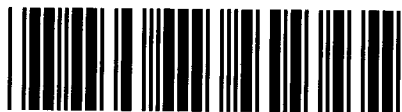




Control Number: 46225



Item Number: 1

Addendum StartPage: 0

DOCKET NO. **46225**

PETITION TO REVOKE BERNARD § PUBLIC UTILITY COMMISSION
TIMBERS WATER SUPPLY §
CORPORATION'S CERTIFICATES OF §
PUBLIC CONVENIENCE AND §
NECESSITY PURSUANT TO TEX. §
WATER CODE ANN. § 13.254 AND 16 § OF TEXAS
TAC § 24.113

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PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S PETITION TO REVOKE
BERNARD TIMBERS WATER SUPPLY CORPORATION'S
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND
NOTICE OF OPPORTUNITY FOR A HEARING**

Staff of the Public Utility Commission of Texas (PUC) files this Petition to Revoke Bernard Timbers Water Supply Corporation's Certificates of Public Convenience and Necessity (Petition) and hereby provides notice of the opportunity to request a hearing on the merits of this Petition.

I. INTRODUCTION

For the reasons discussed below, the water service Certificate of Public Convenience and Necessity (CCN) No. 12486, and sewer service CCN No. 20735 for Bernard Timbers Water Supply Corporation (Bernard Timbers) should be revoked. On March 19, 1991, the Texas Water Commission issued Bernard Timbers water and sewer CCNs. Upon investigation, Staff has determined that the Public Water System associated with Bernard Timbers is inactive and that the CCNs should be revoked.¹

In the event Bernard Timbers fails to request a hearing within thirty days of service of this Petition, a default order should be issued, without additional notice to Bernard Timbers, granting all relief sought in this Petition. In support of this Petition, PUC Staff respectfully shows the following:

¹Texas Commission on Environmental Quality Drinking Water Watch System Summary Sheet, http://dww2.tceq.texas.gov/DWW/JSP/DataSheet.jsp?tinwsys_is_number=6393&tinwsys_st_code=TX&wsnumber=TX2410014%20%20%20&DWWState=TX&begin_date=&end_date=&counter (Activity Status: "I – INACTIVE" as of 03/17/2014) (last visited July 27, 2016) [hereinafter *TCEQ DWW*].

II. JURISDICTION AND LEGAL AUTHORITY

The PUC is authorized to regulate and supervise the business of each water and sewer utility within its jurisdiction.² Pursuant to Tex. Water Code Ann. § 13.242 (West Supp. 2014) (TWC), a “water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension.”

A certificate of convenience and necessity (CCN) is defined as “[a] permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer service to a specified geographic area.”³ A retail public utility is “[a]ny person corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.”⁴

A retail public utility that possesses a CCN is required to provide “continuous and adequate service.”⁵ A retail public utility that possesses a CCN and fails to provide continuous and adequate service may be subject to revocation.⁶ As part of this authority, the PUC, “after notice and hearing, may revoke or amend any” CCN if the PUC finds that “the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate.”⁷

Pursuant to the contested case provisions of the Administrative Procedure Act,⁸ a party is entitled to an opportunity for a hearing after reasonable notice of not less than 10 days, where the party may respond to and present evidence and argument on each issue involved in the case.⁹ If a hearing is not requested within thirty days after service of notice of an opportunity for hearing, a

² Tex. Water Code Ann. § 13.041 (West Supp. 2014) (TWC).

³ 16 Tex. Admin. Code § 24.3(15) (TAC).

⁴ TWC § 13.002(19) and 16 TAC § 24.3(58).

⁵ See TWC § 13.250(a) and 16 TAC § 24.114.

⁶ TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

⁷ *Id.*

⁸ Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

⁹ APA §§ 2001.051-.178.

default occurs.¹⁰ Upon default, the presiding officer may issue a default order, revoking the certificate without a hearing on an informal basis.¹¹

III. FACTUAL ALLEGATIONS

On March 19, 1991, Bernard Timbers was granted CCN Nos. 12486 and 20735.¹² In the fall of 2015, Staff sent a letter to all investor owned water and sewer utilities regarding the Water and Wastewater Annual Reports. On November 30, 2015, the copy of this letter addressed to Bernard Timbers was returned to Staff unopened.

Staff opened an investigation into the proper address for Bernard Timbers. During the investigation, Staff discovered that the public water system (PWS) associated with the CCNs is inactive. The utility has ceased to operate and is listed as “Inactive” on the TCEQ’s “Water System Summary Sheet.”¹³ The area covered by CCN Nos. 12486 and 20735 is now served by the Wharton County Water Control and Improvement District (WCID) 2.

IV. RECOMMENDATION FOR REVOCATION

The Commission should revoke Bernard Timbers’ CCN Nos. 12486 and 20735 because Bernard Timbers is no longer in business and the facilities it used to provide continuous and adequate service are inactive.¹⁴ Additionally, the customers are currently receiving service from the Wharton County WCID 2. For the above stated reasons, Staff recommends revocation of CCN Nos. 12486 and 20735 pursuant to TWC § 13.254(a)(1) and 16 TAC § 24.113(a)(1).

V. NOTICE OF OPPORTUNITY FOR HEARING

16 TAC § 22.54 requires Staff to provide reasonable notice to persons affected by a proceeding in accordance with the Administrative Procedure Act.¹⁵ In license revocation proceedings, it is required that notice be given “by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action.”¹⁶ In order to proceed on a default basis, 16 TAC § 22.183 requires Staff to provide notice by certified mail, return receipt requested: (a) to a certificate holder's last known address in the Commission's records; (b) to the person’s registered agent for process on file with the Secretary of State; or (3)

¹⁰ 16 TAC § 22.183.

¹¹ APA § 2001.056(4) and 16 TAC § 22.183.

¹² CCN Nos. 12486 and 20735 covers an area approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive (*see* Attachments 1-4).

¹³ TCEQ DWW, *supra* note 1.

¹⁴ *See* TWC § 13.254(a)(1) and 16 TAC 24.113(a)(1).

¹⁵ APA §§ 2001.001-.902.

¹⁶ *Id.* at § 2001.054

to an address for the party identified after reasonable investigation if the first two options are not applicable.

In accordance with these provisions, Staff will provide a copy of this petition by certified mail, return receipt requested, to the Bernard Timbers owner's last known address in the TCEQ's records:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the president of Bernard Timbers on file with the TCEQ:

Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the emergency contact address used in TCEQ records:

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639

Staff will also provide a copy of this petition by certified mail, return receipt requested, to the address for the registered agent for process on file with the Secretary of State:

Ed Vacek
P. O. Box 755
East Bernard, TX 77435

Pursuant to 16 TAC § 22.183, Staff hereby notifies Bernard Timbers that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Bernard Timbers fails to request a hearing within 30 days after service of the Petition. The purpose of a hearing on the merits is to consider revocation of Bernard Timbers' CCN Nos. 12486 and 20735.

The factual allegations listed in Staff's Petition and Notice of Opportunity for a Hearing could be deemed admitted and the relief sought herein could be granted by default if you fail to timely request a hearing.

VI. REQUEST

Staff respectfully requests that the Commission grant Staff's request to revoke Bernard Timbers' CCN Nos. 12486 and 20735. In the event that Bernard Timbers fails to request a hearing on the merits, Staff requests that the Commission issue a default final order, with no further notice to Bernard Timbers, revoking CCN Nos. 12486 and 20735.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'W. Patrick Dinnin', with a long horizontal flourish extending to the right.

W. Patrick Dinnin
Attorney - Oversight and Enforcement Division
State Bar No. 24097603
(512) 936-7285
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on July 27, 2016, pursuant to 16 TAC § 22.183(b)(2), a copy of this document was sent certified mail, return receipt requested, to the last known address of Bernard Timbers Water Supply Corporation (Bernard Timbers) in the Commission's records, to addresses used in the Texas Commission on Environmental Quality (TCEQ) proceedings, to the address for the registered agent for process on file with the Secretary of State, and to the address for the director of Bernard Timbers on file with the Secretary of State:

Bernard Timbers owner's Last Known Address in Commission Records:

Bernard Timbers WSC
P. O. Box 755
East Bernard, TX 77435-0755

Address used for the president in TCEQ records:

Weldon Ferrell
P. O. Box 755
East Bernard, TX 77435-0755

Address for the emergency contact for Bernard Timbers in TCEQ records:

Edward Vacek
P. O. Box 639
East Bernard, TX 77435-0639

Address for the registered agent for process on file with the Secretary of State:

Ed Vacek
P. O. Box 755
East Bernard, TX 77435



W. Patrick Dinnin
Attorney - Oversight and Enforcement Division
State Bar No. 24097603
(512) 936-7285
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Attachment 1

Sewer Service Certificate of Convenience and Necessity No.
20735

THE STATE OF TEXAS
COUNTY OF TRAVIS
TEXAS WATER COMMISSION



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on

APR 02 1991

Gloria A. Vasquez
Gloria A. Vasquez, Chief Clerk

CERTIFICATE OF CONVENIENCE AND NECESSITY ~~State~~ Water Commission

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

Certificate No. 20735

I. Certificate Holder:

Name: Bernard Timbers Water Supply Corporation
(not Article 1434a sewer service corporation)
Address: P. O. Box 755
East Bernard, Texas 77435

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive. The service area is generally bounded on the east and south by the San Bernard River and on the west by West Bernard Drive in Wharton County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide sewer service in the area identified on the Commission's official sewer service area map, WRS-241, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

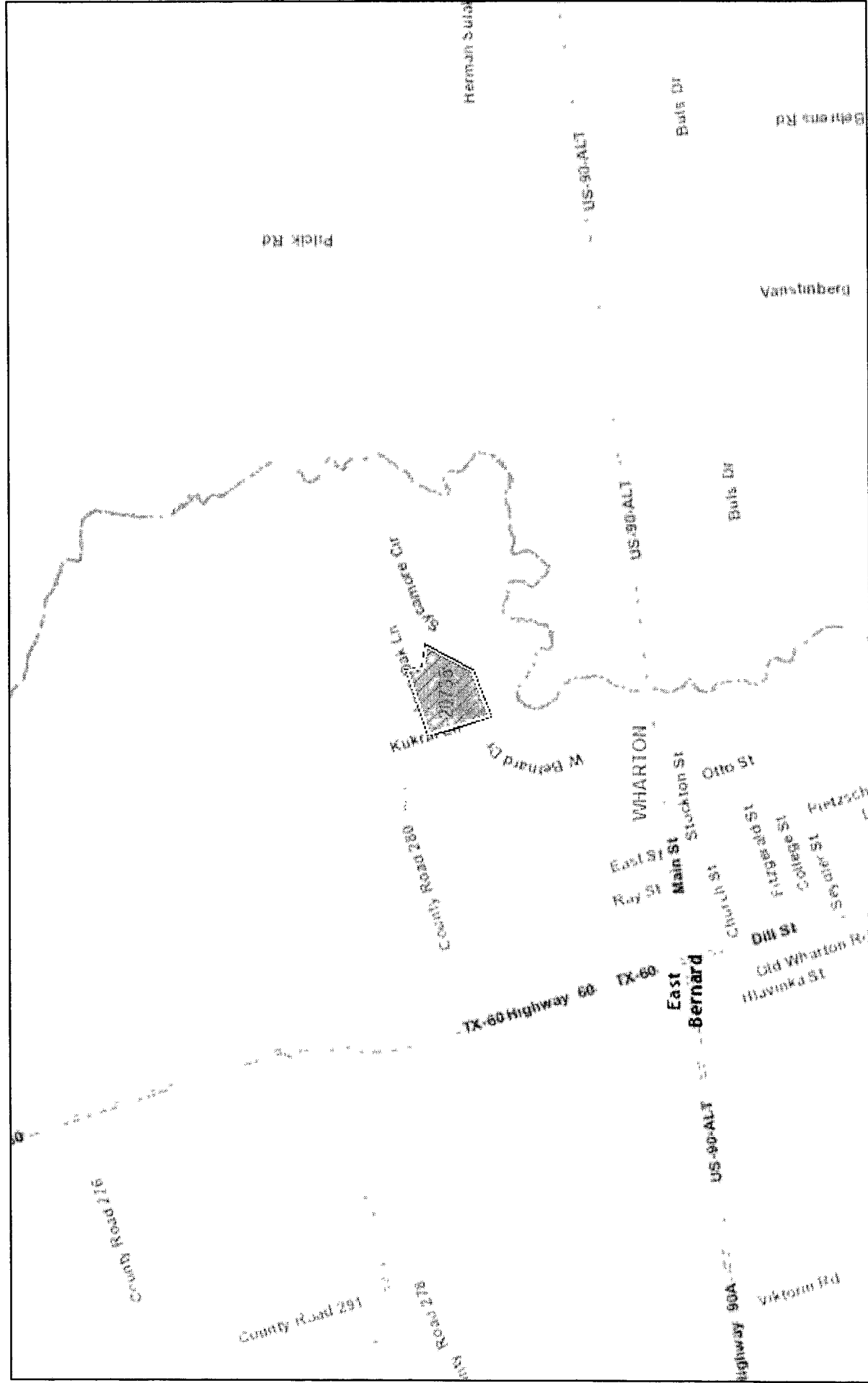
Issued Date: MAR 19 1991

ATTEST: *Gloria A. Vasquez* *RLW* *JH*
For the Commission

Attachment 2

Map of Sewer Service Certificate of Convenience and Necessity
No. 20735

Sewer CCN



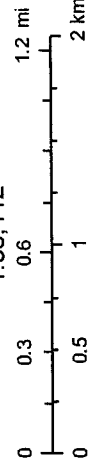
April 27, 2016



Sewer CCN Service Areas

TxDOT Counties

1:36,112



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand).

Attachment 3

Water Service Certificate of Convenience and Necessity No.
12486

THE STATE OF TEXAS
COUNTY OF TRAVIS
TEXAS WATER COMMISSION

I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on
APR 02 1991



Gloria A. Vasquez
Gloria A. Vasquez, Chief Clerk
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

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

Certificate No. 12486

I. Certificate Holder:

Name: Bernard Timbers Water Supply Corporation
(not Article 1434a water supply corporation)
Address: P. O. Box 755
Fast Bernard, Texas 77435

II. General Description and Location of Service Area:

The area covered by this certificate is located approximately 27 miles north of downtown Wharton, Texas on West Bernard Drive. The service area is generally bounded on the east and south by the San Bernard River and on the west by West Bernard Drive in Wharton County, Texas.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official water service area map, WRS-241, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

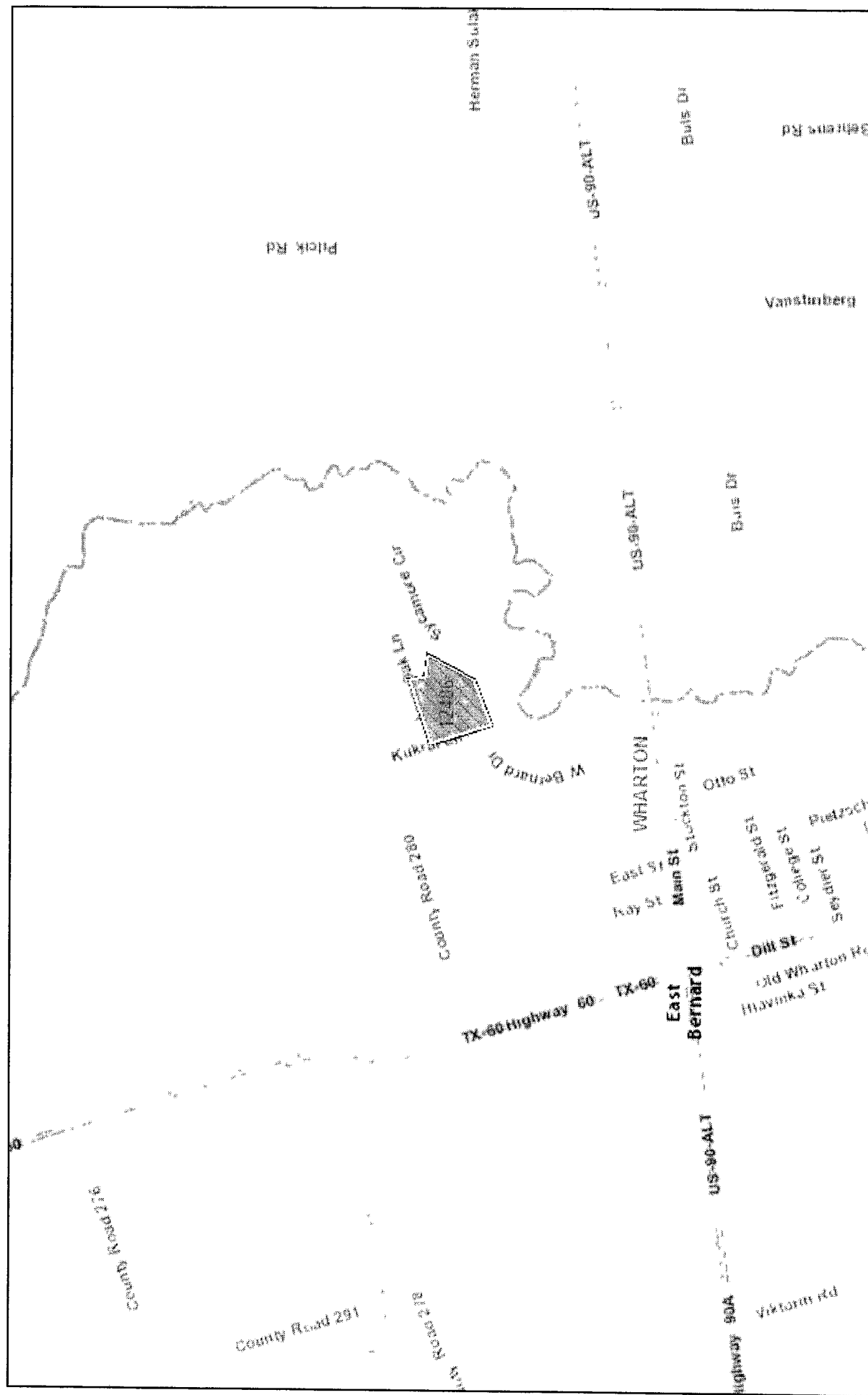
Issued Date: MAR 19 1991

ATTEST: *Gloria A. Vasquez* *BJW* *JH*
For the Commission

Attachment 4

Map of Water Services Certificate of Convenience and
Necessity No. 12486

Water CCN

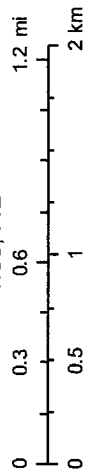


April 27, 2016

CCN_WATERtrim

TxDOT Counties

1:36,112



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand),