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CITY OF LINDSAY
STATEMENT OF CASH FLOWS
INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS
PROPRIETARY FUND
FOR THE YEAR ENDED OCTOBER 31, 2004

Cash flows from operating activities:	
Cash received from customers	\$ 170,313
Cash payments to suppliers for goods and services	(80,275)
Cash payments to employees and contractors for services	(19,377)
Net cash provided (used) by operating activities	<u>70,661</u>
Cash flows from capital and related financing activities:	
Principal payments on capital lease	(20,000)
Interest paid on capital lease	(21,159)
Operating transfers in from general fund	36,299
Net cash provided (used) capital and related financing activities	<u>(4,860)</u>
Cash flows from investing activities:	
Interest income	5,355
Net (purchases)/maturities of certificates of deposits	(41,000)
Net cash provided (used) by investing activities	<u>(35,645)</u>
Net increase (decrease) in cash and cash equivalents	30,156
Cash and equivalents, beginning	<u>40,606</u>
Cash and equivalents, ending	<u>\$ 70,762</u>
Reconciliation of operating income to net cash provided (used) by operating activities:	
Operating income	\$ 43,287
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities:	
Depreciation	31,946
(Increase) Decrease in accounts receivable	(2,473)
Increase (Decrease) in accounts payable	(2,429)
Increase (Decrease) in customer deposits	330
Net cash provided (used) by operating activities	<u>\$ 70,661</u>
Noncash investing, capital, and financing activities:	
There were no significant noncash investing, capital, and financing activities during the reported period.	

	Current Assets	Restricted Assets	Statement of Cash Flows Total
Cash and cash equivalents - beginning	\$ 39,336	\$ 1,270	\$ 40,606
Net increase (decrease)	30,826	(670)	30,156
Cash and cash equivalents - ending	<u>\$ 70,162</u>	<u>\$ 600</u>	<u>\$ 70,762</u>

See accompanying notes to financial statements.

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

A. Summary of Significant Accounting Policies

The basic financial statements of the City of Lindsay (the "City") have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") applicable to governmental units. The City applies all relevant Governmental Accounting Standards Board (GASB) pronouncements and applicable Financial Accounting Standards Board (FASB) and Accounting Principles Board (APB) opinions issued on or before November 30, 1989, unless they conflict with GASB pronouncements. The Governmental Accounting Standards Board ("GASB") is the accepted standard setting body for establishing governmental accounting and financial reporting principles.

For the fiscal year ended October 31, 2004, the City implemented the new reporting requirements of GASB Statement Nos. 33 and 34. As a result, an entirely new financial reporting model has been implemented.

1. Reporting Entity

The City of Lindsay, Texas ("City"), is incorporated under the provisions of the laws of the State of Texas. The City is governed by a mayor and city council that are elected. The City provides the water and sewer services and garbage collection as authorized by charter. The City also collects taxes and fees to fund the general operations of the City.

2. Basis of Presentation, Basis of Accounting

a. Basis of Presentation

Government-Wide Statements: The statement of net assets and the statement of activities include the financial activities of the overall government, except for fiduciary activities. Eliminations have been made to minimize the double-counting of internal activities. Individual funds are not displayed but the statements distinguish governmental activities, generally supported by taxes and City general revenues, from business-type activities, generally financed in whole or in part with fees charged to external customers.

The statement of activities presents a comparison between direct expenses and program revenues for each function of the City's governmental activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly identifiable to a particular function. The City does not allocate indirect expenses in the statement of activities. Program revenues include (1) charges for services which report fees, fines and forfeitures, and other charges to users of the City's services; (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular program. Revenues that are not classified as program revenues, including all taxes, are presented as general revenues.

Fund Financial Statements: The fund financial statements provide information about the City's funds, with separate statements presented for each fund category. The emphasis of fund financial statements is on major governmental funds, each displayed in a separate column. All remaining governmental funds are aggregated and reported as nonmajor funds.

Governmental Funds

The City reports the following major governmental fund:

General Fund: This is the City's primary operating fund. It accounts for all financial resources of the City except those required to be accounted for in another fund.

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

Proprietary Funds

The City reports the following major enterprise fund:

Water and Sewer Utilities Fund – This fund accounts for the operating activities of the City's water and sewer utilities services as well as water and sewer utilities construction, contracting, and debt.

b. Measurement Focus, Basis of Accounting

Government-Wide Financial Statements: These financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Proprietary fund financial statements also report using this same focus and basis of accounting. Revenues are recorded when earned and expenses are recorded at the time liabilities are incurred, regardless of when the related cash flows take place. Nonexchange transactions, in which the City gives (or receives) value without directly receiving (or giving) equal value in exchange, include property taxes, sales and liquor taxes, franchise fees, grants, and donations. On an accrual basis, revenue from property taxes is recognized in the fiscal year for which the taxes are levied. Revenue from grants and donations is recognized in the fiscal year in which all eligibility requirements have been satisfied.

Governmental Fund Financial Statements: Governmental funds are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under this method, revenues are recognized when measurable and available. The City considers all revenues reported in the governmental funds to be available if the revenues are collected within sixty days after year-end. Major revenue sources susceptible to accrual include: sales and liquor taxes, property taxes, and franchise taxes (fees). In general, other revenues are recognized when cash is received because they are generally not measurable until actually received. Investment earnings are recorded as earned, since they are both measurable and available. Expenditures are recorded when the related fund liability is incurred, except for principal and interest on general long-term debt which are recognized as expenditures to the extent they have matured. General capital asset acquisitions are reported as expenditures in governmental funds. Proceeds of general long-term debt and acquisitions under capital leases are reported as other financing sources.

Operating income reported in proprietary fund financial statements includes revenues and expenses related to the primary continuing operations of the fund. Principal operating revenues for proprietary funds are charges to customers for sales or services. Principal operating expenses are the costs of providing goods or services and include administrative expenses and depreciation of capital assets. Other revenues and expenses are classified as non-operating in the financial statements.

When the City incurs an expenditure or expense for which both restricted and unrestricted resources may be used, it is the City's policy to use restricted resources first, then unrestricted resources.

3. Financial Statement Amounts

a. Cash and Cash Equivalents

For purposes of the statement of cash flows, highly liquid investments are considered to be cash equivalents if they have a maturity of three months or less when purchased. The City has no

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

cash equivalents as of October 31, 2004.

b. Property Taxes

Property taxes are levied by October 1 on the assessed value listed as of the prior January 1 for all real and business personal property located in the City in conformity with Subtitle E, Texas Property Tax Code. Taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed. On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed. Property tax revenues are considered available (1) when they become due or past due and receivable within the current period and (2) when they are expected to be collected during a 60-day period after the close of the fiscal year.

Allowances for uncollectible tax receivables within the general fund are based upon historical experience in collecting property taxes. Uncollectible personal property taxes are periodically reviewed and written off, but the City is prohibited from writing off real property taxes without specific statutory authority from the Texas Legislature.

c. Capital Assets

Purchased or constructed capital assets are reported at cost or estimated historical cost. Donated fixed assets are recorded at their estimated fair value at the date of the donation. The cost of normal maintenance and repairs that do not add to the value of the asset or materially extend assets' lives are not capitalized.

Capital assets are being depreciated using the straight-line method over the following estimated useful lives:

<u>Asset Class</u>	<u>Estimated Useful Lives</u>
Buildings	50
Streets and Improvements	20
Vehicles	6
Furniture, Plant and Equipment	5-20

d. Receivable and Payable Balances

The City believes that sufficient detail of receivable and payable balances is provided in the financial statements to avoid the obscuring of significant components by aggregation. Therefore, no disclosure is provided which disaggregates those balances.

There are no significant receivables which are not scheduled for collection within one year of year end.

e. Interfund Activity

Interfund activity results from loans, services provided, reimbursements or transfers between funds. Loans are reported as interfund receivables and payables as appropriate and are subject to elimination upon consolidation. Services provided, deemed to be at market or near market rates, are treated as revenues and expenditures or expenses. Reimbursements occur when one fund incurs a cost, charges the appropriate benefiting fund and reduces its related cost as a reimbursement. All

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

other interfund transactions are treated as transfers. Transfers in and Transfers Out are netted and presented as a single "Transfers" line on the government-wide statement of activities.

f. **Use of Estimates**

The preparation of financial statements in conformity with GAAP requires the use of management's estimates.

B. Deposits and Investments

The City's funds are required to be deposited and invested under the terms of a depository contract. The depository bank deposits for safekeeping and trust with the City's agent bank approved pledged securities in an amount sufficient to protect City funds on a day-to-day basis during the period of contract. The pledge of approved securities is waived only to the extent of the depository bank's dollar amount of Federal Deposit Insurance Corporation ("FDIC") insurance.

Cash Deposits:

At October 31, 2004, the carrying amount of the City's deposits (cash, certificates of deposit, and interest-bearing savings accounts) was \$1,041,155 and the bank balance was \$1,042,571. The City's cash deposits at October 31, 2004 were entirely covered by FDIC insurance or by pledged collateral held by the City's agent bank in the City's name.

In addition, the following is disclosed regarding coverage as of October 31, 2004:

- a. Depositories: First State Bank of Gainesville and American Bank of Texas
- b. The total amount of FDIC coverage at October 31, 2004 was \$200,000.
- c. The market value of securities pledged at October 31, 2004 was \$1,530,585.

The cash deposits held at financial institutions can be categorized according to three levels of risk. These three levels of risk are as follows:

Category 1 - Deposits which are insured or collateralized with securities held by the City or by its agent in the City's name.

Category 2 - Deposits which are collateralized with securities held by the pledging financial institution's trust department or agent in the City's name.

Category 3 - Deposits which are not collateralized or insured.

Based on these three levels of risk, all of the City's deposits are classified as Category 1 as of October 31, 2004.

Investments:

The City is required by Government Code Chapter 2256, The Public Funds Investment Act, to adopt, implement, and publicize an investment policy. That policy must address the following areas: (1) safety of principal and liquidity, (2) portfolio diversification, (3) allowable investments, (4) acceptable risk levels, (5) expected rates of return, (6) maximum allowable stated maturity of portfolio investments, (7) maximum average dollar-weighted maturity allowed based on the stated maturity date for the portfolio, (8)

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

investment staff quality and capabilities, and (9) bid solicitation preferences for certificates of deposit.

The Public Funds Investment Act ("Act") requires an annual audit of investment practices. Audit procedures in this area conducted as a part of the audit of the general purpose financial statements disclosed that in the areas of investment practices, management reports and establishment of appropriate policies, the City adhered to the requirements of the Act. Additionally, investment practices of the City were in accordance with local policies.

The Act determines the types of investments which are allowable for the City. These include, with certain restrictions, (1) obligations of the U.S. Treasury, certain U.S. agencies, and the State of Texas, (2) certificates of deposits, (3) certain municipal securities, (4) money market savings accounts, (5) repurchase agreements, (6) bankers acceptances, (7) mutual funds, (8) investment pools, (9) guaranteed investment contracts, and (10) common trust funds.

The City's investments are categorized to give an indication of the level of risk assumed by the City at year-end. These custodial risk categories are as follows:

- Category 1 - Investments that are insured, registered or held by the City or by its agent in the City's name.
- Category 2 - Investments that are uninsured and unregistered held by the counterparty's trust department or agent in the City's name.
- Category 3 - Uninsured and unregistered investments held by the counterparty, its trust department or its agent, but not in the City's name.

The City's investments at October 31, 2004 are shown below.

<u>Investment</u>	<u>Category</u>			<u>Reported Amount</u>	<u>Fair Value</u>
	<u>1</u>	<u>2</u>	<u>3</u>		
Certificates of Deposit					
General Fund	\$ 648,000	\$ --	\$ --	\$ 648,000	\$ 648,000
Proprietary Fund	307,600	--	--	307,600	307,600
	<u>\$ 955,600</u>	<u>\$ --</u>	<u>\$ --</u>	<u>\$ 955,600</u>	<u>\$ 955,600</u>

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

C. Capital Assets

Capital asset activity for the period ended October 31, 2004, was as follows:

	<u>Beginning Balances</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balances</u>
<i>Governmental activities:</i>				
<i>Capital assets not being depreciated</i>				
Land	<u>\$ 23,700</u>	<u>--</u>	<u>--</u>	<u>\$ 23,700</u>
Total capital assets not being depreciated	<u>23,700</u>	<u>--</u>	<u>--</u>	<u>23,700</u>
<i>Capital assets being depreciated:</i>				
Buildings and improvements	409,750	--	--	409,750
Plant and equipment	81,468	180	180	81,468
Streets	<u>120,135</u>	<u>--</u>	<u>--</u>	<u>120,135</u>
Total capital assets being depreciated	<u>611,353</u>	<u>180</u>	<u>180</u>	<u>611,353</u>
Less accumulated depreciation for:				
Buildings and improvements	(33,486)	(8,194)	--	(41,680)
Plant and equipment	(59,835)	(7,094)	(39)	(66,890)
Streets	<u>(44,441)</u>	<u>(3,882)</u>	<u>--</u>	<u>(48,323)</u>
Total accumulated depreciation	<u>(137,762)</u>	<u>(19,170)</u>	<u>(39)</u>	<u>(156,893)</u>
Total capital assets being depreciated, net	<u>473,591</u>	<u>(18,990)</u>	<u>141</u>	<u>454,460</u>
Governmental activities capital assets, net	\$497,291	\$(18,990)	\$141	\$478,160

Depreciation was charged to functions as follows:

General	\$ 6,864
Recreation	256
Court	1,151
Fire	688
Police	6,534
Streets	<u>3,677</u>
	\$19,170

	<u>Beginning Balances</u>	<u>Increases</u>	<u>Decreases</u>	<u>Ending Balances</u>
<i>Business-type activities:</i>				
<i>Capital assets not being depreciated</i>				
Land	<u>\$ 10,000</u>	<u>--</u>	<u>--</u>	<u>\$ 10,000</u>
Total capital assets not being depreciated	<u>10,000</u>	<u>--</u>	<u>--</u>	<u>10,000</u>
<i>Capital assets being depreciated:</i>				
Plant and equipment	<u>949,944</u>	<u>--</u>	<u>--</u>	<u>949,944</u>
Total capital assets being depreciated	<u>949,944</u>	<u>--</u>	<u>--</u>	<u>949,944</u>
Less accumulated depreciation for:				
Plant and equipment	<u>(402,203)</u>	<u>(31,946)</u>	<u>--</u>	<u>(434,149)</u>
Total accumulated depreciation	<u>(402,203)</u>	<u>(31,946)</u>	<u>--</u>	<u>(434,149)</u>
Total capital assets being depreciated, net	<u>547,741</u>	<u>(31,946)</u>	<u>--</u>	<u>515,795</u>
Business-type activities capital assets, net	\$557,741	\$(31,946)	\$--	\$525,795

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

Depreciation was charged to functions as follows:

Water and sewer utilities \$ 31,946

D. Transfers To and From Other Funds

Transfers to and from other funds at October 31, 2004, consisted of the following:

<u>Transfers From</u>	<u>Transfers To</u>	<u>Amount</u>	<u>Reason</u>
General fund	Water and sewer fund	\$ 36,299	Supplement other fund sources

E. Commitments under Capitalized Leases

During the fiscal year 1995, the City entered into a contract to construct and acquire a new water well under the provisions of a long-term capital lease agreement. Upon final payment (fiscal year 2015) the title of the water well will pass to the City.

Future obligations over the primary terms of the City's capital lease as of October 31, 2004 are as follows:

<u>Year Ending</u> <u>October 31,</u>	<u>Amount</u>
2005	\$39,935
2006	38,697
2007	39,522
2008	41,026
2009	41,486
2010-2014	206,647
2015	<u>24,920</u>
Total	\$432,233

The effective interest rate on the capital lease is 6.55%.

F. Risk Management

The City is exposed to various risks of loss related to torts, theft, damage or destruction of assets, errors and omissions, injuries to employees, and natural disasters. During fiscal year 2004, the City purchased commercial insurance to cover general liabilities. There were not significant reductions in coverage in the past fiscal year and there were not settlements exceeding insurance coverage for each of the past three fiscal years.

G. Restricted Assets

As of October 31, 2004, the City had restricted assets of \$51,155. The City restricts assets and reserves a portion of its retained earnings to meet the requirements of its capital lease. The City restricts the money held on deposit for meter deposits.

CITY OF LINDSAY
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED OCTOBER 31, 2004

H. Deferred Revenue

Deferred revenue at year end consisted of the following:

<u>Revenue Description</u>	<u>Fund</u>	<u>Deferred Amount</u>
Net property tax revenue	General	\$57,976
Police training grant	Special Revenue	321
		<u>\$58,297</u>

I. Due From State

Due from state amount of \$ 6,243 represents the City's overpayment of court fees to the State Comptroller due to miscalculation on the quarterly reports. These reports are being amended and will result in a refund.

J. Commitments and Contingencies

1. Contingencies

The City participates in grant programs which are governed by various rules and regulations of the grantor agencies. Costs charged to the respective grant programs are subject to audit and adjustment by the grantor agencies; therefore, to the extent that the City has not complied with the rules and regulations governing the grants, refunds of any money received may be required and the collectibility of any related receivable may be impaired. In the opinion of the City, there are no significant contingent liabilities relating to compliance with the rules and regulations governing the respective grants; therefore, no provision has been recorded in the accompanying combined financial statements for such contingencies.

2. Litigation

No reportable litigation was pending against the City at October 31, 2004.

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Required Supplementary Information

Required supplementary information includes financial information and disclosures required by the Governmental Accounting Standards Board but is not considered a part of the basic financial statements.

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CITY OF LINDSAY
GENERAL FUND
BUDGETARY COMPARISON SCHEDULE
FOR THE YEAR ENDED OCTOBER 31, 2004

	Budgeted Amounts		Actual	Variance with Final Budget Positive (Negative)
	Original	Final		
REVENUES				
Property taxes	\$ 64,255	\$ 77,645	\$ 67,354	\$ (10,291)
Franchise taxes (fees)	40,000	33,695	33,695	-
Liquor taxes	7,000	4,901	4,901	-
Sales taxes	95,000	76,202	73,177	(3,025)
Licenses and permits	2,500	3,258	3,258	-
Fees	9,987	17,889	17,888	(1)
Grants and donations	-	-	200	200
Interest	9,500	12,640	13,388	748
Total revenues	<u>228,242</u>	<u>226,230</u>	<u>213,861</u>	<u>(12,369)</u>
EXPENDITURES				
General government	61,283	60,396	49,762	10,634
Public safety				-
Court	4,820	14,557	8,314	6,243
Police	48,000	48,673	45,918	2,755
Fire	1,800	5,034	4,971	63
Recreation	1,000	1,847	1,847	-
Streets	56,996	26,564	26,564	-
Total expenditures	<u>173,899</u>	<u>157,071</u>	<u>137,376</u>	<u>19,695</u>
Excess (deficiency) of revenues over (under) expenditures	<u>54,343</u>	<u>69,159</u>	<u>76,485</u>	<u>7,326</u>
OTHER FINANCING SOURCES (USES)				
Transfers to other fund	(35,000)	(25,401)	(36,299)	(10,898)
Total other financing sources (uses)	<u>(35,000)</u>	<u>(25,401)</u>	<u>(36,299)</u>	<u>(10,898)</u>
Net change in fund balance	19,343	43,758	40,186	(3,572)
Fund balance - beginning	641,870	641,870	641,870	-
Fund balance - ending	<u>\$ 661,213</u>	<u>\$ 685,628</u>	<u>\$ 682,056</u>	<u>\$ (3,572)</u>

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Other Supplementary Information

This section includes financial information and disclosures not required by the Governmental Accounting Standards Board and is not considered a part of the basic financial statements. It may, however, include information which is required by other entities.

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HESS & ROHMER, P.C.

CERTIFIED PUBLIC ACCOUNTANTS

BRIAN D. HESS, CP.
MELODY ROHMER, CP.
LESLIE DANGELMAYR, CP.

Independent Auditors' Report

Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards

Honorable Steven Zwinggi, Mayor and
Members of the City Council
City of Lindsay, Texas
P.O. Box 153
Lindsay, Texas 76250

Members of the City Council:

We have audited the general purpose financial statements of the City of Lindsay, State of Texas, as of and for the year ended October 31, 2004, and have issued our report thereon dated January 24, 2005. We conducted our audit in accordance with generally accepted auditing standards and standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

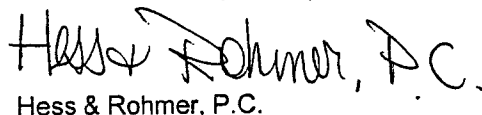
Compliance

As part of obtaining reasonable assurance about whether the City of Lindsay, State of Texas' general purpose financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the City of Lindsay, State of Texas' internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the general purpose financial statements and not to provide assurance on the internal control over financial reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the general purpose financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we considered to be material weaknesses.

This report is intended for the information of management and federal awarding agencies and pass-through entities. However, this report is a matter of public record and its distribution is not limited.


Hess & Rohmer, P.C.

January 24, 2005

CITY OF LINDSAY
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE YEAR ENDED OCTOBER 31, 2004

A. Summary of Auditor's Results

1. Financial Statements

Type of auditor's report issued:

Unqualified

Internal control over financial reporting:

Material weakness(es) identified?

☐ Yes ☒ No

Reportable condition(s) identified that are
not considered to be material weaknesses?

☐ Yes ☒ None Reported

Noncompliance material to financial
statements noted?

☐ Yes ☒ No

B. Financial Statement Findings

Our procedures detected no material findings that require disclosure in this report.

CITY OF LINDSAY
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS
FOR THE YEAR ENDED OCTOBER 31, 2004

<u>Finding/Recommendation</u>	<u>Current Status</u>	<u>Management's Explanation If Not Implemented</u>
There were no findings in the 2002-2003 Annual Financial Report.		

CITY OF LINDSAY
WATER AND SEWER CNN APPLICATION

EXHIBIT D

**CITY OF LINDSAY
SCHEDULE OF FEES**

Exhibit A

Billing Code	Description	Class	Income	Quantity	Price	Rate
WATER						
0.75	3/4" Meter Water Rate	W-Nontax		Base (Minimum) 2,000 gallons	\$12.00	XXXXXXXXXXXXXXXXXXXX
				2,001 to 8,000 gallons	\$12.00	\$1.60 per 1,000 gallons
				8,001 gallons and up	\$21.60	\$2.00 per 1,000 gallons
.75B	Outside City Limits	W-Nontax		Base (Minimum) 2,000 gallons	\$18.00	XXXXXXXXXXXXXXXXXXXX
	Rate + 1/2 (3/4" Meter) Water Rate			2,001 to 8,000 gallons	\$18.00	\$2.40 per 1,000 gallons
				8,001 gallons and up	\$32.40	\$3.00 per 1,000 gallons
1	1" Meter Water Rate	W-Nontax		Base (Minimum) 2,000 gallons	\$15.00	XXXXXXXXXXXXXXXXXXXX
				2,001 to 8,000 gallons	\$15.00	\$1.60 per 1,000 gallons
				8,001 gallons and up	\$24.60	\$2.00 per 1,000 gallons
1.5	1.5" Meter Water Rate	W-Nontax		Base (Minimum) 2,000 gallons	\$20.00	XXXXXXXXXXXXXXXXXXXX
				2,001 to 8,000 gallons	\$20.00	\$1.60 per 1,000 gallons
				8,001 gallons and up	\$29.60	\$2.00 per 1,000 gallons
1B	Outside City Limits	W-Nontax		Base (Minimum) 2,000 gallons	\$22.50	XXXXXXXXXXXXXXXXXXXX
	Rate + 1/2 (1" Meter) Water Rate			2,001 to 8,000 gallons	\$22.50	\$2.40 per 1,000 gallons
				8,001 gallons and up	\$36.90	\$3.00 per 1,000 gallons
2	2" Meter Water Rate	W-Nontax		Base (Minimum) 2,000 gallons	\$25.00	XXXXXXXXXXXXXXXXXXXX
				2,001 to 8,000 gallons	\$25.00	\$1.60 per 1,000 gallons
				8,001 gallons and up	\$34.60	\$2.00 per 1,000 gallons
3	3" Meter Water Rate	W-Nontax		Base (Minimum) 2,000 gallons	\$35.00	XXXXXXXXXXXXXXXXXXXX
				2,001 to 8,000 gallons	\$35.00	\$1.60 per 1,000 gallons
				8,001 gallons and up	\$44.60	\$2.00 per 1,000 gallons
	Meter Deposit-Residential			Minimum	\$40.00	XXXXXXXXXXXXXXXXXXXX
				Each Additional	\$40.00	XXXXXXXXXXXXXXXXXXXX
	Meter Deposit-Commercial			Minimum	\$100.00	XXXXXXXXXXXXXXXXXXXX
				Each Additional	\$100.00	XXXXXXXXXXXXXXXXXXXX
	Water Tap Fee			Each	\$300.00	XXXXXXXXXXXXXXXXXXXX
SEWER						
S00	Sewer Rate-No Water Meter	S-Nontax		Base (Minimum) 3,000 gallons	\$6.00	XXXXXXXXXXXXXXXXXXXX
S01	Residential Sewer Rate	S-Nontax		Base (Minimum) 3,000 gallons	\$5.00	XXXXXXXXXXXXXXXXXXXX
				3,001 and greater	\$5.00	\$0.30 per 1,000 gallons of water
S02	Residential Sewer Rate-Outside CL	S-Nontax		Base (Minimum) 3,000 gallons	\$7.50	XXXXXXXXXXXXXXXXXXXX
				3,001 and greater	\$7.50	\$0.45 per 1,000 gallons of water
S03	Commercial Sewer Rate	S-Nontax		Base (Minimum) 3,000 gallons	\$10.00	XXXXXXXXXXXXXXXXXXXX
				3,001 and greater	\$10.00	\$0.30 per 1,000 gallons of water
S03	Commercial Sewer Rate-Outside CL	S-Nontax		Base (Minimum) 3,000 gallons	\$15.00	XXXXXXXXXXXXXXXXXXXX
				3,001 and greater	\$15.00	\$0.45 per 1,000 gallons of water
	Sewer Tap Fee			Each	\$300.00	XXXXXXXXXXXXXXXXXXXX
GARBAGE						
TPU	Garbage Fee	G-Nontax		Minimum	\$11.02	XXXXXXXXXXXXXXXXXXXX
TPU2	Garbage Fee-2 Polycarts	G-Nontax		Minimum (Base)	\$17.77	XXXXXXXXXXXXXXXXXXXX
				Each Additional Polycart	\$17.77	\$6.75 each
FEES						
RC	Reconnection Fee	F-Nontax		Minimum	\$20.00	XXXXXXXXXXXXXXXXXXXX
RTD	Returned Check Fee	L-Nontax		Minimum	\$20.00	XXXXXXXXXXXXXXXXXXXX
OTHER FEES						
	PART	XXXXXX	XXXXXX	DESCRIPTION	PRICE	XXXXXXXXXXXXXXXXXXXX
	Copper Tubing	XXXXXX	XXXXXX	3/4" and 1"	\$2.00/ft	XXXXXXXXXXXXXXXXXXXX
	Tapping Saddle	XXXXXX	XXXXXX	4" x 3/4"	\$40.00	XXXXXXXXXXXXXXXXXXXX
	Tapping Saddle	XXXXXX	XXXXXX	6" x 3/4"	\$47.05	XXXXXXXXXXXXXXXXXXXX
	Tapping Saddle	XXXXXX	XXXXXX	4" x 1"	\$43.00	XXXXXXXXXXXXXXXXXXXX
	Tapping Saddle	XXXXXX	XXXXXX	6" x 1"	\$52.30	XXXXXXXXXXXXXXXXXXXX
	KVC ² Meter Valve	XXXXXX	XXXXXX	3/4"	\$13.00	XXXXXXXXXXXXXXXXXXXX
	Coupling	XXXXXX	XXXXXX	3/4"	\$7.00 ea	XXXXXXXXXXXXXXXXXXXX
	Meter w/Connections	XXXXXX	XXXXXX	3/4"	\$50.00	XXXXXXXXXXXXXXXXXXXX
	Meter w/Connections	XXXXXX	XXXXXX	1"	\$130.00	XXXXXXXXXXXXXXXXXXXX
	Meter Box	XXXXXX	XXXXXX	Short-14" x 18"	\$35.00	XXXXXXXXXXXXXXXXXXXX
	Meter Box	XXXXXX	XXXXXX	Long-18" x 18"	\$40.00	XXXXXXXXXXXXXXXXXXXX
	Reducer	XXXXXX	XXXXXX	From 1" to 3/4"	\$7.00	XXXXXXXXXXXXXXXXXXXX
	Cooperation Stop	XXXXXX	XXXXXX	3/4"	\$12.50	XXXXXXXXXXXXXXXXXXXX
	Cooperation Stop	XXXXXX	XXXXXX	1"	\$39.00	XXXXXXXXXXXXXXXXXXXX
	Repair Clamp	XXXXXX	XXXXXX	4" F1-514-7.5	\$60.00	XXXXXXXXXXXXXXXXXXXX

City of Lindsay

Water and Sewer CCN Amendment Application

Exhibit E

List of Neighboring Utilities within a 2 mile radius

1. City of Gainesville
CCN Number 12957
200 South Rusk Street
Gainesville, Texas 76240
2. Lindsay Pure Water Company
CCN Number 12858
P.O. Box 5
Lindsay, Texas 76250
3. Myra Water System
CCN Number 12514
P.O. Box 126
Myra, Texas 76253

ARMBRUST & BROWN, L.L.P.

ATTORNEYS AND COUNSELORS

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September 12, 2008

VIA HAND DELIVERYJames W. Norman
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street
Austin, Texas 787012008 SEP 12 PM 4:30
ADMINISTRATIVE LAW JUDGE

2023
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 (1) Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Executive Director; and (2) Lindsay Pure Water Company's Objections to the Prefiled Testimony and Exhibits of the Town of Lindsay.

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 ClerkRECEIVED
MAY 29 2009TCEQ
CENTRAL FILE ROOM

SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

ADAMS & ASSOCIATES
SEP 12 11 41 30

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

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the prefiled testimony and exhibits of the Executive Director ("ED") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Tammy Lee Holguin-Benter.

LPWC makes the following objections to portions of Ms. Tammy Lee Holguin-Benter's prefiled testimony as well as the exhibits introduced through Ms. Holguin-Benter's testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Page 5, line 15 "Has Lindsay indicated..." – line 22.

LPWC objects to the direct question at line 15 as calling for a hearsay answer. LPWC further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge in her testimony.

2. Page 8, line 20 “Does Lindsay have the ability...” – page 9, line 8.

LPWC objects to the question posed as lines 20-21 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay’s ability to adequately provide water service based upon the capacity of the Lindsay’s existing well capacity or the capacity of its storage tanks, pumps, distribution lines and other facilities. LPWC further objects to the testimony at lines 16-22 as hearsay. The witness recounts what Donald Meltzer said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay’s ability to adequately provide service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion.

3. Page 9, line 9 “Does Lindsay have the ability...” – line 17.

LPWC objects to the question posed as lines 9-10 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on Lindsay’s ability to adequately provide sewer service based upon the treatment capacity of an existing wastewater treatment plant or wastewater collection system. LPWC further objects to the testimony at lines 11-17 as hearsay. The witness recounts what Donald Meltzer and Kerry Maroney said and that testimony is offered for the truth of the matter stated. The witness does not demonstrate first-hand knowledge of Lindsay’s ability to adequately provide sewer service in her testimony. In addition, the witness bases her opinion upon the unsupported opinion testimony of Kerry Maroney, which can not form the basis of her opinion.

4. Page 10, lines 7-10, “Although Lindsay Pure... currently serving.”

LPWC objects to this testimony as inadmissible. The testimony is based upon facts that are not in evidence and is contrary to the undisputed facts in the record. As stated in Mr. Myrick’s testimony, Lindsay Pure Water company already provides service to numerous connections within ¼ mile of its existing CCN and intends to provide service to additional connections as homes are constructed within the South Ridge of Lindsay subdivision.

5. Page 10, lines 14-18, “...the Applicant responds...” – “...the areas of overlap is executed.”

LPWC objects to this testimony as hearsay. The witness recounts statements from the Application, and such statements are offered for the truth of the matter stated. The Application itself is the best evidence of what it says.

6. Page 11, lines 4-10, “...Mr. Jack Stowe...100% equity.”

LPWC objects to the question posed as line 4 as calling for speculation on the part of this witness, and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on the sufficiency of Lindsay’s debt-equity ratio or ability to obtain loans, issue bonds, levy taxes or utilize fees or other funds to operate the utility system. LPWC further objects to this testimony as hearsay. The witness recounts testimony of Jack Stowe, and such testimony is offered for the truth of the matter stated.

7. Page 11, lines 11 – 20, “Will the environmental integrity.... development or property in the area.”

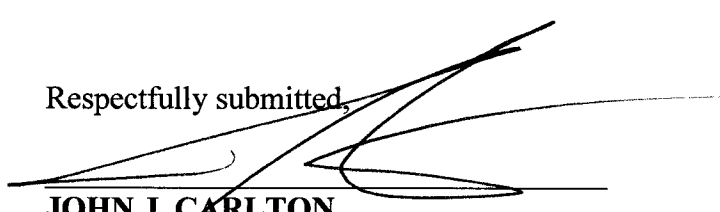
LPWC objects to the question posed at lines 11-12 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on environmental integrity and the

differences in impact between centralized wastewater service versus OSSF systems or between centralized water systems and individual water wells.

8. Page 11, line 21, "Will granting Lindsay's water..." – page 12, line 9, "...lower the cost to consumers."

LPWC objects to the question posed at lines 21-22 as calling for speculation on the part of this witness and the testimony following as speculation. The witness, while employed by TCEQ, was not qualified as an expert capable of opining on improved service with regard to centralized water and wastewater systems versus OSSF systems and individual water wells. In addition, the witness admits to having no knowledge of Lindsay's rates and is not qualified as an expert to testify regarding the potential lowering of cost through economies of scale.

Respectfully submitted,



JOHN J. CARLTON

State Bar No. 03817600

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**ATTORNEYS FOR THE CITY OF
PFLUGERVILLE**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

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Docket Clerk
Office of the Chief Clerk – MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
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JOHN J. CARLTON

SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

ADMINISTRATIVE HEARINGS
JUL 12 PM 4:30

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

**LINDSAY PURE WATER COMPANY'S OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF THE TOWN OF LINDSAY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC") and files its objections to the prefiled testimony and exhibits of the Town of Lindsay ("Lindsay") in the above-styled matter.

A.

Objections to the Prefiled Testimony of Donald L. Metzler.

LPWC makes the following objections to portions of Mr. Donald L. Metzler' prefiled testimony as well as the exhibits introduced through Mr. Metzler' testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Exhibit DLM-2 (Page 3, lines 15-16)

LPWC objects to the admission of DLM-2 as irrelevant. The Applicant's status as a Type "A" General law city is irrelevant to the consideration of issuance of a CCN amendment by the TCEQ.

2. Exhibit DLM-5 (Page 4, lines 11-12)

LPWC objects to the admission of DLM-5 as hearsay and irrelevant. The Motion was drafted by Mr. Rodriguez, attorney for the Applicant, and contains numerous statements of fact

that are beyond the personal knowledge of Mr. Metzler. In addition, the correction of an error to an order in a previous docket by the TCEQ is irrelevant to the consideration of an application to amend a CCN.

3. Page 4, line 14, “On October 10, 2007...” – page 5, line 1, “...testimony as DLM-8.”

LPWC objects to the testimony offered by Mr. Metzler as hearsay. Mr. Metzler is a fact witness and Mayor *Pro Tempore* for Lindsay. He is not employed by TCEQ, and has not been offered as a witness qualified to speak regarding past TCEQ actions affecting Lindsay. Mr. Metzler relies upon correspondence created by others, and testifies as to the content of that correspondence. The testimony is offered for the truth of the matters stated in the correspondence.

4. Exhibits DLM-6 (Page 4, Lines 16-17)

LPWC objects to the admission of DLM-6 as irrelevant and not properly authenticated. The correspondence relates to the notice of the correction of an error to an order in a previous docket. The only relevant issue is the actual boundary of the Applicant’s existing CCN, which is not addressed by this letter. In addition, there is no signature on the document that might be evidence of the document’s accuracy, completeness or authenticity.

5. Page 6, lines 20 – 21, “Yes, except as otherwise modified by ... witnesses.”

LPWC objects to this testimony as hearsay. The witness is testifying regarding the entire content of the Application and the testimony of other witness. The testimony is offered for the truth of the matter stated, but the witness has no personal knowledge of the facts or opinions set forth in the Application and in the testimony presented by other witnesses.

6. Page 7, lines 14 – 18, “...stating that all...accepted for technical review.”

LPWC objects to this testimony as hearsay. The witness is testifying regarding the content of correspondence created by TCEQ. The testimony is offered for the truth of the matter stated in the correspondence. Exhibit DLM-9 is the best evidence of its contents.

7. Page 8, lines 11-20, “Does Lindsay have....only one certified contract operator.”

LPWC objects to the direct question as calling for speculation on the part of the witness and the response as speculation. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding Lindsay’s technical ability to provide water and wastewater service.

8. Page 11, lines 10-12, “Approximately....Attachment DLM-10” and Exhibit DLM-10.

LPWC objects to this testimony and Exhibit DLM-10 as hearsay. DLM-10 contains copies of letters from various individuals. None of the individuals have been called to testify regarding their purported request for water or sewer service. The exhibit is offered to prove the truth of the matter stated.

9. Page 11, line 16, “The map shown....” – page 12, line 2, “....CCN application” and Exhibits DLM-11 and DLM-12.

LPWC objects to this testimony and Exhibits DLM-11 and DLM-12 as hearsay. The witness is testifying as to the content of maps he did not create. The maps themselves are hearsay as they were not created by this witness, nor are they offered or proven up by the individual who created them. The testimony and the maps are offered to prove the truth of the matters stated.

10. Page 12, lines 12-16, “I have attached....testimony as DLM-3” and Exhibit DLM-13.

LPWC objects to this testimony and Exhibit DLM-13 as hearsay. The witness is testifying as to the content of a map he did not create. The map itself is hearsay as it was not

created by this witness, nor is it offered or proven up by the individual who created it. The testimony and the map are offered to prove the truth of the matters stated.

11. Page 12, lines 18-23, "Is there a need....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether a need for service exists. This is ultimately a question for the trier of fact. Further, the witness relies upon a hearsay exhibit (DLM-10) in support of his speculation.

12. Page 14, lines 3-5, "Most municipalities.... residents of the ETJ."

LPWC objects to the response as speculative and hearsay. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding what "most municipalities" believe. The testimony is offered to prove the truth of the matter stated.

13. Page 16, lines 19-22, "Does Lindsay have....Proposed Service Territory."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether Lindsay has the ability to provide service.

14. Page 18, lines 16-19, "Does the City have....Yes."

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or

experience, to testify regarding whether Lindsay has the financial resources to provide service. This is ultimately a question for the trier of fact.

15. Page 21, lines 11-17, “Will service to the proposed....being served by any provider.”

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether service by Lindsay would be an improvement to the proposed area. This is ultimately a question for the trier of fact.

16. Page 22, lines 5-8, “The City has properly....water or wastewater system.”

LPWC objects to the response after, “Yes.” as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether an operator is properly trained, whether the customers have received adequate service, and whether the financial position of the city is good or bad.

17. Page 22, lines 10-13, “If the certificate....Yes.”

LPWC objects to the direct question as calling for speculation and a conclusion on the part of the fact witness and the response as speculation and conclusory. The witness has not been qualified as one with a particular or specialized knowledge, based on education or experience, to testify regarding whether issuing a CCN to Lindsay would best serve the public. This is ultimately a question for the trier of fact.

B.

Objections to the Prefiled Testimony of Kerry D. Maroney.

LPWC makes the following objections to portions of Mr. Kerry D. Maroney’s prefiled testimony as well as the exhibits introduced through Mr. Maroney’s testimony. LPWC moves to

strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. Page 6, lines 2-16 and Exhibits KDM-2 – KDM-10.

The witness testifies regarding the various exhibits attached to his prefiled testimony, Exhibits KDM-2 through KDM-10. LPWC objects to all of these exhibits. Exhibits KDM-2, KDM-3, KDM-5, KDM-6, KDM-7, KDM-8, KDM-9 and KDM-10 are hearsay. KDM-2 is a Notice of Violation letter to which the witness is not a party and a response to the notice of violation to which the witness is not a party. KDM-3, KDM-6 and KDM-7 are maps the witness did not create. KDM-5 is the same exhibit as DLM-10, purported requests for service, and none of the individuals who wrote the letters contained in KDM-5 are offered as witnesses. KDM-8 is information apparently pulled from the internet, was not prepared by the witness and is neither certified as true and correct nor properly authenticated. KDM-9 is a study prepared by someone other than this witness. Only a portion of the study is attached as Exhibit KDM-9. KDM-10 is a TPDES permit document that is not certified as true and correct. All of these exhibits are offered for the truth of the matters contained within them and are hearsay.

2. Page 7, lines 6-7, “A copy of...Attachment KDM-2.”

LPWC has objected to Exhibit KDM-2 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

3. Page 8, lines 16-17, “An official CCN...Attachment KDM-3.”

LPWC has objected to Exhibit KDM-3 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness did not create the map to which he refers, and the map has not been offered or certified as true and correct or properly authenticated. This testimony and the exhibit are hearsay.

4. Page 9, lines 10-19, "There is a need....Mr. Metzler."

LPWC has objected to Exhibits KDM-5 (and the same documents in Exhibit DLM-10), KDM-6 and KDM-7 as hearsay. The witness refers to these exhibits as representing the truth of the matters stated therein. The witness did not create any of the documents contained in Exhibit KDM-5, nor did he create the maps which are Exhibits KDM-6 and KDM-7. This testimony and the exhibits are hearsay.

5. Page 9, lines 21-22, "Lindsay had... Census Bureau."

LPWC objects to this testimony as hearsay.

6. Page 9, lines 22-23, "I have attached...Attachment KDM-8."

LPWC has objected to Exhibit KDM-8 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. This testimony and the exhibit are hearsay.

7. Page 10, Lines 4-5, "Additionally, there are... is needed."

LPWC objects to this testimony as inadmissible. There is no evidence in the record of to support the environmental reasons on which the witness bases this opinion, as further explained in paragraphs 9 and 10 below.

8. Page 10, lines 6-8, "Regarding water,....lose water service."

LPWC objects to this testimony as inadmissible. There is no evidence in the record of well failures on which the witness bases this opinion.

9. Page 10, lines 14-18, "This is important...adversely affected."

LPWC objects to this testimony as inadmissible. There is no evidence in the record of failure of OSSF systems, impacts from discharge coming from a failed OSSF system or pollutant levels on which the witness bases this opinion. There is no evidence in the record of OSSF failures in the proposed service area.

10. Page 11, lines 9-16, "I have attached ... could be understated."

LPWC has objected to Exhibit KDM-9 as hearsay and the witness refers to this exhibit as representing the truth of the matters stated therein. The witness also attempts to cite a statement attributed to the EPA. This testimony and the exhibit are hearsay.

11. Page 12, lines 18-19, "and has no plans... service business."

LPWC objects to this testimony as hearsay.

12. Page 14, lines 6-11, "Lindsay currently....304 additional customers."

LPWC objects to this testimony as inadmissible. The witness gives opinions regarding Lindsay's capacity to serve additional sewer customers and Lindsay's water wells. There is no evidence in the record regarding how Lindsay would serve 470 additional homes, nor is there evidence in the record regarding the capacity of Lindsay's wells.

13. Page 14, lines 16-18, "Additionally, the City...as growth demands."

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay's capacity and ability to serve, yet provides no underlying evidence or calculations in the record for this conclusion.

14. Page 15, lines 17-19, "Additionally,....Proposed Service Territory."

LPWC objects to the testimony at lines 17-19, as the witness states that "Lindsay is not in danger of running out of water," yet provides no basis for that conclusion.

15. Page 16, lines 9-13, "Furthermore,....requested by Lindsay."

LPWC objects to this testimony as irrelevant and nonresponsive. There is no basis for this opinion. The witness is not qualified to determine whether LPWC made a good faith effort in any fact situation, and particularly not as to past performance under a settlement agreement.

16. Page 18, line 22, “and the needs for the foreseeable future.”

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay’s water supply for the future, but there is no evidence in the record to support this conclusion.

17. Page 18, lines 19-20, “Lindsay’s most... is established.”

LPWC objects to this testimony as inadmissible. The witness gives an opinion regarding Lindsay’s water supply quality, but there is no evidence in the record to support this conclusion.

18. Page 19, lines 14-16, “A number....Attachment KDM-5.”

LPWC has previously objected to the documents contained in KDM-5 as hearsay and that objection is reurged here.

19. Page 19, lines 18-21, “The State has made....surface water contamination...”

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness’ conclusions.

16. Page 20, lines 15-17, “With Lindsay’s...Proposed Service Territory.”

LPWC objects to this testimony as inadmissible. There is no evidence in the record to support the witness’ conclusions.

C.

Objections to the Prefiled Testimony of Jack E. Stowe.

LPWC makes the following objections to portions of Mr. Jack E. Stowe’s prefiled testimony as well as the exhibits introduced through Mr. Stowe’s testimony. LPWC moves to strike each portion of the testimony referenced below, as well as the exhibit or specific parts of exhibits that are outlined below.

1. **Page 12, line 22 “According to the Federal Reserve...” – page 13, line 3, “...subject to in the market” and Exhibit JES-6.**

LPWC objects to the testimony and Exhibit JES-6 as hearsay. Exhibit JES-6 is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

2. **Page 13, lines 15-16, “As illustrated...taxable value.”**

LPWC objects to the testimony and Exhibit JES-7 as hearsay. Exhibit JES-7 is simply pulled from the internet, is not certified as correct or authenticated and cannot be offered for the truth of the matter stated by the witness.

3. **Page 16, lines 1-11, “In your opinion....water system development.”**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of Lindsay’s application. The witness is a financial expert.

4. **Page 16, lines 17-20, “However, ...well could be fixed.”**

LPWC objects to the testimony regarding reliability of water service. The witness is not qualified to testify regarding reliability of water service. The witness is a financial expert.

5. **Page 17, lines 6-13, “In your opinion,....treatment facilities.”**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of granting Lindsay’s application to amend Lindsay’s sewer CCN. The witness is a financial expert.

6. **Page 17, lines 15-21, “Mr. Stowe,evapotranspiration systems, etc.”**

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding an OSSF facility. The witness is a financial expert.

7. Page 18, lines 1-6, “What impacts....can be adversely affected.”

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental effects of OSSF systems. The witness is a financial expert.

8. Page 18, line 8, “Have you reviewed....” – page 19, line2, “could be understated” and Exhibit JES-8.

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding OSSF systems in this matter. The witness is a financial expert. Further, the witness references Exhibit JES-8, which is a partial copy of a report and does not contain information on Region IV. The report is hearsay and irrelevant as attached to the testimony. The report should not be used to prove the truth of the matters stated therein.

9. Page 19, lines 4-14, “What will be....requested CCN area.”

LPWC objects to the direct question and the testimony in response to the question. The witness is not qualified to testify regarding environmental impacts of providing wastewater service. The witness is a financial expert.

10. Page 19, line 21, “In a study....” – page 20, line 9, “\$10,000 to install” and Exhibits JES-9 and JES-10.

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

11. Page 20, lines 15-17, “As discussed above....approximately \$10,000.”

LPWC objects to this testimony as irrelevant and objects to Exhibits JES-9 as hearsay and JES-10 as hearsay and irrelevant. The witness testifies regarding studies conducted by the Guadalupe Water Company and Harris County, which are not parties to this case, and which cover areas not at issue in this case. The testimony is irrelevant to this matter.

12. Page 21, lines 3-8, “According to....as high as \$760.20” and Exhibits JES-11 and JES-12.

LPWC objects to this testimony as irrelevant because it refers to information from the Agricultural Extension Service and the City of Austin, which are not parties to this case. LPWC further objects to the testimony as the witness is not qualified to testify regarding types of septic systems. The witness is a financial expert in this matter. Additionally, LPWC objects to Exhibits JES-11 and JES-12 as both hearsay and irrelevant. JES-11 is an article on Leaching Chambers and JES-12 is an article published by the City of Austin on the internet. Neither exhibit is certified and neither address the witness' financial testimony.

13. Page 22, lines 8-16. “The City would... revenue stream.”

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service. He is a financial expert for Lindsay.

14. Page 23, lines 1-7, “Mr. Stowe,....requested area.”

LPWC objects to the direct question and the testimony in response to the question. The question requires the witness to speculate regarding environmental effects. The witness is not qualified to provide an expert opinion on environmental effects in this matter.

15. Page 23, lines 14-15, "It will also...OSSFs."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

16. Page 24, line 17, "In your opinion....," – page 25, line 4, "Integrity of the requested area."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on environmental effects in this matter. He is a financial expert for Lindsay.

17. Page 25, lines 12-23. "As I previously.... OSSF requirements."

LPWC objects to this testimony because the witness is not qualified to provide an expert opinion on development effects of centralized wastewater service, or the environmental effects and burdens of OSSF operations in this matter. He is a financial expert for Lindsay.

Respectfully submitted,



JOHN J. CARLTON

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**ATTORNEYS FOR LINDSAY PURE WATER
COMPANY**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

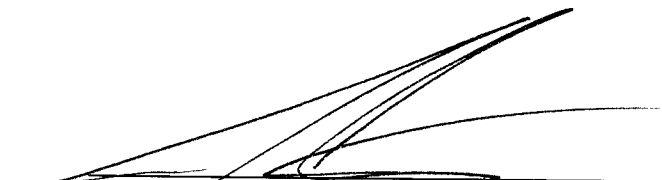
I hereby certify that a true and correct copy of the foregoing has been sent by Facsimile and/or First Class Mail on this 12th day of September, 2008, to the following:

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September 26, 2008

VIA HAND DELIVERY

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

2008 SEP 26 PM 12:04
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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 Lindsay Pure Water Company's Response to the Town of Lindsay's Objections to the Prefiled Testimony and Exhibits of Jim Myrick.

By copy of this letter, copies of the attached are being forwarded to all participating parties.

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
TCEQ Docket Clerk

SOAH DOCKET NO. 582-06-2023

TCEQ DOCKET NO. 2006-0272-UCR

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

2006 SEP 26 11:10:05
TCEQ

LINDSAY PURE WATER COMPANY'S RESPONSE
TO THE TOWN OF LINDSAY'S OBJECTIONS TO THE PREFILED TESTIMONY
AND EXHIBITS OF JIM MYRICK

TO THE HONORABLE ADMINSTRATIVE LAW JUDGE:

COMES NOW, Lindsay Pure Water Company ("LPWC"), Protestant herein, and submits the following Responses to the Town of Lindsay's ("Lindsay") Objections to the Prefiled Testimony and Exhibits of Jim Myrick.

Response to Objections to Testimony and Exhibits of Jim Myrick

1. Page 3, lines 10-12.

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony as hearsay without providing an exception to the hearsay rule. Mr. Myrick attempts to testify regarding statements allegedly made by Lindsay without providing any foundation for whom made the statement, whether the statement was authorized, or whether the person making the statement was an agent of Lindsay. The statements are merely recitations of out of court statements allegedly made by Lindsay to prove the truth of the matter asserted. As such, the testimony violates TEX. R. EVID. 802 and should be stricken.

LPWC'S RESPONSE: The City of Lindsay's objections to Mr. Myrick's testimony are longer than the testimony itself. Mr. Myrick's testimony regarding why he formed LPWC is a personal recollection. Mr. Myrick does not recount statements made by others; rather, he explains why he had to create LPWC to serve his subdivision. Mr. Myrick's personal recollection is not hearsay.

2. Page 4, line 5-11.

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony as irrelevant based on TEX. R. EVID. 401 and 402. The testimony proffered by Mr. Myrick is wholly irrelevant insofar as the Application of Lindsay is being considered. What may or may not have occurred in a prior CCN application filed by LPWC does not provide the trier of fact with evidence that will be admissible at trial to determine if the City of Lindsay has the economic, managerial and technical capability to provide continuous and adequate service to the entirety of the area being requested by Lindsay in its Application. Furthermore, no proof has been proffered to substantiate any of the claims being made by Mr. Myrick. The testimony should be stricken.

LPWC'S RESPONSE: The City of Lindsay is seeking to serve part of the subdivision that Mr. Myrick believed and understood was part of LPWC's service area. Until he began preparing for this matter, he did not know that a portion of an area he intended to serve and could serve was allegedly excluded from LPWC's CCN. He is stating his opinion of his service area as the owner of the water system.

3. Page 4, line 15 beginning with "Consequently,..." and ending on line 16 with "...Commission's rules."

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony as drawing a legal conclusion that the witness is not qualified to make. Mr. Myrick's attempts to testify as an expert regarding the Commission's rules. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter. Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding. At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: As an owner of a water system, Mr. Myrick is uniquely qualified to testify regarding his service area. In the many years Mr. Myrick has owned LPWC, he has undoubtedly had to familiarize himself with certain TCEQ rules that may impact his system. The rule Mr. Myrick refers to is straightforward and does not require an expert to interpret. There has been no testimony to refute Mr. Myrick's correct assertion that LPWC may serve customers within ¼ mile of LPWC's CCN boundaries.

4. Page 5, line 2 through line 5 ending with "...to serve other areas." and lines 17 beginning with "With two 10-horsepower..." through line 19.

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity and future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter. Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding. At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: Because Mr. Myrick oversaw the design and construction of his own water system, it follows that he can testify regarding what areas he intended his water system to serve and the size of the system he built. In the testimony following this, he describes in detail the components of his system. The City of Lindsay does not object to this detailed testimony. Mr. Myrick's time and experience as the owner of LPWC makes him qualified to testify regarding initial design and future plans for expansion.

Regarding the testimony at lines 17-19, Mr. Myrick is doing a little multiplication. The testimony at lines 16-17 (to which there was no objection), establishes that one 10-horsepower pump would have a capacity of 210 gallons per minute. The following line merely states that the addition of another 10-horsepower pump would double that output. That is simple math, and a particular degree is not required to establish that fact.

5. Page 6, line 1 through line 17.

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity and future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter. Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding. At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures. Mr. Myrick, in

deposition testimony, demonstrated that he is not an expert. In fact, Mr. Myrick stated in his deposition testimony that he provided "raw data" to his attorney and then his "attorney helped me with those numbers." He has demonstrated that he cannot calculate capacity for water systems nor has the ability to testify on capacity issues. The testimony proffered by Mr. Myrick is not even testimony prepared by him. Mr. Myrick stated repeatedly in his deposition testimony that he has not performed any calculations for the LPWC system. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: As an owner of LPWC, Mr. Myrick is well aware of his system's capacity, and he testifies in great detail about that capacity – both present and future. He has personally supervised the construction and operation of LPWC since its inception. He has first-hand knowledge of how his system works, including its capacity and its limitations, and that knowledge is evident through this testimony. Mr. Myrick does not have to be an expert to testify regarding a system he works with every day.

6. Page 7, line 16 through line 19.

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the design, capacity and future upgrades of the Lindsay PWC system. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter. Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues regarding capacity. At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert. In fact, Mr. Myrick stated in his deposition testimony that he provided "raw data" to his attorney and then his "attorney helped me with those numbers." He has demonstrated that he cannot calculate capacity for water systems nor has the ability to testify on capacity issues. Mr. Myrick stated repeatedly in his deposition testimony that he has not performed any calculations for the LPWC system. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: As an owner of LPWC, Mr. Myrick is well aware of his system's capacity, and he testifies in great detail about that capacity – both present and future. He has personally supervised the construction and operation of LPWC since its inception. He has first-hand knowledge of how his system works, including its capacity and its limitations, and that knowledge is evident throughout this testimony. Mr. Myrick does not have to be an expert to testify regarding a system he works with every day.

7. Page 7, line 20 through page 8, line 6.

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify as an expert regarding the CCN rules related to the need for service. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training, or experience to formulate and express expert or legal opinions on this subject matter. Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues regarding need for service. At best, Mr. Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert on CCN issues. He has demonstrated that he is not familiar with the CCN rules that apply to this proceeding. Mr. Myrick has demonstrated that he is not an expert witness and therefore his testimony should be stricken.

LPWC'S RESPONSE: Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. It is his opinion there was no need to expand his CCN in the absence of any development in his CCN area. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

8. Page 8, line 17 through page 9, line 16.

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony as the witnesses speculates on why Lindsay proffered the testimony and based on TEX. R. EVID. 701 and 702. Mr. Myrick attempts to testify about the "requestors" "plans for development" and "Lindsay['s] hopes." Mr. Myrick, despite his service on the City Council of Lindsay a decade ago and his living in the area, cannot possibly know what the requestors' intent may be with regarding to their property. Likewise, Mr. Myrick has no knowledge as to Lindsay's "hope" with regard to its intent to secure a CCN amendment. Mr. Myrick's testimony is inadmissible speculation, conjecture, and opinion testimony under TEX. R. EVID. 602, 701 and 702. Mr. Myrick cannot possibly have personal knowledge regarding the actions or intentions of the City. Mr. Myrick does not work for the City, he is not on the City Council, and he is in no way connected with the day to day operations of the City. Mr. Myrick cannot have personal knowledge of any actions taken by or intentions of the City. Therefore, the testimony should be stricken.

Likewise, Mr. Myrick attempts to testify as an expert regarding the requests for service received by Lindsay and his opinions regarding the adequacy of the requests for service. The prefiled testimony and credentials of Mr. Myrick do not establish that he is qualified by education, training or experience to formulate and express expert or legal opinions on this subject matter. Mr. Myrick may be the owner and president of multiple corporations affiliated with Lindsay PWC but he is not an expert on any of the issues relevant to this proceeding. At best, Mr.

Myrick can provide lay witness/fact testimony. Moreover, Mr. Myrick has not shown how he is qualified to provide expert testimony on any issue in this proceeding. He has not shown that he has any scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence. Further, his testimony is not admissible under TEX. R. EVID. 701 because no foundation for lay opinion has been presented. LPWC has not designated Mr. Myrick as an expert witness qualified to testify regarding matters on behalf of Lindsay PWC in any of its responses or supplemental responses to the Parties' Requests for Disclosures. Mr. Myrick, in deposition testimony, demonstrated that he is not an expert.

Additionally, the testimony regarding what Mr. Myrick believes regarding the City's intentions in obtaining a CCN amendment is inadmissible speculation, conjecture and opinion testimony under TEX. R. EVID. 602, 701 and 702. Mr. Myrick cannot possibly have personal knowledge regarding the actions or intentions of the City. Mr. Myrick does not work for the City, he is not on the City Council, and he is in no way connected with the day to day operations of the City. Mr. Myrick cannot have personal knowledge of any actions taken by or intentions of the City. Therefore, the testimony should be stricken.

LPWC'S RESPONSE: Besides being an owner of LPWC, Mr. Myrick is a developer. He developed the subdivision that LPWC serves. He knows the area and knows there has not been any development in the area for many years. He has served on the City Council, the county appraisal board, and is active in the community. After his research on the alleged requests for service, he found no actual plans for development anywhere in the area. It is his opinion that the alleged requests are essentially a sham. The City of Lindsay may disagree, but given his experience in the area and with the water system for many years, it is a valid opinion nonetheless.

9. Page 9, line 1 through line 22

LINDSAY'S OBJECTION: Lindsay objects to and moves to strike this testimony as irrelevant based on TEX. R. EVID. 401 and 402. The testimony proffered by Mr. Myrick is wholly irrelevant insofar as the Application of Lindsay is being considered. The reasons behind Lindsay PWC not filing a CCN amendment when it had allegedly received requests for service does not provide the trier of fact with evidence that will be admissible at trial to determine if the city of Lindsay has the economic, managerial and technical capability to provide continuous and adequate service to the entirety of the area being requested by Lindsay in its Application. Furthermore, no proof has been proffered to substantiate any of the claims being made by Mr. Myrick. the testimony should be stricken.

LPWC'S RESPONSE: The City of Lindsay objected to page 9, lines 1-16 above. LPWC's response to that objection is incorporated herein. Regarding the testimony at lines 19-22, Mr. Myrick is testifying as to his personal actions as an owner of LPWC as well as his personal decision to not complete the CCN amendment process. This testimony supports his opinion as an owner of LPWC as to why there is no need to expand *any* CCN in the area at this time.