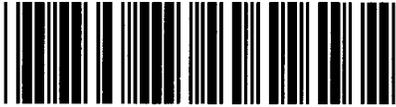


Control Number: 43551



Item Number: 40

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.

RECEIVED

SOAH DOCKET NO. 582-02-3056

2014 OCT 27 AM 10:58

TNRCC DOCKET NO. 2002-0189-UCR

2002 JUL -1 PM 4:05

IN THE MATTER OF THE PUBLIC UTILITIES
APPLICATIONS OF THE CITY OF
AUSTIN FOR A WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY (NO. 33562-C) AND
A WASTEWATER CERTIFICATE OF
CONVENIENCE AND NECESSITY
(NO. 33563-C)

§ BEFORE THE STATE OFFICE
§ CHIEF CLERK'S OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS
§

**THE CITY OF AUSTIN'S
MOTION TO DENY PARTY STATUS**

TO: The Honorable William G. Newchurch, Administrative Law Judge, State Office Of
Administrative Hearings, 300 W. 15th Street, Austin, Texas 78711

The City of Austin ("City") files this Motion To Deny Party Status and in support
respectfully shows the following:

I. PROCEDURAL HISTORY

The City filed its applications for water and sewer certificates of convenience and
necessity ("CCN") on August 13, 2001 ("Applications"). 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. According to the
Texas Natural Resource Conservation Commission ("TNRCC") twelve individuals or entities
filed timely written requests for a contested case hearing. Of those twelve, six have since
resolved their concerns with the City and withdrawn their requests for a contested case hearing.
The City has now filed written responses to the six remaining requests. TNRCC received two
untimely requests for hearing after the comment period ended: (1) John Condon's ("Condon")
protest letter on November 30, 2001, and (2) the City of Mustang Ridge's ("Mustang Ridge")
letter of protest on June 20, 2002. The City also filed responses to the Condon and Mustang

Ridge letters. This motion supplements the City's response letters by summarizing the City's arguments regarding party status with respect to each protestant.

II. APPLICABLE LAW

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 an 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 each protestant to show that he will potentially suffer harm or has a justiciable interest that will be affected. *See United Copper Indus., Inc. v. Grissom*, 17 S.W.3d 797, 803 (Tex. App.—Austin 2000, pet. denied).

In addition, interests that are remote or contingent do not entitle a person to participate in a case. *See Mulcahy v. Houston Steel Drum Co.*, 402 S.W.2d 817, 821 (Tex. Civ. App.—Austin 1966, no writ); *Prescott v. Lone Star Life Ins. Co.*, 586 S.W.2d 703, 705 (Tex. Civ. App.—Waco 1979, no writ).

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

- a. Whether the interest claimed is one protected by the law under which the application will be considered;
- b. Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- c. The likely impact of the regulated activity on the health, safety, and use of property of the person; and

- d. The likely impact of the regulated activity on use of the impacted natural resource by the person.

30 TAC § 55.29(c).

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

III. ANALYSIS OF CLAIMS TO PARTY STATUS

Excluding the ED, there are six protestants to the City's application for a sewer CCN and five protestants to the City's water CCN application. The sections of this motion address the applicable legal rules and factors as they apply to each protestant in the following order:

Section 1: AquaSource Development Company, Inc. ("AquaSource Development")

Section 2: AquaSource Utility, Inc. ("AquaSource Utility")

Section 3: Gary Bradley ("Bradley")

Section 4: Creedmoor-Maha Water Supply Company ("Creedmoor")

Section 5: Hornsby Bend Utility Company, Inc. ("Hornsby Bend")

Section 6: Lower Colorado River Authority ("LCRA")

Each section contains a summary analysis of each protestant's arguments for party status. The City also addresses the claims of John Condon and Mustang Ridge (Sections 7 and 8 respectively) even though both protest letters were untimely and therefore should not be processed. *See* 30 TAC § 55.21.

1

AquaSource Development Company, Inc.

2

AquaSource Utility, Inc.

3

Gary Bradley

4

**Creedmoor-Maha Water
Supply Company**

5

Hornsby Bend Utility Company, Inc.

6

Lower Colorado River Authority

7

John Condon

8

City of Mustang Ridge

9

10

**Protestant AquaSource Development:
WATER CCN Application**

Overall Conclusion Regarding Party Status:

AquaSource Development should not be granted party status. To the City's knowledge, AquaSource Development is not a retail public utility and does not own, operate, maintain or control any facilities for the provision of potable water service for compensation. As such, AquaSource Development's claims are either not relevant or are common to members of the general public. In short, AquaSource Development has no personal justiciable interest in this case.

Summary Conclusions Regarding AquaSource Development's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Most of the area sought is not currently in need of centralized water service.	No personal justiciable interest – 30 TAC § 55.29(a).	Interest common to members of the general public. Not grounds for party status.
AquaSource Development could be adversely affected because granting the application could prevent expansion of AquaSource Development's existing service.	No likely impact of the regulated activity on AquaSource Development's use of its property—30 TAC § 55.29(c)(4). No economic interest affected by the application—30 TAC § 55.29(a).	AquaSource Development is not a retail public utility—it has no service to expand. Not grounds for party status.

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>AquaSource Development could be adversely affected because granting the application could take away portions of its ¼-mile service area buffer zone.</p>	<p>No likely impact of the regulated activity on AquaSource Development's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC 55.29(a).</p>	<p>AquaSource Development is not a retail public utility—it has no service to expand.</p> <p>Regardless, not a legitimate economic interest—a utility may serve within ¼-mile of its area only if the area is not certificated to another utility—30 TAC § 291.103(a)(1)(A).</p> <p>Not grounds for party status.</p>
<p>AquaSource Development is more qualified and can provide more cost-effective and timely service to the requested areas.</p>	<p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>AquaSource Development is not a utility and has no competing applications—no impact. Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Granting the CCN to the City could deter legitimate development and growth in the requested area to the detriment of AquaSource Development.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members of the general public.</p> <p>Also, as AquaSource Development points out, land development control is not a function of a CCN and is not an issue in determining whether a CCN should be granted.</p> <p>Not grounds for party status.</p>

**Protestant AquaSource Development:
SEWER CCN Application**

Overall Conclusion Regarding Party Status:

AquaSource Development should not be granted party status. To the City's knowledge, AquaSource Development is not a retail public utility and does not own, operate, maintain or control any facilities for the provision of sewer service for compensation. As such, AquaSource Development's claims are either not relevant or are common to members of the general public. In short, AquaSource Development has no personal justiciable interest in this case.

Summary Conclusion Regarding AquaSource Development's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Most of the area sought is not currently in need of centralized sewer service.	No personal justiciable interest – 30 TAC § 55.29(a).	Interest common to members of the general public. Not grounds for party status.
AquaSource Development could be adversely affected because granting the application could prevent expansion of AquaSource Development's existing service.	No likely impact of the regulated activity on AquaSource Development's use of its property—30 TAC § 55.29(c)(4). No economic interest affected by the application—30 TAC 55.29(a).	AquaSource Development is not a retail public utility—it has no service to expand. Not grounds for party status.

**Protestant AquaSource Development:
SEWER CCN Application (Continued)**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>AquaSource Development could be adversely affected because granting the application could take away portions of its ¼-mile service area buffer zone.</p>	<p>No likely impact of the regulated activity on AquaSource Development's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC 55.29(a).</p>	<p>AquaSource Development is not a retail public utility—it has no service to expand.</p> <p>Regardless, not a legitimate economic interest—a utility may serve within ¼-mile of its area only if the area is not certificated to another utility—30 TAC § 291.103(a)(1)(A).</p> <p>Not grounds for party status.</p>
<p>AquaSource Development is more qualified and can provide more cost-effective and timely service to the requested areas.</p>	<p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1)—because AquaSource Development is not a competitor.</p>	<p>AquaSource Development is not a utility and has no competing applications—no impact. Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Granting the CCN to the City could deter legitimate development and growth in the requested area to the detriment of AquaSource Development.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members of the general public.</p> <p>Also, as AquaSource Development points out, land development control is not a function of a CCN and is not an issue in determining whether a CCN should be granted.</p> <p>Not grounds for party status.</p>

**Protestant AquaSource Utility:
WATER CCN Application**

Overall Conclusion Regarding Party Status:

AquaSource Utility should not be granted party status. The City is not applying to serve any area already served by AquaSource Utility, and AquaSource Utility has no inherent right or privilege to expand its water service area in the future. Furthermore, to the City's knowledge, AquaSource Utility has not filed a competing application to provide water utility service to any area within the City's proposed water service area. Consequently, the City's provision of service will have no impact upon AquaSource Utility greater than that which is common to members of the general public.

Summary Conclusions Regarding AquaSource Utility's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Most of the area sought is not currently in need of centralized water service.	No personal justiciable interest – 30 TAC § 55.29(a).	Interest common to members of the general public. Not grounds for party status.
AquaSource Utility could be adversely affected because granting the application could prevent expansion of AquaSource Utility's existing service.	No likely impact of the regulated activity on AquaSource Utility's use of its property—30 TAC § 55.29(c)(4). No economic interest affected by the application—30 TAC 55.29(a).	AquaSource Utility has no inherent right or privilege to expand its service and has not filed a competing application. Not grounds for party status.

**Protestant AquaSource Utility:
WATER CCN Application (Continued)**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>AquaSource Utility could be adversely affected because granting the application could take away portions of its ¼-mile service area buffer zone.</p>	<p>No likely impact of the regulated activity on AquaSource Utility's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC 55.29(a).</p>	<p>Not a legitimate economic interest—a utility may serve within ¼-mile of its area only if the area is not certificated to another utility—30 TAC § 291.103(a)(1)(A).</p> <p>Not grounds for party status.</p>
<p>AquaSource Utility is more qualified and can provide more cost-effective and timely service to the requested areas.</p>	<p>No likely impact of the regulated activity on AquaSource Utility's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>AquaSource Utility has no competing applications—no impact. Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Granting the CCN to the City could deter legitimate development and growth in the requested area to the detriment of AquaSource Utility.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members of the general public.</p> <p>Also, as AquaSource Utility points out, land development control is not a function of a CCN and is not an issue in determining whether a CCN should be granted.</p> <p>Not grounds for party status.</p>

**Protestant AquaSource Utility:
SEWER CCN Application**

Overall Conclusion Regarding Party Status:

AquaSource Utility should not be granted party status. The City is not applying to serve any area already served by AquaSource Utility, and AquaSource Utility has no inherent right or privilege to expand its sewer service area in the future. To the City's knowledge, AquaSource Utility has not filed a competing application to provide sewer utility service to any area within the City's proposed sewer service area. Consequently, the City's provision of service will have no impact upon AquaSource Utility greater than that which is common to members of the general public.

Summary Conclusions Regarding AquaSource Utility's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Most of the area sought is not currently in need of centralized sewer service.	No personal justiciable interest – 30 TAC § 55.29(a).	Interest common to members of the general public. Not grounds for party status.
AquaSource Utility could be adversely affected because granting the application could take away portions of its ¼-mile service area buffer zone.	No likely impact of the regulated activity on AquaSource Utility's use of its property—30 TAC § 55.29(c)(4). No economic interest affected by the application—30 TAC 55.29(a).	Not a legitimate economic interest—a utility may serve within ¼-mile of its area only if the area is not certificated to another utility—30 TAC § 291.103(a)(1)(A). Not grounds for party status.

**Protestant AquaSource Utility:
SEWER CCN Application (Continued)**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>AquaSource Utility could be adversely affected if the City uses package plants in the AquaSource Utility well area and is unable to properly operate them, thereby potentially affecting AquaSource Utility's water supply.</p>	<p>No likely impact of the regulated activity on AquaSource Utility's use of its property—30 TAC § 55.29(c)(4).</p> <p>No likely impact of the regulated activity on AquaSource Utility's use of a natural resource—30 TAC § 55.29(c)(5).</p>	<p>Concern related to other media (wastewater discharge permits and enforcement) that are not governed by the law under which the application will be considered.</p> <p>Concern shared by all groundwater users—interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Potential problems with the City's future sewer facilities in the AquaSource Utility's water service area may affect the environmental integrity within this area.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p>	<p>Concern related to other media (wastewater discharge permits and enforcement) that are not governed by the law under which the application will be considered.</p> <p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>The City's construction and operation of a sewer system within AquaSource Utility's water service area may disrupt AquaSource Utility's water service.</p>	<p>No likely impact of the regulated activity on AquaSource Utility's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC § 55.29(a).</p>	<p>Impact not likely and not specific to this application—<u>any</u> construction has the potential to be temporarily disruptive to persons in the area using the roads, businesses in the area, etc.</p> <p>Not grounds for party status.</p>

**Protestant AquaSource Utility:
SEWER CCN Application (Continued)**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>AquaSource Utility is more qualified and can provide more cost-effective and timely service to the requested areas.</p>	<p>No likely impact of the regulated activity on AquaSource Utility's use of its property—30 TAC § 55.29(c)(4).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>AquaSource Utility has no competing applications—no impact. Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Granting the CCN to the City could deter legitimate development and growth in the requested area to the detriment of AquaSource Utility.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members of the general public.</p> <p>Also, as AquaSource Utility points out, land development control is not a function of a CCN and is not an issue in determining whether a CCN should be granted.</p> <p>Not grounds for party status.</p>

**Protestant Bradley:
WATER CCN Application**

Overall Conclusion Regarding Party Status:

Mr. Bradley should not be granted party status. To the City's knowledge, Mr. Bradley is not a retail public utility and does not own, operate, maintain or control any facilities for the provision of potable water service for compensation. As such, Mr. Bradley has no personal justiciable interest in this case.

Summary Conclusions Regarding Bradley's Claims from His Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Mr. Bradley represents the ownership of property within Creedmoor's water service area.	No likely impact of the regulated activity on Mr. Bradley's use of his property—30 TAC § 55.29(c)(4).	The City is not applying to serve within Creedmoor's service area—no impact greater than on general public. Not grounds for party status.

**Protestant Bradley:
SEWER CCN Application**

Overall Conclusion Regarding Party Status:

Mr. Bradley should not be granted party status. To the City's knowledge, Mr. Bradley is not a retail public utility and does not own, operate, maintain or control any facilities for the provision of sewer service for compensation. As such, Mr. Bradley has no personal justiciable interest in this case.

Summary Conclusions Regarding Bradley's Claims from His Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Mr. Bradley represents the ownership of property within Creedmoor's water service area.	No likely impact of the regulated activity on Mr. Bradley's use of his property—30 TAC § 55.29(c)(4).	The City's application only affects the provision of sewer service in the Creedmoor area. Bradley is not a provider of sewer service in this area. The City's provision of service will have no impact greater on Mr. Bradley than on members of the general public. Not grounds for party status.

**Protestant Creedmoor:
WATER CCN Application**

Overall Conclusion Regarding Party Status:

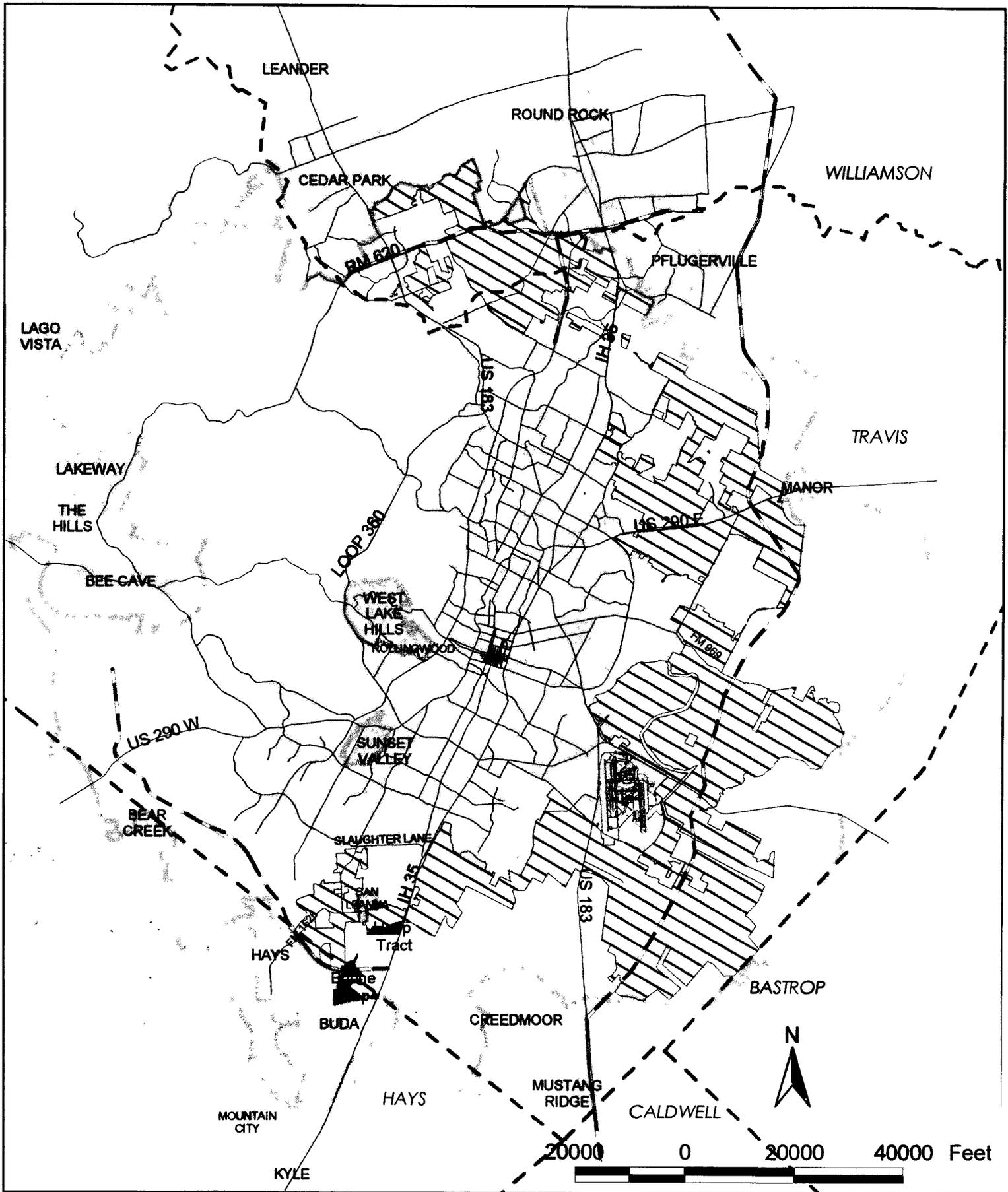
Creedmoor should not be granted party status for the majority of the City's water CCN application. The City acknowledges Creedmoor's potential interest in the "Heep Tracts" for which Creedmoor has a competing application; if Creedmoor's hearing request is granted, the hearing should be limited to these two tracts. The Heep Tracts for which Creedmoor has a competing application are shown in red on Map A.

Summary Conclusions Regarding Creedmoor's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Most of the area sought is not currently in need for centralized water service.	No personal justiciable interest—30 TAC § 55.29(a).	Interest common to members of the general public. Not grounds for party status.
Creedmoor could be adversely affected because granting the application could prevent expansion of Creedmoor's existing service.	Likely impact of the regulated activity on Creedmoor's use of its property—30 TAC § 55.29(c)(4). Economic interest affected by the application—30 TAC § 55.29(a).	Creedmoor has a pending competing application that covers two of the three Heep Tracts. Creedmoor may be an affected party with respect to the area for which it has filed a competing application.
Creedmoor could be adversely affected because granting the application could take away portions of its ¼-mile service area buffer zone.	No likely impact of the regulated activity on Creedmoor's use of its property—30 TAC § 55.29(c)(4). No economic interest affected by the application—30 TAC § 55.29(a).	Not a legitimate economic interest—a utility may serve within ¼-mile of its area only if the area is not certificated to another utility—30 TAC § 291.103(a)(1)(A). Not grounds for party status.

**Protestant Creedmoor:
WATER CCN Application (Continued)**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Creedmoor is more qualified and can provide more cost-effective and timely service to the requested areas.</p>	<p>Economic interest affected by the application—30 TAC § 55.29(a).</p>	<p>Creedmoor has a pending competing application that covers two of the three Heep Tracts. Creedmoor may be an affected party with respect to the area for which it has filed a competing application.</p>
<p>Granting the CCN to the City could deter legitimate development and growth in the requested area to the detriment of Creedmoor.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a). Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members of the general public. Also, as Creedmoor points out, land development control is not a function of a CCN and is not an issue in determining whether a CCN should be granted. Not grounds for party status.</p>



-  Austin ETJ
-  Austin City Limits
-  Austin Limited Purpose
-  Proposed Austin Water CCN
-  Other City Limits
-  Other City ETJ
-  Heep Tracts



City of Austin
Water and Wastewater Utility
Wholesale Services Division
July 1, 2002



Map A

**Protestant Creedmoor:
SEWER CCN Application**

Overall Conclusion Regarding Party Status:

Creedmoor should not be granted party status. Creedmoor is not a provider of retail sewer service. To the City's knowledge, Creedmoor does not own, operate, maintain, or control any facilities for the provision of sewer service for compensation. As such, Creedmoor has no personal justiciable interest.

In addition, Creedmoor's interest in wastewater discharges is not protected by the law under which the application will be considered and is an interest shared by all members of the general public that rely on a groundwater supply.

Summary Conclusions Regarding Creedmoor's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
Most of the area sought is not currently in need of centralized sewer service.	No personal justiciable interest— 30 TAC § 55.29(a)	Interest common to members of the general public. Not grounds for party status.

**Protestant Creedmoor:
SEWER CCN Application (Continued)**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Creedmoor could be adversely affected if the City is unable to properly operate the sewer collection system and lift station(s) it installs in Creedmoor's water service area, thereby potentially affecting Creedmoor's water supply.</p>	<p>No likely impact of the regulated activity on Creedmoor's use of a natural resource—30 TAC § 55.29(c)(5).</p>	<p>Concern related to other media (wastewater discharge permits and enforcement) that are not governed by the law under which the application will be considered.</p> <p>Concern shared by all groundwater users—interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Potential problems with the City's future sewer facilities in the Creedmoor water service area may affect the environmental integrity within this area.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p>	<p>Concern related to other media (wastewater discharge permits and enforcement) that are not governed by the law under which the application will be considered.</p> <p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>The City's construction and operation of a sewer system within Creedmoor's water service area may disrupt Creedmoor's water service.</p>	<p>No likely impact of the regulated activity on Creedmoor's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC § 55.29(a).</p>	<p>Impact not likely and not specific to this application—<u>any</u> construction has the potential to be temporarily disruptive to persons in the area using the roads, businesses in the area, etc.</p> <p>Not grounds for party status.</p>

**Protestant Creedmoor:
SEWER CCN Application (Continued)**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>There may be more qualified providers who can provide more cost-effective and timely service to the requested areas.</p>	<p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p> <p>No personal justiciable interest—30 TAC§ 55.29(a).</p>	<p>Creedmoor does not provide sewer service and has no competing applications, therefore its interest is common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Granting the CCN to the City could deter legitimate development and growth in the requested area to the detriment of Creedmoor.</p>	<p>No personal justiciable interest—30 TAC§ 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members of the general public.</p> <p>Also, as Creedmoor points out, land development control is not a function of a CCN and is not an issue in determining whether a CCN should be granted.</p> <p>Not grounds for party status.</p>

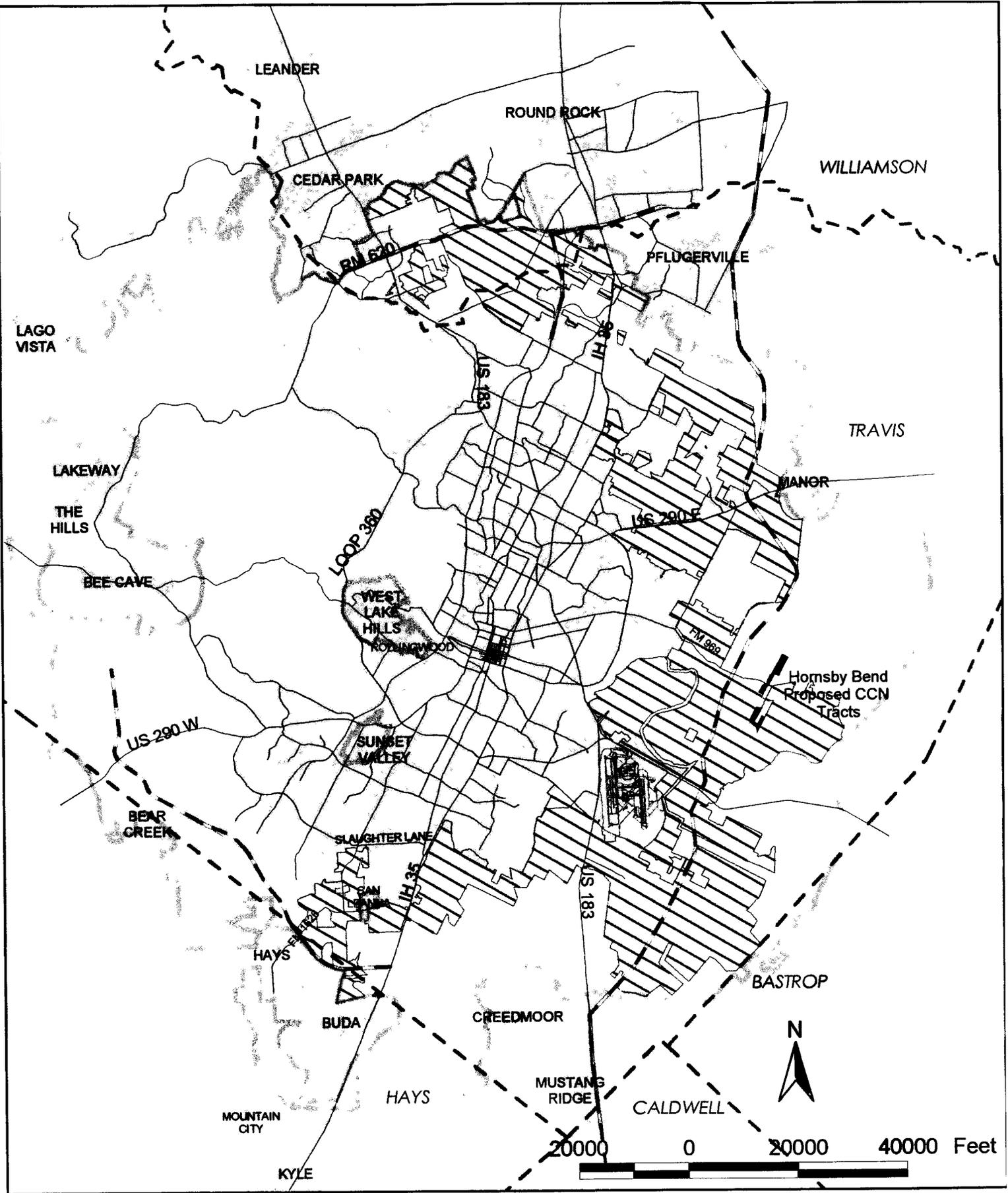
**Protestant Hornsby Bend:
WATER CCN Application**

Overall Conclusion Regarding Party Status:

Hornsby Bend should not be granted party status with respect to the majority of the City's water CCN application. The City acknowledges Hornsby Bend's potential interest in the tracts for which it has filed a competing water CCN application; if Hornsby Bend's request for hearing is granted, the hearing should be limited to these tracts. The Hornsby Bend competing water tracts are shown in red on Map B.

Summary Conclusions Regarding Hornsby Bend's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Hornsby Bend will be adversely affected if the City's application is granted because it provides service within areas affected by the application.</p>	<p>No likely impact on Hornsby Bend's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC § 55.29(a).</p>	<p>The City is not applying to serve areas within Hornsby's service area.</p> <p>Not grounds for party status.</p>
<p>Hornsby Bend will be adversely affected if the City's application is granted because it intends to provide service within areas affected by the application.</p>	<p>Likely impact on Hornsby Bend's use of its property—30 TAC § 55.29(c)(4).</p> <p>Economic interest affected by the application—30 TAC § 55.29(a).</p>	<p>Hornsby has filed a competing application, the competing portions of which cover less than 350 acres of the area that the City has applied to serve. Hornsby may be an affected party with respect to the area for which it has filed a competing application.</p>



-  Austin ETJ
-  Austin City Limits
-  Austin Limited Purpose
-  Proposed Austin Water CCN
-  Other City Limits
-  Other City ETJ
-  Hornsby Bend Utility Co. CCN 11978 Request



City of Austin
 Water and Wastewater Utility
 Wholesale Services Division
 July 1, 2002



Map B

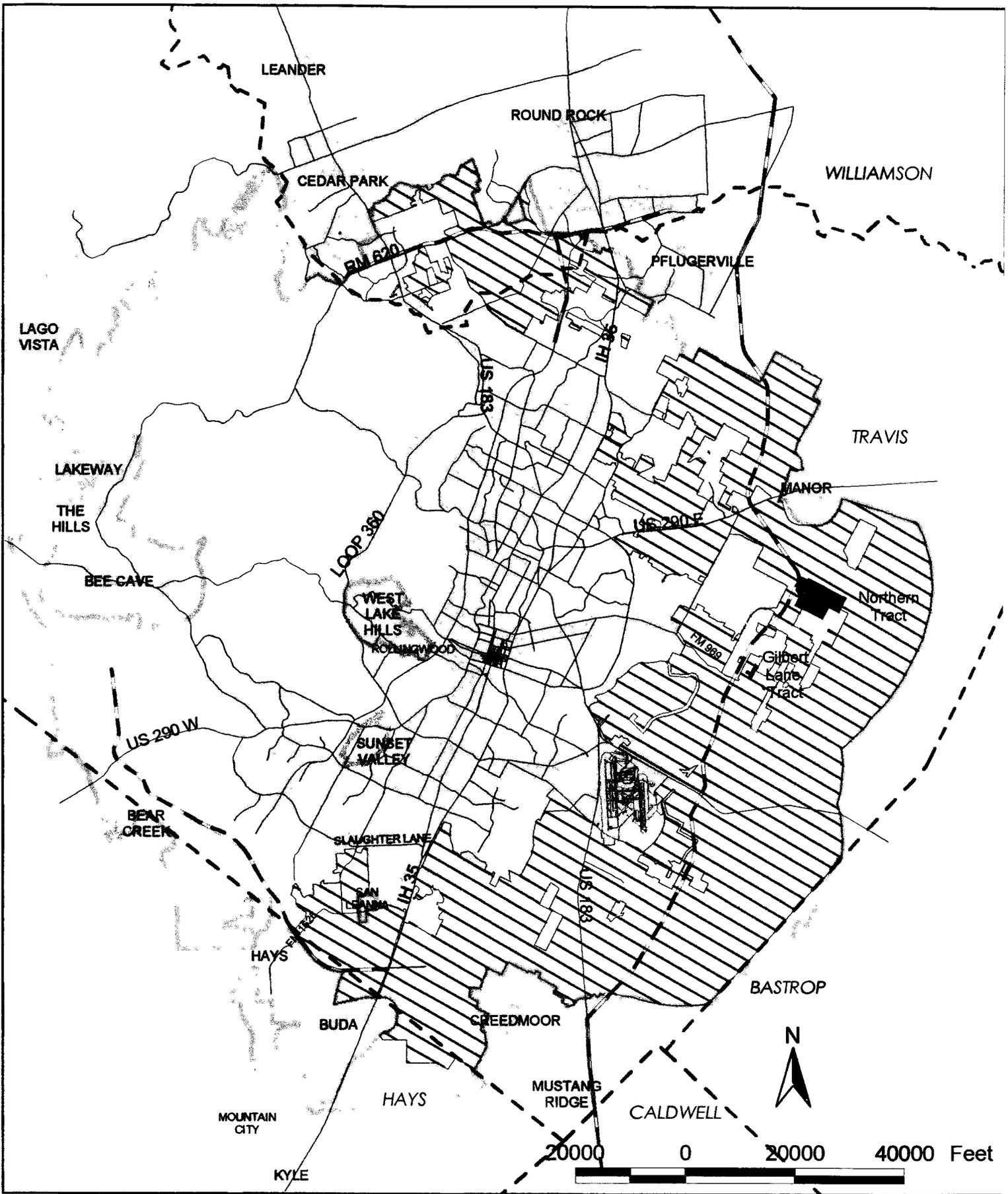
**Protestant Hornsby Bend:
SEWER CCN Application**

Overall Conclusion Regarding Party Status:

Hornsby Bend should not be granted party status with respect to the majority of the City's sewer CCN application. The City acknowledges Hornsby Bend's potential interest in the tracts for which it has filed a competing sewer CCN application; if Hornsby Bend's request for hearing is granted, the hearing should be limited to these tracts. The Hornsby Bend competing sewer tracts are shown in red on Map C.

Summary Conclusions Regarding Hornsby Bend's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Hornsby Bend will be adversely affected if the City's application is granted because it provides service within areas affected by the application.</p>	<p>No likely impact on Hornsby Bend's use of its property—30 TAC § 55.29(c)(4).</p> <p>No economic interest affected by the application—30 TAC § 55.29(a).</p>	<p>The City is not applying to serve areas within Hornsby's service area.</p> <p>Not grounds for party status.</p>
<p>Hornsby Bend will be adversely affected if the City's application is granted because it intends to provide service within areas affected by the application.</p>	<p>Likely impact on Hornsby Bend's use of its property—30 TAC § 55.29(c)(4).</p> <p>Economic interest affected by the application—30 TAC § 55.29(a).</p>	<p>Hornsby has filed a competing application that covers approximately 840 acres of the area that the City has applied to serve. Hornsby may be an affected party with respect to the area for which it has filed a competing application.</p>



-  Austin ETJ
-  Austin City Limits
-  Austin Limited Purpose
-  Proposed Austin Wastewater CCN

-  Other City Limits
-  Other City ETJ
-  Hornsby Bend Utility Co. CCN 20650 Request



City of Austin
 Water and Wastewater Utility
 Wholesale Services Division
 July 1, 2002
Map C



**Protestant LCRA:
SEWER CCN Application**

Overall Conclusion Regarding Party Status:

LCRA should not be granted party status. LCRA is not an adjacent retail public utility; to the City's knowledge, it has no facilities within five (5) miles of the City's proposed service area.

Summary Conclusions Regarding LCRA's Claims from Its Protest Letter:

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
The LCRA is a political subdivision of the State of Texas with authority to provide water and wastewater services in the area for which the City seeks its CCN.	A governmental entity's statutory authority over or interest in the issues relevant to the application—30 TAC § 55.29(c)(6).	Not relevant because LCRA is not protesting as a regulatory entity, but as a business competitor. Not grounds for party status.
If LCRA purchases Creedmoor's water service area, LCRA wants to provide sewer service within Creedmoor's water service area.	No economic interest affected by the application—30 TAC § 55.29(a). No reasonable relationship between interest claimed and activity regulated—30 TAC § 55.29(c)(3).	No facilities within five miles of the proposed area, not providing service within the proposed area, and no competing applications—no reasonable claim to an economic interest. Not grounds for party status.

**Protestant John Condon:
WATER CCN Application**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Mr. Condon is a developer who is unhappy with the progress of his request for final plat approval.</p>	<p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p> <p>No reasonable relationship between interest claimed and activity regulated—30 TAC § 55.29(c)(3).</p>	<p>Not grounds for party status.</p>
<p>The City is financially insolvent and cannot compete with existing facilities.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p>	<p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>The applications are a "land grab" so that the City can control growth in the area.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members the general public.</p> <p>Not grounds for party status.</p>

**Protestant John Condon:
SEWER CCN Application**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Mr. Condon is a developer who is unhappy with the progress of his request for final plat approval.</p>	<p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p> <p>No reasonable relationship between interest claimed and activity regulated—30 TAC § 55.29(c)(3).</p>	<p>Not grounds for party status.</p>
<p>The City is financially insolvent and cannot compete with existing facilities.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p>	<p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>The applications are a "land grab" so that the City can control growth in the area.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p>	<p>Interest common to members the general public.</p> <p>Not grounds for party status.</p>

**Protestant: Mustang Ridge
WATER CCN Application**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Mustang Ridge is adversely affected because Austin is attempting to use a CCN as a land use, building code and development tool within the corporate limits and ETJ of another municipality.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p> <p>No reasonable relationship between interest claimed and activity regulated—30 TAC § 55.29(c)(3).</p>	<p>The City is not applying to serve within Mustang Ridge's corporate limits or ETJ.</p> <p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>The requested service area should be left open to competition.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p>	<p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Mustang Ridge is a landowner that does not need or desire service from the City.</p>	<p>No likely impact of the regulated activity on Mustang Ridge's use of its property—30 TAC § 55.29(c)(4).</p>	<p>The City is not applying to serve land owned by Mustang Ridge.</p> <p>Not grounds for party status.</p>

**Protestant Mustang Ridge:
SEWER CCN Application**

<u>CLAIM(S) FROM PROTEST LETTER</u>	<u>POTENTIALLY RELATED AFFECTED PERSON FACTOR(S) FROM TEXAS ADMINISTRATIVE CODE</u>	<u>CONCLUSION</u>
<p>Mustang Ridge is adversely affected because Austin is attempting to use a CCN as a land use, building code and development tool within the corporate limits and ETJ of another municipality.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p> <p>Interest claimed is not one protected by the law under which the application will be considered—30 TAC § 55.29(c)(1).</p> <p>No reasonable relationship between interest claimed and activity regulated—30 TAC § 55.29(c)(3).</p>	<p>The City is not applying to serve within Mustang Ridge's corporate limits or ETJ.</p> <p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>The requested service area should be left open to competition.</p>	<p>No personal justiciable interest—30 TAC § 55.29(a).</p>	<p>Interest common to members of the general public.</p> <p>Not grounds for party status.</p>
<p>Mustang Ridge is a landowner that does not need or desire service from the City.</p>	<p>No likely impact of the regulated activity on Mustang Ridge's use of its property—30 TAC § 55.29(c)(4).</p>	<p>The City is not applying to serve land owned by Mustang Ridge.</p> <p>Not grounds for party status.</p>

IV. CONCLUSION AND PRAYER

The legal standard for affected persons is set out in the regulations and accompanying case law. The application of this standard to the individual protestants in this proceeding shows that requests for party status made by AquaSource Development, AquaSource Utilities, Gary Bradley, Creedmoor (sewer application), LCRA, John Condon and Mustang Ridge should be denied; if the requests for party status of Creedmoor and Hornsby Bend, both of whom have competing applications pending at TNRCC (Creedmoor-water and Hornsby Bend-water and sewer) are granted, they should be limited to the tracts for which they have competing applications.

The City respectfully requests that the ALJ issue an order denying party status to the protestants in the manner described above, and provide the City with such other and further relief, both general and specific, at law and in equity, to which the City may be entitled.

Respectfully submitted,

BRACEWELL & PATTERSON, L.L.P.
111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
Telephone: (512) 472-7800
Facsimile: (512) 472-9123



Kenneth Ramirez
State Bar No. 16502200
Monica Jacobs
State Bar No. 24007433

-and-

Ronnie Jones
State Bar No. 00786003
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2568
Facsimile: (512) 974-2912

ATTORNEYS FOR THE CITY OF AUSTIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been sent by Facsimile and Regular U.S. Mail, on this 1st day of July, 2002, to the following:

Mark Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759-8436

Representing: AquaSource Utility, Inc.,
AquaSource Development Company,
Creedmoor-Maha WSC, and City of
Mustang Ridge

John J. Carlton
Ambrust, Brown, & Davis, L.L.P.
100 Congress Avenue, Suite 1300
Austin, Texas 78701-3087

Representing: Hornsby Bend Utility
Company, Inc.

John Deering
Geoffrey Kirshbaum
Texas Natural Resource Conservation Commission
P.O. Box 13087, MC-173
Austin, TX 78711-3087

Representing: The Executive Director

Gary Bradley
Bradley Development
The Castle
1111 West 11th Street
Austin, Texas 78703

John Condon
405 Beardsley Lane
Austin, Texas 78746

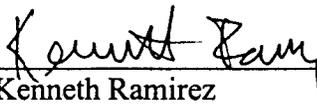
Madison Jechow
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

Representing: Lower Colorado River
Authority

Blas Coy
Public Interest Counsel
Texas Natural Resource Conservation
Commission
P.O. Box 13087, MC-103
Austin, Texas 78711-3087

Representing: Office of Public Interest
Counsel

TNRCC Docket Clerk
Office of Chief Clerk
Texas Natural Resource Conservation Commission
P.O. Box 13087, MC-105
Austin, Texas 78711-3087


Kenneth Ramirez

SOAH DOCKET NO. 582-02-3056
TNRCC DOCKET NO. 2002-0189-UCR

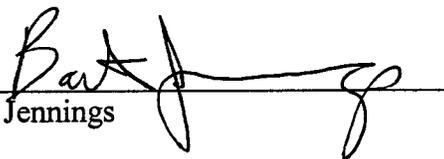
IN THE MATTER OF THE
APPLICATIONS OF THE CITY OF
AUSTIN FOR A WATER
CERTIFICATE OF CONVENIENCE
AND NECESSITY (NO. 33562-C) AND
A WASTEWATER CERTIFICATE OF
CONVENIENCE AND NECESSITY
(NO. 33563-C)

§ BEFORE THE STATE OFFICE
§
§
§ OF
§
§ ADMINISTRATIVE HEARINGS
§

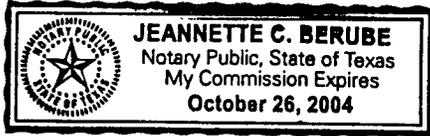
AFFIDAVIT OF BART JENNINGS

BEFORE ME, the undersigned authority, on this day personally appeared, Bart Jennings, who being by me duly sworn on his/her oath stated as follows:

My name is Bart Jennings. I am employed by the City of Austin, Texas, Water and Wastewater Utility. I am familiar with the operations of the City's Water and Wastewater Utility, the City's impact fee service area and extraterritorial jurisdiction, and the City's pending water and sewer applications for Certificates of Convenience and Necessity that were filed at the Texas Natural Resource Conservation Commission. Within my official capacity is the obligation and responsibility to provide water and wastewater utility service and promote and protect the general health, safety and welfare of persons residing within the jurisdiction of the City. I have reviewed the City's Motion to Deny Party Status. I have personal knowledge of the facts in Sections I and II, and those facts are true and correct.


Bart Jennings

SUBSCRIBED AND SWORN TO before me this 1st day of July, 2002, to certify which,
witness by hand and official seal.



Jeannette C. Berube
Notary Public

My Commission Expires: 10/26/04



TEXAS NATURAL
RESOURCE CONSERVATION
COMMISSION

2002 JUL -1 PM 4: 05

CHIEF CLERKS OFFICE

Kenneth Ramirez
Partner

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

July 1, 2002

By Hand Delivery

Ms. Holly Wise, Docket Clerk
State Office of Administrative Hearings
300 W. 15th Street
P.O. Box 13025
Austin, TX 78711-3025

Re: SOAH Docket No. 582-02-3056; TNRCC 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

SOAH Docket No. 582-02-3056; TNRCC 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 Ms. Wise:

Enclosed for filing please find the original and one copy of the following documents in
the above-referenced matter:

- 1) The City of Austin's Plea to the Jurisdiction;
- 2) The City of Austin's Motion to Define the Scope of the Hearing; and
- 3) The City of Austin's Motion to Deny Party Status.

Please file the original, date-stamp the copy and return the copy to my messenger.



Ms. Holly Wise, Docket Clerk
July 1, 2002
Page 2

If you have any questions, please do not hesitate to contact me at (512) 494-3611.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', is written over the typed name.

Kenneth Ramirez

KR/jcb
Enclosure(s)

cc: **(Via Hand Delivery)**
Hon. William G. Newchurch
LaDonna Castañuela, TNRCC Chief Clerk

cc: **(Via Facsimile and Regular Mail)**

Christopher Lippe, Director, Water and Wastewater Utility
Andrew P. Covar, P.E., Assistant Director, Water and Wastewater Utility
Bart Jennings, Water and Wastewater Utility
Ronnie Jones, Assistant City Attorney
Mark H. Zeppa, Attorney
John J. Carlton, Attorney
John Deering, Attorney
Geoffrey Kirshbaum, Attorney
Madison Jechow, Attorney
Blas Coy, Attorney
Mr. Gary Bradley
Mr. John Condon