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PETITION OF COLORADO RIVER §
PROJECT, LLC TO AMEND SWWC §
UTILITIES, INC. DBA HORNSBY §
BEND UTILITY'S CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
TRAVIS COUNTY BY EXPEDITED §
RELEASE §

**SWWC UTILITIES, INC. D.B.A. HORNSBY BEND UTILITY COMPANY, INC.'S
CORRECTIONS AND EXCEPTIONS TO THE PROPOSED ORDER**

SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. (HBUC) files these Corrections and Exceptions to the Proposed Order, filed on December 21, 2020.¹ On December 21, 2020, the Administrative Law Judge issued a Proposed Order and memorandum to be considered at the open meeting scheduled for January 14, 2021, and directed the parties to file corrections or exceptions to the Proposed Order on or before January 5, 2021. Therefore, this pleading is timely filed. In support, HBUC shows as follows:

I. HBUC'S PROPOSED CORRECTIONS

HBUC proposes the following correction to the Proposed Order:

Modify Finding of Fact No. 4 as presented below, for accuracy:

- 4. ~~The petitioner~~ SWWC Utilities, Inc. holds water CCN number 11978 and sewer CCN number 20650 that obligate it to provide retail water and sewer service in its certificated service areas in Travis County.

¹ Proposed Order and Memorandum (Dec. 21, 2020).

II. HBUC'S EXCEPTIONS

A. Exception No. 1—HBUC excepts to proposed Finding of Fact Nos. 29, 31, 36, and 38 and Conclusion of Law No. 9.

In Finding of Fact Nos. 29 and 31, the Proposed Order includes language stating the Certificate of Convenience and Necessity (CCN) holder “has not committed or dedicated any facilities or lines” and “has not performed any act for or supplied anything” to the tract of land for water service. Similarly, in Finding of Fact Nos. 36 and 38, the Proposed Order includes identical findings regarding sewer service. Ultimately, Conclusion of Law No. 9 in the Proposed Order finds “[t]he tract of land is not receiving water or sewer service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied). These findings and conclusion do not accurately reflect HBUC’s activities concerning the Property as explained in the Affidavit of Timothy Williford.

The Property receives water and sewer service from HBUC under any interpretation or application of the term “service” as the Texas Water Code (TWC) defines it, and the Property cannot be released from HBUC’s CCNs under TWC § 13.2541.² The Water Code broadly 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 . . . to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.³

The embedded term “facilities” is defined as:

² TWC § 13.2541(b) (allowing streamlined expedited release of a tract of land that “is not receiving water or sewer service.”); *see also* 16 Tex. Admin. Code (TAC) § 24.245(h)(1)(B).

³ TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.⁴

Actually delivering water to or collecting wastewater from a property is obviously “service,” but a property can also receive water or sewer service under the statute without a utility delivering “actual water” onto or collecting wastewater from a property.⁵ In the *Crystal Clear* Austin Third Court of Appeals decision, the court held that facilities or lines “used” or “committed” to providing such service may cause a property to “receive service” under the statutory and regulatory definition.⁶ But where water lines or wastewater lines are actually present within a tract and “committed” to the property in that manner, the tract is unquestionably “receiving service.” The Commission recently determined that a streamlined expedited release petition may not be granted under *Crystal Clear* and TWC § 13.2541 when such facts are present.⁷

Here, the Petition claims, “The property in question is not receiving water or sewer service from Hornsby or any other water or sewer service provider.”⁸ The Petition supports that statement with a self-serving affidavit from Mr. Rohan Patel, Development Manager for

⁴ TWC § 13.002(9); *see also* 16 TAC § 24.3(15) (same definition).

⁵ *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

⁶ *Id.*

⁷ *Petition of Clay Road 628 Development, LP to Amend T&W Water Service Company's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 50261, Order Denying Streamlined Expedited Release at 2–4 (Apr. 29, 2020).

⁸ Petition at 6.

the Petitioner.⁹ But HBUC has a water line adjacent to the Property that is capable of providing water to the tract and has acquired water rights to provide adequate water resources to the tract and future development of the Property.¹⁰

As shown in the affidavit of Timothy Williford, Vice President of Operations of Texas Utilities for HBUC, HBUC submitted that: (1) HBUC's water and wastewater facilities were originally built with the intent of serving the Property and the planned Austin Green Municipal Utility District (MUD), which would have been developed on the Property; (2) HBUC acquired water rights in the Blue Water pipeline and allocated 6,000 living unit equivalents of water capacity in that line to servicing the Property and the planned MUD; and (3) HBUC has other facilities immediately adjacent to the Property, and has performed various acts and supplied funds in furtherance of service to the Property and HBUC's CCN area that includes the Property, as detailed in Mr. Williford's affidavit.¹¹

Additionally, HBUC has entered into various agreements with neighboring utilities relating to the protection of HBUC's certificated service area and to ensure continuous and adequate service to both current and future customers, including to the Property.

The identified facilities—and the acts planning, creating, and maintaining them—are all plainly “committed” or “used” by HBUC in the performance of its duties to supply water and sewer service to the Property in the targeted CCN area. At a minimum, the water main line located adjacent to the Property provide water service to the Property, but the Property also receives water and sewer service from HBUC through its commitments to, and its existing

⁹ *Id.* at 6–7.

¹⁰ Affidavit of Timothy Williford (attached as Exhibit A), at paragraphs 5-6, 8.

¹¹ *Id.*

facilities and capacity adjacent to, the Property. Mr. Williford's affidavit describes all the different ways HBUC has served the Property through its various service acts and funds supplied, but there should be no question that the Property receives water and sewer service from HBUC today through facilities located adjacent to the Property.¹² Under these facts, the Commission should deny the Petitioner's request to release the Property from HBUC's CCNs because that would violate TWC § 13.2541. Mr. Williford's affidavit is attached as Exhibit A, and it further describes all the different ways HBUC has supplied funds and otherwise acted to serve the Property.

These facts contradict the findings and conclusions in the Proposed Order. Accordingly, HBUC requests that the Commission remove proposed Finding of Fact Nos. 29, 31, 36, and 38 and Conclusion of Law No. 9 from the Final Order.

B. Exception No. 2—HBUC excepts to proposed Ordering Paragraph Nos. 1, 3, 4, 5, and 6.

As proposed, Ordering Paragraph Nos. 1, 3, 4, 5, and 6 grant the requested relief of Petitioner to decertify the tract of land identified in the petition from the CCN holder's service areas under water CCN number 11978 and sewer CCN number 20650. As supported by the facts and argument presented in Exception No. 1, the Commission should instead deny the Petition because the requested release cannot lawfully be granted under TWC § 13.2541 and 16 TAC § 24.245. The Property is receiving service from HBUC and not eligible for streamlined expedited release. These facts contradict the ordering paragraphs in the Proposed Order. Accordingly, HBUC requests that the Commission amend Ordering Paragraph Nos. 1,

¹² *Id.*

3, 4, 5, and 6 in the Final Order and deny the Petitioner's request to release the Property from HBUC's CCNs.

III. CONCLUSION

HBUC respectfully requests that the Commission adopt the correction and exceptions proposed above.

Respectfully submitted,

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Austin, Texas 78701
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Facsimile: (512) 472-0532

/s/ William A. Faulk, III

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**ATTORNEYS FOR SWWC UTILITIES,
INC. D.B.A. HORNSBY BEND UTILITY
COMPANY, INC.**

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 5, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

WILLIAM A. FAULK, III

3146/23/8173620

EXHIBIT A

PUC DOCKET NO. 51166

PETITION OF COLORADO RIVER PROJECT, LLC TO AMEND SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN TRAVIS COUNTY BY EXPEDITED RELEASE § PUBLIC UTILITY COMMISSION OF TEXAS

AFFIDAVIT OF TIMOTHY WILLIFORD IN OPPOSITION OF THE PETITION OF COLORADO RIVER PROJECT, LLC TO AMEND SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN TRAVIS COUNTY BY EXPEDITED RELEASE

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary, personally appeared Timothy Williford, the affiant, a person who is known to me. After administering an oath, the affiant testified that:

1. My name is Timothy J. Williford. I am over the age of eighteen years, of sound mind, and am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

2. I am the authorized representative, Vice President of Operations of Texas Utilities for SWWC Utilities, Inc. d/b/a Hornsby Bend Utility ("HBUC"), the Protestant, in the above-captioned matter. HBUC is the holder of water Certificate of Convenience and Necessity ("CCN") Nos. 11978 and sewer CCN No. 20650.

3. The attached map, **Attachment TW-1**, shows the property tract ("Property") that the Petition filed by Colorado River Project, LLC ("Petitioner") in Docket No. 51166 seeks to remove through streamlined expedited release ("SLER") from areas for which HBUC holds water and sewer certificates of convenience and necessity CCN Nos. 11978 and 20650. I am familiar with HBUC's facilities in the vicinity of the Property and their location in relation to same. **Attachment TW-1** shows the Property and the location of HBUC's water and wastewater facilities adjacent to the Property. Those facilities are part of HBUC's Austin's Colony water system (PWS ID No. TX2270255) and Austin's Colony sewer system (TPDES Permit No. WQ0013138001) which serves the Property and nearby areas. The HBUC water and wastewater facilities were originally built with

the intent of serving the Property, and the approved Austin Green Municipal Utility District ("MUD") and the growth areas next to the Property.

4. Specifically, the Austin's Colony water system and the Austin's Colony sewer system facilities include: three wells that produce a combined 1,210 gallons per minute ("gpm"), two elevated storage tanks that hold a combined 800,000 gallons, two ground storage tanks that hold a combined 279,300 gallons, two pump stations with a combined pumping capacity of 1,800 gpm, (3,313) 5/8" meter water customers, (9) 3/4", (7) 1", (3) 1 1/2", (4) 2", (1) 3" and (2) 6" meter water customers with corresponding service lines, and over 30 miles of water mains adjacent to the property. Austin's Colony sewer system facilities include: a 900,000 gallon per day wastewater treatment plant, 10 lift stations with estimated pumping capacity of 3,500 gpm, chlorine disinfection system, 6 blower units, over 1,300 manholes, 3,587 sewer customers, with corresponding sewer lateral collection lines, and over 22 miles of sewer gravity and force main lines adjacent to the property.

5. HBUC has provided water service to the Property in several ways: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate the Austin's Colony water system facilities located adjacent to the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 11978 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Austin's Colony water system so that it may be used to serve the Property; (4) maintaining a regional office in Pflugerville, Texas with personnel specifically dedicated to operations within HBUC's geographic West Texas Region water CCN No. 11978 service areas, including the Property and CCN No. 11978 area that includes the Property; and (5) analyzing and responding to past service inquiries and service requests for the Property.

6. HBUC has provided sewer service to the Property in several ways: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate the Austin's Colony sewer system facilities located adjacent to the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the sewer CCN No. 20650 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Austin's Colony sewer system so that it may be used to serve the Property; (4) maintaining a regional office in Pflugerville, Texas with personnel specifically dedicated to operations within HBUC's geographic West Texas Region sewer CCN No. 20650

service areas, including the Property and CCN No. 20650 area that includes the Property; and (5) analyzing and responding to past service inquiries and service requests for the Property.

7. CCNs, groundwater, and wastewater permits have value that purchasers of utilities will pay for when acquiring a utility because of the rights to serve the public that they accord and because the time and expense to acquire the CCNs and permits has already been spent. Decertification of the Property will prevent HBUC from using those rights within the Property.

8. HBUC has acquired water rights necessary to provide its Austin's Colony water system and the Austin's Colony sewer system facilities with capacity that exceeds immediate need in order to respond quickly to anticipated new development within the Property. HBUC's dedicated purchased water has the capacity to provide water to approximately 6,000 living unit equivalent (LUE) connections. Attached to this affidavit as Confidential Attachment TW-2 is a copy of the Wholesale Potable Water Supply Agreement between HBUC and Blue Water 130 Project LP ("Blue Water") that was entered for the purposes of acquiring sufficient raw water to be provided to the Property and adjacent service areas.

9. Decertification of the property as requested by Petitioner would result in removal of HBUC's ability to serve planned future commercial and residential development in the area, which would result in substantial financial and operational harm.

10. Decertification of the property as requested by Petitioner denies HBUC's ability to use that existing infrastructure to serve some or all of the acreage sought to be decertified, with the further financial and operational harm to HBUC.

11. HBUC has performed numerous acts, supplied funds, and committed facilities to the Property. HBUC has also performed acts, supplied funds, and committed facilities to areas adjacent to the Property in CCN Nos. 11978 and 20650. HBUC is incurring legal expenses and is likely to incur other professional expenses as a result of the decertification and Petition. If the decertification is approved, HBUC will be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s). HBUC is actively supplying water and sewer services to the Property and nearby properties. The Property receives water and sewer service from HBUC through these acts, supplied funds, and facilities. HBUC stands ready to perform additional acts of service and commit additional facilities to the Property as necessary.

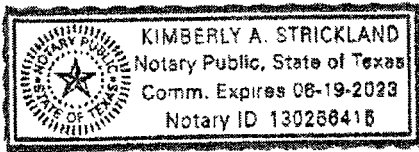
12. HBUC is opposed to Colorado River Project, I.J.C.'s request for expedited release of the property in question.

FURTHER AFFIANT SAYETH NOT.

SIGNED this 25th day of November 2020.

Timothy J. Williford

SWORN TO AND SUBSCRIBED BEFORE ME the undersigned authority on this 25TH day of NOVEMBER 2020.

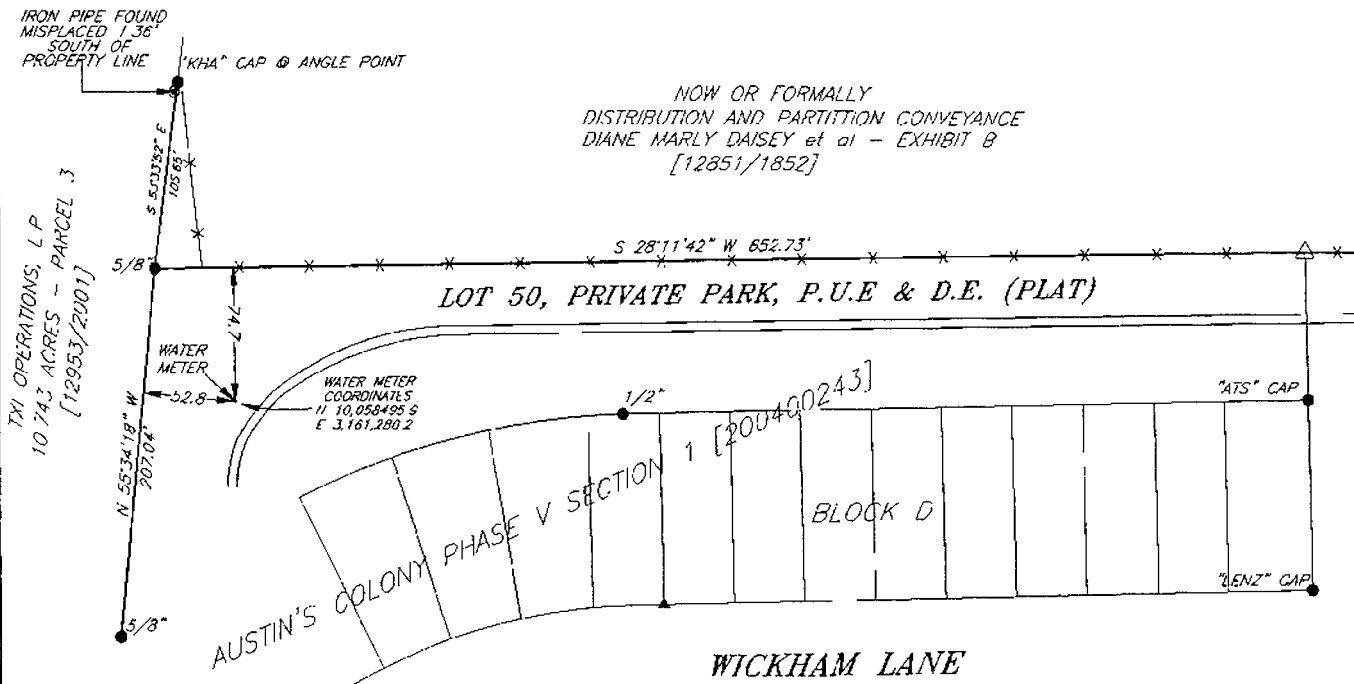


Kim Strickland
Notary Public, State of Texas

SAMFORD & ASSOCIATES
LAND SURVEYING
TEL: 441-5601 FAX: 441-5603

EXHIBIT "B"

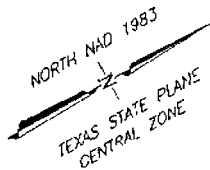
1400 HILLSIDE TERRACE
BUDA, TEXAS 78610



SCALE: 1"=100'

LEGEND

- = IRON ROD FOUND
- ⊙ = IRON PIPE FOUND
- ▲ = MAC NAIL FOUND
- △ = CALCULATED POINT
- x— = WIRE FENCE
- () = FROM PLAT RECORDS
- [] = FROM DEED RECORDS



SKETCH SHOWING WATER METER AND SURROUNDING VICINITY ON LOT 50, (PARK PUE & D.E.) AUSTIN'S COLONY PHASE V, SECTION ONE IN TRAVIS COUNTY TEXAS OF RECORD IN DOC. 200400243 OPRTCT

PLAN No.: 200685F

DATE: 08/20/20

**Attachment TW-2 is
CONFIDENTIAL and being
provided under seal.**