

Control Number: 47457



Item Number: 54

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# Public Utility Commission of Texas

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## Memorandum

2019 NOV -08 PM 1:03

To: Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

From: Mick Long – Director, Oversight and Enforcement  
Taylor Kilroy – Managing Attorney, Oversight and Enforcement  
Emily Young – Analyst, Oversight and Enforcement

Date: November 8, 2019

Re: Docket 47457 – Complaint of Clay Morehead Against Corey Abel, Trustee to the Castlecomb Trust

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At the Open Meeting of October 11, 2019, the Commission requested that the Oversight and Enforcement Division (O&E) obtain answers to a series of questions posed by the Chairman regarding the utility that was the subject of the above-referenced complaint. The Commission further requested that O&E provide a status report to the Commission by November 8, 2019.

O&E's initial report follows:<sup>1</sup>

### **Background**

Corey Abel is the trustee of the Castlecomb Trust. The Castlecomb Trust is the owner of a water and an on-site sewage facility (OSSF) system that provides service to the Castlecomb and Kensington subdivisions located in Kerr County, Texas (the Castlecomb utility).<sup>2</sup> The Castlecomb utility currently provides both retail water and sewer service to approximately 28-30 homes.

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<sup>1</sup> O&E appreciates the responsiveness of the following people who contributed valuable information to this report:

- Mike Hays, City Attorney for the City of Kerrville
- Heather Stebbins, County Attorney, Kerr County
- Kellie Billings-Ray and Doug Brown, Office of the Attorney General of Texas
- Corey Abel, Trustee of the Castlecomb Trust
- Jerry Weaver, President of the Castlecomb Water Board
- Clay Morehead and Rick Phipps, Directors of the Castlecomb Homeowners Association
- Barbara Bingham and Greg Howard, Kerr Country Pump
- Ken Munson, In Or Out Water Services

<sup>2</sup> See Attachment One, Maps of Castlecomb Area.

The OSSF was first permitted by the Upper Guadalupe River Authority on April 30, 1987 (license no. #86-322), and O&E believes that the Castlecomb utility has been providing retail water and sewer service since approximately that date.

Neither Commission records nor TCEQ records show that the Castlecomb utility applied for, much less received, a CCN for their service area.

The City of Kerrville received CCNs for both water and sewer service from the Texas Natural Resource Conservation Commission on February 2, 2000 and June 1, 2001, respectively. The Castlecomb utility provides water service inside of Kerrville's water CCN, but not its sewer CCN.<sup>3</sup>

### **TCEQ Violations**

On January 26, 2016, a TCEQ investigator observed sewage was being discharged into an unnamed intermittent stream.<sup>4</sup> Approximately 400 feet of the intermittent stream was pooled with sewage. This intermittent stream flows through Silver Creek into the Guadalupe River, which is about a half mile away from the Castlecomb utility. A TCEQ investigator collected samples in early February 2016 and observed ponded effluent on multiple occasions in February, March, May, and June 2016.

On February 3, 2016, Kerr County sent a letter to the Castlecomb utility, indicating that the OSSF permit was being revoked.<sup>5</sup>

For approximately a month from late June to July 2016, TCEQ's emergency response contractor pumped and removed tens of thousands of gallons of wastewater from the Castlecomb utility. Even after this time, TCEQ investigators observed effluent surfacing from the ground.

This matter was referred to the Office of the Attorney General of Texas (OAG), and the OAG brought suit on September 9, 2016.

### **Commission Cases**

While the OAG's suit was pending, two dockets were opened at the Commission.

On July 20, 2017, O&E filed a Notice of Violation against the Castlecomb utility, alleging that the utility was providing retail water service without first obtaining a CCN.<sup>6</sup> Soon after, the Commission received a formal complaint from a customer of the Castlecomb utility, alleging that

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<sup>3</sup> See Attachment One, Maps of Castlecomb Area.

<sup>4</sup> Notably, the Castlecomb utility was already under an agreed injunction regarding the unlawful discharge of sewage. See *Kerr County, Texas, A Political Subdivision of the State of Texas v. The Estate of L. De. Juan Abel, Individually, Corey Steven Abel, Executor, and d/b/a Trustee for Hexagon Honeycomb Corporation and d/b/a Trustee for Castlecomb Trust*, Cause No. 07-456A (216th Dist. Ct., Kerr County, Tex., Mar. 11, 2013).

<sup>5</sup> By letter dated September 22, 2016, the Executive Director of the TCEQ at the time, Richard A. Hyde, informed Kerr County officials that, because the letter did not provide the Castlecomb utility with notice of a hearing and no hearing had been held, the permit had not been legally revoked. Kerr County maintains that the revocation was effective.

<sup>6</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Notice of Violation (July 20, 2017).

the debt he owed to the utility was “not warranted and inflated.”<sup>7</sup> In both of these cases, an important issue was whether the Castlecomb utility was required to obtain a CCN before providing service.

The Castlecomb utility responded to both the NOV and the formal complaint on August 18, 2017. In its response to the NOV, the Castlecomb utility noted that it would be “feasible” for it to file a CCN application within 30 days, “but the Trust may need to request an extension of this deadline.”<sup>8</sup> Noting this, O&E requested a 90-day abatement on August 8, 2017, its sole abatement request in this matter. This abatement was requested in order to accomplish two goals: 1) to allow the Castlecomb utility more than the time requested to file a CCN application, and 2) to consult with the Legal Division as to which case ought to proceed first.<sup>9</sup> A few days later, the Legal Division requested their own abatement so that the NOV docket could proceed first.<sup>10</sup>

After those 90 days elapsed, O&E filed a status report regarding the NOV docket, noting that no CCN application had been filed and requesting a referral to SOAH.<sup>11</sup> The NOV was referred to SOAH on February 26, 2018.<sup>12</sup> The Order of Referral stated a deadline for a list of issues (which O&E timely filed<sup>13</sup>) and noted that a preliminary order would be taken up at the March 29, 2018 Open Meeting.

However, on March 21, 2018, the Director of CADM<sup>14</sup> issued an order stating that “[t]he Commission will not consider or issue a preliminary order at [the March 29, 2018 Open Meeting]. The Commission will inform the parties when it intends to issue a preliminary order.”<sup>15</sup> No further filings were made in this docket until September 27, 2018, when the Commission requested that SOAH return the docket<sup>16</sup> and requested that the OAG file suit against the Castlecomb utility.<sup>17</sup>

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<sup>7</sup> *Complaint of Clay Morehead Against Corey Abel, Trustee to the Castlecomb Trust*, Docket 47457, Formal Complaint (July 31, 2017).

<sup>8</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Castlecomb’s Letter to Mr. Lloyd and PUC Commission Staff at 5 (Aug. 18, 2017).

<sup>9</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Commission Staff’s Response to Order No. 1 and Request for Abatement (Sept. 6, 2017).

<sup>10</sup> *Complaint of Clay Morehead Against Corey Abel, Trustee to the Castlecomb Trust*, Docket 47457, Commission Staff’s Request for Abatement (Sept. 18, 2017).

<sup>11</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Commission Staff’s Status Report (December 6, 2017). In response to the Chairman’s memo, Mr. Abel admits that he stopped working on a CCN application by September 2017.

<sup>12</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Order of Referral (Feb. 26, 2018).

<sup>13</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Commission Staff’s List of Issues (Mar. 8, 2018).

<sup>14</sup> The Commission Advising and Docket Management Division has since been renamed the Office of Policy and Docket Management.

<sup>15</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Order (Mar. 21, 2018).

<sup>16</sup> *Notice of Violation by Castlecomb Water System of Texas Water Code § 13.242 and 16 TAC § 24.101, Related to Certificate Required*, Docket No. 47426, Order Requesting Return of Docket (Sept. 27, 2018).

<sup>17</sup> Open Meeting Tr. at 49:24-50:11 and 50:12-17 (Sep. 27, 2018).

During this time, the formal complaint docket was continuously abated, until the Legal Division filed a motion to dismiss, arguing that the Commission had also referred the complaint case to the OAG.<sup>18</sup> A Commission ALJ denied the motion, noting that while “it appears that there might be, in the future, a proceeding brought against Castlecomb Trust by the OAG,” until that suit was brought, the formal complaint was incapable of being duplicative.<sup>19</sup>

The formal complaint case then proceeded, leading to a Commission ALJ filing a PFD on September 11, 2019.<sup>20</sup> In response to that PFD, the Commission requested the following report.

**Current service to Castlecomb residents (Memo Questions 1-5)**

Residents of the Castlecomb and Kensington subdivisions receive service from the Castlecomb utility. At present, the Castlecomb utility is being run by certain residents, who have purported to form a water supply corporation known as the Castlecomb Water Supply Corporation.<sup>21</sup> The precise nature of the Castlecomb WSC is discussed in greater detail later in this report.

The Castlecomb WSC states that it has hired operators for both the water and sewer utilities. At present, Greg Howard of Kerr Country Pump LP operates the water utility, according to the Castlecomb WSC. Mr. Howard currently maintains a Ground Water Treatment Operator C license (WG0002721) and a Water Treatment Specialist III license (WT0000306). The Castlecomb WSC also states that the sewer utility is being operated by Ken Munson of In Or Out Water Services.<sup>22</sup> Mr. Munson maintains an OSSF Maintenance Provider license (MP0001345) and an OSSF Installer II license (OS0029162). The Castlecomb WSC states that it has had some trouble contacting Mr. Munson recently, and Mr. Munson confirmed to O&E that he is no longer operating the sewer utility.

The Castlecomb WSC states that operational costs are paid by the Castlecomb WSC, and that funds are derived through individual donations from customers and from HOA fees.

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<sup>18</sup> *Complaint of Clay Morehead Against Corey Abel, Trustee to the Castlecomb Trust*, Docket 47457, Commission Staff’s Motion to Dismiss Without Prejudice (Nov. 9, 2018).

<sup>19</sup> *Complaint of Clay Morehead Against Corey Abel, Trustee to the Castlecomb Trust*, Docket 47457, Order No. 13, Denying Motion to Dismiss (Jan 24, 2019).

<sup>20</sup> *Complaint of Clay Morehead Against Corey Abel, Trustee to the Castlecomb Trust*, Docket 47457, Proposal for Decision on Motion for Summary Decision (Sept. 11, 2019).

<sup>21</sup> As discussed later in this report, the corporate entity known as the Castlecomb WSC has been dissolved by the Texas Secretary of State. However, in the interest of concision, this report will refer to the group of residents who hold themselves out to be the Castlecomb WSC as such, even though the distinct legal entity no longer exists.

<sup>22</sup> In Or Out Water Services appears to be a sole proprietorship, as no record of this company exists with the Texas Secretary of State.

**Corey Abel (Memo Questions 6-7)**

Mr. Abel has taken no action in the last six months regarding the ongoing operation of the Castlecomb utility and has abandoned the Castlecomb utility. The Castlecomb WSC reports one contact with Mr. Abel in recent months. The purpose of this contact was for Mr. Abel to inform the Castlecomb WSC that he had received a bill regarding the Castlecomb utility and that the Castlecomb WSC needed to pay it.

Mr. Abel has not been in contact with Kerr Country Pump, the Castlecomb HOA, or the OAG for months. The City of Kerrville was unable to locate any communications with Mr. Abel from 2019. Mr. Abel has been in contact with O&E, but only in response to recent filings in the NOV docket and RFIs sent as part of the information gathering for this report.

**OAG Lawsuit (Memo Question 8)**

As discussed above, the OAG filed suit on behalf of the TCEQ on September 6, 2016. The OAG states that it has been working alongside TCEQ investigators to further develop its case. Upon referral of the Commission's claims to the OAG in February 2019, the OAG states that it began and continues to evaluate and research potential resolutions for both the water and sewer utilities. The case is currently set for trial in June 2020. The OAG confirms that it will ensure its pleadings include all appropriate violations prior to its trial setting.

**Castlecomb WSC (Memo Question 9)**

Texas Secretary of State records show that the Castlecomb Water Supply Corporation was formed in April 2017, but the corporation underwent a tax forfeiture in January 2019.

At some point in September or November 2017, it appears that the Castlecomb WSC took over operations of the Castlecomb utility. At present, the officers of the Castlecomb WSC are Jerry Weaver, President, and Brittany Weaver, Vice President. The position of treasurer is vacant. As of November 8, 2019, the Commission has received no complaints regarding the Castlecomb WSC's operation of the utility, and customers that Commission Staff spoke to regarding this report were generally pleased by the quality of service.

The Castlecomb WSC and Mr. Abel confirm that there were previous negotiations regarding the Castlecomb WSC acquiring title to the Castlecomb utility, but these negotiations appear to have fallen apart.<sup>23</sup>

Kerr County confirms that the Castlecomb WSC has not applied for, nor has it received the proper permits to operate the OSSF.

**City of Kerrville (Memo Questions 10-11)**

The Castlecomb utility is outside the City of Kerrville's municipal boundaries but within its ETJ. The utility operates within the City's water CCN. No entity is certificated to provide sewer service for the area served by the Castlecomb utility.

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<sup>23</sup> Notably, even if these negotiations had been successful, Texas Water Code § 13.301(h) would have voided it in the absence of a Commission-approved STM.

In August of 2016, and in response to inquiries from Castlecomb customers, local officials, and the TCEQ, the City conducted an engineering analysis to price out the cost of extending utility service to the residents currently being served by the Castlecomb utility.<sup>24</sup> The City estimated that installing an on-site water system would cost approximately \$196,658. The City also estimated that the cost to install an on-site sewer system would cost \$325,658, with an additional \$577,200 in off-site costs. In total, the City estimated that, at that time, it would cost approximately \$1,099,515 to provide on-site water and sewer utility service to the Castlecomb residents, which would result in a per-household cost of \$29,716.62.

In addition, the City also provided quotes for a commercial wholesale water agreement. The City estimated that the cost for a 6-inch tap and related infrastructure would cost approximately \$28,954.

In both situations, the City stresses that the provision of service would be contingent on the residents forming a legal entity to pay for ongoing utility services as well as the costs for the initial infrastructure required for those services.

The City stated that it does not provide temporary interconnection service for either water or sewer utility service, and so it declined to provide cost estimates.

**Neighboring Utilities (Memo Question 12)**

As noted above, the Castlecomb utility is entirely contained within the City of Kerrville's water CCN. In addition, Split Rock Water System Inc. (CCN 12068) and Harper Water Company Inc. (CCN 11421) appear to be roughly a half mile away from the Castlecomb utility. Aqua Texas (CCN 11157) operates a water utility approximately a mile away.

The nearest sewer CCN holder appears to be the City of Kerrville (CCN 20891), which maintains a small territory approximately five miles north of the Castlecomb utility.

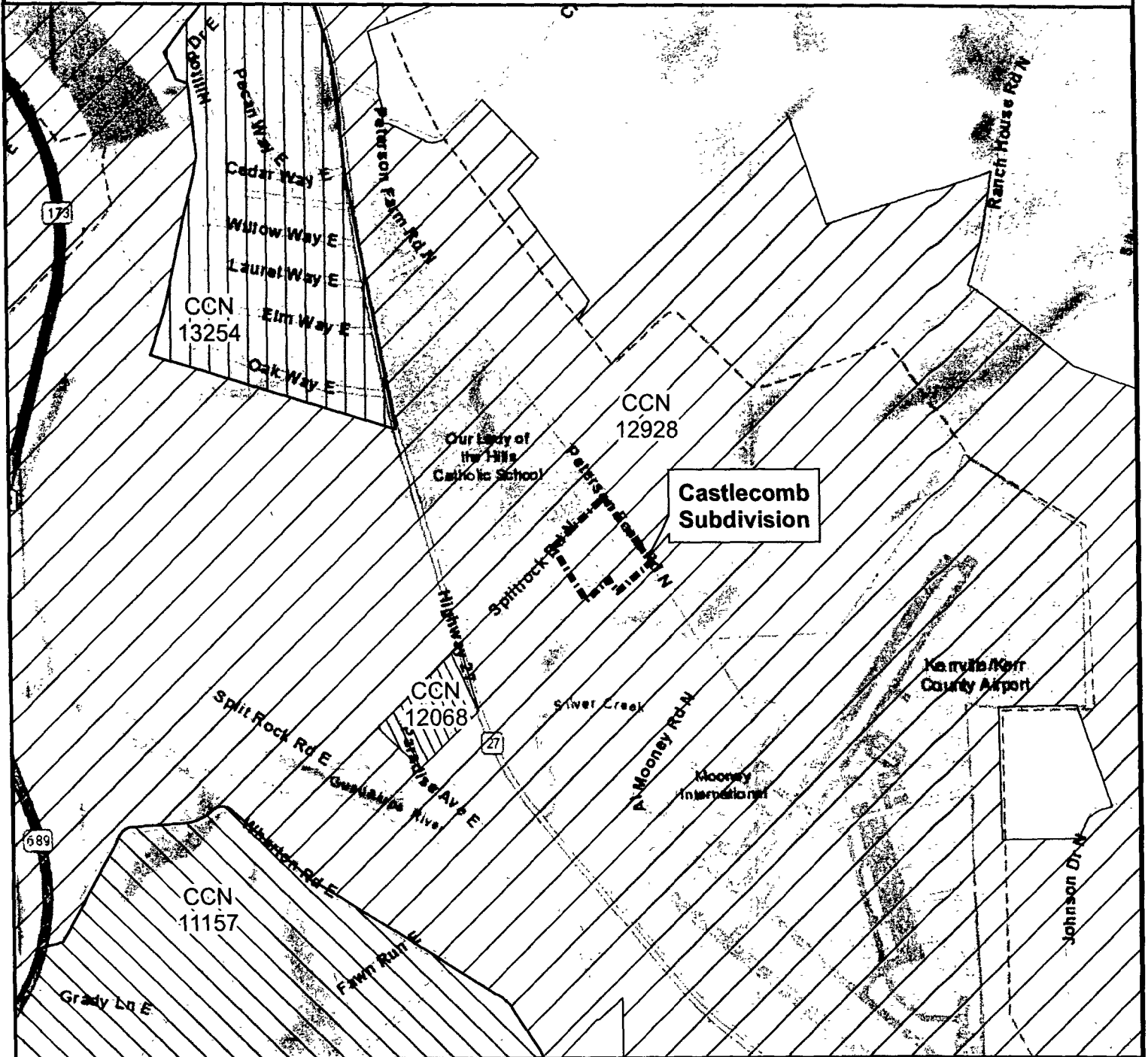
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<sup>24</sup> See Attachment 2, Castlecomb Subdivision – Water and Sewer Cost Estimates (8-24-2016).






**Attachment One**  
**Maps of Castlecomb Area**

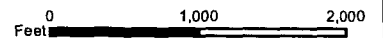


Castlecomb Subdivision  
 Water CCN's  
 PUC Docket No. 47457  
 Complaint of Clay Morehead Against Corey Abel,  
 Trustee to the Castlecomb Trust in Kerr County



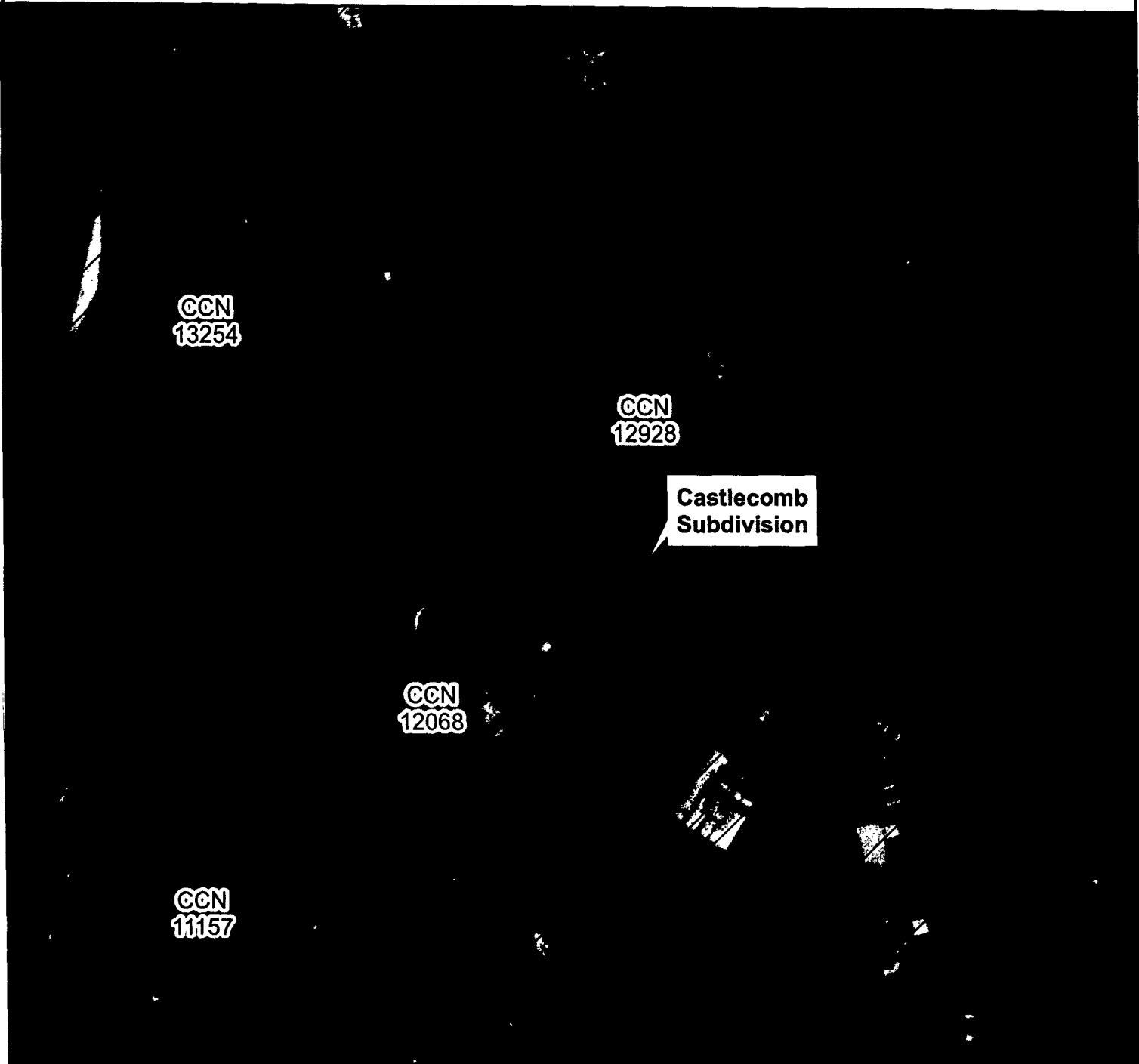
Public Utility Commission of Texas  
 1701 N. Congress Ave  
 Austin, TX 78701

-  Castlecomb Subdivision
-  Aqua Utilities Inc - CCN No. 11157
-  Split Rock Water System Inc - CCN No. 12068
-  City of Kerrville - CCN No. 12928
-  Aqua Texas Inc - CCN No. 13254








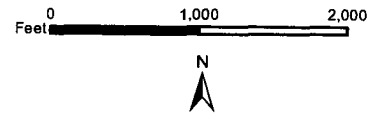
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Castlecomb Subdivision  
 Water CCN's  
 PUC Docket No. 47457  
 Complaint of Clay Morehead Against Corey Abel,  
 Trustee to the Castlecomb Trust in Kerr County



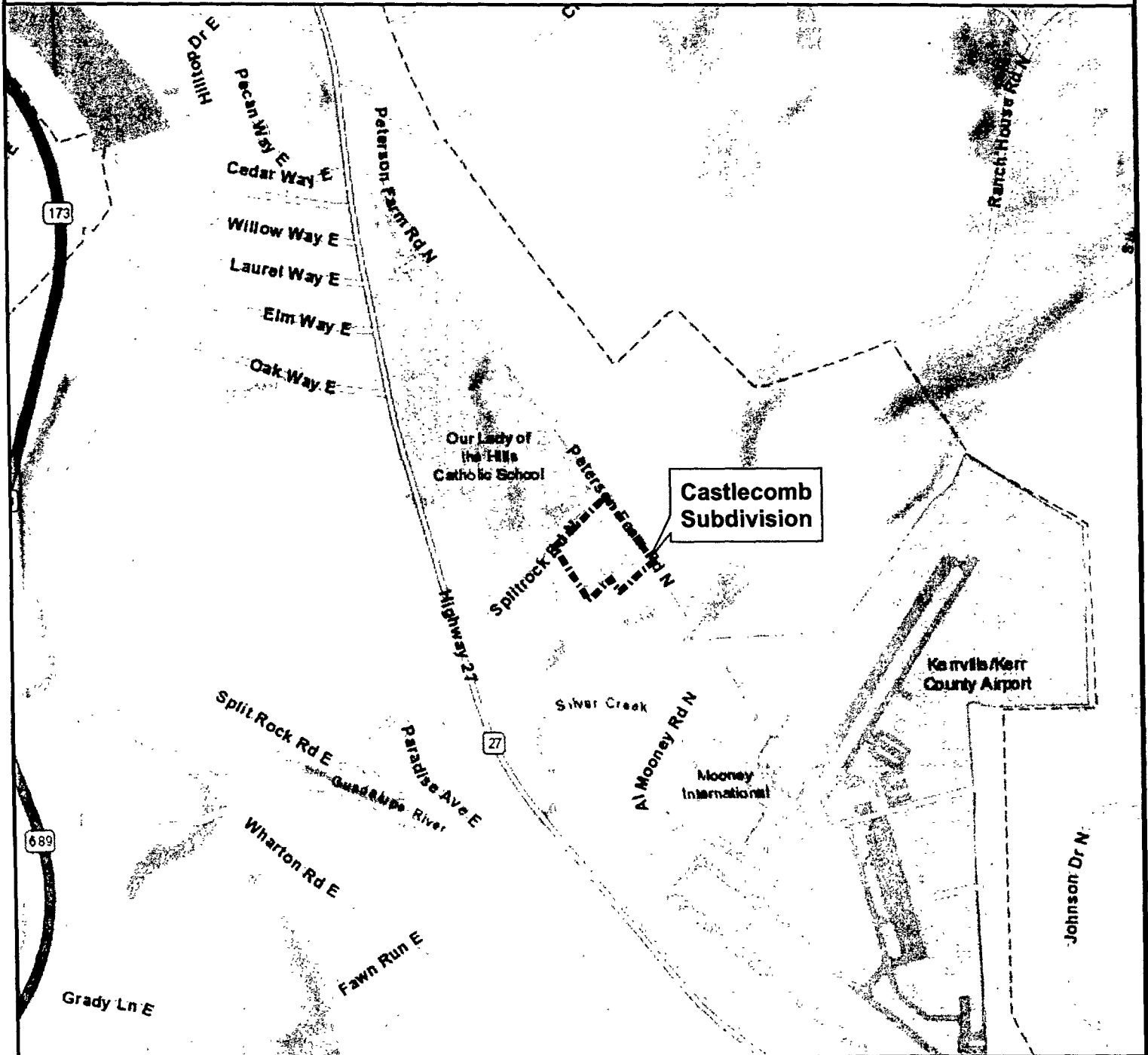
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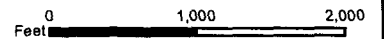
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Castlecomb Subdivision  
 Sewer CCN's  
 PUC Docket No. 47457  
 Complaint of Clay Morehead Against Corey Abel,  
 Trustee to the Castlecomb Trust in Kerr County



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

 Castlecomb Subdivision



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**Attachment Two**

**Castlecomb Subdivision – Water and Sewer  
Cost Estimates (8-24-2016)**

**Castlecomb Subdivision - Water and Sewer Cost Estimates (8-24-2016)**

**Estimated Cost to Install On-Site Water System  
2,017 L.F. of 8" Diameter Pipe**

Item	Unit Cost	Feet	Total
Pipe	65	2,017	\$ 131,105
Engineering (10%)			\$ 13,111
Overhead and Profit (15%)			\$ 19,666
<b>Sub-Total</b>			<b>\$ 163,881</b>
Contingency (20%)			\$ 32,776
<b>GRAND TOTAL</b>			<b>\$ 196,658</b>

**Estimated Cost to Install On-Site Sewer System  
2,017 L.F. of 8" Diameter Pipe**

Item	Unit Cost	Units	Total
Pipe	65	2,017	\$ 131,105
Manholes	5,000	10	\$ 50,000
Lateral Lines	36	1,000	\$ 36,000
<b>Sub-Total Construction</b>			<b>\$ 217,105</b>
Engineering (10%)			\$ 21,711
Overhead and Profit (15%)			\$ 32,566
<b>Sub-Total</b>			<b>\$ 271,381</b>
Contingency (20%)			\$ 54,276
<b>GRAND TOTAL</b>			<b>\$ 325,658</b>

**TOTAL ON-SITE FOR WATER AND SEWER \$ 522,315**

**TOTAL OFF-SITE FOR SEWER \$ 577,200**

**GRAND TOTAL FOR PROJECT \$ 1,099,515**

**COST PER LOT (37 Lots) \$ 29,716.62**