

STATE OF TEXAS

§

BEFORE THE

§

COMMISSIONERS' COURT

COUNTY OF MIDLAND

§

OF MIDLAND COUNTY, TEXAS

FILED FOR RECORD  
2009 DEC 11 AM 8:01  
CHERYL BECKER  
CLERK  
MIDLAND COUNTY, TX.  
BY Coleen White DEPUTY

**SUPPLEMENTAL PETITION REQUESTING CREATION OF A FRESH WATER  
SUPPLY DISTRICT TO BE KNOWN AS  
"MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1"**

TO THE HONORABLE JUDGE AND COMMISSIONERS OF MIDLAND COUNTY:

COMES NOW Fort Stockton Holdings L.P., a Texas limited partnership (hereinafter the "Petitioner") and files this supplement to the petition originally filed with the County Clerk on November 13, 2009 (the "Petition"), and presented to the Honorable Commissioners' Court of Midland County (hereinafter the "Court") for the creation of the Midland County Fresh Water Supply District No. 1 (hereinafter the "District") *see* TEXAS WATER CODE §§ 53.011, 53.013, 53.019, and in support thereof would show the Court as follows:

**I.**

**Section 42.042 Consent Resolution**

Pursuant to Section 42.042, TEXAS LOCAL GOVERNMENT CODE, a copy of which is attached hereto as Appendix "A," the Petitioner sought and obtained the consent of the City of Midland, acting by and through its City Council, to the creation of the District within the City's extra-territorial jurisdiction ("ETJ"). A copy of the City Council's Resolution "consenting" to the District's creation, adopted in an open, duly noticed public meeting of the Council conducted on December 8, 2009, is attached hereto as Appendix "B."

**II.**

**Affidavits of Qualified Potential Temporary Supervisors**

Affidavits of the following five (5) persons who are interested in appointment as the

Temporary Supervisors by the Commissioners' Court as Temporary Supervisors of the District, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary supervisors, in accordance with Sections 49.052 and 53.063, TEXAS WATER CODE, are attached as Appendices "C" through "G," inclusive. See TEXAS WATER CODE §§ 49.052, 53.063:

1. Dr. R. Shelton Viney
2. Donald W. McClure
3. José Cuevas, Jr.
4. Thomas E. Kelly
5. Richard Oldham

### **III.** **Notice of the Hearing on the Petition**

Pursuant to Section 53.017, TEXAS WATER CODE, the County Clerk issued the required Notice of the Hearing on the Petition to be conducted December 14, 2009, a copy of which is attached hereto as Appendix "H." As evidenced by the Affidavits attached hereto as Appendix "I," the Notice was properly posted at the locations, and for the times, prescribed by Section 53.017, TEXAS WATER CODE.

### **XIII.** **Conclusion & Prayer**

For the reasons set forth in the Petition as supplemented by the matters described above, there is a necessity for the creation of the District. The area proposed to be within the District is within the growing and increasingly developed environs of Midland County, Texas, in the corridor near the Midland County Airport between the Cities of Midland and Odessa and within the immediate future will experience a substantial and sustained residential and commercial growth. There is not now available within the area an adequate waterworks system or wastewater system

capable of serving the Property. The health and welfare of the future occupants of the Property and the proposed District, and of territories adjacent thereto, require the acquisition, construction, maintenance, and operation of an adequate waterworks system and, possibly, adequate wastewater system. A public necessity therefore exists for the creation and organization of the District to provide for the purchase, construction, extension, improvement, maintenance, and operation of such waterworks system and, possibly, wastewater system to promote the public health and welfare of the community.

**WHEREFORE,** Petitioner respectfully prays that the Petition, as properly filed and noticed for hearing as prescribed by the provisions of Chapter 53, TEXAS WATER CODE, and other applicable laws, be in all things granted; that the District be organized; that five (5) Temporary Supervisors thereof be appointed to serve as Temporary Supervisors of the District until such time as their successors are duly elected or appointed and qualified; and that such other orders, acts, procedure and relief be granted and issued as are proper, necessary and appropriate to the purposes of organizing the District and to the execution of the purposes for which the District shall be organized as the Honorable Commissioners of Midland County, Texas, shall deem proper and necessary.

RESPECTFULLY SUBMITTED this 14th day of December, 2009.

PETITIONER:

Fort Stockton Holdings L.P.,  
A Texas limited partnership

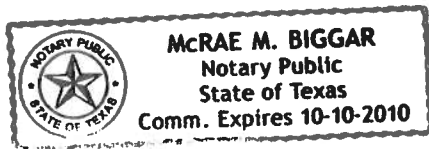


Paul Latham, Vice President

## ACKNOWLEDGEMENT & VERIFICATION

STATE OF TEXAS       §  
                                  §  
COUNTY OF MIDLAND   §

This instrument was acknowledged before me on the 14<sup>th</sup> day of December, 2009, by Paul Latham, acting in his capacity as Vice President of Fort Stockton Holdings L.P., a Texas limited partnership, who after being duly sworn, did state under oath that he had executed the foregoing Petition in the capacity and for the purposes stated therein, and that to the best of his knowledge the statements therein are true and correct.



McRae M. Biggar  
Notary Public, State of Texas  
Printed Name: McRae M. Biggar

My commission expires: 10-10-2010

### APPENDICES

Appendix "A" - Section 42.042, TEXAS LOCAL GOVERNMENT CODE.

Appendix "B" - Resolution of the Midland City Council adopted December 8, 2009.

Appendix "C" - Affidavit of Dr. R. Shelton Viney, candidate for appointment as a Temporary Supervisor.

Appendix "D" - Affidavit of Donald W. McClure, candidate for appointment as a Temporary Supervisor.

Appendix "E" - Affidavit of José Cuevas, Jr., candidate for appointment as a Temporary Supervisor.

Appendix "F" - Affidavit of Thomas E. Kelly, candidate for appointment as a Temporary Supervisor.

Appendix "G" - Affidavit of Richard Oldham, candidate for appointment as a Temporary Supervisor.

Appendix "H" - Copy of the Notice prescribed by Section 53.017, TEXAS WATER CODE.

Appendix "I" - Copy of the Affidavit of Posting of the Notice prescribed by Section 53.018, TEXAS WATER CODE.

## Appendix "A"

### Section 42.042, TEXAS LOCAL GOVERNMENT CODE.

#### § 42.0411

Note 1

found bill constitutional. City of San Antonio v. Summerglenn Property Owners Ass'n Inc. (App. 4 Dist. 2005) 185 S.W.3d 74, review denied,

#### ORGANIZATION OF MUNICIPAL GOVERNMENT

Title 2

rehearing of petition for review denied. Declaratory Judgment ¶ 393

#### § 42.042. Creation of Political Subdivision to Supply Water or Sewer Services, Roadways, or Drainage Facilities in Extraterritorial Jurisdiction

(a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not be created in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this subsection and the Water Code. In giving its consent, the municipality may not place any conditions or other restrictions on the creation of the political subdivision other than those expressly permitted by Sections 54.016(e) and (i), Water Code.

(b) If the governing body fails or refuses to give its consent for the creation of the political subdivision on mutually agreeable terms within 90 days after the date it receives a written request for the consent, a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision may petition the governing body to make available to the area the water, sanitary sewer services, or both that would be provided by the political subdivision.

(c) If, within 120 days after the date the governing body receives the petition, the governing body fails to make a contract with a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision to provide the services, that failure constitutes the governing body's consent to the creation of the proposed political subdivision.

(d) The consent to the creation of the political subdivision is only an authorization to initiate proceedings to create the political subdivision as provided by law.

(e) Repealed by Acts 1997, 75th Leg., ch. 1070, § 55.

(f) If the municipality fails or refuses to give its consent to the creation of the political subdivision or fails or refuses to execute a contract providing for the water or sanitary sewer services requested within the time limits prescribed by this section, the applicant may petition the Texas Natural Resource Conservation Commission for the creation of the political subdivision or the inclusion of the land in a political subdivision. The commission shall allow creation of the political subdivision or inclusion of the land in a proposed political subdivision on finding that the municipality either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. The commitment must provide that construction of the facilities necessary to serve the land

200

**EXTRATERRITORIAL JURISDICTION**  
**Ch. 42**

**§ 42.042**

will begin within two years and will be substantially completed within 4½ years after the date the petition was filed with the municipality.

(g) On an appeal taken to the district court from the Texas Natural Resource Conservation Commission's ruling, all parties to the commission hearing must be made parties to the appeal. The court shall hear the appeal within 120 days after the date the appeal is filed. If the case is continued or appealed to a higher court beyond the 120-day period, the court shall require the appealing party or party requesting the continuance to post a bond or other adequate security in the amount of damages that may be incurred by any party as a result of the appeal or delay from the commission action. The amount of the bond or other security shall be determined by the court after notice and hearing. On final disposition, a court may award damages, including any damages for delays, attorney's fees, and costs of court to the prevailing party.

(h) A municipality may not unilaterally extend the time limits prescribed by this section through the adoption of preapplication periods or by passage of any rules, resolutions, ordinances, or charter provisions. However, the municipality and the petitioner may jointly petition the Texas Natural Resource Conservation Commission to request an extension of the time limits.

(i) Repealed by Acts 1989, 71st Leg., ch. 1058, § 1.

(j) The consent requirements of this section do not apply to the creation of a special utility district under Chapter 65,<sup>1</sup> Water Code. If a special utility district is to be converted to a district with taxing authority that provides utility services, this section applies to the conversion.

(k) This section, except Subsection (i), applies only to the proposed political subdivision's area located in the extraterritorial jurisdiction of the municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 3(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1058, § 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, § 11.254, eff. Sept. 1, 1995; Acts 2007, 80th Leg., ch. 1098, § 1, eff. June 15, 2007.

<sup>1</sup> V.T.C.A., Water Code § 65.001 et seq.

**Revisor's Note**

(1) The revised law requires the written consent of a municipality to be given by ordinance or resolution. The reference to "by ordinance or resolution" is derived from the definition of "written consent" appearing in Section 2 of V.A.C.S. Article 970a. See Revisor's Note (2) at the end of Chapter 43.

(2) The source law refers to the making of "a mutually agreeable" contract. The quoted phrase is omitted as unnecessary because the substance of the phrase is adequately covered by the term "contract."

(3) The revised law omits as executed a provision in Subsection B, Section 8, of V.A.C.S. Article 970a relating to the creation of political subdivisions before the effective date (August 23, 1963) of Article 970a.

## Appendix "B"

### Resolution of the Midland City Council adopted December 8, 2009.

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY OF MIDLAND, TEXAS,  
CONSENTING TO THE CREATION OF MIDLAND  
COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**

WHEREAS, pursuant to Section 42.042, Texas Local Government Code, the City of Midland, has been requested for its consent to the creation of a Fresh Water Supply District operating pursuant to Chapter 53, Texas Water Code, on property more particularly described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the holders of title to the entirety of the value of the Property within the proposed District wish to create said District; and

WHEREAS, all of the Property within the proposed District is located within Midland County, outside of the corporate boundaries of the City of Midland, Texas, but within its extraterritorial jurisdiction; and

WHEREAS, the District will have only the powers and authority of a Fresh Water Supply District created pursuant to Article XVI, Section 59, Texas Constitution and operating pursuant to Chapters 49 and 53, Texas Water Code, and other applicable laws of the State;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF MIDLAND, TEXAS:**

**THAT** pursuant to Section 42.042, Texas Local Government Code, the City of Midland consents to the creation of the District.

On motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2009 by the following vote:

Council members voting "AYE":

Council members voting "NAY":

\_\_\_\_\_  
W. Wesley Perry, Mayor

ATTEST:

\_\_\_\_\_  
Kaylah J. McCord, City Secretary

RECOMMENDED AND APPROVED:

\_\_\_\_\_  
Courtney Sharp, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Keith Stretcher, City Attorney

L:\Resolutions\Administration\2010\Consent Midland County Fresh Water Supply Dist. No. 1.wpd 2

## Appendix "C"

### Affidavit of Dr. R. Shelton Viney, candidate for appointment as a Temporary Supervisor.

**AFFIDAVIT FOR CONSIDERATION OF  
APPOINTMENT AS TEMPORARY SUPERVISOR OF THE  
MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF MIDLAND   §

BEFORE ME, the undersigned authority of the State and County aforesaid, on this day personally appeared R. Shelton Viney who desires to be appointed a Temporary Supervisor of Midland County Fresh Water Supply District No. 1 (hereinafter the "District") pursuant to Section 53.020, Texas Water Code, to serve until his successor is elected or appointed and qualifies, who on oath, did state:

1. I am at least eighteen years of age, a resident citizen of the State of Texas, and own land subject to taxation within the District.

2. I do not, at the present time, plan to live in the District. I do plan to retain ownership of my land in the District for the indefinite future, but I anticipate that I will eventually offer it for resale.

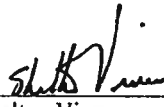
3. I am generally familiar with the responsibilities of a director of a Fresh Water Supply District. I realize that as a director I will be a public official charged with the responsibility of serving the best interests of the present and future property owners, taxpayers and residents of the District.

4. I am aware that the District will be a public agency, and that by law notice of its meetings must be posted, its meetings must be open to the public and its records available for inspection by the public at all reasonable times.

5. I am aware that the District will be subject to the continuing supervision of, and I will fully cooperate with, the Texas Commission on Environmental Quality.

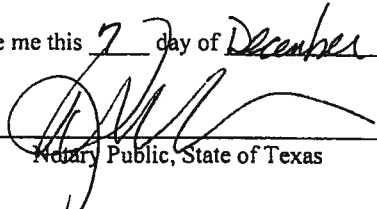
6. I have reviewed the provisions of Section 49.052, TEXAS WATER CODE, a copy of which is appended hereto as Attachment "A," and do not believe that I am disqualified to serve as a Supervisor of the District.

7. I hereby affirm that, if appointed, I will faithfully execute the duties of the office of Supervisor of the District and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States, and of the State of Texas; and I hereby affirm that I have not directly nor indirectly paid, offered or promised to pay, contributed or promised to contribute any money or valuable thing, or promised any public office or employment as a reward to secure this appointment.

  
\_\_\_\_\_  
R. Shelton Viney  
Telephone: 697-1061  
2706 W. Cuthbert St., Bldg. C  
Midland, Texas 79701

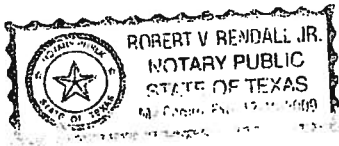
Before me, the undersigned authority, on this day personally appeared **R. Shelton Viney** who desires to be appointed as a Temporary Supervisor of the Midland County Fresh Water Supply District No. 1 to serve until his successor is elected or appointed and qualifies, and who being by me duly sworn on his oath deposed and said that every response and statement set forth herein is true and correct.

SWORN TO AND SUBSCRIBED before me this 7 day of December, 2009.

  
\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
(Printed or Stamped Name of Notary)

My Commission Expires: \_\_\_\_\_



Attachment "A"

Texas Water Code Section 49.052

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(c) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts described in Section 49.181(h)(4), or a district where the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(h) This subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375, Local Government Code, and that is governed by an appointed board consisting of nine or more members. Notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the board if the person fails to attend three consecutive meetings of the board. The remaining board members by majority vote may waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if:

(1) the district is located within the boundaries of a municipality with a population of more than 1.8 million; and

(2) all or a part of the district is located more than five miles from the downtown city hall of that municipality.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 6, eff. June 18, 2003.

## Appendix "D"

### Affidavit of Donald W. McClure, candidate for appointment as a Temporary Supervisor.

**AFFIDAVIT FOR CONSIDERATION OF  
APPOINTMENT AS TEMPORARY SUPERVISOR OF THE  
MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**


THE STATE OF TEXAS     §  
                                     §  
COUNTY OF MIDLAND   §

BEFORE ME, the undersigned authority of the State and County aforesaid, on this day personally appeared DONALD W. McCLURE who desires to be appointed a Temporary Supervisor of Midland County Fresh Water Supply District No. 1 (hereinafter the "District") pursuant to Section 53.020, Texas Water Code, to serve until his successor is elected or appointed and qualifies, who on oath, did state:

1. I am at least eighteen years of age, a resident citizen of the State of Texas, and own land subject to taxation within the District.
2. I do not, at the present time, plan to live in the District. I do plan to retain ownership of my land in the District for the indefinite future, but I anticipate that I will eventually offer it for resale.
3. I am generally familiar with the responsibilities of a director of a Fresh Water Supply District. I realize that as a director I will be a public official charged with the responsibility of serving the best interests of the present and future property owners, taxpayers and residents of the District.
4. I am aware that the District will be a public agency, and that by law notice of its meetings must be posted, its meetings must be open to the public and its records available for inspection by the public at all reasonable times.
5. I am aware that the District will be subject to the continuing supervision of, and I will fully cooperate with, the Texas Commission on Environmental Quality.

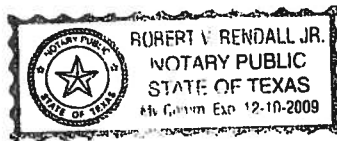
6. I have reviewed the provisions of Section 49.052, TEXAS WATER CODE, a copy of which is appended hereto as Attachment "A," and do not believe that I am disqualified to serve as a Supervisor of the District.

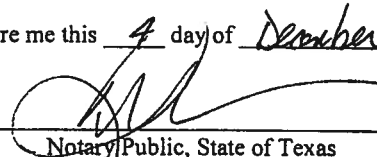
7. I hereby affirm that, if appointed, I will faithfully execute the duties of the office of Supervisor of the District and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States, and of the State of Texas; and I hereby affirm that I have not directly nor indirectly paid, offered or promised to pay, contributed or promised to contribute any money or valuable thing, or promised any public office or employment as a reward to secure this appointment.

  
DONALD W. McCLURE  
Telephone: (432) 683-2787  
800 W. Texas Avenue, Suite 1300  
Midland, Texas 79701

Before me, the undersigned authority, on this day personally appeared DONALD W. McCLURE who desires to be appointed as a Temporary Supervisor of the Midland County Fresh Water Supply District No. 1 to serve until his successor is elected or appointed and qualifies, and who being by me duly sworn on his oath deposed and said that every response and statement set forth herein is true and correct.

SWORN TO AND SUBSCRIBED before me this 4 day of December, 2009.



  
\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
(Printed or Stamped Name of Notary)

My Commission Expires: \_\_\_\_\_

Attachment "A"

Texas Water Code Section 49.052

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts described in Section 49.181(h)(4), or a district where the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(h) This subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375, Local Government Code, and that is governed by an appointed board consisting of nine or more members. Notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the board if the person fails to attend three consecutive meetings of the board. The remaining board members by majority vote may waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if:

(1) the district is located within the boundaries of a municipality with a population of more than 1.8 million; and

(2) all or a part of the district is located more than five miles from the downtown city hall of that municipality.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 6, eff. June 18, 2003.

## Appendix "E"

### Affidavit of José Cuevas, Jr., candidate for appointment as a Temporary Supervisor.

**AFFIDAVIT FOR CONSIDERATION OF  
APPOINTMENT AS TEMPORARY SUPERVISOR OF THE  
MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF MIDLAND    §

BEFORE ME, the undersigned authority of the State and County aforesaid, on this day personally appeared **JOSÉ CUEVAS, JR.** who desires to be appointed a Temporary Supervisor of Midland County Fresh Water Supply District No. 1 (hereinafter the "District") pursuant to Section 53.020, Texas Water Code, to serve until his successor is elected or appointed and qualifies, who on oath, did state:

1. I am at least eighteen years of age, a resident citizen of the State of Texas, and own land subject to taxation within the District.

2. I do not, at the present time, plan to live in the District. I do plan to retain ownership of my land in the District for the indefinite future, but I anticipate that I will eventually offer it for resale.

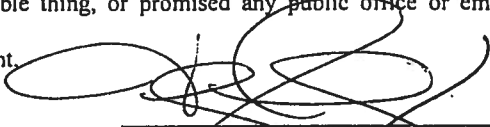
3. I am generally familiar with the responsibilities of a director of a Fresh Water Supply District. I realize that as a director I will be a public official charged with the responsibility of serving the best interests of the present and future property owners, taxpayers and residents of the District.

4. I am aware that the District will be a public agency, and that by law notice of its meetings must be posted, its meetings must be open to the public and its records available for inspection by the public at all reasonable times.

5. I am aware that the District will be subject to the continuing supervision of, and I will fully cooperate with, the Texas Commission on Environmental Quality.

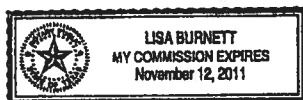
6. I have reviewed the provisions of Section 49.052, TEXAS WATER CODE, a copy of which is appended hereto as Attachment "A," and do not believe that I am disqualified to serve as a Supervisor of the District.

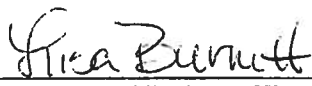
7. I hereby affirm that, if appointed, I will faithfully execute the duties of the office of Supervisor of the District and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States, and of the State of Texas; and I hereby affirm that I have not directly nor indirectly paid, offered or promised to pay, contributed or promised to contribute any money or valuable thing, or promised any public office or employment as a reward to secure this appointment.

  
\_\_\_\_\_  
JOSE CUEVAS, JR.  
Telephone: 432-520-3529  
1701 N. Big Spring Street  
Midland, Texas 79701

Before me, the undersigned authority, on this day personally appeared JOSE CUEVAS, JR., who desires to be appointed as a Temporary Supervisor of the Midland County Fresh Water Supply District No. 1 to serve until his successor is elected or appointed and qualifies, and who being by me duly sworn on his oath depose and said that every response and statement set forth herein is true and correct.

SWORN TO AND SUBSCRIBED before me this 3<sup>rd</sup> day of December, 2009.



  
\_\_\_\_\_  
Notary Public, State of Texas  
Lisa Burnett  
(Printed or Stamped Name of Notary)  
My Commission Expires: 11/12/11

Attachment "A"

Texas Water Code Section 49.052

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts described in Section 49.181(h)(4), or a district where the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(h) This subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375, Local Government Code, and that is governed by an appointed board consisting of nine or more members. Notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the board if the person fails to attend three consecutive meetings of the board. The remaining board members by majority vote may waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if:

(1) the district is located within the boundaries of a municipality with a population of more than 1.8 million; and

(2) all or a part of the district is located more than five miles from the downtown city hall of that municipality.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 6, eff. June 18, 2003.

## Appendix "F"

### Affidavit of Thomas E. Kelly, candidate for appointment as a Temporary Supervisor.

#### AFFIDAVIT FOR CONSIDERATION OF APPOINTMENT AS TEMPORARY SUPERVISOR OF THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF MIDLAND   §

BEFORE ME, the undersigned authority of the State and County aforesaid, on this day personally appeared **THOMAS E. KELLY** who desires to be appointed a Temporary Supervisor of Midland County Fresh Water Supply District No. 1 (hereinafter the "District") pursuant to Section 53.020, Texas Water Code, to serve until his successor is elected or appointed and qualifies, who on oath, did state:


1. I am at least eighteen years of age, a resident citizen of the State of Texas, and own land subject to taxation within the District.
2. I do not, at the present time, plan to live in the District. I do plan to retain ownership of my land in the District for the indefinite future, but I anticipate that I will eventually offer it for resale.
3. I am generally familiar with the responsibilities of a director of a Fresh Water Supply District. I realize that as a director I will be a public official charged with the responsibility of serving the best interests of the present and future property owners, taxpayers and residents of the District.
4. I am aware that the District will be a public agency, and that by law notice of its meetings must be posted, its meetings must be open to the public and its records available for inspection by the public at all reasonable times.
5. I am aware that the District will be subject to the continuing supervision of, and I will fully cooperate with, the Texas Commission on Environmental Quality.

H:\DOCS\3987\KELLY\AFF-DIR.DOC

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6. I have reviewed the provisions of Section 49.052, TEXAS WATER CODE, a copy of which is appended hereto as Attachment "A," and do not believe that I am disqualified to serve as a Supervisor of the District.

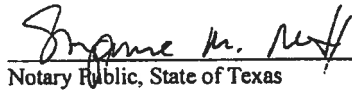
7. I hereby affirm that, if appointed, I will faithfully execute the duties of the office of Supervisor of the District and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States, and of the State of Texas; and I hereby affirm that I have not directly nor indirectly paid, offered or promised to pay, contributed or promised to contribute any money or valuable thing, or promised any public office or employment as a reward to secure this appointment.

  
\_\_\_\_\_  
**THOMAS E. KELLY**  
Phone Number: (432) 686-1028  
Address: 505 N. Big Spring St., Ste 101  
Midland, Texas 79701

Before me, the undersigned authority, on this day personally appeared **THOMAS E. KELLY** who desires to be appointed as a Temporary Supervisor of the Midland County Fresh Water Supply District No. 1 to serve until his successor is elected or appointed and qualifies, and who being by me duly sworn on his oath depose and said that every response and statement set forth herein is true and correct.

SWORN TO AND SUBSCRIBED before me this 2<sup>nd</sup> day of December, 2009.



  
\_\_\_\_\_  
Notary Public, State of Texas

SUZANNE M. MUNDY  
(Printed or Stamped Name of Notary)

My Commission Expires: 07/18/2010

Attachment "A"

Texas Water Code Section 49.052

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(c) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts described in Section 49.181(h)(4), or a district where the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(h) This subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375, Local Government Code, and that is governed by an appointed board consisting of nine or more members. Notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the board if the person fails to attend three consecutive meetings of the board. The remaining board members by majority vote may waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if:

(1) the district is located within the boundaries of a municipality with a population of more than 1.8 million; and

(2) all or a part of the district is located more than five miles from the downtown city hall of that municipality.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 6, eff. June 18, 2003.

## Appendix "G"

### Affidavit of Richard Oldham, candidate for appointment as a Temporary Supervisor.

**AFFIDAVIT FOR CONSIDERATION OF  
APPOINTMENT AS TEMPORARY SUPERVISOR OF THE  
MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF MIDLAND   §

BEFORE ME, the undersigned authority of the State and County aforesaid, on this day personally appeared **RICHARD OLDHAM** who desires to be appointed a Temporary Supervisor of Midland County Fresh Water Supply District No. 1 (hereinafter the "District") pursuant to Section 53.020, Texas Water Code, to serve until his successor is elected or appointed and qualifies, who on oath, did state:

1. I am at least eighteen years of age, a resident citizen of the State of Texas, and own land subject to taxation within the District.

2. I do not, at the present time, plan to live in the District. I do plan to retain ownership of my land in the District for the indefinite future, but I anticipate that I will eventually offer it for resale.

3. I am generally familiar with the responsibilities of a director of a Fresh Water Supply District. I realize that as a director I will be a public official charged with the responsibility of serving the best interests of the present and future property owners, taxpayers and residents of the District.

4. I am aware that the District will be a public agency, and that by law notice of its meetings must be posted, its meetings must be open to the public and its records available for inspection by the public at all reasonable times.

5. I am aware that the District will be subject to the continuing supervision of, and I will fully cooperate with, the Texas Commission on Environmental Quality.

6. I have reviewed the provisions of Section 49.052, TEXAS WATER CODE, a copy of which is appended hereto as Attachment "A," and do not believe that I am disqualified to serve as a Supervisor of the District.

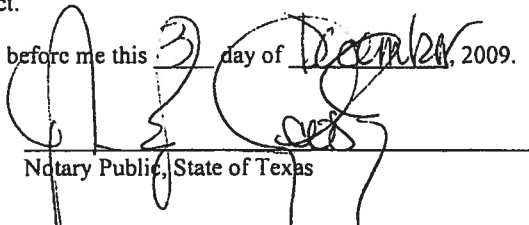
7. I hereby affirm that, if appointed, I will faithfully execute the duties of the office of Supervisor of the District and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States, and of the State of Texas; and I hereby affirm that I have not directly nor indirectly paid, offered or promised to pay, contributed or promised to contribute any money or valuable thing, or promised any public office or employment as a reward to secure this appointment.



**RICHARD OLDHAM**  
Telephone: 432-694-2763  
903 Sorrell Lane West  
Midland, Texas 79705

Before me, the undersigned authority, on this day personally appeared **RICHARD OLDHAM**, who desires to be appointed as a Temporary Supervisor of the Midland County Fresh Water Supply District No. 1 to serve until his successor is elected or appointed and qualifies, and who being by me duly sworn on his oath depose and said that every response and statement set forth herein is true and correct.

SWORN TO AND SUBSCRIBED before me this 3 day of December, 2009.

  
\_\_\_\_\_  
Notary Public, State of Texas

(Printed or Stamped Name of Notary)  
My Commission Expires: \_\_\_\_\_

Attachment "A"

Texas Water Code Section 49.052

Sec. 49.052. DISQUALIFICATION OF DIRECTORS. (a) A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

(1) is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, attorney, or other person providing professional services to the district;

(2) is an employee of any developer of property in the district or any director, manager, engineer, attorney, or other person providing professional services to the district or a developer of property in the district in connection with the district or property located in the district;

(3) is a developer of property in the district;

(4) is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district;

(5)(A) is a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) is a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence, establishing a commercial business within the district, or qualifying as a director; or

(6) during the term of office, fails to maintain the qualifications required by law to serve as a director.

(b) Within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

(f) This section shall not apply to special water authorities, districts described in Section 49.181(h)(4), or a district where the principal function of the district is to provide irrigation water to agricultural lands or to provide nonpotable water for any purpose.

(g) A board by unanimous vote of its remaining members may remove a board member only if that board member has missed one-half or more of the regular meetings scheduled during the prior 12 months. Any board member so removed may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(h) This subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375, Local Government Code, and that is governed by an appointed board consisting of nine or more members. Notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the board if the person fails to attend three consecutive meetings of the board. The remaining board members by majority vote may waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if:

(1) the district is located within the boundaries of a municipality with a population of more than 1.8 million; and

(2) all or a part of the district is located more than five miles from the downtown city hall of that municipality.

Added by Acts 1995, 74th Leg., ch. 715, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 6, eff. June 18, 2003.

## Appendix "H"

Copy of the Notice prescribed by Section 53.017, TEXAS WATER CODE.

### LEGAL NOTICE

#### **NOTICE OF PUBLIC HEARING ON THE PETITION FOR THE CREATION OF A FRESH WATER SUPPLY DISTRICT TO BE KNOWN AS THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**

WHEREAS on November 13, 2009, a Petition was duly filed with the Clerk of Midland County, Texas seeking the Creation of a Fresh Water Supply District over land located in Midland County, Texas, pursuant to the provisions of Chapter 53, TEXAS WATER CODE, in accord with the provisions of Article XVI, Section 59 of the Texas Constitution;

WHEREAS the Clerk duly recorded the Petition and forwarded same to the County Judge for purposes of scheduling a hearing on said Petition before the Commissioners' Court of Midland County, Texas; and

WHEREAS on November 16, 2009, the County Judge issued an Order Setting Hearing on the Petition;

NOTICE IS HEREBY GIVEN that on the 14<sup>th</sup> day of December, 2009, the Midland County Commissioners' Court shall convene at ~~10:00~~ o'clock A.M./P.M. in the Commissioners' Courtroom of the Midland County Courthouse Annex located at 2110 N. "A" Street, Midland, Midland County, Texas, to conduct a hearing on the Petition Requesting the Creation of A Fresh Water Supply District to be Known as the "Midland County Fresh Water Supply District No. 1".

Said hearing is being held at the request of and pursuant to a petition signed by all of the landowners within the proposed district pursuant to Section 53.014, Texas Water Code. The real property described in said Petition encompasses an area of 20.00 acres, more or less, described by metes and bounds in the Petition and located in Section 48, Block 41, T-1-S and Section 1, Block 41, T-2-S, T&P RR Co. Survey, Midland County, approximately eleven (11) miles west of the City of Midland.

All interested persons are entitled to appear at the hearing on the Petition, to challenge the form and allegations of the Petition, and contest the proposition that the projects to be undertaken by the proposed district would benefit the land inside its boundaries. The nature and purposes of the proposed district shall be (i) those contemplated by Article XVI, Section 59 of the Texas Constitution, (ii) to exercise the powers, duties and authority authorized by the Texas Legislature pursuant to all applicable laws, including without limitation Chapters 49 and 53, Texas Water Code, (iii) to conserve, transport, and distribute fresh water from any source for domestic and commercial purposes, and (iv) to purchase, construct, acquire, own, operate, repair, improve, and extend sanitary sewer services to control waters inside of the district.

The hearing may be adjourned from day to day.

EXECUTED and entered of record this 16 day of November, 2009.

Cheryl Becker, COUNTY CLERK  
Midland County, Texas

By: Caleb White Deputy

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PAGE 1 OF 1

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PAGE 2 OF 2

## **Appendix “I”**

**Copy of the Affidavits of Posting of the Notice prescribed by Section 53.018, TEXAS WATER  
CODE.**

STATE OF TEXAS                    §                    BEFORE THE  
                                         §                    COMMISSIONERS' COURT  
COUNTY OF MIDLAND           §                    OF MIDLAND COUNTY, TEXAS

**AFFIDAVIT**

State of Texas                    §  
County of Midland               §

Before me, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Robert V. Rendall, Jr. to be well known to me and who after being duly sworn, deposes and says that:

“On the 16<sup>th</sup> day of November, I received seven certified original Legal Notices from the Midland County Clerk, identical to the copy attached hereto as Exhibit A.

On November 16, 2009, I caused a deputy clerk of the Midland County Clerk's office to post an original of said notice at the Courthouse and Courthouse Annex. The notices have remained posted since such date, including the 10 days that immediately precede the day set for the hearing, such date being December 14<sup>th</sup>, 2009.

In my capacity as the receiver of such notices, I am personally aware of the foregoing facts and swear and affirm that the notices were posted in accordance with the provisions of Texas Water Code Sec. 53.018.

I am over 18 years of age and in all regards competent to make this Affidavit.

Affiant further sayeth not.”

**Affiant:**

Name: Robert V. Rendall, Jr.

SUBSCRIBED, sworn to and acknowledges before me this the 14<sup>th</sup> day of December, 2009 by said Affiant.



Notary Public, State of Texas

Exhibit A

LEGAL NOTICE

**NOTICE OF PUBLIC HEARING ON THE PETITION FOR THE CREATION OF A  
FRESH WATER SUPPLY DISTRICT TO BE KNOWN AS THE MIDLAND COUNTY  
FRESH WATER SUPPLY DISTRICT NO. 1**

WHEREAS on November 13, 2009, a Petition was duly filed with the Clerk of Midland County, Texas seeking the Creation of a Fresh Water Supply District over land located in Midland County, Texas, pursuant to the provisions of Chapter 53, TEXAS WATER CODE, in accord with the provisions of Article XVI, Section 59 of the Texas Constitution;

WHEREAS the Clerk duly recorded the Petition and forwarded same to the County Judge for purposes of scheduling a hearing on said Petition before the Commissioners' Court of Midland County, Texas; and

WHEREAS on November 14, 2009, the County Judge issued an Order Setting Hearing on the Petition;

**NOTICE IS HEREBY GIVEN** that on the 14<sup>th</sup> day of December, 2009, the Midland County Commissioners' Court shall convene at ~~10:00~~ o'clock A.M./P.M. in the Commissioners' Courtroom of the Midland County Courthouse Annex located at 2110 N. "A" Street, Midland, Midland County, Texas, to conduct a hearing on the Petition Requesting the Creation of A Fresh Water Supply District to be Known as the "Midland County Fresh Water Supply District No. 1".

Said hearing is being held at the request of and pursuant to a petition signed by all of the landowners within the proposed district pursuant to Section 53.014, Texas Water Code. The real property described in said Petition encompasses an area of 20.00 acres, more or less, described by metes and bounds in the Petition and located in Section 48, Block 41, T-1-S and Section 1, Block 41, T-2-S, T&P RR Co. Survey, Midland County, approximately eleven (11) miles west of the City of Midland.

All interested persons are entitled to appear at the hearing on the Petition, to challenge the form and allegations of the Petition, and contest the proposition that the projects to be undertaken by the proposed district would benefit the land inside its boundaries. The nature and purposes of the proposed district shall be (i) those contemplated by Article XVI, Section 59 of the Texas Constitution, (ii) to exercise the powers, duties and authority authorized by the Texas Legislature pursuant to all applicable laws, including without limitation Chapters 49 and 53, Texas Water Code, (iii) to conserve, transport, and distribute fresh water from any source for domestic and commercial purposes, and (iv) to purchase, construct, acquire, own, operate, repair, improve, and extend sanitary sewer services to control waters inside of the district.

The hearing may be adjourned from day to day.

EXECUTED and entered of record this 16 day of November, 2009.

Cheryl Becker, COUNTY CLERK  
Midland County, Texas

By: Colleen Shultz, Deputy

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PAGE 1 OF 1

STATE OF TEXAS                    §                    BEFORE THE  
                                         §                    COMMISSIONERS' COURT  
COUNTY OF MIDLAND           §                    OF MIDLAND COUNTY, TEXAS

**AFFIDAVIT**

State of Texas           §  
County of Midland       §

Before me, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Mitch Malouf to be well known to me and who after being duly sworn, deposes and says that:

“On the 18<sup>th</sup> day of November, I received four certified original Legal Notices issued by the Midland County Clerk, identical to the copy attached hereto as Exhibit A, from Robert V. Rendall, Jr., attorney.

On November 19, 2009, I posted an original of each such notice in four different places inside the proposed district. A photographic reproduction of each of said four postings is attached hereto as Exhibit B. The notices have remained posted since such date, including the 10 days that immediately precede the day set for the hearing, such date being December 14<sup>th</sup>, 2009.

In my capacity as the receiver of such notices posted on the property within the proposed District, I am personally aware of the foregoing facts and swear and affirm that the notices were posted in accordance with the provisions of Texas Water Code Sec. 53.018.

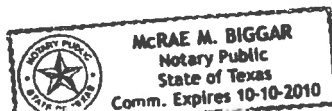
I am over 18 years of age and in all regards competent to make this Affidavit.

Affiant further sayeth not.”

**Affiant:**

Mitch Malouf  
Name: Mitch Malouf

SUBSCRIBED, sworn to and acknowledges before me this the 14th day of December, 2009 by said Affiant.



McRae M. Biggar  
Notary Public, State of Texas

## Exhibit A

### LEGAL NOTICE

#### **NOTICE OF PUBLIC HEARING ON THE PETITION FOR THE CREATION OF A FRESH WATER SUPPLY DISTRICT TO BE KNOWN AS THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**

WHEREAS on November 13, 2009, a Petition was duly filed with the Clerk of Midland County, Texas seeking the Creation of a Fresh Water Supply District over land located in Midland County, Texas, pursuant to the provisions of Chapter 53, TEXAS WATER CODE, in accord with the provisions of Article XVI, Section 59 of the Texas Constitution;

WHEREAS the Clerk duly recorded the Petition and forwarded same to the County Judge for purposes of scheduling a hearing on said Petition before the Commissioners' Court of Midland County, Texas; and

WHEREAS on November 14, 2009, the County Judge issued an Order Setting Hearing on the Petition;

NOTICE IS HEREBY GIVEN that on the 14<sup>th</sup> day of December, 2009, the Midland County Commissioners' Court shall convene at ~~10:00~~ o'clock A.M./P.M. in the Commissioners' Courtroom of the Midland County Courthouse Annex located at 2110 N. "A" Street, Midland, Midland County, Texas, to conduct a hearing on the Petition Requesting the Creation of A Fresh Water Supply District to be Known as the "Midland County Fresh Water Supply District No. 1".

Said hearing is being held at the request of and pursuant to a petition signed by all of the landowners within the proposed district pursuant to Section 53.014, Texas Water Code. The real property described in said Petition encompasses an area of 20.00 acres, more or less, described by metes and bounds in the Petition and located in Section 48, Block 41, T-1-S and Section 1, Block 41, T-2-S, T&P RR Co. Survey, Midland County, approximately eleven (11) miles west of the City of Midland.

All interested persons are entitled to appear at the hearing on the Petition, to challenge the form and allegations of the Petition, and contest the proposition that the projects to be undertaken by the proposed district would benefit the land inside its boundaries. The nature and purposes of the proposed district shall be (i) those contemplated by Article XVI, Section 59 of the Texas Constitution, (ii) to exercise the powers, duties and authority authorized by the Texas Legislature pursuant to all applicable laws, including without limitation Chapters 49 and 53, Texas Water Code, (iii) to conserve, transport, and distribute fresh water from any source for domestic and commercial purposes, and (iv) to purchase, construct, acquire, own, operate, repair, improve, and extend sanitary sewer services to control waters inside of the district.

The hearing may be adjourned from day to day.

EXECUTED and entered of record this 14 day of November, 2009.

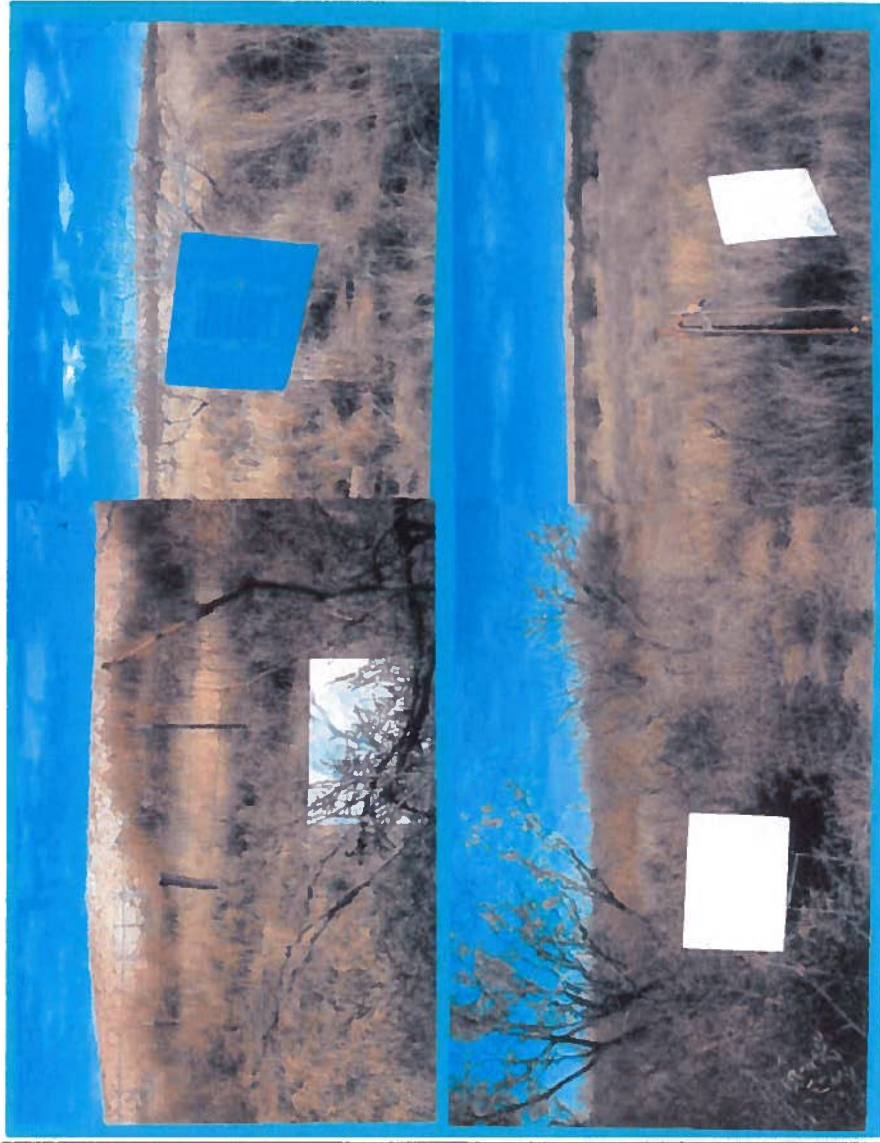
Cheryl Becker, COUNTY CLERK  
Midland County, Texas

By: Coleen White, Deputy

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**Exhibit B**



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