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

*Protecting Texas by Reducing and Preventing Pollution*

January 23, 2009

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 JAN 23 PM 12: 25
CHIEF CLERKS OFFICE

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

Re: TCEQ Docket No. 2007-1609-UCR; Petition from Kerala Christian Adult Homes 1, L.P. for an Expedited Release from Water Certificate of Convenience and Necessity (CCN) No. 10064 of BHP Water Supply Corporation (WSC) in Collin County, Texas, Application No. 35724-C.

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the following backup materials for the February 11, 2009, agenda item on the above referenced matter:

1. Agenda Executive Summary;

2. Caption;

3. Expedited release petition from Kerala Christian Adult Homes 1, L.P., filed June 12, 2007;

4. Order from the Executive Director of the Commission granting Kerala's expedited release petition, dated September 17, 2007;

5. Letter from the City of Royse City expressing its intent to provide Kerala with water and sewer service, dated March 20, 2008;

6. Appraisal of the area released from BHP WSC's CCN prepared for BHP WSC by GDS Associates, Inc., filed on May 28, 2008;

7. Appraisal of the area released from BHP WSC's CCN prepared for Royse City by J. Stowe & Co., dated May 27, 2008;

8. Appraisal of the area released from BHP WSC's CCN prepared for the Commission by Donald G. Rauschuber & Associates, Inc. (DGR), dated July 3, 2008;

9. DGR's revised appraisal, dated July 10, 2008;

10. Letter from Royse City responding to DGR's appraisal, filed on July 17, 2008;

11. Letter from BHP WSC responding to DGR's appraisal, filed on July 25, 2008; and

12. Proposed order.

Please do not hesitate to contact me at (512) 239-0575 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Brian Dickey, Water Supply Division, MC-153
Heidi Graham, Water Supply Division, MC-153
Mailing List

# Texas Commission on Environmental Quality

**INTEROFFICE MEMORANDUM**

**TO:** Texas Commission on Environmental Quality **DATE:** January 23, 2009

**THRU:** LaDonna Castañuela, Chief Clerk

**FROM:** Stefanie Skogen, Environmental Law Division

**SUBJECT:** **TCEQ Docket No. 2007-1609-UCR.** Consideration of a request for a Commission order determining the amount of compensation owed to BHP Water Supply Corporation (WSC) by the City of Royse City for area decertified from BHP WSC's water certificate of convenience and necessity (CCN) No. 10064 due to an expedited release petition filed by Kerala Christian Adult Homes 1, L.P.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 JAN 23 PM 2:27
CHIEF CLERK'S OFFICE

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DESCRIPTION OF APPLICATION

| | |
|---|---|
| Applicant: | Kerala, Royse City, and BHP WSC |
| Regulated Activity: | Retail water utility service |
| Type of Application: | Request for a Commission order determining compensation |
| Commission Action: | Hearing regarding the determination of the compensation amount |
| Authority: | Texas Water Code § 13.254 and 30 Texas Administrative Code § 291.113 |

FACTUAL BACKGROUND

On June 12, 2007, Kerala filed a petition for an expedited release of approximately 432.05 acres from BHP WSC's water CCN No. 10064 in Collin County. The Executive Director (ED) granted the petition in an order dated September 17, 2007. The City of Royse City sent a letter to the TCEQ dated March 20, 2008, informing the agency that it intends to provide Kerala's property with water service. Because Royse City and BHP WSC were unable to agree on an appraiser, who would determine how much compensation Royse City must pay BHP WSC for the loss of part of its water CCN, both parties submitted their own appraisals on or about May 28, 2008. The appraisal from Royse City valued BHP WSC's loss at $0. The appraisal from BHP WSC valued BHP WSC's loss at $299,996. ED staff then requested a third appraisal to be completed based on the first two appraisals. The third appraisal, dated July 3, 2008, was provided to the TCEQ,

followed by a revised version dated July 10, 2008.[1] The third appraisal valued BHP WSC's loss at $63,848. Both Royse City and BHP WSC filed objections to the third appraisal in July 2008.

LEGAL AUTHORITY

Under section 13.254 of the Texas Water Code and title 30, section 291.113(b) of the Texas Administrative Code, an owner of a tract of land that is at least fifty acres and that is not in a platted subdivision actually receiving water service may petition the Commission for expedited release of the area from a CCN so that the area may receive service from another retail public utility (RPU). If the area is decertified, another RPU may not provide retail water service in that area without first providing compensation for any property that the Commission determines is rendered useless or valueless to the decertified RPU.[2] Once the RPU seeking to provide service notifies the Commission of its intent to serve, the two RPUs have ten days to agree on an independent appraiser, who will determine the monetary amount owed.[3] If the RPUs are unable to agree on an appraiser, then each one shall hire its own appraiser at its own expense and submit their appraisals within 60 days after the date on which the RPU notified the Commission of its intent to serve.[4] After receiving the two appraisals, the ED shall appoint a third appraiser, who will make a determination of the compensation within thirty days after the TCEQ receives the first two appraisals.[5] The determination may not be less than the lower appraisal or more than the higher appraisal, and each RPU shall pay one-half the cost of the third appraisal.[6] The appraisers shall use the factors and standards found in section 291.113(k) when conducting their appraisals and determining the amount of compensation owed.

BASIS FOR STAFF RECOMMENDATION

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

1. The appraisal prepared for BHP WSC by GDS Associates, Inc., filed on May 28, 2008;

2. The appraisal prepared for Royse City by J. Stowe & Co., dated May 27, 2008;

3. The appraisal prepared for the Commission by Donald G. Rauschuber & Associates, Inc. (DGR), dated July 3, 2008;

4. DGR's revised appraisal, dated July 10, 2008;

5. Royse City's letter responding to DGR's appraisal, filed on July 17, 2008; and

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[1] In the revised appraisal, the compensation amount came down from $82,948 in the original appraisal to $63,848. The revised appraisal states what changes were made from the original appraisal to reach the new compensation amount.
[2] 30 TEX. ADMIN. CODE § 291.113(h) (West 2008).
[3] *Id.* § 291.113(j).
[4] *Id.* § 291.113(j)(1).
[5] *Id.* § 291.113(j)(2).
[6] *Id.*

6. BHP WSC's letter responding to DGR's appraisal, filed on July 25, 2008.

STAFF RECOMMENDATION

DGR calculated a compensation amount of $63,848. As detailed in the attached appraisal, this amount included debt; expenditures for planning, design, or construction of service facilities; and legal expenses and professional fees. The only adjustment to this amount that the ED is requesting is the subtraction of $6,500, which was the amount paid by BHP WSC to GDS Associates for the appraisal it submitted to the TCEQ in this matter. According to section 291.113(j)(1), each RPU is required to pay for its own appraisal when the two RPUs are unable to agree on an appraiser. Therefore, the ED believes that BHP WSC should not be compensated by Royse City for the amount it paid for its appraisal and recommends that the $6,500 included for the first appraisal be removed, resulting in a compensation amount of $57,348.

In accordance with the compensation process detailed in section 291.113, the ED recommends that the Commission approve the attached order, which directs Royse City to pay $57,348 to BHP WSC as compensation for the territory removed from its CCN.

STAFF CONTACTS

Stefanie Skogen, Environmental Law Division (239-0575)
Brian Dickey, Water Supply Division (239-0963)
Heidi Graham, Water Supply Division (239-0963)

**CAPTION**
**KERALA CHRISTIAN ADULT HOMES 1, L.P.**
**Application No. 35724-C**

**TCEQ Docket No. 2007-1609-UCR.** Consideration of a request for a Commission order determining the amount of compensation owed to BHP Water Supply Corporation (WSC) by the City of Royse City for area decertified from BHP WSC's water certificate of convenience and necessity (CCN) No. 10064 due to an expedited release petition filed by Kerala Christian Adult Homes 1, L.P. (Stefanie Skogen, Brian Dickey, Heidi Graham)

Espey Consultants, Inc.
Environmental & Engineering Services

A-080-7 BD

RECEIVED
JUN 12 2007
UTILITIES & DISTRICTS SECTION

June 5, 2007

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

RE: Petition of Kerala Christian Adult Homes 1, L.P. for the Kerala Christian Retirement Community to decertify from BHP Water Supply Corporation (WSC), Certificate of Convenience and Necessity No. 10064, Public Water System ID No. 1160015, Rockwall County, Texas. EC Project No. 6051.201.

Ms. Holgiun Benter:

This letter is to petition the Texas Commission on Environmental Quality (TCEQ) for decertification of the above referenced developer/landowner area from BHP WSC's certified service area pursuant to Texas Water Code §13.254 and 30 Texas Administrative Code §291.113(b). The required information is presented herein. The $100 filing fee has been paid.

The Kairali Development is located at the intersection of Farm to Market Road 1777 and County Road 677 in Rockwall County, Texas within the corporate limits of the City of Royse City (annexed in September 2006). A map of the area to be decertified is provided as Attachment A. Digital data is also provided on the enclosed CD.

The development planned is for a total of 659 lots on 432.05 acres. The development includes light commercial and residential homes, a nursing home, a medical facility, and churches. The water service request includes fire flow requirements as well as the required pressure and quantities for reasonable uses. The development is planned in five phases (Phases IA, IB, II, III, and IV). The timing of each phase is as follows: Phase IA homes- October 2007, Phase IB homes- January 2008, Phase II homes- October 2008, Phase III homes- October 2009 and Phase IV homes- October 2010.

The Kairali Development currently exists within the certificated boundaries of B H P WSC's CCN. A letter requesting service was sent to BHP WSC by Douphrate and Associates, Inc. (DAI) on behalf of said development on December 1, 2006. According to Texas Administrative Code, Chapter §291.85 Response to Requests for Service by a Retail Public Utility Within Its Certificated Area (a) (2) Upon request for service by a service applicant, the retail public utility shall make available and accept a completed written application for service. No application for service was provided.

**Timeline:** Copies of all correspondence are attached in Attachment B.
**December 1, 2006** – Douphrate & Associates, Inc. (DAI), on behalf of Kairali Christian Adult Homes, L.P. (KCAH), sent a letter to BHP WSC requesting water service with fire flow for the entire development. A copy of the master plat was attached to the letter sent. A copy of the letter is attached.

**December 22, 2006** – DAI sent a second letter of request for water service by certified mail. A copy of the master plat was attached to the letter sent. A copy of the letter is attached.

**December 23, 2006** – The certified letter sent December 22, 2006 was signed and received by Wayne Krider on behalf of BHP WSC. A copy of the letter and delivery receipt is attached.

**January 3, 2006** – DAI received a phone call from Eddy Daniels, P.E., BHP WSC's engineer, requesting a copy of the plat to review so that they could reply to the request for service.

**January 3, 2006** – Amy Miller, P.E., representing DAI, sent, by e-mail, a copy of the overall Master plat to Eddy Daniels, P.E., BHP WSC's engineer for review so that BHP could reply to the request for service. A copy of this e-mail is attached.

**February 13, 2007** -- DAI received a copy of a letter, by fax, which was written by Eddy Daniels, P.E. and addressed to G.W. Peoples, BHP WSC President. This letter outlined the improvements and facilities that the developer would have to pay to construct in order for BHP WSC to be the water provider. A copy of this fax is attached.

The development also requires wastewater collection and treatment. BHP WSC does not provide wastewater collection or treatment. Per the City of Royse City, wastewater service is contingent on water service from the City of Royse City.

As an alternate to BHP WSC, a request for water and wastewater service was made to the City of Royse City, Texas, CCN Nos. 12827 and 20813 (PWS ID No. 1990002). The proposed subdivision was annexed into the City of Royse City in September 2006. The response from the City indicates two extensions can be made to provide adequate water service to the development can be made for approximately $1.4 million including engineering fees. Copies of correspondence and costs are attached (Attachment C). A copy of this petition has been sent certified to BHP WSC on June 4, 2007.

Both service requests to BHP WSC and the City of Royse City require line extensions to the development. However, BHP WSC also requires the installation of an elevated storage tank. Based upon the above information, it is not feasible to obtain water and wastewater service for the development with BHP WSC. Copies of correspondence are attached (Attachment B). The only water and wastewater service is that available from the City of Royse City.

Therefore, Kerala Christian Adult Homes, L.P. is requesting decertification from BHP WSC immediately. If you have any additional questions, please contact me (512) 326-5659. Thank you in advance for your time and attention.

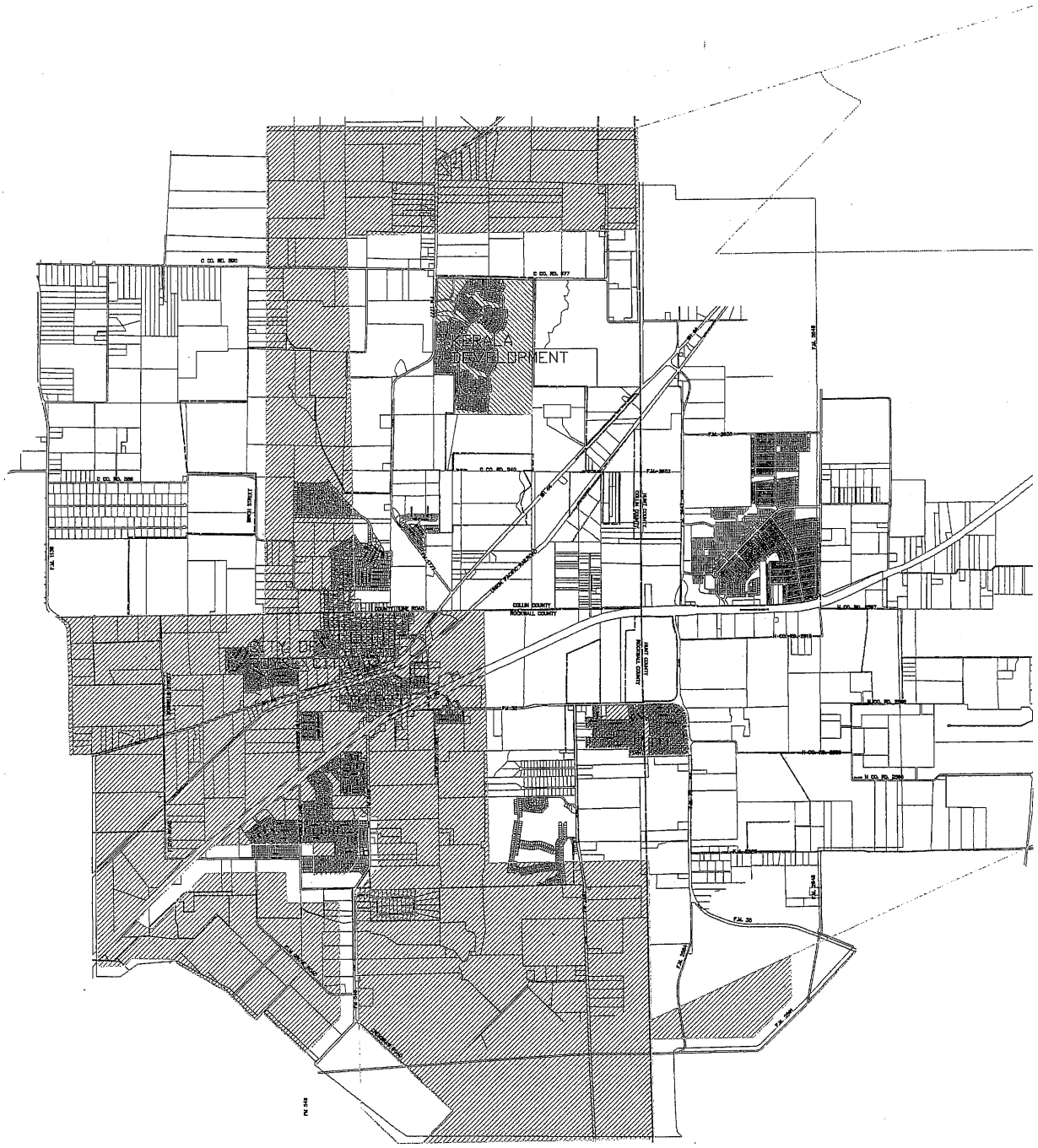
Sincerely,

Victoria Harkins

Victoria Richards Harkins, Ph.D., P.E.
Project Manager

cc: Mr. Dub Douphrate, Douphrate and Associates

*P:\active\6051.101 Kerala Development\CCN Issue\Petition.doc*




LEGEND

——— CITY LIMITS

——— COUNTY LIMIT

12827 - ROYSE CITY CCN

10064 - BHP WSC

N

0 1000' 3000'

2000' 4000'

BASE MAP CREATED BY:
BIRKHOFF, HENDRICKS & CONWAY, L.L.P
CONSULTING ENGINEERS
Dallas, Texas

Espey Consultants, Inc.
Environmental & Engineering Services

# EXHIBIT A
## KERALA CHRISTIAN ADULT HOMES, L.P.
CCN DECERTIFICATION MAP

APRIL 2007

6051

R:\active\6051.101 Kerala Development\CCN Issue\Kerala Development-Exhibit 1.dwg, 22x34 (Exhibit) Misc, 5/2/2007 11:25:40 AM, mpinckney, 1:2

DESCRIPTION

All that certain lot, tract or parcel of land situated in the JOHN W. FOOTE SURVEY, ABSTRACT NO. 333, and in the RUSSELL CRAWFORD SURVEY, ABSTRACT NO. 229, Collin County, Texas, and being known as the land described as the First, Second and Third Tracts in a Warranty deed from Nesbitt Farm Enterprises, Inc. to W. Parks Nesbitt and wife, Inez C. Nesbitt, dated October 1, 1963, and being recorded in Volume 417, Page 1765, in Clerk's file no. 4232172, of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING, at a point in the center of County Road 877, at the Northeast corner of the common line of said First tract and the Northwest corner of said FOOTE SURVEY, from which a 1/2" iron rod found for witness bears SOUTH, 22.73 feet;

THENCE SOUTH ( Controlling bearing line ), at 22.73 feet pass a 1/2" iron rod found for witness, and continuing along said survey line and the East line of said First, Second and Third tracts along and near a fence line, a total distance of 5268.12 feet to a 1/2" iron rod set for corner at the base of a fence corner post at the Southeast corner of said Third tract;

THENCE S. 89 deg. 40 min. 56 sec. W. along and near a fence line a distance of 3017.04 feet to a 1/2" iron rod set for corner at the base of a fence corner post;

THENCE N. 00 deg. 29 min. 38 sec. W. along the West line of said Third tract a distance of 1539.12 feet to a 1/2" iron rod set for corner at the Northwest corner of said Third tract and in the South line of said Second tract;

THENCE N. 88 deg. 50 min. 51 sec. W. along a fence line a distance of 791.89 feet to a 1/2" iron rod set for corner at the base of a fence post;

THENCE N. 00 deg. 20 min. 00 sec. E. along the West line of said Second tract a distance of 693.92 feet to a 1/2" iron rod set for corner at the intersection of the West line of said First tract and the curving Southeast right-of-way line of F.M. Highway 1777;

THENCE in a Northeasterly direction along a curve to the left having a central angle of 21 deg. 29 min. 24 sec., a radius of 617.96 feet, a chord of N. 10 deg. 58 min. 58 sec. E., 230.42 feet to an axle rod found for corner at a wooden monument;

THENCE N. 01 deg. 08 min. 19 sec. E. a distance of 209.99 feet to a 1/2" iron rod set for corner in the East right-of-way line of F.M. Highway 1777;

THENCE N. 00 deg. 14 min. 16 sec. E. along said right-of-way line a distance of 2392.15 feet to a 1/2" iron rod set for corner;

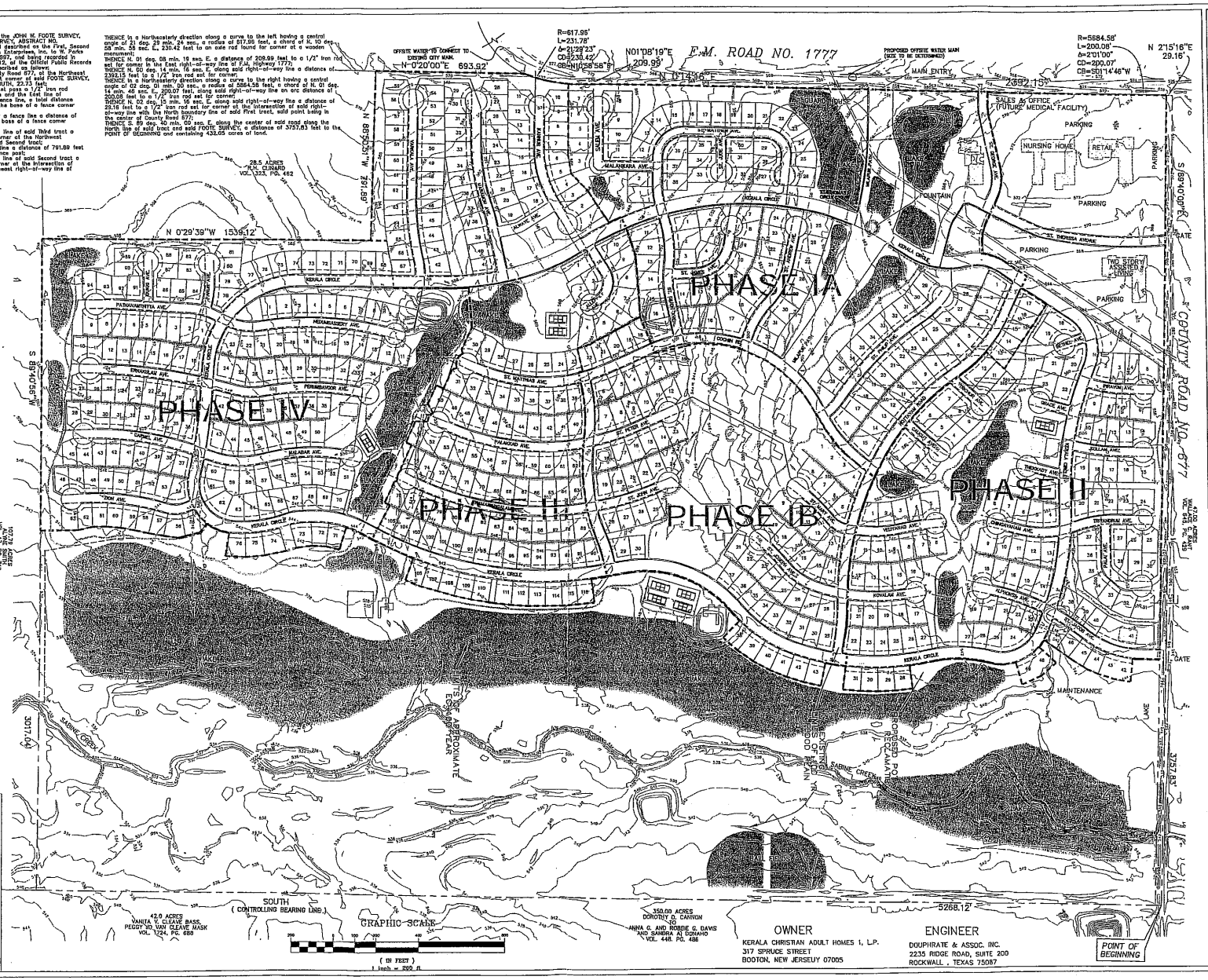
THENCE in a Northeasterly direction along a curve to the right having a central angle of 02 deg. 01 min. 00 sec., a radius of 5684.58 feet, a chord of N. 01 deg. 14 min. 46 sec. E., 200.07 feet along said right-of-way line an arc distance of 200.08 feet to a 1/2" iron rod set for corner;

THENCE N. 02 deg. 15 min. 16 sec. E. along said right-of-way line a distance of 29.16 feet to a 1/2" iron rod set for corner at the intersection of said right-of-way line with the North boundary line of said First tract, said point being in the center of County Road 877;

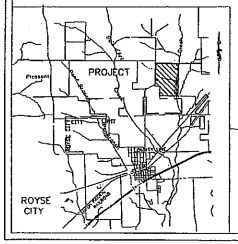
THENCE S. 89 deg. 40 min. 00 sec. E. along the center of said road along the north line of said and said FOOTE SURVEY, a distance of 3757.83 feet to the POINT OF BEGINNING and containing 432.05 acres of land.

## LOT COUNT

| | |
|---|---|
| PHASE 1A– | 120 |
| PHASE 1B– | 78 |
| PHASE 2 – | 124 |
| PHASE 3 – | 171 |
| PHASE 4 – | 166 |
| TOTAL – | 659 |




VICINITY MAP




OWNER
KERALA CHRISTIAN ADULT HOMES 1, L.P.
317 SPRUCE STREET
BOOTON, NEW JERSEUY 07005

ENGINEER
DOUPHRATE & ASSOC. INC.
2235 RIDGE ROAD, SUITE 200
ROCKWALL , TEXAS 75087

DOUPHRATE & ASSOCIATES, INC.
ENGINEERING - PLANNING MANAGEMENT - SURVEYING
2235 RIDGE RD., # 200 ROCKWALL, TEXAS 75087
PHONE: (972)771-0004 FAX: (972)771-0005

KERALA CHRISTIAN RETIREMENT COMMUNITY
659 TOTAL LOTS – 432.05 ACRES
CITY OF ROYSE CITY
ROCKWALL COUNTY, TEXAS

REVISION

CHECKED D.L.B.

DRAWN 04/06

DATE

0525PPLT-1 overall

PROJECT

SHEET 1 OF 1

DOUPHRATE & ASSOCIATES, INC.
ENGINEERING PROJECT MANAGEMENT SURVEYING
2235 RIDGE ROAD SUITE 200 ROCKWALL, TEXAS 75087 TEL 972.771.9004 FAX 972.771.9005
www.douphrate.com

December 1, 2006

BHP Water Supply Corporation
623 Fm 2453
Royse City, TX 75189

RE: BHP Water Service Request

Dear Sir:

On behalf of the Kerala Christian Adult Homes (KCAH), L.P., we, Douphrate & Associates, Inc. (DAI), are requesting water service with fire flow for the entire Kerala Development for which we are contracted to do the engineering design. Phase I of the project, which contains 198 lots, is currently under design and is expected to need water by late Spring 2007. The master plan of the entire development to be developed over the next 5 years, includes 659 homes, a church, a club house, cafeteria, library, banquet facility, and multiple swimming pools. I have attached a copy of the Master Plan as a reference.

Please let us know what you will require to serve this planned community. If you have any questions, please feel free to contact me

Sincerely,

W.L. Douphrate II, P.E.

wl/am

encl.

DOUPHRATE & ASSOCIATES, INC.
*ENGINEERING PROJECT MANAGEMENT SURVEYING*
2235 RIDGE ROAD SUITE 200 ROCKWALL, TEXAS 75087 TEL 972.771.9004 FAX 972.771.9005
www.douphrate.com

December 22, 2006

BHP Water Supply Corporation
623 Fm 2453
Royse City, TX 75189

Dear Sir or Madam:

On behalf of the Kerala Christian Adult Homes (KCAH), L.P., we, Douphrate & Associates, Inc. (DAI), are making a second request for water service with fire flow for the entire Kerala Development for which we are contracted to do the engineering design. Phase I of the project, which contains 198 lots, is currently under design and is expected to need water by late Spring 2007. The master plan of the entire development to be developed over the next 5 years, includes 659 homes, a church, a club house, cafeteria, library, banquet facility, and multiple swimming pools. I have attached a copy of the Master Plan as a reference.

Please let us know what you will require to serve this planned community. If you have any questions, please feel free to contact me.

Sincerely,

Amy Miller

Amy C. Miller, P.E.
Project Manager

DOUPHRATE & ASSOCI
ENGINEERING PROJECT MANAGE
2235 RIDGE ROAD . SUITE 200 ROCKWALL, TEXAS 75
www.douphrate.com

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ROYSE CITY TX 75189 OFFICIAL USE

| | | |
|---|---|---|
| Postage | $ 0.39 | 0087 |
| Certified Fee | $2.40 | 01 |
| Return Receipt Fee (Endorsement Required) | $1.85 | Postmark Here |
| Restricted Delivery Fee (Endorsement Required) | $0.00 | |
| Total Postage & Fees | $ $4.64 | 12/22/2006 |

DEC 22 2006
USPS

Sent To BHP Water Supply 2006
Street, Apt. No.; or PO Box No. 623 FM 2453
City, State, ZIP+4 Royse City, TX 75189
PS Form 3800, August 2006 See Reverse for Instructions

December 22, 2006

BHP Water Supply Corporation
623 Fm 2453
Royse City, TX 75189

Dear Sir or Madam:

On behalf of the Kerala Christian Adult Homes (KCAH), L.P., we, Douphrate & Associates, Inc. (DAI), are making a second request for water service with fire flow for the entire Kerala Development for which we are contracted to do the engineering design. Phase I of the project, which contains 198 lots, is currently under design and is expected to need water by late Spring 2007. The master plan of the entire development to be developed over the next 5 years, includes 659 homes, a church, a club house, cafeteria, library, banquet facility, and multiple swimming pools. I have attached a copy of the Master Plan as a reference.

Please let us know what you will require to serve this planned community. If you have any questions, please feel free to contact me.

Sincerely,

Amy C. Miller, P.E.
Project Manager

SENDER: COMPLETE THIS SECTION
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
BHP Water Supply 2006
623 FM 2453
Royse City, TX 75189

COMPLETE THIS SECTION ON DELIVERY
A. Signature X Wayne Kricker ☐ Agent ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery 12-23
D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No

3. Service Type ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7006 2150 0005 7691 0414
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

## Amy Miller

**From:** "Amy Miller" <amy@douphrate.com>
**To:** "PE Eddy Daniel" <eddy@dbiconsultants.com>
**Sent:** Wednesday, January 03, 2007 9:51 AM
**Attach:** 0525PPLT-1 overall Model (1).pdf
**Subject:** Kerala project master plat

Eddy,

I have attached a copy of the master plat for your reference. Please let me know if you have any questions.

Thank You,

Amy C. Miller, PE
Project Engineer
Douphrate & Associates, Inc.
wk 972-771-9004
fx 972-771-9005
email: amy@douphrate.com

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# BHP WATER SUPPLY

P.O. BOX 370 - ROYSE CITY, TEXAS 75189
(972) 636-2154 – Fax (972) 636-2465

## FACSIMILE TRANSMITTAL SHEET

TO: Douphrate & Associates, Inc. FROM: G.W. Peoples

COMPANY: DATE: 2-13-2007

FAX #: 972-771-9005 TOTAL PAGES (Including Cover) 2

RE: Kerala Christian Adult Homes

This facsimile is intended only for the use of the addressee. In any event, if you are not the intended recipient of the facsimile, you are hereby notified that you have received this facsimile inadvertently and in error. Any review, dissemination, distribution, or copying of this is strictly prohibited. If you received this in error, please immediately notify us by telephone.

**DANIEL & BROWN INC.**
ENGINEERS/CONSULTANTS/PLANNERS

February 12, 2007

Mr. G.W. Peoples, President
BHP Water Supply Corporation
P.O. Box 370
Royse City, Texas 75089

RE: Proposed Kerala Christain Retirement Community

Dear G.W.:

I have received a preliminary plat regarding a proposed development located east of FM 1777 and south of CR #677. The development contains approximately 492 acres and will have approximately 859 lots at ultimate build-out. It is anticipated that both domestic water flows and fire flows will be required for the development due to the proposed densities.

I have looked at the request and after analysis have determined that the development is located within the certificated service area of BHP WSC. As such BHP WSC can provide water service to the development. The water lines currently serving the area do not have adequate capacity for the development. Also, there are minimum flow rates and duration of flows to meet adequate fire protection needs. Accordingly, in order for BHP WSC to provide domestic service and fire flows to the development a new elevated water storage tank will have to be constructed in the vicinity of the development. Additionally, to fill the elevated storage tank a new 8-inch water line would have to be installed along FM 1777 from the development to the intersection of FM 1777 and SH 66 and southwesterly along SH 66 to the existing master meter location where BHP WSC purchases water from the City of Royse City. The developer would also be required to extend on-site waterlines throughout the development to accommodate the services and fire hydrants. Water service to the development will also depend upon the provision of adequate purchase capacity at the master meter location from the City of Royse City.

The capacity of the elevated storage tank would be dedicated to the domestic service and fire flows within the development; therefore, the costs of constructing the elevated tank, the off-site waterlines and the on-site waterlines would be the responsibility of the developer. Since a portion of the equity buy-in fee (currently at $1,400.00 per connection) is dedicated to storage and water distribution lines, the Board could consider rebating a portion of each connection's equity buy-in fee back to the developer as a reimbursement for constructing the elevated tank and installing the off-site waterlines. If the developer wants to pursue service to the development, detailed construction cost estimates can be provided by our office.

If you should have any questions or need additional information, please feel free to contact me.

Sincerely,

Eddy Daniel, P.E.

Eddy Daniel, P.E. • P.O. Box 609 • Farmersville, Texas 75442 • Office 972-784-7777 • Fax 972-782-7721
Larry Brown • P.O. Box 5056 • Georgetown, Texas 78627 • Office 512-930-5721 • Fax 512-869-7021

# BIRKHOFF, HENDRICKS & CONWAY, L.L.P.
**CONSULTING ENGINEERS**

7502 Greenville Ave., #220 Dallas, Texas 75231 Fax (214) 361-0204 Phone (214) 361-7900

JOHN W. BIRKHOFF, P.E.
RONALD V. CONWAY, P.E.
GARY C. HENDRICKS, P.E.
JOE R. CARTER, P.E.
PAUL A. CARLINE, P.E.
MATT HICKEY, P.E.


November 8, 2006

Ms. Karen Philippi
City Manager
City of Royse City
100 W. Main Street
Royse City, Texas 75189

Re: Kerala Development
Water Distribution Study

Dear Ms. Philippi:

As you requested, we evaluated the City's existing water distribution system hydraulic model and determined the minimum water distribution improvements required to provide water service and fire protection to the proposed Kerala Development. This study was based on information provided by the City and the Kerala development. The City asked that the following assumptions be included in the hydraulic study:

1. Kerala – 659 Lots by 2008
2. Hidden Creek – 1,000 Lots by 2008
3. Verandah – Phase 1 & Phase 2 by 2008 (767 Lots)
4. Highlands of McKamy – 100 Lots by 2008
5. Woodland Creek – All phases completed by 2008 (539 Lots)

With the potential for 3,065 new water services by 2008, the projected maximum daily demand could increase to approximately 6.0-million gallons per day (MGD) and the projected maximum hourly demand could increase to approximately 12.0-MGD. In order to meet the projected demands, the first two years of the City's 10-year water distribution CIP needs to be implemented. The required 2007-2008 CIP waterline improvements are highlighted in green on the enclosed exhibit.

The water distribution system will also require the proposed Royse City No. 2 Pump Station Improvements and the proposed Verandah 1.5-Million Gallon Elevated storage Tank to be constructed and in service. These proposed facilities are shown on the enclosed exhibit. Other water line improvements are also required in the Downtown area when the Verandah Elevated Storage Tank is placed into service. However these are primarily rehabilitation projects and for clarity are not shown on the enclosed exhibit.

Once the 2007 and 2008 CIP projects were added to the existing hydraulic model, the existing water distribution system was extended and looped into the proposed Kerala development. The water distribution line extensions are noted on the enclosed exhibit as Kerala 12" Offsite Water Line #1 and Kerala 12" Offsite Water Line #2 and are color coded red.

Based on the projected demand and CIP assumptions listed above, the model results showed the Kerala development could be supported with the Kerala #1 Offsite Water Line during maximum daily and maximum hourly demand conditions. During peak demand conditions the model pressures varied between 49 to 90-psi.

However, with a 1,500-gallon per minute (gpm) fire flow (2-Hydrants at 750-gpm) a 20-psi residual could not be provided. With the Kerala #1 and #2 water lines included, a 34-psi residual could be provided during a 1,500-gpm fire flow event.

As shown on the enclosed exhibit, the Kerala # 1 12-inch Water Line is approximately 10,925-ft and extends from County Line Road, south of FM 1777 and S.H. 66, north along FM 1777 to County road 940, east along County Road 940 and north to the Kerala development. The Kerala #1 Water Line needs to be connected to the 16-inch water line being constructed by the Verandah Development.

The Kerala # 2 12-inch Water line loops the development for fire flow. This 5,260-ft segment is connected to the future 12-inch Hidden Creek water line extension and extends east to FM 1777 and into the main entrance of the Kerala development.

The water lines internal to the Kerala development need to consist of a main 12-inch water line that connects the Kerala #1 and # 2 offsite water lines and that extends north to County Road 677. The internal 12-inch water lines are identified on the enclosed exhibit and are consistent with the City's Master Plan update. All other internal water lines can be 8-inches in diameter.

The anticipated construction cost for the Kerala offsite water lines are summarized in the table below:

| Offsite Water Line Segment | Diameter (in) | Length (ft) | * Average Unit Cost] | Probable Construction Cost ($) |
|---|---|---|---|---|
| Kerala Offsite # 1 | 12 | 10,925 | $84.00 | $917,700 |
| Kerala Offsite # 2 | 12 | 5,260 | $84.00 | $441,840 |
| **TOTAL** | | **16,185** | | **$1,395,540** |

* Average Unit Cost Includes 20% for Engineering, Testing and Contingences

If requested, output can be provided from the hydraulic model. We are available to discuss our findings further at your convenience.

Sincerely yours,

Matt Hickey

Matt Hickey, P.E.

Enclosures
cc: Mr. John Ward

ROYCE CITY 430 ACRE TRACT 3/1/07

| DESCRIPTION | UNIT | UNIT COST | PHASE-1A QTY | PHASE-1A AMOUNT | PHASE-1B QTY | PHASE-1B AMOUNT | PHASE-2 QTY | PHASE-2 AMOUNT | PHASE-3 QTY | PHASE-3 AMOUNT | PHASE-4 QTY | PHASE-4 AMOUNT | TOTAL QTY | TOTAL AMOUNT |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **I. PAVING** | | | | | | | | | | | | | | |
| 6" 3600PSI PVMT RESIDENT | SY | 28.50 | 45,225 | 1,288,912.50 | 21,010 | 598,785.00 | 23,363 | 665,845.50 | 20,574 | 586,359.00 | 21,082 | 600,837.00 | 131,254 | 3,740,739.00 |
| BRICK NEAR ENTRYWAY | SY | 34.00 | 5,471 | 186,014.00 | | 0.00 | 0 | 0.00 | 0 | 0.00 | 0 | 0.00 | 5,471 | 186,014.00 |
| 8" 3600PSI COLLECTOR | SY | 34.00 | 17,365 | 590,410.00 | | 0.00 | 12,835 | 436,390.00 | 10,176 | 345,984.00 | 11,446 | 389,164.00 | 51,822 | 1,761,948.00 |
| FM1777 DECEL LANE | LS | 110,000.00 | 1 | 110,000.00 | | 0.00 | 0 | 0.00 | 0 | 0.00 | 0 | 0.00 | 1 | 110,000.00 |
| HANDICAP RAMPS | EA | 800.00 | 34 | 26,880.00 | 22 | 17,920.00 | 26 | 20,800.00 | 18 | 14,400.00 | 16 | 12,800.00 | 116 | 92,800.00 |
| LIME STABILIZATION | SY | 2.10 | 72,485 | 152,218.43 | 22,376 | 46,988.87 | 38,551 | 80,956.83 | 32,749 | 68,772.38 | 34,642 | 72,748.87 | 200,803 | 421,685.37 |
| HYDRATED LIME | TON | 115.00 | 1,377 | 158,379.65 | 425 | 48,890.80 | 732 | 84,233.65 | 622 | 71,556.02 | 658 | 75,693.47 | 3,815 | 438,753.58 |
| SIDEWALKS | LOT | 2000.00 | 120 | 240,000.00 | 78 | 156,000.00 | 78 | 156,000.00 | 171 | 342,000.00 | 166 | 332,000.00 | 613 | 1,226,000.00 |
| TRAIL - 6' WIDE | SF | 3.00 | 40,827 | 122,481.90 | 26,103 | 78,308.10 | 64,488 | 193,464.00 | 39,066 | 117,198.00 | 60,618 | 181,854.00 | 231,102 | 693,306.00 |
| PAVING SUBTOTAL | | | | 2,875,296.48 | | 946,892.76 | | 1,637,689.98 | | 1,546,269.39 | | 1,665,097.34 | 8,671,245.95 | 8,671,245.95 |
| **II. EARTHWORKS** | | | | | | | | | | | | | | |
| EARTHWORK | CY | 2.80 | 1,049,600 | 2,938,880.00 | 0 | 0.00 | 0 | 0.00 | 0 | 0.00 | 0 | 0.00 | 1,049,600 | 2,938,880.00 |
| LAKE /POND SPILLWAY CONST | LS | 62500.00 | 1 | 62,500.00 | 1 | 62,500.00 | 1 | 62,500.00 | 1 | 62,500.00 | 1 | 62,500.00 | 5 | 312,500.00 |
| BENCH AMENITY ACREAGE | AC | 850.00 | 26 | 21,930.00 | 17 | 14,620.00 | 15 | 12,750.00 | 2 | 1,700.00 | 3 | 2,550.00 | 63 | 53,550.00 |
| CLEARING & GRUBBING | AC | 1,000.00 | 56 | 55,800.00 | 37 | 37,200.00 | 66 | 66,000.00 | 58 | 58,000.00 | 63 | 63,000.00 | 280 | 280,000.00 |
| SEEDING | AC | 800.00 | 45 | 36,000.00 | 30 | 24,000.00 | 50 | 40,000.00 | 44 | 35,200.00 | 48 | 38,400.00 | 217 | 173,600.00 |
| EARTHWORKS SUBTOTAL | | | | 3,115,110.00 | | 138,320.00 | | 181,250.00 | | 157,400.00 | | 166,450.00 | | 3,758,530.00 |
| **III. DRAINAGE** | | | | | | | | | | | | | | |
| 18" C76 CLIII RCP | LF | 37.00 | 2,628 | 97,236.00 | 1,752 | 64,824.00 | 5,220 | 193,140.00 | 1,836 | 67,932.00 | 574 | 21,238.00 | 12,010 | 444,370.00 |
| 21" C76 CLIII RCP | LF | 42.00 | 1,555 | 65,318.40 | 1,037 | 43,545.60 | 2,296 | 96,432.00 | 768 | 32,256.00 | 1,798 | 75,516.00 | 7,454 | 313,068.00 |
| 24" C76 CLIII RCP | LF | 45.00 | 1,480 | 66,582.00 | 986 | 44,388.00 | 904 | 40,680.00 | 518 | 23,310.00 | 1,036 | 46,620.00 | 4,924 | 221,580.00 |
| 27" C76 CLIII RCP | LF | 55.00 | 413 | 22,704.00 | 275 | 15,136.00 | 200 | 11,000.00 | 2,860 | 157,300.00 | 272 | 14,960.00 | 4,020 | 221,100.00 |
| 30" C76 CLIII RCP | LF | 55.00 | 132 | 7,260.00 | 88 | 4,840.00 | 250 | 13,750.00 | 1,294 | 71,170.00 | 250 | 13,750.00 | 2,014 | 110,770.00 |
| 33" C76 CLIII RCP | LF | 62.00 | 300 | 18,600.00 | 1500 | 93,000.00 | 1200 | 74,400.00 | 842 | 52,204.00 | 900 | 55,800.00 | 4,742 | 294,004.00 |
| STD.INLET | EA | 2,350.00 | 24 | 56,400.00 | 16 | 37,600.00 | 26 | 61,100.00 | 18 | 42,300.00 | 14 | 32,900.00 | 98 | 230,300.00 |
| 18" HEADWALL | LF | 750.00 | 2 | 1,500.00 | 1 | 750.00 | 8 | 6,000.00 | 0 | 0.00 | 0 | 0.00 | 11 | 8,250.00 |
| 21" HEADWALL | LF | 850.00 | 2 | 1,700.00 | 1 | 850.00 | 0 | 0.00 | 1 | 850.00 | 0 | 0.00 | 4 | 3,400.00 |
| 24" HEADWALL | LF | 950.00 | 3 | 2,850.00 | 2 | 1,900.00 | 4 | 3,800.00 | 0 | 0.00 | 3 | 2,850.00 | 12 | 11,400.00 |
| 27" HEADWALL | LF | 1050.00 | 1 | 1,050.00 | 0 | 0.00 | 1 | 1,050.00 | 1 | 1,050.00 | 2 | 2,100.00 | 5 | 5,250.00 |
| 30" HEADWALL | LF | 1250.00 | 1 | 1,250.00 | 0 | 0.00 | 1 | 1,250.00 | 3 | 3,750.00 | 2 | 2,500.00 | 7 | 8,750.00 |
| 33" HEADWALL | LF | 1400.00 | 1 | 1,400.00 | 1 | 1,400.00 | 2 | 2,800.00 | 1 | 1,400.00 | 2 | 2,800.00 | 7 | 9,800.00 |
| 10 "-12" STONE RIP RAP | SF | 4.00 | 7200 | 28,800.00 | 4800 | 19,200.00 | 7800 | 31,200.00 | 5400 | 21,600.00 | 6000 | 24,000.00 | 31,200 | 124,800.00 |
| DRAINAGE SUBTOTAL | | | | 372,650.40 | | 327,433.60 | | 536,602.00 | | 475,122.00 | | 295,034.00 | 2,006,842.00 | 2,006,842.00 |

| DESCRIPTION | UNIT | UNIT COST | PHASE-1A QTY | PHASE-1A AMOUNT | PHASE-1B QTY | PHASE-1B AMOUNT | PHASE-2 QTY | PHASE-2 AMOUNT | PHASE-3 QTY | PHASE-3 AMOUNT | PHASE-4 QTY | PHASE-4 AMOUNT | TOTAL QTY | TOTAL AMOUNT |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| IV. UTILITIES | | | | | | | | | | | | | | |
| WATER | | | | | | | | | | | | | | |
| 12" DIA. C-900 CL150 PVC MAIN | LF | 22.50 | 770 | 17,325.00 | | 0.00 | 2,738 | 61,605.00 | 2,129 | 47,902.50 | 2,463 | 55,417.50 | 8,100 | 182,250.00 |
| 8" DIA. C-900 CL150 PVC MAIN | LF | 17.00 | 12,217 | 207,689.00 | 6,600 | 112,200.00 | 3,666 | 62,322.00 | 3,585 | 60,945.00 | 4,645 | 78,965.00 | 30,713 | 522,121.00 |
| FIRE HYDRANTS | EA | 2350.00 | 32 | 75,200.00 | 17 | 39,950.00 | 20 | 47,000.00 | 32 | 75,200.00 | 28 | 65,800.00 | 129 | 303,150.00 |
| 1" SINGLE SERVICES | EA | 380.00 | 120 | 45,600.00 | 78 | 29,640.00 | 124 | 47,120.00 | 171 | 64,980.00 | 166 | 63,080.00 | 659 | 250,420.00 |
| 2" SINGLE SERVICES | EA | 525.00 | 11 | 5,985.00 | 8 | 3,990.00 | 14 | 7,350.00 | 6 | 3,150.00 | 6 | 3,150.00 | 45 | 23,625.00 |
| 6" SINGLE SERVICES | EA | 900.00 | 5 | 4,320.00 | 3 | 2,880.00 | 4 | 3,600.00 | 1 | 900.00 | 1 | 900.00 | 14 | 12,600.00 |
| 12" DIA. GATE VALVE | EA | 2850.00 | 5 | 14,250.00 | 0 | 0.00 | 0 | 0.00 | 2 | 5,700.00 | 8 | 22,800.00 | 15 | 42,750.00 |
| 8" DIA. GATE VALVE | EA | 950.00 | 55 | 52,250.00 | 24 | 22,800.00 | 18 | 17,100.00 | 2 | 1,900.00 | 7 | 6,650.00 | 106 | 100,700.00 |
| FITTINGS | TON | 2300.00 | 8 | 19,320.00 | 6 | 12,880.00 | 7 | 16,100.00 | 7 | 16,100.00 | 7 | 16,100.00 | 35 | 80,500.00 |
| BLOCKING | LS | 2000.00 | 1 | 2,000.00 | 1 | 2,000.00 | 1 | 2,000.00 | 1 | 2,000.00 | 1 | 2,000.00 | 5 | 10,000.00 |
| CONC. ENCASEMENT | LS | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 5 | 12,500.00 |
| CONNECT TO EXIST MAIN | LS | 3,000.00 | 1 | 3,000.00 | 1 | 3,000.00 | 1 | 3,000.00 | 1 | 3,000.00 | 1 | 3,000.00 | 5 | 15,000.00 |
| WATER TEST | LS | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 1 | 2,500.00 | 5 | 12,500.00 |
| OFF-SITE WATER * | | | | | | | | | | | | | | |
| 12" Water Line by Open Cut, With Embedment | LF | $ 35.00 | 4,800 | 168,000.00 | | | | | | | | | | 168,000.00 |
| 12" Water Line by Other than Open Cut | LF | $ 300.00 | 200 | 60,000.00 | | | | | | | | | | 60,000.00 |
| Valves, Fittings, Etc. | LS | $ 65,000.00 | 1 | 65,000.00 | | | | | | | | | | 65,000.00 |
| Erosion Control | LS | $ 15,000.00 | 1 | 15,000.00 | | | | | | | | | | 15,000.00 |
| Hydromulch Seeding | SY | $ 1.00 | 3,200 | 3,200.00 | | | | | | | | | | 3,200.00 |
| SEWER | | | | | | | | | | | | | | |
| 8" SDR-35 PVC SAN SEWER | LF | 21.50 | 14,840 | 319,060.00 | 1,814 | 39,001.00 | 8,268 | 177,762.00 | 7,325 | 157,487.50 | 8,030 | 172,645.00 | 40,277 | 865,955.50 |
| TRENCH SAFETY | LF | 1.00 | 14,840 | 14,840.00 | 1,814 | 1,814.00 | 8,268 | 8,268.00 | 7,325 | 7,325.00 | 8,030 | 8,030.00 | 40,277 | 40,277.00 |
| 4' DIA MANHOLE | EA | 2,500.00 | 42 | 105,000.00 | 5 | 12,500.00 | 21 | 52,500.00 | 18 | 45,000.00 | 16 | 40,000.00 | 102 | 255,000.00 |
| CLEANOUTS | EA | 300.00 | 3 | 900.00 | 0 | 0.00 | 5 | 1,500.00 | 6 | 1,800.00 | 6 | 1,800.00 | 20 | 6,000.00 |
| 4" SEWER SERVICE | EA | 330.00 | 120 | 39,600.00 | 78 | 25,740.00 | 124 | 40,920.00 | 171 | 56,430.00 | 166 | 54,780.00 | 659 | 217,470.00 |
| CONNECT TO EXIST. MANHOL | EA | 1,500.00 | 1 | 1,500.00 | 1 | 1,500.00 | 0 | 0.00 | 0 | 0.00 | 0 | 0.00 | 2 | 3,000.00 |
| OFF-SITE SEWER | | | | | | | | | | | | | | |
| 10" Sanitary Sewer by Open Cut | LF | $ 42.00 | 23,500 | 987,000.00 | | | | | | | | | | 987,000.00 |
| 10" Sanitary Sewer by NOT Open Cut | Ea. | $ 300.00 | 500 | 150,000.00 | | | | | | | | | | 150,000.00 |
| Manholes @ 500-ft Intervals | Ea. | $ 3,200.00 | 49 | 156,800.00 | | | | | | | | | | 156,800.00 |
| Erosion Control | LS | $ 40,000.00 | 1 | 40,000.00 | | | | | | | | | | 40,000.00 |
| Hydromulch Seeding | SY | $ 1.00 | 15,500 | 15,500.00 | | | | | | | | | | 15,500.00 |
| UTILITY SUBTOTAL | | | | 2,593,339.00 | | 314,895.00 | | 553,147.00 | | 554,820.00 | | 600,117.50 | 4,616,318.50 | 4,616,318.50 |

* These numbers came directly from the City Engineer's estimate of off-site utility construction cost. It only includes the Kerala portion of pipeline cost and does not take into account the over-sizing.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**APPLICATION NO. 35724-C**

| | | |
|---|---|---|
| **PETITION FROM KERALA CHRISTIAN ADULT HOMES 1, L.P. FOR AN EXPEDITED RELEASE FROM WATER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 10064 OF BHP WATER SUPPLY CORPORATION (WSC) IN COLLIN COUNTY, TEXAS, APPLICATION NO. 35724-C** | § | **BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY** |

**ORDER**

On SEP 17 2007, the Executive Director of the Texas Commission on Environmental Quality, pursuant to chapters 5 and 13 of the Texas Water Code, considered the petition of Kerala Christian Adult Homes 1, L.P. (Petitioner) for an expedited release from water CCN No. 10064, held by BHP WSC, in Collin County, Texas.

Notice of the application was given to BHP WSC, the certificate holder.

The alternative service provider is the City of Royse City.

The criteria set forth in section 13.245(a-1) of the Texas Water Code have been considered. The Petitioner has satisfied the elements required by that section.

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

1. The petition from Kerala Christian Adult Homes 1, L.P. for an expedited release from water CCN No. 10064 of BHP Water Supply Corporation, as reflected in the attached copy of the official water service area map for Collin County, Texas, is hereby approved.

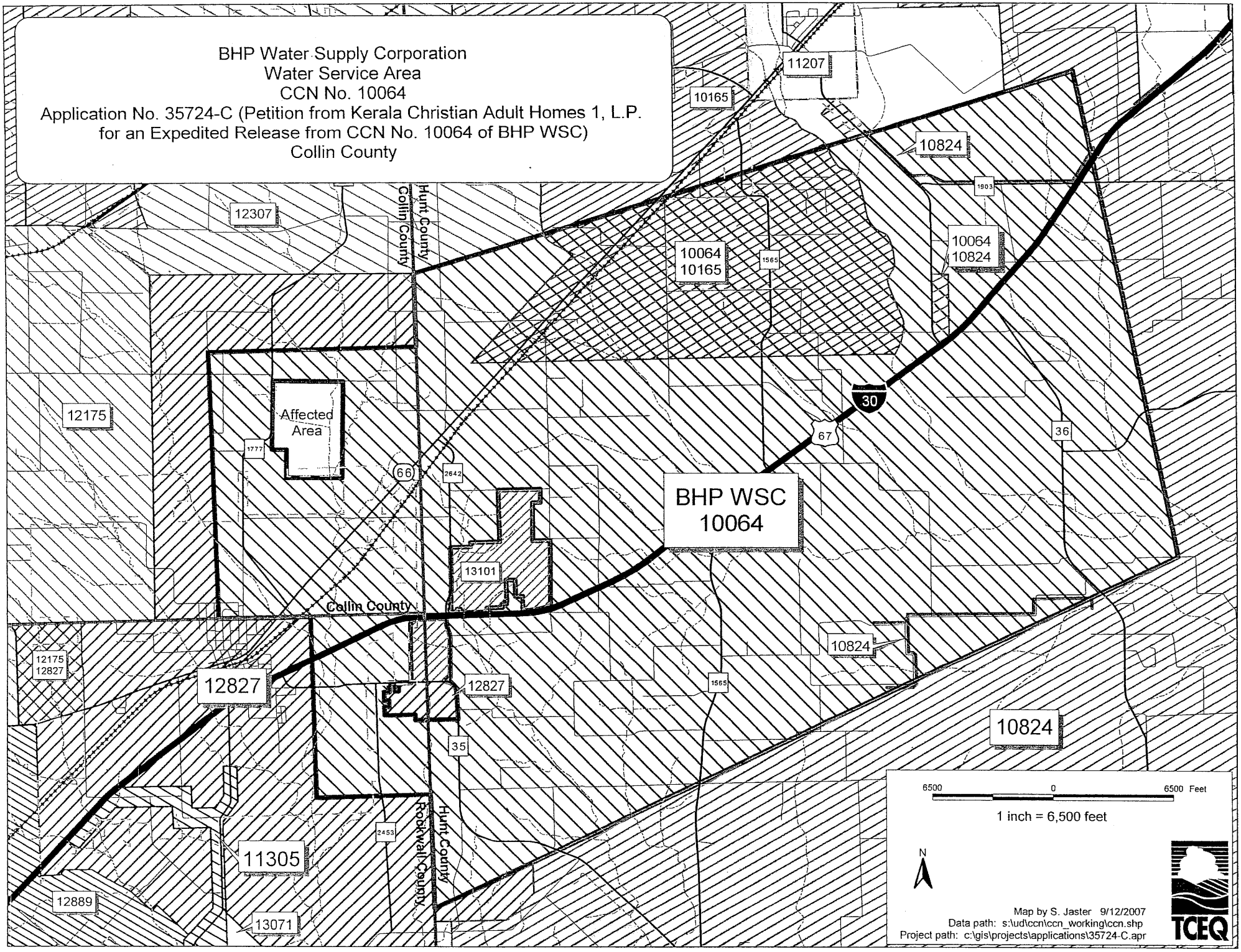
2. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order and the attached map to the parties.

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

Issue Date: SEP 17 2007

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission


BHP Water Supply Corporation
Water Service Area
CCN No. 10064
Application No. 35724-C (Petition from Kerala Christian Adult Homes 1, L.P.
for an Expedited Release from CCN No. 10064 of BHP WSC)
Collin County
11207
10165
10824
1903
12307
Hunt County
Collin County
10064
10165
1565
10064
10824
12175
Affected Area
1777
66
2642
30
67
36
BHP WSC
10064
13101
Collin County
10824
12175
12827
12827
12827
1565
10824
35
2453
Rockwall County
Hunt County
11305
12889
13071
6500
0
6500 Feet
1 inch = 6,500 feet
N
Map by S. Jaster 9/12/2007
Data path: s:\ud\ccn\ccn_working\ccn.shp
Project path: c:\gis\projects\applications\35724-C.apr
TCEQ

Royse City

A Friendly Touch of Texas

**P.O. Box 638, 305 N. Arch, Royse City, TX 75189 – Metro 972-636-2250, X223–Fax 972-635-2434**

March 20, 2008

Mr. Brian Dickey
Texas Commission on Environmental Quality
Water Supply Division, MC 153
P.O. Box 13087
Austin, Texas 78711

RE: Petition of Kerala Christian Adult Homes 1, L.P. for the Kerala Christian Retirement Community to decertify from BHP Water Supply Corporation (WSC), Certificate of Convenience and Necessity No. 10064, Public Water System ID No. 1160015, Rockwall County, Texas.
EC Project No. 6051.201.

TCEQ Application No. 35724-C, RN: 101218964, CN: 600660807

Dear Mr. Dickey:

This letter is to respond to the letter dated March 11, 2008 considering the intent of the City of Royse City (City) to provide service to the above stated development. A developer agreement was executed between the City and Kerala Adult Christian Homes 1, L.P. on June 13, 2006. Further, the City annexed this area in September 2006. The City has intended to provide service to this area since June 2006. Please accept this letter as a formal response to your letter requesting notification.

If you have any additional questions, please contact me.

Sincerely,

Karen Philippi

Karen Philippi
City Manager

RECEIVED
TCEQ WATER SUPPLY
2008 MAR 28 PM 4: 4

cc: Mr. Dub Douphrate, Douphrate and Associates
Mr. Leonard Dougal, Jackson Walker, L.P. 100 Congress Avenue, Suite 1100, Austin, TX 78701

# Determination of Monetary Compensation for the CCN Area to Serve the Kerala Tract

## Prepared for

## BHP Water Supply Corporation

CCN # 10064

## Presented By

GDS Associates, Inc.
Engineers and Consultants

May 27, 2008

GDS Associates, Inc. • 919 Congress Avenue • Suite 800 • Austin, Texas 78701 • www.gdsassociates.com
• Marietta, GA • Austin, TX • Auburn, AL • Manchester, NH • Madison, WI • Avon, IN

# I. Introduction

This report is prepared as a result of a petition filed by Kerala Christian Adult Homes 1, L.P. ("Kerala") pursuant to Texas Water Code §13.254(a-1) to decertify some 432.05 acres from BHP Water Service Corporation's ("BHP" or the "WSC") CCN No. 10064. Attachment "A" includes a map showing the Kerala property in relation to BHP's CCN. The Executive Director of the Texas Commission on Environmental Quality ("TCEQ") signed an order granting the petition on September 17, 2007 (Attachment "B"). On March 20, 2008, the City of Royse City submitted a letter to the TCEQ stating its intent to provide service to Kerala's development. The parties have not agreed on an independent appraiser. This report is submitted on behalf of BHP.

The value of BHP's property was determined based on an analysis of the factors set forth in Tex. Water Code §13.254(g) and the Commission's rules at 30 Tex. Admin. Code §291.113(k) (Attachment "C" contains the text of the referenced statute and rule). In general, just compensation for utility property acquired should include the physical and intangible property, the on-going concern value to the utility, and in some cases goodwill. The purpose of this report is to provide an actual value to be used as a benchmark for determining the amount of compensation requested by BHP from the City for the right to provide service to the area. Information relied upon in the preparation of the report included a site visit to the BHP WSC service area and the area in question, inspection of above ground facilities, review of BHP's files, and review of the application and related documents submitted by the City in taking this action.

This valuation has been prepared following the guidelines of Section 13.254.

Pursuant to Section 13.254(g), Water Code, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code. This statute governs actions in eminent domain and the value of personal property shall be determined according to the following factors:

1. The amount of the retail utility's debt allocable to the service area in question,
2. The value of the service facilities of the retail pubic utility in the area,
3. The amount of any expenditure for planning and construction of facilities in the area,
4. The amount of any contractual obligations allocable to the service area in question,
5. The demonstrated impairment of service or increased costs to the remaining customers of the utility,
6. The impact of future revenues lost from existing customers,
7. Necessary and reasonable legal and professional expenses,
8. And, "Other relevant factors."

## II. Area to be Transferred

The total Kerala Tract area requested by the City to be transferred in this action from the WSC's certificated area (CCN No. 10064) contains 432.05 acres. The tract is located entirely within the WSC's CCN area in the northwest side and is bounded on the west by FM Hwy 1777 and on the north by CR 677. The nearest WSC water lines are located to the south on US Hwy 66 and to the east on CR 628.

The area where the tract lies can currently be considered rural. The current residences throughout the area are scattered and the land is mostly undeveloped. The WSC has no water service on or immediately adjacent to the tract, but does have a customer nearby on the east with a meter located on CR 628. Additionally, there are WSC owned water lines and active customer services to the northeast of the Kerala Tract.

## III. Determination of Values

Using the valuation elements of Section 13.254, a value of $299,996 has been determined. This is based on the following:

1. Debt service: $0

The WSC has long-term debt of $514,961 (as of December 2007). However, based on our review of the documentation, this debt does not appear to be allocable for service to the area in question.

2. Asset value: $11,602

This value of the assets is based on a portion of the replacement value (adjusted for age and condition) for the existing master meter, water lines, and easements that would be used to supply service to the tract if service had been requested from the WSC. The computations supporting this are included in Attachment "D".

3. Planning and construction expenditures: $0

The WSC has done capital planning studies and has on-going planning efforts. None, however significantly address service to the Kerala Tract specifically.

4. Contractual obligation: $0

There are no contractual obligations connected to service to the Kerala Tract.

5. Impairment of service: $0

Service to the existing customers of the WSC will not be impaired by the transaction.

6. Future revenues from existing customers: $0

There are no existing WSC customers in the Kerala Tract.

7. Legal and professional expenditures: $30,500

The following legal and expenditures related to processing this action have been incurred to date:

A. Jackson Walker, L.L.P. $19,000

Challenge to Kerala's Expedited Release Petition: $2,800

- Review Petition
- Communication with TCEQ regarding Petition
- Client communication
- Written response and comments to Kerala's Petition

Appeal of Executive Director's Order: $13,700

- Legal research
- Draft Motion to Overturn
- Draft Reply and Brief in Support of MTO
- Communication with TCEQ
- Client communication
- Communication to obtain support from third parties

Valuation $2,500

- Legal research
- Communication with valuation consultant

B. Daniel & Brown, Inc. $5,000

Support Services

- Review files, maps, and legal documents
- Communication with utility, consultants, and attorney
- Prepare maps and data regarding WSC operations

C. GDS Associates, Inc. $6,500

Valuation Report

- Review files, maps, and legal documents
- Communication with utility, engineer, and attorney
- Prepare report and attachments.

8. Other factors: $257,894

Traditional property valuation for non-regulated water utility situations may include all or part of several approaches, including:

- Market value – where consideration is given to actual comparable transaction similar in nature.
- Asset value – where value of physical property and facilities are considered.
- Economic value – where income related economic benefits such as earnings stream and cash flow are used in the value computation.

The value of the Kerala Tract service area must also be determined using comparable market sales, as that factor takes into account the loss of service rights. There is a real, tangible value for the future rights to provide service to water utility customers in an area. The only way for the WSC to get a feel for the value it owns comes with comparison of sales values for similar transactions. An analysis of similar transactions reflects what the value will be on the open market. These are the prices that have been

agreed on where there is a willing buyer and a willing seller that have knowledge of the relevant facts. This factor is the only one that recognizes and takes this into account.

There have been three recent transactions involving the transfer of BHP WSC facilities to other certificate holders. They are relatively recent and were substantially similar in the nature of service desired. The buyers in those purchases desired the service for various reasons to enhance their utility operations and determined that the purchase would fit the long range plans for their service area growth.

The average transaction price per acre was $1,248 for the three transactions. Information related to the transactions is set forth below:

- Fairway Ranch Estates: Transfer of CCN rights for 99.57 acres in Rockwall County from BHP to the City for development by Countryside Development Corporation. This agreement was executed in February 2005. No facilities, water lines, or equipment were transferred as part of this transaction. The purchase price for this transfer was $105,500, which amounts to $1,060 per acre.
- Verandah: Transfer of CCN rights for 697.5 acres from BHP to Verandah Fresh Water Supply District at a cost of $825,000, which amounts to $1,183 per acre. This agreement was executed in April 2004. No facilities, water lines, or equipment were transferred as part of this transaction.
- Royse City Independent School District: Transfer of CCN rights for approximately 116 acres in Hunt County where a new High School was under construction by the Royse City Independent School District. This agreement was executed in February 2006. The total price paid to BHP for the transfer of its CCN was $174,000, which amounts to $1,500 per acre. No facilities, water lines, or equipment were transferred as part of this transaction.

Attachment E contains the executed agreements for these transactions. These transactions were all recent transactions and the circumstances were very similar to this case. They did not involve the transfer of existing customers or actual facilities. And, they involved willing buyers and willing sellers that focused on the value of service rights.

These transactions were located in a different part of the service area where there were WSC facilities in closer proximity, and thus 50% of the per acre value or $624 was used.

This is important in that it recognizes the fact that the WSC would possibly have to incur some expenses in expanding its facilities to meeting its obligations for service in that area.

So, using this method, the comparable price for the 432 acre Kerala Tract is $269,568. To account for the value of facilities in Number 2 above, this is rounded down to $257,894.

## V. Conclusion

Just because there is no actual service within the area to be transferred does not mean there is no value to the WSC associated with the Kerala Tract area. The WSC has had certificated rights to serve the area since at least 1976. CCNs are by nature a right to provide service and also an obligation to provide service within the certificated area. Therefore it is reasonable to assume that the WSC intends in good faith to provide water service within its CCN area when the requests for service are made.

As it has been established as the only rightful water supplier in the area for over 31 years, the WSC as a whole has value as a going concern in being an established business. Even though not serving within the area, the fact that the area is squarely within its CCN has given the WSC assurances that when growth occurs and service is requested, there will be additional customers to share the costs. Customer growth for the entire service area of the WSC has been steady over recent years, but due first to drought restrictions and then a wet 2007, overall customer usage has not seen the same increase as the growth in connections. Costs of providing service do continue to increase however, and the addition of new connections would be valuable to the WSC in sharing of costs. In fact, in anticipation of continuing growth, the WSC recently purchased property with the expectations of developing a larger business office.

Therefore, based on all factors that must be considered in the process, a value of $299,996 for the transfer of the certificated water service rights to the Kerala Tract is supported by a preponderance of the evidence.

CERTIFICATION

I certify that this Valuation Analysis Report and Exhibits for BHP Water Supply Corporation has been prepared under my supervision and control.

George Freitag

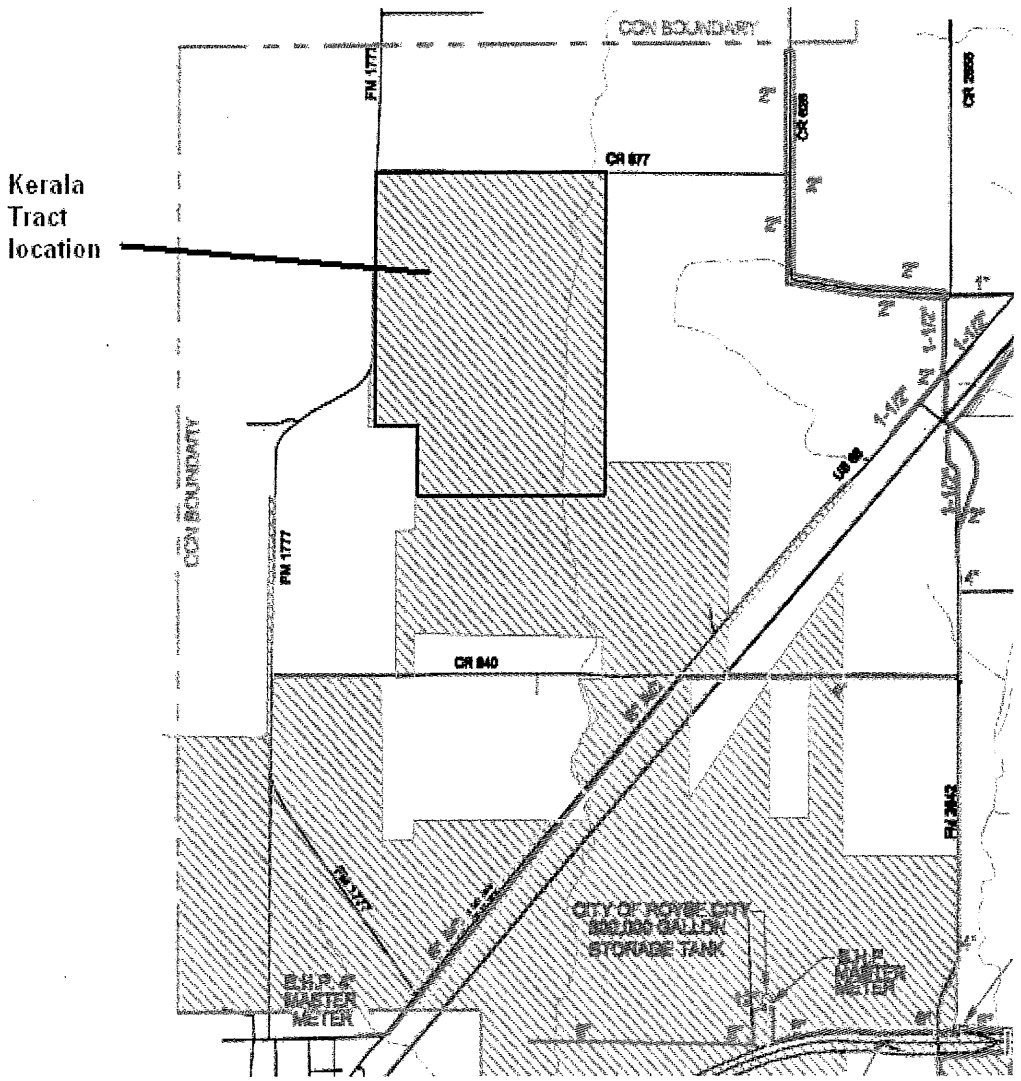
George Freitag, P.E.

Date: May 27, 2008

# ATTACHMENT A

Existing CCN for BHP WSC

ATTACHMENT A



# ATTACHMENT B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

THE STATE OF TEXAS
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
SEP 25 20
LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality

**APPLICATION NO. 35724-C**

| | | |
|---|---|---|
| **PETITION FROM KERALA CHRISTIAN ADULT HOMES 1, L.P. FOR AN EXPEDITED RELEASE FROM WATER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 10064 OF BHP WATER SUPPLY CORPORATION (WSC) IN COLLIN COUNTY, TEXAS, APPLICATION NO. 35724-C** | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | **BEFORE THE**<br><br>**TEXAS COMMISSION ON**<br><br>**ENVIRONMENTAL QUALITY** |

**ORDER**

On SEP 17 2007, the Executive Director of the Texas Commission on Environmental Quality, pursuant to chapters 5 and 13 of the Texas Water Code, considered the petition of Kerala Christian Adult Homes 1, L.P. (Petitioner) for an expedited release from water CCN No. 10064, held by BHP WSC, in Collin County, Texas.

Notice of the application was given to BHP WSC, the certificate holder.

The alternative service provider is the City of Royse City.

The criteria set forth in section 13.245(a-1) of the Texas Water Code have been considered. The Petitioner has satisfied the elements required by that section.

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

1. The petition from Kerala Christian Adult Homes 1, L.P. for an expedited release from water CCN No. 10064 of BHP Water Supply Corporation, as reflected in the attached copy of the official water service area map for Collin County, Texas, is hereby approved.

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

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

Issue Date: SEP 17 2007

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

# ATTACHMENT C

determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property requested by the municipality to be transferred to the municipally owned utility or franchised utility and located within the singly certificated area and property determined by the court or jury to be rendered useless or valueless by the granting of single certification; and

(2) orders payment in accordance with Subsection (g) of this section to the retail public utility of adequate and just compensation for the property transferred and for the property damaged as determined by the court or jury.

(f) Transfer of property shall be effective on the date the judgment becomes final. However, after the judgment of the court is entered, the municipality or franchised utility may take possession of condemned property pending appeal if the municipality or franchised utility pays the retail public utility or pays into the registry of the court, subject to withdrawal by the retail public utility, the amount, if any, established in the court's judgment as just and adequate compensation. To provide security in the event an appellate court, or the trial court in a new trial or on remand, awards compensation in excess of the original award, the municipality or franchised utility, as the case may be, shall deposit in the registry of the court an additional sum in the amount of the award, or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages in excess of the original award of the trial court. On application by the municipality or franchised utility, the court shall order that funds deposited in the registry of the court be deposited in an interest-bearing account, and that interest accruing prior to withdrawal of the award by the retail public utility be paid to the municipality or to the franchised utility. In the event the municipally owned utility or franchised utility takes possession of property or provides utility service in the singly certificated area pending appeal, and a court in a final judgment in an appeal under this section holds that the grant of single certification was in error, the retail public utility is entitled to seek compensation for any damages sustained by it in accordance with Subsection (g) of this section.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain; the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate, shall, at a minimum, include: impact on the existing indebtedness of the retail public utility and its ability to repay that debt, the value of the service facilities of the retail public utility located within the area in question, the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question, the amount of the retail public utility's contractual obligations allocable to the area in question, any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification, the impact on future revenues lost from existing customers, necessary and reasonable legal expenses and professional fees, factors relevant to maintaining the current financial integrity of the retail public utility, and other relevant factors.

(g-1) The commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the commission determines that the municipality's application is administratively complete.

(h) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right

pursuant to Subsection (f) of this section.

(i) In the event that a municipality files an application for single certification on behalf of a franchised utility, the municipality shall be joined in such application by such franchised utility, and the franchised utility shall make all payments required in the court's judgment to adequately and justly compensate the retail public utility for any taking or damaging of property and for the transfer of property to such franchised utility.

(j) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under Chapter 65, Water Code, or a fresh water supply district under Chapter 53, Water Code; or

(2) the retail public utility that is authorized to serve in the certificated area that is annexed or incorporated by the municipality is a retail public utility, other than a nonprofit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

(1) the commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the commission or a person the commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the commission.

(m) The commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

Added by Acts 1987, 70th Leg., ch. 583, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 32, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 926, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 814, Sec. 1 to 4, eff. Aug. 28, 1995; Acts

**§291.113. Revocation or Amendment of Certificate.**

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may on its own motion or on receipt of a petition revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing service, is incapable of providing service, or has failed to provide continuous and adequate service in the area or part of the area covered by the certificate;

(2) in an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action under Texas Water Code, §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(b) As an alternative to decertification under subsection (a) of this section, the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. Prior to the petition being filed with the commission, the petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought shown on a map with descriptions according to §291.105(a)(2)(A) - (G) of this title (relating to Contents of Certificate of Convenience and Necessity Applications);

(B) the time frame within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the time frame, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the time frame, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area. An alternate retail public utility is limited to:

(A) an existing retail public utility; or

(B) a district proposed to be created under Texas Constitution, Article 16, §59 or Article 3, §52. If an area is decertificated under a petition filed in accordance with subsection (d) of this section in favor of such a proposed district, the commission may order that final decertification is conditioned upon the final and unappealable creation of the district and that prior to final decertification the duty of the certificate holder to provide continuous and adequate service is held in abeyance.

(c) A landowner is not entitled to make the election described in subsection (b) of this section but is entitled to contest the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(d) Within 90 calendar days from the date the commission determines the petition filed under subsection (b) of this section to be administratively complete, the commission or executive director shall grant the petition unless the commission or executive director makes an express finding that the petitioner failed to satisfy the elements required in subsection (b) of this section and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission or executive director may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section.

(e) Texas Government Code, Chapter 2001, does not apply to any petition filed under subsection (b) of this section. The decision of the commission or executive director on the petition is final after any reconsideration authorized under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) and may not be appealed.

(f) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Texas Water Code, §13.242(c).

(g) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(h) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(i) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided but no later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(j) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(1) If the retail public utilities cannot agree on an independent appraiser within ten calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days after the date on which the retail public utility notified the commission of its intent to provide service to the decertified area.

(2) After receiving the appraisals, the commission or executive director shall appoint a third appraiser who shall make a determination of the compensation within 30 days after the commission receives the appraisals. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay one-half of the cost of the third appraisal.

(k) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Texas Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers ; necessary and reasonable legal expenses and professional fees; and other relevant factors.

(l) As a condition to decertification or single certification under Texas Water Code, §13.254 or §13.255, and on request by a retail public utility that has lost certificated service rights to another retail public utility, the commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(m) The commission shall order service to the entire area under subsection (l) of this section if the commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(n) The commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(o) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the commission, if applicable.

(p) The commission shall not order compensation to the decertificated retail public utility if service to the entire service area is ordered under this section.

(q) Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) submit to the executive director a written list with the names and addresses of the lienholders and the amount of debt; and

(2) notify the lienholders of the decertification process and request that the lienholder provide information to the executive director sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

Adopted December 14, 2005 Effective January 5, 2006

**§291.114. Requirement to Provide Continuous and Adequate Service.**

(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

(b) After notice and hearing, the commission may:

# ATTACHMENT D

ATTACHMENT D

**VALUE OF CCN AREA KNOWN AS KERALA TRACT**
**BHP WATER SUPPLY CORPORATION - CCN 10064**

| VALUE COMPUTATION | | |
|---|---|---|
| 1 value of facilities | $ | 11,602 |
| 2 value of debt associated | $ | - |
| 3 value of lost revenues | $ | - |
| 4 value of construction | $ | - |
| 5 value of contractual obligations | $ | - |
| 6 legal and profess expenses | $ | 30,500 |
| 7 other | $ | 257,894 |
| | **$** | **299,996** |

| | | | |
|---|---|---|---|
| Total replacement value of facilities that are available to serve Tract: | | $33,570.21 | |
| (Facilities include 6" water line and easements, valves, and master meter installation) | | | |
| est current density is 1 residence per 5 acre | 5 | 86.4 | residence potential |
| TCEQ regs, max allowable conn on a 6" line | | 250 | |
| | use | 34.56% | percent of facilities |

| | | | | | |
|---|---|---|---|---|---|
| Comparable sales | Veranda | 697.5 ac | per ac | $ | 1,183 |
| | Fairway Ranch | 99.57 ac | per ac | $ | 1,060 |
| | RC ISD | 116 ac | per ac | $ | 1,500 |
| | | | average | $ | 1,248 |
| | | percent disc | 50% | $ | 624 |
| | acreage of tract | 432 | total | $ | 269,496 |

| System Name: BHP WSC facilities on St Hwy 66<br>PWS ID: 1160015 CCN: 10064 | | VALUATION SUMMARY | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Region:(Rockwall County) | | | | | | | | | | | |
| | Acquisition Date:1/1/2008 | | | | | | | | | | |
| Acct. No. | Account Name / Description | Actual or Estimated Date Installed | | Quantity | Trended Original Cost | Original Cost Asset Value | Current Annual Depreciation Expense | Total Accumulated Depreciation | Original Cost Less Depreciation or Net Book Value | Estimated Replacement Value | Replacement Value Adjusted for Age & Condition |
| 303.0 | Land - Water System | | | | | | | | | | |
| | Utiltiy easements | 1-Jul-64 | | 91,770 | $1,797.56 | $1,797.56 | | | $1,797.56 | $18,354.00 | $18,354.00 |
| | | | | | | | | | | | |
| 331.0 | Transmission and Distribution Mains | | | | | | | | | | |
| | 6" PVC Water Line | 1-Jul-64 | | 2,326 | $7,795.23 | $7,795.23 | $155.90 | $6,782.12 | $1,013.11 | $41,868.00 | $5,441.41 |
| | 6" PVC Water Line | 1-Jul-64 | | 3,792 | $12,708.31 | $12,708.31 | $254.17 | $11,056.66 | $1,651.65 | $68,256.00 | $8,870.94 |
| | 6" Valves | 1-Jul-64 | | 2 | $298.94 | $298.94 | $5.98 | $260.09 | $38.85 | $1,713.80 | $222.74 |
| 333.0 | Services | | | | | | | | | | |
| | | | | - | | | | | | | |
| 334.0 | Meters and Meter Installations | | | | | | | | | | |
| | Master meter vault and connection | 1-Jun-64 | | 1 | $160.04 | $160.04 | $3.20 | $139.50 | $20.54 | $1,200.00 | $153.99 |
| | 4" Master meter at City Supply | 1-Jul-00 | | 1 | $1,513.13 | $1,513.13 | $151.31 | $1,135.11 | $378.02 | $2,110.00 | $527.14 |
| 335.0 | Hydrants | | | | | | | | | | |
| | | | | | | | | | | | |
| 339.0 | Miscellaneous Plant | | | | | | | | | | |
| | | | | | | | | | | | |
| TOTAL | | | | | **$24,273.20** | **$24,273.20** | **$570.56** | **$19,373.48** | **$4,899.73** | **$133,501.80** | **$33,570.21** |

# ATTACHMENT E

**AGREEMENT TO TRANSFER RETAIL WATER SERVICE AREA BETWEEN THE CITY OF ROYSE CITY, TEXAS AND BHP WATER SUPPLY CORPORATION**

This Agreement (the "Agreement") is executed between the City of Royse City, Texas (the "City") and BHP Water Supply Corporation ("BHP") on the 9th day of February, 2005.

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

WHEREAS, BHP is a water supply corporation organized in accordance with the laws of the State of Texas; and

WHEREAS, the City and BHP (collectively the "Parties") are both "retail public utilities" as that term is defined in Section 13.002 of the Texas Water Code and Chapter 291 of Title 30 of the Texas Administrative Code; and

WHEREAS, BHP has been issued Certificate of Convenience and Necessity ("CCN") No. 10064 by the Texas Commission on Environmental Quality ("TCEQ") to provide water utility service for certain areas within Hunt, Collin, and Rockwall counties, Texas; and

WHEREAS, the City has been issued CCN No. 12827 by TCEQ to provide water utility service for certain areas within Rockwall and Hunt counties, Texas; and

WHEREAS, the City and BHP desire to transfer a certain defined area within BHP's present CCN to the City in consideration for monies paid by the City; and

WHEREAS, the City and BHP, subject to approval by TCEQ, have agreed to BHP's transfer of a portion of its CCN area; and

WHEREAS, the approximately 99.57 acres in Rockwall County, known as the Fairway Ranch Estates area, which are being developed by Countryside Development Corporation, are contained within BHP's CCN; and

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

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

1. Term. This Agreement shall remain valid and enforceable until the City's payment obligations herein are satisfied, and thereafter until the Agreement is superseded by a subsequent written agreement.

2. Property Subject to the Agreement. The property that is the subject of this Agreement is approximately 99.57 acres in Rockwall County known as the Fairway Ranch Estates area, which is currently contained within BHP's CCN, CCN No. 10064, being more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes (the "Property").

3. Transfer of Water Utility Service Area.

3.1 BHP currently holds CCN No. 10064 that includes the Property. BHP desires to transfer to the City that portion of CCN No. 10064 which includes the Property. The Parties agree that the City will be entitled exclusively to a CCN upon the Property. BHP agrees to provide to the City all information necessary for the City's Sales/Transfer/Merger ("STM") Application to transfer the CCN rights to the Property.

3.2 The total purchase price to be paid by the City to BHP for the CCN rights on the Property is ONE HUNDRED THOUSAND, FIVE HUNDRED DOLLARS ($105,500) (the "Payment"). The Parties agree that the Payment constitutes a just, adequate, and reasonable payment to BHP for its loss of revenue and service rights to the Property.

3.3 The Payment shall be made by the City as follows:

A. Upon execution of this Agreement by the City, the City shall pay BHP TWENTY FIVE THOUSAND, FIVE HUNDRED DOLLARS ($25,500); and

B. The remaining amount of the Payment shall be made to BHP by credits applied over a three (3) year period on the water volumes purchased by BHP pursuant to the Wholesale Treated Water Supply Contract. Each month after the Effective Date of this Agreement, and continuing for a total of thirty-six (36) months until the Payment is fully satisfied, BHP shall be credited by the City the amount of $2,222.22 to the amount BHP would otherwise owe to the City under the Wholesale Treated Water Supply Contract. The amount credited in the thirty-sixth (36th) month shall be $2,222.30.

3.4 Upon execution of this Agreement, the City will file an application with TCEQ to amend its CCN No. 12827 (the "STM Application") to reflect the transfer of the CCN rights to the Property to the City. BHP will support the STM Application as it relates to this agreement. All costs associated with preparing and filing the STM Application and pursuit of regulatory approvals shall be borne by the City.

3.5 No Facilities or Waterlines. No facilities, water lines, equipment, or other property or property rights of BHP are transferred to the City by this Agreement, except for the portion of the retail water CCN as set forth herein.

3.6 BHP represents that it does not presently have outstanding any loan from the Farmer's Home Administration ("FMHA") or any successor federal agencies.

4. Miscellaneous.

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

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

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

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

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

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

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

to the City: City Manager
City of Royse City
P.O. Box 638
Royse City, Texas 75189

To BHP: President
BHP Water Supply Corporation
P.O. Box 370
Royse City, Texas 75189

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

4.8 This Agreement is executed in duplicate originals, each of which shall be deemed an original for all purposes.

4.9 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

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

4.12 Default. In the event either party fails to comply with the terms of this Agreement, the other party has the right to enforce the terms of this Agreement by specific performance or by any other remedies available to the other party. The party substantially prevailing in any litigation over the enforcement of this contract shall receive its reasonable and necessary attorney fees and court costs.

IN WITNESS THEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the latest date (the "Effective Date") as reflected by the signatures below.

[Remainder of page intentionally left blank.]

THE CITY OF ROYSE CITY, TEXAS

By: _____ Date: 2-15-05
Its: Mayor

STATE OF TEXAS §
§
COUNTY OF ROCKWALL §

BEFORE ME, the undersigned authority, on this day personally appeared Jim Melloy, known to me to be one of the persons whose names are subscribed on the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative for THE CITY OF ROYSE CITY, TEXAS, and he/she executed said instrument for the purposes and considering therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of February 2005.

Brenda J. Craft
Notary Public in and for the State of Texas
My Commission Expires:
February 17, 2008

BRENDA J. CRAFT
MY COMMISSION EXPIRES
February 17, 2008

[Remainder of page intentionally left blank.]

BHP WATER SUPPLY CORPORATION

By: B. W. Peoples Date: 2-9-05
Its:

STATE OF TEXAS §
§
COUNTY OF ROCKWALL §

BEFORE ME, the undersigned authority, on this day personally appeared B W Peoples, known to me to be one of the persons whose names are subscribed on the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative for BHP WATER SUPPLY CORPORATION, and he/she executed said instrument for the purposes and considering therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 9th day of February 2005.

Stephanie Blake
Notary Public in and for the State of Texas
My Commission Expires:
April 19, 2008

STEPHANIE BLAKE
MY COMMISSION EXPIRES
April 19, 2008

**EXHIBIT "A"**
**(THE PROPERTY)**

The Property is comprised of:

Lot Numbers 1 through 29 in Fairway Ranch Estates Phase I; and

Lot Numbers 1 through 38 in Fairway Ranch Estates Phase II;

as identified on the attached two plats.

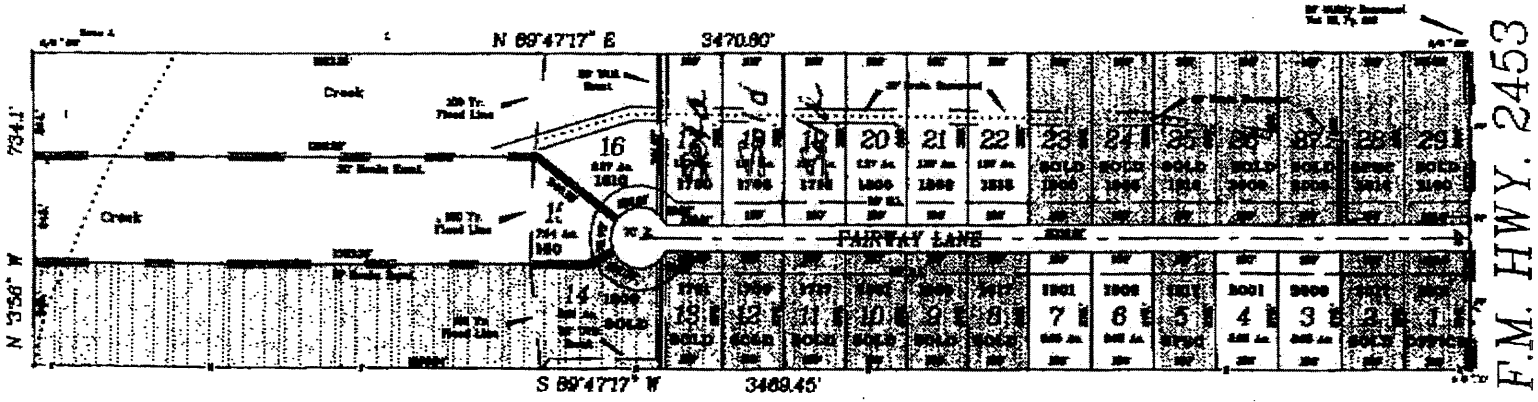
# FAIRWAY RANCH ESTATES

**LOTS ARE AVAILABLE FOR PURCHASE SEPARATELY OR COMBINED WITH A**

## COUNTRYSIDE CUSTOM HOME

**(972) 636-4500**

**(972) 427-3500**




Surveyor
CCLS, Inc. – Land Surveyors

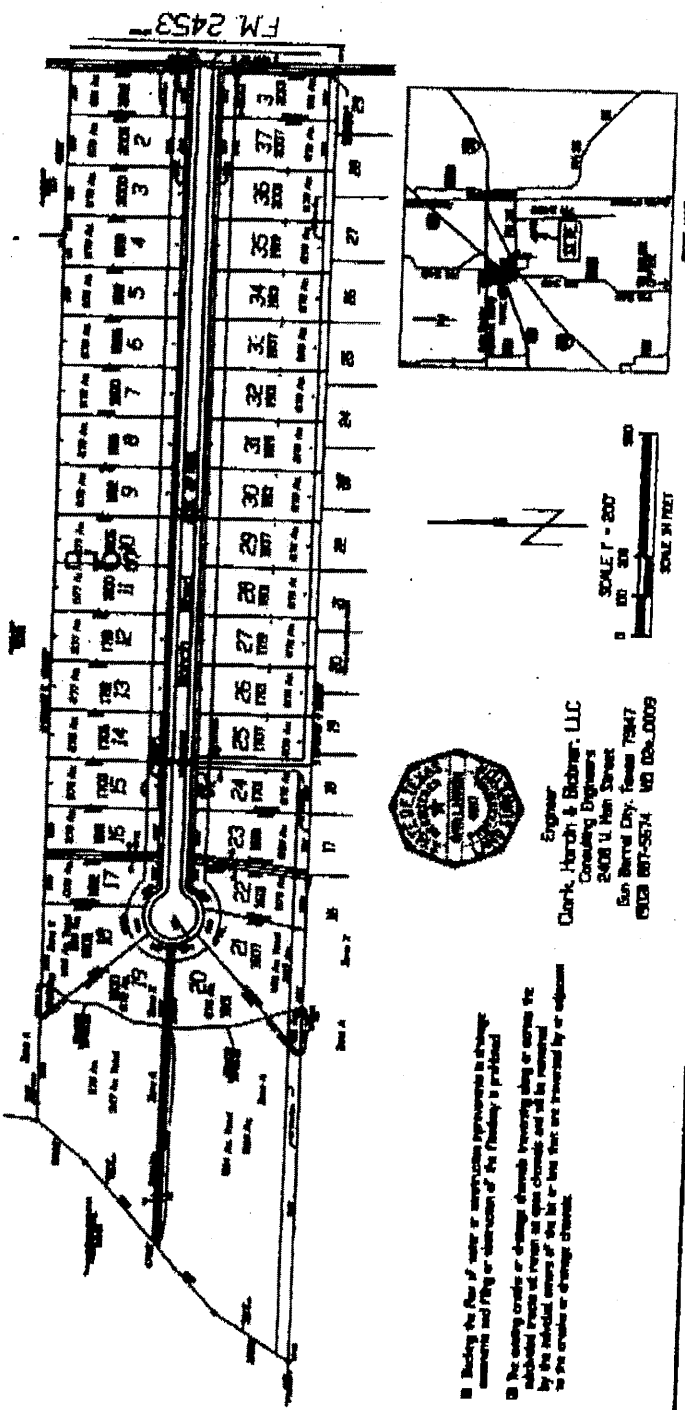
(AAKI RANCH GOLF COURSE)

# FAIRWAY RANCH ESTATES II

BY

COUNTRYSIDE CUSTOM HOMES

(972) 636-4500



**SETTLEMENT AGREEMENT CONCERNING**
**RETAIL WATER SERVICE AREAS**

This Settlement Agreement Concerning Retail Water Service Areas (the "Agreement") is made and entered into by and between BHP Water Supply Corporation, a non-profit water supply corporation ("BHP"), Verandah Communities, L.P., a Texas limited partnership (the "Partnership"), and Verandah Fresh Water Supply District, a conservation and reclamation district (the "District"), to be effective on the 16th day of April, 2004 (the "Effective Date"). Collectively, the Partnership and District are sometimes referred to herein as the "Verandah Parties."

WHEREAS, the Partnership filed an Original Petition of Complaint for Failure to Serve (the "Complaint") with the Texas Commission on Environmental Quality ("TCEQ"), which Complaint is now pending at the TCEQ; and

WHEREAS, the Partnership has desires to receive both water and wastewater utility service from the District and is willing to underwrite the cost of transferring the District's water utility service area from BHP to the District in order to accomplish this; and

WHEREAS, BHP and the District are both "retail public utilities" as defined in Section 13.002 of the Texas Water Code and Chapter 291 of Article 30 of the Texas Administrative Code; and

WHEREAS, BHP has been issued Certificate of Convenience and Necessity ("CCN") No. 10064 to provide retail water service for certain areas within Hunt County, Texas; and

WHEREAS, the Parties desire to resolve their various disputes over water service to property owned by the Partnership and to enter into an agreement by which BHP will transfer a portion of its retail water CCN to the District; and

WHEREAS, the Parties desire to make the agreement as set forth below.

**NOW, THEREFORE**, for and in consideration of the promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, BHP, the Partnership and the District hereby agree as follows:

1. Area Subject to the Agreement. The geographic area that is the subject of this Agreement is an area of 697.5 acres within BHP's CCN, which is identified in Exhibit "A"(which area is designated the "Transfer Area").

A. Additionally, it is agreed that the acreage in the Transfer Area may be increased by the District in an amount not to exceed 150 acres, by adding property

which is immediately adjacent to (excluding road ways or easements) that shown in Exhibit "A," so long as the compensation to BHP is increased as forth in Section 3.3.

B. The District's option to increase the area of the Transfer Area shall expire two (2) years after the Effective Date. Thereafter, BHP shall be obligated to allow the District to increase the Transfer Area to the maximum of 150 total acres for an additional three (3) years but only under such terms and conditions as may be mutually agreed upon by BHP and the Verandah Parties at that time. If BHP and the Verandah Parties are not able to reach mutually agreeable terms despite good faith negotiations, BHP shall not be obligated to transfer additional service area to the District under this provision.

2. Withdrawal of Complaint. Not later than 15 days after the Effective Date, the Partnership shall file a letter with the TCEQ withdrawing for all purposes the Complaint and requesting that the TCEQ take no further action in the matter, other than to dismiss the action.

**Transfer of Portion of CCN Area.**

3.1 Transfer of Portion of CCN. Subject to the terms of this Agreement, the Parties agree that the District will be entitled to a CCN covering the area of the Transfer Area and that, so long as the District is in compliance with the terms of this Agreement, BHP will cooperate with the District to transfer the CCN for the Transfer Area to the District.

A. To accomplish the transfer the District shall prepare and file a Sale, Transfer or Merger Application (the "STM Application") with the TCEQ, which seeks to convey the CCN for the Transfer Area from BHP to the District.

B. All costs associated with obtaining regulatory approval of the STM Application shall be borne by the District. BHP will provide necessary signatures, information and testimony required of BHP for the STM Application. BHP will cooperate with the District to obtain TCEQ approval of this Agreement and of the resultant STM Application. The District shall promptly reimburse any reasonable and necessary costs incurred by BHP at the District's request related to the STM Application.

3.2 Current Customers in Transfer Area. All current retail water customers of BHP if any, whose place of use of water is located within the Transfer Area will, after the approval of the STM Application by TCEQ, become customers of the District. BHP has reviewed its records and the Transfer Area, believes that it has seven (7) current customers located therein.

**Compensation, Payments and Deposit.**

3.3 Compensation to BHP. To compensate BHP for its costs and expenses to date, and for the loss of revenue, future customers, and service rights in the Transfer Area the Parties agree that $825,000 is a just, adequate and reasonable payment to

BHP for the transfer to the District of the Transfer Area containing 697.5 acres. Any additional acreage included in the Transfer Area by the Partnership, up to the amount allowed by Section 1A hereto, shall require a payment to BHP of $1,200 per acre. The $825,000 shall be termed the "BHP Compensation."

3.4 Payments.

A. Not later than fifteen (15) days after the Effective Date, the Partnership shall pay to BHP $82,500 by certified check or cashier's check. This payment shall be a portion of the BHP Compensation for the Transfer Area shall be non-refundable if the TCEQ does not approve this transaction or if the transaction does not close due to any act or omission of the Partnership or the District.

B. The balance of the BHP Compensation shall be paid to BHP by cashier's check not later than five (5) days after the date on which the Transfer Area is certificated to the District by the TCEQ's order granting the STM Application becoming final and non-appealable, as provided by Government Code § 2001.001, et. seq. (the "Final Order Date").

C. At the time the District notifies BHP that it is adding acreage as allowed by Section 1A, the Partnership shall pay to BHP $300 times the number of acres added, which payment shall represent twenty-five percent (25%) of the additional compensation required by BHP for the added acreage. The balance shall be paid not less than five (5) days after the TCEQ issues a final non-appealable order transferring the added acreage to the District's certificated service area. It is the intent of the parties that the transfer of the added acreage be treated in the same manner, with the same escrow requirements and deadlines, and subject to the same conditions as the transfer of the original 697.5 acres of BHP's current certificated service area.

D. After satisfaction of the payment set forth in Section 3.4A, the District shall be authorized to provide retail public water utility service within the Transfer Area as BHP's agent pending a final TCEQ decision on the STM Application. BHP shall have the right to inspect all facilities constructed within the Transfer Area until the Final Order Date. The District shall be responsible and liable for all acts and omissions related to the provision of retail public water utility service under TCEQ rules and regulations within the Transfer Area occasioned by the District's facilities, employees, contractors, operators, and/or water supplies. The District shall indemnify BHP for any costs, fines or expenses BHP incurs due to any act or omission of the District occurring during this period. BHP shall be responsible for its own water utility facilities in and running through the Transfer Area and their maintenance and repair.

E. Conveyance of Facilities to BHP, if STM is Denied. The Partnership has agreed to acquire and construct on behalf of the District all retail water utility distribution facilities necessary for the District to provide retail water utility service to customers, or future customers within the Transfer Area, subject to the District's agreement to purchase such facilities from the Partnership in the future in accordance with the rules of the TCEQ. Further, the District agrees that it shall not purchase and

the Partnership agrees that it shall not sell any of such facilities until the TCEQ renders its decision approving the STM and any required transfer. If the STM application is ultimately and finally denied by a final order of the TCEQ, the District shall cease to be BHP's agent and BHP shall thereafter be the retail water supplier to those customers which are located within the Transfer Area, if any, but without reimbursement for revenues collected by the District prior to the date of the final order. To ensure uninterrupted water service to customers and a smooth transition, the District and Partnership agree that the Partnership shall convey to BHP all retail water utility distribution facilities and equipment constructed by the Partnership on behalf of the District within the Transfer Area and used to provide retail water utility service to customers, or future customers, within the Transfer Area, except for those above ground facilities which can reasonably be salvaged by the Partnership. Further, the District and Partnership shall grant and convey to BHP easements for the location of water lines and other facilities to be conveyed to BHP.

After the TCEQ renders its decision denying the STM and any required transfer is made, the District shall cease to be BHP's agent as the retail water service provider. To minimize customer confusion and inconvenience, BHP and the District will endeavor to make this transition at the end of a normal monthly water utility service cycle. The District shall have the right to collect the revenues for the final month's water service under its operation if it is obligated to bear the expenses of operation for that last month of operation. If BHP assumes these liabilities, BHP shall be entitled to collect those water service revenues.

3.5 Joint and Several Obligation. The payment of STM Application expenses, indemnities, damages for interim water operations and other similar obligations of the District to BHP in this agreement shall be, and are, obligations jointly and severally with the Partnership in the event the District fails or is unable to make any such payment, BHP shall have the right to recover such payment from the Partnership. Payments for the transfer to the District of the Transfer Area are deemed to be the sole responsibility of the Partnership to be secured only by the Partnership's cash deposit, escrow and its full faith and credit.

3.6 Forfeiture of STM Application for Delay in Prosecution. If the TCEQ has not issued its final order in the STM Application matter within two (2) years from the date of the preliminary hearing at the State Office of Administrative Hearing (SOAH) on the STM Application (the "Approval Deadline"), or if prior to that date a final order of the TCEQ denies the STM Application, then BHP shall thereafter no longer be under any obligation to transfer the CCN for the Transfer Area to the District and if the STM Application remains pending the District shall immediately withdraw the application and request the TCEQ dismiss any pending proceedings related thereto. In addition to retaining the CCN for the Transfer Area after the passage of the Approval Deadline BHP shall retain any monies paid by the District or Partnership under this Agreement prior to the Approval Deadline, and BHP shall have no obligation to refund any such payments.

**Escrow and Closing**

4.1 Escrow and Closing if TCEQ Waives Hearing. Under Texas Water Code §13.301 and 30 TAC §291.109, after application, notice and investigation, the TCEQ may waive the requirements for a public hearing on the parties' application for approval of the transfer of BHP's CCN for the Transfer Area to the District. In the event this occurs, the following shall happen:

4.11 Within thirty (30) business days of receipt by all parties, or their counsel, of the TCEQ's notice that a hearing shall not be required and that they may close their transaction, the Partnership shall escrow the balance of the BHP Compensation with an escrow agent mutually acceptable to BHP and the Partnership.

4.12 Thereafter, the parties shall close the transfer of the CCN for the Transfer Area effective on the first day following the end of the then current BHP billing cycle so that any new services from the date of closing forward will be customers of the District unless otherwise agreed to in writing by the parties on an interim basis.

4.13 Upon closing, the parties will file proof of their closing with the TCEQ in order that the agency may process the final transfer of the CCN from BHP to the District.

4.14 Upon BHP's presentation of a certified copy of the TCEQ's order(s) issuing the District a retail public water utility CCN for the Transfer Area in Hunt County, Texas and simultaneously amending BHP's retail public water utility CCN to delete the Transfer Area, the escrow agent shall release the escrowed funds to BHP. No other act or consent by the Partnership or the District shall be required for the escrow agent to release these funds. No release of the escrow funds shall be made to BHP without such an order of the TCEQ without the prior written consent of both the Partnership and the District. The escrow agent shall be required to give notice to the Partnership and the District of any release of the escrow funds.

4.2 Escrow and Closing if TCEQ Requires a Contested Hearing. Under Texas Water Code §13.301 and 30 TAC §291.109, after application, notice and investigation, the TCEQ may require a contested public hearing on the STM Application. In the event this occurs, the following shall happen:

4.21 If the Proposal for Decision Recommends Approval of the CCN Transfer. If the presiding administrative law judge (ALJ) from the State Office of Administrative Hearings (SOAH) issues a proposal for decision (PFD) recommending approval of the STM Application and a transfer of that portion of BHP's CCN for the Transfer Area to the District, the following shall occur:

4.22 Within thirty (30) business days of receipt by both parties, or their counsel, of the ALJ's PFD, the Partnership shall escrow the balance of the BHP Compensation with an escrow agent mutually acceptable to BHP and the Partnership.

4.3 Upon BHP's presentation of a certified copy of the TCEQ's order(s) issuing the District a retail public water utility CCN in Hunt County, Texas and simultaneously amending BHP's retail public water utility CCN **plus** a copy of the TCEQ General Counsel's notice that all motions for rehearing have been overruled by act of the TCEQ or operation of law, the escrow agent shall release the escrowed funds to BHP. No other act or consent by the Partnership or the District shall be required for the escrow agent to release these funds. No release shall be made to BHP without such an order of the TCEQ without the prior written consent of both the Partnership and the District. The escrow agent shall be required to give notice to the Partnership or the District of any release of the escrow funds.

4.31 <u>If the Proposal for Decision Recommends Denial of the CCN Transfer.</u> If the presiding administrative law judge (ALJ) from the State Office of Administrative Hearings (SOAH) issues a proposal for decision (PFD) recommending denial of the STM Application and a transfer of that portion of BHP's CCN for the Transfer Area to the District, the following shall occur:

4.32. No escrow of the balance of the purchase price shall be made before the TCEQ commissioners hear oral argument and render a decision on the STM Application. If the TCEQ commissioners deny the application and subsequently deny all motions for rehearing, this transaction shall be terminated and all parties released from further obligations to each other related to the transfer of service area rights. This termination and release may be suspended if the parties all agree in writing to do so while pursuing their respective rights of judicial appeal.

4.33 If the TCEQ commissioners overrule the ALJ and approve the application to transfer the CCN for the Transfer Area to the District, within five (5) business days of the rendition of the TCEQ's order of approval, the Partnership shall escrow the balance of the BHP Compensation with an escrow agent mutually acceptable to BHP and the Partnership.

4.3 Upon BHP's presentation of a certified copy of the TCEQ's order(s) issuing the District a retail public water utility CCN in Hunt County, Texas and simultaneously amending BHP's retail public water utility CCN **plus** a copy of the TCEQ General Counsel's notice that all motions for rehearing have been overruled by act of the TCEQ or operation of law, the escrow agent shall release the escrowed funds to BHP. No other act or consent by the Partnership or the District shall be required for the escrow agent to release these funds. No release shall be made to BHP without such an order of the TCEQ without the prior written consent of both the Partnership and the District. The escrow agent shall be required to give notice to the Partnership or the District of any release of the escrow funds.

4.4 Failure to Escrow. The failure of the Partnership to escrow the balance of the BHP Compensation within any deadline set forth herein shall be a material breach of this Agreement by the Partnership, and such breach shall entitle BHP to unilaterally cause the STM Application to be withdrawn from consideration by the TCEQ. This remedy shall be in addition to any other remedies to which BHP may be

entitled. If the parties cannot agree on an escrow agent, the escrow agent shall be Republic Title or its successor.

4.5 Mutual Cooperation. So long as the District and the Partnership are in compliance with the payment and escrow obligations set forth in this Agreement, each party has an affirmative obligation to assist the other in performing all acts necessary to accomplish the transfer the CCN for the Transfer Area from BHP to the District.

4.6 Notice, Cure and Remedies. Except as provided below, If any party fails to perform any obligation arising under this Agreement, the other party having notice of such failure or default shall provide written notice thereof to the party in default. The party in default shall have no less than five (5) business days to cure the alleged failure or default. If the failure or default is not cured after notice, the other party may seek such recourse and remedies as may be available to them at law and/or in equity, including but not limited to specific performance. The notice of failure and notice of default provisions of this Section 4.6 shall not apply to the Partnership's obligation to escrow funds, which obligation shall only be changed by a subsequent written agreement executed by the Parties.

**Other Issues.**

5.1 No Facilities or Water Lines to be Transferred. Excepting only that portion of the retail water CCN described herein, no facilities, water lines, equipment or other property or property rights of BHP are to be transferred to the District by this Agreement. Notwithstanding the foregoing, the District shall have the option to move or relocate any water lines of BHP located within the Transfer Area (or any additional area), so long as the District pays all the costs of such moving or relocating such lines, replacing such lines with new or comparable materials, and locates such lines in private easements, all at no cost to BHP. The private easements shall be in a form reasonably acceptable to BHP and shall be assigned to BHP promptly after final inspection of the relocation project.

5.2 No Impairment of Other Customers or Facilities. Nothing in this Agreement shall in any way impair, or adversely affect, BHP's right or ability to provide water to those customers located outside the Transfer Area. BHP shall continue to have the right to use, repair, replace and upgrade its water transmission and distribution lines and facilities, which are located inside the area of the Transfer Area.

5.3 Option to Participate in Water Supply Project. The Parties agree to negotiate in good faith to allow BHP the option to participate as a wholesale customer in any water supply project to be undertaken by any of the Verandah Parties to bring water supply to the Transfer Area upon terms and conditions acceptable to BHP and the

Verandah Parties. The terms of any such participation shall be memorialized in a separate agreement.

**Miscellaneous.**

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

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

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

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

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

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

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

to the District

Verandah Fresh Water Supply District
Clay Crawford, General Counsel
Law Offices of Clay E. Crawford, PC
4265 San Felipe Street, Suite 1050
Houston, Texas 77027
Facsimile: (713) 621-3909

with copy to:

Mark H. Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
Facsimile: (512) 346-6847

to the Partnership:

Verandah Communities, LP
Donald Huffines

8222 Douglas Avenue, Suite 660
Dallas, Texas 75225
Facsimile: (214) 526-3000

with copy to:

Mark H. Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
Facsimile: (512) 346-6847

to BHP:

President
BHP Water Supply Corporation
P. O. Box ~~730~~ 370
Royse City, Texas 75189
Facsimile: (972) 636-2465

BHP WATER SUPPLY CORP.
P.O. BOX 370
ROYSE CITY, TX 75189

With a copy to:

Leonard H. Dougal
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas, 78701
Facsimile: (512) 236-2002

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

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

6.9 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

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

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

VERANDAH COMMUNITIES, L.P.,
a Texas limited partnership

By: DBH ENTERPRISES, INC A TEXAS
Its: CORPORATION, ITS GENERAL
PARTNER

BY: Philip W. Huffman
VICE-PRESIDENT
3-23-04

STATE OF TEXAS *
*
COUNTY OF Dallas *

BEFORE ME, the undersigned authority, on this day personally appeared Phillip W. Huffines, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for Verandah Communities, L.P., a Texas limited partnership and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23 day of March 2004.

ROXANNE M. CABRERA
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
1-19-2005

Roxanne M. Cabrera
Notary Public in and for the
State of Texas
My Commission Expires:
1-19-2005

VERANDAH FRESH WATER SUPPLY DISTRICT

By: [illegible]
Its: President

STATE OF TEXAS *
*
COUNTY OF HUNT *

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT TAYLOR, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for VERANDAH FRESH WATER SUPPLY DISTRICT, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th. day of MAY 2004.

ROSS S. MARTIN
Notary Public, State of Texas
My Commission Expires
January 14, 2007

Ross S. Martin
Notary Public in and for the
State of Texas
My Commission Expires:
1/14/2007

BHP WATER SUPPLY CORPORATION

By: [illegible]
Its: President

STATE OF TEXAS *
*
COUNTY OF HUNT *

BEFORE ME, the undersigned authority, on this day personally appeared G W Peoples, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for BHP WATER SUPPLY CORPORATION, and he/she executed said instrument for the purposes and consideration therein expressed.

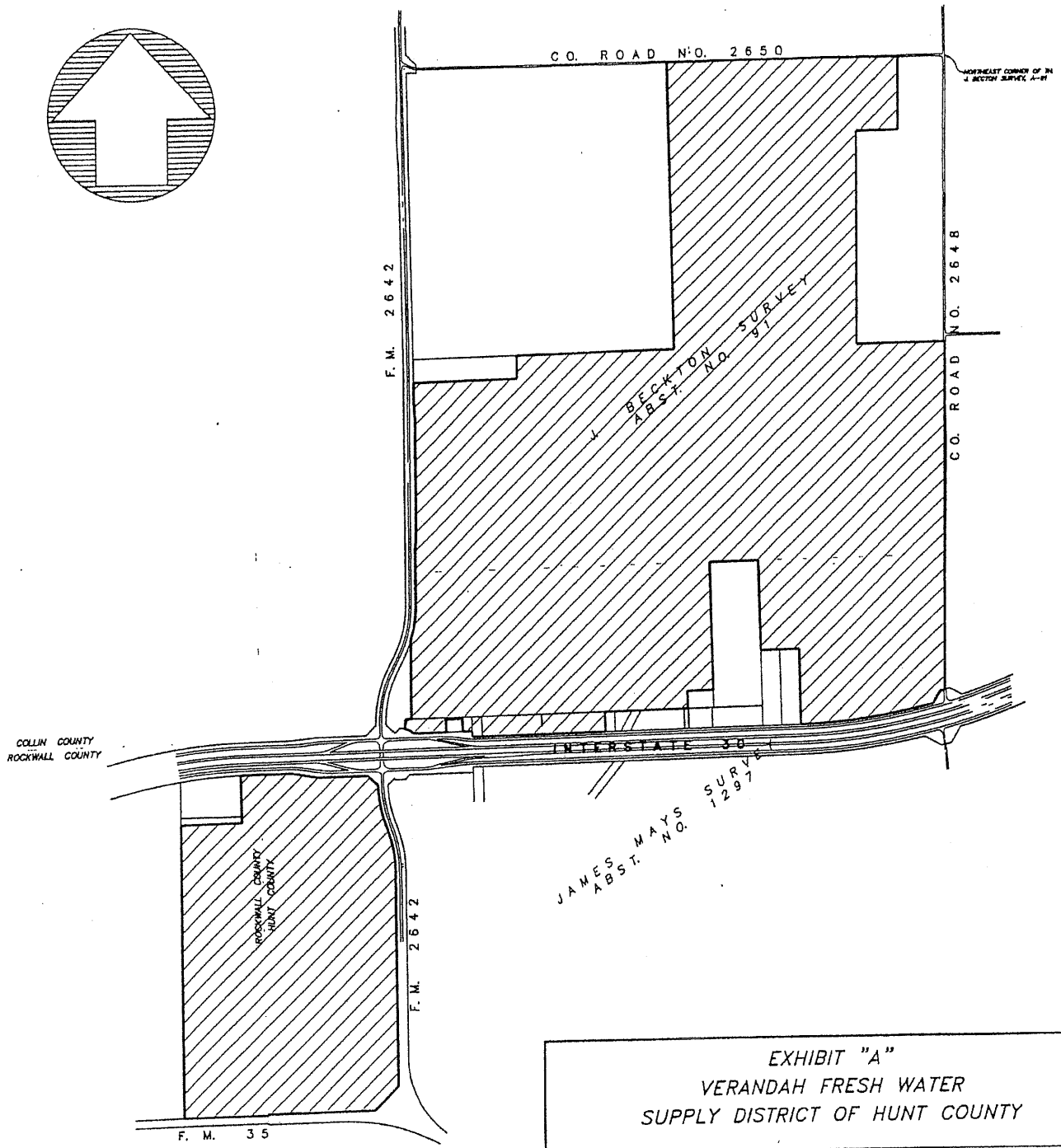
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of April 2004.

Stephanie M Coleman
Notary Public in and for the
State of Texas
My Commission Expires:
2-8-06

STEPHANIE M. COLEMAN NOTARY PUBLIC STATE OF TEXAS Expires 2-8-06

**EXHIBIT "A"**

Map Identifying the Transfer Area




GRAPHIC SCALE

1500 0 750 1500 3000

( IN FEET )
1 inch = 1500 ft.

EXHIBIT "A"
VERANDAH FRESH WATER
SUPPLY DISTRICT OF HUNT COUNTY

PROPOSED CCN
TRANSFER AREA

PATE ENGINEERS
8150 BROOKRIVER DRIVE
SUITE S-700
DALLAS, TEXAS, 75247
PH. (214) 357-2981
FAX (214) 357-2985

| | |
|---|---|
| EXHIBIT NO. | 1 |
| JOB NO. | 081001100 |
| DATE | MAR. 2004 |

X:\projects\081001100\survey\EXHIBIT\PROP CCN TRANS.DWG 3/16/2004 4:37:39 PM CST

# AGREEMENT CONCERNING WATER SERVICE AREAS

This Agreement Concerning Water Service Areas (the "Agreement") is executed between the Royse City Independent School District (the "District") and BHP Water Supply Corporation ("BHP") on the 6 day of February, 2006 (the "Effective Date").

**WHEREAS**, BHP is a water supply corporation organized in accordance with the laws of the State of Texas; and

**WHEREAS**, BHP has been issued Certificate of Convenience and Necessity ("CCN") No. 10064 by the Texas Commission on Environmental Quality ("TCEQ") to provide water utility service for certain areas within Hunt, Collin, and Rockwall counties, Texas; and is able and willing to provide water service to the District;

**WHEREAS**, the District desires to receive water service from the City of Royse City (the "City") and desires to have BHP release a portion of its CCN; and

**WHEREAS**, the District and BHP desire to make the agreement as set forth below.

**NOW THEREFORE**, for and in consideration of the premises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the District and BHP hereby agree as follows:

1. Property Subject to the Agreement. The property that is the subject of this Agreement is approximately 116 acres in Hunt County where a new High School is under construction by District, which area is currently contained within BHP's CCN No. 10064. The subject area is more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes (the "Property").

2. Transfer of Portion of CCN.

2.1 BHP currently holds CCN No. 10064 which includes the Property. The District has requested that BHP release from its certificate and transfer to the City that portion of CCN No. 10064 which includes the Property. The parties agree that the City will be entitled to serve water to the Property. BHP agrees to provide to the City all information necessary for the City's Sale/Transfer/Merger ("STM") Application to transfer the CCN rights for the Property to the City.

2.2 The total purchase price to be paid by the District to BHP for the CCN rights on the Property is ONE HUNDRED SEVENTY FOUR THOUSAND DOLLARS ($174,000) (the "Payment"). The Parties agree that the Payment constitutes a just, adequate and reasonable payment to BHP to compensate BHP for its stranded investment, loss of revenue and loss of service rights to the Property.

2.3 The Payment shall be made by the District promptly upon execution of the Agreement by the District.

2.4 Following execution of this Agreement, the District will cause the City to file an application with TCEQ to amend its CCN No. 12827 (the "STM Application") to reflect the transfer of the CCN rights to the Property to the City. BHP will support the STM Application in accordance with this Agreement. All costs associated with preparing and filing the STM Application and pursuit of regulatory approvals shall be borne by the District.

2.5 No Facilities or Waterlines. No facilities, water lines, equipment or other property or property rights of BHP are transferred by this Agreement, except for the portion of the retail water CCN as set forth herein.

3. Miscellaneous.

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

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

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

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

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

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

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

To the District: District Superintendent
Royse City Independent School District
P.O. Box 479
Royse City, Texas 75189

To BHP: President
BHP Water Supply Corporation
P.O. Box 370
Royse City, Texas 75189

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

3.8 This Agreement is executed in duplicate originals, each of which shall be deemed an original for all purposes.

3.9 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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

3.11 Default. In the event either party fails to comply with the terms of this Agreement, the other party has the right to enforce the terms of this Agreement by specific performance or by any other remedies available to the other party. The party substantially prevailing in any litigation over the enforcement of this contract shall receive its reasonable and necessary attorney fees and court costs.

**IN WITNESS THEREOF**, by the signatures set forth below the parties have reached this Agreement, executed this Agreement and caused this Agreement to be effective on the date set forth in the first paragraph above.

**ROYSE CITY INDEPENDENT SCHOOL DISTRICT**

By: _____

Its: RCISD - Board President

STATE OF TEXAS §
§
COUNTY OF Rockwall §

BEFORE ME, the undersigned authority, on this day personally appeared Bobby Summers, known to me to be one of the persons whose names are subscribed on the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative for ROYSE CITY INDEPENDENT SCHOOL DISTRICT, and he/she executed said instrument for the purposes and considering therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 30 day of March 2006.

_____
Notary Public in and for the State of Texas
My Commission Expires:
Bob Summers

FRAYA FISK
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
5-2-2009

Fraya Fisk
Notary Public in and for the
State of Texas.
Expires: 5/2/09

**BHP WATER SUPPLY CORPORATION**

By: G.W. Peoples
G.W. Peoples
Its: President

STATE OF TEXAS §
§
COUNTY OF HUNT §

BEFORE ME, the undersigned authority, on this day personally appeared G.W. Peoples, known to me to be one of the persons whose names are subscribed on the foregoing instrument; he acknowledged to me that he is the duly authorized representative for BHP WATER SUPPLY CORPORATION, and he executed said instrument for the purposes and considering therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6 day of February 2006.

FRAYA FISK
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
5-2-2009

Fraya Fisk
Notary Public in and for the State of Texas
My Commission Expires:
5/2/09

**EXHIBIT "A"**

The Property is comprised of 116 acres as set forth on the attached diagram.

BEING a tract of land situated in the J. Roads Survey, Abstract No. 872, and the G.W. McCafferty Survey, Abstract No. 1298, Hunt County, Texas, and being part of a 40 acre, a 66 acre, and a 54.7 acre tract as recorded in Volume 450, Page 180, Deed Records, Hunt County, Texas, and being more particularly described as follows:

BEGINNING at a point on the East line of F.M. Road No. 2642, said point being on the North line of said 40 acre tract recorded in Volume 458, Page 180, a 1/2" iron stake found for corner;

THENCE leaving F.M. Road No. 2642, and along the center of a Dirt Road, the following:

N. 89 deg. 06'23" E., a distance of 691.50 feet to a 1/2" iron stake set for corner;
N. 88 deg. 16'54" E., a distance of 1886.99 feet to a 1/2" iron stake found for corner;

THENCE S. 0 deg. 10'00" W., leaving the center of said Dirt Road, a distance of 2014.42 feet to a 1/2" iron stake found for corner;

THENCE S. 89 deg. 11'49" W., a distance of 2552.30 feet to a point on the east line of F.M. Road No. 2642, a 1/2" iron stake found for corner;

THENCE N. 0 deg. 33'11" W., along the East line of F.M. Road No. 2642, a distance of 335.56 feet to a 1/2" iron stake found for corner;

THENCE around a 1.8 acre tract the following:

N. 76 deg. 36'49" E., a distance of 156.86 feet to a fence corner post for corner;
N. 55 deg. 09'09" E., a distance of 85.11 feet to a fence corner post for corner;
N. 30 deg. 16'27" E., a distance of 45.68 feet to a fence corner post for corner;
N. 22 deg. 24'11" W., a distance of 100.23 feet to a fence corner post for corner;
N. 31 deg. 10'17" W., a distance of 104.71 feet to a fence corner post for corner;
N. 36 deg. 01'42" W., a distance of 198.72 feet to a fence corner post for corner;
N. 40 deg. 32'33" W., a distance of 144.61 feet to a 1/2" iron stake found for corner;

THENCE N. 0 deg. 33'11" W., along the East line of F.M. Road No. 2642, a distance of 1111.95 feet to the beginning of a curve to the left having a central angle of 1 deg. 55' 35" and a radius of 1245.94 feet, a concrete marker for corner around said curve, a distance of 41.89 feet to the PLACE OF BEGINNING and containing 116.155 acres of land, more or less.

NOTE: THE COMPANY IS PROHIBITED FROM INSURING THE AREA OR

.F. NUMBER: NT04-32831
Commitment No.

**Schedule A - Page 2**

All that certain lot, tract or parcel of land situated in Hunt County, Texas, a part of the G.W. McCafferty Survey, Abstract No. 1298, and being a part of a 40 acre tract of land out of said survey described as First Tract in a deed from Price to Shaw and of record in Volume 458, Page 180, of the Hunt County Deed Records, and being more particularly described as follows:

BEGINNING at a stake for corner in the East right of way line of Farm to Market Highway No. 2642, said point being 50 feet East and 432 feet South of the Northwest corner of said 40 acre tract;

THENCE South and along highway right of way line, 506 feet to a stake for corner;

THENCE along a land terrace as follows and in a Northeasterly direction and along chord bearings thusly;

North 81 1/2 degrees East, 100 feet to point;

North 66 1/2 degrees East, 100 feet to point;

North 35 degrees East, 100 feet to point;

THENCE continuing along terrace and in a Northwesterly direction with chord bearing as follows;

North 24 1/2 degrees West, 100 feet to point;

North 30 1/2 degrees West, 100 feet to point;

North 35 degrees West, 100 feet to point;

North 39 1/2 degrees West, 145 feet to the place of beginning and containing 1.8 acres of land, more or less.

NOTE: THE COMPANY IS PROHIBITED FROM INSURING THE AREA OR QUANTITY OF THE LAND DESCRIBED HEREIN. ANY STATEMENT IN THE LEGAL DESCRIPTION OF THE AREA OR QUANTITY OF LAND IS NOT A REPRESENTATION OF SUCH AREA OR QUANTITY, BUT IS FOR INFORMATIONAL AND/OR IDENTIFICATION PURPOSES AND DOES NOT OVERRIDE ITEM 2 OF SCHEDULE B HEREOF.

?

May 27, 2008

Ms. Georgia Crump
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

Subject: **Petition from Kerala Christian Adult Homes 1, L.P., for an Expedited Release from Certificate of Convenience and Necessity (CCN) No. 10064 of BHP Water Supply Corporation (WSC) in Rockwall County; Application No. 35724-C**

Dear Ms. Crump:

J. Stowe & Co. has completed our valuation of the area which is the subject of Kerala's application for expedited release from BHP Water Supply Corporation's (WSC) CCN No. 10064. A copy of the Commission's Final Order dated September 17, 2007 is attached as Exhibit 1. Our valuation has been performed in compliance with 30 TAC § 291.113(h) – (k).

There is no real property subject to the acquisition and therefore, Chapter 21 of the Texas Property Code was not employed. The specific required factors set forth in 30 TAC §291.113(k), and utilized in the performance of our valuation to insure just and adequate compensation, are as follows:

1. "The amount of the retail public utility's debt allocable for service to the area in question"

   Finding:

   Our analysis and review of BHP's water system and customer location maps reveal that BHP has no facilities and/or customers within the subject area and thus no debt is allocable to this area.

2. "The value of the service facilities of the retail public utility located within the area in question"

   Finding:

   Our analysis and review of BHP's water system facilities maps reveal that BHP has no facilities within the subject area.

3. "The amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question"

Finding:

According to Mr. Eddy Daniel, BHP's consulting engineer, BHP's planning approach is restricted to responding to requests for service only[1]. Therefore, our conclusion is there are no such expenditures associated with the area in question unless BHP can provide evidence contrary to Mr. Daniel's statement.

4. "The amount of the retail public utility's contractual obligations allocable to the area in question"

Finding:

We have not identified any contractual obligations allocable to the area in question.

5. "Any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification"

Finding:

In our opinion, given that there are no current customers or facilities within the subject area, and the statements made by BHP's consulting engineer, Mr. Eddy Daniel, that off-site facilities are inadequate to provide service to the subject area[2], there can be no impairment of services and/or increase in costs to the remaining customers of BHP after decertification of the area in question.

6. "The impact on future revenues lost from existing customers"

Finding:

There are no existing customers within the subject area; therefore, there is no loss of future revenues.

7. "Necessary and reasonable legal expenses and professional fees"

Finding:

BHP has not provided, nor have we reviewed, any necessary and reasonable legal and/or professional fees. While we would assume some level of legal and professional fees have been incurred by BHP regarding Kerala's application for decertification, we cannot offer an opinion of the reasonableness and/or necessity of such expenses.

---

[1] Statement made by Mr. Daniel, May 6, 2008, Trinity Conference Room of Lloyd Gosselink Rochelle & Townsend, P.C., Austin, Texas

[2] Letter from Eddy Daniel, P.E. to Mr. G.W. Peoples, President, BHP Water Supply Corporation, RE: Proposed Kerala Christian Retirement Community, dated February 12, 2007.

8. "And other relevant factors"

Finding:

We are unaware of any other relevant factors which would impact our valuation.

Conclusion:

Based upon our analysis, as governed by 30 TAC §291.113(h) – (k), it is our opinion that the value of the area subject to Kerala's application for decertification is zero dollars ($0.00). This opinion is subject to the submission of legal and/or professional fees incurred by BHP in relation to Kerala's application, and the determination of the reasonableness and necessity of these expenditures, if any.

If has been a pleasure to serve you and your client, Royse City. After review of this Valuation Letter Report, if you and/or your client have any questions or require additional explanation, please feel free to contact Mr. Jack Stowe at jstowe@jstoweco.com or call 469.467.7799.

Very truly yours,

Jack E. Stowe, Jr.

Jack E. Stowe, Jr.
President
J. Stowe & Co.

1560 J. Place, Suite 379
Plano, Texas 75074
469.467.7799

515 Congress Avenue, Suite 1515
Austin, Texas 78701
512.472.0719

Exhibit 1

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

THE STATE OF TEXAS
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
SEP 25 2007
LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality

APPLICATION NO. 35724-C

| | | |
|---|---|---|
| PETITION FROM KERALA CHRISTIAN ADULT HOMES 1, L.P. FOR AN EXPEDITED RELEASE FROM WATER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 10064 OF BHP WATER SUPPLY CORPORATION (WSC) IN COLLIN COUNTY, TEXAS, APPLICATION NO. 35724-C | § | BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY |

## ORDER

On SEP 17 2007, the Executive Director of the Texas Commission on Environmental Quality, pursuant to chapters 5 and 13 of the Texas Water Code, considered the petition of Kerala Christian Adult Homes 1, L.P. (Petitioner) for an expedited release from water CCN No. 10064, held by BHP WSC, in Collin County, Texas.

Notice of the application was given to BHP WSC, the certificate holder.

The alternative service provider is the City of Royse City.

The criteria set forth in section 13.245(a-1) of the Texas Water Code have been considered. The Petitioner has satisfied the elements required by that section.

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

1. The petition from Kerala Christian Adult Homes 1, L.P. for an expedited release from water CCN No. 10064 of BHP Water Supply Corporation, as reflected in the attached copy of the official water service area map for Collin County, Texas, is hereby approved.

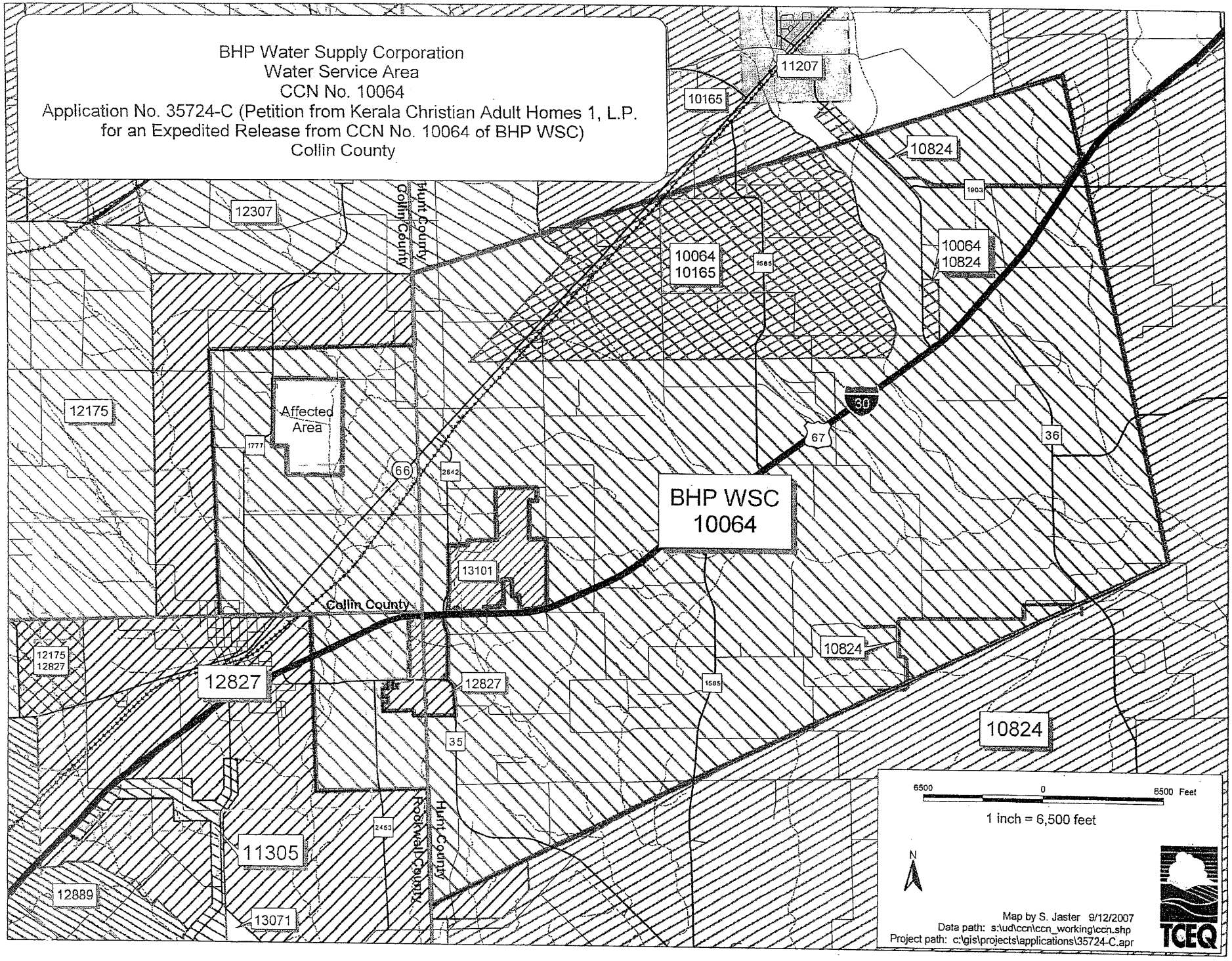
2. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order and the attached map to the parties.

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

Issue Date: SEP 17 2007

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission


BHP Water Supply Corporation
Water Service Area
CCN No. 10064
Application No. 35724-C (Petition from Kerala Christian Adult Homes 1, L.P.
for an Expedited Release from CCN No. 10064 of BHP WSC)
Collin County
11207
10165
10824
1903
12307
Hunt County
Collin County
10064
10165
1565
10064
10824
12175
Affected Area
1777
66
2642
30
67
36
BHP WSC
10064
13101
Collin County
12175
12827
12827
12827
1565
10824
10824
35
2453
Rockwall County
Hunt County
11305
12889
13071
6500
0
6500 Feet
1 inch = 6,500 feet
N
Map by S. Jaster 9/12/2007
Data path: s:\ud\ccn\ccn_working\ccn.shp
Project path: c:\gis\projects\applications\35724-C.apr
TCEQ

# Darrell W. Cline

**Southern Methodist University**
Masters of Business Administration

**University of North Texas**
Masters of Public Administration

**East Texas Baptist University**
Bachelor of Science in Medical Technology

Mr. Cline joined Reed-Stowe & Company, Inc. in 1998. In October 2000 the company was renamed Reed, Stowe & Yanke, LLC (RS&Y) and in March of 2003 was acquired by R. W. Beck, Inc. Mr. Cline brings strong academic qualifications to the firm with a Master of Public Administration from the University of North Texas and a Master of Business Administration from Southern Methodist University. While completing his MPA degree, Mr. Cline completed an internship with the City of North Richland Hills, Texas, acting as a liaison between the budget and finance departments.

Mr. Cline has been actively involved in the privatization efforts of the United States military's utility distribution systems. Mr. Cline has served as lead consultant in the financial and economic analysis of the following military privatization efforts:

- **Public Works Command, San Diego, California** – Electric, Natural Gas, Potable Water, and Wastewater
- **Marine Corps Recruiting Depot, San Diego, California** – Electric, Natural Gas, Potable Water, and Wastewater
- **China Lake Naval Air Weapons Station, Ridgecrest, California** – Electric, Natural Gas, Steam, Potable Water, Wastewater, and Propane
- **Yuma Marine Corps Air Station, Yuma Arizona** – Potable Water and Wastewater
- **San Nicholas Island, California** – Electric, Natural Gas, Potable Water and Wastewater
- **Naval Post-Graduate School, Monterey, California** – Electric, Natural Gas, Steam, Potable Water, and Wastewater
- **Naval Construction Battalion Center, Port Hueneme, California** – Electric, Natural Gas, Potable Water, and Wastewater
- **Naval Air Weapons Station, Point Mugu, California** – Electric, Natural Gas, Potable Water, and Wastewater
- **Marine Corps Air Ground Combat Center, Twenty-Nine Palms, California** – Electric, Natural Gas, Potable Water, Non-Potable Water, and Wastewater
- **Marine Corps Logistics Base, Barstow, California** – Electric, Natural Gas, Potable Water, Non-Potable Water, and Wastewater
- **Kelly Air Force Base, San Antonio, Texas** – Chilled Water and Steam
- **Red River Army Depot, New Boston, Texas** – Electric, Natural Gas, Steam, Potable Water, and Domestic and Industrial Wastewater

Mr. Cline has assisted the following municipalities in conducting water, wastewater, and/or electric cost of service, customer class cost allocation, and/or rate design studies for both retail and wholesale customers:

R·W·BECK

- Richmond, Virginia*
- Tyler, Texas*
- Paris, Texas*
- Fritch, Texas
- Gainesville, Texas*
- Lewisville, Texas*
- New Braunfels, Texas
- Garland, Texas*
- Mansfield, Texas
- Brenham, Texas*
- Terrell, Texas
- Possum Kingdom Water Supply Corporation (Texas)
- Bellaire, Texas
- Denton, Texas
- Arlington, Texas
- Laredo, Texas
- Copperas Cove, Texas
- Haltom City, Texas
- Nogales, Arizona
- Palestine, Texas
- Waco, Texas*
- Lampasas, Texas*
- OSR Water Supply Corporation (Texas)

* Indicates multiple engagements

In addition to cost of service and rate design studies, Mr. Cline has also developed custom-designed cost of service and rate design forecasting computer models for use by the following municipalities:

- Paris, Texas
- Gainesville, Texas
- Lewisville, Texas
- Mansfield, Texas
- Haltom City, Texas
- Palestine, Texas
- Kilgore, Texas
- Arlington, Texas

Mr. Cline has assisted in litigation support and/or expert testimony development before all three public utility regulatory agencies in Texas – Texas Commission on Environmental Quality (formerly TNRCC), Railroad Commission of Texas and Public Utility Commission of Texas. Mr. Cline's cases include:

- GUD No. 8935 – Lone Star Gas' proposal to modify Rate Schedule No. 56
- Audit No. 99-027 – Exhibit B of Final Order GUD No. 8647, Lone Star Gas City Gate Rate dispute
- GUD No. 9560 – Atmos Energy Corporation, Mid-Tex Division, CY 2003 Annual Gas Reliability Infrastructure Program (GRIP) Rate Adjustment Filing
- GUD No. 9670 – Statement of Intent to Increase the Gas Utility Rates of Atmos Energy, Corporation, Mid-Tex Division, on a System Wide Basis
- TNRCC Docket No. 99-0117-URC – Outside City ratepayers' rate compliant against the City of Fritch, Texas
- TNRCC Compliance and Enforcement audit of Waste Tire Recycling Fund regarding reimbursements to an East Texas waste tire processor

- FY 2000, FY 2004, and FY 2005 Earnings Reports for PUCT on behalf of the City of Garland (Garland Power & Light) for Non-IOU TSPs in ERCOT
- PUC Docket No. 28090 – Application of the City of Garland (Garland Power & Light) to Change Rates for Wholesale Electric Transmission Service
- PUC Docket No. 28475 – Application of the City of San Antonio (City Public Service) to Change Rates for Wholesale Electric Transmission Service
- PUC Docket No. 30358 – Application of Denton Municipal Electric to Change Rates for Wholesale Electric Transmission Service
- PUC Docket No. 31617 – Application of the City of Garland (Garland Power & Light) for an Update of Wholesale Transmission Rates Pursuant to PUC Substantive Rule 25.192 (g)(1)
- TCEQ Docket No. 2002-1260-UCR – Appeal of Clarksville City Regarding a Decision of City of Gladewater Affecting Water and Sewer Service
- SOAH Docket No. 582-03-1248 – Applications of OSR Water Supply Corp., Brushy Water Supply Corp. (Bryan ETJ portion), and City of Bryan to Amend Their Water Certificates of Convenience and Necessity
- SOAH Docket No. 582-03-1249 – Applications of Brushy Water Supply Corp. (College Station ETJ portion), and City of College Station to Amend Their Water Certificates of Convenience and Necessity
- SOAH Docket No. 582-01-1618 – Applications of Mustang Water Supply Corp. and City of Little Elm for Certificates of Convenience and Necessity
- SOAH Docket Nos. 582-02-1652, 582-03-1820, 582-03-1821, & 582-03-1824 – Applications of McKinney, Melissa, and Anna and North Collin Water Supply Corporation to Amend CCN Nos. 10194, 11482, 12976, 11035 and Sewer CCN No. 20898 and of the City of Melissa to Obtain a Sewer CCN in Collin County
- SOAH Docket Nos. 582-05-7095 and 582-05-7096 – Application of the City of Leander to Amend Certificate of Convenience and Necessity No. 10302 and Sewer CCN No. 20626
- SOAH Docket No. 582-06-1367 – Application of the City of Meridian to Amend its Water and Sewer Certificate of Convenience and Necessity Nos. 10884 and 20349 in Bosque County, Application Nos. 35057-C and 35058-C

Mr. Cline has also been involved in research of solid waste issues to provide solutions for the following clients:

- City of Bismarck, North Dakota
- Houston – Galveston Area Cities

Mr. Cline has assisted the following clients in developing and negotiating contractual agreements:

- City of Paris, Texas
- City of Tyler, Texas
- Red River Redevelopment Authority (Texas)

Mr. Cline has performed impact and capital recovery fee determinations to assist the following clients in recovering capital costs related to increased demand on utility systems due to rapid customer growth.

- Manville Water Supply Corporation (Texas)
- City of Laredo, Texas
- Town of Flower Mound, Texas
- City of Frisco, Texas
- City of Fort Worth, Texas
- City of New Braunfels, Texas

Mr. Cline has also determined compensation/valuation for service areas for the following entities:

- City of Southlake, Texas
- City of Keller, Texas
- Wellborn Special Utility District (Texas)
- City of Heath, Texas
- Lindale Rural Water Supply Corporation (Texas)
- OSR Water Supply Corp. (Texas)
- City of Tyler, Texas

Mr. Cline has supported the following clients in organizational and operational reviews and evaluations:

- Lower Colorado River Authority (LCRA)
- City of Nogales, Arizona
- Brownsville Public Utilities Board (BPUB)

Mr. Cline has also participated in the following projects:

- Assisted the City of Tyler, Texas in conducting an indirect cost allocation study for all General Fund, Enterprise Fund and Internal Service Fund departments. In addition, Mr. Cline was requested to determine the fixed and variable costs for each department under the assumption the department no longer existed in order to examine possible managed competition alternatives.
- Conducted an analysis of the Town of Flower Mound, Texas' accounting structure and financial execution for compliance with Chapter 395 of Local Government Code.
- Assisted the Texas Water Development Board in the research of private utility companies for a handbook addressing water and wastewater utility competitive marketing strategies.
- Assisted in the revenue requirement and economic analysis for the consolidation of treated water production for the water utilities of the Cities of Bryan and College Station, Texas and Texas A&M University.
- Performed an analysis of the potential economic impact of the proposed Lake Ralph Hall Reservoir to the water supply's Basin of Origin and Basin of Destination.
- Developed a business plan for the City of Heath, Texas addressing the assessment of future operational, administrative, and management requirements associated the acquisition of a wholesale water supply corporation, as well as various ownership scenarios.
- Assisted Dallas Water Utilities in the financial assessment of the City's proposed Recycle Water Implementation Plan.
- Assisted the City of Garland in a comprehensive asset evaluation and depreciation rate study for its municipal electric utility (Garland Power & Light).

- Assisting Dallas Water Utilities, North Texas Municipal Water District, Sabine River Authority of Texas, and Tarrant Regional Water District in assessing the economic impact of the Toledo Bend Water Supply Project, which proposes to supply at least 600,000 acre-feet of raw water to the DFW metroplex. In addition, Mr. Cline is assisting in the determination of a raw water rate and an interbasin transfer fee. Mr. Cline is also examining the financial implications of the Toledo Bend hydro-electric plant's inclusion or exclusion from the Toledo Bend Water Supply Project.
- Assisting the Texas Water Development Board in analyzing the socioeconomic impact of selected interbasin transfers.

Mr. Cline holds memberships in the following professional organizations:

- Government Finance Officers Association of Texas
- American Water Works Association

Mr. Cline has made the following presentations:

- "How Conservation Affects Water Rate Planning" – 5th Annual North Central Texas Chapter of AWWA Drinking Water Seminar, 2006

**dgr**
**Donald G. Rauschuber & Associates, Inc.**

P.O. Box 2777
Georgetown, Texas 78627
Office: (512) 763-1170
Fax: (512) 763-1341

Water Engineering
Municipal Engineering

July 3, 2008

Ms. Tammy Benter and
Mr. Brian Dickey
Texas Commission on Environmental Quality
Utilities & Districts Section – MC 153
Water Supply Division
Austin, Texas 78711-3087

**RE: DGRA, Inc., Letter Report on the Petition from Kerala Christian Adult Homes 1, L.P., for an Expedited Release from Water Certificate of Convenience and Necessity (CCN) No. 10064 of BHP Water Supply Corporation in Collin County, Application No. 35724-C; TCEQ Docket No. 2007-1609-URS**

Dear Ms. Benter and Mr. Dickey:

This Letter Report is presented in response to the TCEQ's recent request for DGRA, Inc., to perform a valuation study of the Kerala Christian Adult Homes 1, L.P. Tract (the "Kerala Tract") located within BHP WSC's (the "WSC") Water CCN 10064.

## APPROACH

The approach for the Kerala Tract valuation presented herein follows the procedures described in 30 TAC §291.113(k). This subsection requires the consideration of the following factors for establishing the value of property owned and/or utilized by a retail public utility located within or adjacent to a tract of land being decertified from a utility's Water CCN:

A. the amount of the retail public utility's debt allocable for service to the area in question;

B. the value of the service facilities of the retail public utility located within the area in question;

C. the amount of any expenditures for planning, design, or construction of service facilities that are allocated to service to the area in question;

D. the amount of the retail public utility's contractual obligations allocable to the area in question;

E. any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification;

F. the impact on future revenues lost from existing customers;

G. necessary and reasonable legal expenses and professional fees; and

H. other relevant factors.

**DOCUMENTS REVIEWED**

Documents reviewed for the preparation of this Letter Report include, but are not limited to:

A. May 27, 2008, report entitled, "Determination of Monetary Compensation for the CCN Area to Serve the Kerala Tract" prepared for BHP Water Supply Corporation by GDS Associates, Inc., Austin, Texas;

B. May 27, 2008, letter prepared by J. Stowe & Co., on behalf of Kerala Christian Adult Homes 1, L.P., submitted to Ms. Georgia Crump, Lloyd, Gosselink, Rochelle, & Tonwnsend, P.C.;

C. Title 30, §291.113 provisions;

D. WSC's annual financial audits for the last four (4) fiscal years;

E. various WSC's water system maps/layouts illustrating improvements throughout the WSC's Service Area and location of water customers/demand centers;

F. monthly/annual number of water customers, categorized by meter size and class;

G. monthly/annual retail water sales (water produced, gallons sold and revenue received);

H. WSC's population and/or customer growth projections;

I. WSC's historic and current water rates/tariffs;

J. WSC's current debt obligation instruments including notes, loans, and amortization schedules;

K. WSC's rules and regulations;

L. WSC's water purchase contracts dated November 15, 1988 with the City of Royse City and dated October 27, 2003 with Cash SUD;

M. WSC's inventory of existing water improvements located within or adjacent to the Kerala Tract, which the WSC claims would be used and useful to service the subject tract;

N. WSC's claimed legal cost and professional expenses associated with TCEQ Docket No. 2007-1609-URS;

O. WSC's FY 2008 Budget; and

P. Various miscellaneous documents associated with this matter.

## BACKGROUND

The Kerala Tract is an approximate 432-acre tract of land located within the WSC's Water CCN No. 10064 and in Royse City's ETJ area (see Figure One). It is DGRA's understanding that the WSC has no existing water customers located within the Kerala Tract, nor does the WSC have any water infrastructure located contiguous to or within the ETJ. As generally shown in Figure One, the WSC has an existing 6-inch diameter water main located 0.5 miles (at the closest point) to the Kerala Tract, and a 2-inch diameter water main located approximately 0.5 miles east of the subject parcel. It is not known if any of these "area" water facilities has surplus capacity to service the Kerala Tract.

## VALUATION OF THE KERALA TRACT

A. Factor: The amount of the WSC's debt allocable for service to the Kerala Tract –

As of December 31, 2007, the WSC had the following debt obligations (source: BHP WSC 2007 Financial Statements):

American National Bank Promissory Note (1) –

| | |
|---|---|
| Principal Amount = | $795,000 |
| Annual Interest = | 7.15% |
| Maturity Date = | Feb. 5, 2015 |

American National Bank Promissory Note (2) –

| | |
|---|---|
| Principal Amount = | $357,642 |
| Annual Interest = | 4.75% |
| Maturity Date = | May 14, 2008 |

Both the principle and interest portions of these notes contribute to the utility's "readiness to serve" its water CCN area. The principal portions of these notes should be included in the utility's 2007 Financial Statements as part of the "total capital assets at historical cost" shown on page 11 of the referenced financial statements (assuming such assets were capitalized as of December 31, 2007, by the utility). If this is the case, the "readiness to serve" principal allocation associated with these notes payable to the Kerala Tract is included Factor C below.

With regards to the "readiness to serve" interest allocation for these notes associated with the Kerala Tract the following valuation is submitted:

| | | |
|---|---|---|
| Total Interest Due on Note (1) | = | $381,489 |
| Total Interest Due on Note (2) | = | $ 25,702 |
| Total | = | $ 407,191 |

The Kerala Tract represents approximately 1.3-percent (i.e., 432 acres divided by 32,840 acres) of the WSC's CCN area. Applying this percentage to the total interest due ($407,191) for the two (2) notes payable results in a value allocable to the Kerala Tract for Factor A of $5,293 (i.e., $407,191 x 0.013).

B. Factor: The value of the WSC's water service facilities located within the Kerala Tract –

Since the WSC does not have any water improvements located within the Kerala Tract, the value for Factor B of $0.00.

C. Factor: The amount of any expenditures for planning, design, or construction of service facilities that are allocated to service to the area in question –

WSC expenditures for this category could include, among other things, the utility's historic and current costs associated with water system planning and design, water supply planning and acquisition, water supply development, and cost of facilities associated with the "readiness to serve" their water CCN area. However, the WSC did not provide any cost documenting these expenditures other than "total capital assets at historical cost" presented in the WSC's 2007 Annual Financial Report.

The 2007 Annual Financial Report indicates a "total capital assets at historical cost" value of $2,158,043. This represents the WSC's capitalized portion of its "readiness to serve" the Water CCN area. As previously stated, the WSC's CCN area is approximately 32,840 acres is size. The Kerala Tract represents approximately 1.3-percent (i.e., 432 acres divided by 32,840 acres) of the WSC's CCN area. Applying this ratio to the total capital assets at historic cost value of $2,158,043, results in a value allocable to the Kerala Tract for Factor C of $28,055.

D. Factor - The amount of the WSC's contractual obligations allocable to the Kerala Tract -

The WSC has the water supply contractual obligations:

Wholesale Treated Water Contract by and between the City of Royce City and BHP Water Supply Corporation; and

Agreement for the Emergency Purchase of Water between Cash SUD and BHP WSC

Although the above reference contracts could be used to provide water to the Kerala Tract, if served by the WSC, no portion of these contracts appear to be allocable to the subject tract. Therefore, the valuation of this factor is $0.00.

E. Factor - Any demonstrated impairment of service or increase of cost to consumers of the WSC remaining after the decertification -

There was no information provided by the WSC that suggests service would be impaired or cost to consumers would be increased as a result of the decertification of the Kerala Tract. Therefore, the valuation of this factor is $0.00.

F. Factor - The impact on future revenues lost from existing customers –

Since there are no existing WSC customers located within the Kerala Tract, the valuation of this factor is $0.00.

G. Factor - Necessary and reasonable legal expenses and professional fees –

The WSC has documented the following cost for necessary and reasonable legal expenses and professional fees:

| | |
|---|---|
| Jackson Walker, L.L.P. | $ 19,000 |
| Challenge to Kerala' Expedited Release Petition | 2,800 |

| | |
|---|---|
| Appeal of Executive Director's Order | 13,700 |
| Valuation | 2,500 |
| Daniel & Brown, Inc. | 5,000 |
| GDS Associates | 6,500 |
| Total | $ 49,500 |

H. Factor - Other relevant factors -

There are no other identifiable factors associated with the Kerala Tract. Therefore, this factor has a valuation of $0.00.

---

In summary, DGRA, Inc., projected valuation for the expedited decertification of the Kerala Tract, based on the information provided by the BHP WSC and the TCEQ, totals $82,948, as summarized below:

| | |
|---|---|
| Factor A | $ 5,393 |
| Factor B | 0 |
| Factor C | 28,055 |
| Factor D | 0 |
| Factor E | 0 |
| Factor F | 0 |
| Factor G | 49,500 |
| Factor H | 0 |
| **TOTAL** | **$82,948** |

Preparing and performing a valuation pursuant to Title 30 TAC §291.113 (j) and (k) on a parcel subject to expedited review is very difficult to accomplish without having the benefit of full access to the utility's records and without assess to the administrative record associated with the subject case. I recommend on future valuations conducted pursuant to §291.113 (j) and (k) provisions, the TCEQ make available the complete administrative record for the subject case, as well as, coordinate on-site discovery where all parties may be present.

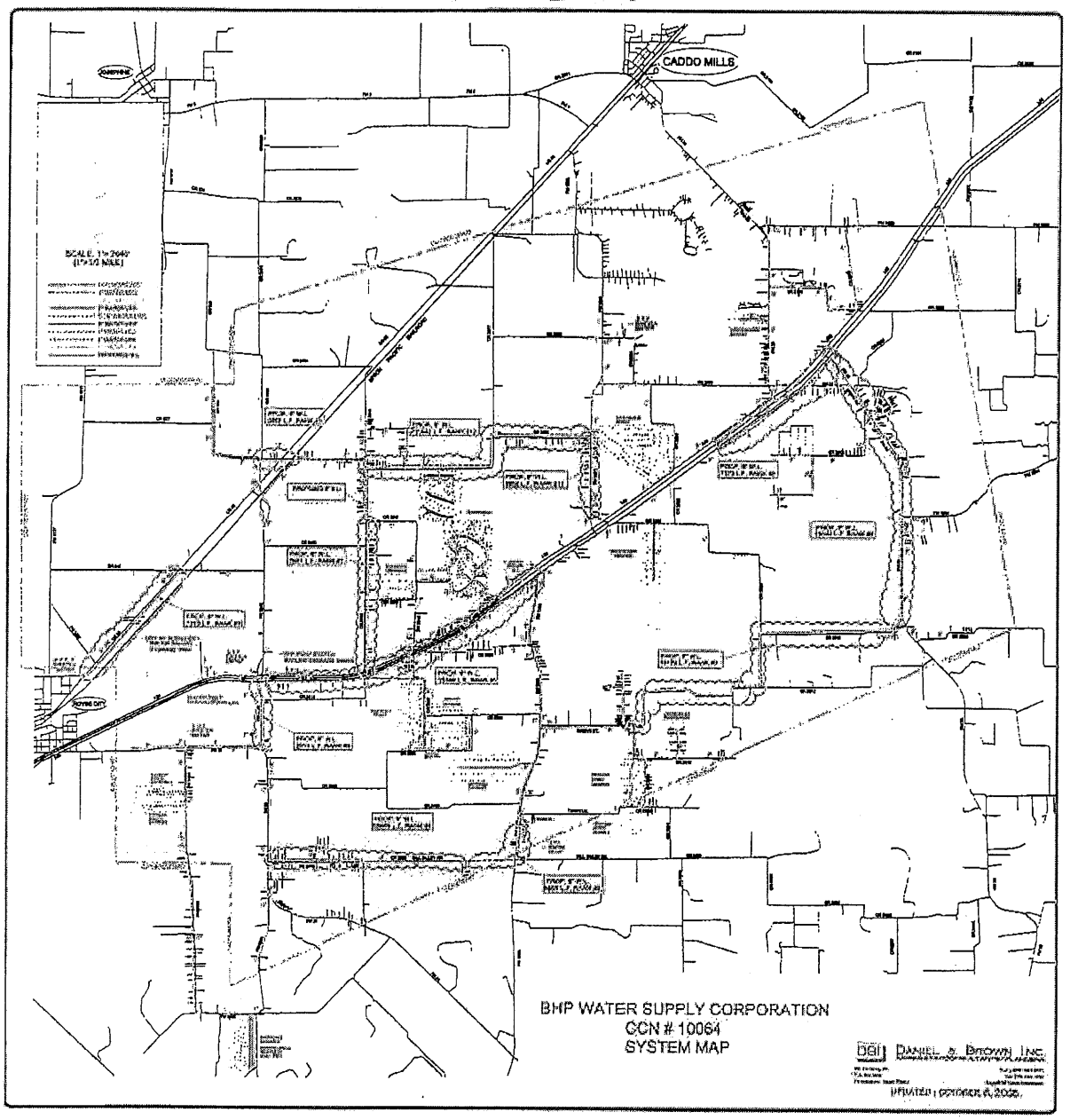
If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Donald G. Rauschuber, P.E.
President, DGRA, Inc.

enclosure

FIGURE ONE


CADDO MILLS
BHP WATER SUPPLY CORPORATION
CCN # 10064
SYSTEM MAP
DBI DANIEL & BROWN, INC.

**dgr**
**Donald G. Rauschuber & Associates, Inc.**

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Water Engineering
Municipal Engineering

RECEIVED
TCEQ
WATER SUPPLY DIV.
2008 JUL 11 AM 9 25

July 3, 2008
**[REVISED JULY 10, 2008[1]]**

Ms. Tammy Benter and
Mr. Brian Dickey
Texas Commission on Environmental Quality
Utilities & Districts Section – MC 153
Water Supply Division
Austin, Texas 78711-3087

**RE: DGRA, Inc., Letter Report on the Petition from Kerala Christian Adult Homes 1, L.P., for an Expedited Release from Water Certificate of Convenience and Necessity (CCN) No. 10064 of BHP Water Supply Corporation in Collin County, Application No. 35724-C; TCEQ Docket No. 2007-1609-URS**

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## APPROACH

The approach for the Kerala Tract valuation presented herein follows the procedures described in 30 TAC §291.113(k). This subsection requires the consideration of the following factors for establishing the value of property owned and/or utilized by a retail public utility located within or adjacent to a tract of land being decertified from a utility's Water CCN:

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B. the value of the service facilities of the retail public utility located within the area in question;

C. the amount of any expenditures for planning, design, or construction of service facilities that are allocated to service to the area in question;

---

1 Item G and the summary paragraph presented on Pages 5 and 6 of the July 3, 2008, DGRA, Inc., letter are modified herein.

D. the amount of the retail public utility's contractual obligations allocable to the area in question;

E. any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification;

F. the impact on future revenues lost from existing customers;

G. necessary and reasonable legal expenses and professional fees; and

H. other relevant factors.

**DOCUMENTS REVIEWED**

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American National Bank Promissory Note (1) –

| | |
|---|---|
| Principal Amount = | $795,000 |
| Annual Interest = | 7.15% |
| Maturity Date = | Feb. 5, 2015 |

[2] The term "ETJ" contained in the July 3, 2008, Letter Report has been replaced with the phase "Kerala Tract".

American National Bank Promissory Note (2) –

| | |
|---|---|
| Principal Amount = | $357,642 |
| Annual Interest = | 4.75% |
| Maturity Date = | May 14, 2008 |

Both the principle and interest portions of these notes contribute to the utility's "readiness to serve" its water CCN area. The principal portions of these notes should be included in the utility's 2007 Financial Statements as part of the "total capital assets at historical cost" shown on page 11 of the referenced financial statements (assuming such assets were capitalized as of December 31, 2007, by the utility). If this is the case, the "readiness to serve" principal allocation associated with these notes payable to the Kerala Tract is included Factor C below.

With regards to the "readiness to serve" interest allocation for these notes associated with the Kerala Tract the following valuation is submitted:

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|---|---|---|
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| Total | = | $ 407,191 |

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B. Factor: The value of the WSC's water service facilities located within the Kerala Tract –

Since the WSC does not have any water improvements located within the Kerala Tract, the value for Factor B of $0.00.

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WSC expenditures for this category could include, among other things, the utility's historic and current costs associated with water system planning and design, water supply planning and acquisition, water supply development, and cost of facilities associated with the "readiness to serve" their water CCN area. However, the WSC did not provide any cost documenting these expenditures

other than "total capital assets at historical cost" presented in the WSC's 2007 Annual Financial Report.

The 2007 Annual Financial Report indicates a "total capital assets at historical cost" value of $2,158,043. This represents the WSC's capitalized portion of its "readiness to serve" the Water CCN area. As previously stated, the WSC's CCN area is approximately 32,840 acres is size. The Kerala Tract represents approximately 1.3-percent (i.e., 432 acres divided by 32,840 acres) of the WSC's CCN area. Applying this ratio to the total capital assets at historic cost value of $2,158,043, results in a value allocable to the Kerala Tract for Factor C of $28,055.

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Agreement for the Emergency Purchase of Water between Cash SUD and BHP WSC

Although the above reference contracts could be used to provide water to the Kerala Tract, if served by the WSC, no portion of these contracts appear to be allocable to the subject tract. Therefore, the valuation of this factor is $0.00.

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There was no information provided by the WSC that suggests service would be impaired or cost to consumers would be increased as a result of the decertification of the Kerala Tract. Therefore, the valuation of this factor is $0.00.

F. Factor - The impact on future revenues lost from existing customers –

Since there are no existing WSC customers located within the Kerala Tract, the valuation of this factor is $0.00.

G. Factor - Necessary and reasonable legal expenses and professional fees –

The WSC has documented the following cost for necessary and reasonable legal expenses and professional fees:

| | |
|---|---|
| Jackson Walker, L.L.P. | $ 19,000 |
| Daniel & Brown, Inc. | 5,000 |
| GDS Associates | 6,500 |
| Total | $ 30,500[3] |

H. Factor - Other relevant factors -

There are no other identifiable factors associated with the Kerala Tract. Therefore, this factor has a valuation of $0.00.

---

In summary, DGRA, Inc., projected valuation for the expedited decertification of the Kerala Tract, based on the information provided by the BHP WSC and the TCEQ, totals $63,848, as summarized below:

| | |
|---|---|
| Factor A | $ 5,293[4] |
| Factor B | 0 |
| Factor C | 28,055 |
| Factor D | 0 |
| Factor E | 0 |
| Factor F | 0 |
| Factor G | 30,500 |
| Factor H | 0 |
| **TOTAL** | **$63,848** |

Preparing and performing a valuation pursuant to Title 30 TAC §291.113 (j) and (k) on a parcel subject to expedited review is very difficult to accomplish without having the benefit of full access to the utility's records and without assess to the administrative record associated with the subject case. I recommend on future valuations conducted pursuant to §291.113 (j) and (k) provisions, the TCEQ make available the complete administrative record for the subject case, as well as, coordinate on-site discovery where all parties may be present.

---

3 Legal expenses associated "Challenge to Kerala's Expedited Release Petition" for $2,800, "Appeal of Executive Director's Order" for $13,700, and "Valuation" for $2,500 shown in the July 3, 2008, valuation letter are excluded herein. These expenses are included in the $19,000 Jackson Walker, L.L.P., legal expense.

4 Factor A in the summary paragraph of the July 3, 2008, valuation letter contained a value of $5,393. The correct amount is $5,293.

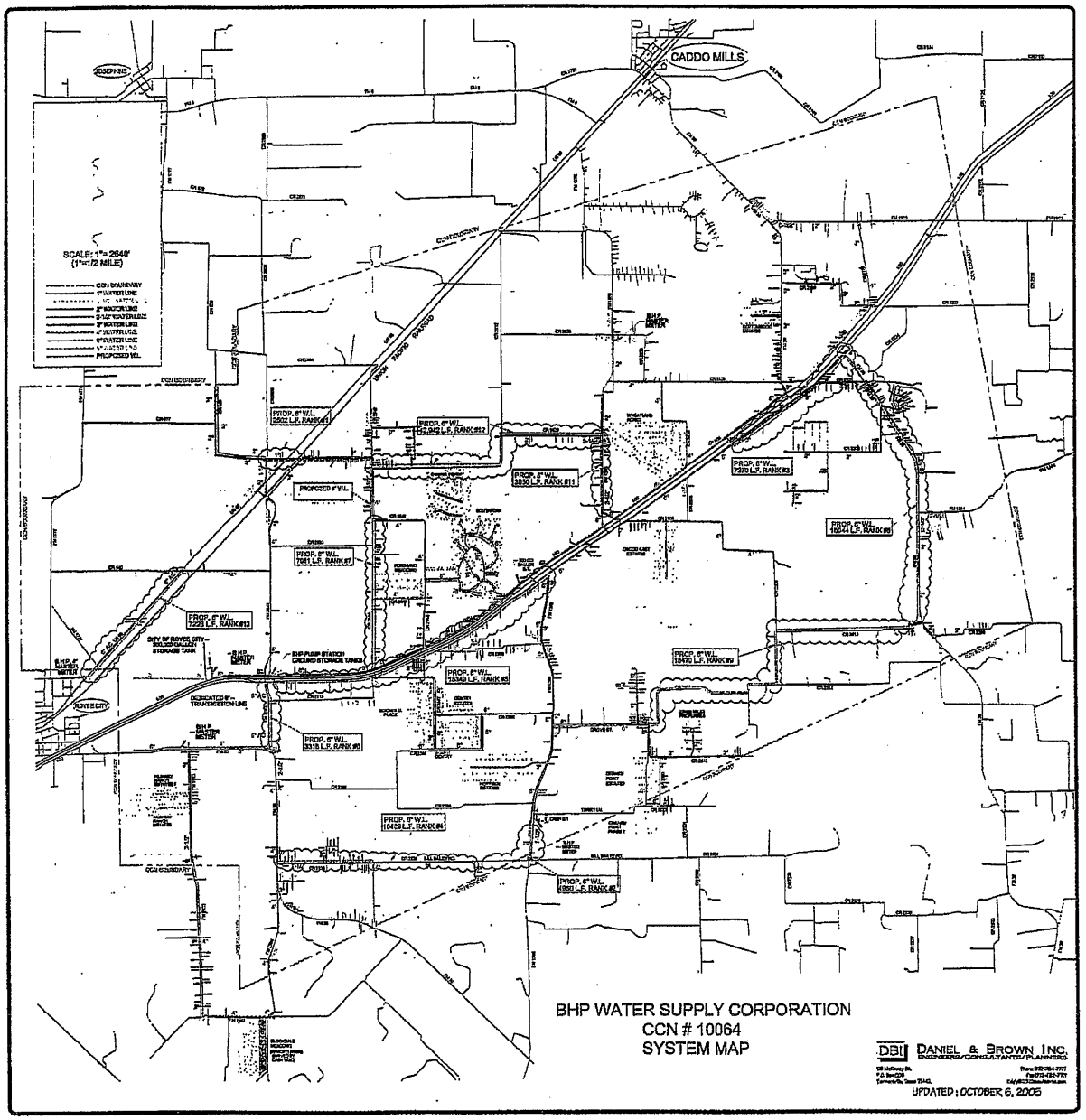
If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Donald G. Rauschuber, P.E.
President, DGRA, Inc.

enclosure

Figure One


CADDO MILLS
SCALE: 1"= 2640'
(1"=1/2 MILE)
PROP. 6" W.L.
PROP. 6" W.L.
PROP. 6" W.L.
PROP. 6" W.L.
PROP. 6" W.L.
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PROP. 6" W.L.
PROP. 6" W.L.
BHP WATER SUPPLY CORPORATION
CCN # 10064
SYSTEM MAP
DANIEL & BROWN INC.
UPDATED: OCTOBER 6, 2005

Lloyd Gosselink
ATTORNEYS AT LAW

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Austin, Texas 78701
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Facsimile: (512) 472-0532
www.lglawfirm.com

Ms. Crump's Direct Line: (512) 322-5832
Email: gcrump@lglawfirm.com

July 17, 2008

**VIA FACSIMILE AND MAIL**

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

Re: *Petition from Kerala Christian Adult Homes 1, L.P., for an Expedited Release from Water Certificate of Convenience and Necessity (CCN) No. 10064 of BHP Water Supply Corporation (WSC) in Collin County*; Application No. 35724-C; **TCEQ Docket No. 2007-1609-UCR**

Dear Mr. Dickey:

We received on July 9, 2008, Mr. Rauschuber's Letter Report dated July 3, 2008, in response to the TCEQ's request for a third appraisal of the CCN area to be transferred from BHP Water Supply Corporation to the City of Royse City. On July 14, 2008, we received Mr. Rauschuber's Revised Letter Report dated July 10, 2008. I have inquired of the TCEQ as to the procedures for forwarding this matter to the Commission for a final order, but I have not yet received a response. In order to ensure that I do not miss an opportunity to submit comments to the Commission in this matter, I am including herein Royse City's comments on Mr. Rauschuber's Revised Letter Report.

The following are our specific comments on the Valuation Factors addressed by Mr. Rauschuber:

**Factor A: The amount of the WSC's debt allocable for service to the Kerala Tract.**

**1. There is no debt allocable to the Kerala Tract.**

In the report furnished by BHP on this factor, performed by Mr. George Freitag of GDS Associates, BHP admitted that no debt is allocable for service to the area. Specifically, BHP's report stated the following:

> The WSC has long-term debt of $514,961 (as of December 2007). However, based on our review of the documentation, this debt does not appear to be allocable for service to the area in question. (GDS Report, page 3)

Royse City agrees with BHP's conclusion, which is also supported by BHP's engineer's statement to Mr. Stowe on May 6, 2008, that BHP's planning approach is restricted to responding to requests for service only.[1] There are no facilities owned by BHP in the subject area, and no service is currently being provided, therefore none of BHP's outstanding debt was incurred in order to provide service to the subject tract.

However, Mr. Rauschuber makes the unsupported assumption that the principal and interest portions of the outstanding debt "contribute to the utility's 'readiness to serve' its water CCN area."[2] There is no basis in fact for Mr. Rauschuber's assumption that BHP is "ready to serve" the entire CCN area, or that BHP has, in fact, made capital investments that render it able to service its entire CCN area. Additionally, there is no basis in either the Texas Water Code, § 13.254, or in the Commission's regulations, for Mr. Rauschuber's valuation of an intangible "readiness to serve" in connection with a valuation of the amount of debt allocable for service in the Kerala Tract.

**2. Mr. Rauschuber's report incorrectly identified BHP's debt obligations.**

In addition to making an unfounded assumption that is directly contradicted by the facts, Mr. Rauschuber has incorrectly identified the two debt obligations of BHP. According to BHP's 2007 Financial Statement (page 10, attached hereto), the following debt obligations are indicated:

| Description | Interest Rate | Original Balance | Outstanding Balance |
|---|---|---|---|
| American National Bank (Note 1) | 4.75% | $795,000 | $157,319 |
| American National Bank (Note 2) | 7.15% | $359,470 | $357,642 |

Mr. Rauschuber incorrectly switched the interest rates for the two notes. Note 1, with an original balance of $795,000, actually has an interest rate of 4.75%, but Mr. Rauschuber listed this note with an interest rate of 7.15%.[3] Likewise, Note 2, with an original balance of $359,470, has an interest rate of 7.15%, but Mr. Rauschuber listed this note with an interest rate of 4.75%.[4]

**3. Mr. Rauschuber incorrectly calculated interest due on the two debts.**

On Page 11 of BHP's 2007 Financial Statement (copy attached), it is indicated that total interest due as of December 31, 2007 is $40,415, not the $407,191 as indicated by Mr. Rauschuber. If one were to assume that Mr. Rauschuber's allocation of 1.3% of the interest payment to the Kerala Tract is correct (an assumption with which Royse City does not agree), using the correct interest amount would result in an interest allocation to the Kerala Tract of

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[1] J. Stowe & Co. Report, page 2.

[2] Rauschuber Revised Letter Report, page 4.

[3] Rauschuber Revised Letter Report, page 3.

[4] Rauschuber Revised Letter Report, page 4.

$525 ($40,415 x 1.3%), not the amount of $5,293 ($407,191 x 1.3%), as shown in Mr. Rauschuber's Revised Letter Report.[5]

**Factor C: The amount of any expenditures for planning, design, or construction of service facilities that are allocated to service to the area in question.**

**1. Mr. Rauschuber has incorrectly concluded that BHP facilities are "ready to serve" the Kerala Tract.**

As set forth above, Mr. Rauschuber has incorrectly assumed that BHP has current facilities that are "ready to serve" the Kerala Tract. This assumption is directly contradicted both by BHP's engineer (*see* discussion above with regard to Factor A) and the GDS Report, which states as follows:

> The WSC has done capital planning studies and has on-going planning efforts. None, however, significantly address service to the Kerala Tract specifically. (GDS Report, page 3.)

There are no facilities in place that have been constructed to serve the Kerala Tract. Just as there is no basis in either Texas Water Code § 13.254 or in the Commission's regulations for Mr. Rauschuber's valuation of an intangible "readiness to serve" in connection with a valuation of the amount of debt allocable for service in the Kerala Tract, there is also no basis in the statutes or regulations for a valuation of an intangible "readiness to serve" with regard to a valuation of capital assets.

**2. Mr. Rauschuber has incorrectly utilized BHP's total Capital Assets at Historical Cost.**

In identifying costs attributable under Factor C, Mr. Rauschuber has incorrectly utilized BHP's total Capital Assets at Historical Cost, which includes accumulated depreciation in the amount of $954,622 (as shown on page 11 of BHP's 2007 Financial Statement, copy attached). If it is assumed that a valuation of this Factor on BHP's "readiness to serve" is appropriate (an assumption with which Royse City does not agree), it is nonetheless necessary to remove accumulated depreciation in as much as BHP has already booked this amount as operating costs in previous years, thus indicating the value of the system expended through use. As such, the ***net value*** of Capital Assets should be utilized. This amount, as indicated on Page 11 of BHP's 2007 Financial Statements, is $1,203,421. Assuming that Mr. Rauschuber's 1.3% allocation is correct (again, an assumption with which Royse City does not agree), using the ***net value*** of capital assets would result in costs attributable under Factor C of $15,644 ($1,203,421 x 1.3%), not $28,055 ($2,158,043 x 1.3%) as concluded by Mr. Rauschuber.

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[5] Although not material, it should also be noted that Note 2 matured in May 2008. Therefore, the interest attributable to this note ($9,589 X 1.3% = $125.00) should not be included as an on-going expense.

**Factor G: Necessary and reasonable legal expenses and professional fees.**

Mr. Rauschuber has incorrectly charged Royse City with the cost of the GDS Report. Section 13.254(g-1), Texas Water Code, provides that if the retail public utilities cannot agree on an independent appraiser, each retail public utility shall engage its own appraiser ***at its own expense***. This requirement is also spelled out in 30 Tex. Admin. Code § 291.113(j)(1). The costs of the independent appraiser are to be split evenly between the parties. Tex. Water Code § 13.254(g-1), 30 Tex. Admin. Code § 291.113(j)(2). However, Mr. Rauschuber has incorrectly charged the costs of the GDS Report, $6,500, to Royse City in violation of the directives of the Water Code and the Commission's rules.

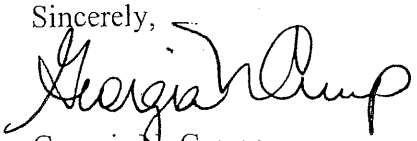
**Conclusion**

The City of Royse City submits that Mr. Rauschuber's valuation of a "readiness to serve" is not supported by the statutes or the Commission's rules, and his report should be revised in accordance with the comments provided herein to reflect valuations attributable to Factors A and C of zero dollars ($0). However, to the extent that the Commission adopts Mr. Rauschuber's valuation of a "readiness to serve," the above-described corrections should be made in order for his report to accurately reflect the facts, as shown in the table below:

| Factor | Rauschuber | Reduction | Corrected |
|---|---|---|---|
| A | $ 5,293 | ($ 4,768) | $ 525 |
| C | $ 28,055 | ($ 12,411) | $ 15,644 |
| G | $ 30,500 | ($ 6,500) | $ 24,000 |
| Total | $ 63,848 | ($ 23,679) | $ 40,169 |

The City of Royse City respectfully requests that these comments be included in the Staff's submittal of this matter to the Commission, and we stand ready to assist the Staff and the Commission to provide further explanation, or argument, if appropriate in this process. Please let me know if you have any questions or need additional information.

Sincerely,



Georgia N. Crump

GNC/jmc
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cc: Stefanie Skogen
Leonard Dougal
Donald Rauschuber
TCEQ Chief Clerk
Karen Philippi
Jack Stowe
Jason Day

BHP WATER SUPPLY CORPORATION
NOTES TO THE FINANCIAL STATEMENTS
YEAR ENDED DECEMBER 31, 2007

B. Summary of Significant Accounting Policies (Continued)

8. Current and Long-Term Notes

Allocations between current and long-term notes are classified according to the requirements within the next twelve months as compared to the requirements after the next twelve months.

9. Vacation, Sick Leave and Other Compensated Absences

Employees are entitled to certain compensated absences based on their length of employment. Compensated absences do not vest or accumulate and are recorded as expenditures when paid.

C. Cash and Certificates of Deposit

Cash and Certificates of Deposit are comprised of the following:

| | December 31, 2007 |
|---|---|
| Petty Cash | $ 43 |
| Cash Drawer | 150 |
| American National Bank Operating | 163,376 |
| American National Bank Certificates of Deposit | 882,763 |
| American National Bank Money Market | 52,302 |
| Alliance Bank Certificate of Deposit | 100,827 |
| CitiBank Certificate of Deposit | 143,956 |
| Cash and Certificates of Deposit Available for Operations | $ 1,343,417 |

During 2007, the Corporation's general operating fund was maintained at the American National Bank, Royse City, Texas. This institution is a member of the Federal Deposit Insurance Corporation (FDIC). Deposits at this financial institution exceeded FDIC insurance limits during the year and at December 31, 2007. Additionally, deposits held at CitiBank and Alliance Bank, members of the FDIC, exceeded FDIC insurance limits throughout the year.

D. Long-Term Obligations

During the year, the Corporation entered into a promissory note agreement with the American National Bank of Texas with a principal amount totaling $ 359,470, for the specific purpose of purchasing land. The promissory note is payable in full upon Lender's demand, however, if no such demand is made the note will incur monthly interest payments with an interest rate of 7.15%. A lump sum payment is due on May 14, 2008 in full satisfaction of the outstanding principal totaling $ 359,470. The Corporation may, without incurring penalty, pay any portion of the amount owed earlier than it is due.

The Corporation's long-term obligations consist of the following notes:

| Lein Holder | Interest Rate | Original Balance | Outstanding Balance |
|---|---|---|---|
| American National Bank – Promissory Note | 4.75 % | $ 795,000 | $ 157,319 |
| American National Bank – Promissory Note | 7.15 % | 359,470 | 357,642 |
| Totals | | | $ 514,961 |

BHP WATER SUPPLY CORPORATION
NOTES TO THE FINANCIAL STATEMENTS
YEAR ENDED DECEMBER 31, 2007

D. Long-Term Obligations (Continued)

| | Beginning Balance 1/1/2007 | Additions | Deletions | Ending Balance 12/31/2007 | Current Portion of Debt |
|---|---|---|---|---|---|
| Notes Payable | $ 174,692 | $ 357,642 | $ 17,373 | $ 514,961 | $ 375,751 |
| Total Debt Payable | $ 174,692 | $ 357,642 | $ 17,373 | $ 514,961 | $ 375,751 |

Maturities of notes payable at December 31, 2007, are as follows:

| Year Ending December 31 | Principal | Interest | Total Requirements |
|---|---|---|---|
| 2008 | $ 375,751 | $ 17,796 | $ 393,547 |
| 2009 | 18,988 | 6,207 | 25,195 |
| 2010 | 19,910 | 5,286 | 25,196 |
| 2011 | 20,877 | 4,319 | 25,196 |
| 2012 | 21,890 | 3,306 | 25,196 |
| 2013-2015 | 57,545 | 3,501 | 61,046 |
| Total Debt Payable | $ 514,961 | $ 40,415 | $ 555,376 |

E. Property, Plant and Equipment

Property, Plant and Equipment used in the Corporation's operations are recorded at historical cost or estimated historical cost if actual historical cost is not available. Material expenses that increase the estimated useful life of the assets are capitalized. Expenses with a unit value under $ 100 and maintenance and repairs, renewals and betterments which do not extend the asset's useful life are charged to expense when incurred.

| | Beginning Balances | Additions & Reclassification | Decreases | Ending Balances |
|---|---|---|---|---|
| Land | $ 6,500 | $ 359,642 | $ -0- | $ 366,142 |
| Buildings and Improvements | 55,984 | 5,700 | -0- | 61,684 |
| Equipment | 97,808 | -0- | -0- | 97,808 |
| Vehicles | 76,224 | -0- | -0- | 76,224 |
| Water Distribution System | 1,512,433 | 22,686 | -0- | 1,535,119 |
| Furniture and Fixtures | 21,066 | -0- | -0- | 21,066 |
| Total Capital Assets at Historical Cost | $ 1,770,015 | $ 388,028 | $ -0- | $ 2,158,043 |
| Less Accumulated Depreciation for: | | | | |
| Buildings and Improvements | $ 46,604 | $ 2,527 | $ -0- | $ 49,131 |
| Equipment | 34,501 | 17,652 | -0- | 52,153 |
| Vehicles | 43,687 | 13,270 | -0- | 56,957 |
| Water Distribution System | 728,110 | 47,400 | -0- | 775,510 |
| Furniture and Fixtures | 19,865 | 1,006 | -0- | 20,871 |
| Total Accumulated Depreciation | $ 872,767 | $ 81,855 | $ -0- | $ 954,622 |
| Property, Plant and Equipment, Net | $ 897,248 | $ 306,173 | $ -0- | $ 1,203,421 |

JACKSON WALKER L.L.P.
ATTORNEYS & COUNSELLORS

Leonard H. Dougal
(512) 236-2222 (Direct Dial)
(512) 391-2112 (Direct Fax)
ldougal@jw.com

July 25, 2008

**VIA FACSIMILE (239-6972) AND US MAIL**

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

RE: Petition from Kerala Christian Adult Homes 1, L.P. for an Expedited Release from Water Certificate of Convenience and Necessity (CCN) No. 10064 of BHP Water Supply Corporation (WSC) in Collin County; Application No. 35724-C; TCEQ Docket No. 2007-1609-UCR

Dear Mr. Dickey:

I write in response to Mr. Rauschuber's Revised Letter Report dated July 10, 2008 and Ms. Georgia Crump's letter, submitted on behalf of the City of Royse City (the "City"), dated July 17, 2008. Since three separate appraisers have produced three reports that are each unique, it is clear that appraisers of CCN values have divergent professional views on how the statutory criteria used to determine just and adequate compensation to retail public utilities should be applied.

We disagree with the City's effort to "cherry pick" portions of the various appraiser reports. Not surprisingly, the City agrees only with the components of the report submitted on behalf of BHP Water Supply Corporation ("BHP") where the component value is lower than that determined by Mr. Rauschuber, but agrees with the components of Mr. Rauschuber's Revised Letter Report when those are lower than that assessed by BHP's consultant. For example, regarding Factors A and C, while it is true that a value was not ascribed to this factor in BHP's report, it does not follow that Mr. Rauschuber's determination is unfounded and unsupportable, as suggested by the City. In fact, the City fails to cite to any authority as to its claim that the methodology used by Mr. Rauschuber related to Factors A and C are prohibited. The fact is that the statutory language clearly allows for a valuation based on the methodology used by Mr. Rauschuber.

In the event the TCEQ will entertain comments on the reports, we submit that Section 13.254(g), Water Code, and 30 TAC §291.113(k) do not allow the agency to disregard a factor that is specifically listed. Both the statute and the Commission's rule allow for the consideration of "other relevant factors." There is no factor more "relevant" to the valuation of any property, whether real or personal, as "comparable sales." Yet, the City and Mr. Rauschuber manage to


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somehow ignore this most obvious factor. Clearly, a buyer's desire to purchase a service area to enhance its current or long-term operations has a value. This value can be determined by analyzing certain comparable sales. BHP believes that this is exactly the type of "relevant factor" contemplated by Section 13.254(g), Water Code, and 30 TAC §291.113(k), and urges the Commission to consider the information related to comparable sales noted in BHP's report, and assign a value for same.

Finally, we note that as this matter continues to be contested, BHP will continue to incur additional legal and professional costs. Accordingly, BHP believes that the Commission should perform a final accounting of legal and professional costs prior to issuing its order, in an effort to include those costs incurred by BHP after the submittal of the report. Section 13.254(g) and the Commission's rules specifically allow for the recovery of such costs.

Please call me should you have any questions or concerns.

Sincerely,

Leonard H. Dougal

cc: **VIA FACSIMILE 239-0606**
Ms. Stefanie Skogen
Texas Commission on Environmental Quality
Legal Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

**VIA FACSIMILE 472-0532**
Ms. Georgia Crump
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

**VIA FACSIMILE 239-3311**
Ms. LaDonna Castañuela (MC-105)
Office of the Chief Clerk
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

**VIA FACSIMILE (512) 763-1341**
Mr. Donald G. Rauschuber, P.E.
Donald G. Rauschuber & Associates, Inc.
P. O. Box 2777
Georgetown, Texas 78627

**AN ORDER** determining the amount of compensation owed to BHP Water Supply Corporation (WSC) by the City of Royse City for area decertified from BHP WSC's water certificate of convenience and necessity (CCN) No. 10064 due to an expedited release petition filed by Kerala Christian Adult Homes 1, L.P; TCEQ Docket No. 2007-1609-UCR.

A request for a Commission order determining the amount of compensation owed to BHP WSC by the City of Royse City for area decertified from BHP WSC's water CCN No. 10064 due to an expedited release petition filed by Kerala Christian Adult Homes 1, L.P. in Collin County, Texas, was presented to the Texas Commission on Environmental Quality (TCEQ or Commission) pursuant to section 13.254 of the Texas Water Code and title 30, section 291.113 of the Texas Administrative Code.

On June 12, 2007, Kerala filed a petition for an expedited release of approximately 432.05 acres from BHP WSC's water CCN No. 10064. The Executive Director (ED) granted the petition in an order dated September 17, 2007. The City of Royse City sent a letter to the TCEQ dated March 20, 2008, informing the agency that it intends to provide Kerala's property with water service. Because Royse City and BHP WSC were unable to agree on an appraiser, who would determine how much compensation Royse City must pay BHP WSC for the loss of part of its water CCN, both parties submitted their own appraisals on or about May 28, 2008. ED staff then requested a third appraisal to be completed based on the first two appraisals. The third appraisal, dated July 3, 2008, was provided to the TCEQ, followed by a revised version dated July 10, 2008.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 JAN 23 PM 12: 26

CHIEF CLERKS OFFICE

A retail public utility may not in any way render retail water service directly or indirectly to the public in an area that has been decertified under section 291.113 without providing compensation for any property that the Commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification. 30 TEXAS ADMIN. CODE § 291.113(h). When the retail public utilities cannot agree on an appraiser to determine the amount of compensation, they shall each submit their own appraisal. *Id.* § 291.113(j). A third appraiser appointed by the Commission or ED shall then make a determination of the compensation. *Id.* § 291.113(j)(1).

The appraisal from Royse City valued BHP WSC's loss at $0. The appraisal from BHP WSC valued BHP WSC's loss at $299,996. The third appraisal valued BHP WSC's loss at $63,848. The ED recommended the removal of $6,500 from the third appraisal amount for costs paid by BHP WSC for its first appraisal, resulting in a compensation amount of $57,348.

The Commission held a hearing on the request at its February 11, 2009, Agenda meeting and found the request has merit.

Based on the appraisals filed in this matter, BHP WSC has property that has been rendered useless or valueless as a result of the decertification. Pursuant to section 291.113, Royse City may not render retail water service to the decertified area without providing compensation for this property.

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

1. The City of Royse City shall pay $57,348 to BHP WSC and shall not in any way render service to Kerala Christian Adult Homes 1, L.P.'s property until this amount has been paid.

2. Within thirty days of this order, the City of Royse City and BHP WSC shall each pay one-half of the cost of the third appraisal to Donald G. Rauschuber & Associates, Inc.

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

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

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

_____
For the Commission

## CERTIFICATE OF SERVICE

I certify that on January 23, 2009, a copy of the foregoing document was sent by first class, electronic mail, agency mail, and/or facsimile to the persons on the attached Mailing List.

Stefanie Skogen, Staff Attorney
Environmental Law Division

**Mailing List**
**Kerala Christian Adult Homes 1, L.P.**
**TCEQ Docket No. 2007-1609-UCR**

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