

Any order in this matter must address refunds of these overcharges, irregardless of what rates are approved. It is unfair to expect ratepayers to review years of their past billings and request these refunds. The applicant should be ordered to refund with interest all of the late charges it has made that are not in compliance with its tariff. It should be penalized if it fails to do so.

It is critical that late charges in the future give Cresson's rate payers 30 days to make payment. The evidence shows the applicant mails its billings from a post office other than the rural post office serving the applicant's customers. Due to the delays these mailing practices create, ratepayers usually only have a window of a few days to pay their bills unless a 30 day requirement is imposed. Cresson either recommends that the time period for a \$5.00 late charge be made 30 days, or that the applicant be ordered to mail his future billings from the Cresson post office. The Texas Attorney General in opinion H - 1289 reiterates that utility late charges are not to be punitive but to approximate as nearly as possible the cost to the utility of their collection. The applicant provided no evidence to show that its collection costs exceed \$5.00 and provides no explanation for its practice of ignoring the late charge provisions in its tariff.

CONCLUSION

The evidence shows that the applicant one day decided it would like to make more money from its water utility. It noticed that a nearby municipal water system was charging higher water rates than it was. It filed a rate change increase for the nearby water system rates increased by 10% just for good measure. Never mind that there were few similarities between its system and the municipal system. Never mind that other nearby water system's rates were lower. Since its rate increase was challenged, the regulatory authorities have spent much time and effort trying to see if such a rate increase is justified. It has been found not to be justified. The only thing the applicant has proved is that it would like to make more money.

The evidence has shown a total disdain by the applicant for TCEQ rules and procedures. It has shown a total disdain for controlling statutes, ignoring them at its own discretion. It failed to file a required certificate to bring the current appeal under an assumed name, and hence the TCEQ has no jurisdiction to hear this appeal. The applicant ignored the statute prohibiting it from filing two statements of intent and rate increase requests within twelve months, and hence the TCEQ has no jurisdiction to hear this appeal of an illegal filing. The applicant refuses to improve the quality of its water, yet fails to get the required permission from the TCEQ ED to exceed

secondary drinking water standards. The applicant promised to keep its records and books in accordance with the applicable statutes and rules when it applied for its CCN. It refuses to keep that promise. The applicant promised to establish and fund a reserve account for future maintenance when it applied for its CCN. Instead of keeping this promise it has repeatedly taken rate payers money from its water company and used it for the owners personal use. The applicant ignores its current tariff, assessing late charges as it wishes irregardless of its tariff and threatening ratepayers with disconnection if they don't pay its illegal late charges. The applicant refuses to maintain its system, allowing electricity saving equipment to remain in disrepair for over a year.

Now the applicant asks that it be rewarded by attempting to use a regulatory process to give it a return on its investment, even though by any definition that investment is contributed by the developer. It hopes the ALJ will ignore the millions of dollars of real estate sales it has enjoyed in large part because of these developer contributions.

Cresson's citizen rate payers deserve better than this from their regulated water company. They deserve to have the statutes, rules, and regulations followed. Cresson spent considerable money to determine if the applicant was entitled to a rate increase. It employed an independent third party who found that applicant was entitled to an increase, but certainly no where near the magnitude it wanted. After months of further scrutiny, Cresson's rate increase order is effectively sustained.

The ALJ should grant Cresson's motion to dismiss the current appeal. The ALJ should grant the HOA and Perdue's motion to dismiss the current appeal. If the ALJ refuses to grant either of these motions, it should order these rates:

Monthly Base Rate including 0 gallons:

Residential Meter Size:	5/8" or 3/4":	\$ 42.37
	1":	\$ 70.61
	1 1/2":	\$141.32
	2":	\$226.10
	3":	\$254.15
	4":	\$706.55

Gallonage charges, including a 22 cent per 1,000 gallon pass through of the Upper Trinity Groundwater District Conservation District fee:

\$1.21 for each 1,000 gallons over the minimum for the first 15,000 gallons,
\$2.53 per 1,000 gallons for the next 15,000 gallons,
and \$3.33 per 1,000 gallons thereafter.

Miscellaneous fees:

Tap Fee:	\$529.48
Reconnect Fee, non payment:	\$25.00
Customer Request:	\$42.36
Transfer Fee	\$35.00
Late Charge	\$ 5.00, assessed if payment not received within 30 days of mailing
Returned Check Charge:	\$26.47
Deposit	\$50.00
Meter Test Fee	\$26.47

The ALJ should order the applicant to immediately refund the illegal late charges it has required its ratepayers to bear. The ALJ should deny allowing the applicant to recover any rate case expenses.

Respectfully submitted,
THE CITY OF CRESSON



Ron Becker, Authorized Representative

CERTIFICATE OF SERVICE

I, Ron Becker, hereby certify that on the 23rd day of May, 2013, a true and correct copy of this document was transmitted by electronic mail, in accordance with SOAH Order No. 1, to the parties listed below:

Bridget Bohac, Chief Clerk
TCEQ, Office of the Chief Clerk
P. O. Box 13087
Austin, Texas 78711 - 3087

Harold Scott Perdue
137 Constellation Drive
Cresson, Texas 76035

Kayla Murray
TCEQ, Environmental Law Division
P. O. Box 13087
Austin, Texas 78711 – 3087

Lambeth Townsend
Eileen McPhee
Lloyd Gosselink Rochelle & Townsend, P. C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2478

Scott Humphrey
TCEQ, Office of Public Interest Counsel
P. O. Box 13087, MC – 103
Austin, Texas 78711 – 3087



Ron Becker

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 23, 2013

The Honorable William G. Newchurch
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Re: Appeal by BFE Water Company of the ratemaking action of the City of Cresson
and Motion for Interim Rate Relief in Parker County, Application No. 37311-A;
SOAH Docket No. 582-12-3250; TCEQ Docket No. 2012-0786-UCR

Dear Judge Newchurch:

Enclosed you will find the Executive Director's closing arguments for the above-referenced matter.

Please contact me should you have any questions.

Thank you,

A handwritten signature in black ink, reading "Kayla Murray", is written over the typed name.

Kayla Murray
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

**SOAH DOCKET NO. 582-12-6250
TCEQ DOCKET NO. 2012-0786-UCR**

APPEAL OF THE CITY OF CRESSON'S ORDER SETTING RATES FOR BFE WATER COMPANY	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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THE EXECUTIVE DIRECTOR'S CLOSING ARGUMENTS

TO THE HONORABLE WILLIAM G. NEWCHURCH, ADMINISTRATIVE LAW JUDGE ("ALJ"), AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS ("SOAH"):

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), and files this Closing Argument in the above-referenced matter.

I. INTRODUCTION

BFE Water Company ("BFE" or "Applicant") is an investor-owned utility providing retail water service in Parker County, Texas under Certificate of Convenience and Necessity ("CCN") No. 12899. On January 27, 2009, BFE filed a rate change application with the City of Cresson ("City"), which, at that time, had original jurisdiction over BFE's water rates. There were some issues regarding the City's surrendering of its jurisdiction to the TCEQ, and as a result, a subsequent application was filed with the TCEQ on October 6, 2009, along with two amendments, filed on November 4 and 9, 2009. It was determined that the City had not surrendered jurisdiction and the TCEQ returned this latter application on May 25, 2010. The City held a preliminary hearing on BFE's water rate increase on November 2, 2011. The City issued a rate order on January 24, 2012. The City passed an ordinance on February 14, 2012, surrendering its jurisdiction over BFE's water rates to the TCEQ. BFE filed a petition with the TCEQ on March 13, 2012, pursuant to Texas Water Code ("TWC") §13.043(a). A preliminary hearing was held on June 7, 2012, at which time the interim rates set out in BFE's May 30, 2012, Motion for Interim Rates were adopted. The following parties were named: the Applicant ("BFE"); the City of Cresson ("City"); Harold Scott Perdue and Bourland Field Estates Homeowners' Association, Inc.; the Executive Director; and the Public Interest Counsel ("OPIC"). A Hearing on the Merits was held April 2-3, 2013.

II. APPLICATION FOR A WATER RATE INCREASE

The commission shall hear an appeal under TWC §13.043(a) de novo. Moreover, pursuant to 30 Texas Administrative Code ("TAC") §291.12, the burden of proof is on the provider of the water service to show that the proposed rate is just and reasonable. The ED has reviewed BFE's application and the supporting documentation that was provided to the TCEQ for inspection. After reviewing the information provided, the ED made recommendations in his pre-filed testimony for a rate which he determined was just and reasonable.¹ This rate was based on the ED's recommended revenue requirement which was designed using operation and maintenance expenses, taxes, annual depreciation, and rate of return. The ED also made recommendations regarding undercharges and rate case expenses.

III. MAIN ISSUES IN CONTROVERSY

The main issues that the ED will address in his closing arguments are income tax requirements, the use of a reserve account, developer contribution, depreciation schedule issues (ground storage tank capacity, fire hydrants, and construction cost estimate), pass through fee and proposed late fee, and rate case expenses. The ALJ also asked the ED to provide an explanation of "public interest."

A. Income tax requirements

Since BFE Water Co. is a d/b/a of BFE Development Corp., it must report its taxes using Schedule C.² It is not required to file its tax return on the same form as BFE Development Corp.³ Because of the Schedule C filing of BFE Water Co.'s operations, Mr. Richard Bourland (owner of BFE) himself is responsible for paying self-employment tax and federal income tax in years the business makes money, and may recover this amount through the cost of service of the water company.⁴

30 TAC § 291.31(b)(1)(D) states that a utility's income tax should be calculated in accordance with TWC § 13.185(f), if applicable. However, TWC § 13.185(f) does not apply to BFE Water Co. because BFE Water Co. is not a member of an affiliated group that is eligible to file a consolidated income tax return.⁵ Corporations, and not individuals or shareholders, benefit from consolidation because the corporate tax rate is applied to corporate entities only. BFE

¹ *Direct Testimony of Brian Dickey*, Pg.17, Lines 1-7.

² This is true if BFE Water Co. is owned by Mr. Bourland. *See Cross Examination of Debi Loockerman*, Tr. Pg. 471, Lines 11-12, 14-16.

³ *Cross-Examination of Debi Loockerman*, Tr. Pg. 471, Lines 11-12; 14-16.

⁴ *Id.*, Tr. Pg. 455, Lines 19-21.

⁵ INTERNAL REVENUE CODE § 1501 states that, "An affiliated group of corporations shall...have the privilege of making a consolidated return ...in lieu of separate returns."

Executive Director's Closing Arguments

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Water Co.'s income and expenses are reported on Schedule C of Mr. Bourland's individual tax return. Because BFE Water Co. is not being treated as a corporation for federal taxation purposes, it was correct to calculate its income tax in the cost of service in accordance with 30 TAC § 291.31 instead of TWC § 13.185(f).

The TCEQ's rules require the ED to include federal income tax on a normalized basis. Normalization is the averaging of depreciation expense that varies dramatically between years (due to income tax regulation) so that the effect of such expense is spread more evenly over a period of years.⁶ This ultimately means that depreciation is calculated on a straight line basis rather than the accelerated basis allowed by the Internal Revenue Code.⁷ By normalizing federal income taxes, the ED stabilizes the rate over a number of years and spreads the tax evenly among customers who are currently obtaining water from BFE Water Co., even though BFE Water Co. may not owe taxes in the current year.⁸ Because the accelerated depreciation taken in the current year will not be available in future years, any tax difference should reverse in future years.

The ED applied a 15% tax rate to BFE Water Co. because this is the lowest possible tax rate for a business corporation. Using this low corporate rate is appropriate because BFE Water Co.'s net income does not exceed \$50,000, which is the lowest tax bracket for a corporation.⁹ Using an individual tax rate is inappropriate because Mr. Bourland has other unrelated sources of income that may cause his individual tax rate to be much higher than 15%.¹⁰ If the ED applied the IRS tax rates for individuals, the customers could end up paying higher rates due to higher federal income tax due based on Mr. Bourland's personal income.¹¹ Therefore, the ED used the 15% as a conservative tax rate based on the fact that Mr. Bourland could have formed a corporation and received this tax rate instead of his personal tax rate; also, it would be unreasonable to charge the customers a higher tax rate simply because Mr. Bourland is in a higher individual tax bracket than a corporate entity.

⁶ "The process of normalization spreads the tax liability more evenly over the years, and matches the estimated normalized liability with the period in which the tax expense would be incurred, if tax laws did not cause variations. . . . If normalization is ignored, the customers using the system now would pay little or no taxes, and those customers using the system in the future would end up paying more taxes. In addition, the actual tax liability could vary wildly from year to year due to tax laws." *Direct Testimony of Debi Loockerman*, Pg. 15, Lines 1-4, 6-9.

⁷ See 26 U.S.C § 179 (2011).

⁸ Due to accelerated depreciation allowed by the tax laws.

⁹ If BFE Water Co.'s income had exceeded the lowest tax bracket, the ED would have applied a varying rate.

¹⁰ When determining federal income taxes, the ED must determine the "reasonable cost of service allowance for federal income taxes actually paid by its shareholders . . . or for taxes it would be required to pay as a conventional corporation, *whichever is less*." *Direct Testimony of Mary Jane Horst*, Inquiry Into the Rates of Suburban Utility Company, PUC Docket No. 0099, Pg. 3, Lines 10-13 (emphasis added).

¹¹ *Direct Testimony of Mary Jane Horst*, Inquiry Into the Rates of Suburban Utility Company, PUC Docket No. 0099, Pg. 5, Lines 21-25.

Executive Director's Closing Arguments

B. Reserve accounts for Investor Owned Utilities (IOUs)

TCEQ rules provide multiple alternative rate methods, including the “cash needs method” of establishing rates.¹² If the utility chooses to use the cash needs method, it must maintain a reasonable cash reserve account.¹³ The cash needs method is the only rate method that requires maintenance of a cash reserve account. IOUs utilizing the standard method of establishing rates are not required to maintain a cash reserve account.¹⁴

BFE utilized the standard rate method provided by TCEQ rules. It did not apply for or utilize the cash needs method. Because no rule or statute requires a utility to maintain a reserve account when not utilizing the cash needs method, BFE is not required to maintain a reserve account.

BFE stated in its CCN application¹⁵ that it intended to maintain a reserve account. However, because the TCEQ rules do not require a utility to maintain a reserve account, BFE's failure to maintain a reserve account does not constitute a violation. In order to maintain a reserve account, a utility must generate excess cash with which to fund it. Mr. Bret Fenner (BFE consultant) testified that most IOUs do not have reserve accounts because most do not have actual reserves with which to fund a reserve account.¹⁶ Ms. Debi Loockerman (expert for the ED) testified that, after her review of BFE's 2008 and 2009 general ledgers, she believes that there was no excess cash built up in the company.¹⁷

C. Developer contribution

Pursuant to 30 TAC § 291.86(c)(2), developer contributions are monies that the developer reimburses to the utility for the construction of the facilities. Developer contributions typically pay for the utility's distribution lines, pumps, and ground storage tanks. Developer contributions are not eligible to earn a return; instead, developer contributed property may only recover depreciation. However, TCEQ rules allow return and depreciation, which may fund note payments. Developer contributions are not intended to be paid back and, accordingly, the presence of notes payable is a strong indication that a plant's assets were not developer contributed.

BFE did not list any developer contributions in either its current application or the 2002 application. Mr. Bourland testified in both his prefiled testimony and at the evidentiary hearing

¹² 30 TEX. ADMIN. CODE § 291.34(d).

¹³ 30 TEX. ADMIN. CODE § 291.34(d)(2)(E).

¹⁴ 30 TEX. ADMIN. CODE § 291.32.

¹⁵ *Direct Testimony of Brian Dickey*, Exhibit ED-BDD-8, Pg. 39.

¹⁶ *Cross-Examination of Brett Fenner*, Tr. Pg. 225, Lines 9-12.

¹⁷ *Direct Testimony of Debi Loockerman*, Pg. 12, Lines 9-11. *See also* *Cross Examination of Debi Loockerman*, Tr. Pg. 477, Lines 21-22, 24.

Executive Director's Closing Arguments

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that he never intended for BFE to report developer contributions.¹⁸ He also testified that the lot prices did not include the cost of the water system.¹⁹ No evidence, such as contracts or other legal documents, was presented during the hearing to show that the sale of the lots would include the cost of the water system. If the cost of the lots had included the cost of the system, the water system would have been paid for by the purchases of the lots and the utility would not have had to make any investment and therefore would not be entitled to a return on its investment. Moreover, in BFE's 1998 Certificate of Convenience and Necessity ("CCN") application, BFE Development Corp. d/b/a BFE Water Co. listed a note payable of \$156,868.00 for its first year of business in its five-year projected balance sheets.²⁰ It also listed a note payment of \$12,839.52.²¹ If BFE did not intend to finance the equipment, then it likely would not have listed a note payable amount or a note payment in the projections. The listing of these notes indicates that BFE's plant was funded through an investment by the owner and not through developer contribution.²²

D. Depreciation schedule issues

1. Ground storage tank capacity

TCEQ rules require public water systems to have a minimum storage capacity of 200 gallons per connection.²³ Therefore, a system with 35 connections, like BFE, must provide 7,000 gallons of storage capacity. BFE has an 84,000 gallon ground storage tank. When the used and useful principle is applied, it indicates that only 8.3% of BFE's ground storage tank is used and useful. However, as reflected in the billing registers,²⁴ the BFE system has a very high level of per capita water consumption. The May billing register shows that the 34 connections²⁵ used a total of 374,040 gallons for that 31-day period. That is an average of 354 gallons per connection per day (374,040 gallons ÷ 34 connections ÷ 31 days). The billing register for June shows an average usage of 647 gallons per connection per day (660,420 gallons ÷ 34 connections ÷ 30 days). July shows an average usage of 1,078 gallons per connection per day (1,136,790 gallons ÷ 34 connections ÷ 31 days). These three months provide a snapshot of BFE's high water usage and show that BFE's customers greatly exceed the minimum storage requirement of 200 gallons per connection.

¹⁸ *Direct Testimony of Richard Bourland*, page 5, lines 13-15; Cross-Examination of Richard Bourland, Tr. Pg. 18, Lines 21-23.

¹⁹ Cross-Examination of Richard Bourland, Tr. Pg. 18, Lines 24-25 through Pg.19, Line 1.

²⁰ *Direct Testimony of Brian Dickey*, Exhibit ED-BDD-8, BFE Water Co. Projected Balance Sheet, Pg. 41.

²¹ *Id.* at page 40.

²² Cross-Examination of Debi Loockerman, Tr. Pg. 487, Lines 10-13.

²³ 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(ii).

²⁴ *Direct Testimony of Brian Dickey*, Exhibit ED-BDD-6.

²⁵ BFE had 34 connections until November 2008, when it acquired an additional connection.

In addition, the storage tank's extra capacity allows for the stored water to vent the trapped hydrogen sulfide gas before it goes to the distribution system. While the allowable size of a utility's ground storage tank is determined on a case-by-case basis, the record reflects that BFE has both hydrogen sulfide issues²⁶ and high water usage.²⁷ These two factors – high water usage and venting of the trapped gas – justify BFE having an 84,000 gallon ground storage tank. Furthermore, as Mr. Brian Dickey (expert for the ED) stated in his testimony, reducing the used and useful portion of the tank from 100% to 8.3% would decrease the base rate by \$5.72 which would be inconsequential since BFE is able to justify a higher base rate than it proposed.

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2. *Fire hydrants*

A retail public utility is defined as, "Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."²⁹ There is no TCEQ rule that requires a retail public utility to provide anything other than potable water service or sewer service. Since fire protection is not potable water service, BFE is not required to provide fire protection.

The ED did not recommend removing the fire hydrants from the cost of service because BFE stated they were used as flush valves.³⁰ Mr. Becker testified that the fire department has used the fire hydrants for fire protection, as well as to refill the fire department's 300-gallon and 600-gallon trucks.³¹ Mr. Becker's testimony further supports the ED's position that the fire hydrants should not be removed from the cost of service. Therefore, BFE should be allowed to recover its investment in its fire hydrants through depreciation and a return.

3. *Construction cost estimate fees*

The construction cost estimate submitted by BFE included 10% in engineering and legal fees for the water plant.³² Since Mr. Dickey was unable to locate the actual invoices during his inspection of the utility, he relied on Mr. Fenner's trending analysis.³³ This trending analysis led

²⁶ Cross-Examination of Scott Perdue, Tr. Pg. 402, Lines 10-12; Cross-Examination of Ronald Becker, Tr. Pg. 336, Lines 9-25 and Tr. Pg. 337, Lines 1-5.

²⁷ *Direct Testimony of Brian Dickey*, Exhibit ED-BDD-6.

²⁸ *Id.*, Page 11, Lines 21-23 through Page 12, Lines 1-4.

²⁹ 30 TAC § 291.3(40) (emphasis added).

³⁰ *Direct Testimony of Brian Dickey*, Page 8, Lines 20-22.

³¹ Cross-Examination of Ron Becker, Tr. Pg.338, Lines 13-19; Page 339, Lines 5-7.

³² *Direct Testimony of Brian Dickey*, Exhibit ED-BDD-11.

³³ Cross-Examination of Brian Dickey, Tr. Pg. 507, Lines 17-21.

Mr. Dickey to conclude that 10% was an appropriate amount to charge for such fees.³⁴ Therefore, the ED allowed the 10% in engineering and legal fees.

E. Pass through fee and proposed late fee

Mr. Bourland's prefiled testimony contained BFE's October 6, 2009 rate change application.³⁵ On the notice dated "November 10, 2009, 12:05AM, page 3" at the top,³⁶ three gallonage charges are listed: \$3.22 per 1,000 gallons for the first 5,000 gallons; \$3.72 per 1,000 gallons up to 15,000 gallons; and \$4.22 per 1,000 gallons thereafter. There is an asterisk next to the \$3.22 amount, and at the bottom of the page next to another asterisk is written, "Includes pass through fee for Upper Trinity Groundwater Conservation District of \$.22 per 1,000 gallons."

There was discussion at the evidentiary hearing whether the gallonage charges included the pass through fee or not.³⁷ The notice is not clear on this issue. It appears that the pass through fee could be included in the first tier (\$3.22) but not necessarily in the other two (\$3.72 and \$4.22). When Mr. Dickey designed the ED's proposed rates, he did so with the assumption that the pass through fee was not included in the gallonage charges. However, if the pass through fee is included in the gallonage charges, it should not otherwise be recovered from the customers. The ED defers to the ALJ on how to decide this issue. If the ALJ determines that the pass through fee was not included in the rates, the ED recommends that it be a separate line item on the customers' bills.

In addition, utilities are allowed to charge a late fee of either \$5.00 or 10%.³⁸ BFE proposed a 10% late fee in its October 6, 2009 application. This was a change from the current \$5.00 late fee that was in the City's October 26, 2011 Order. However, since the City has surrendered its jurisdiction over BFE to the TCEQ,³⁹ the ED now has the authority to approve this late fee as a minor tariff change.⁴⁰ Therefore, the ED recommends approving the 10% late fee as part of the current proceeding in the interest of administrative efficiency.⁴¹

³⁴ *Id.*, Pg. 508, Lines 2-3.

³⁵ *Direct Testimony of Richard Bourland*, Attachment A.

³⁶ *Id.* at Pg. 44.

³⁷ Cross-Examination of Brian Dickey, Tr. Pgs. 525-530.

³⁸ 30 TEX. ADMIN. CODE § 291.87(c).

³⁹ *Direct Testimony of Brian Dickey*, ED-BDD-14.

⁴⁰ 30 TEX. ADMIN. CODE § 291.21(b)(2).

⁴¹ *Direct Testimony of Brian Dickey*, Page 18, Lines 4-5.

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F. Rate case expenses

The ED analyzes rate case expenses based on which expenses or amounts are reasonable, necessary, and in the public interest.⁴² In addition to the reasonableness and necessity of the work performed, the ED focuses on removing the incentive for utilities to run up exorbitant rate case expenses that may be passed on to customers and discouraging utilities from engaging in legal strategies that exhaust protestants' resources and ability to employ adequate representation.⁴³ The ED reviews each rate case's expenses separately, according to specific facts of each case, in order to determine what is reasonable in that situation.⁴⁴

When forming the ED's recommendation on BFE's allowable rate case expenses, Ms. Loockerman relied on her experience analyzing rate cases for both the TCEQ and the private sector to indicate which amounts meet the commission's regulatory standards.⁴⁵ She also utilized the expertise of a TCEQ attorney when considering reasonable attorney fees and hours.⁴⁶

BFE's attorneys bill between \$200 and \$330 per hour for attorney fees.⁴⁷ While noting that the \$330 per hour attorney fee is high for a system of BFE's size and should be limited where possible, Ms. Loockerman concluded that the hourly rates are reasonable.⁴⁸ She reached this determination based on her own experience as well as that of TCEQ attorneys, a comparison of rates for similar work in Travis County, and review of a survey of attorneys' fees published by the Texas State Bar Association.⁴⁹ Ms. Loockerman testified that she believed BFE attempted to control its rate case expenses by using associate attorneys and paralegals where possible,⁵⁰ and that the amount of time billed by the assistant and lead attorney were appropriate for a case such as this.⁵¹

While the ED concludes that BFE's attorneys' hourly rates are reasonable, he recommends reducing the number of hours that should be recovered. Hours billed between September 2011 and October 2011 for the purpose of arguing that the City of Cresson lost jurisdiction through its inaction are not reasonable or necessary, and should be disallowed.⁵²

⁴² "A utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest." 30 Tex. Admin. Code § 291.28(7); see also *Direct Testimony of Debi Loockerman*, Pg. 16, Lines 9-11.

⁴³ *Direct Testimony of Debi Loockerman*, Page 18, Line 20-Pg. 19, Line 7.

⁴⁴ *Id.*, Pg. 20, Lines 6-12.

⁴⁵ *Id.*, Pg. 16, Line 2-Pg. 18, Line 13.

⁴⁶ *Id.*, Pg. 17, Lines 14-16.

⁴⁷ *Id.*, Pg. 19, Line 15.

⁴⁸ *Id.*, Pg. 19, Lines 14-18.

⁴⁹ *Id.*, Pg. 20, Lines 2-4.

⁵⁰ *Id.*, Pg. 20 Lines 14-16.

⁵¹ *Id.*, Pg. 20, Lines 16-21.

⁵² *Id.*, Pg. 21, Lines 4-8.

This reduction of \$2,973 results in a recommended recovery of \$98,136.97, or \$101,107.97 less \$2,973, for legal fees.⁵³

The ED concluded that Mr. Fenner's consultant rates are reasonable for this type of case.⁵⁴ The limited number of hours billed for travel is also reasonable.⁵⁵ However, the ED recommends lowering the hourly travel charge from \$60 per hour to \$30 per hour because \$60 per hour is high according to Ms. Loockerman's experience.⁵⁶ This constitutes a \$210 reduction in total travel time,⁵⁷ resulting in a recommended consultant expense of \$6,617.58 less \$210, or \$6,407.58.⁵⁸

At the time of the hearing, the estimated amount of rate case expenses totaled \$130,611.55, which included \$3,366 contract secretary fees, \$1,200 escrow fees, and \$18,320 fees for Mr. Bourland's involvement in the case.⁵⁹ Ms. Loockerman testified that the legal expenses incurred prior to the evidentiary hearing were reasonable in light of the litigation and circumstances of this case.⁶⁰ Ms. Loockerman did not recommend that Mr. Bourland's fees, the escrow fees, or the contract secretary hours be included in the rate case expenses. The ED could find no invoice that included the \$1,200 escrow fee.⁶¹ Therefore the ED recommends excluding the escrow fee because BFE has not met the burden of proof to show that the expense was properly incurred and is just and reasonable and in the public interest.

BFE Exhibit 4 includes rate case expense fees charged by Mr. Bourland in the amount of \$18,320. There is no evidence that these amounts were ever paid or recorded as a liability. Mr. Bourland is an affiliate of BFE. The contract secretary was Mr. Bourland's late wife and a utility of this size would normally prepare its own rate case expense calculations with employees it currently pays. Furthermore, the utility has the burden of proof to show reasonableness and necessity of expenses, and offered no evidence that these charges from affiliates met the requirements of TWC § 13.185(e), which requires "a finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliate or divisions for the same item or items, or to unaffiliated persons or corporations." Therefore, the ED has excluded the affiliated expenses from rate case expenses.

⁵³ *Id.*, Pg. 21, Lines 17-19, and exhibit BFE 4, revised on 4/1/2013.

⁵⁴ *Id.*, Pg. 22, Line 9.

⁵⁵ *Id.*, Pg. 22, Line 4.

⁵⁶ *Id.*, Pg. 22, Lines 4-6.

⁵⁷ *Id.*, Pg. 22, Lines 6-7.

⁵⁸ *Id.*, Pg. 22, Lines 12-13; BFE Exhibit 4, revised on 4/1/2013.

⁵⁹ BFE Exhibit 4.

⁶⁰ *Direct Testimony of Debi Loockerman*, Pg. 23, Lines 11-14.

⁶¹ BFE Exhibit 4 includes the escrow fee on September 2011 and October 2011; however, the invoices show no escrow fee.

The summary of the ED's recommended rate case expenses after the evidentiary hearing is:

Legal Fees	\$98,136.97
Consultant fees	\$6,407.58
Mr. Bouland's fees	0.00
Contract Secretary fees	0.00
Escros fees	0.00
<hr/>	
ED recommended rate case expenses	\$104,544.55

Because BFE has not provided estimates of rate case expenses to be incurred during and after the hearing for the ED to review, and has not provided any updates to invoices since the evidentiary hearing on amounts due, the ED cannot take a position on any rate case expenses incurred after the submission of BFE Exhibit 4 on April 1, 2013 at this time.

The ED often recommends that a utility be allowed to recover rate case expenses over a two year period (24 months).⁶² In cases where the projected rate case expenses are unusually large, however, the ED may recommend a longer recovery period in order to reduce monthly charges.⁶³ Due to the low number of connections and the potentially high amount of allowable rate case expenses in this case, the ED recommends that rate case expenses be paid out over a period of five years (60 months).⁶⁴ If recovered over a 24-month period, each ratepayer could be required to pay \$104,544.55 divided by 35 connections divided by 24 months, or \$124.46 per month.⁶⁵ Recovery over a 60-month period would result in \$104,544.55 divided by 35 connections divided by 60 months, or \$49.78 monthly charge per customer.⁶⁶

G. Public interest

There was discussion during the evidentiary hearing regarding how the TCEQ defines "public interest."⁶⁷ 30 TAC § 291.31 states that a utility's cost of service may not include "any new expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest . . .".⁶⁸ However, neither the TCEQ's rules nor state statutes provide a test or even a list of factors defining "public interest." This is because the public interest varies with each rate case, and any attempt to create an all-inclusive checklist for determining the public interest at any given time would be futile. The ED addresses the public interest on an ad hoc basis; accordingly,

⁶² *Direct Testimony of Debi Loockerman*, Pg. 22, Lines 15-16.

⁶³ *Id.*, Pg. 22, Lines 16-17.

⁶⁴ *Id.*, Pg. 22, Lines 19-20.

⁶⁵ BFE Exhibit 4.

⁶⁶ BFE Exhibit 4.

⁶⁷ Cross-Examination of Brian Dickey, Tr. Pg.521, Lines 1-7.

⁶⁸ 30 TEX. ADMIN. CODE § 291.31(b)(2)(I).

how we define public interest must be flexible enough to be used in many different types of cases.

Under 30 TAC § 291.28(7), utilities may “recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest.”⁶⁹ A definitive list of reasonableness and necessity factors used to determine public interest cannot be devised “because the public interest needs to be flexible to allow maximum ability of the Commission to protect the public interest inherent in the rates and services of public utilities.”⁷⁰ However, in this case, ED staff looked at two factors to evaluate the public interest: removing the incentive for a utility to allow rate case expenses to go as high as possible because of the certainty that the utility will not have to pay any of the fees; and discouraging the potential for the use of trial strategies that exhaust the resources of protestants, thereby weakening their ability to pay what is necessary for adequate representation.⁷¹

Texas courts have held that a public interest determination is one that state agencies are able and entitled to make.⁷² “The agency’s findings, inferences and conclusions are presumed to be supported by substantial evidence, and the appealing party bears the burden of showing a lack of substantial evidence.”⁷³ Courts have also held that it is “within the agency’s discretion to make reasonable ad hoc policy determinations consistent with its statutory mandate.”⁷⁴ Determining the public interest is a policy consideration, and the courts allow agencies to make these types of policy decisions without requiring substantial supporting evidence in the record.⁷⁵ The legislature did not provide a definition or concrete test for determining public interest. Accordingly, an agency’s action based on its determination of public interest in the absence of defined factors is reasonable and not arbitrary and capricious.⁷⁶

TCEQ employees use the distinct facts of the case and their own personal knowledge and experience to determine what is in the public interest. During their testimony, Ms. Loockerman and Mr. Dickey explained their recommended amounts of rate case expense and cost of service.

⁶⁹ 30 TEX. ADMIN. CODE § 291.28(7).

⁷⁰ *Direct Testimony of Debi Loockerman*, Pg. 18, Lines 16-18.

⁷¹ *Direct Testimony of Debi Loockerman*, Pg. 19, Lines 1-7.

⁷² *Indus. Util. Serv., Inc. v. Tex. Natural Res. Conservation Comm’n*, 947 S.W.2d 712,717 (Tex. App. Austin 1997, writ denied).

⁷³ *Indus. Util. Serv., Inc. v. Tex. Natural Res. Conservation Comm’n*, 947 S.W.2d 712,717 (Tex. App. Austin 1997, writ denied) citing *Tex. Health Facilities Comm’n v. Charter Medical-Dallas, Inc.*, 665 S.W.2d 446, 453 (Tex.1984).

⁷⁴ *Indus. Util. Serv., Inc. v. Tex. Natural Res. Conservation Comm’n*, 947 S.W.2d 712,717 (Tex. App. Austin 1997, writ denied) citing *West Tex. Util. v. Office of Pub. Util. Counsel*, 896 S.W. 2d 261, 272 (Tex. App. – Austin 1995, no writ).

⁷⁵ *West Tex. Util. Co. v. Office of Pub. Util. Counsel*, 896 S.W. 2d 261, 272 (Tex. App. – Austin 1995, no writ).

⁷⁶ *AEP Tex. Cent. Co. v. Pub. Util. Comm’n of Texas*, 286 S.W.3d 450, 474 (Tex. App.—Corpus Christi 2008, pet. denied).

When forming these recommendations, they took into account aspects of the public interest that are unique to this case. Their testimony as agency employees fulfills the evidentiary requirement and is the type of public interest consideration intended by legislators.

IV. CONCLUSION


The ED concludes that the rates proposed by BFE recover the cost of service and are just and reasonable. As such, the ED respectfully requests that the Judge order the rates proposed by BFE: a base rate of \$38.50 (5/8 x 3/4 meter), with gallonage charges of \$3.22 per 1,000 gallons for 0-5,000 gallons; \$3.72 per 1,000 gallons for 5,001-15,000 gallons; and \$4.22 per 1,000 gallons for above 15,001 gallons. The ED defers to the ALJ to determine if these rates already include the Upper Trinity Groundwater Conservation District pass through fee of \$0.22 per 1,000 gallons. Reasonable rate case expenses should be surcharged over the lesser of a five year period or the point at which the allowed rate case expense has been recovered.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

Robert Martinez, Director
Environmental Law Division

By 

Kayla Murray, Staff Attorney
Environmental Law Division
State Bar of Texas No. 24049282
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
Phone: 512.239.4761
Fax: 512.239.0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Certificate of Service

I certify that on May 23, 2013, a copy of the foregoing document was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk and State Office of Administrative Hearings and sent by first class, agency mail, electronic mail, and/or facsimile to the persons on the mailing list below.

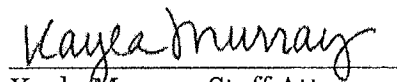
Office of the Chief Clerk:
Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Fax: (512) 239-3311

Representing BFE Water Company:
Lambeth Townsend
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2478
Fax: (512) 472-0532
ltownsend@lglawfirm.com

Representing the Office of Public Interest Counsel:
Scott Humphrey
Texas Commission on Environmental Quality
P. O. Box 13087, MC-103
Austin, Texas 78711-3087
Fax: (512) 239-6377
scott.humphrey@tceq.texas.gov

Representing City of Cresson
Ron Becker
123 Concorde Circle
Cresson, Texas 76035
Fax: (817) 396-4398
beckerr@yahoo.com

Representing self and Bourland Field Estates
Homeowners' Association
Harold Scott Perdue
137 Constellation Dr.
Cresson, Texas 76035
sperdue@mac.com


Kayla Murray, Staff Attorney

**SOAH DOCKET NO. 582-12-6250
TCEQ DOCKET NO. 2012-0786-UCR**

APPEAL OF THE CITY OF CRESSON'S ORDER SETTING RATES FOR BFE WATER COMPANY	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**BFE WATER COMPANY'S RESPONSE TO HOA/PERDUE
MOTION TO REOPEN THE RECORD**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

BFE Water Company opposes the Motion to Reopen the Record for Admission of Perdue Exhibit 5 ("Motion") filed by Harold Scott Perdue, for himself and the Bourland Field Estates Homeowners' Association, Inc. ("Perdue/HOA"). Despite the date on the Motion's certificate of service, BFE Water Company was served with the Motion on May 14, 2013. Therefore, this Response is timely filed.

No good cause exists to admit Perdue Exhibit 5. The water bills that comprise Perdue Exhibit 5 existed at the time of the hearing. Nothing prevented Mr. Perdue from offering the exhibit at the hearing. Mr. Perdue did not offer the exhibit at the hearing. Therefore, no good cause exists to reopen the record to admit Perdue Exhibit 5.

Further, Perdue Exhibit 5 does not establish what Mr. Perdue purports to prove with the proffered exhibit. While it is unclear from the Motion, BFE Water Company interprets the Motion to be referencing the discussion of whether the groundwater conservation district fee is included in the gallonage rate or is a separate pass through. The bills offered by Mr. Perdue as Perdue Exhibit 5 do not demonstrate whether BFE Water Company included the groundwater conservation district fee in the gallonage charge or as a pass through charge. The bills do not include a breakdown between the meter charge and the gallonage charge.

Additionally, the relief sought by Mr. Perdue is unclear. Mr. Perdue purports not to request “interpretation of this Exhibit” to be admitted.¹ Mr. Perdue states that parties may use this information in making their written closing statements. However, parties may not rely upon facts not in evidence in their closing statements.

Finally, it is disingenuous for Perdue/HOA to move to reopen the record considering the vehement opposition that Mr. Perdue filed in response to BFE Water Company’s Motion to Reopen the Record for Admission of BFE Exhibit 13. In that response, Mr. Perdue claimed that “[t]hese proceedings will continue indefinitely if the record is repeatedly reopened when requested by any of the parties....”²


Perdue Exhibit 5 will simply confuse the record and does not establish what Mr. Perdue purports it will establish. No good cause exists to admit the evidence. Therefore, the Perdue/HOA Motion should be denied.

¹ Motion at 1.

² Scott Perdue’s Reply to BFE Water Company’s Motion to Reopen the Record for Admission of BFE Exhibit 13 at 2 (Apr. 14, 2013).

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5830
Facsimile: (512) 472-0532



LAMBETH TOWNSEND
State Bar No. 20167500

EILEEN MCPHEE
State Bar No. 24060273

ATTORNEYS FOR BFE WATER COMPANY

CERTIFICATE OF SERVICE

I, Eileen L. McPhee, hereby certify that on this 21st day of May, 2013, a true and correct copy of this document was transmitted by the method shown, in accordance with SOAH Order No. 1, to the parties listed below:

Bridget Bohac, Chief Clerk
TCEQ, Office of the Chief Clerk
P. O. Box 13087
Austin, Texas 78711-3087
Via Electronic Mail

Scott Humphrey
TCEQ, Office of Public Interest Counsel
P. O. Box 13087, MC-103
Austin, Texas 78711-3087
Via Electronic Mail

Ron Becker
City of Cresson
123 Concorde Circle
Cresson, Texas 76035
Via Electronic Mail

Scott Perdue
Bourland Field Estates
Homeowners' Association
137 Constellation Drive
Cresson, Texas 76035
Via Electronic Mail

Kayla Murray
TCEQ, Office of the Executive Director
P. O. Box 13087, MC-173
Austin, Texas 78711-3087
Via Electronic Mail



EILEEN L. MCPHEE

SOAH DOCKET NO. 582-12-6250

TCEQ DOCKET NO. 2012-0786-UCR

**THE CITY OF CRESSON'S RESPONSE
TO
BFE WATER COMPANY'S PETITION
FOR REVIEW OF THE CITY OF CRESSON'S
ORDER MAKING A FINAL DETERMINATION
OF BFE WATER COMPANY'S RATES**

INTERIM RATE ISSUES

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

2012 MAY 31 AM 10:27

CHIEF CLERKS OFFICE

**SOAH DOCKET NO. 582-12-6250
TCEQ DOCKET NO. 2012-0786-UCR**

**APPEAL OF THE CITY OF CRESSON'S
ORDER SETTING RATES FOR BFE WATER COMPANY**

I. INTRODUCTION

BFE Water Company, Applicant and Petitioner, has appealed the rate making action of the City of Cresson and requests interim rate relief. A notice issued on May 11, 2012, by the Texas Commission on Environmental Quality (TCEQ) states that a preliminary hearing on this appeal will be held by the State Office of Administrative Hearings (SOAH) on June 7, 2012. Based upon this notice, interim rates in this matter will be considered in this preliminary hearing. The City of Cresson (Cresson) responds to BFE's appeal and urges the SOAH to not take the rare step of setting interim rates during this appeal. BFE did not propose any interim rates other than those in its rate change application. The SOAH should allow the status quo (the rates determined by Cresson to be just and reasonable) to continue during the consideration of this appeal.

BFE Water Company also has appealed on jurisdictional issues. Should the SOAH determine either BFE Water Company did not make a legal rate increase application, then consideration of interim rates or final rates is moot.

II. BACKGROUND FACTS

BFE Development Corp. (BFE) is incorporated. BFE Water Company is not incorporated but exists as BFE Development Corp. doing business as BFE Water Company.¹ After notice and hearing, in which BFE participated, Cresson made a final determination of just and reasonable rates. BFE sought a rate increase of approximately 61% over its rates then in effect. The TCEQ, to which BFE initially submitted its application, internally determined that the rates requested by BFE were not justified on preliminary review of the cost of service.² Using the same method as the TCEQ used in its preliminary analysis, the rates approved by Cresson are an increase of 8.4% over BFE's previous rates. Cresson approved 13.8% of the increase BFE requested.³

¹ See Exhibit 1, attached hereto and incorporated herein by reference.

² See Exhibit 2, attached hereto and incorporated herein by reference.

³ See Exhibit 3, attached hereto and incorporated herein by reference.

CHIEF CLERKS OFFICE

2012 MAY 21 AM 10:29

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

III. ARGUMENT AND AUTHORITIES

The Texas Water Code Section 13.043 provides that this appeal be de novo. Accordingly, the TCEQ upon recommendation of the SOAH has the same authority to set interim rates pending a final determination as did Cresson. Section 13.187 provides:

(1) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect until a final determination is made on the proposed rate.

BFE has the burden of proof to show that it will suffer irreparable harm if it isn't granted interim rates and that there is a substantial likelihood that its recommended rates will be ultimately approved.

A. BFE'S PROPOSED RATES REQUEST A RETURN ON DEVELOPER CONTRIBUTIONS WHICH WILL NOT LIKELY BE APPROVED

The substantial difference between the rates requested by BFE and those found to be just and reasonable by Cresson concerns the request by BFE that it be allowed to enjoy a 7% annual return on an invested capital of \$191,463, or \$13,402 per year.⁴ This amount is 34% of the revenue requirement to which BFE claims it is entitled. Further, BFE claims no developer contributions to be subtracted from its invested capital.⁵ In its application, it claims an outstanding loan balance of \$40,968 from BFE Development. However, this loan is "from itself," since BFE Water is simply BFE Development d. b.a. BFE Water.⁶ Upon questioning in Cresson's contested hearing, Mr. Bourland, BFE Development's president and owner, conceded that he was unable to produce any written loan agreement that ever obligated BFE Water or that used any of BFE Water assets as collateral. Cresson determined that BFE Water did not meet its burden of proof to show that BFE Water was entitled to any revenue to service any debt.

BFE is the developer of the Bourland Field Estates subdivision.¹ BFE prepared a plat of this subdivision, which is recorded in the records of Parker County, (Plat Drawer B-321) on March 17, 1998.⁷ BFE's rate change application states all the components of its water system were installed that same year, in October, 1998.⁸ News interviews by BFE's president in November, 1998 show BFE understood the installation costs of its water system were a component of the sales price of its lots when he stated "Infrastructure at the development is now completed, including water, electricity and sewer at a cost of about \$28,000 per lot, said Bourland."⁹ Land records of Parker County show BFE began selling lots in Bourland Field Estates in 1999. BFE advertised its water system on the internet as a selling point for its lots,

⁴ See Exhibit 4, attached hereto and incorporated herein by reference.

⁵ See Exhibit 5, attached hereto and incorporated herein by reference.

⁶ See Exhibit 6, attached hereto and incorporated herein by reference.

¹ See Exhibit 1, attached hereto and incorporated herein by reference.

⁷ See Exhibit 7, attached hereto and incorporated herein by reference.

⁸ See Exhibit 8, attached hereto and incorporated herein by reference.

⁹ See Exhibit 9, attached hereto and incorporated herein by reference.

stating "Water system . . . one of the best in Texas! Deep well . . . 7,000,000 gallon month capacity".¹⁰ In Cresson's contested hearing, BFE stated that it was its intent to recover its water system installation costs through the sale of lots, but still expected a return on the installation costs. BFE could not show that its approved rates dating back to 2000 permitted a return on BFE's invested capital. These facts left Cresson with no alternative than to conclude that the entire installation cost of BFE's water system was a developer contribution. There is not a substantial likelihood that BFE will be able to show in these proceedings that the installation costs of BFE's water system was not a developer contribution, so the SOAH should not recommend to the TCEQ that a return be included in any interim rates on BFE's invested capital.

B. BFE'S PROPOSED RATES REQUEST A RETURN ON AN ESTIMATED \$162,000 TO SOLEY SERVE THE PRESIDENT OF BFE, WHICH WILL NOT LIKELY BE APPROVED

BFE presented the argument that an estimated \$91,960 out of its initial estimated investment of \$254,112 was a developer contribution. However, Mr. Bourland testified that from the time of initial installation to the time of his rate change application, only one water customer was served by BFE outside of the Bourland Field Estates subdivision developed by BFE. That one customer was himself, at his personal residence. His suggestion that an estimated \$162,152 was spent by BFE to service only himself, the owner, of BFE was not found to be credible by Cresson.¹¹ His argument that ratepayers should pay a return on such an investment by BFE to service only himself, the owner of BFE, was not found to be just and reasonable by Cresson. There is not a substantial likelihood that BFE will be able to show in these proceedings that any such portion of BFE's invested capital will be granted a return, so the SOAH should not recommend to the TCEQ that a return be included in any interim rates on any portion of BFE's invested capital.

C. CRESSON'S APPROVED RATES EXCEED BFE'S REVENUE REQUIREMENTS FOR BFE'S CLAIMED EXPENSES

The BFE water rates determined by Cresson to be just and reasonable in the worst case provide estimated revenue to BFE in the test year of \$26,761.¹² Even without disputing the accuracy or BFE's ability to bear its burden of proof to justify costs in its application, BFE's application shows the revenue required for allowed operating expenses is \$19,392.⁴ At a minimum, the rates prescribed by Cresson will provide BFE with \$7,369 of excess cash flow to be reserved for future equipment replacement. The annual depreciation and amortization claimed by BFE, which is the revenue requirement for a reserve for future equipment replacement, is \$6,872.⁴ Even assuming BFE can bear the burden of proof to justify its investment costs, which is doubtful since a large portion was apparently paid for through some sort of barter arrangement, a conservative analysis shows the rates approved by Cresson are in excess of BFE's claimed revenue requirements.

¹⁰ See Exhibit 10, attached hereto and incorporated herein by reference.

¹¹ See Exhibit 11, attached hereto and incorporated herein by reference.

¹² See Exhibit 12, attached hereto and incorporated herein by reference.

⁴ See Exhibit 4, attached hereto and incorporated herein by reference.

**D. SEASONAL NATURE OF BFE'S WATER SALES PROJECT CRESSON'S
APPROVED RATES ARE FAR IN EXCESS OF BFE'S REVENUE
REQUIREMENTS**

The generosity of the 8.4% rate increase approved by Cresson is further demonstrated by comparing the projected revenue these rates give BFE in a conservative analysis to its actual revenues in the test year under its previous lower rates. BFE's sworn annual report filed with the TCEQ for calendar 2008, the test year, shows actual revenues from water sales under the previous lower rates of \$29,254.¹³ This substantial 11% increase over the estimated revenue from Cresson's approved rates reflects the seasonal nature of BFE's water sales. High water usage in summer months allows BFE to collect higher per gallon revenues than the lowest tier provided in the rate structure. Also, BFE swore it collected \$1,353 in fees in 2008.¹³ So BFE's own reported revenues show in the test year BFE actually received revenues of \$30,607 without the benefit of the rate increase granted by Cresson. This is \$4,343 more than the revenue requirement claimed by BFE in its application. BFE's own filings show its previous rates were \$4,343 (14% of revenue) too high in the test year. The seasonal adjustment calculated for the test year shows Cresson's rates are \$0.69 per 1,000 gallons too high. The minimums are \$3.22 per customer per month too high based on actual fee income.¹⁴ Rather than being able to show a substantial likelihood that Cresson's approved rates are too low, there is a substantial likelihood the SOAH will find and recommend to the TCEQ that the 8.4% increase granted by Cresson should be reversed and BFE's previous rates will be lowered based on data from BFE's own filings.

**E. BFE'S RATEPAYERS HAVE PAID TO BUILD SUBSTANTIAL CASH
RESERVES FOR BFE, SO BFE IS FINANCIALLY VIABLE**

The financial viability of BFE is not threatened by the continuation of the rates determined by Cresson to be just and reasonable. Since inception, through 2010, BFE's required annual reports show it has collected \$248,269 from its ratepayers.¹⁵ Its expenses from its sworn annual reports over this period total \$190,565. As provided for in its previous rates, a reserve fund of the difference, \$ 57,704, was accumulated by BFE from its ratepayers to cover necessary equipment replacement. BFE has claimed in its filing one such replacement, a pump in September, 2008. Even though its filing claimed a cost of \$24,003 for this replacement,⁸ BFE presented different documentation at its contested hearing that this replacement cost \$32,639. Giving BFE the benefit of the doubt, and using the higher number, BFE should still have at least \$ 25,065 received from ratepayers in reserve based solely on its sworn annual reports.

¹³ See Exhibit 13, attached hereto and incorporated herein by reference.

¹⁴ See Exhibit 14, attached hereto and incorporated herein by reference.

¹⁵ See Exhibit 15, attached hereto and incorporated herein by reference.

⁸ See Exhibit 8, attached hereto and incorporated herein by reference.

F. BFE HAS USED RATEPAYER CREATED RESERVES FOR DISALLOWED EXPENSES.

BFE produced financial records showing that it maintains a separate checking account for the activities of BFE water.¹⁶ It showed minimal funds in this account. However, several large questionable withdrawals, such as "Owner Draws" and legal expenses for this rate case had been made. In just 2009, based on BFE's general ledger introduced into evidence at BFE's contested hearing, \$7,500 in owner draws were made in only 11 months.¹⁷ Possibly more of these types of withdrawals have been made in other years. Concerning these owner draws, 30 Texas Administrative Code §291.31 provides, in part:

(2) Expenses not allowed. The following expenses are not allowed as a component of cost of service:

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines...

BFE introduced evidence of \$32,794 of legal expenses associated with this rate case that have been paid with monies received from ratepayers. Regarding rate case expenses, 30 Texas Administrative Code §291.28 (8) provides:

(8) A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.

There is not a substantial likelihood that BFE will be able to bear its burden of proof to cause the SOAH to recommend to the TCEQ that BFE's rates be increased from Cresson's approved rate increase granting 13.8% of the rate increase sought by BFE to 51% of the rate increase sought by BFE. There is not a substantial likelihood that BFE will be able to bear its burden of proof and show that owner draws or executive salaries are in the public interest. Accordingly, expenditures on such items from funds received from ratepayers must be restored to BFE's water account. Both BFE's required sworn annual reports and BFE's expenditure record support that BFE is not financially distressed. The SOAH should not recommend to the TCEQ interim rates based on any representation of distressed financial viability of BFE.

¹⁶ See Exhibit 16, attached hereto and incorporated herein by reference.

¹⁷ See Exhibit 17, attached hereto and incorporated herein by reference.

CONCLUSION AND PRAYER

Cresson asks the SOAH to take notice of the thoughtful, methodical, and generous procedures it used to make a final determination of BFE's just and reasonable rates. The SOAH should not recommend any interim rates for BFE during these appeal proceedings that differ from those determined by Cresson to be just and reasonable in Cresson's final order. Should the SOAH recommend that any higher rates than Cresson's should be collected by BFE in the interim, Cresson strongly urges that such a recommendation also provide for the escrowing of any increase in rates as provided for in the Texas Water Code Section 13.187 (i) and (j).

WHEREFORE, ALL PREMISES CONSIDERED, Cresson respectfully requests that the Commission deny BFE's request for interim rate relief requested in its Petition for Review. Cresson additionally requests any and all other relief to which it is justly entitled.

Respectfully submitted,

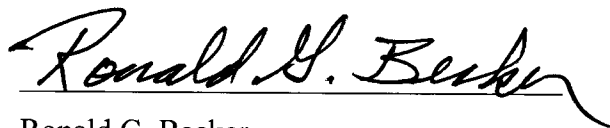
THE CITY OF CRESSON

P. O. Box 619

Cresson, Texas 76035

Telephone: (817) 396-4729

Facsimile: (817) 396-4398

A handwritten signature in black ink, reading "Ronald G. Becker". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Ronald G. Becker

Mayor Pro Tem, Authorized Representative

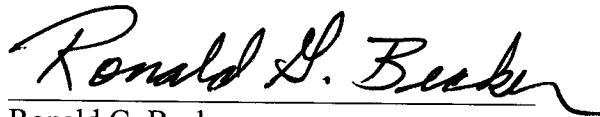
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on this
31st day of May, 2012, to the following:

Lambeth Townsend
Attorney for BFE
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Via Hand Delivery

Scott Perdue
137 Constellation Drive
Cresson, Texas 76035
Via Hand Delivery

Bob Ellis, President
Bourland Field Estates Homeowners' Association, Inc.
101 Constellation Drive
Cresson, Texas 76035
Via Hand Delivery



Ronald G. Becker
Mayor Pro Tem
City of Cresson, Texas
Authorized Representative

CRESSON EXHIBIT INDEX

1. BFE Water Description, BFE Incorporation from TCEQ, Secretary of State Files
2. Preliminary Review of BFE proposed rates by TCEQ from TCEQ files
3. Comparison of Cresson's approved rates to those requested by BFE
4. Page 14 of 41, BFE rate increase application
5. Page 11 of 41, BFE rate increase application
6. Page 12 of 41, BFE rate increase application
7. Plat of Bourland Field Estates from land records of Parker County, Texas
8. Page 10 of 41, BFE rate increase application
9. Dallas Business Journal November 13, 1998
10. Online advertisement by BFE to sell lots in Bourland Field Estates
11. Estimated Cost of BFE Water System from BFE's rate increase application
12. Estimated Revenue to BFE in 2008 test year under Cresson's Rates
13. Page 1 and 3 of 7, 2008 Water and Wastewater Utilities Annual Report of BFE Water Company from TCEQ files
14. Comparison of Test Year Actual Revenue to Estimated Revenue from Previous Rates
15. BFE Water Annual Reports, 2000 – 2010, from TCEQ files or BFE
16. BFE Water Account Bank Statements provided by BFE
17. Page from BFE Water general ledger, October, 2009 provided by BFE

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



CERTIFICATE OF CONVENIENCE AND NECESSITY

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

Certificate No. 12899

I. Certificate Holder:

Name: BFE Development Corporation dba BFE Water Company

Address: 17611 Highway 377 South
Fort Worth, Texas 76126

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 17 miles southeast of downtown Weatherford, Texas on US Highway 377. The service area is generally bounded on the north by US Highway 377, on the south by Dickey's Branch and South Bear Creek, on the east by Goforth Road, and on the west by US Highway 377 in Parker County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area map, WRS-184, maintained in the offices of the Texas Natural Resource Conservation Commission, 12015 Park 35 Circle, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 32309-C and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: MAY 28 1999


For the Commission

CRESSON
EXHIBIT

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



APPLICATION NO. 32309-C

IN THE MATTER OF THE APPLICATION §
OF BFE DEVELOPMENT CORPORATION §
DBA BFE WATER COMPANY FOR A §
WATER CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN PARKER COUNTY, §
TEXAS §

BEFORE THE
TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION

ORDER

On MAY 28 1999, the Executive Director of the Texas Natural Resource Conservation Commission pursuant to Chapters 5 and 13 of the Texas Water Code considered the application of BFE Development Corporation dba BFE Water Company for a water Certificate of Convenience and Necessity in Parker County.

No person has requested a public hearing on the application;

Notice of the application was given all affected and interested parties;

The criteria set forth in Section 13.246(c) have been considered; and

Granting the application is necessary for the service, accommodation, convenience and safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION that the application is granted and Certificate of Convenience and Necessity No. 12899 is issued to BFE Development Corporation dba BFE Water Company in accordance with the terms and conditions set forth herein and in the certificate.

IT IS FURTHER ORDERED that BFE Development Corporation dba BFE Water Company shall serve every customer and applicant for service within the area certified under Certificate of Convenience and Necessity No. 12899 and that such service shall be continuous and adequate.

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION

Issued Date: MAY 28 1999

For the Commission

A handwritten signature in black ink, appearing to read "Jeffrey Davis", written over a horizontal line.

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

June 11, 1999

Mark Zeppa
6101 West Courtyard Drive, Suite 221
Austin, Texas 78730

RE: BFE DEVELOPMENT CORPORATION DBA BFE WATER COMPANY
Application No. 32309-C; CCN No. 12899
Order approving a water CCn

Enclosed is a certified copy of an order and a copy of a certificate of convenience and necessity issued by the Commission regarding the referenced matter.

Should you have any questions, please contact Jessica Leyendecker of the Texas Natural Resource Conservation Commission's Office of the Chief Clerk (MC 105) at (512) 239-4517.

Sincerely,

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

LaDonna Castañuela
Chief Clerk

LC/jl

Enclosure

cc: Joy Schultz, Engineer, TNRCC Water Utilities Division, Utility Rates and Services
Section (MC 153)
Richard Bourland, BFE Water Company, 17611 Highway 377 South, Fort Worth, Texas
76126

RECEIVED
JUN 15 1999
65 51108

MAILING LIST FOR APPLICATION NO. 32309-C

Mr. Mark Zeppa
6101 West Courtyard Drive, Suite 221
Austin, Texas 78730

Mr. Richard Bourland
BFE Water Company
17611 Highway 377 South
Fort Worth, Texas 76126

Please send a copy of the signed order to Central Records to be included in the following CCN permanent files:

BFE Development Corporation dba BFE Water Company, CCN No. 12899

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Jeffrey A. Saitas, Executive Director
Texas Natural Resource Conservation Commission
Thru: ^{DH} Steve Blackhurst, Manager, Utility Rates and Services Section
^{DW} Steven E. Walden, Director, Water Utilities
From: Joy Schultz, Utility Rates and Services Section
Subject: Executive Summary and Staff Recommendation for Executive Director

Date: May 7, 1999

DESCRIPTION OF APPLICATION

Applicant: BFE Development Corporation dba BFE Water Company

Type: Water Certificate of Convenience and Necessity (CCN)

Request: Approval of Application Number 32309-C of BFE Water Company for a Water CCN in Parker County, Texas

Authority: Texas Water Code Chapters 5 and 13, 30 TAC Chapter 291

STAFF RECOMMENDATION

General: Approving Water Certificate of Convenience and Necessity Number 12899 for BFE Water Company in accordance with the proposed order and certificate is necessary for the service, accommodation, convenience and safety of the public.

TECHNICAL INFORMATION

General: BFE Development Corporation dba BFE Water Company proposes to operate a new water system known as the Bourland Field Estates Subdivision in Parker County, Texas. The applicant is a for profit corporation. The applicant is the owner/developer of the land in the proposed service area. This application was accepted for filing on October 6, 1998. All notice requirements have been met by the applicant and there are no protests to the application.

The applicant plans to serve a total of 68 connections. Construction was scheduled to begin in June, 1998. The applicant's utility tariff for water service was approved on April 28, 1999.

COMPLIANCE SUMMARY

General: Water System: BFE Development Corporation dba BFE Water Company
Public Water System No. 1840132
Plans were approved on May 15, 1998.

Prior, Pending or Recommended Enforcement Action: None

CONTACT

Applicant: BFE Development Corporation dba BFE Water Company

Owner: Richard L. Bourland and Barbara Jane Bourland

Operator: Donald L. Dickens, Class "C", License No. 440-24-4007

Carlos Valdez, Class "D", License No. 453-02-7468

Linda Leal, Class "D", License No. 457-15-3980

Attorney: Mark Zeppa

Staff: Joy Schultz, Utility Rates and Services Section



Joy Schultz

Utility Rates and Services Section

JFS/mlm

**ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF
BOURLAND FIELD, INC.**

FILED
In the Office of the
Secretary of State of Texas

JUL 24 1998

Corporations Section

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

ARTICLE ONE

The name of the corporation is BOURLAND FIELD, INC.

ARTICLE TWO

Article One of the Articles of Incorporation is hereby amended to read as follows:

"ARTICLE ONE

The name of the corporation is BFE DEVELOPMENT CORP."

ARTICLE THREE

The number of shares of the corporation outstanding at the time of the adoption was 1,000 and the number of shares entitled to vote on the amendment was 1,000.

ARTICLE FOUR

The number of shares voted for the amendment was 1,000 and the number of shares that voted against the amendment was none.

ARTICLE FIVE

This Amendment was adopted by the Shareholders on July 23, 1998.

Dated July 23, 1998

BOURLAND FIELD, INC.

By: Richard L. Bourland
Richard L. Bourland, President

ARTICLES OF INCORPORATION
OF BOURLAND FIELD, INC.

FILED
In the Office of the
Secretary of State of Texas
JAN 28 1985
Clerk D
Corporations Section

I, the undersigned, a natural person over the age of eighteen (18) years, acting as the Incorporator of a Corporation under the Texas Business Corporation Act, do hereby adopt the following Articles of Incorporation for such Corporation.

ARTICLE ONE

The name of the Corporation is BOURLAND FIELD, INC.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the Corporation is organized is to transact any or all lawful business for which corporations may be incorporated under this Act.

ARTICLE FOUR

The aggregate number of shares which the Corporation shall have authority to issue is One Hundred Thousand (100,000) common shares with One Dollar (\$1.00) par value for each share.

ARTICLE FIVE

The Corporation will not commence business until it has received for the issuance of its shares consideration of the value of a stated sum which shall be at least One Thousand Dollars (\$1,000.00), consisting of money, labor done or property actually received.

ARTICLE SIX

The address of its registered office is 6962 Miramar Circle, Fort Worth, Texas 76126. The name of its registered agent at such address is RICHARD L. BOURLAND.

ARTICLE SEVEN

The number of initial directors is three (3) and the names and addresses of the directors are:

<u>Name</u>	<u>Address</u>
Richard L. Bourland	6962 Miramar Circle Fort Worth, TX 76126
Barbara Jane Bourland	6962 Miramar Circle Fort Worth, TX 76126
W. Blake Bourland	6962 Miramar Circle Fort Worth, TX 76126

ARTICLE EIGHT

The name and address of the incorporator is RICHARD L. BOURLAND, 6962 Miramar Circle, Fort Worth, Texas 76126.

SIGNED AND DATED this 25th day of January, 1985.

Richard L. Bourland
RICHARD L. BOURLAND, Incorporator

SWORN TO AND SUBSCRIBED BEFORE ME by Richard L. Bourland, Incorporator, this 25th day of January, 1985.

My Commission Expires:

June 30, 1988

James T. Blanton
Notary Public Appointed in
Tarrant County for the
State of Texas.

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations, Limited Liability Companies (LLCS) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

111323107388

Taxpayer number

17520206206

Taxpayer name

BFE Development Corp.

Mailing address

17911 Hwy 377 South

City

Cresson

State

TX

ZIP Code

76035-5661

Plus 4

Secretary of State file number or
Comptroller file number

0073772370

☐ Check box if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

17911 Hwy 377 South

Cresson

TX 76035-5661

Principal place of business

17911 Hwy 377 South

Cresson

TX 76035-5661



1752020620611

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.

SECTION A Name, title and mailing address of each officer, director or member.

Name	Title	Director	Term expiration	State	ZIP Code
Richard L Bourland	President	<input checked="" type="checkbox"/> YES		TX	76035
Mailing address	City				
17911 Highway 377 South	Cresson				
Name	Title				
Jane Bourland	Vice-President	<input checked="" type="checkbox"/> YES		TX	76035
Mailing address	City				
17911 Highway 377 South	Cresson				
Name	Title				
Blake Bourland	Secretary	<input checked="" type="checkbox"/> YES		TX	76035
Mailing address	City				
17911 Highway 377 South	Cresson				

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
NONE			
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
NONE			
Registered agent and registered office currently on file. (See Instructions if you need to make changes)			
Agent: Richard L. Bourland	City	State	ZIP Code
Office: Route 5, Box 247Z	Port Worth	TX	76126

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here  Title President Date May 7, 2011 Area code and phone number 817 512 3121

Texas Comptroller Official Use Only

VE/DE

PIR IND



TCEQ Review - BFE Water Company
INTERIM RATE ANALYSIS
WATER RATES
Application No. 36523-R

Staff Accountant: Flores
Staff Engineer: Adhikari

CURRENT WATER RATES:

MINIMUM # GALLONS

\$24.00 0

GALLONAGE
ABOVE MIN
\$2.00

AVERAGE USAGE:

TOTAL TEST
YEAR GALLONS

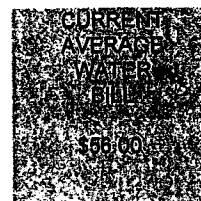
6,719,600

AVE
CUST #

35

GALLONS
PER MNTH

15,999



PROPOSED RATES:

MINIMUM
\$38.50

GALLONS
0

GALLONAGE
ABOVE MIN
\$3.22

AVERAGE USAGE:

TOTAL TEST
YEAR GALLONS

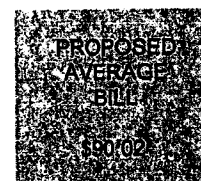
6,719,600

AVE
CUST #

35

GALLONS
PER MNTH

15,999



CHANGE IN AVE MONTHLY BILL:

\$34.02

60.75%

Considerations:

1. Are the rates justified on preliminary review of the cost of service? No
2. Is the increase greater than \$15 or 50%? Yes
3. What is the effective date of this rate increase? 1/16/2010
4. Will the utility put the proposed rates into effect before a hearing? Yes
5. Will rates place an undue financial hardship/burden on the customer? No
6. Is it possible that the utility will refuse to or be unable to make refund? No
7. Is the utility in receivership or bankruptcy? No
8. Will there be a positive cash flow with the proposed interim rate? N/A
9. When was the Utility's last rate increase? 7/15/2002
10. Why is the rate increase necessary? Applicant states that they have not had a rate increase in 12 years, and the water company is not making a profit.
11. What improvements have been made to the system since the last rate increase? None shown per depreciation schedule submitted.
12. Does the utility have any compliance issues? The utility had compliance issues on their last inspection conducted on 12/1/08, the TCEQ's Dallas Regional Office issued a letter to the applicant dated 5/8/09 that adequate documentation had been received to resolve the alleged violations documented.
13. Is the utility providing good customer service? No complaints noted in IVUD. One protest letter received.
14. Is the quality of water good? One protest rec'd they mention the quality of water (sulfur).

Conclusion:

Staff's preliminary review generate rates of \$38.89 with \$3.00/1,000 gallons.

Note: The utility is requesting a Pass Through Provision from the Upper Trinity Groundwater Conservation District. Staff will request documentation from the UTGC.

CRESSON
EXHIBIT

2

**COMPARISON OF CRESSON'S
APPROVED RATES TO THOSE
REQUESTED BY BFE**

MONTHLY AVERAGE WATER BILL PER CUSTOMER

	CURRENT RATES	BFE REQUESTED RATES	CRESSON APPROVED RATES
GALLONS/MO/ CUSTOMER	15,999	15,999	15,999
MINIMUM	\$24.00	\$38.50	\$15.72
GALLONAGE CHARGE, 1 ST 15,000 GALS	\$2.00	\$3.22	\$2.81
GALLONAGE CHARGE/ CUSTOMER/MO	\$32.00	\$51.52	\$44.96
AVG BILL/ CUSTOMER	\$56.00	\$90.02	\$60.68

% INCREASE APPROVED BY CRESSON = $\$60.68 / \$56.00 = 8.4\%$

% OF BFE REQUESTED INCREASE APPROVED BY CRESSON = $\frac{\$60.68 - \$56.00}{\$90.02 - \$56.00} = 13.8\%$

CRESSON
EXHIBIT 3

SECTION VI - UTILITY INCOME & EXPENSE INFORMATION - WATER

A REVENUE REQUIREMENT

Please provide the following information regarding the cost to the utility of providing water utility services over your selected twelve month "test year."

Note 1 - Instead of using the percentages listed, you may take the Total Cost and multiply it by 67% to determine the fixed portion and 33% for the variable portion.

TABLE VI. A.

Test Year <u>11/1/08 to 12/31/08</u>	Line	12 Month "test year" per books	Known and Measurable Changes	Revenue Requirement for next yr	% of ③ that is fixed (Note 1)		Fixed Expenses (Note 1)	Variable Expenses (Note 1)
					Rec.	Act.		
Salaries and Wages	[A]			③=①+②	50		③=(③*⑤)/100	③
Contract Labor	[B]				90			
Purchased water	[C]				0			
Chemicals for treatment	[D]				0			
Utilities (electricity)	[E]	1,508		1,508	0			1,508
Repairs/maintenance/supplies	[F]	891		891	50		445	446
Office expenses	[G]	285		285	50		143	142
Accounting & Legal fees	[H]	14,775		14,775	100			14,775
Insurance	[I]	1,783		1,783	100			1,783
Rate case expense	[J]				100			
Miscellaneous	[K]	150		150	50		75	75
Subtotal - Sum of Line [A] thru Line [K]	[L]	19,392		19,392			663	18,729
Payroll Taxes	[M]				50			
Property and other taxes	[N]				100			
Annual Depreciation and Amortization - From Table III. B.	[O]	6,872		6,872	100		6,872	
Income Taxes - From Table V, Line [F]	[P]				100			
Return - From Table IV. E., Line [H]	[Q]		13,402	13,402	100		13,402	
Subtotal - Sum of Line [L] thru Line [Q]	[R]	26,264	13,402	39,666			20,937	18,729
Other Revenues	[S]				100			
Total Cost = Line [R] - Line [S]	[T]	26,264	13,402	39,666			20,937	18,729
Alternative Allocation between Fixed and Variable	[U]				67			

CRESSON
EXHIBIT

4

C. DEVELOPER CONTRIBUTIONS - WATER

If any of the Items listed in the Depreciation Schedule were contributed by a developer, please list those items and the associated cost below.

Table III. C.

Item	Date of installation or Contribution	Total Cost	Amount of Developer Contribution	Net Book Value (from Table III. B.)
NONE				
Total				①

① Insert this amount in Table IV. E., Line [E]

- Attach additional sheet(s) if necessary -

SECTION IV - LONG TERM DEBT & EQUITY INFORMATION - WATER

A. EQUITY

How much equity or total capital does the company have in the utility? 218,916 Enter also in Table IV. D., Box ③ below

B. RATE OF RETURN

What rate of return (profit) on investment in plant (equity) is expected? 6 %
Enter also in Table IV. D., Box ④ below

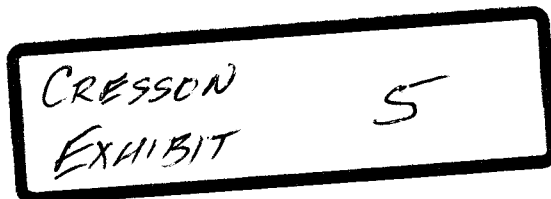
NOTE: You may choose

- an average equity return established by the staff each year and included with the Annual Report Instructions OR
- an interest rate that you think is fair that is less than the rate established by the staff OR
- to use the Rate of Return Worksheet which is attached to the Instructions.

C. BANKRUPTCY

Has the utility or utility owner filed bankruptcy within the last seven years? ____ YES ☒ NO

If YES, explain status of applicant at this time. _____



List the following
equity of the utility and

Round all percentages to two (2) decimal places.

information concerning debt and
attach copies of notes payable:

Table IV. D.

[A] Name of Bank/Lender	[B] Date of Issue	[C] Date of Maturity	[D] Original Amount of Loan	[E] Outstanding or Unpaid Balance - End of Test Year	[F] Interest Rate	[G] Weighted Average [E] ÷ [D] × [F]
Part 1 - Debt						
BFE DEVELOPMENT	6/1/98	5/20/18	\$ 42,968	\$ 40,968	5 %	1 %
	✓	✓	\$ 1,535	\$ -0-	%	%
			\$	\$	%	%
			\$	\$	%	%
			\$	\$	%	%
Total			\$44,503 ①	\$40,968 ②		1 %⑤
Part 2 - Investment/Equity				\$218,916 ③	6 %④	6 %⑦
Total Debt & Equity				\$259,884 ⑥		
					Rate of Return:	7 %⑧

- ① Total amount of original loans
- ② Total amount of the outstanding balance on the loans
- ③ Equity in the utility - From Section IV. A.
- ④ Return on Equity - From Section IV. B.
- ⑤ Total of ② ÷ ③
- ⑥ Total weighted average of debt - To Table V, Line [C]
- ⑦ Weighted average of Investment/Equity ③ ÷ ⑤ × ④
- ⑧ Sum of ⑥ + ⑦ - To Table IV. E, Line [G]

CRESSON
EXHIBIT

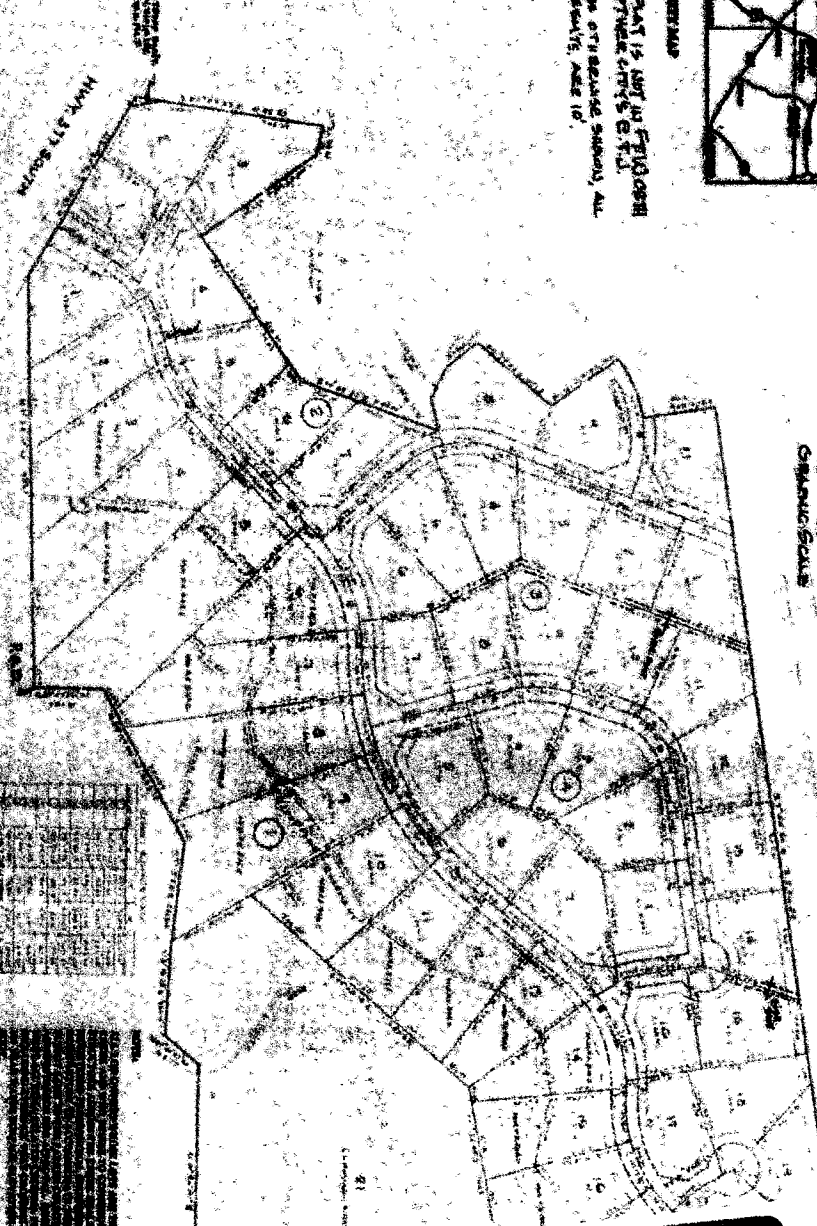
6

PLAT OF LAND
COUNTY OF HARRIS

THE STATE OF TEXAS, COUNTY OF HARRIS, SS: I, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the within and foregoing plat of land was duly filed for record in my office on the 1st day of May, 1908, at 10 o'clock, A.M., and that the same is a true and correct copy of the original as the same appears on the records of my office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office, at Houston, Texas, this 1st day of May, 1908.

Note: This plat is not in full compliance with the provisions of the Act of the Legislature of the State of Texas, passed March 1st, 1907, relating to the recording of plats of land.



CRESSON
EXHIBIT
7

THE STATE OF TEXAS, COUNTY OF HARRIS, SS: I, the undersigned, a Notary Public in and for the State of Texas, do hereby certify that the within and foregoing plat of land was duly filed for record in my office on the 1st day of May, 1908, at 10 o'clock, A.M., and that the same is a true and correct copy of the original as the same appears on the records of my office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office, at Houston, Texas, this 1st day of May, 1908.

NOTARY PUBLIC
COUNTY OF HARRIS

NOTARY PUBLIC
COUNTY OF HARRIS

NOTARY PUBLIC
COUNTY OF HARRIS

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COUNTY OF HARRIS

NOTARY PUBLIC
COUNTY OF HARRIS

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That said Development Corporation hereby does hereby agree that the use of the land shown on the map attached hereto shall be for the purposes of the

LOT 104, BLOCK 1, LOTS 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

and does hereby dedicate to the public use, all easements, rights and other interests therein.

EXECUTED this 17th day of March 1968

By *Robert L. [Signature]*

STATE OF TEXAS
COUNTY OF PARKER

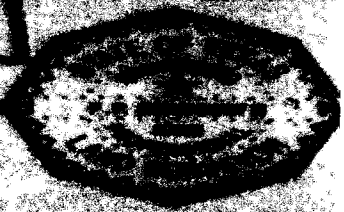
I hereby certify that this is a true and correct copy of the original as the same appears in the records of the County Clerk of the County of Parker, State of Texas.

RECORDED this 17th day of March 1968

Carol [Signature]

My Commission Expires

STATE OF TEXAS
COUNTY OF PARKER



I hereby certify that this is a true and correct copy of the original as the same appears in the records of the County Clerk of the County of Parker, State of Texas.

[Signature] 4-17-68

My Commission Expires

Please provide the following inventory of the water utility plant being used to provide water service at the end of the test year. You will be responsible for supporting this information with invoices or other documentation. Round your figures to the nearest dollar. Amounts should be computed as of the end of the "test year."

Table III. B.

[A] Item	[B] Date of Installation	[C] Service Life (yrs)		[D] Original Cost when installed (\$)	Depreciation					[G] = [D]-[F] Net Book Value (\$)
		*	**		Years in Service			[E] = [D]/[C] Annual (\$)	[F] Accumulated (\$)	
					Yrs 0	Mos 00	Days 000			
Land		n/a								
Wells (1)	10-98	50		79,473	10	2		1,589	16,155	63,318
Well Pumps:										
5 hp or less		5								
greater than 5 hp	10-98 9-08	10		18,668 24,033	10	2 3		1,554 481	18,668 481	- 0 - 23,552
Booster Pumps:										
5 hp or less (4)	10-98	5		2,400	10	2		- 0 -	2,400	- 0 -
greater than 5 hp		10								
Chlorinators	10-98	10		350	10	2		29	350	- 0 -
Structures:										
Wood		15								
Masonry 18' x 20'	10-98	30		13,500	10	2		450	4,575	8,925
Storage Tanks 1	10-98	50		13,000	10	2		260	2,643	10,357
Pressure Tanks 3	10-98	50		3,600	10	2		72	732	2,868
Distribution System (mains and lines)	10-98	50		93,960	10	2		1,879	19,103	74,857
Meters and Service (taps not covered by fees)	10-98	20		6,900	10	2		345	3,508	3,392
Office Equipment		10								
Vehicles		5								
Shop Tools		15								
Heavy Equipment		10								
Fencing	10-98	20		3,600	10	2		180	1,830	1,770
Other: (Please list)										
AIR COMPRESSOR	10-98	10		400	10	2		33	400	- 0 -
Total				259,884				6,872	70,845	189,039

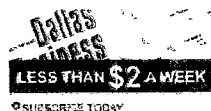
* TCEQ Suggested Service Life ** Other Service Life

① Enter this number in Table VI. A., Line [O], Column ① ② If [F] is greater than [D], enter the total for [D]
③ Enter this number in Table IV. E., Line [A]

-Attach additional sheet(s) if necessary-

CRESSON
EXHIBIT 8

CUT ACTUAL COST OF FENC. \$46,000.



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Friday, November 13, 1998

Aviation buff develops upscale fly-in community

High-priced lots will put aircraft owners next to an airfield -- and lots of amenities

Dallas Business Journal by Margaret Allen Staff Writer

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BOURLAND AIR FIELD -- The owner of a private airport in northern Parker County is developing an upscale \$1.6 million fly-in residential community designed exclusively for aircraft owners wanting to live next to an airfield.

The 100-acre Bourland Field Estates will feature lots ranging in size from 1 to 3.5 acres, with lot prices running as high as \$100,000 each, said Dick Bourland.

The 65-year-old Bourland and his wife, Jane, are the owners and developers of the property.

They've had the project on the drawing board since 1984, but it stalled in 1987 when the stock market crashed. The development now enters the market at a time when sales of corporate and private aircraft nationwide are booming. Texas and California boast the largest number of corporate and privately owned aircraft among the states, according to the National Business Aircraft Association in Washington, D.C.

With development of Bourland Field Estates, the Metroplex will be home to upwards of half a dozen fly-in communities. Only two others, Pecan Plantation and Hidden Valley, sport high-dollar lots and upscale amenities like those at Bourland, however.

Located off State Highway 377 about 10 miles south of Benbrook, Bourland Field Estates is designed for up to 67 lots and will include a 20-acre common area for jogging trails, tennis courts, a baseball diamond, a picnic pavilion, horse stables and soccer fields.

Infrastructure at the development is now completed, including water, electricity and sewer at a cost of about \$28,000 per lot, said Bourland. Streets should be under construction beginning the end of November, with ground breaking on homes starting as early as February, he said.

Interested buyers so far include an airline captain, a couple of lawyers, several airline pilots, an executive at defense contractor Lockheed Martin in Fort Worth and one man who said he's inheriting a lot of money, Bourland said.

"They all are proud and love their planes," he said. "An airplane is the ultimate toy and they want their airplane in their back yard ... You can climb in your airplane and go anywhere."

Most of the financing for Bourland Field Estates is through Bank of Commerce in Fort Worth. Bourland is providing the rest, most of it raised from the \$2 million sale in 1982 of a mobile home park and marina he developed near Lake Arlington.

A Fort Worth native, Bourland purchased the 162 acres south of Benbrook in 1981 and began building his airport. For him, it was a dream come true.

"I always wanted a piece of land, and this is just gorgeous," he said of the property, which is crisscrossed by Red Bear Creek. "There are just a jillion trees, some of them 150 years old. It's hilly out here and we put the runway where it has the least impact on the hills."

Over time, Bourland paved and lighted the 4,200-foot runway, added an instrument landing system, built rental hangars, started up a flight school, and opened a maintenance facility and fixed base operation for fueling.

Although Bourland retired in 1993 from a career as a pilot flying Boeing 747s to Tokyo for American Airlines Inc., he hasn't retired from everything else.

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