

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

CARROLL COUNTY WATER DISTRICT NO. 1)
COMPLAINANT)

VS.)

WHITEHORSE DEVELOPMENT CO.)
INTERVENING COMPLAINANT)

VS.)

GALLATIN COUNTY WATER DISTRICT)
DEFENDANT)

CASE NO. 2007-00202

RENEWED MOTION TO
SET ASIDE AGREED ORDER
DATED AUGUST 1, 2007

Comes now the defendant, Gallatin County Water District (GCWD), by counsel and moves the Commission (PSC) for an order setting aside and vacating the Agreed Order dated August 1, 2007, on the following grounds;

- (a) GCWD renews and reiterates the grounds for the relief it seeks set forth in its original motion to set aside the Agreed Order, received by the PSC on April 25, 2008.
- (b) The Agreed Order was the outgrowth of an agreement between the parties based upon circumstances prevailing at that time. It was not the product of rulings of the PSC arising out of an evidentiary

hearing. Those circumstances have changed markedly during the year since the Order's entry as set forth hereinbelow. Moreover, the intervening complainant herein was not a party to the agreement resulting in the Order.

- (c) The purposes and effect of the Agreed Order have been rendered moot by subsequent actions.
- (1) By order dated July 8, 2008, and pursuant to KRS 74.110, the territory in question herein has been annexed by GCWD. A true copy of said order is annexed hereto as Exhibit A.

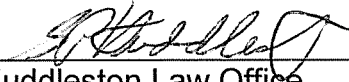
Therefore, GCWD cannot violate the subject Agreed Order in that the Carroll County territory protected thereby no longer belongs to Carroll County, but is now within the territorial boundaries of GCWD.

- (2) Carroll County disputes the validity of this annexation and has filed an appeal seeking to vacate it. Said action currently pends in the Gallatin Circuit Court. A true copy of the complaint initiating said action is annexed hereto as Exhibit B.

Therefore, any question as to the validity of the annexation of the affected territory by GCWD is before the Court and will be decided in that forum.

The foregoing developments render the Agreed Order, if not this entire action, in effectual and moot.

Respectfully submitted,



Huddleston Law Office
Stephen P. Huddleston
P.O. Box 807
Warsaw, Kentucky 41095
(859) 567-2818

NOTICE

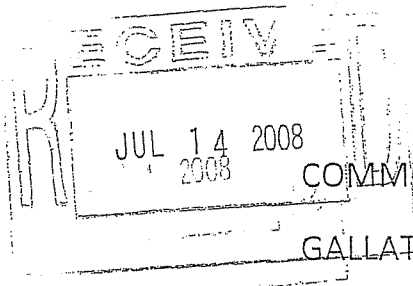
Please take notice that the foregoing motion has been submitted to the Public Service Commission for consideration at its earliest convenience.

CERTIFICATION

This is to certify that the foregoing was served by mailing a true copy of same by first class mail, postage prepaid to Hon. Ruth H. Baxter, P.O. Box 353, Carrollton, Kentucky 41008, and Hon. Dennis R. Williams, P.O. Box 861, Covington, Kentucky 41012-0861, this the 11th day of AUGUST, 2008.



EXHIBIT A



COMMONWEALTH OF KENTUCKY
GALLATIN COUNTY FISCAL COURT

IN RE: The matter of Annexation of Territory by the Gallatin County Water District:

FINDINGS OF FACT

AND ORDER

THE Gallatin County Judge/Executive Kenny French received a request from the Gallatin County Water District to change the boundaries of the Gallatin County Water District by annexing areas within Gallatin County but within the territory of the Carroll County Water District, pursuant to KRS 74.110. The request seeks to accomplish two purposes, as it appears to this tribunal, to wit;

- 1) To clarify the status of customers in that area currently served by the Gallatin County Water District, and;
- 2) To avoid any future conflicts relative to users who might hereafter be located in the affected area.

The Gallatin County, KY area sought to be annexed is described as follows:

Beginning at Speedway Blvd. and 1000 ft., West of Junction 1039 and Speedway Blvd., Southwest Blvd., Southwest to I-71, all areas South of I-71 and all other areas south of the interstate excluding any existing customers as of April 1, 2008.

Gallatin County Judge/Executive received public comments until May 12, 2008. At 8:00 a.m. on May 12, 2008, Judge Kenny French held a public meeting to receive public comments (minutes attached of the May 12, 2008 meeting). A public hearing was duly advertised and held on May 23, 2008 at 2:00 p.m. at the Gallatin County Courthouse.

May 23, 2008 at 2:00 p.m. Gallatin County Judge/Executive Kenny R. French held a public Hearing at the Gallatin County Courthouse. This hearing was to receive both public and party testimony and any evidence on the redistricting of the Gallatin County Water District in the described areas not served by the Carroll County Water District #1 located in Gallatin County. Those in attendance were: Attorney Ruth Baxter, Judge/Executive Harold Tomlinson, Carroll County Water



District, #1 Manager Jim Smith, Carroll County Magistrate Mark Bates, Attorney Steve Huddleston, Gallatin County Water District Manager Morris Courtney, Gallatin County Water District Chairman Denny French, Gallatin County Water District Commissioner Vic Satchwell, Attorney John Wright, Judge/Executive Kenny R. French, Circuit Court Clerk Pam McIntyre, Deputy Fiscal Court Clerk & Financial Officer Elaine Lillard, and one visitor Fred Berkshire.

Gallatin County Water District was represented by Attorney Steve Huddleston. Carroll County Water District was presented to Ruth Baxter.

Both parties were given the opportunity to call and cross-examine witnesses. Questions were also asked by Judge/Executive Kenny R. French. Written comments had been received prior to the hearing from Jim Smith as Chairman of the Carroll County Water District dated May 5, 2008; Adam Chaney of Whitehorse Development dated April 18, 2008; and Carroll County Judge Executive Harold "Shorty" Tomlinson dated May 2, 2008. No comment was received from any resident of the affected area.

Based on the evidence before this hearing officer, I do hereby make the following FINDINGS OF FACT, TO WIT:

- 1) The described area is currently part of the territory of the Carroll County Water District #1. Whether a water district is entitled to exclusive rights to provide service within its territory is not an issue before this tribunal.
- 2) The area was served by Gallatin Water District at the time the first public notice was advertised in the Gallatin County News on April 16th, 2008.
- 3) Gallatin County Water District had provided service for several years in the territory in question without objection.
- 4) Gallatin County Water District has the present capacity to provide substantial volumes of water to the area, sufficient to meet current and anticipated needs of users in the area without an appreciable outlay of funds by that district or existing or future users. Carroll County Water District does not have that current capacity.
- 5) The existing new water user in the area has requested water service by the Gallatin County Water District.
- 6) Allowing the Gallatin County Water District to serve the area will enhance the desirability of Gallatin County for commercial

development, increased employment and tax base and that allowing the area to be served by Carroll County Water District will likely hinder and delay those beneficial effects.

- 7) The annexation of territory sought herein by the Gallatin County Water District is reasonably necessary to achieving the benefits set out in subparagraph (6) above.
- 8) The only debt incurred by Carroll County Water District in the described area is that associated with the recent extension of lines to serve Love's Truck Stop.

After viewing the exhibits presented in this hearing and consideration of the testimony given, and making the FINDING OF FACT set forth above, I do hereby Order as follows, pursuant to KRS 74.110.

- 1) The Gallatin County Water District's territory limits will now include the area as advertised and more clearly stated as follows: All areas along Speedway Blvd. (a/k/a Jerry Carroll Blvd.) from KY 35 to KY 1039 and extending along the same projected line to a point 1000 ft. west of the junction of KY 1039 and Speedway Blvd., thence southwestwardly course to I-71, AND including all of Gallatin County south of I-71 from KY 35 and the Carroll County line; excluding any existing customers as of April 1, 2008.
- 2) The Gallatin County Water District shall reimburse the Carroll County Water District all expenses incurred in connecting Love Brother's Truck Stop to their existing line at Tommy Crawford's residence.
- 3) The Clerk of the Gallatin County Clerk shall enter this Order in the appropriate County Order Book.

SO ORDERED this 8th day of July, 2008.


Kenny R. French
Gallatin County Judge/Executive

This is to attest that the foregoing is a true and correct copy of the FINDINGS OF FACT, and Order adopted by the Gallatin County Judge/Executive on the 8th day of July, 2008.

Tracy Miles

Clerk, Gallatin County Court

Copies to: Hon. John G. Wright

Hon. Stephen P. Huddleston

Hon. Ruth Baxter

Gallatin Co Water District

Carroll Water District

Carroll County Judge Executive

EXHIBIT B

COMMONWEALTH OF KENTUCKY
UNIFIED COURT OF JUSTICE
GALLATIN CIRCUIT COURT
Civil Action No. 08-CI- 00194

CARROLL COUNTY WATER DISTRICT NO. 1
P.O. BOX 350
GHENT, KENTUCKY 41045

PLAINTIFF

VS.

COMPLAINT
ON APPEAL FROM THE ORDER OF THE GALLATIN COUNTY/JUDGE
EXECUTIVE KENNY R. FRENCH

GALLATIN COUNTY JUDGE/EXECUTIVE
KENNY R. FRENCH
P.O. BOX 144
WARSAW, KENTUCKY 41095-0144

DEFENDANTS

SERVE: Certified Mail, Return Receipt

GALLATIN COUNTY WATER DISTRICT
4500 HIGHWAY 455
SPARTA, KENTUCKY 41086

SERVE: Morris Courtney, Manager
4500 Highway 455
Sparta, Kentucky 41086
Certified Mail, Return Receipt

TOMMY CRAWFORD
50 CRAWFORD RIDGE ROAD
SANDERS, KENTUCKY 41083

SERVE: Certified Mail, Return Receipt

JOHN ZALLA
525 ZALLA LANE
WARSAW, KENTUCKY 41095

SERVE: Certified Mail, Return Receipt

LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.
d/b/a LOVE'S TRAVEL STOP #383
976 HIGHWAY 1039
SPARTA, KENTUCKY 41086

SERVE: C.T. Corporation System
Kentucky Home Life Building
Louisville, Kentucky 40202
Registered Agent for Service of Process
Certified Mail, Return Receipt

WHITEHORSE DEVELOPMENT GROUP, LLC
40 WEST PIKE STREET
COVINGTON, KENTUCKY 41012

SERVE: Dennis R. Williams
40 West Pike Street
Covington, Kentucky 41012
Registered Agent for Service of Process
Certified Mail, Return Receipt

** ** * * * * *

Pursuant to KRS 74.110 and all other applicable law, comes now Plaintiff Carroll County Water District No. 1, by counsel, and for its Appeal from the Order of the Gallatin County Judge/Executive Kenny R. French entered on July 8, 2008, against the Defendants Kenny R. French, Gallatin County Judge/Executive; Gallatin County Water District; Tommy Crawford; John Zalla; Love's Travel Stops & Country Stores, Inc.; and Whitehorse Development Group, LLC; states as follows:

1. Plaintiff Carroll County Water District No. 1 (hereinafter "Carroll") is a public water district created in accordance with KRS 74.010 et seq. (hereinafter "Carroll"), doing business in Carroll, Owen and Gallatin Counties, Kentucky, with its principal place of business at 205 Main Cross Street, Ghent, Carroll County, Kentucky 41045, and a mailing address at Post Office Box 350, Ghent, Kentucky 41045;
2. Defendant Gallatin County Judge/Executive Kenny R. French (hereinafter "Judge French") was at all times complained of herein, the duly elected and acting Gallatin County Judge/Executive for the County of Gallatin County, Kentucky;

3. Defendant Gallatin County Water District (hereinafter “Gallatin”) is a public water district created in accordance with KRS 74.010 et seq., doing business in Gallatin County, Kentucky, with its principal place of business at 4500 Highway 455, Sparta, Gallatin County, Kentucky 41086;

4. Defendant Tommy Crawford (hereinafter “Crawford”) is a resident of Gallatin County, Kentucky, who owns real estate within the territorial boundaries of Carroll, and is a current water user of Carroll;

5. Defendant John Zalla (hereinafter “Zalla”) is a resident of Gallatin County, Kentucky, who owns real estate within the territorial boundaries of Carroll, and has purchased a water meter from Carroll with the intention of being a water user of Carroll in the future;

6. Defendant Love’s Travel Stops and Country Stores, Inc. (hereinafter “Love’s”), is a foreign corporation registered to do business in the Commonwealth of Kentucky. At all times complained of herein, said Defendant owned a commercial travel stop in Gallatin County, Kentucky, at Exit 55 off of Interstate 71 and Highway 1093, which travel stop is within the territorial boundaries of Carroll and is served by Carroll as a water user. Defendant Love’s has appointed C.T. Corporation System, Kentucky Home Life Building, Louisville, Kentucky 40202, as its agent for service of process;

7. Defendant Whitehorse Development Group, LLC (hereinafter Whitehorse), is a Kentucky limited liability company registered to do business in the Commonwealth of Kentucky, with its principal place of business at 40 West Pike Street, Covington, Kentucky 41012. At all times complained of herein, Defendant Whitehorse owns real estate within the territorial boundaries of Carroll, and has granted to Carroll an easement for the installation of its water line to serve Defendant Love’s. Defendant Whitehorse is a future water user of Carroll. Defendant Whitehorse

has appointed Dennis R. Williams, 40 West Pike Street, Covington, Kentucky 41012, as its agent for service of process;

8. In accordance with KRS Chapter 74, et seq., and by Orders of the Carroll County, Gallatin County and Owen County Fiscal Courts, respectively, Approving Boundaries of Carroll County Water District No. 1, dated September 8, 1998, Carroll acquired the exclusive right to supply water service to the territory lying and being in Carroll, Gallatin and Owen Counties (referred to herein as its 'territorial boundaries'), and more fully described as follows:

Beginning at the intersection of Kentucky Highway 320 (Lock Road and U.S. Highway 227); thence northwest with the centerline of said U.S. Highway 227 approximately 1200 feet to a point on the Carrollton City Limits line; thence northeast with said limits line approximately 1,750 feet to the centerline of the Carrollton Railroad tracks; thence northwesterly with the centerline of said tracks, approximately 1,500 feet to a point; thence northeast and perpendicular to said tracks approximately 2,000 feet to a point; thence northwesterly and parallel with M & T Road approximately 3,200 feet to a point which is 900 feet west of said M & T Road; thence north approximately 1200 feet to the Carrollton City Limits and the west right of way of M & T Road; thence northwesterly with said R-O-W line approximately 1,750 feet to the centerline of U.S. Highway No. 42; thence continuing northwesterly with an extension of the aforesaid line approximately 725 feet to the low water mark (elevation 420) of the Ohio River; thence northeasterly with said river's low water mark to the Gallatin County line; thence continuing with said River's low water mark northeasterly to a point on the west bank of Craig's Creek; thence southerly with the meanderings of the west bank of said creek to a point 1000 feet south and 1000 feet east of the intersection of Winn Road and Kentucky Highway 1130; thence south and parallel with Kentucky Highway 1130 to a point 1,000 feet east and 2,000 feet south of the intersection of Kentucky Highway 1130 and Kentucky Highway 465; thence southwesterly and parallel with Kentucky Highway 465 approximately 8,500 feet to a point on the Carroll County--Gallatin County Line; thence southeasterly along said county line approximately 8,500 feet to the center of Eagle Creek and the Owen County line; thence southeasterly with the meanderings of Eagle Creek and said county line to a point in Eagle Creek 2,500 feet north and west of the Mid Valley Crude Oil Pipe line; thence southwesterly along a parallel line 2,500 feet north

of said pipeline to a point 1,000 feet north of the intersection of Bucks Run Road and State Road 227; thence south to a point 1,000 feet south of State Road 227; thence southwesterly along State Road 227 to a point 5000 feet Northeast of the intersection of the Southernmost boundary of Twin Eagle Wildlife area and State Road 355; thence south along a line parallel and 5000 feet east of State Road 355 to a point 1,000 feet north of Fairview Ridge Road; thence east to a point 1,000 feet north of the intersection of Morgan's Lane Road and State Road 22; thence southeast with Morgan's Lane and Morgan's Lane extended approximately 3,500 feet to a point 2,500 feet southeast of the intersection of State Road 22 and Morgan's Lane; thence southwesterly to a point 1,000 feet east of the Gratz city limit line on Highway 355; thence west approximately 4,500 feet to the normal pool water level (elevation 428) of the Kentucky River; thence northeasterly with said water level to Carrollton Lock #1 on the Kentucky River; thence north approximately 1,000 feet to a point on the centerline of Kentucky Highway 320; thence northeasterly with said centerline approximately 2,000 feet to the point of beginning.

Surveyed by James M. West, P.E., Kentucky Reg. No. 12349 dated June 10, 1998.

A true and correct copy of the aforesaid Orders Approving Boundaries of Carroll County Water District No. 1, is attached hereto and incorporated herein by reference as Exhibit A. The physical boundaries of Carroll are delineated by the plat of Carroll, a true and correct copy of which is attached as Exhibit B;

9. Pursuant to KRS Chapter 74, Plaintiff Carroll and Defendant Gallatin are both subject to the jurisdiction of the Public Service Commission of Kentucky;

10. On or about May 21, 2007, Plaintiff Carroll filed a Complaint before the Public Service Commission of Kentucky (hereinafter "Commission") in Case No. 2007-00202 against Defendant Gallatin as a result of Defendant Gallatin's construction of a water line within the territorial boundaries of Plaintiff Carroll, without Plaintiff Carroll's consent and knowledge, and without a Certificate of Public Convenience and Necessity. Despite the establishment of territorial boundaries, Defendant Gallatin was then constructing water lines and/or water service in an attempt

to provide service to Defendant Whitehorse and/or Love's . A true and correct copy of the Complaint filed with the Commission is attached hereto as Exhibit C;

11. By Order of the Commission issued on August 1, 2007, Defendant Gallatin was prohibited during the pendency of the proceedings before the Commission from: (1) constructing any water lines within the territory of Plaintiff Carroll; (2) allowing a third party to connect to its existing water line within the territory of Plaintiff Carroll; and (3) from furnishing and/or selling water from its existing water line within the territory of Carroll to any customers not served by Gallatin County as of July 18, 2007. A true and correct copy of said Order is attached hereto as Exhibit D;

12. A hearing on the Complaint of Plaintiff Carroll was held before the Commission on November 1, 2008, at which time Plaintiff Carroll, Defendant Gallatin and Defendant Whitehorse appeared and gave testimony regarding the parties' controversy. At the time of the filing of this Appeal, no decision has been issued by the Commission;

13. In April of 2008, and while the matter between Plaintiff Carroll and Defendants Gallatin and Whitehorse was pending before the Commission for a decision, Defendant Judge French allegedly received a request from Defendant Gallatin to change its water district boundaries by annexing areas within Gallatin County which were within the territorial boundaries of Carroll as established by the Orders of the Carroll, Gallatin and Owen Fiscal Courts. A public hearing was scheduled for May 23, 2008, to receive comments. By Order entered July 8, 2008, Defendant Judge French changed the territorial boundaries of Defendant Gallatin to include areas of Gallatin County which were within the territorial boundaries of Carroll. A true and correct copy of said Order is attached hereto as Exhibit E;

14. In accordance with KRS Chapters 74 and 278, Carroll is ready, willing and

able to provide water service to all water users within its territorial boundaries, and has sufficient infrastructure and capacity to supply the needed water service to the Gallatin County residents and customers within its territorial boundaries;

15. Despite the establishment of territorial boundaries and Plaintiff Carroll's exclusive right to serve water users within those boundaries, Defendant Gallatin has attempted and will continue to attempt by the Order of the Defendant Judge French to serve Plaintiff Carroll's existing and future water users within the territorial boundaries of Carroll, including but not limited to, Defendants Crawford, Zalla, Whitehorse and Love's;

16. The Order of the Defendant French in enlarging the territorial boundaries of Defendant Gallatin so that it extends into the Plaintiff Carroll's exclusive territorial boundaries and authorizes Defendant Gallatin to construct water lines and to furnish and sell water violates the August 1, 2007, Order of the Commission; was entered by Defendant Judge French without the legal authority to do so; was procedurally and legally in violation of KRS Chapter 74; was without a factual and/or legal basis; is contrary to prevailing law; and usurps the statutory jurisdiction of the Commission in matters involving public water districts;

17. The Defendants Gallatin, Crawford, Zalla, Whitehorse and Love's may have an interest in and to this appeal as the operator of a water district and/or as owners of real estate which is subject to the Order of Defendant Judge French, but within the territorial boundaries of Carroll, and/or as Carroll's existing and/or future water users, and should be required to assert their claim in this Appeal, if any;

WHEREFORE, Plaintiff Carroll County Water District No. 1 requests this Court to enter an Order in this Appeal:

1. Setting aside and vacating the Order of Defendant Judge French which

unlawfully changed the boundaries of Defendant Gallatin County Water District so as to conflict with the existing territorial boundaries of Plaintiff Carroll County Water District No. 1; and,

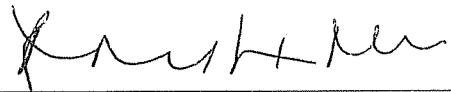
2. Ordering Defendant Gallatin County Water District to cease and desist its construction of water lines and/or the furnishing and/or sale of water service to the Defendants Crawford, Zalla, Whitehorse and/or Love's, within Plaintiff Carroll's territorial boundaries;

3. For its costs herein expended, and,

4. For all other necessary and proper relief to which it may be entitled.

CRAWFORD & BAXTER, P.S.C.
ATTORNEYS AT LAW
523 Highland Avenue
P.O. Box 353
Carrollton, Kentucky 41008
Phone: (502) 732-6688

Attorneys for Plaintiff
Carroll County Water District No. 1

By: 
Ruth H. Baxter