

**TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY**  

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**TRANSMITTAL OF ADMINISTRATIVE RECORD**

**DATE:** June 14, 2006

**TO:** SOAH Natural Resources Docket Clerk

**FROM:** SB Steve Brachel, Final Documents Team

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

Pursuant to 30 TAC § 80.6(b)(4) regarding referrals to SOAH, a copy of the Chief Clerk's case file is attached. Please find **certified** copies of the following documents:

- ☒ 1. the application;
- ☒ 2. public hearing notice and Chief Clerk's affidavit

If any of these documents are not included as enclosures with this memo, please notify Steve Brachel at (512) 239-2207 or Deanna Avalos, Final Documents Team Leader at (512) 239-3327.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

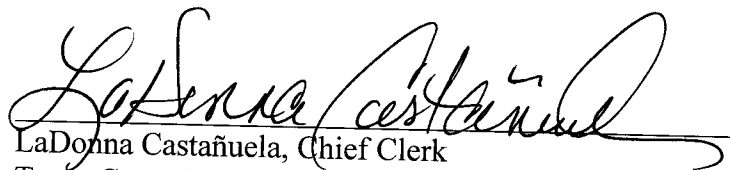


STATE OF TEXAS §

COUNTY OF TRAVIS §

I, LaDonna Castañuela, Chief Clerk of the Texas Commission on Environmental Quality, do hereby certify that the attached mailing list provides the persons to whom the notice of the public hearing for the Town of Lindsay, SOAH Docket No. 582-06-2023, TCEQ Docket No. 2006-0272-UCR, was mailed on June 12, 2006.

Given under my hand and the seal of the Texas Commission on Environmental Quality, this the 12th day of June, 2006.

  
LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality

(SEAL)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**NOTICE OF HEARING  
TOWN OF LINDSAY  
SOAH Docket No. 582-06-2023  
TCEQ Docket No. 2006-0272-UCR**

**APPLICATION.** The Town of Lindsay, P.O. Box 3, Lindsay, Texas 76250, has applied with the Texas Commission on Environmental Quality (TCEQ) to amend water and sewer Certificates of Convenience and Necessity Nos. 13025 and 20927 in Cooke County, Texas (Application Nos. 35096-C and 35097-C).

**CONTESTED CASE HEARING.** The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing on this application at:

**1:00 p.m. – July 11, 2006  
William P. Clements Building  
300 West 15th Street, 4th Floor  
Austin, Texas 78701**

The hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 13, Texas Water Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapter 291; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. To participate in the hearing as a party, you must attend the hearing and show you would be affected by the petition in a way not common to members of the general public.

**INFORMATION.** For information concerning the hearing process, please contact the TCEQ Office of the Public Interest Counsel (MC 103), P.O. Box 13087, Austin, TX 78711-3087. For additional information, contact the TCEQ Water Supply Division, Utilities & Districts Section (MC 153), P.O. Box 13087, Austin, TX 78711-3087, telephone 512-239-4691. General information regarding the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us).

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the SOAH Docketing Department at 512-475-3445, at least one week prior to the hearing.

Issued: June 12, 2006

A handwritten signature in cursive script, reading "LaDonna Castañuela".

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality

**MAILING LIST  
TOWN OF LINDSAY  
SOAH Docket No. 582-06-2023  
TCEQ Docket No. 2006-0272-UCR**

FOR THE APPLICANT:

Arturo D. Rodriguez, Jr., Attorney  
Russell, Moorman & Rodriguez, L.L.P.  
102 West Morrow Street, Suite 103  
Georgetown, Texas 78626

FOR THE EXECUTIVE DIRECTOR:

Brian MacLeod, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Tuyet Truong, Technical Staff  
Tammy Benter, Technical Staff  
Texas Commission on Environmental Quality  
Water Supply Division MC-153  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR STATE OFFICE OF  
ADMINISTRATIVE HEARINGS:

Natural Resources Docket Clerk  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

INTERESTED PERSONS:

See attached list.

John J. Carlton, Attorney  
Armbrust & Brown, LLP  
100 Congress Avenue, Suite 1300  
Leonard, Texas 75452

Bill and Monica Laux  
3792 FM 199  
Gainesville, Texas 76240

Christopher W. Sikes  
12588 County Road 352  
Gainesville, Texas 76240

Kenneth J. Thurman  
1733 County Road 404  
Gainesville, Texas 76240

Bradley Franklin &  
Ronda Lynn Metzler  
6030 West Highway 82  
Gainesville, Texas 76240

Jimmy and Barbara Mosman  
1290 County Road 418  
Gainesville, Texas 76240

Darlene B. Huebner  
2127 County Road 327  
Gainesville, Texas 76240

Kathleen M. Hacker  
1230 County Road 434  
Gainesville, Texas 76240

Herbert Schmidlkofer  
3416 County Road 409  
Gainesville, Texas 76240

Ella Mae Rohmer  
302 North Sycamor  
Muenster, Texas 76252

Mary Ann Arendt  
3055 County Road 306  
Gainesville, Texas 76240

Damian and Lucy Krah  
5434 FM 1199  
Gainesville, Texas 76240

Alvin Fleitman  
4372 County Road 306  
Gainesville, Texas 76240

**STATE OFFICE OF ADMINISTRATIVE HEARINGS  
300 WEST 15TH STREET, STE. 502  
AUSTIN, TEXAS 78701  
(512) 475-4993  
FAX (512) 475-4994  
DOCKET (512) 475-3445**

**CONFIRMATION OF REQUEST TO DOCKET CASE**

TO: STEVE BRACHEL  
TX COMM ON ENVIRONMENTAL QUALITY

VIA FACSIMILE 239 3311

FROM: NATALIE HOWARD  
DEPUTY CLERK

DATE: April 17, 2006

RE: SETTINGS OF HEARING(S)

At your request, the following hearing(s) have been set:

<u>Docket Number</u>	<u>Case</u>	<u>Date</u>	<u>Time</u>	<u>Hearing Location</u>
582-06-2022 2006-0045-UCR	City of Kemp	07/11/06	10:00 am	<u>William P. Clements Bldg</u> <u>300 West 15<sup>th</sup> Street</u> <u>4<sup>th</sup> Floor Street</u> <u>Austin, TX 78701</u>
582-06-2023 2006-0272-UCR	Town of Lindsay	07/11/06	1:00 pm	<u>same as above</u>
582-06-2024 2006-0004-UCR	City of Valley View	07/11/06	10:00 am	<u>same as above</u>

Administrative law judge(s) will be assigned at a later date.

All parties will be notified in the event of a change of location of the hearing.

Please remember that you are responsible for providing the court reporter as required by your agency.

If you have any questions regarding any of the information herein, please call,

(Revised - 03/25/04)	<b>FOR SOAH USE ONLY</b>	(req. frm)
Date complete request received by SOAH:	Proceeding date set by SOAH:	SOAH Docket Number & type of case:

### REQUEST TO DOCKET CASE (Please type or print)

#### PLEASE CHECK ACTION(S) REQUESTED:

☒ **SETTING OF HEARING**
☐ **ASSIGNMENT OF ALJ \***
☐ **ALTERNATIVE DISPUTE RESOLUTION (ADR)\***

REFERRING AGENCY NAME: TCEQ AGENCY NO.: \_\_\_\_\_ AGENCY'S FILE/CASE NO.: 2006-0272-UCR

NAME/STYLE OF THE CASE: Town of Lindsay

DATE APPLICATION FILED AT AGENCY: \_\_\_\_\_ DOCKET NO. SUFFIX, if applicable: UCR

PROCEEDING DATE(S) REQUESTED (Include range of dates if possible): July 11, 2006

EXPECTED NUMBER OF HOURS (If less than a day) OR DAYS NEEDED FOR PROCEEDING: \_\_\_\_\_ HOURS 1 DAYS

☐ **ADMIN. FINE**
☐ **GRIEVANCE**
☐ **ENFORCEMENT**
☐ **CONTRACT CLAIM (Gov't. Code 2260)**
☐ **OTHER** \_\_\_\_\_

SPECIAL NEEDS OR ACCOMMODATIONS: Hearing in Austin, Seating for 30 people. **PLEASE SET HEARING TIME FOR 1:00 P.M.**

IF ADR REQUESTED PLEASE DESCRIBE PROCESS NEEDED: \_\_\_\_\_

☐ **PREHEARING CONFERENCE REQUESTED**

☐ **CASE FILE** and/or ☐ **HEARING IS CONFIDENTIAL** (Specify applicable statute): \_\_\_\_\_

NAME OF INDIVIDUAL SENDING REQUEST FORM: Steve Brachel PHONE NO.: 239-2207 FAX NO.: 239-3311

### PARTIES AND REPRESENTATIVES

PARTY REPRESENTED BY: ☐ SELF ☒ **ATTORNEY**

☐ **OTHER**, If so, relationship: \_\_\_\_\_

REPRESENTATIVE'S NAME: Brian MacLeod

PARTY'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE No.: (512) 239-0750

(Direct Phone Number Please)

FAX No.: \_\_\_\_\_

PARTY REPRESENTED BY: ☐ SELF ☐ **ATTORNEY**

☐ **OTHER**, If so, relationship: \_\_\_\_\_

REPRESENTATIVE'S NAME: \_\_\_\_\_

PARTY'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE No.: \_\_\_\_\_

(Direct Phone Number Please)

FAX No.: \_\_\_\_\_

#### PLEASE LIST ADDITIONAL PARTIES AND/OR REPRESENTATIVES ON EXTRA FORM PROVIDED.

SEND TO:

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
 ATTN.: Deputy Clerk  
 William P. Clements Building  
 300 West 15th Street, Suite 504  
 Austin, Texas 78701

OR

Post Office Box 13025  
 Austin, Texas 78711-3025  
 Docket Phone No. (512) 475-3445  
 Fax No. (512) 475-4994

**\*PLEASE FORWARD A COPY OF THE APPLICATION, APPEAL, OR COMPLAINT WITH THIS REQUEST FORM, AS WELL AS ANY OTHER PLEADING FILED IN THE CASE TO DATE IF REQUESTING ASSIGNMENT OF ALJ or ALTERNATIVE DISPUTE RESOLUTION (ADR). A COPY OF THE NOTICE OF PROCEEDING MUST BE FORWARDED TO SOAH AT THE SAME TIME IT IS MAILED TO THE PARTIES.**

# Confirmation Report-Memory Send

Time : 04-17-2006 08:08am  
Tel line 1 : +15122391502  
Tel line 2 :  
Name : TCEQ / CHIEF CLERK

Job number : 473  
Date : 04-17 08:06am  
To : 94754994  
Document Pages : 002  
Start time : 04-17 08:06am  
End time : 04-17 08:07am  
Pages sent : 002  
Status : OK

Job number : 473

\*\*\* SEND SUCCESSFUL \*\*\*

(Revised - 03/25/04) Date complete request received by SOAH	FOR SOAH USE ONLY Proceeding Date set by SOAH	SOAH Docket Number & type of case (req. firm)
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**REQUEST TO DOCKET CASE (Please type or print)**

**PLEASE CHECK ACTION(S) REQUESTED:**

☒ SETTING OF HEARING ☐ ASSIGNMENT OF ALJ ☐ ALTERNATIVE DISPUTE RESOLUTION (ADR)

REFERRING AGENCY NAME: TCEQ AGENCY NO:                      AGENCY'S FILE/CASE NO: 2006-0272-UCR

NAME/STYLE OF THE CASE: Town of Lindsay

DATE APPLICATION FILED AT AGENCY:                      DOCKET NO. SUFFIX, if applicable: UCR

PROCEEDING DATE(S) REQUESTED (Include range of dates if possible): July 11, 2006

EXPECTED NUMBER OF HOURS (if less than a day) OR DAYS NEEDED FOR PROCEEDING:                      HOURS 1 DAYS

☐ ADMIN FINE ☐ GRIEVANCE ☐ ENFORCEMENT ☐ CONTRACT CLAIM (Gov't. Code 2260) ☐ OTHER                     

SPECIAL NEEDS OR ACCOMMODATIONS: Hearing in Austin, Seating for 30 people **PLEASE SET HEARING TIME FOR 1:00 P.M.**

IF ADR REQUESTED PLEASE DESCRIBE PROCESS NEEDED:                     

☐ PREHEARING CONFERENCE REQUESTED

☐ CASE FILE and/or ☐ HEARING IS CONFIDENTIAL (Specify applicable statute)                     

NAME OF INDIVIDUAL SENDING REQUEST FORM: Steve Brachei PHONE NO: 239-2207 FAX NO.: 239-3311

**PARTIES AND REPRESENTATIVES**

PARTY REPRESENTED BY <input type="checkbox"/> SELF <input checked="" type="checkbox"/> ATTORNEY <input type="checkbox"/> OTHER if so, relationship: <u>                    </u> REPRESENTATIVE'S NAME: <u>Brian MacLeod</u> PARTY'S NAME: <u>                    </u> ADDRESS: <u>                    </u> PHONE No: <u>(512) 239-0750</u> (Direct Phone Number Please) FAX No: <u>                    </u>	PARTY REPRESENTED BY: <input type="checkbox"/> SELF <input type="checkbox"/> ATTORNEY <input type="checkbox"/> OTHER if so, relationship: <u>                    </u> REPRESENTATIVE'S NAME: <u>                    </u> PARTY'S NAME: <u>                    </u> ADDRESS: <u>                    </u> PHONE No.: <u>                    </u> (Direct Phone Number Please) FAX No: <u>                    </u>
--	--

**PLEASE LIST ADDITIONAL PARTIES AND/OR REPRESENTATIVES ON EXTRA FORM PROVIDED.**

SEND TO

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
ATTN: Deputy Clerk  
William P. Clements Building  
300 West 15th Street Suite 504  
Austin, Texas 78701

OR

Post Office Box 13025  
Austin Texas 78711-3025  
Docket Phone No. (512) 475-3445  
Fax No. (512) 475-4994

**\*PLEASE FORWARD A COPY OF THE APPLICATION, APPEAL, OR COMPLAINT WITH THIS REQUEST FORM, AS WELL AS ANY OTHER PLEADING FILED IN THE CASE TO DATE IF REQUESTING ASSIGNMENT OF ALJ or ALTERNATIVE DISPUTE RESOLUTION (ADR). A COPY OF THE NOTICE OF PROCEEDING MUST BE FORWARDED TO SOAH AT THE SAME TIME IT IS MAILED TO THE PARTIES.**

OCC Faxed On: 04/17/2006

**RM&R**RUSSELL MOORMAN & RODRIGUEZ, L.L.P.  
ATTORNEYS AT LAWTEXAS HERITAGE PLAZA 102 WEST MORROW STREET, SUITE 103  
GEORGETOWN, TEXAS 78626PHONE (512) 930-1417 • FAX (512) 930-7742  
Email: arodriguez@rmlawfirm.com

April 12, 2006

VIA FACSIMILE

Hon. Sheila Bailey Taylor  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street  
Room 502  
Austin, Texas 78701

CHIEF CLERKS OFFICE

APR 12 PM 2:03

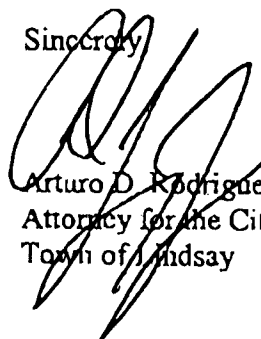
Re: *Application from the City of Valley View to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Cooke County; Application No. 35090-C*  
*Application from the Town of Lindsay to Amend Certificate of Convenience and Necessity (CCN) No. 13025 in Cooke County; Application No. 35096-C and*  
*Application from the Town of Lindsay to Amend CCN No. 20927 in Cooke County;*  
*Application No. 35097-C.* 2006-0004-UCR, 2006-0272-UCR

Dear Judge Sheila Bailey Taylor:

This law firm represents the City of Valley View ("Valley View") and the Town of Lindsay ("Lindsay") in the above referenced applications. We have been informed by staff members of the Texas Commission on Environmental Quality that both Valley View and Lindsay have preliminary hearings scheduled for July 11, 2006, at 10:00 a.m. While the undersigned is prepared to have both hearings on July, 11, 2006, it may be better for the respective parties to set different times on that day for the preliminary hearings. This office requests that either of these hearings be continued until July 11, 2006, at 1:00 p.m. or immediately after the completion of the morning hearing. If this is not convenient to your office, then we request that an alternate date be set for whichever hearing cannot be accommodated through a change in time. This letter is provided well in advance of any notice being mailed in hopes that the issue can be resolved in advance thereof.

Thank you for your attention to this matter.

Sincerely,

Arturo D. Rodriguez, Jr.  
Attorney for the City of Valley View and the  
Town of Lindsay

Hon. Sheila Bailey Taylor

April 12, 2006

Page 2

Cc: Mr. Steven Zwinggi  
Mr. Carl Kemplin  
Mr. Pat Dillon  
SOAH Docketing  
Ms. LaDonna Castañuela, TCEQ Docketing  
Ms. Tammy Benter, TCEQ  
Ms. Tuyet Truong, TCEQ  
Mr. Prabin Basnet, TCEQ  
Mr. Blas Coy, OPIC  
Mr. Robert Martinez, TCEQ Legal

**RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.****102 West Morrow Street, Suite 103****Georgetown, Texas 78626****Telephone: (512) 930-1317****Facsimile: (512) 930-7742****TELECOPIER COVER SHEET**

April 12, 2006

PLEASE DELIVER THE FOLLOWING PAGES TO:

Honorable Sheila Bailey Taylor	Fax: 512/ 475-4994
Honorable Carl Kemplin	Fax: 940/ 726-6253
Mr. Steven Zwinggi	Fax: 940/ 665-4910
SOAH Docketing	Fax: 512/ 475-4994
Pat Dillon	Fax: 972/ 680-0003
TCEQ Docketing	Fax: 512/ 239-3311
Tammy Benter	Fax: 512/ 239-6972
Tuyet Truong	Fax: 512/ 239-6972
Prabin Basnet	Fax: 512/ 239-6972
Blas Coy	Fax: 512/ 239-6377
Robert Martinez	Fax: 512/ 239-0606

CHIEF CLERKS OFFICE

APR 12 PM 2:03

REFERENCE NUMBER: 1030-00

FROM: Arturo D. Rodriguez, Jr.

NUMBER OF PAGES: 2 + Cover Sheet

COMMENTS: Letter requesting change in time for preliminary hearing.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 930-1317.  
THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL.  
INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW,  
DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED  
ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE  
IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA  
THE U.S. POSTAL SERVICE. THANK YOU.

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

April 13, 2006

Mr. Arturo D. Rodriguez, Jr.  
Russell, Moorman & Rodriguez, L.L.P.  
Attorneys at Law  
Texas Heritage Plaza  
103 West Morrow Street, Suite 103  
Georgetown, Texas 78626

CHIEF CLERKS OFFICE

2006 APR 14 AM 9:30

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2006-0272-VCR

Re: *Application from the City of Valley View to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Cooke County, Application No. 35090-C; Application from the Town of Lindsay to Amend Certificate of Convenience and Necessity (CCN) No. 13025 in Cooke County, Application No. 35096-C; and Application from the Town of Lindsay to Amend CCN No. 20927 in Cooke County, Application No. 35097-C*

Dear Mr. Rodriguez:

I have received your letter indicating that preliminary hearings have been scheduled in the above-referenced applications for July 11, 2006, at 10:00 a.m., and your request that the hearing in one of the applications be continued until July 11, 2006, at 1:00 p.m.

Please be advised that to date none of the above-referenced applications have been referred to the State Office of Administrative Hearings (SOAH) by the Texas Commission on Environmental Quality (TCEQ). Until such referral is made, SOAH has not acquired jurisdiction to schedule the hearing(s) in these applications and they are not on the SOAH docket. Pending referral of these applications to SOAH, any request for relief should be directed to TCEQ.

By copy of this letter I am forwarding your request to TCEQ for consideration.

Sincerely,

A handwritten signature in cursive script that reads "Shelia Bailey Taylor".

Shelia Bailey Taylor  
Chief Administrative Law Judge

c: Ms. LaDonna Castañuela, TCEQ Docketing

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## INTEROFFICE MEMORANDUM

TO: LaDonna Castanuela, Chief Clerk

THRU: *DK* Doug Holcomb, P.E., Section Manager  
*3/17* Utilities & Districts Section  
Water Supply Division

FROM: *TB* Tammy Benter, Team Leader  
*3/17* Utilities & Districts Section  
Water Supply Division

DATE: March 21, 2006

SUBJECT: Docket No. 2006-0272-UCR; Application from the Town of Lindsay to Amend a Water Certificate of Convenience and Necessity (CCN) No. 13025 in Cooke County; Application No. 35096-C

Docket No. 2006-0272-UCR; Application from the Town of Lindsay to Amend a Sewer Certificate of Convenience and Necessity (CCN) No. 20927 in Cooke County; Application No. 35097-C

CN: 601118607; RN: 104296488 (water) and 104315569 (sewer)

We hereby transfer the official file for the above referenced applications to the Chief Clerk's Office. Please refer these applications to the State Office of Administrative Hearings and request that a hearing be scheduled.

These applications have been protested by Lindsay Pure Water Company and various landowners. Lindsay Pure Water Company is concerned that the applications may affect a settlement reached between Lindsay Pure Water Company and the applicant in 2002 to address portions of the requested area. The majority of the landowners feel they don't need service from the Town of Lindsay. Additional concerns listed by the landowners include concerns about the Town of Lindsay's capability to serve its current customers, future city limits implications, future property tax implications, and the possibility of restrictions imposed on their property rights.

The individuals on the attached mailing list protested these applications. Staff estimates 30 people to attend this hearing.

The staff assigned to these cases are:

Technical - *T.T.* Tuyen Truong and Tammy Benter  
*3/16/06*

Legal -

If we may be of further service regarding this matter, please call.

*Doug Holcomb*  
Doug Holcomb, P.E., Section Manager

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

**CERTIFIED MAIL**

March 21, 2006

Mr. Arturo D. Rodriguez, Jr.  
Russell, Moorman & Rodriguez, LLP  
102 West Morrow Street, Suite 103  
Georgetown, Texas 78626

Re: Application from the Town of Lindsay to Amend Certificate of Convenience and Necessity (CCN)  
No. 13025 in Cooke County; Application No. 35096-C

Application from the Town of Lindsay to Amend CCN No. 20927 in Cooke County; Application  
No. 35097-C

CN: 601118607; RN: 104296488 (water) and 104315569 (sewer)

Dear Mr. Rodriguez:

The Texas Commission on Environmental Quality (TCEQ) has received several protests regarding the application referenced above. The Commission's Chief Clerk has assigned Docket No. 2006-0272-UCR to this matter. Any further communications should refer to this docket number. V.T.C.A. Water Code, Section 13.246 provides that affected parties may protest the applications and request a hearing on whether the CCNs should be amended. Please see the enclosed list of protestants.

This matter has been referred to the State Office of Administrative Hearings to schedule a hearing. When a hearing has been scheduled, you will receive a notice of hearing which explains when and where the hearing will be held.

In order to review the CCN applications, the staff of the TCEQ may need additional information regarding your utility's service. You may be receiving Staff Requests for Information (RFI's) within a few weeks. We would appreciate your cooperation in providing the information requested.

If you have questions about this process or what material you should bring with you to the hearing, please contact Ms. Tuyet Truong at (512) 239-0605 or Ms. Tammy Benter at 512/239-6136.

Sincerely,

A handwritten signature in cursive script that reads "Doug Holcomb".

Doug Holcomb, P.E., Section Manager  
Utilities & Districts Section  
Water Supply Division

DH/TT/TB/ac

cc: B.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)  
Attached Mailing List

Town of Lindsay  
Mailing List  
Application Nos. 35096-C & 35097-C

Mr. Arturo D. Rodriguez, Jr.  
Russell, Moorman & Rodriguez, LLP  
102 West Morrow Street, Suite 103  
Georgetown, Texas 78626

Representing: Town of Lindsay

Mr. John J. Carlton, Attorney  
Ambrust & Brown, LLP  
100 Congress Avenue, Suite 1300  
Leonard, Texas 75452

Representing: Lindsay Pure Water Company

Mr. & Mrs. Bill and Monica Laux  
3792 FM 199  
Gainesville, Texas 76240

Landowner Protestant

Mr. Christopher W. Sikes  
12588 County Road 352  
Gainesville, Texas 76240

Landowner Protestant

Mr. Kenneth J. Thurman  
1733 County Road 404  
Gainesville, Texas 76240

Landowner Protestant

Mr. Bradley Franklin &  
Ms. Ronda Lynn Metzler  
6030 West Highway 82  
Gainesville, Texas 76240

Landowner Protestant

Mr. & Mrs. Jimmy and Barbara Mosman  
1290 County Road 418  
Gainesville, Texas 76240

Landowner Protestant

Ms. Darlene B. Huebner  
2127 County Road 327  
Gainesville, Texas 76240

Landowner Protestant

Ms. Kathleen M. Hacker  
1230 County Road 434  
Gainesville, Texas 76240

Landowner Protestant

Mr. Herbert Schmidlkofer  
3416 County Road 409  
Gainesville, Texas 76240

Landowner Protestant

Ms. Ella Mae Rohmer  
302 North Sycamor`  
Muenster, Texas 76252

Landowner Protestant

Ms. Mary Ann Arendt  
3055 County Road 306  
Gainesville, Texas 76240

Landowner Protestant

Mr. & Mrs. Damian & Lucy Krah  
5434 FM 1199  
Gainesville, Texas 76240

Landowner Protestant

Mr. Alvin Fleitman  
4372 County Road 306  
Gainesville, Texas 76240

Landowner Protestant

TCEQ:

Region 4 Office  
Tuyet Truong, MC -153, Water Supply Division  
Tammy Benter, MC-153, Water Supply Division

35046-C  
TAT

# RM&R

RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.  
ATTORNEYS AT LAW

TEXAS HERITAGE PLAZA · 102 WEST MORROW STREET, SUITE 103  
GEORGETOWN, TEXAS 78626  
PHONE (512) 930-1317 · FAX (512) 930-7742  
Email: arodriguez@rmrlawfirm.com

February 15, 2006

VIA HAND DELIVERY

Mr. Doug Holcomb  
Texas Commission on Environmental Quality  
Utilities & Districts Section  
P.O. Box 13087, MC-153  
Austin, Texas 78711-3087

RECEIVED  
THB  
FEB 16 2005  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY  
UTILITIES AND DISTRICTS

Re: *Application from the Town of Lindsay to Amend Certificate of Convenience and Necessity (CCN) No. 13025 in Cooke County; Application No. 35096-C*

*Application from the Town of Lindsay to Amend CCN No. 20927 in Cooke County; Application No. 35097-C*

CN: 601118607; RN: 104296488 (water) and 104315569 (sewer)

Dear Mr. Holcomb,

This letter serves as a supplement to our October 21, 2005, letter to Ms. Karen Blaschke wherein the Town of Lindsay ("Town") asserted that the Town did not need to demonstrate landowner consent outside of its extraterritorial jurisdiction ("ETJ") in order for the Commission to consider the Town's application to amend its water and sewer CCNs outside of its ETJ. The Town asserted that the request to provide landowner consent for all proposed service area located outside of the Town's current ETJ is not a legal requirement of the Commission's CCN application process. This understanding of the Commission's rules in relation to House Bill 2876 has been substantiated and supported through the Executive Director's response to a filing in another case, which was received yesterday.

In another case currently pending before the State Office of Administrative Hearings, I filed a Motion for Summary Disposition based on my understanding of the Executive Director's position that pending CCN applications would not be granted to municipal applicants if it contained service territory outside its ETJ. The Executive Director requested denial of the Motion for Summary Disposition, which is attached hereto as Attachment 1, by stating that it is the Commission's position that the preamble to the new Chapter 291 rules is not conclusive and that an application filed prior to January 1, 2006, is not governed by the rule package approved by the Commission on December 14, 2005. This firm has requested a directive from the Commission on this new rule as it has consistently been this firm's position that this new rulemaking and HB 2876 cannot be retroactive to municipalities but only prospectively applied

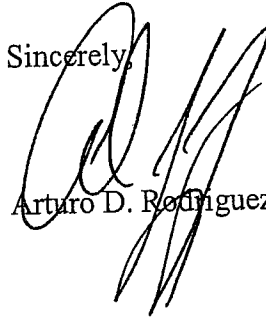
Mr. Doug Holcomb  
February 15, 2006  
Page 2 of 2

to applications filed after January 1, 2006. This position had not been clearly articulated by the Executive Director, until the attached response was received.

As I know that the Commission strives to consistently apply its rules and policies, I ask that you apply the Executive Director's position, as articulated in the attached document, to the above-referenced application. Without doubt, the Executive Director has clearly stated that municipal CCN applications filed prior to January 1, 2006, do not need to demonstrate ETJ boundaries or landowner consent outside the ETJ boundaries. Because of the Commission's desire to treat all applicants in a consistent manner, I request that the Town's application be processed in an expedited manner under the TCEQ rules as they existed prior to the Commission's December 14, 2005, meeting. As such, the Town may be granted an amendment to its water and sewer CCNs outside its ETJ boundaries without landowner consent. Please continue to process the above-referenced application in this manner, as it is consistent with the Executive Director's position.

Thank you very much for your attention to this matter.

Sincerely,



Arturo D. Rodriguez, Jr.

Attachment as stated in letter

cc: Mr. Glenn Shankle, Executive Director  
Mr. Derek Seal, General Counsel  
Mr. Blas Coy, Public Interest Counsel  
✓ Ms. Tammy Holguin-Benter  
Mr. Pat Dillon  
Mr. Steven Zwinggi

SOAH DOCKET NOS. 582-05-7095 and 582-05-7096  
TCEQ DOCKET NOS. 2005-0864-UCR and 2005-0863-UCR

APPLICATIONS OF THE CITY OF	§	
LEANDER TO AMEND WATER	§	BEFORE THE STATE OFFICE
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY (CCN) NO. 10302	§	
AND SEWER CCN NO. 20626 IN	§	
WILLIAMSON AND TRAVIS	§	
COUNTIES, AND OBTAIN DUAL	§	OF
CERTIFICATION WITH A PORTION	§	
OF THE CITY OF CEDAR PARK'S	§	ADMINISTRATIVE HEARINGS
CCN NOS. 10160 AND 20580 IN	§	
TRAVIS COUNTY, TEXAS	§	

**THE EXECUTIVE DIRECTOR'S RESPONSE TO THE**  
**CITY OF LIBERTY HILL'S MOTION FOR**  
**PARTIAL SUMMARY DISPOSITION**

COMES NOW, the representative for the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), and files the Executive Director's Response to the City of Liberty Hill's Motion for Partial Summary Disposition, and would respectfully show the following:

**I. BACKGROUND**

On January 25, 2006, the City of Liberty Hill ("Liberty Hill" or "Movant") filed a Motion for Partial Summary Disposition involving the portions of the application filed by the City of Leander ("Leander") to amend its water and sewer Certificates of Convenience and Necessity ("CCN") Nos. 10302 and 20626 ("Amended Applications") to add areas that are outside of Leander's ETJ. In Liberty Hill's Motion for Partial Summary Disposition they asserted that they should be granted a summary disposition on the portion of the Amended Applications because there

are no genuine issues as to any material fact and they also asserted that there were, "...no issues of law in the disputed area because there is not a valid application by Leander for that area," (*City of Liberty Hill's Motion for Partial Summary Disposition, See Attachment ED-A, page 3*).

## II. ARGUMENT

The Executive Director disagrees with the motion for partial summary disposition, and recommends that Liberty Hill's motion be denied.

### A. THE MOTION DOES NOT COMPLY WITH PROCEDURAL REQUIREMENTS

In Liberty Hill's request for summary disposition they raise the point that there are no genuine issues as to any material fact, and that they should be afforded a partial summary disposition as a matter of law. In order to receive relief for a summary disposition the movant must show the following, pursuant to Title 1, Chapter 155 of the Texas Administrative Code, Rule §155.57 (State Office of Administrative Hearings - Summary Disposition):

(b) A motion for summary disposition shall state the specific grounds therefor.

(1) A party may move with or without supporting affidavits for summary disposition upon all or any part of a contested case.

(2) *The motion shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence.* The failure to comply with the requirement of a separate fact statement may, in the judge's discretion, constitute sufficient grounds for the denial of the motion (Emphasis Added).

In this instance the Movant has failed to substantiate their motion, since they have failed to plead all material and undisputed facts to afford them a partial summary disposition as a matter of law. Liberty Hill has not attached any evidence of pertinent facts to show that the City of Leander has not received landowner consent beyond Leander's Extra Territorial Jurisdiction ("ETJ") as applicable

to the Amended Applications. Although Liberty Hill asserts that the City of Leander would not be permitted to amend their CCN beyond their ETJ without landowner consent they have not stated specific grounds nor substantiated this issue through factual evidence by reference within their pleading for a partial summary disposition. Thus, Liberty Hill has not met their burden by showing that there are no controverted issues of material facts to support their motion for partial summary disposition.

**B. LIBERTY HILL HAS NOT SHOWN IT IS ENTITLED TO THE RELIEF**

**REQUESTED AS A MATTER OF LAW**

The City of Liberty Hill asserts that because of, "...the position of the Commission and the newly promulgated rules, there are no issues of law in the disputed area because there is not a valid application by Leander for that area," (*City of Liberty Hill's Motion for Partial Summary Disposition*, See Attachment ED-A, page 3). Liberty Hill must show that as a matter of law, it is entitled to the relief requested in its Motion for Partial Summary Disposition. In seeking to make this showing, Liberty Hill relies entirely upon a statement in the preamble to the Commission's adoption of amendments to CCN rules in 30 Texas Administrative Code, Chapter 291 to implement House Bill 2876. As discussed below, Liberty Hill has not met its burden on the Motion for Partial Summary Disposition.

In adopting the CCN rule amendments, the Commission did not state a position on whether House Bill 2876 would void a city's CCN located outside of its ETJ without landowner consent on an application that was submitted before January 1, 2006. Instead, the Commission deleted proposed rule language that would have stated that city CCN areas located outside their ETJ without landowner consent are void on September 1, 2005, the effective date of House Bill 2876. In the

preamble the Commission stated that "as a result of input and comments from affected parties and the public, the Commission recognizes the existence of interpretative differences in regard to CCNs outside cities' ETJs." The Commission then stated that, "the Commission will not take any affirmative action cities CCNs outside their ETJ until after January 1, 2008...[and that] [d]uring this period, the Commission will consider those portions of cities' pending CCN applications that are outside their ETJ only if they provide landowner consent for those areas." The Commission stated that it was taking this course of action "in order to conduct a study and to provide opportunities to cities to obtain any necessary landowner consent in these areas [and to] also allow the legislature to further consider this important issue."

In summary, the Commission did not state a position on the legal effect House Bill 2876 would have on cities' CCNs located outside of their ETJ without landowner consent that were granted on applications that were submitted before January 1, 2006. However, the Commission recognized that there were different legal interpretations on the effect of House Bill 2876 on those CCNs and, in recognition of the different legal interpretations, stated in the preamble an intended course of action until January 1, 2008 in which it would consider those portions of cities' pending CCN applications that are outside their ETJ only if they provide landowner consent, conduct a study on the issue, and allow cities the opportunity to obtain landowner consent. Since the Commission did not state a position on the legal effect of House Bill 2876 as stated above, but instead recognized that there were different interpretations, the Commission's preamble statement does not support the argument that Liberty Hill is entitled to the requested relief as a matter of law. Therefore, the Motion for Partial Summary Disposition should be denied.

### III. CONCLUSION

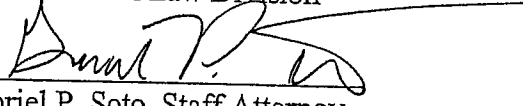
The Executive Director respectfully requests that the Administrative Law Judge deny the City of Liberty Hill's Motion for Partial Summary Disposition in order to proceed with the evidentiary hearing on the current applications pending before SOAH.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

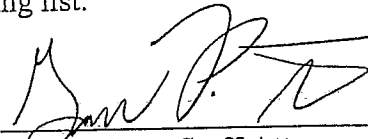
Glenn W. Shankle  
Executive Director

Robert Martinez, Director  
Environmental Law Division

By:   
Gabriel P. Soto, Staff Attorney  
Environmental Law Division  
State Bar of Texas No. 24037531  
MC-173, P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-3668  
Fax: (512) 239-0606

CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of February, 2006, a true and correct copy of the foregoing document was delivered via facsimile, hand delivery, interagency mail, or deposit in the U.S. Mail to all persons on the attached mailing list.

A handwritten signature in black ink, appearing to read "Gabriel Soto", is written over a horizontal line.

Gabriel Soto, Staff Attorney  
Environmental Law Division  
Texas Commission on  
Environmental Quality

MAILING LIST

City of Leander

SOAH Docket No. 582-05-7095 and 582-05-7096  
TCEQ Docket No. 2005-0864-UCR and 2005-0854-UCR

Honorable Cassandra J. Church  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West Fifteenth Street, Suite 502  
Austin, Texas 78701  
Tel.: (512) 475-4993  
Fax: (512) 475-4994

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TCEQ Office of the Chief Clerk  
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Austin, Texas 78711-3087  
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Fax: (512) 239-3311

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Fax: (512) 239-6377

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102 West Morrow, Suite 103  
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Fax: (512) 930-7742

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Tiemann, Shahady & Hamala, P.C.  
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Fax: (512) 251-8540

Mr. John J. Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
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Tel.: (512) 435-2300  
Fax: (512) 435-2360

Mr. Nelson R. Barrett  
P.O. Box 307  
Liberty Hill, Texas 78642-0307  
Fax: (512) 515-6172

Ms. Lauren Kalisek  
Mr. Michael Gershon  
Lloyd Gosselink Blevins Rochelle &  
Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Tel.: (512) 322-5847  
Fax: (512) 472-0532

Mr. Gabriel Soto (MC-173)  
Environmental Law Division  
Texas Commission on Environmental  
Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel.: (512) 239-3668  
Fax: (512) 239-0606

SOAH DOCKET NO. 582-05-7095 AND 582-05-7096  
TCEQ DOCKET NO. 2005-0864-UCR and 2005-0863-UCR

APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
LEANDER TO AMEND WATER	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY (CCN) NO. 10032 AND	§	
SEWER CCN NO. 20626 IN	§	
WILLIAMSON AND TRAVIS	§	OF
COUNTIES, AND OBTAIN DUAL	§	
CERTIFICATION WITH A PORTION	§	
OF THE CITY OF CEDAR PARK'S CCN	§	
NOS. 10160 AND 20580 IN TRAVIS COUNTY	§	ADMINISTRATIVE HEARINGS

CITY OF LIBERTY HILL'S MOTION FOR PARTIAL SUMMARY DISPOSITION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of Liberty Hill ("Liberty Hill" or "City") hereby files its Motion for Partial Summary Disposition in the above referenced matter. Liberty Hill's Motion is brought pursuant to 30 TEX. ADMIN. CODE § 80.137 and TEX. R. CIV. P. 166 (a). Liberty Hill asserts that there are no genuine issues as to any material fact regarding any of the issues discussed below and that Liberty Hill is entitled to partial summary disposition as a matter of law on all issues expressly set out in this motion.

**I. BACKGROUND**

This proceeding involves an application filed by the City of Leander ("Leander") with the Texas Commission on Environmental Quality ("TCEQ" or "Commission") to amend its water and sewer certificates of convenience and necessity ("CCN") Nos. 10032 and 20626, respectively. On September 15, 2005, Liberty Hill filed its *Motion to Abate Proceedings and Motion to Certify Questions to the Texas Commission on Environmental Quality* based on proposed rules to implement House Bill 2876. Such rules held that as of September 1, 2005, all CCNs outside of a municipalities' extraterritorial jurisdiction would be void. On December 14,

EXHIBIT

ED - A

2005, the Commission held an agenda on adoption of their proposed rules. Commissioner Marquez included a new statement that was added to the preamble of the new rules, Texas Administrative Code, Title 30, Chapter 291, which provides: "As a result of input and comments from affected parties and the public, the commission recognizes the existence of interpretive differences in regard to CCNs outside cities' ETJs. Therefore, the commission will not take any affirmative action on cities' CCNs outside their ETJ until after January 1, 2008, in order to conduct a study and to provide opportunities to cities to obtain any necessary landowner consent in those areas. This will also allow the legislature to further consider this very important issue. During this period, the commission will consider those portions of cities' pending CCN applications that are outside their ETJ only if they provide landowner consent for those areas."<sup>1</sup> The Commission voted unanimously to include this language into the preamble of said rules.

On December 19, 2005, Leander filed its prefiled testimony and attached as Exhibit AP 12B, a map which clearly depicts Leander's ETJ, city limits, and requested sewer CCN amendment. Exhibit AP 12B shows that most of the disputed area between Leander and Liberty Hill lies outside of Leander's ETJ. All exhibits are incorporated herein by reference.

On January 19, 2006, Liberty Hill filed its prefiled testimony of Mr. Kerry Maroney, Liberty Hill Exhibit LH-2, and attached Attachment KDM-13 which shows the ETJ of Liberty Hill. As can be seen when comparing the two maps, most of the disputed area lies outside of Leander's ETJ and inside of Liberty Hill's ETJ. Also attached to Liberty Hill Exhibit LH-2 is Attachment KDM-10 which is the preamble to the rules of the Commission, which became effective January 6, 2006. All exhibits are incorporated herein by reference.

---

<sup>1</sup> 30 Tex. Reg. 8961 (Dec. 30, 2005).

It has been expressly stated by staff members of the water utilities division of the Commission that it is the Executive Director's and the Commission's policy that *all* pending applications must demonstrate landowner consent for any CCN area being sought outside of the City's ETJ, *regardless of what date the application was filed.*

## II. ARGUMENT AND AUTHORITIES

Summary disposition shall be rendered if the pleadings and other case documents show there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion.<sup>2</sup> As can be seen in Leander's Exhibit AP 12B and Liberty Hill's Exhibit LH-2, Attachments KDM-10 and KDM-13, because of the position of the Commission and the newly promulgated rules, there are no issues of law in the disputed area because there is not a valid application by Leander for that area. Additionally, Liberty Hill requested that Leander provide all requests for water and/or sewer service in the disputed area. Leander has not produced any written requests for service in the disputed area. In fact, during the deposition of Mr. Wayne Watts a map was presented for Mr. Watts to mark where requests had been received. Mr. Watts was not able to identify any requests received in the northwest area, or the disputed area. This map was attached to Liberty Hill's Exhibit LH-2, Attachment KDM-12. No genuine issues as to any material fact regarding any of the issues in this proceeding exist as it relates to the area requested by Leander outside its ETJ and Liberty Hill is entitled to partial summary disposition as a matter of law on all issues expressly set out in this motion. Liberty Hill is entitled to partial summary disposition as to the area in dispute between Leander and Liberty Hill, otherwise known as the "Northwest CCN area."

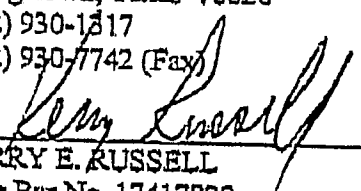
<sup>2</sup> 30 TEX. ADMIN. CODE § 80.137.

### III PRAYER

For the reasons stated herein, Liberty Hill respectfully requests that its Motion for Partial Summary Disposition be in all things granted and that the disputed area between Leander and Liberty Hill be removed from this proceeding. Liberty Hill further prays for any additional relief to which it is justly entitled.

Respectfully submitted,

Russell, Moorman & Rodriguez, L.L.P.  
102 West Morrow Street, Suite 103  
Georgetown, Texas 78626  
(512) 930-1817  
(512) 930-7742 (Fax)

  
KERRY E. RUSSELL  
State Bar No. 17417820

ARTURO D. RODRIGUEZ, JR.  
State Bar No. 00791551

ATTORNEYS FOR THE CITY OF LIBERTY  
HILL, TEXAS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of January 2006, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following:

State Office of Administrative Hearings  
Honorable Cassandra Church  
Administrative Law Judge  
300 West 15th Street, Suite 502  
P.O. Box 13025  
Austin, Texas 78711-3025  
Fax: 512/475-4994

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

Executive Director of the TCEQ  
Mr. Gabriel Soto  
Environmental Law Division  
TCEQ - MC 173  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: 512/239-0606

City of Cedar Park  
Mr. John Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
Fax: 512/435-2360

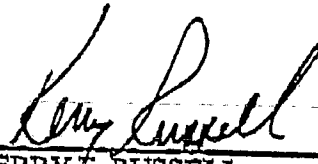
Public Interest Counsel  
Mr. Blas Coy, Attorney  
Office of the Public Interest Counsel  
TCEQ - MC 103  
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Fax: 512/239-6377

City of Georgetown  
Jack and Camille A. Garey  
Mr. Richard Hamala  
Tiemann, Shahady & Blackman, P.C.  
P.O. Box 1190  
Pflugerville, Texas 78691-1190  
Fax: (512) 251-8540

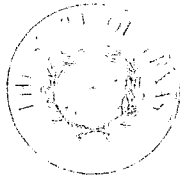
Elmer McLester  
Gary Brown  
Mr. John Carlton  
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City of Leander  
Ms. Lauren Kalisek  
Mr. Michael Gershon  
Lloyd Gosselink, et al.  
816 Congress Avenue  
Suite 1900  
Austin, Texas  
Fax: 512/472-0532

Aligned Protestants  
Mr. Nelson Barrett  
P.O. Box 307  
Liberty Hill, Texas 78642  
Fax: 512/515-6172

  
KERRY E. RUSSELL

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 8, 2005

Mr. Arturo D. Rodriguez, Jr.  
Russell, Moorman & Rodriguez, L.L.P.  
102 West Morrow, Suite 103  
Georgetown, Texas 78626

Re: Application from the City (Town) of Lindsay to Amend Certificate of Convenience and Necessity (CCN) No. 13025 in Cooke County; Application No. 35096-C

Application from the City (Town) of Lindsay to Amend CCN No. 20927 in Cooke County;  
Application No. 35097-C

CN: 601118607; RN: 104296488 (water) and 104345569 (sewer)

Dear Mr. Rodriguez:

Enclosed are copies of protest letters received from various individuals in the proposed area. These individuals are requesting a hearing on the applications referenced above. Copies of these letters are enclosed to allow the City of Lindsay an attempt to resolve the issues brought forward in their letters.

Please, respond to these individuals in writing and forward a copy of the response to this office. If the Commission does not receive a written withdrawal letter from each individual protesting the City of Lindsay's applications by January 8, 2005, the applications will be sent to the State Office of Administrative Hearings to schedule a hearing.

Thank you for your attention to this matter. If you have any questions, please call me at 512/239-6136, by fax at 512/239-6972, by email at [tholguin@tceq.state.tx.us](mailto:tholguin@tceq.state.tx.us), or if by correspondence, include please include MC 153 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Holguin-Benter".

Tammy Holguin-Benter  
Utilities & Districts Section  
Water Supply Division

THB/ac

Enclosures

cc: P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)  
Mailing List

City (Town) of Lindsay  
Mailing List  
Application Nos. 35096-C & 35097-C

Mr. John J. Carlton, Attorney  
Ambrust & Brown, LLP  
100 Congress Avenue, Suite 1300  
Leonard, Texas 75452

Representing: Lindsay Pure Water Company

Mr. & Mrs. Bill and Monica Laux  
3792 FM 199  
Gainesville, Texas 76240

Landowner Protestant

Mr. Christopher W. Sikes  
12588 County Road 352  
Gainesville, Texas 76240

Landowner Protestant

Mr. Kenneth J. Thurman  
1733 County Road 404  
Gainesville, Texas 76240

Landowner Protestant

Mr. Bradley Franklin &  
Ms. Ronda Lynn Metzler  
6030 West Highway 82  
Gainesville, Texas 76240

Landowner Protestant

Mr. & Mrs. Jimmy and Barbara Mosman  
1290 County Road 418  
Gainesville, Texas 76240

Landowner Protestant

Ms. Darlene B. Huebner  
2127 County Road 327  
Gainesville, Texas 76240

Landowner Protestant

Ms. Kathleen M. Hacker  
1230 County Road 434  
Gainesville, Texas 76240

Landowner Protestant

Mr. Herbert Schmidtkofer  
3416 County Road 409  
Gainesville, Texas 76240

Landowner Protestant

Ms. Ella Mae Rohmer  
302 North Sycamor  
Muenster, Texas 76252

Landowner Protestant

Ms. Mary Ann Arendt  
3055 County Road 306  
Gainesville, Texas 76240

Landowner Protestant

Mr. & Mrs. Damian & Lucy Krah  
5434 FM 1199  
Gainesville, Texas 76240

Landowner Protestant

Mr. Alvin Fleitman  
4372 County Road 306  
Gainesville, Texas 76240

Landowner Protestant

TCEQ:

Region 4 Office

35046

OCT 21 2005

TEX. COMMISSION ON ENVIRONMENTAL QUALITY

1. ALVIN FLEITMAN  
4372 CR 306  
GAINESVILLE, TX 76240  
1-940-736-2328
2. TOWN OF LINDSAY<sup>TX</sup> CON NOS. 13025  
AND 20927
3. "I/WE REQUEST A PUBLIC HEARING"
4. WE HAVE WATER AND SEWER  
WOULD HAVE TO PAY FOR WATER  
AND SEWER,
5. NOT TO HAVE IT OUT HERE  
WE DO NOT <sup>WENT</sup> IT. WE HAVE OUR OWN  
WE LIVE 7 MI OUT IT WOULD COST  
OF LINDSAY

CCN 13025

35096-C

October 19, 2005

Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section, MC-153  
P.O. Box 13087  
Austin, TX 78711-3087

- (1) Name: Damian & Lucy Krahll and family  
Lucinda, Travis, Louis, & Maggie Krahll  
5434 FM 1199  
Gainesville, TX 76240  
(940) 668-8332 daytime  
(940) 668-1356 home
- (2) Applicant's Name: Town of Lindsay  
RN 101388338
- (3) "We request a public hearing" on the proposed amendment of CCN Nos. 13025 & 20927.
- (4) We live 5 1/2 miles north of the Town of Lindsay on 135 acres of farm land. About 98% of the land north of Lindsay is agricultural farm and pasture land. We do not want the city to include our property in their CCN application. Granting this application would adversely affect our family and property by giving the city authority over our property. This could mean that someday the city would tell us what we can and cannot do with our own property. Also they could someday tax us for services we know they can never afford to provide. We have our own sewer and water and do not need the city to have any jurisdiction over our property. We have no need or desire to have the city involved in any phase of our life. We live in the country in order to stay away from city jurisdiction. Granting this application would restrict our property rights.
- (5) We would gladly withdraw our request for a hearing if the CCN application would not include property so far north of Lindsay including our property. We request that the CCN application be changed to exclude property so far away from the city.

Please consider our request:  
Damian & Lucy Krahll Family

*Damian J. Krahll*  
*Lucy M. Krahll*

Enclosed: Notice of Application for CCN and map

RECEIVED  
OCT 23 2005  
TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY

*Notice to Landowners*  
NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)  
TO PROVIDE WATER/SEWER UTILITY SERVICE IN COOKE COUNTY

To:

Damian & Lucy Krah  
5434 FM 1199  
Gainesville, TX 76240

Date Notice Mailed: October 11, 2005

The Town of Lindsay has filed an application to amend CCN Nos. 13025 and 20927 with the Texas Commission on Environmental Quality to provide water & sewer utility service in Cooke County.

The proposed utility service area is located approximately 4.6 miles north, 3.5 miles south, .6 miles east, and 4.1 miles west of downtown Lindsay, Texas, and is generally bounded on the north by CR 434; on the east by Gainesville Airport; on the south by FM 1630; and on the west by CR 415. See enclosed map of the proposed service area.

The total area being requested for water service includes approximately 18,230 acres and 371 current customers. The total area being requested for sewer service includes approximately 18,230 acres and 362 current customers.

A request for a public hearing must be in writing. You must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent, would be adversely affected by the granting of the application for a CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

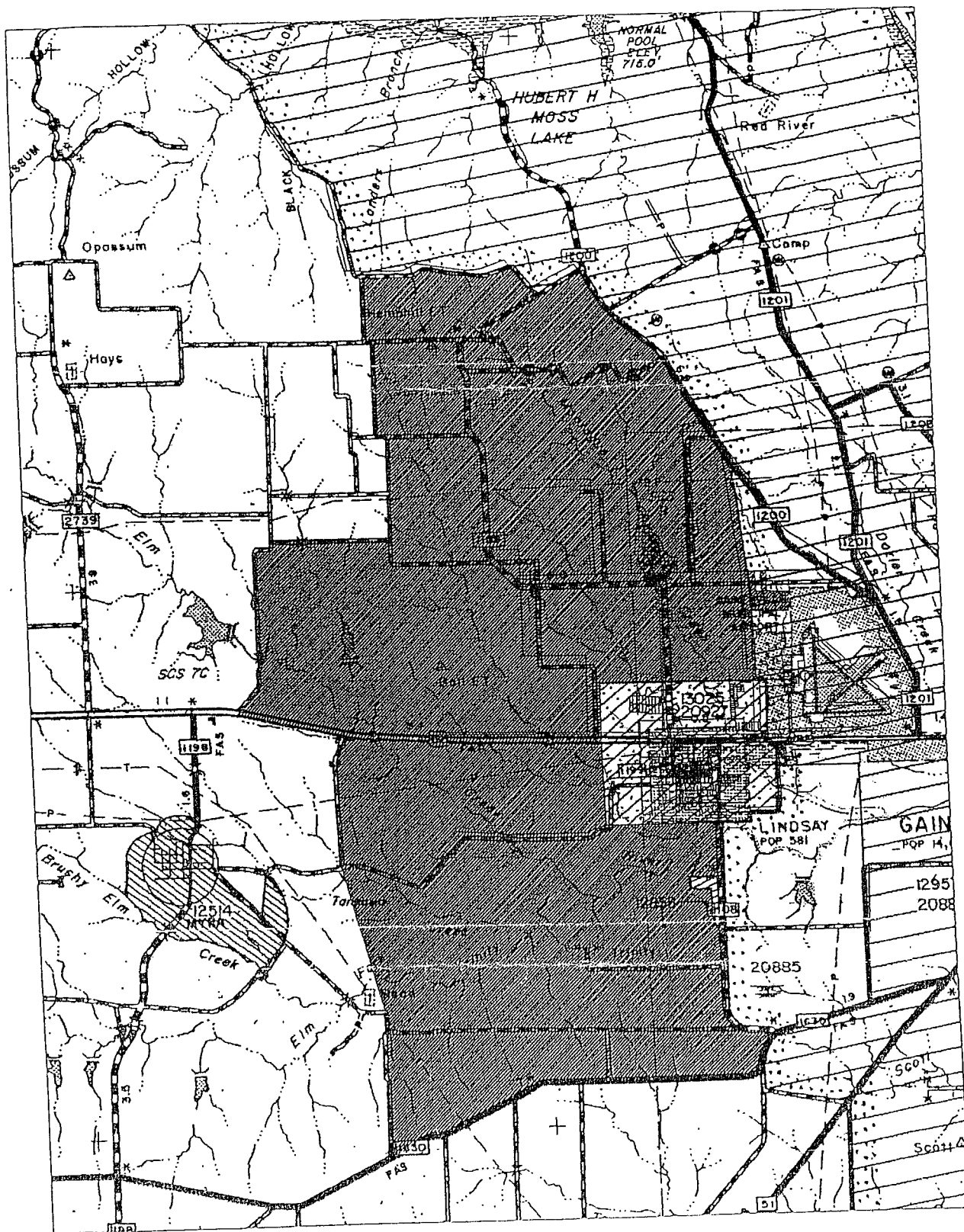
Persons who wish to intervene or comment should write the:

Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section, MC-153  
P. O. Box 13087  
Austin, TX 78711-3087

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the Commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.



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Si desea informacion en Espanol, puede llamar al 1-800-687-4040.



 CITY OF LINDSAY  


# **LINDSAY PROPOSED WATER AND SEWER CCN**

-  LINDSAY PROPOSED CCN AREA
-  REQUESTS FOR SERVICE LOCATIONS

35096-C

35096-C

Bentley

Date Oct 24, 2005

3055

I am interested in water and sewer service to my property located on CR 306.  
I hope that my City of Lindsay at some point in the future will be able to provide these  
services to my property. For this reason I would like to be included in the CCN for the  
City of Lindsay.

Sincerely, Mary Ann Grendt

Full Name: Mary Ann Grendt  
Address: 3055 CR 306 - Gainesville TX  
76240

Phone #: 940-736-2254

RECEIVED

RECEIVED

OCT - 8 2005

OCT 28 2005

TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY

ON

CITY

3 5095-B  
#35096-C

*Notice to Landowners*  
**NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)  
TO PROVIDE WATER/SEWER UTILITY SERVICE IN COOKE COUNTY**

To: \_\_\_\_\_  
Ella Mae Rohmer Trustee  
302 N. Sycamore Dr.  
Muenster, TX 76252

Date Notice Mailed: October 11, 2005

The Town of Lindsay has filed an application to amend CCN Nos. 13025 and 20927 with the Texas Commission on Environmental Quality to provide water & sewer utility service in Cooke County.

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Si desea informacion en Espanol, puede llamar al 1-800-687-4040.

(over)

I request a public hearing on the proposed  
utility services in Cooke County -  
my name Ella Mae Rohmer  
address. 302 N. Lycamore  
Muenster TX 76252

Phone # 940-759-4399

Cell 940 736-3778

*Notice to Landowners*  
**NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)  
TO PROVIDE WATER/SEWER UTILITY SERVICE IN COOKE COUNTY**

Date Notice Mailed: October 11, 2005

To:

Ella Mae Rohmer  
302 N. Sycamore Dr.  
Muenster, TX 76252

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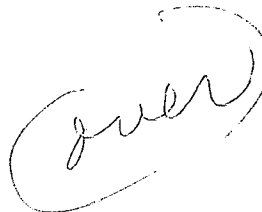
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Si desea informacion en Espanol, puede llamar al 1-800-687-4040.



I request a public hearing on the  
sewer + water utility services in Cooke  
County.

my name: Ella Mae Bohmer

address 302 N Sycamore

Menster, TX 76252

phone 940-759-4399

cell 940-736-3778

RECEIVED

NOV 14 2005

TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY

Dear Austin,

I am a Land owner in Cooke County in which you sent a letter about "to provide water/sewer utility service in Cooke County" - in Lindsay area, (CCN #s 13025 + 20927)

I'm not sure what this means cause I already have these thing and have for some years. Would this affect me in any way? I'm not sure I want a hearing but if there is one I would like to be there, please.

How does this affect people who are already in this area and are set up. I hope this doesn't include us in the Lindsay city limits cause I don't want that.

P.s my dad feels the same and would like to know more,  
Herbert Schmidt/Kuter  
3416 C.R. 409  
Gainesville Tx 76240  
940-665-7256

Thanks, Kathy Hacker  
Kathleen M. Hacker  
1230 CR 434  
Gainesville Tx 76240  
940-668-7088

November 5, 2005

Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and District Section, MC-153  
P.O. Box 13087  
Austin, Texas 78711-3087

In response to the application filed by  
the Town of Lindsay to amend Nos. 13025  
and 20927 with the Texas Commission on  
Environmental Quality to provide water  
and sewer utility service in Cook County,  
I am very much against this pro-  
posal!

Darleen B Hubner  
2127 CR327  
Lancaster, Texas 76740

I would ~~be~~ appreciate it, if I can be notified  
of proceedings.

Jimmy & Barbara Mosman  
1290 CR 418  
Gainesville, TX 76240

November 3, 2005

Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section, MC-153  
P.O. Box 13087  
Austin, TX 78711-3087

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d  
35097 C

To Whom It May Concern;

Our names are Jimmy & Barbara Mosman, and mailing address is 1290 County Rd 418, Gainesville, TX 76240. We are located north of downtown Lindsay, Texas. We can be reached during the daytime by cell phone number: (940)727-2940.

The Town of Lindsay has filed an application to amend CCN Nos. 13025 and 20927 with the Texas Commission on Environmental Quality to provide water & sewer utility service in Cooke County.

We request a public hearing. We would be adversely affected by the granting of the application for a CCN, as it is not a convenience, nor a necessity for us. We have our own water and sewer and therefore we do not need to acquire any utilities from the Town of Lindsay. We do not have any desire for the Town of Lindsay to "come out to the country" and try to run our lives and also raise our taxes by eventually putting us in the city limits when they get the application granted.

We would be satisfied if The Town of Lindsay would stay how it is presently, and leave me and my family alone.

Thank You for your time and consideration of this important matter.

Sincerely,

*Jimmy & Barbara Mosman*

Jimmy & Barbara Mosman

NOV 07 2005

To: Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section, MC 153  
P.O. Box 13087  
Austin, TX 78711-3087

25386.0

From: Bradley Franklin & Ronda Lynn Metzler  
6030 W. Hwy 82  
Gainesville, TX 76240  
(940)668-6477

The Town of Lindsay has filed an application to amend CCN Nos. 13025 and 20927 to provide water and sewer utility service in Cooke County. I, Bradley Franklin Metzler **request a public hearing** regarding this matter. As a property owner, outside the city limits, I would adversely be affected by the granting of the application for a CCN. Since 2001 I have had a water well drilled and two septic systems put in on my property, so I see no benefit for me. I purchased this property because it was outside the city limits. I feel that the granting a CCN would be the first step to placing my property inside the city limits, thus increasing my property tax. I would like to have my property excluded from this request.

RECEIVED  
MAY 10 2001  
CITY OF LINDSAY  
CLERK

*Notice to Landowners*  
**NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)  
TO PROVIDE WATER/SEWER UTILITY SERVICE IN COOKE COUNTY**

To:

Bradley Franklin & Ronda Lynn Metzler  
6030 Hwy 82  
Gainesville, TX 76240

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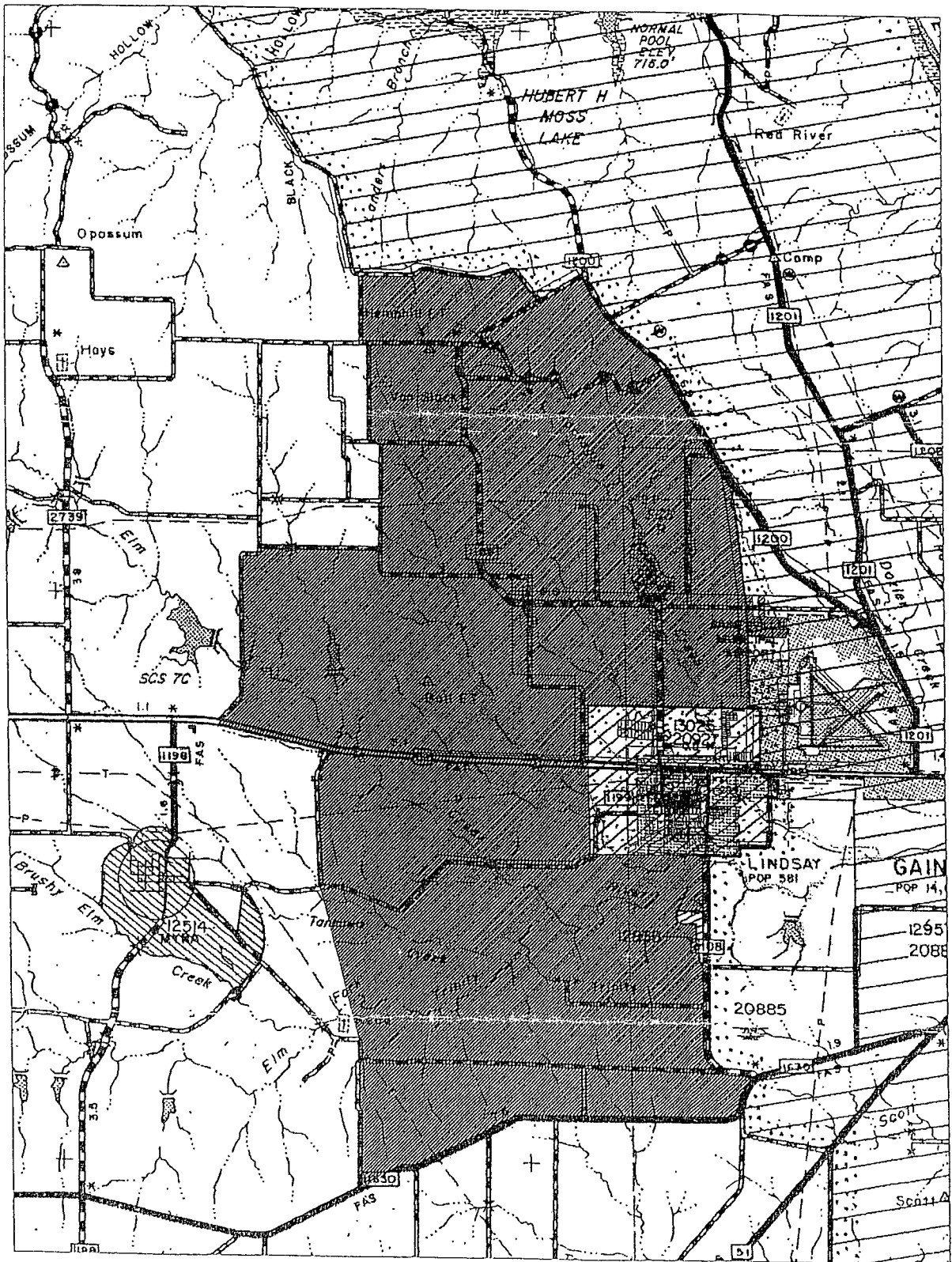
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CITY OF LINDSAY

# LINDSAY PROPOSED WATER AND SEWER CCN

- LINDSAY PROPOSED CCN AREA
- REQUESTS FOR SERVICE LOCATIONS

October 31, 2005

To Whom It May Concern:

I, Kenneth J. Thurman do request for a hearing to get water & sewer utility service in Cooke County in our area.  
We need the water service and sewer service in our area.

Name: Kenneth J. Thurman  
1733 CR 404  
Gainesville, Texas 76240

This will effect us to the fact that our property is surrounded by land that could maybe be using these services at some time including us.

Sincerely yours,

*Kenneth J. Thurman*  
Kenneth J. Thurman

RECEIVED

NOV 02 2005

TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY