

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
THE DEPARTMENT OF WATER WORKS)
OF THE CITY OF MICHIGAN CITY,)
INDIANA, FOR APPROVAL OF A)
REGULATORY ORDINANCE)
ESTABLISHING A SERVICE TERRITORY)
FOR THE CITY'S MUNICIPAL WATER)
SYSTEM PURSUANT TO IND. CODE § 8-
1.5-6 *ET SEQ.*

CAUSE NO.: 44865

VERIFIED PETITION

The Department of Water Works of the City of Michigan City, Indiana (“Department”), by counsel, respectfully petitions the Indiana Utility Regulatory Commission (“Commission”) for approval of a regulatory ordinance establishing a service territory for the Department’s municipal water system in accordance with Ind. Code § 8-1.5-6 *et seq.* In support of its Petition, the Department shows the Commission as follows:

I. Commission Jurisdiction

1. Michigan City, Indiana (“City”), is an Indiana municipality located in LaPorte County, Indiana, which by and through the Department owns and operates a municipal water utility (“Utility”).
2. The Utility serves approximately 14,500 water customers.
3. The Utility constitutes a “municipal utility” as defined in Ind. Code § 8-1.5-6-1.
4. As discussed in Part II below, the Board of Directors for the Department (“Board”) and the Common Council for the City (“Common Council”) adopted, and the Mayor of the City approved, a certain “regulatory ordinance” as that term is defined in Ind. Code § 8-1.5-6-3. The regulatory ordinance establishes a service territory for the Utility.
5. The Department is not filing a “wholesale sewage petition” as that term is defined in Ind. Code § 8-1.5-6-5.

6. Because the Department requests that the Commission approve the regulatory ordinance adopted by the Board and the Common Council, the Commission has jurisdiction over the subject matter and the Utility pursuant to Ind. Code §§ 8-1.5-6-6 and 8-1.5-6-9.

II. Approval of Regulatory Ordinances

7. On July 26, 2016, the Board adopted Resolution No. 2016-3, which encouraged the Common Council to adopt a regulatory ordinance establishing a service area for the Utility and to regulate the furnishing of water therein. A copy of Resolution No. 2016-3 is attached hereto as Exhibit 1.

8. On September 20, 2016, the Common Council adopted Ordinance No. 4398, which is a regulatory ordinance (as defined in Ind. Code § 8-1.5-6-3) establishing the Department's Water Service Area ("Water Service Area") and regulating the furnishing of water therein ("Regulatory Ordinance"). The Department seeks Commission approval of Ordinance No. 4398 and the Water Service Area. The Water Service Area is defined as those areas within the corporate boundaries of the City, as well as certain areas within four (4) miles outside the City's boundaries, excluding any area within the authorized service area of another water utility including, but not limited to, a municipal water utility. A copy of the Regulatory Ordinance is attached hereto as Exhibit 2.

9. The boundaries of the Water Service Area established by the Regulatory Ordinance are outlined on the map attached to Exhibit 2.

10. The enforceability of the Regulatory Ordinance is subject to the jurisdiction of the Commission pursuant to Ind. Code §§ 8-1.5-6-6 and 8-1.5-6-9.

11. The rates and charges for the services to be provided in the Water Service Area were approved by the Commission in its May 27, 2015 final Order in Cause No. 44538.

12. The Regulatory Ordinance is not currently the subject of any administrative or judicial proceedings.

13. Upon information and belief, the water utilities that might be impacted by the Water Service Area are as follows:

- a. Town of Long Beach, Indiana Municipal Water Utility;
- b. Homeowners' Association of Duneland Beach Water Utility;
- c. Thirty-Nine North Conservancy Area;
- d. LaPorte Water Utility;
- e. JongKind Park Water Utility; and
- f. Prairie Lakes Conservancy District.

14. The existing service areas of the utilities referenced in Paragraph 13 above have been excluded from the Water Service Area.

15. To that end, the Department is unaware of any neighboring utility that objects to the proposed Water Service Area at this time.

III. Conclusion

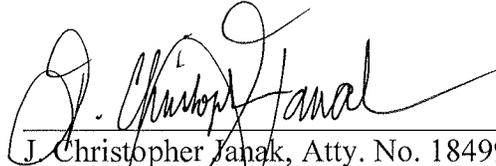
16. The Department is represented in this matter by the following counsel who respectfully request service of all Commission Orders and/or filings by any parties in this matter:

J. Christopher Janak, Atty. No. 18499-49
Jonathan W. Hughes, Atty. No. 28610-29
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000
(317) 684-5173 Fax
cjanak@boselaw.com
jhughes@boselaw.com

17. Consistent with Ind. Code § 8-1.5-6 *et seq.*, the Department respectfully requests that the Commission approve Ordinance No. 4398 (i.e., the Regulatory Ordinance).

WHEREFORE, the Department of Water Works of the City of Michigan City, Indiana, respectfully requests that the Commission approve Ordinance No. 4398, the Water Service Area established therein, and for all other necessary and proper relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Christopher Janak". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

J. Christopher Janak, Atty. No. 18499-49
Jonathan W. Hughes, Atty. No. 28610-29
BOSE MCKINNEY & EVANS LLP
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(317) 584-5173 (facsimile)
cjanak@boselaw.com
jhughes@boselaw.com

Counsel for Petitioner,
The City of Michigan City, Indiana

VERIFICATION

I have read the foregoing Petition and the allegations contained therein are true and correct to the best of my knowledge and belief.

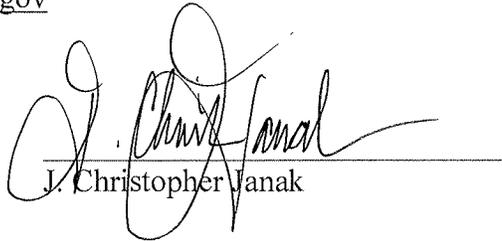


Randall E. Russell, Superintendent
Department of Water Works
City of Michigan City, Indiana

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Verified Petition" was served upon the following
by electronic mail this 4th day of October, 2016:

Indiana Office of Utility Consumer Counselor
PNC Center, Suite 1500 South
115 West Washington Street
Indianapolis, IN 46204
infomgt@oucc.in.gov



J. Christopher Janak

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000

3057717_3

Exhibit 1

**City of Michigan City
Resolution No. 2016-3**

**DEPARTMENT OF WATER WORKS
MICHIGAN CITY, INDIANA
BOARD OF DIRECTORS**

RESOLUTION NO. 2016-03

A Resolution by the Board of Directors for the Department of Water Works for the City of Michigan City, Indiana, approving and recommending to the Common Council of said City the approval of an ordinance establishing the Water Service Area for the Department and Regulating the Furnishing of Water Therein

WHEREAS, the Board of Directors of the Department of Water Works of the City of Michigan City, Indiana (the "Board" and the "Department", respectively), finds that the Department should be the exclusive provider of water utility service in areas within four (4) miles outside the corporate boundaries of the City of Michigan City, Indiana ("City"), including the regulation of furnishing of potable water therein; and

WHEREAS, the Board has reviewed the proposed ordinance entitled "An Ordinance Establishing the Water Service Area for the Department of Water Works of Michigan City, Indiana and Regulating the Furnishing of Water Therein" a copy of which is attached hereto as Exhibit 1; and

WHEREAS, Exhibit 1, if approved by the Common Council of the City of Michigan City, Indiana ("Common Council"), and the Indiana Utility Regulatory Commission ("Commission"), would establish the "Department's Water Service Area" as defined therein as those areas within the corporate boundaries of the City, as well as certain areas within four (4) miles outside the City's boundaries, excluding any area within the already authorized service area of another water utility including, but not limited to, another municipal water utility. A map detailing the Department's Water Service Area is attached to Exhibit 1 as Exhibit A.

WHEREAS, Exhibit 1, if approved by the Common Council and the Commission, would give the Department an exclusive license to furnish potable water service within the Department's Water Service Area, and the Department would be the exclusive provider of potable water to the public within the Department's Water Service Area; and

WHEREAS, if approved by the Common Council and the Commission, Exhibit 1 would prohibit all other utilities from providing potable water service in the Department's Water Service Area and would prevent any person from connecting to a utility other than the Department; and

WHEREAS, if approved by the Common Council, Indiana Code § 8-1.5-6 *et seq.* requires the Department to submit the ordinance establishing the Department's Water Service Area to the Commission for approval; and

WHEREAS, the Board finds that the City should approve the Department's Water Service Area as set forth in Exhibit 1, and authorize the Department to submit the matter for review and approval by the Commission.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Department of Water Works of the City of Michigan City, Indiana, that:

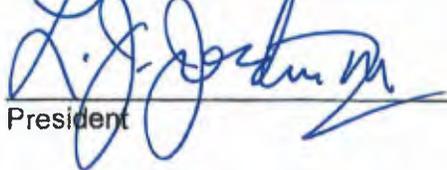
1. The City should establish a water service area pursuant to a water regulatory ordinance under Indiana Code § 8-1.5-6 *et seq.* and authorize the Department to pursue approval of the same by the Commission.

2. The Board recommends that the Common Council approve the Department's Water Service Area by adopting this form of the ordinance attached hereto as Exhibit 1 and incorporated herein by reference.

3. This resolution is effective as of the date of its adoption.

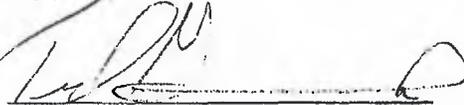
Adopted this 26th day of JULY, 2016, by a vote of 4 ayes and 0 nays.

BOARD OF DIRECTORS OF THE
DEPARTMENT OF WATER WORKS
OF THE CITY OF MICHIGAN CITY, INDIANA



President

ATTEST:



Secretary

3024650_4

The Department of Water Works Water Service Area Boundaries;

Starting from the West

- All of Pine Township in Porter County,
- Thence South starting along Center Line of County Line Road between LaPorte / Porter County, Pine Township south to the Indiana Toll Road North R-O-W, thence northeast,
- Along the Indiana Toll Road R-O-W – to CR 500 W, thence north,
- Along center line of CR 500 W to Johnson Road, thence east,
- Along center line Johnson Road to the Indiana Toll Road North R-O-W, thence northeast
- Along the Indiana Toll Road to the west boundary of the Old C&O RR Line (Thirty-nine North Conservancy District) thence northeast,
- Along the west boundary line Old C&O RR Line (Thirty-nine North Conservancy District) thence east,
- Along the of CR 225 N, thence north,
- Along center line Indiana State Road No. 39 to the Indiana /Michigan State Line, thence west,
- Along to the Indiana /Michigan State Line to Lake Michigan.

Areas that are excluded from our service area are as follows;

- 1. The Town of Long Beach, IN and their Water Utility
- 2. The Homeowners Association of Duneland Beach and their Water Utility,
- 3. The Thirty-Nine North Conservancy Area
- 4. The area served by LaPorte Water Utility,
- 5. Jon-Kind Park Water Utility,
- 6. Prairie Lakes Conservancy District

Exhibit 2

**City of Michigan City
Ordinance No. 4398**

MICHIGAN CITY COMMON COUNCIL

ORDINANCE NO. 4398

FILED
AUG 25 2016
GALE A. NEULIEB
CITY CLERK
CITY OF MICHIGAN CITY

**ESTABLISHING THE WATER SERVICE AREA
FOR THE DEPARTMENT OF WATER WORKS OF
MICHIGAN CITY, INDIANA,
AND REGULATING THE FURNISHING OF WATER THEREIN**

WHEREAS, Michigan City, Indiana (the "City"), has created a Department of Water Works ("Department") that is responsible for operating and maintaining the City's municipal water system; and

WHEREAS, Ind. Code § 36-9-2-14 permits a municipality to regulate the furnishing of water to the public; and

WHEREAS, Ind. Code § 36-9-2-18 permits a municipality to exercise powers granted by Ind. Code § 36-9-2-14 in areas within four (4) miles outside its corporate boundaries; and

WHEREAS, Ind. Code § 8-1.5-6, *et seq.* permits the City to adopt a "regulatory ordinance" which can then be submitted to the Indiana Utility Regulatory Commission ("Commission") for its review and approval and said regulatory ordinance allows the Department to regulate the furnishing of water utility service in areas within four (4) miles outside the City's corporate boundaries; and

WHEREAS, the City wishes to establish a specific water service area for the area that is within four (4) miles of its corporate boundaries as permitted by Indiana law, excluding any area within the authorized service area of another water utility.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF MICHIGAN CITY, INDIANA, that:

Section 1. The "Department's Water Service Area" is hereby defined and established as those areas within the corporate boundaries of the City, as well as certain areas within four (4) miles outside the City's boundaries, excluding any area within the authorized service area of another water utility including, but not limited to, a municipal water utility. A map and description detailing the Department's Water Service Area is attached hereto as Exhibit A.

Section 2. Upon adoption of this Ordinance and its approval by the Commission, the Department shall hold an exclusive license to furnish potable water service within the Department's Water Service Area, and the Department shall be the exclusive provider of potable water to the public within the Department's Water Service Area.

CC: WATER DEPT
Corporate Counsel
Planning (2 X's)
CITY ENGINEER

Section 3. Upon adoption of this Ordinance and its approval by the Commission, no other utilities are permitted to provide water service within the Department's Water Service Area. This Ordinance does not mandate the Department to extend service to areas where technically or financially not feasible. Rather, this Ordinance expressly prohibits other utilities from furnishing water service to customers within the Department's Water Service Area.

Section 4. No end service user shall permit a connection to potable water service within the Department's Water Service Area by any other water service provider.

Section 5. Any person, firm, or corporation who violates this Ordinance shall be subject to a civil penalty of two thousand dollars (\$2,000.00) per violation, and each day of violation shall be deemed a separate violation.

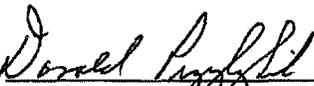
Section 6. The Department's existing rules and regulations for water service, as amended from time to time, shall apply to and within the Department's Water Service Area.

Section 7. If any one or more of the terms, provisions, or sentences of this Ordinance, or portions of the Department's Water Service Area, shall be deemed by a court or a tribunal of competent jurisdiction to be contrary to law, then such term of provision shall be deemed severable from the remaining terms and shall in no way affect the validity of the other provisions of this Ordinance.

Section 8. The City hereby authorizes the Department and its Board of Directors to pursue any and all necessary approvals for the implementation, effectiveness, and enforcement of this Ordinance, including, but not limited to, seeking approval of this Ordinance by the Commission.

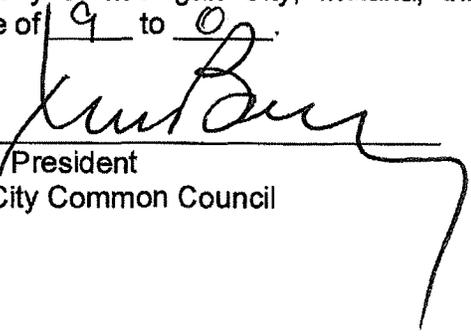
This Ordinance to be effective upon adoption, approval by the Mayor, and any required regulatory approval.

INTRODUCED BY:



Donald Przybylinski, Member
Michigan City Common Council

Passed by the Common Council of the City of Michigan City, Indiana, this 20th day of September, 2016, by a vote of 9 to 0.


Tim Bietry, President
Michigan City Common Council

Approved by me, this 21st day of September, 2016.



Ron Meer, Mayor
City of Michigan City

ATTEST:



Gale A. Neulieb, Clerk
City of Michigan City

3020265

Exhibit A

Map of Department's Water Service Area



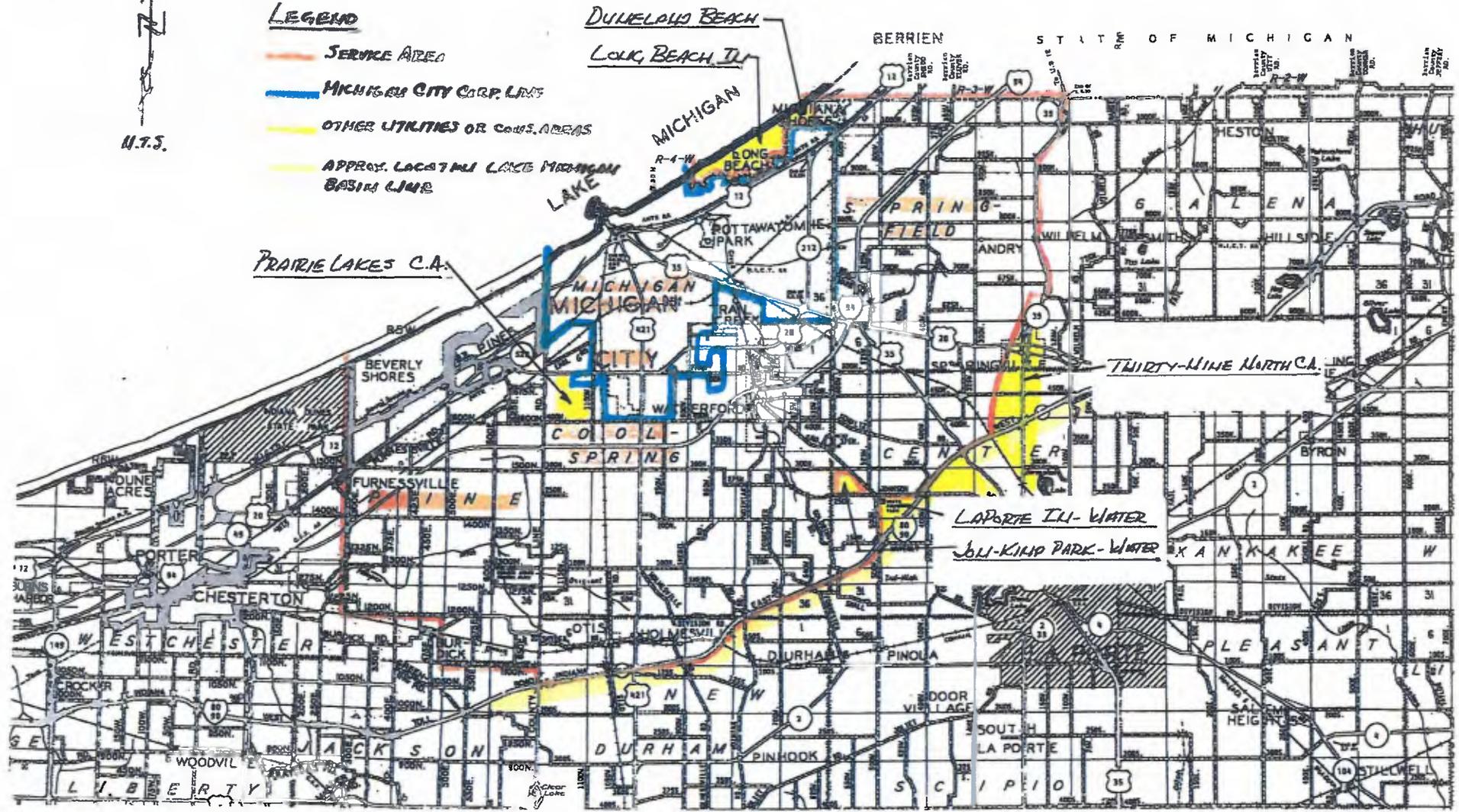
LEGEND

- SERVICE AREA
- MICHIGAN CITY CORP. LINE
- OTHER UTILITIES OR CONTS. AREAS
- APPROX. LOCATION LONG MICHIGAN BASIN LINE

DUNELAND BEACH

LONG BEACH ILL.

PRAIRIE LAKES C.A.



BERRIEN

STATE OF MICHIGAN

THIRTY-NINE NORTH C.A.

LAPORTE ILL. WATER

SOLI-KIND PARK - WATER

N.T.S.