

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*

August 5, 2009

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

CHIEF CLERKS OFFICE

2009 AUG - 5 PM 1: 31

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: TCEQ Docket No. 2009-1104-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Bastrop and Bastrop County Water Control and Improvement District (WCID) 2 pursuant to Texas Water Code Section 13.248.

Dear Ms. Castañuela:

Transmitted herewith for filing with the Texas Commission on Environmental Quality ("Commission") are the following items to be filed as backup material for the August 26, 2009 agenda on a request for an order approving a contract designating service areas between the City of Bastrop and Bastrop County WCID 2:

1. Proposed Order, with Texas Water Code Section 13.248 contract attached to it;
2. Interoffice Memorandum containing the Executive Director's Summary;
3. Application for a Commission order approving a Texas Water Code Section 13.248 contract filed on October 29, 2008 (please note that the final version of the 13.248 contract was filed on June 1, 2009, and is attached to the Proposed Order);
4. Interoffice Memorandum containing analysis of the City of Bastrop's financial, managerial, and technical capability;
5. Map of the area covered by the Agreement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ruth A. Takeda".

Ruth A. Takeda, Staff Attorney  
Environmental Law Division

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** APPROVING A CONTRACT DESIGNATING SERVICE AREAS BETWEEN THE CITY OF BASTROP AND BASTROP COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT 2 PURSUANT TO TEXAS WATER CODE SECTION 13.248; TCEQ DOCKET NO. 2009-1104-UCR.

A request for a Commission order approving a contract designating service areas in Bastrop County between the City of Bastrop (City) Certificate of Convenience and Necessity (CCN) Nos. 11198 and 20466, and Bastrop County Water Control and Improvement District No. 2 (District), CCN Nos. 10990 and 20961, was presented to the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Texas Water Code Section 13.248 and Title 30 of the Texas Administrative Code, Section 291.117.

On May 27, 2009, the City and the District executed a Water CCN Transfer Agreement ("Contract") regarding their respective water and sewer service areas. The Contract addresses the transfer of the District's authority to provide water and sewer service to approximately 552 acres and provides that the City will be the sole provider of retail water and sewer service in that service area. There are no customers in the area to be transferred. The Contract is attached to this Order as Exhibit 1. This Order effects changes in CCN service areas as designated by the City and the District in the Agreement.

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

The Commission held a hearing on the request at the August 26, 2009 agenda and found the request had merit.

The City is capable of rendering continuous and adequate water service to every customer in the area covered by the Agreement. The decertification of the District's authority to provide service in the affected area, which results in the City being the sole service provider remaining in the area, is necessary for the service, accommodation, convenience, or safety of the public.

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

1. The provisions of the Contract addressing the transfer of a portion of the District's CCN Nos. 10990 and 20961, and designating that retail water and sewer service shall be provided by the City, CCN Nos. 11198 and 20466, in that area are hereby approved.
2. CCN Nos. 11198 and 20466 in Bastrop County, held by the City, are hereby amended in accordance with the Contract.
3. CCN Nos. 10990 and 20961 in Bastrop County, held by the District, are hereby amended in accordance with the Contract.
4. The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Contract and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Bastrop County, Texas. The certificate amendment requested in this application is necessary for the service, accommodation, convenience, and safety of the public.
5. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.
6. 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

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For the Commission

RECEIVED  
TCEQ  
WATER SUPPLY DIV.

2009 JUN 1 PM 4 39

WATER CCN TRANSFER AGREEMENT BETWEEN  
BASTROP COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2,  
BASTROP 552, LLLP,  
AND  
THE CITY OF BASTROP, TEXAS

This Water CCN Transfer Agreement ("Agreement") is entered into effective as of the 27 day of MAY, 2009 (the "Effective Date"), by and among Bastrop County Water Control and Improvement District No. 2 ("District"), a political subdivision of the State of Texas operating pursuant to Chapters 49 and 51 of the Texas Water Code, the City of Bastrop ("City"), a Texas home rule city, and Bastrop 552, LLLP, an Arizona limited liability limited partnership ("Developer") each acting by and through its undersigned, duly authorized representatives.

RECITALS

WHEREAS, the District has been issued water Certificate of Convenience and Necessity No. 10990 ("District's Water CCN") and sewer Certificate of Convenience and Necessity No. 20961 ("District's Sewer CCN") by the Texas Commission on Environmental Quality ("TCEQ") to provide retail water and wastewater utility service to certain areas within Bastrop County; and

WHEREAS, the City has been issued water Certificate of Convenience and Necessity No. 11198 ("City's Water CCN") and sewer Certificate of Convenience and Necessity No. 20466 ("City's Sewer CCN") by the TCEQ to provide retail water and wastewater utility service to certain areas within its extraterritorial jurisdiction; and

WHEREAS, the District has been notified of by Bastrop 552, LLLP of plans to develop a 552 acre tract of land known as the Colorado Bend Development, which tract of land is located within the City's ETJ and is located within the District's Water CCN and District's Sewer CCN; and

WHEREAS, the District, Bastrop 552, LLLP, and the City have entered into a letter agreement setting out the terms and conditions pursuant to which the District will transfer the Transfer Area to the City, a copy of which is attached as Exhibit "A" (the "Prior Letter Agreement").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, District, City and Developer agree as follows:

1. CCN Transfer. Subject to the approval of this Agreement by the TCEQ, the District hereby transfers to City, and City hereby accepts, the 552 acre tract located within District's Water CCN and the District's Sewer CCN as shown on the map attached as Exhibit "B" (the "Transfer Area").



2. TCEQ Approval. After execution by the parties, a copy of this Agreement shall be filed with the TCEQ in accordance with Texas Water Code § 13.248. The District shall be primarily responsible for filing this Agreement with the TCEQ to effect the transfer and amendment of the Transfer Area described in paragraph 1 above. City and District will cooperate with each other and the TCEQ to accomplish the transfer and amendment of the Transfer Area described in paragraph 1 above.

3. Conditions of Transfer. (a) As consideration for this Agreement and the District's performance of its obligations hereunder, upon execution of this Agreement, Bastrop 552, LLLP agrees to deposit with the District \$19,531.50 as further set out in the "Cost Estimate" attached as Exhibit "C" which is comprised of the following actual or estimated costs:

- 1) the sum of \$13,799 to reimburse the District for costs already incurred to secure the Water CCN and the Sewer CCN on the Transfer Area;
- 2) necessary and reasonable legal expenses and professional fees incurred by the District in connection with the negotiation and drafting of an agreement with Bastrop in compliance with Section 13.255(a) of the Texas Water Code, not to exceed \$10,000.00; and
- 3) all costs incurred with the decertification of the Transfer Area, including but not limited to the preparation and filing of an application with the TCEQ, such costs not to exceed \$10,000.00.

(b) Upon approval of the decertification of the Transfer Area from the District's Water CCN and Sewer CCN by the TCEQ, the final cost of the CCN decertification will be reconciled with the payment made by Bastrop 552, LLLP, or its assigns. If the final cost of the CCN decertification is less than the amounts paid by Bastrop 552, LLLP, or its assigns, the difference shall be refunded to Bastrop 552, LLLP, or its assigns, within thirty (30) days of approval of the CCN decertification by the TCEQ. If the final cost of the CCN decertification is greater than the amount paid by Bastrop 552, LLLP, or its assigns, Bastrop 552, LLLP, or its assigns, shall pay the District the difference, in a form acceptable to the District, within ten (10) days after receipt of written notice of the balance due; provided Bastrop 552, LLLP's obligation to pay any excess costs shall be subject to the limits set forth in the Prior Letter Agreement.

(c) If decertification of the Transfer Area from the District's Water CCN and District's Sewer CCN is not approved, the District will promptly refund the \$13,799 to Bastrop 552, LLLP, and the other expenses of the District will be reimbursed by Bastrop 552, LLLP as provided in Section 3(b) above.

(d) If decertification of the Transfer Area from the District's Water CCN and District's Sewer CCN is approved, Bastrop 552, LLLP, or its assigns, will provide for a wastewater manhole to be located on Lover's Lane and connected to its collection facilities, for future use by the District. This manhole will provide a delivery location to the City's facilities from the District's facilities. In addition, the collection lines installed by Bastrop 552, LLLP, or its assigns, located downstream from such manhole shall be sized to allow for a discharge from the District of 400 gallons per minute of wastewater. Such manhole and collection lines shall be

constructed at the same time as Bastrop 552, LLLP's, or its assigns', construction of the other applicable collection facilities in the affected area.

4. Effect of Transfer. Upon approval of this Agreement by the TCEQ, the Transfer Area shall be within the City's Water CCN and City's Sewer CCN and the CCN boundary between the District and the City shall be adjusted as shown on Exhibit "C". The parties agree that upon such approval, the City will have the sole right to provide water and wastewater utility service within the Transfer Area.

5. Customers in Transfer Area. The parties agree that as of the Effective Date of this Agreement, that the District has no water or sewer utility customers in the Transfer Area. The parties further agree that, between the Effective Date of this Agreement and the Transfer Effective Date, the District will not serve any new customers in the Transfer Area.

6. Facilities in Transfer Area. The parties agree that there is no transfer of facilities, waterlines, sewer lines, easements, or equipment under this Agreement.

7. Transfer Effective Date. The "Transfer Effective Date" shall be the date the TCEQ issues an order granting and/or approving the amendment of the District's Water CCN and District's Sewer CCN to the City to reflect the transfer of the Transfer Area described in paragraph 1 above to the City.

8. Related Documents. The parties covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

9. Applicable Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

10. Performance. Except for matters within the jurisdiction of the TCEQ (or its successor), any action at law or in equity brought to enforce or interpret any provision of this Agreement shall be brought in a state court of competent jurisdiction with venue in Bastrop County, Texas.

11. Entire Agreement. This Agreement contains the entire agreement by and between District, City and the Developer with respect to the subject matter of this Agreement. No agreement, statement or promise made by any party to any other party, or by or to any employee, agent or officer of any party hereto, that is not contained in this Agreement shall be valid, binding or of any force or effect. Any amendments to this Agreement must be in writing and signed by the party or parties charged.

12. Successors and Assigns. This Agreement shall be binding upon the parties and their respective successors and assigns.

13. No Third Party Beneficiaries. It is the express intention of the parties that the terms and conditions of this Agreement may be enforced by any party, but not by any third party or alleged third-party beneficiary.

14. Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

15. Covenant of Authority. The undersigned hereby represent and covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

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

IN WITNESS HEREOF, this Agreement is executed as of the 27 day of MAY, 2009, by Bastrop County Water Control and Improvement District No. 2, Bastrop 552, LLLP, and the City of Bastrop, Texas, under the authority of their respective governing bodies.

~~BASTROP COUNTY WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 2~~

CITY OF BASTROP, TEXAS *AT*

By: *Paul D. Rock*

BASTROP COUNTY WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 2 *KP*

~~CITY OF BASTROP, TEXAS~~

By: *Karen Lenciel*

BASTROP 552, LLLP

By: Harvard Investments, Inc., its general partner

By: *Chris Cacheris*

Christopher J. Cacheris, Vice President

Exhibit "A"

09/09/2008 00:32

5123211692

BCWCID2

PAGE 02/04

*file under*



JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELLORS

Jim Alsup  
(512) 236-2010 (Direct Dial)  
(512) 391-2110 (Direct Fax)  
jalsup@jw.com

September 5, 2008

RECEIVED

SEP 8 2008

BCWCID #2

Ms. Karen Pinard  
General Manager  
Bastrop County Water Control  
and Improvement District #2  
P.O. Box 708  
Bastrop, Texas 78602-0708

Re: Letter Agreement with Bastrop County WCID#2

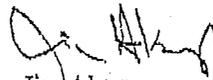
Dear Ms. Pinard:

Pursuant to your instructions, enclosed is the original Letter Agreement duly signed by all the parties.

By copy of this letter I am forwarding copies of the Letter Agreement to the other parties.

Please call if you have any questions.

Very truly yours,

  
Jim Alsup

IMA:ddw  
Enclosure

cc: Chris Cacheris *VIA EMAIL*

JoChristy Brown *VIA EMAIL*

5289852v.1

100 Congress Avenue, Suite 1100 • Austin, Texas 78701 • (512) 236-2000 • fax (512) 236-2002



# BASTROP COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #2

RECEIVED  
JUL 28 2008

BCWCID #2

Received

JUL 10 2008

Harvard Investments

July 7, 2008

Mr. Christopher J. Cacheris  
Harvard Investments  
17700 North Pacesetter Way  
Scottsdale, Arizona 85255

RE: BCWCID No. 2  
550 Acre Colorado Bend Development (CBD)

Dear Mr. Cacheris,

I would like to take this opportunity to thank you for your letter dated April 7, 2008. In your letter you requested BCWCID No.2 to begin the process of removing CBD from their water and wastewater CCN. At the BCWCID No. 2 Board meeting held on Thursday, April 17, the Board of Directors approved the request.

Prior to beginning the task of decertification, the Board would like to develop an agreement of understanding on the various issues. The issues are documented below:

1. Conditioned upon approval of the decertification of CBD from the CCN of BCWCID No. 2, Bastrop 552, LLLP ("Harvard Investments") will reimburse BCWCID No.2 the amount of \$13,799 for costs incurred to secure the CCN for the subject area;
2. Harvard Investments will reimburse BCWCID No. 2 for all costs including necessary and reasonable legal expenses and professional fees reasonably incurred by BWCID No. 2 in connection with the negotiation and reduction to a writing of an agreement with the City of Bastrop relating to the Colorado Bend Development in compliance with Section 13.255 (a) of the Texas Water Code, not to exceed \$10,000.00.
3. Harvard Investments will be responsible for all costs incurred with the decertification process with TCEQ as it relates to CBD (estimated at \$10,000).
4. Conditioned upon approval of the decertification of CBD from the CCN of BCWCID No. 2, Harvard Investments (or its assigns) will provide for a wastewater manhole, connected to its collection facilities, on Lover's Lane for future use by BCWCID No. 2. This manhole will provide for a delivery location to the City's facilities from BCWCID No.2. In addition, and conditioned upon such approval, the collection lines installed by Harvard Investments (or its assigns) downstream from such manhole shall be sized to allow for a discharge of 400 gpm from BCWCID No. 2. Such manhole and collection lines shall be constructed at the same time as Harvard's (or its assigns) construction of the other applicable collection facilities in the affected area.

5108954v.4

5. BCWCID No. 2 will not require any additional consideration for such decertification, whether from Harvard Investments or the City of Bastrop.

If Harvard Investments and the City of Bastrop are in agreement with these items, please execute below. This executed document will serve as our contract of understanding. Upon execution of this letter agreement by all parties, the decertification process can begin with the negotiation of a formal agreement to be signed by BWCID NO. 2 and the City of Bastrop agreeing to the transfer of the CCN to the City of Bastrop.

Very truly yours,

Bastrop County Water Control and Improvement District No. 2

Karen Pinard

Karen Pinard  
General Manager

KP:bms

Approved by: Bastrop 552, LLLP

By: Harvard Investments, Inc., its general partner

By:

Christopher J. Cacheris

Christopher J. Cacheris

Title: VP.

Date:

7/10/08

Approved by: City of Bastrop

By:

Michael H. Talbot

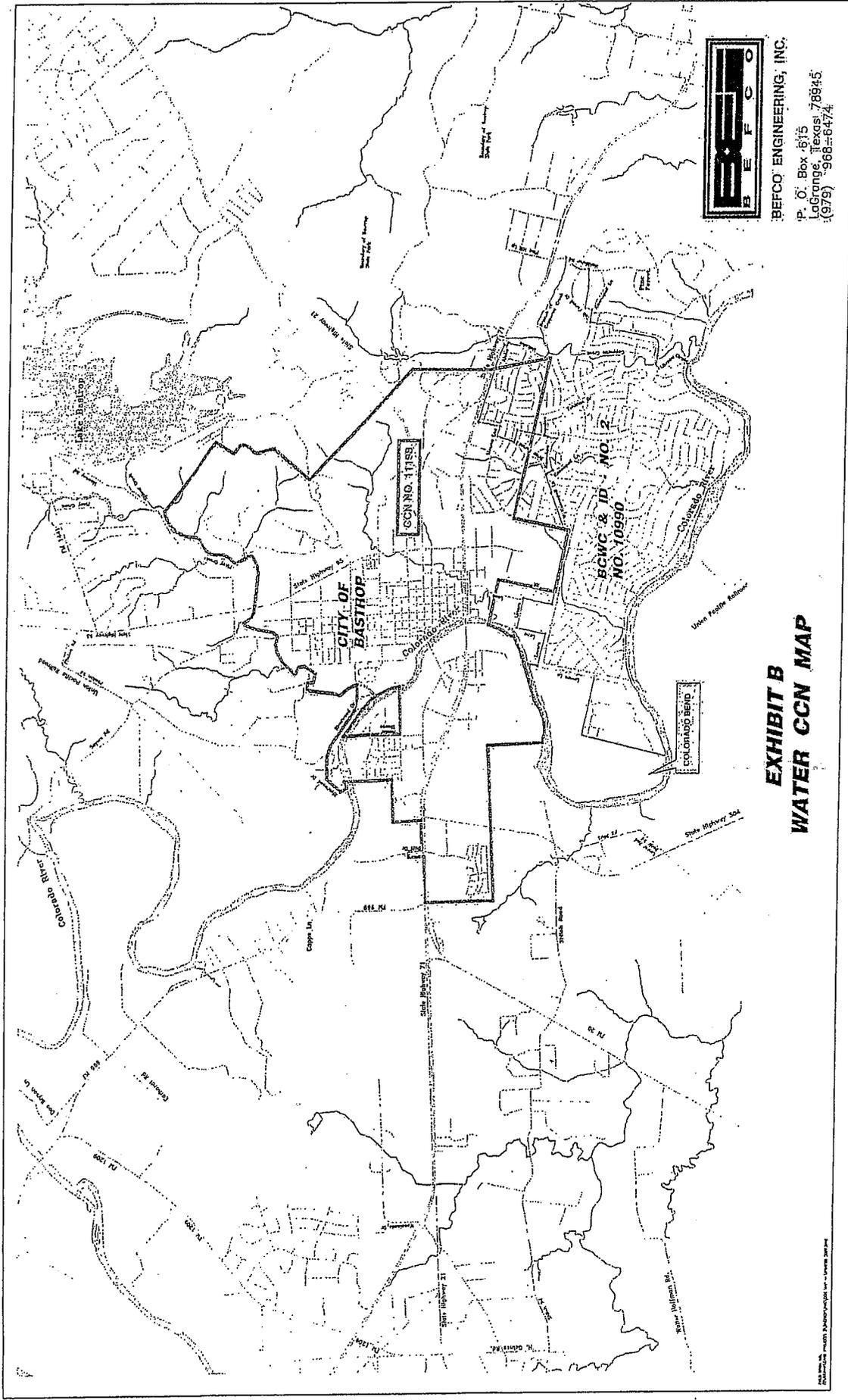
Name: Michael H. Talbot

Title: City Manager

Date:

7/22/08

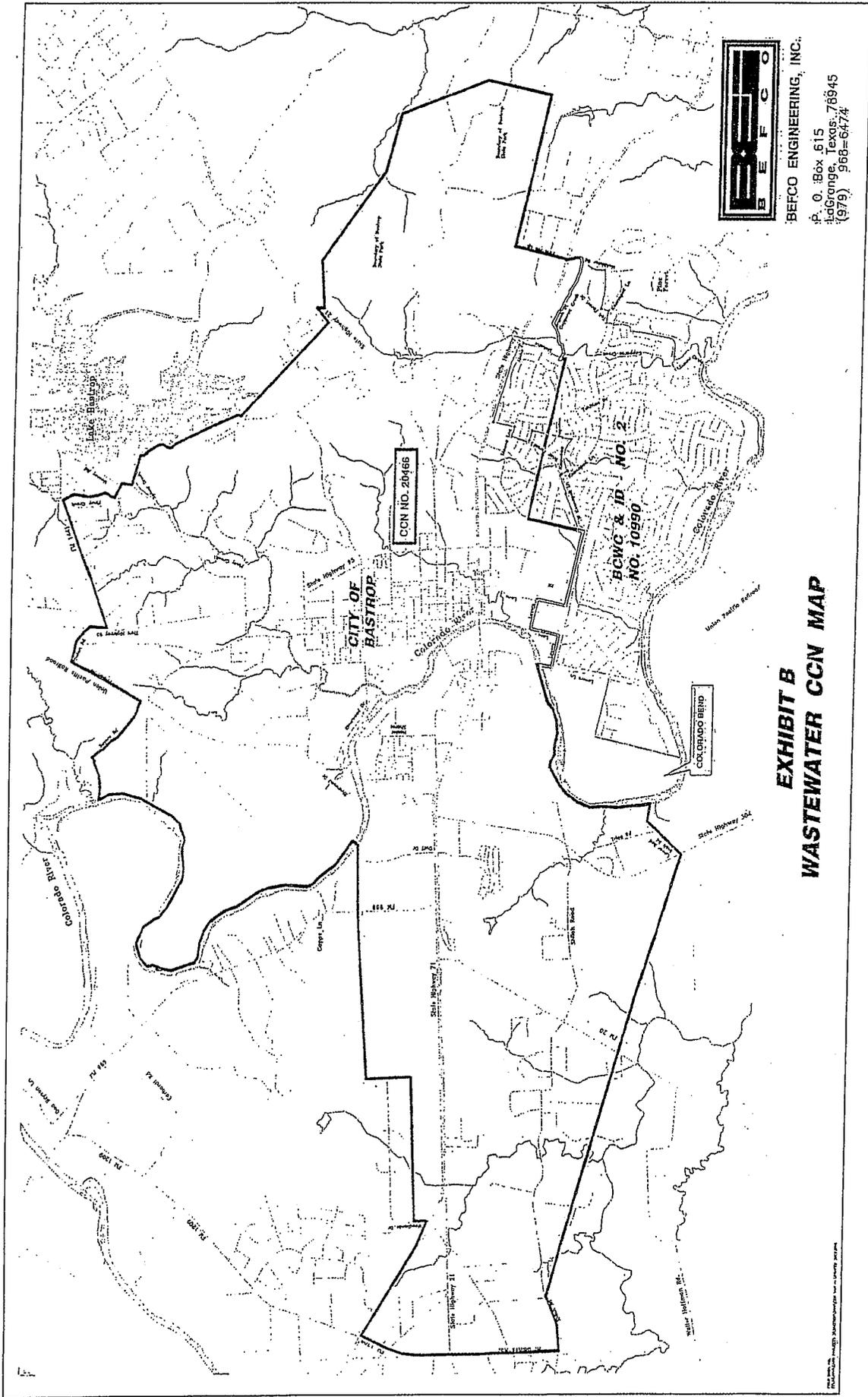
Regular mail



BEFCO ENGINEERING, INC.  
 P. O. Box 6115  
 LaGrange, Texas 78945  
 (979) 968-6474

**EXHIBIT B  
 WATER CCN MAP**

THIS MAP WAS PREPARED FOR THE CITY OF BASTROP, LOUISIANA.



BEFCO ENGINEERING, INC.  
 P. O. Box 615  
 Odessa, Texas 76845  
 (979) 966-6474

**EXHIBIT B  
 WASTEWATER CCN MAP**

DATE: 11/15/88 BY: J. W. BROWN

EXHIBIT C

Water CCN Transfer Agreement  
Estimate of Costs

1.	Costs previously incurred:	\$13,799.00
2.	Legal and professional fees:	\$ 5,200.00
3.	Decertification of Tract:	\$ 2,300.00 <sup>1</sup>
TOTAL AMOUNT TO BE DEPOSITED		\$19,531.50

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<sup>1</sup> It is our understanding that BEFCO has directly billed Bastrop 552, LLLP \$1,767.50 and such amount has been paid. This amount is not included in the total

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**TO:** Texas Commission on Environmental Quality      **DATE:** August 5, 2009  
**THRU:** LaDonna Castañuela, Chief Clerk  
**FROM:** Ruth Takeda, Environmental Law Division  
**SUBJECT:** **TCEQ Docket No. 2009-1104-UCR.** Consideration of a request for a Commission Order approving a contract designating service areas between the City of Bastrop and Bastrop County Water Control and Improvement District 2 pursuant to Texas Water Code Section 13.248.

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### DESCRIPTION OF APPLICATION

**Applicants:** City of Bastrop and Bastrop County Water Control and Improvement District 2.  
**Regulated Activity:** Retail water and sewer utility service.  
**Type of Application:** Request for a Commission order approving a contract.  
**Commission Action:** Hearing regarding approval of the contract.  
**Authority:** Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117.

### FACTUAL BACKGROUND

The City of Bastrop (City), water certificate of convenience and necessity (CCN) No. 11198, sewer CCN No. 20466, and Bastrop County Water Control and Improvement District 2 (District), water CCN No. 10990, sewer CCN No. 20961, provide retail water and sewer service in Bastrop County, Texas. On May 27, 2009, the City and the District entered into a Water CCN Transfer Agreement (Contract) regarding their respective water and sewer service areas pursuant to Section 13.248 of the Texas Water Code. Under the Contract, the District will transfer 552 acres from its CCN Nos. 10990 and 20961 to the City, thereby incorporating the area into the City's CCN Nos. 11198 and 20466. According to the Contract, there are no facilities in the area to be transferred and only one landowner in the area, who is a developer and party to the Contract. While the developer is party to the Contract, any conditions in the Contract involving the developer are matters between the City, the District, and the developer.

Both the City and the District have reviewed the CCN map to be issued with the Commission's order and have approved it.

### LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public without first obtaining a CCN.<sup>1</sup> Conversely, a municipality is not required to obtain a CCN to provide retail water service.<sup>2</sup> However, a municipality may not provide service to an area within its boundaries that is certificated to another retail public utility without first obtaining a CCN for that area.<sup>3</sup>

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area contract and have the Commission affirm the contracts by amending the entities' respective CCNs.<sup>4</sup> The request to approve a section 13.248 contract is not subject to the notice provisions of title 30, section 291.106 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area contract pursuant to Section 13.248 of the Texas Water Code with appropriate notice provided under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

### BASIS FOR STAFF RECOMMENDATION

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

1. Application for a Commission Order approving the 13.248 contract filed by the City and the District on October 29, 2008 (Application Nos. 36229-C and 36230-C);
2. Agreement between the City and the District, executed on May 27, 2009 and filed on June 1, 2009;
3. Analysis of the City's financial, managerial, and technical capability to operate in the affected area;

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<sup>1</sup> TEX. WATER CODE ANN. § 13.242(a) (Vernon Supp. 2006).

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

<sup>3</sup> TEX. WATER CODE ANN. § 13.247(a).

<sup>4</sup> TEX. WATER CODE ANN. § 13.248 (Vernon 2000); 30 TEX. ADMIN. CODE § 291.117 (West 2008). Section 13.248 states, "Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

4. Map of the service area subject to the 13.248 agreement submitted by the City.

#### STAFF RECOMMENDATION

Staff has confirmed that both parties are retail public utilities with active water and sewer CCNs, and that the area the parties seek to transfer abuts the CCN of the entity receiving the CCN. Further, staff is satisfied that the City possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred. The City already serves approximately 3,300 connections. The City's utility fund has a debt service coverage ratio of 2.00:1. The sole landowner in the area, Bastrop 552, LLLP, which has named the tract "Colorado Bend Development," has agreed to the terms of the agreement between the City and the District, and has indicated that it wishes to receive water and sewer service from the City. Therefore, based on the facts stated in the application and the supporting documentation submitted by the City, staff supports the request for a Commission Order approving a contract designating service areas between the City and the District.

#### STAFF CONTACTS

Ruth Takeda, Environmental Law Division (239-6635)  
Lisa Fuentes, Water Supply Division (239-6117)

A-153-8

Appl 36229-C (water)  
36230-C (sewer)

LF



**BEFCO ENGINEERING, INC.**  
Consulting Engineering/Land Surveying  
P. O. BOX 615 485 NORTH JEFFERSON  
LA GRANGE, TEXAS 78945-0615  
979 / 968-6474 FAX 979 / 968-3056  
www.befcoengineering.com E-mail: befcocmaaccess.com

October 27, 2008

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

**RECEIVED**  
*Check Rec'd 10/29/08*  
**OCT 29 2008**  
TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY

**RE: Colorado Bend Development**  
**CCN Transfer**  
**BEFCO Job No. 07-4545**

**Attention: Water Supply Division**

Pursuant to Texas Water Code 13.248, Bastrop County WCID No. 2 would like to transfer 552 acres (Colorado Bend Development) of their water and wastewater Certificate of Convenience and Necessity (CCN) to the City of Bastrop. Bastrop WCID No. 2 CCN no. for water is 10990 and wastewater 20961. The City of Bastrop CCN no. for water is 11198 and wastewater 20466.

Please see the attached CCN maps for the City of Bastrop and Bastrop County WCID No.2. The transfer area is shown in yellow on each water and wastewater map. In addition, we are submitting the most recent audit report for the City of Bastrop (recipient of the transfer CCN). Also, we are including for review and approval the letter of agreement between the Bastrop County WCID No. 2, Colorado Bend Development, and the City of Bastrop.

The transfer of the 552 acres will only affect the Bastrop County WCID No. 2 and the City of Bastrop. There are no affected customers on the 552-acre tract. The only affected landowner will be Colorado Bend Development and they have signed the letter of agreement. We are including a check for \$100 to TCEQ for filing fee (check no. 4080).

If you have any questions, please contact us. I am thanking you for your assistance in the transfer of the CCN (552 acres) from BCWCID No. 2 to the

City of Bastrop. As previously noted, the proposed transfer area (552 acres) is shown in yellow on the maps.

Very truly yours,

**BEFCO ENGINEERING, INC.**



**Gene Kruppa, P.E., R.P.L.S.**

GK:bms



Attachments: Maps 4 (BCWCID No. 2 CCN and City of Bastrop CCN)  
Audit – City of Bastrop  
Agreement



# BASTROP COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT #2

RECEIVED

JUL 28 2008

BCWCID #2

Received

JUL 10 2008

Harvard Investments

July 7, 2008

Mr. Christopher J. Cacheris  
Harvard Investments  
17700 North Pacesetter Way  
Scottsdale, Arizona 85255

RE: BCWCID No. 2  
550 Acre Colorado Bend Development (CBD)

Dear Mr. Cacheris,

I would like to take this opportunity to thank you for your letter dated April 7, 2008. In your letter you requested BCWCID No.2 to begin the process of removing CBD from their water and wastewater CCN. At the BCWCID No. 2 Board meeting held on Thursday, April 17, the Board of Directors approved the request.

Prior to beginning the task of decertification, the Board would like to develop an agreement of understanding on the various issues. The issues are documented below:

1. Conditioned upon approval of the decertification of CBD from the CCN of BCWCID No. 2, Bastrop 552, LLLP ("Harvard Investments") will reimburse BCWCID No.2 the amount of \$13,799 for costs incurred to secure the CCN for the subject area;
2. Harvard Investments will reimburse BCWCID No. 2 for all costs including necessary and reasonable legal expenses and professional fees reasonably incurred by BWCID No. 2 in connection with the negotiation and reduction to a writing of an agreement with the City of Bastrop relating to the Colorado Bend Development in compliance with Section 13.255 (a) of the Texas Water Code, not to exceed \$10,000.00.
3. Harvard Investments will be responsible for all costs incurred with the decertification process with TCEQ as it relates to CBD (estimated at \$10,000).
4. Conditioned upon approval of the decertification of CBD from the CCN of BCWCID No. 2, Harvard Investments (or its assigns) will provide for a wastewater manhole, connected to its collection facilities, on Lover's Lane for future use by BCWCID No. 2. This manhole will provide for a delivery location to the City's facilities from BCWCID No.2. In addition, and conditioned upon such approval, the collection lines installed by Harvard Investments (or its assigns) downstream from such manhole shall be sized to allow for a discharge of 400 gpm from BCWCID No. 2. Such manhole and collection lines shall be constructed at the same time as Harvard's (or its assigns) construction of the other applicable collection facilities in the affected area.

5108954v.4

- 5. BCWCID No. 2 will not require any additional consideration for such decertification, whether from Harvard Investments or the City of Bastrop.

If Harvard Investments and the City of Bastrop are in agreement with these items, please execute below. This executed document will serve as our contract of understanding. Upon execution of this letter agreement by all parties, the decertification process can begin with the negotiation of a formal agreement to be signed by BWCID NO. 2 and the City of Bastrop agreeing to the transfer of the CCN to the City of Bastrop.

Very truly yours,

Bastrop County Water Control and Improvement District No. 2

Karen Pinard

Karen Pinard  
General Manager

KP:bms

Approved by: Bastrop 552, LLLP

By: Harvard Investments, Inc., its general partner

By: [Signature]  
Christopher J. Cacheris  
Title: VP.

Date: 7/10/08

Approved by: City of Bastrop

By: [Signature]  
Name: Michael H. Talbot  
Title: City Manager

Date: 7/22/07

Regular mail

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division Date: January 14, 2009

Thru: Lisa Fuentes/Tammy Benter

From: Dan Smith

Subject: Contract Service Agreement Pursuant to Texas Water Code Section 13.248, from the City of Bastrop, Certificate of Convenience and Necessity (CCN) No. 11198, to Transfer a Portion of CCN No. 10990 from Bastrop County WCID 2 in Bastrop County; Application No. 36229-C

Contract Service Agreement Pursuant to Texas Water Code Section 13.248, from the City of Bastrop, Certificate of Convenience and Necessity (CCN) No. 20466 Transfer a Portion of CCN No. 20961 from Bastrop County WCID 2 in Bastrop County; Application No. 36230-C

CN: 600339568; RN: 101390789 (City of Bastrop)

CN: 600739544; RNs: 101410959 (water) and 104208285 (sewer)  
(transferor/Bastrop County WCID 2)

In my opinion, the City of Bastrop has demonstrated adequate financial, managerial and technical capability to provide service to the area contracted for transfer.

Signed: Dan Smith Date: January 14, 2009

The city of Bastrop (Bastrop) and Bastrop County WCID 2 (the district) have entered an agreement dated July 7, 2008, and acknowledged by Bastrop on July 22, 2008, to transfer 552 acres, known as the Colorado Bend Development. The owner of the property, Bastrop 552, LLLP, and its general partner, Harvard Investments, Inc., are required to reimburse the district for various costs specified in the July 7 agreement, apparently in the range of no more than \$25,000 in total. It is represented in the application that there are no affected customers.

Bastrop provides service to about 3,300 connections and is ranked superior. The  
(continued)

The City of Bastrop and Bastrop County WCID 2  
Financial and Managerial Capability Analysis of Contract Service Agreement  
Page 2

district provides service to about 1,100 connections and is also ranked superior.

I have reviewed an unqualified opinion audit for Bastrop for the fiscal year ended September 30, 2007. The balance sheet for the water and wastewater fund showed total assets of \$13.4 mil., of which \$3.2 mil. was cash or equivalents. Long-term debt was \$2.7 mil. and net assets (equity) was \$10.2 mil., for a debt-to-equity ratio of 0.26:1. The overall debt-to-equity ratio for the entire city was 0.82:1.

The statement of revenues and expenses for the water utility showed net income before transfers of \$82,997 after covering depreciation expense of \$285,505 and interest expense of \$130,634. So cash available for debt service was \$382,136. Required debt service specific for water and wastewater debt was not broken out, to be able to determine a debt service coverage ratio. The overall city debt service coverage ratio was over 2.00:1.

With no current customers and no apparent system investment by the district in the development in question, there would be little or no financial impact.

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

City of Bastrop / Bastrop County WCID No. 2  
 Water Service Areas  
 Application No. 36229-C  
 (13,248 Contract Service Agreement  
 from City of Bastrop, CCN No. 11198  
 to Transfer a Portion of CCN No. 10990  
 from Bastrop County WCID 2)  
 Bastrop County



Water CCN Service Areas  
 1198 - CITY OF BASTROP  
 10990 - BASTROP COUNTY WCID 2  
 10294 - AQUA WSC  
 \*Facilities Only\* Water CCN Service Areas  
 10294 - AQUA WSC  
 Transfer Area

Note: CCN 10294 - \*Facilities Only\*  
 See map no. 30568-A for customer locations  
 filed in TCEQ Records Office.



Map by S. Jaser, 7/10/2008  
 Data path: c:\gis\projects\bastrop\applications\36229-c.sdp  
 and 36229-c\_fac.sdp  
 Project path: c:\gis\projects\applications\36229-c.sdp

