



Control Number: 45342



Item Number: 26

Addendum StartPage: 0

## Hernandez, Nancy

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**From:** Journeay, Stephen  
**Sent:** Tuesday, May 17, 2016 3:09 PM  
**To:** agency\_req\_rep (agency\_req\_rep@texasattorneygeneral.gov)  
**Cc:** Commissioners Offices; Hubenak, Priscilla; Preister, David; Sterling, Elizabeth (Elizabeth.Sterling@oag.state.tx.us); Linda Secord (linda.secord@texasattorneygeneral.gov); Journeay, Stephen; Pemberton, Margaret; Hernandez, Nancy  
**Subject:** Request representation, PUC Docket No. 45342, Northlake v. PUC No. D--1-GN-001949  
**Attachments:** 45342\_Northlake.pdf

Mr. Jim Davis, Deputy, Attorney General for Civil Litigation

Re: Town of Northlake, Texas v. PUC, No. D-1-GN-16-001949

Dear Mr. Davis:

The Public Utility Commission of Texas was served with a citation in the above referenced cause number on May 11, 2016. This letter is to request representation by the Attorney General in this matter. A copy of the petition and citation is attached.

This lawsuit relates to PUC Docket No. 45342 – Petition of continental U.S. Management Corporation to Amend the Town of Northlake's Sewer Certificate of Convenience and Necessity in Denton County, Texas by Expedited Release.

If you need further information, please call me at 512-936-7215.

Stephen Journeay, Director

Commission Advising and Docket Management  
Public Utility Commission of Texas

[stephen.journeay@puc.state.tx.us](mailto:stephen.journeay@puc.state.tx.us)  
[stephen.journeay@puc.texas.gov](mailto:stephen.journeay@puc.texas.gov)

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(512) 936-7208 (fax)

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C A U S E   N O .   D - 1 - G N - 1 6 - 0 0 1 9 4 9

845342

TOWN OF NORTHLAKE, TEXAS

, Plaintiff

vs.

PUBLIC UTILITY COMMISSION OF TEXAS

TO: PUBLIC UTILITY COMMISSION OF TEXAS  
BY SERVING ITS EXECUTIVE DIRECTOR, BRIAN LLOYD  
1701 NORTH CONGRESS, 7TH FLOOR, ROOM 110  
AUSTIN, TEXAS 78701

DELIVERED THIS 11 DAY OF May, Defendant  
CARLOS B. LOPEZ 2016  
CONSTABLE, PCT 5, TRAVIS COUNTY, TEXAS  
BY: LLOYD  
DEPUTY

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION FOR JUDICIAL REVIEW of the PLAINTIFF in the above styled and numbered cause, which was filed on MAY 6, 2016 in the 261ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, May 10, 2016.

REQUESTED BY:  
STEPHEN C DICKMAN  
303 COLORADO ST # 2000  
AUSTIN, TX 78701-3924  
BUSINESS PHONE: (512) 495-6413 FAX: (512) 495-6613



*[Signature]*  
Velva L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: CHAMBERS VICTORIA

R E T U R N

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and executed at \_\_\_\_\_ within the County of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., by delivering to the within named \_\_\_\_\_, each in person, a true copy of this citation together with the ORIGINAL PETITION FOR JUDICIAL REVIEW accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Carlos B. Lopez  
Constable Pct. 5, Travis County, Texas



Sheriff / Constable / Authorized Person

By: \_\_\_\_\_

Printed Name of Server

Notary Public, THE STATE OF TEXAS

County, Texas

D-1-GN-16-001949

CONSTABLE

P01 - 000040154

☐ Original

☐ Service Copy

D 35342

5/6/2016 10:33:32 AM

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-16-001949  
Victoria Chambers

CAUSE NO. D-1-GN-16-001949

TOWN OF NORTHLAKE, TEXAS,  
*Plaintiff,*

V.

PUBLIC UTILITY COMMISSION OF  
TEXAS,  
*Defendant.*

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§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

**ORIGINAL PETITION FOR JUDICIAL REVIEW**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Town of Northlake, Texas ("Northlake"), Plaintiff herein, pursuant to the Texas Administrative Procedure Act, Tex. Gov't Code §§ 2001.171 and 2001.176 ("APA") and Texas Water Code § 13.381 and files this Original Petition for Judicial Review of an Order of the Public Utility Commission of Texas ("PUC") entered in PUC Docket No. 45342, *Petition of Continental U.S. Management Corporation to Amend the Town of Northlake's Sewer Certificate of Convenience and Necessity in Denton County, Texas by Expedited Release*, and for cause of action would respectfully show the Court as follows:

**I. DISCOVERY PLAN**

Northlake intends to conduct discovery, if any, under a Level 3 Discovery Control Plan as provided by Rule 190.4 of the Texas Rules of Civil Procedure.

**II. PARTIES**

1. Northlake is Type A general law municipality originally incorporated in December 1960 and located in Denton County, Texas with a current population of approximately 2,160 residents. Northlake is the holder of sewer certificate of convenience and necessity ("CCN") No. 20866.

2. The PUC is an administrative agency of the State of Texas charged with

regulating, issuing and amending CCNs for retail public utilities providing water and sewer service in Texas. The PUC may be served with process by service of citation on its Executive Director, Brian Lloyd, Public Utility Commission of Texas, 1701 North Congress, 7<sup>th</sup> Floor, Room 110, Austin, Texas 78701. *See* 16 Tex. Admin. Code § 22.22. Northlake requests that the Clerk of the Court issue service of process to PUC pursuant to Texas Rule of Civil Procedure 99.

3. Pursuant to Texas Government Code § 2001.176(b)(2), a copy of this Original Petition is being served on all parties of record in PUC Docket No. 45342, through their attorneys of record, by E-mail and by certified mail, return receipt requested. A list of all parties and attorneys of record in PUC Docket No. 45342 is attached hereto as Exhibit A.

### III. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action which seeks judicial review of a decision of a Texas administrative agency. This suit is an appeal from the February 17, 2016 final order of the PUC in PUC Docket No. 45342. The PUC's order was issued under Texas Water Code § 13.254(a-6). Texas Water Code § 13.003 provides that the Texas APA, Tex. Gov't Code § 2001.001 *et seq.*, applies to all proceedings under Chapter 13, unless Chapter 13 provides otherwise. Texas Water Code § 13.381 provides that "[a]ny party to a proceeding before the PUC is entitled to judicial review under the substantial evidence rule" which is the default standard of review under the APA.

5. Accordingly, this suit is filed pursuant to §§ 2001.171 and 2001.176 of the Texas APA and § 13.381 of the Texas Water Code. The PUC's final order of February 17, 2016 adjudicated all applicable issues in Docket No. 45342 and is therefore a final and appealable order. Northlake is aggrieved by the PUC's Order of February 17, 2016, a copy of which is attached hereto as Exhibit B.

6. Northlake timely filed a motion for rehearing on March 11, 2016. *See* Tex. Gov't Code § 2001.146(a) and the PUC rule at 16 Tex. Admin. Code § 22.264 which provides that motions for rehearing, replies thereto and PUC action on motions for rehearing are governed by the APA. A copy of Northlake's Motion for Rehearing (without exhibits) is attached hereto as Exhibit C and is incorporated herein by reference for all purposes. On March 16, 2016, all parties in Docket No. 45342 were notified by the PUC that "no commissioner has voted to add the Motion for Rehearing of Town of Northlake to an open meeting agenda" and no action was taken by the PUC on Northlake's Motion for Rehearing. Therefore Northlake's Motion for Rehearing was overruled by operation of law on April 12, 2016 which is 55 days after the date of the PUC's Order of February 17, 2016. Tex. Gov't Code § 2001.146(c). Accordingly, on April 12, 2016, the PUC's Order of February 17, 2016 became final and appealable pursuant to § 2001.144(a)(2)(B) of the APA. The statutory deadline for filing this petition for judicial review is thirty days following the date the PUC's Order became final and appealable, or May 12, 2016.

7. Based on the above procedural history, Northlake has exhausted all administrative remedies and Northlake is statutorily entitled to judicial review of the PUC's order of February 17, 2016 pursuant to APA § 2001.171 and Texas Water Code § 13.381. This Original Petition is filed within thirty days of April 12, 2016, the date on which the PUC's Order became final and appealable as required by APA § 2001.176.

8. Venue in this Court is mandatory under APA § 2001.176(b)(1) which requires that appeals thereunder be brought in a district court of Travis County.

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

9. Under its sewer CCN No. 20866, Northlake has the exclusive right and obligation to provide retail wastewater service to all customers within the geographic boundaries of its

CCN. See generally, Tex. Water Code §§ 13.250 and 13.252.

10. Under Tex. Water Code § 13.254(a-5), the Texas legislature established an expedited process for certain qualifying landowners to remove (i.e., decertify) their property from a CCN. Under this expedited decertification process, an owner of a tract of land of at least 25 acres that is not receiving water or sewer service and that is located in one of 33 counties may petition the PUC for expedited release of the tract from a CCN. The PUC must grant the petition within 60 days of the filing of the petition. Tex. Water Code § 13.254(a-6). PUC rules implementing this expedited decertification process are at 16 Tex. Admin. Code 24.113(r).

11. Although a tract of land may be decertified under this expedited process, a retail public utility may not provide water or sewer service to persons on such tract unless and until compensation is provided to the decertified retail public utility (i.e., the entity that held the CCN for the tract prior to the decertification) for any property that the PUC determines is rendered useless or valueless to the decertified retail public utility. Tex. Water Code § 13.254(d); 16 Tex. Admin. Code 24.113(h).

## V. FACTUAL BACKGROUND

12. On November 16, 2015, Continental U.S. Management Corporation (“Continental”) filed a petition with the PUC to amend Northlake’s sewer CCN No. 20866 to decertify a 138.907-acre tract of land pursuant to the expedited CCN release provisions of Tex. Water Code § 13.254(a-5). Continental’s petition was docketed as PUC Docket No. 45342. Northlake was granted intervenor status in Docket No. 45342 on January 5, 2016.

13. In its petition filed at the PUC, Continental repeatedly identified the entire 138.907-acre tract as the area to be decertified from Northlake’s sewer CCN No. 20866. For example, Continental’s petition states: “*Petitioner owns approximately 138.907 contiguous*

*acres of land in Denton County, Texas (the 'Property'), which petitioner seeks to decertify from sewer CCN No. 20866... Petitioner requests that the PUC grant expedited release of the Property from sewer CCN No. 20866". In the Conclusion and Prayer of its petition, Continental again requests "release of the Petitioner's property...". All of Continental's mapping attachments and submissions which are a part of its petition show the entire 138.907-acre tract as the area that was sought for decertification from sewer CCN 20866. In support of its petition, Continental's President filed a sworn affidavit stating "Continental U.S. Management Corporation owns approximately 138.907 acres of land (the 'Property') located within the boundaries of Sewer CCN 20866 issued to the Town of North Lake, Texas.... I request that the Public Utility Commission of Texas release this property from Sewer CCN No. 20866."*

14. Notwithstanding the clearly expressed intent of Continental that it sought release of the 138.907-acre tract of land from Northlake's sewer CCN, the northern portion of the 138.907-acre tract was actually not within Northlake's sewer CCN area but rather was located within the City of Justin's sewer CCN No. 20061, and only the southern 74.174-acre portion of the 138.907-acre tract was within Northlake's sewer CCN.

15. On February 17, 2016, the Commission issued its Order in the above-referenced docket granting the petition to amend Northlake's sewer CCN No. 20866 and removing from Northlake's sewer CCN the 74.174-acre tract of land comprising the southern portion of the 138.906-acre tract that Continental petitioned for. A map showing the 138.907-acre tract including the 74.174-acre southern portion is attached hereto as Exhibit D. The PUC's Order was issued notwithstanding the facts that (i) Continental petitioned for decertification of the 138.907-acre tract, and (ii) Continental never sought to amend its petition to seek decertification area of only the southern 74.174-acre portion of the 138.907-acre tract.



16. The 74.174-acre tract which was decertified by the PUC order is within Northlake's extra-territorial jurisdiction ("ETJ") and is the subject of pending litigation between Northlake and the City of Justin ("Justin") in which Northlake is alleging that Justin illegally included the tract in Justin's ETJ.<sup>1</sup> A temporary injunction has been issued in that litigation prohibiting Justin and "any persons or entities acting in concert with Justin" from taking any action involving development and permitting of the 74.164-acre tract under an August 12, 2015 development agreement between Justin and Continental. A copy of the Denton County District Court's Order Granting Temporary Injunction is attached hereto as Exhibit E. One of the terms of the development agreement called for Continental to file the application for expedited decertification of the 138.907-acre tract which Continental did in PUC Docket No. 45342. An excerpt from the Justin-Continental development agreement showing Section 5.1 (entitled "Certificates of Convenience and Necessity") is attached hereto as Exhibit F.

**VI. CAUSE OF ACTION: PUC'S DECERTIFICATION OF CONTINENTAL'S 74.174-ACRE TRACT FAILED TO COMPLY WITH THE SUBSTANTIVE REQUIREMENTS OF TEXAS WATER CODE § 13.254 AND PUC'S RULES BECAUSE CONTINENTAL FAILED TO IDENTIFY THE TRACT OF LAND TO BE DECERTIFIED**

17. The PUC's Order of February 17, 2016 granting decertification of the 74.174-acre tract when Continental had petitioned for decertification of a 138.907-acre tract is contrary to Tex. Water Code § 13.254(a-5) and PUC Rules at 16 Tex. Admin. Code § 24.113(r). Because Northlake has been deprived of its sewer CCN covering the 74.174-acre tract in violation of a statutory provision and through unlawful procedure, substantial rights of Northlake have been prejudiced as a result of the PUC's Order. Accordingly, the PUC's Order of February 17, 2016 should be reversed or remanded to the PUC for further proceedings under the authority of Tex. Water Code § 13.381 and § 2001.174 of the APA.

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<sup>1</sup> Cause No. 15-08170-367 in the 367th Judicial District Court of Denton County.

18. Texas Water Code Section 13.254(a-5) states in pertinent part: "... the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of convenience and necessity..." [emphasis added]. Thus the petition must identify the acreage (i.e., the "area") to be decertified and the CCN from which that acreage is to be decertified.

19. Notwithstanding the statutory obligation to specifically identify the tract of land to be decertified, in its petition filed in this docket, Continental only identified the 138.907-acre tract as the area to be decertified from Northlake's sewer CCN No. 20866. See facts described in Paragraph 13 above. Despite the petition of Continental unequivocally seeking release of the 138.907-acre tract, the Commission's Order of February 17, 2016 granted Continental a CCN release for a different tract of land, i.e., the 74.174-acre tract. Therefore, there is a substantial variance between the decertification tract that Continental petitioned for and the tract that was actually decertified by the Commission. This constitutes legal error in view of Texas Water Code Section 13.254(a-5) which requires that the landowner identify the specific tract of land to be decertified.

20. Continental's error in petitioning for release of the 138.907-acre tract is a more-than-sufficient basis for the PUC to require that Continental amend or re-file its petition to accurately describe what acreage is being sought for decertification from Northlake's sewer CCN. Without a clear description in Continental's petition of what acreage is being sought for decertification, the PUC has no basis in the record for finding that the requirements for expedited decertification in Texas Water Code § 13.254(a-5) have been met with respect to the 74.174-acre tract. Without such a legal basis, the PUC's Order, particularly Conclusion of Law No. 4, is erroneous.

21. Although PUC Staff stated that “the mapping submitted by Continental makes clear the intention of the petition is only to release that portion of Continental’s land that is within Northlake’s sewer CCN”<sup>2</sup>, there is no indication in the record whatsoever as to how the mapping submitted by Continental makes clear the intention of Continental to amend its petition to alter the decertified tract from 138.907 acres to a tract of only 74.174 acres. For the Commission to rely on Continental’s perceived intent without a supporting pleading or evidence constitutes legal error.

22. Consistent with the PUC’s rule at 16 Tex. Admin. Code § 22.76(b), it is a time-honored rule in Texas practice and procedure that a party is bound by its pleadings in court, insofar as they affect their substantial rights. *Taylor v. Miss.-Texas R.R.*, 294 S.W.2d 167, 168 (Tex. Civ. App. – Waco 1956, no writ); *Dallas Railway & Terminal Co. v. Bishop*, 153 S.W.2d 298, 305 (Tex. Civ. App. – Eastland 1941, no writ) (“We think plaintiff is bound by his pleadings in the first place, ...”). Continental as petitioner is the master of its claims, and its petition and its supporting affidavit clearly state that Continental sought release of the 138.907-acre tract from Northlake’s sewer CCN, not the 74.174-acre tract. Continental is bound by its pleading and is judicially estopped to claim otherwise.

23. If allowed to stand, the PUC’s Order would set the precedent that, regardless of what acreage is petitioned for decertification, the PUC is authorized to unilaterally and implicitly amend a petition to conform to what the PUC believes the petitioner really intends regardless of there being no documentation from the petitioner of an intention to amend its petition. Such discretion on the part of PUC is unworkable and unwise from a public policy perspective as it would undermine the transparency and integrity of the PUC’s CCN expedited decertification process.

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<sup>2</sup> Commission Staff’s Final Recommendation, pg. 2, Footnote No. 5.

24. By decertifying the 74.174-acre tract from Northlake's sewer CCN, Northlake is now deprived of its right to provide retail sewer service to the tract. This substantial right of Northlake has been effectuated through the PUC's Order of February 17, 2016 which was issued in violation of Tex. Water Code § 13.254(a-5)'s requirement to specifically identify the 74.174-acre tract of land to be decertified, and through the PUC's unlawful procedure of approving the decertification without requiring Continental to amend its petition to specifically identify the 74.174-acre tract. Accordingly, under § 2001.174 of the APA, the Court must reverse or remand this case for further proceedings.

#### **VII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Northlake prays that the PUC be cited to appear and answer herein. Northlake prays that, upon final trial or hearing, it have a judgment reversing or remanding the PUC's Order of February 17, 2016. Finally, Northlake prays for such other and further relief to which it may show itself justly entitled either general or special, at law or in equity.

Respectfully submitted,

**KELLY HART & HALLMAN LLP**  
303 Colorado Street, Suite 2000  
Austin, Texas 78701  
Telephone: (512) 495-6400  
Facsimile: (512) 495-6401

By: 

Stephen C. Dickman  
State Bar No. 05836500


**ATTORNEYS FOR THE TOWN OF  
NORTHLAKE**

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Original Petition for Judicial Review has been served on the following attorneys of record, via e-mail and certified mail, return receipt requested, on this 10th day of May, 2016:

Matthew A. Arth  
Attorney – Legal Division  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
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**Attorney for Public Utility Commission of Texas**

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Tel: 512-236-2233  
Fax: 512-391-2112  
**Attorney for Continental U.S. Management Corp.**

  
\_\_\_\_\_  
Stephen C. Dickman

# Exhibit A

## List of Parties and Attorneys of Record in PUC Docket No. 45342

Matthew A. Arth  
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Fax: 512-495-6613  
**Attorney for Town of Northlake**

# EXHIBIT B

DOCKET NO. 45342

PETITION OF CONTINENTAL U.S.  
MANAGEMENT CORPORATION TO  
AMEND THE TOWN OF  
NORTHLAKE'S SEWER  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN DENTON  
COUNTY BY EXPEDITED RELEASE

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ORDER

This Order addresses the petition of Continental U.S. Management Corporation (Continental) for expedited release of 138.907 acres from the Town of Northlake's (Northlake) sewer Certificate of Convenience and Necessity (CCN) No. 20866 in Denton County (Petition). Public Utility Commission of Texas (Commission) Staff recommended approval of the Petition. Consistent with Commission Staff's recommendation, the Petition is approved.

I. Background

On November 16, 2015, Continental filed the Petition, pursuant to Tex. Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC), for expedited release of an approximately 138.907-acre tract of land owned by Continental (the Petition Property) from Northlakes' sewer CCN No. 20866 in Denton County.<sup>1</sup> Continental asserts that the Petition Property is not receiving sewer service from Northlake or any other sewer service provider.<sup>2</sup>

In its response to the Petition, Northlake stated that, contrary to Commission Staff's statement otherwise in its response addressing administrative completeness, only a portion of the Petition Property is located within Northlake's CCN No. 20866.<sup>3</sup> Northlake stated that the northern portion of the Petition Property is actually located within the City of Justin's (Justin) sewer CCN No. 20061.<sup>4</sup> Exhibit 2 of Northlake's response, provided as Attachment 1 to this

<sup>1</sup> Petition for Expedited Release from the Town of North Lake's Sewer CCN No. 20866 Pursuant to Section 13.254(a-5), Texas Water Code (Nov. 16, 2015).

<sup>2</sup> *Id.*, Affidavit of George Olen Sanders at 6-7, Exhibit 1.

<sup>3</sup> The Town of Northlake's Response to Order No. 2 and Motion to Abate at 2 (Jan. 4, 2016) (Northlake Response).

<sup>4</sup> *Id.*

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Order, depicts the portion of the 138.907-acre tract that is within Justin's CCN. Northlake stated that the Petition should therefore be withdrawn and refiled.<sup>5</sup> Northlake stated that an approximately 74.174-acre southern portion of the Petition Property is within Northlake's extra-territorial jurisdiction (ETJ); but Justin has taken certain legal actions to bring this area within its ETJ.<sup>6</sup> This legal matter is now before the 367<sup>th</sup> District Court of Denton County.<sup>7</sup> Northlake stated that a temporary injunction (TI) has been issued against Justin in that proceeding.<sup>8</sup> Northlake requested abatement of this Petition pending the final trial in that proceeding.<sup>9</sup>

On January 8, 2015, Continental responded to Northlake, stating that it is not required to demonstrate that all of the Petition Property is within Northlake's CCN No. 20866; only that it owns a tract of land greater than 25 acres, in a qualifying county, and that is not receiving sewer service, which Continental asserts it has done.<sup>10</sup> Continental stated that ultimately, the Commission may decertify from Northlake's CCN only that portion of the Petition Property located within Northlake's CCN; but that it is appropriate for Continental to describe all of the deeded property.<sup>11</sup> Continental opposed abatement of this proceeding, stating that the TI does not mention a Commission proceeding and that the plain language of the TI demonstrates that it was not intended to interfere with the Commission's jurisdiction over CCNs.<sup>12</sup>

On January 11, 2016, Commission Staff recommended approval of the Petition.<sup>13</sup> Commission Staff stated that Continental provided adequate information to demonstrate that the Petition Property meets the requirements for expedited release.<sup>14</sup> Commission Staff noted that mapping submitted by Continental makes clear that the intention of this Petition is only to release the portion of Continental's land that is within Northlake's CCN.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2-4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> Continental U.S. Management Corporation's Reply to the Town of Northlake's Response to Order No. 2 and Motion to Abate Case at 2-3 (Jan. 8, 2016).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> Commission Staff's Final Recommendation at 3 (Jan. 11, 2016).

<sup>14</sup> *Id.* at 1.

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On January 15, 2016, Northlake responded to Commission Staff's recommendation on final disposition, stating that Continental should be required to amend the Petition to correctly identify the acreage sought to be decertified; and further that while Commission Staff may be correct that this error is not dispositive of the need to deny the Petition, it is certainly more than sufficient to require Continental to accurately describe the acreage being sought for decertification from Northlake's CCN.<sup>15</sup>

Northlake did not deny that it is not providing sewer service to the portion of the Petition Property within CCN No. 20866. Based on the preceding, the Commission finds that Continental has adequately shown that the portion of the Petition Property within Northlake's CCN No. 20866 is not receiving sewer service and meets all other criteria under TWC § 13.254(a-5).

The Commission adopts the following findings of fact and conclusions of law:

## II. Findings of Fact

### Procedural History

1. On November 16, 2015, Continental filed the Petition to amend Northlake's sewer CCN No. 20866 in Denton County by expedited release.
2. On December 21, 2015, Order No. 2 was issued, finding the Petition administratively complete and adopting a procedural schedule.
3. On December 29, 2015, Northlake requested late intervention.
4. On January 4, 2016, Northlake responded to Order No. 2, substantively opposing the Petition and requesting abatement pending the final trial in its referenced litigation with Justin.
5. On January 11, 2016, Commission Staff recommended approval of the Petition and provided an amended certificate and map for Northlake's CCN No. 20866. The amended map and certificate are provided with this Order as Attachments 2 and 3, respectively.

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<sup>15</sup> The Town of Northlake's Response to Commission Staff's Final Recommendation at 1-2 (Jan. 15, 2016).

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Notice

6. Continental sent a copy of the Petition to Northlake by certified mail the same day the Petition was filed with the Commission.
7. Notice of the Petition was published in the *Texas Register* on November 27, 2015.

Project Description

8. The Petition Property, an approximately 138.907-acre tract owned by Continental, is located in Denton County, a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).
9. The portion of the Petition Property within CCN No. 20866 is at least 25 acres.
10. The portion of the Petition Property within CCN No. 20866 is not receiving sewer service from Northlake.

**III. Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to TWC §§ 13.041 and 13.254(a-5).
2. Notice of the Petition was provided in compliance with 16 TAC § 24.113(s) and 16 TAC §§ 22.54 and 22.55.
3. This docket was processed in accordance with the requirements of the TWC and Commission rules.
4. Continental is entitled to approval of the Petition having satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r) by adequately demonstrating ownership of a tract of land that is at least 25 acres, located in a qualifying county, and not receiving water service.
5. The requirements in 16 TAC § 22.35(b)(2) have been met in this proceeding.

**IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusion of law, the Commission issues the following order:

1. As to the area within CCN No. 20866, Continental's Petition is approved.

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2. The portion of Continental's 138.907-acre tract that is within Northlake's sewer CCN No. 20866 is hereby removed from CCN No. 20866.
3. Northlake's sewer CCN No. 20866 is amended in accordance with this Order.
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 17<sup>th</sup> day of <sup>February</sup>~~January~~ 2016.

## PUBLIC UTILITY COMMISSION OF TEXAS

  
DONNA L. NELSON, CHAIRMAN

  
KENNETH W. ANDERSON, JR., COMMISSIONER

  
BRANDY MARTY MARQUEZ, COMMISSIONER

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## Public Utility Commission of Texas

By These Presents Be It Known To All That

**Town of Northlake**

having obtained certification to provide sewer utility service for the convenience and necessity of the public; and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by Town of North Lake, is entitled to this

### **Certificate of Convenience and Necessity No. 20866**

to provide continuous and adequate sewer utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order resulting from Docket No. 45342 is on file at the Commission offices in Austin, Texas; and is a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Town of North Lake, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, the 17<sup>th</sup> day of February, 2016.

ATTACHMENT 2

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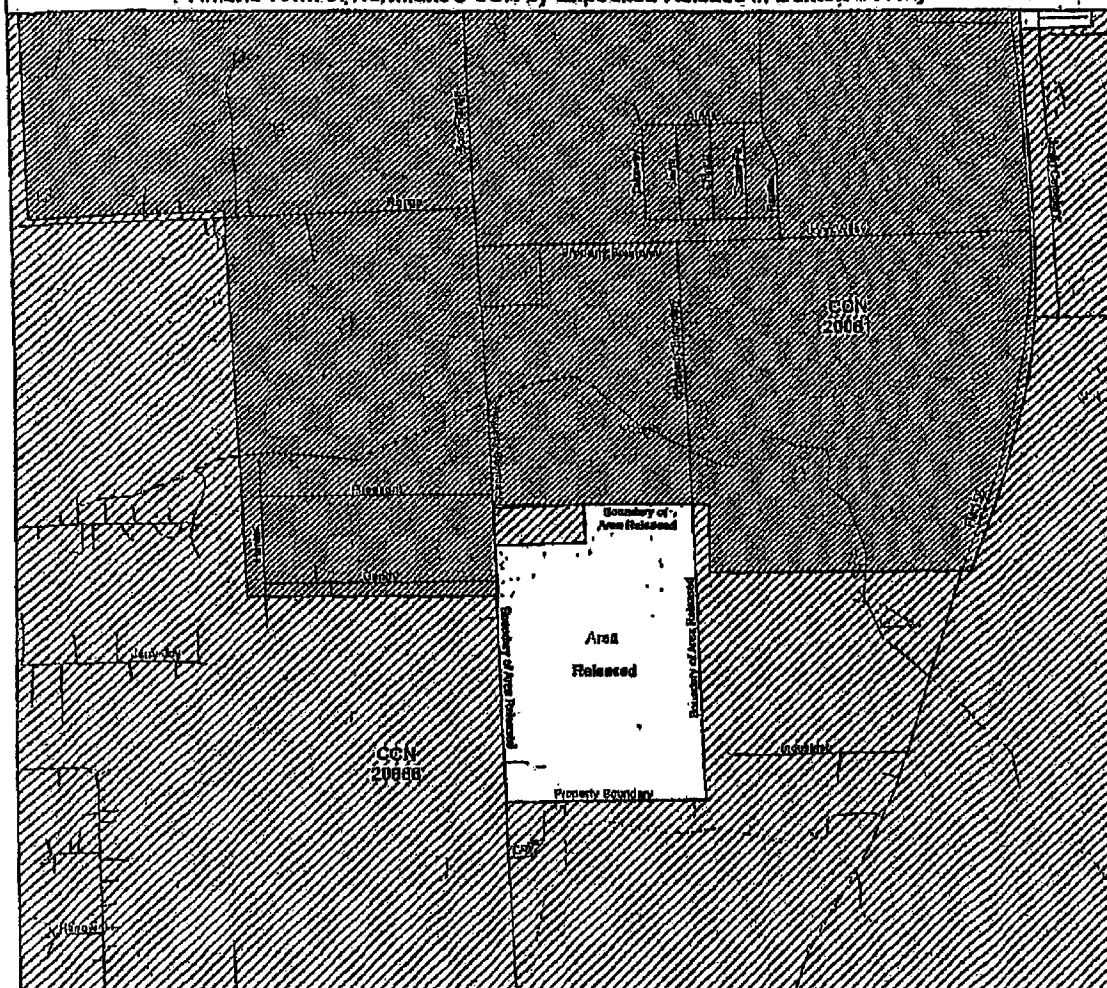
# ATTACHMENT 3

Town of Northlake  
Sewer Service Area

CCN No. 20888

PUC Docket No: 48342

Petition by Continental U.S. Management Corporation to  
Amend Town of Northlake's CCN by Expedited Release in Denton County



Public Utility Commission of Texas  
1701 N. Congress Ave  
Austin, TX 78701

## Sewer CCN Service Area

20888 - Town of Northlake

20881 - City of Justin

Area Released

Property Boundary

0 500 1000  
Feet



Map by: Koral Patel  
Date created: December 31, 2018  
Project Path: c:\puc\mapping\48342 Town of Northlake.mxd

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COMMISSION ADVISING & DOCKET MANAGEMENT  
OUTGOING COMMISSION-SIGNED ORDER  
MAIL LOG

16 FEB 17 PM 3:11  
FILED CLERK

OPEN MEETING DATE: 2/11/16

DOCKET NO.	STAFF	NO. OF PAGES	DATE ORDER SIGNED
45342	S. Goodson/Cynthia R.	8	2/17/16
TYPE OF ORDER: <u>FINAL ORDER</u>			

FILE STAMP DATE: 2/17/16 FILE STAMP TIME    A.M. 3:10 P.M.

NOTE: IF THE ORDER IS PLACED IN THE MAIL AFTER 3:00 PM, ENTER THE NEXT BUSINESS DAY  
AS THE DATE THE ORDER WAS MAILED  
FIRST CLASS MAIL ONLY - NO FED EX, AIRBORNE, UPS

CADM OUTGOING MAILBOX

DATE: 2/18/16 TIME 3:00 A.M.    P.M.

Ruby Hicks 2-17-16  
SIGNATURE DATE

21,

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**SERVICE LIST**

**DOCKET NO: 45342**

**PETITION OF CONTINENTAL U.S. MANAGEMENT CORPORATION TO AMEND  
THE TOWN OF NORTH LAKE'S CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN DENTON COUNTY BY EXPEDITED RELEASE**

<b>PARTIES</b>	<b>REPRESENTATIVE/ADDRESS</b>
<b>PUBLIC UTILITY COMMISSION</b>	LEGAL DIVISION PUBLIC UTILITY COMMISSION 1701 N CONGRESS AVE STE 8-110 AUSTIN TX 78711 512-936-7260 512-936-7268 FAX
<b>CONTINENTAL US MANAGEMENT CORPORATION</b>	LEONARD DOUGAL JACKSON WALKER LLP 100 CONGRESS STE 1100 AUSTIN TX 78701 512-236-2233 512-391-2112 FAX Email: ldougal@jw.com
<b>TOWN OF NORTH LAKE</b> Filed MTI 12/29/15 ggo Filed Request for Late Intervention 12/29/15 rdh Order No. 3 Granted MTI 1/5/16 krw	STEPHEN C DICKMAN KELLY HART & HALLMAN LLP 303 COLORADO STREET SUITE 2000 AUSTIN TEXAS 78701 512-495-6413 512-495-6613 FAX  DREW CORN TOWN OF NORTH LAKE 1400 FM 407 NORTHLAKE TX 76247 940-648-3290 940-648-0263 FAX

Verified: 11/16/15 DW; 11/17/15 KRW; 12/22/15 krw; 12/29/15 krw; 12/29/15/ ggo; 12/30/15 ggo; 1/5/16 krw;  
2/9/16 nsh; 2/17/16 rdh

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# EXHIBIT C

**PUC DOCKET NO. 45342**

<b>PETITION OF CONTINENTAL U.S.</b>	<b>§</b>	<b>BEFORE THE</b>
<b>MANAGEMENT CORPORATION TO</b>	<b>§</b>	
<b>AMEND THE TOWN OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>NORTHLAKE'S SEWER C.C.N.</b>	<b>§</b>	
<b>IN DENTON COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	<b>OF TEXAS</b>

---

**THE TOWN OF NORTHLAKE'S MOTION FOR REHEARING**

---

TO THE PUBLIC UTILITY COMMISSION OF TEXAS (the "Commission" or "PUC"):

NOW COMES the intervenor Town of Northlake ("Northlake") and files this Motion for Rehearing pursuant to Commission Procedural Rule 22.264 and Texas Government Code Chapter 2001 requesting that the Commission reconsider its Order of February 17, 2016 (the "Order", a copy of which is attached hereto as Exhibit 1) granting the petition of Continental U.S. Management Corporation ("Continental") seeking to amend Northlake's sewer Certificate of Convenience and Necessity ("CCN") No. 20866 by expedited release. Pursuant to Tx. Gov't. Code § 2001.146(a), a motion for rehearing in this case must be filed no later than the 25<sup>th</sup> day after the date the Commission Order was signed. Accordingly, this Motion for Rehearing is timely filed. In support hereof, Northlake would respectfully show as follows:

**RELEVANT FACTS**

On November 16, 2015, Continental filed a petition for expedited release to amend Northlake's sewer CCN No. 20866 to remove (i.e., decertify) a 138.907-acre tract of land pursuant to the expedited CCN release provisions of Tx. Water Code § 13.254(a-5). Northlake is a Type A general law municipality originally incorporated in December 1960 and that currently

has a population of approximately 2,160 residents.<sup>1</sup> Northlake was granted intervenor status in this docket on January 5, 2016.

In its Response to Order No. 2 filed on January 4, 2016, Northlake showed that the northern portion of the 138.907-acre tract was not within Northlake's sewer CCN area but rather was located within the City of Justin's sewer CCN No. 20061. On February 17, 2016, the Commission issued its Order in the above-referenced docket granting the petition to amend Northlake's sewer CCN No. 20866 and removing from Northlake's sewer CCN the 74.174-acre tract of land comprising the southern portion of the 138.906-acre tract Continental petitioned for. The Commission's Order was issued notwithstanding the facts that (i) Continental petitioned for decertification of a 138.907-acre tract, and (ii) Continental never sought to amend its petition to delete the requested decertification area that was within Justin's CCN area.

Moreover, the 74.174-acre tract which was within Northlake's extra-territorial jurisdiction ("ETJ") is the subject of pending litigation between Northlake and Justin (Cause No. 15-08170-367 in the 367<sup>th</sup> Judicial District Court of Denton County) in which Northlake is alleging that Justin illegally included the tract in Justin's ETJ. A temporary injunction has been issued in that litigation prohibiting Justin and "any persons or entities acting in concert with Justin" from taking any action involving development and permitting of the 74.164-acre tract under an August 12, 2015 development agreement between Justin and Continental. One of the terms of the development agreement called for Continental to file the application for expedited decertification of the 138.907-acre tract and Continental did so in PUC Docket No. 45200 (previously voluntarily dismissed by Continental) and in this docket. An excerpt from the Justin-Continental development agreement showing Section 5.1 (entitled "Certificates of

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<sup>1</sup> See Section I of Northlake's Response to Order No. 2 and Motion to Abate Case.

Convenience and Necessity") is attached hereto as Exhibit 2.<sup>2</sup> A copy of the Denton County District Court's Order Granting Temporary Injunction is attached hereto as Exhibit 3.<sup>3</sup> The terms of the Temporary Injunction clearly appear to apply to acts of Continental ("any persons or entities acting in concert with Justin") involving PUC decertification of the 74,174-acre tract because such decertification was undertaken by Continental pursuant to its August 12, 2015 development agreement with Justin.

**PROVISIONS OF THE PROPOSED ORDER  
TO WHICH NORTHLAKE EXCEPTS**

For the reasons set forth below, Northlake respectfully requests that the Commission reconsider its Order and deny Continental's petition.

Specifically, Northlake requests that the Commission reconsider the following provisions of the Order:

- The statement in Section I of the Proposed Order which states: "*Based on the preceding, the Commission finds that Continental has adequately shown that the portion of the Petition Property within Northlake's CCN No. 20866 is not receiving sewer service and meets all other criteria under TWC § 13.254(a-5).*"
- Conclusion of Law No. 4 which states: "*Continental is entitled to approval of the Petition having satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r) by adequately demonstrating ownership of a tract of land that is at least 25 acres, located in a qualifying county, and not receiving water service.*"
- All four ordering paragraphs of the Order.

**ARGUMENT AND AUTHORITIES**

**1. Continental's petition should be denied for failing to correctly identify the acreage sought to be decertified.**

As acknowledged by Commission Staff in its Final Recommendation, only about half of the 138,907-acre tract which Continental petitioned for release from Northlake's CCN area is

<sup>2</sup> This is Exhibit 5 to Northlake's Response to Order No. 2 and Motion to Abate Case.

<sup>3</sup> This is Exhibit 6 to Northlake's Response to Order No. 2 and Motion to Abate Case.

actually within Northlake's CCN area, as the other approximate northern half of the tract is within the City of Justin's CCN area.<sup>4</sup> Nevertheless, Commission Staff brushes off this substantial error in the petition and the mapping as "not dispositive in the present case."<sup>5</sup> Staff further states that "the mapping submitted by Continental makes clear the intention of the petition is only to release that portion of Continental's land that is within Northlake's sewer CCN."<sup>6</sup>

Texas Water Code Section 13.254(a-5) states in pertinent part: "... the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of convenience and necessity..." [emphasis added]. Thus the petition must identify the acreage (i.e., the "area") to be decertified and the CCN from which that acreage is to be decertified.

In its petition filed in this docket, Continental has repeatedly identified the entire 138,907-acre tract as the area to be decertified from Northlake's sewer CCN No. 20866. See Continental's petition which states: "*Petitioner owns approximately 138,907 contiguous acres of land in Denton County, Texas (the 'Property'), which petitioner seeks to decertify from sewer CCN No. 20866... Petitioner requests that the PUC grant expedited release of the Property from sewer CCN No. 20866*". In the Conclusion and Prayer of its petition, Continental again requests "*release of the Petitioner's property...*". All of Continental's mapping attachments and submissions which are a part of its petition show the entire 138,907-acre tract as the area that is sought for decertification from sewer CCN 20866. In support of its petition, Continental's President filed a sworn affidavit stating "*Continental U.S. Management Corporation owns approximately 138,907 acres of land (the 'Property') located within the boundaries of Sewer*

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<sup>4</sup> Commission Staff's Final Recommendation, pg. 2, Footnote No. 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

*CCN 20866 issued to the Town of North Lake, Texas.... I request that the Public Utility Commission of Texas release this property from Sewer CCN No. 20866."*

Despite these crystal clear statements that Continental petitioned for release of the 138.907-acre tract in this docket, the Commission's Order granted Continental a CCN release for a different tract of land, i.e., the 74.174-acre tract. Therefore, there is a substantial variance between the decertification tract that Continental petitioned for and the tract that was actually decertified by the Commission. This constitutes legal error in view of Texas Water Code Section 13.254(a-5) which requires that the landowner identify the specific land to be decertified.

The Commission's Procedural Rule § 22.76(b) provides that issues heard or argued in a Commission proceeding must conform to the pleadings unless the parties give express or implied consent to a hearing on the issues not raised in the pleadings.<sup>7</sup> Consistent with the Commission's Procedural Rule § 22.76(b), it is a time-honored rule in Texas practice and procedure that a party is bound by its pleadings in court, insofar as they affect their substantial rights. *Taylor v. Miss.-Texas R.R.*, 294 S.W.2d 167, 168 (Tex. Civ. App. – Waco 1956, no writ); *Dallas Railway & Terminal Co. v. Bishop*, 153 S.W.2d 298, 305 (Tex. Civ. App. – Eastland 1941, no writ) ("We think plaintiff is bound by his pleadings in the first place, ...") (emphasis added); *Backues v. Wood*, 218 S.W.2d 892, 894 (Tex. Civ. App. – Eastland 1949, writ ref'd n.r.e.) ("[parties] plead that Fisher County is a dry county and are bound by such pleading in the absence of testimony to the contrary") (emphasis added); *Herron v. City of Abilene*, 528 S.W.2d 349, 350 (Tex. Civ. App. – Eastland 1975, writ ref'd) ("Parties are bound by their pleadings...") (emphasis added); see also *Demos v. Doe*, 49 F.3d 728, 1995 WL 103632, \*2 (5<sup>th</sup> Cir. 1995) (" [we are] bound by [plaintiff's] pleadings, and are not free to speculate whether he might be able to state

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<sup>7</sup> By its Exceptions and its previously filed Response to Commission Staff's Final Recommendation, Northlake never expressly or impliedly consented to amendment of Continental's petition.

a claim against the Frito-Lay corporation if given yet another opportunity to amend his complaint." (emphasis added); *cf. Macias v. Raul A. (Unknown)*, *Badge No. 153*, 23 F.3d 94, 97 (5th Cir. 1994) ("Although we construe [plaintiff's] complaints liberally, ... we are still **bound by the allegations in the complaint**, and are not free to speculate that the plaintiff 'might' be able to state a claim if given yet another opportunity to add more facts to the complaint."), *cert. denied*, 513 U.S. 883, 115 S.Ct. 220 (1994) (emphasis added); *Ponderosa Development v. Craig*, 2007 WL 155866, \*2 (E.D. Tex. 2007) ("it is elementary law that parties are **bound by their pleadings**, and may not offer evidence to contradict a fact or position admitted in their pleadings) (citing *Johnson v. Houston's Restaurant, Inc.*, 167 Fed. Appx. 393, 395 (5th Cir.2006) ("Since facts admitted in pleadings 'are no longer at issue,' Johnson is foreclosed from now arguing ... contrary to the facts alleged in his complaint," (internal citations omitted); *White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir.1983); *Sinclair Refining Co. v. Tompkins*, 117 F.2d 596, 598 (5th Cir.1941) ("Pleadings are for the purpose of accurately stating the pleader's version of the case, and **they bind unless withdrawn or altered by amendment.**") (emphasis added).

Here, Continental as petitioner is the master of its claims, and its petition and its supporting affidavit shows on their face that Continental seeks release of the 138.907-acre tract from Northlake's sewer CCN, not the 74.174-acre tract. Continental is bound by its pleading and is judicially estopped to claim otherwise.

Continental's error in petitioning for release of the 138.907-acre tract is a more-than-sufficient basis to require that Continental amend or re-file its petition to accurately describe what acreage is being sought for decertification from Northlake's sewer CCN. Without a clear description in Continental's petition of what acreage is being sought for decertification, the Commission has no basis in the record for finding that the requirements for expedited



decertification in Texas Water Code § 13.254(a-5) have been met with respect to the 74.174-acre tract that would be decertified under the Proposed Order. Without such a legal basis, the Commission's Order, particularly Conclusion of Law No. 4, is erroneous.

Although PUC Staff stated that "the mapping submitted by Continental makes clear the intention of the petition is only to release that portion of Continental's land that is within Northlake's sewer CCN"<sup>8</sup>, there is no indication in the record whatsoever as to how the mapping submitted by Continental makes clear the intention of Continental to amend its petition to alter the decertified tract from 138.907 acres to a tract of only 74.174 acres. For the Commission to rely on Continental's perceived intent without a supporting pleading or evidence constitutes legal error.

PUC Staff essentially asserts that it really does not matter what acreage is identified in the petition so long as the decertified area is at least 25 acres (and is located within a qualifying county and is not currently receiving service). But the Commission's Order decertifying the 74.174-acre tract creates a risk of confusion in the mind of the public since the public notice published in this docket states that "*Continental seeks to have 138.907 acres removed from CCN 20866.*"<sup>9</sup> Moreover, the Commission's Order sets the precedent that, regardless of what acreage is petitioned for decertification, the PUC Staff is authorized to unilaterally and implicitly amend a petition to conform to what the PUC Staff believes the petitioner really intends regardless of there being no documentation from the petitioner of the amendment. Such discretion on the part of PUC Staff is unworkable and unwise as it undermines the transparency and integrity of the Commission's CCN expedited decertification process.

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<sup>8</sup> Commission Staff's Final Recommendation, pg. 2, Footnote No. 5.

<sup>9</sup> See PUC Interchange Item No. 3 in this docket.

**2. The commission should rehear this case in light of Northlake's ETJ litigation with the City of Justin.**

The litigation currently pending between Northlake and the City of Justin concerning Justin's illegal attempt to appropriate the 74.174-acre tract into Justin's ETJ justifies the Commission in reconsidering its Order in this case. Because the District Court of Denton County has already determined in the Temporary Injunction that Northlake has a probable right of prevailing in the litigation, and because the status of the 74.174-acre southern portion of the 138.907-acre tract at issue in this docket is in litigation, the Commission should reconsider its Order and abate this proceeding until the question of whether Continental has the right to develop the 74.174-acre tract as contemplated by the development agreement is adjudicated.

**PRAYER**

WHEREFORE, the Town of Northlake respectfully requests that the Commission reconsider its February 17, 2016 Order, set this matter for rehearing, deny Continental's petition and so amend its Order. Specifically, Northlake requests that the Commission replace the last full sentence of the Order's Background section (which is in error) with the following: *"Based on the preceding, the Commission finds that Continental has not adequately shown that the 138.907-acre tract of land sought for decertification from Northlake's CCN No. 20866 meets all criteria under TWC § 13.254(a-5)."*

Northlake further requests that the Commission replace Conclusion of Law No. 4 (which is in error) with the following: *"Continental is not entitled to approval of the Petition because Continental failed to petition for and accurately identify the tract of land to be decertified from Northlake's sewer CCN as required by Texas Water Code § 13.254(a-5) and 16 TAC § 24.113(r)."*

Northlake further requests that the Commission replace Ordering Paragraphs 1 through 4

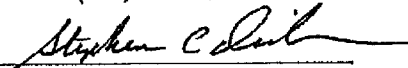
(which are all in error) with the following Ordering Paragraphs:

1. *As to the area for which Continental petitioned for decertification, Continental's Petition is not approved.*
2. *The portion of Continental's 138.907-acre tract that is within Northlake's sewer CCN No. 20866 is not removed from CCN No. 20866.*
3. *Northlake's sewer CCN No. 20866 is not amended by this Order.*
4. *All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.*

Northlake further requests that the Commission grant it all such other relief to which it is entitled.

Respectfully submitted,

**KELLY HART & HALLMAN LLP**  
303 Colorado Street, Suite 2000  
Austin, Texas 78701  
Telephone: (512) 495-6413  
Facsimile: (512) 495-6613

By:   
Stephen C. Dickman  
State Bar No. 05836500


**ATTORNEYS FOR THE TOWN OF  
NORTHLAKE**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of March, 2016, a true and correct copy of the foregoing document was served on the individuals listed below by Email and First Class U.S. Postal Service.

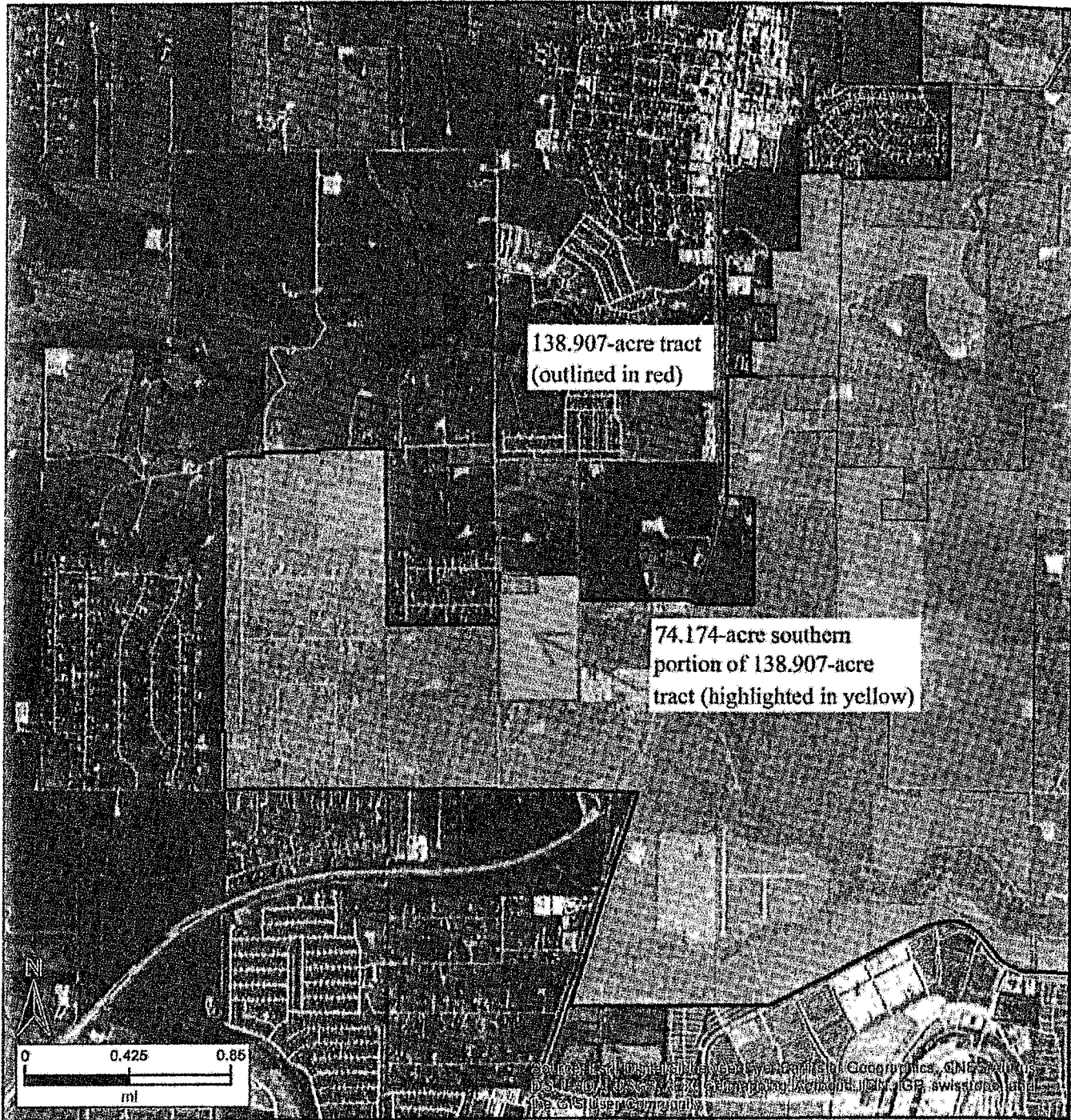
Leonard Dougal  
Jackson Walker L.L.P.  
100 Congress, Suite 1100  
Austin, Texas 78701  
Email: [ldougal@jw.com](mailto:ldougal@jw.com)  
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Fax: 512-936-7268

  
\_\_\_\_\_  
Stephen C. Dickman

# EXHIBIT D

# Northlake Web Map



## Legend

Northlake Boundary

Town of Northlake Boundaries

- Incorporated Area
- Extraterritorial Jurisdiction

**NORTH LAKE**  
TEXAS

Date: 10/7/2015

# EXHIBIT E

Cause No. 15-08170-367

TOWN OF NORTHLAKE,

*Plaintiff,*

v.

CITY OF JUSTIN,

*Defendant.*

IN THE DISTRICT COURT

DENTON COUNTY, TEXAS

367th JUDICIAL DISTRICT

**ORDER GRANTING TEMPORARY INJUNCTION**

On this day came to be considered the plaintiff, the Town of Northlake's, request for temporary injunction against defendant, the City of Justin.

The Court, having considered the Request, the evidence presented, arguments of counsel, and the pleadings on file in this case, is of the opinion that plaintiff's request for a temporary injunction should be GRANTED.

**IT IS THEREFORE ORDERED** that defendant City of Justin and its agents, servants, employees, representatives, and all persons or entities of any type whatsoever acting in concert with him or acting on his behalf, shall immediately cease and desist any enforcement, exercise or application of jurisdiction involving the attached Exhibit A (the "Property"), including: acts involving the Development Agreement; and development, including permitting and inspections, of the Property based on any plat.

The Court finds from the facts and evidence set forth in plaintiff's request and the evidence adduced at the hearing on this matter, that plaintiff has suffered and will continue to suffer a probable injury from defendant's violations of the Town of Northlake's Ordinances, including by defendant instituting subdivision development standards of the City of Justin in violation of the

**ORDER GRANTING TEMPORARY INJUNCTION - PAGE 1**

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Town of Northlake's Subdivision Ordinance and by purporting to expand its extraterritorial jurisdiction in violation of the Town of Northlake's Ordinances establishing its official maps. Without injunctive relief, defendant will engage in the activities enjoined. The Court further finds that unless defendant and its agents, servants, employees, representatives, and all persons or entities of any type whatsoever acting in concert with it or acting on its behalf are immediately enjoined as described above, defendant will continue to violate the Town of Northlake's Ordinances. Injunctive relief is warranted in this cause, as the Town has suffered and will continue to suffer violations of its duly-enacted Ordinances with no recourse to prevent such violations.

The Court also finds from the facts and evidence set forth in the request and evidence adduced at the hearing on this matter that plaintiff has a probable right to relief at final hearing and that there is a substantial likelihood that plaintiff will prevail on the merits at trial, that a temporary injunction issued to defendant and its agents, servants, employees, representatives, and all persons or entities of any type whatsoever acting in concert with it or acting on its behalf regarding the above-described acts is reasonable under the circumstances. The Court finds the violation is itself a finding of injury.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall forthwith issue a writ of Temporary Injunction in conformity with the law and terms of this Order. Plaintiff as a municipality is not required to give bond to secure a temporary injunction. Once effective, this Order shall remain in full force and effect until defendant and its agents, servants, employees, representatives, and all persons or entities of any type whatsoever acting in concert with it or acting on its behalf fully comply with the above-described actions by immediately ceasing and desisting any enforcement, exercise or application of jurisdiction involving the Property, including: acts

ORDER GRANTING TEMPORARY INJUNCTION - PAGE 2

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Involving the Development Agreement; and development, including permitting and inspections,  
of the Property based on any plat.

IT IS FURTHER ORDERED that this Temporary Injunction shall remain in effect  
pending entry of final judgment on the permanent injunction and final trial on the merits. It is  
therefore ordered that this case be set for trial on Jan 20, 2015 at  
9:00 (a.m./p.m.),

Signed on Oct 28, 2015, at 3:30 (a.m./p.m.).

Margaret E. Barney  
PRESIDING JUDGE

ORDER GRANTING TEMPORARY INJUNCTION - PAGE 3

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Exhibit A  
Metes and Bounds Description of Property

**SOUTH TRACT**

BEING a 74.174 acre tract of land in the Mary Polk Survey, Abstract Number 993, situated in Denton County, Texas, and being a portion of that certain tract of land described in deed to Wood Ranch 78 Limited Liability Company, recorded in Instrument Number 2007-106241, Deed Records, Denton County, Texas, and being all of Exhibit A-1, and A-3, described in deed to Wood Wells 78 Limited Liability Company, recorded in Instrument Number 2007-106242, Deed Records, Denton County, Texas. The bearings for the description are based on the bearing of the south line of the said Wood Family Holdings, L.L.O., recorded in Instrument Number 2010-128035, Deed Records, Denton County, Texas. Said 74.174 acre tract being described by metes and bounds as follows:

COMMENCING at a 1/2" iron rod at the northwest corner of said Wood Ranch tract, same being the northwest corner of that certain tract of land described in deed to Carl J. and Carla J. Hardeman, recorded in Instrument Number 2012-5148, Deed Records, Denton County, Texas, same being in the approximate centerline of Boss Range Road, a variable width public right-of-way;

THENCE North 89°34'00" East, departing said Boss Range Road, along the north line of said Wood Ranch tract, and said Hardeman tract, a distance of 685.39 Feet to a 1/2" iron rod with plastic cap stamped "RPLS 4818" found at the northeast corner of said Hardeman tract, same being the POINT OF BEGINNING;

THENCE North 89°34'00" East, departing said Hardeman tract, continuing along the said north line of the Wood Ranch tract, a distance of 809.00 Feet to a 1/2" iron rod found;

THENCE South 0°23'29" East, departing said north line of the Wood Ranch tract, along the east line of the said Wood Ranch tract, passing onto the east line of said Exhibit A-3 at a distance of 1779.26 Feet, and continue for a total distance of 2317.40 Feet to a 1/2" iron rod found at the south east corner of said Exhibit A-3;

THENCE North 89°05'20" West, along the south line of said Exhibit A-3, passing onto the south line of said Wood Ranch tract, at a distance of 162.04 Feet, and continue for a total distance of 1493.85 Feet to a 1/2" iron rod with plastic cap stamped "RPLS 4818" found at the southwest corner of said Wood Ranch tract, same being in the said approximate centerline of Boss Range Road;

THENCE North 0°26'17" West, departing said south line of the Wood Ranch tract, along the said approximate centerline of Boss Range Road and the west line of said Wood Ranch tract, a distance of 1982.35 Feet to a PK nail found at the southwest corner of said Hardeman tract;

THENCE North 89°34'00" East, departing said approximate centerline of Boss Range Road and said west line of the Wood Ranch tract, along the south line of said Hardeman tract, a distance of

686.08 Feet to a  $\frac{1}{2}$ " iron rod with plastic cap stamped "RPLS 4618" found at the southeast corner of said Hardeman tract;

THENCE North  $0^{\circ}23'29''$  West, departing the said south line of said Hardeman tract, along the east line of said Hardeman tract, a distance of 300.00 Feet to the POINT OF BEGINNING; and containing a computed area of 74.174 Acres, more or less.

00039

00031

000000042

# **EXHIBIT F**

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is executed between Continental U.S. Management Corporation, a Texas corporation ("Owner") and the City of Justin, Texas, a general law city (the "City") (Owner and City, being referred to, individually, as a "Party" and, collectively, as the "Parties") to be effective on the Effective Date, as defined in Section 11.10.

### ARTICLE I RECITALS

WHEREAS, Owner is the owner of approximately 138,906 acres of land situated in the Mary Polk Survey, Abstract Number 993, Denton County, Texas (the "County") described by metes and bounds on Exhibit A (the "Property") and shown on Exhibit B, which property is undeveloped; and

WHEREAS, Owner submitted a petition to the City requesting that the City extend its extraterritorial jurisdiction ("ETJ") to include all of the Property that was not previously in the City's ETJ, which petition was approved by the City Council on August 10, 2015, by adoption of Ordinance No. 592-15 expanding the City's ETJ to include all of the Property; and

WHEREAS, Owner intends that the Property be developed as a high-quality, master-planned, residential community with minimum one-half acre lots served by on-site septic systems and retail City water service or, in the alternative, with minimum 7,000 square foot lots served by retail City water and sewer service, pursuant to development regulations contained in this Agreement; and

WHEREAS, this Agreement will be recorded in the deed records of the County (so as to bind Owner and all future owners of the Property or any portion thereof), and will provide regulatory certainty during the term of this Agreement; and

WHEREAS, Owner does not have any interest in the minerals underlying the Property; and

WHEREAS, the Texas Commission on Environmental Quality ("TCEQ") or its predecessor has issued certificate of convenience and necessity ("CCN") number 13201 to Aqua Texas, Inc. ("Aqua Texas") to provide retail water service to the Property and has issued CCN number 20866 to the Town of Northlake to provide retail sewer service to a portion of the Property; and

WHEREAS, provision of water service to the Property by Aqua Texas will substantially arrest the sound growth of the City and will adversely impact the potential for annexation of the Property into the City's corporate limits; and

WHEREAS, Owner intends to seek expedited release of the Property from Aqua Texas' CCN service area for retail water service and to make the City the sole water CCN holder for the Property; and

(d) The City shall pay to Owner or its assignee, or on before July 31 and January 31 of each year, the Water Impact Fees collected within the Property for the preceding six-month period from January 1 to June 30 and from July 1 to December 31, respectively, together with an accounting of such fees identifying the address of the residence for which such fees were paid, payor, date and amount paid, and any other information reasonably requested by Owner, until Owner is reimbursed in full for all Eligible Expenses incurred by Owner in connection with release of the Property from Aqua Texas' water CCN plus 10% of such costs. For purposes of this Agreement, "Eligible Expenses" means all attorney's fees, engineering fees and compensation paid to the former CCN-holder in accordance with Section 5.1(b).

4.5 Parkland Dedication. Owner shall dedicate parkland to the City in accordance with the City's park dedication requirements in effect as of the Effective Date, some or all of which property may be in the floodplain.

4.6 Annexation and Zoning. Annexation and zoning of the Property shall be subject to the City's standard fees (collectively, the "Annexation and Zoning Fees").

4.7 Exclusive Fees. Except for Plat Review Fees, Plan Review Fees, Residential Fees, Water Impact Fees, Sewer Impact Fees (if applicable), Infrastructure Inspection Fees (in accordance with Section 3.3) and Annexation and Zoning Fees, no other fees or charges of any kind are due and payable to the City in connection with the development of the Property.

#### ARTICLE V PUBLIC INFRASTRUCTURE; RETAIL UTILITY SERVICE

##### 5.1 Certificates of Convenience and Necessity.

(a) Within 30 days after the Effective Date, Owner shall submit a petition to the Public Utilities Commission (the "PUC") pursuant to Section 13.254, Texas Water Code ("Section 13.254"), requesting expedited release of the Property from Aqua Texas' water CCN service area and the Town of Northlake's sewer CCN service area, and shall provide a copy of such petition to the City. The City shall cooperate with Owner to remove the Property from Aqua Texas' water CCN service area and Northlake's sewer CCN service area and to add the Property to the City's water CCN service area and, upon Owner's written request, to add the Property to the City's sewer CCN service area.

(b) The City shall provide written notice to the PUC of the City's intent to provide retail water service to the Property within fifteen (15) days after receipt of written request from Owner. The City shall not provide such notice to the PUC except upon receipt of written request from Owner. If the Property is removed from Aqua Texas' water CCN, Owner shall pay compensation, if any, to Aqua Texas as determined by the PUC in accordance with Section 13.254 on behalf of the City, subject to right to reimbursement pursuant to Section 4.4.

(c) The City shall provide written notice to the PUC of the City's intent to provide retail sewer service to the portion of the Property removed from the Town of Northlake's sewer

CCN within fifteen (15) days after receipt of written request from Owner. The City shall not provide such notice to the PUC except upon receipt of written request from Owner.

5.2 Retail Water Service; Construction of Infrastructure.

(a) Retail water service to the Property for development in accordance with this Agreement will be provided by the applicable CCN-holder.

(b) Provided the Property is released from Aqua Texas' water CCN service area in accordance with Section 5.1, Owner shall design and construct or cause to be designed and constructed approximately 170 linear feet of eight-inch water main sized to serve the Property (the "Off-Site Water Main") and all on-site water infrastructure for the City to provide retail water service to the Property. At the City's request, Owner shall oversize the Off-Site Water Main with 12-inch water main, provided the City pays 1/3 of all costs associated with design and construction of the Off-Site Water Main prior to commencement of construction of the Off-Site Water Main. If the City does not deposit funds for the City's 1/3 share of such costs in an escrow account designated by Owner or make other payment arrangements acceptable to Owner within 30 days after Owner delivers notice of intent to commence construction of the Off-Site Water Main, Owner may install the Off-Site Water Main as an eight-inch main and shall have no obligation to oversize the Off-Site Water Main.

(c) Water service by the City to portions of the Property located within the City's water CCN service area shall be at the City's generally applicable in-city rates.

5.3 Retail Sewer Service. At Owner's option, sewer service to the Property shall be provided by:

(a) Individual on-site septic systems on each platted lot. Owner shall obtain a septic tank license for each platted lot from the County Health Department in accordance with applicable regulations; or

(b) The City, provided the Property is released from the Town of Northlake's sewer CCN service area in accordance with Section 5.1 and Owner constructs at Owner's expense, all infrastructure determined by the City to be necessary to connect to the City's sewer system.

5.4 Roadways.

(a) Owner shall dedicate right-of-way to the City for Boss Range Road adjacent to the Property sufficient to provide a total of 30 feet of right-of-way from the centerline, in connection with final platting the Property adjacent to Boss Range Road. Owner's sole obligation with respect to Boss Range Road shall be dedication of such right-of-way. Owner shall have no obligation to construct, or finance the construction of, any improvements to Boss Range Road.

(b) Owner has no obligation to dedicate right-of-way or construct improvements to John Wiley Road.




# CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): **D-1-GN-16-001949** COURT (FOR CLERK USE ONLY): **261st**

## STYLED TOWN OF NORTHLAKE, TEXAS V. PUBLIC UTILITY COMMISSION OF TEXAS

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b>  Name: <u>Stephen Dickman</u> Email: <u>stephen.dickman@kellyhart.com</u>  Address: <u>303 Colorado, Ste. 2000</u> Telephone: <u>512-495-6413</u>  City/State/Zip: <u>Austin, TX 78701</u> Fax: <u>512-495-6401</u>  Signature:  State Bar No: <u>05836500</u>		<b>Names of parties in case:</b>  Plaintiff(s)/Petitioner(s): <u>Town of Northlake, Texas</u>  Defendant(s)/Respondent(s): <u>Public Utility Commission of Texas</u>  [Attach additional page as necessary to list all parties]		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____  <b>Additional Parties in Child Support Case:</b>  Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____					
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>									
<b>Civil</b>			<b>Family Law</b>						
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____  <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____		<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____		<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____  <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____		<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children  <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____		<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other  <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order  <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		<b>Other Civil</b> <input checked="" type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property  <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____							
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings  <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____							
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>									
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover					
<b>4. Indicate damages sought (do not select if it is a family law case):</b> <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000									

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