

**SOAH DOCKET NO. 582-10-1868  
TCEQ DOCKET NO. 2009-1865 UCR**

<b>APPLICATION OF EAST CEDAR</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>CREEK FRESH WATER SUPPLY</b>	<b>§</b>	
<b>DISTRICT, CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>(CCN) NO. 11682, TO ACQUIRE</b>	<b>§</b>	<b>OF</b>
<b>FACILITIES AND TRANSFER A</b>	<b>§</b>	
<b>PORTION OF CCN NO. 11206 FROM</b>	<b>§</b>	
<b>THE CITY OF MABANK AND TO</b>	<b>§</b>	
<b>AMEND ITS CCN NO. 11682, LOCATED</b>	<b>§</b>	
<b>IN HENDERSON COUNTY,</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

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**GUN BARREL CITY’S EXCEPTIONS  
TO  
PROPOSAL FOR DECISION  
AND  
PROPOSED ORDER**

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TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The City of Gun Barrel City, Protestant in these proceedings, submits the following Exceptions to the Proposal for Decision and Proposed Order presented in these proceedings.

**I.**

**INTRODUCTION TO EXCEPTIONS**

East Cedar Creek Fresh Water Supply District (ECCFWSD) and the City of Mabank (Mabank) seek Commission approval and the granting of their Application for the Sale and Transfer of a portion of Mabank’s retail water distribution facilities, service area, customers, and CCN within the municipal and extraterritorial boundaries of the City of Gun Barrel City (GBC)

under Texas Water Code Sections 13.301 and 13.246. The Executive Director supports the Application and the SOAH Administrative Law Judge has recommended that the Commission grant the Application as requested. GBC is a home rule Texas municipality and has protested the Application because the granting of the Application is neither in the public interest nor is it necessary for the “service, accommodation, convenience, or safety of the public,” as required by the Texas Water Code. As demonstrated in the hearing conducted, the proposed transfer will reduce both the level and quality of service from what Mabank’s GBC customers currently receive and far less than what GBC’s and its constituents require, will compromise public health and safety, and retard growth in the proposed service area, the most accelerated growth location in all of Henderson County. From a strictly legal standpoint, the Applicants failed to meet their burden of proof under applicable statutory and regulatory standards. From a public interest standpoint, the record review provided by the PFD is woefully inadequate, placing the burden of proof on GBC rather than the Applicants and relying upon unproven assumptions and erroneous recitations of fact as the basis for the Proposed Order. The Proposed Findings and their recital support in the PFD complained of by these Exceptions primarily address the impacts associated with the proposed facilities and customers transfer and CCN amendment as detailed below.

## **II.**

### **IMPACTS OF THE PROPOSED TRANSFER**

Water utilities generally are required by the Commission's Rules to maintain facilities having a continuous supply capacity of at least 0.6 gallons per minute (gpm) per connection under 30 TAC 290.45. Mabank secured a waiver from the TCEQ for this requirement such that its supply capacity requirement was reduced to 0.53 gpm per connection. [Tr. p 153] Recently, Mabank's water system usage under such waiver was found to exceed 85% of its supply capacity under the Commission's Rule 291.93(3) by 1% [Tr. p 159], necessitating the submittal of a "planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area (including) projections of cost and expected design and installation dates for additional facilities."

Mabank sought a waiver from such requirements proposing to reduce its supply requirement to 0.45 gpm per connection, but such request was denied by the TCEQ [ Tr. p 160]. In lieu of providing the Rule 291.93(3) planning report and ultimately expanding its supply capacity, Mabank proposes reduce its customer base by transferring the GBC portion of its service to ECCFWSD. [Tr. p 154]

ECCFWSD's water system has operated under a waiver from the Commission's 0.6gpm per connection requirement in Rule 290.45 since approximately 1993, when ECCFWSD was allowed to maintain a supply capacity of 0.45 gpm per connection in lieu of the customary 0.6 gpm standard. [ED Exh. 1] As stated in the PFD, such waiver was granted because "the area (served by ECCFWSD) consists of scattered lakeside communities, whose water demand is lower than normal." [PFD @ 10] However, the area sought to be certificated to ECCFWSD in this docket is an urbanized portion of a home rule city, not scattered and sparsely populated rural lakeside communities, and neither ECCFWSD nor Mabank presented any evidence of the water demand associated with the area to be acquired. Hence, there is no evidentiary support for any

determination that there will be no adverse impact upon the transferred customers and service area resulting from the substitution of ECCFWSD's 0.45gpm minimum customer supply requirement for Mabank's 0.53gpm for supply requirement, particularly when Mabank's own request for a similar reduction was denied by the Commission due to the area's density and urban water demand and when the standard requirement for public water systems is 0.6 gpm under Rule 290.45.

The reduction in the service level standard from 0.53gpm to 0.45gpm associated with the transfer is not the only service reduction impact associated with the Application. Even under the ED's analysis, ECCFWSD will be subject to the Commission's 291.93(3) 85% Rule reporting, planning and expansion requirements upon initiation of service to the proposed area, with no existing plans of any sort as to how or when such deficiency might be addressed and no cost estimates or any other evidence to support ECCFWSD's willingness and ability to undertake the improvements needed to bring the proposed service area into compliance with Commission Rules. Under the ED's own analysis recognized by the PFD, the addition of Mabank's 900+ existing GBC customers and service area to ECCFWSD's Brookshire plant's current 3706 active connections under a 0.45 gpm per connection standard will cause ECCFWSD's raw water intake structure of 3.0 MGD to be at nearly 100% of its rated capacity, its elevated storage facilities at 92% of their capacity and its service pumps to be in excess of 85% of their capacity. [ED Exh. 1] The PFD opines that ECCFWSD is not required to file an 85% Rule Report and plan until such time as it actually exceeds such 85% capacity. However, it is ECCFWSD which is applying for the proposed transfer that make it subject to the same 85% Rule which Mabank seeks to avoid by the proposed transfer. More significantly, the PFD simply ignores the Commission's Rules governing CCN amendments. Under Commission Rule 291.105(a),

To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission...:

(6) a capital improvements plan, including a budget and estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to maps showing where such facilities will be located to provide service;

(7) a description of the sources of funding for all facilities;

(10) to the extent known, a description of current and projected land uses, including densities; and

(14) (B) other information that indicates the applicant is in compliance with §291.93 of this title (relating to Adequacy of Water Utility Service) for the system.

Contrary to the requirements of Rule 291.105, ECCFWSD submitted no capital improvements plan, budget, construction time line, sources of funding, or description of current and projected land uses and densities for the transfer area, much less a Rule 291.93 “planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area (including) projections of cost and expected design and installation dates for additional facilities” that will be necessitated upon commencement of service to the proposed transfer area on account of the 85% Rule. Indeed, the only improvements contemplated by the Application were the interconnects between ECCFWSD’s system and the Mabank system to be transferred which were to be funded by a Texas Water Development Board (TWDB) loan. No information was presented either by the Application nor by evidence in the record as to a written plan, cost, budget, funding source or construction time line for expanded raw water intake capability, elevated storage facilities or service pumps that will be needed for the area.

The ALJ’s PFD also mistates the record when she suggests that ECCFWSD’s current refurbishing of two of its filters will, when completed, bring the capacity of the Brookshire Plant up from 2.0MGD to 3.0 MGD. One half of the Brookshire Plant was taken

out of service in 2008 because of long term TCEQ documented deficiencies since at least 2001 in the filtration and clarification processes. The filters have been in the refurbishing stage since 2008; however, the primary clarifier has not been refurbished or restored to service and such work will not likely be undertaken before 2012, and is wholly dependent upon ECCFWSD Board approval and funding. [TR 89-90]. Without a rehabilitated or replaced primary clarifier, the two refurbished filters are useless. With half of the Brookshire plant out of service, the plant maintains a capacity of 2.0 MGD, not 3.0 MGD. [Id.] Contrary to the PFD's recital, the Brookshire plant will not be up to 3.0 MGD within a matter of months and the refurbishing is not a mere temporary situation. TCEQ notices of violation for such deficiencies have been ongoing since 2001, the refurbishment in question alone is requiring at least 4 years and that time-line is totally dependent upon Board action to approve and fund its completion. As stated by ECCFWSD's General Manager at page 70-71:

22 Q You indicated that the -- that your Brookshire  
23 water treatment plant had undergone some  
expansions and  
24 that it is now rated at 3 million gallons per  
day. Is  
25 that correct?  
A It is -- I believe I'll leave that to my  
2 engineer to answer that question completely. I  
mean,  
3 I've already stated, with the two clarifiers,  
that we  
4 were able to produce 2 MGD. But as we're into  
the  
5 refurbishing of those filters, we are going to  
be a

6 point -- I believe I stated 2012, that we  
would be in  
7 full production for capability of 4 MGD. Of  
course,  
8 that all depends on board decisions, through  
my  
9 recommendation and engineer studies.  
10 Q Okay. And how long have the two filters --  
the  
11 older filters been taken out of service for  
12 refurbishing?  
13 A To the best of my knowledge, since that  
14 question was just asked to me -- but I  
believe it was  
15 2009. It could be the fall of 2008. I'm not  
too sure.  
16 I'd have to go back and find out when those  
filters were  
17 completed. They were still in operation  
during that  
18 process, but they weren't completely taken  
offline until  
19 we was comfortable with the flows and the  
designs and  
20 meet the specifications of that contractor.  
21 Q When were the new filters put in and  
installed?  
22 A I think it was 2008, but I'd have to again  
go  
23 back and look at my records to be sure.  
24 Q So somewhat close in time to the  
installation  
25 of the new filters, the old filters were  
taken out for

1 refurbishing?

2 A That's correct. And they were refurbished in  
3 about three phases.

4 Q And leaving aside the question of the  
filters,

5 which the new ones that are in place have a 2  
MGD

6 capacity, the remainder of the treatment plant  
with

7 clarifiers in place would have a capacity of 3  
million

8 gallons per day. Is that your testimony?

9 A No. My testimony right now is that our

10 facility, where we're at on our refurbishing,  
is capable

11 of producing 2 MGD a day.

As stated by ECCFWSD's Engineer at pages 89-90:

Yes. Well, like Bill had discussed this

6 morning, they're in the process of  
refurbishing the two

7 oldest filters in the treatment train, and  
that's what

8 you've got to think about when you talk about  
this plant

9 is, you've got essentially two plants in one,  
you know,

10 half the capacity on one side and half the  
capacity is

11 on the other, so a couple of years ago we  
completed the

12 construction of a second primary clarifier  
and a second  
13 set of new filters which allowed the plant to  
-- which  
14 allowed the operators, and the management, to  
take off  
15 one half of the plant to do the refurbishing  
that's  
16 underway right now.  
17 So the train that's in operation today has  
18 a capacity of two MGDs. The raw water pump  
station can  
19 pump up to 3 million gallons a day if it's  
required. Of  
20 course, it's unable to be pushed through  
because the  
21 plant can only -- or that train can only do 2  
MGDs, so  
22 if you want to say one has the capacity as of  
today it's  
23 2 MGDs for that plant.  
24 Q All right. And what is the time frame and  
what  
25 needs to be done to increase the capacity?  
1 A Well, the capacity is already there. It's  
2 placing the other half of the plant online  
that is the  
3 question, and they are in the process now of  
finishing  
4 up the refurbishing of the two filtered units.  
The next  
5 step in the process will be to refurbish the  
upstream

6 primary clarifier which is the old clarifier  
in the  
7 plant. And like Bill had mentioned, I think  
they're  
8 going to do that in 2012 pending approval by  
the board  
9 and the allowance of expenditures for funds,  
you know.  
10 I mean, they've got a budget for that kind of  
activity,  
11 but it's in -- it is a scheduled event that  
will occur,  
12 it's just a matter of when.

Moreover, the PFD appears to ignore the fact that ECCFWSD does not propose to postpone the proposed transfer until it has completed the long awaited rehabilitation of its water treatment facilities...it proposes to commence service to GBC with only a 2.0 MGD plant. Indeed, according to its General Manager, once the Application is approved, ECCFWSD proposes to commence service to over 65% of the transferred customers within 90 days. [Tr. 14-15] A 2.0 MGD plant can only deliver 1389 gallons per minute. With ECCFWSD's 3706 current connections served by the Brookshire Plant, the maximum delivery flow rate per customer, without reduction for system losses, is only 0.375 per connection. The proposed transfer, without system losses or customer growth, of 900 GBC area customers from Mabank's service area will result in a maximum delivery flow rate of only 0.308 gpm per connection. If

system water losses are considered, which ECCFWSD's financial report attached to Mr. Goheen's testimony states as 24% in the last fiscal year reported [p. 36, item #4], the maximum available flow per connection under the proposed transfer, without any growth in the customer base, will be only 0.234 gpm – just 44% of the per connection flow requirement which Mabank currently meets under its 0.53 gpm waiver standard. It is unreasonable and not in the public interest to authorize the transfer of Mabank's GBC customers to ECCFWSD under such circumstances.

While both Mabank and ECCFWSD derive their water supply from the same source – East Cedar Creek Reservoir, Mabank's water system does not have chronic disinfectant byproduct violations. ECCFWSD's system does. While ECCFWSD should be commended for attempting to reduce the trihalomethane and haloacetic contamination of its drinking water supply, the proposed transfer would implicitly force GBC area water customers to known and documented carcinogenic exposure in their drinking water. Such is not in the public interest and is certainly inconsistent with the Commission's duty in granting such an application to determine that the proposed transfer is necessary for the service, accommodation, convenience and safety of the public.

While the PFD focuses on the potential for a reduction in water rates resulting from the proposed transfer, it dismisses the degradation in both the level and quality of service that will likely result without substantial expenditures by ECCFWSD to upgrade its supply and distribution facilities to meet Commission requirements. To avoid violations of the Commission's 85% Rule, ECCFWSD will be required to increase its raw water intake capacity, its treatment capacity, its elevated storage and its service pumps. ECCFWSD presented no plans or cost projections for these improvements. Without valid cost calculations and how ECCFWSD proposes to meet such costs through customer rate increase supported bond issues or self funding, any comparison of ECCFWSD's current rates with those of Mabank is meaningless, since the impact upon the ratepayers can not be assessed until such cost studies are performed.

In the totality of considerations mandated by Texas Water Code Sections 13.246 and 13.301, the pending Application must fail because the Applicants, even with the aid and assistance of the ED, have failed to meet their burden of proof that the proposed transaction is in the public interest and necessary for the service, accommodation, convenience and safety of the public. The proposed transfer entails a reduction in the currently applicable minimum water supply capacity standard of Mabank's 0.53 gpm to ECCFWSD's standard of 0.45 gpm without any evidence presented as to the impact of such a reduced standard or why same would be in the

public interest. The proposed transfer entails a reduction in the quality of drinking water to be supplied from one which is compliant with State and Federal Drinking Water Act standards to one which has been plagued with carcinogenic disinfectant byproduct contamination violations for many years which still have not been resolved. The PFD's suggestion that these violations have been addressed because ECCFWSD are taking training classes in disinfection by-products is no assurance that their drinking water is any less contaminated with carcinogens. No evidence was presented as to why such a reduction in the quality of water supplied is in the public interest or enures to the betterment of the customers to be transferred.

The proposed transfer entails a near immediate substitution of water systems from one which currently provides at least 0.53 gpm of flow per connection to one which is only presently capable of providing 0.308 gpm per connection, without consideration given for system losses and unaccounted for water in an annual amount of 24% which further reduces the flow rate per connection to 0.234 gpm. No evidence was presented by the Applicants as to the demand characteristics of the subject area or how such demand could be met with such diminished supply capability. No growth projections were performed by the Applicants from which to demonstrate area service needs or how ECCFWSD would meet ongoing, much less, future growth in the subject area characterized by ECCFWSD's own engineer as the most

accelerated in Henderson County. Applicants presented no cost projections for the expansion of existing ECCFWSD facilities necessitated by the acquisition of the proposed transfer area and customers under the Commission's minimum requirements and 85% Rule. Without such projections and a recovery method proposed by which to fund such improvements, no determination can be made as to whether the proposed transaction will result in a lower or increased cost to affected consumers.

The PFD grants broad latitude to ECCFWSD's generic representations that it will conduct appropriate planning, budgeting, funding and upgrading of its facilities when it becomes necessary to do so. However, such broad, undefined representations are no substitute for proof and under the application requirements of Commission Rule 291.105, such representations are required to be reduced to written plans for submission which can bear scrutiny. The PFD often references the ED's argument regarding ECCFWSD's "plans in place" for various matters [eg., PFD@15]; however, no such plans were ever made part of the Application and no such plans were submitted into evidence.

On account of these deficiencies in the record, Gun Barrel City takes exception to Proposed Order Findings No. 19, 20, 21, 23,26 and 27 and the Conclusions of Law which they purport to support. The Application should be denied or the proceedings should be remanded for

further hearings and evidence of ECCFWSD's current compliance with Safe Drinking Water Act standards and a Capital Improvement Plan, with water demand forecasts, budgets, time lines and costs which will ensure the availability of adequate capacity with which to provide continuous and adequate service.

### III.

#### THE PUBLIC INTEREST AND FIRE FLOW

The PFD cites to the Creedmore Maha WSC case [SOAH Docket No. 582-00-0546; TCEQ Docket No. 2000-0018-UCR] support the proposition that a water utility is not required to provide fire flows in order to secure a CCN and acknowledges that since that decision, the Legislature has directed that the regulatory authority adopt standards for installing fire hydrants and maintaining sufficient water pressure to protect public safety in residential areas of municipalities with a population of 1 million or more.[ Texas Health & Safety Code §341.0358(b)] The PFD suggests that if the Legislature had intended to require fire flows for all areas of the state, it could have done so and concludes that the provision of fire flows is not a factor to consider in the granting of a CCN amendment and even precluded GBC from conducting any cross examination of adverse witnesses on such subject, violating GBC's due process rights to a fair hearing in the process. The PFD completely misses the point. Both

Sections 13.246 and 13.301 require the Commission to consider public safety and the public interest. The issue is not whether all water utilities should provide fire flows, but whether local safety needs, as defined by local ordinances, are going to be met by a water utility which wants a monopoly to provide water service within a municipality requiring such flows but which refuses to do so. The Creedmore Maha case did not involve an area within municipal limits to which a local ordinance was applicable. Here, the city in which the Applicant desires to serve has expressly spoken through its ordinances as to hydrant placement and fire flows. The question then arises as to whether such refusal under the circumstances is in the public interest. The fact that the Legislature has expressly required such regulatory action in municipalities with over 1million in population does not negate the Commission's discretion to exercise such authority in lesser populated cities. The safety considerations associated with fire protection are no less threatening in small home rule cities than large ones.

The PFD cites to no authority for the proposition that a water supplier has the right to require payment for compliance with municipal ordinances or regulatory standards requiring fire flow capable structures for service to its residents. The PFD references ECCFWSD's misreading of Texas Water Code Section 49.212(a) for the proposition that Gun Barrel City would be required to bear the cost of ECCFWSD providing fire-fighting services

inside the City; however, such Section authorizes a district to charge its customers for such service, not the regulating municipality requiring such facilities through its duly enacted ordinances.

In the case of *Texas Citizens for a Safe Future & Clean Water v. R.R. Com'n of Texas*, 254 S.W. 3d 492 (Tex. App.—Austin, 2008), the Austin Court of Appeals ruled that the term “Public Interest” required the Commission to consider a broad variety of impacts extending beyond those specifically addressed in the statute. Here, the PFD and Proposed Finding of Fact No. 42 and the proposed conclusions of law purportedly supported thereby expressly disregard such ruling.

On account of ECCFWSD’s refusal to provide fire fighting capabilities through adequately sized pipes and flow capability and its lack of treated water supply capacity addressed earlier, GBC is greatly concerned that ECCFWSD will not be able to meet the Commission’s minimum pressure requirements during emergencies and that public health and safety will thus be compromised if the proposed transaction is allowed to proceed.

#### IV.

#### FINANCIAL CAPABILITIES

GBC takes issue with Proposed Findings No. 32 and 33 and 39 because they are irrelevant in their context. Finding No. 32 implies that the loan will be used to make improvements to serve the transferred area, but such improvements will be limited to the cost of the interconnects alone and will not include upgrades in plant capacities necessitated by the transfer. Likewise, the fact that the district has a reserve fund of over \$1 million is irrelevant to its capability to construct the various plant and facility improvements necessitated by the transfer and increased customer demand since the district performed no cost analyses for such improvements that were made part of the record. Finding No. 39 reveals nothing with regard to the customer costs resulting from the expanded facilities to be required due to the transfer and increased customer demand.

#### VI.

#### ACQUISITION PRECLUSION

The PFD suggests that GBC could exercise its powers of eminent domain to acquire that portion of ECCFWSD's service area within GBC but has not done so, pointing to no authority under which a municipality, home rule or otherwise, may use eminent domain proceedings against a municipal utility district. Section 13.255 of the Water Code is the only mechanism

recognized by the statutes for such authority and on its face it excludes municipal utility districts from its application. The ED has also suggested Water Code Section 13.254; however, under that statute a utility must be found to be incapable of providing continuous and adequate service before its CCN may be revoked. Such action is totally remedial and the damage done by such ineffective service will have already materialized before any such proceeding could be initiated.

The PFD states that no evidence was presented showing that ECCFWSD has federal debt [PFD@19] and that, hence, its concerns regarding Section 1926(b) of the United States Code protecting the service areas of entities funded with federal loans from municipal interference is “too tangential to be considered.” However ECCFWSD’s Annual Financial Report at page 28 attached to the Application and ECCFWSD’s General Manager’s direct testimony states that the District has loans with the United States Department of Agriculture, Rural Development. Section 1926(b) was adopted by Congress expressly to forbid municipalities from selling water within the territory/service area of a federally indebted rural water district or association. See, *North Alamo WSC v. City of San Juan, Texas*, 90 F.3d 910 (5<sup>th</sup> Circuit Ct. Of Appeals, 1996, cert. Den.117 S. Ct. 586, 519 U.S. 1029). So long as ECCFWSD is indebted to the Federal Government and enjoys the absolute protection of Title 7, United States Code, Section 1926(b), GBC can never hope to forcibly acquire the subject area if ECCFWSD’s Application is granted

in this Docket. The fact that ECCFWSD already serves half of Gun Barrel City is also irrelevant. Such service exists only by virtue of a franchise agreement which will soon expire.

The PFD's suggestion that because the district already has some customers within GBC, it should have them all is simply without merit.

GBC's resolve in this matter is proactive, not remedial. It is confident that if the pending Application is denied, it can resolve the matter directly with the City of Mabank and the TCEQ in a manner that will avoid any need for Mabank to expend capital funds for the expansion of its water facilities under the 85% Rule as Mabank is currently only at 86% and there is more than sufficient time for GBC to construct its own water intake and treatment system before Mabank's capabilities are exhausted.

## CONCLUSION

The proposed transaction does not serve the public interest. The proposed transfer will: subject area customers to a lesser regulatory standard for supply capacity without any evidentiary support that such reduced supply capacity is warranted for the service area in question; subject area customers to reduced actual available capacity that does not meet minimum State requirements; subject area customers to health hazards in their drinking water which exceed

maximum contaminant levels promulgated by EPA and the State; subject area customers to likely rate increases because of the inadequacy of facilities proposed to service such customers; impede area development due to the lack of adequate facilities and exorbitant connection fees which had not been repealed at the time of hearing as violative of Statutory stand by fee limitations; result in the lack of fire protection capability through fire rated water lines and hydrants which are standard in the provision of municipal water service and preclude GBC from ever acquiring the water system serving the City in furtherance of the health, safety and welfare of its inhabitants due to the lack of any statutory mechanism by which to undertake such acquisition.

#### PRAYER

Under the totality of points raised herein and evidence in the record, the Application in this Docket should be denied without prejudice to the refile of same upon the ECCFWSD's completion of facilities necessary for the provision of services meeting all State drinking water requirements under Chapters 290 and 291 of the Commission's Rules. Such facilities must be adequate to provide service to the area sought to be acquired and free from contaminants exceeding drinking water standards. If such facilities are adequate only for the provision of

service to the area to be acquired, ECCFWSD must accompany any new application with a capital improvement plan to accommodate growth in both the service area to be sought as well as all other areas served by the District. The Application in this Docket fails to provide any evidence or other assurance that the service to be provided will be anything more than substandard, at best. In this respect, the Applicants have failed to meet their burden of proof that the granting of the Application is necessary to the service, accommodation, convenience and safety of the public and that the proposed transaction will serve the public interest. Accordingly, the City of Gun Barrel City prays that the Application be denied. Alternatively, Gun Barrel City prays that the Application be remanded for further hearings in order that ECCFWSD's compliance with safe drinking water requirements may be evidenced and that a viable capital improvement plan with projected demand, costs, budget and time line may be scrutinized as a consequence of the are proposed to be served.

Respectfully Submitted  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2010, a true and correct copy of the above and foregoing instrument was delivered electronically to each of the party representatives, the Chief Clerk of the TCEQ and the ALJ in this docket.

*Skip Newsom*