

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 JUL 15 PM 2:04

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

July 15, 2008

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

Re: TCEQ Docket No. 2008-0476-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the Cities of Fair Oaks Ranch and Bulverde

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus eleven copies of the following backup materials for the August 20, 2008 agenda item on the above referenced matter:

1. Agenda Executive Summary;
2. Caption;
3. Staff memo detailing financial, managerial, and technical capabilities of Fair Oaks Ranch to provide continuous and adequate service in the affected area;
4. Request for Commission order approving a Texas Water Code section 13.248 agreement filed by Fair Oaks Ranch on August 6, 2007;
5. Texas Water Code section 13.248 agreement between Fair Oaks Ranch and Bulverde executed on December 7, 2006;
6. Certificates of Convenience and Necessity (CCN) Nos. 11246 and 12864;

7. Proposed map of the service area subject to the section 13.248 agreement; and
8. Proposed Order.

Please do not hesitate to contact me at 239-4761 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kayla Murray".

Kayla Murray
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** July 15, 2008
THRU: LaDonna Castañuela, Chief Clerk
FROM: Kayla Murray, Environmental Law Division
SUBJECT: **TCEQ Docket No. 2008-0476-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between the Cities of Fair Oaks Ranch and Bulverde

DESCRIPTION OF APPLICATION

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

FACTUAL BACKGROUND

The City of Fair Oaks Ranch, water certificate of convenience and necessity ("CCN") No. 11246, and the City of Bulverde., CCN No. 12864, provide retail water service in Comal, Kendall, and Bexar Counties, Texas. On December 7, 2006, Fair Oaks Ranch and Bulverde entered into an agreement regarding their respective water service areas pursuant to §13.248 of the Texas Water Code. Under the agreement, Bulverde and Fair Oaks Ranch will dually certificate an approximate 1402.25 acre tract of land currently in Bulverde's CCN. No customers currently exist in this area.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public without first obtaining a CCN.¹ Conversely, a municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.³

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

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

BASIS FOR STAFF RECOMMENDATION

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

1. Request for a Commission order approving the 13.248 agreement filed by the City of Fair Oaks Ranch on August 6, 2007 (application no. 35775-C);

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

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

³ *Id.* § 13.242(b).

⁴ TEX. WATER CODE ANN. § 13.248 (Vernon 2000); 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Env'tl. Quality, Contracts Valid and Enforceable). Section 13.248 states "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

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

2. Agreement between the City of Fair Oaks Ranch and the City Of Bulverde, executed on December 7, 2006;
3. Map of the service area subject to the 13.248 agreement submitted by the City of Fair Oaks Ranch; and
4. Financial, Managerial, and Technical analysis of the City of Fair Oaks Ranch to operate in the affected area.

STAFF RECOMMENDATION

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

STAFF CONTACTS

Kayla Murray, Environmental Law Division (239-4761)
Heidi Graham, Water Supply Division (239-0844)

CAPTION
CITY OF FAIR OAKS RANCH
Application No. 35775-C

TCEQ Docket No. 2008-0476-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Fair Oaks Ranch, water certificate of convenience and necessity (CCN) No. 11246, and the City of Bulverde, water CCN No. 12864, in Comal, Kendall, and Bexar Counties, Texas, pursuant to section 13.248 of the Texas Water Code. Currently, the City of Bulverde holds a CCN for the approximate 1402.25 acre area in question. The Cities of Fair Oaks Ranch and Bulverde have agreed that it is in the public interest for Fair Oaks Ranch to provide retail water service to this area. There are no customers in this area. (Kayla Murray, Heidi Graham)

The City of Fair Oaks Ranch and the City of Bulverde
Financial and Managerial Capability Analysis of Contract Service Agreement
Page 2

assets of \$9,868,704, long-term liabilities of \$3,290,000, and net assets (equity) of \$6,154,702, for a debt-to-equity ratio of .53:1. There is no term debt shown in the general fund. The statement of revenues and expenses showed a net income before capital contributions of \$621,453 after covering depreciation expense of \$312,488 and interest expense of \$177,700. So cash available for debt service was \$811,641 and required debt service was \$398,704 for a good debt service coverage ratio of 2.04:1.

This information supports a finding of adequate financial and managerial capability to provide service to the area contracted for dual certification.

CLARK, THOMAS & WINTERS

A PROFESSIONAL CORPORATION

TELEPHONE (512) 472-8800

POST OFFICE BOX 1148
AUSTIN, TEXAS 78767

FAX (512) 474-1129

300 WEST 6TH STREET, 15TH FLOOR
AUSTIN, TEXAS 78701

35775-C

August 6, 2007

HG
mapping-KS

Via Hand Delivery

Doug Holcomb, Manager
Water Supply Division
Utilities & Districts Section
Texas Commission on Environmental Quality
Building F, 3rd Floor
12100 Park 35 Circle
Austin, Texas 78753

RE: Service Area Agreement

Dear Mr. Holcomb:

Enclosed are four copies of a joint request for approval of a contract under 13.248, Texas Water Code, between the Cities of Fair Oaks Ranch and Bulverde for filing with the TCEQ. (The original was sent to the TCEQ in December 2006, but was apparently never received by you.) Also enclosed is an extra copy that we ask you to date-stamp and return with our runner.

Thank you for your attention to this matter. If you have any questions, please contact Roy Thomas at 210-689-0900.

Very truly yours,



Celina Romero

CR/ch

Enclosures

cc: Roy Thomas, City of Fair Oaks Ranch, w/enclosure (*via regular mail*)

RECEIVED
TCEQ WATER SUPPLY
2007 AUG -6 PM 3:52

CITY OF
FAIR OAKS RANCH, TEXAS

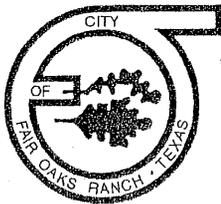
7286 Dietz Elkhorn · Fair Oaks Ranch, Texas 78015 · S.A. (210) 698-0900 · Fax (210) 698-3565

CITY COUNCIL

E. L. Boots Gaubatz
Mayor

ALDERMEN

Raymond Balcer
Dan Kasprovicz
Cheryl Landman
Conrad Fothergill
Frank Pickart



July 31, 2007

Mr. Doug Holcomb
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Mail Code 153
Austin, Texas 78753

Re: 13.248 Service Agreement

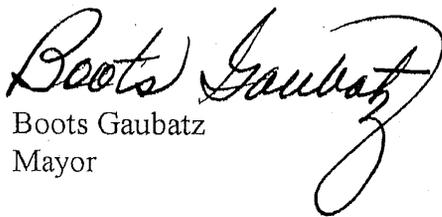
Dear Mr. Holcomb:

The City of Fair Oaks Ranch (CCN No. 11246) and the City of Bulverde (CCN No. 12864) have entered into a 13.248 Service Agreement pursuant to the Texas Water Code. A copy of the Agreement, the Field Notes, and a Map are attached.

The appropriate documents were sent in December 2006, but apparently not received by TCEQ for approval. I am resubmitting the documents and requesting your assistance in expediting, if possible, the approval.

If you have any questions, please contact me at 210-698-0900. Your assistance in finalizing this agreement is greatly appreciated.

Respectfully,


Boots Gaubatz
Mayor

ADMINISTRATION

Roy W. Thomas
City Administrator

Scott Rubin
Chief of Police

Carole H. Vanzant
City Secretary

Ronald C. Emmons, P.E.
Public Works Administrator

RECEIVED
TCEQ WATER SUPPLY
2007 AUG - 6 PM 3:55

**TEXAS WATER CODE SECTION 13.248
SERVICE AGREEMENT BETWEEN THE CITY OF BULVERDE AND
THE CITY OF FAIR OAKS RANCH**

This Service Agreement between the City of Bulverde, Texas ("Bulverde") and the City of Fair Oaks Ranch, Texas ("Fair Oaks Ranch") is made and entered into as of the last date of the signatures below pursuant to Texas Water Code § 13.248.

WHEREAS, Bulverde is the holder of water Certificate of Convenience and Necessity (CCN) No. 12864 which authorizes Bulverde to provide continuous and adequate water utility service to certain service areas in Comal County; and

WHEREAS, Fair Oaks Ranch is the holder of water CCN No. 11246 which authorizes Fair Oaks Ranch to provide continuous and adequate water utility service to certain service areas in Comal, Kendall, and Bexar Counties; and

WHEREAS, Bulverde's CCN No. 12864 includes lands covering approximately 1402.25 acres, described in a Fieldnote Description attached hereto as Exhibit 1 and generally shown on the map attached as Exhibit 2, within a portion of Fair Oaks Ranch's extraterritorial jurisdiction (ETJ), some of which are in the process of being annexed into Fair Oaks Ranch; and

WHEREAS, Bulverde and Fair Oaks Ranch agree that it is in the public interest for Fair Oaks Ranch to provide retail water service to the above-described 1402.25 acre tract at this time and to dually certificate such tract.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein the parties hereby agree as follows:

1. The approximate 1402.25 acre tract described in Exhibit 1 and shown on Exhibit 2 and customers located within said tract of land and included within Bulverde's authorized service area evidenced by CCN No. 12864 will be provided retail water service by Fair Oaks Ranch, pursuant to its CCN No. 11246, unless the parties hereto agree otherwise.
2. At such time that water service from Bulverde, by virtue of its contractual agreements with the Guadalupe-Blanco River Authority, is available to the 1402.25 acre tract of land customers within said 1402.25 acre tract of land will have the option but not the requirement to discontinue water service from Fair Oaks Ranch and instead receive retail water service from Bulverde. Such option shall be exercised by providing written notice to both Bulverde and to Fair Oaks Ranch.
3. As soon as this Service Agreement has been approved and signed by both parties, Bulverde agrees to file this Service Agreement with the Texas Commission on Environmental Quality ("TCEQ") for its consideration and approval of dual certification over the above-mentioned tract of land and Fair Oaks Ranch agrees to support Bulverde's efforts to obtain TCEQ's approval of this Service Agreement and such dual certification.

RECEIVED
TCEQ WATER SUPPLY
MAY -6 PM 3:55

4. Fair Oaks Ranch may not assign this Service Agreement to a third-party without the prior written approval of Bulverde.

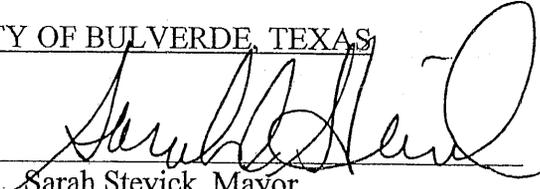
5. This Service Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. By entering into this Service Agreement, neither party is agreeing to amend or waive any rights each party may have under its respective CCN.

This Service Agreement can only be terminated by: (i) agreement of both parties, or (ii) one party conveys its rights under this Service Agreement to the other party.

CITY OF BULVERDE, TEXAS

By: _____

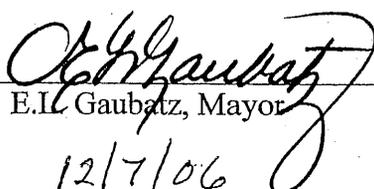

Sarah Stevick, Mayor

Date: _____

12/7/06

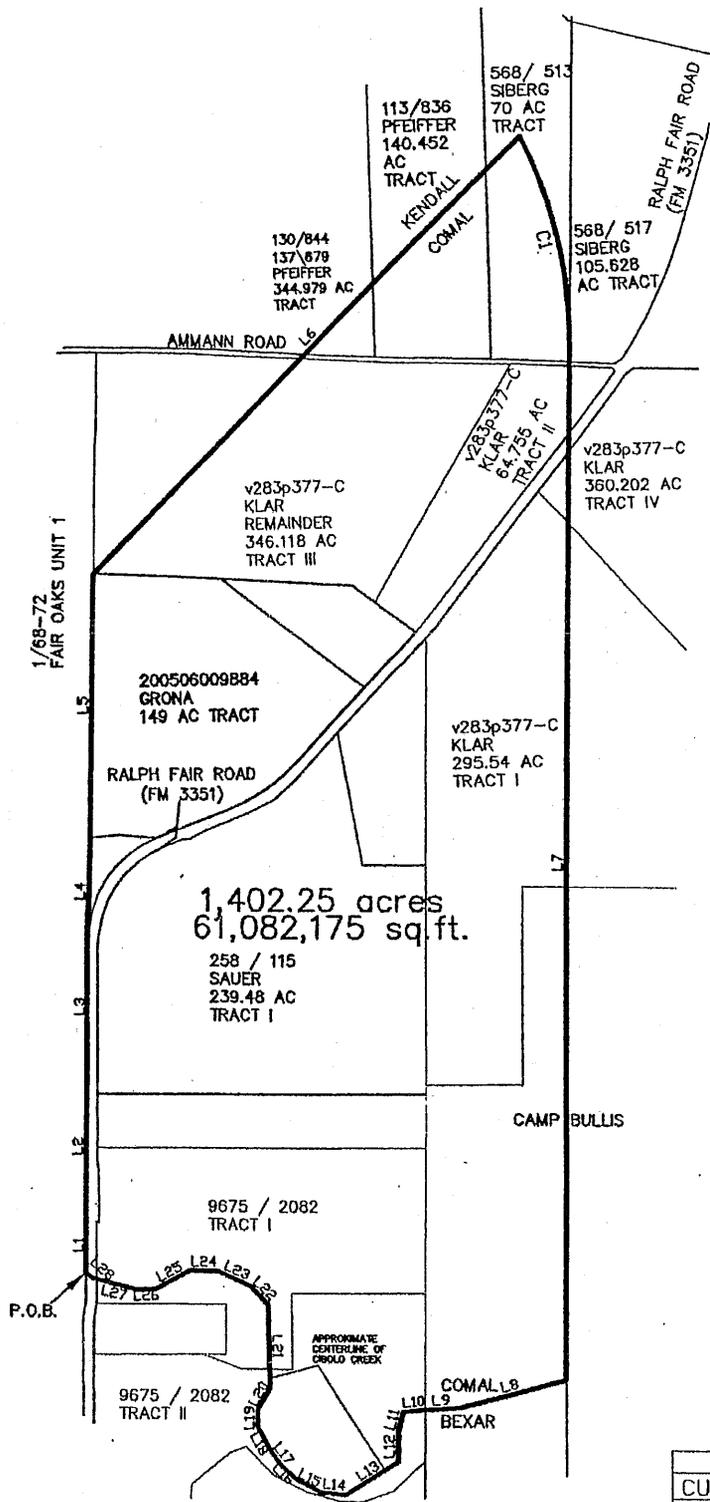
CITY OF FAIR OAKS RANCH, TEXAS

By: _____


E.L. Gaubatz, Mayor

Date: _____

12/7/06



SCALE: 1" = 2000'



| LINE TABLE | | |
|------------|----------|-------------|
| LINE | LENGTH | BEARING |
| L1 | 590.68 | N00°16'52"W |
| L2 | 1606.37 | N00°04'32"E |
| L3 | 1414.87 | N00°16'52"W |
| L4 | 1193.65 | N01°18'45"E |
| L5 | 2929.39 | N00°06'25"E |
| L6 | 6822.44 | N44°13'43"E |
| L7 | 11463.49 | S00°01'08"W |
| L8 | 1195.84 | S74°50'23"W |
| L9 | 359.91 | S87°29'53"W |
| L10 | 233.72 | S84°06'02"W |
| L11 | 218.38 | S14°39'16"W |
| L12 | 338.51 | S00°00'00"E |
| L13 | 678.96 | S57°43'41"W |
| L14 | 289.68 | N84°17'32"W |
| L15 | 303.97 | N63°14'38"W |
| L16 | 228.41 | N47°52'58"W |
| L17 | 178.46 | N38°16'06"W |
| L18 | 326.14 | N29°50'02"W |
| L19 | 189.67 | N00°48'06"E |
| L20 | 264.80 | N30°05'12"E |
| L21 | 944.05 | N01°18'12"W |
| L22 | 286.61 | N45°18'51"W |
| L23 | 403.00 | N66°24'56"W |
| L24 | 306.72 | N89°35'22"W |
| L25 | 443.46 | S61°43'47"W |
| L26 | 208.06 | S88°49'53"W |
| L27 | 531.79 | N75°54'54"W |
| L28 | 87.58 | N49°30'59"W |

| CURVE TABLE | | | | |
|-------------|---------|-----------|---------|-----------------------|
| CURVE | RADIUS | DELTA | LENGTH | CHORD |
| C1 | 5280.08 | 26°15'43" | 2420.16 | S13°06'45"E, 2399.03' |

CITY OF FAIR OAKS RANCH

MAIN OFFICE
P.O. BOX 970
SPRING BRANCH, TEXAS 78070
PHONE * (830) 228-5446
FAX * (830) 885-2170



ENGINEERING, LTD.
ENGINEERS, PLANNERS AND SURVEYORS

BRANCH OFFICE
P.O. BOX 391
McQUEENEY, TEXAS 78123
PHONE * (830) 560-3200
FAX * (830) 590-3203

EXHIBIT

SKETCH TO ACCOMPANY
FIELDNOTES FOR FAIR
OAKS RANCH CCN,
COMAL COUNTY, TEXAS.

1,402.25 ACRE TRACT
(61,082,175 Sq. Ft.)
6CFO005.DWG

FN NO. 6CFO005
OCTOBER 20, 2006
JOB NO. 6CFO005

FIELDNOTE DESCRIPTION OF CITY OF FAIR OAKS RANCH ETJ

FOR A 1,402.25 ACRE TRACT OF LAND SITUATED IN COMAL COUNTY, TEXAS; SAID 1,402.25 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING, AT THE POINT OF INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF RALPH FAIR ROAD (F.M 3351) AND SITUATED ON THE APPROXIMATE CENTERLINE OF CIBOLO CREEK BEING THE APPROXIMATE COMMON COUNTY LINE OF BEXAR AND COMAL COUNTIES, AND MARKING THE SOUTHWESTERLY CORNER OF THIS TRACT;

THENCE, ALONG THE WESTERLY RIGHT OF WAY LINE OF RALPH FAIR ROAD THE FOLLOWING COURSES:

N 00°16'52" W, A DISTANCE OF 590.68 FEET TO A POINT;

N 00°04'32" E, A DISTANCE OF 1,606.37 FEET TO A POINT;

N 00°16'52" W, A DISTANCE OF 1,414.87 FEET TO A POINT;

THENCE, N 01°18'45" E, DEPARTING SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 1,193.65 FEET TO A POINT AT THE SOUTHWESTERLY CORNER OF A 149 ACRE TRACT DESCRIBED IN DOCUMENT NUMBER 200506009884 OF THE OFFICIAL RECORDS OF COMAL COUNTY, TEXAS;

THENCE, N 00°06'25" E, ALONG THE WESTERLY BOUNDARY LINE OF SAID 149 ACRE TRACT, A DISTANCE OF 2,929.39 FEET TO A POINT MARKING THE NORTHWESTERLY CORNER OF SAID 149 ACRE TRACT BEING IN THE APPROXIMATE COMMON COUNTY LINES OF COMAL AND KENDALL COUNTIES;

THENCE, N 44°13'43" E, ALONG SAID COMMON COUNTY LINE, A DISTANCE OF 6,822.44 FEET TO A POINT IN THE ARC OF A CURVE TO THE RIGHT;

THENCE, SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 5,280.08 FEET, A CENTRAL ANGLE OF 26°15'43", AN ARC LENGTH OF 2,420.16 FEET AND A CHORD BEARING: S 13°06'45"E, 2,399.03 FEET, TO A POINT IN A LINE BEING APPROXIMATELY 1 MILE (5,280 FEET) WEST OF THE EXISTING CITY LIMITS OF FAIR OAKS RANCH AT THE POINT OF BEGINNING;

THENCE, S 00°01'08" W, ALONG SAID LINE, A DISTANCE OF 11,463.49 FEET TO A POINT IN THE APPROXIMATE CENTERLINE OF SAID CIBOLO CREEK AND SAID COMMON COUNTY LINE OF COMAL AND BEXAR COUNTIES;

THENCE, WESTERLY ALONG SAID APPROXIMATE CENTERLINE OF CIBOLO CREEK THE FOLLOWING COURSES:

S 74°50'23" W, A DISTANCE OF 1,195.84 FEET TO A POINT;

S 87°29'53" W, A DISTANCE OF 359.91 FEET TO A POINT;

S 84°06'02" W, A DISTANCE OF 233.72 FEET TO A POINT;

S 14°39'16" W, A DISTANCE OF 218.38 FEET TO A POINT;

S 00°00'00" W, A DISTANCE OF 338.51 FEET TO A POINT;

S 57°43'41" W, A DISTANCE OF 678.96 FEET TO A POINT;

N 84°17'32" W, A DISTANCE OF 289.68 FEET TO A POINT;

N 63°14'38" W, A DISTANCE OF 303.97 FEET TO A POINT;

N 47°52'58" W, A DISTANCE OF 228.41 FEET TO A POINT;

N 38°16'06" W, A DISTANCE OF 178.46 FEET TO A POINT;

N 29°50'02" W, A DISTANCE OF 326.14 FEET TO A POINT;

N 00°48'06" E, A DISTANCE OF 189.67 FEET TO A POINT;

N 30°05'12" E, A DISTANCE OF 264.80 FEET TO A POINT;

N 01°18'12" W, A DISTANCE OF 944.05 FEET TO A POINT;

N 45°18'51" W, A DISTANCE OF 286.61 FEET TO A POINT;

N 66°24'56" W, A DISTANCE OF 403.00 FEET TO A POINT;

N 89°35'22" W, A DISTANCE OF 306.72 FEET TO A POINT;
S 61°43'47" W, A DISTANCE OF 443.46 FEET TO A POINT;

S 88°49'53" W, A DISTANCE OF 208.06 FEET TO A POINT;

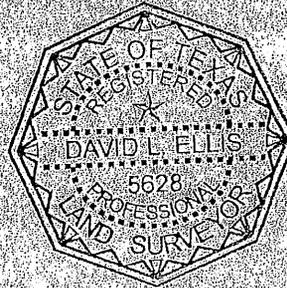
N 75°54'54" W, A DISTANCE OF 531.79 FEET TO A POINT;

N 49°30'59" W, A DISTANCE OF 87.58 FEET TO THE POINT OF
BEGINNING, CONTAINING AN AREA OF 1,402.25 ACRES OF LAND, MORE OR
LESS.

I, DAVID L. ELLIS, A REGISTERED PROFESSIONAL LAND SURVEYOR,
DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS
DETERMINED FROM A COMPILATION OF RECORD DATA AND MAPPING OF THE
CIBOLO CREEK TO THE BEST OF MY KNOWLEDGE AND ABILITY, AND IN NO
WAY REPRESENTS AN ON THE GROUND SURVEY.

M&S ENGINEERING, LTD
P.O. BOX 970
SPRING BRANCH, TEXAS 78070

David L. Ellis 10/20/06
DAVID L. ELLIS DATE
R.P.L.S #5628 STATE OF TEXAS



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code
and Texas Natural Resource Conservation Commission Substantive Rules

Certificate No. 11246

I. Certificate Holder:

Name: City of Fair Oaks Ranch

Address: 7286 Dietz Elkhorn
Fair Oaks Ranch, Texas 78015

II. General Description and Location of Service Area:

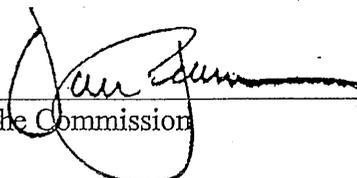
The area covered by this certificate is located approximately 22 miles northwest of downtown San Antonio, Texas at the conjunction of Bexar, Comal and Kendall Counties. The service area is generally bounded on the east by Ralph Fair Road and Farm to Market Road 3351, on the southwest by Interstate Highway 10, and on the north by Rolling Acres Trail and Cibolo Creek in Bexar, Comal and Kendall Counties, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area maps, WRS-15, WRS-46 and WRS-131, maintained in the offices of the Texas Natural Resource Conservation Commission, 12015 Park 35 Circle, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 31850-S and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: JAN 30 1998


For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

City of Bulverde

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

Certificate of Convenience and Necessity No. 12864

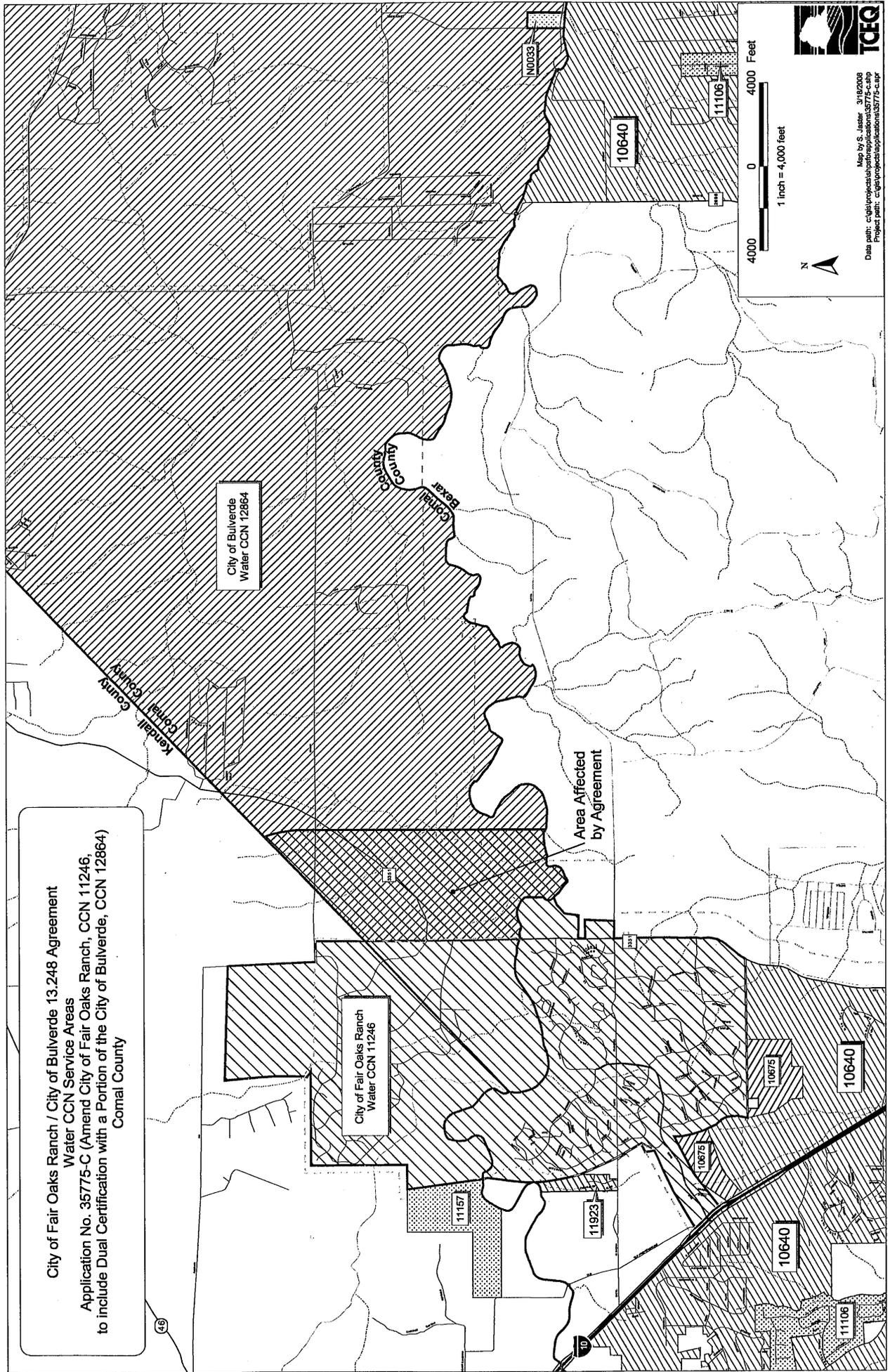
to provide continuous and adequate water utility service to that service area or those service areas in Comal County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 34588-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Bulverde to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this JAN 13 2005

verified
BY 01/27/05

Kathleen Santolucito White
For the Commission

City of Fair Oaks Ranch / City of Bulverde 13.248 Agreement
Water CCN Service Areas
Application No. 35775-C (Amend City of Fair Oaks Ranch, CCN 11246,
to include Dual Certification with a Portion of the City of Bulverde, CCN 12864)
Comal County



Map by S. Jester 3/18/2008
Data path: c:\gdp\projections\projections\applications\35775-c.rtp
Project path: c:\gdp\projections\applications\35775-c.apr

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER approving an agreement designating service areas between the City of Fair Oaks Ranch and the City of Bulverde., pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2008-0476-UCR.

A request for a Commission order approving a contract designating service areas between the City of Fair Oaks Ranch, Certificate of Convenience and Necessity ("CCN") No. 11246, and the City of Bulverde, CCN No. 12864, in Comal, Kendall, and Bexar Counties, Texas, was presented to the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Section 13.248 of the Texas Water Code and Title 30, Section 291.117 of the Texas Administrative Code.

On December 7, 2006, Fair Oaks Ranch and Bulverde entered into an agreement (the "Agreement") regarding their respective service areas pursuant to §13.248 of the Texas Water Code. The Agreement states that part of Bulverde's CCN contains an approximate 1402.25 acre tract, both Fair Oaks Ranch and Bulverde agree to dually certificate this tract, and Fair Oaks Ranch will provide retail water service to the tract. The Agreement is attached to this Order.

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

On July 15, 2008, the Executive Director of the Commission mailed notice of the hearing date on which the Commission was to consider the request to the Cities of Fair Oaks Ranch and Bulverde.

The Commission held a hearing on the request at the August 20, 2008 agenda and found the request had merit.

Fair Oaks Ranch is capable of rendering continuous and adequate water service to every customer in the area covered by the Agreement. The dual certification of the affected area, which results in both Fair Oaks Ranch and Bulverde as service providers, with Fair Oaks Ranch responsible for providing retail water, is necessary for the service, accommodation, convenience, or safety of the public.

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

The Agreement dually certifying the approximate 1402.25 acre tract of land in Bulverde's CCN No. 12864 to include Fair Oaks Ranch's CCN No. 11246 is hereby approved.

CCN No. 11246 in Comal, Kendall, and Bexar Counties, held by the City of Fair Oaks Ranch, is hereby amended in accordance with the Agreement.

CCN No. 12864 in Comal County, held by the City of Bulverde, is hereby amended in accordance with the Agreement.

The Executive Director is directed to redraw the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Comal, Kendall, and Bexar Counties, Texas.

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

CERTIFICATE OF SERVICE

I certify that on July 15, 2008, a copy of the foregoing documents was sent by first class, agency mail, and/or facsimile to the persons on the attached Mailing List.



Kayla Murray, Staff Attorney
Environmental Law Division

MAILING LIST
City of Fair Oaks Ranch / City of Bulverde 13.248 Agreement
TCEQ Docket No. 2008-0476-UCR

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
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Austin, Texas 78711-3087

Ms. Celina Romero
Clark, Thomas & Winters
P.O. Box 1148
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Mr. John D. Hobson
City Administrator
City of Bulverde
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Bulverde, Texas 78163