

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 21, 2009

Honorable William Newchurch
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-0325

Re: Application of Buena Vista Water System to change its water rates and tariff
under CCN No. 11656 in Burnet County. SOAH Docket No. 582-09-3642;
TCEQ Docket No. 2009-0504-UCR.

Dear Judge Newchurch:

The representative for the Executive Director of the Texas Commission on Environmental Quality has enclosed the "Executive Director's Motion for Summary Disposition" for the above referenced matter.

If you have any questions, please call me at (512) 239-0608.

Sincerely,

A handwritten signature in black ink that reads "RON" followed by a stylized surname.

Ron M. Olson
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May 2009, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the persons on the attached Mailing List.

A handwritten signature in black ink, appearing to be 'RON' followed by a stylized flourish.

Ron Olson, Staff Attorney
Environmental Law Division

MAILING LIST

Application of Buena Vista Water System to change its water rates/tariff
under CCN No. 11656 in Burnet County

SOAH Docket No. 582-09-3642
TCEQ Docket No. 2009-0504-UCR

FOR SOAH:

Honorable William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-0325
Fax: 475-4994

FOR THE APPLICANT:

Kathie Bryant
Buena Vista Water System
349 CR 139
Burnet, Texas 78611

FOR THE PROTESTANTS:

Roger B. Borgelt, Attorney
Potts & Reilly, L.L.P.
401 West 15th Street, Suite 850
Austin, Texas 78701
Fax: 512-469-7480

Michael Wortham
P. O. Box 1002
Buchanan Dam, Texas 78609
Fax: 512-793-4788

FOR PUBLIC INTEREST COUNSEL:

Eli Martinez, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Fax: 512-239-6377

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
P.O. Box 13087
Austin, Texas 78711-3087

**SOAH DOCKET NO. 582-09-3642
TCEQ DOCKET NO. 2009-0504-UCR**

APPLICATION OF BUENA VISTA	§	BEFORE THE STATE OFFICE
WATER SYSTEM TO CHANGE ITS	§	
WATER RATES AND TARIFF,	§	OF
CERTIFICATE OF CONVENIENCE	§	
AND NECESSARY NO. 11656, IN	§	
BURNET COUNTY.	§	ADMINISTRATIVE HEARINGS

THE EXECUTIVE DIRECTOR'S MOTION FOR SUMMARY DISPOSITION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW the Executive Director (“ED”) of the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) and files this motion for summary disposition pursuant to 30 TEX. ADMIN. CODE § 80.137. The ED moves for summary disposition on the specific grounds that Buena Vista Water System (“Applicant” or “Buena Vista”) is seeking authorization to collect a surcharge to make loan payments for a Texas Water Development Board (“TWDB”) loan that Buena Vista has not received and for which it has not even applied.

I. SOAH PROCEEDINGS

The Honorable William G. Newchurch, administrative law judge (“ALJ”) of the State Office of Administrative Hearings (“SOAH”), conducted a preliminary hearing on Buena Vista’s application for a water rate/tariff change on May 11, 2009, in Travis County, Texas. After reviewing the notice documents, the ALJ took jurisdiction of the case, and designated the following parties: The Executive Director, the Office of Public Interest Counsel (“OPIC”), the Applicant, and the Buena Vista Property Owners Association.

On May 12, 2009, the ALJ issued Order No. 1 granting an interim surcharge rate of zero dollars (\$0) and establishing a deadline for the parties to submit motions for summary disposition by May 22, 2009.

II. FACTS

In December of 2008, Mr. Brian Dickey contacted Ms. Kathie Bryant to suggest that she include language in the notice to the ratepayers that states that Buena Vista will not collect the proposed surcharge until funds have been committed and extended to the utility from the TWDB.¹ Buena Vista did not include any such language in its notice to the ratepayers.²

On February 28, 2009, notice of the proposed surcharge, with a proposed effective date of June 1, 2009, was provided to the customers by Buena Vista.

On March 9, 2009, Buena Vista filed an application with the ED of TCEQ for a water rate/tariff change. The application was accepted for filing on March 19, 2009.

The TCEQ received protests from more than 10%³ of Buena Vista's ratepayers. Additionally, ED Staff protested this application on its own motion.⁴

On April 14, 2009, this matter was referred to the State Office of Administrative Hearings for a contested case hearing.

The application that was submitted by Buena Vista for its proposed surcharge did not contain any documentation stating that Buena Vista had received a commitment from the TWDB that it would receive a loan or showing that it had applied for a loan from the Texas Water Development Board.⁵

On May 4, 2009, Mr. Brian Dickey, TCEQ staff engineer, contacted Mr. Luis Farias, TWDB Drinking Water State Revolving Fund, to inquire whether Buena Vista has applied for a loan.

On May 5, 2009, Mr. Farias e-mailed Mr. Dickey and stated that the TWDB does not have any pending loan applications from Buena Vista and the deadline to apply for a loan for fiscal year 2009 has expired.⁶

On May 6, 2009, the TCEQ received a copy of a letter from Mr. Ken Petersen, General Counsel for the TWDB, to Mr. Mike Wortham (Protestant) stating that Buena

¹ See Exhibit 1

² See Exhibit 2

³ 30 TEX. ADMIN. CODE § 291.28(1) "If...the commission receives a complaint from...10% of the ratepayers of the utility...the commission shall set the matter for hearing."

⁴ See Exhibit 3

⁵ See Exhibit 4

⁶ See Exhibit 5

Vista had not applied for a loan in fiscal year 2009.⁷

On May 11, 2009, on record during the preliminary hearing, Buena Vista admitted that it did not file a loan application with the TWDB.⁸

On May 20, 2009, the TCEQ received a letter from Mr. Joe Reynolds, an attorney for the TWDB, stating that Buena Vista does not have a pending loan application with the TWDB and that Buena Vista has not responded to the solicitation for the 2010 Intended Use Plan. Moreover, Mr. Reynolds stated that the TWDB does not require a utility to collect a cash reserve of 12 months before it can file an application.⁹

III. ARGUMENTS & AUTHORITIES

When a party moves for summary disposition in a cause of action, the motion shall be granted if the party shows that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law.¹⁰

TEX. WATER CODE § 13.184(c) states that “in any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change... is just and reasonable.” Furthermore, a utility filing for a rate change under TEX. WATER CODE § 13.187 shall be prepared to go forward at the hearing on the data which has been submitted in its application and sustain the burden of proof of establishing that its proposed changes are just and reasonable.¹¹

Buena Vista filed an application with the TCEQ proposing to collect a total of \$1,070,000 through a surcharge of \$56.50 per connection per month for 240 months for a proposed loan from the TWDB. In the surcharge application Buena Vista acknowledges that the purpose of the proposed surcharge is for a TWDB loan.¹² Buena Vista further states in a letter to the TCEQ dated November 14, 2008, that was attached to the application, that “Buena Vista Water System is requesting financial assistance from the Texas Water Development Board to upgrade the treatment, storage, and distribution

⁷ See Exhibit 6

⁸ SOAH record of Preliminary Hearing, SOAH Docket No. 582-09-3642

⁹ See Exhibit 7

¹⁰ 30 TEX. ADMIN. CODE § 80.137(c); See also Tex. R. Civ. P. 166a(c)

¹¹ 30 TEX. ADMIN. CODE § 291.25(b)

¹² See Exhibit 4. Applicant's Surcharge Application, Section 1B, Subsection E. Bates labeled pg. 000016.

system to bring it into full compliance with state regulations.”¹³ However, Buena Vista did not submit any documentation with their surcharge application which indicates that it has even applied for a TWDB loan. In fact, all available evidence indicates that Buena Vista does not have a pending loan application with the TWDB. The TCEQ has contacted the TWDB and received a letter from Mr. Joe Reynolds, an attorney with the TWDB, stating that Buena Vista does not have a pending loan application with the TWDB and that the deadline to apply for a loan has expired. Moreover, Mr. Reynolds states that the TWDB does not require a utility to collect a cash reserve of 12 months before it can file a loan application.¹⁴ Additionally, when asked by the ALJ at the preliminary hearing as to whether Buena Vista has a pending loan application with the TWDB, the Applicant stated on the record that it did not submit a loan application with the TWDB.¹⁵

The Commission’s rules require Buena Vista to go forward at the hearing on the data submitted in its application.¹⁶ The application states that the purpose of the proposed surcharge is for a TWDB loan. Buena Vista did not submit any documentation establishing that it has been awarded a TWDB loan or any documentation establishing that Buena Vista has a pending loan application with the TWDB. In fact, the undisputed factual evidence clearly proves that Buena Vista does not have a loan with the TWDB and has not even applied for a TWDB loan. Accordingly, if Buena Vista was to go forward with the data submitted in their application, Buena Vista would clearly fail to meet its burden of proof to show that the proposed surcharge is just and reasonable. Assuming all the facts stated in the application are true, Buena Vista cannot prevail in its TCEQ surcharge application because it does not have a pending TWDB loan and the deadline to apply for a loan has expired. The data in the application is insufficient to meet the burden of proof. It is not just and reasonable for Buena Vista to collect a surcharge from its customers to repay a loan that Buena Vista has not received. Moreover, whether Buena Vista will be issued a loan in subsequent fiscal years is pure speculation. Since Buena Vista is under no obligation to make loan payments, it is not

¹³ See Exhibit 4. Buena Vista Surcharge Application, Bates labeled page 000019.

¹⁴ See Exhibit 7

¹⁵ SOAH record of Preliminary Hearing, SOAH Docket No. 582-09-3642

¹⁶ 30 TEX. ADMIN. CODE § 291.25(b)

just and reasonable to have its ratepayers stretch their financial resources each month to cover a loan the utility does not have. The TWDB has stated that they do not require a utility to collect a 12 month cash reserve before applying for a TWDB loan. Therefore, there is no need to begin collecting the proposed surcharge. Buena Vista should not be allowed to collect a surcharge for a loan until funds are actually committed and extended to the utility from the TWDB. Therefore, since it is undisputed that Buena Vista does not have a pending loan application with the TWDB, there is no genuine issue of material fact. Buena Vista has clearly failed, as a matter of law, to prove that the proposed surcharge rate is just and reasonable under TEX. WATER CODE § 13.184(c) and 30 TEX. ADMIN. CODE § 291.25(b).

Furthermore, Section 291.21(k)(3) of the Commission's rules states that a utility must use a surcharge only for the purposes noted in the application submitted by the utility to the Commission.¹⁷ Buena Vista acknowledges that the purpose of the proposed surcharge is for a TWDB loan. Buena Vista also admitted that it does not have a pending loan application with the TWDB. Therefore, Buena Vista, as a matter of law, will not be able to use any surcharge collected for the stated purpose in its application because it has not been granted a TWDB loan. Accordingly, since Buena Vista is unable to use the proposed surcharge for its intended purpose and by going forward with the data in the application, Buena Vista cannot meet its burden of proof to show that the proposed surcharge is just and reasonable.

IV. CONSTRUCTION WORK IN PROGRESS

Construction work in progress ("CWIP") applies where a utility has costs recorded on the books for money spent on assets but cannot claim those assets in the application because they are not used and useful during the test year.¹⁸ The TCEQ rules allow, only in exceptional circumstances, the inclusion of some expenses as CWIP because the utility has funds that are tied up in the project and are unable to be used elsewhere.¹⁹ Further, any expenses that can be classified as CWIP are allocated to the

¹⁷ 30 TEX. ADMIN. CODE §291.21(k)(3)

¹⁸ TEX. WATER CODE § 13.185(b)

¹⁹ Id.

utility's rate base.²⁰ Buena Vista is proposing a surcharge. A surcharge is not a part of a utility's rate base. It is an authorized rate to collect revenue over and above the usual cost of service.²¹ Buena Vista's proposed surcharge for a TWDB loan is a cost that would be over and above the usual cost of service. Accordingly, it cannot be included as part of Buena Vista's rate base. Therefore the statutory and rule provisions for CWIP are not applicable in this situation.

Furthermore, assuming that CWIP is applicable, the applicant does not have a project under construction and has not incurred any expenses towards construction of a project. Section 291.31(c)(3)(B) of the Commission's rules require the applicant to prove by clear and convincing evidence that the inclusion of CWIP is necessary to the financial integrity of the utility and the major projects under construction have been efficiently and prudently planned and managed. In the case at bar, there has not been any debt incurred by the utility for a project under construction. Thus, there is no obligation for the utility to make loan payments. In fact the utility does not even have a loan application with the TWDB. Therefore, even if the proposed surcharge could be considered CWIP, and somehow part of the rate base, the undisputed factual evidence makes clear that Buena Vista cannot prove by clear and convincing evidence that the proposed surcharge is necessary to the financial integrity of the utility. Moreover, the utility must also show, pursuant to Section 291.31, that the project has been efficiently and prudently planned and managed.²² Buena Vista does not have a project under construction and has not submitted any current plans to the TCEQ to show that a project has been efficiently and prudently planned and managed.²³ Section 291.31(c)(3)(B)(ii) states that "construction work in progress may not be allowed for any portion of a major project that the utility has failed to prove was efficiently and prudently planned and managed."²⁴ Therefore, Buena Vista's proposed surcharge does not qualify for classification as CWIP, as a matter of law, even if the statutory and rule provisions for CWIP are applicable.

²⁰ 30 TEX. ADMIN. CODE § 291.31(c)(3)(B)

²¹ 30 TEX. ADMIN. CODE § 291.21(k)(1)

²² 30 TEX. ADMIN. CODE § 291.31(c)(3)(B)

²³ See Exhibit 1

²⁴ 30 TEX. ADMIN. CODE § 291.31(c)(3)(B)(ii)

V. GROUNDS

The ED moves for summary disposition on the specific grounds that Buena Vista has applied for authorization to collect a surcharge for a TWDB loan for which they have not been granted. In fact, Buena Vista has admitted that it has not applied for a TWDB loan. Accordingly, if Buena Vista is to go forward with its application as required by Section 291.25(b) of the Commission's rules, Buena Vista cannot meet its burden of proof establishing that the proposed surcharge is just and reasonable.

VI. SUMMARY DISPOSITION EVIDENCE

The Executive Director includes the summary disposition evidence in an appendix filed with this motion and incorporates the evidence into this motion by reference. This motion for summary disposition depends on the following proof included in the appendix:

A. **Affidavits.** The affidavits of the following individuals establish the following facts in Exhibit 1:

a. Affidavit of TCEQ staff engineer Brian Dickey showing that:

- Mr. Dickey contacted Ms. Bryant regarding language that should be included in the utility's notice to customers of the proposed surcharge that would allow Buena Vista to collect the surcharge only upon actually receiving a loan from the TWDB.
- Mr. Dickey searched the water utilities database to check if Buena Vista Water Systems had submitted any plans for any upgrades to their facilities. Mr. Dickey did find any records that show that Buena Vista has submitted plans to the TCEQ.
- The e-mails received by Mr. Dickey from Mr. Luis Farias, of the TWDB, are authentic and are true and correct copies of the original electronic version.

B. Documentary Evidence. The exhibits, which are verified as authentic, establish the following facts:

- a. Evidence that Buena Vista did not include language in its notice to customers regarding the proposed surcharge limiting the collection of the surcharge only upon actually receiving a loan from the TWDB. *See* Exhibit 2.
- b. Evidence proving that no documentation regarding a TWDB loan was submitted with Buena Vista's water rate/tariff change application. *See* Exhibit 4.
- c. Evidence showing that Buena Vista does not have a current loan application filed with the Texas Water Development Board. *See* Exhibits 5, 6 and 7.
- d. Evidence that the deadline to file a TWDB loan application has expired. *See* Exhibits 5, 6 and 7.
- e. Evidence that the TWDB does not require a utility to collect a cash reserve of 12 months before it can file a loan application. *See* Exhibit 7.

VII. CONCLUSION

The Commission's rules require Buena Vista to be able to go forward with its water rate/tariff change application that it filed with the TCEQ to prove that the proposed surcharge is just and reasonable. The rules further state that a utility must use a surcharge only for the purposes noted in the application submitted by the utility to the Commission. The undisputed evidence unequivocally establishes that Buena Vista did not apply for a TWDB loan and has, therefore, not received a TWDB loan. Accordingly, Buena Vista's application is insufficient as a matter of law to prove that the proposed surcharge is just and reasonable. Moreover, since Buena Vista does not have a TWDB loan, the utility's intended purpose for the proposed surcharge, to make TWDB loan payments, cannot be achieved. Therefore, Buena Vista's application for a proposed surcharge must be denied.

VIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, the ED requests that the honorable ALJ grant this motion for summary disposition by finding that Buena Vista does not have a current loan application with the TWDB and is, therefore, unable to prove as a matter of law that the proposed surcharge is just and reasonable as required by TEX. WATER CODE § 13.184(c) and 30 TEX. ADMIN. CODE § 291.25(b).

Respectfully submitted,
Texas Commission on Environmental Quality

Mark Vickery P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



Ron M. Olson, Staff Attorney
Environmental Law Division
State Bar No. 24056070
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: 512.239.0608
Fax: 512.239.0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AFFIDAVIT OF BRIAN DAVID DICKEY

THE STATE OF TEXAS

§

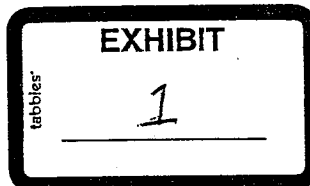
§

COUNTY OF TRAVIS

§

BEFORE ME, the undersigned notary, on this day personally appeared BRIAN DAVID DICKEY, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. My name is Brian Dickey. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am employed by the Texas Commission on Environmental Quality ("TCEQ") as an engineer in the Utilities and District Section of the Water Supply Division. I have been employed as an engineering specialist with the TCEQ for 9 years.
3. As the staff engineer for the TCEQ, I am responsible for reviewing and processing applications to obtain or amend certificates of convenience and necessity; reviewing rate change applications and appeals filed with TCEQ; negotiating settlements; preparing testimony and exhibits for rate hearings for investor-owned, nonprofit, and governmental water and sewer utilities; conducting rate-related inspections of water and sewer utility systems within the state; and reviewing of water utility plans and specifications.
4. On or about December 18, 2008 I contacted Ms. Kathie Bryant to suggest that she include language in the notice to the ratepayers for the proposed surcharge that states that Buena Vista will not collect the proposed surcharge until funds have been committed and extend to the utility from the TWDB. This would allow for a mechanism to be in place to collect as surcharge once, and only if, the TWDB granted Buena Vista a loan.



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5. Buena Vista did not include any language in its notice of the surcharge to its customers that would limit the collection of a surcharge only upon receipt of a TWDB loan.
6. On May 18, 2009, I searched the water utilities database to check if Buena Vista Water Systems had submitted any plans for any upgrades to their facilities. I was not able to locate any records that show that Buena Vista has submitted plans to the TCEQ.
7. On May 4, 2009 at 4:26 PM, I composed and sent, by electronic mail, an e-mail to Mr. Luis Farias of the Texas Water Development Board ("TWDB"), inquiring as to whether Buena Vista Water Systems had applied for a loan.
8. The electronic mail was sent from my TCEQ e-mail account to Mr. Farias' TWDB e-mail address.
9. On May 5, 2009 at 10:30 AM, I received a response from Mr. Farias in regards to the e-mail I sent him. This e-mail is attached as Exhibit A and is true and correct copy of the electronic version. The response was from Mr. Farias' TWDB e-mail account to my TCEQ e-mail address.
10. On May 5, 2009 at 1:27 PM, I again received another e-mail from Mr. Farias with additional information relating to my e-mail inquiry of May 4, 2009. This e-mail is attached as Exhibit B and is a true and correct copy of the electronic version. The response was from Mr. Farias' TWDB account to my TCEQ e-mail address.
11. The attached e-mails are statements from Mr. Luis Farias regarding the activities of the Texas Water Development Board stating that the TWDB does not have a pending loan application from Buena Vista Water Systems and that the deadline to apply has expired.

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12. The attached e-mails are a type of documentation that I would normally rely upon in my regular course of business in determining whether the TWDB has a pending loan application for a utility.

FURTHER AFFIANT SAYETH NOT.

By: Brian D Dickey
Brian D. Dickey

SWORN AND SUBSCRIBED BEFORE ME, the undersigned notary public, on the 20th day of May 2009.



Notary without Bond
-seal-

Raechel Stanford
NOTARY PUBLIC, STATE OF TEXAS

000006

From: "Luis Farias" <Luis.Farias@twdb.state.tx.us>
To: "Brian DICKEY" <BDICKEY@tceq.state.tx.us>
Date: 5/5/2009 10:30 AM
Subject: Re: Buena Vista water Company pending Loan.

Brian,

The TWDB does not have any pending loan applications nor has it provided any financial assistance to any of the names below. If you have any questions please let me know. Thanks Luis.

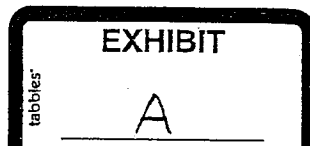
>>> "Brian DICKEY" <BDICKEY@tceq.state.tx.us> 5/4/2009 4:26 PM >>>
Mr. Farias / Walker:

The Texas Commission on Environmental Quality (TCEQ) received an application from Buena Vista Water System (utility) for a surcharge for the construction cost of improvements to the water system. The utility has indicated in the application that they are requesting financial assistance from the Texas Water Development Board (TWDB) to upgrade the treatment, storage, and distribution system. A preliminary hearing for the proposed surcharge has been scheduled for May 11, 2009 at the State Office of Administrative Hearings Office. If staff from the TWDB wish to attend the preliminary Hearing it will be in the William P. Clements Building 4th floor at 10:00 am.

Does the TWDB have a pending loan application for Don M Bryant dba Buena Vista Water System, Buena Vista Water System, or Buena Vista Water System LLC?

Thank You

Brian Dickey
Utilities Technical Review Team
Utilities and Districts Section
Water Supply Division
Texas Commission on Environmental Quality



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From: "Luis Farias" <Luis.Farias@twdb.state.tx.us>
To: "Brian DICKEY" <BDICKEY@tceq.state.tx.us>
Date: 5/5/2009 1:27 PM
Subject: Re: Buena Vista water Company pending Loan.

Brian,

I just wanted to add that the purpose of their application to TCEQ for the surcharge was due to their pending application for the 2009 IUP DWSRF funds. Before we can take a private loan to the Board for a commitment we require that a surcharge be in place or the process be in place at TCEQ. The did not send in an application to TWDB for this funding and the deadline to get an application to the Board expired. Thanks

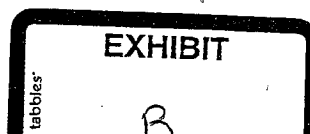
>>> "Brian DICKEY" <BDICKEY@tceq.state.tx.us> 5/4/2009 4:26 PM >>>
Mr. Farias / Walker:

The Texas Commission on Environmental Quality (TCEQ) received an application from Buena Vista Water System (utility) for a surcharge for the construction cost of improvements to the water system. The utility has indicated in the application that they are requesting financial assistance from the Texas Water Development Board (TWDB) to upgrade the treatment, storage, and distribution system. A preliminary hearing for the proposed surcharge has been scheduled for May 11, 2009 at the State Office of Administrative Hearings Office. If staff from the TWDB wish to attend the preliminary Hearing it will be in the William P. Clements Building 4th floor at 10:00 am.

Does the TWDB have a pending loan application for Don M Bryant dba Buena Vista Water System, Buena Vista Water System, or Buena Vista Water System LLC?

Thank You

Brian Dickey
Utilities Technical Review Team
Utilities and Districts Section
Water Supply Division
Texas Commission on Environmental Quality



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NOTICE OF PROPOSED RATE CHANGE

Buena Vista Water System
Company Name

11656
CCN Number

has submitted a rate change application to the Texas Commission on Environmental Quality (Commission). The proposed rates listed on the next page will apply to service received after the effective date provided below. If the Commission receives protests to the proposed increase from 10 percent of the ratepayers or from any affected municipality before the 91st day after the proposed effective date, a public hearing will be scheduled to determine if the proposed rates are reasonable. Protests should be mailed to:

Texas Commission on Environmental Quality
Water Supply Division
Utilities & Districts Section, MC 153
P. O. Box 13087
Austin, Texas 78711-3087

Unless protests are received from 10 percent of the ratepayers or the Commission staff requests a hearing, no hearing will be held and rates will be effective as proposed. Please read the following information carefully:

Buena Vista

Subdivisions or Systems Affected by Rate Change (512)

<u>349 CB139</u>	<u>Burnet</u>	<u>TX</u>	<u>78611</u>	<u>793-2767</u>
Company Address	City	State	Zip	Telephone
<u>84,744</u>			<u>02-27-09</u>	
Annual Revenue Increase			Date Customer Notice Mailed	
<u>09-01-07</u>			<u>last day of the month</u>	
Date of Last Rate Change			Date Meters Typically Read	

EFFECTIVE DATE OF PROPOSED INCREASE: 06-01-09

SURCHARGE RATE PROVISION:

(INSERT YOUR UTILITY'S SURCHARGE REQUEST HERE)

Proposed construction cost of water treatment plant improvements, elevated storage and ground storage tank, distribution and transmission lines, pump station. To correct TCEQ enforcement violations. \$1,070,000.00 at 5% for 240 months. Each of the 125 customers' monthly surcharge amount is \$56.50.

The proposed rates will apply to all service rendered after the effective date and will be reflected on the bill you receive approximately 30 to 45 days after the effective date.

In the event that the application is set for hearing, the specific rates requested by the utility may be decreased or increased by order of the Commission. If the Commission orders a lower rate to be set, the utility may be ordered to refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest. You may inspect a copy of the rate change application at your utility's office or at the Commission's office at Park 15 - Building F, 12015 Park 35 Circle, Suite 3101, Austin, Texas, west side of IH-35, south of Yager Lane. Additional information about the application can be obtained by contacting the Utilities and Districts Section at 512/239-4691. Information about how you can participate in the rate setting process can be obtained by contacting the Public Interest

AFFIDAVIT

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STATE OF TEXAS

COUNTY OF BURNET

Kathie Bryant ~~OWNER~~, being duly sworn, file this NOTICE OF PROPOSED RATE CHANGE as OWNER (indicate relationship to Utility, that is, owner, member of partnership, title as officer of corporation, or other authorized representative of Utility); that, in such capacity, I am qualified and authorized to file and verify such NOTICE; and that all statements made and matters set forth herein are true and correct.

further represent that a copy of the attached notice was provided by MAIL to each customer or other affected party on or about FEB 28, 20 09 (mail or hand delivery)

Kathie Bryant
Affiant (Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Utility, or its attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this the 4th day of March, 2009 to certify which witness my hand and seal of office.

Rose Jones

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



SEAL

Rose Jones
PRINT OR TYPE NAME OF NOTARY

MY COMMISSION EXPIRES 5-15-2012

THE STATE OF TEXAS
COUNTY OF TRAVIS
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF A TEXAS DEPARTMENT OF ENVIRONMENTAL QUALITY DOCUMENT, WHICH HAS BEEN FILED IN THE PUBLIC RECORDS

MAY - 8 - 2009

OF THIS DOCUMENT UPON PRESENTATION AND THE SEAL OF THE ARCHIVE.
John C. Grotz
TADGUNA CASTANEDA, CHIEF CLERK
TEXAS DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
TCEQ
WATER SUPPLY DIV.
2009 FEB 28 AM 10:33

000012

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 14, 2009

CERTIFIED MAIL

Ms. Kathie Bryant
Buena Vista Water System
349 CR 139
Burnet, TX 78611

Re: Docket No. 2009-0504-UCR; Water Rate/Tariff Change Application of Buena Vista Water System, Certificate of Convenience and Necessity No. 11656 in Burnet County; Application No. 36343-R

CN: 601589815; RN: 101190809

Dear Ms. Bryant:

On March 9, 2009, we received your notice of a water rate/tariff change. The Commission has now received 32 protests from a total of 125 customers, which is more than ten percent (10%) of the affected customers. Staff is also protesting the application on its own motion and is requesting a suspension of the surcharge requested. Your application has been assigned Docket No. 2009-0504-UCR. Any further communications should refer to this docket number.

This matter has been referred to the State Office of Administrative Hearings for scheduling. When a hearing has been scheduled, you will receive a notice of hearing which explains when and where the hearing will be held.

In order to review this rate change request, the staff of the TCEQ may need additional information regarding your utility's cost of providing service. You may be receiving Staff Requests for Information (RFI's) within a few weeks. We would appreciate your cooperation in providing the information requested.

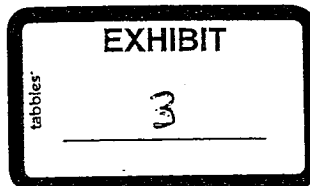
If you have questions about this process or what material you should bring with you to the hearing, please contact Ms. Elsie N. Pascua at (512) 239-5367, or Mr. Brian Dickey at (512) 239-0963.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy Benter".

for Doug Holcomb, P.E., Section Manager
Utilities & Districts Section
Water Supply Division

DH/ENP/BD/as



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Mailing List for Buena Vista Water System
TCEQ Docket No. 2009-0504-UCR
(Application No. 36343-R)

Ms. Kathie Bryant
Buena Vista Water System
349 CR 139
Burnet, TX 78611

APPLICATION FOR A RATE/TARIFF CHANGE

Instructions: Please Answers All Questions Completely *Attached*
Attach Three Copies of Notice Mailed to Customers
Send Three Copies of this Application and All Supporting Documents To TCEQ *Attached*

SECTION IA - GENERAL INFORMATION

Applicant: Buena Vista Water System
(Individual, Corporation, or Other Legal Entity)

Utility Name: Same - DON M BRYANT dba Buena Vista Water System
(if different than above)

Legal form of Application:

<input type="checkbox"/>	Individual
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Corporation. Provide Charter Number
<input type="checkbox"/>	Sub Chapter-S Corporation
<input checked="" type="checkbox"/>	Other: <u>DON M BRYANT dba BUENA VISTA WATER SYSTEM</u>

Utility Address: 349 CR 139 Burnet TX 78611
Street Address or Location City State Zip Code

County(ies) where services are provided: Burnet CCN Number(s): 11656

Contact Person: KATHIE BRYANT Telephone Number: (512) 793-2767

Position: owner-operator Fax Number: SAME

Address: 349 CR 139 Burnet TX 78611
Street Address or Location City State Zip Code

If the applicant is a corporation, please provide a copy of the corporation's "Certificate of Account Status" (regarding the payment of franchise taxes) from the State Comptroller's Office. This "Certificate of Account Status" can be obtained from:

Comptroller of Public Accounts, Office Management
P. O. Box 13528
Austin, Texas 78711
1-800-252-5555
or
<http://ecpa.cpa.state.tx.us/coa/coaStart.html>

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MAR 9 2009

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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SECTION IB - MISCELLANEOUS INFORMATION

- A. How often and on what dates are water meters typically read? 1 time per month (last day of month)
- B. When are bills typically sent out? 1st of the month
- C. Do you serve customers within the corporate limits of a municipality? If No, Go to D. Yes No
 If yes, which municipalities? _____
- Have you filed a request to change rates with the municipality? Yes No. If no, please explain: _____

- D. Are you currently collecting the Regulatory Assessment Fee from your customers?
 Yes No

If yes, are you current in your payment of the Regulatory Assessment Fee to the Texas Commission on Environmental Quality or the predecessor agency, Texas Water Commission, for assessments payable beginning January 1, 1992?
 Yes No

- E. *Water Utilities:* Please indicate the Public Water System Identification numbers for each of your systems:

System Name	TCEQ PWS ID #	County	Rate Increase Applicable?
<u>Buena Vista Water System</u>	<u>0290008</u>	<u>BURNET</u>	

Attached

For each of the systems, please provide a copy of the most recent public water system annual inspection report letter from the Texas Commission on Environmental Quality and a written explanation detailing how and when you will comply with all noted deficiencies. will comply when funds are approved by TCEQ & TWDB loan interest loan application. Purpose of this SURCHARGE

- F. *Sewer Utilities:* Please indicate the discharge permit number for each Wastewater Treatment Plant you operate:

Wastewater Treatment Plant Name	TCEQ Discharge Permit Number	County	Rate Increase Applicable?
<u>N/A</u>			

For each of the plants, please provide a copy of the most recent inspection report letter from the Texas Commission on Environmental Quality and a written explanation detailing how and when you will comply with all noted deficiencies.

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AFFIDAVIT

EP

STATE OF TEXAS

COUNTY OF BURNET

Kathie Bryant, being duly sworn, file this NOTICE OF PROPOSED RATE CHANGE as OWNER (indicate relationship to Utility, that is, owner, member of partnership, title as officer of corporation, or other authorized representative of Utility); that, in such capacity, I am qualified and authorized to file and verify such NOTICE; and that all statements made and matters set forth herein are true and correct.

further represent that a copy of the attached notice was provided by mail to each customer or other affected party on or about Feb 28 2009.

Kathie Bryant

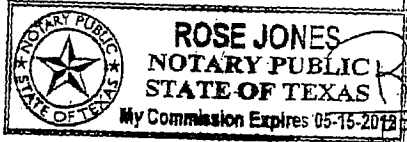
Affiant (Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Utility, or its attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this the 4th day of March, 2009 to certify which witness my hand and seal of office.

Rose Jones

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



Rose Jones

PRINT OR TYPE NAME OF NOTARY

SEAL

MY COMMISSION EXPIRES 5-15-2012

RECEIVED
TCEQ
WATER SUPPLY DIV.
2009 FEB 31 AM 10 38

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NOTICE OF PROPOSED RATE CHANGE

Buena Vista Water System
Company Name

11656
CCN Number

has submitted a rate change application to the Texas Commission on Environmental Quality (Commission). The proposed rates listed on the next page will apply to service received after the effective date provided below. If the Commission receives protests to the proposed increase from 10 percent of the ratepayers or from any affected municipality before the 91st day after the proposed effective date, a public hearing will be scheduled to determine if the proposed rates are reasonable. Protests should be mailed to:

Texas Commission on Environmental Quality
Water Supply Division
Utilities & Districts Section, MC 153
P. O. Box 13087
Austin, Texas 78711-3087

Unless protests are received from 10 percent of the ratepayers or the Commission staff requests a hearing, no hearing will be held and rates will be effective as proposed. Please read the following information carefully:

Buena Vista

Subdivisions or Systems Affected by Rate Change

(512)

349 CB139

Burnet

TX 78611

793-2767

Company Address

City

State

Zip

Telephone

84,744

02-27-09

Annual Revenue Increase

Date Customer Notice Mailed

09-01-07

last day of the month

Date of Last Rate Change

Date Meters Typically Read

EFFECTIVE DATE OF PROPOSED INCREASE: 06-01-09

SURCHARGE RATE PROVISION:

(INSERT YOUR UTILITY'S SURCHARGE REQUEST HERE)

Proposed construction cost of water treatment plant improvements, elevated storage and ground storage tank, distribution and transmission lines, pump station, to correct TCEA enforcement violations. \$1,070,000.00 at 5% for 240 months. Each of the 125 customers' monthly surcharge amount is \$56.50.

The proposed rates will apply to all service rendered after the effective date and will be reflected on the bill you receive approximately 30 to 45 days after the effective date.

In the event that the application is set for hearing, the specific rates requested by the utility may be decreased or increased by order of the Commission. If the Commission orders a lower rate to be set, the utility may be ordered to refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest. You may inspect a copy of the rate change application at your utility's office or at the Commission's office at Park 15 - Building F, 12015 Park 35 Circle, Suite 3101, Austin, Texas, west side of IH-35, south of Yager Lane. Additional information about the application can be obtained by contacting the Utilities and Districts Section at 512/239-4691. Information about how you can participate in the rate setting process can be obtained by contacting the Public Interest Counsel at 512/239-6363.

Don M. Beyant dba
Buena Vista Water System,
349 CR 139
Burnet, TX 78611
(512) 793-2767

November 14, 2008

Utilities & Districts Section
MC 153
TCEQ
PO BOX 13087
Austin, TX 78711-3087

Resubmit

Re: Buena Vista Water System, LLC Request Approval of a Surcharge.

To Whom It May Concern:

Buena Vista Water System, requests approval of a surcharge for the proposed construction costs of the water treatment plant improvements, elevated storage and ground storage tank, distribution and transmission lines, pump station, etc. to correct the TCEQ enforcement violations associated with the treatment and distribution systems. The current system has inadequate capacity to comply with TCEQ volume requirements. The current system also lacks adequate service pump capacity at the plant and booster pump capacity at the booster station, as well as adequate storage capacity in the upper and lower planes, and has difficulty maintaining the required 35 psi throughout the distribution system.

The estimated total project costs are \$1,070,000.00 (attached).

The current number of connections is one hundred twenty-five (125).

The requested monthly surcharge per connection is \$56.50. The surcharge will be in effect for two hundred and forty (240) months as calculated below:

\$1,070,000.00	loan amount	
5 %	interest rate	
240 months	term	
\$ 7,062.00	monthly payment	\$7062 / 125 connections = \$56.50
125	current customers	
\$1,694,766.00	total of payments	
\$ 624,766.00	total interest paid	

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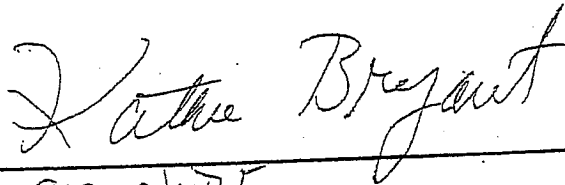
Buena Vista Water System, is requesting financial assistance from the Texas Water Development Board to upgrade the treatment, storage, and distribution system to bring it into full compliance with state regulations. Please feel free to contact me at (512)793-2767 or Nancy Donnelly, CPA at (713) 864-1460.

Sincerely
Kathie Bryant
Buena Vista Water System,

cc: Luis Farias
Texas Water Development Board
Project Lead
PO Box 13231
1700 North Congress Avenue
Austin, TX 78711

Nancy Donnelly, CPA
PO Box 842563
Houston, TX 77284

attachment



SIGNATURE

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 25, 2008

CERTIFIED MAIL 91 7108 2133 3935 1946 0513
RETURN RECEIPT REQUESTED

Ms. Kathie Bryant, Owner
Buena Vista Water System
349 County Road 139
Burnet, Texas 78611

Re: Notice of Enforcement for Comprehensive Compliance Investigation at:
Buena Vista WS, 349 CR 139, Burnet (Burnet County), Texas
Public Water Supply ID No. 0270008, RN101190809, Investigation No. 704944

Dear Ms. Bryant:

On October 9, 2008, Lawrence King of the Texas Commission on Environmental Quality (TCEQ) Austin Region Office conducted an investigation of the above-referenced regulated entity to evaluate compliance with applicable requirements for public drinking water systems. During this investigation, certain outstanding alleged violations were documented. Enclosed is a summary which lists the investigation findings.

In the listing of alleged violations, the applicable requirements have been cited, including TCEQ rules. If you would like to obtain a copy of the applicable TCEQ rules, you may contact any of the sources listed in the enclosed brochure entitled *Obtaining TCEQ Rules*. Copies of applicable federal regulations may be obtained by calling Environmental Protection Agency's Publications at (800) 490-9198.

Also, please be advised that the Legislature has granted enforcement powers to the TCEQ to carry out its mission to protect human health and the environment. Due to the apparent seriousness of the alleged violations, formal enforcement action has been initiated, and additional violations may be cited upon further review. We encourage you to immediately begin taking actions to address the outstanding alleged violations.

In responding with prompt corrective action, the administrative penalty to be assessed may be limited.

The Commission recognizes that the great majority of the regulated community wants to prevent pollution and to comply with environmental laws. We dedicate considerable resources toward making voluntary compliance achievable. But where compliance has not been met it is our duty to protect the public and the environment by enforcing the state's environmental laws, regulations, and permits.

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REPLY TO: REGION 11 • 2800 S. INTERSTATE HWY. 35, STE. 100 • AUSTIN, TEXAS 78704-5700 • 512-339-2929 • FAX 512-339-3795

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: www.tceq.state.tx.us

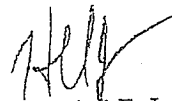
Ms. Kathie Bryant
Page 2
November 25, 2008

Also, if you believe the violations documented in this notice have been cited in error, and you have additional information that we are unaware of, you may request a meeting to discuss this enforcement matter. To request a meeting, send a letter describing the additional information to the address shown below.

Manager, Water Section
Enforcement Division, MC 219
Re: Enforcement Meeting Request
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, Texas 78711-3087

Should you have a question, please do not hesitate to contact Mr. King in the Austin Region Office at (512) 339-2929.

Sincerely,



Herschel E. Janus
PWS Work Leader
Austin Region Office

HEJ/lok

Enclosures: Summary of Investigation Findings
Obtaining TCEQ Rules

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Summary of Investigation Findings

BUENA VISTA WS
119 BUENA VISTA DR
BURNET, BURNET COUNTY, TX 78611

Investigation # 704944

Investigation Date: 10/09/2008

Additional ID(s): 0270008

OUTSTANDING ALLEGED VIOLATION(S) ASSOCIATED TO A NOTICE OF ENFORCEMENT

Track No: 2226 Compliance Due Date: To Be Determined

30 TAC Chapter 290.45(b)(2)(C)

30 TAC Chapter 290.45(c)(2)(C)

Alleged Violation:

Investigation: 704944

Comment Date: 10/17/2008

The water system failed to provide a water production capacity of at least 0.6 gpm for each connection.

Investigation: 874

Comment Date: 06/19/2002

Failure to meet the TNRCC's minimum water system capacity requirements for surface water systems. All surface water supplies must provide the following:

A treatment plant capacity of 0.6 gallon per minute per connection under normal rated design flow.

Transfer pumps (where applicable) with a capacity of 0.6 gallon per minute per connection with the largest pump out of service.

At the time of the investigation, it was noted that the water system did not meet the TNRCC's minimum water system capacity requirements for the sedimentation basin and the transfer pumps. With 118 connections, at 0.6 gallons per minute per connection, the water system must provide a minimum water system capacity of 70.8 gallons per minute (0.102 MGD).

The water system currently provides a sedimentation basin capacity of 56.1 gallons per minute (0.0809 MGD) and a transfer pump capacity of 60 gallons per minute (0.0864 MGD). Both need to provide a minimum capacity of at least 70.8 gallons per minute, based on the current 118 connections. Therefore, both the sedimentation basin capacity and the transfer pump capacity are in violation of the TNRCC's minimum water system capacity requirements.

Recommended Corrective Action: Buena Vista Water System needs to upgrade the system capacity to meet the TNRCC's minimum water system capacity requirements for surface water systems.

Withdrawal Comments: Agreed Order Docket No. 2007-0304-PWS-E was issued and effective on April 14, 2008. Ordering Provision No. 2.d.ii. was due to be completed on July 13, 2008. During an investigation on October 9, 2008, the status of the violation remains outstanding.

Track No: 2231 Compliance Due Date: To Be Determined

30 TAC Chapter 290.45(b)(2)(B)

Alleged Violation:

Investigation: 704944

Comment Date: 10/17/2008

The water system failed to provide a water production capacity of at least 0.6 gpm for each connection.

Investigation: 874

Comment Date: 06/19/2002

All surface water supplies must provide a treatment plant capacity of 0.6 gallon per minute per

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connection under normal rated design flow.

Buena Vista's surface water treatment plant is currently rated at 56 gallons per minute (0.08064 MGD). With the water system's current 118 connections, the water system is required to provide a minimum water system capacity of 70.8 gallons per minute (0.102 MGD).

Therefore, the water system is currently in violation of the TNRCC's minimum water system capacity requirements.

Recommended Corrective Action: Buena Vista Water System needs to upgrade the system capacity to meet the TNRCC's minimum water system capacity requirements for surface water systems.

Withdrawal Comments: Agreed Order Docket No. 2007-0304-PWS-E was issued and effective on April 14, 2008. Ordering Provision No. 2.d.ii. was due to be completed on July 13, 2008. During an investigation on October 9, 2008, the status of the violation remains outstanding.

Track No: 107746 Compliance Due Date: To Be Determined

ORDER 2.c.i

Provide a treatment plant capacity of 0.6 gpm

Alleged Violation:

Investigation: 704944

Comment Date: 10/17/2008

The water system failed to provide a water production capacity of at least 0.6 gpm for each connection.

Investigation: 699996

Comment Date: 08/15/2008

Failed to provide a treatment plant capacity of 0.6 gpm per connection

Investigation: 598042

Comment Date: 10/16/2007

Failure to provide adequate treatment plant capacity. The facility is required to provide a treatment plant capacity of 0.6 GPM per connection. With 123 active retail connections, the facility must provide at least 0.1062 million gallons per day (MGD) (73.8 GPM) treatment capacity. Currently, the facility provides 0.079 MGD (54.8 GPM) based on the limiting component, which is the sedimentation basin capacity. The facility is rated at 0.081 based on the current CT study which uses the filters as the limiting component.

Investigation: 543330

Comment Date: 03/07/2007

Failed to provide a treatment plant capacity, at a surface water supply, of at least 0.6 gpm for each connection.

Investigation: IE0018526001001

Comment Date: 08/07/2003

Failure to meet TNRCCs minimum water system capacity requirements for surface water systems.

Withdrawal Comments: Agreed Order Docket No. 2007-0304-PWS-E was issued and effective on April 14, 2008. Ordering Provision No. 2.d.ii. was due to be completed on July 13, 2008. During an investigation on October 9, 2008, the status of the violation remains outstanding.

Track No: 211701 Compliance Due Date: To Be Determined

30 TAC Chapter 290.42(d)(11)(D)(i)

Alleged Violation:

Investigation: 704944

Comment Date: 10/17/2008

The pressure filters are not equipped with rate of flow controllers.

Investigation: 699996

Comment Date: 08/15/2008

Failed to equip each filter with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

Investigation: 598042

Comment Date: 10/16/2007

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Failure to equip the filters with rate-of-flow indicators.

Investigation: 533380

Comment Date: 12/13/2006

As noted during this CCI and the previous CCIs, the system has failed to provide each filter with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

Investigation: 398279

Comment Date: 07/20/2005

Failed to equip the filters with rate of flow indication.

With the exception of declining rate filters, each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

Recommended Corrective Action: The system should install rate-of-flow controllers as required in 30 Tex. Admin. Code Chpt. 290, Sub. Chpt. D, Section 290.42(D)(11)(D)(i).

The system must comply with requirements established by the Enforcement Division.

Withdrawal Comments: Agreed Order Docket No. 2007-0304-PWS-E was issued and effective on April 14, 2008. Ordering Provision No. 2.b.ii. was due to be completed on May 14, 2008. During an investigation on October 9, 2008, the status of the violation remains outstanding:

Track No: 234456 Compliance Due Date: To Be Determined

30 TAC Chapter 290.45(b)(2)(F)

Alleged Violation:

Investigation: 704944

Comment Date: 10/17/2008

The water system failed to provide a service pump capacity of at least 2.0 gpm for each connection.

Investigation: 699996

Comment Date: 08/15/2008

Failed to provide a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less.

Investigation: 598042

Comment Date: 10/16/2007

Failure to provide adequate service pump capacity at the water treatment plant. The facility is required to provide at least 2.0 gallons per minute (GPM) of service pump capacity per connection. During the September 25, 2007 investigation the system was serving 123 active connections, which requires a service pump capacity of 246 GPM. At the time of the investigation, the facility provided 90 GPM of service pump capacity at the plant.

Investigation: 533380

Comment Date: 12/12/2006

As noted during this CCI and the previous CCIs, the system has failed to have adequate service pump capacity for the system. With a reported 123 active connections and a total of 129 available connections, the system should have a minimum of 246 gallons per minute (gpm) of service pump capacity with the largest pump out of service. The system has a reported 180 gpm total service pump capacity including 3-25 gpm booster pumps located at the booster station supplying pressure plane 2.

Investigation: 458878

Comment Date: 04/20/2006

Failure to provide adequate service pump capacity at the water treatment plant. The facility is required to provide 2.0 GPM of service pump capacity per connection, which amounts to 238 GPM. The transfer pumps at the treatment plant also serve as service pumps. The facility provides 90 GPM of transfer/service pump capacity.

Recommended Corrective Action: Surface water supplies must provide a service pump capacity that provides each pump station pressure plane with two or more pumps that have a total of 2.0 GPM per connection or have a total capacity of 1,000 GPM and the ability to meet the peak hourly demands as required by 30 Tex. Admin. Code Chpt. 290, Sub. Chpt. D, Section 290.45(b)(2)(F). The system does not provide 200 gallons per connection of elevated storage.

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The system must comply with requirements established by the Enforcement Division.

Withdrawal Comments: Agreed Order Docket No. 2007-0304-PWS-E was issued and effective on April 14, 2008. Ordering Provision No. 2.d.i. was due to be completed on July 13, 2008. During an investigation on October 9, 2008, the status of the violation remains outstanding.

**ALLEGED VIOLATION(S) NOTED AND RESOLVED
ASSOCIATED TO A NOTICE OF ENFORCEMENT**

Track No: 107748

ORDER 2.c.iii

Provide a minimum water pressure of at least 35 psi throughout the distribution system under normal operating conditions.

Alleged Violation:

Investigation: 704944

Comment Date: 11/14/2008

On the date of the investigation, the water pressure at 119 Buena Vista Drive was 60 psi and at 108 Vista Verde Drive 40 psi.

Investigation: 598042

Comment Date: 10/16/2007

Failure to provide a minimum operating pressure of 35 pounds per square inch (psi) throughout the distribution system. During the current investigation, field tests were conducted at two locations in the distribution system. At a hose bib located adjacent to the driveway of 113 Las Flores, the pressure was 25 psi. This location has historically low pressure readings.

However, the pressure was not low at all locations in the distribution system. A pressure reading was also taken at 108 Vista Verde. The pressure at this location was 40 psi.

Investigation: 543330

Comment Date: 03/07/2007

Failed to provide water pressure of at least 35 pounds per square inch at all points within the distribution system.

Investigation: IE0018526001001

Comment Date: 08/07/2003

Failure to provide a water pressure of at least 35 psi in all points of the distribution system.

Resolution: On the date of the investigation, the water pressure at 119 Buena Vista Drive was 60 psi and at 108 Vista Verde Drive 40 psi.

Track No: 211696

30 TAG Chapter 290.42(d)(11)(E)(ii)

Alleged Violation:

Investigation: 704944

Comment Date: 11/14/2008

Each filter was equipped with a turbidimeter and recorder and documentation of the work, including photographs, was sent to the TCEQ Austin Region Office on November 10, 2008.

Investigation: 699996

Comment Date: 08/15/2008

Failed to equip each filter with an on-line turbidimeter and recorder.

Investigation: 598042

Comment Date: 10/16/2007

Failure to equip each individual filter with an on-line turbidimeter and recorder.

Investigation: 533380

Comment Date: 12/13/2006

As noted during this CCI and the previous CCIs, the system has failed to have an online turbidimeter and recorder for each of the sand filters. The system was required to install individual filters as of 1/1/2005 unless an exception was granted. An exception had not been granted.

Investigation: 398279

Comment Date: 07/20/2005

Failed to equip each filter with an on-line turbidimeter and recorder.

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The system must comply with requirements established by the Enforcement Division.

Withdrawal Comments: Agreed Order Docket No. 2007-0304-PWS-E was issued and effective on April 14, 2008. Ordering Provision No. 2.d.i. was due to be completed on July 13, 2008. During an investigation on October 9, 2008, the status of the violation remains outstanding.

**ALLEGED VIOLATION(S) NOTED AND RESOLVED
ASSOCIATED TO A NOTICE OF ENFORCEMENT**

Track No: 107748

ORDER 2.c.iii

Provide a minimum water pressure of at least 35 psi throughout the distribution system under normal operating conditions.

Alleged Violation:

Investigation: 704944

Comment Date: 11/14/2008

On the date of the investigation, the water pressure at 119 Buena Vista Drive was 60 psi and at 108 Vista Verde Drive 40 psi.

Investigation: 598042

Comment Date: 10/16/2007

Failure to provide a minimum operating pressure of 35 pounds per square inch (psi) throughout the distribution system. During the current investigation, field tests were conducted at two locations in the distribution system. At a hose bib located adjacent to the driveway of 113 Las Flores, the pressure was 25 psi. This location has historically low pressure readings. However, the pressure was not low at all locations in the distribution system. A pressure reading was also taken at 108 Vista Verde. The pressure at this location was 40 psi.

Investigation: 543330

Comment Date: 03/07/2007

Failed to provide water pressure of at least 35 pounds per square inch at all points within the distribution system.

Investigation: IE0018526001001

Comment Date: 08/07/2003

Failure to provide a water pressure of at least 35 psi in all points of the distribution system.

Resolution: On the date of the investigation, the water pressure at 119 Buena Vista Drive was 60 psi and at 108 Vista Verde Drive 40 psi.

Track No: 211696

30 TAC Chapter 290.42(d)(1)(E)(ii)

Alleged Violation:

Investigation: 704944

Comment Date: 11/14/2008

Each filter was equipped with a turbidimeter and recorder and documentation of the work, including photographs, was sent to the TCEQ Austin Region Office on November 10, 2008.

Investigation: 699996

Comment Date: 08/15/2008

Failed to equip each filter with an on-line turbidimeter and recorder.

Investigation: 598042

Comment Date: 10/16/2007

Failure to equip each individual filter with an on-line turbidimeter and recorder.

Investigation: 533380

Comment Date: 12/13/2006

As noted during this CCI and the previous CCIs, the system has failed to have an online turbidimeter and recorder for each of the sand filters. The system was required to install individual filters as of 1/1/2005 unless an exception was granted. An exception had not been granted.

Investigation: 398279

Comment Date: 07/20/2005

Failed to equip each filter with an on-line turbidimeter and recorder.

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Beginning January 1, 2005, each filter operated by a public water system that serves fewer than 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals.

Recommended Corrective Action: The system should equip each filter with an on-line turbidimeter and recorder as required by 30 Tex. Admin. Code Chpt. 290, Sub. Chpt. D, Section 290.42(d)(11)(E) (ii).

The system must comply with requirements established by the Enforcement Division.

Resolution: Each filter was equipped with a turbidimeter and recorder and documentation of the work, including photographs, was sent to the TCEQ Austin Region Office on November 10, 2008.

Withdrawal Comments: Each filter was equipped with a turbidimeter and recorder and documentation of the work, including photographs, was sent to the TCEQ Austin Region Office on November 10, 2008.

Track No: 262088

30 TAC Chapter 290.46(d)(2)(A)

Alleged Violation:

Investigation: 704944

Comment Date: 11/14/2008

On the date of the investigation, the residual chlorine concentration was 0.99 mg/l.

Investigation: 699996

Comment Date: 08/15/2008

Failed to operate the disinfection equipment to maintain a minimum free chlorine residual of 0.2 mg/L in each finished water storage tank and throughout the distribution system at all times.

Investigation: 598042

Comment Date: 10/16/2007

Failure to maintain a minimum disinfectant residual of 0.2 mg/l free chlorine throughout the distribution system at all times. During the current investigation, the chlorine residual at 108 Vista Verde was 0.04 mg/l. This location has a history of low chlorine residuals due to low usage (vacation homes). The chlorine residual at 113 Las Flores was 0.23 mg/l.

Investigation: 533380

Comment Date: 12/21/2006

As noted during this CCI and the previous CCIs, the system has failed to provide a minimum disinfectant residual of 0.2 parts per million (ppm) free chlorine throughout the distribution system at all times. During this CCI, disinfectant residual was found to be 0.05 ppm at 113 Las Flores St. Additionally, during an investigation conducted on 5/14/2004 residuals were found to be 0.09 ppm and 0.07 ppm, as detailed in investigation reports found in the file.

Recommended Corrective Action: The system should ensure that a minimum disinfectant residual of 0.2 ppm is maintained throughout the distribution system at all times as required by 30 Tex. Admin. Code Chpt. 290, Sub. Chpt. D, Section 290.46(d)(2)(A).

The system must comply with requirements established by the Enforcement Division.

Resolution: On the date of the investigation, the residual chlorine concentration was 0.99 mg/l.

000032

Bullock, Bennett & Associates, LLC * 165 N. Lampasas Street * Bertram, Texas 78605
Telephone: 512.355.9198 * Fax: 512.355.9197

December 27, 2007

Texas Water Development Board
P.O. Box 13231
Development Fund Manager
1700 N. Congress Avenue
Austin, Texas 78711-3231

VIA FEDEX DELIVERY

Re: Pre-Design Funding
Buena Vista Water System
PWS ID No. 0270008; RN101190809

Dear Development Fund Manager:

Bullock, Bennett & Associates, LLC (BBA) has prepared this proposed plan on behalf of Buena Vista Water System (BVWS), located in Burnet County as part of the pre-design funding application.

In accordance with Rule §371.38, BVWS is including in this plan Attachment A: area maps for the purpose of fully locating the project area, Attachment B: a proposed project schedule, Attachment C: estimated project costs and budget including sources of funds, Attachment D: contract for engineering services, Attachment E: population and water use information, and Attachment F: drought contingency plan. The remaining requirements of Rule §371.38 will be addressed in the following numeric format in the sequence shown on Guidance on Preparing Engineering Feasibility Report for Water Supply Projects (DW-002).

1. Name of applicant

Buena Vista Water System (Kathie Bryant, Owner)

2. Name, address and telephone number of project engineers

Bullock, Bennett & Associates, LLC (BBA)
165 N. Lampasas Street
Bertram, Texas 78605
(512) 355-9198

3. Description of service area and need for project

BVWS provides water treatment and distribution for a small subdivision with a population of approximately 390 individuals and approximately 129 service connections. The current BVWS water treatment system is a 20+ years old sand filtration system and currently under Texas Commission on Environmental Quality (TCEQ) enforcement for violations associated with the treatment and distribution systems. The current treatment system has inadequate capacity to comply with TCEQ volume per connection requirements. Additionally, the filters lack automated features such as on-line turbidity meters and recorder, and rate-of-flow indicators. The system also lacks adequate service pump capacity at the plant and booster pump capacity at the booster

Development Fund Manager
December 27, 2007
Page 2

station, as well as adequate storage capacity in the upper and lower planes, and has difficulty maintaining the required 35 psi throughout the distribution system. The system has also experienced exceedances of disinfection by-products and has difficulty maintaining adequate chlorine residuals.

4. Maps or drawings that fully locate the project area

See Attachment A

5. Population and water use information

See Attachment E

6. Description of all alternatives considered

As an alternative to BVWS's current plan, BVWS entered a Wholesale Public Water Services Agreement with the Lower Colorado River Authority (LCRA) in February 2004. On May 30, 2006 the LCRA provided a letter to BVWS nullifying the Wholesale Public Water Services Agreement. After LCRA nullified the agreement, TCEQ revoked a compliance extension and moved forward with enforcement procedures.

7. A discussion of known permitting, social or environmental issues which may affect the alternatives.

BVWS reportedly has no knowledge of any existing permitting or social issues which may affect the alternatives considered and the implementation of the proposed project. However, any environmental issues associated with upgrade construction will be more fully addressed in the Environmental Information Document (EID).

8. Current estimated cost and allocation of costs to each project element including engineering, legal, and other fees

BVWS has completed a preliminary engineering cost estimate to upgrade the treatment, storage, and distribution system to bring it into full compliance with State regulations, and has incorporated the engineering cost estimate into the Estimated Project Budget (WRD-702D) of this pre-design funding application as Attachment C.

9. Project implementation schedule

See Attachment B

Additionally, BVWS has provided in this application the contract for engineering services as Attachment D and BVWS current Drought Contingency Plan (Attachment F) which will ultimately be incorporated into the Required Water Conservation Plan.

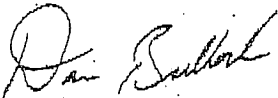
BVWS appreciates the opportunity to submit this pre-design funding application for review. Please feel free to contact me at (512) 355-9198 if you have any questions about this application, or if I can be of any further assistance.

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Development Fund Manager
December 27, 2007
Page 3

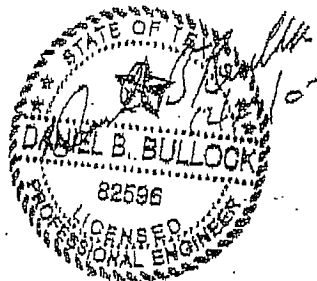
Sincerely,

BBA, LLC



Dan Bullock, P.E.
Principal Engineer

cc: Kathie Bryant (BVWS)
Peggy Hairston (BBA)



ESTIMATED PROJECT BUDGET
 Drinking Water (DW) State Revolving Fund (SRF)
 (Costs of Proposed Project and Sources of Funds)

ITEM	DWSRF FUNDS	OTHER FUNDS (SMWBE SRF)	TOTAL FUNDS
Construction Costs			
WTP Improvements	450,000		450,000
Elevated Storage Tank	70,000		70,000
Ground Storage Tank	7,500		7,500
Distribution Lines	220,000		220,000
Transmission Lines			
Pump Station	8,000		8,000
Other (describe)			
Subtotal Construction Costs	753,500		753,500
Basic Engineering Fees			
Planning Phase		15,000	15,000
Design Phase	20,000		20,000
Construction Phase	20,000		20,000
Subtotal Basic Fees	40,000	15,000	55,000
Special Engineering Fees			
Environmental Information Document		4,000	4,000
Water Conservation Plan ¹		3,000	3,000
Inspection ²	4,000		4,000
Surveying	6,000		6,000
Testing	1,000		1,000
Geotechnical	5,000		5,000
O & M Manual	1,000		1,000
Other (describe)			
Subtotal Special Fees	17,000	7,000	24,000
Bond Issuance Costs			
Financial Advisor			
Bond Counsel			
Bond Insurance			
Other (general attorney & CPA/financial advisor fees)	40,000		
Subtotal Issuance Costs	40,000		40,000
Land, Easements or ROW			
Contingency³ (20%)	170,100	4,400	174,500
Loan Origination Fees (2.25%)	22,964	394	23,558
TOTAL PROJECT COSTS^{4,5}	1,043,564	26,994	1,070,558

¹ Not required if loan amount is less than \$500,00.

² Required on all projects.

³ 15% or more is recommended.

⁴ Previous estimate of \$845,000 revised to reflect cost increases based on updated (12/2007) supplier cost estimates.

Also includes increased facility capacity to provide service for life of loan based on current growth projections.

⁵ Pre-design Funding amount: Planning Phase + EID + Water Conservation Plan = \$22,000.

000036

From: "Luis Farias" <Luis.Farias@twdb.state.tx.us>
To: "Brian DICKEY" <BDICKEY@tceq.state.tx.us>
Date: 5/5/2009 10:30 AM
Subject: Re: Buena Vista water Company pending Loan.

Brian,
The TWDB does not have any pending loan applications nor has it provided any financial assistance to any of the names below. If you have any questions please let me know. Thanks Luis.

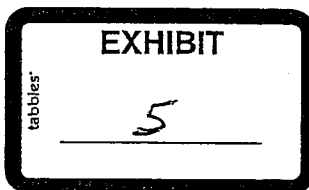
>>> "Brian DICKEY" <BDICKEY@tceq.state.tx.us> 5/4/2009 4:26 PM >>>
Mr. Farias / Walker:

The Texas Commission on Environmental Quality (TCEQ) received an application from Buena Vista Water System (utility) for a surcharge for the construction cost of improvements to the water system. The utility has indicated in the application that they are requesting financial assistance from the Texas Water Development Board (TWDB) to upgrade the treatment, storage, and distribution system. A preliminary hearing for the proposed surcharge has been scheduled for May 11, 2009 at the State Office of Administrative Hearings Office. If staff from the TWDB wish to attend the preliminary Hearing it will be in the William P. Clements Building 4th floor at 10:00 am.

Does the TWDB have a pending loan application for Don M Bryant dba Buena Vista Water System, Buena Vista Water System, or Buena Vista Water System LLC?

Thank You

Brian Dickey
Utilities Technical Review Team
Utilities and Districts Section
Water Supply Division
Texas Commission on Environmental Quality



000037

From: "Luis Farias" <Luis.Farias@twdb.state.tx.us>
To: "Brian DICKEY" <BDICKEY@tceq.state.tx.us>
Date: 5/5/2009 1:27 PM
Subject: Re: Buena Vista water Company pending Loan.

Brian,

I just wanted to add that the purpose of their application to TCEQ for the surcharge was due to their pending application for the 2009 IUP DWSRF funds. Before we can take a private loan to the Board for a commitment we require that a surcharge be in place or the process be in place at TCEQ. The did not send in an application to TWDB for this funding and the deadline to get an application to the Board expired. Thanks

>>> "Brian DICKEY" <BDICKEY@tceq.state.tx.us> 5/4/2009 4:26 PM >>>
Mr. Farias / Walker:

The Texas Commission on Environmental Quality (TCEQ) received an application from Buena Vista Water System (utility) for a surcharge for the construction cost of improvements to the water system. The utility has indicated in the application that they are requesting financial assistance from the Texas Water Development Board (TWDB) to upgrade the treatment, storage, and distribution system. A preliminary hearing for the proposed surcharge has been scheduled for May 11, 2009 at the State Office of Administrative Hearings Office. If staff from the TWDB wish to attend the preliminary Hearing it will be in the William P. Clements Building 4th floor at 10:00 am.

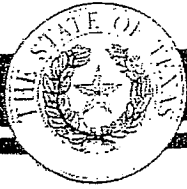
Does the TWDB have a pending loan application for Don M Bryant dba Buena Vista Water System, Buena Vista Water System, or Buena Vista Water System LLC?

Thank You

Brian Dickey
Utilities Technical Review Team
Utilities and Districts Section
Water Supply Division
Texas Commission on Environmental Quality

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TEXAS WATER DEVELOPMENT BOARD



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J. Kevin Ward
Executive Administrator

Jack Hunt, *Free Chairman*
Thomas Weir Labatt III, *Member*
Joe M. Crutcher, *Member*

May 6, 2009

Mr. Mike Wortham
mwortham@281.com

Re: Buena Vista Water System

Dear Mr. Wortham:

Thank you for your email of May 1, 2009. Buena Vista Water System has no existing loans, grants, or pending applications with the Texas Water Development Board.

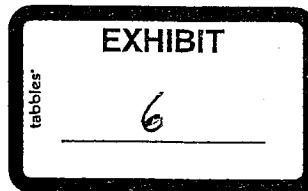
A private water entity, such as Buena Vista, can qualify for Texas Water Development Board funding, but under only one program—the Drinking Water State Revolving Fund (DWSRF) program. Buena Vista Water System was invited to apply for the 2008 and 2009 DWSRF Intended Use Plan for priority ranking to qualify for funding. Buena Vista made an application in 2008. However, that application was never finalized and the deadline to get a loan commitment expired. Buena Vista did not apply in 2009.

Please let me know if I can be of further assistance. I can be contacted at 512/475-1673 or ken.petersen@twdb.state.tx.us.

Very truly yours,

Kenneth L. Petersen
General Counsel

KLP/cks



000041



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TEXAS WATER DEVELOPMENT BOARD



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Executive Administrator

Jack Hunt, *Vice Chairman*
Thomas Weir Labatt III, *Member*
Joe M. Crutcher, *Member*

May 20, 2009

Mr. Ron Olson, Attorney
Environmental Law Division
Texas Commission on Environmental Quality

via Electronic Mail ROlson@tceq.state.tx.us

Re: Buena Vista Water Systems

Dear Mr. Olson:

Ken Petersen, General Counsel for the Texas Water Development Board (TWDB), shared with me your request for certain information regarding applications from Buena Vista Water Systems (Buena Vista) to the TWDB for financial assistance. Specifically, you ask whether the TWDB has a current loan application from Buena Vista, and whether, as a prerequisite to filing a loan application, a utility must collect a cash reserve of 12 months.

I understand that Buena Vista is a private company that supplies water systems in Burnet County and the surrounding area. As a private water supply company, the only loan program managed by the TWDB for which Buena Vista would be eligible is the Drinking Water State Revolving Fund (DWSRF). Our records indicate that Buena Vista submitted a response to solicitation for projects that could be included in the Intended Use Plan (IUP), as required by the DWSRF program, for 2008 and for 2009. Buena Vista was invited to apply for funding in 2008 and in 2009 but never submitted an application. Buena Vista has not responded to the solicitation for the 2010 IUP. Attached is a copy of a letter of May 6, 2009 from Mr. Petersen to Mr. Mike Wortham regarding this issue.

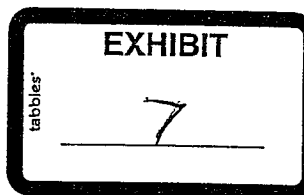
Regarding your second question, the TWDB does not require that a utility collect a cash reserve of 12 months before it can file a loan application. Once an applicant receives a commitment from the TWDB and closes on the loan, it must accumulate a reserve fund of no less than the average annual debt service requirements in equal monthly installments over the initial sixty (60) months following the issuance of the loan. But the accumulation of a 12-month cash reserve is not a prerequisite for filing an application.

If you need further assistance, please feel free to contact me at 512.936.2414 or by e-mail at joe.reynolds@twdb.state.tx.us.

Sincerely,

Joe P. Reynolds
Attorney

Attachment



000043

Our Mission

To provide leadership, planning, financial assistance, information, and education for the conservation and responsible development of water for Texas.

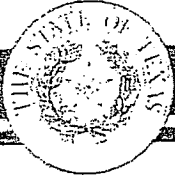
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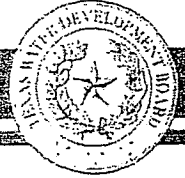


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TEXAS WATER DEVELOPMENT BOARD



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J. Kevin Ward
Executive Commissioner

Jack Hunt, Chairman
Thomas Wenzelabatt III, Member
Roy M. Crutcher, Member

May 6, 2009

Mr. Mike Wortham
mwortham@281.com

Re: Buena Vista Water System

Dear Mr. Wortham:

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Please let me know if I can be of further assistance. I can be contacted at 512/475-1673 or ken.petersen@twdb.state.tx.us.

Very truly yours,

Kenneth L. Petersen
General Counsel

KLP/cks

000045

Our Mission

To provide leadership planning, financing, construction, and operation of water supply and wastewater treatment facilities for Texas.

P.O. Box 13241 • DALLAS, TEXAS 75213 • Phone: 512/475-2231

Internet: www.twdb.state.tx.us • Fax: 512/475-2081 • E-mail: twdb@twdb.state.tx.us

Twdb is a Texas National Resources Interagency System (NARS) State Office.

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