

**G & W WATER SUPPLY CORPORATION  
P O BOX 1219  
WALLER, TEXAS 77484  
Phone: 936-372-9858 Fax: 936-372-5840**

**PUBLIC NOTICE FROM G & W WATER SUPPLY CORPORATION**

April 28th, 2020

The Texas Commission on Environmental Quality (TCEQ) has notified G & W Water Supply Corporation PWS 0930048 that the drinking water supplied to customers in our CCN in part of Grimes County has exceeded the Maximum Contaminant Level (MCL) for Gross Alpha and excluding Radon and Uranium and also Combined Radium (-226 & -228) MCL, Average. The U.S. Environmental Protection Agency (U.S. EPA) has established The MCL for Gross Alpha excluding Radon and Uranium to be 15 picocuries per liter (pCi/L) based on a running annual average (RAA). The MCL for Combined Radium (-226 & -228) is 7 pCi/L, and has determined that it is a health concern at levels above the MCL. Analysis of drinking water in your area for Gross Alpha excluding Radon and Uranium for Quarter 4 - 10/01/2019-12/31/2019 had a RAA 34.2 ( pCi/l) and Quarter 1- 01/01/2020--03/31/2020 had a RAA 24.7 (pCi/l). Combined Radium(-226 & -228 ) indicates a violation period Quarter 4- 10/01/2019--12/31/2019 had a RAA 7.3 (pCi/l) and Quarter 1- 01/01/2020--03/31/2020 had a RAA 7.5 (pCi/L).

This is not an emergency. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased cancer risk. It is important to note this can affect all ground water, public wells as well as private wells.

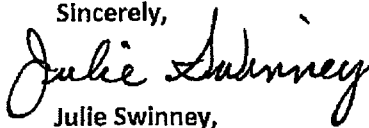
You do not need to use an alternate water supply. However, if you have health concerns, you may want to talk to your doctor to get more information as to how this may affect you.

We are taking the following actions to address this issue:

We have contacted our engineer who is working with us to find solutions to resolve the issues. Currently the wells in violation are Well #6 at 13577 CR 446 and Well # 1 at 2851 CR 306. We are blending water from all wells in Grimes County to decrease the levels before entering the distribution lines. Our engineer is also looking at other methods to utilize as well.

If you have any questions , you may contact Julie Swinney at 936-372-9858.

Sincerely,



Julie Swinney,  
Customer Service

*Contacts at Public Drinking Water section at TCEQ - 512-239-4691  
Kristine Kreeg - 512-756-3997  
Cait Kernan - 512-710-9494*



## Texas Commission on Environmental Quality

### CERTIFICATE OF DELIVERY OF TIER II PUBLIC NOTICE TO CUSTOMERS:

Public Water System (PWS) name: G & W WSC

PWS ID: 0930048 Violation Period (Month/Qtr/Year): Quarter 4- 10/01/2019--12/31/2019(7.3 pCi/L) Quarter 1 - 01/01/2020--03/31/2020 - 7.5 pCi/L

Type of Violation: Combined Radium (-226 & -228) MCL, Average

30 TAC 290.122(b) requires a PWS to notify customers of any non-acute MCL, MRDL, treatment technique violation, or significant deficiency identified in §290.122(b)(1) as soon as possible, but no later than 30 days after the violation or situation is identified. The initial public notice shall be issued in the following manner:

Please indicate how the PWS provided this public notice to customers, mark all that apply:

#### COMMUNITY WATER SYSTEM:

- ☒ Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered **(REQUIRED)**  
**AND** any other method reasonably calculated to reach other persons served by the PWS such as: (choose one or more below)
- ☐ Publication in a local newspaper
- ☐ Delivery of multiple copies for distribution to others (i.e. apartment building owners, large private employers)
- ☒ Continuous posting in conspicuous public places within the area served
- ☐ On the internet
- ☒ Electronic delivery or alert systems (e.g., reverse 911)
- ☐ Delivery to community organizations

#### NONCOMMUNITY WATER SYSTEM:

- ☐ Continuously post Notice in conspicuous places within affected PWS or service area **OR**
- ☐ Mail or direct delivery to each customer or service connection  
**(At least one of these two options is required)**  
**AND** any other method reasonably calculated to reach other persons served by the PWS such as (choose one or more below):
- ☐ Publication in a local newspaper or newsletter distributed to customers
- ☐ E-mail to notify employees or students
- ☐ Electronic delivery or alert systems (e.g., reverse 911)
- ☐ Delivery of multiple copies to central locations (e.g., community centers)

In accordance with 30 TAC §290.122(g), all public water systems that are required to issue public notice to persons in accordance with 30 TAC §290.122, and that sell or otherwise provide drinking water to other public water systems (i.e., consecutive systems), shall provide public notice to the owner or operator of the consecutive systems.

☐ This PWS provides water to consecutive systems and those systems have been provided public notice.

Notice to Consecutive Systems was delivered on: \_\_\_\_\_ (date)  
by the following means: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

NOTE: 30 TAC 290.122(f) requires the PWS to provide a copy of the Public Notice issued and a signed Certificate of Delivery to the Executive Director within 10 days.

Date of Delivery to Customers: May 5th, 2020 Phone: 936-372-9828

Certified by: (print name): Julie Swinney Title: Customer Service

Signature: Julie Swinney Date: April 29, 2020  
Submit a copy of the Public Notice delivered to customers and a copy of this completed Certificate of Delivery to the TCEQ at:

E-mail: pwsn@tceq.texas.gov  
Mail: TCEQ, Water Supply Division, MC-155  
Attn: Public Notice  
P.O. Box 13087  
Austin, TX 78711-3087



## Texas Commission on Environmental Quality

### CERTIFICATE OF DELIVERY OF TIER II PUBLIC NOTICE TO CUSTOMERS:

Public Water System (PWS) name: G & W WSC

PWS ID: 0930048 Violation Period (Month/Qtr/Year): Quarter 4- 10/01/2019--12/31/2019(34.2 pCi/L ) Quarter 1-01/01/2020--03/31/2020(24.7 pCi/L)

Type of Violation: \_Gross Alpha, excluding Radon and Uranium MCL Average exceeded the maximum contaminant level (MCL)

30 TAC 290.122(b) requires a PWS to notify customers of any non-acute MCL, MRDL, treatment technique violation, or significant deficiency identified in §290.122(b)(1) as soon as possible, but no later than 30 days after the violation or situation is identified. The initial public notice shall be issued in the following manner:

Please indicate how the PWS provided this public notice to customers, mark all that apply:

#### COMMUNITY WATER SYSTEM:

- ☒ Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered **(REQUIRED)**  
**AND** any other method reasonably calculated to reach other persons served by the PWS such as: (choose one or more below)
- ☐ Publication in a local newspaper
- ☐ Delivery of multiple copies for distribution to others (i.e. apartment building owners, large private employers)
- ☒ Continuous posting in conspicuous public places within the area served
- ☐ On the internet
- ☐ Electronic delivery or alert systems (e.g., reverse 911)
- ☐ Delivery to community organizations

#### NONCOMMUNITY WATER SYSTEM:

- ☐ Continuously post Notice in conspicuous places within affected PWS or service area **OR**
- ☐ Mail or direct delivery to each customer or service connection  
**(At least one of these two options is required)**  
**AND** any other method reasonably calculated to reach other persons served by the PWS such as (choose one or more below):
- ☐ Publication in a local newspaper or newsletter distributed to customers
- ☐ E-mail to notify employees or students
- ☐ Electronic delivery or alert systems (e.g., reverse 911)
- ☐ Delivery of multiple copies to central locations (e.g., community centers)

In accordance with 30 TAC §290.122(g), all public water systems that are required to issue public notice to persons in accordance with 30 TAC §290.122, and that sell or otherwise provide drinking water to other public water systems (i.e., consecutive systems), shall provide public notice to the owner or operator of the consecutive systems.

☐ This PWS provides water to consecutive systems and those systems have been provided public notice.

Notice to Consecutive Systems was delivered on: \_\_\_\_\_ (date)  
by the following means: \_\_\_\_\_  
\_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

NOTE: 30 TAC 290.122(f) requires the PWS to provide a copy of the Public Notice issued and a signed Certificate of Delivery to the Executive Director within 10 days.

Date of Delivery to Customers: May 5th, 2020 Phone: 936-372-9858

Certified by: (print name): Julie Swinney Title: Customer Service

Signature: Julie Swinney Date: April 28, 2020  
Submit a copy of the Public Notice delivered to customers and a copy of this completed Certificate of Delivery to the TCEQ at:

E-mail: pwsn@tceq.texas.gov  
Mail: TCEQ, Water Supply Division, MC-155  
Attn: Public Notice  
P.O. Box 13087  
Austin, TX 78711-3087

## Julie Swinney

---

**From:** kristine krieg <kristine.krieg@tceq.texas.gov>  
**Sent:** Friday, May 15, 2020 2:15 PM  
**To:** Julie Swinney  
**Subject:** RE:

Julie:

I've entered in the notices. There are no notices due at this time. Thank you.

Kristine Krieg  
Public Notice Coordinator  
Drinking Water Inventory and Protection Team  
Drinking Water Special Functions Section  
Texas Commission On Environmental Quality (TCEQ)  
512-239-5723  
[Kristine.Krieg@tceq.texas.gov](mailto:Kristine.Krieg@tceq.texas.gov)

Public Notice Templates:  
[https://www.tceq.texas.gov/drinkingwater/public\\_notice.html](https://www.tceq.texas.gov/drinkingwater/public_notice.html)

Send public notices to:  
[PWSPN@tceq.texas.gov](mailto:PWSPN@tceq.texas.gov)

**From:** Julie Swinney <[jswinney@gwwsc.net](mailto:jswinney@gwwsc.net)>  
**Sent:** Friday, May 15, 2020 1:28 PM  
**To:** kristine krieg <kristine.krieg@tceq.texas.gov>  
**Subject:** RE:

I will, Thank you Kristine

Have a great day!

*Julie Swinney*  
Customer Service Representative  
936-372-9858  
[jswinney@gwwsc.net](mailto:jswinney@gwwsc.net)

**From:** kristine krieg <[kristine.krieg@tceq.texas.gov](mailto:kristine.krieg@tceq.texas.gov)>  
**Sent:** Friday, May 15, 2020 1:00 PM  
**To:** Julie Swinney <[jswinney@gwwsc.net](mailto:jswinney@gwwsc.net)>  
**Subject:**

Julie:

**Julie Swinney**



**From:** Michele Risko <Michele.Risko@Tceq.Texas.Gov>  
**Sent:** Wednesday, April 29, 2020 3:19 PM  
**To:** J. F. Fontaine & Assoc., Inc.  
**Cc:** pwschem; Julie Swinney; Steven Swierenga  
**Subject:** RE: Notice of Violation - G & W WSC Field Store - PWS ID NO. TX0930048

1512-239-1689

Sean,

Can we speak to obtain more information and go over the requirements for the system? I am available by phone at 512-797-1081 or we can setup a conference call if you desire more people to be on the call.

Thank you,  
Michele

**From:** J. F. Fontaine & Assoc., Inc. <jffontaine@jffontaine.com>  
**Sent:** Wednesday, April 29, 2020 2:14 PM  
**To:** Michele Risko <Michele.Risko@Tceq.Texas.Gov>  
**Cc:** pwschem <pwschem@tceq.texas.gov>; jswinney@gwwsc.net  
**Subject:** Notice of Violation - G & W WSC Field Store - PWS ID NO. TX0930048

Good afternoon,

Regarding your Notice of Violation: COMBINED RADIUM letter dated March 26, 2020, we would like to request a time extension. We would like to request an extension of 30 additional days for providing the public notice. The G & W Water Supply Corporation's office is working alternating shifts and is not back to 100% work force and did not receive the notice of violation until mid April. Due to the circumstances caused by the COVID-19, we would like to extend the deadline by an additional 30 days for providing the public notice. The G & W Water Supply Corporation is working hard to get them out by the deadline but would still like to request an extension.

J.F. Fontaine and Associates, Inc. is currently working with the G & W Water Supply Corporation to resolve both the radium and the gross alpha issues and will notify you with our progress. G&W will continue to provide notice to the Public every 3 months, for as long as the violation persist.

Thanks, Sean

**Julie Swinney**

---

**From:** Michele Risko <Michele.Risko@Tceq.Texas.Gov>  
**Sent:** Thursday, April 30, 2020 11:24 AM  
**To:** Julie Swinney  
**Subject:** Link Public Notice Documentation

Ms. Swinney,

As discussed on the phone, the mandatory languages and certificate of delivery related to your violations can be found in Word format on our website at [https://www.tceq.texas.gov/drinkingwater/public\\_notice.html](https://www.tceq.texas.gov/drinkingwater/public_notice.html). If you'd like someone to review your draft notice prior to distribution to ensure that it is compliant and meets all the rule needs, you may email your draft to [PWSPN@tceq.texas.gov](mailto:PWSPN@tceq.texas.gov) and ask for an acceptability review. Once you've issued the notice, please provide a copy of the notice you sent to you customers and the certificate of delivery to us either through the mail or via email to [PWSPN@tceq.texas.gov](mailto:PWSPN@tceq.texas.gov).

I hope this helps you. Thank you for working to keep your public informed.

Michel

Michele Risko  
Manager, Drinking Water Standards Section  
Water Supply Division  
Texas Commission on Environmental Quality  
[Michele.risko@tceq.texas.gov](mailto:Michele.risko@tceq.texas.gov)  
512-239-1689

## Julie Swinney

---

**From:** PWSPN <PWSPN@tceq.texas.gov>  
**Sent:** Tuesday, May 5, 2020 4:41 PM  
**To:** Julie Swinney  
**Cc:** PWSPN  
**Subject:** FW: Michele/ PN letter/ Cert. of delivery  
**Attachments:** 20200505152421043.pdf

Julie:

The notice does not have the running annual average for the gross alpha for the 4th quarter 2019 and 1st quarter 2020 and combined radium for 1st quarter 2020. Please let me know if you have questions. Thank you.

Kristine Krieg  
Public Notice Coordinator  
Drinking Water Inventory and Protection Team Drinking Water Special Functions Section Texas Commission On  
Environmental Quality (TCEQ)  
512-239-5723  
Kristine.Krieg@tceq.texas.gov

Public Notice Templates:  
[https://www.tceq.texas.gov/drinkingwater/public\\_notice.html](https://www.tceq.texas.gov/drinkingwater/public_notice.html)

Send public notices to:  
PWSPN@tceq.texas.gov

-----Original Message-----

From: Michele Risko <Michele.Risko@Tceq.Texas.Gov>  
Sent: Tuesday, May 5, 2020 4:22 PM  
To: PWSPN <PWSPN@tceq.texas.gov>  
Cc: Patrick Kading <Patrick.Kading@Tceq.Texas.Gov>  
Subject: FW: Michele/ PN letter/ Cert. of delivery

PN Folks,  
Please review and let Ms. Swinney know if any further action is needed.  
Michele

-----Original Message-----

From: Julie Swinney <jswinney@gwwsc.net>  
Sent: Tuesday, May 5, 2020 3:47 PM  
To: Michele Risko <Michele.Risko@Tceq.Texas.Gov>  
Subject: FW: Michele/ PN letter/ Cert. of delivery

Good afternoon Michele,

Attached is a copy of the Public Notice letter and certificate of delivery. I have been working sketchy hours because of dr. appt. If I need to do anything else right now other than complete the mail out to customers let me know. I will be back in the office May 6th at 12:30 pm. Whatever needs to be done I will do it. Thank you for being a great help to us. Warm regards,

Have a great day!  
Julie Swinney  
Customer Service Representative  
936-372-9858  
jswinney@gwwsc.net

-----Original Message-----

From: gwwsc@gwwsc.net <gwwsc@gwwsc.net>  
Sent: Tuesday, May 5, 2020 2:24 PM  
To: Julie Swinney <jswinney@gwwsc.net>  
Subject: Michele/ PN letter/ Cert. of delivery

This E-mail was sent from "RNP002673B8E8CA" (MP C3003).

Scan Date: 05.05.2020 15:24:20 (-0400)  
Queries to: gwwsc@gwwsc.net

**Attachment “N” – Question 20**

**HOW THE PROPOSED TRANSACTION SERVES  
THE PUBLIC INTEREST**

**Question 20: How will the proposed transaction serve the public interest?**

The Kickapoo Preserve Subdivision is located within G&W's WSC's existing CCN (CCN No. 12391). The Kickapoo FWSD's existing CCN (CCN No. 13204) is dually certificated with G&W WSC's CCN over the area generally described as the Kickapoo Preserve Subdivision (certificates and maps, attached as Attachment I). By consolidating the CCNs under G&W WSC's CCN, the District would be relieved of significant debt owed to the Developer (New Waverly Sound Investments, LLC), which would enable the District to dissolve. The Developer has agreed to relieve such debt in accordance with the Contract for Purchase (see Attachment B, Contract for Purchase).

The CCN consolidation makes logical sense, and serves the public interest because G&W already holds the CCN that encompasses and overlaps the service area currently being served by the District. G&W WSC also owns the Wholesale Water Plant, which provides water to the District. Therefore, G&W WSC is best positioned to seamlessly step into the District's position as the retail water service provider. G&W WSC has decades of experience providing continuous and adequate water service throughout Grimes and Waller counties.

**Attachment “O” – Question 22**

**Kickapoo FWSD TCEQ Compliance Correspondence**

## TCEQ EXIT INTERVIEW FORM: Potential Violations and/or Records Request

<b>Regulated Entity/Site Name</b>	Kickapoo Preserve Subdivision	<b>TCEQ Add. ID No. RN No (optional)</b>	2370096
<b>Investigation Type</b>	CCI	<b>Contact Made In-House (Y/N)</b>	Y
		<b>Purpose of Investigation</b>	Comprehensive Compliance Investigation
<b>Regulated Entity Contact</b>	Byron Hughey	<b>Telephone No.</b>	
		<b>Date Contacted</b>	
<b>Title</b>	Compliance Coordinator	<b>FAX #/Email address</b>	
		<b>FAX/Email date</b>	

**NOTICE:** The information provided in this form is intended to provide clarity to issues that have arisen during the investigation process between the TCEQ and the regulated entity named above and *does not represent final TCEQ findings related to violations*. Any potential or alleged violations discovered after the date on this form will be communicated to the regulated entity representative prior to the issuance of a notice of violation or enforcement. Conclusions drawn from this investigation, including additional violations or potential violations discovered (if any) during the course of this investigation, will be documented in a final investigation-report.

Issue		For Records Request, identify the necessary records, the company contact and date due to the agency. For Alleged and Potential Violation issues, include the rule in question with the clearly described potential problem. Other type of issues: fully describe.	
No.	Type <sup>1</sup>	Rule Citation (if known)	Description of Issue
1	AV		Failure to obtain approval from the executive director prior to having the interconnection with Spring Preserve Water System
2	RR		Provide the monitoring plan
3	RR		Provide the distribution chlorine residual records for Nov. 2019 – Jan 2020
4	RR		Provide the distribution map
5	RR		Provide the as-built plans
6	RR		Provide the Service Agreement. The records provided onsite was not the most updated and did not reflect the required percentages for pipes and flux.
7	RR/AV		Provide the customer service inspection. If there is a potential cross contamination present, install the appropriate backflow prevention device and provide a copy of the Backflow Prevention Assembly Test and Maintenance Report
8	RR		Provide the drought contingency plan
9	RR		Provide the water purchase contract. The water purchase contract must be available to the executive director in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated.
10	AI		The bacteriological samples collected were not rotated

**Note 1: Issue Type Can Be One or More of:** AV (Alleged Violation), PV (Potential Violation), O (Other), or RR (Records Request)

Did the TCEQ document the regulated entity named above operating without proper authorization?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Did the investigator advise the regulated entity representative that continued operation is not authorized?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Document Acknowledgment.** Signature on this document establishes only that the regulated entity (RE) representative received a copy of this document and associated continuation pages on the date noted. If contact was made by telephone, the document will be sent via FAX or Email to RE; therefore, the RE signature is not required.

If you have questions about any information on this form, please contact your local TCEQ Regional Office.

Please contact the agency's public information officer with any requests, questions, or comments on access to records or information at 512-239-0800.

White Copy: Regulated Entity Representative    Yellow Copy: TCEQ

(Note: use additional pages as necessary) <sup>313</sup> Page 1 of 2

Thuy Chau	2/4/2020		
<b>Investigator Name (Signed &amp; Printed)</b>	<b>Date</b>	<b>Regulated Entity Representative Name (Signed &amp; Printed)</b>	<b>Date</b>

**If you have questions about any information on this form, please contact your local TCEQ Regional Office.**

Please contact the agency's public information officer with any requests, questions, or comments on access to records or information at 512-239-0800.

**White Copy: Regulated Entity Representative    Yellow Copy: TCEQ**

**Attachment “P” – Question 26**

**Wholesale Water Supply Agreement and Assignment to G&W WSC**

**ASSIGNMENT OF WHOLESALE WATER PURCHASE CONTRACT**

Spring Preserve Water Company, LLC ("Spring Preserve Water Co.") hereby assigns the Wholesale Water Purchase Contract ("Wholesale Contract") between Spring Preserve Water Co. and Kickapoo Fresh Water Supply District, which is attached hereto as Exhibit A, to G & W Water Supply Corporation, a non-profit water supply corporation ("G&W WSC").

Spring Preserve Water Co. and G & W WSC agree that the Wholesale Contract will continue in effect under the original terms and conditions, except that the Wholesale Contract will expire upon (1) the successful acquisition by G & W WSC of the Kickapoo Fresh Water Supply District retail water service system, which is contemplated, and (2) the appropriate approvals of such acquisition by the Public Utility Commission of Texas, as prescribed by law.

IN WITNESS WHEREOF, the undersigned parties have executed this assignment in multiple counterparts on the date indicated by each party's signature, but effective the date on which the Bill of Sale and Assignment and the Special Warranty Deed for the subject Wholesale Water Plant and Well Site were executed, such date being the 27th day of March, 2020 (the "Effective Date"), and acknowledging that their respective governing bodies authorized execution of this assignment.

**AGREED:**

**SPRING PRESERVE WATER COMPANY, LLC**  
a Texas limited liability company

by: 

Rajan Shandassan, Managing Member

Date: 4-16-20

**G & W WATER SUPPLY CORPORATION**  
a Texas non-profit water supply corporation

by: 

Jake Marcisz, Board President

Date: 4/17/2020

**CONSENT GRANTED BY:**

**KICKAPOO FRESH WATER SUPPLY DISTRICT**  
a Texas water control and improvement district

by: 

Dr. Sukhinder Phother, Board President

Date: 4-20-2020

**EXHIBIT A**

**Wholesale Water Purchase Contract  
between  
Spring Preserve Water Company, LLC  
and  
Kickapoo Fresh Water Supply District of Walter County,  
a water control and improvement district**

---

**WHOLESALE WATER PURCHASE CONTRACT**

**between**

**Spring Preserve Water Company, LLC**

**and**

**Kickapoo Fresh Water Supply District of Waller County,**

**a water control and improvement district**

---

## WHOLESALE WATER PURCHASE CONTRACT

### Table of Contents

	<u>Page</u>
SECTION 1. DEFINITIONS .....	1
SECTION 2. TERM .....	3
SECTION 3. EQUITY .....	3
SECTION 4. VOLUME .....	3
SECTION 5. RATES AND COMPENSATION .....	4
SECTION 6. BILLING AND PAYMENT .....	4
SECTION 7. REASSESSMENT OF THE WATER RATE .....	4
SECTION 8. MEASURING EQUIPMENT .....	4
SECTION 9. DISPUTE REGARDING RATES AND BILLING .....	5
SECTION 10. POINT OF DELIVERY .....	6
SECTION 11. FACILITIES FOR DELIVERING WATER .....	6
SECTION 12. QUALITY .....	6
SECTION 13. TITLE TO AND RESPONSIBILITY FOR WATER .....	6
SECTION 14. PURPOSE AND PLACE OF USE .....	7
SECTION 15. BLUEBONNET GCD RULES .....	7
SECTION 16. REGULATORY REQUIREMENTS .....	7
SECTION 17. WATER CONSERVATION PLANS .....	7
SECTION 18. SOURCE AND ADEQUACY OF SUPPLY .....	8

SECTION 19.	ADDITIONAL ASSESSMENTS NOT OTHERWISE ADDRESSED .....	8
SECTION 20.	DEFAULT IN PAYMENTS .....	9
SECTION 21.	TERMINATION, RENEWAL AND EXPIRATION.....	9
SECTION 22.	WAIVER AND AMENDMENT .....	9
SECTION 23.	REMEDIES .....	10
SECTION 24.	FORCE MAJEURE .....	10
SECTION 25.	NO ALTERNATIVE SUPPLY .....	10
SECTION 26.	ASSIGNMENT .....	11
SECTION 27.	NO THIRD-PARTY BENEFICIARIES .....	11
SECTION 28.	RELATIONSHIP OF THE PARTIES .....	11
SECTION 29.	SOLE AGREEMENT .....	11
SECTION 30.	SEVERABILITY .....	11
SECTION 31.	NOTICES .....	11
SECTION 32.	PLACE OF PERFORMANCE .....	12
SECTION 33.	DUPLICATE ORIGINALS .....	12
SECTION 34.	SIGNATURES OF PARTIES .....	12

**List of Exhibits**

Exhibit 1 – Well Site Survey

Exhibit 2 – Demonstration of Capacity of District’s Authorized Representative

This Wholesale Water Purchase Contract is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between the SPRING PRESERVE WATER COMPANY, LLC ("SPWC"), a Texas limited liability company, and the KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY (the "District"), a water conservation and improvement district organized and empowered under Article XVI, Section 59 of the Texas Constitution and governed by Chapter 51 of the Texas Water Code. Throughout this Agreement SPWC and the District may be referred to jointly as the Parties, and shall each be considered a Party.

#### **RECITALS**

1. SPWC is a Texas limited liability company with access to productive groundwater formations through facilities located on that certain 1.262 acre tract of land located in the Shubal Marsh Survey, Abstract No. 217, Waller County, Texas, that is more thoroughly described the real property survey labeled Exhibit No. 1, attached hereto and incorporated herein by this reference for all purposes;
2. The District desires to purchase, and SPWC is willing to sell, wholesale potable water produced from facilities located on the Well Site, subject to the terms and conditions of this Agreement; and
3. The District desires to beneficially use the water purchased under the terms of this Agreement by making it available for purchase by residential, commercial, and other classes of retail customers served by the District's public water supply system.

#### **AGREEMENT**

For and in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SPWC and the District hereby agree as follows:

##### **SECTION 1. DEFINITIONS**

- 1) "Agreement" shall mean this Wholesale Water Purchase Contract, including exhibits and any amendments made thereto.
- 2) "Actual Monthly Quantity" shall mean the actual volume of water delivered by SPWC to the District at the point of delivery.
- 3) "Bluebonnet GCD" shall mean the Bluebonnet Groundwater Conservation District, or its successor in interest, a conservation and reclamation district organized under Article XVI, Section 59 of the Texas Constitution, and operating pursuant to Chapter 36 of the Texas Water Code and its enabling legislation.
- 4) "Calendar Month" shall mean the period beginning at 12:00 a.m. on the first day of each month and ending at 12:00 a.m. of the first day of the following month.

- 5) "Commission" shall mean the Texas Commission on Environmental Quality and its predecessor and successor agencies.
- 6) "Contract Quantity" shall mean the maximum annual amount of Water available for purchase to the District under this Agreement, which shall be the lesser of the following:
  - a) 44,712,500 gallons of Water; or
  - b) the maximum annual amount of Water SPWC is authorized to produce at any time under the terms of Bluebonnet GCD Permit for Well No. BWLL-0048, as may be amended.
- 7) "District's Office" shall mean the District's primary place of business, the offices of Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027.
- 8) "Effective Date" shall mean the date that this Agreement is fully executed and becomes legally binding on the Parties. The Effective Date is the date that this Agreement is signed by the authorized representative of SPWC, as indicated in Section 33.
- 9) "Fiscal Year" shall mean each one (1) year period beginning on September 1 and ending on August 31 of the following calendar year during the Term of this Agreement.
- 10) "Maximum Delivery Rate" is the maximum rate at which SPWC may be called upon by the District to deliver water to the Point of Delivery, which shall be expressed in terms of gallons per minute. The Maximum Delivery Rate shall not exceed \_\_\_\_ gallons per minute or any limits set forth in SPWC's permit(s) issued by the Bluebonnet GCD.
- 11) "Point of Delivery" shall be the point at which possession of and title to Water passes from SPWC to the District, which shall be at the point described in Section 10.
- 12) "SPWC's Office" shall mean SPWC's principal place of business, the offices of Lloyd Gosselink Rochelle & Townsend, P.C. c/o Michael A. Gershon, 816 Congress Avenue, Suite 1900, Austin, Texas 78701.
- 13) "Water" shall mean groundwater produced by mechanical means from the Evangeline formation using facilities located on the Well Site.
- 14) "Water Production and Treatment Plant Revenue Requirement" or "WPTPRR" shall mean the capital cost, operations and maintenance costs, and repair and replacement costs associated with the purchase, acquisition, improvement and maintenance of the Well Site, the construction, completion, equipment, operation and maintenance of any water production wells and related facilities, and water treatment facilities located on the Well Site. The WPTPRR does not include Water Use Fees.
- 15) "Water Rate" shall mean the rate in dollars per thousand gallons that the District shall pay to SPWC for Water under this Agreement and shall be calculated by

SPWC based on the WPTPRR in a manner that conforms with all applicable law, including but not limited to depreciation expense. The Parties agree that the Water Rate may include SPWC's costs incurred to secure all regulatory approvals, including but not limited to permits and approvals from TCEQ and the Bluebonnet GCD.

- 16) "Water Use Fee" shall mean all fees legally imposed by the Bluebonnet GCD under the provisions of its rules for the production of groundwater from the facilities located on the Well Site. The Water Use Fee amount shall be the total amount, expressed in U.S. Dollars, that SPWC is under a legal obligation to pay for each 1,000 gallons of groundwater delivered to the District at the Point of Delivery, regardless of whether the Bluebonnet GCD has demanded payment from SPWC.

"Well Site" shall mean that certain 1.262-acre tract of land located in the Shubal Marsh Survey, Abstract No. 217, Waller County, Texas, that is more thoroughly described the real property survey labeled Exhibit No. 1, attached hereto and incorporated herein by this reference for all purposes, and all improvements thereupon, including all groundwater production, water treatment, water storage, and water conveyance facilities up to the Point of Delivery.

## **SECTION 2. TERM**

This Agreement shall remain in force and effect until the fifteenth (15th) anniversary of the Effective Date, unless sooner terminated because SPWC and the District agree to terminate this Agreement or this Agreement is terminated pursuant to its terms. SPWC mutually shall have the sole option to renew this Agreement for four (4) additional five-year (5-year) terms. Thereafter, the Parties may agree in writing to renew this Agreement.

## **SECTION 3. EQUITY**

The District acknowledges and agrees that it will accrue no equity or any other interest in, or pursue condemnation of, the Well Site or any other assets of SPWC, including but not limited to any Bluebonnet GCD permit(s) issued to SPWC, as may be amended, as a result of payment or other performance by the District of its obligations under this Agreement.

## **SECTION 4. VOLUME**

Subject to the limitations and conditions described in this Agreement, SPWC agrees to sell to the District a daily volume of Water produced from the Well Site, as needed, not to exceed the Contract Quantity.

SPWC is under no obligation to the District, and the District may not obligate SPWC, to seek amendments to SPWC's Bluebonnet GCD Permit(s) that would increase the maximum volumes of groundwater that may be produced under its current terms. The District may neither make demands upon SPWC for more than the Contract Quantity nor may it demand that SPWC exceed the Maximum Delivery Rate without a written amendment to this Agreement manifesting the Parties' intent in that regard.

## **SECTION 5. RATES AND COMPENSATION**

Beginning on the Effective Date, the District shall be obligated to pay to SPWC:

- A. An amount equal to the Water Rate for the Contract Quantity multiplied by the actual volume of Water delivered by SPWC to the District pursuant to this Agreement; and
- B. All Water Use Fees for Water taken by the District pursuant to this Agreement (cumulatively, the "Base Obligation").

## **SECTION 6. BILLING AND PAYMENT**

On or before the 10th calendar day of each Calendar Month, SPWC shall render to the District at the District's Office, or such other place as designated by the District in writing, by depositing with the United States Postal Service using first class mail a statement for:

- A. An amount equal to the Actual Monthly Quantity in the immediately preceding month multiplied by the Water Rate; and
- B. The Water Use Fee multiplied by each 1,000 gallons of Water taken by the District at the Point of Delivery during the immediately preceding month.

Payment of such statement shall be due and payable at the SPWC's Office, or such other place as designated by SPWC in writing, on or before the 30th calendar day after receipt of such statement.

## **SECTION 7. REASSESSMENT OF THE WATER RATE**

During the month of July in each calendar year during the Term of this Agreement, SPWC will adopt a budget for the ensuing Fiscal Year. Within two (2) weeks after adopting a budget, SPWC will advise the District of the Water Rate for the ensuing Fiscal Year.

## **SECTION 8. MEASURING EQUIPMENT**

At the District's own cost and expense, the District shall furnish, operate and maintain at the Point of Delivery, measuring equipment, properly equipped with meters and devices of standard types for measuring accurately the quantity of Water taken by the District under this Agreement, with a capacity to measure such quantity of Water in accordance with then-current water industry standards or as prescribed by standards of the American Water Works Association. However, in no case shall the accuracy tolerance of such equipment exceed five percent (5%). The District agrees to have said meters calibrated as necessary, but at least every two (2) years, by qualified personnel. Such qualified personnel shall provide a certified report to the District and SPWC concerning such calibration. The District shall notify SPWC fifteen (15) days in advance of the date for such meter calibration and SPWC shall have the right to be present and witness said calibration. The measuring equipment and the calibration thereof shall be approved by the District and SPWC in writing, but the measuring equipment shall remain the property of the District.

During any reasonable hours SPWC shall have access to such measuring equipment so installed. SPWC shall have access to all records pertinent to determining the measurement and quantity of Water actually delivered. The reading of the meter shall be done by SPWC, or SPWC's designate, for the purpose of billing. The District agrees that SPWC may furnish, install, operate and maintain check meters, and that said check meters shall remain the property of SPWC. The District also agrees that the design and construction of its metering equipment will facilitate SPWC's installation and operation of check meters.

If, for any reason, the District's measuring equipment is out of service or out of calibration and the amount of Water diverted hereunder cannot be ascertained or computed by the reading thereof, the quantity of Water diverted during such period shall be estimated and/or determined by SPWC based on the best data available. Information from SPWC's check meter shall be deemed the best data available. If no information from check meters is available, information from SPWC's flow meter used to report the production of Water to the Bluebonnet GCD shall be deemed the next best data available. In any event, estimations made by SPWC pursuant to this paragraph shall be final and conclusive, and the Water Use Fee for the affected Calendar Month shall be calculated by SPWC accordingly. If the District's measuring equipment is out of service for thirty (30) days or more, SPWC may purchase, install and maintain any required measuring equipment, as determined by SPWC, and charge the expense thereof to the District, for which the District shall remit payment immediately upon receipt of SPWC's invoice.

#### **SECTION 9. DISPUTE REGARDING RATES AND BILLING**

If the District at any time disputes the amount to be paid to SPWC pursuant to this Agreement, the District shall nevertheless promptly make the disputed payment or payments; but, if it is subsequently determined by agreement or court decision that the disputed amount paid by the District should have been less or more, SPWC shall promptly recalculate the District's past, current, and future payments and submit invoices reflecting such and requiring payment or reimbursement in a manner ensuring the District or SPWC will recover the amount due within a period of time not to exceed twelve (12) months.

If a court, the Commission, or any federal or state regulatory authority finds that SPWC's rates or policies for delivering Water to the District under this Agreement are unreasonable or otherwise unenforceable, SPWC has the option to terminate this Agreement without any liability on the part of SPWC to the District. By signing this Agreement, the District stipulates and agrees that SPWC will be prejudiced if the District avoids the obligation to pay the rates for Water specified in this Agreement while accepting the benefits of obtaining Water from SPWC. Nothing in this Agreement shall be construed as constituting an undertaking by SPWC to furnish Water to the District except pursuant to the terms of this Agreement. If the District initiates or participates in any proceeding regarding SPWC's rates and policies under this Agreement and advocates a position that is adverse to SPWC and SPWC prevails, the District shall pay SPWC for its expenses, including attorneys' fees, expert and consultant fees, and costs in the proceeding within thirty (30) calendar days after SPWC's request for payment. The District stipulates and agrees that the rates and policies specified in this Agreement are just, reasonable, and without discrimination.

#### **SECTION 10. POINT OF DELIVERY.**

The Point of Delivery for the District shall be a four-inch (4") meter and twelve-inch (12") connection generally located near the right-of-way of Hegar Springs Parkway. The District shall construct, maintain, and operate, at its own expense, all facilities and equipment necessary to receive and take all potable Water delivered to it pursuant to this Agreement. All facilities and equipment must be inspected and approved by SPWC and construction of any facilities connecting to the Point of Delivery must meet SPWC's standard specifications. No change in the type or size of meters or connections shall be allowed unless this Agreement has been amended accordingly.

#### **SECTION 11. FACILITIES FOR DELIVERING WATER**

The District shall provide, at the District's expense, the facilities required to take, transport and deliver Water from the Point of Delivery to the District's customers and other places of use. All facilities and property of the District used by the District or relating to the use or delivery of Water contemplated by this Agreement are subject to damage. The District acknowledges the possibility of damage and assumes the risk of such an occurrence.

#### **SECTION 12. QUALITY**

All Water delivered by SPWC and received by the District pursuant to the terms of this Agreement shall be potable water. SPWC is obligated to treat such water so as to meet the standards of all state and federal agencies having jurisdiction over water quality. SPWC and the District shall cooperate, each within its legal powers, to prevent, to the extent practicable, the pollution and contamination of any underground sources of drinking water, as that phrase is defined in title 30, Chapter 331 of the Texas Administrative Code, from which Water is produced. **THE DISTRICT ACKNOWLEDGES AND AGREES THAT SUCH WATER IS SUITABLE FOR ITS NEEDS. SPWC EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE QUALITY OF THE WATER OR SUITABILITY OF THE WATER FOR ITS INTENDED PURPOSE BEYOND WHAT IS REQUIRED UNDER APPLICABLE STATE AND FEDERAL WATER QUALITY STANDARDS. SPWC EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS. THE DISTRICT AGREES THAT ANY VARIATION IN THE QUALITY OR CHARACTERISTICS OF THE WATER OFFERED FOR SALE AS PROVIDED BY THIS AGREEMENT SHALL NOT ENTITLE THE DISTRICT TO AVOID OR LIMIT ITS OBLIGATION TO MAKE PAYMENTS PROVIDED FOR BY THIS AGREEMENT. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT. THE DISTRICT ASSUMES FULL RESPONSIBILITY WITH RESPECT TO THE MAINTENANCE OF WATER QUALITY ONCE WATER IS RECEIVED AT THE POINT OF DELIVERY, PRIOR TO, AND UP, TO ITS DISTRIBUTION FOR HUMAN CONSUMPTION OR ANY OTHER USES.**

#### **SECTION 13. TITLE TO AND RESPONSIBILITY FOR WATER**

For liability purposes, title to all Water supplied to the District pursuant to this Agreement shall remain in SPWC up to the Point of Delivery, at which point title shall pass to the District.

**WHILE TITLE FOR LIABILITY PURPOSES REMAINS IN A PARTY, THAT PARTY HEREBY AGREES TO SAVE AND HOLD THE OTHER PARTY HARMLESS FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION WHICH MAY BE ASSERTED BY ANYONE ON ACCOUNT OF THE PRODUCTION, TREATMENT, DELIVERY, TRANSPORTATION, AND USE OF SAID WATER.**

**SECTION 14. PURPOSE AND PLACE OF USE**

The District shall use Water purchased from SPWC pursuant to this Agreement in accordance with any and all applicable restrictions in the Bluebonnet GCD Well Operating Permit for Well No. BWLL-0048, that Agreement by and between G&W Water Supply Corporation and New Waverly Sound Investments, L.L.C., and any certificate of convenience and necessity issued by the Commission.

**SECTION 15. BLUEBONNET GCD RULES**

SPWC and the District shall comply with the rules of the Bluebonnet GCD, as may be amended from time to time.

**SECTION 16. REGULATORY REQUIREMENTS**

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having jurisdiction, and SPWC and the District each agree to make a good faith effort to support proposed laws and regulations which would be consistent with, and refrain from supporting proposed laws and regulations which would be inconsistent or interfere with, the performance of this Agreement in accordance with its terms.

**SECTION 17. WATER CONSERVATION PLANS**

The District shall develop and implement plans, programs, and rules to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in use of water, or increase the recycling and reuse of water. SPWC's obligations under this Agreement shall be subject to the District preparing and implementing a water conservation plan or water conservation measures, as well as implementing any water conservation plans and drought contingency plans adopted by SPWC and required or approved by the Bluebonnet GCD, the Commission, the Texas Water Development Board, or any other federal, state, or local regulatory authority with power to require or approve water conservation and drought contingency plans affecting either or both of the Parties to this Agreement. Upon execution of this Agreement, the District shall submit any water conservation plans, drought contingency plans, and water conservation measures required of the District by this section to SPWC for its review and written approval. SPWC will not approve of any water conservation plans, drought contingency plans, and water conservation measures that are not, at a minimum, consistent with applicable rules of the Bluebonnet GCD, the Commission, the Texas Water Development Board, or any other federal, state, or local regulatory authority with power to

require or approve water conservation and drought contingency plans affecting either or both of the Parties to this Agreement. Until the all plans required of the District pursuant to the terms of this section are approved by SPWC, SPWC is under no obligation to make any water available to the District.

When the District resells Water, the District shall require appropriate contractual terms and provisions mandating all successive users of the Water to implement water conservation measures that comply with water conservation plans, programs, and rules of the State of Texas, SPWC, and the District.

#### **SECTION 18. SOURCE AND ADEQUACY OF SUPPLY**

Water supplied by SPWC to the District under this Agreement shall be Water produced by SPWC from the Evangeline formation and from no other source, unless SPWC, at its sole discretion, elects to supply Water from another source available to SPWC. SPWC and the District hereby agree that the District shall have no right or entitlement to any Water after the expiration of the Term of this Agreement. SPWC will use all reasonable efforts to remain in a position to furnish Water sufficient to satisfy the reasonable demands of the District consistent with the terms of this Agreement. SPWC's agreement to provide Water to the District shall not be deemed a guarantee on SPWC's part that any particular quantity of Water will be available, and the quantity of Water taken by the District shall at all times be subject to the right of SPWC to reduce said quantity of Water as SPWC, in its sole judgment, may deem necessary in order to: (i) comply with any production limitation or restriction imposed by the Bluebonnet GCD, (ii) comply with any order of any court or administrative body having appropriate jurisdiction, (iii) prevent waste, or (iv) prevent injury to persons and/or property.

SPWC will adopt a Water Conservation and Drought Contingency Plan. If the District fails to implement SPWC's and its own Drought Contingency Plan when trigger conditions occur under such plans, SPWC's Well Site operator is authorized to institute rationing pursuant to any applicable statutory, regulatory, or common law obligations imposed upon SPWC for Water produced from the Well Site, and as may be necessary to protect the public welfare. When the District is not in compliance with SPWC's Water Conservation and Drought Contingency Plan, Water made available to the District pursuant to this Agreement will be reduced to the amount of Water that the SPWC's Well Site operator estimates would be necessary to satisfy the District's demand if the District was operating in compliance with both SPWC's and the District's Drought Contingency Plans.

SPWC's rights to maintain and operate the Well Site in any lawful manner and to any lawful extent SPWC may see fit is recognized by the District, and, except as otherwise provided herein, there shall be no obligation hereunder upon SPWC to produce or not produce Water at any time or to maintain a Maximum Delivery Rate at any specified level. Further, the District recognizes that the total annual amount of Water authorized by the Bluebonnet GCD to be produced from the Well Site may at all times be subject to permanent or temporary reduction.

#### **SECTION 19. ADDITIONAL ASSESSMENTS NOT OTHERWISE ADDRESSED**

If sales or use taxes, or taxes, assessments, or charges of similar nature are imposed for the production, storing, delivering, gathering, taking, selling, using, or consuming the Water received

by the District beyond what is otherwise expressly addressed by the terms of this Agreement, the amount of the tax, assessment, or charge shall be borne by the District. In the event SPWC shall be required to pay, collect, or remit any tax, assessment, or charge on Water received by the District pursuant to this Agreement that is not otherwise expressly addressed by this Agreement, then the District shall promptly pay or reimburse SPWC for the tax, assessment, or charge in the manner directed by SPWC within thirty (30) calendar days of receipt of SPWC's invoice for same.

#### **SECTION 20. DEFAULT IN PAYMENTS**

All amounts due and owing to SPWC by the District shall, if not paid when due, bear interest at the Texas post-judgment interest rate set out in Section 304.003 of the Texas Finance Code, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If any amount due and owing by the District to SPWC is placed with an attorney for collection, the District shall pay to SPWC, in addition to all other payments provided for by this Agreement, including interest, SPWC's expenses, including court costs and attorneys' fees. SPWC shall, to the extent permitted by law, suspend delivery of Water produced from the Well Site to the District if the District remains delinquent in any payments due hereunder for a period of sixty (60) days and shall not resume delivery of Water while the District is so delinquent and may, at its option, terminate this Agreement without further liability on the part of SPWC to the District. SPWC may pursue any and all legal remedies against the District to enforce and protect the rights of SPWC.

#### **SECTION 21. TERMINATION, RENEWAL AND EXPIRATION**

If SPWC elects to terminate this Agreement as provided herein, SPWC shall deliver written notice of the election to the District. The District shall cease taking water from SPWC under this Agreement within one hundred eighty (180) days after SPWC delivers written notice to the District or as soon as the District secures an alternative supply, whichever comes later. The District shall exercise its best efforts to secure an alternative water supply under this circumstance. No later than two (2) calendar years prior to the expiration of this Agreement, each Party shall provide written notice to the other Party of its intention to either renew this Agreement or allow it to expire without renewal. If either Party indicates in this notice its intention to allow the Agreement to expire without renewal, each Party is obligated to take any and all actions necessary to prepare for the expiration of the Agreement. The Parties recognize and agree that this two-year notice period is designed to afford both Parties sufficient opportunity to develop alternative water supply, alternative wholesale customers, and to take any other action necessary recognizing that neither Party will be under any duty to the other Party upon expiration of the Agreement. The Parties agree that this contractual provision is subject to enforcement by either Party prior to the expiration of the Agreement, and a breach-of-contract lawsuit in the event of failure to comply with the terms of this section.

#### **SECTION 22. WAIVER AND AMENDMENT**

Failure to enforce any provision of this Agreement or any breach or nonperformance by SPWC or the District shall not be deemed a waiver by the District or SPWC of the right in the future to demand strict compliance and performance of any provision of this Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or remedy or

any default under this Agreement, except the right of SPWC to receive the Base Obligation, as defined in Section 5, which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years after the occurrence of the default.

No officer or agent of SPWC or the District is authorized to waive or modify any provision of this Agreement, unless authorized by their respective governing boards. No modifications to or rescission of this Agreement may be made except by a written document signed by the Parties' authorized representatives.

#### **SECTION 23. REMEDIES**

This Agreement is not intended hereby to specify and this Agreement shall not be considered as specifying an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any Party hereto and shall be cumulative. Recognizing, however, that failure in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees in the event of any default on its part that each Party shall have available to it the equitable remedies of injunction and specific performance, in addition to any other legal or equitable remedies (other than termination which also may be available to SPWC only).

#### **SECTION 24. FORCE MAJEURE**

If, for any reason of force majeure, either SPWC or the District shall be rendered unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of the District to make the payments required under the terms of this Agreement, then if the Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure," as used in this Agreement, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, wells, treatment facilities, storage facilities, delivery facilities, or other structures, partial or entire failure of water supply, including pollution (accidental or intentional), and any inability on the part of SPWC to deliver water, or of the District to receive water, on account of any other cause not reasonably within the control of the Party claiming the inability.

#### **SECTION 25. NO ALTERNATIVE SUPPLY**

Until the Well Site is operational and finally authorized for the production, treatment, and conveyance of Water to the Point of Delivery, SPWC is under no obligation to make any water available to the District.

#### **SECTION 26. ASSIGNMENT**

Neither Party may assign its rights or delegation of its duties under this Agreement without the prior written consent of the other Party.

#### **SECTION 27. NO THIRD-PARTY BENEFICIARIES**

This Agreement shall inure only to the benefit of the Parties. Third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each Party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments.

#### **SECTION 28. RELATIONSHIP OF THE PARTIES**

This Agreement is by and between SPWC and the District and is not intended, and shall not be construed to create, the relationship of agent, servant, employee, partnership, joint venture, or association as between SPWC and the District or between SPWC and any officer, employee, contractor, or representative of the District. No joint employment is intended or created by this Agreement for any purpose. The District agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation this Agreement of or construction of facilities contemplated under this Agreement.

Each Party acknowledges that it has sought independent legal counsel to review and provide counsel on this Agreement.

#### **SECTION 29. SOLE AGREEMENT**

This Agreement constitutes the sole and only agreement of the District and SPWC and supersedes any prior understanding or oral or written agreements between SPWC and the District respecting the subject matter of this Agreement.

#### **SECTION 30. SEVERABILITY**

The provisions of this Agreement are severable, and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

#### **SECTION 31. NOTICES**

All notices, payments, and communications (collectively "notices") required or allowed by this Agreement shall be in writing and be given by hand delivery, nationally recognized common-carrier, or by depositing the notice in the United States mail, postage prepaid, registered or certified, with return receipt requested, and addressed to the Party to be notified. Notice deposited in United States mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) calendar days after the notice is deposited in

United States mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the Parties shall be shown above the signatures of the individuals who signed this Agreement on behalf of SPWC and the District. Either Party may change its address by giving written notice of the change to the other Party at least fifteen (15) calendar days before the change becomes effective.

**SECTION 32. PLACE OF PERFORMANCE**

All acts performable under the terms of this Agreement and all amounts due under this Agreement, including, but not limited to, payments due under this Agreement and/or damages for breach of this Agreement, shall be due and payable in Waller County, Texas, said Waller County, Texas, being the place of performance agreed to by the Parties to this Agreement.

**SECTION 33. DUPLICATE ORIGINALS**

The District and SPWC, acting under the authority of their respective governing bodies, shall authorize the execution of this Agreement in three original counterparts. The District shall submit written evidence in the form of bylaws, charters, resolutions, or other written documentation specifying the authority of the District's representative to sign this Agreement, which evidence shall be attached to this Agreement as Exhibit 2.

**SECTION 34. SIGNATURES OF PARTIES**

EFFECTIVE as of the date signed by the authorized representative of SPWC.

**SPRING PRESERVE WATER COMPANY, LLC**

c/o Lloyd Gosselink Rochelle & Townsend, P.C.

816 Congress Avenue, Suite 1900

Austin, Texas 78701

Attn.: Michael A. Gershon

BY: 

TITLE: Managing Member

DATE: 2-1-11

**KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY**

c/o Allen Boone Humphries Robinson LLP

3200 Southwest Freeway, Suite 2600

Houston, Texas 77027

Attn.: Stephen M. Robinson

BY: 

TITLE: PRESIDENT

DATE: 1/27/2011

**Exhibit 1**  
**Well Site Survey**

CALLED 269.3 ACRE  
NEW WAVERLY SOUND INVESTMENT, LLC.  
VOL. 1008, PG. 280, W.C.D.R.

LINE	LENGTH	BEARING
L1	40.00	S 88°27'56" W
L2	75.40	N 02°05'42" E
L3	121.38	S 88°27'56" W
L4	130.10	N 02°05'42" E
L5	151.80	S 88°27'56" W
L6	121.85	N 02°05'42" E
L7	12.44	S 01°32'52" E

NOTES:

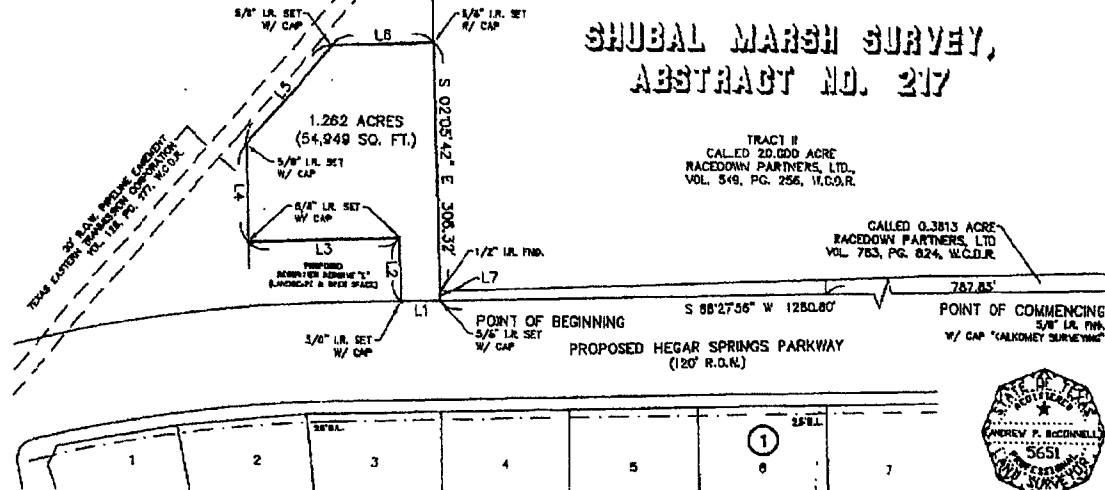
1. THERE IS A METES & BOUNDS DESCRIPTION OF THE 1.262 ACRE TRACT SHOWN HEREON, DATED NOVEMBER 11, 2008, THAT ACCOMPANIES THIS PLAN.
2. ALL SET 5/8" I.R. HAVE ORANGE PLASTIC CAPS STAMPED "WESTBELT SURVEYING INC."
3. THE BEARINGS SHOWN HEREON ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM SOUTH CENTRAL ZONE, NAD 83, BASED ON THE CORNERSTONE CO-OP EARS ARP, COR 10 DMS, 81.61 NO DEBHD, THETA ANGLE = 90°44'10.1".



# SHUBAL MARSH SURVEY, ABSTRACT NO. 217

TRACT II  
CALLED 20,000 ACRE  
RACEDOWN PARTNERS, LTD.  
VOL. 549, PG. 256, W.C.D.R.

CALLED 0.3813 ACRE  
RACEDOWN PARTNERS, LTD  
VOL. 753, PG. 824, W.C.D.R.



**WEST BELT**  
SURVEYING, INC.

WATER TREATMENT PLANT  
1.262 ACRE  
SHUBAL MARSH SURVEY, A-217  
WALLER COUNTY, TEXAS

NO.	DATE	REVISIONS	BY
1	11/11/08		
PROJECT NO. 0807001P			
DATE: NOVEMBER 11, 2008			

THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 16, CONDITION 1 SURVEY.

*Andrew P. McConnell*  
ANDREW P. MCCONNELL, P.S.  
TEXAS REGISTRATION NO. 8404

11/11/08  
DATE

**Exhibit 2**

**Demonstration of Capacity of District's Authorized Representative**

MINUTES  
KICKAPOO FRESH WATER SUPPLY DISTRICT OF WALLER COUNTY

February 25, 2010

The Board of Directors (the "Board") of Kickapoo Fresh Water Supply District of Waller County (the "District") met in regular session, open to the public, on the 25<sup>th</sup> day of February, 2010, at the offices of Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Houston, Texas 77027, outside the boundaries of the District, and the roll was called of the members of the Board:

Sukhjinder (Suky) Dhoother, M.D.	President
Gary D. Smith	Vice President
Susan L. (Susie) Higley	Assistant Vice President
Rajesh Chandwani	Secretary
Nicolette (Nikki) T. Szeto	Assistant Secretary

and all of the above were present, except Directors Smith and Chandwani, thus constituting a quorum.

Also present at the meeting were Andrew Barclay of Brooks & Sparks, Inc.; Karla Efigenio of McLennan & Associates, Inc.; Jonathan Hubbard of Severn Trent Services, Inc.; and Stephen M. Robinson and Hope Jeffers of Allen Boone Humphries Robinson LLP ("ABHR").

APPROVE MINUTES

The Board first considered approving the minutes of the August 20, 2009, regular Board meeting and the November 12, 2009, special Board meeting. Director Dhoother made a motion to approve both sets of minutes as submitted. Director Higley seconded the motion, which carried unanimously.

DISTRICT REGISTRATION FORM

Mr. Robinson stated that at the District's last Board meeting, it approved an updated District Registration Form and authorized filing of the same with the Texas Commission on Environmental Quality (the "TCEQ") without having an agenda item to do so. He requested the Board re-approve the District Registration Form and filing of the same. Following discussion, Director Dhoother made a motion to re-approve the District Registration Form and filing of the same. Director Higley seconded the motion, which carried unanimously.

275169.doc

#### AMENDMENT TO INFORMATION FORM

Mr. Robinson stated that at the District's last Board meeting, it approved an Amendment to Information Form and authorized filing of the same with the TCEQ, without having an agenda item to do so. He requested the Board re-approve the Amendment to Information Form and filing of the same. Following discussion, Director Dhothar made a motion to re-approve the Amendment to Information Form and filing of the same. Director Higley seconded the motion, which carried unanimously.

#### DISCUSS 2010 DIRECTORS ELECTION

Mr. Robinson stated that Directors Dhothar and Smith's terms of office will expire on May 8, 2010.

#### ADOPT ORDER CALLING DIRECTORS ELECTION

Mr. Robinson then presented an Order Calling Directors Election. Following review and discussion, Director Higley made a motion to adopt the Order Calling Directors Election as presented and direct that a copy be filed appropriately and retained in the District's records. Director Dhothar seconded the motion, which carried unanimously.

#### SET PAY FOR ELECTION OFFICIALS

Mr. Robinson informed the Board that the election officials must be paid at least minimum wage per hour for their services. After review and discussion, Director Higley moved that the election officials be paid \$10.00 an hour for their services. Director Dhothar seconded the motion, which carried unanimously.

#### DISCUSS VOTING MACHINE REQUIREMENTS

Mr. Robinson stated that the District will need to rent electronic voting machines from Premier Election Solutions, Inc. ("Premier"). Following discussion, Director Higley moved to authorize the rental of electronic voting machines from Premier. Director Dhothar seconded the motion, which passed by unanimous vote.

#### RESOLUTION DESIGNATING AN AGENT OF THE SECRETARY

Mr. Robinson stated that from March 19 through June 17, the Secretary of the Board of Directors must be available to perform duties in connection with the 2010 Directors Election. Mr. Robinson stated that since Director Chandwani maintains

regular office hours, it will not be necessary for him to designate an agent to act on his behalf.

#### VOTING RIGHTS ACT SUBMISSION LETTER TO THE U.S. DEPARTMENT OF JUSTICE

Mr. Robinson explained that the District will need to make a submission to the U.S. Department of Justice under the Voting Rights Act, if the District holds a Directors Election and there is any change affecting voting. After review and discussion, Director Higley moved to authorize the preparation and submittal of a letter to the U.S. Department of Justice under the Voting Rights Act, if applicable. Director Dhoother seconded the motion, which carried unanimously.

#### ASSOCIATION OF WATER BOARD DIRECTORS WINTER CONFERENCE

The Board discussed the Association of Water Board Directors winter conference and concurred that no Directors attended. The Board then considered authorizing attendance at the summer conference. After discussion, Director Dhoother motioned to authorize attendance of any interested Directors at the summer conference. Director Higley seconded the motion, which carried unanimously.

#### BOOKKEEPERS REPORT

Ms. Efigenio reviewed the bookkeeper's report, a copy of which is attached, and payments to be made. After review and discussion, Director Higley moved to approve the bookkeeper's report and payment of the bills. Director Dhoother seconded the motion, which carried unanimously.

#### ENGINEER'S REPORT

Mr. Barclay reviewed the engineer's report, a copy of which is attached, and discussed engineering matters in the District.

He first updated the Board regarding the construction of Phase I of the Detention Basin to Serve Kickapoo Preserve and stated he had no items for the Board's approval. He reported that construction of the project is complete and that the developer will soon convey the detention basin to the District.

Mr. Barclay then updated the Board regarding the construction of the paving, storm drainage, and water line to serve Kickapoo Preserve, Section One and reviewed and recommended approval of the following pay estimates, all payable to Terbo Construction, L.P.: 1) Pay Estimate No. 1 in the amount of \$326,820.83; 2) Pay Estimate No. 2 in the amount of \$229,670.91; 3) Pay Estimate No. 3 in the amount of \$480,326.40;

4) Pay Estimate No. 4 in the amount of \$77,822.70; and 5) Pay Estimate No. 5 in the amount of \$28,364.63.

Following review and discussion, Director Higley made a motion, based on the engineer's recommendation, to approve the engineer's report and Pay Estimate Nos. 1, 2, 3, 4, and 5 for the construction of the paving, storm drainage, and water line to serve Kickapoo Preserve, Section One. Director Szeto seconded the motion, which carried unanimously.

#### REPORT ON DEVELOPMENT

Mr. Barclay updated the Board regarding development in the District and the construction of the investor-owned water plant in the District.

#### REPORT ON APPLICATION FOR DUAL WATER CCN

Mr. Robinson stated the developer has employed Mike Gershon at Lloyd Gosselink Rochelle & Townsend, P.C. to prepare an application for a dual water Certificate of Convenience and Necessity ("CCN"). He stated the dual CCN holders will be Spring Preserve Water Company, LLC ("SPWC"), which is the investor-owned utility company that will supply water to the District, and G&W Water Supply Corporation. He further stated that the District will be asked to participate in the application since the CCN will benefit the District.

#### ENGAGEMENT OF LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C.

Mr. Robinson reviewed an engagement letter from Mike Gershon of Lloyd Gosselink Rochelle & Townsend, P.C. ("Lloyd Gosselink") and explained that the engagement is for the purpose of developing, filing, and pursuing the dual water CCN. He further stated that Lloyd Gosselink has disclosed in the engagement letter that it also represents the developer and SPWC. Mr. Robinson then recommended the Board engage Lloyd Gosselink and authorize execution of the engagement letter as presented. Following review and discussion, Director Dhoother made a motion to engage Lloyd Gosselink and authorize execution of the engagement letter. Director Higley seconded the motion, which carried unanimously.

#### AUTHORIZE CONSULTANTS TO PURSUE APPLICATION FOR DUAL WATER CCN, APPROVE APPLICATION FOR DUAL WATER CCN, AND AUTHORIZE DIRECTORS TO EXECUTE ALL DOCUMENTS IN CONNECTION WITH DUAL WATER CCN

Mr. Robinson recommended the Board authorize the District's consultants, including Lloyd Gosselink, to develop, file, and pursue the application for the dual water CCN and to approve the application, subject to final review and approval by the District's attorney. He further recommended the Board authorize execution of any and

all documents related to the application, subject to the final review and approval by the District's attorneys. Following discussion, Director Higley made a motion to: 1) authorize the District's consultants to develop, file, and pursue the application for the dual water CCN; 2) approve the application subject to final review and approval by the District's attorney; and 3) authorize the execution of any and all documents related to the application, subject to the final review and approval by the District's attorneys. Director Dhoother seconded the motion, which carried unanimously.

#### APPROVE ASSIGNMENT OF AGREEMENT

Mr. Robinson reviewed an Agreement By and Between G&W Water Supply Corporation ("G&W") and New Waverly Sound Investments, L.L.C. ("New Waverly") dated October 23, 2007 (the "Agreement"). He explained that the Agreement allows New Waverly to construct facilities in order to supply the District with retail public water utility service, with the understanding that said facilities will be conveyed to G&W upon retirement of the District's or New Waverly's debt incurred for constructing said facilities. He further stated that the Agreement allows for New Waverly to assign its interest in the Agreement to the District. Mr. Robinson then reviewed and recommended the Board accept the Assignment of the Agreement from New Waverly to the District. Following review and discussion, Director Higley made a motion to accept the Assignment of the Agreement. Director Szeto seconded the motion, which carried unanimously.

#### WHOLESALE WATER PURCHASE CONTRACT

Mr. Robinson then reviewed and recommended approval of a Wholesale Water Purchase Contract between SPWC and the District. He explained that the District will purchase water wholesale from SPWC and that the District will be the retail water supplier to the District's residents. Following review and discussion, Director Higley made a motion to approve the Wholesale Water Purchase Contract with SPWC. Director Szeto seconded the motion, which carried unanimously.

#### OPERATOR'S REPORT

Mr. Hubbard updated the Board regarding operating matters. He did not present a written report. In response to a question from Director Dhoother, Mr. Hubbard discussed what the operator's daily and regular duties will be when the water plant begins supplying water to the District.

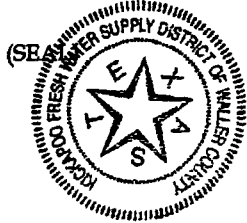
#### ADOPT RATE ORDER

Mr. Robinson stated Water Engineers, Inc. prepared an analysis of the water rates recommended for the District. He then distributed and reviewed the water rates analysis with the Board, a copy of which is attached. Mr. Robinson then reviewed a Rate Order, which incorporates the recommended water rates. Following review and

discussion, Director Dhoother made a motion to adopt the Rate Order and direct that a copy be filed appropriately and retained in the District's records. Director Higley seconded the motion, which carried unanimously.

Mr. Robinson stated the Board will most likely need to meet again in March or April to cancel the 2010 Directors election.

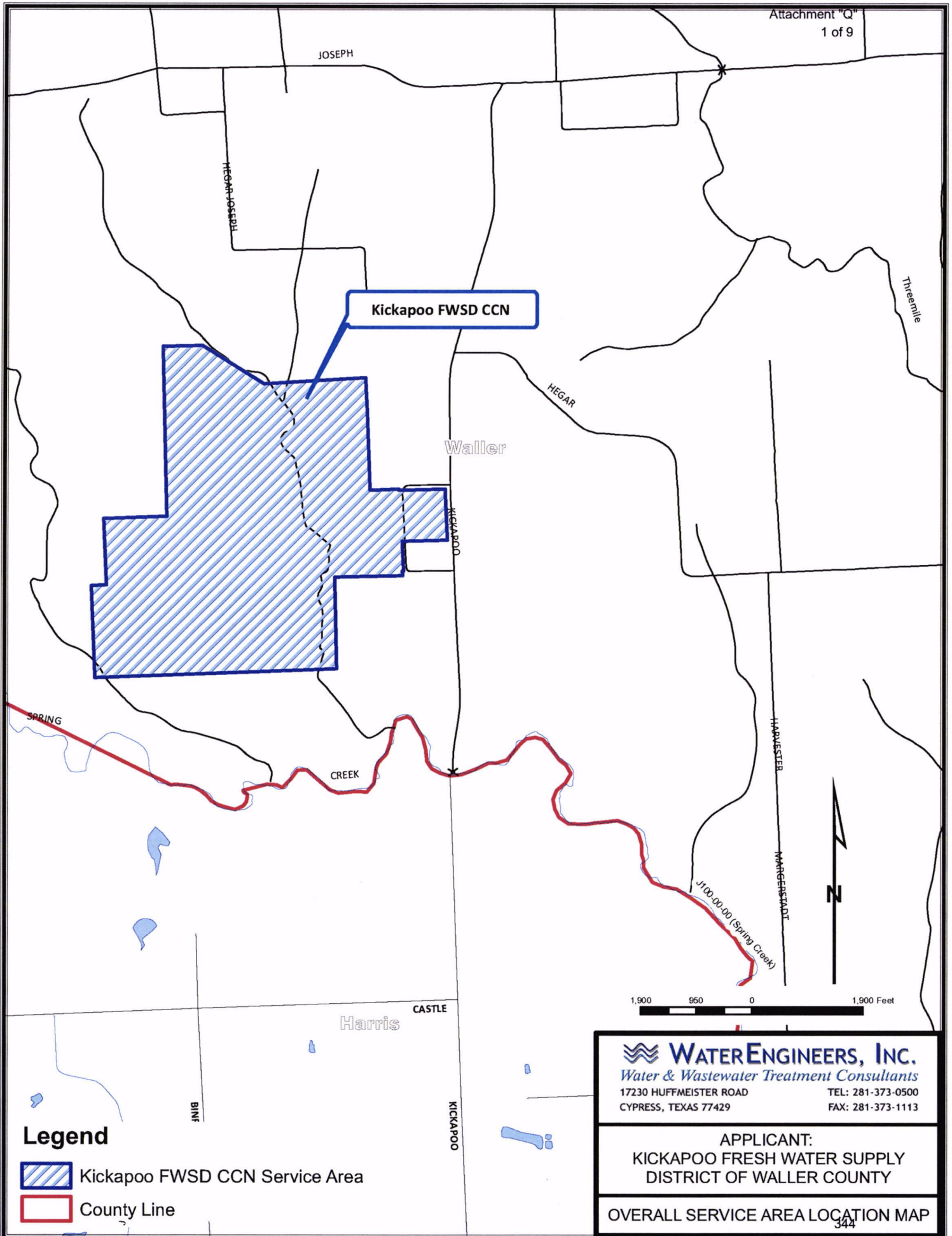
The Board did not receive additional reports from District consultants or Directors. There being no further business to come before the Board, the Board concurred to adjourn the meeting.



Asst. Nicole S. Sapp  
Secretary, Board of Directors

**Attachment “Q” – Question 29**

**General Location Map and Metes and Bounds Survey**



18-23-'07 17:11 FROM-Brooks &amp; Sparks

+281-578-9686

T-948 P006/008 F-409

495.3 ACRE  
21,574,710 SQUARE FEET  
HENRY TROTT SURVEY  
ABSTRACT 267  
WALLER COUNTY, TEXAS

FIELD NOTE DESCRIPTION of a 495.3 acre (21,574,710 square feet) tract of land located in the Henry Trott Survey, Abstract Number 267 and the Shubel Marsh Survey, Abstract 217, Waller County, Texas, said 495.29 acre tract of land being all of a called 226.0 acre tract conveyed by deed to New Waverly Sound Investments, L.L.C., recorded under Volume (Vol.) 1008, Page (Pg.) 253 of the Waller County Deed Records and all of a called 269.3 acre tract described in deed to New Waverly Sound Investments, L.L.C. under Vol. 1008, Pg. 260 of the Waller County Deed Records (W.C.D.R.), said 495.3 acre tract being more particularly described by metes and bounds as follows: (The bearings described herein are oriented to the Texas State Plane Coordinate System, South Central Zone, NAD 1983, based on the Cornerstone Co-op CORS ARP, COR ID CMS1, N.G.S. PID DE8140, theta angle = +01°44'10.5")

BEGINNING at a 1-inch iron pipe found marking the most southerly southeast corner of said 269.3 acre tract in the northerly line of a called 99.787 acre tract described in deed to Versia Mae Halcrow recorded under Vol. 304, Pg. 738, W.C.D.R. and the most southerly east corner of the herein described tract ;

THENCE, South 88°48'19" West, along the fenced northerly line of said 99.787 acre tract, a distance of 1,159.85 feet, to a 1/2-inch iron rod found marking a common corner of said 99.787 acre tract and the aforesaid called 226.0 acre tract;

THENCE, South 01°17'59" East, along the fenced westerly line of said 99.787 acre tract, a distance of 1,565.62 feet, to a fence post found marking the southeasterly corner of the herein described tract;

THENCE, South 87°50'39" West, along the fenced southerly line of the aforesaid called 223.6107 acre tract, a distance of 4,127.74 feet (called 4,133.33 feet), to a fence post found marking the southwesterly corner of the herein described tract, being the southeast corner of a called 150 acre tract described in deed to KSA Industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 02°17'16" West, along the fenced easterly line of said called 150 acre tract, a distance of 1,573.03 feet (called 1,572.22 feet), to a fence post found in the southerly line of a called 72 acre tract described in deed to KSA Industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 87°11'52" East, along the fenced southerly line of said 72 acre tract, a distance of 259.50 feet (called 258.89 feet), to a fence post found marking a corner of the herein described tract;

THENCE, North 02°34'51" West, along the fenced easterly line of said 72 acre tract, a distance of 1,131.76 feet (called 1,133.33 feet), to a fence post found marking the northwesterly corner of the herein described tract;

*info*  
RAS

10-23-'07 17:11 FROM-Brooks &amp; Sparks

+281-578-9686

T-948 P007/008 F-409

THENCE, North 87°43'44" East, along a fenced line, passing at 32.06 feet a 1/2-inch iron rod found marking the southwesterly corner of a called 68.977 acre tract described in deed to Grainger Diagnostic Clinic, recorded under Vol. 332, Pg. 123, W.C.D.R., continuing along the southerly line of said 68.977 acre tract a total for a total distance of 1,083.00 feet (called 1,100.00 feet), to a fence post found marking an interior corner of the herein described tract and in the westerly line of aforesaid called 269.3 acre tract;

THENCE, North 01°26'26" West, along the easterly line of said 68.977 acre tract, a distance of 2,891.31 feet (called 2,891.76 feet), to a 5/8-inch iron rod found in the southerly line of a called 158.609 acre tract described in the deed to Grainger Diagnostic Clinic, P.A. Defined Benefit Pension Plan, recorded under Vol. 332, Pg. 126, W.C.D.R. marking an exterior corner of the herein described tract;

THENCE, North 88°57'46" East, along the southerly line of said called 158.609 acre tract, a distance of 677.90 feet (called 677.93 feet), to a 3-inch iron pipe found marking an angle point in the northerly line of the herein described tract;

THENCE, South 58°05'56" East, along the southerly line of said 158.609 acre tract, a distance of 1,227.33 feet (called 1,228.07 feet), to a 5/8-inch iron rod found marking an angle point in the northerly line of herein described tract;

THENCE, North 86°30'07" East, along the southerly line of said 158.609 acre tract, passing at a distance of 780.53 feet the southwesterly corner of a called 30.000 acre tract described in the deed to Grainger Interests Ltd. recorded under Vol. 893, Pg. 275, W.C.D.R., continuing for a total distance of 1,741.70 feet (called 1,742.14 feet) to a 5/8-inch iron found in the westerly line of a called 31.949 acre tract described in the deed to Richard B. Welch and wife, J. Joan Welch, recorded under Vol. 528, Pg. 595, W.C.D.R. and marking a corner of the herein described tract;

THENCE, South 02°47'33" East, along the westerly line of said 31.949 acre tract, a distance of 585.54 feet (called 585.51 feet), to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking the northwesterly corner of a called 20.000 acre "Tract 1" described in the deed to Racedown Partners, Ltd. recorded under Vol. 549, Pg. 256, W.C.D.R., and an angle in the easterly line of the herein described tract;

THENCE, South 01°55'13" East, along the westerly line of said "Tract I", a distance of 663.51 feet (called 663.81 feet), to a 1/2-inch iron found marking the northwesterly corner of a called 20.000 acre "Tract II" described in said deed to Racedown Partners Ltd. and marking a corner of the herein described tract;

THENCE, South 02°05'42" East, along the westerly line of said "Tract II", a distance of 670.68 feet, to a 1/2-inch iron rod found marking the southwesterly corner of said "Tract II" and marking an interior corner of the herein described tract;

THENCE, North 87°44'32" East, along the southerly line of said "Tract II", a distance of 492.62 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the northwesterly corner of a called 0.3813 acre tract described in the deed to Racedown Partners recorded under Vol. 783, Pg. 824, of the minutes of the Commissioner's Court of Waller County and marking a corner of the herein described tract;

*[Signature]*  
RAS

10-23-'07 17:11 FROM-Brooks &amp; Sparks

+281-578-9686

T-948 P008/008 F-409

THENCE, South 02°40'34" East, along the westerly line of said 0.3813 acre tract, a distance of 18.24 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the southwesterly corner of said 0.3813 acre tract and a corner of the herein described tract;

THENCE, North 88°27'56" East, along the southerly line of said 0.3813 acre tract, a distance of 787.85 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found in the westerly R.O.W. line of the aforesaid Kickapoo Road and marking a corner of the herein described tract;

THENCE, South 00°10'19" West, along the westerly R.O.W. line of said Kickapoo Road, a distance of 23.84 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a point of curvature of Kickapoo Road and the of the herein described tract;

THENCE, in a southerly direction, along a curve to the left, being the westerly R.O.W. line of said Kickapoo Road, having a radius of 5,767.37 feet, a central angle of 01°23'24" (chord bears, South 03°28'04" East, 139.91 feet) and an arc distance of 139.91 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a point of tangency of the herein described tract;

THENCE, South 02°42'57" East, along said westerly R.O.W. line, a distance of 711.03 feet, to the northeast corner of a called 10.000 acre tract described in the deed to Ann Staake Rivers Family Limited Partnership, recorded under Vol. 711, Pg.163, W.C.D.R.

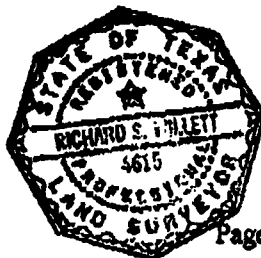
THENCE, South 88°50'07" West, along the northerly line of said 10.000 acre tract, passing at a distance of 745.62 feet a 1-inch iron pipe found marking the northwesterly corner of said 10.000 acre tract in the easterly R.O.W. line of the abandoned portion of Old Kickapoo Road R.O.W. as described in Vol. 43, Pg. 366 of the minutes of the Commissioners' Court of Waller County, continuing for a total distance of 768.51 feet, to a capped 1/2-inch iron rod stamped "R.P.L.S. 4194" found in the center line of said abandoned R.O.W. and marking a corner of the herein described tract;

THENCE, South 02°52'20" East, along the center line of said abandoned R.O.W., a distance of 508.62 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set at the most southerly southeast corner of aforesaid called 269.3 acre tract, being the on northerly line of aforesaid called 226.0 acre tract and marking a corner of the herein described tract;

THENCE, South 88°47'46" West, across said abandoned R.O.W., a distance of 22.46 feet to the westerly R.O.W. line of the abandoned portion of said Old Kickapoo Road and marking a corner of the herein described tract;

THENCE, South 02°13'42" East, along the westerly R.O.W. line of said abandoned portion of said Old Kickapoo Road, a distance of 80.01 feet, to the POINT OF BEGINNING and containing a computed area of 495.3 acres (21,574,710 square feet) of land.

West Belt Surveying, Inc.  
21020 Park Row.  
Katy, Texas 77449  
(281) 599-8288



*Richard Willett*  
Richard Willett Date: 10/23/07  
Texas Registration No. 4615 *W.B.*  
*R.A.S.*

10-23-'07 17:09 FROM-Brooks &amp; Sparks

+281-578-9686

T-948 P001/008 F-409

269.3 ACRE  
11,731,976 SQUARE FEET  
HENRY TROTT SURVEY  
ABSTRACT 267  
SHUBAL MARSH SURVEY  
ABSTRACT 217  
WALLER COUNTY, TEXAS

FIELD NOTE DESCRIPTION of a 269.3 acre (11,731,976 square feet) tract of land located in the Henry Trott Survey, Abstract Number 267 and the Shubal Marsh Survey, Abstract Number 217 Waller County, Texas, said 269.3 acre tract of land described deeds to Leland C. Sutton and wife, Karen O. Sutton, recorded under Volume (Vol.) 545, Page (Pg.) 726 and Vol. 43, Pg. 366 of the Waller County Deed Records (W.C.D.R.), said 269.3 acre tract being more particularly described by metes and bounds as follows: (The bearings described herein are oriented to the Texas State Plane Coordinate System, South Central Zone, NAD 1983, based on the Cornerstone Co-op CORS ARP, COR ID CMS1, N.G.S. PID DB8140, theta angle = +01°44'10.5".)

BEGINNING at a 1/2-inch iron rod found marking the northeast corner of a called 10.000 acre tract described in the deed to the Ann Staacke Rivers Family Limited Partnership recorded under Vol. 711, Pg. 163 W.C.D.R. and being in the westerly Right-Of-Way (R.O.W.) line of Kickapoo Road (based on a width of 80 feet);

THENCE, South 88°50'07" West, along the northerly line of said 10.000 acre tract, passing at a distance of 745.62 feet a 1-inch iron pipe found marking the northwesterly corner of said 10.000 acre tract in the easterly R.O.W. line of the abandoned portion of Old Kickapoo Road R.O.W. as described in Vol. 43, Pg. 366 of the minutes of the Commissioners' Court of Waller County, continuing for a total distance of 768.51 feet, to a capped 1/2-inch iron rod stamped "R.P.L.S. 4194" found in the center line of said abandoned R.O.W. and marking a corner of the herein described tract;

THENCE, South 02°52'20" East, along the center line of said abandoned R.O.W., a distance of 508.62 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a corner of the herein described tract;

THENCE, South 88°47'46" West, over and across said abandoned R.O.W., passing at 22.46 feet a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" found marking the northeasterly corner of a called 2.3475 acre tract described in the deed to Karen K. Staacke recorded under Vol. 432, Pg. 227, W.C.D.R., continuing along the northerly line of said 2.3475 acre tract, for a total distance of 1,301.91 feet (called 1,299.98 feet), to a 1-inch iron pipe found marking a corner of the herein described tract;

THENCE, South 01°37'01" East, along westerly line of said 2.3475 acre tract, a distance of 79.80 feet (called 80.00 feet), to a 1-inch iron found marking the a corner of the herein described tract in the northerly line of a called 223.6107 acre tract described in the deed to Karen K. Staacke, recorded under Vol. 432, Pg. 229 W.C.D.R.;

*W.B.S.*  
*R.A.S.*

THENCE, South 87°34'03" West, along the northerly line of said 223.6107 acre tract, a distance of 918.88 feet (called 919.45 feet), to a 1/2-inch iron rod found marking a corner of the herein described tract;

THENCE, North 01°42'34" West, along the northerly line of said 223.6107 acre tract, a distance of 1,135.10 feet (called 1,127.78 feet), to a 1/2-inch iron rod found marking a corner in the line of the herein described tract;

THENCE, South 87°49'05" West, along the northerly line of said 223.6107 acre tract, a distance of 1,790.43 feet (called 1,963.89 feet) to a 1/2-inch iron rod found in the westerly line of and marking a corner of the herein described tract;

THENCE, North 01°07'08" West, along the northline of said 223.6107 acre tract, a distance of 12.59 feet (called 15.00 feet) to a fence corner found marking the southeast corner of a called 68.977 acre tract described in the deed to Grainger Diagnostic Clinic, P.A. Defined Benefit Pension Plan recorded under Vol. 332, Pg. 123, W.C.D.R. and marking a corner of the herein described tract;

THENCE, North 01°26'26" West, along the easterly line of said 68.977 acre tract, a distance of 2,891.31 feet (called 2,891.76 feet), to a 5/8-inch iron rod found in the southerly line of a called 158.609 acre tract described in the deed to Grainger Diagnostic Clinic, P.A. Defined Benefit Pension Plan, recorded under Vol. 332, Pg. 126, W.C.D.R. marking a corner of the herein described tract;

THENCE, North 88°57'46" East, along the southerly line of said 158.609 acre tract, a distance of 677.90 feet (called 677.93 feet), to a 3-inch iron pipe found marking an angle point in the northerly line of the herein described tract;

THENCE, South 58°05'56" East, along the southerly line of said 158.609 acre tract, a distance of 1,227.33 feet (called 1,228.07 feet), to a 5/8-inch iron rod found marking an angle point in the northerly line of herein described tract;

THENCE, North 86°30'07" East, along the southerly line of said 158.609 acre tract, passing at a distance of 780.53 feet the southwesterly corner of a called 30.000 acre tract described in the deed to Grainger Interests Ltd. recorded under Vol. 893, Pg. 275, W.C.D.R., continuing for a total distance of 1,741.70 feet (called 1,742.14 feet) to a 5/8-inch iron found in the westerly line of a called 31.949 acre tract described in the deed to Richard B. Welch and wife, J. Joan Welch recorded under Vol. 528, Pg. 595, W.C.D.R. and marking a corner of the herein described tract;

THENCE, South 02°47'33" East, along the westerly line of said 31.949 acre tract, a distance of 585.54 feet (called 585.51 feet), to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking the northwesterly corner of a called 20.000 acre "Tract 1" described in the deed to Racedown Partners, Ltd. recorded under Vol. 549, Pg. 256, W.C.D.R., and an angle in the easterly line of the herein described tract;

THENCE, South 01°55'13" East, along the westerly line of said "Tract I", a distance of 663.51 feet (called 663.81 feet), to a 1/2-inch iron found marking the northwesterly corner of a called 20.000 acre "Tract II" described in said deed to Racedown Partners Ltd. and marking the a corner of the herein described tract;

WMA  
KAS

THENCE, South 02°05'42" East, along the westerly line of said "Tract II", a distance of 670.68 feet, to a 1/2-inch iron rod found marking the southwesterly corner of said "Tract II" and marking an interior corner of the herein described tract;

THENCE, North 87°44'32" East, along the southerly line of said "Tract II", a distance of 492.62 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the northwesterly corner of a called 0.3813 acre tract described in the deed to Racedown Partners recorded under Vol. 783, Pg. 824, of the minutes of the Commissioner's Court of Waller County and marking a corner of the herein described tract;

THENCE, South 02°40'34" East, along the westerly line of said 0.3813 acre tract, a distance of 18.24 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found marking the southwesterly corner of said 0.3813 acre tract and a corner of the herein described tract;

THENCE, North 88°27'56" East, along the southerly line of said 0.3813 acre tract, a distance of 787.85 feet, to a capped 5/8-inch iron rod stamped "Kalkomey Surveying" found in the westerly R.O.W. line of the aforesaid Kickapoo Road and marking a corner of the herein described tract;

THENCE, South 00°10'19" West, along the westerly R.O.W. line of said Kickapoo Road, a distance of 23.84 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking a point of curvature of Kickapoo Road and the of the herein described tract;

THENCE, in a southerly direction, along a curve to the left, being the westerly R.O.W. line of the aforesaid Kickapoo Road, having a radius of 5,767.37 feet, a central angle of 01°23'24" (chord bears, South 03°28'04" East, 139.91 feet) and an arc distance of 139.91 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking the point of tangency of the herein described tract;

THENCE, South 02°42'57" East, along said westerly R.O.W. line, a distance of 711.03 feet, to the POINT OF BEGINNING and containing a computed area of 269.3 acres of land as depicted on the Standard Land Survey dated: December 15, 2006, prepared by West Belt Surveying, Inc., Project No. S6970001A.

West Belt Surveying, Inc.  
21020 Park Row.  
Katy, Texas 77449  
(281) 599-8288  
Revised: 10/22/07



*RS Willett*  
Richard S. Willett Date: 12/15/06  
Texas Registration No. 4615 *WBF RAS*

226.0 ACRE  
9,842,734 SQUARE FEET  
HENRY TROTT SURVEY  
ABSTRACT 267  
WALLER COUNTY, TEXAS

FIELD NOTE DESCRIPTION of a 226.0 acre (9,842,734 square feet) tract of land located in the Henry Trott Survey, Abstract Number 267, Waller County, Texas and said 226.0 acre tract of land being all of a called 2.35 acre tract conveyed by deed to Karen K. Staacke, recorded under Volume (Vol.) 432, Page (Pg.) 227 and all of a called 223.6107 acre tract described under Vol. 432, Pg. 229 of the Waller County Deed Records (W.C.D.R.), said 226.0 acre tract being more particularly described by metes and bounds as follows: (The bearings described herein are oriented to the Texas State Plane Coordinate System, South Central Zone, NAD 1983, based on the Cornerstone Co-op CORS ARP, COR ID CMS1, N.G.S. PID DE8140, theta angle = +01°44'10.5")

BEGINNING at a 1-inch iron pipe found marking the southeasterly corner of said 2.35 acre tract in the northerly line of a called 99.787 acre tract described in deed to Versia Mae Halcrow recorded under Vol. 304, Pg. 738, W.C.D.R. and the most southerly east corner of the herein described tract;

THENCE, South 88°48'19" West, along the fenced northerly line of said 99.787 acre tract, a distance of 1,159.85 feet, to a 1/2-inch iron rod found marking a common corner of said 99.787 acre tract; and the aforesaid called 223.6107 acre tract;

THENCE, South 01°17'59" East, along the fenced westerly line of said 99.787 acre tract, a distance of 1,565.62 feet, to a fence post found marking the southeasterly corner of the herein described tract;

THENCE, South 87°50'39" West, along the fenced southerly line of the aforesaid called 223.6107 acre tract, a distance of 4,127.74 feet (called 4,133.33 feet), to a fence post found marking the southwesterly corner of the herein described tract in the easterly line of a called 150 acre tract described in deed to KSA Industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 02°17'16" West, along the fenced easterly line of said called 150 acre tract, a distance of 1,573.03 feet (called 1,572.22 feet), to a fence post found in the southerly line of a called 72 acre tract described in deed to KSA Industries, Inc. recorded under Vol. 606, Pg. 493, W.C.D.R.;

THENCE, North 87°11'52" East, along the fenced southerly line of said 72 acre tract, a distance of 259.50 feet (called 258.89 feet), to a fence post found marking a corner of the herein described tract;

THENCE, North 02°34'51" West, along the fenced easterly line of said 72 acre tract, a distance of 1,131.76 feet (called 1,133.33 feet), to a fence post found marking the northwesterly corner of the herein described tract;

THENCE, North 87°43'44" East, along a fenced line, passing at 32.06 feet a 1/2-inch iron rod found marking the southwesterly corner of a called 68.977 acre tract described in deed to Grainger Diagnostic Clinic, recorded under Vol. 332, Pg. 123, W.C.D.R., continuing along the southerly line of said 68.977 acre tract a total distance of 1,083.00 feet (called 1,100.00 feet), to a fence post found marking a corner

*WAS*  
RAS.

along the northerly line of the herein described tract and in the westerly line of a called 253.242 acre tract described in deed to Leland C. Sutton, Sr. and wife Karen O. Sutton, recorded under Vol. 545, Pg. 726, W.C.D.R.;

THENCE, South 01°07'08" East, along the fenced westerly line of said called 253.242 acre tract, a distance of 12.59 feet (called 15.00 feet) to a 1/2-inch iron rod found marking a corner of said 253.242 tract;

THENCE, North 87°49'05" East, along the fenced line of said called 253.242 acre tract, a distance of 1,790.43 feet (called 1,963.89 feet), to a 1/2-inch iron rod found marking a corner of the herein described tract;

THENCE, South 01°42'34" East, along the fenced line of said called 253.242 acre tract, a distance of 1,135.10 feet (called 1,127.78 feet), to a 1/2-inch iron rod found marking an interior corner of the herein described tract;

THENCE, North 87°34'03" East, along the fenced line of said called 253.242 acre tract a distance of 918.88 feet (called 921.22 feet), to a 1½-inch iron pipe found marking the southwesterly corner of the aforesaid called 2.35 acre tract;

THENCE, North 01°37'01" West, along the fenced line of said called 253.242 acre tract, a distance of 79.80 feet (called 80.00 feet), to a 1½-inch iron pipe found marking the northwesterly corner of said 2.35 acre tract and a corner of the herein described tract;

THENCE, North 88°47'46" East, along the fenced line of said called 253.242 acre tract, a distance of 1,279.45 feet (called 1,278.74 feet), to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set in the westerly line of Old Kickapoo Road (based on a width of 40 feet) marking the northeast corner of said 2.35 acre tract and the most northerly east corner of the herein described tract;

THENCE, South 02°13'42" East, along the westerly Right-of-Way line of said Old Kickapoo Road, a distance of 80.01 feet, to the POINT OF BEGINNING and containing a computed area of 226.0 acres (9,842,734 square feet) of land as depicted on the Land Title Survey dated: November 30, 2006, prepared by West Belt Surveying, Inc., Project No. S6970001A.

West Belt Surveying, Inc.  
21020 Park Row.  
Katy, Texas 77449  
(281) 599-8288  
Corrected 12/15/06

*RSW*  
Richard S. Willett Date: 11/30/06 *WBL*  
Texas Registration No. 4615 *RAS*

