

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

2009 MAY 11 PM 2:54

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

CHIEF CLERKS OFFICE

THE EXECUTIVE DIRECTOR'S MOTION FOR INTERIM RATES

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), and files this Motion for Interim Rates in the above-referenced matter. For the reasons discussed below, the Executive Director ("ED") respectfully requests that the Administrative Law Judge ("ALJ") set an interim surcharge rate of zero dollars (\$0) to remain in effect until a final decision is rendered in this case.

I. Background

On March 9, 2009, an application by Buena Vista Water System ("Applicant" or "Buena Vista") for authorization to begin collecting a surcharge to install new facilities in Burnet County ("Application") was submitted to the Executive Director of the Texas Commission on Environmental Quality. The Application was accepted for filing on March 19, 2009. Notice of the proposed surcharge, with a proposed effective date of June 1, 2009, was provided to the customers by the Applicant. The TCEQ received protests from more than 10%¹ of Buena Vista's ratepayers. Additionally, ED Staff is protesting this application on its own motion.² Therefore, pursuant to Section 291.28 of the Commission's rules, the matter was referred to the State Office of Administrative Hearings ("SOAH") for a contested case hearing.

¹ 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."

² See Exhibit 1

II. An interim surcharge rate should be established in this case.

Texas Water Code Section 13.187(l) states that “at any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect until a final determination is made on the proposed rate.” Title 30 Section 291.29 of the Texas Administrative Code (“TAC”) authorizes the ALJ to establish interim rates in cases filed under the Commission’s original or appellate jurisdiction where the proposed increase in rates is unjust or unreasonable, could result in an unreasonable economic hardship on the utility’s customers, or failure to set interim rates could result in an unreasonable economic hardship on the utility.³

A. The collection of the surcharge is unjust and unreasonable since there is no loan application pending with the Texas Water Development Board.

The Applicant is 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 Texas Water Development Board (“TWDB”). The effective date for this surcharge is June 1, 2009. Mr. Brian Dickey, TCEQ Staff Engineer, contacted Mr. Luis Farias, TWDB Drinking Water State Revolving Fund, to inquire whether the Applicant has applied for a loan. Mr. Farias informed Mr. Dickey that this Applicant had not submitted a current loan application to the TWDB and that the deadline to submit an application had expired.⁴ To further support that this Applicant does not have a current loan application, the TCEQ received a copy of a letter from Mr. Ken Peterson, General Counsel for the TWDB, to Mr. Mike Wortham (Protestant) stating that Buena Vista had not applied for a loan in fiscal year 2009.⁵

The Applicant acknowledges in its surcharge application filed with the TCEQ that the purpose of the proposed surcharge is for a TWDB loan.⁶ The customers of Buena Vista should not be obligated to begin paying a monthly surcharge for a loan for which the Applicant has not even applied. The deadline to apply for a fiscal year 2009 TWDB loan has expired. Moreover, whether Buena Vista will be issued a loan in subsequent fiscal years is pure speculation. It is unjust and unreasonable for the Applicant to collect a surcharge to pay off a loan that the Applicant has not received and will not receive in the near future. Buena Vista should not be allowed to collect a surcharge for a loan until funds are actually committed and extended to the

³ 30 TEX. ADMIN. CODE § 291.29(d)

⁴ See Exhibit 2

⁵ See Exhibit 3

⁶ Applicant’s Surcharge Application, pg. 3 Section 1B, Subsection E. See Exhibit 4

utility from the TWDB. Accordingly, the ED requests that the ALJ set an interim surcharge rate of zero dollars in this case until a final determination is made.

B. The proposed surcharge places an unreasonable economic hardship on ratepayers.

The Applicant is proposing to collect a surcharge of \$56.50 per connection per month for 240 months. This would escalate the average ratepayer's water bill to over \$100 per month for the next 20 years. Many of Buena Vista's customers are retirees who live on a fixed income.⁷ 30 TAC Section 291.29(d) authorizes the ALJ to establish interim rates where the proposed rate could result in an unreasonable economic hardship. To require the ratepayers to pay a monthly surcharge of \$56.50 extra on their water bill, for a loan that the utility does not have, places an unreasonable economic hardship on the ratepayers. The ratepayers should not have to stretch their financial resources to pay for a loan that the utility was not granted. Accordingly, the ED requests that the ALJ set an interim surcharge rate of zero dollars in this case until a final determination is made.

C. Establishing an interim rate would not result in an economic hardship for the utility.

The Applicant filed an application with the TCEQ for authorization to begin collecting a surcharge to cover loan payments for a TWDB loan. However, the Applicant did not submit a current loan application with the TWDB and, therefore, will not receive a loan for fiscal year 2009. As a result, the Applicant does not have loan payments that it is obligated to pay. Accordingly, there is no present need to begin collecting a surcharge from its ratepayers. Therefore, establishing an interim rate of zero dollars for the surcharge will not place the utility in an economic hardship. Thus, the ED requests that the ALJ establish an interim surcharge rate of zero dollars in this case until a final determination can be made.

III. If an interim rate is not established, all surcharge amounts collected should be placed in escrow.

Alternatively, if interim rates are not established, the ED requests that the whole surcharge amount collected each month be placed in an escrow account. 30 TAC 291.29(e)(3) authorizes the ALJ to require that all or part of the requested rate increase be deposited in an escrow account in accordance with Section 291.30 of the Commission's rules.

⁷ Prefiled Direct Testimony of Michael Wortham, pg. 11. SOAH Docket No. 582-08-2245 See Exhibit 5

The Applicant's surcharge application requests the authorization to collect a surcharge to make payments on a TWDB loan. To ensure that the surcharge amounts are used solely for payments on a TWDB loan, the surcharge collected should be placed in escrow so that the funds are easily accounted for and are not comingled with the utility's other funds. Upon final determination of this proceeding, the funds will either be returned to the customers or released to the utility. Accordingly, the ED requests, if interim rates are not established, that the Applicant be required to place all surcharge amounts collected into an escrow account only to be released once the utility is obligated to make payments on a loan from the TWDB.


IV. Conclusion

Since the Applicant does not have a current loan application with the Texas Water Development Board, the Applicant will not be granted a loan for fiscal year 2009. Accordingly, the Applicant's proposed surcharge is unjust and unreasonable and places an unreasonable economic hardship on the utility's ratepayers. Furthermore, establishing an interim surcharge rate of zero dollars will not create an economic hardship on the utility because the utility is not receiving funds from the TWDB and is under no obligation to make any loan payments. Therefore, the Executive Director respectfully requests that the ALJ establish an interim surcharge rate of zero dollars in this matter until a final determination can be rendered.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
Ron M. Olson, Staff Attorney
Environmental Law Division
State Bar of Texas No. 24056070
P.O. Box 13087, MC-173
Austin, Texas 78711-3087

REPRESENTING THE
EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

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.

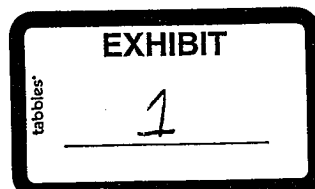
If you have questions about this process or what material you should bring with you to the hearing, please contact Ms. Elsie N. Pascua at (512) 239-5367, or Mr. Brian Dickey at (512) 239-0963.

Sincerely,

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

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

DH/ENP/BD/as



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



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



TEXAS WATER DEVELOPMENT BOARD



James E. Herring, *Chairman*
Lewis H. McMahan, *Member*
Edward G. Vaughan, *Member*

J. Kevin Ward
Executive Administrator

Jack Hunt, *Vice 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.

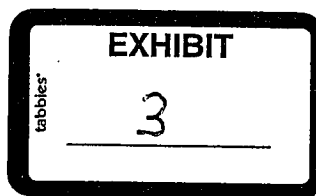
A private water entity, such as Buena Vista, can qualify for Texas Water Development Board funding, but under only one program—the Drinking Water State Revolving Fund (DWSRF) program. Buena Vista Water System was invited to apply for the 2008 and 2009 DWSRF Intended Use Plan for priority ranking to qualify 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



Our Mission

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

P.O. Box 13251 • 1100 N. Congress Avenue • Austin, Texas 78711-3251
Telephone (512) 463-7817 • Fax (512) 475-2053 • 1-800-RELAY TX (for the hearing impaired)
www.twdb.state.tx.us or twdb.state.tx.us

TNRIS: Texas Natural Resource Information System • www.tnris.state.tx.us
A Member of the Texas Natural Resource Information Council (TNRIC)



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"/>	NO	Individual
<input type="checkbox"/>	NO	Partnership
<input type="checkbox"/>	NO	Corporation. Provide Charter Number
<input type="checkbox"/>	NO	Sub Chapter-S Corporation
<input checked="" type="checkbox"/>	X	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

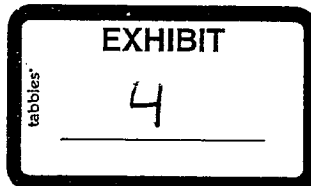
If the applicant is a corporation, please provide a copy of the corporation's "Certificate of Account Status" (regarding the payment of franchise taxes) from the State Comptroller's Office. This "Certificate of Account Status" can be obtained from:

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>

RECEIVED

MAR 9 2009

TEXAS COMMISSION
 ON
 ENVIRONMENTAL QUALITY



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 for TWDB loan interest loan application. Purchase 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.

EP

AFFIDAVIT

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 20 09 (mail or hand delivery)

Kathie Bryant

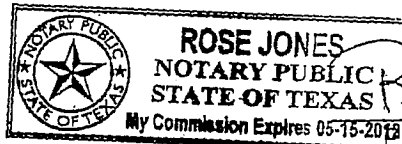
Affiant (Utility's Authorized Representative)

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



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 33

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> Company Address	<u>Burnet</u> City	<u>TX</u> State	<u>78611</u> Zip	<u>793-2767</u> Telephone
<u>84,744</u> Annual Revenue Increase			<u>02-27-09</u> Date Customer Notice Mailed	
<u>09-01-07</u> Date of Last Rate Change			<u>Last day of the month</u> 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 Counsel at 512/239-6363.

Don M Beyant d/b/a
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	

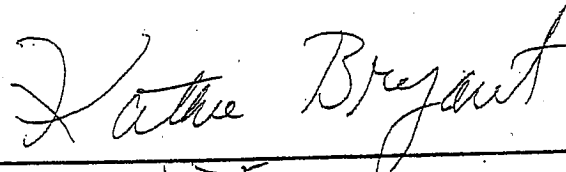
Buena Vista Water System, is requesting financial assistance from the Texas Water Development Board to upgrade the treatment, storage, and distribution system to bring it into full compliance with state regulations. Please feel free to contact me at (512)793-2767 or Nancy Donnelly, CPA at (713) 864-1460.

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.

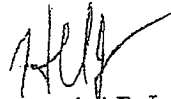
Ms. Kathie Bryant
Page 2
November 25, 2008

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

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

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

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.

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.

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)(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.

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.

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
PWE 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.

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	6,000		6,000
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	504	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.

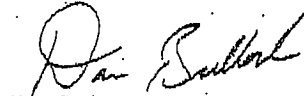
Also includes increased facility capacity to provide service for life of loan based on current growth projections.

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

Development Fund Manager
December 27, 2007
Page 3

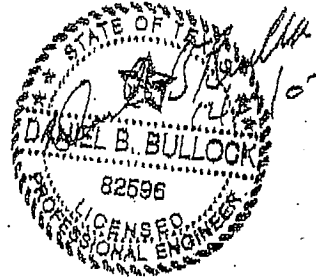
Sincerely,

BBA, LLC



Dan Bullock, P.E.
Principal Engineer

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



MICHAEL D. WORTHAM
P.O BOX 1002
BUCHANAN DAM, TEXAS 78609

DATE: August 15, 2008
TO: Attached Service List
RE: SOAH DOCKET NO.582-08-2245, TCEQ DOCKET NO. 2007-1878-UCR


APPLICATION OF BUENA VISRA WATER SYSTEM (BVWS) TO CHANGE
WATER RATES AND TARIFF UNDER CCN NO. 11656

Per instructions contained in Order Number 1 of The Honorable Judge Newchurch, Rate Payers provide this prefiled testimony of Michael Wortham for the above referenced proceeding.

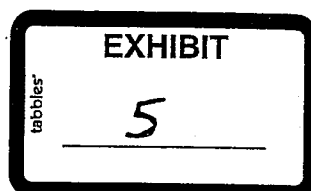
Additionally, Rate Payers designate the following as potential witnesses to be called upon in the administrative hearing:

1. John Miloy, Rate Payer and previously Buena Vista POA
2. Louis Bryant, Rate Payer and previously Buena Vista POA
3. Barbara Mathews, Rate Payer
4. Tom and/or Violet Olson, previously BVWS employees and previously Rate Payers

Sincerely,



Michael Wortham



SERVICE LIST

SOAH DOCKET NO.582-08-2245, TCEQ DOCKET NO. 2007-1878-UCR

APPLICATION OF BUENA VISRA WATER SYSTEM (BVWS) TO CHANGE
WATER RATES AND TARIFF UNDER CCN NO. 11656

TCEQ Executive Director
Ron Olson
TCEQ Environmental Law Div.
P.O. Box 13087
MC-173
Austin, TX 78711-3087

Office of Public Interest Council
Eli Martinez
P.O. Box 13087
MC-103
Austin, TX 78711-3087

TCEQ Office of Chief Clerk
Docket Clerk
P.O. Box 13087
Austin, TX 78711-3087

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

GDS Associates, Inc.
George Freitag
919 Congress Ave., Suite 800
Austin, TX 78701

SOAH DOCKET NO. 582-08-2245
TCEQ DOCKET NO. 2007-1878-UCR

IN THE MATTER OF THE
APPLICATION OF KATHIE BRYANT
dba BUENA VISTA WATER SYSTEM,
TO CHANGE WATER RATES,
BURNET COUNTY TEXAS, CCN 11656

THE RATE PAYERS DIRECT TESTIMONY OF
MICHAEL D. WORTHAM

Q. Please state your name and business address for the record.

A. Michael D. Wortham. I am retired. My home address is 118 Mountain View Circle, Buena Vista, Burnet, TX.

Q. Please describe your education and prior business experience.

A. I hold degrees in Chemical Engineering from Columbia University in NY, NY and Chemistry from The University of the South in Sewanee, TN. I was employed by Exxon Chemical for 34 years where I held many positions including the development of project investment economics and leading negotiations for international joint ventures.

Q. Are you representing the rate payer customers of Buena Vista Water System (BVWS)?

A. Yes. I am a rate payer, a resident of Buena Vista Subdivision, and an officer of the Buena Vista Property Owners Association (BV POA). Members of my family have lived in Buena Vista since 1948.

Q. What is your major concern about BVWS's request for a rate increase?

A. Our concern is a lack of veracity by BVWS in dealing with Rate Payers, TCEQ, and others on this and previous applications for rate increases. We believe that past examples of unfulfilled commitments and blatant lies help to put BVWS's testimony in context.

Q. Do you have specific examples?

A. Our first example concerns applications for rate increases claiming expenses for improvements which never occurred. The latest TCEQ ENFORCEMENT ACTION on BVWS (Docket No. 2007-0304-PWS-E, Enforcement Case No. 5864, effective April 14, 2008) states that by May 14, 2008, BVWS must equip each of four filters with its own online turbidity meter and recorder (**Exhibit RP 1**). And yet, BVWS's application for a rate increase in 2001 (Case No. 33513), lists on page 9 in a note to "Miscellaneous":

"Turbidity monitors on each of 4 filters, Labor" (**Exhibit RP 2**). This exhibit is a copy from TCEQ Central Files film for Rate Case No. 33513.

The 2001 rate case was uncontested. BVWS was granted an increase of 26% (**Exhibit RP 3**). Even with this extraordinary rate increase, BVWS did not install turbidity meters on each of four filters as indicated on the application. BVWS's expense claim on their rate application was false. This is typical of false statements in the current rate application which will be addressed in this testimony.

Q. Was there anything else unusual about the 2001 Rate Case?

A. Yes, BVWS requested an increase of 15%, but BVWS was granted an increase of 26% as shown in Summary Table **Exhibit RP 3**. BVWS Rate Increase Application (**Exhibit RP 4**) shows they requested a base rate of \$33/month (includes 2,000 gallons). This is the rate that Rate Payers did not protest. The October 5, 2001 letter and attached tariff from TCEQ to BVWS (**Exhibit RP 5**) shows a base rate of \$33/month (includes 0 gallons). Rate Payers were never made aware that this higher rate was an option so they never had an opportunity to protest. Consistent with BVWS standard practice, BVWS gave no notification or communication to Rate Payers of a rate increase. BVWS certainly did not announce an increase of higher than the requested rate. BVWS monthly bills include information on meter readings, the amount of water used, and the dollars due. Rate Payers have no way of knowing the approved rate or the actual rate being charged unless they back calculate the bill. Inquiries about “How do you calculate the extension from gallons to dollars” are met with shouting, cursing, and phone hang-ups. This was my personal experience in July of 2007 when I became aware of BVWS charging unapproved rates.

We do not believe that BVWS asked for this higher rate. We believe that BVWS was not aware of this higher rate. BVWS never charged this higher rate until a few years later when it was pointed out to BVWS by TCEQ staff during their multiple applications for Rate Case No. 34903. Rate Payers were never told of this higher rate structure with zero gallons included in the base rate even when BVWS finally implemented the zero gallons included as part of the next rate case. We believe it must have been a clerical error by TCEQ that should be corrected by TCEQ. We believe the granted rate should reflect what BVWS requested and Rate Payers chose not to protest, i.e.:

Base Rate	\$33.00/month (<u>includes 2,000 gallons</u>)
Water Usage	\$2.75/K gallons

Q. Do you have other examples?

A. Yes. For BVWS’s previous Rate Case (No. 34903), the initial filing was 11/9/2004. Over 10% of rate payers protested, but rate payers were not notified of any hearings by BVWS as required. TCEQ staff protested at the Preliminary Hearing. Ultimately, after a SOAH Hearing on the Merits, TCEQ Commissioners issued an Order on September 20, 2006; and on January 24, 2007, they confirmed this Order after a Rehearing. TCEQ Commissioners denied the requested rate increase. The Ordering Provision stated:

- “4. Don M. Bryant d/b/a Buena Vista Water System shall refund or credit against future bills all sums collected during the pendency of rate proceeding in excess of the rate finally ordered plus 6% interest over a two year period, with repayments to end at such time as the total amount of the excess rate collection is returned.
- “5. Don M. Bryant d/b/a Buena Vista water System shall notify customers, by mail, of the final rate structure within 30 days of the date of this Order.”

BVWS did not notify Rate Payers as ordered. BVWS did not refund the unapproved rates collected over 17 months. BVWS did not revert to the approved rate. BVWS continued to charge an unapproved rate for 11 more months. Then BVWS filed a new rate case. On the effective date, BVWS seamlessly and with no notice to Rate Payers, changed the rate to that requested in the current rate case. Now we are 40 months and counting into rapid

fire rate cases. For 40 months and counting, Rate Payers have paid rates above the approved rate (**Exhibit RP 6**). BVWS's only response to the TCEQ Commissioners Ordering Provision was to file a new rate case which was received at TCEQ on June 18, 2007, a few months after the January 24, 2007 confirmation of denial. The business plan appears to be:

- File a rate case and start charging the requested rate on the effective date.
- Do not refund excessive collections when the rate case is denied.
- Continue to charge an unapproved rate until you can get a new rate case in place.
- File a new rate case immediately, and start charging the requested rate on the effective date. Claim that you were "railroaded"
- And so on.

In the past 14 years, there have been only 4 years without an active rate case. During these 14 years, only 2 rate increases have been granted. We have specific proof of gaming the system for the past 40 months (**Exhibit RP 6**). We have no data on the earlier years. This fraud would have been more difficult to hide if BVWS had been required to show their water rate on their monthly bills to Rate Payers along with the calculation extension.

Over the past 14 years, BVWS's facilities have declined from neglect and lack of reinvestment. Rate Payers would have been much better served if BVWS had devoted more time and effort to operating and improving the water system rather than focusing on submitting so many rate cases. BVWS would have been in much better condition today if they had devoted more effort and funds to operations and maintenance. But maybe this was a plan to increase revenue while bypassing TCEQ's approval. And expenses to pursue rate increases can be used to justify the next rate increase.

In BVWS's response to Rate Payers' Discovery, BVWS admitted that it had not refunded over collections from the previous rate case. In all earlier discussions, BVWS denied that it owed refunds to any Rate Payer. In same Discovery, BVWS stated that reimbursement would begin in August, 2008—that is, on Rate Payer bills that arrive in September. This is 2 years after the Commissioners Order. Denials of any refunds due to Rate Payers continued through the time of the Prehearing and continued until BVWS's response to Discovery.

In BVWS's response to Rate Payers' Discovery, BVWS continued to deny that an unapproved, illegal rate was charged between Rate Cases. This is a false statement as shown in (**Exhibit RP 6**). Rate Payer bills for this period were sent to TCEQ to prove this over billing, and the original water bills are available.

Q. What rate is being charged today?

A. As allowed by TCEQ, BVWS has been charging the requested, new rate of \$40/month (includes 0 gallons) plus water usage charge of \$3.25/K gallons (**Exhibit RP 6**). For 40 months, rate payers have paid rates higher than the current approved rates. Judge Newchurch advised us at the Preliminary Hearing that the burden of proof is on the Utility, and we see no such proof in BVWS's prefiled testimony. We expect this rate

request to be denied. We estimate that BVWS will owe refunds to rate payers of over \$20K.

Q. Do you have any comments on the applicant's prefiled testimony?

A. Yes. It speaks to 7 years of undocumented income and expenses. This includes "newly discovered expenses" with no documentation. Applicant has admitted that over these 7 years BVWS and Kathie Bryant shared a checking account with no documentation of expenses charged to commingled funds. For BVWS's previous rate case (No. 34903), TCEQ Commissioners issued an Order on September 20, 2006; and on January 24, 2007, they confirmed this Order after a Rehearing. The FINDINGS OF FACT stated:

- "13. Applicant and Kathie Bryant shared a joint checking account, a house, and a vehicle, with Applicant paying a substantial portion of household expenses and all vehicular expenses.
- "14. Although Commission staff requested Applicant's financial records to separate personal expenses from Applicant's expenses, Applicant only provided copies of check stubs and unidentified and uncategorized invoices and receipts, attributing the deficiency in records to unavailability.
- "15. Applicant's accounting was in disorder, due to the commingled nature of the funds.
- "16. Applicant failed to keep and submit financial books and records to support the proposed rate structure as provided in the application."

There is no data to support a "new" Income Statement for 2001 through 2007.

Apparently, nothing has changed from Rate Case No.34903. This new rate case was filed within months of the final resolution of the previous case and the urgency to file a new rate case took precedent over correcting deficiencies. The owner of BVWS, Kathie Bryant, continues to commingle her personal funds with Applicant's business funds. Now Applicant's testimony states:

"The books will soon be kept so that there will be no allegations that they are connected with personal expenses of the owner."

This statement has nothing to do with the test year. This statement continues a pattern of after the fact promises to correct longstanding problems. On April 5, 2008 at the Buena Vista POA annual meeting, Kathie Bryant told Rate Payers that all such problems had been corrected. Also, she stated that BVWS had been granted a large loan by the Texas Water Development Board (TWDB), and with this funding, she would begin construction of a new water plant soon. All of her statements were false. BVWS has had over 14 years to address the many problems that are dragging it under, and the only response has been many such diversionary promises.

The restated income now shows loses in all years, 2001 to 2007. This “new data” is not consistent with previously provided information such as:

- Annual Income Reports that BWS submitted to TCEQ
- Application for Rate Case 5/3/2001
- Application for Rate Case 3/30/2005
- Application for Rate Case 6/18/2007

One wonders why the owner of such a money losing business did not accept LCRA’s generous offer to buy this money losing business. One wonders if this long history of dismal profitability and mismanagement has been shared with the TWDB.

A plan to incorporate is not germane to economic data from the test year of 2006. But one wonders why incorporate so the dba owner cannot pass through these alleged losses on her tax return? Are these “new” losses consistent with IRS filings?

Incorporation may offer some liability protection for Kathie Bryant, and she may need this liability protection. But incorporation alone does not grant liability if the “corporation” is not meeting all operating and accounting guidelines. There is nothing of substance in this testimony.

Q. Since the testimony submitted by BVWS does not address any of the material issues in their requested rate do you have any other comments?

A. The Rate Payers do not have the resources or expertise of TCEQ. We appreciate TCEQ staff representing our interests in a neutral manner during the last rate case since we were not present. We expect TCEQ staff’s analysis will be similar to the last rate case since this rate case follows so closely behind the previous one. The rapid filing of a new rate case took precedent over correcting major problems like commingling personal and business funds. We followed Judge Newchurch’s advice that the burden of proof is on the Utility, and under his advice, we did not hire outside expertise. We are not capable of an audit as is TCEQ staff. This leaves us in the uncomfortable position of having an application with numbers in boxes. Can BVWS verify and document each number in each box? BVWS has a history of incorrect data submissions. The last rate case is an excellent example of BVWS’s lack of respect for the data or the truth.

We believe that the rate structure proposed by TCEQ staff and supported by OPIC counsel is appropriate since nothing has changed from the last rate case. The staff stated the rate structure which could be supported by BVWS was:

Base Rate	\$18.69/month (includes 0 gallons)
Water Usage	\$3.00/1,000 Gallons

Q. Do you have any comments about the data in BVWS's application for a rate increase or BVWS's response to Discovery?

Applicant's testimony did not speak to the data in BVWS's Application for a Rate/Tariff Change form which was received by TCEQ on June 21, 2007.

- It does not speak to "Electric Utilities of \$4,137" which Applicant's Response to TCEQ Discovery Interrogatory number 9 admitted was a duplicate entry. Correcting this error reduces expenses on Table VI.A by \$4,137.
- It does not speak to "Loan Interest Expense" which is included in "Miscellaneous Expenses". When Applicant responded to Rate Payers' Discovery Interrogatories No. 10 and 11 they listed interest expense summarized below.

Actual for 2006	\$ 782
Known and Measurable	\$ 1,712
Total Loan Interest	<u>\$ 2,494/Year</u>

Rate Payers' Discovery Request for Production No.6 to produce "any loan documents for loans granted or pending for the past five years to date pertaining to BVWS". Applicant's response is that BVWS only applied to the Texas Water Development Board for a loan in January of 2007. This loan was not granted in 2007 as Applicant told Rate Payers. Applicant gave no documents to support this loan interest expense or the existence of any loan. Correcting this error reduces expenses on Table VI.A by \$2,494.

- It does not speak to health and life insurance for the owner of BVWS. As the owner of BVWS, these insurance expenses should be paid by Kathie Bryant, not BVWS. Correcting this error reduces expenses on Table VI.4 by \$4,102.

Health Insurance	\$3,250
Life Insurance	\$ 852
Total	<u>\$4,102/Year</u>

- It does not speak to the 2003 Dodge maroon pickup truck which is driven exclusively by Kathie Bryant for her personal and business use. Kathie Bryant has never been seen by residents driving a 1998 Ford pickup truck. There is only one road entering or leaving Buena Vista. Residents who live at this entrance road will testify that they see Kathie Bryant coming and going daily in her maroon pickup truck. They will testify that they have never seen her in any other vehicle. Kathie Bryant told TCEQ staff that her daughter drives the 1998 Ford pickup truck, and she admitted this again in Discovery.

Kathie Bryant only drives one truck for her personal and business use. She has no records of this use. She has no maintenance records. All costs for this truck should be deleted as they were in the last rate case.

Annual Depreciation	\$3,705/year
2006 net book value (\$10,497x12%)	\$1,260
2006 auto expense	\$2,423
Known and Measurable	\$500
Auto Insurance	\$597
Total	<u>\$8,485/year</u>

The 2003 Dodge pickup was purchased new with less than 100 miles in October of 2003. Kathie Bryant's response to Discovery states the truck currently has odometer reading of 30,000 miles. Annual mileage is approximately 6,200/ year for personal and business use. A round trip from Kathie Bryant's home and the water plant is 1.5 miles. According to the people who live next to the water plant, Kathie Bryant typically visits the water plant once each day. This accounts for only 550 miles. We believe that Kathie Bryant's business use of this truck is only about 1,000 miles/year. The majority is personal use. Kathie Bryant has presented no log or record of use.

- It does not speak to the Rate Payers' water meters which are carried by BVWS as a capital investment. However, these meters were financed 100% by customers in their tap fees. Correcting this error reduces :

2006 Net Book Value (\$1,252x12%)	\$150/year
Annual Depreciation	\$155
Total Annual Reduction	<u>\$305/year</u>

- It does not speak to charges for BVWS's office which is in Kathie Bryant's house. It appears BVWS pays \$3,000/year to Kathie Bryant as rent for this office space. But BVWS also is charged a pro rata of house expenses based on the percentage of house area used for this home office. Correcting this double dip reduces annual expenses by \$3,000.
- It does not speak to the \$17,000 of double counting that TCEQ staff highlights in the Executive Director's Discovery. The implication is that a 12% return on net book value is accounted for correctly in the investment portion of the application. However, TCEQ staff implies that this same amount is incorrectly charged to "Miscellaneous". If this is correct, this mistake reduces annual expenses by \$17,000.

This analysis with our meager resources totals to approximately \$40,000 in overstated costs as shown in the summary table.

Electric Utilities	\$4,137
Loan Interest Expense	\$2,494
Health and Life Insurance	\$4,102
Vehicle Costs	\$8,485
Water Meters	\$ 305
Office	\$3,000
Miscellaneous	<u>\$17,000</u>
	\$39,523

We expect the more experienced TCEQ staff to identify additional overstated and/or undocumented costs as they did in the last Rate Case. We expect they will refine our attempt at auditing with limited data. However, the real problem highlighted by our analysis is that numbers in boxes have no meaning unless they can be verified. BVWS has a history of submitting incorrect numbers. The loan application to TWDB uses numbers that are different from those used with the rate application for TCEQ. We suspect the numbers were skewed to support differing positions taken by BVWS at TCEQ and TWDB. Data which is skewed to support a position is not verifiable data. When so many erroneous numbers are found in a simple screening, common sense demands that all numbers must be questioned, and all numbers must be rigorously verified.

Q. What is the status of refunds to Rate Payers discussed earlier?

- A. During Discovery for the current rate case, BVWS admitted that rate payers were never notified by mail as ordered. In fact, BVWS denied in writing that the 2005 rate case had been denied. Rather she maintained that her application had been "declared ""Administratively Incorrect"" due to clerical errors". (EXHIBIT RP 7). In Discovery for the current case, BVWS admitted that rate payers were never refunded for a period of two years. BVWS did not refund or credit Rate Payers as ordered. I could find no rate payer who was notified verbally or in writing. I could find no Rate Payer who was aware that they were owed a refund. All rate payers with whom I discussed this matter were angry, and felt Kathie Bryant was stealing from them.

The Rate Payers Discovery for this case requested a table listing the amount owed to each rate payer and how these numbers were calculated. BVWS's response:

"Reconciliation is complete. Reimbursement to begin in August, 2008. Instead of a Table, each account has a separate reconciliation and will be made available. Note that a few customers may not be due a refund and actually may owe additional funds."

BVWS's August water bills which were received in September did indeed contain a hand written number. Some hand written numbers were preceded by a plus sign while others had a minus sign. There was no explanation. There was no justification. Kathie Bryant's verbal response to Rate Payer questions:

"I cannot explain the adjustments. I have no reconciliation. If you owe more money, it is because you did not use enough water"

The Rate Payers deserve a written reconciliation showing calculations and an explanation of the written authority to justify the calculations. The Rate Payers deserve refunds with a written reconciliation for the unapproved water rates charged by BVWS between the last rate case and the current rate case.

Q. Do you have any comments about water quality?

- A. BVWS Rate Payers pay a hidden tax for poor water quality. Most Rate Payers buy bottled water or invest in water treatment systems to protect them from BVWS water. On September 11, 2008, Rate Payers received yet another reminder of why we buy bottled water (**Exhibit RP 8**). This mandatory, undated warning states that trihalomethanes (THM) are extraordinarily high. We have received these warnings before, always undated. Each time there is another empty promise to correct the problem. At least this year's empty promise is closer to the truth. Previously, Kathie Bryant consistently insisted that the loan from the TWDB had already been granted. Now she admits to only a loan application. A few years ago, a local TV station had a segment on BVWS as one of the worst offenders in the state for dangerously high THM. This type of publicity harms home values.

Some Rate Payers have had to replace corroded pipes in their homes at great expense. BVWS has a long history on wide fluctuations in chlorine (Cl). When Cl is low, the water is not safe to drink. When the Cl is high, pH is reduced into the acidic range, and corrosion accelerates to damaging levels.

The poor operating procedures of BVWS have caused significant monetary damage to the Rate Payers. BVWS should not be rewarded with a rate increase that might be appropriate for a well managed water system. We believe a significant reduction is in order.

Q. What are your conclusions?

- A. For 14 years, BVWS has suffered from mismanagement, and the Rate Payers have been damaged. BVWS has emphasized increasing water rates as demonstrated by their 8 separate Rate Case applications found in TCEQ Central Files. Rate Case applications have been filled with self-serving, false numbers. As documented in the last two Rate Cases, business and personal funds have been commingled in a single checking account.

Rate Payers have documented 40 months of charges that are above approved rates. BVWS has ignored Orders from TCEQ Commissioners including Orders to repay Rate Payers.

While rate cases were being filed and rapidly refiled, there has been no urgency to invest or correct operating deficiencies. The last significant investment was in 1987 when Don Bryant owned and operated BVWS. The small investments since then should be classified as unavoidable maintenance to replace worn out or broken components. In recent years, the largest investment was for a personal truck. BVWS has been under

Enforcement Orders during this time, and BVWS's refusal to invest should be seen as a refusal to correct deficiencies listed in these Enforcement Orders.

Rate Payers continue to pay hidden taxes for poor quality. BVWS has made no investment in recent years to correct these quality deficiencies. Their only plan is to invest in a new, small plant with an extraordinarily high cost-to-serve because of the lack of economies of scale and the low number of customers. This is an unworkable business plan. Projected water rates of over \$100/month will provide more than adequate incentives to waterfront Rate Payers to reactivate individual water systems and disconnect from BVWS. They would rejoin the majority of Inks Lake residents who continue to operate individual water systems. If waterfront customers disconnect from BVWS, only half of the Rate Payers would remain to carry the financial burden of a large loan. This would require water rates of \$200/month which is unfair and unmanageable. Buena Vista has many retired residents on fixed incomes who cannot pay such high water bills. BVWS would default on the unwise loan. Loans for this economically unfeasible plan have been denied in the past. Hopefully, the TWDB will not squander our state funds on such an unwise investment.

BVWS should not be rewarded for such mismanagement and deceit. Kathie Bryant has poisoned customer relations by mistreating her customers for years, and she has fostered an adversarial relationship. There was a time when many if not most Rate Payers would have been willing to help her if they were able. Today, few if any Rate Payers want to continue with the current management of BVWS. Kathie Bryant should have banked a good portion of the \$700K revenue she has collected. It is past time for Receivership. BVWS's CCN should be removed. Rate Payers should be given the CCN, and they should have the opportunity to finalize plans for a new approach to supply quality water at reasonable rates.

Q. Does this conclude your testimony?

A. Yes.