

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that on the 26th day of October, 2009, true and correct copies of the foregoing document were sent via mail, facsimile or electronic mail to the following counsel or party representatives of record:

Philip Haag
Phil Haag

Texas Commission on Environmental
Quality

Ms. Lisa Fuentes
Utilities & Districts Section
Water Supply Division
TCEQ – MC 153
P.O. Box 13087
Austin, TX 78711-3087
Fax: 512/239-6190

Ms. Susan G. Zachos

Law Offices of Susan G. Zachos
901 South Mopac Expressway
Barton Oaks Plaza One, Suite 300
Austin, Texas 78746

Mr. Steven Harris

President
Dripping Springs Water Supply Corporation
P.O. Box 354
Dripping Springs, Texas 78620

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 18, 2009

Ms. Susan G. Zachos
Law Offices of Susan G. Zachos
901 South Mopac Expressway
Barton Oaks Plaza One, Suite 300
Austin, Texas 78746

Re: Application of the City of Dripping Springs, Sewer Certificate of Convenience and Necessity (CCN) No. 20967, to Compel Dripping Springs Water Supply Corporation (WSC), CCN No. 10315, to Terminate Water Utility Service for Nonpayment of Sewer Utility Service, in Hays County, Application No. 36498-C

CN: 602491284; RN: 104403266 (City of Dripping Springs)
CN: 601179070; RN: 102179397 (Dripping Springs WSC)

Dear Ms. Zachos:

Your application for the City of Dripping Springs, received on September 8, 2009, has been accepted for filing. Ms. Lisa Fuentes has been assigned to perform the technical review. It has been assigned Application No. 36498-C. Please refer to this number in future correspondence.

Your request for an order to compel Dripping Springs WSC to terminate water utility service if the ratepayers had not paid their wastewater/sewage bills will be considered by the commission. Your petition indicates that an attempt was made to come to an agreement with Dripping Springs WSC. According to the petition, Dripping Springs WSC refused to enter into an agreement with the City of Dripping Springs to terminate water service. The alternative was to request an order from the Texas Commission on Environmental Quality (TCEQ) to issue an order requiring disconnections. The TCEQ will issue an order requiring termination of service by the retail public utility providing water service if either:

1. the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or,
2. the commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.

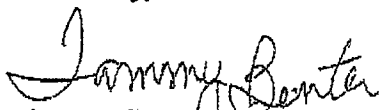
Ms. Susan G. Zachos

Page 2

September 18, 2009

If you have any further questions, please contact Ms. Lisa Puentes at (512) 239-6117 or if by correspondence, include MC 153 in the letterhead address.

Sincerely,



Tammy Benter, Team Leader
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental Quality

THB/KLB/lm

cc: Mailing List

MAILING LIST APPLICATION No. 36498-C

Mr. Steven Harris, President
Dripping Springs Water Supply Corporation
P.O. Box 354
Dripping Springs, Texas 78620

Ms. Susan G. Zachos
Law Offices of Susan G. Zachos
901 South Mopac Expressway
Barton Oaks Plaza One, Suite 300
Austin, Texas 78746

Representing: City of Dripping Springs

Texas Commission On Environmental Quality

INTEROFFICE MEMORANDUM

To: Texas Commission on Environmental Quality Date: April 30, 2010

Through: LaDonna Castañuela
Chief Clerk

From: Environmental Law Division

Subject: Docket No. 2009-1972-UCR. An application from the City of Dripping Springs, CCN No. 20967, for an order requiring the disconnection of water service for nonpayment of sewer service charges, Application No. 36498-C

TYPE OF REQUEST: The City of Dripping Springs ("City") requests an order from TCEQ that would require Dripping Springs Water Supply Corporation ("Dripping Springs WSC") to terminate water service under specified conditions to certain customers for nonpayment of undisputed bills for sewer service provided by the City.

AUTHORITY: Texas Water Code Sections 13.041(b) and 13.250(b); 30 Texas Administrative Code ("TAC") Section 291.88(e).

BACKGROUND: The City has applied for an order requiring the disconnection of water service provided by Dripping Springs WSC, CCN No. 10315, for nonpayment of sewer service charges. Dripping Springs WSC provides water utility service to the City's sewer customers. The City provided documentation which indicates it is experiencing losses due to uncollected revenue. Dripping Springs WSC and the City executed a temporary 90 day agreement wherein Dripping Springs WSC and the City agreed that Dripping Springs WSC would terminate water service for nonpayment of sewer service charges. The City requested that Dripping Springs renew or extend the agreement for nonpayment of sewer service charges; however, the parties have been unable to negotiate an agreement on this issue.

LEGAL CRITERIA: Texas Water Code Section 13.041(b) requires the Commission to adopt and enforce rules reasonably required to exercise its authority to regulate and supervise the business of water and sewer utilities. Texas Water Code Section 13.250(b) states that the holder of a certificate used to provide utility service shall not discontinue service to a certified service area except for, among other things, nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or under a Commission-ordered arrangement between the two service providers. The Commission has adopted regulations for retail public utilities in Title 30, Chapter 291 of the Texas Administrative Code. Title 30, Section 291.88(e) of the Texas Administrative Code establishes the requirements for the disconnection of water service due to nonpayment of sewer charges when one retail public utility provides sewer service and a different retail public utility provides water service. If requested by the sewer service provider, the retail public utility that provides the water service must disconnect water service to a customer who has not paid

undisputed sewer charges if an order has been issued by the Commission specifying a process for such disconnections. Under 30 TAC Section 291.88(e)(1)(C), the Commission may issue an order requiring disconnections under specified conditions if the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer service charges. In accordance with 30 TAC Section 291.88(e)(1)(D), the Commission will issue an order requiring termination of service by the retail public utility providing water service if: (i) the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or (ii) the Commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.

STAFF RECOMMENDATION: Based on the information provided by the City and Dripping Springs WSC, Staff recommends that the Commission issue an order that would require Dripping Springs WSC to terminate water service under specified conditions to certain customers for nonpayment of undisputed bills for sewer service provided by the City.

The City is a retail public utility that provides sewer service. The City has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service. Specifically, the City has provided documentation showing that it has obtained a loan from the Texas Water Development Board. Further, based on information provided by the City, the proposed order is necessary to effectuate the purposes of the Texas Water Code to allow the City to provide continuous and adequate sewer service that is safe, adequate, efficient and reasonable and to receive fair return for the services that it provides.

The City contacted Dripping Springs WSC to request an agreement regarding disconnection of water service for nonpayment of sewer charges, but that Dripping Springs WSC declined to enter into such an agreement.

STAFF CONTACTS: Dinniah C. Tadema, Environmental Law Division, MC-173,
(239-0617)
Lisa Fuentes, Water Supply Division, MC-153, (239-6117)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER to compel Dripping Springs Water Supply Corporation to terminate water utility service to customers for nonpayment of sewer utility service provided by the City of Drippings Springs in Hays County, Texas; Docket No. 2009-1972-UCR

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the petition of the City of Dripping Springs ("City") for an order to compel Dripping Springs Water Supply Corporation ("Dripping Springs WSC") to terminate water utility service for nonpayment of sewer utility service in Hays County in accordance with the requirements of 30 Texas Administrative Code Section 291.88(e).

The City is a retail public utility that supplies sewer service in Hays County and is authorized by the TCEQ to provide such service pursuant to the authority granted in Certificate of Convenience and Necessity ("CCN") No. 20967. The City has obtained funding through State government for the provision, expansion or upgrading of sewer service with a loan from the Texas Water Development Board.

Dripping Springs WSC provides retail water utility service in Hays County pursuant to CCN No. 10315. Dripping Springs WSC provides water utility service to the City's Sewer customers ("Affected Customers"). The provision of sanitary sewer service to the Affected Customers is integral to Dripping Springs WSC's separate provision of water service to those same customers. Dripping Springs WSC and the City executed a temporary 90 day agreement wherein Dripping Springs WSC and the City agreed that Dripping Springs WSC would terminate water service for nonpayment of sewer service charges.

The City provided documentation which indicates that it is experiencing losses due to uncollected revenue. The City requested that Dripping Springs WSC renew or extend the agreement for termination of water service for nonpayment of sewer service charges. However, the parties have been unable to negotiate an agreement on this issue. An Order compelling a process for the termination of water utility service for nonpayment of sewer utility service by the

Affected Customers is necessary to effectuate the purposes of the Texas Water Code.

WHEREAS, the Commission has jurisdiction to consider this petition and is authorized to make and enter this Order in accordance with Texas Water Code Sections 13.041(b) and 13.250(b).

WHEREAS, the Commission's findings are sufficient to allow the issuance of this Order under 30 Texas Administrative Code Section 291.88(e).

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The City's petition for an order to compel Dripping Springs WSC to terminate water utility service for nonpayment of sewer utility service is hereby granted.
2. Delinquent Customers. This Order is valid for the purpose of compelling Dripping Springs WSC to terminate an Affected Customer's water utility service for nonpayment of sewer utility services owed to the City. 30 TEX. ADMIN. CODE § 291.88(a)(2).
3. Subject to the provisions of 30 Texas Administrative Code Section 291.88, the parties must use the following process in order to terminate water utility service for nonpayment of sewer utility service:
 - A. Notice to delinquent Customers. After proper notice to its delinquent customers, the City may initiate procedures for the disconnection of water service. The notice to delinquent customers must comply with 30 Texas Administrative Code Section 291.88(a)(1).
 - B. Disconnection. Prior to the intended date of disconnection described in 30 Texas Administrative Code Section 291.88(a)(1)(D), the City shall notify Dripping Springs WSC in writing of any customer account that requires disconnection of water service for nonpayment of sewer utility services by providing the address of the delinquent account and the intended date of disconnection. In order to avoid unnecessary disconnection of water service, the City shall provide immediate notice to Dripping Springs WSC when a delinquent customer has paid all of its past-due charges prior to the intended date of disconnection and the City is no

longer requesting disconnection. The Dripping Springs WSC shall disconnect the water service to a customer who has not paid the sewer charges on the intended date of disconnection if possible, but in any event within 5 business days after that date. The City shall reimburse Dripping Springs WSC the cost of disconnecting the water service in an amount not to exceed \$50.

- C. Reconnecting. If water service is disconnected for nonpayment of sanitary sewer service charges, except as otherwise required by law or as agreed to by the City, Dripping Springs WSC shall not provide water services to that customer until the City notifies Dripping Springs WSC that it has received payment of all delinquent sewer collection charges, plus any applicable charges which are then collectible in accordance with the City's tariff or other applicable law. Dripping Springs WSC may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. Dripping Springs WSC may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. Dripping Springs WSC must follow the service restoration procedures provided in 30 Texas Administrative Code Section 291.88(h).
- D. Effect on Provision of Water. This Order shall not affect or impair Dripping Springs WSC's rights and obligations with respect to its customers or the provision of water utility services, except as specifically set forth in this Order and as allowed by law.
- E. Purpose of Order. This Order is made for the purpose of facilitating the collection of fees for sanitary sewer services provided by the City. No partnership or joint venture is intended to be created hereby. Dripping Springs WSC's sole responsibility is that of the City's agent for disconnection of utility service, and this Order does not create or give rise to any responsibility by Dripping Springs WSC for:
- i. the construction, operation, maintenance, repair or existence of the sewer collection system;
 - ii. the provision of sewer collection service; and
 - iii. any act or omission relating to such services.

- F. Commencement. The effect of this order shall commence after the first billing date which includes service provided on the date that this Order is issued.
- G. Automatic Termination. If any provision of this Order is determined by any regulatory or judicial body to be invalid, or in violation of any law, the remainder of the Order shall continue to be valid.
- H. This Order shall remain in effect until either 1) the City and Dripping Springs WSC notify the Commission that the Order is no longer needed or 2) the City and Dripping Springs WSC enter into an agreement that specifically states that it supersedes the arrangement established by this Order.
- I. Notices. Any notice or communication required or permitted to be given under this Order shall be sufficiently given when received by any other party. It will also be deemed sufficient if it is delivered by hand delivery, mailed by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission to the addresses indicated below, or to other addresses furnished in writing by any party to all other parties.

City of Dripping Springs
P.O. Box 384
Dripping Springs, Texas 78620

Dripping Springs Water Service Corporation
P.O. Box 354
Dripping Springs, Texas 78620

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Brian W. Shaw, Ph.D., Chairman