



Control Number: 44066



Item Number: 7

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

SOAH DOCKET NO. 582-09-4289
TCEQ DOCKET NO. 2009-0612-UC 2015 JAN -6 PM 12: 10

APPLICATION OF HARVEST HILLS § BEFORE THE STATE OFFICE
TREATMENT, LTD., TO DECERTIFY §
A PORTION OF CERTIFICATE OF §
CONVENIENCE AND NECESSITY § OF
(CCN) NO. 20973 FROM GREEN § ADMINISTRATIVE HEARINGS
VALLEY SPECIAL UTILITY §
DISTRICT AND TO OBTAIN A SEWER
CCN IN GUADALUPE COUNTY,
TEXAS

**ORDER NO. 1
SETTING CASE SCHEDULE**

I. INTRODUCTION

On August 20, 2009, a preliminary hearing was held in this case and jurisdiction was proven. The following appeared and were admitted as parties:

PARTY	REPRESENTATIVE
Harvest Hills Treatment, Ltd. (Applicant))	Emily Willms Rogers
Executive Director (ED)	Shana Horton
Office of Public Interest Counsel (OPIC)	did not appear
Green Valley Special Utility District	Mark Zeppa
City of Santa Clara	Hon. David D. Mueller, Mayor
City of Marion	Randolph Schwenn

II. SCHEDULE

The parties agreed on the following schedule for prehearing activities and the hearing on the merits of the case, which schedule shall govern this proceeding:

DATE	EVENT
October 20, 2009	Deadline to serve written discovery requests.
November 23, 2009	Applicant to prefile its direct case in writing, including all testimony and exhibits.
December 21, 2009	Parties other than Applicant and ED to prefile their direct cases in writing, including all testimony and exhibits.
January 25, 2010	ED to prefile his direct case in writing, including all testimony and exhibits.
February 8, 2010	Deadline to file objections to and motions to strike any prefiled evidence.
February 15, 2010	Deadline to take depositions.
February 15, 2010	Deadline to file responses to objections and motions to strike prefiled evidence.
February 22, 2010	Prehearing conference to rule on objections to prefiled evidence and other pending motions.
March 31, 2010	Hearing on the merits (HOM) of case begins.
April 2, 2010	Estimated end of HOM.

III. HEARING AND PREHEARING DATES AND LOCATION

The hearing on the merits will convene at 9:00 a.m., March 31, 2010, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Unless the parties are notified otherwise, the hearing will continue each workday thereafter until it has concluded. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed. The prehearing conference will convene at 10:00 a.m., February 22, 2010, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas.

IV. PROCEDURAL RULES

Except as otherwise provided herein, this case shall be conducted in accordance with the procedural rules of the Texas Commission on Environmental Quality (TCEQ) and SOAH. 30 TEX. ADMINISTRATIVE CODE (TAC) Chapter 80 and 1 TAC Chapter 155. In the event of conflict, the TCEQ's rules apply. 1 TAC § 155.3 (d).

V. DISCOVERY

Discovery shall be conducted according to the Texas Rules of Civil Procedure (TRCP), as supplemented by SOAH's discovery rules. 1 TAC § 155.251. The TRCP shall be interpreted consistently with chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act. 30 TAC § 80.151. Pursuant to SOAH Procedural Rule 1 TAC § 155.251(c)(2), discovery documents shall be served on the other parties but shall not be filed with the Administrative Law Judge (ALJ) unless such materials are the subject of a discovery dispute and only those portions relevant to the dispute shall be attached to any pertinent motion.

The parties are expected to attempt to resolve discovery disputes; however, significant disputes which cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any such motion shall include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

The total time for the Applicant, Protestants as a group, the ED, and the OPIC to each take oral depositions may not exceed 50 hours, although each may divide its total time among the witnesses as it sees fit. The total number of written interrogatories that any party may serve on any other party may not exceed 25. 30 TAC § 80.152(c).

VI. PLEADINGS

Unless a party seeks a hearing and the motion is granted, the ALJ will rule on motions based on the written pleadings. If oral argument is granted, it shall be conducted by telephone conference, unless the ALJ specifies otherwise.

The parties may fax pleadings to SOAH at (512) 475-4994. If a deadline is approaching and a party cannot get a fax through for reasons beyond its control, the party should call SOAH's Docketing Division, (512) 475-3445, to discuss the problem.

When filing or serving documents, the parties shall use the service list attached to this order and attach a copy of that list to each filing.

VII. PREFILED EVIDENCE

All parties shall prefile their direct-case evidence in writing. One copy shall be served on the representative of every other party, and one copy shall be filed with the Judge. Rebuttal evidence and documents used for impeachment or rebuttal purposes need not be prefiled. The prefiled evidence should include all testimony and other evidence necessary to support a party's direct case.

Non-rebuttal and non-cross-examination evidence that is not prefiled will not be admitted unless the offering party shows that there is good cause to do so and that the other parties will not be placed at an unreasonable disadvantage by the late offering. Good cause will be determined primarily based the offering party's showing that a need for the evidence could not have been reasonably anticipated or that the evidence was inadvertently not prefiled due to an error. The party with the burden of proof is cautioned not to attempt to gain a strategic advantage by saving evidence for rebuttal that is more properly part of its direct case, since that might lead to a motion for summary disposition.

Prefiled testimony shall be written as if the questions were asked by the party's lawyer and answered by the witness. Each witness must be called to testify and adopt the prefiled testimony under oath. The testimony should then be offered as an exhibit. Every other party will have an opportunity to cross-examine the witness unless that opportunity has been waived. If all other parties have waived cross-examination, the witness's testimony shall be admitted without the witness appearing.

When a party prefiles testimony, it shall indicate the sequence in which it intends to call its witnesses. If there is a need to deviate from that order, the judge and the other parties shall be informed at least 24-hours before the witness is called to testify unless the judge permits shorter notice.

Every page of every prefiled document shall be appropriately numbered, preferably in the lower right corner, to allow easy identification and reference.

On the day they will be offered, two copies of every exhibit, which will be referred to as the "Record Set" and the "Appeal Set," shall be provided to the court reporter before the hearing starts, so that the court reporter can mark them and not delay the hearing.

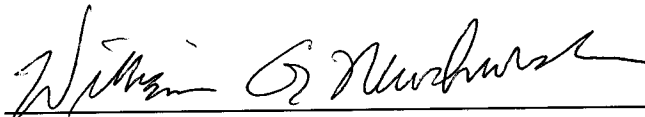
VIII. OPEN GOVERNMENT

The Judge intends to strictly limit admission of evidence under seal and closing of the hearing on the merits to the public. The parties shall negotiate prior to the hearing to agree on redacted versions of any confidential documents that can be admitted or to stipulate to facts to which they pertain. If the parties are legitimately unable to reach an agreement, the Judge will resolve the dispute at the hearing in a session closed to the public.

IX. TRANSCRIPT

For any proceeding set to last longer than one day, a court reporter is generally required and an ALJ may order one on his or her own motion. 1 TAC § 155.423(b) and 30 TAC § 80.23 (b)(4). The parties estimate that the hearing on the merits will last longer than one day. The Applicant shall arrange for and pay a court reporter to record and transcribe the hearing on the merits and deliver the original transcript to the ALJ and two copies to the TCEQ's Chief Clerk within two weeks after the end of the hearing. The delivered transcript shall also include electronic copies thereof on disc in text format. When the Commission makes a final decision in this case, the costs of the recording and transcription shall be allocated among the parties in accordance with 30 TAC § 80.23.

SIGNED August 20, 2009.



**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: HARVEST HILLS TREATMENT LTD
SOAH DOCKET NUMBER: 582-09-4289
REFERRING AGENCY CASE: 2009-0612-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH

REPRESENTATIVE / ADDRESS

PARTIES

MARK ZEPPA
ATTORNEY
LAW OFFICE OF MARK H. ZEPPA, P.C.
4833 SPICEWOOD SPRINGS RD., SUITE 202
AUSTIN, TX 78759-8436
(512) 346-4011 (PH)
(512) 346-6847 (FAX)
markzeppa@austin.rr.com

GREEN VALLEY SUD

BLAS J. COY, JR.
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
bcoy@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

EMILY WILLMS ROGERS
ATTORNEY
BICKERSTAFF HEATH DELGADO ACOSTA LLP
816 CONGRESS, Ste 1700
AUSTIN, TX 78701
(512) 472-8021 (PH)
(512) 320-5638 (FAX)
erogers@bickerstaff.com

HARVEST HILLS TREATMENT, LTD.

SHANA HORTON
ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087, MC-175
AUSTIN, TX 78711-3087
(512) 239-1088 (PH)
(512) 239-3434 (FAX)

EXECUTIVE DIRECTOR

HON. DAVID D. MUELLER
MAYOR
CITY OF SANTA CLARA
P.O. BOX 97
MARION, TX 78124
(830) 914-2387 (PH)
(830) 914-2917 (FAX)
davidd.mueller@sbcglobal.net

CITY OF SANTA CLARA

RANDOLPH SCHWENN
CITY OF MARION PUBLIC WORKS DIRECTOR
P.O. BOX 158
MARION, TX 78124
(830) 914-2391 (PH)
(830) 420-4460 (FAX)
rschwenn@cityofmariontx.org

CITY OF MARION

xc: Docket Clerk, State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

DATE: 08/20/2009
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2
REGARDING: ORDER NO. 1- SETTING CASE SCHEDULE
DOCKET NUMBER: 582-09-4289

JUDGE WILLIAM G NEWCHURCH

FAX TO:

FAX TO:

RANDOLPH SCHWENN

(830) 420-4460

EMILY WILLMS ROGERS

(512) 320-5638

HON. DAVID D. MUELLER

(830) 914-2917

MARK ZEPPA (LAW OFFICE OF MARK H. ZEPPA, P.C.)

(512) 346-6847

BLAS J. COY, JR. (TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY)

(512) 239-6377

SHANA HORTON (TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY)

(512) 239-3434

KX & Associates

(214) 630-9200

Kennedy Court Reporting Services

(512) 474-6704

TCEQ Docket Clerk, Fax Number 512/239-3311

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT NORMA LOPEZ(nlo) (512) 475-4993

The information contained in this facsimile message is privileged and confidential information intended only for the use of the above-named recipient(s) or the individual or agent responsible to deliver it to the intended recipient. You are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the address via the U.S. Postal Service. Thank you.

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0901
 RECIPIENT ADDRESS 9p8304204460
 DESTINATION ID
 ST. TIME 08/21 06:44
 TIME USE 02'43
 PAGES SENT 9
 RESULT OK

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
 300 West 15th Street Suite 502
 Austin, Texas 78701
 Phone: (512) 475-4993
 Fax: (512) 475-4994

08/20/2009

DATE:

9

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

ORDER NO. 1- SETTING CASE SCHEDULE

REGARDING:

582-09-4289

DOCKET NUMBER:

JUDGE WILLIAM G NEWCHURCHFAX TO:FAX TO:

RANDOLPH SCHWENN

(830) 420-4460

EMILY WILMS ROGERS

(512) 320-5638

HON. DAVID D. MUELLER

(830) 914-2917

MARK ZEPPA (LAW OFFICE OF MARK H. ZEPPA, P.C.)

(512) 346-6847

BLAS J. COY, JR. (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-6377

SHANA HORTON (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-3434

KX & Associates

(214) 630-9200

Kennedy Court Reporting Services

(512) 474-6704

TCEQ Docket Clerk, Fax Number 512/239-3311

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT NORMA LOPEZ(nlo) (512) 475-4993

The information contained in this facsimile message is privileged and confidential information intended only for the use of the above-named recipient(s) or the individual or agent responsible to deliver it to the intended recipient. You are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the address via the U.S. Postal Service. Thank you.

 *** MULTI TX/RX REPORT ***

TX/RX NO 0899
 PGS 9
 TX/RX INCOMPLETE

TRANSACTION OK

(1) 9p8304204460
 (2) 9p3205638
 (4) 9p3466847
 (5) 9p2393434
 (6) 9p2396377
 (7) 9p2146309200
 (8) 9p4746704

ERROR INFORMATION

(3) 9p8309142914

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

DATE: 08/20/2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 9

REGARDING: ORDER NO. 1- SETTING CASE SCHEDULE

DOCKET NUMBER: 582-09-4289

JUDGE WILLIAM G NEWCHURCH

FAX TO:

FAX TO:

RANDOLPH SCHWENN

(830) 420-4460

EMILY WILLMS ROGERS

(512) 320-5638

HON. DAVID D. MUELLER

(830) 914-2917

MARK ZEPPA (LAW OFFICE OF MARK H. ZEPPA, P.C.)

(512) 346-6847

BLAS J. COY, JR. (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-6377

SHANA HORTON (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-3434

KX & Associates

(214) 630-9200

Kennedy Court Reporting Services

(512) 474-6704

TCEQ Docket Clerk, Fax Number 512/239-3311

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT NORMA LOPEZ(nlo) (512) 475-4993

The information contained in this facsimile message is privileged and confidential information intended only for the use of the above-named recipient(s) or the individual or agent responsible to deliver it to the intended recipient. You are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the address via the U.S. Postal Service. Thank you.

Norma Lopez

From: System Administrator
To: Norma Lopez
Sent: Thursday, August 20, 2009 2:52 PM
Subject: Undeliverable: TCEQ Confirmation: Your Filing on Permit Number/Docket Number 2009-0612-UCR was received.

Your message did not reach some or all of the intended recipients.

Subject: TCEQ Confirmation: Your Filing on Permit Number/Docket Number 2009-0612-UCR was received.
Sent: 08/20/2009 2:51 PM

The following recipient(s) could not be reached:

Norma Lopez on 08/20/2009 2:51 PM

The e-mail account does not exist at the organization this message was sent to. Check the e-mail address, or contact the recipient directly to find out the correct address.

< rhwww.tceq.state.tx.us #5.1.1 SMTP; 550 Requested action not taken: mailbox unavailable>

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: LaDonna Castanuela, Chief Clerk
THRU: Doug Holcomb, P.E. Section Manager
Utilities & District Section
Water Supply Division

Tammy Benter, Team Leader
Utilities Financial Review Team
Utilities & District Section
Water Supply Division

Vera Poe, P.E., Team Leader
Utilities Technical Review Team
Utilities & District Section
Water Supply Division

FROM: Heidi Graham
Utilities Technical Review Team
Water Supply Division

SUBJECT: Application from Harvest Hills Treatment, LTD., A1893, to Decertify a Portion of Certificate of Convenience and Necessity (CCN) No. 20973 from Green Valley Special Utility District (SUD) and to Obtain a Sewer CCN, in Guadalupe County; Application No. 36353-C

CN: pending; RN: pending (Harvest Hills Treatment, LTD)
CN: 600684294; RN: 104190244 (Green Valley SUD)

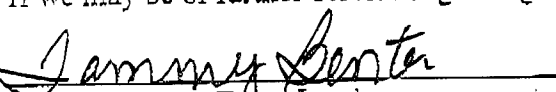
We hereby transfer the official file for the above application to the Chief Clerk's Office. Please, refer the application to the State Office of Administrative Hearings and request that a hearing be scheduled.

We received protests from Green Valley Special Utility District (GVSD) and the City of Marion.

Staff estimates approximately 10 people to attend this hearing. Attached is a mailing list. The staff assigned to this case are:

Technical - Heidi Graham
Legal -

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


Tammy Benter, Team Leader

TB/HG/ln

CHIEF CLERK'S OFFICE

2009 MAY 13 AM 9:53

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009-0612-UCR

CCN/20973/50

SOAH DOCKET NO. 582-09-4289
TCEQ DOCKET NO. 2009-0612-UCR

APPLICATION OF HARVEST HILLS
TREATMENT, LTD., TO DECERTIFY
A PORTION OF CERTIFICATE OF
CONVENIENCE AND NECESSITY
(CCN) NO. 20973 FROM GREEN
VALLEY SPECIAL UTILITY
DISTRICT AND TO OBTAIN A SEWER
CCN IN GUADALUPE COUNTY,
TEXAS

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 2
GRANTING MOTION TO DISMISS AND REMAND

On December 3, 2009, Harvest Hills Treatment, Ltd. filed a motion to dismiss this case from the docket of the State Office of Administrative Hearings (SOAH) and to remand the case to the Executive Director (ED) for uncontested approval. The ED has no objection to the motion, and all the protesting parties have withdrawn their requests for a hearing. The motion is granted. This case is dismissed from SOAH's docket and remanded to the ED.

SIGNED December 4, 2009.



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

2009 DEC -7 AM 9:33

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

JAN 11 2010
TCEQ
CENTRAL FILE ROOM

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: HARVEST HILLS TREATMENT LTD
SOAH DOCKET NUMBER: 582-09-4289
REFERRING AGENCY CASE: 2009-0612-UCR

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 DEC -7 AM 9:33
CHIEF CLERKS OFFICE

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH

REPRESENTATIVE / ADDRESS

PARTIES

MARK ZEPPA
ATTORNEY
LAW OFFICE OF MARK H. ZEPPA, P.C.
4833 SPICEWOOD SPRINGS RD., SUITE 202
AUSTIN, TX 78759-8436
(512) 346-4011 (PH)
(512) 346-6847 (FAX)
markzeppa@austin.rr.com

GREEN VALLEY SLD

BLAS J. COY, JR.
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
bc coy@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

EMILY WILLMS ROGERS
ATTORNEY
BICKERSTAFF HEATH DELGADO ACOSTA, LLP
3711 S. MOPAC EXPRESSWAY, BUILDING ONE, SUITE
300
AUSTIN, TX 78746
(512) 472-8021 (PH)
(512) 320-5638 (FAX)
erogers@bickerstaff.com

HARVEST HILLS TREATMENT, LTD.

SHANA HORTON
ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087, MC-175
AUSTIN, TX 78711-3087
(512) 239-1088 (PH)
(512) 239-3434 (FAX)

EXECUTIVE DIRECTOR

HON. DAVID D. MUELLER
MAYOR
CITY OF SANTA CLARA
P.O. BOX 97
MARION, TX 78124
(830) 914-2387 (PH)
(830) 914-2917 (FAX)
davidm.mueller@sbcglobal.net

CITY OF SANTA CLARA

RANDOLPH SCHWENN
CITY OF MARION PUBLIC WORKS DIRECTOR
P.O. BOX 158
MARION, TX 78124
(830) 914-2391 (PH)
(830) 420-4460 (FAX)
rschwenn@cityofmariontx.org

CITY OF MARION

cc Docket Clerk, State Office of Administrative Hearings

Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

December 3, 2009

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 DEC - 3 AM 10:33

CHIEF CLERKS OFFICE

Via e-file

La Donna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 1st Floor
Austin, TX 78753

Re: SOAH Docket No. 582-09-4289; TCEQ Docket No. 2009-0612-UCR;
*Application of Harvest Hills Treatment, Ltd. to Decertify a Portion of CCN No.
20973 from Green Valley Special Utility District and to Obtain a Sewer CCN in
Guadalupe County, Texas*

Dear Ms. Castañuela:

Enclosed for filing is Harvest Hills Treatment Plant, Ltd.'s Motion to Remand to Executive Director in connection with the above-referenced matter. A copy is being served on each party of record.

Should you have questions, please call Emily Rogers at (512) 472-8021.

Sincerely,



Denise Fregeolle-Burk
Assistant to Emily W. Rogers

/dfb
Enclosure

cc: Judge Craig Bennett
All Parties of Record