

1 Q. HOW MANY CONNECTIONS IS THE LINDSAY PURE WATER SYSTEM  
2 CAPABLE OF SERVING?

3 A. Based upon the Commission rules and the way the system is currently operated, it can  
4 serve up to 100 connections. The storage tank capacity is sufficient for 500 connections at  
5 200 gallons per connection. The currently pump capacity is sufficient for 260 connections  
6 (the new pump would allow us to serve 420 connections). The distribution lines are  
7 sufficient for up to 250 connections. The 100 gallon per minute well capacity is sufficient  
8 for 168 connections. The limiting factor is the pressure tank, which has a capacity to  
9 serve 100 connections. The Commission rules require a system to have pressure tank  
10 capacity of 20 gallons for every connection. By changing the way we operate to eliminate  
11 the use of pressure tank, the system could serve up to 168 connections, which is the well  
12 capacity limit. This is because the capacity of the standpipe that is 80 feet above the  
13 highest service connection, which is considered elevated storage, is sufficient to serve  
14 about 180 connections. By adding a second well, depending on the production of the  
15 well, the system could serve up to 180 connections without any additional improvements.  
16 By adding additional elevated storage or pressure tank capacity, the system can be  
17 expanded to serve even more connections.

18 SOUTH RIDGE OF LINDSAY DEVELOPMENT STATUS

19 Q. WHO OWNS THE UNSOLD LOTS IN PHASE 3 OF THE SOUTH RIDGE OF  
20 LINDSAY SUBDIVISION?

21 A. Myrick Development.

22 Q. WHO OWNS THE PROPERTY THAT WILL BE PHASE 4 OF THE SOUTH RIDGE  
23 OF LINDSAY SUBDIVISION?

24 A. Myrick Development.

1 Q. HOW MANY ACRES OF LAND DOES MYRICK DEVELOPMENT OWN WITHIN  
2 THE SOUTH RIDGE OF LINDSAY SUBDIVISION?

3 A. Myrick Development owns approximately 42 acres of land within the South Ridge of  
4 Lindsay, which includes 8 unsold lots of approximately 1 acre each and approximately 34  
5 acres of land that is to be developed as Phase 4.

6 Q. WHICH UTILITY COMPANY DO YOU WANT TO PROVIDE WATER SERVICE  
7 TO THE MYRICK DEVELOPMENT PROPERTY WITHIN THE SOUTH RIDGE OF  
8 LINDSAY SUBDIVISION?

9 A. Lindsay Pure Water Company.

10 EXPANSION OF LINDSAY SYSTEM

11 Q. WHAT ARE LINDSAY PURE WATER COMPANY'S DESIRES WITH REGARD TO  
12 PROVIDING SERVICE IN THE AREA SURROUNDING ITS CURRENT CCN?

13 A. Our company would like to be the service provider in the area that surrounds our CCN.

14 Q. WHY IS THAT?

15 A. We would like to be the service provider because we have facilities in close proximity that  
16 have sufficient capacity to serve a significant number of additional connections, and with  
17 some slight improvements, could serve an many more connections on top of that. By  
18 serving additional connections, we would be able to fully utilize our system's resources  
19 and cost efficiently serve landowners in the area surrounding us.

20 Q. IF YOU WANT TO SERVE IN THE AREA SURROUNDING YOU, WHY HAVE  
21 YOU NOT APPLIED FOR A CCN FOR THAT AREA?

22 A. There is no current need for service.

1 Q. WHY DO YOU HAVE THAT OPINION?

2 A. I have been developing property in Cooke County for 34 years. Based on my experience,  
3 there is not an immediate need for service because there are no developments proposed  
4 within the area surrounding our Company's CCN. The only active subdivisions, beside  
5 the South Ridge of Lindsay, are within the City of Lindsay's city limits and its current  
6 water CCN.

7 Q. HOW WOULD LINDSAY PURE WATER COMPANY PROVIDE WATER SERVICE  
8 TO THE SURROUNDING AREA?

9 A. Landowners could connect to the Company's existing water system for service to their  
10 property. If additional capacity were needed, the improvements described above could be  
11 easily made in order to supply water sufficient to serve the development when it is  
12 needed.

13 SERVICE REQUESTS AND NEED

14 Q. HAVE YOU REVIEWED THE REQUESTS FOR SERVICE RECEIVED BY THE  
15 CITY OF LINDSAY?

16 A. I have.

17 Q. WHAT IS YOUR OPINION REGARDING THOSE REQUESTS?

18 A. I do not believe that any of the requestors have plans for developing their property at this  
19 time. It is my opinion that the requests are merely for the purpose of securing a  
20 certificated service area so that neither my company nor the City of Gainesville can obtain  
21 a CCN over the area. By securing a CCN, the City of Lindsay hopes to add an additional  
22 layer of regulatory control over development within the area and to prevent the City of  
23 Gainesville from controlling the area.

1 Q. WHY DO YOU NOT BELIEVE THE REQUESTORS TRULY NEED SERVICE?

2 A. I base my opinion on the fact there are no actively developing subdivisions, other than the  
3 South Ridge of Lindsay, within the City of Lindsay's requested service area surrounding  
4 our company's CCN. By actively developing, I mean that there are no pending plat  
5 applications before the City of Lindsay or Cooke County, which are the entities that have  
6 jurisdiction over the subdivision process in the area. None of the requestors have actually  
7 filed any applications related to development of their property with Cooke County or the  
8 City of Lindsay.

9 Q. WHAT IS THE BASIS FOR YOUR OPINION?

10 A. I base my opinion on my experience as a former Lindsay City Council member and my  
11 involvement in utility and growth issues affecting the area over the past 34 years. In  
12 particular, I base my opinion on my discussions with current and prior City Council  
13 members and City staff regarding the desire to prevent the City of Gainesville from  
14 expanding its service area any further to the West. We have previously received similar  
15 requests for service, which I know were not based upon an actual need for service and  
16 were based upon a desire to keep the City of Gainesville from serving the area.

17 Q. WHY HAVE YOU NOT APPLIED FOR A CCN AMENDMENT WHEN YOU  
18 RECEIVED THOSE TYPE OF REQUESTS?

19 A. We actually retained an individual to assist us in preparation of a CCN amendment  
20 application, but the application was never completed because there was not an immediate  
21 need for service to those tracts of land and therefore no urgency to follow through with an  
22 application.

1 Q. DOES THE GROWTH IN LINDSAY'S POPULATION, AS REFERENCED BY MR.  
2 MARONEY IN HIS PREFILED TESTIMONY, AFFECT YOUR OPINION ABOUT  
3 THE LACK OF NEED FOR SERVICE?

4 A. No.

5 Q. WHY NOT?

6 A. As I stated before, there are no actively developing subdivisions, other than the South  
7 Ridge of Lindsay, within the City of Lindsay's requested service area surrounding our  
8 company's CCN. By actively developing, I mean that there are no pending plat  
9 applications before the City of Lindsay or Cooke County, which are the entities that have  
10 jurisdiction over the subdivision process in the area. The only growth is occurring within  
11 the City limits of Lindsay, which is already subject to the City's CCN, or within the South  
12 Ridge of Lindsay subdivision, which is served by Lindsay Pure Water Company.

13 CONCLUSION

14 Q. WHAT WOULD BE THE IMPACT ON LINDSAY PURE WATER COMPANY IF  
15 THE CITY OF LINDSAY WAS ISSUED ITS PROPOSED CCN?

16 A. Lindsay Pure Water Company would be forced to terminate its service to its current  
17 customers within the South Ridge of Lindsay Subdivision, Phases 2 and 3. Lindsay would  
18 be unable to provide service to any new homes constructed within Phases 2 and 3 or  
19 within future Phase 4. The Company would also be prevented from utilizing the capacity  
20 available within its existing system for future customers. This would result in the  
21 Company not earning a return on its decade old investment in water service for the area  
22 and probably result in extreme financial trouble for the Company because we would lose a  
23 substantial portion of the revenues we currently generate.

1 Q. WHAT WOULD BE THE IMPACT ON THE LAND WITHIN THE SOUTH RIDGE  
2 OF LINDSAY SUBDIVISION IF THE CITY OF LINDSAY WAS ISSUED ITS  
3 PROPOSED CCN?

4 A. The land within the South Ridge of Lindsay, Phases 2, 3 and future Phase 4 would be  
5 forced to obtain water service from the City of Lindsay's facilities, which are  
6 approximately one mile away. The cost of obtaining this service would greatly exceed the  
7 cost to obtain service from Lindsay Pure Water Company because, in addition to the cost  
8 of the internal distribution system and the taps, the landowners would incur costs to  
9 construct a mile long transmission line from the City's system and additional pumps and  
10 storage necessary to serve the subdivision. The only costs to connect to the Lindsay Pure  
11 Water Company system would be for the distribution mains and the taps because there is  
12 sufficient capacity in all the other facilities to serve the remainder of the subdivision build  
13 out. In addition, there would be significant time delay associated with the construction of  
14 the extension of the City of Lindsay's system that would not occur using the Company's  
15 system. Finally, the land would no longer have the benefit of elevated storage within  
16 close proximity, and the customers on the land would pay more for their retail utility  
17 service.

18 Q. WHAT WOULD BE THE IMPACT ON THE LAND WITHIN THE AREA  
19 SURROUNDING THE SOUTH RIDGE OF LINDSAY SUBDIVISION IF THE CITY  
20 OF LINDSAY WAS ISSUED ITS PROPOSED CCN?

21 A. Similarly, the land within the area surrounding the South Ridge of Lindsay would be  
22 forced to obtain water service from the City of Lindsay's facilities, which are  
23 approximately one mile away. This area would also incur costs to obtain water service  
24 that would greatly exceed the cost to obtain service from Lindsay Pure Water Company.

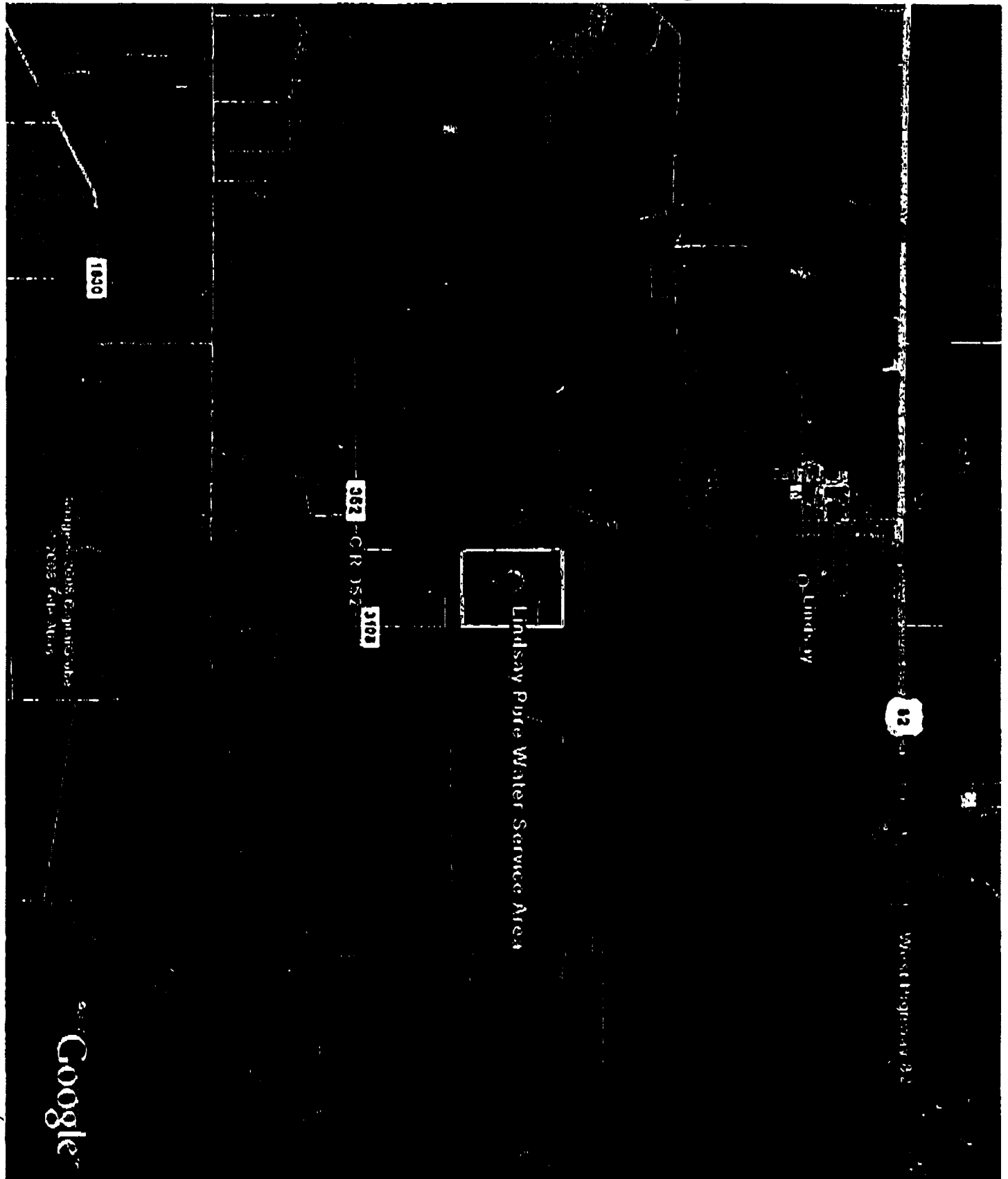
1 The costs would be higher for the same reasons, construction of a transmission main and  
2 additional pumps and storage necessary to serve the land. Whereas, the only costs to  
3 connect to the Lindsay Pure Water Company system would be for the internal distribution  
4 mains and the taps because there is sufficient capacity in all the other Company facilities  
5 to serve the area surrounding the South Ridge of Lindsay, and to the extent additional  
6 capacity is needed, it can be readily obtained by improvements to the Company's system.  
7 Just like the areas within the South Ridge of Lindsay subdivision, customers within this  
8 area would also pay more for retail service from the City of Lindsay. These issues are  
9 particularly true for the areas located south of the Company's service area, because the  
10 transmission line would have to pass by the Company's system in order to reach the areas  
11 that are further to the South. While it is less clear where the costs and timing for service  
12 begin to be the same for the area between the City and the Company's service area, there  
13 is still no need for service in this area at this time.

14 Q. WHAT WOULD YOU LIKE FOR THE COMMISSION TO DO IN THIS MATTER?

15 A. I want the Commission to deny the City of Lindsay's application for a CCN for all areas  
16 South of U.S. 82 because there is not a need for service in any of this area at this time. At  
17 some point in the future, when there is actually a need for service, Lindsay Pure Water  
18 Company and the City of Lindsay can work together to determine how that future need  
19 can best be met from an economic, engineering and timing perspective. However, it is not  
20 time for that now.

21 Q. DOES THIS CONCLUDE YOUR TESTMONY?

22 A. Yes.





Lindsay Pure Water Service Area

3000

Image © 2008 Google, Inc.  
All Rights Reserved

Google

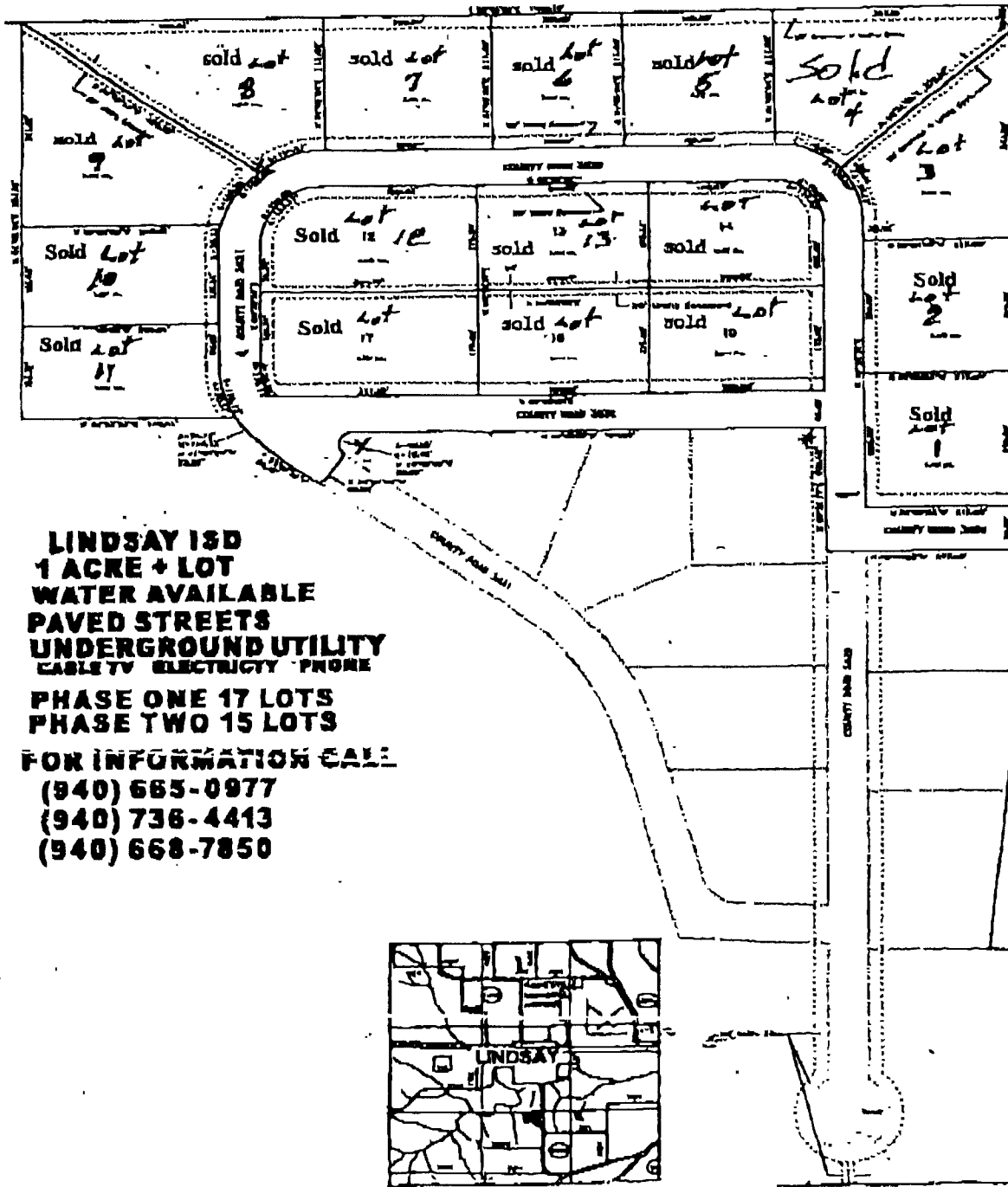
Oct 20 08 02:07p

940-665-3768

P.18

Attachment 1 of 3

# SOUTH RIDGE of LINDSAY



**p - 19**

**LPWC 4**

Oct 20 06 02:08p

940-665-3788

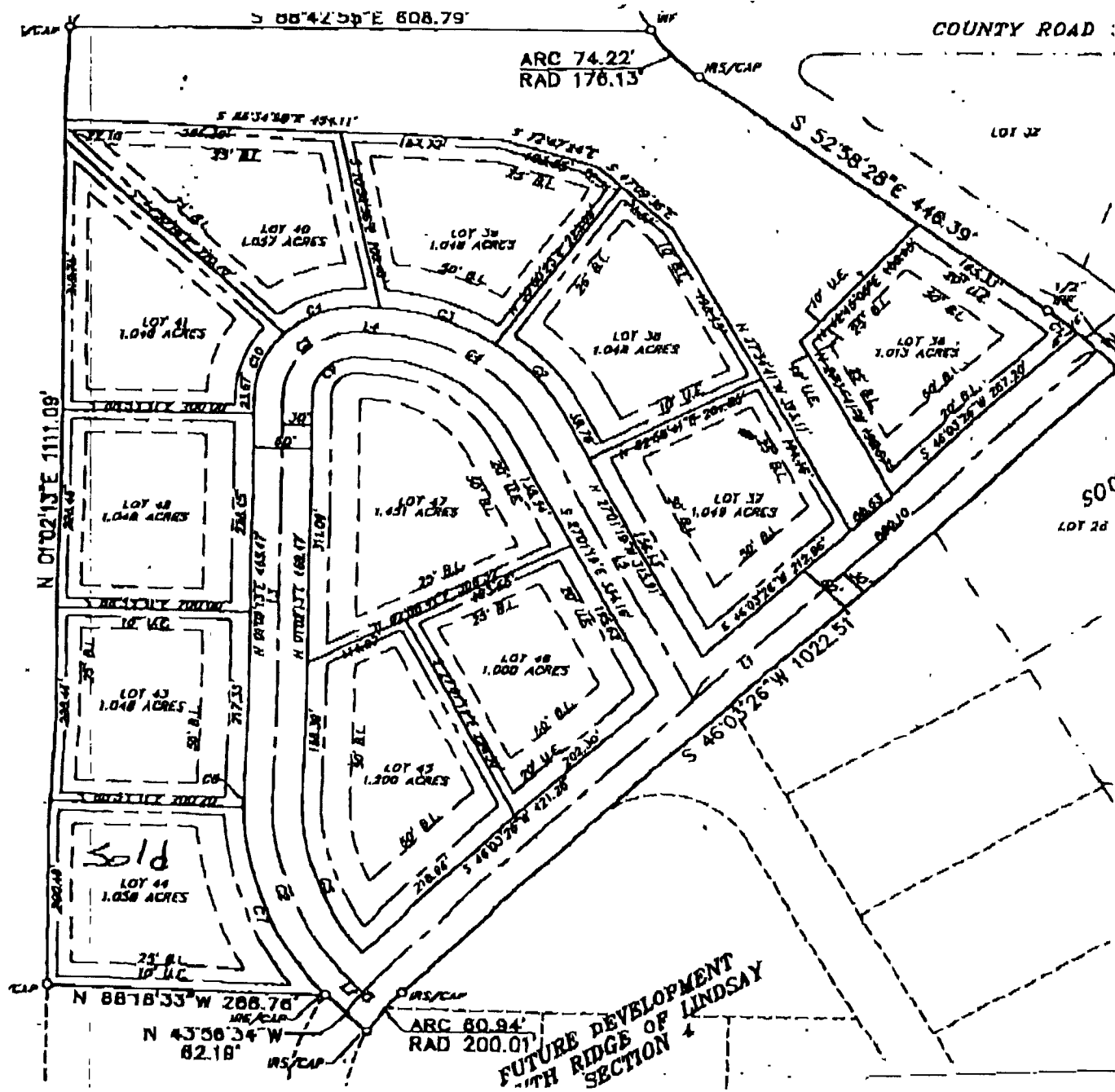
p.20

Attachment #1  
3/3

# SOUTH RIDGE

## of Lindsay

### Phase 3



LPWC 5

## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

STATE OF TEXAS  
COUNTY OF TRAVIS

§ 07

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission. Given under my hand and the seal of office.

*Rodney W. Peschel*  
Rodney W. Peschel, Alternate Custodian of Records  
Texas Commission on Environmental Quality

## CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code  
and Texas Natural Resource Conservation Commission Substantive Rules

Certificate No. 12858

## I. Certificate Holder:

Name: Lindsay Pure Water Company, a Texas Corporation

Address: P. O. Box 5  
Lindsay, Texas 76250

## II. General Description and Location of Service Area:

The area covered by this certificate, known as the South Ridge of Lindsay Subdivision, is located approximately 5 miles west of downtown Gainesville, Texas on Farm to Market Road 3108. The service area is generally bounded on the east by Farm to Market Road 3108 and on the north by Elm Creek in Cooke County, Texas.

## III. Certificate Maps:

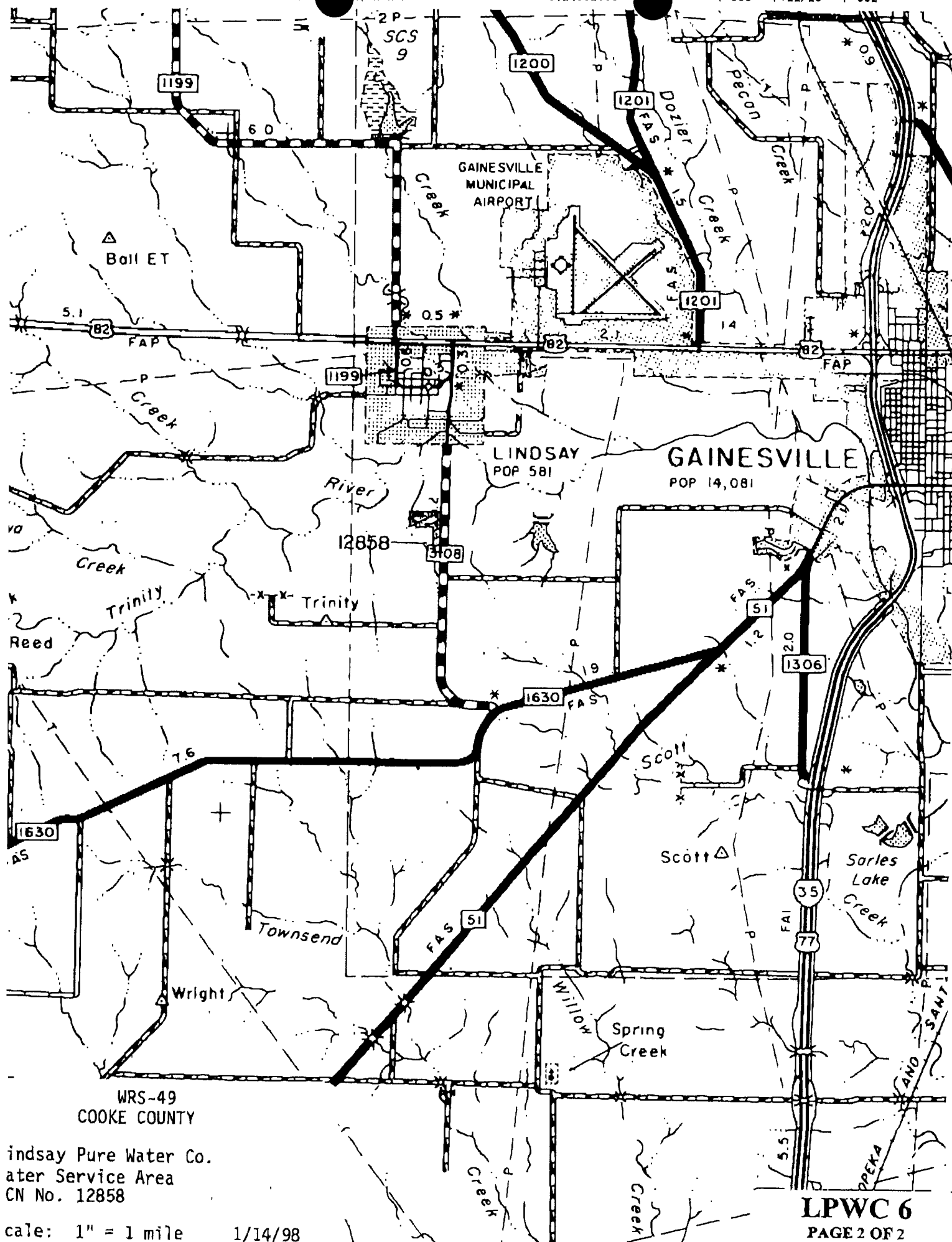
The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area map, WRS-49, maintained in the offices of the Texas Natural Resource Conservation Commission, 12015 Park 35 Circle, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 31888-C and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date:

APR 17 1998

*[Signature]*  
For the Commission



Oct 20 06 02:16p

940-665-3768

p. 39

Lindsay Pure Water Company

Water Tariff Page No. 2

Revision Date 1/1

## SECTION 1.0 - RATE SCHEDULE

Section 1.01 - Rates

| <u>Meter Size</u> | <u>Monthly Base Rate</u>                  | <u>Gallage Charge</u>        |
|-------------------|---|------------------------------|
| 5/8" or 3/4"      | \$ <u>18.50</u> (INCLUDING 2,000 GALLONS) | \$ <u>2.00</u>               |
| 1"                | \$ <u>18.50</u>                           | per 1000 gallons             |
| 1 1/2"            | \$ <u>40.00</u>                           | same for all meter sizes     |
| 2"                | \$ <u>62.50</u>                           | Above 30,000 gallons: \$2.50 |
| 3"                | \$ <u>114.00</u>                          | Above 70,000 gallons: \$3.50 |

REGULATORY ASSESSMENT ..... 1.0%

A REGULATORY ASSESSMENT, EQUAL TO ONE PERCENT OF THE CHARGE FOR RETAIL WATER SERVICE ONLY, SHALL BE COLLECTED FROM EACH RETAIL CUSTOMER.

Section 1.02 - Miscellaneous FeesTAP FEE ..... \$ 600.00

THE TAP FEE IS BASED ON THE AVERAGE OF THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR STANDARD RESIDENTIAL CONNECTION OF 5/8" or 3/4" METER. IF A ROAD BORE IS REQUIRED, THE ACTUAL COST OF THE ROAD BORE WILL BE ADDED TO THE TAP FEE.

RECONNECTION FEE

THE RECONNECT FEE WILL BE CHARGED BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS:

- a) Non payment of bill (Maximum \$25.00) ..... \$ 25.00  
 b) Customer's request ..... \$ 25.00  
 OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF

TRANSFER FEE ..... \$ 25.00

THE TRANSFER FEE WILL BE CHARGED FOR CHANGING AN ACCOUNT NAME AT THE SAME SERVICE LOCATION WHERE THE SERVICE IS NOT DISCONNECTED.

LATE CHARGE ..... \$ 2.00 OR 5%

A ONE TIME PENALTY MAY BE MADE ON DELINQUENT BILLS BUT MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A PREVIOUS BILLING.

RETURNED CHECK CHARGE ..... \$ 15.00CUSTOMER DEPOSIT (Maximum \$50) ..... \$ 50.00METER TEST FEE (actual cost of testing the meter up to) ..... \$ 25.00

THIS FEE MAY BE CHARGED IF A CUSTOMER REQUESTS A SECOND METER TEST WITHIN A TWO YEAR PERIOD AND THE TEST INDICATES THAT THE METER IS RECORDING ACCURATELY.

RATES LISTED ARE EFFECTIVE ONLY IF  
THIS PAGE HAS TNRC APPROVAL STAMP

WATERTAR.FRM (Rev. 1/96)

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION  
APPROVED

Date 2-24-98 Docket 31808-1

File 12858 By AM  
TARIFF CLERK

LPWC 7

07-07-08 15:35

Received:  
From-ARMBRUST & BROWN, L.L.P.

Jul 7 2008 04:32pm

5124352360

T-335 P 01/23 F-082

**ARMBRUST & BROWN, L.L.P.**

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

**FACSIMILE COVER PAGE**

Date: May 21, 2008

CHIEF CLERKS OFFICE

JUL 7 2008 4:39 PM

TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY  
OFFICE OF PUBLIC INTEREST  
COUNSEL

| NAME:                             | COMPANY:                                     | FACSIMILE NO.: | TELEPHONE NO.: |
|-----------------------------------|--|----------------|----------------|
| Arturo D. Rodriguez               | Russell & Rodriguez, L.L.P.                  | (512) 930-7742 | (512) 930-1317 |
| Brian MacLeod<br>Christiaan Siano | Texas Commission on<br>Environmental Quality | (512) 239-0606 | (512) 239-0750 |
| Blas J. Coy, Jr.                  | Office of Public Interest<br>Counsel         | (512) 239-6377 | (512) 239-6363 |
| Docket Clerk                      | Texas Commission on<br>Environmental Quality | (512) 239-3311 | (512) 239-3311 |

Please call us immediately if the document you receive is incomplete or illegible.

|                               |                               |
|-------------------------------|-------------------------------|
| From: John J. Carlton         | Telephone No.: (512) 435-2375 |
| Client/Matter No.: 52515.0101 | Total No. of Pages Sent: 23   |

**REMARKS:**

- ☐ Urgent
 ☐ For Your Review
 ☐ Reply ASAP
 ☐ Please Comment
- ☐ Original To Follow Via:
 ☐ Hand Delivery
 ☐ Federal Express
 ☐ First Class Mail

**RE:** SOAH Docket No. 582-06-0203; TCEQ Docket No. 2006-0272-UCR; *Application of the Town of Lindsay to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Texas*; Application Nos. 35096-C & 35097-C

**ATTACHMENTS:** Prefiled Direct Testimony and Exhibits of Jim Myrick for Lindsay Pure Water Company.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U. S. POSTAL SERVICE. THANK YOU.

252890-1 03/24/2008



**ARMBRUST & BROWN, L.L.P.**

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

2003 JUL -8 AM 10:41

CHIEF CLERKS OFFICE

JOHN CARLTON  
(512) 435-2308  
jcarlton@abaustin.com

July 7, 2008

***VIA HAND DELIVERY***

James W. Norman  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street  
Austin, Texas 78701

Re: SOAH Docket No. 582-06-0203; TCEQ Docket No. 2006-0272-UCR; *Application of the Town of Lindsay to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos. 13025 and 20927 in Cooke County, Texas*; Application Nos. 35096-C & 35097-C

Dear Judge Norman:

Pursuant to Order No. 6, enclosed for filing is the Prefiled Direct Testimony and Exhibits of Jim Myrick for Lindsay Pure Water Company.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

**ARMBRUST & BROWN, L.L.P.**

  
John J. Carlton

Attorney for Lindsay Pure Water Company

Enclosure

cc: Arturo D. Rodriguez  
Blas J. Coy  
Brian MacLeod  
Christiaan Siano  
TCEQ Docket Clerk

SOAH DOCKET NO. 582-06-2023

2008 JUL -8 AM 10:41

TCEQ DOCKET NO. 2006-0272-UCR

CHIEF CLERKS OFFICE

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| APPLICATION OF THE TOWN OF         | § | BEFORE THE STATE OFFICE |
| LINDSAY TO AMEND WATER AND         | § |                         |
| SEWER CERTIFICATES OF              | § |                         |
| CONVENIENCE AND NECESSITY          | § | OF                      |
| (CCN) NOS. 13025 AND 20927 IN      | § |                         |
| COOKE COUNTY, TEXAS                | § |                         |
| APPLICATION NOS. 35096-C & 35097-C | § | ADMINISTRATIVE HEARINGS |

---

**PREFILED DIRECT TESTIMONY AND EXHIBITS OF**

**JIM MYRICK**

**FOR**

**LINDSAY PURE WATER COMPANY**

**July 7, 2008**

---

**PREFILED DIRECT TESTIMONY AND EXHIBITS  
OF  
JIM MYRICK**

**TABLE OF CONTENTS**

|   |    |
|---|----|
| BACKGROUND .....                                | 1  |
| CREATION OF LINDSAY PURE WATER COMPANY .....    | 2  |
| LINDSAY PURE WATER COMPANY CCN .....            | 3  |
| LINDSAY PURE WATER COMPANY SYSTEM.....          | 5  |
| SOUTH RIDGE OF LINDSAY DEVELOPMENT STATUS ..... | 6  |
| EXPANSION OF LINDSAY SYSTEM .....               | 7  |
| SERVICE REQUESTS AND NEED .....                 | 8  |
| CONCLUSION.....                                 | 10 |

**EXHIBITS:**

|                |  |
|----------------|--|
| <b>LPWC 1:</b> | Google Earth Map of South Ridge of Lindsay, Lindsay Pure Water Company service area and Surrounding Area |
| <b>LPWC 2:</b> | Google Earth Map of South Ridge of Lindsay Subdivision Area  |
| <b>LPWC 3:</b> | South Ridge of Lindsay Phase 1 Subdivision Map   |
| <b>LPWC 4:</b> | South Ridge of Lindsay Phase 2 Subdivision Map   |
| <b>LPWC 5:</b> | South Ridge of Lindsay Phase 3 Subdivision Map   |
| <b>LPWC 6:</b> | TCEQ Order issuing CCN No. 12858 to Lindsay Pure Water Company   |
| <b>LPWC 7:</b> | Rate Schedule from Lindsay Pure Water Company Tariff   |

1                   **PREFILED DIRECT TESTIMONY AND EXHIBITS**  
2                   **OF**  
3                   **JIM MYRICK**  
4                   **BACKGROUND**

5   **Q.**    PLEASE STATE YOUR NAME AND ADDRESS.

6   **A.**    My name is Jim Myrick. My business address is Lindsay Pure Water Company, P.O. Box  
7           1338, Gainesville, Texas 76241.

8   **Q.**    PLEASE DESCRIBE YOUR EDUCATION, EXPERIENCE AND ANY DEGREES  
9           OBTAINED SINCE HIGH SCHOOL.

10 **A.**    I received a Bachelor of Arts degree in industrial engineering from North Texas State in  
11          1965. I worked in production management in Ling Temco Vaught (LTV) in the industrial  
12          engineering division for 7 years. I have owned my own appliance store for over 25 years.  
13          I have been a general contractor for the last 11 years both in commercial and residential  
14          construction. I have been developing land for subdivisions since 1976. In addition, I  
15          served as a council member on the Town of Lindsay City Council from about 1975 until  
16          about 1981. I have also actively served the community as a member of the Lindsay  
17          School Board for 18 years (11 as President). I have served on the Cooke County  
18          Appraisal District Board of Directors for the past 7 years, the last 4 of which I have been  
19          the President.

20 **Q.**    WHAT IS YOUR POSITION WITH LINDSAY PURE WATER COMPANY?

21 **A.**    I am the President of the company.

22 **Q.**    HOW LONG HAVE YOU BEEN AN OWNER OF LINDSAY PURE WATER  
23          COMPANY?

24 **A.**    I have owned part of the company and been President since it was created in 1997.

1 Q. WHAT HAVE BEEN YOUR RESPONSIBILITIES AS PRESIDENT OF THE  
2 COMPANY?

3 A. I have supervised both the acquisition of the various permits and approvals necessary to  
4 operate the water system and the construction and operation of the water system since it  
5 began.

6 **CREATION OF LINDSAY PURE WATER COMPANY**

7 Q. WHY WAS LINDSAY PURE WATER COMPANY CREATED?

8 A. The company was created to provide water service to the South Ridge of Lindsay  
9 Subdivision, which is located in the area shown on the Google Earth maps I have attached  
10 as **Exhibits LPWC 1 and LPWC 2.**

11 Q. DO THESE MAPS ACCURATELY SHOW THE LOCATION OF THE SOUTH  
12 RIDGE OF LINDSAY SUBDIVISION?

13 A. They do.

14 Q. WHO IS THE DEVELOPER FOR THE SOUTH RIDGE OF LINDSAY?

15 A. Myrick Development Company.

16 Q. PLEASE DESCRIBE YOUR RELATIONSHIP WITH MYRICK DEVELOPMENT  
17 COMPANY.

18 A. I am an owner and the President of Myrick Development Company.

19 Q. PLEASE DESCRIBE THE SUBDIVISION.

20 A. The South Ridge of Lindsay is approximately 96 acres of land located along County Road  
21 3108 approximately one mile south of the City of Lindsay. The property was purchased  
22 by Myrick Development Company in 1997, and the subdivision has been developed in  
23 phases. There will ultimately be about 65 lots within the subdivision. Phases 1, 2 and 3  
24 have been platted for 44 lots, and all but 8 of the lots have been sold. Phase 4, which is

1 the final phase, will begin development within the next 6 months. The first 2 homes were  
2 constructed in 1998, and we have averaged 2.6 new homes per year over the 10 years that  
3 the project has been active. There are now 26 homes within the subdivision and 14 sold,  
4 but vacant, lots. Copies of the plats for Phases 1, 2 and 3 are attached as **Exhibits LPWC**  
5 **3, LPWC 4 and LPWC 5.**

6 **Q.** DID YOU TRY TO OBTAIN WATER SERVICE FOR THE SOUTH RIDGE OF  
7 LINDSAY SUBDIVISION INSTEAD OF CREATING LINDSAY PURE WATER  
8 COMPANY?

9 **A.** Yes.

10 **Q.** WHAT HAPPENED?

11 **A.** I initially requested service from the Town of Lindsay. They refused to extend service  
12 from their water system or even allow me to pay to extend their lines to the subdivision.  
13 Consequently, we had to create Lindsay Pure Water Company, drill a new well and  
14 construct a new water system to serve the subdivision.

15 **LINDSAY PURE WATER COMPANY CCN**

16 **Q.** DOES LINDSAY PURE WATER COMPANY HOLD A CERTIFICATE OF  
17 CONVENIENCE AND NECESSITY TO PROVIDE RETAIL WATER SERVICE  
18 FROM THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY?

19 **A.** Yes.

20 **Q.** WHAT IS THE CCN NUMBER?

21 **A.** The CCN number is 12858

22 **Q.** WHEN WAS THE CCN ISSUED?

23 **A.** The CCN was issued by the Commission in 1998. A copy of the Order is attached as  
24 **Exhibit LPWC 6.**

1 Q. PLEASE DESCRIBE THE CERTIFICATE OF CONVENIENCE AND NECESSITY  
2 HELD BY LINDSAY PURE WATER COMPANY?

3 A. The current CCN for the Company only covers what is known as Phase 1 of the South  
4 Ridge of Lindsay Subdivision and a portion of Phase 2.

5 Q. WHY IS PHASE 1 THE ONLY AREA COVERED BY THE CCN?

6 A. I do not know and believe this is in error. The entire South Ridge of Lindsay subdivision  
7 should be within the Lindsay Pure Water Company CCN. However, the public records at  
8 the Commission are incomplete, and I have been unable to locate a copy of our original  
9 application to confirm my opinion.

10 Q. WHEN DID YOU DISCOVER THIS ERROR?

11 A. I discovered this error in the course of preparing for this case.

12 Q. HOW IS LINDSAY PURE WATER COMPANY SERVING THE EXISTING HOMES  
13 IN AREAS OUTSIDE ITS CCN?

14 A. Those homes, like the remainder of the subdivision property are within ¼ mile of the  
15 company's CCN boundary. Consequently, the company is authorized to serve them under  
16 the Commission's rules. As soon as we have finished this case and have enough  
17 resources, I intend to apply for an amendment to the company's CCN in order to add the  
18 remainder of Phase 2, and Phases 3 and 4 to CCN No. 12858.

19 Q. HOW MUCH DOES LINDSAY PURE WATER COMPANY CHARGE ITS  
20 CUSTOMERS FOR SERVICE?

21 A. We charge the rates that are set by our tariff, which has been approved by the  
22 Commission. A copy of the rate schedule page from our tariff is attached as **Exhibit**  
23 **LPWC 7.**

1                                    **LINDSAY PURE WATER COMPANY SYSTEM**

2    **Q.**     PLEASE DESCRIBE THE LINDSAY PURE WATER COMPANY SYSTEM.

3    **A.**     This system was initially designed to serve, at a minimum, the South Ridge of Lindsay  
4           subdivision at full build-out of Phases 1 through 4, which included 65 connections, but it  
5           has been oversized in many ways that will allow it to serve other areas. The main  
6           components of the water system include:

- 7                (1)     approximately 1.2 miles of 6-inch C900 PVC distribution lines;  
8                (2)     a 100,000 gallon standpipe, with maximum elevation of 963 feet above  
9                        sea level;  
10               (3)     a well that is 905 feet deep, has a static water level of 325 feet and is  
11                        pumping a minimum of 100 gallons per minute from 515 feet deep;  
12               (4)     a 2000 gallon pressure tank;  
13               (5)     a 10-horsepower service pump with a capacity of 420 gallons per minute;  
14                        and  
15               (6)     a 3-horsepower high pressure pump with 100 gallons per minute capacity.

16           We are planning to replace the 3-horse power pump with another 10-horsepower pump  
17           with a capacity of 420 gallons per minute in the next few months. With two 10-  
18           horsepower pumps we should be able to supply 840 gallons per minutes at 60 pounds of  
19           head pressure.



1 Q. HOW MANY CONNECTIONS IS THE LINDSAY PURE WATER SYSTEM  
2 CAPABLE OF SERVING?

3 A. Based upon the Commission rules and the way the system is currently operated, it can  
4 serve up to 100 connections. The storage tank capacity is sufficient for 500 connections at  
5 200 gallons per connection. The currently pump capacity is sufficient for 260 connections  
6 (the new pump would allow us to serve 420 connections). The distribution lines are  
7 sufficient for up to 250 connections. The 100 gallon per minute well capacity is sufficient  
8 for 168 connections. The limiting factor is the pressure tank, which has a capacity to  
9 serve 100 connections. The Commission rules require a system to have pressure tank  
10 capacity of 20 gallons for every connection. By changing the way we operate to eliminate  
11 the use of pressure tank, the system could serve up to 168 connections, which is the well  
12 capacity limit. This is because the capacity of the standpipe that is 80 feet above the  
13 highest service connection, which is considered elevated storage, is sufficient to serve  
14 about 180 connections. By adding a second well, depending on the production of the  
15 well, the system could serve up to 180 connections without any additional improvements.  
16 By adding additional elevated storage or pressure tank capacity, the system can be  
17 expanded to serve even more connections.

18 **SOUTH RIDGE OF LINDSAY DEVELOPMENT STATUS**

19 Q. WHO OWNS THE UNSOLD LOTS IN PHASE 3 OF THE SOUTH RIDGE OF  
20 LINDSAY SUBDIVISION?

21 A. Myrick Development.

22 Q. WHO OWNS THE PROPERTY THAT WILL BE PHASE 4 OF THE SOUTH RIDGE  
23 OF LINDSAY SUBDIVISION?

24 A. Myrick Development.

1 Q. HOW MANY ACRES OF LAND DOES MYRICK DEVELOPMENT OWN WITHIN  
2 THE SOUTH RIDGE OF LINDSAY SUBDIVISION?

3 A. Myrick Development owns approximately 42 acres of land within the South Ridge of  
4 Lindsay, which includes 8 unsold lots of approximately 1 acre each and approximately 34  
5 acres of land that is to be developed as Phase 4.

6 Q. WHICH UTILITY COMPANY DO YOU WANT TO PROVIDE WATER SERVICE  
7 TO THE MYRICK DEVELOPMENT PROPERTY WITHIN THE SOUTH RIDGE OF  
8 LINDSAY SUBDIVISION?

9 A. Lindsay Pure Water Company.

10 **EXPANSION OF LINDSAY SYSTEM**

11 Q. WHAT ARE LINDSAY PURE WATER COMPANY'S DESIRES WITH REGARD TO  
12 PROVIDING SERVICE IN THE AREA SURROUNDING ITS CURRENT CCN?

13 A. Our company would like to be the service provider in the area that surrounds our CCN.

14 Q. WHY IS THAT?

15 A. We would like to be the service provider because we have facilities in close proximity that  
16 have sufficient capacity to serve a significant number of additional connections, and with  
17 some slight improvements, could serve an many more connections on top of that. By  
18 serving additional connections, we would be able to fully utilize our system's resources  
19 and cost efficiently serve landowners in the area surrounding us.

20 Q. IF YOU WANT TO SERVE IN THE AREA SURROUNDING YOU, WHY HAVE  
21 YOU NOT APPLIED FOR A CCN FOR THAT AREA?

22 A. There is no current need for service.

1 Q. WHY DO YOU HAVE THAT OPINION?

2 A. I have been developing property in Cooke County for 34 years. Based on my experience,  
3 there is not an immediate need for service because there are no developments proposed  
4 within the area surrounding our Company's CCN. The only active subdivisions, beside  
5 the South Ridge of Lindsay, are within the City of Lindsay's city limits and its current  
6 water CCN.

7 Q. HOW WOULD LINDSAY PURE WATER COMPANY PROVIDE WATER SERVICE  
8 TO THE SURROUNDING AREA?

9 A. Landowners could connect to the Company's existing water system for service to their  
10 property. If additional capacity were needed, the improvements described above could be  
11 easily made in order to supply water sufficient to serve the development when it is  
12 needed.

13 **SERVICE REQUESTS AND NEED**

14 Q. HAVE YOU REVIEWED THE REQUESTS FOR SERVICE RECEIVED BY THE  
15 CITY OF LINDSAY?

16 A. I have.

17 Q. WHAT IS YOUR OPINION REGARDING THOSE REQUESTS?

18 A. I do not believe that any of the requestors have plans for developing their property at this  
19 time. It is my opinion that the requests are merely for the purpose of securing a  
20 certificated service area so that neither my company nor the City of Gainesville can obtain  
21 a CCN over the area. By securing a CCN, the City of Lindsay hopes to add an additional  
22 layer of regulatory control over development within the area and to prevent the City of  
23 Gainesville from controlling the area.

1 Q. WHY DO YOU NOT BELIEVE THE REQUESTORS TRULY NEED SERVICE?

2 A. I base my opinion on the fact there are no actively developing subdivisions, other than the  
3 South Ridge of Lindsay, within the City of Lindsay's requested service area surrounding  
4 our company's CCN. By actively developing, I mean that there are no pending plat  
5 applications before the City of Lindsay or Cooke County, which are the entities that have  
6 jurisdiction over the subdivision process in the area. None of the requestors have actually  
7 filed any applications related to development of their property with Cooke County or the  
8 City of Lindsay.

9 Q. WHAT IS THE BASIS FOR YOUR OPINION?

10 A. I base my opinion on my experience as a former Lindsay City Council member and my  
11 involvement in utility and growth issues affecting the area over the past 34 years. In  
12 particular, I base my opinion on my discussions with current and prior City Council  
13 members and City staff regarding the desire to prevent the City of Gainesville from  
14 expanding its service area any further to the West. We have previously received similar  
15 requests for service, which I know were not based upon an actual need for service and  
16 were based upon a desire to keep the City of Gainesville from serving the area.

17 Q. WHY HAVE YOU NOT APPLIED FOR A CCN AMENDMENT WHEN YOU  
18 RECEIVED THOSE TYPE OF REQUESTS?

19 A. We actually retained an individual to assist us in preparation of a CCN amendment  
20 application, but the application was never completed because there was not an immediate  
21 need for service to those tracts of land and therefore no urgency to follow through with an  
22 application.

1 Q. DOES THE GROWTH IN LINDSAY'S POPULATION, AS REFERENCED BY MR.  
2 MARONEY IN HIS PREFILED TESTIMONY, AFFECT YOUR OPINION ABOUT  
3 THE LACK OF NEED FOR SERVICE?

4 A. No.

5 Q. WHY NOT?

6 A. As I stated before, there are no actively developing subdivisions, other than the South  
7 Ridge of Lindsay, within the City of Lindsay's requested service area surrounding our  
8 company's CCN. By actively developing, I mean that there are no pending plat  
9 applications before the City of Lindsay or Cooke County, which are the entities that have  
10 jurisdiction over the subdivision process in the area. The only growth is occurring within  
11 the City limits of Lindsay, which is already subject to the City's CCN, or within the South  
12 Ridge of Lindsay subdivision, which is served by Lindsay Pure Water Company.

13 **CONCLUSION**

14 Q. WHAT WOULD BE THE IMPACT ON LINDSAY PURE WATER COMPANY IF  
15 THE CITY OF LINDSAY WAS ISSUED ITS PROPOSED CCN?

16 A. Lindsay Pure Water Company would be forced to terminate its service to its current  
17 customers within the South Ridge of Lindsay Subdivision, Phases 2 and 3. Lindsay would  
18 be unable to provide service to any new homes constructed within Phases 2 and 3 or  
19 within future Phase 4. The Company would also be prevented from utilizing the capacity  
20 available within its existing system for future customers. This would result in the  
21 Company not earning a return on its decade old investment in water service for the area  
22 and probably result in extreme financial trouble for the Company because we would lose a  
23 substantial portion of the revenues we currently generate.

1 Q. WHAT WOULD BE THE IMPACT ON THE LAND WITHIN THE SOUTH RIDGE  
2 OF LINDSAY SUBDIVISION IF THE CITY OF LINDSAY WAS ISSUED ITS  
3 PROPOSED CCN?

4 A. The land within the South Ridge of Lindsay, Phases 2, 3 and future Phase 4 would be  
5 forced to obtain water service from the City of Lindsay's facilities, which are  
6 approximately one mile away. The cost of obtaining this service would greatly exceed the  
7 cost to obtain service from Lindsay Pure Water Company because, in addition to the cost  
8 of the internal distribution system and the taps, the landowners would incur costs to  
9 construct a mile long transmission line from the City's system and additional pumps and  
10 storage necessary to serve the subdivision. The only costs to connect to the Lindsay Pure  
11 Water Company system would be for the distribution mains and the taps because there is  
12 sufficient capacity in all the other facilities to serve the remainder of the subdivision build  
13 out. In addition, there would be significant time delay associated with the construction of  
14 the extension of the City of Lindsay's system that would not occur using the Company's  
15 system. Finally, the land would no longer have the benefit of elevated storage within  
16 close proximity, and the customers on the land would pay more for their retail utility  
17 service.

18 Q. WHAT WOULD BE THE IMPACT ON THE LAND WITHIN THE AREA  
19 SURROUNDING THE SOUTH RIDGE OF LINDSAY SUBDIVISION IF THE CITY  
20 OF LINDSAY WAS ISSUED ITS PROPOSED CCN?

21 A. Similarly, the land within the area surrounding the South Ridge of Lindsay would be  
22 forced to obtain water service from the City of Lindsay's facilities, which are  
23 approximately one mile away. This area would also incur costs to obtain water service  
24 that would greatly exceed the cost to obtain service from Lindsay Pure Water Company.

1 The costs would be higher for the same reasons, construction of a transmission main and  
2 additional pumps and storage necessary to serve the land. Whereas, the only costs to  
3 connect to the Lindsay Pure Water Company system would be for the internal distribution  
4 mains and the taps because there is sufficient capacity in all the other Company facilities  
5 to serve the area surrounding the South Ridge of Lindsay, and to the extent additional  
6 capacity is needed, it can be readily obtained by improvements to the Company's system.  
7 Just like the areas within the South Ridge of Lindsay subdivision, customers within this  
8 area would also pay more for retail service from the City of Lindsay. These issues are  
9 particularly true for the areas located south of the Company's service area, because the  
10 transmission line would have to pass by the Company's system in order to reach the areas  
11 that are further to the South. While it is less clear where the costs and timing for service  
12 begin to be the same for the area between the City and the Company's service area, there  
13 is still no need for service in this area at this time.

14 **Q. WHAT WOULD YOU LIKE FOR THE COMMISSION TO DO IN THIS MATTER?**

15 **A.** I want the Commission to deny the City of Lindsay's application for a CCN for all areas  
16 South of U.S. 82 because there is not a need for service in any of this area at this time. At  
17 some point in the future, when there is actually a need for service, Lindsay Pure Water  
18 Company and the City of Lindsay can work together to determine how that future need  
19 can best be met from an economic, engineering and timing perspective. However, it is not  
20 time for that now.

21 **Q. DOES THIS CONCLUDE YOUR TESTMONY?**

22 **A.** Yes.





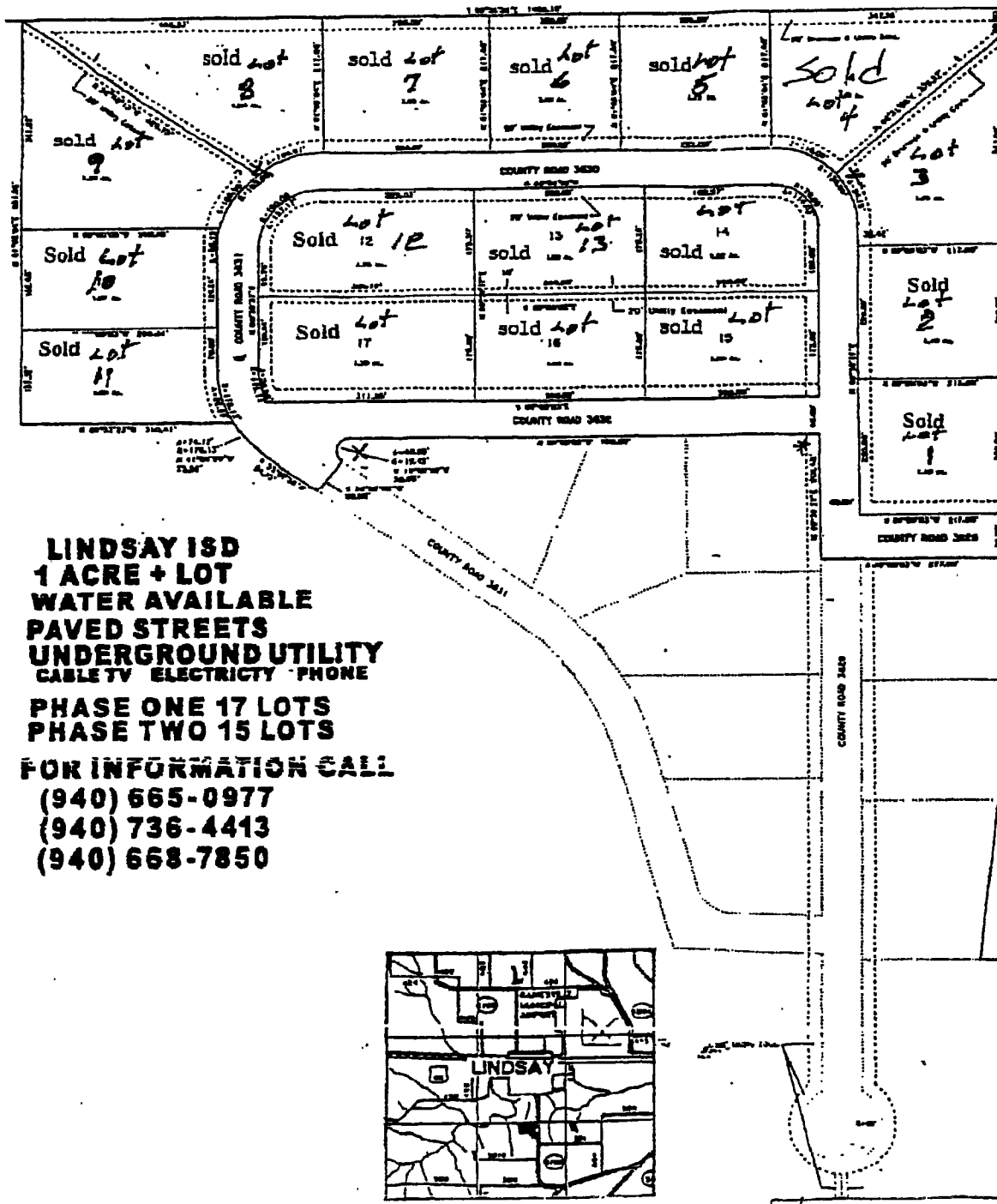
Lindsay Pure Water Service Area

3630

Image © 2008 DigitalGlobe  
© 2008 Tele Atlas

© 2007 Google™

# SOUTH RIDGE of LINDSAY



**LINDSAY ISD**  
**1 ACRE + LOT**  
**WATER AVAILABLE**  
**PAVED STREETS**  
**UNDERGROUND UTILITY**  
**CABLE TV ELECTRICITY PHONE**

**PHASE ONE 17 LOTS**  
**PHASE TWO 15 LOTS**

**FOR INFORMATION CALL**

**(940) 665-0977**

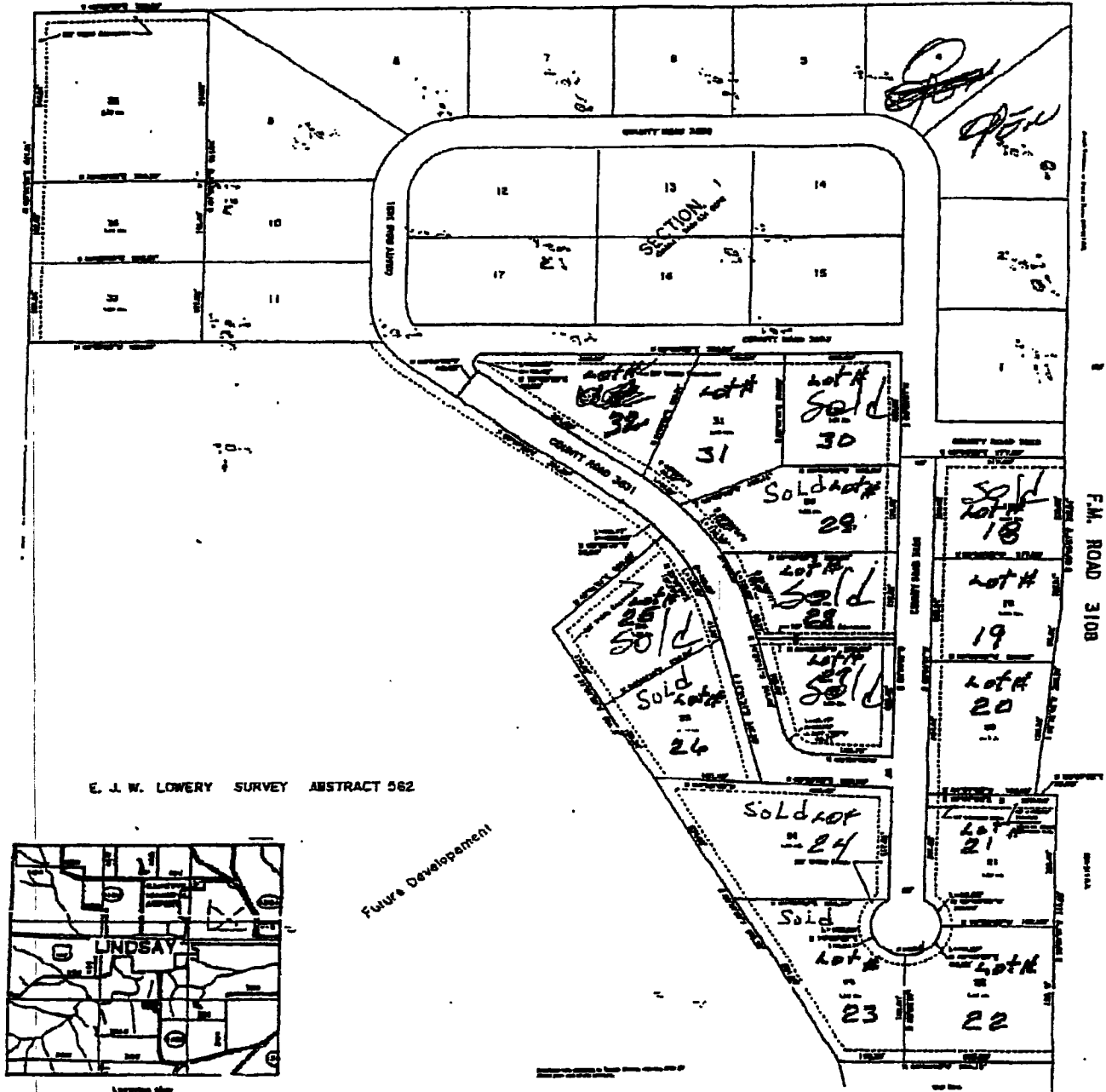
**(940) 736-4413**

**(940) 668-7850**

1.5 MILES TO HWY. 82

FM 3108

# SOUTHERN BRIDGE of LINDSAY PHASE 2





# TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



STATE OF TEXAS §  
COUNTY OF TRAVIS §

07

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission Given under my hand and the seal of office.

*Rodney D. Peschel*

Rodney D. Peschel, Alternate Custodian of Records  
Texas Commission on Environmental Quality

## CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code  
and Texas Natural Resource Conservation Commission Substantive Rules

**Certificate No. 12858**

### I. Certificate Holder:

Name: Lindsay Pure Water Company, a Texas Corporation  
Address: P. O. Box 5  
Lindsay, Texas 76250

### II. General Description and Location of Service Area:

The area covered by this certificate, known as the South Ridge of Lindsay Subdivision, is located approximately 5 miles west of downtown Gainesville, Texas on Farm to Market Road 3108. The service area is generally bounded on the east by Farm to Market Road 3108 and on the north by Elm Creek in Cooke County, Texas.

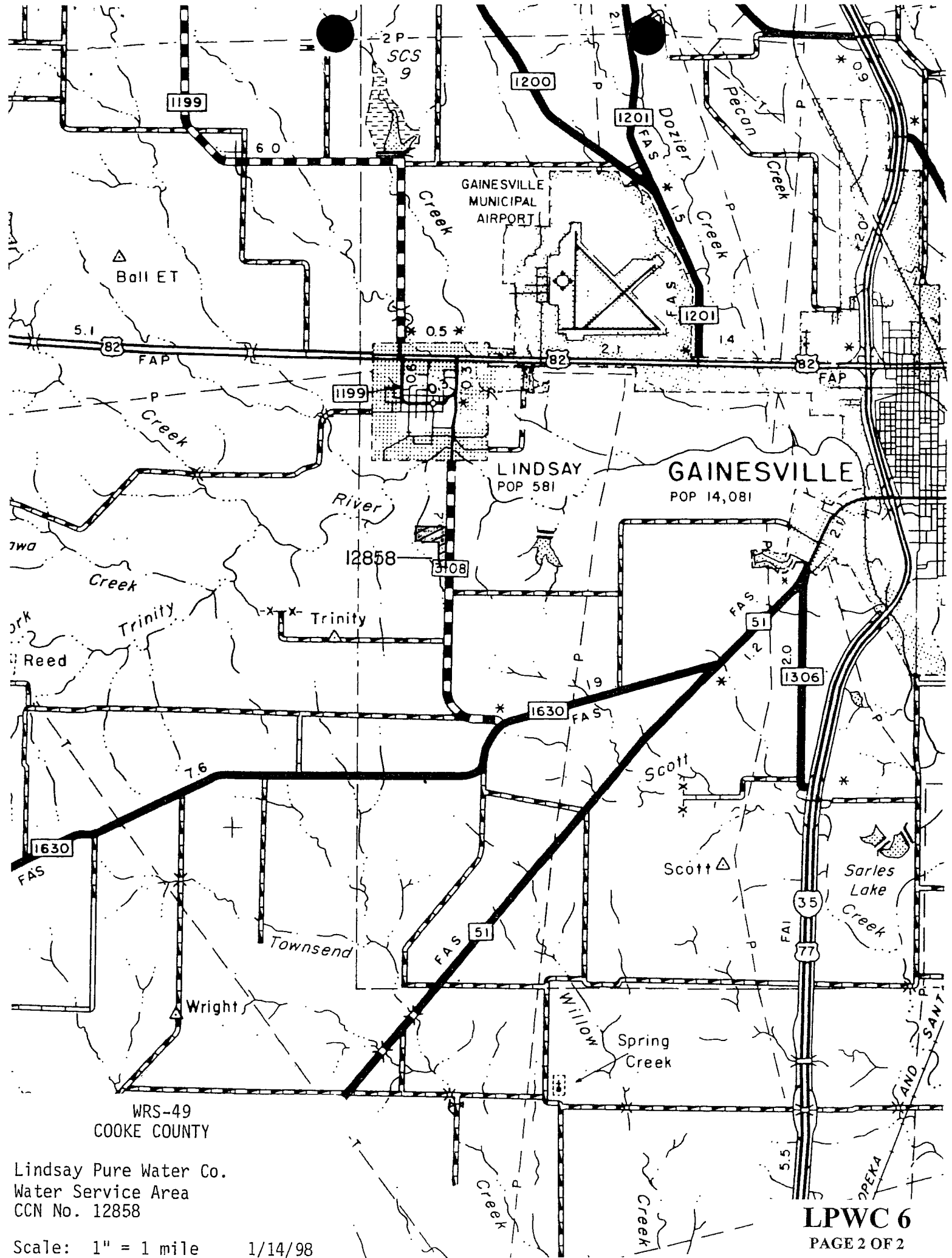
### III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area map, WRS-49, maintained in the offices of the Texas Natural Resource Conservation Commission, 12015 Park 35 Circle, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 31888-C and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: **APR 17 1998**

*[Signature]*  
For the Commission



Lindsay Pure Water Co.  
Water Service Area  
CCN No. 12858

Scale: 1" = 1 mile 1/14/98

Lindsay Pure Water Company

Water Tariff Page No. 2

Revision Date 11

## SECTION 1.0 - RATE SCHEDULE

Section 1.01 - Rates

| <u>Meter Size</u> | <u>Monthly Base Rate</u>                  | <u>Gallonge Charge</u>       |
|-------------------|---|------------------------------|
| 5/8" or 3/4"      | \$ <u>18.50</u> (INCLUDING 2,000 GALLONS) | \$ <u>2.00</u>               |
| 1"                | \$ <u>18.50</u>                           | per 1000 gallons             |
| 1½"               | \$ <u>40.00</u>                           | same for all meter sizes     |
| 2"                | \$ <u>62.50</u>                           | Above 30,000 gallons: \$2.50 |
| 3"                | \$ <u>114.00</u>                          | Above 70,000 gallons: \$3.50 |

REGULATORY ASSESSMENT ..... 1.0%

A REGULATORY ASSESSMENT, EQUAL TO ONE PERCENT OF THE CHARGE FOR RETAIL WATER SERVICE ONLY, SHALL BE COLLECTED FROM EACH RETAIL CUSTOMER.

Section 1.02 - Miscellaneous FeesTAP FEE ..... \$ 600.00

THE TAP FEE IS BASED ON THE AVERAGE OF THE UTILITY'S ACTUAL COST FOR MATERIALS AND LABOR FOR STANDARD RESIDENTIAL CONNECTION OF 5/8" or 3/4" METER. IF A ROAD BORE IS REQUIRED, THE ACTUAL COST OF THE ROAD BORE WILL BE ADDED TO THE TAP FEE.

## RECONNECTION FEE

THE RECONNECT FEE WILL BE CHARGED BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS:

- a) Non payment of bill (Maximum \$25.00) ..... \$ 25.00  
 b) Customer's request ..... \$ 25.00  
 OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF

TRANSFER FEE ..... \$ 25.00

THE TRANSFER FEE WILL BE CHARGED FOR CHANGING AN ACCOUNT NAME AT THE SAME SERVICE LOCATION WHERE THE SERVICE IS NOT DISCONNECTED.

LATE CHARGE ..... \$ 2.00 OR 5%

A ONE TIME PENALTY MAY BE MADE ON DELINQUENT BILLS BUT MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A PREVIOUS BILLING.

RETURNED CHECK CHARGE ..... \$ 15.00CUSTOMER DEPOSIT (Maximum \$50) ..... \$ 50.00METER TEST FEE (actual cost of testing the meter up to) ..... \$ 25.00

THIS FEE MAY BE CHARGED IF A CUSTOMER REQUESTS A SECOND METER TEST WITHIN A TWO YEAR PERIOD AND THE TEST INDICATES THAT THE METER IS RECORDING ACCURATELY.

RATES LISTED ARE EFFECTIVE ONLY IF  
 THIS PAGE HAS TNRC APPROVAL STAMP

WATERTAR.FRM (Rev. 1/96)

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION  
APPROVEDDate 2-24-98 Docket 31888-CFile 12858 By AAH  
TARIFF CLERK

LPWC 7

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 26, 2008

Honorable James Norman  
State Office of Administrative Hearings  
Administrative Law Judge  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

Re: Town of Lindsay; SOAH Docket No. 582-06-2023; TCEQ Docket No. 2006-0272-UCR

Dear Judge Norman:

Enclosed please find the Executive Director's Response to Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director. Should you have any questions or concerns, please do not hesitate to contact me at (512) 239-0750.

Sincerely,

A handwritten signature in black ink, appearing to read "B. MacLeod".

Brian MacLeod  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing list



APPLICATION OF THE TOWN OF  
LINDSAY TO AMEND A WATER  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY (CCN) NO. 13025 IN COOKE  
COUNTY; APPLICATION NO. 35096-C;  
and APPLICATION TO AMEND A  
SEWER CERTIFICATE OF  
CONVENIENCE AND NECESSITY (CCN)  
NO. 20927 IN COOKE COUNTY, TEXAS;  
APPLCIATION NO. 35097-C

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE  
OF

ADMINISTRATIVE HEARINGS

2023 SEP 27 PM 2:22

RECEIVED  
STATE OFFICE  
ADMINISTRATIVE  
HEARINGS

**THE EXECUTIVE DIRECTOR'S RESPONSE TO LINDSAY PURE WATER  
COMPANY'S OBJECTIONS TO THE PREFILED TESTIMONY AND EXHIBITS OF  
THE EXECUTIVE DIRECTOR**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

All of Lindsay Pure Water Company's objections are based on the same faulty premise, namely, that the Executive Director's witness is not an expert and therefore cannot give opinions (speculate) based on hearsay and facts not in evidence. If the ED's witness is an expert, then all of her testimony is admissible.

**I. EXPERT WITNESSES CAN GIVE OPINION TESTIMONY AND DRAW INFERENCES  
BASED ON HEARSAY**

Rule 703 of Texas Rules of Evidence reads as follows: "The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonable relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."

## **II. THE EXECUTIVE DIRECTOR'S WITNESS IN THIS CASE IS AN EXPERT WITNESS**

Rule 702 of the Texas Rules of Evidence provides the test for qualifying a witness as an expert. It provides as follows: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of opinion or otherwise."

The ED's witness testified on page 1, line 4-8 of her prefiled testimony that she has worked for the Commission for nine years on the utilities and financial review team, and that she had been a team leader of that team for over two years. She is testifying to her interpretation of the Commission's own regulations and how they apply to this particular case. If the team leader for the team that executes those regulations for the Commission is not an expert on how the CCN factors are to be applied, it would be difficult to imagine who would be. This same witness faced an identical attack on her qualifications in the town of Prosper case (SOAH Docket No. 582-03-1994). In that case the very same ALJ hearing this case found that this witness is qualified as an expert and can give testimony as to the CCN factors as an expert witness. A copy of the relevant pages of the transcript of that hearing are attached hereto. As Mr. Russell (attorney involved in the Prosper case) pointed out in that hearing, the objection is a "basic attack on the Commission's ability to appoint people to interpret and apply its own regulations." (Page 906 lines 19-20 of the attachment).

Furthermore, the ED's witness testified in her prefiled testimony that she has a bachelor of science degree in economics and biology and a master's degree in business administration. She also testified that two former employment positions gave her experience in business financial analysis and in conducting socioeconomic research and analysis and in drafting Environmental Baseline Studies

and other environmental reports. (page 1 lines 10-21 of her prefiled testimony). She further testified that her current responsibilities include supervising a team whose primary responsibility is to process applications related to obtaining or amending Certificates of Convenience and Necessity and that she reviews and processes CCN related applications. (page 2 lines 1-10 of her prefiled testimony) She further testified that she has been assigned over 260 separate CCN related applications and has prefiled testimony as an expert in numerous CCN and rate cases, and that she had testified live from the stand as an expert two CCN cases. (page 2 lines 11-22 of her prefiled testimony).

There should be no doubt that the person who supervises the processing of CCN applications for the very agency charged with the authority to review and approve applications for CCNs can give expert testimony that would be helpful to the trier in fact on how the factors are weighed. If the ED's expert is not an expert on how the factors are weighed in determining whether a CCN should be issued, then such a person would not exist.

### **III. THE SPECIFIC TESTIMONY OBJECTED TO**

The objections are listed below by number. However, all can be overruled based on the fact that the ED's witness is an expert. For the purposes of being thorough, a brief rebuttal to each objection is offered.

**Objection 1**– Expert witnesses routinely base their opinions on testimony of other witnesses in the case. Mr. Meltzer's testimony is in his prefiled evidence. Additionally, the testimony recounts the exhibits which are applications for service. Such requests are "operative words" (effect on hearer not veracity of declarant is central) and not hearsay, therefore, once they are authenticated, they are

admissible in evidence.

**Objection 2**— The description of the location of the testimony doesn't match with the allegations of what was testified to at the citations given in the objection. As such, the objection should be overruled. However, the pages and lines referred to only recount what size storage tanks Lindsay has and the locations of existing retail water utilities. These are facts routinely used by experts without doing personal observations in CCN cases. Experts do not go into the field and actually test the capacity of storage tanks nor do they go out and survey the land to determine the distance to neighboring utilities with a surveying team. If necessary, at the pretrial hearing, the ED's witness can give testimony to support this obvious fact. Here, again, her reliance on testimony of other witnesses is objected to. However, experts may rely on testimony of other witnesses in drawing inferences and giving opinions.

**Objection 3**-- The question is specifically aimed at the adequacy of ability to provide sewer service and is sufficiently specific to overcome a speculation objection. Furthermore, an objection that the testimony calls for an answer on an ultimate fact is not sustainable under Texas Rule of Evidence 704. The answer is not long and rambling and the reason underlying a speculation objection doesn't apply to prefiled testimony. The question is already asked and answered in the prefiled testimony. There should be no fear that a witness could go on at length and be allowed to give a narrative to a jury. There is no jury. And if the testimony is long and rambling and includes a narrative rather than an answer to the direct question, the objection should be targeted at that portion of the testimony rather than at the question itself, as there is no way to interrupt the answer when it has already been prefiled. The answer is short and direct. The policies underlying objections to questions calling for speculation don't apply here. Furthermore, as argued above, experts can testify based on matters that

normally would not be admissible in evidence. Experts routinely testify based on facts related in other witnesses testimony.

**Objection 4--** This is not an objection to the testimony, but is rather an attempt to rebut the testimony. The ED's witness testified that Lindsay Pure Water has not filed an application for a CCN. She is the person in charge of handling CCN applications; the objection that the testimony is based on facts not in evidence has no application. She is testifying to the fact that they have no application on file. The fact is in evidence when she testified to it. She draws the conclusion that this would tend to show that it is not feasible for Lindsay Pure Water Co. to serve the area. The argument that Lindsay is already serving customers doesn't make her testimony inadmissible, it is other evidence that Lindsay Pure Water Company wants to use to rebut her conclusion.

**Objection 5—** Statements in an application are not hearsay. They are operative words. To the extent that the statements are not operative words, the ED's experts routinely relies on statements made in applications. Otherwise, the ED could not even rely on whether the person who filed it actually was who they said they were.

**Objection 6—** The ED's witness has extensive experience in determining the financial abilities of a retail public utility to provide water and sewer service. Therefore, she qualifies as an expert on this factor with even greater force. The "question calls for speculation" objection should also be overruled for the reasons stated above. The question is sufficiently specific, the answer is direct, and the policies underlying the sustaining of such an objection do not apply to this case.

**Objection 7—** The inability of a TCEQ expert to give opinion testimony on the environmental integrity portion of the CCN criteria has already been addressed in the attachment to this response. That case involved this very witness and this very judge. Therefore, the ED refers the court to the

attachment. As for the portion of the objection stating that the question calls for speculation, the ED refers the court to the discussion above.

**Objection 8—** As for the “question calls for speculation” objection, the ED refers the court to the argument given above; *to wit*, the question has sufficient focus, the answer is not long and rambling, and the concepts behind such an objection (cutting off the witness before they start to ramble) are particularly inapplicable to prefiled testimony. If the answer did create the problems such an objection is meant to solve, then the non-responsive or rambling portions of the testimony should be the focus of the objection when the evidence is prefiled. Again, the objection is more of a rebuttal than a statement on the admissibility of the evidence. Furthermore, the witness is eminently qualified to testify on the effects of economies of scale because she is the team leader for the agency that makes such determinations. Moreover, she has a degree in economics, and an MBA.

#### **IV. ANY PROBLEMS WITH THE TESTIMONY OF THE ED’S WITNESS GOES TO THE WEIGHT, NOT THE ADMISSIBILITY OF HER TESTIMONY**

Because the trier of fact in this case is an ALJ, there is no jury to protect from being swayed by hearsay evidence. The ALJ as trier of fact, will give the testimony the weight it deserves. To the extent that the facts underlying an expert’s testimony are questionable, Texas Courts have held that the “weakness of facts in support of an expert’s opinion generally goes to the weight of the testimony rather than its admissibility.” *LMC Complete Auto, Inc. v. Burke*, 229 S.W.3d 469, 478 Tex. App.—Houston [1<sup>st</sup>. Dist.] 2007, pet denied.

#### **IV. IF THE BASIS OF HER TESTIMONY IS INSUFFICIENT, SUCH INSUFFICIENCY NEEDS TO BE ESTABLISHED BY A VOIR DIRE EXAMINATION RATHER THAN A**

## **BLANKET OBJECTION.**

Rule 704 of the Texas Rules of Evidence contemplates that objections to expert testimony based on insufficiency of underlying facts or insufficient proof of expert status should be done by means of voir dire rather than a blanket objection. Therefore, if such objections are to be considered, they would have to be by live testimony rather than legal argument.

## **V. TO REQUIRE THE ED TO PROVIDE WITNESSES WITH ACTUAL KNOWLEDGE OF EACH OF THE CCN CRITERIA AND A DEGREE IN EACH SCIENTIFIC OR BUSINESS AREA INVOLVED WOULD LEAD TO UNWORKABLE CHAOS**

The personal knowledge that Lindsay Pure Water Company claims the ED's witness must have in order to testify includes actual verification of all facts regarding a city's financial position (statements by the city's expert are insufficient), personal knowledge of each fact stated in the application, actually producing a non-existent CCN application, a degree in every area of business (finance, public finance accounting) and environmental science that might entail a conclusion regarding a CCN criterion, personal inspection of every piece of equipment used by a utility, and more. The time it would take to make all these personal observations and to obtain all these degrees would mean that no case would ever get heard. The number of different witnesses needed to give all the underlying data through personal observation would make the case even more impossible to try. That is the very reason why experts are allowed to give their testimony in the form of opinion or otherwise without disclosing the underlying data.

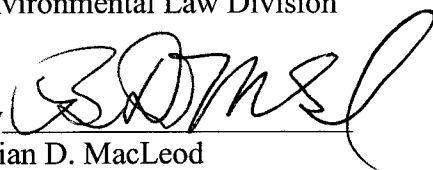
## **VI. EVEN IF THE EVIDENCE IS INADMISSIBLE UNDER THE TEXAS RULES OF EVIDENCE, THE EVIDENCE SHOULD BE ADMITTED PURSUANT TO THE TEXAS ADMINISTRATIVE PROCEDURES ACT.**

Section 2001.081 of the Texas Government Code provides that evidence that would not be admissible under the Texas Rules of Evidence is still admissible in an administrative hearing if necessary to ascertain facts not reasonably susceptible of proof under those rules if not precluded by statute and a type on which reasonably prudent person commonly relies on in the conduct of personal affairs. For the reasons stated in this response, the ED believes that these criteria are met.

**WHEREFORE PREMISES CONSIDERED**, the ED requests that the objection to the ED's prefiled testimony be overruled.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Robert Martinez, Director  
Environmental Law Division

By   
Brian D. MacLeod  
Staff Attorney  
Environmental Law Division  
State Bar of Texas No. 12783500  
P.O. Box 13087; MC 173  
Austin, Texas 78711-3087  
Phone: (512) 239-0750  
Fax: (512) 239-0606



**CERTIFICATE OF SERVICE**

This is to certify that all parties on the attached Mailing List have been sent a copy of the foregoing document in accordance with TCEQ and SOAH rules on September 26, 2008.

A handwritten signature in black ink, appearing to read 'B. MacLeod', is written over a horizontal line.

Brian D. MacLeod  
Staff Attorney  
Environmental Law Division

**Mailing List**  
**City of THE TOWN OF LINDSAY**  
**SOAH Docket Nos. 582-06-1641**  
**TCEQ Docket Nos. 2006-0044-UCR**

**The Town of Lindsay**

Arturo Rodriguez, Jr., Esq.,  
Russell & Rodriguez, L.L.P.  
102 West Morrow Street, Suite 103  
Georgetown, Texas 78626  
Tel: (512) 930-1317  
Fax (512) 930-7742

**Lindsay Pure Water Co.**

John J. Carlton  
Attorney at Law  
Armrust & Brown, LLP  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701-2744  
Tel: (512) 435-2308  
Fax: (512) 435-2360

**TCEQ Public Interest Counsel**

Blas J. Coy, Jr.  
P.O. Box 13087 (MC 103)  
Austin, Texas 78711-3087  
Tel: (512) 239-6361  
Fax: (512) 239-6377

**TCEQ Executive Director**

Brian MacLeod  
P.O. Box 13087 (MC 173)  
Austin, Texas 78711-3087  
Tel: (512) 239-0750  
Fax: (512) 239-0606

**TCEQ Chief Clerk:**

Docket Clerk  
TCEQ Office of Chief Clerk  
P.O. Box 13087 (MC 105)  
Austin, Texas 78711-3087  
Fax: (512) 239-3311