



Control Number: 43535



Item Number: 48

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.

RM&R

RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.
ATTORNEYS AT LAW

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GEORGETOWN TEXAS 78626
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May 12, 2004

VIA HAND DELIVERY

The Honorable Craig Bennett
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street
Room 502
Austin, Texas 78701

Re: Settlement Agreement, *Application of the City of Royse City to Amend Water CCN and to Obtain Sewer CCN in Collin, Rockwall, and Hunt Counties*, Consolidated Docket, SOAH Docket Nos. 582-04-0253, 582-04-1268, and 582-04-2730; TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, 2003-1289-UCR & 2003-1491-UCR.

Dear Judge Bennett:

Enclosed please find the Settlement Agreement, including all Exhibits, entered into between the City of Royse City and the City of Fate in the above referenced dockets. The Agreement addresses each city's protests to the respective applications. Pursuant to the Agreement, both Royse City and Fate will be filing amendments to their respective applications with the Commission. Each city will also be filing a letter withdrawing their protest of the other city's applications. If you have any questions, please telephone me or Mr. Kerry Russell at (512) 930-1317.

Sincerely,


Angela K. Moorman

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ENCLOSURES

cc: Service List
Mr. Connie Goodwin
Mr. Kerry Russell

43535

RECEIVED

2014 OCT 13 PM 2:12

PUBLIC UTILITY COMMISSION
FILING CLERK

CHIEF CLERKS OFFICE

OCT 13 11:36

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TEXAS

CLERK OF COURT

48

**SOAH DOCKET NOS. 582-04-0253, 582-04-1268 & 582-04-2730
TCEQ DOCKET NOS. 2003-0737-UCR, 2003-0738-UCR,
2003-1289-UCR & 2003-1491-UCR**

SERVICE LIST

Mr. Geoffrey Kirshbaum Texas Commission on Environmental Quality MC-175 P.O. Box 13087 Austin, Texas 78711-3087 (mail) 12100 Park 35 Circle, Building F Austin, Texas 78753 (delivery) Telephone: (512) 239-0600 Fax: (512) 239-0606	Representing the Executive Director, Texas Commission on Environmental Quality
Mr. Blas Coy Office of the Public Interest Counsel Texas Commission on Environmental Quality MC-103 P.O. Box 13087 Austin, Texas 78711-3087 (mail) 12100 Park 35 Circle, Building F Austin, Texas 78753 (delivery) Telephone: (512) 239-6363 Fax: (512) 239-6377	Representing the Office of Public Interest Counsel, Texas Commission on Environmental Quality
Mr. Mark H. Zeppa Law Offices of Mark Zeppa, PC 4833 Spicewood Springs Road #202 Austin, Texas 78759-8436 Telephone: (512) 346-4011 Fax: (512) 346-6847	Representing: <ul style="list-style-type: none">▪ Verandah Communities, LP▪ Verandah Freshwater Supply District▪ Parker Creek Estates, L.P.
Mr. Leonard H. Dougal Jackson Walker L.L.P. 100 Congress Avenue, Suite 1100 Austin, Texas 78701 Telephone: (512) 236-2000 Fax: (512) 236-2002	Representing Blackland Water Supply Corporation

Ms. Susan E. Potts Mr. David Klein Potts & Reilly, L.L.P. Attorneys and Counselors 401 West 15th Street, Suite 850 Austin, Texas 78701-1665 Telephone: (512) 469-7474 Fax: (512) 469-7480	Representing Mr. Dean M. Gandy
Mr. Skip Newsom Attorney 3724 Jefferson Street, Suite 200 Austin, Texas 78731 Telephone: (512) 477-4121 Fax: (512) 477-2860	Representing the City of Fate, Texas
Ms. Amy Cortinas Utility Rates and Services Section Water Utilities Division – MC-153 Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087 (mail) 12100 Park 35 Circle, Building F Austin, Texas 78753 (delivery) Telephone: (512) 239-6960 Fax: (512) 239-6972	Texas Commission on Environmental Quality
Docket Clerk TCEQ Office of Chief Clerk (MC-105) P.O. Box 13087 Austin, Texas 78711-3087 (mail) 12100 Park 35 Circle, Building F Austin, Texas 78753 (delivery) Fax: (512) 239-3311	

**SOAH DOCKET NOS. 582-04-0253, 582-04-1268 & 582-04-2730
TCEQ DOCKET NOS. 2003-0737-UCR,
2003-0738-UCR, 2003-1289-UCR, & 2003-1491-UCR**

**APPLICATION OF THE CITY OF
ROYSE CITY TO AMEND WATER
CCN AND TO OBTAIN SEWER CCN IN
COLLIN, ROCKWALL, AND HUNT
COUNTIES**

**APPLICATION OF VERANDAH
COMMUNITIES, LP TO OBTAIN
SEWER CCN IN HUNT AND
ROCKWALL COUNTIES**

**APPLICATION OF PARKER CREEK
ESTATES, L.P. TO OBTAIN A WATER
AND SEWER CCN IN ROCKWALL
COUNTY, TEXAS, APPLICATION NOS.
34297-C AND 34301-C**

**APPLICATION OF THE CITY OF FATE
TO AMEND WATER CCN NO. 12889
AND TO AMEND SEWER CCN NO.
20856 IN ROCKWALL COUNTY**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

2003 JUL 12 11:36

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into between the City of Royse City, Texas ("Royse City"), a political subdivision of the State of Texas, and the City of Fate ("Fate"), a political subdivision of the State of Texas.

RECITALS

WHEREAS, Royse City is a general law city organized in accordance with the laws of the State of Texas; and

WHEREAS, Fate is a general law city organized in accordance with the laws of the State of Texas; and

WHEREAS, Royse City has filed with the Texas Commission on Environmental Quality (the "Commission") an application to obtain a Sewer Certificate of Convenience and Necessity ("CCN") in Collin, Rockwall, and Hunt counties, Application No. 34277-C ("Royse City Sewer CCN Application"); and

WHEREAS, Royse City has filed with the Commission an application to amend Water CCN No. 12827 in Rockwall and Hunt counties, Application No. 34270-C ("Royse City Water CCN Application"); and

WHEREAS, Fate has filed with the Commission an application to amend Sewer CCN No. 20856 in Rockwall County, Application No. 34362-C ("Fate Sewer CCN Application"); and

WHEREAS, Fate has filed with the Commission an application to amend Water CCN No. 12889 in Rockwall County, Application No. 34361-C ("Fate Water CCN Application"); and

WHEREAS, Royse City and Fate recognize that their respective CCN applications, in part, overlap and that failure to resolve such conflicts could result in a time-consuming and costly contested case hearing; and

WHEREAS, Royse City and Fate desire to avoid contested case litigation over water service and sewer service rights to areas identified in their current and proposed CCNs by executing this Settlement Agreement (the "Agreement"); and

WHEREAS, Royse City and Fate desire to enter into the Agreement to identify the boundaries and extent of each city's water and sewer service areas, to the extent such determinations can be made by the cities; and

WHEREAS, Royse City and Fate desire to transfer certain areas within Royse City's and Fate's present water and sewer CCN areas to each other in consideration of the mutual covenants, promises, and agreements set forth in the Agreement; and

WHEREAS, Royse City and Fate desire to amend their pending CCN applications, as identified above, to bring such applications into conformity with the boundary line identified in the Agreement; and

WHEREAS, it is the intent of Royse City and Fate to effectuate a full and complete settlement and resolution of their concerns regarding water service and sewer service rights to areas identified in their current and proposed water and sewer CCNs through the execution of the Agreement; and

WHEREAS, the City Councils of both Royse City and Fate have respectively approved the Agreement; and

WHEREAS, the City Councils of both Royse City and Fate have authorized each city's mayor to execute the Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged by both Royse City and Fate, Royse City and Fate do hereby agree as follows:

TERMS OF AGREEMENT

- (1) Royse City and Fate agree to a mutual boundary line between each city's water service and sewer service areas. Such boundary line is identified on Exhibits A through F to this Agreement, which are attached hereto and incorporated herein for all purposes.
- (2) Royse City and Fate agree to the following transfers of existing CCN areas:
 - (a) With regard to areas included in Fate's current Sewer CCN No. 20856:
 - (i) Fate agrees to transfer to Royse City the right to furnish retail sewer service to a 345 acre tract, identified on Exhibit A to the Agreement, which is attached hereto and incorporated herein for all purposes, as Tract 1. Fate agrees to the removal of Tract 1 from Sewer CCN No. 20856.
 - (b) With regard to areas included in Fate's current Water CCN No. 12889:
 - (i) Fate agrees to transfer to Royse City the right to furnish retail water service to a 345 acre tract, identified on Exhibit B to the Agreement which is attached hereto and incorporated herein for all purposes, as Tract 2. Fate agrees to the removal of Tract 2 from Water CCN No. 12889.
 - (c) With regard to areas included in Royse City's current Water CCN No. 12827:
 - (i) Royse City agrees to transfer to Fate the right to furnish retail water service to a 227 acre tract, identified on Exhibit B to the Agreement as Tract 3. Royse City agrees to the removal of Tract 3 from Water CCN No. 12827.
 - (d) Within sixty (60) days of the execution of the Agreement, the parties will file with the Commission a copy of this Agreement pursuant to Texas Water Code Section 13.248 and a Sales, Transfer, Merger ("STM") application pursuant to Texas Water Code Section 13.301 to reflect the transfers of Tracts 1, 2, and 3, as described

above. Neither party will object to or otherwise attempt to defeat the approval of the STM application for Tracts 1, 2, and 3, as described above.

(3) Royse City and Fate agree to the following amendments to their pending CCN applications:

- (a) With regard to areas identified in the Fate Sewer CCN Application, Fate agrees to amend such Application to identify that Fate no longer seeks a CCN amendment to serve areas identified in the Application that are to the north and east of the boundary line identified on Exhibit C to the Agreement, which is attached hereto and incorporated herein for all purposes. The areas requested in the Fate Sewer CCN Application that are to the south and west of the boundary line identified on Exhibit C to the Agreement will not be changed by the Agreement. The areas to be removed through an amendment to the Fate Sewer CCN Application are identified on Exhibit C. No new areas will be added to the Fate Sewer CCN Application pursuant to the Agreement.
- (b) With regard to areas identified in the Fate Water CCN Application, Fate agrees to amend such Application to identify that Fate no longer seeks a CCN amendment to serve areas identified in the Application that are to the north and east of the boundary line identified on Exhibit D to the Agreement, which is attached hereto and incorporated herein for all purposes. The areas requested in the Fate Water CCN Application that are to the south and west of the boundary line identified on Exhibit D to the Agreement will not be changed by the Agreement. The areas to be removed through an amendment to the Fate Water CCN Application are identified on Exhibit D. No new areas will be added to the Fate Water CCN Application pursuant to the Agreement.
- (c) With regard to areas identified in the Royse City Sewer CCN Application, Royse City agrees to amend such Application to identify that Royse City no longer seeks a CCN to serve areas identified in the Application that are to the south and west of the boundary line identified on Exhibit E to the Agreement, which is attached hereto and incorporated herein for all purposes. The areas requested in the Royse City Sewer CCN Application that are to the north and east of the boundary line identified on Exhibit E to the Agreement will not be changed by the Agreement. The areas to be removed through an amendment to the Royse City Sewer CCN Application are identified on Exhibit E. No new areas will be added to the Royse City Sewer CCN Application pursuant to the Agreement.
- (d) With regard to areas identified in the Royse City Water CCN Application, Royse City agrees to amend such Application to identify that Royse City no longer seeks a CCN

amendment to serve areas identified in the Application that are to the south and west of the boundary line identified on Exhibit F to the Agreement, which is attached hereto and incorporated herein for all purposes. The areas requested in the Royse City Water CCN Application that are to the north and east of the boundary line identified on Exhibit F to the Agreement will not be changed by the Agreement. The areas to be removed through an amendment to the Royse City Water CCN Application are identified on Exhibit F. No new areas will be added to the Royse City Water CCN Application pursuant to the Agreement.

- (e) Within thirty (30) days of the execution of the Agreement, Royse City and Fate will file information with the Commission identifying the amendments to each of the four (4) applications, as described above.
- (4) Within thirty (30) days of the execution of the Agreement, Fate shall execute a letter to the Commission and the State Office of Administrative Hearings ("SOAH"), identifying that it is no longer protesting the Royse City Sewer CCN Application and the Royse City Water CCN Application. Such letter shall identify that Fate no longer protests the Sewer CCN sought by Royse City and the amendment to Water CCN No. 12827 sought by Royse City. Fate may maintain its status as a party to the consolidated SOAH proceeding identified as SOAH Docket Nos. 582-04-0253 and 582-04-1268, TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, and 2003-1289-UCR ("Royse City Application Proceeding"), but only to the extent that Fate is protesting the other applications that are included in that consolidated proceeding. Such letter shall be filed with the Office of the Chief Clerk of the Commission, the SOAH Administrative Law Judge ("ALJ"), and all other parties in the Royse City Application Proceeding.
- (5) Within thirty (30) days of the execution of the Agreement, Royse City shall execute a letter to the Commission and to SOAH, identifying that it is no longer protesting the Fate Sewer CCN Application and the Fate Water CCN Application. Such letter shall identify that Royse City no longer protests the amendment to Sewer CCN No. 20856 sought by Fate and the amendment to Water CCN No. 12889 sought by Fate. Royse City shall withdraw as a party from the SOAH proceeding identified as SOAH Docket No. 582-04-2730, TCEQ Docket No. 2003-1491-UCR ("Fate Application Proceeding"). Such letter shall be filed with the Office of the Chief Clerk of the Commission, the SOAH ALJ, and all other parties in the Fate Application Proceeding.
- (6) Fate agrees that it shall not knowingly participate, directly or indirectly, in the Royse City Application Proceeding for the purpose of opposing the Royse City Sewer CCN Application or the Royse City Water CCN Application. Fate shall not file or encourage the filing of any other pleadings seeking reversal or judicial review of the Commission's approval of the

Royse City Sewer CCN Application or the Royse City Water CCN Application. Fate's agreement to forego opposition to the Royse City Sewer CCN Application and the Royse City Water CCN Application includes a commitment by Fate not to directly or indirectly assist, encourage, fund, or otherwise support any individual or entity in opposition to either referenced application.

- (7) Royse City agrees that it shall not knowingly participate, directly or indirectly, in the Fate Application Proceeding for the purpose of opposing the Fate Sewer CCN Application or the Fate Water CCN Application. Royse City shall not file or encourage the filing of any other pleadings seeking reversal or judicial review of the Commission's approval of the Fate Sewer CCN Application or the Fate Water CCN Application. Royse City's agreement to forego opposition to the Fate Sewer CCN Application and the Fate Water CCN Application includes a commitment by Royse City not to directly or indirectly assist, encourage, fund, or otherwise support any individual or entity in opposition to either referenced application.

MISCELLANEOUS

- (8) The Agreement shall remain valid and enforceable until superceded by subsequent written agreement.
- (9) The Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
- (10) The obligations and undertakings of each of the parties to the Agreement shall be performed in Rockwall County, Texas. The parties expressly agree that all judicial proceedings to enforce any of the provisions of the Agreement shall take place in Rockwall County, Texas.
- (11) The Agreement may not be assigned by any party without the written consent of the other party.
- (12) The 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 the Agreement shall be valid, binding, or of any force or effect. Any amendments to the Agreement must be in writing and signed by the party or parties to be charged.
- (13) The Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.

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

For Royse City:

City Administrator
100 West Main Street
P.O. Box 638
Royse City, Texas 75189

For Fate:

City Manager
105 East Fate Main Place
P.O. Box 31
Fate, Texas 75132

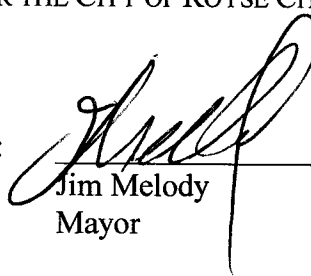
Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of the Agreement.

- (15) The Agreement shall be effective as of the last date of execution by the parties.
- (16) In the event that the terms and conditions of the Agreement are breached by either party, and the parties participate in a proceeding before any state or federal tribunal because the terms and conditions of the Agreement are not being complied with by one of the parties, the prevailing party shall recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing party, general or special, at law or in equity, to which the prevailing party may show itself justly entitled.
- (17) The Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- (18) In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- (19) The respective signatories to the Agreement represent that they are authorized to sign the Agreement on behalf of their respective party.

FOR THE CITY OF ROYSE CITY, TEXAS

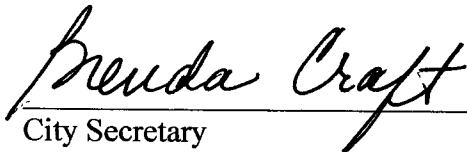
By: _____


Jim Melody
Mayor

Date: _____

4-27-04

ATTEST:


Brenda Craft
City Secretary

FOR THE CITY OF FATE, TEXAS

By: _____

David Hill
Mayor

Date: _____

ATTEST:

City Secretary

SOAH Docket Nos. 582-04-0253, 582-04-1268 & 582-04-2730
TCEQ Docket Nos. 2003-0737-UCR, 2003-0738-UCR, 2003-1289-UCR, & 2003-1491-UCR

- (19) The respective signatories to the Agreement represent that they are authorized to sign the Agreement on behalf of their respective party.

FOR THE CITY OF ROYSE CITY, TEXAS

By: _____
Jim Melody
Mayor

Date: _____

ATTEST:

City Secretary

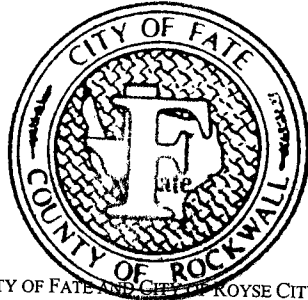
FOR THE CITY OF FATE, TEXAS

By: _____
David Hill
Mayor

Date: 4-29-04

ATTEST:

Sandra Lophan
City Secretary



SETTLEMENT AGREEMENT, CITY OF FATE AND CITY OF ROYSE CITY

OVERSIZED DOCUMENT(S)

TO VIEW

OVERSIZED DOCUMENT(S)

PLEASE GO TO

CENTRAL RECORDS

(512) 936-7180

OVERSIZED DOCUMENT(S)

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