



Mr. Jeffrey Saitas

April 11, 2002

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Article 3, section 49-d of the Texas Constitution, which concerns the Texas Water Development Board ("TWDB"), begins with a broad but unmistakably clear policy statement:

It is hereby declared to be the policy of the State of Texas to encourage the optimum development of the limited number of feasible sites available for the construction or enlargement of dams and reservoirs for conservation of the public waters of the state, which waters are held in trust for the use and benefit of the public, and *to encourage the optimum regional development of systems built for the filtration, treatment, and transmission of water and wastewater.*

(Emphasis added). This policy of encouraging optimum regional development of utility systems has been implemented via the following statutes that govern the TWDB and TNRCC, most notably the statutes dealing with the legislatively mandated State Water Plan and its regional water plans:

- (a) Texas Water Code § 16.051(a), regarding the State Water Plan, requiring that the Plan incorporate regional water plans and "provide for the orderly development, management, and conservation of water resources . . .;"
- (b) Texas Water Code § 13.241(d), which requires applicants to demonstrate that regionalization or consolidation with another retail public utility is not economically feasible before constructing physically separate water or sewer systems;
- (c) Texas Water Code § 13.183(c), which provides that water and sewer rates may be based upon factors such as encouraging regionalization;
- (d) The inclusion of a definition of regionalization, added in 2001, in Texas Water Code § 15.001, which defines regionalization to be "development of a water supply or wastewater collection and treatment system that incorporates multiple service areas into an area-wide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state;"



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- (e) Texas Water Code § 26.081, which states that "[t]he legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state;"
- (f) Texas Health and Safety Code § 341.0315(b), which provides that "[t]he commission shall encourage and promote the development and use of regional and area-wide drinking water supply options;" and
- (g) The Region K Water Supply Plan for the Lower Colorado Regional Water Planning Group, which identifies the City as one of two officially designated "major water providers" for the region (p. 1-37), and states that, as such, the City is "expected to meet the growing needs of [its] existing customers." (p. ES-1).

The optimum regional development of complex and costly treatment and transmission systems can only occur as the result of effective long-term planning, which is exactly why the City has applied for these CCNs. Patchwork, ad hoc changes and additions to the CCN landscape of any city's ETJ wreak havoc on the municipal planning process, making "optimum" planning impossible. Agency concerns regarding speculative CCNs should pose no barriers when a city the size of Austin is seeking CCNs for its own ETJ, especially when, as here, the City's own growth projections and land use policies clearly support the need for utility service in the foreseeable future. Under these circumstances, requiring any municipality to proffer actual service extension requests in order to obtain a CCN directly thwarts that city's ability to undertake necessary planning.

The City of Austin—like many cities—has a history of expansion of its corporate limits in order to provide a consistent level of service to its residents. Experience has shown that when the City annexes an area that includes an existing private or investor-owned utility, the City is usually faced with substantial retrofitting costs in order to meet required urban-level, City standards, which include the provision of water service adequate for fire flow. *See, e.g.,* Tex. Loc. Gov. Code § 43.056(g).

Past examples where the retrofitting problem has been encountered are the Valley View Acres Wastewater Treatment Plant and Travis Country Utilities, Inc. A current example of the retrofitting problem is the Thoroughbred Farms utility, which is located within the



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City's proposed sewer service area. TNRCC and the Attorney General have recently inquired regarding the feasibility of the City assuming management and operational responsibility for Thoroughbred Farms because of its consistent failure to meet TNRCC standards. The initial cost to bring this utility, which serves only approximately 83 customers, into compliance will be more than \$100,000; future annual costs will be at least \$50,000. Much of these costs are not recoverable and thus will ultimately be borne by all of the City's ratepayers.

Currently, TNRCC staff require that applicants provide written service extension requests for each requested area to demonstrate a need for additional service. This policy has the effect of stymying long-term planning efforts. Municipal utility lines are designed and constructed to meet projected future needs, not just those immediate needs represented by recent service requests. Limiting the service boundaries to be included within a CCN strictly on account of existing service requests, without regard to the nature and location of projected development, severely undermines effective municipal utility planning by making it a reactive, rather than proactive, process. In addition, municipal ETJs, by definition, are areas designated for the purpose of actively promoting the health, safety and welfare of persons residing in and adjacent to municipalities. Tex. Loc. Gov. Code § 42.001. Finally, and perhaps most importantly, there is no law, regulation, or rule requiring that need for service be demonstrated in the manner currently required by your staff.

The City does not dispute that service extension requests may be used to show anticipated need for service; however, the City does dispute that service extension requests are the only way to demonstrate the need for service. Data concerning population and other demographic projections, wholesale service agreements, subdivision development, planned major arterials, etc., should be considered in conjunction with service extension requests in the "need for service" analysis.

By considering the merits of other legitimate need indicators—in addition to service extension requests—that are submitted by applicants, TNRCC staff will be able to fulfill their duty, while at the same time allowing municipalities to fulfill their long-term planning responsibilities.



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We appreciate your consideration of these issues and will be happy to answer any questions you might have regarding this subject.

Very truly yours,

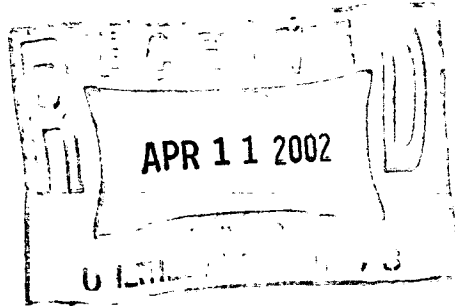
Bracewell & Patterson, L.L.P.

Barry R. McBee

Kenneth Ramirez

/jcb

cc: John Stephens, Acting Assistant City Manager  
Sedora Jefferson, City Attorney  
Marty Terry, Assistant City Attorney  
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Christopher Lippe, Director, Water and Wastewater Utility  
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility  
Bart Jennings, Water and Wastewater Utility  
Margaret Hoffman, Deputy Director of Legal Services - TNRCC  
Irene Montelongo, Senior Manager of Water Supply Division - TNRCC  
Angela Stephenson, Senior Attorney - TNRCC  
Mike Howell, Utility Certification & Rate Analysis Team - TNRCC  
Victoria Harkins, Ph.D., P.E. - TNRCC  
Doug Holcomb, Manager, Utility Certification & Rate Analysis Team  
Kenneth Ramirez, Attorney



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APR 11 2002

April 11, 2002

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION  
UTILITIES AND DISTRICTS

Barry R. McBee  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3610  
Fax: 512.479.3910  
bmcbee@bracepatt.com

Mr. Jeffrey Saitas  
Executive Director  
Texas Natural Resource Conservation  
Commission  
P. O. Box 13087, MC-109  
Austin, Texas 78711-3087

Re: Application from City of Austin to Obtain a Water CCN in Hays, Travis,  
and Williamson Counties; Application No. 33562-C

Application from City of Austin to Obtain a Sewer CCN in Hays, Travis,  
and Williamson Counties; Application No. 33563-C

Dear Jeff:

Many thanks to you and your staff for meeting with us and representatives of the City of Austin on March 28 regarding the City's pending applications for Certificates of Convenience and Necessity ("CCNs"). As we discussed at our meeting, the City and Texas Natural Resource Conservation Commission ("TNRCC") staff apparently disagree on at least one key issue: how to analyze the need for utility service in the geographic region in which the City seeks its CCNs.

The purpose of today's letter is to begin a dialogue concerning how the agency's informal policy of insisting upon service extension requests to show a need for utility service conflicts with municipalities' legitimate need for effective, long-term, regional planning in their extra-territorial jurisdictions ("ETJs"). As we discussed previously, the City's proposed service areas are entirely within its ETJ and impact fee boundary, which is established by City ordinance.

Whether there is a legitimate need for service is a critical issue that must be analyzed under both Texas Water Code § 13.246(c) and 30 TAC § 291.102(d)(2). One purpose served by this requirement is to help ensure that the application is not a speculative "land grab." We respectfully suggest, however, that the agency staff's analysis of this issue need not conflict with a city's effective regional planning. Indeed, as discussed below, policy established by the Texas Legislature strongly suggests that the two concepts should coexist.



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We appreciate your consideration of these issues and will be happy to answer any questions you might have regarding this subject.

Very truly yours,

Bracewell & Patterson, L.L.P.

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Barry R. McBee

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez'.

Kenneth Ramirez

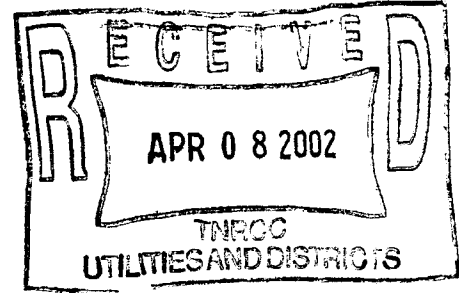
/jcb

cc: John Stephens, Acting Assistant City Manager  
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Kenneth Ramirez, Attorney



City of Austin  
**Law Department**

Norwood Tower, 114 West 7<sup>th</sup> Street, P.O. Box 1546  
Austin, Texas 78767-1546  
(512)974-2268



Writer's Direct Line  
512 / 974-2568

Writer's Fax Line  
512 / 974-2912

April 8, 2002

VIA HAND DELIVERY

Attorney Client Privilege  
Attorney Work Product

Mr. Doug Holcomb, Manager  
Utility Certification & Rate Analysis Team  
Utilities & Districts Section, MC-153  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, TX 78767-1308

Re: Docket No. 2002-0189-UCR; Application from City of Austin to Obtain a Water Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33562-C

Docket No. 2002-0189-UCR; Application from City of Austin to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33563-C

Dear Mr. Holcomb:

Thank you for our meeting on March 19, 2002 concerning the letter dated February 25, 2002 from Ms. Victoria Harkins regarding the above-referenced matters. During our meeting, we discussed the City of Austin's ("City") concerns regarding the technical review of its Water and Sewer CCN Applications ("Applications") by your staff and the adverse legal position asserted by your staff in the above-referenced letter. Based on our meeting, I understand that you need the information requested in the letter, dated March 6, 2002, from Mike Howell to address your concerns regarding the need for water and sewer utility service in the proposed areas. In addition, I understand that the above-mentioned adverse legal position asserted by your staff, in the letter dated February 25, 2002, is preliminary and may not be the Executive Director's legal position during the public hearing concerning the City's Applications.

CHIEF OF POLICE OFFICE

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Mr. Doug Holcomb  
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In Mr. Howell's March 6, 2002 request for information ("RFI"), he requested additional information regarding the need for water and sewer utility service in the proposed areas in the City's Applications. In response to Mr. Howell's RFI, the City has provided the information and accompanying documentation referenced below.

**RFI 1** *Written requests for service from potential customers including address and phone number. Requests can include landowners, developers, and business owners who own land in the proposed area.*

The City filed its CCN Applications in order to be able to engage in effective, long-term, regional planning to best serve its existing and potential customers in the proposed area. Attachment 1 contains written service extension requests ("SERs") for water service for tracts in the proposed water area. Attachment 2 contains written requests for sewer service in the proposed sewer area. Written requests for service are also illustrated through wholesale contracts with other municipalities and utilities adjacent to the proposed service areas. Attachment 3 contains copies of 20 wholesale service contracts and identification of proposed wholesale agreements for which the City is a wholesale service provider.

Under the City's existing authority to provide water and sewer utility service outside its corporate limits, the City is currently serving a large number of water and wastewater customers. Specifically, Attachment 4 contains the customer account numbers and addresses of existing outside City water retail customers within the Desired Development Zone and the City's ETJ; Attachment 5 contains the customer account numbers and addresses of existing City wastewater retail customers within the Desired Development Zone and the City's ETJ.

**RFI 2** *Map showing the location of those people requesting service in the proposed area.*

A map showing the locations of areas for requests for water and sewer utility service in the proposed areas, using current City corporate limit boundaries, is included in Attachment 6. Maps showing the service extension requests using 1990 City corporate limit boundaries were included in the Applications as described below. When these two sets of maps are compared, it is quite noticeable that many of the areas that requested utility service from the City have since been incorporated. This comparison demonstrates the City's movement toward providing full municipal and utility services within its finite ETJ (the City's ETJ growth is limited due to abutment with other municipalities' ETJs such as Cedar Park, Round Rock, Pflugerville, Manor, Bastrop, Creedmoor, Mustang Ridge, and Buda). The locations of customers within and adjacent to the proposed areas being provided water and sewer utility service by the City were included in the Applications as indicated below.

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- **Water**
  - (a) Wholesale Contracts Map, Application Attachment 2-Appendix 5.
  - (b) Water Service Extension Requests Map, Application Attachment 2-Appendix 6.
- **Sewer**
  - (a) Wholesale Contracts Map, Application Attachment 2-Appendix 4.
  - (b) Wastewater Service Extension Requests Map, Application Attachment 2-Appendix 5.

**RFI 3** *If you do not have written requests for service in any area, please provide a clear detailed explanation of the need for service.*

The City is currently providing wholesale and retail water and sewer utility service adjacent to and in the proposed areas, and has service extension requests as described above. For additional information regarding the need for service in the proposed areas, please see the following:

(1) Water Application:

- (a) Austin 10, 2001 letter to Doug Holcomb from Chris Lippe
- (b) Attachment 2, Memorandum from Craig Bell to Chris Lippe, dated July 31, 2001 and entitled "Summary Analysis of Need for Water Service in the Area Proposed in the City's CCN Application" (includes related Appendices 1-8).

(2) Sewer Application:

- (a) August 10, 2001 letter to Doug Holcomb from Chris Lippe
- (b) Attachment 2, Memorandum from Craig Bell to Chris Lippe, dated July 31, 2001 and entitled "Summary Analysis of Need for Wastewater Service in the Area Proposed in the City's CCN Application" (includes related Appendices 1-7).

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(3) The need for service in the proposed areas can also be demonstrated by preliminary plat applications filed with the City. Attachment 7 contains maps depicting the locations of preliminary plat applications filed with the City in the proposed areas. Four maps are included as follows:

- (a) Subdivision Map;
- (b) Subdivision Map – North Austin;
- (c) Subdivision Map – East Central Austin; and
- (d) Subdivision Map – South Austin.

As indicated in the maps, most of the proposed area has identified need for service via preliminary plat applications.

**RFI 4** *The proposed average cost to obtain water and sewer service for a residential only connection in the outermost limit of the proposed area.*

According to information provided to the City and included in its Applications, most of the proposed areas are expected to be urban and suburban residential developments. Generally, the initial costs for the facilities that are required to provide urban and suburban water and sewer utility service are paid by the developer and/or the City. The City has established specific cost incentives to encourage development in the proposed areas, *e.g.*, the City has cost participation and cost reimbursement programs for the infrastructure necessary to provide service. The amount of the reimbursement is dependent upon the size and oversizing of the infrastructure.

The Wild Horse Ranch development is an example of a recent suburban residential development near the outermost limits of the proposed area. The Wild Horse Ranch development will consist of approximately 6,725 Living Unit Equivalents and is located in the eastern quadrant of the City near the City of Manor and adjacent to the proposed service area. The Austin City Council has agreed to pay up to \$25 million dollars to reimburse the developer for hard cost related to the construction of water and wastewater facilities that are required to provide water and wastewater utility service to the area. A copy of the Wild Horse Ranch development Service Extension Request has been included in Attachment 8 for your review.

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The proposed average cost to obtain water and sewer service for a residential connection in the proposed development consists of a tap permit fee, inspection fee and capital recovery fee. These fees for a 5/8" water connection are currently \$110, \$50 and \$1,300, and \$0, \$50, and \$800 for a typical residential sewer connection (with concurrent water service). These costs are the same throughout the proposed areas.

**RFI 5** *The proposed average time to provide water and sewer service to the request for service.*

Since many of the factors that determine the timing of service extensions lie in the hands of developers and not the City, it is difficult to arrive at an "average time" estimate. By way of example, the Wild Horse Ranch development cost reimbursement was approved in September 2001; under an agreement with the developer, the water and wastewater facilities will be constructed in phases with the initial phases completed and available for utility service by the City in 2003.

In general, sections in the City's Land Development Code provide time limits for the extension of utility service by the City to subdivisions after a SER has been approved. Specifically, for service extensions approved before April 17, 2000, the approval remains effective until the latest of:

- (a) the date on which the preliminary plan expires for the property to be served by the service extension;
- (b) the second anniversary of the date on which the service extension was approved, if on or before that date:
  - (i) a preliminary plan for the property to be served has not been approved; or
  - (ii) construction of the service extension has not begun; or
- (c) the third anniversary of the date on which the service extension was approved, if:
  - (i) on or before that date a preliminary plan for the property to be served has not been approved; and
  - (ii) construction of the service extension began before the second anniversary of the date on which the service extension was approved, but on or before the third anniversary of that date, construction of the service extension has not been completed and accepted for operation and maintenance by the City.

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If construction of a service extension begins while the approval is in effect, however, the Director of the Water and Wastewater Utility may extend the approval of a service extension for the period of time estimated to be necessary to complete construction of the service extension.

For service extensions approved after April 17, 2000, a service extension expires on the latest of:

- (a) 120 days after the date of its approval;
- (b) for a project with a pending development application, the date the application expires; and
- (c) for a project with an approved development application, the date approval expires.

If a project's intensity, proposed land use, or anticipated water or wastewater demands change substantially, the approved service extension will expire.

If the approval of a service extension requires cost participation from the City under a cost participation contract:

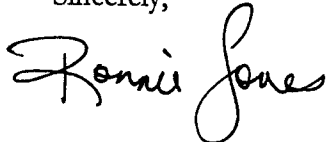
- (a) construction of the service extension begins on the date that fiscal security is posted or money is deposited in compliance with the contract; and
- (b) the service extension approval is extended until construction of the service extension is complete and the City accepts the lines and associated facilities constructed under the contract.

These and other pertinent regulations may be found in Chapter 25-9 of the City's Land Development Code, which is included in the Applications in Attachment 7.

If you have any further questions regarding the information we have provided here or any other aspect of the City's Applications, please do not hesitate to contact me at 512/974-2568.

Mr. Doug Holcomb  
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Sincerely,

A handwritten signature in cursive script that reads "Ronnie Jones".

Ronnie Jones  
Assistant City Attorney

Enclosures

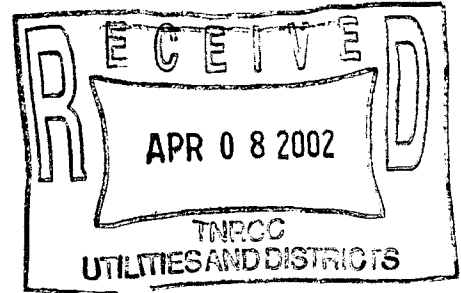
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COPIES OF LETTER BEING

SENT TO THE DISTRICT

NOTE: [unclear]

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**RFI 2** *Map showing the location of those people requesting service in the proposed area.*

A map showing the locations of areas for requests for water and sewer utility service in the proposed areas, using current City corporate limit boundaries, is included in Attachment 6. Maps showing the service extension requests using 1990 City corporate limit boundaries were included in the Applications as described below. When these two sets of maps are compared, it is quite noticeable that many of the areas that requested utility service from the City have since been incorporated. This comparison demonstrates the City's movement toward providing full municipal and utility services within its finite ETJ (the City's ETJ growth is limited due to abutment with other municipalities' ETJs such as Cedar Park, Round Rock, Pflugerville, Manor, Bastrop, Creedmoor, Mustang Ridge, and Buda). The locations of customers within and adjacent to the proposed areas being provided water and sewer utility service by the City were included in the Applications as indicated below.

Mr. Doug Holcomb  
April 8, 2002  
Page 3

- **Water**

- (a) Wholesale Contracts Map, Application Attachment 2-Appendix 5.

- (b) Water Service Extension Requests Map, Application Attachment 2-Appendix 6.

- **Sewer**

- (a) Wholesale Contracts Map, Application Attachment 2-Appendix 4.

- (b) Wastewater Service Extension Requests Map, Application Attachment 2-Appendix 5.

**RFI 3** *If you do not have written requests for service in any area, please provide a clear detailed explanation of the need for service.*

The City is currently providing wholesale and retail water and sewer utility service adjacent to and in the proposed areas, and has service extension requests as described above. For additional information regarding the need for service in the proposed areas, please see the following:

(1) Water Application:

- (a) Austin 10, 2001 letter to Doug Holcomb from Chris Lippe

- (b) Attachment 2, Memorandum from Craig Bell to Chris Lippe, dated July 31, 2001 and entitled "Summary Analysis of Need for Water Service in the Area Proposed in the City's CCN Application" (includes related Appendices 1-8).

(2) Sewer Application:

- (a) August 10, 2001 letter to Doug Holcomb from Chris Lippe

- (b) Attachment 2, Memorandum from Craig Bell to Chris Lippe, dated July 31, 2001 and entitled "Summary Analysis of Need for Wastewater Service in the Area Proposed in the City's CCN Application" (includes related Appendices 1-7).

Mr. Doug Holcomb

April 8, 2002

Page 4

(3) The need for service in the proposed areas can also be demonstrated by preliminary plat applications filed with the City. Attachment 7 contains maps depicting the locations of preliminary plat applications filed with the City in the proposed areas. Four maps are included as follows:

- (a) Subdivision Map;
- (b) Subdivision Map – North Austin;
- (c) Subdivision Map – East Central Austin; and
- (d) Subdivision Map – South Austin.

As indicated in the maps, most of the proposed area has identified need for service via preliminary plat applications.

**RFI 4** *The proposed average cost to obtain water and sewer service for a residential only connection in the outermost limit of the proposed area.*

According to information provided to the City and included in its Applications, most of the proposed areas are expected to be urban and suburban residential developments. Generally, the initial costs for the facilities that are required to provide urban and suburban water and sewer utility service are paid by the developer and/or the City. The City has established specific cost incentives to encourage development in the proposed areas, *e.g.*, the City has cost participation and cost reimbursement programs for the infrastructure necessary to provide service. The amount of the reimbursement is dependent upon the size and oversizing of the infrastructure.

The Wild Horse Ranch development is an example of a recent suburban residential development near the outermost limits of the proposed area. The Wild Horse Ranch development will consist of approximately 6,725 Living Unit Equivalents and is located in the eastern quadrant of the City near the City of Manor and adjacent to the proposed service area. The Austin City Council has agreed to pay up to \$25 million dollars to reimburse the developer for hard cost related to the construction of water and wastewater facilities that are required to provide water and wastewater utility service to the area. A copy of the Wild Horse Ranch development Service Extension Request has been included in Attachment 8 for your review.

Mr. Doug Holcomb  
April 8, 2002  
Page 5

The proposed average cost to obtain water and sewer service for a residential connection in the proposed development consists of a tap permit fee, inspection fee and capital recovery fee. These fees for a 5/8" water connection are currently \$110, \$50 and \$1,300, and \$0, \$50, and \$800 for a typical residential sewer connection (with concurrent water service). These costs are the same throughout the proposed areas.

**RFI 5** *The proposed average time to provide water and sewer service to the request for service.*

Since many of the factors that determine the timing of service extensions lie in the hands of developers and not the City, it is difficult to arrive at an "average time" estimate. By way of example, the Wild Horse Ranch development cost reimbursement was approved in September 2001; under an agreement with the developer, the water and wastewater facilities will be constructed in phases with the initial phases completed and available for utility service by the City in 2003.

In general, sections in the City's Land Development Code provide time limits for the extension of utility service by the City to subdivisions after a SER has been approved. Specifically, for service extensions approved before April 17, 2000, the approval remains effective until the latest of:

- (a) the date on which the preliminary plan expires for the property to be served by the service extension;
- (b) the second anniversary of the date on which the service extension was approved, if on or before that date:
  - (i) a preliminary plan for the property to be served has not been approved; or
  - (ii) construction of the service extension has not begun; or
- (c) the third anniversary of the date on which the service extension was approved, if:
  - (i) on or before that date a preliminary plan for the property to be served has not been approved; and
  - (ii) construction of the service extension began before the second anniversary of the date on which the service extension was approved, but on or before the third anniversary of that date, construction of the service extension has not been completed and accepted for operation and maintenance by the City.

Mr. Doug Holcomb  
April 8, 2002  
Page 6

If construction of a service extension begins while the approval is in effect, however, the Director of the Water and Wastewater Utility may extend the approval of a service extension for the period of time estimated to be necessary to complete construction of the service extension.

For service extensions approved after April 17, 2000, a service extension expires on the latest of:

- (a) 120 days after the date of its approval;
- (b) for a project with a pending development application, the date the application expires; and
- (c) for a project with an approved development application, the date approval expires.

If a project's intensity, proposed land use, or anticipated water or wastewater demands change substantially, the approved service extension will expire.

If the approval of a service extension requires cost participation from the City under a cost participation contract:

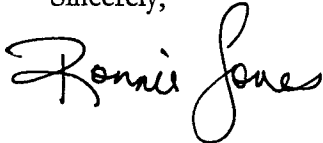
- (a) construction of the service extension begins on the date that fiscal security is posted or money is deposited in compliance with the contract; and
- (b) the service extension approval is extended until construction of the service extension is complete and the City accepts the lines and associated facilities constructed under the contract.

These and other pertinent regulations may be found in Chapter 25-9 of the City's Land Development Code, which is included in the Applications in Attachment 7.

If you have any further questions regarding the information we have provided here or any other aspect of the City's Applications, please do not hesitate to contact me at 512/974-2568.

Mr. Doug Holcomb  
April 8, 2002  
Page 7

Sincerely,

A handwritten signature in cursive script that reads "Ronnie Jones". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Ronnie Jones  
Assistant City Attorney

Enclosures

xc: Jeff Saitas, Executive Director - TNRCC  
Victoria Harkins, Ph.D., P.E. - TNRCC  
Mike Howell - TNRCC  
John Stephens, Acting Assistant City Manager  
Chris Lippe, P.E, Director, Water and Wastewater Utility  
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility  
Sedora Jefferson, City Attorney  
Marty Terry, Division Chief  
Kenneth Ramirez, Attorney  
Monica Jacobs, Attorney  
Bart Jennings, Water and Wastewater Utility

# Barney Knight & Associates

Attorneys at Law

Tel: (512) 323-5778  
FAX: (512) 323-5773  
BarneyKn@aol.com

Executive Office Terrace  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

Attorneys  
Barney L. Knight  
Sheila I. Jalufka  
Gregory D. Humbach

April 4, 2002

Texas Natural Resource Conservation Commission  
Attn: Mike Howell  
Registration, Review & Recording Division  
Permits Administrative Review Section  
Water Quality Applications Team  
MC-153  
P.O. Box 13087  
Austin, Texas 78711-3087

04/04/02 10:10 AM  
10/10/02 10:10 AM  
10/10/02 10:10 AM

Re: Application to Amend Sewer CCN for the City of Austin, Texas No.33563-C

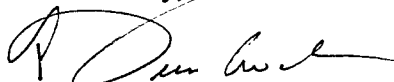
Dear Mr. Howell:

The purpose of this correspondence is to advise that the City of Manor, Texas desires to express their support of the application for a sewer CCN referenced above. This application indicates long range planning on behalf of the City of Austin that should benefit future ratepayers who will received a level of service that they might not otherwise.

The City of Manor believes that allowing cities to obtain CNN's for a large portion of their ETJ results in a reduction or retrofitting expenses to the city and its ratepayers. As you know MUDs, water and wastewater supply corporations, and similar service providers do not build their utilities to city standards, requiring a rebuild when a city annexes these areas.

The City of Manor further believes that effective long term regional planning is best accomplished when other utilities providers are not attempting to provide uncoordinated water and wastewater services within their ETJ. For the above reasons the City of Manor supports the City of Austin's application to amend its CCN referenced above.

Yours Truly,



Gregory D. Humbach

cc: Bart Jennings, City of Austin Wholesale Services  
Mike Tuley, Dir. Public Works City of Manor, Texas



April 2, 2002

Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3611  
Fax: 512.472.9123  
kramirez@bracepatt.com

CONFIDENTIAL  
COMPROMISE NEGOTIATIONS

Mr. John J. Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, TX 78701

Re: Withdrawal of Dessau Utilities, Inc.'s Protest and Request for a Public Hearing Regarding the Application of the City of Austin for a Sewer Certificate of Convenience and Necessity (Application No. 33563-C)

Dear Mr. Carlton:

On October 9, 2001, Mr. Steve Stratton submitted a letter of protest to the Texas Natural Resource Conservation Commission ("TNRCC"), on behalf of Dessau Utilities, Inc. ("Dessau") requesting a public hearing regarding the above-referenced City of Austin ("City") application for a sewer Certificate of Convenience and Necessity ("CCN").

More specifically, his protest letter stated that:

Dessau requests a hearing because some of the proposed area is currently served by Dessau.

Dessau Utilities also believes that some of this area would be more effectively served by Dessau's existing facilities. The current customers who have paid to connect to the system and potential customers would be affected by cost the City would require them to pay to construct lift stations and lines to be served by the City.

Dessau Utilities would be affected by its loss of revenue from these potential customers.

If the tracts that are served or that could be more effectively served by Dessau Utilities Inc. were

APR 11 2002  
11:45 AM  
CLIFF CLEGG OFFICE

Mr. John J. Carlton  
April 2, 2002  
Page 2

Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3611  
Fax: 512.472.9123  
kramirez@bracepatt.com

removed from this request we could withdraw our  
request for a hearing.

As a result of our recent meetings and discussions between Dessau and City representatives, it is my understanding that Dessau's concerns have been resolved and that the City and Dessau agree to settle this matter on the following terms:

- (1) Dessau will submit a letter to the TNRCC formally withdrawing its protest and request for a public hearing within ten (10) days after this letter agreement is executed by both the City and Dessau.
- (2) Within thirty (30) days of the execution date of this agreement, Dessau will file an application with the TNRCC to decertify the areas identified in Attachment A (labeled "CCN area Dessau will decertify"), which are within the corporate limits of the City. One area is located south of Parmer Lane near the Harris Ridge subdivision and the other area straddles Parmer Lane and is located southeast of the Harris Ridge subdivision. The City will assist Dessau in the creation of the CCN decertification application and pay for the costs of the application and its own CCN processing costs. Dessau will provide all requested information by the City related to the CCN decertification application in a timely manner and at its own cost, provided that information requested by the City will not require Dessau to retain or pay any consultants in order to respond to the City's request. The City will process the CCN application.
- (3) Dessau and the City hereby reaffirm their agreement as set forth in the final plat for Dessau Business Park. When Dessau receives written notice from the City that gravity wastewater service is available for the area north of Gregg Lane identified in Attachment A (labeled "CCN area Dessau will transfer to City of Austin"), the City will assist Dessau in the creation of the CCN transfer application and pay for the costs of the application and the City's own CCN processing costs. The CCN application will be filed by Dessau within thirty (30) days of the City's written request to file the transfer application and the City's submittal of the information requested by Dessau that is necessary to complete and file the application. Dessau will provide all requested information by the City related to the CCN decertification application in a timely manner and at its own cost, provided that information requested by the City will not require Dessau to retain or pay any consultants in order to respond to the City's request. Dessau will also transfer and assign all of its rights and interest in existing wastewater facilities and easements to the City for the previous referenced area, and the transfer and assignments of its rights and interest in those wastewater facilities



Mr. John J. Carlton  
April 2, 2002  
Page 3

and easements will be without conditions. The transfer will be accomplished at no cost to Dessau. The City will process the CCN application.

- (4) In consideration for the above actions, the City agrees as follows:
  - (a) if the owner(s) of the property identified in Attachment A (labeled "Revised proposed Austin wastewater CCN--Fish Tract") ("Fish Tract") files a preliminary plat with the City for all or a portion of the Fish Tract Areas and notifies the City's Utility in writing that the proposed development requires service by a sanitary sewer utility, then the City agrees to engage in discussions, no longer than sixty days, with Dessau to determine the best engineering solution (including, but not limited to actual costs) for sanitary sewer service. The parties agree that the party that is able to provide sanitary sewer service using the best engineering solution will be entitled to serve the portion of the Fish Tract requesting service and that the parties will transfer the CCN (or any portion thereof), if necessary, to the party that is entitled to serve the area. If a solution cannot be mutually agreed to by both parties within the sixty day period, then the City and Dessau agree to engage in non-binding mediation, sharing equally in the cost, within thirty days to determine the best engineering solution to provide sanitary sewer utility service to the development; and
  - (b) remove the area identified in Attachment A, labeled "Area to be removed from City of Austin's proposed CCN," from its proposed sewer CCN service area.

In addition, by signing this agreement, the City and Dessau acknowledge and agree that upon the execution of this letter agreement:

- (1) Dessau is not adversely affected by the granting of the City's sewer CCN application; and
- (2) the City's proposed sewer CCN application does not include area currently being served by Dessau other than noted above.

If you agree with the terms and conditions in this letter agreement, please memorialize your agreement by signing in the space below and having this Agreement executed by Mr. Steve Stratton in the space below. Please sign both copies of this letter, and have the letters executed by Mr. Stratton, and return them to me at the address on this letterhead. I will then send you an executed original for your files.



Mr. John J. Carlton  
April 2, 2002  
Page 4

On behalf of the City, may I thank you and Dessau for your cooperation in this matter.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in cursive script, appearing to read 'Kenneth Ramirez'.

Kenneth Ramirez

A large, stylized handwritten signature in cursive script, appearing to read 'John J. Carlton'.

John J. Carlton  
for Dessau Utilities, Inc.

Dated: 04-02-02

A handwritten signature in cursive script, appearing to read 'Steve Stratton'.

Steve Stratton, Vice President  
Dessau Utilities, Inc.

Dated: 04-02-02

A handwritten signature in cursive script, appearing to read 'Kenneth Ramirez'.

Kenneth Ramirez  
for the City of Austin

Dated: 04-02-02

A handwritten signature in cursive script, appearing to read 'John Stephens'.

John Stephens, Acting Assistant City Manager  
for the City of Austin

Dated: 4/3/02

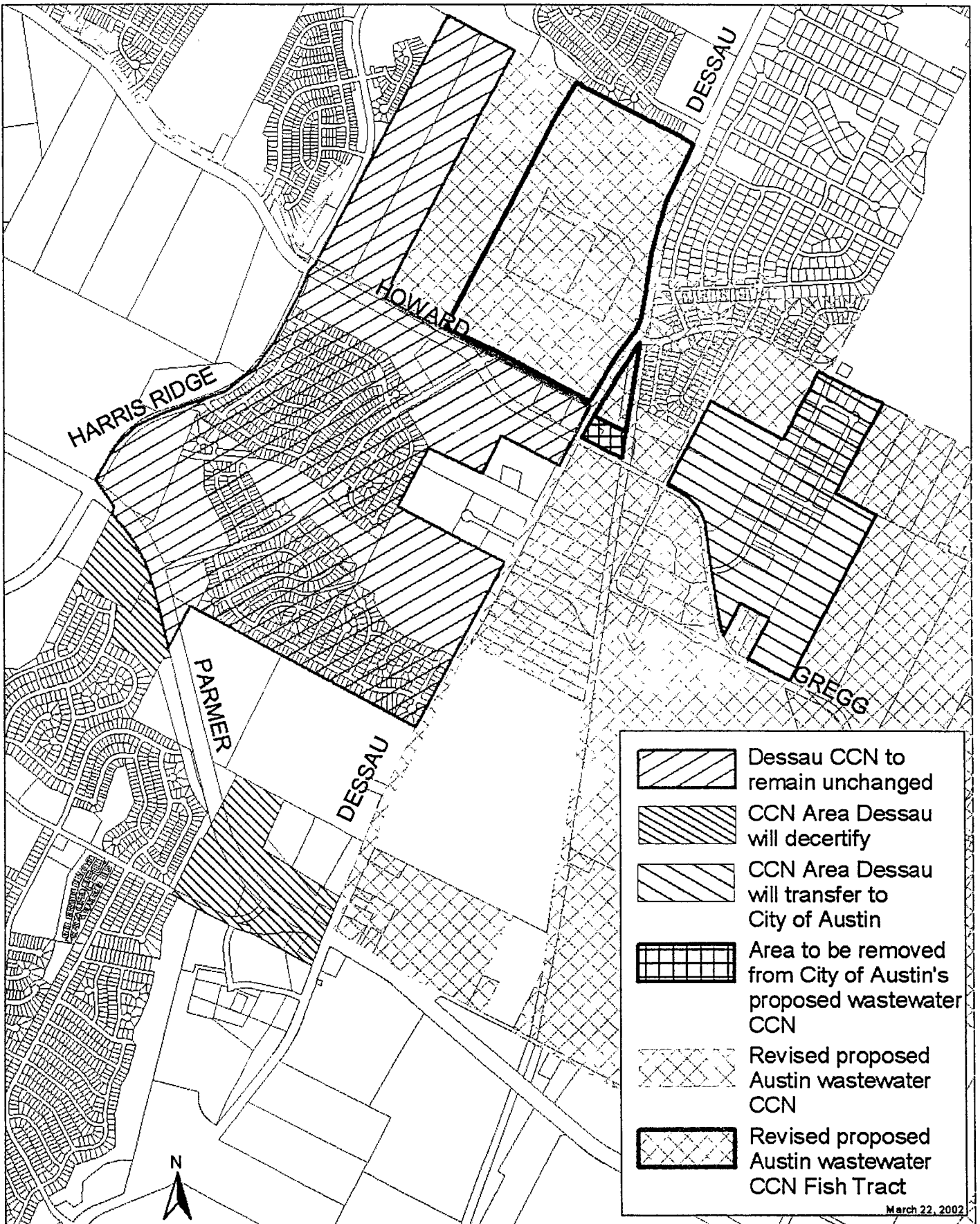


Mr. John J. Carlton

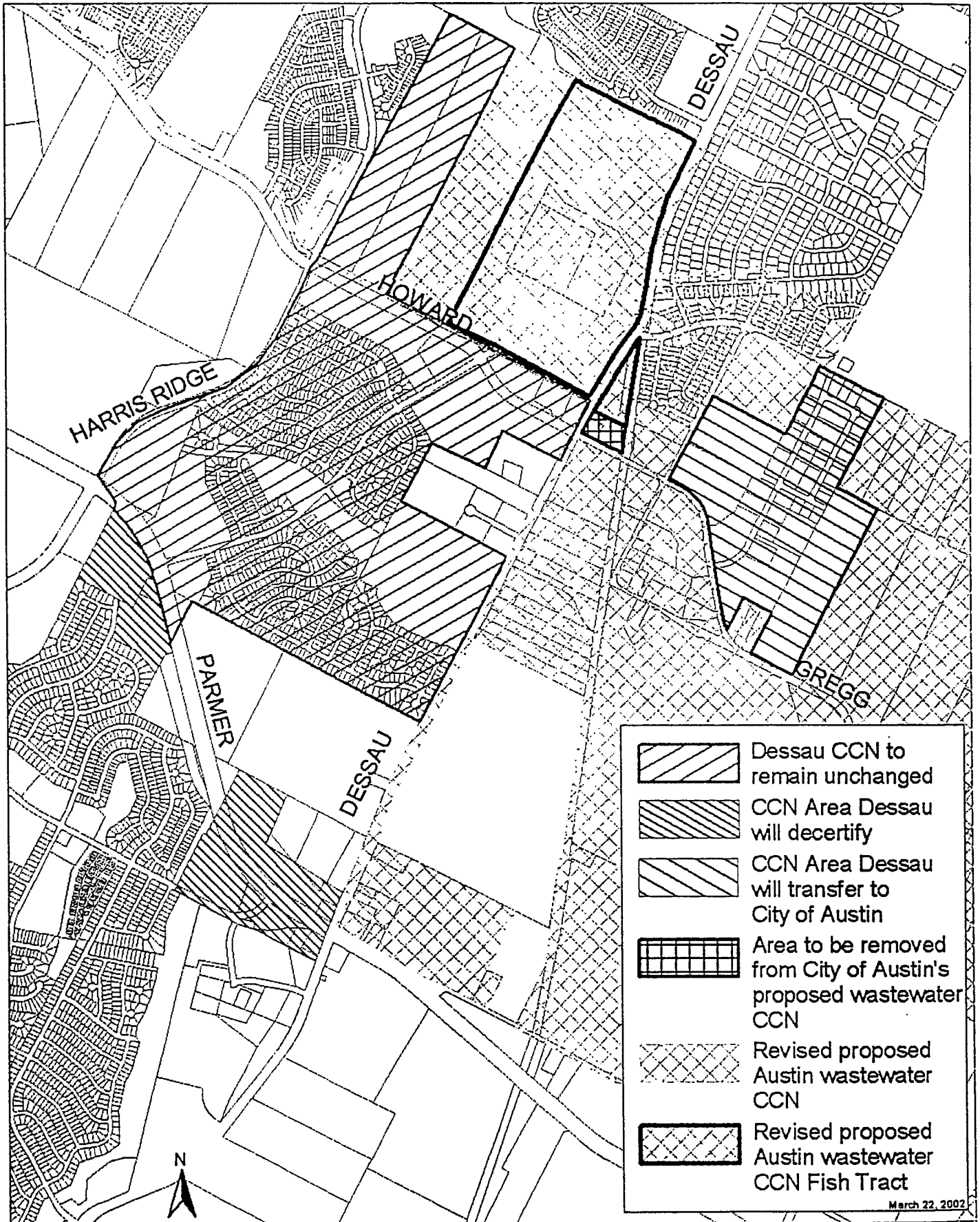
April 2, 2002

Page 5

cc: Mr. Mike Howell  
Mr. Andy Covar  
Mr. Bart Jennings  
Mr. Ronnie Jones



March 22, 2002



March 22, 2002



CHIEF COUNSEL OFFICE

Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3611  
Fax: 512.472.9123  
kramirez@bracepatt.com

April 2, 2002

CONFIDENTIAL  
COMPROMISE NEGOTIATIONS

Mr. John J. Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, TX 78701

Re: Withdrawal of Dessau Utilities, Inc.'s Protest and Request for a Public Hearing Regarding the Application of the City of Austin for a Sewer Certificate of Convenience and Necessity (Application No. 33563-C)

Dear Mr. Carlton:

On October 9, 2001, Mr. Steve Stratton submitted a letter of protest to the Texas Natural Resource Conservation Commission ("TNRCC"), on behalf of Dessau Utilities, Inc. ("Dessau") requesting a public hearing regarding the above-referenced City of Austin ("City") application for a sewer Certificate of Convenience and Necessity ("CCN").

More specifically, his protest letter stated that:

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Dessau Utilities would be affected by its loss of revenue from these potential customers.

If the tracts that are served or that could be more effectively served by Dessau Utilities Inc. were





Mr. John J. Carlton  
April 2, 2002  
Page 2

Kenneth Ramirez  
Partner

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kramirez@bracepatt.com

removed from this request we could withdraw our  
request for a hearing.

As a result of our recent meetings and discussions between Dessau and City representatives, it is my understanding that Dessau's concerns have been resolved and that the City and Dessau agree to settle this matter on the following terms:

- (1) Dessau will submit a letter to the TNRCC formally withdrawing its protest and request for a public hearing within ten (10) days after this letter agreement is executed by both the City and Dessau.
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- (3) Dessau and the City hereby reaffirm their agreement as set forth in the final plat for Dessau Business Park. When Dessau receives written notice from the City that gravity wastewater service is available for the area north of Gregg Lane identified in Attachment A (labeled "CCN area Dessau will transfer to City of Austin"), the City will assist Dessau in the creation of the CCN transfer application and pay for the costs of the application and the City's own CCN processing costs. The CCN application will be filed by Dessau within thirty (30) days of the City's written request to file the transfer application and the City's submittal of the information requested by Dessau that is necessary to complete and file the application. Dessau will provide all requested information by the City related to the CCN decertification application in a timely manner and at its own cost, provided that information requested by the City will not require Dessau to retain or pay any consultants in order to respond to the City's request. Dessau will also transfer and assign all of its rights and interest in existing wastewater facilities and easements to the City for the previous referenced area, and the transfer and assignments of its rights and interest in those wastewater facilities



Mr. John J. Carlton  
April 2, 2002  
Page 3

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- (4) In consideration for the above actions, the City agrees as follows:
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  - (b) remove the area identified in Attachment A, labeled "Area to be removed from City of Austin's proposed CCN," from its proposed sewer CCN service area.

In addition, by signing this agreement, the City and Dessau acknowledge and agree that upon the execution of this letter agreement:

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Mr. John J. Carlton  
April 2, 2002  
Page 4

On behalf of the City, may I thank you and Dessau for your cooperation in this matter.

Very truly yours,

Bracewell & Patterson, L.L.P.

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Kenneth Ramirez

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John J. Carlton  
for Dessau Utilities, Inc.

Dated: 04-02-02

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Steve Stratton, Vice President  
Dessau Utilities, Inc.

Dated: 04-02-02

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Kenneth Ramirez  
for the City of Austin

Dated: 04-02-02

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John Stephens, Acting Assistant City Manager  
for the City of Austin

Dated: 4/3/02



Mr. John J. Carlton

April 2, 2002

Page 5

cc: Mr. Mike Howell  
Mr. Andy Covar  
Mr. Bart Jennings  
Mr. Ronnie Jones



Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3611  
Fax: 512.472.9123  
kramirez@bracepatt.com

April 2, 2002

CONFIDENTIAL  
COMPROMISE NEGOTIATIONS

Mr. John J. Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, TX 78701

Re: Withdrawal of Dessau Utilities, Inc.'s Protest and Request for a Public Hearing Regarding the Application of the City of Austin for a Sewer Certificate of Convenience and Necessity (Application No. 33563-C)

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TEXAS NATURAL  
RESOURCE CONSERVATION  
COMMISSION

APR 2 11 4 55

CHIEF CLERK'S OFFICE



Mr. John J. Carlton  
April 2, 2002  
Page 2

Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3611  
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Mr. John J. Carlton  
April 2, 2002  
Page 3

and easements will be without conditions. The transfer will be accomplished at no cost to Dessau. The City will process the CCN application.

- (4) In consideration for the above actions, the City agrees as follows:
- (a) if the owner(s) of the property identified in Attachment A (labeled "Revised proposed Austin wastewater CCN--Fish Tract") ("Fish Tract") files a preliminary plat with the City for all or a portion of the Fish Tract Areas and notifies the City's Utility in writing that the proposed development requires service by a sanitary sewer utility, then the City agrees to engage in discussions, no longer than sixty days, with Dessau to determine the best engineering solution (including, but not limited to actual costs) for sanitary sewer service. The parties agree that the party that is able to provide sanitary sewer service using the best engineering solution will be entitled to serve the portion of the Fish Tract requesting service and that the parties will transfer the CCN (or any portion thereof), if necessary, to the party that is entitled to serve the area. If a solution cannot be mutually agreed to by both parties within the sixty day period, then the City and Dessau agree to engage in non-binding mediation, sharing equally in the cost, within thirty days to determine the best engineering solution to provide sanitary sewer utility service to the development; and
  - (b) remove the area identified in Attachment A, labeled "Area to be removed from City of Austin's proposed CCN," from its proposed sewer CCN service area.

In addition, by signing this agreement, the City and Dessau acknowledge and agree that upon the execution of this letter agreement:

- (1) Dessau is not adversely affected by the granting of the City's sewer CCN application; and
- (2) the City's proposed sewer CCN application does not include area currently being served by Dessau other than noted above.

If you agree with the terms and conditions in this letter agreement, please memorialize your agreement by signing in the space below and having this Agreement executed by Mr. Steve Stratton in the space below. Please sign both copies of this letter, and have the letters executed by Mr. Stratton, and return them to me at the address on this letterhead. I will then send you an executed original for your files.



Mr. John J. Carlton  
April 2, 2002  
Page 4

On behalf of the City, may I thank you and Dessau for your cooperation in this matter.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', written over a horizontal line.

Kenneth Ramirez

A large, stylized handwritten signature in black ink, written over a horizontal line.

John J. Carlton  
for Dessau Utilities, Inc.

Dated: 04-02-02

A handwritten signature in black ink, appearing to read 'Steve Stratton', written over a horizontal line.

Steve Stratton, Vice President  
Dessau Utilities, Inc.

Dated: 04-02-02

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', written over a horizontal line.

Kenneth Ramirez  
for the City of Austin

Dated: 04-02-02

A handwritten signature in black ink, appearing to read 'John Stephens', written over a horizontal line. To the right of the signature, the date '4/3/02' is handwritten.

John Stephens, Acting Assistant City Manager  
for the City of Austin

Dated: 4/3/02



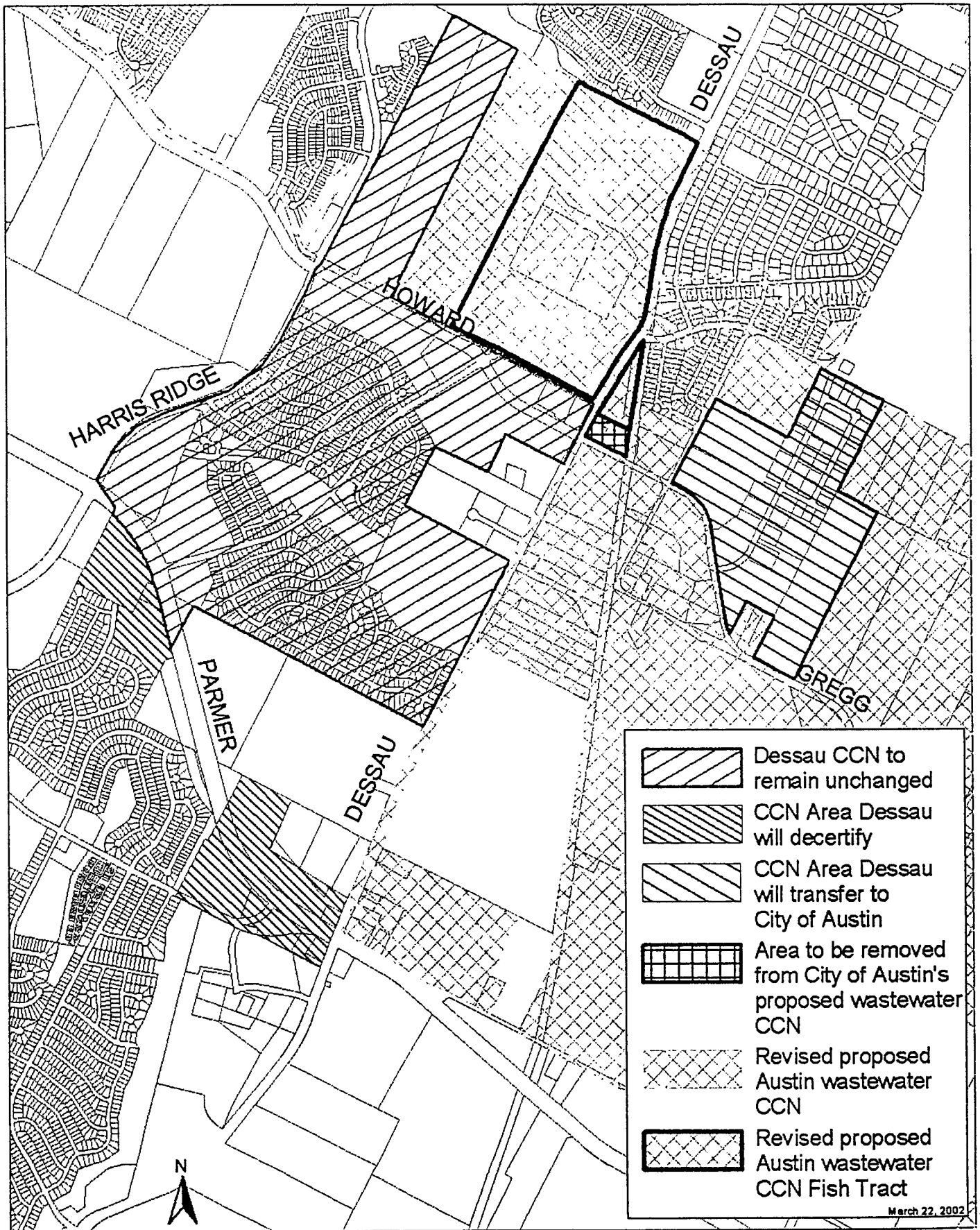


Mr. John J. Carlton

April 2, 2002

Page 5

cc: Mr. Mike Howell  
Mr. Andy Covar  
Mr. Bart Jennings  
Mr. Ronnie Jones





CCN/11978

CHIEF CLERK OFFICE

Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3611  
Fax: 512.472.9123  
kramirez@bracepatt.com

Via Hand Delivery

March 29, 2002

LaDonna Castañeula, Chief Clerk  
Office the Chief Clerk  
Texas Natural Resource Conservation  
Commission  
P.O. Box 13087, MC-105  
Austin, Texas 78711-3087

Re: City of Austin's Water and Sewer CCN Applications (33562-C and  
33563-C)

Dear Ms. Castañeula:

Enclosed please find an original and one copy of a letter to Doug Holcomb in response to Hornsby Bend Utility Company, Inc.'s Request for Contested Case Hearing on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C). Please date-stamp the copy and return it to my messenger.

If you have any questions, please contact me at 512/494-3611.

Very truly yours,

Bracewell & Patterson, L.L.P.

Kenneth Ramirez

KR/jcb  
Enclosure

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MAR 29 2002

cc: Doug Holcomb  
John J. Carlton, Attorney for Hornsby Bend  
Ronnie Jones, Assistant City Attorney  
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility  
Bart Jennings, Water and Wastewater Utility

UTILITY & DISTRICT  
OVERSIGHT TEAM



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MARCH 29 2002  
UTILITY & DISTRICT  
OVERSIGHT TEAM

Kenneth Ramirez  
Partner

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4043  
Phone: 512.494.3611  
Fax: 512.472.9123  
kramirez@bracepatt.com

By Hand Delivery

March 29, 2002

Mr. Doug Holcomb  
Utilities & Districts Section  
Texas Natural Resources Conservation Commission  
P.O. Box 13087, MC 153  
Austin, Texas 78711-3087

Re: Response to Hornsby Bend Utility Company, Inc.'s Request for Public Hearing on the City of Austin's Water and Sewer CCN Applications (33562-C and 33563-C)

Dear Mr. Holcomb:

On October 17, 2001, Mr. John J. Carlton filed a request for public hearing on behalf of Hornsby Bend Utility Company, Inc. ("Hornsby") regarding the City of Austin's ("City") water and sewer Certificate of Convenience and Necessity ("CCN") applications (33562-C and 33563-C) ("Application(s)"). The City filed its Applications on August 13, 2001. The Applications were declared administratively complete on August 20, 2001. The City issued individual and published notices under 30 TAC § 291.106; the last date of publication was October 3, 2001.

A request for a contested hearing may be granted if made by an "affected person." See 30 TAC § 55.27(b)(2); see also 30 TAC §§ 291.107(d) and 55.101(g)(5). An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. See 30 TAC § 55.29(a). An interest that is common to members of the general public does not qualify as a personal justiciable interest. See *id.* This standard requires Hornsby to show that it will potentially suffer harm or has a justiciable interest that will be affected. See United Copper Industries, Inc. v. Grissom, 17 S.W.3d 797, 803 (Tex. App.—Austin 2000, pet. denied).

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MAR 29 2002

UTILITY & DISTRICT  
OVERSIGHT TEAM



Mr. Doug Holcomb  
March 29, 2002  
Page 2

Relevant factors to be considered in evaluating whether a person is an affected person include:

- (1) Whether the interest claimed is one protected by the law under which the application will be considered;
- (2) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (3) The likely impact of the regulated activity on the health, safety, and use of property of the person; and
- (4) The likely impact of the regulated activity on use of the impacted natural resource by the person.

30 TAC § 55.29(c).

In addition, a request for hearing must also be reasonable and supported by competent evidence. *See* 30 TAC § 55.27(b)(2).

As is explained below, Hornsby does not qualify as an affected person with respect to the majority of the Water and Sewer Applications. In addition, its request for hearing is not reasonable and supported by competent evidence.

**The City's Proposed Water Service Area  
Excludes Hornsby's Water Service Area**

Hornsby requests a hearing because it asserts that it will be adversely affected by the granting of the City's water CCN application because some of the City's proposed water service area is currently served by Hornsby. This assertion is incorrect and thus is not a basis for affected person status. According to maps provided to the City by TNRCC, none of the City's proposed water utility service area is within Hornsby's certificated water utility service area. Additionally, as is stated in the City's water CCN application and the notice of the City's water CCN application, the proposed water area expressly excludes any areas that lie within the boundary of a TNRCC-issued water CCN (such as Hornsby's) that was valid and in effect as of the date the City's water CCN application was filed and any connections currently being served by such provider. Thus, granting the City's water CCN application will not affect Hornsby's economic interest in its water CCN or use of its property or natural resources.



# City of Austin

Founded by Congress, Republic of Texas, 1839  
Municipal Building, Eighth at Colorado, P.O. Box 1088, Austin, Texas 78767 Telephone 512/499-2000

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March 8, 2002

MAR 12 2002

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION  
UTILITIES AND DISTRICTS

Mr. Gregory D. Humbach  
Executive Office Terrace  
223 West Anderson Lane, Suite A-105  
Austin, TX 78752

Re: City of Manor Wastewater CCN Application (#33744-C)

Dear Mr. Humbach:

Thank you for meeting with City of Austin representatives yesterday regarding Manor's wastewater CCN application. After discussing with you the reasons for the filing of your CCN, I believe each of the cities have much in common. We too believe that it is in the best interests of current and future ratepayers to ensure that cost-efficient and effective long-range infrastructure planning, placement, and sizing are accomplished. We both believe that our CCN applications address the State's mandate for regionalizations of water and wastewater services and additionally, we both have evidence that supports the need for regional water and sewer utility service in our extra-territorial jurisdictions (ETJ).

I wanted to reaffirm that the City of Austin does not intend to protest the City of Manor's Application to Amend Sewer CCN No. 33744-C. We do not believe there exists an overlap between your proposed amendment to Sewer CCN No. 33744-C and the City's proposed sewer utility service area in Application No. 33563-C. As indicated in our water and sewer CCN applications, each city is intending to provide regional water and sewer service within its ETJ.

I wish you the best of luck with your sewer application. If you need additional information or we can be of service to you, please call me at 972-0118. Thank you.

Sincerely,

Bart Jennings  
Wholesale Services

cc: Ronnie Jones, Assistant City Attorney  
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility  
Ken Ramirez, Legal Counsel  
Mike Howell, TNRCC

OFFICE OF THE  
DIRECTOR  
MARCH 12 2002  
MAY 1 2002

Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Kathleen Hartnett White, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*  
March 6, 2002

### CERTIFIED MAIL

Mr. Ronnie Jones  
City of Austin  
Assistant City Attorney  
P.O.B. 1546  
Austin, TX 78767-1546

Re: Application from City of Austin to Obtain a Water Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33562-C

Application from City of Austin to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33563-C

Dear Mr. Jones:

This letter is to request further information concerning the above stated applications. A requirement under Texas Water Code Chapter 13, CCNs are granted only when and where there is a need for service. With respect to the proposed area in these applications, please provide the following:

- (1) Written requests for service from potential customers including address and phone number. Requests can include landowners, developers, and business owners who own land in the proposed area.
- (2) Map showing the location of those people requesting service in the proposed area.
- (3) If you do not have written requests for service in any area, please provide a clear detailed explanation of the need for service.
- (4) The proposed average cost to obtain water and sewer service for a residential only connection in the outermost limit of the proposed area.
- (5) The proposed average time to provide water and sewer service to the request for service.

Please provide the requested information by **April 9, 2002**. Your attention to this matter is appreciated. If you have any questions, please contact me at (512)239-6960, or if by correspondence, include MC 153 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Mike Howell".

for Mike Howell  
Utility Certification & Rate Analysis Team  
Utilities & Districts Section  
Water Supply Division

MH/ac

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MARCH 11 11 05 AM '02  
NATURAL RESOURCE CONSERVATION COMMISSION

Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Kathleen Hartnett White, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*  
March 6, 2002

### CERTIFIED MAIL

Mr. Ronnie Jones  
City of Austin  
Assistant City Attorney  
P.O.B. 1546  
Austin, TX 78767-1546

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Sincerely,

A handwritten signature in cursive script that reads "Victoria Harkins".

for Mike Howell  
Utility Certification & Rate Analysis Team  
Utilities & Districts Section  
Water Supply Division

MH/ac





# City of Austin Law Department

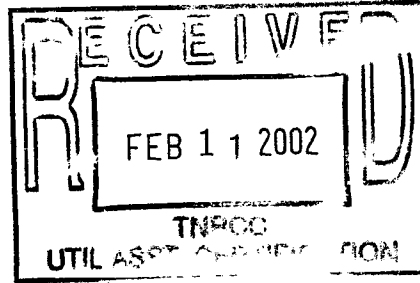
Norwood Tower, 114 West 7<sup>th</sup> Street, P.O. Box 1546  
Austin, Texas 78767-1546  
(512)974-2268

RECEIVED  
FEB 11 2002  
CITY OF AUSTIN  
LAW DEPARTMENT

Writer's Direct Line  
512 / 974-2568

Writer's Fax Line  
512 / 974-2912

February 11, 2002



Mr. Mike Howell  
Utility Certification & Rate Analysis Team  
Utilities & Districts Section, MC-153  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, TX 78711-3087

VIA HAND DELIVERY

Re: Application from City of Austin to Obtain a Water Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33562-C

Application from City of Austin to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Travis, Hays and Williamson Counties; Application No. 33563-C

Dear Mr. Howell:

On December 7, 2001, you sent the City of Austin ("City") a letter, pursuant to our December 6, 2001 meeting, allowing additional time for the City to address the concerns of protestants to the City's CCN applications referenced above. You requested a response and progress report from the City by February 11, 2002. Accordingly, this letter provides a summary of the City's efforts since December 7, 2001 to resolve protestants' concerns.

First, the City's efforts and discussions with protestants have resulted in four of the protestants withdrawing their requests for a contested case hearing: Mrs. Ellen M. Caruthers withdrew her protest on December 22, 2001; Manville Water Supply Corporation withdrew on January 10, 2002, the City of Round Rock withdrew its protest on January 31, 2002, and Mr. Ed Wolf withdrew his protest on February 6, 2002. Second, in order to have further discussions with

Mr. Mike Howell  
February 11, 2002  
Page 2

protestants Creedmoor-Maha Water Supply Corporation ("Creedmoor"), AquaSource Development Company, Inc. ("AquaSource") and Mr. Gary Bradley, the City filed responses to their letters of protest on October 29, 2001, and December 21, 2001. These responses outline the reasons the

City believes that neither Creedmoor, AquaSource, or Mr. Bradley qualifies as affected persons in the context of this proceeding. The City is still hopeful that these filings will lead to further discussions with both protestants.

Third, the City has met with representatives of the Lower Colorado River Authority ("LCRA") two times and exchanged numerous telephone calls. The City is hopeful that resolution will occur soon.

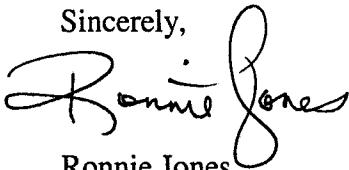
Fourth, the City has met with representatives of the Onion Creek Wastewater Corporation ("Onion Creek") two times and exchanged numerous telephone calls. These meetings are part of an ongoing negotiation of the potential purchase of the Onion Creek wastewater facilities by the City. The City believes that negotiations will conclude in the very near future.

Finally, the City has met with representatives of Hornsby Bend Utility Company, Inc., and Dessau Utilities, Inc., three times and exchanged numerous telephone calls. These meetings and discussions have been helpful and productive in working toward resolving concerns held by these protestants; the City is hopeful that such resolution will occur soon.

To this end, the City requests an additional thirty (30) days—until March 15, 2002—to continue working with the remaining protestants before the City's CCN applications are referred to the State Office of Administrative Hearings and the contested case hearing process begins.

If you have any questions or would like to discuss this matter further, please call me at 974-2568.

Sincerely,

A handwritten signature in cursive script that reads "Ronnie Jones". The signature is written in black ink and is positioned to the left of the typed name.

Ronnie Jones  
Assistant City Attorney