

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 7, 2010

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. 2010-0552-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Palestine and Four Pines Rural WSC 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 as backup material for the June 2, 2010 agenda regarding the request described above:

1. Proposed Order, with the Texas Water Code Section 13.248 contract and map attached to it;
2. Interoffice Memorandum containing an Executive Summary;
3. Application for a Commission order approving a Texas Water Code Section 13.248 contract filed on November 12, 2009;
4. Letters of agreement between Four Pines Rural WSC and three of its customers;
5. Interoffice Memorandum containing analysis of the City of Palestine's financial, managerial, and technical capability;
6. Consents to the map of the area covered by the Agreement.

Respectfully submitted,

A handwritten signature in black ink that reads "Ruth A. Takeda".

Ruth A. Takeda, Staff Attorney
Environmental Law Division

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 7, 2010

Mr. Roger Smith
J.F. Fontaine & Associates, Inc.
P.O. Box 4187
Palestine, Texas 75802

Mr. John Rosier, President
Mr. Leslie Starr, Chief Operator
Four Pines Rural WSC
905 Bassett Rd.
Palestine, Texas 75803

Mr. R. Dale Brown, City Manager
City of Palestine
504 N. Queen St.
Palestine, Texas 75801

Mr. Roger L. Sedgwick, Utility Director
City of Palestine
504 N. Queen St.
Palestine, Texas 75801

Mr. Ronald D. Stutes
Attorney for City of Palestine
P.O. Box 359
Tyler, Texas 75710

Mr. James E. Thomas, Jr.
1641 ACR 385
Palestine, Texas 75801

Mr. B.C. Lively
103 Edna Dr.
Palestine, Texas 75803

Mr. W.T. Ashley
4631 ACR 370
Palestine, Texas 75801

Re: TCEQ Docket No. 2010-0552-UCR. Consideration of a request for a Commission Order approving a contract designating service areas between the City of Palestine and Four Pines WSC pursuant to Texas Water Code Section 13.248.

Dear Mr. Smith, Mr. Brown, Mr. Rosier, Mr. Starr, Mr. Sedgwick, Mr. Stutes, Mr. Livley, Mr. Ashley, and Mr. Thomas:

This letter is to inform you that the above-referenced application has been set on the agenda for consideration by the Texas Commission on Environmental Quality (Commission). This agenda will occur on June 2, 2010, beginning at 9:30 a.m. in Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. Included with this letter are the agenda backup materials to be considered by the Commission. One of you will need to attend the agenda to explain the contract and to answer any questions the Commissioners may have. I understand that Mr. Leslie Starr, or one of the board members of Four Pines Rural WSC, will be attending. There is no need for anyone else to attend, though all are welcome.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the Agenda should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-

RELAY-TX (TDD) at least one week prior to the hearing. If you have any questions about this matter, you may contact Heidi Graham from the Water Supply Division at 1-512-239-0844, or me at 1-512-239-6635.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth A. Takeda". The signature is written in a cursive style with a large initial "R" and "T".

Ruth A. Takeda
Staff Attorney
Environmental Law Division

Enclosures

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

APPROVING A CONTRACT DESIGNATING SERVICE AREAS BETWEEN THE CITY OF PALESTINE AND FOUR PINES RURAL WSC PURSUANT TO TEXAS WATER CODE SECTION 13.248; TCEQ DOCKET NO. 2010-0552-UCR.

A request for a Commission Order approving a contract designating service areas in Anderson County between the City of Palestine (City), Certificate of Convenience and Necessity (CCN) No. 12135, and Four Pines Rural WSC (WSC), CCN No. 11239, 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 November 9, 2009, the City and the WSC executed an "Agreement to Transfer Territory from Certification of Convenience and Necessity No. 11239 to CCN No. 12135" (Contract) regarding their respective water service areas. The Contract addresses the transfer of the WSC's authority to provide water and sewer service to approximately 6.28 acres and provides that the City will be the sole provider of retail water service in that service area. There are three customers in the area to be transferred. All three customers have requested retail water service from the City. 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 WSC in the Contract.

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 Section 13.248.

The Commission held a hearing on the request at the June 2, 2010 agenda and found that the request had merit.

The City is capable of rendering continuous and adequate water service to every customer in the area covered by the Contract. The decertification of the WSCs 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 WSC's CCN No. 11239, and designating that retail water service shall be provided by the City, CCN No. 12135, in that area are hereby approved.
2. CCN No. 12135 in Anderson County, held by the City, is hereby amended in accordance with the Contract.
3. CCN No. 11239 in Anderson County, held by the WSC, is 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 as Exhibit 2, and to amend the Commission's official water service area map for Anderson County, Texas. The certificate amendments requested in this application are 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

For the Commission

AGREEMENT TO TRANSFER TERRITORY
FROM CERTIFICATION OF CONVENIENCE
AND NECESSITY NO. 11239 TO CCN NO. 12135

This Agreement is between the Four Pines Water Supply Corporation ("Four Pines" CCN No. 11239) and the City of Palestine, Texas ("City" CCN No. 12135).

1. Four Pines wishes to transfer to the City certain territory within the territory covered by the Certificate of Convenience and Necessity ("CCN") issued by the Texas Commission on Environmental Quality ("TCEQ"), according to Sec. 13.248. Contracts valid and enforceable.

2. The territory to be transferred ("Transferred Territory") is the territory that covers the following addresses:

- a. 4601 West Oak Street (Mr. B.C. Lively)
- b. 4711 West Oak Street (Mr. W.T. Ashley)
- c. 4721 West Oak Street (Mr. W.T. Ashley)
- d. 4805 West Oak Street (Mr. James E. Thomas, Jr.)

3. The City agrees to extend service to the Transferred Territory. The cost to extend service that would be charged under the standard tariff adopted by the City Council is \$ 2,780.00. This cost will be borne by Four Pines, and is payable within ten business days of the acceptance of this Agreement by the TCEQ.

4. The city will extend service within 7 days of the acceptance of this Agreement, unless such extension is delayed due to weather conditions or similar unforeseen circumstances beyond the City's control.

5. Four Pines will file the necessary paperwork with the TCEQ to remove the Transferred Territory from its CCN. Four Pines will provide the City with a copy of all documentation submitted to and received from the TCEQ.

6. The parties covenant that the person signing this Agreement has all necessary authority from the governing board of the entity represented.

EXECUTED this 9th day of November, 2009.

CITY OF PALESTINE, TEXAS

FOUR PINES WATER SUPPLY



R. Dale Brown
City Manager



John Rosier
President

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** May 7, 2010
THRU: LaDonna Castañuela, Chief Clerk
FROM: Ruth Takeda, Staff Attorney, Environmental Law Division
SUBJECT: **TCEQ Docket No. 2010-0552-UCR.** Consideration of a request for a Commission Order approving a contract designating service areas between the City of Palestine and Four Pines Rural WSC pursuant to Texas Water Code Section 13.248.

DESCRIPTION OF APPLICATION

Applicants: City of Palestine and Four Pines Rural WSC.
Regulated Activity: Retail water 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 Palestine (City), certificate of convenience and necessity (CCN) No. 12135, and Four Pines Rural WSC (WSC), CCN No. 11239, provide retail water service in Anderson County, Texas. On November 9, 2009, the City and the WSC entered into an "Agreement to Transfer Territory from Certification of Convenience and Necessity No. 11239 to CCN No. 12135" (Contract) regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. The WSC is certificated for facilities plus 200 feet in this service area. Under the Contract, the WSC will transfer approximately 6.28 acres from its CCN No. 11239 to the City, thereby incorporating the area into the City's CCN No. 12135. According to the Contract, no facilities in the area will be transferred. The 2" line currently serving three WSC customers in the area must be relocated due to widening of U.S. Highway 79 South by the Texas Department of Transportation within City limits – the relocated 2" water line will stop short of these three customers and the existing 2" line will be abandoned by the WSC. These customers wish to receive retail water service from the City and will be connected to a City line. One of the customers receives water service at two different addresses.

Both the City and the WSC 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.¹ Conversely, a municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to an area within its boundaries that is certificated to another retail public utility without first obtaining a CCN for that area.³

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area contracts and have the Commission affirm the contracts by amending the entities' respective CCNs.⁴ 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 WSC on November 12, 2009 (Application No. 36554-C);
2. Agreement between the City and the WSC, executed on November 9, 2009;
3. Letters of agreement between the WSC and the following WSC customers:

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

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

³ TEX. WATER CODE ANN. § 13.247(a).

⁴ 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."

- a. B.C. Lively at 4601 W. Oak St.;
 - b. W.T. Ashley at 4711 and 4721 W. Oak St.;
 - c. James E. Thomas, Jr., at 4805 W. Oak St.;
4. Analysis of the City's financial, managerial, and technical capability to operate in the affected area;
 5. Map of the service area subject to the 13.248 agreement.

STAFF RECOMMENDATION

Staff has confirmed that both parties are retail public utilities with active water CCNs, that the area the parties seek to transfer is currently certificated to the WSC as facilities plus 200,' and that the area is within the City's corporate limits. No facilities are being transferred – only the service area for the three identified customers. 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 6,843 connections. The City's utility fund has a debt service coverage ratio of 2.42:1. The three customers in the area being transferred have indicated that they wish to receive water service from the City. Therefore, based on the facts stated in the application and the supporting documentation submitted by the applicants, staff supports the request for a Commission Order approving a contract designating service areas between the City and the WSC.

STAFF CONTACTS

Ruth Takeda, Environmental Law Division (239-6635)
Heidi Graham, Water Supply Division (239-0844)

J.F. FONTAINE & ASSOCIATES, INC.

CONSULTING ENGINEERS

P.O. Box 4187
Palestine, Texas 75802

Telephone (903) 729-6005
Fax (903) 729-7310

November 3, 2009

Ms. Tammy Benter, Team Leader
TCEQ - Utility & District Section
Water Utilities Division - MC 153
P.O. Box 13087
Austin, Texas 78711-3087

Re: Four Pines Water Supply Corporation - PWS ID # 0010020
CCN No. 11239
Sec. 13.248 Contracts Valid and Enforceable

Dear Ms. Benter:

We have been advised that the Texas Department of Transportation is planning on widening U.S. Highway 79 south from within the city limits of Palestine, Texas. The Four Pines W.S.C. and the City of Palestine currently have adjacent water lines serving their respective customers within this area under a dual certification.

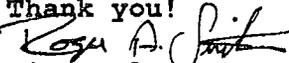
Four Pines W.S.C. is having to relocate their 2" water line due to the construction. Three (3) customers currently being served by Four Pines have requested that once has the lines are relocated, that they be switched to the City of Palestine line. One (1) of these customers has two (2) meters. Four Pines has agreed to their request. Four Pines also agreed to pay the City's \$ 575.00 per customer tap fee and a \$ 120.00 per customer deposit for a total of \$ 2,780.00. The relocated Four Pines 2" water line will stop short of the transferred customers and the existing 2" line will be abandoned.

For your review, please find enclosed one (1) original and three (3) copies each of the following:

1. An Agreement to Transfer Territory
2. Letters of Agreement from the customers requesting transfer of services providers.
3. Location maps (with one (1) disc)

I Have also obtained and enclosed one (1) copy of the City's financial report. We respectfully request that this transfer of customer service be approved as all parties are in a agreement. Please call if you should have any questions or require further information or documentation.

Thank you!


Sincerely,

Roger A. Smith, Project Manager
RAS/ela

cc: Four Pine W.S.C.
City of Palestine
Ron Stutes, Attorney at Law

2009 NOV 12 PM 3:51

RECEIVED
TCEQ WATER SUPPLY

HG

Four Pines Water Supply
905 Bassett Rd.
Palestine ,TX 75803
903-723-5704

Act # 566e

Letter of Agreement

August 11th 2009

Re : B.C. Livley

I B.C. Livley agree to have my water service at 4601 W. Oak St. transferred to the City of Palestine. I agree to pay the final bill when the change is made. I acknowledge that my membership with Four Pines Water Supply will be canceled. Upon doing this Four Pines Water Supply will pay for Transfer, Tap, and Deposit fee's. After the change, Four Pines Water Supply will no longer be responsible for my water service.

IN WITNESS WHEREOF the said persons have executed this instrument this 26th day of August, 2009.

X B. C. Lively

ACKNOWLEDGEMENT

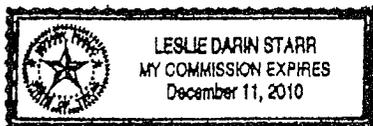
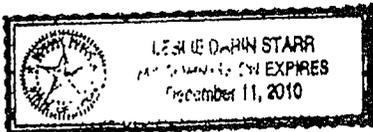
STATE OF TEXAS
COUNTY OF Anderson.

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared B. C. Lively known to me to be the person(s) whose name(s) the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 26th day of August, 2009.

Leslie Starr
(Seal)

Anderson County, Texas
(Notary Public in and for)



Four Pines Water Supply
905 Bassett Rd.
Palestine ,TX 75803
903-723-5704

ACA # 564

Letter of Agreement

August 11th 2009

Re : W.T. Ashley

I W.T. Ashley agree to have my water service at 4711(house) and 4721(building) W. Oak St. transferred to the City of Palestine. I agree to pay the final bill when the change is made. I acknowledge that my memberships with Four Pines Water Supply will be canceled. Upon doing this Four Pines Water Supply will pay for Transfer, Tap, and Deposit fee's. After the change, Four Pines Water Supply will no longer be responsible for my water service.

Note : The membership at 4607 (vacant)W. Oak St. has already been canceled.

IN WITNESS WHEREOF the said persons have executed this instrument this 26th day of August, 2009.

William T. Ashley

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF Anderson.

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared William T. Ashley known to me to be the person(s) whose name(s) the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 26th day of August, 2009.

Leslie Starr
(Seal)

Anderson County, Texas
(Notary Public in and for)



Four Pines Water Supply
905 Bassett Rd.
Palestine ,TX 75803
903-723-5704

pt # 562

Letter of Agreement

August 11th 2009

Re : James E. Thomas Jr.

I, James E Thomas Jr agree to have my water service at 4805 W. Oak St.(house) transferred to the City of Palestine. I agree to pay the final bill when the change is made. I acknowledge that my membership with Four Pines Water Supply will be canceled. Upon doing this Four Pines Water Supply will pay for Transfer, Tap, and Deposit fee's. After the change, Four Pines Water Supply will no longer be responsible for my water service.

Note: 4807 W. Oak St.(shop) is already on the city water. Mr. Thomas has been promised a meter by the city when they put the line in. Four Pines Water will only pay for the existing tap.

IN WITNESS WHEREOF the said persons have executed this instrument this 27th day of August, 2009.

James E Thomas Jr.

ACKNOWLEDGEMENT

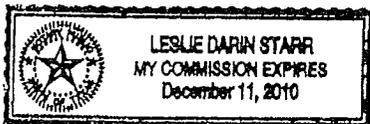
STATE OF TEXAS
COUNTY OF Anderson.

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared James E. Thomas known to me to be the person(s) whose name(s) the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 27th day of August, 2009.

Leslie D. Starr
(Seal)

Anderson County, Texas
(Notary Public in and for)



Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division **Date:** March 24, 2010
Thru: Heidi Graham/Tammy Benter
From: Dan Smith *DS*
Subject: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from the City of Palestine, Certificate of Convenience and Necessity (CCN) No. 12135, to Transfer a Portion of CCN No. 11239 from Four Pines Rural Water Supply Corporation (WSC), in Anderson County; Application No. 36554-C

CN: 600622922; RN: 101174787 (City of Palestine)
CN: 600624043; RN: 101242873 (Four Pines Rural WSC)

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

Signed: _____ Date: March 24, 2010

The City of Palestine and Four Pines Rural WSC have entered an agreement to transfer what amounts to approximately eight acres of Four Pines' "facilities plus 200 feet," CCN area, to the City of Palestine's CCN area. The area includes four or five current customers, and is now within the city limits of Palestine.

Palestine provides service to about 7,300 connections in its public water system, and is ranked superior. Only a portion of that number and service area is within the 1,173 acres of a water CCN which runs along outer loop 256 on the southern edge of the city. The city does not have a wastewater CCN, but has two enforcement agreed orders, apparently for wastewater violation, in dockets 2009-0659-MWD-E and 2009-0817-PWS-E.

Four Pines Rural WSC provides service to 1,083 connections on it's "facilities plus 200 feet," CCN area.

(continued)

The information provided included an unqualified opinion audit for the City of Palestine, for the fiscal year ended September 30, 2007. The statement of net assets (balance sheet) for the proprietary funds showed total assets of \$11.1 million in water and \$19.9 million in wastewater. Term debt was \$2.5 million in water and \$14.4 million in wastewater. Total net assets (equity) in water was \$8.0 million and in wastewater was \$4.7 million, for ratios of debt to equity of 0.31:1 and 3.08:1, respectively.

The statement of revenues and expenses for water and wastewater operations showed a change in net assets (net profit, or loss if in parentheses) of (\$166,374) in water and \$375,123 in wastewater. These figures were net of, respectively, depreciation expense of \$364,478 and 526,715, and interest expense of \$112,026 and \$430,593. So, cash available for debt service in water was \$310,130 and for wastewater, was \$1,332,431. The total of those two, \$1,363,444, is still less than required proprietary fund principal and interest debt service for the following year, of \$1,430,720.

However, general revenues, primarily from taxes, exceeded total expense for the city, so that an "overall" ratio of debt service coverage, on all debt including general obligation and capital leasing, is 2.42:1.

The effect on Four Pines Rural WSC is apparently not material, as we are informed the WSC has agreed to pay the costs for the customers to connect to the city's lines.

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

CONSENT FORM

Applicant's Name: City of Palestine/Four Pines Rural WSC 13.248 Agreement
Application No.: 36554-C

- I concur with the map created 3/24/2010 as a result of the above mentioned application.
- I do not concur with the map created 3/24/2010 and intend to respond by letter dated _____.

I am authorized by the Four Pines Rural WSC, to sign this form.

Signature: John P Rosier

Printed Name: John P Rosier

Relationship to Applicant: Resident

Date signed: 3-30-2010

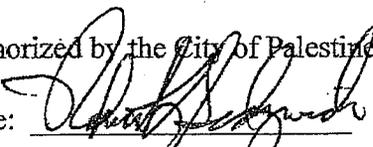
Mail to or fax to:
Heidi Graham
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972

CONSENT FORM

Applicant's Name: City of Palestine/Four Pines Rural WSC 13.248 Agreement
Application No.: 36554-C

- I concur with the map created 3/24/2010 as a result of the above mentioned application.
- I do not concur with the map created 3/24/2010 and intend to respond by letter dated _____.

I am authorized by the City of Palestine, to sign this form.

Signature: 

Printed Name: Robert L. Sedgwick

Relationship to Applicant: Utility Director, City of Palestine

Date signed: 3-30-2010

Mail to or fax to:
Heidi Graham
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972