

Control Number: 42983



Item Number: 8

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.



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CITY MANAGER'S OFFICE PUBLIC UTILITY COMMISSION
FILING CLERK

July 11, 2014

Ms. Cari-Michel La Caille, Assistant Director
Utility and Districts Section
Water Supply Division
P. O. Box 13087 – MC 153
Austin, Texas 78711-3087

RE: Application No. 37671-S, Mutual Agreement to Amend CCN No. 10298 (City of San Marcos) and CCN No. 10297 (Crystal Clear Water Supply Corporation) to transfer portions of retail water service areas.

Dear Ms. La Caille,

This letter is in response to your correspondence to the City of San Marcos dated June 5, 2014 and is provided to you in accordance with Section 13.301 of the Texas Water Code jointly by the City of San Marcos and the Crystal Clear Water Supply Corporation. As requested, enclosed is an executed copy of the Agreement between the City of San Marcos and Crystal Clear Water Supply Corporation (Agreement) relating to the transfer of portions of each parties' retail water service area. The execution of this Agreement completes the part of the transaction between the parties relating to the amendment of each parties' CCN. This transaction does not involve the exchange of compensation between the parties.

The Agreement is authorized by the City Council of the City of San Marcos and the Board of Directors of the Crystal Clear Water Supply Corporation. It is in the best interest of both parties and their customers to effectuate this transfer as soon as possible. The parties respectfully request that the Executive Director approve the transfer before August 30, 2014. To that end, the parties will be available to complete any required consent forms once received from the Commission and will expedite the return to the Commission.

Your June 5, 2014 letter also asked for documentation regarding the disposition of customer deposits for current customers whose service will be transferred. The Agreement provides that both parties will refund any monies provided by the customer. The City of San Marcos will refund security deposits received from its customers and Crystal Clear Water Supply Corporation will refund membership fees received from its customers. Neither party will seek a new security deposit or membership fee from the customers who will be added to their service area. Attached

for your information is documentation completed by each party that demonstrates the customers who will receive a refund and the amount of each refund.


Thank you for your prompt attention to this matter. Please contact Mr. Jon L. Clack, Assistant Director of Public Services for the City of San Marcos, at (512) 393-8003 or Mr. Mike Taylor, General Manager of Crystal Clear Water Supply Corporation at (830) 372-1031, extension 203, if you have any questions regarding this matter.

Respectfully submitted,

City of San Marcos, Texas

By: 
Jared Miller
City Manager

Crystal Clear Water Supply Corporation

By: 
Mike Taylor
General Manager

/js
Attachments

**AGREEMENT BETWEEN THE CITY OF SAN MARCOS AND CRYSTAL CLEAR
WATER SUPPLY CORPORATION REGARDING RETAIL WATER SERVICE AREAS**

This Agreement Designating Retail Water Service Areas between Crystal Clear Water Supply Corporation ("CCWSC") and the City of San Marcos, Texas, a home-rule municipal corporation ("City"), is made and entered into effective the 11th day of July, 2014 (the "Effective Date"). CCWSC and the City may be collectively referred to herein as the "Parties."

**ARTICLE I.
RECITALS**

WHEREAS, CCWSC is a water supply corporation authorized by the State of Texas and organized under Chapter 67 of the Texas Water Code; and

WHEREAS, the City is a home-rule municipal corporation created pursuant to Article XI, § 5 of the Texas Constitution; and

WHEREAS, CCWSC holds water Certificate of Convenience and Necessity ("CCN") No. 10297; and City holds water CCN No. 10298, and each entity is a retail public utility providing retail water utility service as defined in §13.002(19) of the Texas Water Code; and

WHEREAS, CCWSC and City are dually certificated to serve the areas that are being transferred between the Parties which are depicted in Exhibits A and B attached hereto and incorporated herein by reference; and

WHEREAS, the Parties agree it is mutually beneficial to designate the City as the sole retail service provider for the area described in the map attached hereto in Exhibit A (illustrated in tan color) under CCN No. 10298 and to designate CCWSC as the sole retail service provider for the area described in the map attached hereto in Exhibit B (illustrated in tan color) under CCN No. 10297 rather than each entity being dually certificated in both of these areas; and

WHEREAS, this Agreement between the Parties regarding retail water service areas was authorized by the City of San Marcos City Council on May 1, 2012;

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE II.
TRANSFER OF SERVICE AREA,
CERTAIN FACILITIES AND COMPENSATION**

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, the Parties agree as follows:

2.1 **Service Area.** CCWSC is the retail public utility providing retail water service in the area certificated under CCN No. 10297. The City is the retail public utility providing retail water service in area certificated under CCN No. 10298. Both entities are currently dually certificated to provide retail water service in the areas designated on the maps attached hereto as Exhibits A and B illustrated in the tan color on each map.

2.2 **Amendment of CCN.** The Parties shall jointly file a copy of this Agreement with the Texas Commission on Environmental Quality ("TCEQ") in conjunction with the filing of each Party's STM application to effectuate the transfer of service area and customers between the parties, decertify service areas, amend service area boundaries, and for the transfer of facilities and utility easements.

2.3 **Transfer Areas and Customers.** The Parties are seeking to amend their respective water service areas as follows:

(a) Transfer Areas. The City is seeking the addition of approximately 2,462 acres to its CCN (includes the parcels north of Kingswood) and to release, decertify and transfer approximately 4,044 acres of its service area to CCWSC. CCWSC is seeking the addition of approximately 1,360 acres to its CCN and to release, decertify and transfer approximately 4,510 acres of its service area to the City of San Marcos.

(b) Customers. The number of customers being transferred from the CITY to CCWSC on the Effective Date is 239 customers in the City's ETJ. The number of customers being transferred from CCWSC to the CITY on the Effective Date is 206 within the City's ETJ.

2.4 **Sale, Transfer and Exchange of Certain Water Facilities.** Subject and pursuant to the terms and conditions set forth in this Agreement, each Party shall transfer and exchange water lines, appurtenances, meter boxes and hydrants (excluding the water meters themselves) owned by each Party as well as the easements that are no longer necessary to provide service resulting from the transfer of service area to the other Party ("Surplus Waterlines"). The Surplus Waterlines are identified in Exhibit C and will be conveyed at Closing.

(a) The Parties acknowledge and agree that the Surplus Waterlines are currently used and at Closing will be conveyed **AS IS, WHERE IS AND WITH ALL DEFECTS** and after such conveyance neither party shall have any obligation whatsoever to maintain, replace or repair any of the Surplus Waterlines. Prior to closing each Party shall maintain the Surplus Waterlines in accordance with best practices and industry standards.

(b) Those easements or rights-of-way (or portions thereof) which are located within the Transfer Areas and are specifically described in Exhibit D will be assigned (without representations or warranty) to the other Party at Closing.

(c) City will construct approximately 2,269 linear feet of 8" pipe along Hunter Road between Reimer and McCarty to be transferred to CCWSC upon completion of construction.

2.5 Compensation. The Parties agree that the value of the service rights, customers and Surplus Waterlines in the Transfer Areas being exchanged is sufficient just, adequate, and reasonable compensation; and therefore, no additional compensation other than the service areas and Surplus Waterlines exchanged shall be paid by either Party to the other Party.

2.6 Deposits and Memberships. CCWSC shall refund membership fees to those customers being transferred to the City. CCWSC shall waive membership fees for all customers being transferred to it through this CCN amendment. The City shall refund security deposits to those customers being transferred to CCWSC. The City shall waive security deposits for all customers being transferred to it through this CCN amendment.

ARTICLE III. REGULATORY APPROVALS

3.1 The Parties have prepared, filed and pursued an appropriate Sale, Transfer, Merger Application ("STM Application") with the TCEQ requesting the transfer of the service areas specified in this Agreement. Each Party has provided a complete copy of its STM Application to the other Party. The Parties have cooperated with each other in the filing, review and approval of the STM Application.

3.2 Unless waived by TCEQ, notice of the STM Application shall be as required by law. The Parties agree to request TCEQ approval to waive notice of the STM Application.

3.3 The Parties shall endeavor to obtain TCEQ approval of this Agreement in an expeditious manner and each Party will support and cooperate with the other, and the TCEQ to accomplish this goal. The Parties have prepared all of the required documents and maps required by the TCEQ as part of their respective STM Applications for their respective CCN amendment.

3.4 This Agreement shall be construed and interpreted in accordance with Sections 13.248 and 13.301 of the Texas Water Code.

ARTICLE IV. CONDITIONS

4.1 **Conditions Precedent to Closing.** The obligations of the Parties to consummate the transactions to be performed hereunder in connection with the Closing are subject to satisfaction of all of the following conditions (collectively, the "Conditions Precedent"):

(a) TCEQ's approval of the STM Application to be filed by the Parties as set forth in Article III herein, which approval shall be shown by the TCEQ's issuance of a letter authorizing the Parties to complete the proposed transaction.

ARTICLE V. CLOSING

5.1 **Closing.** Within sixty (60) days after the TCEQ approves the Parties' applications or at such other time agreed to by the City and CCWSC, a closing (the "Closing") shall be held. All matters to take place at the Closing shall take place simultaneously, and no delivery shall be considered to have been made until all such proceedings have been completed.

5.2 **Delivery.** At the Closing, each Party shall deliver or cause to be delivered to the other Party for its respective Transfer Area:

(a) An Assignment duly executed and acknowledged transferring and assigning all rights, title, and interest in the CCN rights to the Transfer Area and in the Surplus Waterlines;

(b) An updated list of all customer names;

(c) An Assignment of the easements, rights-of-way or portions thereof, described in Section 2.4(b);

(d) A written statement affirming that all customer deposits or membership fees for those customers located in the CCN Transfer Area have been returned to the Customer;

(e) Any additional documents as in the mutual opinion of the City's counsel and CCWSC's counsel is reasonably necessary to complete this transaction.

**ARTICLE VI.
POST-CLOSING MATTERS**

6.1 **Service Transfer Date.** On or after the date of Closing, but not later than 6 months after the date of Closing ("Service Transfer Date"), each Party will begin providing retail water service to all retail water customers whose place of use of water is located within the Transfer Area, unless otherwise agreed to in writing by the City and CCWSC.

6.2 **Notice and Charges to Customers within the Transfer Area.** Each Party shall provide notice of the transfer to each customer located within its respective Transfer Area. No existing customer located in the Transfer Area shall be required to pay, or be charged, any connection fee, tap fee, impact fee or like charge for continuing their existing level of retail service.

6.3 **No Impairment of Other Customers.** Nothing in this Agreement shall in any way impair, or adversely affect each Party's right to provide water to any customers located outside of the Transfer Area. Except for the Surplus Waterlines, each Party shall continue to own and have the right to use, repair, replace, and upgrade all of its water transmission and distribution lines and facilities, including those that are located within the Transfer Area, provided however, that each Party shall not provide retail water service to any customer within the other Party's Transfer Area.

6.4 **Revenues for Service Prior to the Service Transfer Date.** All revenues due to, or received by each Party for water utility service rendered for the period prior to the Service Transfer Date in the area transferred will remain the property of the Party providing such service and be retained by said Party. All revenues from water utility services rendered by each Party to customers in the area transferred from and after the Service Transfer Date shall be the property of the Party to which the Transfer Area has been transferred. The Parties shall cooperate with each other as necessary including the termination of water service, to collect the revenues from any customers who fail to timely pay for service rendered by the Party providing service prior to the Service Transfer Date.

6.5 **Prevention of Service Interruption.** The Parties shall cooperate to prevent any interruption of water service to the customers located with the Transfer Areas.

**ARTICLE VII.
MISCELLANEOUS**

7.1 **Applicable Texas Law and Performance.** This Agreement shall be governed by and construed and enforced under the laws of the State of Texas. The obligations and undertakings of each of the parties to this Agreement shall be performed in Hays County, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the Parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Hays County, Texas.

7.2. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter of the Agreement. No agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party, 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 Parties.

7.3 **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns.

7.4 **Agreement Drafted Equally.** This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

7.5 **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.

7.6 **Covenant of Authority.** The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

7.7 **Notices.** Unless expressly required otherwise, any notice required or permitted hereunder shall be in writing and shall be deemed to be delivered on the date received if delivered by hand to the address shown hereinafter for each Party, as appropriate, or, if deposited in the mail, such notice shall be deemed to be delivered, whether actually received or not, on the first business day after having been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to each Party, as appropriate, at the address shown hereinafter. The addresses for each Party for all purposes under this Agreement shall be the following:

If to CCWSC

Mike Taylor, General Manager
Crystal Clear Water Supply Corporation
2370 FM 1979
San Marcos, TX 78666
Phone: (830) 372-1031
Email: miket@crystalclearwsc.com

If to the City:

City of San Marcos
Attn: City Manager
630 E. Hopkins Street
San Marcos, TX 78666
Phone: (512) 393-8101
FAX: (855) 759-2844

With a copy to:

City Attorney
630 E. Hopkins Street
San Marcos, TX 78666
Phone: (512) 393-8150
FAX: (855) 759-2846

The Parties hereto shall have the right from time to time, and each shall have the right to specify as its address, the State of America by at least five (5) days written notice to the other.

7.8 Business Days. In the event that any date falls on a Saturday, Sunday or legal holiday, the term "business day following such Saturday, Sunday or legal holiday" means any state or federal holiday for which the State of Texas is generally closed in the State of Texas.

7.9 Recitals. The recitals in this agreement are hereby incorporated by reference into this agreement.

**ARTICLE 8
LIST OF EXHIBITS**

8.1 The following Exhibits are attached hereto and incorporated by reference into this agreement:

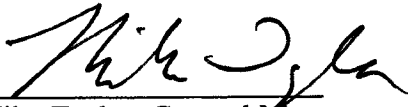
Exhibit A Map

Exhibit B Map

Exhibit C Description of the Surplus Waterline

IN WITNESS WHEREOF, each party hereto has signed this Agreement or caused this Agreement to be signed in its corporate name by its officer thereunto duly authorized, as of the date set forth in the opening paragraph to this Agreement.

CRYSTAL CLEAR WATER SUPPLY CORPORATION

By: 
Mike Taylor, General Manager

CITY OF SAN MARCOS, TEXAS


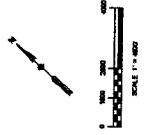
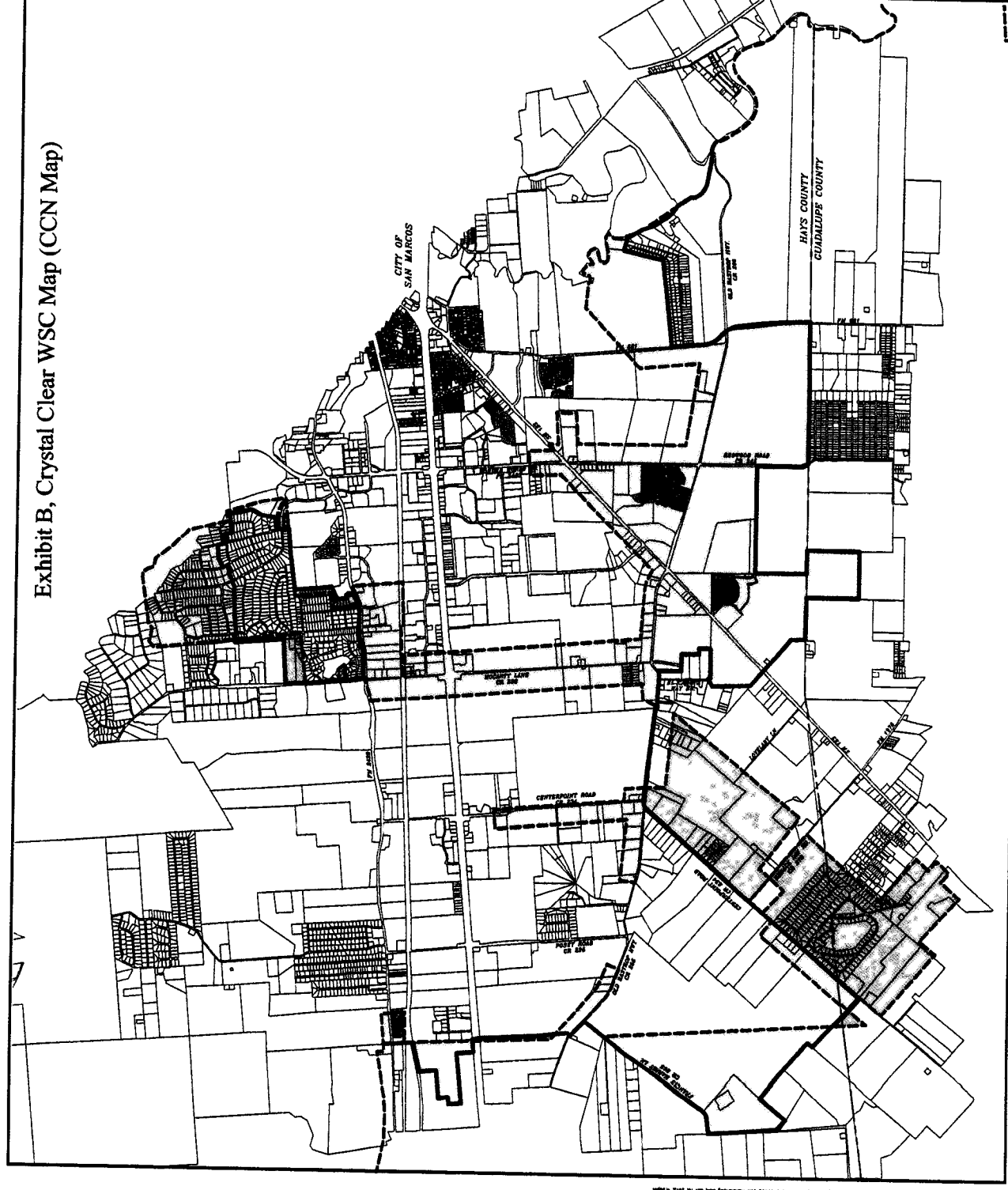
By: 
Jared Miller, City Manager

EXHIBIT A
CITY OF SAN MARCOS MAP

EXHIBIT B
CRYSTAL CLEAR WSC MAP

Exhibit B, Crystal Clear WSC Map (CCN Map)



LEGEND

- EXISTING CRYSTAL CLEAR WSC BOUNDARY
- PROPOSED CCR BOUNDARY
- SERVICE AREA
- PROPOSED CRYSTAL CLEAR WSC SERVICE AREA BOUNDARY
- CRYSTAL CLEAR WSC SERVICE AREA
- PROPOSED TO THE CITY OF SAN MARCOS

DOCKET #: DATE: 8/12/13

PROPOSED CCN AREA

CRYSTAL CLEAR W.S.C.

Southwest Engineers, Inc.
Civil - Environmental - Planning
Gonzales
www.swengr.com
TBPE No. F. 1999

EXHIBIT C
Inventory of Surplus Waterlines

CCWSC to City:

<u>Line Size</u>	<u>Number of Linear Feet</u>
8"	2,140
6"	4,840
4"	8,810
3"	5,680
2" and smaller	13,965

Number of Meter Boxes transferred from CCWSC to City = 206

Number of Fire Hydrants transferred from CCWSC to City = 0

City to CCWSC:

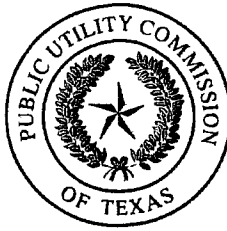
<u>Line Size</u>	<u>Number of linear feet</u>
8"	2,269
6"	6,787
4"	6,561
3"	714
2"	25,813

Number of Meter Boxes transferred from City to CCWSC = 239

Number of Fire Hydrants transferred from City to CCWSC = 0

DOCUMENTATION SHOWING CURRENT CRYSTAL CLEAR WATER SUPPLY CUSTOMERS THAT WILL BE TRANSFERRED TO THE CITY OF SAN MARCOS WATER UTILITY. ANY MEMBERSHIP FEE NOTED WILL BE REFUNDED TO THE CUSTOMER.

17-JUL '14



House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions and records relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014.

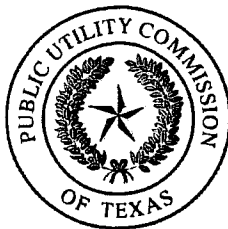
Central Records Personally Identifiable Information Audit

NOTICE OF REDACTION

Documents containing Personally Identifiable Information* have been redacted from electronic posting, in accordance with Texas privacy statutes.

*"Personally Identifiable Information" (PII) is defined to include information that alone or in conjunction with other information identifies an individual, including an individual's: Social security or employer taxpayer identification number, driver's license number, government-issued identification card number, or passport numbers, checking and savings account numbers, credit card numbers, debit card numbers, unique electronic identification number, address, or routing code, electronic mail names or addresses, internet account numbers, or internet identification names, digital signatures, unique biometric data, and mother's maiden name, marriage and any other numbers or information used to access an individual's financial account.

DOCUMENTATION SHOWING CURRENT CITY OF SAN MARCOS WATER CUSTOMERS THAT WILL BE TRANSFERRED TO CRYSTAL CLEAR WATER SUPPLY CORPORATION. ANY SECURITY DEPOSIT NOTED WILL BE REFUNDED TO THE CUSTOMER.



House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions and records relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014.

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