



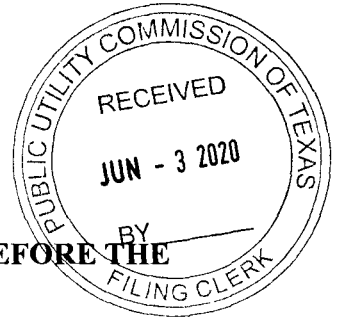
Control Number: 49926



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APPLICATION OF CRYSTAL CLEAR §  
SPECIAL UTILITY DISTRICT FOR A §  
NAME CHANGE AND TO AMEND ITS §  
SEWER CERTIFICATE OF §  
CONVENIENCE AND NECESSITY IN §  
COMAL, HAYS, AND GUADALUPE §  
COUNTIES §

PUBLIC UTILITY COMMISSION

OF TEXAS

**JOINT RESPONSE TO HEARING REQUESTS**

TO THE HONORABLE COMMISSION ADMINISTRATIVE LAW JUDGE:

COMES NOW, Crystal Clear Special Utility District (“District”) and MCLB Land, LLC (“MCLB Land”) and file this Joint Response to Hearing Requests filed by the City of San Marcos (“City”) and Carson Select Investments, LP (“Carson”) and, in support thereof, would respectfully show the following.

**I. BACKGROUND**

1. On September 3, 2019, the District filed an application to amend its sewer certificate of convenience and necessity (“CCN”) No. 21086 in Comal, Hays, and Guadalupe Counties.
2. On January 3, 2020, the Public Utility Commission of Texas (“Commission”) Administrative Law Judge (“ALJ”) issued Order No. 4 finding the application administratively complete and establishing a procedural schedule.
3. On January 24, 2020, the City filed an Motion to Intervene, which included a request for a hearing on the application.
4. On February 5, 2020, Carson filed a Motion to Intervene without requesting a hearing on the merits of the application.

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5. On February 6, 2020, the Commission ALJ issued Order No. 5 noting that the City's request for intervention was unopposed and the City had demonstrated a justiciable interest which may be adversely affected by the outcome of this proceeding.
6. On February 14, 2020, the Commission ALJ issued Order No. 6 granting Carson's Motion to Intervene, similarly finding Carson had demonstrated a justiciable interest.
7. On February 21, 2020, the Commission ALJ issued Order No. 7 finding notice sufficient and establishing a procedural schedule which included a deadline of May 12, 2020 for the Commission Staff to file its final recommendation, *if no hearing is requested*.
8. On May 11, 2020, Commission Staff requested an extension for filing its recommendation until the City's request for hearing was acted upon. Thereafter on May 19, 2020, the Commission ALJ issued Order No. 9, ordering the City to indicate if it still desired a hearing in this case but did not address Carson.
9. The City reiterated its request for hearing on May 27, 2020 at the same time Carson requested a hearing for the first time claiming it was directly or indirectly impacted by the CCN application. Therefore this pleading is timely filed.

## **II. RESPONSE TO THE CITY**

The City claims it has a justiciable interest that may be adversely affected by the granting of an amendment to the District's sewer CCN.<sup>1</sup> It specifically argues that it "has planned for service to the proposed service area" and will be negatively affected if it "no longer has the opportunity to respond" to requests for service.<sup>2</sup> The City's argument is undermined by the fact that the City has no legal right to serve the area in question, including the property of MCLB Land.

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<sup>1</sup> Title 16 Tex. Admin. Code ("TAC") § 22.103(b). Movants understand that the Commission ALJ previously granted the unopposed requests to intervene and found the intervenors to have a justiciable interest; however, this discussion is necessary to evaluate the City's requests for hearing and to adequately frame the City's arguments in the larger context of expedited releases and its own request for expanded CCN area in Docket No. 48571.

<sup>2</sup> City of San Marcos' Motion to Intervene at 2 (Jan. 24, 2020).

Pursuant to Tex. Water Code Ann. (“TWC”) § 13.246(h), MCLB Land and numerous other landowners elected to be removed and were removed from the City’s proposed amended CCN area.<sup>3</sup> As a result, the City cannot be affected by the outcome of this proceeding, because state law has granted the right to landowners such as MCLB to determine which service provider best meets their respective needs.<sup>4</sup> To further litigate this case on the City’s argument that it should serve the requested area not only disregards the Commission’s findings in Docket No. 48571, but thwarts state policy allowing opt-outs from CCN amendment proceedings, and similarly allowing for streamlined expedited CCN releases under TWC § 13.2541(b).

In adopting the opt-out provisions of TWC § 13.246(h) and the streamlined expedited release provisions under TWC § 13.2541(b), the Texas Legislature made clear its intent that landowners should choose their water or wastewater utility service provider. As shown in the District’s application, the landowners have chosen the District to be that wastewater utility service provider, not the City.<sup>5</sup> State policy not only allows but promotes a property owner’s choice of utility provider for property in a certain geographic area like the District’s.<sup>6</sup>

Just because the ALJ found the City to have met the 16 TAC § 22.103(b)(2) justiciable interest standard previously (for purposes of intervention), does not mean that the City is an “affected person” to whom relief may be granted in this Docket for purposes of evaluating its hearing request under Chapter 13 of the Texas Water Code:

"Affected person" means any landowner within an area for which a certificate of public convenience and necessity is filed, any retail public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a retail public utility

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<sup>3</sup> See Docket No. 48571, *Application of the City of San Marcos to Amend a Sewer Certificate of Convenience and Necessity in Hays, Guadalupe, Comal and Caldwell Counties* (pending). The City never objected to the release of MCLB Land or numerous other landowners.

<sup>4</sup> 16 TAC § 22.103(b).

<sup>5</sup> Importantly, the District is already the authorized water provider to the MCLB property pursuant to water CCN No. 10297 and a binding agreement between MCLB and the District.

<sup>6</sup> TWC § 13.2541(b).

with respect to any service performed by the retail public utility or that desires to enter into competition.<sup>7</sup>

On the contrary, since the City does not possess an automatic right to serve and may not serve the MCLB tract as the result of exercising its right to be excluded from the City's proposed new CCN area, the City is neither a retail public utility affected by an action of the regulatory authority (in this docket) nor a competitor or would-be competitor of the District's. Curiously, in no pleading has the City argued a legitimate basis for opposing the District's application – like its financial, managerial, or technical ability to provide continuous and adequate service. Rather, the District's original and reiterated requests for hearing are nothing but a transparent “turf war” with the District over an area in which the legislature has given landowners the right to elect which service provider best meets its needs. Allowing the City to circumvent this legislative policy by granting a contested case hearing would result in a significant waste of state resources. The Commission should rule that the City lacks a justiciable interest in providing service in an area for which the landowner has opted out because it is not entitled to any of its pled request for relief.

### **III. RESPONSE TO CARSON**

Order No. 7 established a deadline to file a hearing request of May 12, 2020. Carson did not file its hearing request until May 27, 2020. Thus, Carson has missed the deadline and has waived any right to request a hearing in this docket.

Moreover, since Carson's property is outside the sewer CCN area sought by the District and within the City's existing sewer CCN, Carson will never be served the District.<sup>8</sup> Thus, Carson cannot be “directly or indirectly impacted” by the CCN that is the subject of this proceeding.<sup>9</sup> Carson will be served by the City if it is served at all, and cannot be legally served by the District. Additionally, Carson's claims that it will be impacted by the District's wastewater treatment plant is already subject of a permit hearing before the Texas Commission on Environmental Quality

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<sup>7</sup> TWC § 13.002(1). *See also*, 16 TAC § 24.3(5).

<sup>8</sup> *See* Exhibit A, Map.

<sup>9</sup> Carson Select Investments, LP's Request for Hearing at 1 (May 27, 2020).

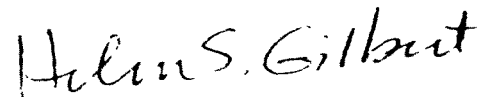
("TCEQ"), which matter is outside the jurisdiction of the Commission.<sup>10</sup> Pursuant to both TWC § 13.002(2) and 16 TAC § 22.103(b)(2), Carson is not an affected person with a justiciable interest in this matter. Carson is neither a utility providing similar service nor a landowner within the affected area; therefore, it cannot be a party to a CCN hearing. Carson has no personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application, since the District will not provide Carson with service and Carson will thus not be affected by the application.

#### **IV. PRAYER**

WHEREFORE, PREMISES CONSIDERED, the District and MCLB Land respectfully pray that the Commission deny the hearing requests filed by the City and Carson and for all other relief to which they are entitled.

Respectfully submitted,

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Helen S. Gilbert

**ATTORNEYS FOR MCLB LAND, LLC**

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<sup>10</sup> TCEQ Docket No. 2020-0411-MWD, *Application by Crystal Clear Special Utility District and MCLB Land, LLC for New TPDES Permit No. WQ0015266002*. Any alleged regionalization concerns raised by either the City or Carson will be addressed under the TCEQ's more stringent regionalization analysis.

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/s/ Shan S. Rutherford

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Shan S. Rutherford

**ATTORNEYS FOR CRYSTAL CLEAR  
SPECIAL UTILITY DISTRICT**

**CERTIFICATE OF SERVICE**

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 3<sup>rd</sup> of June 2020.

*Helen S. Gilbert*

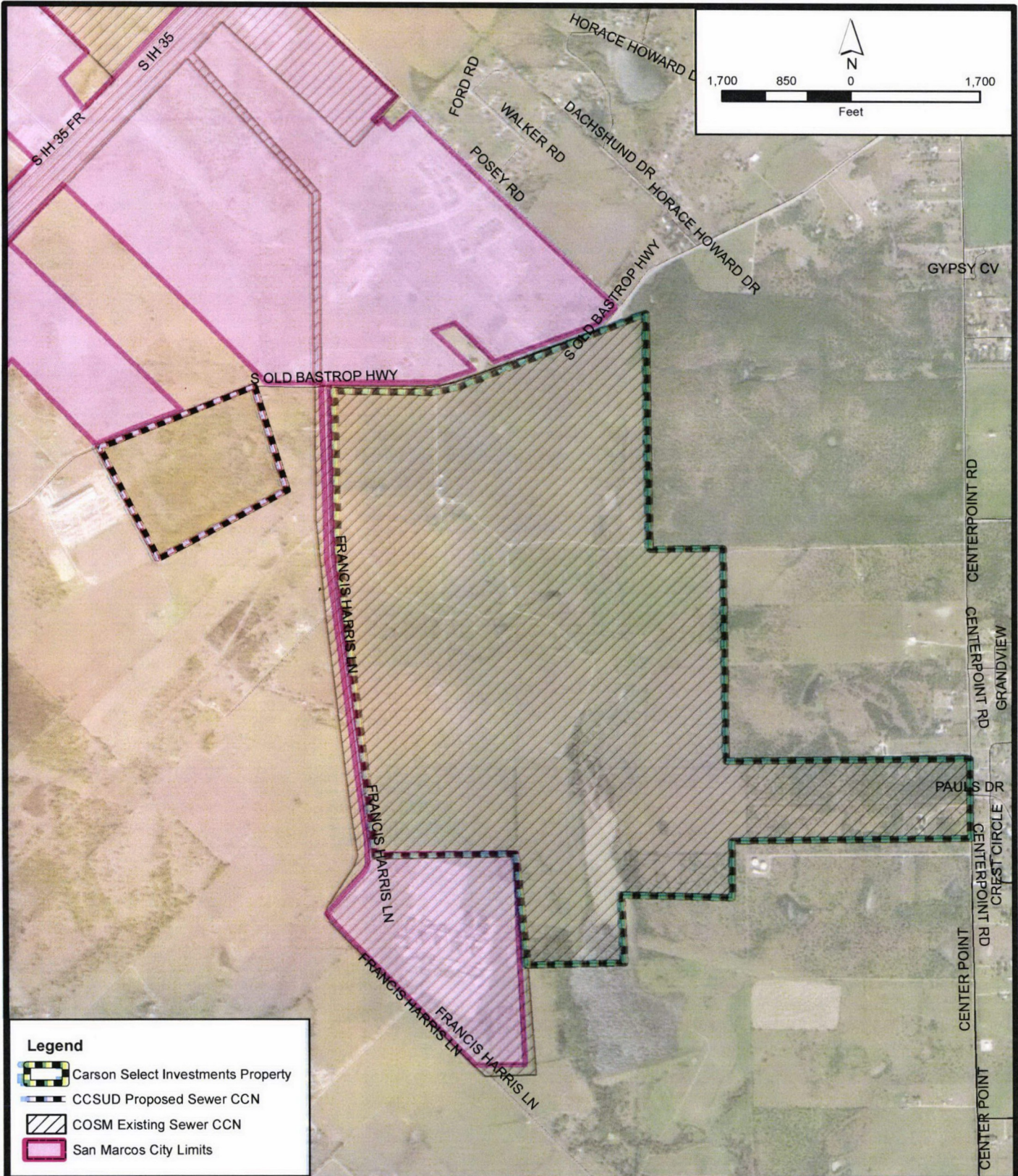
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Helen S. Gilbert



# DOCKET NO. 49926 - EXHIBIT A

Date: Jun 03, 2020, 12:58:19 PM User ID: gsharp  
 File: \\coulgar\Civil Dept\Active Projects\14CCSUD001 - General Engineering Services\Sewer CCN Amendment\2019-Sewer CCN Amendment\File Exchange\To Others\Gilbert Attorney\_06.02.2020\CCN Carson Property\_06022020.mxd



EXH	JOB: 14CCSUD001		REVISIONS:		CRYSTAL CLEAR SUD PROPOSED SEWER CCN AREA	 <b>M&amp;S ENGINEERING</b> CIVIL   ELECTRICAL   STRUCTURAL   MEP TEXAS PROFESSIONAL ENGINEERING FIRM # F-1394 WWW.MSENGR.COM   (830) 228-5446
	DATE: JUNE 2020		DATE	DESCRIPTION		
	DRAWN: GS	PM:				
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