



Control Number: 47044



Item Number: 10

Addendum StartPage: 0

RECEIVED

PETITION OF JEFF STOCKTON TO
 DECERTIFY PROPERTY FROM
 JARRELL-SCHWERTNER WATER
 SUPPLY CORPORATION, CCN NO.
 10002 IN WILLIAMSON COUNTY

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BEFORE THE MAY 16 AM 9:35
 PUBLIC UTILITIES COMMISSION
 FILING CLERK
 COMMISSION OF TEXAS

**JARRELL-SCHWERTNER WATER SUPPLY CORPORATION'S
 RESPONSE TO JEFF STOCKTON'S
 PETITION FOR EXPEDITED RELEASE**

Jarrell-Schwertner Water Supply Corporation, JSWSC, files this response to the April 7, 2017, *Petition for Decertification, the Petition*, filed by Jeff Stockton, Stockton.

Overview

1. In the Petition, Stockton requests that the Public Utility Commission of Texas, *the PUC*, decertificate approximately 55.28 acres of real property, *the Property*, from the JSWSC's certificated water service area, pursuant to *Texas Water Code §13.254* and *16 Texas Administrative Code §24.113(r)*.

2. The Property is not eligible for expedited decertification under *Texas Water Code §13.254(a-5)* because the statute does not authorize expedited certification of lands that receive "service". JSWSC provides service to the Property, as defined by *Texas Water Code §13.002 (21)*.

Discussion

JSWSC is a non-profit water supply corporation in the State of Texas and a holder of *Certificate of Convenience and Necessity* No. 10002 in Williamson and Bell Counties. JSWSC currently provides retail water service to approximately 1,524 water connections.

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Service of Area

Texas Water Code §13.254(a-5) authorizes expedited decertification only for property "that is not receiving water or sewer service." *Texas Water Code §13.002(21)* defines service as

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter. . .

JSWSC has performed many acts in the furtherance of providing retail water service to the Property, including the following:

- A. In 2000, JSWSC installed an six-inch water line on the Property at the eastern and northern boundaries of the Property.
- B. JSWSC has served since 2002 and continues to serve Claudeen J. McDowell, whose property is surrounded on three sides by the Property to be decertificated. Attached as the Response's *Exhibit A* is a map that shows the area and facilities that exist in service to the area. This Exhibit demonstrates numerous facilities in the immediate area and surrounding Stockton's property.
- C. After lengthy negotiations, in 2011 JSWSC entered into a contract with the City of Jarrell whereby the City of Jarrell and JSWSC agreed that JSWSC would service all future residential service customers in the applied area. They also agreed that in the event JSWSC was unable or refused to provide service, the customer would be referred to the City of Jarrell for service. (See this Response's *Exhibit B*.) This agreement was an instrument that both JSWSC and the City of Jarrell relied on to be able to provide adequate service to this area. Stockton was aware of this contract as he participated in the negotiations as a City Council member.
- D. In 2016, JSWSC took further action to provide service to the area by contracting with Lone Star Regional Water Authority for 1.5 million gallons per day of water supply and signed indebtedness of its pro rata share for more than \$10,200,000.00. This action was also taken for purposes of insuring that the Property and others in the area would have sufficient water supply for years to come. If the area is removed from JSWSC's service area, JSWSC potentially will lose a significant portion of its projected income stream to serve this indebtedness. This action was taken in reliance of the CCN agreement with the City of Jarrell. In a five-year period, this would result in more than a \$1,000,000.00 financial impact to JSWSC.

Attached to this Response as *Exhibit C* is a true and correct affidavit in support of these facts by David Yohe, General Manager of JSWSC.

Conclusion

The Property is not eligible for expedited decertification due to the facts that support that JSWSC provides service to the Property as defined by *Texas Water Code* §13.002(21).

Stockton has failed to meet the criteria set out in *Texas Water Code* §13.254(a-5) and Stockton's prayer for decertification of 55.28 acres should be denied.

Respectfully submitted,



Patricia Coy
Attorney for Jarrell-Schwertner WSC
State Bar No. 06918400
Patricia Coy & Associates, LLC
815 West 5th Street
Clifton, Texas 76634-1519
Telephone: 254-675-8663
Facsimile: 254-675-4567
pcoy@bosquelaw.com

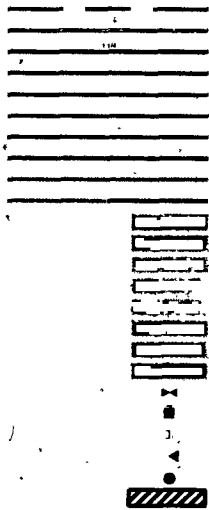
Certificate of Service

I certify that a true and correct copy of this motion was sent on May 15, 2017, to Art Rodriguez, Attorney for Jeffrey P. Stockton, 1633 Williams Drive, Building 2, Suite 200, Georgetown, Texas 78628, and by facsimile to 866-929-1641.



Patricia Coy
Attorney for Jarrell-Schwertner WSC

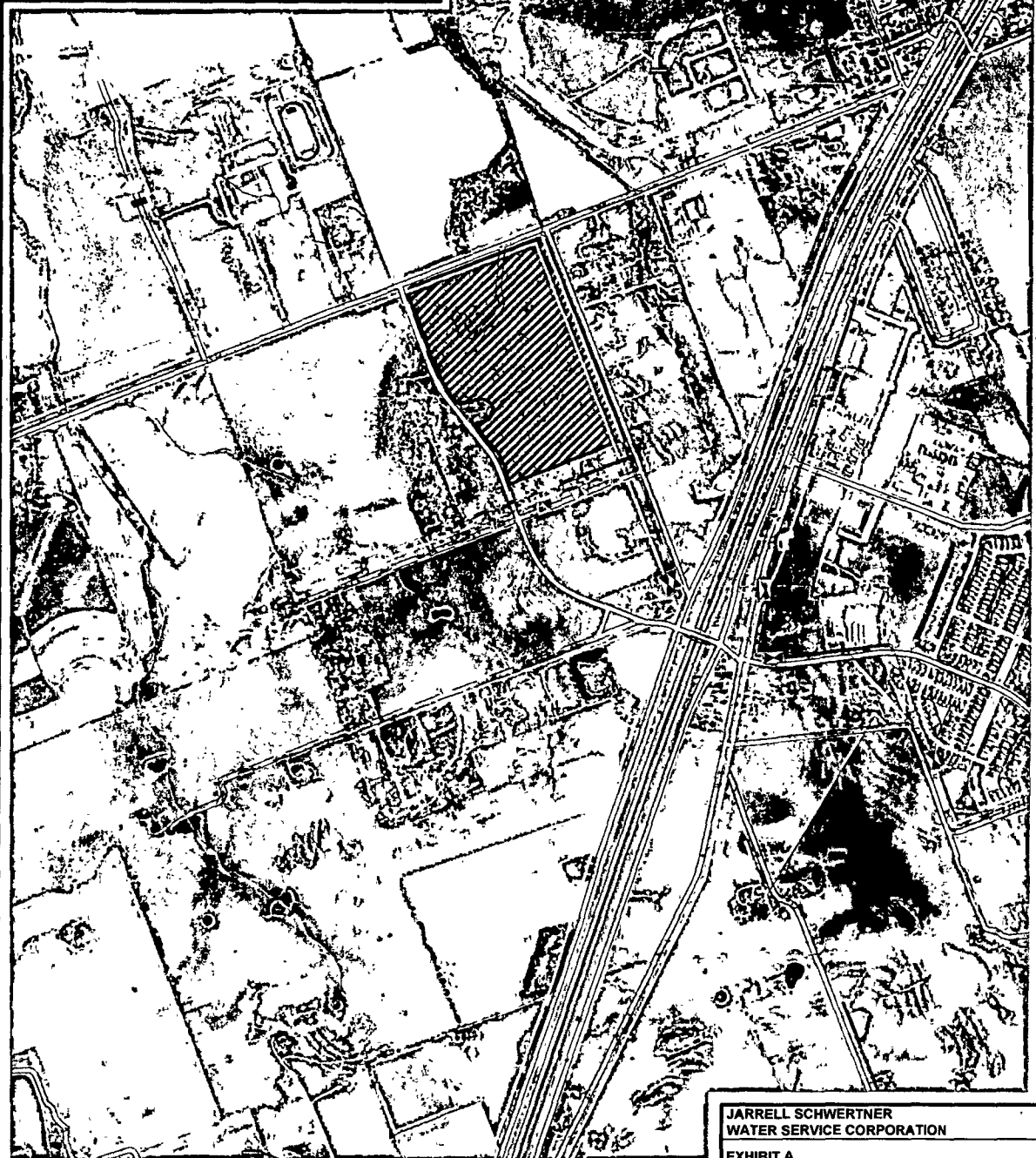
LEGEND



EXISTING WATERLINE BY OTHERS
 EXISTING 1" PIPE
 EXISTING 1 1/4" PIPE
 EXISTING 1 1/2" PIPE
 EXISTING 2" PIPE
 EXISTING 2 1/2" PIPE
 EXISTING 3" PIPE
 EXISTING 4" PIPE
 EXISTING 6" PIPE
 EXISTING POINT OF CHANGE IN PIPE SIZE
 AMITY PRESSURE PLANE
 DOVE'S LANDING PRESSURE PLANE
 HIGHWAY 95 PRESSURE PLANE
 LIVE OAK PRESSURE PLANE
 PRAIRIE DELL PRESSURE PLANE
 SALADO PRESSURE PLANE
 SOUTH WELL PRESSURE PLANE
 TOWN PRESSURE PLANE
 VALVE
 PRESSURE REDUCING VALVE
 CAP
 CL₂ INJECTION POINT
 MASTER METER
 SUBJECT PROPERTY



0 500 1000
 HORIZONTAL SCALE IN FEET



JARRELL SCHWERTNER
 WATER SERVICE CORPORATION
 EXHIBIT A

FILE: P:\JWS\2001\DEVELOPMENT\BUD STOCKTON\BUD STOCKTON.dwg LAST SAVED: 28/03/01 10:18:34 AM LAYOUT: CLUD STOCKTON SITE - 0000

Response Exhibit A

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into on this the 29 day of March, 2011 (the "Effective Date"), by and between the City of Jarrell, Texas ("City"), and Jarrell Schwertner Water Supply Corporation ("WSC").

RECITALS

WHEREAS, WSC holds certificates of convenience and necessity ("CCN") for water service, CCN No. 10002, issued by the Texas Commission on Environmental Quality ("TCEQ"), or its predecessor agency; and

WHEREAS, The City filed an Application, TCEQ Application No. 36697-C, SOAH No. 582-11-0685 ("City's Application") with the TCEQ requesting to decertify a portion of WSC's CCN and to obtain a water CCN to provide retail water service within Williamson County, Texas, as shown on the map contained in the City's Application; and

WHEREAS, WSC has protested the City's Application; and

WHEREAS, the City and WSC desire to avoid contested case litigation over the City's Application and to resolve such disputed service area boundaries by executing this Agreement.

WHEREAS, Troy Bradshaw, ("Bradshaw") is an affected landowner who joined this action with party status and also joined into these negotiations.

NOW, THEREFORE, it is the intent of the City, the WSC and Bradshaw to effectuate a full and complete settlement and resolution of their concerns regarding the City's Application through the execution of this settlement agreement ("Agreement"). This Agreement neither confirms nor denies the merits of WSC's objections or concerns, but, rather, is executed solely to buy peace between the parties. By signature below and pursuant to Water Code 13.248 and 13.255(a), the City and the WSC agree as follows:

TERMS OF AGREEMENT

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, the parties may file this Agreement with the TCEQ and further agree upon the following terms:

- (1) The City agrees to file the Application with TCEQ, to provide for dual certification for the area indicated on the map attached hereto as Exhibit A, which map is incorporated herein for all purposes.

- (2) For areas inside the dual certification area, the City and WSC agree to the following:
 - (i) all current and future residential service customers will be served by WSC;
 - (ii) all current commercial retail utility customers will be served by WSC;
 - (iii) all future commercial retail utility customers will be served by the City;
 - (iv) if WSC is unable, or refuses, to provide retail utility service to a residential customer, that customer will be referred to the City for service; and
 - (v) if the City is unable, or refuses, to provide retail utility service to a commercial customer, that customer will be referred to WSC for service.
- (3) The City shall, within 30 business days from execution of this Agreement, file an application consistent with this agreement to obtain a dual certificate of convenience and necessity as set out herein.
- (4) The City shall work with TCEQ to file an application, consistent with TCEQ recommendations, that will allow for dual certification in all areas of the City's current extraterritorial jurisdiction, excluding the Bradshaw development area and approximately 371 acres in and around Troy Bradshaw's development as shown on Exhibit B, in compliance with this Agreement.
- (5) The City shall file an application to singly certify the area shown in Exhibit B to the City.
- (6) The City and WSC agree that they will participate in cost sharing of a road bore for the I-35 corridor that will benefit the parties' dual certificated area.
- (7) The City agrees to pay \$10,000 in four equal installments on a quarterly basis to WSC. The first installment of \$2,500.00 will be due within 90 days from the effective date of this Agreement.
- (8) The City and WSC will create a Joint Development Committee and such committee will consist of two members each from the City and WSC. Any future issues with water service will be referred to this committee for discussion and recommendations.
- (9) The City, WSC and Bradshaw shall refrain from participating in, directly or indirectly, any proceeding before the TCEQ or any other state agency or tribunal or federal agency or tribunal or local proceeding for the purpose of opposing, protesting, or objecting to any CCN applications to the extent that same are consistent with this Agreement.
- (10) Effective Dates. This Agreement is effective and enforceable as between the City, WSC and Bradshaw following execution by all parties.

- (11) Notice. Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested addressed and delivered to the following:

to CITY: City of Jarrell
 City Manager
 P.O. Box 828
 Jarrell, Texas 76537-0828

With a copy to:
Kerry E. Russell, Attorney at Law
1633 Williams Drive, Suite 200
Georgetown, Texas 78628

to Jarrell Schwertner WSC: General Manager
Jarrell Schwertner Water Supply Corp.
P.O. Box 40
Jarrell, Texas 76537

With a copy to:
Patricia Coy,
Patricia Coy & Associates, LLC.
815 West Fifth Street
Clifton, Texas 76634

to Troy Bradshaw: Troy Bradshaw
 P.O. Box 488
 Salado, Texas 76571

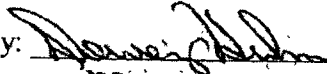
Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

MISCELLANEOUS

- (12) This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
- (13) The obligations and undertakings of each of the parties to this Agreement shall be performed in Williamson County, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Williamson County, Texas.


- (14) This Agreement contains the entire agreement of the Parties with respect to the subject matter of the agreement. No agreement, statement, or promise made by any party or to any employee, agent, or officer of any party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the party or parties to be charged.
- (15) This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.
- (16) This Agreement shall be effective as of the date of execution by the Parties and terminate twenty-five (25) years thereafter.
- (17) This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.
- (18) Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- (19) In the event that the terms and conditions of this Agreement are breached by either party, and the parties participate in a proceeding before any state or federal tribunal because the terms and conditions of this Agreement are not being complied with by one of the parties, the prevailing party shall recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing party, general or special, at law or in equity, to which the prevailing party may show itself justly entitled.
- (20) The respective signatories to this Agreement represented that they are authorized to sign this Agreement on behalf of their respective party.

CITY OF JARRELL, TEXAS

By: 
Mayor

Date: 3-29-2011

ATTEST:


City Secretary

JARRELL SCHWERTNER WATER SUPPLY CORPORATION

By: Mark Shaden
_____, President

Date: SEPT 14, 2011

ATTEST:

Pam Oatis Sec 1 Tre
Board Secretary

TROY BRADSHAW

For himself:

Troy Bradshaw

Date:

8-12-11

Witnessed Signature 8-12-2011

Dianne Peace

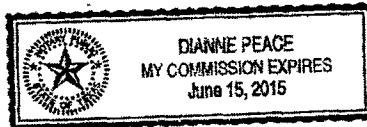


EXHIBIT A

EXHIBIT B

R011836 – app 38 acres – B Ruth LLC
R012162 – app 25 acres – B Ruth LLC
R011395 – app 115 acres – James and Virginia Davidson
R011223 – app 125 acres – Wess and Helen Cassens
R011224 – app 1.5 acres – Wess and Helen Cassens
R012231 – app 52 acres – Corn Hill Partnership, LP
R503544 – app 6 acres – Corn Hill Partnership, LP
R419469 – app 9 acres – Corn Hill Partnership, LP

This totals approximately 371 acres

Proposed
Single
Certification

CCN 10002
Fac + 200'

Proposed
Dual
Certification

Proposed
Single
Certification

1500 0 1500 Feet





Map by S. Jaster 11/8/12

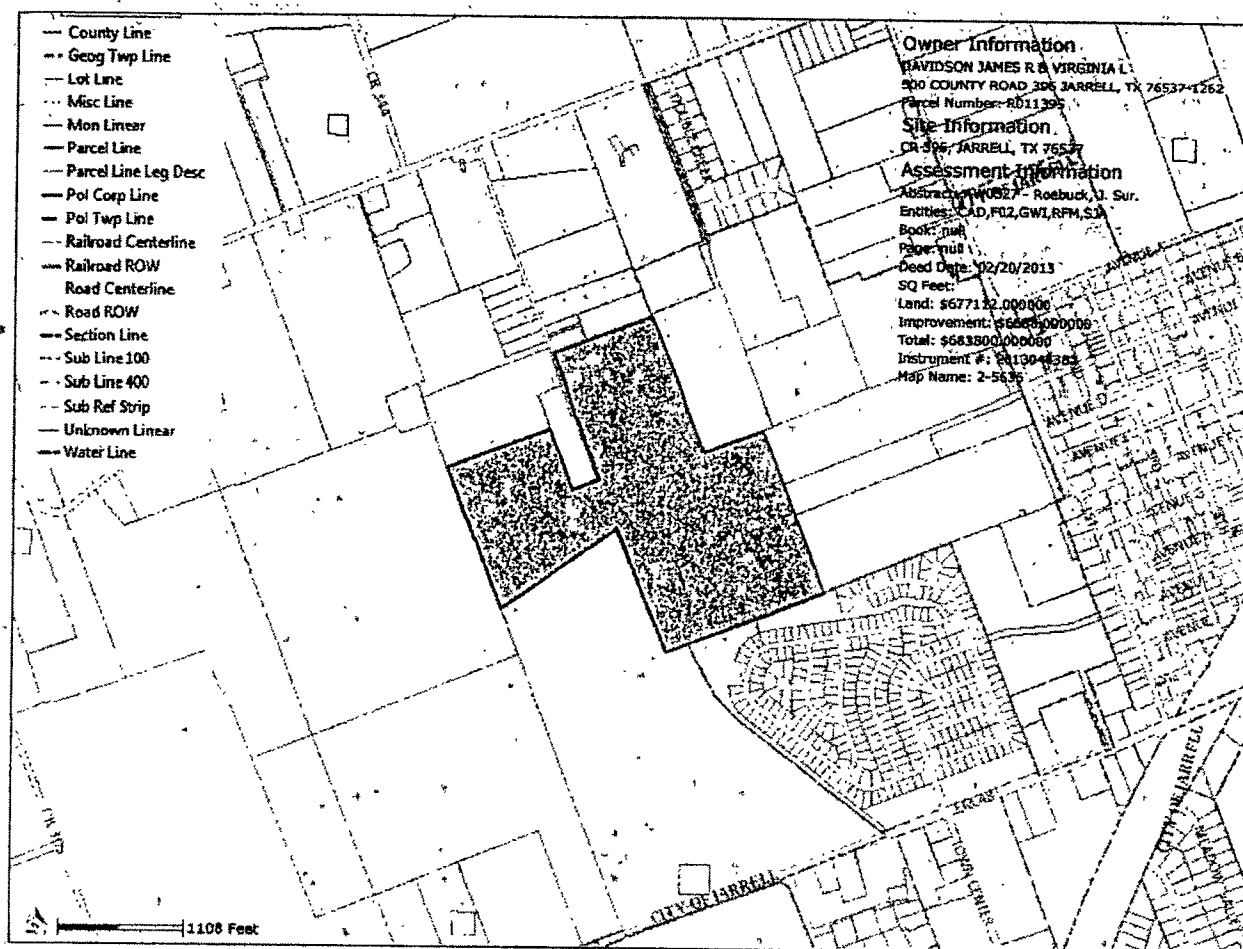


 Area of Overlap w/ CCN 10002

Facilities +200 Feet

 10002 - JARRELL SCHWERTNER WSC

 City of Jarrell Proposed Single Certification
 City of Jarrell Proposed Dual Certification



Please choose **Landscape** when you print. [Print Now](#) | [Generate a PDF](#)

PUC DOCKET NO. 47044

PETITION OF JEFF STOCKTON TO	§	BEFORE THE
DECERTIFY PROPERTY FROM	§	
JARRELL-SCHWERTNER WATER	§	PUBLIC UTILITIES
SUPPLY CORPORATION, CCN NO.	§	
10002 IN WILLIAMSON COUNTY	§	COMMISSION OF TEXAS

**AFFIDAVIT OF DAVID YOHE, GENERAL MANAGER
OF JARRELL-SCHWERTNER WATER SUPPLY CORPORATION**

STATE OF TEXAS
COUNTY OF BOSQUE

Before me, the undersigned authority, on this day personally appeared **David Yohe, General Manager of Jarrell-Schwertner Water Supply Corporation**, who after being duly sworn deposed and stated.

"I am David Yohe, I reside at 1205 Deepwoods Trail, Leander, Texas 78641. I am the General Manager of Jarrell-Schwertner Water Supply Corporation, a non-profit water supply corporation in the State of Texas and holder of *Certificate of Convenience and Necessity* No. 10002 in Williamson and Bell Counties, Texas. I am the custodian of its records and I have personal knowledge of the facts stated in this affidavit.

"Since February 11, 2013, I have been the General Manager of **Jarrell-Schwertner Water Supply Corporation, JSWSC**. As such, I am the custodian of its records.

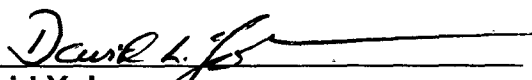
"JSWSC has performed many acts in the furtherance of providing retail water service to the Property, including the following:

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- C. After lengthy negotiations, in 2011 JSWSC entered into a contract with the City of Jarrell whereby the City of Jarrell and JSWSC agreed that JSWSC would service all future residential service customers in the applied area. They also agreed that in the event JSWSC was unable or refused to provide service, the customer would

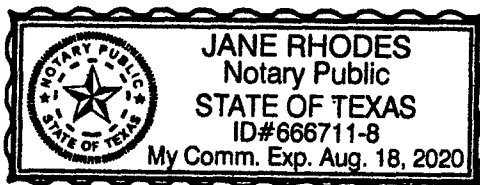
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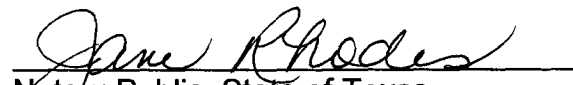
- D. In 2016, JSWSC took further action to provide service to the area by contracting with Lone Star Regional Water Authority for 1.5 million gallons per day of water supply and signed indebtedness of its pro rata share for more than \$10,200,000.00. This action was also taken for purposes of insuring that the Property and others in the area would have sufficient water supply for years to come. If the area is removed from JSWSC's service area, JSWSC potentially will lose a significant portion of its projected income stream to serve this indebtedness. This action was taken in reliance of the CCN agreement with the City of Jarrell. In a five-year period, this would result in more than a \$1,000,000.00 financial impact to JSWSC.

"I have read JSWSC's *Response to Jeff Stockton's Petition for Expedited Release* and each and every factual statement contained in it is true and correct.


David Yohe
General Manager of Jarrell-Schwertner
Water Supply Corporation

Sworn to and subscribed before me on May 15, 2017, by David Yohe, General Manager of Jarrell-Schwertner Water Supply Corporation, to certify which witness my hand and seal of office.




Notary Public, State of Texas