDURAL BACKGROUND

The present remand proceeding arises out of a lawsuit filed by several dissatisfied hearing requestors against the Commission challenging the Commission's decision to deny them affected person status and to deny their hearing requests on the petition for creation of the District. In that lawsuit, plaintiffs Tapatio Springs Service Company, Lee Roy and Joan Hahnfeld, and Edgar Blanch (collectively referred to here as "Plaintiffs" or "Requestors") filed a motion with the Travis County District Court to remand the proceedings back to the Commission for the purpose of presenting additional alleged material evidence in accordance with the remand procedure set out in the Texas Administrative Procedure Act ("APA") at Government Code Sec. 2001.175(c). In the December 4, 2007, Order, the Court granted Requestors' motion and remanded the case to the Commission for the sole purpose of allowing "Plaintiffs to present additional evidence . . . with respect to the use of groundwater and Plaintiffs' status as 'affected persons.'" *See* Requestors' Initial Pleading, Attachment F, District Court Order (Dec. 4, 2007).

A. Prior Proceeding Before the Commission.

As noted above, the District was created by the Commission over the protests of Plaintiffs, all of whom requested a contested case hearing on its creation, each claiming to be "affected persons" under Commission rules. A Commission rule at 30 Tex. Admin. Code ("TAC") § 55.256 defines the term "affected person" and describes factors the Commission may use in determining if someone is an affected person:

(a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

....

(c) All relevant factors shall be considered, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256.

Commission Staff evaluated the claims of the hearing requestors, and both the Executive Director ("the ED") *and* the Office of Public Interest Counsel ("OPIC") concluded that none of the requestors was an affected person and recommended the denial of all hearing requests. The ED recommended denying all hearing requests, because the requestors "are not affected persons and because the hearing requests are not reasonably related to the factors established in Section 54.021 of the Texas Water Code."² See Attachment B, Executive Director's Response to Hearing

² Section 54.021 provides as follows:

- (a) If the commission finds that the petition conforms to the requirements of Section 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.
- (b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:
 - (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
 - (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
 - (3) whether or not the district and its system and subsequent development within the district will have an *unreasonable* effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

Tex. Water Code § 54.021 (emphasis added).

Request (Oct. 23, 2006), p. 4. The ED based his recommendation, in part, on the fact that none of the requests concerned property located within the proposed District. *See* Attachment B, Executive Director's Response to Hearing Request (Oct. 23, 2006), p. 5. Similarly, OPIC recommended denial of all hearing requests because: (1) the Requestors' concerns were not interests which are protected by law, (2) the Requestors did not reside in, own land in, or serve land within the boundaries of the proposed District, and (3) the Requestors' interests were common to members of the public and, therefore, not personal justiciable interests. *See* Attachment C, Office of Public Interest Counsel's Response to Hearing Requests (Oct. 23, 2006), pp. 9-10. Remarkably, in their hearing requests, none of the Requestors expressed any concerns regarding the District's potential use of groundwater and the effect it may have on their properties. *See* Requestors' Initial Pleading, Attachments B, C, and E, Requestors' Hearing Requests.

Commissioners White, Hubert, and Soward fully considered all timely hearing requests at an open meeting held on November 15, 2006. *See generally* Requestors' Initial Pleading, Attachment G, Transcript of TCEQ Meeting on November 15, 2006. Commission Staff stated that the Commission had never before granted affected person status to a person who did not own land within the boundaries of a proposed MUD. *See* Requestors' Initial Pleading, Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 10, lines 11-25, p. 11, lines 1-3. The Commissioners considered all of the required statutory factors listed in Subsection 54.021(b)(3) of the Water Code, including whether the District would have an unreasonable effect on groundwater level within the region, and voted to deny all hearing requests and order the District's creation.³ In response to the issuance of the TCEQ Order

³ At the meeting, the Executive Director's Staff informed the Commissioners that the source of water for the Development would be surface water obtained from the Guadalupe-Blanco River Authority ("GBRA"). *See*

creating the District, several of the original hearing requestors filed a motion for reconsideration with the Commission, which was overruled by operation of law, and then later appealed the matter to the District Court, where they filed the motion that requested this remand proceeding before the Commission.

III. LIMITED SCOPE OF REMAND

The authority for Requestors' motion filed with the District Court asking the Court to remand the case back to the Commission for the presentation of additional evidence is pursuant to the APA at Government Code § 2001.175(c).

Section 2001.175(c) states:

A party may apply to the court to present additional evidence. If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the state agency, the court may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may change its findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court.

Tex. Gov't Code, § 2001.175(c).

The remand procedure set out in § 2001.175(c) has a very specific purpose. It allows a court to send a case back to an administrative agency in the rare instance when new, material evidence comes to light, which, for good reasons, was not available to the parties in the original proceeding before the state agency. *Id.* The purpose of § 2001.175(c) is not to allow dissatisfied losing parties a second chance to reargue and rehash old arguments they have previously made to an agency based on evidence that they have previously presented.

Accordingly, the District Court's Order remanding the case back to the Commission was very narrowly drawn. The Order only allowed Requestors to present additional evidence to the

Requestors' Initial Pleading, Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 25, lines 13-23. Much as the Plaintiffs would like for you to believe otherwise, that is still the case. *See infra* Section V.B. GBRA Contract.

Commission with respect to "the use of groundwater and Plaintiffs' status as 'affected persons.'" *See* Requestors' Initial Pleading, Attachment F, District Court Order (Dec. 4, 2007). Requestors are not now entitled to completely reopen the question of whether they have standing as "affected persons" to protest the District's creation. Rather, their possible status as "affected persons" must be examined solely in the context of alleged new material evidence they allege demonstrates that the District is seeking authorization for groundwater supplies for the Development.

IV. RESPONSE TO REQUESTORS' ARGUMENTS THAT FALL OUTSIDE OF THE SCOPE OF THE REMAND

A. Overview.

Despite the limited scope of the remand ordered by the Court, Plaintiffs in their Initial Pleading, attempt to resurrect all of their prior arguments relating to whether they are affected persons, even those which were previously heard and rejected by the Commission. In addition to groundwater use issues, in their pleading, Requestors raise issues relating to notice, alternative service providers, water quality, storm water runoff, and wastewater discharge. *See* Requestors' Initial Pleading, pp. 2-3. Each of these issues was previously considered and rejected by the ED, OPIC, and the Commissioners as a basis for affected person status in the District's creation. *See generally* Attachment B, Executive Director's Response to Hearing Request (Oct. 23, 2006); Attachment C, Office of Public Interest Counsel's Response to Hearing Requests (Oct. 23, 2006); Requestors' Initial Pleading, Attachment G, Transcript of TCEQ Meeting on November 15, 2006. Further, Plaintiffs have no new evidence to present on any of these issues, in accordance with the procedure authorized by § 2001.175(c) of the APA. To raise these issues again in a remand proceeding specifically designated for new evidence relating to groundwater use almost

risers to an abuse of process. However, given that Plaintiffs raise these non-groundwater use issues again in this proceeding, the District is compelled to respond to them, once again, briefly.

B. Tapatio Springs' Out-of-Scope Arguments.

Tapatio Springs attacks the necessity of the District by asserting that it is "willing and able" to serve the proposed Development. Requestors' Initial Pleading, p. 2. In the prior proceeding before the Commission, the Commission rightly determined that that claim (which the District disputed) was not enough to give Tapatio Springs standing in a MUD creation application. *See* Attachment B, Executive Director's Response to Hearing Request (Oct. 23, 2006), pp. 5-6; Attachment C, Office of Public Interest Counsel's Response to Hearing Requests (Oct. 23, 2006), p. 10. There is no new evidence here, so Tapatio Spring's supposed ability to serve the proposed Development is not within the scope of the Court's remand.

As a matter of fact, however, and to set the record straight, before the Developer sought a MUD designation from TCEQ, the Developer asked Tapatio Springs to provide service to the proposed Development. *See* Attachment D, Affidavit of Abel Godines, ¶¶6-7. They refused. *Id.* Their refusal led the Developer to initiate discussions with GBRA regarding providing a water supply to the Development. Moreover, to secure water supplies from GBRA, the Developer was required to establish a MUD. *Id.*

Separate and apart from Tapatio Springs' earlier refusal to provide service to the Development, in its Initial Pleading, Tapatio Springs states that it serves its customers exclusively with groundwater and is "particularly apprehensive about the impact of the proposed MUD and the development projected to be occasioned by the proposed MUD on area groundwater." Requestors' Initial Pleading, p. 2. It is astonishing that on the one hand, Tapatio Springs serves its competing development with groundwater supplies, but on the other hand is "apprehensive" about the impact the Lerin Hills Development will have on area groundwater.

Obviously, effects on regional groundwater levels would be much greater if Tapatio Springs served the Lerin Hills Development, than if the District serves the Development with GBRA surface water as planned.

C. The Hahnfelds' Out-of-Scope Arguments.

The Hahnfelds also raise arguments that were previously presented to the Commission regarding alleged adverse impacts to their property from storm water runoff and sewer discharge. In addition, they allege that the potential for increased flows of runoff resulting from the Development could contaminate their property and groundwater. These same arguments were before the Commission in the prior proceeding and were rejected as a basis for granting the Hahnfelds affected person status. The Hahnfelds did not present any new evidence to the District Court nor have they presented any new evidence to the Commission regarding alleged contamination of their groundwater that would justify a remand under the conditions set out in APA 2001.175(c). In regard to the Hahnfelds' concerns related to wastewater discharges, the Commission decided that those issues would be more appropriately raised in connection with the processing of a wastewater discharge permit for which Lerin Hills, Ltd. had applied.⁴ The application for the wastewater discharge permit has been referred to SOAH for hearing. Additionally, the Hahnfelds' concern regarding groundwater contamination was not raised in a timely manner, because it was not presented in their request for hearing but was first raised in their response to the Commission's denial of their request for hearing. *See* Requestors' Initial

⁴ The Executive Director concluded that "concerns about the sewer or wastewater discharge . . . would be better raised in the processing of the water quality permit application filed with the TCEQ by Lerin Hills, Ltd. on May 3, 2006." *See* Attachment B, Executive Director's Response to Hearing Request (Oct. 23, 2006), p.6. The Office of Public Interest Counsel reached a similar conclusion. *See* Attachment C, Office of Public Interest Counsel's Response to Hearing Requests (Oct. 23, 2006), p. 9. At the November 15, 2006, open meeting, the Commissioners agreed that concerns regarding wastewater discharge would be more appropriately dealt with in connection with an application for a wastewater discharge permit than in a MUD creation proceeding. Commissioner Hubert stated, "I think that the—perhaps the appropriate forum for those [issues] is in a—in a waste water application or some other permitting process, rather than in the creation of a MUD." *See* Requestors' Attachment G, Transcript of TCEQ Meeting on November 15, 2006, p. 28, lines 3-10.

Pleading, Attachment C, Hahnfelds' Request for Hearing (May 26, 2006); Requestors' Initial Pleading, Attachment D, Hahnfelds' Response to Denial of their Request for Hearing (Nov. 5, 2006). The Hahnfelds' groundwater contamination concern was not timely raised and is not within the scope of the remand.

D. Blanch's Out-of-Scope Arguments.

Blanch alleges that the notice for the petition to create the District was defective and states that he is an affected person because the District would be adjacent to his property. These arguments were rejected by the Commission when Blanch raised them in the prior proceeding. The ED stated that the District's notice was adequate under the law, as did OPIC. *See* Attachment B, Executive Director's Response to Hearing Request (Oct. 23, 2006), p. 5; Attachment C, Office of Public Interest Counsel's Response to Hearing Requests (Oct. 23, 2006), p. 8. No new evidence on notice was presented to the Court, or in the Requestors' Initial Pleading for that matter; notice issues have already been decided and are outside the scope of the Court's remand.

E. General Claims by Requestors' Initial Pleading.

In their pleading to the Commission, Requestors state that in the District Court they demonstrated that material evidence had arisen since November 2006 indicating that the District would likely, in fact, have an impact on regional groundwater levels and inferentially, water quality. *See* Requestors' Initial Pleading, p. 3. Requestors also assert that the issue of whether the District or subsequent development within the District will affect the recharge capability of the groundwater is within the scope of the remand order. *See* Requestors' Initial Pleading, p. 5. Plaintiffs overstate their case again. The Court's remand Order made no judgment as to whether the proposed District would have an impact on regional groundwater levels, on water quality, or

on recharge capability.⁵ *See* Requestors' Initial Pleading, Attachment F, District Court Order (Dec. 4, 2007). In addition, Requestors have presented no water quality or recharge capability evidence to the Court, and none was authorized to be presented by the Court's remand Order. *See* Requestors' Initial Pleading, Attachment F, District Court Order (Dec. 4, 2007).

In summary, in accordance with APA § 2001.175(c), the Court's Order allows only for the presentation of additional material evidence which relates to "groundwater use." *See* Requestors' Initial Pleading, Attachment F, District Court Order (Dec. 4, 2007). To be considered affected persons, Requestors are required to demonstrate that the District's use of groundwater will harm or affect their legal interests differently than those of the general population. Requestors have failed in this effort.

V. RESPONSE TO PLAINTIFFS' GROUNDWATER ARGUMENTS WITHIN THE SCOPE OF THE REMAND

Plaintiffs have complained to the Court and now to the Commission that the District and/or the Developer plans on using groundwater wells for the Lerin Hills Development. They try to imply that this was the intent all along. More to the point, they claim that their new evidence proves it. *See* Requestors' Initial Pleading at pp. 7-8. Nothing could be further from the truth, and Plaintiffs know it.

Plaintiffs have seriously mischaracterized the evidence they have presented both to the Commission and the Court. The Plaintiffs have conveniently not revealed to the Court or the Commission key evidence that makes it absolutely clear that neither the Developer nor the District is seeking groundwater withdrawal permits for the Development. Simply put, the

⁵ Recharge capability of the groundwater source was addressed in the ED Staff's Memorandum which was incorporated into the TCEQ Order creating the District. Staff stated that the "proposed District is not located in a recognized contributing or recharge zone of any major aquifer. Therefore, the proposed District will have minimal effect on groundwater recharge." *See* Requestors' Initial Pleading, Attachment A, Executive Director Staff's Memorandum, p. 9.

circumstances have not changed since the District's creation, and Plaintiffs' evidence does not show that the District intends to seek groundwater well permits to secure water for the Development. This is yet another attempt by Plaintiffs to delay a competing development.

A. The Development Has Sufficient Water from GBRA.

Before addressing the evidence on which Plaintiffs have sought remand, the Commission should consider another important aspect of this situation that Plaintiffs fail to mention. Plaintiffs cite to the ED Staff's Memorandum, dated August 28, 2006, for the proposition that the Development, as originally proposed, would leave the District with a possible water shortfall, given its contract with GBRA for 750 acre-feet/year. *See* Requestors' Initial Pleading, pp. 1-2, and Attachment A. Based on this Staff evaluation, Plaintiffs have previously argued and implied in their Initial Pleading that the District is seeking groundwater to cover this perceived "shortfall." *Id.* Again, Plaintiffs are wrong.

The TCEQ Order creating the District incorporated by reference (as Exhibit A) the August 28, 2006, Memorandum by the ED's Staff. *See* Attachment A, TCEQ Order (Nov. 20, 2006). The August 28, 2006, Staff Memorandum recommends the creation of the proposed MUD, "provided the proposed District does the following: (a) Scale back its development to be consistent with the availability of water." Requestors' Initial Pleading, p. 4 and Attachment A. Clearly, the Commission created the District with the understanding that the Development may have to be scaled back (depending, as the Staff's Memorandum states, on actual usage) to meet the amount of water provided for in the GBRA surface water contract. As the economic and financial feasibility of the District's creation (fully examined and considered by the ED in its recommendation for creating the District) was only based on 1,475 connections, the water capacity currently secured from GBRA is adequate to supply the entire Development currently proposed within the boundary of the District. *See* Requestors' Initial Pleading, Attachment A,

p. 5. Both the District Board of Directors and the Developer are aware of and agree to the conditions of the District's creation and have no plans to violate the terms of the Commission Order creating the District. *See* Attachment D, Affidavit of Abel Godines; Attachment E, Affidavit of Edward Suarez. The District intends to fully comply with the Commission's Order. *See Id.*

B. GBRA Contract.

The District is currently in the final stages of contract negotiations with GBRA to transfer the existing treated surface water supply agreement from the Developer to the District. Both the Developer's existing contract with GBRA and the proposed District contract contain an exclusivity provision that specifies, in effect, that GBRA will be the exclusive provider of potable water for development in the District. *See* Attachment E, Affidavit of Edward Suarez, at ¶5; Attachment D, Affidavit of Abel Godines, ¶¶11 and 12, with GBRA Contracts attached. In addition, the District's proposed contract with GBRA is a "take or pay" contract. *Id.*

Not only would the GBRA Contract specifically restrict the use of other sources of potable water in the Development, it would limit conjunctive use of surface water with groundwater, in direct contradiction of allegations in the Plaintiffs' Initial Pleading. *See* Requestors' Initial Pleading at p. 9. As a further deterrent against using any other sources of water supply, the "take or pay" provision would require the District to pay for water, regardless of whether the District uses any water or not from GBRA. *See* Attachment D, Affidavit of Abel Godines with attached GBRA Contracts. It would make no financial sense for the District to try to obtain water from any other source than GBRA, when the District is obligated to pay the same amount, regardless of whether it takes less than its contract allocation. Given the terms of the proposed GBRA Contract, the District has no need for and no incentive to try to obtain groundwater withdrawal permits for the Development.

C. Remand Evidence.

1. Kendall County Restrictions.

On remand, the Plaintiffs essentially have two evidentiary bases to support their incorrect claim that the District and/or Developer has intent to seek groundwater withdrawal authorizations: (1) the Developer's request for relief from a Kendall County plat note and density requirements, and (2) a District engineer's report that recommended that the District pursue groundwater withdrawal permits. This was the evidence considered by the Court and on which the Court issued the Order for Remand to the Commission. Contrary to Plaintiffs' allegations, neither of these evidentiary bases, when viewed in their full and accurate context, support Plaintiffs' claims.

The first evidentiary basis involved the Developer's appearance before the Kendall County Commissioners Court on March 26, 2007, on a written Request for Relief, or variance, for a twofold purpose. *See* Attachment D, Affidavit of Abel Godines, ¶¶14-16, with attached written Request for Relief.

First, as the written Request for Relief (attached to A. Godines' Affidavit) attests, the Developer sought relief from Exhibit A of the 1997 Kendall County Development Guidelines and Regulations rulebook. *Id.* with attached Exhibit A. Exhibit A specifies that it is only applicable if the water supply for a proposed residential subdivision is based on groundwater supply. *Id.* It requires that a groundwater availability report ("GAR") be prepared and submitted to the Kendall County Commissioners Court and the Cow Creek Groundwater Conservation District. The GAR is required to be prepared by a certified professional engineer or professional geoscientist licensed in the State of Texas. *Id.* Exhibit A also specifies certain development density requirements based on groundwater availability. *Id.* In addition, Water Control and Improvement Districts ("WCIDs") are not subject to Exhibit A under the 1997 Kendall County

Development Guidelines and Regulations. *Id.* Because both MUDs and WCIDs are created and operate pursuant to Chapter 49 of the Texas Water Code and because the District will operate much like a WCID and will be based on surface water supplies, Lerin Hills sought confirmation that Exhibit A did not apply. *Id.* In addition, since the proposed development was not based on groundwater supplies, the Developer also sought confirmation that it was not required to prepare a GAR. *Id.*

The second reason for seeking relief from the Kendall County Commissioners Court on March 26, 2007, was to allow use of an existing groundwater well that Developer owns in order to use it for construction purposes related to building roads or infrastructure for development, but not for residents to use as their water supply. *Id.* In this case, the Developer was seeking relief from a plat note restriction (attached to A. Godines' Affidavit) that is so broad that it would not allow use of any Kendall County groundwater on the platted property. *See id.*

The Developer never had any intent to use groundwater as a source of potable water within the Development (which would clearly be a violation of the proposed GBRA Contract), just to use the existing well on the site of the Development for these limited non-potable water purposes. *Id.*

Despite the Developer's request to the Kendall County Commissioners Court, the Commissioners denied relief from the plat note and Exhibit A. *See Requestors' Initial Pleading at Attachment H, p. 25.* That being the case, the platted property retains the note prohibiting use of Kendall County groundwater. *See Attachment D, Affidavit of Abel Godines, ¶16, attached Plat Note.*

Since the prohibition remains on the platted property, the Developer would be barred from using groundwater within the platted property. The Developer intends to abide by the restrictions of any final plat note.⁶ Attachment D, Affidavit of Abel Godines, ¶¶16, 18.

Contrary to Plaintiffs' assertions, the plat note restriction and the record of the proceedings of the Kendall County Commissioners Court on March 26, 2007, are evidence showing that the Developer and the MUD are restricted from using groundwater on the platted property. Moreover, the Developer's efforts in seeking a variance is reasonable, consistent with the GBRA water supply contract, and does not evidence intent by either the Developer or the District to seek a groundwater withdrawal permit to provide groundwater supplies for the Development, in contravention of representations to the TCEQ or the GBRA Contract. *See* Requestors' Initial Pleading at p. 8 and Attachment J.

2. District Board Meeting.

Plaintiffs' only other substantive evidentiary basis for their position is the transcript of the March 28, 2007, meeting of the Board of Directors of the District. *See* Requestors' Initial Pleading at p. 8 and Attachment J. At the District Board meeting, the agenda included discussion of an engineer's report which recommended that the District apply for a groundwater withdrawal permit from the Cow Creek Groundwater Conservation District in order to provide a backup, emergency water supply to the subdivision and provide for conjunctive use of groundwater that would allow a lower overall operating cost to residents. *See* Attachment F, Affidavit of Teague Harris, ¶¶4-9. Neither the District Board, nor the Developer, directed the engineer to examine and make recommendations on the use of groundwater in the District. *Id.*

⁶ A response to open records request from the Cow Creek Groundwater Conservation District, which regulates water well permitting in the area, dated January 11, 2008, shows that the District has never made any application for the registration of existing wells, the drilling of new wells, or for an operating permit. Attachment G, Letter from Cow Creek Conservation District (Jan. 11, 2008).

The engineer, of his own initiative, made those recommendations without knowledge of the terms of the GBRA Contract's take or pay or exclusivity provisions. *Id.* The Board rejected the engineer's report, took no action on the engineer's recommendations, and returned the engineer's report back to him. Attachment D, Affidavit of Abel Godines, ¶17; Attachment E, Affidavit of Edward Suarez, ¶7; Attachment F, Affidavit of Teague Harris, ¶¶5-9. The engineer has since stated that he withdraws his recommendations concerning groundwater for conjunctive and backup use, as they could put the proposed GBRA Contract in jeopardy. Attachment F, Affidavit of Teague Harris, ¶7. Moreover, the District has not applied for a groundwater permit, as is evidenced by the letter from the Cow Creek Groundwater Conservation District. Attachment G, Cow Creek Letter. In fact, neither the Developer, nor the District, has current plans to seek groundwater withdrawal permits for the Development. *See* Attachment D, Affidavit of Abel Godines, ¶18; Attachment F, Affidavit of Teague Harris, ¶¶7-10.

D. Cow Creek Groundwater Conservation District.

Although neither the District nor the Developer seeks groundwater withdrawal permits for the Development, even if they did, they would still have to seek such authorization from the Cow Creek Groundwater Conservation District ("Cow Creek"). *See* Attachment H, Rules of the Cow Creek Groundwater Conservation District. Cow Creek has the sole authority to issue such permits and is charged to "provide for the conservation, preservation, protection, and recharge of groundwater and aquifers" within the District. *See id.* at Rule 1.2. As evidenced by Cow Creek's amicus brief in this case, even if the Developer or the District sought a groundwater well, Cow Creek would not likely be amenable to issuing such a permit.⁷

⁷ It appears clear in reviewing Cow Creek's amicus brief, that it has assumed the veracity of the representations in Requestors' Initial Pleading and Requestors' characterization of the evidence on remand. Such assumptions are misplaced.

Moreover, even if, hypothetically, Cow Creek were to issue either the Developer or the District a groundwater well permit, Cow Creek is charged with assuring that the effects on regional groundwater levels and other groundwater users were limited. *See* Attachment H, Rules of the Cow Creek Groundwater Conservation District.

For example, Cow Creek Rule 3.3(C) lists the factors Cow Creek considers when deciding whether to issue an operating permit for a new well, including whether the proposed well "unreasonably affect[s] existing groundwater and surface water resources or existing permit holders." *See id.* at Rule 3.3(C). Further, Cow Creek's Rules provide for enforcement proceedings against anyone who violates a Cow Creek rule, order or permit. *See id.* at Rule 7. Furthermore, not only do the Cow Creek Rules protect against unreasonable water use, they also provide an opportunity for persons affected by permit applications to request contested case hearings. *See id.* at Rules 8.4 and 8.5. Cow Creek's Rules allow a "person who (a) has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority, that is not merely an interest common to members of the public; and (b) is affected by the Board's action on the Application" to make a request for a contested case hearing on a well permit application. *See id.* at Rule 8.4(I). Requestors have tried to argue that the District's creation proceeding before the Commission is the only venue they have to raise their groundwater use concerns. Clearly, the Rules of the Cow Creek Groundwater Conservation District provides them another, more appropriate, opportunity to voice their concerns related to groundwater use, assuming, hypothetically, that the District or the Developer ever decide to apply for a groundwater permit.

Given Cow Creek's conservation charge, permitting policies, and contested case hearing procedures, it would be very difficult for Plaintiffs to show that harm to their groundwater levels

would result from the mere act of the Commission's creation of the District. In the case at hand, although neither the Developer nor the District seek authorization for groundwater wells, even if they did, potential harm to Plaintiffs' groundwater interests are too speculative and remote to confer affected person status to any of them in this MUD creation proceeding, especially given Cow Creek's authority over the issuance of groundwater permits in the District.

VI. CONCLUSION

Plaintiffs have failed to provide any credible evidence showing that the District has any intent to seek groundwater withdrawal permits. The District has provided evidence showing how Plaintiffs, two of which are direct competitors of the District and the Developer, have mischaracterized the evidence on remand both before the Court and in their pleading before the Commission. Plaintiffs' mischaracterization of the evidence is not motivated by a true concern for effects on groundwater levels, but by the desire to thwart a competing development. The District has no current plans for seeking groundwater withdrawal authorizations and could jeopardize the proposed GBRA Contract if it did. Furthermore, the District has shown that it has an adequate surface water supply for the scope of its Development, and the Developer has pledged to abide by the conditions of the Commission Order creating the District. In addition, Plaintiffs have shown no particularized potential harm to their interests by the MUD creation petition in this case that would confer upon them affected person status. The rules of the Cow Creek Groundwater Conservation District are in place to provide protection from harm against any future use of groundwater within the District and the area and provides the proper procedural forum and mechanism for disputes regarding these issues.⁸

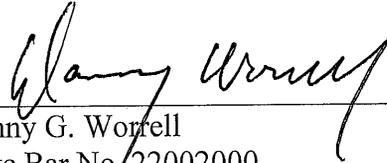
⁸ This situation is no different from the hundreds of MUDs created by the Commission in the Houston area, which must comply with the rules of the Harris-Galveston Coastal Subsidence District in the use of groundwater versus surface water.

The Commission has no precedent for allowing affected person status to be granted to someone who does not own land within the boundaries of a proposed MUD. There is no reason for the Commission to break with that precedent in this case. Accordingly, the Commission should not disturb its order of November 22, 2006, creating the District.

VII. PRAYER

For all of the foregoing reasons, the District respectfully requests that you inform the Court that you affirm the Commission's Order of November 22, 2006, creating the District and notify the Judge that the evidence on remand does not support a determination that the Plaintiffs are affected persons. The District also prays for any and all other relief to which it may be justly entitled.

Respectfully submitted,



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State Bar No. 20928000
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ATTORNEYS FOR LERIN HILLS
MUNICIPAL UTILITY DISTRICT

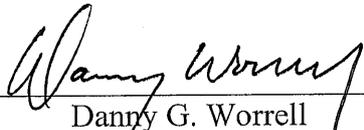
CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2008, a copy of the foregoing document was served on all parties of record in this case via hand delivery.

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David Frederick
Marisa Perales
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Danny G. Worrell

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CHIEF CLERKS OFFICE
2008 JAN 31 PM 4: 21
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

ATTACHMENT A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



COUNTY OF TRAVIS
I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on

LaDonna Castanuela NOV 22 2006

LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality

**AN ORDER GRANTING THE PETITION FOR CREATION OF
LERIN HILLS MUNICIPAL UTILITY DISTRICT OF KENDALL COUNTY AND
APPOINTING TEMPORARY DIRECTORS**

A petition by J. Abel Godines, Manager, (hereafter "Petitioner") was presented to the Executive Director of the Texas Commission on Environmental Quality (hereafter "Commission") for approval of the creation of Lerin Hills Municipal Utility District of Kendall County (hereafter "District") pursuant to Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE, Chapters 49 and 54.

The Commission, after having considered the petition, application material, and Memorandum from the Executive Director's staff dated August 28, 2006, along with Addendum No. 1 dated October 27, 2006, regarding the petition, copies of which are attached as Exhibit "A" and "B", finds that the petition for creation should be approved. The creation of the proposed District as set out in the application is feasible, practicable, necessary and would be a benefit to the land to be included in the proposed District.

All statutory and regulatory requirements for creation of Lerin Hills Municipal Utility District of Kendall County have been fulfilled in accordance with TEX. WATER CODE § 54.021 and 30 TAC §§ 293.11-293.13.

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

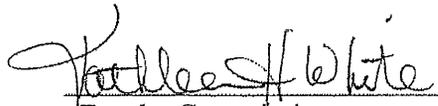
The petition for the creation of Lerin Hills Municipal Utility District of Kendall County is hereby granted.

1. The District is created under the terms and conditions of Article XVI, Section 59 of the TEXAS CONSTITUTION and TEX. WATER CODE, Chapter 54.
2. The District shall have all of the rights, powers, privileges, authority, and functions conferred and shall be subject to all duties imposed by the Texas Commission on Environmental Quality and the general laws of the State of Texas relating to municipal utility districts.
3. The District shall be composed of the area situated wholly within Kendall County, Texas, described by metes and bounds in Exhibit "C", attached hereto and incorporated herein for all purposes.
4. The memorandum from the Executive Director's staff dated August 28, 2006, (hereafter "Memorandum") and Addendum No. 1 dated October 27, 2006, are hereby attached as Exhibit "A" and "B", and incorporated as part of this order.
5. The temporary directors listed in Recommendation No. 3 of the Memorandum shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oaths of office. All such bonds shall be approved by the Board of Directors of the

District, and each bond and oath shall be filed with the District and retained in its records.

6. This Order shall in no event be construed as an approval of any proposed agreement or of any particular item in any document provided in support of the petition for creation, nor as a commitment or requirement of the Commission in the future to approve or disapprove any particular item or agreement in future applications submitted by the District for Commission consideration.
7. The Chief Clerk of the Commission shall forward a copy of this Order to all affected persons.
8. 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: NOV 20 2006



For the Commission

ATTACHMENT B

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 23, 2006

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

Re: Lerin Hills MUD
Docket No. 2006-0969-DIS
Executive Director's Response to Hearing Requests

Dear Ms. Castañuela:

I am enclosing for filing with the Texas Commission on Environmental Quality (Commission) an original and 11 copies of the "*Executive Director's Response to Hearing Request*" regarding Lerin Hills MUD.

Please file stamp these documents and return one to Paul Tough, Attorney, Environmental Law Division, MC 173. If you have any questions, please do not hesitate to contact me at (512) 239-6996.

Sincerely,

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

Paul Tough
Staff Attorney
Environmental Law Division

TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY
OCT 23 2006
CHIEF CLERK'S OFFICE

TCEQ DOCKET NUMBER 2006-0969-DIS

APPLICATION FOR THE CREATION OF LERIN HILL MUNICIPAL DISTRICT	§ § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") files this Response to Hearing Request on the application filed by J. Abel Godines, manager of Lerin Development Company, LLC, a general partner of Lerin Hills, LTD., ("Petitioner") with the TCEQ for the creation of Lerin Hills Municipal Utility District ("District"). A copy of the application and the Executive Director's technical summary have been filed separately with the Office of the Chief Clerk for Commission consideration.

The proposed District contains 866.53 acres of land and is located approximately 4 miles west southwest of downtown Boerne, Texas, and approximately 31 miles northwest of the San Antonio Central Business District, in Kendall County, Texas. Access to the proposed District is provided by State Highway 46, on the south side, and Johns Road, on the north side. The application asserts that the proposed District is not within the corporate limits or the extraterritorial jurisdiction of any city, town, or village. The application asserts that the general nature of the District's work will include the provision of water, wastewater, and drainage services within the District's boundaries.

II. PROCEDURAL HISTORY

The Petitioner filed an application for the creation of the District on February 16, 2006, which was declared administratively complete on February 24, 2006. The Petitioner published the Notice of District Petition in the *Comfort News* on April 27, 2006 and May 4, 2006. The period to request a contested case hearing ended June 5, 2006. The Office of Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing requests on October 11, 2006.

III. THE CREATION OF MUNICIPAL UTILITY DISTRICTS

The District is proposed to be created and organized as a Municipal Utility District ("MUD") according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code. A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the waters of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

TEX. WATER CODE § 54.012.

MUDS have been created mainly to develop and provide water service, wastewater service, and storm water drainage to developing areas.

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district. TEX. WATER CODE § 54.021(a). The Commission may use the following factors in order to determine if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

TEX. WATER CODE § 54.021(b).

TCEQ's regulations incorporate the procedures established by the Texas Water Code. Title 30 of the Texas Administrative Code, Section 293.13, allows the Commission to grant a district creation application and to issue an order including a finding that the project meets applicable statutory requirements. *See* 30 TEX. ADMIN. CODE § 293.13(b)(1). The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must

redefine the boundaries of the proposed district according to its findings. *See* TEX. WATER CODE § 54.021(c); 30 TEX. ADMIN. CODE § 293.13(b)(2).

IV. OUTLINE OF THE EVALUATION PROCESS FOR HEARING REQUESTS

In the past, the TCEQ has received few protests or hearing requests regarding the majority of the MUD creation applications filed with the agency. The Commission may act on a MUD creation application if no public hearing is requested within thirty days of the final publication of notice that the petitioner was required to publish. 30 TEX. ADMIN. CODE § 293.12(c).

The Executive Director recommends that the Commission evaluate the hearing requests on this application in accordance with Title 30, Chapter 55, Subchapter G of the Texas Administrative Code. The Commission, the Executive Director, the applicant or affected persons may request a contested case hearing on this application. 30 TEX. ADMIN. CODE § 55.251(a). The Commission must evaluate the hearing requests and may take one of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings ("SOAH") for a hearing; or
- (4) refer the hearing requests to SOAH for a hearing on whether the hearing requests meet the rule requirements.

30 TEX. ADMIN. CODE § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition. 30 TEX. ADMIN. CODE § 55.251(b) and (d). These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

30 TEX. ADMIN. CODE § 55.251(c).

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public. 30 TEX. ADMIN. CODE § 55.256(a). The regulations give the Commission flexibility to determine affected person status by considering any relevant factor; including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

V. THE HEARING REQUESTS

1. TCEQ received hearing requests on the application for the creation of the proposed District from the following individuals:

Cow Creek Groundwater Conservation District*, Tapatio Springs Service Company, RLC Designs, Inc., William Wood, Lee Roy and Joan Hahnfeld, and Edgar W. Blanch.

2. TCEQ received hearing requests that have since been withdrawn from the following individual:

Kendall County Commissioners Court

The requester marked with a ("*") filed a letter with the Office of the Chief Clerk but the Executive Director will argue that the letter did not actually request a contested case hearing.

VI. ANALYSIS OF THE HEARING REQUESTS

1. **The Executive Director recommends that the Commission deny all the hearing requests because the requesters are not affected persons and because the hearing requests are not reasonably related to the factors established in Section 54.021 of the Texas Water Code.**

William Wood, RLC Designs, Inc., and Lee Roy and Joan Hahnfeld were concerned about the effects of storm water runoff and sewer discharge on their properties. Edgar W.

Blanch is also concerned about the effect of sewer discharge on his property. William Wood is concerned about any topographic changes that would be necessary to accommodate the proposed lot density and the District's effect on property values. William Wood believes the District plan is based on impossible economics and an unachievable land plan. RLC Designs, Inc. is concerned about its ability to receive water or sewer service from the District and the availability of other service providers besides the District. RLC Designs, Inc., Edgar Blanch, and Tapatio Springs Service Company ("Tapatio") argue that newspaper publication notice of the creation application was defective and that the temporary directors obtained land in the District through illegal or sham transfers.

None of the hearing requesters own land within the proposed District. See Attachment A for the locations of the hearing requester's properties. The District is not required to serve property owners outside the proposed District boundaries. The Petitioner published newspaper notice in the *Comfort News* on April 27, 2006 and May 4, 2006. The Petitioner is required to publish notice of the application once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located. TEX. WATER CODE § 49.011(c). The Petitioner submitted a signed affidavit from the Office Manager of the *Comfort News* that states that the newspaper is regularly published and circulated in Kendall County. The requesters do not show how the means by which the temporary directors obtained land in the District affects their interests. Therefore, William Wood, RLC Designs, Inc., Lee Roy and Joan Hahnfeld, and Edgar W. Blanch, have not demonstrated an individual justiciable interest regarding the application. Because these requesters fail to establish that they are affected persons with individual and unique interests to the application and because the requests do not concern property located within the proposed District, the Executive Director recommends denying their hearing requests.

Tapatio raises more concerns than the other hearing requesters but fails to establish that it is an affected person with individual and unique interests to the application. Tapatio states that it is ready, willing, and able to serve the customers to be located in the proposed District and questions the need of the District. Tapatio is also concerned about the possibility that it will be required to provide an interconnect or assume operation of the District in the event the District's plans become unfeasible and impracticable. Tapatio argues that the Petitioner made false statements with regard to a prior ownership interest in Tapatio and requesting service from Tapatio. Tapatio challenges the adequacy of the District's water supply, the costs associated with peak demands, the wastewater disposal plan, the feasibility of building a wastewater treatment plant on land subject to an electric line easement, the proposed wastewater discharge route, the ability to convert the use of a lake, and not including all the land on the land use map within the proposed District.

Tapatio holds a water certificate of convenience and necessity ("CCN") (CCN No. 12122) and a sewer CCN (CCN No. 20698). However, the boundaries of the proposed District do not include or overlap any land within Tapatio's CCNs. Therefore, Tapatio has failed to establish that it is an affected person with individual and unique interests to the application and because the request does not concern property located within the proposed District, the Executive Director recommends denying its hearing request.

The requestors concerns about the sewer or wastewater discharge and the location of the wastewater treatment plant would be better raised in the processing of the water quality permit application filed with the TCEQ by Lerin Hills, Ltd. on May 3, 2006. A public meeting on that water quality permit application (No. WQ0014712001) will be held on October 24, 2006.

2. **The Executive Director recommends that the Commission deny the Cow Creek Groundwater Conservation District's request because it does not request a contested case hearing or identify a personal justiciable interest.**

The Cow Creek Groundwater Conservation District ("CCGCD") filed a letter with the Office of the Chief Clerk which states that the CCGCD approved a motion "supporting the Kendall County Commissioners Court's position requesting a contested case hearing to receive more information in order to make a final decision concerning the proposed Lerin Hills MUD application." Title 30 of the Texas Administrative Code, Section 55.251(c), requires that a hearing request substantially comply with certain specific requirements. One of those requirements is that the requestor actually request a contested case hearing. CCGCD's letter merely expresses its support for the Kendall County Commissioners Court's decision to request a contested case hearing. CCGCD did not request a contested case hearing. Furthermore, CCGCD did not identify any personal justiciable interest affected by the application and only identified the goals of CCGCD. The Executive Director recommends that the Commission deny CCGCD's request because it does not meet the requirements in Title 30 of the Texas Administrative Code, Section 55.251(c).

VII. DURATION FOR THE CONTESTED CASE HEARING

If the Commission grants any of the hearing requests and refers the matter to SOAH for a contested case hearing, the Executive Director recommends that the projected duration for any contested case hearing between preliminary hearing on the matter and presentation of a proposal for decision before the Commission, should be six (6) months.

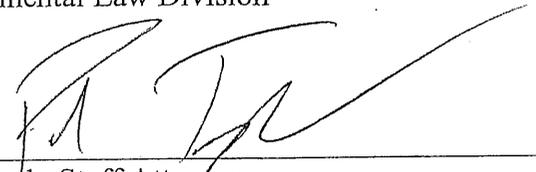
VIII. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the Commission deny the requests for a contested case hearing filed by the Cow Creek Conservation District, Tapatio Springs Service Company, RLC Designs, Inc., William Wood, Edgar W. Blanch, and Lee Roy and Joan Hahnfeld.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY
Glenn Shankle, Executive Director

Robert Martínez, Director
Environmental Law Division

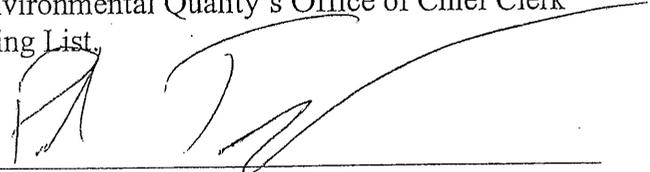
By 

Paul Tough, Staff Attorney
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P.O. Box 13087, MC-173
Austin, Texas 78711-3087
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(512) 239-0606 (Fax)

ATTORNEYS FOR THE EXECUTIVE
DIRECTOR

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October, 2006, the original of "Executive Director's Response to Hearing Request" relating to the application for creation of Lerin Hills MUD was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk and mailed to the individuals on the attached Mailing List.


Paul Tough, Staff Attorney
Environmental Law Division
Texas State Bar No. 24051440

MAILING LIST
LERIN HILLS MUNICIPAL UTILITY DISTRICT
DOCKET NO. 2006-0969-DIS; PERMIT NO. 02162006-D01

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FOR THE CHIEF CLERK:

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Austin, Texas 78711-3087
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FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Office of Public Assistance, MC-222
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Austin, Texas 78711-3087
Tel: 512 239-4010
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Patrick W. Lindner
Davidson & Troilo, P.C.
7550 W. IH-10, Ste. 800
San Antonio, Texas 78229-5803

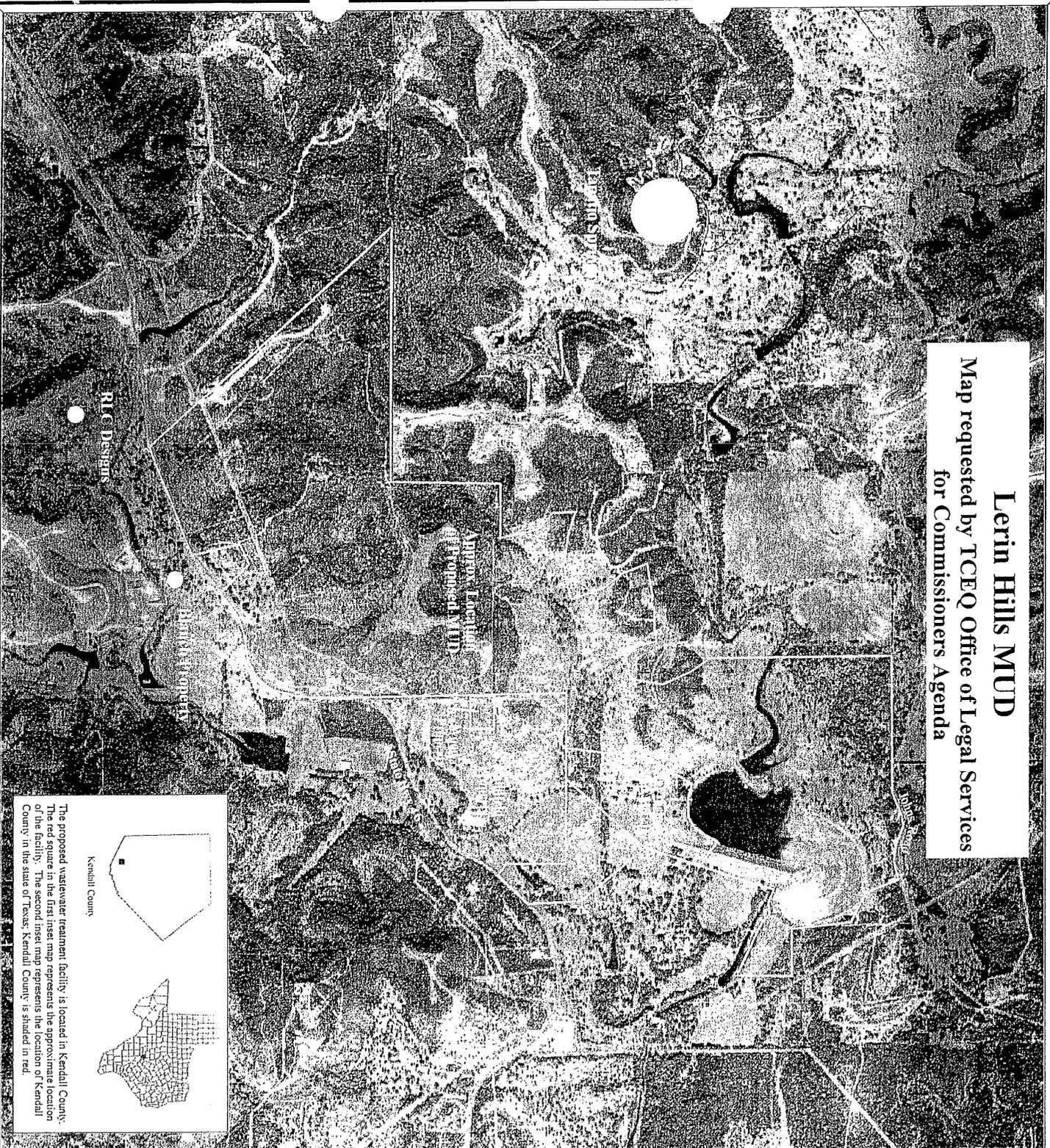
The Honorable Eddie J. Vogt
Kendall County Judge
201 E. San Antonio, Ste. 120
Boerne, Texas 78006-2013

Micah Voulgaris
Cow Creek Groundwater Conservation
District
216 Market Ave., Ste. 105
Boerne, Texas 78006-3003

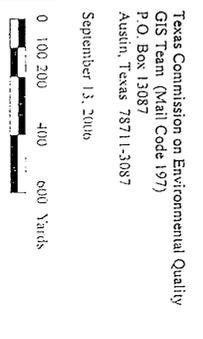
William R. Wood
306 State Highway 46 W.
Boerne, Texas 78006-8104

ATTACHMENT A

Lerin Hills MUD
 Map requested by TCEQ Office of Legal Services
 for Commissioners Agenda



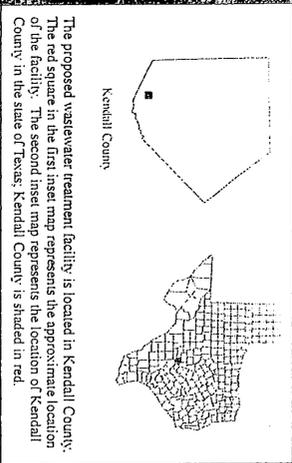
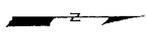
TCEQ
 Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087
 September 13, 2006



Legend
 Proposed MUD

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The corners are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is R 259 1-1.

This map depicts the following:
 (1) The approximate location of the proposed Lerin Hills MUD site located in Kendall County. This facility is labeled "Approved Enclosed Proposed MUD."
 (2) Properties in vicinity of proposed MUD.



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy, or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

ATTACHMENT C

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 23, 2006

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

Re: **LERIN HILLS, LTD.**
TCEQ DOCKET NO. 2006-0969-DIS

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512/239-6363

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: www.tceq.state.tx.us

printed on recycled paper using soy-based ink

TCEQ DOCKET NO. 2006-0969-DIS

PETITION BY LERIN HILLS, LTD.
FOR CREATION OF LERIN HILLS
MUNICIPAL UTILITY DISTRICT IN
KENDALL COUNTY

§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS

To the members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this Response to Hearing Requests.

I. Introduction

On February 10, 2006, Lerin Hills, Ltd. ("petitioner") filed a petition for the creation of Lerin Hills Municipal Utility District. The proposed municipal utility district (MUD) would be located entirely within Kendall County.

The application was declared administratively complete on February 24, 2006. On April 27 and May 4, 2006, the Notice of District Petition was published in the *Comfort News*.

In response to the notice, the TCEQ received requests for a contested case hearing from the following people: Lee Roy and Joan Hahnfeld; RLC Designs, Inc.; Edgar W. Blanch¹; Cow Creek Groundwater Conservation District; William R. Wood; Tapatio Springs Service Company²; and Kendall County. By letter dated September 11, 2006, Kendall County appears to have withdrawn its hearing request.

For the reasons discussed herein, the OPIC recommends that the Commission deny all hearing requests.

¹ RLC Designs, Inc. and Edgar W. Blanch are represented by Grady B. Jolley of Nunley, Davis, Jolley, Cluck, and Aelvoet.

² Tapatio Springs Service Company is represented by Patrick W. Lindner of Davidson & Troilo.

II. Applicable Law

A. Requirements to Obtain a Contested Case Hearing

Under 30 Texas Administrative Code (TAC) § 55.251(a), the following may request a contested case hearing:

- (1) the commission;
- (2) the executive director;
- (3) the applicant; and
- (4) affected persons, when authorized by law.

Section 55.251(b) states that a request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (d).

Section 55.251(c) states that a hearing request must substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

According to § 55.255(b), a request for a contested case hearing shall be granted if the request is: made by an affected person; complies with the requirements of § 55.251; timely filed with the chief clerk; and pursuant to a right to hearing authorized by law.

Section 55.256(a) defines "affected person" as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

To determine if someone is an affected person, § 55.256(c) states that all relevant factors shall be considered, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

B. Requirements Applicable to a Petition for Creation of a MUD

This petition is subject to Chapter 54 of the Texas Water Code (TWC), which provides for the creation of MUD's. Section 54.021 states as follows:

- (a) If the commission finds that the petition conforms to the requirements of Section 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

(1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and

(3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

(A) land elevation;

(B) subsidence;

(C) groundwater level within the region;

(D) recharge capability of a groundwater source;

(E) natural run-off rates and drainage;

(F) water quality; and

(G) total tax assessments on all land located within a district.

(c) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(d) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall so find by its order and deny the petition.

(e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested a hearing under Section 49.011.

III. Hearing Requests

A. Lee Roy and Joan Hahnfeld

The Hahnfelds state that they are adjoining land owners with approximately one mile of common property line, and their property is surrounded on three sides by the proposed project. They also state that storm water and sewer discharge from this project will impact their property.

B. RLC Designs, Inc.

RLC Designs, Inc. ("RLC") states that it is an affected person because it has a personal justifiable interest related to a legal right, duty, and economic interest affected by this application. RLC also states that the proposed district includes territory located immediately adjacent to RLC's property, and the petitioner proposes to discharge wastewater through RLC's property, but has not proposed to include or serve RLC's property.

RLC additionally states that other water and sewage systems are available in the area, and it would be more efficient and beneficial to the affected area to have those providers extend service to the petitioner's proposed district and other adjacent lands. RLC asserts that expansion of the current provider's system (Tapatio Springs Service Company) would be less expensive and have less negative impact on RLC's property.

The petitioner used the *Comfort News* to publish notice, and RLC points out that *Comfort* is located more than eighteen miles by road from the proposed district, and the City of Boerne, located less than three miles from the proposed district, is served by two newspapers. RLC further states that the *San Antonio Express News* is a daily paper that probably has a greater circulation in Kendall County than all of the other newspapers.

RLC concludes by stating that the petitioner should be required to present evidence at a hearing to demonstrate that the legal requirements have been satisfied and this project is feasible,

practicable, necessary, and would be a benefit to all or any part of the land proposed to be included in the district.

C. Edgar W. Blanch, Jr.

Mr. Blanch's hearing request states that he is an affected person because he has a personal justifiable interest related to a legal right, duty, and economic interest affected by this application. His request also states that the proposed district includes territory located immediately adjacent to his property. Like the RLC hearing request, Mr. Blanch's hearing request questions whether the appropriate newspaper was used to publish notice.

Mr. Branch's hearing request concludes by stating that the petitioner should be required to present evidence at a hearing to demonstrate that the legal requirements have been satisfied and this project is feasible, practicable, necessary, and would be a benefit to all or any part of the land proposed to be included in the district.

D. Cow Creek Groundwater Conservation District

The Cow Creek Groundwater Conservation District (CCGCD) submitted a letter which recounts action taken by the CCGCD's Board of Directors at a May 17, 2006 meeting. The CCGCD Directors voted to support the Kendall County Commissioners Court's position requesting a contested case hearing to receive more information in order to make a final decision concerning the proposed MUD.

E. William R. Wood

Mr. Wood states that he is an adjoining land owner and believes that the proposed MUD is dependent on an unachievable land plan, impossible economics, and poor stewardship of the region's natural resources. Mr. Wood additionally states that his property is located adjacent to and downstream of the proposed MUD, and storm water runoff and sewer discharge from the

project will uniquely impact his property. Mr. Wood believes that the massive topographic changes necessary to accommodate the proposed lot density will also impact his property. Mr. Wood concludes that property values in the immediate vicinity could be adversely impacted if the MUD fails.

F. Tapatio Springs Service Company

Tapatio Springs Service Company ("Tapatio") states that it is an affected person because it has a personal justifiable interest related to a legal right, duty, and economic interest affected by this application. Tapatio also states that the proposed district includes territory immediately adjacent to Tapatio's existing water and wastewater service area, and Tapatio is ready, willing, and able to serve the customers to be located within the proposed district. As the nearest utility and source of alternative water supply, Tapatio believes that it may be required by the TCEQ to provide an interconnect to the proposed district or be forced to assume operation of the district if the district's plans for providing water and wastewater service prove to be unfeasible and impracticable.

For the same reasons given by Mr. Branch and RLC, Tapatio believes the newspaper notice was potentially defective.

Tapatio is further opposed to the application because the proposed district is not necessary. To support this contention, Tapatio states that it is an existing retail water and wastewater utility with a service area adjacent to the proposed subdivision and is ready, willing, and able to serve the territory. Tapatio asserts that federal and state policy encourages the consolidation of utilities in order to provide a greater customer base, maintain and improve systems for public health reasons, and lessen the federal and state regulatory burden. Tapatio also states that the petitioner failed to seek service from Tapatio.

Tapatio contends that the district is not feasible or practical and gives several reasons to support this contention. Tapatio questions the adequacy of the water supply and undisclosed costs associated with the water supply. Tapatio states that the proposed plan to dispose of wastewater is insufficient, and the owner of the land immediately downstream of the proposed discharge point has publicly stated opposition to the proposed discharge. Tapatio further states that the petitioner has not addressed obtaining a water rights permit for SCS Lake. Tapatio notes that the application's land use plan shows that certain tracts will be included in the development but not in the proposed district, and the exclusion of these tracts and how these tracts will obtain service is not addressed.

Tapatio concludes by stating that the petitioner should be required to present evidence at a hearing to demonstrate that the legal requirements have been satisfied and this project is feasible, practicable, necessary, and would be a benefit to all or any part of the land proposed to be included in the district.

IV. Analysis

A. Notice

The OPIC will first discuss the notice issue raised by RLC, Mr. Blanch, and Tapatio. These three requesters state that the notice was potentially defective because of the newspaper used to publish the notice. Under 30 TAC § 293.12(b)(1), the notice must be published in a newspaper regularly published or circulated in the county where the district is proposed to be located. Notice was published in the *Comfort News*, and according to the Affidavit of Publication submitted by the petitioner, this newspaper is regularly published or circulated in Kendall County. Therefore, the OPIC concludes that the *Comfort News* complies with § 293.12, and the use of that newspaper did not cause a defective notice.

B. Affected Person

1. Lee Roy and Joan Hahnfeld; Edgar W. Blanch, Jr.; Cow Creek Groundwater Conservation District; William R. Wood

If a contested case hearing is held concerning the proposed district, the State Office of Administrative Hearings (SOAH) will make findings pursuant to TWC § 54.021. Specifically, SOAH will make a recommendation to grant or refuse the petition based on whether the petition conforms to the requirements of TWC § 54.015 and whether the project is feasible, practicable, necessary and beneficial to the land included within the proposed district.

None of the hearing requesters listed above is suggesting that they would be served by the Lerin Hills MUD. The concerns expressed in their hearing requests are not those that would be adjudicated in a proceeding concerning a MUD creation. Some of these hearing requesters express concerns about the proposed wastewater treatment plant that would serve the MUD. The OPIC notes that the proposed wastewater treatment plant (Permit No. WQ0014712001) is currently being considered by the TCEQ, and a public meeting is scheduled for October 24, 2006, to discuss the wastewater treatment plant application.

As stated previously, the Lerin Hills petition is subject to TWC § 54.021, and the hearing requesters' concerns are not interests which are protected by this law. Therefore, the Hahnfelds, Mr. Blanch, CCGCD, and Mr. Wood do not qualify as affected persons. Additionally, these hearing requesters do not reside within the proposed MUD, and therefore lack a personal justiciable interest in the creation of the MUD.

2. RLC Designs, Inc. and Tapatio Springs Service Company

Both RLC and Tapatio question whether the creation of this MUD complies with the requirements of TWC § 54.021. Section 54.021 sets conditions on the creation of a MUD and directs the TCEQ to consider certain factors to determine if these conditions are met. It is the

TCEQ's responsibility to ensure that the petitioner satisfies the applicable statutory criteria. By questioning whether the Lerin Hills project complies with § 54.021, RLC and Tapatio seem to be stating an interest in seeing the TCEQ carry out its responsibilities regarding the creation of a MUD. Ensuring that the TCEQ performs its responsibilities is an interest which is presumably common to many members of the general public, not just RLC and Tapatio.

RLC states that the proposed district includes territory immediately adjacent to RLC's property, but RLC does not state that it owns any property within the proposed district. RLC also states that the petitioner proposes to discharge wastewater through RLC's property, however the matter before the Commission is the creation of a MUD, and not the discharge of wastewater. Tapatio states that the proposed district includes territory located immediately adjacent to Tapatio's existing water and wastewater service area, but Tapatio does not state that it owns or serves any property within the proposed district. In fact, Tapatio's motivating interest seems to be a desire to expand its own service area. Without property located in the proposed district, RLC and Tapatio fail to demonstrate a personal justiciable interest in the creation of this MUD.

Under 30 TAC § 55.256, an "affected person" has a personal justiciable interest which is not common to members of the general public. The OPIC finds that the interests of RLC and Tapatio are likely common to members of the general public, and such interests do not qualify as personal justiciable interests. Therefore, RLC and Tapatio are not affected persons.

IV. Conclusion

For the reasons set forth above, the OPIC finds that none of the hearing requesters qualify as affected persons, and respectfully recommends that all hearing requests be denied.

Respectfully submitted,

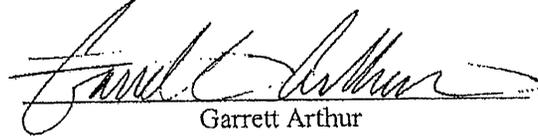
Blas J. Coy, Jr.
Public Interest Counsel

By 

Garrett Arthur
Assistant Public Interest Counsel
State Bar No. 24006771
P.O. Box 13087, MC-103
Austin, TX 78711-3087
Tel: 512-239-5757
Fax: 512-239-6377

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2006, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served on all parties listed below via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

FOR THE APPLICANT:

Samuel W. Jones, P.E.
P.O. Box 427
Hutto, TX 78634-0427

Trey Lary
3200 Southwest Fwy., Ste. 2600
Houston, TX 77027-7537

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel: 512-239-3300
Fax: 512-239-3311

FOR THE EXECUTIVE DIRECTOR:

Robert Martinez, Senior Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
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Austin, TX 78711-3087
Tel: 512-239-0600
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FOR OFFICE OF PUBLIC ASSISTANCE:

Jody Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
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Austin, TX 78711-3087
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Fax: 512-239-4007

FOR ALTERNATIVE DISPUTE RESOLUTION:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, TX 78711-3087
Tel: 512-239-0687
Fax: 512-239-4015

REQUESTERS:

Joan & Lee Roy Hahnfeld
306 State Highway 46 W.
Boerne, TX 78006-8104

Grady B. Jolley
Nunley, Davis, Jolley, Cluck, Aelvoet, LLP
1580 S. Main St., Ste. 200
Boerne, TX 78006-3311

Patrick W. Lindner
Davidson & Troilo, P.C.
7550 W. IH-10, Ste. 800
San Antonio, TX 78229-5803

The Honorable Eddie J. Vogt
Kendall County Judge
201 E. San Antonio, Ste. 120
Boerne, TX 78006-2013

Micah Voulgaris
Cow Creek Groundwater Conservation District
216 Market Ave., Ste. 105
Boerne, TX 78006-3003

William R. Wood
306 State Highway 46 W.
Boerne, TX 78006-8104

ATTACHMENT D

ATTACHMENT D

AFFIDAVIT OF ABEL GODINES

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared J. Abel Godines, who being by me duly sworn upon his oath did depose and state as follows:

1. My name is J. Abel Godines. I am over eighteen (18) years of age, I am of sound mind, and I am competent to make this Affidavit. I have never been convicted of a felony or a crime involving moral turpitude. I do certify that the statements, facts and opinions recited herein are based on my personal knowledge and are true and correct.

2. I am President of Lerin Hills, Ltd., and Manager of Lerin Development Company, L.L.C., which is a general partner of Lerin Hills, Ltd. Together, they are referred to here as "Lerin Hills" or "the Developer."

3. My business address is 4820 Bacon Road, San Antonio, Texas 78249. My business phone number is (210) 408-2612.

4. Lerin Hills is the developer of the Lerin Hills subdivision ("the Lerin Hills Development"), which will be located within the boundaries of the Lerin Hills Municipal Utility District ("the District") in Kendall County, Texas.

5. Lerin Hills filed the petition for creation of the District.

6. Prior to filing the petition, as a representative of the Developer, I met with Tapatio Springs Service Company and Kendall County Utility Company (together referred to here as "Tapatio Springs") representatives. At the meeting, I made a request on behalf of Lerin Hills and the future District, to Tapatio Springs for water and sewer services. Tapatio Springs representatives denied my request.

7. Because of Tapatio Springs' denial of my request for service, we began discussions with the Guadalupe-Blanco River Authority ("GBRA") to provide treated surface water for the Lerin Hills Development.

8. GBRA agreed to supply sufficient treated surface water for the Lerin Hills Development, as long as certain conditions were met, and specifically it required that a municipal utility district ("MUD") be created as described in the attached letters to this Affidavit.

9. Thus, creation of the MUD was sought to secure surface water supplies from GBRA for the Lerin Hills Development.

10. Lerin Hills entered into a preliminary contract with GBRA to secure the surface water supplies, and the final contract will be between the District and GBRA. Both the preliminary contract and the proposed final contracts with GBRA are attached.

11. The final contract is proposed as a "take or pay" contract with an exclusivity provision, which specifies that treated surface water from GBRA will be the exclusive potable water source for development within the District.

12. It is my understanding that the same, or substantially similar, take or pay and exclusivity provisions will be in the final GBRA contract with the District.

13. Lerin Hills is also aware of the limitation on development contained in the Texas Commission on Environmental Quality's ("TCEQ's") Order designating the District. The Order incorporates the TCEQ Staff's memo that recommends limitation of development to less than 1,913 equivalent single family connections ("ESFCs") (notably, the District's feasibility was based on 1,475 ESFCs). Consequently, Lerin Hills will restrict development within the District as necessary to comply with the TCEQ Order and Lerin Hills will not seek to violate the Commission's Order.

14. The purpose for seeking relief or a variance from the Kendall County Commissioners Court on March 26, 2007, was twofold. First, as the written Request for Relief (attached) attests, Lerin Development Company, L.L.C. sought relief from Exhibit A of the 1997 Kendall County Development Guidelines and Regulations rulebook. Exhibit A specifies that it is only applicable if the water supply for a proposed residential subdivision is based on groundwater supply. It requires that a groundwater availability report ("GAR") be prepared and submitted to the Kendall County Commissioners Court and the Cow Creek Groundwater Conservation District. The GAR is required to be prepared by a certified professional engineer or professional geoscientist licensed in the State of Texas. Exhibit A also specifies certain density requirements based on groundwater availability. In addition, Water Control and Improvement Districts ("WCIDs") are not subject to Exhibit A under the 1997 Kendall County Development Guidelines and Regulations. Consequently, because both the District and WCIDs are created under and operate pursuant to Chapter 49 of the Texas Water Code and the District will operate almost identically to a WCID and will be based on surface water supplies, Lerin Hills sought relief from the applicability of Exhibit A. In addition, Lerin Hills did not want to seek groundwater, because it did not want to prepare a GAR, which is a requirement for a commercial well permit from the Cow Creek Groundwater Conservation District.

15. The second reason for seeking relief from the Kendall County Commissioners Court on March 26, 2007, was to allow use of an existing groundwater well that Lerin Hills owns in order to use it for construction purposes related to building roads or infrastructure for development, but not for residents to use as their water supply. (It is important during construction to be able to water the construction sites to reduce dust.) In this case, Lerin Hills was seeking relief from a plat restriction (attached) that is so broad that it would not allow use of

any Kendall County groundwater on the platted property, which would include Tapatio Springs water since it supplies *groundwater* to its customers.

16. Kendall County Commissioners denied Lerin Hills's request, and Lerin Hills has agreed to comply with the plat note.

17. I was present at the District Board meeting of March 28, 2007, where a representative of Pate Engineering, Inc. presented an Engineer's Report that made a request to the Board for approval to seek authorization for a groundwater withdrawal permit to supply groundwater as backup and for conjunctive uses associated with development within the District. This was the first time I became aware of such a request relating to groundwater. Neither I nor any other representative of Lerin Hills requested Pate Engineering to consider seeking groundwater supplies for development within the District. In effect, I recommended that the Board reject the Engineer's Report. The Board agreed and rejected the Report and all copies of it were given back to the Pate Engineering representative.

18. Consequently, Lerin Hills has no current plans to seek authorization for groundwater well permits.

19. Finally, I received the attached communication from a Tapatio Springs resident protesting Kendall County Utility Company's (i.e., Tapatio Springs') massive water rate increase and KCUC's notice for the proposed increase. Based on this protest letter, it appears that KCUC should focus on service to its own customers and not challenging competing, nearby developments.

Affiant sayeth not.



J. Abel Godines

SUBSCRIBED AND SWORN TO before me by the said J. Abel Godines on this 30th day of January, 2008, to certify which witness my hand and seal of office.



Kristine M. Mace
Notary Public in and for the State of Texas

**PRELIMINARY AGREEMENT
BETWEEN
LERIN DEVELOPMENT CO., INC.,
AND
GUADALUPE-BLANCO RIVER AUTHORITY**

This Preliminary Agreement (this "Preliminary Agreement") is made and entered into as of the ___ day of _____, 2006 (the "Effective Date"), by and between Lerin Development Co., Inc. ("Lerin"), and the Guadalupe-Blanco River Authority ("GBRA"), a conservation and reclamation district and political subdivision of the State of Texas created pursuant to Article XVI, Section 59 of the Texas Constitution by special act of the Legislature, formerly compiled at Article 8280-106, Vernon's Annotated Civil Statutes. Lerin and GBRA may be referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

Lerin owns or controls the rights to lands within Kendall County known as Lerin Hills. Lerin proposes to develop Lerin Hills for residential purposes. The lands comprising Lerin Hills are shown on Exhibit 1 and are defined in this Preliminary Agreement as the "Lerin Hills Service Area." Lerin desires that GBRA provide wholesale treated potable water to the Lerin Hills Service Area.

By this Preliminary Agreement, GBRA makes certain reservations regarding the provision by GBRA of such service, and Lerin makes certain commitments regarding its proposed development and regulatory requirements applicable to such development.

This Preliminary Agreement further provides for the Parties to enter into the detailed agreement attached hereto as Exhibit 2 (the "Agreement") regarding the provision by GBRA of such services, upon Lerin satisfying the conditions set forth herein.

The Agreement provides that GBRA will provide the treated potable water from GBRA's Western Canyon Regional Treated Water Supply Project, as such project may be expanded from time to time, which will serve portions of Comal, Kendall and Bexar Counties (the "Western Canyon Project"). The raw water to be treated will be diverted by GBRA from Canyon Reservoir under GBRA's Certificate of Adjudication 18-2074, as amended. The Agreement further provides that GBRA may also furnish untreated water from any source or combination of sources that may be available to GBRA on a firm-yield basis including, without limitation, run-of-river flows of the Guadalupe River under new water rights or amendments to existing water rights, and water obtained from sources other than surface waters of the Guadalupe River Basin.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Lerin and GBRA agree as follows:

Section 1. Definitions.

As used in this Agreement, the following terms shall have the meanings set forth in this Section:

“Acre-Foot” means that volume defined by an area of one acre, one foot deep. One acre-foot of water equals 325,851 gallons.

“District-Wide Firm Water Rate” at any time means the rate charged by GBRA at that time pursuant to written contracts for the reservation or supply of firm raw water from Canyon Reservoir or other sources for use within GBRA’s ten-county statutory district. The present rate is \$92.00 per acre-foot per year.

“Initial Treated Water Supply Project” means the initial phase of the Western Canyon Project.

“Lerin’s Capacity Reservation Charge” means the monthly charge to be paid by Lerin for Lerin’s Reserved Water Treatment Capacity.

“Lerin’s Raw Water Reservation” means the maximum amount of raw water that GBRA agrees to reserve for diversion, treatment and delivery for use within the Lerin Hills Service Area in any calendar year as specified in Section 4.

“Lerin’s Raw Water Replacement Charge” means the one-time charge to be paid by Lerin as determined and described in Section 11(a) (1).

“Lerin’s Raw Water Reservation Charge” means the monthly charge to be paid by Lerin for Lerin’s Raw Water Reservation as determined and described in Section 11(a)(2).

“Lerin’s Reserved Water Treatment Capacity” means the capacity in, and/or the right to add capacity to, the Western Canyon Project that GBRA agrees to reserve for Lerin as specified in Section 5.

“Lerin Hills Service Area” means that area in Kendall County defined as the “Lerin Hills Service Area” on Exhibit 1.

“mgd” means million gallons per day.

“Treated Water Point of Delivery” means the point on the treated water conveyance system of the Western Canyon Project at which treated water is to be delivered to the Water Distribution System for Lerin’s conveyance and retail supply to users within the Lerin Hills Service Area, as such point is identified on Exhibit 1.

“TCEQ” means the Texas Commission on Environmental Quality, or any successor agency.

“Water Distribution System” means all conveyance facilities, storage facilities, distribution facilities, meters, valves, telemetry equipment and ancillary facilities necessary or desirable to receive at the Treated Water Point of Delivery the treated water needed to satisfy the projected demands for treated water within the Lerin Hills Service Area, and to store and convey such treated water and distribute and supply such treated water to users within the Lerin Hills Service Area. A preliminary map of the Water Distribution System is shown on Exhibit 1.

“Water Project” at any time means the Initial Treated Water Supply Project, as such project is further defined, constructed, upgraded, expanded and maintained.

Section 3. Execution of Agreement.

(a) Lerin and GBRA each agrees that it will execute the Agreement, a copy of which is attached hereto as Exhibit 2, within thirty (30) days after the date that all of the following conditions have been satisfied:

- (1) The Initial Treated Water Supply Project has been completed and is in operation;
- (2) Lerin has prepared a master plan in accordance with the requirements of Sections 7 and 8(a), and GBRA has approved such master plan;
- (3) Lerin has filed with Kendall County all necessary plans and documents, and has obtained from Kendall County and all other governmental authorities all required approvals relating in any way to the development and use of lands, including without limitation all required platting approvals, for at least the first phase of the development as reflected by the approved master plan required by paragraph (2), above;
- (4) Lerin has imposed or caused to be imposed deed restrictions as required by Sections 8(a), 14 and 15 that are acceptable to GBRA on all lands within the Lerin Hills Service Area, and no land has been sold or leased prior to the imposition of such deed restrictions;
- (5) Lerin has secured approval for creation of the Municipal Utility District from the State of Texas; and

(6) Lerin has secured a wastewater discharge permit from TCEQ for at least the first phase of development as reflected by the approved master plan required by paragraph (2), above.

(b) Before executing the Agreement, GBRA and Lerin may agree to make corrections or other revisions to the version attached hereto as Exhibit 2 as may be necessary or desirable so that the revised Agreement more accurately reflects the facts and circumstances as they exist at that time.

Section 4. Lerin's Raw Water Reservation for the Lerin Hills Service Area.

Lerin's Raw Water Reservation is the amount of raw water from Canyon Reservoir under Certificate of Adjudication 18-2074, as amended, that GBRA agrees to reserve under this Preliminary Agreement for use within the Lerin Hills Service Area in any calendar year for the purposes provided in the Agreement. Legacy's Raw Water Reservation shall be seven hundred fifty (750) acre-feet per year of raw water from Canyon Reservoir under Certificate of Adjudication 18-2074, as amended or from other firm water sources. GBRA shall be under no obligation under this Preliminary Agreement or otherwise to reserve any water for the Lerin Hills Service Area in addition to the water reserved under this Section 4.

Section 5. Reservation of Capacity in the Western Canyon Project.

GBRA agrees to reserve capacity in the Western Canyon Project, and/or to reserve the right to add capacity to the Western Canyon Project, sufficient to divert and treat two hundred twenty-five (225) acre-feet per year of raw water from Canyon Reservoir or other firm water sources, and deliver such treated water to the Point of Delivery at a rate which meets or exceeds TCEQ's minimum requirements for retail water supply for distribution and supply to users within the Lerin Hills Service Area as provided in the Agreement ("Lerin's Reserved Water Treatment Capacity"). The amount of water that can be treated and delivered using Lerin's Reserved Water Treatment Capacity is equal to or greater than the amount of treated water that Lerin anticipates will be needed for the first phase of development within the Lerin Hills Service Area when such phase is fully developed. GBRA shall be under no obligation under this Preliminary Agreement or otherwise to reserve any capacity in, or to reserve any right to add capacity to, the Western Canyon Project in addition to Lerin's Reserved Water Treatment Capacity under this Section 5. Unless and until the Agreement is executed pursuant to the terms of this Preliminary Agreement, GBRA shall be under no obligation to divert any water from Canyon Reservoir or other firm water sources, or to treat or supply any water for use within the Lerin Hills Service Area.

Section 7. Master Plan.

Lerin shall develop a proposed master plan for all proposed development within the Lerin Hills Service Area and will submit the proposed master plan to GBRA for review and approval, which approval shall not be unreasonably withheld or delayed. The Parties acknowledge and agree that Lerin Hills may be developed, including design and construction, in phases and that, if it is developed in phases, the approved master plan shall reflect such phased development. The

plan shall include, without limitation, the Water Distribution System for each phase and the total amount of treated water that Lerin anticipates will be needed for each phase over defined periods of time when such phase is fully developed. Lerin may modify the master plan from time-to-time. In the event that Lerin determines to modify the master plan, any such modifications shall be presented to GBRA for review and approval the same as the original proposed master plan. Lerin will also develop estimates of costs of development of the Water Distribution System pursuant to the master plan as the same may be revised from time-to-time.

Section 8. Development Within the Lerin Hills Service Area.

(a) Lerin agrees to impose deed restrictions requiring compliance in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands, with all applicable federal, state and local laws, rules and regulations relating to land use or protection of the environment or natural resources including, without limitation: (i) protection of the quality of groundwater or surface water; (ii) regulation of the use of groundwater or surface water; (iii) conservation of groundwater or surface water; (iv) recharge of aquifers; and (v) drainage and flood control.

(b) Without limiting the generality of the requirements set forth in subsection (a) above, Lerin shall insure that there is compliance with all requirements of Kendall County applicable to Lerin relating in any way to development and use of lands within the Lerin Hills Service Area including, without limitation, compliance with all requirements to submit plats and obtain approvals thereof. All applications for approvals sought by Lerin from Kendall County and other governmental authorities shall be based upon the master plan approved by GBRA pursuant to Section 5.

Section 9. Charges.

(a) Pursuant to this Preliminary Agreement, Lerin agrees to pay GBRA the following charges:

- (1) Upon execution of this Preliminary Agreement, Lerin shall pay to GBRA a one-time charge ("Lerin's Raw Water Replacement Charge") equal to the product of Lerin's Raw Water Reservation times \$275.
- (2) Commencing on the Effective Date, Lerin shall pay GBRA each month a charge ("Lerin's Raw Water Reservation Charge") equal to the product of 1/12th of Lerin's Raw Water Reservation times the District-Wide Firm Water Rate in effect during that month. The District-Wide Firm Water Rate that is charged pursuant to this written agreement may be changed by the GBRA Board of Directors at any time and from time to time.
- (3) Commencing on the Effective Date, Lerin shall pay GBRA each month a charge ("Lerin's Capacity Reservation Charge") of \$9,795.24 for the reservation by GBRA of capacity in, and/or the reservation of the right to add capacity to, the Western Canyon Project as set forth in Section 5.

Lerin's Capacity Reservation Charge may be adjusted by the GBRA Board of Directors at any time and from time to time. In arriving at any adjustment, the Board may take into consideration all costs that are appropriate for Lerin to pay for such reservations including, without limitation, Lerin's share of debt service requirements and fixed costs for operation and maintenance.

(b) All amounts paid by Lerin pursuant to this Preliminary Agreement shall be non-refundable.

(c) All payments required to be made by Lerin to GBRA under this Agreement shall be payable from any and all sources available to Lerin.

Section 10. Billing.

GBRA will render bills to Lerin once each month for the charges required to be paid by Lerin pursuant to this Preliminary Agreement. GBRA shall, until further notice, render such bills on or before the 10th day of each month and such bills shall be due and payable at GBRA's office indicated below by the 20th day of each month or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Lerin, whichever is later. GBRA may, however, by sixty (60) days written notice change the monthly date by which it shall render bills, and all bills shall thereafter be due and payable ten (10) days after such date or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Lerin, whichever is later. Lerin shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to GBRA at its office in the City of Seguin, Texas, or at such other place as GBRA may from time to time designate by sixty (60) days written notice.

Section 11. Delinquency in Payment.

(a) All amounts due and owing to GBRA by Lerin shall, if not paid when due, bear interest at the maximum rate permitted by law, provided that such rate shall never be usurious. If any amount due and owing by Lerin is placed with an attorney for collection by GBRA, Lerin shall pay to GBRA, in addition to all other payments provided for by this Preliminary Agreement, including interest, GBRA's collection expenses, including court costs and attorney's fees. Lerin further agrees that GBRA may, at its option, terminate this Preliminary Agreement, or it may discontinue taking some or all actions to fulfill its obligations under this Preliminary Agreement until all amounts due and unpaid are paid in full with interest as herein specified.

(b) Notwithstanding anything in this Preliminary Agreement to the contrary, the Parties agree that any default shall not result in termination of this Preliminary Agreement until thirty (30) days after the date that the alleged defaulting Party receives written notice from the non-defaulting Party specifying the default and the requirements to cure the same.

Section 12. Applicable Laws and Regulations.

This Preliminary Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction.

Section 13. Conservation.

Lerin agrees to provide to the maximum extent practicable for the conservation of water, and it agrees that it will design, construct, operate and maintain its facilities in a manner that will prevent waste of water. Lerin further agrees to assist GBRA in implementing water conservation and drought management plans applicable to the use of treated water by users within the Lerin Hills Service Area that, at a minimum, comply with all minimum standards that may be required or recommended by the Texas Water Development Board (the "TWDB"), the TCEQ or GBRA. Such standards may include, but shall not be limited to, conservation rates or surcharges to be imposed by GBRA on users for use of water in excess of amounts that are determined by the TWDB, the TCEQ or GBRA to be adequate for essential indoor domestic uses. Assistance by Lerin shall include, without limitation, deed restrictions, contractual provisions, and other lawful means by which those who purchase or lease lands within the Lerin Hills Service Area are required to comply with such standards.

Section 14. Exclusive Source.

Lerin agrees that except as otherwise agreed to in writing by the Parties, the exclusive source of potable water for use by users within the Lerin Hills Service Area shall be treated water delivered by GBRA, and the exclusive source of wastewater service within the Lerin Hills Service Area shall be wastewater service provided by GBRA. Lerin agrees to impose deed restrictions and utilize contractual provisions and other lawful means by which those who purchase or lease lands currently owned or controlled by Lerin, or that Lerin may own or control at some time in the future within the Lerin Hills Service Area are required to comply with the restriction set forth above in this Section 16.

Section 15. Term and Termination.

(a) This Preliminary Agreement shall be effective as of the date first written above and shall continue in effect until it is terminated pursuant to the terms of this Preliminary Agreement.

(b) This Preliminary Agreement shall terminate upon execution by both Parties of the Agreement, a copy of which is attached as Exhibit 2. Termination shall be effective as of the date of the Agreement.

(c) Lerin shall have the right to give GBRA written notice of termination of this Preliminary Agreement at any time. Any such notice must specify the date of termination, which must be not less than sixty (60) days after the date the notice is given. This Preliminary Agreement shall terminate on the date specified by Lerin in its notice of termination if, but only

if, Lerin pays to GBRA before such date all charges accrued up to the specified date of termination that Lerin owes to GBRA under this Preliminary Agreement, or GBRA agrees in writing to termination on such date without full payment by Lerin before such date. GBRA will render a final bill to Lerin at least ten (10) days prior to the specified date of termination for all amounts due under this subsection (c). If Lerin fails to pay such bill in full before the specified date of termination and GBRA does not agree in writing to termination on such date, this Preliminary Agreement shall continue in effect after the specified date of termination and charges to Lerin shall continue to accrue as if Lerin had never given its written notice of termination.

(d) GBRA shall have the right to give to Lerin written notice of termination of this Preliminary Agreement at any time after two (2) years following the Transition Date if, on the date such notice is given, all of the conditions set forth in Section 3 are not fully satisfied. Any such notice must specify the date of termination, which must be not less than sixty (60) days after the date the notice is given. Lerin may extend the date of termination specified by GBRA to a date not later than one (1) year after the date GBRA's notice is given to Lerin, by giving written notice to GBRA specifying the new date of termination. The written notice by Lerin must be actually received by GBRA before the date of termination specified by GBRA. This Preliminary Agreement shall continue in effect and charges to Lerin shall continue to accrue up to the date of termination of this Preliminary Agreement. This Preliminary Agreement shall terminate on the date of termination specified by GBRA or, if extended by Lerin, on the new date of termination specified by Lerin, if all conditions are not fully satisfied before such date. If all conditions are fully satisfied before such date, the Parties shall proceed to execute the Agreement, a copy of which is attached as Exhibit 2, in accordance with the provisions of Section 3, in which case this Preliminary Agreement shall terminate as provided by subsection (b) of this Section 17.

Section 16. Rights after Termination.

Except as specifically provided otherwise in this Preliminary Agreement, all of the rights and obligations of the Parties under this Preliminary Agreement shall terminate upon termination of this Preliminary Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

Section 17. Time is of the Essence.

Time is of the essence in the Parties' performance of their respective obligations under this Preliminary Agreement.

Section 18. Waiver and Amendment.

Failure to enforce or the waiver of any provision of this Preliminary Agreement or any breach or nonperformance by Lerin or GBRA shall not be deemed a waiver by GBRA or Lerin of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of GBRA is authorized to waive or modify any provision of this

Agreement. No modifications to or recession of this Preliminary Agreement may be made except by a written document signed by GBRA's and Lerin's authorized representatives.

Section 19. Remedies.

It is not intended hereby to specify (and this Preliminary Agreement shall not be considered as specifying) an exclusive remedy for any default by either Party, but all such other remedies existing at law or in equity shall be cumulative including, without limitation, termination of this Preliminary Agreement. The prevailing Party shall be entitled to any reasonable attorney's fees, court costs or other expenses incurred in bringing or defending any suit alleging such default or claim.

Section 20. Force Majeure.

If for any reason of force majeure, either GBRA or Lerin shall be rendered unable, wholly or in part, to carry out its obligations under this Preliminary Agreement, other than the obligation of Lerin to make the payments required under the terms of this Preliminary Agreement, then if the Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Preliminary Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accident or intentional), and any inability on the part of GBRA to deliver treated water or provide wastewater service on account of any other cause not reasonably within the control of GBRA.

Section 21. Non-Assignability.

Lerin may not assign this Preliminary Agreement without first obtaining the written consent of GBRA; provided, however, that Lerin shall have the right, without GBRA's prior written consent upon delivery of written notice of the same to GBRA, to assign all or a portion of its interest in this Agreement to any person, partner or entity that is either owned, or partially owned by Lerin, that has an ownership interest in or is a subsidiary of Lerin Hills, or Lerin Development Co., Inc., provided, however, that any assigned interest of rights permitted herein applies only to lands within the Lerin Hills Service Area and to no other lands.

Section 22. Entire Agreement.

This Preliminary Agreement constitutes the entire agreement between GBRA and Lerin and supersedes any prior understanding or oral or written agreements between GBRA and Lerin respecting the subject matter of this Preliminary Agreement.

Section 23. Due Authorization and Binding Obligation

This Preliminary Agreement has been duly authorized, executed and delivered by all necessary action of Lerin, and is enforceable against Lerin in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

Section 24. Severability.

The provisions of this Preliminary Agreement are severable and if, for any reasons, any one or more of the provisions contained in the Preliminary Agreement shall be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Preliminary Agreement and this Preliminary Agreement shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Preliminary Agreement.

Section 25. Captions.

The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Preliminary Agreement.

Section 26. No Third Party Beneficiaries.

This Preliminary Agreement does not create any third party benefits to any person or entity other than the signatories hereto and their authorized successor's in interest, and is solely for the consideration herein expressed.

Section 27. Notices.

All notices, payments and communications ("notices") required or allowed by this Preliminary Agreement shall be in writing and be given by depositing the notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be as follows:

For GBRA:

Guadalupe-Blanco River Authority
Attention: General Manager
933 E. Court Street
Seguin, Texas 78155

And for Lerin:

Abel Godines, President
Lerin Development Co., Inc.
4820 Bacon Road
San Antonio, Texas 78249

Either party may change its address by giving written notice of the change to the other party at least fourteen (14) days before the change becomes effective.

In witness whereof, the Parties hereto, acting under the authority of the respective governing bodies, have caused this Preliminary Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

GUADALUPE-BLANCO RIVER AUTHORITY

By: _____
William E. West, Jr., General Manager

ATTEST:

LERIN DEVELOPMENT CO., INC.

By: _____
Abel Godines, President

ATTEST:

THE STATE OF TEXAS §

COUNTY OF GUADALUPE §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2006.

Notary Public
The State of Texas

THE STATE OF TEXAS §

COUNTY OF GUADALUPE §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Abel Godines known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of LERIN DEVELOPMENT CO., INC., and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2006.

Notary Public
The State of Texas

**AGREEMENT BETWEEN LERIN DEVELOPMENT CO., INC.
AND
GUADALUPE-BLANCO RIVER AUTHORITY**

**AGREEMENT BETWEEN LERIN DEVELOPMENT CO., INC. AND
GUADALUPE-BLANCO RIVER AUTHORITY**

This Agreement (this "Agreement") is made and entered into as of the ___ day of _____, ____ (the "Effective Date"), by and between Lerin ("Lerin") and the Guadalupe-Blanco River Authority ("GBRA"), a conservation and reclamation district and political subdivision of the State of Texas created pursuant to Article XVI, Section 59 of the Texas Constitution by special act of the Legislature, formerly compiled at Article 8280-106, Vernon's Annotated Civil Statutes. Lerin and GBRA may be referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

This Agreement provides for the wholesale supply by GBRA of treated potable water to Lerin Hills. The lands comprising Lerin Hills are located in Kendall County, Texas, and such lands are defined in this Agreement as the "Lerin Hills Service Area" as shown on **Exhibit 1**. Lerin owns or controls the rights to all lands within the Lerin Hills Service Area and it proposes to develop such lands for residential and commercial purposes.

GBRA and Lerin are entering into this Agreement pursuant to the terms of that certain Preliminary Agreement between the Parties dated as of _____, 2006 (the "Preliminary Agreement"). In the Preliminary Agreement, GBRA made certain reservations regarding the provision by GBRA of treated potable water service. The reservations made by GBRA in the Preliminary Agreement are continued in this Agreement to the extent set forth in this Agreement, and such reservations therefore commenced as of _____, 2006, the effective date of the Preliminary Agreement.

The treated potable water to be provided by GBRA under this Agreement will be supplied from GBRA's Western Canyon Regional Treated Water Supply Project that will serve portions of Comal, Kendall and Bexar Counties (the "Western Canyon Project"). The initial phase of the Western Canyon Project has been completed and is in operation. Time is of the essence in the Parties' performance of their respective obligations under this Agreement.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, GBRA and Lerin agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth in this Section:

“Acre-Foot” means that volume defined by an area of one acre, one foot deep. One acre-foot of water equals 325,851 gallons.

“Annual Debt Service Requirement” means the total principal and interest scheduled to come due on all Bonds during each twelve month period ending on August 31 of each year, plus a debt service coverage factor, as determined by GBRA, and provided by the Bond Resolution but not to exceed 10% of such principal and interest unless GBRA and Lerin mutually agree upon a greater percentage, less interest to be paid out of Bond proceeds as permitted by the applicable Bond Resolution, if any.

“Annual Operation and Maintenance Requirement” for a project means the total amount budgeted by GBRA for each twelve month period ending on August 31 of each year to pay all estimated Operation and Maintenance Expenses for that project.

“Annual Miscellaneous Bond Requirement” means the total amount determined by GBRA for each twelve-month period ending on August 31 of each year to be required to pay the following:

- (a) the amount of any debt service reserve and contingency funds required to be established and maintained by the provisions of the Bond Resolution for Bonds issued to finance GBRA’s construction of the Water Project;
- (b) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of the Bond Resolution;
- (c) any amounts due under a reimbursement agreement between GBRA and any credit facility provider providing a credit facility issued to cause the balance on deposit in any debt service reserve funds to satisfy the requirements of the Bond Resolution; and
- (d) any charges of the bank or banks where the Bonds are payable.

“Bonds” means all bonds and other obligations issued and outstanding from time to time by GBRA to finance or refinance the costs of construction, acquisition, repair, improvement, and upgrading related to the Water Project, and any extension, expansion, maintenance, repair, improvement, upgrade or other modification of any such project, including, without limitation of the generality of the foregoing, any costs necessary or desirable to maintain or increase the capacity of any such project and comply with applicable laws, rules and regulations.

“Bond Resolution” means the resolution or resolutions approved by the Board of Directors of GBRA, which authorize the issuance of each series of Bonds related to the Water Project.

“District-Wide Firm Water Rate” means at any time the lawful rate charged by GBRA pursuant to written contracts for firm raw water from Canyon Reservoir or other sources for use within GBRA’s ten-county statutory district. The present rate is \$92.00 per acre-foot per year.

“Extension Firm Water Rate” means the lawful rate charged for firm raw water from any source of water supply for use within GBRA’s ten-county statutory district set pursuant to Section 9.1 of this Agreement and charged pursuant to this written agreement. The rate may include costs for water supplies secured outside of GBRA’s statutory district.

“Initial Treated Water Supply Project” means the initial phase of the Western Canyon Project, described generally in Section 3.1 of this Agreement.

“Lerin’s Raw Water Charge” means the charge for raw water to be paid by Lerin as determined and described in Section 7.1 of this Agreement.

“Lerin’s Required Monthly Raw Water Purchase” means for any month the amount of raw water that Lerin is obligated to pay for that month, as specified in Section 7.1 of this Agreement.

“Lerin Hills Service Area” means that area in Kendall County defined as the “Lerin Hills Service Area” on **Exhibit 1**.

“MGD” means million gallons per day.

“Operation and Maintenance Expenses” for the respective Water Project, means all costs and expenses of operation and maintenance of the respective project, including (for greater certainty, but without limiting the generality of the foregoing) repairs and replacements, which are not paid from a special fund created in the Bond Resolutions or other project debt instruments, employee salaries, benefits and other expenses, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, other services, supplies, charges by GBRA for administrative and general expenses, and equipment necessary for proper operation and maintenance of the respective project.

“Point of Diversion” means the point on the perimeter of Canyon Reservoir at which raw water reserved by Lerin under this Agreement is diverted for supply to the Water Plant under this Agreement, as such point is identified in Section 3.1 of this Agreement.

“Raw Water Reservation” means the maximum amount of raw water that GBRA shall be obligated to reserve for diversion, treatment and delivery in any calendar year as specified in Section 5.3 of this Agreement.

“Termination Date” means the expiration date of the term of this Agreement, as defined in Section 9.1 of this Agreement.

“TCEQ” means the Texas Commission on Environmental Quality, or any successor agency.

“Treated Water Point of Delivery” means the point on the treated water conveyance system of the Western Canyon Project at which treated water is to be delivered to the Water Distribution System for retail supply to Users within the Lerin Hills Service Area, as such point is identified on **Exhibit 1**.

“User” means any person within the Lerin Hills Service Area to which Lerin supplies retail treated water. Lerin may be a User.

“Water Distribution Project” means the Water Distribution System described in Section 4.1 of this Agreement, as such project is further defined, constructed, upgraded and maintained pursuant to the terms of this Agreement.

“Water Plant” means the surface water treatment plant that is included as part of the Initial Treated Water Supply Project described generally in Section 3.1 of this Agreement.

“Water Plant Daily Capacity” at any time means the amount of water which the Water Plant is designed to treat on an average daily basis, based upon standards that exist at that time, expressed in terms of million gallons per day, as certified by the General Manager of GBRA or, if GBRA determines that the entire amount should not be committed, the portion of such amount that GBRA determines should be committed.

“Water Project” at any time means the Initial Treated Water Supply Project, described generally in Section 3.1 of this Agreement, as such project is further defined, constructed, upgraded, expanded and maintained pursuant to the terms of this Agreement.

ARTICLE II

MASTER PLAN AND DEVELOPMENT

Section 2.1 Master Plan.

Pursuant to the Preliminary Agreement, Lerin developed a proposed master plan for all proposed development within the Lerin Hills Service Area, and GBRA approved that plan. The Parties acknowledge and agree that Lerin Hills may be developed, including design and construction, in phases and that, if it is developed in phases, the approved master plan shall reflect such phased development. The approved master plan includes, without limitation, the platted roads and rights-of-way, the Water Distribution System and the wastewater collection system for each phase, the total amount of treated water that Lerin anticipates will be needed for each phase over defined periods of time when such phase is fully developed. Lerin may modify the master plan from time-to-time. In the event that Lerin determines to modify the master plan, any such modifications shall be presented to GBRA for review and approval the same as the original proposed master plan. Lerin will also develop estimates of costs of development of the

Water Distribution System pursuant to the master plan as the same may be revised from time-to-time.

Lerin has provided to GBRA documentation that verifies Lerin's compliance with Section 3 of the Preliminary Agreement. The verification in addition to the master plan includes approval of all plats, plans and other developmental approvals from Kendall County, inclusion of GBRA approved deed restrictions, approval for creation of Municipal Utility District and Lerin has secured a wastewater discharge permit.

Section 2.2 Development Within the Lerin Hills Service Area.

(a) Lerin agrees to impose deed restrictions requiring compliance in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands, with all applicable federal, state and local laws, rules and regulations relating to land use or protection of the environment or natural resources including, without limitation: (i) protection of the quality of groundwater or surface water; (ii) regulation of the use of groundwater or surface water; (iii) conservation of groundwater or surface water; (iv) recharge of aquifers; and (v) drainage and flood control. Lerin further agrees that GBRA shall have the right not to supply any water under this Agreement for use on any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvements on such lands or other use of or activities on such lands, with any such laws, rules or regulations. If Lerin fails to comply with the requirements of this Section 2.2, then GBRA shall provide Lerin with written notice of such failure to comply, and Lerin shall have sixty (60) days thereafter to correct such non-compliance. If Lerin fails to correct such non-compliance within such time, GBRA shall have available all remedies allowed by law.

(b) Without limiting the generality of the requirements set forth in subsection (a) above, Lerin shall insure that there is compliance with all requirements of Kendall County applicable to Lerin relating in any way to development and use of lands within the Lerin Hills Service Area including, without limitation, compliance with all requirements to submit plats and obtain approvals thereof. All applications for approvals sought by Lerin from Kendall County and other governmental authorities shall be based upon the master plan approved by GBRA pursuant to Section 2.1.

Section 2.3. Conservation.

Lerin agrees to provide to the maximum extent practicable for the conservation of water, and it agrees that it will design, construct, operate and maintain its facilities in a manner that will prevent waste of water. Lerin further agrees to assist GBRA in implementing water conservation and drought management plans applicable to the use of treated water by users within the Lerin Hills Service Area that, at a minimum, comply with all minimum standards that may be required or recommended by the Texas Water Development Board (the "TWDB"), the TCEQ or GBRA. Such standards may include, but shall not be limited to, conservation rates or surcharges to be imposed by GBRA on users for use of water in excess of amounts that are determined by the

TWDB, the TCEQ or GBRA to be adequate for essential indoor domestic uses. Assistance by Lerin shall include, without limitation, deed restrictions, contractual provisions, and other lawful means by which those who purchase or lease lands within the Lerin Hills Service Area are required to comply with such standards.

Section 2.4. Exclusive Source.

Lerin agrees that except as otherwise agreed to in writing by the Parties, the exclusive source of potable water for use by users within the Lerin Hills Service Area shall be treated water delivered by GBRA. Lerin agrees to impose deed restrictions and utilize contractual provisions and other lawful means by which those who purchase or lease lands within the Lerin Hills Service Area are required to comply with the restriction set forth above in this Section 2.4. Lerin agrees that groundwater wells will not be connected to the Water Distribution System.

Section 2.5. Deed Restrictions.

Pursuant to the Preliminary Agreement, Lerin imposed or caused to be imposed deed restrictions as required by Sections 2.2(a), 2.3, 2.4, and 2.5 that are acceptable to GBRA on all lands within the Lerin Hills Service Area, and Lerin represents that it owned all such lands at the time such deed restrictions were imposed and that no land was sold or leased prior to the imposition of such deed restrictions. Lerin agrees to take all action necessary to maintain such deed restrictions in effect, and to impose such other deed restrictions as may be needed from time to time to comply with the requirements or to further the objectives of this Agreement.

**ARTICLE III
WATER PROJECT**

Section 3.1 Description of the Initial Treated Water Supply Project.

(a) The Initial Treated Water Supply Project, also known as the initial phase of the Western Canyon Project, consists of facilities for the diversion of raw water from Canyon Reservoir, a water treatment plant (the "Water Plant"), facilities to convey the raw water after diversion from Canyon Reservoir to the Water Plant, and facilities to convey treated water from the Water Plant for use in areas within portions of Comal, Kendall and Bexar Counties, including Lerin Hills Service Area. The Initial Treated Water Supply Project may also include storage and other facilities necessary or desirable for the supply of treated water to GBRA's customers. The Initial Treated Water Supply Project also includes all lands and interests in lands necessary or desirable for the construction, operation and maintenance of Initial Treated Water Supply Project facilities.

(b) The scope and capacity of the Initial Treated Water Supply Project were determined by GBRA based on which entities entered into contracts with GBRA for the supply of treated water before the design of the Initial Treated Water Supply Project was finalized, the amounts of water contracted to be supplied to each, and other factors such as the timing and

outcome of GBRA's applications for permits, amendments to permits or other governmental authorizations required for the Initial Treated Water Supply Project or portions thereof.

(c) The Initial Treated Water Supply Project is further described on the map and facility plan attached as Exhibit 1 showing the general location of the point of diversion from Canyon Reservoir, the Water Plant, and the general routings of raw and treated water conveyance facilities to and from the Water Plant.

Section 3.2 GBRA Responsibilities.

(a) GBRA shall be responsible for the operation and maintenance of the Water Project, for the design, permitting, financing, and construction of all expansions, extensions and other modifications to the Water Project, and for the operation and maintenance of the Water Project as it may exist at any time. GBRA may assign or subcontract all or any part of such responsibilities.

(b) GBRA will select and retain all legal, financial, engineering and other consultants that GBRA determines are necessary or desirable for GBRA to satisfy its obligations under this Agreement.

Section 3.3 Ownership of the Water Project.

(a) Except as provided otherwise in subsection (b), below, or otherwise agreed to in writing by the Parties, GBRA shall own all facilities, lands and interests in land comprising the Water Project.

(b) GBRA may transfer title to any facilities, lands and interests in lands comprising a portion of the Water Project to any person; provided, however, that such transfer of title does not impair GBRA's ability to fully perform its obligations under this Agreement.

Section 3.4 Extensions or Other Modifications of the Water Project.

(a) GBRA may extend, expand, maintain, repair, improve, upgrade or otherwise modify the Water Project from time to time, as it determines to be necessary or desirable. GBRA shall be authorized from time to time to issue Bonds for any such expansion, maintenance, repair, improvements, upgrade or other modification of the Water Project. Such Bonds may be issued without approval from Lerin.

(b) Lerin acknowledges that the Initial Treated Water Supply Project will need to be expanded, extended, and otherwise modified in order to meet the needs of Users within the Lerin Hills Service Area.

Section 3.5 Preparation of Plans and Specifications; Competitive Bids.

GBRA will cause to be prepared plans, specifications and contract documents for construction of all facilities comprising the Water Project. Plans and specifications for any portion of the Water Supply Project shall be subject to approval by the GBRA General Manager, after which GBRA will solicit pricing for construction of that portion, and GBRA shall determine which construction bid or bids to accept.

Section 3.6 Financing of Water Project.

(a) GBRA will define the terms and conditions (including maturity) of any Bonds issued by GBRA to finance the design, acquisition, construction and testing of any facilities, lands and interests in lands comprising the Water Project. GBRA will prepare such data, materials and documents as may be necessary to facilitate the sale and delivery of the Bonds, and Lerin agrees to furnish GBRA with such data, projections and related information as may reasonably be required by GBRA in the sale of the Bonds in compliance with all applicable laws, rules and regulations. In addition to the amounts paid under the construction contract or contracts, the proceeds of the Bonds will also be used to pay additional costs such as development costs (including without limitation, preliminary engineering costs, employee salaries, benefits and other expenses, legal and other advisory fees, charges by GBRA for administrative and general expenses, insurance premiums, if any, and any other costs incurred in developing and pursuing the Water Project), land acquisition costs, engineering, legal, financial and other advisory fees, charges by GBRA for administrative and general expenses, insurance premiums, if any, and any other costs incurred in the issuance of the Bonds and in the design, acquisition, construction and testing of the facilities, lands, and interests in lands comprising and directly related to the Water Project.

(b) GBRA shall be authorized from time to time to issue Bonds to refund outstanding Bonds or otherwise refinance costs of the Water Project. Such refunding Bonds may be issued without approval from the Lerin.

Section 3.7 Additional Customers.

GBRA may enter into contracts with Other Customers to supply treated water from the Water Project, and may amend existing contracts with Other Customers to supply greater or lesser amounts of treated water from the Water Project, at any time and from time to time.

Section 3.8 Source of Water.

The raw water to be treated and supplied under this Agreement will be diverted by GBRA from Canyon Reservoir under GBRA's Certificate of Adjudication 18-2074, as amended; provided, however, GBRA may also furnish untreated water from any source or combination of sources that may be available to GBRA on a firm-yield basis including, without limitation, run-of-river flows of the Guadalupe River under new water rights or amendments to existing water rights, and water obtained from sources other than surface waters of the Guadalupe River Basin.

ARTICLE IV
WATER DISTRIBUTION PROJECT

Section 4.1 Description of the Water Distribution Project.

The water distribution system (the "Water Distribution System") will consist of all conveyance facilities, storage facilities, distribution facilities, meters, valves, telemetry equipment and ancillary facilities necessary or desirable to convey, store, distribute and supply treated water from the Treated Water Point of Delivery to Users within the Lerin Hills Service Area. The "Water Distribution Project" consists of the Water Distribution System and all lands and interests in lands necessary or desirable for the construction, operation and maintenance of the Water Distribution System. The Water Distribution Project is generally described by the maps and documents attached as **Exhibit 2**.

Section 4.2 Lerin Responsibilities.

Subject to the terms of this Agreement:

- (a) Lerin shall be responsible for the design, permitting, acquisition, construction, operation, maintenance and replacement of those facilities comprising the Water Distribution Project as designated in the approved master plan, and for the acquisition of all lands and interests in land on which those facilities are located. The design, construction, operation and maintenance of all such facilities shall be in accordance with all applicable federal, state and local laws, rules and regulations, and in accordance with this Agreement.
- (b) Lerin shall bear all costs associated with the design, permitting, acquisition, construction, testing, operation and maintenance of all facilities comprising the Water Distribution Project that Lerin is required to construct pursuant to the approved master plan, and all lands and interests in land on which those facilities are located.

ARTICLE V
CONNECTION BY GBRA OF WATER DISTRIBUTION SYSTEM
AND SUPPLY OF TREATED WATER

Section 5.1 Connection by GBRA.

(a) Connection of the Water Distribution System to the Water Project at the Point of Delivery shall be made by GBRA after commencement of operation of the Water Project and the earlier of the completion of construction of the entire Water Distribution System or the portion thereof extending to the Point of Delivery. Connection shall be made in accordance with plans, specifications and requirements prepared or adopted by GBRA, and shall be accomplished by

GBRA setting the meter and physically tying in to the Water Distribution System at the Point of Delivery.

(b) The Point of Delivery for all treated water supplied by GBRA to the Water Distribution System under this Agreement shall be as shown on **Exhibit 2**, or such other point as may be agreed to by GBRA and Lerin.

(c) GBRA will design, acquire, install, construct, maintain and operate facilities intended to prevent backflow of water supplied by GBRA, or any flow of any other water or other substance, from the Water Distribution System to the Water Project at the Point of Delivery.

(d) Lerin shall pay all costs associated with connecting the Water Distribution System to the Water Project at the Point of Delivery including all reasonable costs of design, construction, installation, operation and maintenance of all connection facilities and equipment, including one or more meters, valves, storage tank(s) and telemetry equipment.

Section 5.2 Delivery of Treated Water to Lerin Hills Service Area.

(a) Upon connection of the Water Distribution System to the Water Project at the Point of Delivery, Lerin shall be responsible for the operation and maintenance of the Water Distribution Project and shall supply treated water to Users within the Lerin Hills Service Area, subject to the limitations provided in this Agreement.

(b) GBRA shall deliver treated water to the Water Distribution System at the Treated Water Point of Delivery in amounts and at delivery rates as may be needed to supply treated water to Users within the Lerin Hills Service Area, subject to the limitations provided in this Agreement.

Section 5.3 Raw Water Reservation.

The Raw Water Reservation is the amount of raw water that GBRA agrees to reserve under Certificate of Adjudication 18-2074, as amended, or other source as provided by Section 3.8, for use within the Lerin Hills Service Area in any calendar year for the purposes provided in this Agreement, unless otherwise agreed to in writing by the Parties. Subject to Section 5.4, below, the Raw Water Reservation for Lerin shall be seven hundred fifty (750) acre-feet per year out of the permitted yield of Canyon Reservoir and/or firm yield of one or more other sources, unless otherwise agreed to in writing by the Parties. GBRA shall be under no obligation under this Agreement or otherwise to reserve or supply any water for use within the Lerin Hills Service Area in addition to the Raw Water Reservation for those purposes or any other purpose.

Section 5.4 Annual Limitation.

(a) GBRA shall not be required under any circumstances to supply an amount of treated water to the Water Distribution System for supply to Users within the Lerin Hills Service Area during any calendar year in excess of the annual limitation in effect for the Lerin Hills Service Area during that year (the "Annual Limitation"). The Annual Limitation for treated water to be supplied to the Users initially shall be two hundred twenty-five (225) acre-feet per year, subject to adjustments set forth in subsection (b), below.

(b) Each calendar year on or before December 1, Lerin shall notify GBRA of the amount of treated water that will be needed by Users within the Lerin Hills Service Area during the following calendar year. The amount shall be the Annual Limitation for the following calendar year provided, however, under no circumstances shall the Annual Limitation for any calendar year exceed seven hundred fifty (750) acre-feet, unless otherwise agreed to by the Parties in writing. The Annual Limitation may not be decreased without the written consent of GBRA.

Section 5.5 Maximum Delivery Rate and Pressure.

GBRA shall supply treated water to the Treated Water Point of Delivery for supply to Users within the Lerin Hills Service Area at a rate, which meets or exceeds TCEQ's minimum requirements for water supply.

Section 5.6 Purpose of Use.

All water delivered by GBRA to the Water Distribution System for supply to Users within the Lerin Hills Service Area under this Agreement shall be used for municipal use only, as such purpose of use is defined by the rules of the TCEQ; provided, however, the Parties agree that municipal use includes domestic use, but that it does not include any use for heavy industrial or manufacturing purposes. Water delivered under this Agreement may not be used for the irrigation of golf courses, parks or public areas.

Section 5.7 Place of Use.

All water delivered by GBRA to the Water Distribution System for supply to Users within the Lerin Hills Service Area under this Agreement shall be used exclusively within the Lerin Hills Service Area, and no User or Lerin may use, or supply or resell for use, any water delivered by GBRA to such User outside the Lerin Hills Service Area unless, and except to the extent that, GBRA gives prior written approval for such use.

Section 5.8 Allocation of Water During Drought.

During severe drought conditions as may be defined by conservation or drought management plans adopted by GBRA, or in any other condition beyond GBRA's control when water cannot be supplied to meet the demands of all customers, the water to be distributed shall

be divided among all customers of stored water from Canyon Reservoir pro rata, according to the amount each may otherwise be entitled to under their respective contracts with GBRA, subject to reasonable conservation and drought management plans and requirements based on particular purposes of use of the water, so that preference is given to no one and everyone suffers alike. Commencement of a drought shall be initially defined as a period of forty-five (45) consecutive days when the inflow to Canyon Reservoir at the Spring Branch gage on the Guadalupe River is ninety (90) cubic feet per second average or less. GBRA may redefine commencement of a drought so long as the definition applies to all customers uniformly.

Section 5.9 Water Quality.

(a) GBRA agrees to use reasonable diligence and care in its efforts to supply to the Water Distribution System for delivery to Users within the Lerin Hills Service Area water of quality that meets or exceeds the standards of the TCEQ or any other applicable regulatory agency for potable water.

(b) GBRA shall periodically collect samples of treated water delivered to the Water Distribution System and other customers and cause the same to be analyzed consistent with guidelines established by the TCEQ using the then-current edition of Standard Methods for Examination of Water and Wastewater as published by the American Water Works Association and others.

(c) GBRA shall be solely responsible for insuring compliance of the Water Project with all applicable state and federal regulatory water quality requirements within GBRA's control.

Section 5.10 Measurement of Water.

(a) GBRA shall provide, operate, maintain, and read one or more meters, which shall record treated water delivered to the Water Distribution System at the Point of Delivery for supply to Users within the Lerin Hills Service Area. GBRA shall also provide, operate, maintain, and read one or more meters, which shall record treated water taken by Other Customers receiving treated water from the Project at the points of delivery for them. GBRA shall also provide, operate, maintain, and read one or more meters which shall record the total amount of raw water diverted at Canyon Reservoir at the Point of Diversion and conveyed to the Water Plant, and the total amount of water, if any, supplied via the Water Project from other sources. All meters shall be conventional types of approved meter(s), which will be maintained to a measuring accuracy within five percent (5%).

(b) For all purposes under this Agreement, unless water from one or more sources other than Canyon Reservoir is supplied via the Water Project, the amount of raw water diverted from Canyon Reservoir by GBRA and conveyed to the Water Plant for delivery to the Water Distribution System at the Point of Delivery for supply to Users within the Lerin Hills Service Area during any period of time shall be the greater of the following amounts:

- (1) the amount of treated water delivered to the Water Distribution System for supply to Users within the Lerin Hills Service Area during that period of time, as measured at the Treated Water Point of Delivery; or
- (2) the amount of water determined by allocating the total amount of raw water diverted during that period of time, as measured at the Point of Diversion, pro rata, based on the amounts of treated water delivered to Lerin at the Treated Water Point of Delivery and each Other Customer during that same period of time.

(c) GBRA shall keep accurate records of all measurements of water required under this Agreement, and the measuring device(s) and such records shall be open for inspection at all reasonable times. Measuring devices and recording equipment shall be accessible for adjusting and testing and the installation of check meter(s). If requested in writing, but not less than once in each calendar year, GBRA shall calibrate its water meter(s) that record raw water diverted from Canyon Reservoir at the Point of Diversion for delivery to the Water Plant and the treated water delivered to the Water Distribution System for supply to Users within the Lerin Hills Service Area at the Treated Water Point of Delivery. GBRA shall give Lerin notice of the date(s) and time(s) when any such calibration is to be made and, if a representative of Lerin is not present at the time set, calibration and adjustment may proceed in the absence of any representative of Lerin.

(d) If upon any test of the water meter(s), the percentage of inaccuracy of such metering equipment is found to be in excess of five percent (5%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than six (6) months. If any meter(s) that record treated water delivered to the Water Distribution System for supply to Users within the Lerin Hills Service Area at the Treated Water Point of Delivery are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters(s) are out of service or out of repair shall be estimated and agreed upon by GBRA and Lerin upon the basis of the best data available, and, upon written request, GBRA shall install new meters or repair existing meters. If GBRA and Lerin fail to agree on the amount of water delivered during such period, the amount of water delivered may be estimated by:

- (1) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- (2) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

Section 5.11 Title to Water.

Title to and responsibility for all water supplied hereunder shall be in GBRA to the Point of Delivery, at which point title to and responsibility for such water shall pass to Lerin.

ARTICLE VI
PERMITTING AND OTHER REGULATORY REQUIREMENTS

Section 6.1 Applicable Laws and Regulations.

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the TCEQ, or any successor agency.

Section 6.2 Agreement Conditioned upon Permitting.

The Parties' obligations under this Agreement are expressly conditioned upon GBRA and Lerin obtaining the necessary permits, amendments to permits, licenses and other governmental authorizations to allow the construction, expansion, extension, modification, and operation of the Water Project and the Water Distribution Project, and to supply treated water to Users within the Lerin Hills Service Area as provided herein.

ARTICLE VII
CHARGES

Section 7.1 Lerin's Raw Water Charge.

(a) Lerin's Required Monthly Raw Water Purchase for each month during any calendar year shall be 1/12th of the Raw Water Reservation in effect that year. Lerin agrees to pay GBRA each month for Lerin's Required Monthly Raw Water Purchase, in accordance with the following provisions of this Section 7.1, whether or not such amount, or any of it, is taken by Lerin.

(b) Lerin's Raw Water Charge for each month beginning the month immediately following the month when this Agreement is approved by GBRA through the Termination Date, shall equal the product of Lerin's Required Monthly Raw Water Purchase for each month times the District-Wide Firm Water Rate in effect that month.

(c) The District-Wide Firm Water Rate charged pursuant to this written agreement may be changed by the GBRA Board of Directors at any time and from time to time. GBRA agrees to provide Lerin with notice sixty (60) days in advance of such changes, provided, however, GBRA's failure to provide Lerin with such notice shall not, in any manner, effect Lerin's obligation to pay such rates in accordance with the terms of this Agreement.

Section 7.2 Charges to Lerin and Users for Treated Water Service.

(a) The amount to be paid to GBRA by Lerin for treated water service received each month (the "Water Project Component") will be charges for costs and services associated with the diversion and treatment of raw water and the delivery of treated water to the Treated Water Point of Delivery, including the Annual Debt Service Requirement related to the Water Project.

(b) GBRA will establish rates and other charges to be charged to Lerin for the Water Project Component. The rates to be established by GBRA shall be sufficient to pay for the Operation and Maintenance Expenses and the Annual Debt Service Requirement, if any, on the Water Project. Further, Lerin agrees to pay GBRA the rate and all subsequent billings to Lerin related to the Annual Debt Service Requirement whether or not Lerin's Annual Limitation, or any of it is actually taken or received. These rates and charges may be changed by the GBRA Board of Directors at any time and from time to time. GBRA agrees to provide Lerin with notice sixty (60) days in advance of such changes, provided, however, GBRA's failure to provide Lerin with such notice shall not, in any manner, effect Lerin's obligation to pay such rates and charges in accordance with the terms of this Agreement.

(c) Lerin acknowledges that the Initial Treated Water Supply Project was financed with proceeds of a series of Bonds issued prior to Lerin entering into this Agreement (the "Initial Water Project Bonds"). Pursuant to the Bond Resolution which authorized the issuance of the Initial Bonds and contracts entered into by GBRA with Other Customers at the time the Initial Bonds were issued (the "Original Water Customers"), each Other Customer that enters into an agreement with GBRA to receive treated water from the Initial Treated Water Supply Project after the delivery of the Initial Water Project Bonds, including Lerin, is obligated to pay such Other Customer's pro rata portion of the Annual Debt Service Requirement and the Annual Miscellaneous Bond Requirement related to the Initial Water Project Bonds. Lerin further acknowledges that entering into this Agreement will cause GBRA to expand, extend, and otherwise modify the Initial Treated Water Supply Project, but the Original Water Customers are not obligated, and are not expected, to pay debt service on any Bonds issued for purposes of expanding the Initial Treated Water Supply Project. Therefore, for purposes of paying debt service on Bonds issued to finance the Water Project, Lerin agrees that GBRA shall be authorized to set rates for treated water that is treated and delivered through the Water Project to the Delivery Point for Lerin Hills Service Area under the terms of this Agreement in a manner deemed necessary and appropriate by GBRA, in its sole discretion, which will be sufficient to collect from Lerin that aggregate (i) the appropriate portion of the Annual Debt Service Requirement and Annual Miscellaneous Bond Requirement on the Initial Water Project Bonds, and (ii) all or an appropriate pro rata portion of the Annual Debt Service Requirement and Annual Miscellaneous Bond Requirement on all additional Bonds issued by GBRA for purposes of expanding the Initial Treated Water Supply Project to accommodate the treated water requirements of Lerin and such Users. Therefore, Lerin acknowledges that contractual obligations GBRA has with the Original Water Customers and other factors may result in GBRA setting rates for Lerin's Annual Debt Service Requirement and Annual Miscellaneous Bond

Requirement, which exceed the rates set by GBRA for the Original Water Customers.

Section 7.3 Lerin Annual Requirement.

Lerin agrees that GBRA shall be entitled to recover the proportionate share of the Annual Operation and Maintenance Requirement for the Water Treatment Project applicable to the Lerin Hills Service Area for each twelve (12) month period ending August 31 of each year. Such proportionate share for the project shall be calculated by multiplying the Annual Operation and Maintenance Requirement by the fraction derived by dividing the average daily amount of use of such project by Lerin for Users in the Lerin Hills Service Area each month by the Water Plant Daily Capacity.

Section 7.4 Payments by Lerin Unconditional.

GBRA and Lerin recognize that the Bonds will be payable from and secured by a pledge of the sums of money to be received by GBRA from Lerin under this Agreement and from other customers under similar contracts. In order to make the Bonds marketable at the lowest available interest rate, it is to the mutual advantage of GBRA and Lerin that Lerin's obligation to make the payments required hereunder be, and the same is hereby, made unconditional. All sums payable hereunder to GBRA shall, so long as any part of the Bonds are outstanding and unpaid, be paid by Lerin without set-off, counterclaim, abatement, suspension or diminution except as otherwise expressly provided herein; and so long as any part of the Bonds are outstanding and unpaid, this Agreement shall not terminate, nor shall Lerin have any right to terminate this Agreement nor be entitled to the abatement of any payment or any reduction thereof nor shall the obligations hereunder of Lerin be otherwise affected for any reason, it being the intention of the Parties that so long as any portion of the Bonds are outstanding and unpaid, all sums required to be paid by Lerin to GBRA shall continue to payable in all events and the obligations of Lerin hereunder shall continue unaffected, unless the requirement to pay the same shall be reduced or terminated pursuant to an express provision of this Agreement.

Section 7.5 Source of Payments from Lerin.

All payments required to be made by Lerin to GBRA under this Agreement shall be payable from any and all sources available to Lerin and Users and further, all payments made by Lerin under this Agreement shall be considered an operating expense of the Water Distribution Project.

Section 7.6 Lerin's Covenant to Maintain Sufficient Income.

Lerin agrees to fix and maintain rates and collect charges for the facilities and services provided by the Water Distribution Project as will be adequate to permit Lerin to make prompt payment of all expenses of operating and maintaining the Water Distribution Project, including payments under this Agreement and to make prompt payment of the interest on and principal of

any bonds or other obligations of Lerin payable, in whole or in part, from the revenues of the Water Distribution Project.

Section 7.7 Billing.

GBRA will render bills to Lerin once each month for the payments required by this Article. GBRA shall, until further notice, render such bills on or before the 10th day of each month and such bills shall be due and payable at GBRA's office indicated below by the 20th day of each month or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Lerin, whichever is later. GBRA may, however, by sixty (60) days written notice change the monthly date by which it shall render bills, and all bills shall thereafter be due and payable ten (10) days after such date or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Lerin and Users, whichever is later. Lerin shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to GBRA at its office in the City of Seguin, Texas, or at such other place as GBRA may from time to time designate by sixty (60) days written notice.

Section 7.8 Delinquency in Payment.

(a) All amounts due and owing to GBRA by Lerin shall, if not paid when due, bear interest at the maximum rate permitted by law, provided that such rate shall never be usurious. If any amount due and owing by Lerin is placed with an attorney for collection by GBRA, Lerin shall pay to GBRA, in addition to all other payments provided for by this Agreement, including interest, GBRA's collection expenses, including court costs and attorney's fees. Lerin further agrees that GBRA may, at its option, terminate this Agreement, or it may discontinue delivering treated water until all amounts due and unpaid are paid in full with interest as herein specified. Any such discontinuation shall not, however, relieve Lerin of its unconditional obligation to make the payments required hereunder, as provide by Section 7.4 of this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, the Parties agree that any default shall not result in termination of this Agreement until thirty (30) days after the date that the alleged defaulting party receives written notice from the non-defaulting party specifying the default and the requirements to cure the same.

**ARTICLE VIII
PROJECT REPRESENTATION**

Section 8.1 Project Management Committee.

An advisory committee (the "Project Management Committee") has been established to provide advice to GBRA with respect to the Water Project and related actions proposed to be taken by GBRA including, without limitation, advice to GBRA with respect to GBRA's

preparation of any operating plans for the Water Project. Lerin shall be entitled to have a representative on the Project Management Committee.

ARTICLE IX
TERM OF AGREEMENT AND RIGHTS AFTER TERMINATION

Section 9.1 Term.

(a) This Agreement shall be effective as of the date first written above and, unless it is terminated earlier pursuant to any provision of this Agreement, shall continue in effect until December 31, 2033, or as it may be extended pursuant to subsections (d) or (e) below, on which date this Agreement shall terminate unless extended pursuant to subsection (c) below (the "Termination Date").

(b) From and after the Termination Date, Lerin shall have no right to be supplied any water, and GBRA shall have no obligation to supply any water to Lerin.

(c) If all of the Bonds (including principal and interest) will not be fully paid by the Termination Date, then GBRA shall have the right, at any time before such date, to extend the Termination Date to December 31 of the year in which the Bonds are to be paid. Any extension by GBRA pursuant to this subsection shall be effective as of the date that GBRA gives Lerin written notice of the extension.

(d) During the month of January 2033, GBRA shall give Lerin written notice of the "Extension Firm Water Rate" to be utilized in calculating Lerin's Raw Water Component to be paid by Lerin if the Termination Date is extended beyond December 31, 2033. If GBRA fails to give Lerin timely written notice of the Extension Firm Water Rate as set forth above in this subsection (d), then the Extension Firm Water Rate for each month beginning January 2034 shall be the District-Wide Firm Water Rate in effect that month. If Lerin desires to extend the Termination Date, then it shall give GBRA, after January 31, 2033 and by not later than June 30, 2033, written notice of extension. If Lerin gives GBRA timely written notice of extension, then the Termination Date shall be extended to December 31, 2053.

(e) If the Termination Date is extended to December 31, 2053, pursuant to subsection (d), above, then during the month of January 2053, GBRA shall give Lerin written notice of the "Extension Firm Water Rate" to be utilized in calculating Lerin's Raw Water Component to be paid by Lerin if the Termination Date is extended beyond December 31, 2053. If GBRA fails to give Lerin timely written notice of the Extension Firm Water Rate as set forth above in this subsection (e), then the Extension Firm Water Rate for each month beginning January 2054 shall be the District-Wide Firm Water Rate in effect that month. If Lerin desires to extend the Termination Date, then it shall give GBRA, after January 31, 2053 and by not later than June 30, 2053, written notice of extension. If Lerin gives GBRA timely written notice of extension, then the Termination Date shall be extended to December 31, 2073. Any extension thereafter shall be by mutual agreement of the Parties.

Section 9.2 Rights after Termination.

Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

**ARTICLE X
OTHER PROVISIONS**

Section 10.1 Waiver and Amendment.

Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by Lerin or GBRA shall not be deemed a waiver by GBRA or Lerin of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of GBRA is authorized to waive or modify any provision of this Agreement. No modifications to or recession of this Agreement may be made except by a written document signed by GBRA's and Lerin's authorized representatives.

Section 10.2 Remedies.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by either Party, but all such other remedies existing at law or in equity shall be cumulative including, without limitation, specific performance may be availed of by Lerin and termination or suspension of service, may be availed of by GBRA. The prevailing Party shall be entitled to any reasonable attorney's fees, court costs or other expenses incurred in bringing or defending any suit alleging such default or claim.

Section 10.3 Force Majeure.

If for any reason of force majeure, either GBRA or Lerin shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation of Lerin to make the payments required under the terms of this Agreement, then if the Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accident or intentional),

and any inability on the part of GBRA to deliver treated water or provide wastewater service on account of any other cause not reasonably within the control of GBRA.

Section 10.4 Non-Assignability.

Lerin may not assign this Agreement without first obtaining the written consent of GBRA; provided, however, that Lerin shall have the right, without GBRA's prior written consent upon delivery of written notice of the same to GBRA, to assign all or a portion of its interest in this Agreement to a district or other public entity established for the purpose of operating and maintaining the Water Distribution Project.

Section 10.5 Entire Agreement.

This Agreement constitutes the entire agreement between GBRA and Lerin and supersedes any prior understanding or oral or written agreements between GBRA and Lerin respecting the subject matter of this Agreement.

Section 10.6 Severability.

The provisions of this Agreement are severable and if, for any reasons, any one or more of the provisions contained in the Agreement shall be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Agreement.

Section 10.7 Captions.

The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Agreement.

Section 10.8 No Third Party Beneficiaries.

This Agreement does not create any third party benefits to any person or entity other than the signatories hereto and their authorized successors in interest, and is solely for the consideration herein expressed.

Section 10.9 Due Authorization and Binding Obligation

This Agreement has been duly authorized, executed and delivered by all necessary action of Lerin, and is enforceable against Lerin in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

Section 10.10 **Notices.**

All notices, payments and communications ("notices") required or allowed by this Agreement shall be in writing and be given by depositing the notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be as follows:

For GBRA:

Guadalupe-Blanco River Authority
Attention: General Manager
933 E. Court Street
Seguin, Texas 78155

And for Lerin:

Abel Godines, President
Lerin Development Co., Inc.
4820 Bacon Rd.
San Antonio, Texas 78249

Either party may change its address by giving written notice of the change to the other party at least fourteen (14) days before the change becomes effective.

In witness whereof, the Parties hereto, acting under the authority of the respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

GUADALUPE-BLANCO RIVER AUTHORITY

By: _____
William E. West, Jr., General Manager

ATTEST:

LERIN DEVELOPMENT CO., INC.

By: _____
Abel Godines, President

ATTEST:

THE STATE OF TEXAS §

COUNTY OF GUADALUPE §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public
The State of Texas

THE STATE OF TEXAS §

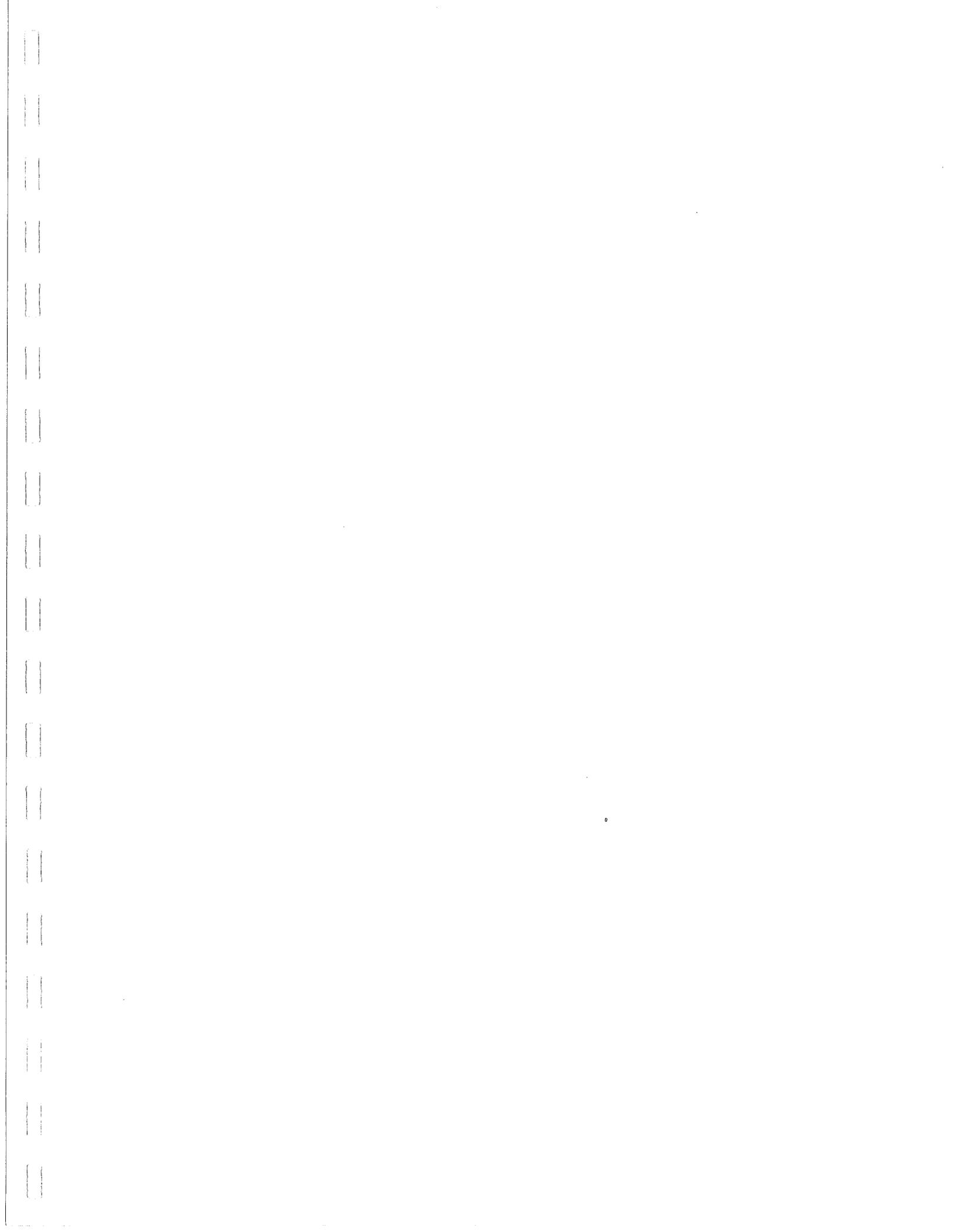
COUNTY OF GUADALUPE §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Abel Godines known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of LERIN DEVELOPMENT CO., INC., and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public
The State of Texas





GENERAL OFFICE
933 East Court Street
Seguin, Texas 78155
Phone: 830-379-5822
800-413-5822
Fax: 830-379-9718

BUDA WASTEWATER
RECLAMATION
PLANT
575 County Road 236
Buda, Texas 78610
Phone: 512-312-0526
Fax: 512-312-0526

COLETO CREEK PARK
AND RESERVOIR
P.O. Box 68
Fannin, Texas 77960
Phone: 361-575-6366
Fax: 361-575-2267

LAKE WOOD
RECREATION AREA
167 FM 2091 South
Gonzales, Texas 78629
Phone: 830-672-2779
Fax: 830-672-2779

LOCKHART WATER
TREATMENT PLANT
547 Old McMahan Road
Lockhart, Texas 78644
Phone: 512-398-3528

LOCKHART
WASTEWATER
RECLAMATION
SYSTEM
4435 FM 20 East
Lockhart, Texas 78644
Phone: 512-398-6391
Fax: 512-398-2036

LULING WATER
TREATMENT PLANT
350 Memorial Drive
Luling, Texas 78648
Phone: 830-875-2132
Fax: 830-875-2132

PORT LAVACA
OPERATIONS
P.O. Box 146
Port Lavaca, Texas 77979
Phone: 361-552-9751
Fax: 361-552-6529

SAN MARCOS WATER
TREATMENT PLANT
91 Old Bastrop Road
San Marcos, Texas 78666
Phone: 512-353-3888
Fax: 512-353-3127

VICTORIAL REGIONAL
WASTEWATER
RECLAMATION
SYSTEM
P.O. Box 2085
Victoria, Texas 77902-2085
Phone: 361-578-2878
Fax: 361-578-9039

GBRA WEBSITE
www.gbra.org



GUADALUPE-BLANCO RIVER AUTHORITY

February 15, 2005

Abel Godines, President & CEO
Lerin Development Company LLC
4820 Bacon Road
San Antonio, Texas 78249

Re: Water Commitment

Dear Mr. Godines,

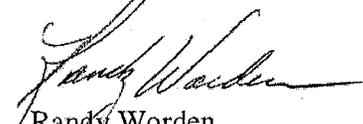
Your request for 750 acre-feet per year of stored water in Canyon Reservoir and treated water from the Western Canyon Regional Water Supply Project has been considered. Guadalupe-Blanco River Authority (GBRA) does have adequate supply in Canyon Reservoir to supply Lerin Development with the 750 acre-feet supply and will consider reserving the full amount with the following contingencies.

- Lerin Development must first acquire a Certificate of Convenience and Necessity (CCN) for the area to be served from Texas Commission on Environmental Quality (TCEQ) prior to GBRA entering into a contract with Lerin Development for a permanent water supply from Canyon Reservoir and a treated water supply from the Western Canyon Project.
- Lerin Development must supply documentation of the legislative action creating a Municipal Utility District (MUD) for the development.
- Lerin Development must provide proof of Lerins' or the MUDs' financial ability to pay GBRA the annual Canyon reservation payment. An irrevocable letter of credit or bond may be necessary to provide long-term security.
- Lerin Development must be able to construct the facilities (storage, transmission and pumping) necessary to receive the treated water.
- Lerin Development will agree to abide by the conservation and drought contingency plans developed by GBRA and approved by TCEQ.

- Lerin Development or the MUD must commit to set the tax and/or utility rates sufficient to pay the raw water reservation charge and the treated water annual commitment.
- Lerin Development will agree to enter into a contract with GBRA for the raw water supply reservation and treated water supply.

GBRA will provide a contract to Lerin Development Co. at such time as all contingencies have been met. Please contact me at 830-379-5822 should you have additional questions.

Sincerely,



Randy Worden
Executive Manager of Business Development

Cc: William E. West, Jr., General Manager

GENERAL OFFICE
933 East Court Street
Seguin, Texas 78155
Phone: 830-379-5822
800-413-5822
Fax: 830-379-9718

BUDA WASTEWATER
RECLAMATION
PLANT
575 County Road 236
Buda, Texas 78610
Phone: 512-312-0526
Fax: 512-312-0526

COLETO CREEK PARK
AND RESERVOIR
P.O. Box 68
Fannin, Texas 77960
Phone: 361-575-6366
Fax: 361-575-2267

LAKE WOOD
RECREATION AREA
167 FM 2091 South
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Phone: 830-672-2779
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LOCKHART WATER
TREATMENT PLANT
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Phone: 512-398-3528

LOCKHART
WASTEWATER
RECLAMATION
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Lockhart, Texas 78644
Phone: 512-398-6391
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SAN MARCOS WATER
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VICTORIAL REGIONAL
WASTEWATER
RECLAMATION
SYSTEM
P.O. Box 2085
Victoria, Texas 77902-2085
Phone: 361-578-2878
Fax: 361-578-9039

GBRA WEBSITE
www.gbra.org



GUADALUPE-BLANCO RIVER AUTHORITY

June 7, 2005

Abel Godines, President & CEO
Lerin Development Company LLC
4820 Bacon Road
San Antonio, Texas 78249

Re: Commitment to Supply Water

Dear Mr. Godines,

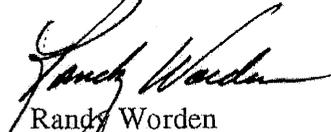
As previously expressed, Guadalupe-Blanco River Authority (GBRA) has the ability and capacity to provide your development in Kendall County, south of Highway 46 with 750 acre-feet of treated potable water through the Western Canyon Project. GBRA will commit to providing 750 acre-feet if the following conditions are met.

1. Lerin Development secures a CCN for the development.
2. Documentation of the MUD creation.
3. Proof of financial ability to pay for the water supply.
4. Provide proof of ability to construct receiving infrastructure.
5. Lerin agrees to abide by GBRA's Conservation and Drought Contingency Plans.
6. The MUD must agree to set rates sufficient to pay the raw water reservation and treated water commitments and enter into a contract for it with GBRA.
7. Abide by the Participation Criteria for the Western Canyon Project that was approved by the GBRA Board of Directors at its May 18, 2005 meeting. (copy attached)

There is adequate capacity to serve the existing and proposed requirements of the City of Boerne, Tapatio Springs and Lerin Development with capacity to spare.

Please advise if you need additional information.

Sincerely,



Randy Worden
Executive Manager of Business Development

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REQUEST FOR RELIEF (Variance)

From the Kendall County (KC) Development Rules and Regulations
(Section 106)

1. Date: March 22, 2007
2. Location of Property: North of and adjacent to State Highway 46 approximately 4.5 miles west of the City of Boerne
3. Name of Development (If Applicable): Lerin Hills Unit 1 and all subsequent Units of Lerin Hills Subdivision.
4. Property Owner/Developer Name: Lerin Development Co., LLC
5. Relief Requested (Reference the specific Section/Paragraph of the current KC Development Rules and Regulations: "EXHIBIT A" – I. Applicability: This exhibit is applicable only if the water supply for a proposed residential subdivision is based on a groundwater supply, including individual water wells on individual lots, excluding water control and improvement districts established pursuant to state law... of the 1997 Kendall County Development Guidelines and Regulations Rule Book.
6. Reason(s) for Requesting Relief: (Please refer to Section 106, Relief by County Commissioners Court in answering these questions)
 - a. What special circumstances or conditions affecting the land involved such that the strict interpretation of the provisions of these regulations would deprive you of the reasonable use of this land.

The Lerin Hills Municipal Utility District has been established pursuant to state law and operates and furnishes the same services as a water conservation and improvement district. Subdivisions located within the Lerin Hills Municipal Utility District should be exempt from the requirements stated in Exhibit A of the Kendall County Development Guidelines and Regulations Rule Book. The Lerin Hills Municipal Utility District should be treated the same as a water conservation and improvement district since Lerin Hills Municipal Utility District can provide the same service as the water conservation and improvement district and is a district created pursuant to state law.

- b. Why is relief necessary for the preservation and enjoyment of a substantial property right of yours?

The relief provides the preservation and enjoyment of a substantial property rights that other Kendall County property owners have that reside in a water conservation and improvement district.

- c. Will the granting of relief not be detrimental to the public's health, safety, and welfare? Please explain.

The granting of this relief will not be detrimental to the public, health, safety or welfare, and will further provide for the protection and development of water resources under its jurisdiction.

- d. Will the granting of relief not have the effect of preserving the orderly subdivision of other land in the area? Please explain.

The granting of this relief will not effect the orderly development of other land in the area because the relief sought effects the area within the boundaries of the Lerin Hills Municipal Utility District. The Lerin Hills Municipal Utility District will be working with other agencies in the development of alternative sources of water and the preservation of existing sources.

Signed:

“EXHIBIT A”

I. Applicability:

This exhibit is applicable only if the water supply for a proposed residential subdivision is based on a groundwater supply, including individual water wells on individual lots, excluding water control and improvement districts established pursuant to state law. If expansion of an existing public water supply system or installation of a new public water supply system is to be the proposed method of water distribution for the proposed residential subdivision, site-specific groundwater data shall be developed under the requirements of Texas Administrative Code (TAC), Title 30, Part I, Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems) and the information developed in meeting these requirements shall be attached to the form required under TAC, Title 30, Part I, Chapter 230.3 (relating to Certification of Groundwater Availability for Platting).

II. Purpose and Goals of Rules:

The purpose, intent and goal of this exhibit is to provide a general indication to individual purchasers of property within a covered subdivision of the anticipated quantity and quality of available water. Additionally, these regulations strive to protect and preserve the groundwater resources within Kendall County.

III. Regulating Authority:

The Texas Commission on Environmental Quality (TCEQ) has declared the Trinity Aquifer, over which Kendall County lies, a Priority Groundwater Management Area (PGMA). Therefore, pursuant to the Texas Water Code, Chapter 35, Section 35.019, the Kendall County Commissioners' Court (KCCC) has the authority to require anyone seeking approval for a platted subdivision to show that groundwater of sufficient quantity and quality is available for the completed subdivision.

IV. Groundwater Availability:

A. Definition:

Groundwater availability shall be defined as the amount of groundwater available to a proposed platted subdivision, at full build-out, which does not cause the permanent long term lowering of our aquifer. The available groundwater shall be calculated based on the following assumptions, which are, in part, derived from the Texas Water Development Board (TWDB) reports #60 and #273.

Kendall County receives an average of 35 inches of rain each year

The average recharge rate of the Trinity Aquifer is 4% of total rainfall

The average private residence uses 600 gallons of water per day

B. Preparing the Availability Report:

A developer of a platted residential subdivision will be required to furnish a Groundwater Availability Report (GAR) to the KCCC and the Cow Creek Groundwater Conservation District (CCGCD). The GAR shall be prepared and certified by a Professional Engineer or a Professional Geoscientist license in the state of Texas. The data used to prepare the report shall be obtained from test wells, or a series of test wells using the following criteria:

1. Test wells shall be provided in accordance with the following:
 - a. Subdivisions up to and including 75 acres shall require a single (one) test well.
 - b. Subdivisions greater than 75 acres and up to and including 320 acres shall require a minimum of two test wells.
 - c. An additional test well shall be required for each additional 320 acres, or parts thereof.

In order to provide uniformity of test data, additional test wells shall be required, for subdivision requiring two or more test wells, if the five hour pump test, (detailed in 6 below), indicates a variance of 50% or greater between any two wells. In this case, paragraph 1(c) above shall be amended to read "An additional test well shall be required for each 160 acres, or parts thereof."

2. Locations of the test wells shall be shown on the subdivision plat required by Kendall County.
3. The test wells must be placed within the proposed subdivision and shall be located by latitude and longitude.
4. Location of all known existing, abandoned, and inoperative wells within the proposed subdivision shall be identified, located, and mapped by on-site surveys. Existing well locations shall be illustrated on the plat required by Kendall County.
5. An existing well may be used as a test well if sufficient data is available, or can be obtained, from that well to demonstrate that it meets the requirements of this exhibit. KCCC or CCGCD may accept the results of a previous well test in lieu of a new test if:
 - a. The well is located within the proposed subdivision.
 - b. The previous test fully meets all the requirements of this exhibit.
 - c. The previous test was conducted in an aquifer which is being considered as the source of water supply for the proposed subdivision; and
 - d. Aquifer conditions (e.g., water levels, gradients, etc.) during the previous test were approximately the same as they are presently
6. The test wells shall be pumped with a pump capable of varying its discharge rate up to sixteen (16) gallons per minute. During the testing period the discharge rate shall be adjusted until the water surface in the well stabilizes and remains constant for a pumping period of 5 hours. An air line may be used to monitor water levels during pumping and recovery periods.
7. Water pumped out of the well during well development shall not be allowed to influence initial well performance results.
8. Well testing required by this section shall be performed before any acidization or other flow-capacity enhancement procedures are applied to the test well.
9. Each GAR shall contain a statement of groundwater quality. Groundwater quality shall be based on a test conducted in a Texas Department of Health approved laboratory, using the criteria as defined in TAC , Title 30, Chapter 230.9(a)(2)(3).

C. Protection of groundwater.

All reasonably necessary precautions shall be taken during construction of test wells to ensure that surface contaminants do not reach the subsurface environment and that undesirable groundwater (water that is injurious to human health and the environment or water that can cause pollution to land or other

waters) if encountered, is sealed off and confined to the zone(s) of origin. Test wells shall be cased and cemented per current county rules and regulations for a residential well.

V. Exemptions:

A subdivision of land may be exempted from preparing a GAR if it can be shown that:

1. Sufficient data as determined by the CCGCD and approved by the KCCC exists from tests on adjacent or like properties in the same area, or
2. Division is among family members (family member is defined as within the third degree by consanguinity or within the second degree by affinity), or
3. Each parcel is twenty acres or more, and no more than one well is permitted per twenty acres .
4. The subdivision's water source is supplied solely from surface water or rainwater catchment .

VI. Density and Number of Lots:

Using the assumptions in IV (A), it can be shown that the average density of a platted subdivision within Kendall County must be approximately six (6) acres per dwelling unit. Therefore, the total number of lots in any one platted subdivision, or section thereof, using groundwater from individual wells, shall not be more than the total acres in the subdivision/section divided by six. Platted subdivisions using a central water system as defined in paragraph I, shall maintain a total density of four (4) acres per dwelling unit. Therefore, the total number of lots in any one platted subdivision, or section thereof, using central water systems, shall not be more than the total number of acres in the subdivision/section divided by four.

VII. Lot/Tract Sizes:

The following shall define residential lot sizes in a required platted subdivision or section thereof:

- A. Lots supporting a well and septic system shall be no less than three (3) acres while maintaining a six-acre (6) density.
- B. Subdivisions having an approved central water system developed under TAC, Title 30, Part 1, Chapter 290, Subchapter D, and using on-site septic systems may reduce the individual lot sizes to one acre while maintaining a four-acre (4) density.
- C. Subdivisions having both a centralized water system, as defined above, and a centralized sewage disposal system installed and approved in accordance with TAC, Title 30, Chapter 285 may reduce the individual lot sizes to one-half acre, while maintaining the four-acre (4) density.

VIII. Approval Criteria:

KCCC will not approve a final plat for a subdivision falling under the requirements of this exhibit unless a GAR has been previously approved by the CCGCD. It must be the clear conclusion of the report that the fully developed subdivision will have water currently available of sufficient amount and quality using the aforementioned assumptions in IV(A). The submitted GAR must contain at a minimum the following information summarized on the attached form of the latest revision:

1. Size of subdivision including total acres and proposed number of tracts
2. Number of wells drilled, including dry holes.
3. Number of wells pump tested
4. Well locations by physical address/description and GPS coordinates
5. Well logs including static water levels
6. Elevation above mean sea level at the well sites
7. A geological cross section of the studied area at a scale of not less than or equal to one-inch per 400 feet horizontal and one-inch per 100 feet vertical.
8. Well yields in gallons per minute from the 5 hour pump test
9. Average well yields for all wells tested
10. Water quality results from an approved laboratory
11. Conclusion statement based on TAC, Title 30, Part 1, Chapter 230.11(b)(c)

KCCC nor CCGCD make any guarantees or warranties based upon GARs as to the availability of water and/or of its quality now, or in the future, to prospective buyers of the properties within the subject subdivision.

IX. Well Accessibility:

Test wells shall remain available for CCGCD inspection for a minimum of 60 days after the receipted date of the GAR by CCGCD. Upon final approval of the GAR by CCGCD and KCCC test wells may be offered for sale in conjunction with tract sales within the platted subdivision.

Andrew J. Calvert
108 Jack Rabbit Circle
Boerne, Texas 78006
(830) 537-3980

January 29, 2008

Ms. Sheresia Perryman, Auditor
TCEQ, Water Supply Division
12100 Park 35, Circle, Bldg. F
MC-153
P.O. Box 13087
Austin, TX 78711-3087

RE: Proposed Rate Increase: Kendall County Utility Company CCN 11904,12122,20698

Dear Ms. Perryman:

I understand that you are the TCEQ Executive Director's team leader assigned to review the Kendall County Utility Company proposed rate increase. The ratepayers most definitely will be contesting this rate increase; protest letters and petitions are being collected and mailed to the TCEQ at this time. **The purpose of this letter is to urgently request the current rates be held constant until the conclusion of the SOAH hearing and final decision by the TCEQ Commission.**

Texas Administrative Code Rule 291.29(b), states:

"At any time after the filing of a statement of intent to change rates under Texas Water Code 13.187, as amended, the executive director may petition the commission or judge to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates."

The reason I am requesting the Executive Director to hold these rates constant is that the proposed rate increase is not justified, and the ratepayers will ultimately prevail in the hearing. If the rates are not held constant, the ratepayers will have endured these dreadfully excessive rates for as long as two years as the hearing progresses. This in turn will place undue hardships on some ratepayers (over which one-half are retired and on fixed incomes), depress home values and make homes harder to sell in an already difficult real estate market.

The specific reasons for my request is:

1. Huge amount of the increase
 - 79 to 169% increase of water base rates
 - 125% increase in sewer base rate

2. Unfair and inequitable rate structure

The proposed rate structure places the heaviest burden on the base rate charge and not on the actual usage. Only \$4.00 per 1000 gallons is charged on all water used over 50,000 gallons. This in effect gives a break to the largest water users, which so happens to be affiliated companies of the KCUC Owners. Historical records show the Tapatio Springs Hotel complex uses over 400,000 gallons per month, and the Tapatio Springs Golf Course has used in excess of one million gallons in a single month.

In contrast, a more equitable approach would be like the City of Boerne's tiered rate structure: \$4.47 per 1000 between 50,000 to 100,000; \$6.03 100,000 to 250,000 and \$8.44 per 1000 above 250,000.

3. Tariff Violations

In a letter dated April 24, 2007, Ms. Lisa Fuentes of your office reprimanded this utility for not following the Tariff in place since 2002. Specifically, this utility under-billed its affiliated companies for water and sewage usage. It is conservatively estimated this under-billing is well in excess of \$100,000. This activity is not only wrong but also illegal. These are revenues that would have offset the revenue requirement for the proposed rate increase, taking the burden off of the ratepayers.

4. Unsupported and exaggerated expenses

Ultimately, we will want to view all supporting documents for each expense category. On a cursory look there are several items that stand out.

- GBRA Fees – Ratepayers have not received one drop of water from the GBRA. This contract has been effect since 2001. These costs should be classified as “work in progress” and therefore not recoverable in the rates. Developers reimbursed many of these GBRA fees, and available GBRA water (not delivered) may well have been sold to another water company.
- Legal Fees – We believe these legal fees are investor costs. We know the investors filed a slander suit against some of its ratepayers and lost. The investors decided to expand the utility and fought a CCN Expansion protest against the ratepayers. The investors have sued the TCEQ for allowing the Lerrin Hills MUD creation. KCUC ratepayers should not be charged for investor-instigated lawsuits for their personal benefit. Furthermore, developers have reimbursed this utility for many legal fees, and may have reimbursed the fees listed as expenses.
- Annual Depreciation –
 - Many items listed in the Inventory of Water Utility Plant are for repairs. Repairs should be expensed, not capitalized and depreciated. It is possible these expenses are in fact being double counted in expenses as well.
 - Line Items titled Ranger Creek Line Construction and Interconnection w/Tapatio are assets of the Tapatio Springs Resort that were donated to the utility and are therefore not depreciable assets.

January 28, 2008, Ms. Sheresia Perryman – page two

- Salaries – The proposed salary for Jay Parker is approximately \$70 per hour. Or \$30,300 per year. Mr. Parker is the owner of the utility and is claiming a 12% profit on \$2,401,644, which equates to \$288,197. A \$300,000 salary is an January 28, 2008, Ms. Sheresia Perryman – page two excessive amount for such a small utility. Additionally it is not clear if Mr. Parker is receiving a salary from just Water Company or both the Water Company and the Sewer Company.

These are just a few of the more salient anomalies found in the rate application. Again we urge the Executive Director to hold the current rates constant until the entire matter is concluded.

Sincerely,

Andrew J. Calvert
KCUC Ratepayer

**NOTICE OF PROPOSED RATE CHANGE
KENDALL COUNTY UTILITY COMPANY, INC**

11904, 12122, 20698

Company Name

CCN Numbers

has submitted a rate change application to the Texas Commission on Environmental Quality (Commission). The proposed rates listed on the next page will apply to service received after the effective date provided below. If the Commission receives protests to the proposed increase from 10 percent of the ratepayers or from any affected municipality before the 91st day after the proposed effective date, a public hearing will be scheduled to determine if the proposed rates are reasonable. Protests should be mailed to:

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

Unless protests are received from 10 percent of the ratepayers or the Commission staff requests a hearing, no hearing will be held and rates will be effective as proposed. Please read the following information carefully:

Tapatio Springs Subdivision and all units therein

Subdivisions or Systems Affected by Rate Change				
P.O. Box 1335	Boerne	TX	78006	(830)537-5755
Company Address	City	State	Zip	Telephone
\$505,500 combined water and sewer				On or before December 28, 2007
Annual Revenue Increase				Date Customer Notice Mailed
03/14/01				First or second week of month
Date of Last Rate Change				Date Meters Typically Read

EFFECTIVE DATE OF PROPOSED INCREASE: March 1, 2008

BILLING COMPARISON

Water:	Existing	10,000 gallons:	\$ 47.00 /mo	Existing	30,000 gallons:	\$ 93.25 /mo
	Proposed	10,000 gallons:	\$ 76.66 /mo	Proposed	30,000 gallons:	\$ 145.36 /mo
Sewer:	Existing	10,000 gallons:	\$ 59.10 /mo	Proposed	10,000 gallons:	\$ 96.05 /mo

The proposed rates will apply to all service rendered after the effective date and will be reflected on the bill you receive approximately 30 to 45 days after the effective date.

In the event that the application is set for hearing, the specific rates requested by the utility may be decreased or increased by order of the Commission. If the Commission orders a lower rate to be set, the utility may be ordered to refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest. You may inspect a copy of the rate change application at your utility's office or at the Commission's office at Park 35 - Building F, 12015 Park 35 Circle, Suite 3101, Austin, Texas, west side of IH-35, south of Yager Lane. Additional information about the application can be obtained by contacting the Utilities and Districts Section at 512/239-4691. Information about how you can participate in the rate setting process can be obtained by contacting the Public Interest Counsel at 512/239-6363.

<u>CURRENT RATES</u>		<u>PROPOSED RATES</u>	
Monthly base rate including <u>0</u> gallons		Monthly base rate including <u>0</u> gallons	
Meter Size: Residential		Meter Size: Residential	
5/8" or 3/4"	\$ <u>24.50</u>	5/8" or 3/4"	\$ <u>43.96</u>
1"	\$ <u>40.92</u>	1"	\$ <u>109.90</u>
1 1/2"	\$ <u>81.59</u>	1 1/2"	\$ <u>219.80</u>
2"	\$ <u>130.59</u>	2"	\$ <u>351.68</u>
3"	\$ <u>245.00</u>	3"	\$ <u>659.40</u>
Other: <u>4</u> "	\$ <u>408.42</u>	Other: <u>4</u> "	\$ <u>879.20</u>
<u>Gallonage Charge:</u>		<u>Gallonage Charge:</u>	
\$2.25 per 1,000 gallons up to 25,000 gallons		\$3.27 per 1,000 gallons for 0-20,000 gallons	
\$2.50 per 1,000 gallons for 25,001-50,000 gallons		\$3.60 per 1,000 gallons for 20,001-50,000 gallons	
\$2.75 per 1000 gallons for 50,001 + gallons		\$4.00 per 1000 gallons thereafter	
<u>Miscellaneous Fees</u>		<u>Miscellaneous Fees</u>	
Tap fee	\$400.00 (larger meter or unique costs is actual cost)	Tap fee	\$400.00 (larger meter or unique costs is actual cost)
Reconnection fee	\$ <u>25.00</u>	Reconnection fee	\$ <u>25.00</u>
Non-payment (Maximum - \$25.00)	\$ <u>25.00</u>	Non-payment (Maximum - \$25.00)	\$ <u>25.00</u>
Customer's request	\$ <u>25.00</u>	Customer's request	\$ <u>35.00</u>
Transfer fee	\$ <u>15.00</u>	Transfer fee	\$ <u>35.00</u>
Late charge	\$ <u>5.00</u>	Late charge	\$ <u>5.00</u>
Returned check charge	\$ <u>25.00</u>	Returned check charge	\$ <u>25.00</u>
Deposit -Residential	\$ <u>50.00</u>	Deposit -Residential	\$ <u>50.00</u>
Deposit-Commercial	1/6 th of estimated annual bill	Deposit-Commercial	1/6 th of estimated annual bill
Meter test fee	\$ <u>25.00</u>	Meter test fee	\$ <u>25.00</u>

Regulatory Assessment of 1% is added to base rate and gallonage charges

Pass Through Adjustment Clause:

The utility's may pass on to each affected customer any increase or decrease in any fixed fee and/or consumption-based fee from Guadalupe- Blanco River Authority, Cow Creek Groundwater Conservation District and/or other such governmental authority, thirty (30) days after noticing of any change to all affected customers and filing notice with the TCEQ as required by 30 TAC 291.21 (I). The change per customer shall be calculated as follows:

Fixed Charge: Monthly minimum charge + (Increase or Decrease in Annual, Monthly or Quarterly Fee / Number of Affected Customers)
 Volume Charge: Monthly gallonage charge per 1,000 gallons + (Increase or decrease in pumpage fee* 1.15)

<u>CURRENT RATES</u>		<u>PROPOSED RATES</u>	
Monthly base rate including <u>0</u> gallons		Monthly base rate including <u>0</u> gallons	
Meter Size:		Meter Size:	
Residential			
5/8" or 3/4"	\$ <u>24.10</u>	Residential or equivalent	\$ <u>54.25</u>
1"	\$ <u>24.10</u>	Com'l-Tapatlo Sps Club (per meter)	\$ <u>325.50</u>
1 1/2"	\$ <u>24.10</u>	Com'l-Tapatlo Sps Hotel (per meter)	\$ <u>401.45</u>
2"	\$ <u>24.10</u>	Com'l-Tapatlo Sps offices	\$ <u>542.50</u>
3"	\$ <u>24.10</u>	Com'l-Ridgeview Condos per meter	\$ <u>596.75</u>
Other: <u>4</u> "	\$ <u>24.10</u>	Other: _____"	\$ _____
Gallonge Charge:		Gallonge Charge:	
\$ <u>3.50</u> for each additional 1000 gallons over the minimum		\$ <u>4.10</u> for each additional 1000 gallons over the minimum	

Gallonge charges are determined based on average consumption for winter period which includes the following months: December, January and February

<u>Miscellaneous Fees</u>		<u>Miscellaneous Fees</u>	
Tap fee	\$400.00 (larger meter or unique cost is actual cost)	Tap fee	\$400.00 (larger meter or unique cost is actual cost)
Reconnection fee	\$ <u>25.00</u>	Reconnection fee	\$ <u>25.00</u>
Non-payment (Maximum - \$25.00)	\$ <u>25.00</u>	Non-payment (Maximum - \$25.00)	\$ <u>25.00</u>
Customer's request	\$ <u>25.00</u>	Customer's request	\$ <u>35.00</u>
Transfer fee	\$ <u>15.00</u>	Transfer fee	\$ <u>35.00</u>
Late charge	\$ <u>5.00</u>	Late charge (Indicate either \$5.00 or 10%)	\$ <u>5.00</u>
Returned check charge	\$ <u>25.00</u>	Returned check charge	\$ <u>25.00</u>
Deposit	\$ <u>50.00</u>	Deposit (Maximum \$50.00)	\$ <u>50.00</u>

Regulatory Assessment of 1% is added to base rate and gallonge charges

ATTACHMENT E

ATTACHMENT E

AFFIDAVIT OF EDWARD SUAREZ

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Edward Suarez, who being by me duly sworn upon his oath did depose and state as follows:

1. My name is Edward Suarez. I am over eighteen (18) years of age, I am of sound mind, and I am competent to make this Affidavit. I have never been convicted of a felony or a crime involving moral turpitude. I do certify that the statements, facts and opinions recited herein are based on my personal knowledge and are true and correct.

2. I am President of the Lerin Hills Municipal Utility District ("the District").

3. My business address is c/o Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027-7537.

4. The District was created to provide water, sewer and drainage services for property within its boundaries, which is generally located approximately four miles west southwest of downtown Boerne, Texas in Kendall County, Texas.

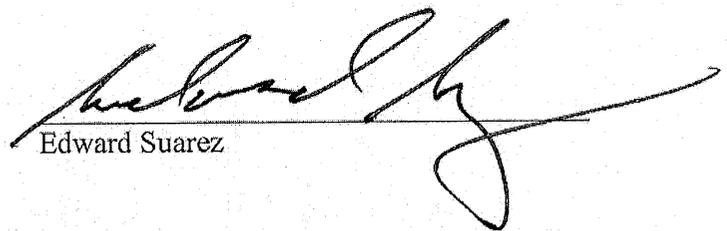
5. At a District Board meeting on March 28, 2007, the District's attorneys, Allen Boone Humphries Robinson, reported to the District's Board of Directors that Lerin Hills, Ltd. had previously entered into a water supply agreement with the Guadalupe-Blanco River Authority ("GBRA") to supply surface water to the land within the District. The Board authorized the District's attorneys to negotiate the terms of transferring the water supply agreement to the District. From the discussion at the Board's meeting, I understand that the current proposed GBRA supply contract is a "take or pay" contract with an exclusivity provision that specifies, in effect, that GBRA will be the exclusive provider of potable water for

development in the District, and that the final agreement between the District and GBRA will likely have those same or very similar terms.

6. From the discussion at the Board's meeting, I understand that the District must comply with all terms of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") Order, dated November 22, 2006, that created the District, and that development in the District cannot exceed available water. I have no intention of voting to allow the District to violate the TCEQ's Order.

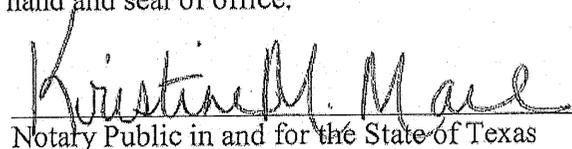
7. At the Board's March 28, 2007, meeting the Board rejected the engineer's report that recommended that the District seek groundwater for development within the District. The Board took no action as a result of the rejected report, and all copies of the report were collected and returned to the engineer's representative. To my knowledge, no member of the District's Board has requested Pate Engineering to address or consider the need for seeking a groundwater withdrawal permit.

Affiant sayeth not.


Edward Suarez

SUBSCRIBED AND SWORN TO before me by the said Edward Suarez on this 30th day of January, 2008, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

ATTACHMENT F

AFFIDAVIT OF TEAGUE G. HARRIS III

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Teague G. Harris III, who being by me duly sworn upon his oath did depose and state as follows:

1. My name is Teague G. Harris III. I am over eighteen (18) years of age, I am of sound mind, and I am competent to make this Affidavit. I have never been convicted of a felony or a crime involving moral turpitude. I do certify that the statements, facts and opinions recited herein are based on my personal knowledge and are true and correct.

2. I am Senior Vice President of Pate Engineers, Inc., and my business address is 13333 Northwest Freeway, Suite 300, Houston, Texas 77040. My business phone number is (713) 462-3178.

3. Pate Engineers performs engineering work on behalf of Lerin Hills Municipal Utility District ("the District").

4. As part of Pate Engineers' work for the District, I prepared an Engineer's Status Report for the March 28, 2007 Board of Directors meeting.

5. As part of this Report, it was recommended that the District apply for a groundwater withdrawal permit from the Cow Creek Groundwater Conservation District in order to provide emergency backup to the surface water supply so that if there is any disruption of supply of treated surface water via pipeline from the Guadalupe-Blanco River Authority ("GBRA"), the groundwater supply can be used to fight fires and serve the health, safety, and welfare of the District's residents.

6. The Report also indicated that conjunctive use of groundwater would allow a lower overall cost to the residents of treated surface water from GBRA.

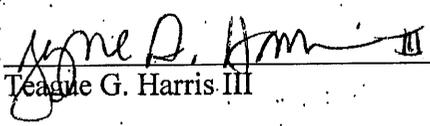
7. The Engineering Report's recommendation for seeking groundwater supplies was made in the absence of knowledge regarding the GBRA contract for treated surface water supplies that contains "take or pay" and exclusivity provisions. Consequently, seeking groundwater supplies is not recommended, because it could jeopardize the surface water contract with GBRA.

8. Neither representatives of the District nor any of its Board Members requested that the Engineering Report or Pate Engineers address the need for groundwater supplies.

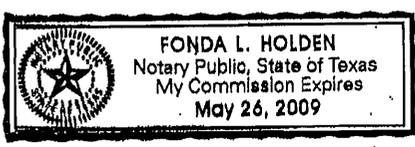
9. Neither the Developer, Lerin Hills, Ltd., nor any of its representatives requested that the Report or Pate Engineers evaluate or address groundwater supplies for the District.

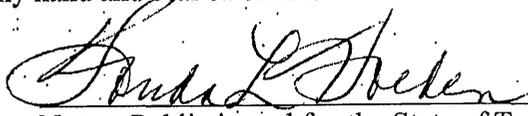
10. I am aware of no current or future plans of the District or the Developer, Lerin Hills, Ltd., to seek groundwater supplies.

Affiant sayeth not.


Teague G. Harris III

SUBSCRIBED AND SWORN TO before me by the said Teague Harris on this 30 day of January, 2008, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

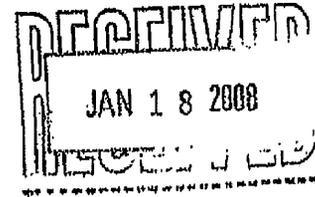
ATTACHMENT G

Cow Creek Groundwater Conservation District

216 Market Ave., Ste. 105
Boerne, Texas 78008
(830) 816-2504 Fax (830) 816-2607
www.ccgcd.org

January 11th, 2008

Lerin Hills, LTD
Attn: J. Abel Godines
4820 Bacon Rd
San Antonio, TX 78249



Re: Request for Information under the Public Information Act by the Lerin Hills Municipal Utility District

Dear Mr. Godines,

As requested, I am writing this letter to clarify the circumstances surrounding the Lerin Hills Municipal Utility District. As of the date of this letter, the Cow Creek Groundwater Conservation District has not received any applications from the Lerin Hills Municipal Utility District for the registration of existing wells, the drilling of new wells, or for an Operating Permit.

To Iterate, the District has no responsive documents related to this request.

If you have any questions, please feel free to contact me at (830) 816-2504.

Thank you,
Cow Creek Groundwater Conservation District

Micah Voulgaris

Micah Voulgaris
General Manager

ATTACHMENT H

**RULES OF THE COW CREEK
GROUNDWATER CONSERVATION DISTRICT**

As Amended Effective August 23, 2007

Cow Creek Groundwater Conservation District Rules

RULE REVISION RECORD

The history of each specific Rule is noted following that Rule.

Date Adopted	Effective Date	Affected Rules
10/7/03	10/7/03	Original Adoption
6/1/04	6/1/04	Original Adoption
5/17/05	5/17/05	Original Adoption and Amendment
9/12/05	9/14/05	Original Adoption and Amendment
10/20/05	10/25/05	Amendment
9/5/06	9/5/06	Amendment
1/8/07	1/8/07	Amendment
8/20/07	8/23/07	Original Adoption and Amendment

Cow Creek Groundwater Conservation District Rules

TABLE OF CONTENTS

RULE 1 INTRODUCTION AND REGULATORY AUTHORITY..... 6

Rule 1.1 Authority to Promulgate Rules.....6

Rule 1.2 Purpose of the Rules6

Rule 1.3 Effective Date7

Rule 1.4 Action on Rules7

Rule 1.5 Savings Clause8

Rule 1.6 Boundaries of the District8

Rule 1.7 Groundwater Management Policies.....8

RULE 2 DEFINITIONS 9

RULE 3 WELL REGISTRATION, DRILLING PERMITS, AND OPERATING PERMITS..... 21

Rule 3.1 Existing Wells21

Rule 3.2 New Wells – Registration/Drilling Permit24

Rule 3.3 New Wells – Operating Permit26

Rule 3.4 Change in Well Conditions or Operations, and Permit Renewal, Amendment, and Revocation29

Rule 3.5 Wells Subject to Operating Permits31

RULE 4 FEES..... 32

Rule 4.1 Application Fee..... 32

Rule 4.2 Contested Case Hearing Fee 33

Rule 4.3 Annual Well Fee 33

Rule 4.4 Production Fee 35

Rule 4.5 Other Fees 36

Cow Creek Groundwater Conservation District Rules

RULE 5	WELL CONSTRUCTION AND COMPLETION STANDARDS	37
Rule 5.1	Preamble	37
Rule 5.2	Applicability	37
Rule 5.3	Exemptions.....	37
Rule 5.4	Additional Well Construction and Completion Standards	38
Rule 5.5	Authorized Well Drillers and Well Pump Installers.....	40
Rule 5.6	Reporting and Recordkeeping	40
Rule 5.7	Sealing of Wells.....	41
Rule 5.8	Capping of Wells	42
Rule 5.9	Plugging of Wells.....	42
Rule 5.10	Right to Inspect and Enter Property.....	42
Rule 5.11	Meter Registration	43
RULE 6	WELL SPACING	44
Rule 6.1	Applicability	44
Rule 6.2	Determining Distances of a Tract Bordered By a Public Roadway	44
Rule 6.3	Spacing from Potential Sources of Pollution.....	44
Rule 6.4	Spacing From Property Lines and Other Wells	45
Rule 6.5	Spacing from Retail Water Utility Service Area or Community Water System	45
Rule 6.6	Variance Procedures	46
Rule 6.7	Well Clusters	46
RULE 7	ENFORCEMENT AND VARIANCES	48
Rule 7.1	Enforcement.....	48
Rule 7.2	Variances	49

Cow Creek Groundwater Conservation District Rules

RULE 8	PROCEDURAL RULES	50
Rule 8.1	Hearings on Management Plan, Budget and Rules Other Than Emergency Rules	50
Rule 8.2	Adoption of Emergency Rules	52
Rule 8.3	Actions On Drilling and Operating Permits	52
Rule 8.4	Permit Actions by the Board Not Requiring A Hearing	53
Rule 8.5	Permit Actions Requiring a Contested Case Hearing	55
Rule 8.6	Hearings On Enforcement Actions	59
RULE 9	PROHIBITION AGAINST WASTE	61
RULE 10	GROUNDWATER PRODUCTION LIMITS	62
Rule 10.1	Preamble	62
Rule 10.2	Production Limits for All Wells Requiring an Operating Permit.....	62
Rule 10.3	Production Limits for Wells Supplying Community Water Systems and Retail Water Utilities	62
Rule 10.4	Production Limits for New Domestic or Livestock Wells Incapable of Producing More Than 25,000 Gallons Per Day	63
RULE 11	DROUGHT MANAGEMENT	64
Rule 11.1	Determination of Waste	64
Rule 11.2	Applicability	64
Rule 11.3	Initiation and Determination of Drought Stages	65

Cow Creek Groundwater Conservation District Rules

Rule 1 Introduction and Regulatory Authority

Rule 1.1 Authority to Promulgate Rules

The Cow Creek Groundwater Conservation District (the District) is a political subdivision of the State of Texas. The District was formed as a temporary District by Senate Bill 1911 of the 76th Texas Legislature (1999). The 77th Legislature (2001) ratified the District as a permanent district subject to voter approval under House Bill 3544 and Senate Bill 2. Both House Bill 3544 and Senate Bill 2 give the district all of the rights, powers, privileges, authority, functions and duties provided under the general law of this state, including Texas Water Code Chapter 36, applicable to groundwater conservation districts created under Section 59, Article XVI, of the Texas Constitution. House Bill 3544 and Senate Bill 2 prevail over conflicts with the earlier legislation (Senate Bill 1911) and general law. Additional authority was granted to the District by the 79th Legislature, R.S. (2005) in Senate Bill 839.

In a confirmation election held on November 5, 2002, Kendall County voters approved the creation of the District and elected five Directors to the Board of Directors. As a duly created groundwater conservation district, the District may exercise any and all statutory authority or power conferred under its Enabling Legislation and under Chapter 36 of the Texas Water Code, including the adoption and enforcement of rules under Section 36.101 Rule Making Power. All references to statutory provisions are to those provisions as may be amended from time to time.

The District is located within the Hill Country Priority Groundwater Management Area (PGMA), which was designated and delineated in 1990 under Texas Water Code Chapter 35 as an area experiencing or expected to experience critical groundwater problems.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005.

Rule 1.2 Purpose of the Rules

The District acknowledges that groundwater is a limited resource within the District. Balancing the allocation of water among competing uses such as domestic, municipal, agricultural, and industrial, while ensuring adequate groundwater to maintain spring flow, riparian rights, and wildlife needs is beneficial to all residents within the District. Continuing

Cow Creek Groundwater Conservation District Rules

population growth within the District and surrounding areas will place increasing demands on groundwater resources within the District. In order to ensure water availability to meet future needs, the District has developed these Rules.

The District Rules are promulgated under its Enabling Legislation and the Texas Water Code Chapter 36 authority to make and enforce rules to provide for the conservation, preservation, protection, and recharge of groundwater and aquifers within the District. These Rules are also intended to minimize the draw down of the water table, minimize the reduction of artesian pressure, prevent interference between wells, prevent the degradation of the quality of groundwater, prevent waste of groundwater, give consideration to the service needs of retail water utilities, and carry out the powers and duties conferred under Chapter 36 and the District's Enabling Legislation.

These Rules, and any orders, requirements, resolutions, policies, directives, standards, guidelines, management plan, or other regulatory measures implemented by the Board, have been promulgated to fulfill these objectives. These Rules may not be construed to limit, restrict, or deprive the District or Board of any exercise of any power, duty, or jurisdiction conferred by the District's Enabling Legislation, Texas Water Code Chapter 36, or any other applicable law or statute.

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Rule 1.3 Effective Date

These Rules and any amendment are effective on the effective dates indicated following each subsection.

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Rule 1.4 Action on Rules

- A. The Board may from time to time, following notice and public hearing, amend or revoke Rules or adopt new Rules following the procedures of Rule 8.1.
- B. The Board may adopt an emergency Rule without prior notice or hearing, or with an abbreviated notice and hearing, according to Rule 8.2.

Cow Creek Groundwater Conservation District Rules

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005.

Rule 1.5 Savings Clause

If any Rule, provision, section, sentence, paragraph, clause, word, or other portion of these Rules is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other Rules or portions thereof, and these Rules shall be construed as if such invalid, illegal, or unenforceable Rule or of portions thereof had never been contained herein.

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Rule 1.6 Boundaries of the District

The boundary of the District is contiguous with the county lines of Kendall County, Texas, and includes all land within Kendall County except for land located within the City Limits of the City of Fair Oaks Ranch, Texas. Fair Oaks Ranch is excluded pursuant to House Bill 2005 of the 77th Texas Legislature (2001) and a subsequent election.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005.

Rule 1.7 Groundwater Management Policies

The District is in agreement with the commonly accepted groundwater management principle that opposes the mining of groundwater. Therefore, it shall be the policy of the District to limit withdrawal of groundwater from wells, while preserving historic use to the greatest extent practical and consistent with its certified Groundwater Management Plan. Any such limits shall be based on current estimates of groundwater availability presented in the Plan and as may be revised from time to time as new data becomes available.

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Cow Creek Groundwater Conservation District Rules

Rule 3 Well Registration, Drilling Permits, and Operating Permits

All wells located within the District except environmental sampling wells, environmental monitoring wells, environmental soil borings, geotechnical wells, and geologic exploration wells, shall be registered with the District. Based on the registration information, certain well owners shall be required to obtain operating permits.

All registrations and permits issued by the District shall be subject to the District's Rules and to terms and conditions regarding the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practical the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells.

The District reserves the authority, to the extent allowed by law, to adopt, revise, and supersede its Rules applicable to wells subject to registration and permitting. Registration of a well, issuance of a drilling permit, operating permit, or permit to substantially alter a well does not limit the District's authority to regulate a well or the production of water from a well.

The District may conduct well and well site inspections during the registration, application, drilling, or completion process to confirm well location, status, production capability, measure water levels, take water samples, or conduct other appropriate well-related investigations and inspection activities deemed necessary by the District. All well and well site access shall be conducted in accordance with Rule 5.10.

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Rule 3.1 Existing Wells

Any well in the District that was drilled and properly completed on or before May 17, 2005, is an existing well under these Rules. All existing wells are required to either register with the District under Rule 3.1.A. or obtain an operating permit from the District under Rule 3.1.B. A failure to take these steps may result in issuance of a notice of violation and assessment of a penalty under Rule 7.1. If an existing well is substantially altered, as defined by District Rules, after May 17, 2005, it becomes subject to the requirements of the District Rules applicable to new wells.

Cow Creek Groundwater Conservation District Rules

A. Registration

The owner of an existing well located within the District shall register the well with the District. Forms for registering existing wells are available from the District Office. The owner shall provide all information required on the form and a copy of the completed State of Texas Well Report. This information shall include, but is not limited to:

- (1) The name of the well owner, mailing address, and telephone number;
- (2) A location map or property plat drawn on a scale that adequately details the well site, the property lines, the location of other existing wells on the subject tract, the location of the existing use(s), the location of any existing or proposed on-site wastewater system, and the location of any other potential source of contamination within 100 feet of the existing well;
- (3) Casing size, well depth, pump size, and production capability;
- (4) What the well is used for; and
- (5) If it is a water well, the information shall include what water from the well is used for and where water from the well is used.

No application fee under Rule 4.1. shall be charged for registering an existing well. The well shall be registered under its existing State well number. If the well does not have a State well number, the District shall issue a temporary well number pending assignment of a State well number.

The District shall determine under Rule 3.5. whether the existing well must obtain an operating permit, and whether it is currently operational, abandoned, or plugged, and what annual well fees under Rule 4.3. are required, if any. No further approval is required of existing wells, except as may be required by Rule 3.4. regarding changes in ownership or well conditions or operations. Changes in well conditions or operations or purpose of use of water from the well, may make the well subject to production limits under Rule 10. Increases in the production capability may require an operating permit.

Cow Creek Groundwater Conservation District Rules

B. Operating Permit

If based on the registration submitted under Rule 3.1.A., the District determines that an existing well requires an operating permit, the well owner shall obtain an operating permit as described in this Rule 3.1.B. The owner shall submit to the District an operating permit application on a form obtained from the District. All operating permit applications shall be signed and sworn to as required by Texas Water Code Section 36.113(b). In addition to the information required under Rule 3.1.A., the owner shall provide other information such as a water conservation plan and a drought contingency plan, and any other information deemed necessary by the District. No application shall be deemed administratively complete if the applicant has unpaid fees or has unresolved compliance issues with the District. No application fee under Rule 4.1. shall be charged for issuing an operating permit for an existing well.

If the application seeks less than 100,000 gallons per year, once the application is deemed administratively complete, the District shall issue the operating permit per Rule 8.3. No public hearing shall be held unless requested by the owner.

If the application seeks 100,000 gallons per year or more, once the application is deemed administratively complete, the District will determine the production amount under Rule 10. The application will be processed per Rule 8.3.

An operating permit shall require installation of a meter or other reliable water measuring device, specify and authorize the annual maximum groundwater production from the well as provided by Rule 10, the owner of the well, the state or temporary well number, the purpose of use permitted, and any special permit conditions, including the production fee, if required under Rule 4.4. All meters must be registered with the District under Rule 5.11.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended September 5, 2006 by Board Order 2006-025; effective September 5, 2006. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007.

Cow Creek Groundwater Conservation District Rules

Rule 3.2 New Wells – Registration/Drilling Permit

- A. Under the District's Enabling Legislation, written authorization must be obtained from the District before a new well is drilled or an existing well is substantially altered.
- B. A new well is a well drilled or properly completed after May 17, 2005. A well that is substantially altered after this date must also comply with the requirements of this Rule 3.2.
- C. The owner of a new well proposed to be located within the District shall register the well with the District and pay the application fee, as required by Rule 4.1.A.(1), prior to commencement of drilling. This registration shall serve as an application for a drilling permit. Forms for registering new wells are available from the District Office. The owner of an existing well that will be substantially altered shall seek authorization from the District, as required by Rule 3.4, prior to altering the well.
- D. The owner shall provide all information required on the form. This information shall include, but is not limited to:
 - (1) The name of the well owner, mailing address, and telephone number;
 - (2) The proposed well location, including a location map or property plat drawn on a scale that adequately details the well site, the property lines, the location of other existing wells, any existing or proposed wastewater systems, and other potential sources of contamination within 2000 feet of the proposed well showing compliance with Rule 6 spacing requirements. This map or plat shall provide adequate detail to allow the District to determine compliance with Rule 10.4, if applicable.
 - (3) Certification that the well is not located within 50 feet of or within the service area of a retail public water utility or community water system;
 - (4) If the well is to be located within 50 feet of or within the service area of a retail public water utility or community water system, a document from the retail public water utility or community water system stating that it is unable or unwilling to provide service;

Cow Creek Groundwater Conservation District Rules

- (5) Casing size, well depth, pump size, and production capability;
- (6) What the well will be used for; and
- (7) If it is a water well, the information shall include what water from the well will be used for and where water from the well will be used.

The District shall issue a temporary well number pending assignment of a State well number.

If the District determines that the information is complete, that the application fee has been paid, that location of the proposed well complies with Rule 6 spacing requirements, and Rule 10.4, if applicable, that no operating permit under Rule 3.3. is required, and that the registrant is in compliance with all District Rules and all required fees have been paid, the District shall issue a drilling permit. If an operating permit under Rule 3.3. is required, the owner shall obtain such an operating permit prior to drilling the well.

If no operating permit under Rule 3.3. is required, upon issuance of the drilling permit, the owner may drill the well. A copy of the drilling permit shall be on-site while the well is being drilled. The issuance of a permit to drill is not a guaranty of the availability of groundwater. The well shall comply with all State and District well construction and spacing requirements. The owner shall ensure that the driller files a copy of the State of Texas Well Report with the District within 60 days of well completion. Although no further approval is required, except as may be required by Rule 3.4. regarding changes in ownership or well conditions or operations, all new wells are subject to the production limits imposed by Rule 10. Increases in the production capability or purpose of use may result in the well being reclassified so that the well owner would be required to apply for an operating permit and be subject to annual production fees under Rule 4.4.

Drilling shall begin within one year of approval of a registration and issuance of a drilling permit. At that time, if no drilling has begun, the drilling permit expires. The application fee is non-refundable. After expiration of a drilling permit, an owner shall submit a new registration/application for drilling permit accompanied by the appropriate application fee prior to drilling the well. The District may grant a one-time extension of no more than 180 days upon written request to the District.

Cow Creek Groundwater Conservation District Rules

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended September 5, 2006 by Board Order 2006-025; effective September 5, 2006. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007.

Rule 3.3 New Wells – Operating Permit

If based on the registration submitted under Rule 3.2., the District determines that a new well requires an operating permit, prior to producing water from the well, the owner is required to obtain an operating permit as follows.

A. Application

An application for an operating permit shall be submitted on a form obtained from the District and shall be signed and sworn to by the well owner as required by Texas Water Code Section 36.113(b). A separate application is required for each well. Each application shall include the following:

- (1) Name, address, phone number, and facsimile number of the well owner or owners;
- (2) Name, address, phone number, and facsimile number of the person submitting the permit application;
- (3) Name of the proposed project, if any;
- (4) Any previous or other name(s) that identifies the tract of land;
- (5) Location and legal property description of the proposed project;
- (6) A copy of the well registration and drilling permit;
- (7) The annual maximum production requested (in gallons per year or acre feet per year);
- (8) A water conservation plan;
- (9) A drought contingency plan; and

Cow Creek Groundwater Conservation District Rules

- (10) Any other information deemed necessary by the District to comply with the requirements of Texas Water Code Chapter 36 and address specific District needs.
- (11) Application fee required by Rule 4.1.A(2).

B. Administrative Completeness of Application

In order to adequately address the purposes and requirements of Texas Water Code Chapter 36 and District Rules, the District may require further clarification or additional documentation from the applicant. The applicant shall be notified when the application has been reviewed and deemed administratively complete. No application shall be deemed administratively complete if the applicant has unpaid fees or has unresolved compliance issues with the District. If an application remains administratively incomplete for more than 180 days following either the original application date or the date that the District notified the applicant of the need to submit additional clarification or documentation, the application shall expire.

C. Consideration of Operating Permit Applications

The District shall promptly act on each administratively complete application for an operating permit. Within 60 days after the date an operating permit application or application to substantially alter a well is determined to be administratively complete, the application shall be referred to the Board in accordance with the provisions of Rule 8.3.

The District shall be guided by these Rules and Chapter 36, Texas Water Code in consideration of each application. The District shall consider the following, which include the considerations required by Texas Water Code Section 36.113(d):

- (1) Does the application conform to the requirements of Chapter 36 and these Rules?
- (2) Is the well located within 50 feet or within the service area of a retail public water utility or community water system? If so, has the applicant shown that the utility or community water system is unable or unwilling to provide water service?
- (3) Does the proposed use of water unreasonably affect existing groundwater and surface water resources or existing permit holders?

Cow Creek Groundwater Conservation District Rules

- (4) Is the proposed use of water considered "beneficial use"?
- (5) Is the proposed use of water consistent with the District's certified water management plan?
- (6) Has the applicant agreed to avoid waste and achieve water conservation?
- (7) Will the conditions and limitations in the permit prevent waste, achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells?
- (8) Does the application include an acceptable drought contingency plan?
- (9) Does the application include an acceptable water conservation plan?
- (10) Has the applicant agreed to use reasonable diligence to protect groundwater quality?
- (11) Has the applicant agreed to follow the District's rules on well plugging at the time of well closure?"
- (12) Are the applicant and the well in compliance with all District rules and have all required fees been paid?

An operating permit shall require installation of a meter or other reliable water measuring device, and specify and authorize the annual maximum groundwater production from the well as provided by Rule 10. All meters must be registered with the District under Rule 5.11.

The issuance or amendment of an operating permit is not a guaranty of the availability of groundwater.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007.

Cow Creek Groundwater Conservation District Rules

Rule 3.4 Change in Well Conditions or Operations, and Permit Renewal, Amendment, and Revocation

A. Change in Well Conditions or Operations

No person shall take any of the following actions related to a well located in the District without notifying and receiving authorization from the District: (1) change the type of use of a well; (2) change the place of use of the water produced from the well; (3) alter the size or depth of a well, the well pump, or its pumping volume; (4) plug a well; or (5) abandon a well. Such changes may be processed administratively, may require an amendment to an existing operating permit, may make an exempt well be required to obtain an operating permit, and may make a well subject to the production limits of Rule 10. No pump installer or water well driller shall make changes to a well if the owner has not applied for and obtained the appropriate authorization under this Rule.

B. Change in Use That Requires a Well to Have an Operating Permit

Any time the production of groundwater from a well or the capability to produce groundwater from a well increases to more than 25,000 gpd (17.36 gpm), an operating permit shall be required. It is the responsibility of the owner of such a well to apply for an operating permit no later than 90 days prior to making the changes that render such well subject to this Rule. A change in use from domestic or livestock to any other purpose or use, regardless of production capability, shall likewise require the owner to obtain an operating permit. No pump installer or water well driller shall make changes to a well if the owner has not applied for and obtained the appropriate authorization under this Rule.

C. Change in Ownership

Any change in ownership of a well shall be reported to the District by the purchaser on an approved form within 60 days after the change. If there are unpaid annual well fees or production fees at the time of transfer, the new owner shall become responsible for payment of such fees. For wells with an operating permit, failure to timely notify the District may result in the permit being revoked.

Cow Creek Groundwater Conservation District Rules

D. Operating Permit Term

Operating permits issued by the District are valid for a period of five (5) years, unless otherwise specified by the District as a special permit condition. Such a special permit condition may include the need for additional data regarding the impact of the well on the aquifer or surrounding wells. The District reserves the authority to adopt, revise, and supersede rules applicable to wells subject to an operating permit.

E. Renewal of Operating Permits

An application for renewal of an operating permit shall be submitted no later than 90 days prior to the expiration date of the operating permit and shall be accompanied by the appropriate application fee under Rule 4.1. The District shall normally renew the permit at the end of each permit term unless: (1) the permit holder is not in compliance with permit conditions, the District Management Plan or District Rules; (2) the permit holder has delinquent annual well fees, production fees, or other District fees; or (3) conditions of the aquifer, as reflected in the District's water monitoring program or drought management plan, indicate that a reduction in production is required to prevent aquifer mining. In the event of noncompliance or delinquent fees, the District shall notify the permit holder of the conditions preventing the automatic renewal of the permit and allow the permit holder an opportunity to correct any noncompliance or pay delinquent fees. Failure of the permit holder to correct any noncompliance or pay delinquent fees within 30 days may result in revocation of the permit.

F. Operating Permit Amendment

An amendment to an operating permit is required for any change to the operation, use, or condition of a well, including changing the production limit, the type of use of the well, the place of use of the water produced from the well, the size or depth of a well, a well pump, or its pumping volume. An application for an amendment, on a form obtained from the District and accompanied by the appropriate application fee under Rule 4.1., shall be submitted at least 90 days prior to the date the change is to take place. The applicant shall be notified when the application has been reviewed and deemed administratively complete. No amendment application shall be deemed administratively complete if the applicant has unpaid fees or has unresolved compliance issues with the District. Within 60 days after the date an operating permit amendment application is determined to be administratively complete, the

Cow Creek Groundwater Conservation District Rules

application shall be referred to the Board in accordance with the provisions of Rule 8.3. The amendment shall be considered as provided in Rule 3.3.C. No pump installer or water well driller shall make changes to a well if the owner has not applied for and obtained the appropriate authorization under this Rule.

G. Operating Permit Involuntary Amendment or Revocation

Operating permits are subject to involuntary amendment or revocation for violation of District Rules; violation of the permit, including special permit conditions; violation of the provisions of Texas Water Code Chapter 36; waste of groundwater; non-payment of annual well fees or production fees; or other actions that the District determines to be detrimental to the groundwater resources within the District, including noncompliance with the District's conservation plan or drought contingency plan.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007.

Rule 3.5 Wells Subject to Operating Permits

- A.** All water wells located within the District, having the capacity to produce more than 25,000 gallons per day (17.36 gallons per minute) shall be required to obtain an operating permit under Rules 3.1.B. or 3.3. and pay a production fee under Rule 4.4.
- B.** All water wells located within the District incapable of producing more than 25,000 gallons per day (17.36 gallons per minute), except such wells used for domestic or livestock purposes, shall be required to obtain an operating permit under Rules 3.1.B. or 3.3. Such wells are not required to pay a production fee under Rule 4.4.
- C.** A well may be issued a temporary or one-time authorization for the limited purpose, production volume, and duration specified in the authorization. Such authorization is limited solely to the terms specified in the authorization and does not create a right to produce water from the well in the future. Such authorization shall be obtained under Rules 3.1.B. or 3.3 and shall pay a production fee under Rule 4.4.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007.

Cow Creek Groundwater Conservation District Rules

Rule 7 Enforcement and Variances

Rule 7.1 Enforcement

A. As authorized by Texas Water Code Section 36.102, the violation of any District Rule shall be subject to a civil penalty not to exceed \$10,000.00 per day per violation, and each day of a continuing violation constitutes a separate violation. The Board may seek enforcement of such civil penalties by injunction, mandatory injunction, or other appropriate remedy through a complaint filed in a court of competent jurisdiction. In addition, the District may seek, and the court shall grant, recovery of attorney's fees, costs for expert witnesses, and any other costs incurred by the District before the court.

B. Notice of Violation

The District shall send a notice of violation to a person who is believed to be in violation of law, including violation of a District Rule, Order, or permit. The notice shall include information about the violation and may require remedial action and may assess a penalty. The notice shall provide the opportunity for public hearing under Rule 8.6.

C. Penalty Schedule

The District may assess penalties for non-compliance with District Rules including failure to comply with conditions of a permit issued by the District. Penalties will be assessed in accordance with the following schedule.

Schedule of Penalties for Non-Compliance

Non-Compliant Action	Minimum Penalty
Failure to notify District of drilling activity, location, date, and time.	\$250.00
Failure to obtain a drilling permit or drilling a well without a permit	\$1,000.00
Failure to notify District of date and time of setting casing and/or annular space sealing	\$250.00
Violation of District Rule or permit requirement	\$250.00
Exceeding production rate or volume specified in operating permit	\$1,000.00

Cow Creek Groundwater Conservation District Rules

Violation of drought rule (Rule 11)	\$250.00
Substantially altering an existing well prior to obtaining a permit or permit amendment	\$500.00
Equipping a well to make it capable of producing more than 25,000 gallons per day prior to obtaining a permit	\$1,000.00

Penalties may be assessed per day per violation, with each day of a continuing violation constituting a separate violation.

D. Enforcement Fee

In addition to any penalty authorized by Rule 7.1.C., if the District is required to incur expenses to enforce District Rules, including the payment of a production fee, the person responsible for causing the District to incur the expense shall reimburse the District for such expenses within ten days after receipt of a demand for payment from the District.

E. Regulatory Compliance

All wells and well owners located within the District shall comply with all applicable Rules, orders, requirements, resolutions, policies, directives, standards, guidelines, or any other regulatory measures implemented by the District.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007.

Rule 7.2 Variances

Any exceptions or variances to the requirements imposed by District Rules shall be considered on a case-by-case basis. A request for variance shall be submitted in writing and include the reasons for the request. A request for a variance from the requirements of Rule 6 Well Spacing shall comply with rule 6.6. This Rule 7.2 is not applicable to a request for a variance from a permit requirement. A variance from a permit requirement requires an application for an amendment and shall comply with Rule 3.4.F.

Adopted May 17, 2005 by Board Order; effective May 17, 2005.

Cow Creek Groundwater Conservation District Rules

Rule 8 Procedural Rules

Rule 8.1 Hearings on Management Plan, Budget and Rules Other Than Emergency Rules

- A. Once the District has developed a proposal involving its Rules, Management Plan, or budget, the District will decide at which Board meeting the proposal will be considered for action. The Board meeting at which the proposal is considered under this Rule shall be considered the public hearing on the proposal and fulfills the requirement, if any, for a public hearing.
- B. Notice required by the Open Meetings Act shall be provided for the hearing.
- C. In addition to the notice required by the Open Meetings Act, not later than the 20th day before the date of the hearing, notice shall be provided as follows:
 - (1) Post notice in a place readily accessible to the public at the District office;
 - (2) Provide notice to the county clerk of Kendall County;
 - (3) Publish notice in one or more newspapers of general circulation in the county or counties in which the District is located; and
 - (4) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.1.F. Failure to provide notice under this Rule 8.1.C(4) does not invalidate an action taken by the District at a rulemaking hearing.
- D. Notice of the hearing on the proposal required by Rule 8.1.C shall include:
 - (1) A brief explanation of the subject of the rulemaking hearing, including a statement that the District's Board of Directors will consider changes to the District's Rules, Management Plan, or budget, at the Board meeting, which will serve as the public hearing on the matter.
 - (2) The time, date, and location of the hearing.

Cow Creek Groundwater Conservation District Rules

- (3) The agenda of the hearing.
 - (4) A statement that the proposal is available to be reviewed or copied at the District Office prior to the hearing.
 - (5) A statement that the District will accept written comments and give the deadline for submitting written comments.
 - (6) A statement that oral public comment will be taken at the hearing.
- E.** Copies of the proposal shall be available at the District Office during normal business hours at least 20 days prior to the hearing.
- F.** A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request.
- G.** Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 days prior to the scheduled hearing at which the proposal will be considered by the Board.
- H.** Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.
- I.** The District shall make and keep in its files an audio recording of the hearing.
- J.** The Board shall issue a written order or resolution reflecting its decision. The proposal that the Board has approved shall be an attachment to that written order or resolution.
- K.** The effective date of the written order or resolution shall be the date on which the President of the District signs the order or resolution. The order or resolution shall include a statement that the proposal becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final.
- L.** If in the course of the deliberation during the meeting, the Board decides it wants to substantially change the proposal, the Board shall "continue" or postpone the matter until a future Board meeting.

Cow Creek Groundwater Conservation District Rules

Prior to consideration of the substantially changed proposal, the District shall provide notice and opportunity for comment and hold a hearing on the substantially changed proposal under this Rule. It is solely within the discretion of the Board what constitutes a substantial change to a proposal under this Rule.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005.

Rule 8.2 Adoption of Emergency Rules

- A. The District may adopt an emergency rule without following the notice and hearing provisions of Rule 8.1, if the Board:
 - (1) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and
 - (2) Prepares a written statement of the reasons for its finding under Rule 8.2.A(1).
- B. An emergency rule under this Rule 8.2 must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act. Notice required by the Open Meetings Act shall be provided.
- C. Except as provided by Rule 8.2.D., a rule adopted under this Rule may not be effective for longer than 90 days.
- D. If notice of a hearing under Rule 8.1 is given before the emergency rule expires under Rule 8.2.C., the emergency rule is effective for an additional 90 days.

Adopted September 12, 2005 by Board Order 2005-007; effective September 14, 2005.

Rule 8.3 Actions On Drilling and Operating Permits

- A. Within 60 days after the date it is deemed administratively complete by the District, an application under this Rule 8.3 shall be acted on by the District's Operations Manager or set on a specific date for action at a meeting of the District Board.

Cow Creek Groundwater Conservation District Rules

- B. An application for a drilling permit for a new exempt well under Rule 3.2 may be approved by the District's Operations Manager without further Board action. Denial of a drilling permit for a new exempt well shall be referred to the Board for action under Rule 8.4. An application for a drilling permit for a new non-exempt well shall be referred to the Board for action with the associated application for an operating permit.
- C. An application for an operating permit for an existing well under Rule 3.1.B seeking production of less than 100,000 gallons per year, may be approved by the District's Operations Manager without further Board action. Denial of such an application shall be referred to the Board for action under Rule 8.4. All other applications for an operating permit for an existing or new well under Rules 3.1.B and 3.3, or an amendment to an operating permit, shall be referred to the Board for action under Rule 8.4.
- D. An application for renewal of an operating permit under Rule 3.4.E may be approved by the District's Operations Manager without further Board action. Denial of an operating permit renewal shall be referred to the Board for action under Rule 8.4.

Adopted September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007.

Rule 8.4 Permit Actions by the Board Not Requiring A Hearing

- A. In this Rule, "Applications" refers to applications referred to the Board for action under the requirements of Rule 8.3.
- B. Within 60 days of the date on which the District determines that an Application is administratively complete, it shall be set on the agenda for Board action at a Board meeting. Such setting shall be no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by Rule 8.4.E.
- C. An Application that is referred to the Board shall be considered by the Board within 95 days of the date on which the Application was determined to be administratively complete.
- D. Notice required by the Open Meetings Law shall be provided for the meeting and shall include the name of the applicant and the address or approximate location of the well.

Cow Creek Groundwater Conservation District Rules

- E. Notice of the Board meeting at which the Application will be considered shall be mailed to the applicant at least seven days prior to the scheduled meeting date. Such notice may be waived by the applicant.
- F. Anyone interested in the Application may attend the meeting and make oral comments at the time designated for comments.
- G. The Board, at its sole discretion, may administer an oath to the staff, the applicant, and anyone who makes oral comments on the Application.
- H. The Board shall issue a written order or resolution reflecting its decision. If the Board approves the Application, the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within 60 days after the Board meeting at which the Application was considered.
- I. A request for contested case hearing, which will be conducted under Rule 8.5., shall be in writing and shall be made within 10 days after the Board's action on the Application. The following individuals may request a contested case hearing:
 - (1) The applicant; or
 - (2) A person who (a) has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority, that is not merely an interest common to members of the public; and (b) is affected by the Board's action on the Application.
- J. If the District receives a written request for contested case hearing, the District shall schedule a pre-hearing conference at its next regularly scheduled Board meeting, in no event longer than 35 days after the date of the request. The pre-hearing conference may be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process, including, but not limited to:
 - (1) whether a valid contested case hearing request has been submitted and if so, the designation of parties.
 - (2) the Contested Case Hearing Fee deposit amount required to be paid by each designated party under Rule 4.2.
 - (3) formulation and simplification of issues.

Cow Creek Groundwater Conservation District Rules

- (4) the hearing schedule, including any necessary discovery.
- K. The effective date of the written order shall be 10 days after the date on which the President of the District signs the order or resolution, if no request for a contested case hearing under Rule 8.4.I. is received by the District. The order or resolution shall include a statement that the order or resolution and its attachment become effective and final within 10 days of that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final, unless there is a request for a contested case hearing.
- L. If there is a timely filed request for a contested case hearing, a pre-hearing conference is held under Rule 8.4.J. and the Board determines that there will be no contested case hearing, the effective date of the written order shall be the date on which the Board denies the contested case hearing request.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005.

Rule 8.5 Permit Actions Requiring a Contested Case Hearing

- A. Rule 8.5 applies only to Applications for which the District has received a timely filed request for a contested case hearing under Rule 8.4.I.
- B. If the District receives a timely filed request for a contested case hearing under Rule 8.4.I., the Application shall be set for the initial hearing no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by this Rule 8.5. Setting of a pre-hearing conference under Rule 8.4.J. shall be considered the setting of the initial hearing.
- C. Notice required by the Open Meetings Law shall be provided for the hearing if conducted by a quorum of the Board.
- D. In addition to the notice required by the Open Meetings Act, not later than the 10th day before the date of the hearing, notice shall be provided as follows:

Cow Creek Groundwater Conservation District Rules

- (1) Post notice in a place readily accessible to the public at the District office;
 - (2) Provide notice to the county clerk of Kendall County;
 - (3) Mail notice to the applicant by regular mail;
 - (4) Mail notice to the individual requesting a contested case hearing by regular mail; and
 - (5) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.5.F. Failure to provide notice under this Rule 8.5.D(5) does not invalidate an action taken by the District at contested case hearing.
- E. Notice of the hearing on the Application shall include the following:
- (1) The name of the applicant;
 - (2) The address or approximate location of the well or proposed well;
 - (3) A brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
 - (4) The time, date and location of the hearing; and
 - (5) Any other information the District considers relevant and appropriate.
- F. A person may submit to the District a written request for notice of a hearing on a permit or permit amendment. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a hearing in a later year, a person must submit a new request.
- G. The hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a Hearings Examiner to preside at and conduct the hearing on the Application. The appointment of a Hearings Examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside.

Cow Creek Groundwater Conservation District Rules

- H. The presiding officer has the following authority and obligations:
- (1) May convene the hearing at the time and place specified in the notice;
 - (2) May set any necessary additional hearing dates;
 - (3) May designate the parties regarding a contested application;
 - (4) May establish the order for presentation of evidence;
 - (5) May administer oaths to all persons presenting testimony;
 - (6) May examine persons presenting testimony;
 - (7) May ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
 - (8) Shall admit relevant evidence and may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
 - (9) May prescribe reasonable time limits for testimony and the presentation of evidence.
 - (10) May allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
 - (11) May refer parties to an alternative dispute resolution (ADR) procedure on any matter at issue in the hearing, apportion costs for ADR, and appoint an impartial third party as provided by Section 2009.053 of the Government Code to facilitate that procedure; and
 - (12) May continue a hearing from time to time and from place to place without providing notice under Rule 8.5.D. and E. If the continuance is not announced on the record at the hearing, the presiding officer shall provide notice of the continued hearing by regular mail to the parties. In any event, if the hearing is being conducted by a quorum of the Board, Open Meetings notice under Rule 8.5.C. shall be provided.

Cow Creek Groundwater Conservation District Rules

- I. The presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to the contested case hearing and payment of an appropriate deposit, as set by the presiding officer, the hearing shall be transcribed by a court reporter. The costs of such court reporter may be assessed against the party requesting it or among the parties to the hearing. The presiding officer may exclude a party from further participation in the hearing for failure to pay in a timely manner costs assessed against that party under this Rule 8.5.I.

- J. If the Board has appointed a hearings examiner to be the presiding officer at the hearing, the hearings examiner shall submit a report to the Board not later than the 30th day after the date the hearing is concluded. A copy shall be provided to the applicant and each party to the hearing. The applicant and other parties to the hearing may submit to the Board written exceptions to the report within 10 days of issuance of the report. The report shall include:
 - (1) A summary of the subject matter of the hearing;
 - (2) A summary of the evidence received; and
 - (3) The hearing examiner's recommendations for Board action on the subject matter of the hearing.

- K. The Board shall issue a written order or resolution reflecting its decision, which shall be made at the hearing or at a meeting subject to the requirements of the Open Meetings Act. A copy of the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within 60 days after the final hearing on the Application is concluded.

- L. Request for rehearing or findings and conclusions shall be considered as follows:
 - (1) Not later than the 20th day after the date of the Board's decision, an applicant or a party to a contested hearing may administratively appeal a decision of the Board on an Application by requesting written findings and conclusions or a rehearing before the Board.
 - (2) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on an Application. The board shall provide certified copies of the findings and conclusions to the person who

Cow Creek Groundwater Conservation District Rules

requested them, and to each designated party, not later than the 35th day after the date the Board receives the request. The applicant or a party to the contested case hearing may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.

- (3) A request for rehearing must be filed in the District office and must state the grounds for the request. The person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (4) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted. Any action by the Board on a request for rehearing shall be made at a Board meeting subject to the Open Meetings Act.
- (5) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

M. A decision by the Board on an Application is final if:

- (1) A request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
- (2) A request for rehearing is filed on time, on the date:
 - (a) the Board denies the request for rehearing; or
 - (b) the Board renders a written decision after rehearing.

N. An applicant or a party to a contested hearing may file a suit against the District under Texas Water Code § 36.251 to appeal a decision on an Application not later than the 60th day after the date on which the decision becomes final. A timely filed request for rehearing is a prerequisite to any such suit.

Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005.

Rule 8.6 Hearings On Enforcement Actions

A. If the District receives a timely filed written request for hearing from a Respondent who has received a notice of violation from the