

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TN

January 13, 2015

IN RE:)	
)	
CARTWRIGHT CREEK, LLC,)	
REQUEST TO UTILIZE ALTERNATIVE)	DOCKET NO.
FINANCIAL SECURITY PURSUANT TO)	14-00034
TENN. COMP. R. & REGS.)	
1220-4-13-.07(5))	

PETITION FOR PARTIAL RECONSIDERATION

Pursuant to T.C.A. § 4-5-317, Cartwright Creek, LLC asks the Tennessee Regulatory to reconsider one section of the "Order Denying Request for Alternative Financial Security" issued January 6, 2015.

The Order requires that if Cartwright Creek files another petition for alternate financial security, the utility must include in the filing, inter alia, "all communications between the Company and TDEC [the Tennessee Department of Environment and Conservation] during the last twelve (12) months," Order, at 9.

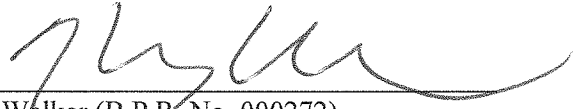
Cartwright Creek asks that the Authority reconsider that requirement. As a wastewater utility, Cartwright Creek files numerous, periodic reports, such as Monthly Operating Reports and Discharge Monitoring Reports, with TDEC. Moreover, in connection with a "Settlement Agreement and Consent Order" filed August 22, 2014, Cartwright Creek is now in the process of correcting and refileing all such reports from the last three years. (A copy of the "Settlement Agreement and Consent order" is attached.) Finally, the communications between Cartwright Creek and TDEC concerning the Settlement Agreement and Consent Order are also voluminous. Locating and producing all of these communications between TDEC and Cartwright Creek over

a recent twelve-month period would be burdensome, expensive and of limited relevance to a request for alternate financial security. This requirement alone would materially increase the utility's filing costs and indirectly burden the company's ratepayers.

In the event that the TRA Compliance Division or the TRA's advisory staff need all or part of this TDEC-related information, either group may readily request and obtain it through a Staff data request. Therefore, rather than requiring the company to file with the petition "all communications" between TDEC and Cartwright Creek over the period of a year, the utility asks that the Authority and its staff make a more focused request for such information as may be needed to evaluate the petition after it is filed.

For these reasons, Cartwright Creek asks the Authority to reconsider, in part, the Order and delete or amend the language requiring that a petition for alternate financial security filed by Cartwright Creek must include "all communications" between Cartwright Creek and TDEC over a year's time.

Respectfully submitted,

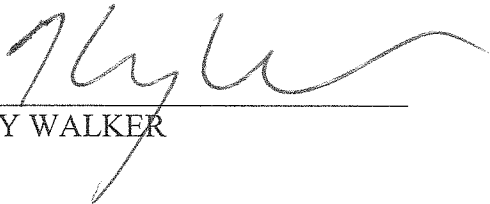


Henry Walker (B.P.R. No. 000272)
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Phone: 615-252-2363
Email: hwalker@babbc.com

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January, 2015, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

Shiva Bozarth
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, TN 37243



HENRY WALKER



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

TDEC Office of General Counsel
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, TN 37243
Phone: 615-741-1440

August 22, 2014

**CERTIFIED MAIL #
7012 1010 0000 5814 0619**

Joshua K. Chesser
Smith Cashion & Orr, PLC
231 Third Avenue North
Nashville, TN 37201-1603

Re: Settlement Agreement and Consent Order __WPC14-0021

Dear Mr. Chesser:

Enclosed are the Settlement Agreement and Consent Order, along with Attachment A, (the SEP) that was signed by the Commissioner yesterday. This Order will become effective upon your receipt. We want to thank you again for your cooperation.

I will also file a complete copy with Judge LaFevor, along with an Agreed Order of Dismissal, and that will close this case. With your permission, I'll sign for you on the dismissal.

Thanks again, and don't hesitate to call DWR if your client ever has any questions about complying with the Order or the SEP.

Sincerely,

David L. Henry
Assistant General Counsel

ATTACHMENT

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	
)	DIVISION OF WATER
)	RESOURCES
)	
CARTWRIGHT CREEK, LLC)	
)	DOCKET # 04.30-126158J
)	
RESPONDENT)	CASE NO. WPC14-0021
)	

SETTLEMENT AGREEMENT AND CONSENT ORDER

On April 21, 2014, a Commissioner's Order and Assessment was issued to Cartwright Creek, LLC. (Copy attached as Exhibit 1). The Respondent filed a timely appeal on May 22, 2014 (Copy attached as Exhibit 2). Pursuant to Tennessee Code Annotated (T.C.A.) §4-5-105 and §68-212-113(b), the Commissioner and the Respondent have reached a settlement. To implement this settlement (1) the Commissioner has agreed and by entering into this Settlement Agreement and Consent Order does hereby also dismiss the April 21, 2014 Order; and, the Respondent has agreed and by entering into this Settlement Agreement and Consent Order does also hereby waive its right to a contested case hearing before the Board in this matter and withdraws its appeal of the April 21, 2014 Order. This Settlement Agreement and Consent Order resolves and supersedes the April 21, 2014 Order. The Parties stipulate and agree to the following:

PARTIES

I.

Robert Martineau, Jr. is the Commissioner of the Tennessee Department of

Environment and Conservation (hereinafter the "Department").

II.

Cartwright Creek (hereinafter the "Respondent") is a municipality in Williamson County, Tennessee. The Respondent operates a sewage treatment plant (STP) and the associated collection system (hereinafter the "system") in Franklin, Tennessee. Service of process may be made on the Respondent through the Mr. Bruce Meyer, located at 1551 Thompson's Station Road West, Thompson Station, Tennessee 37179.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 0400-40-03, 0400-40-04, (hereinafter the "Rule"). Pursuant to T.C.A. §69-3-107(13), the Commissioner may delegate to the Director of the Division

any of the powers, duties, and responsibilities of the Commissioner under the Act.

IV.

The Respondent is a "person" as defined at T.C.A. §69-3-103(25) and as herein described, has violated the Act.

V.

The Harpeth River is "waters of the state" as defined by T.C.A. §69-3-103(42). Pursuant to T.C.A. 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 0400-40-4, Use Classifications for Surface Waters, is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, all waters of the state have been classified at a minimum for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife, and may additionally be classified for use as industrial water supply, domestic water supply, and navigation.

VI.

Tennessee Code Annotated §69-3-108 requires a person to obtain a permit from the Department prior to discharging into waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Rule 0400-40-5-.08 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the wastewater. Rule 0400-40-5-

.07 states in part that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit. Furthermore, it is unlawful for any person to increase, in volume or strength, any wastes in excess of the permissive discharges specified under any existing permit.

FINDINGS OF FACT

VII.

The Division issued to the Respondent National Pollutant Discharge Elimination System (NPDES) permit number TN0027278 (hereinafter the "permit"). The current permit was modified to include a Carbonaceous Biochemical Oxygen Demand (CBOD) limit that was omitted from the original permit. The modified permit became effective on November 1, 2010, and expired on November 30, 2011. The STP has a design capacity of 0.25 million gallons per day (MGD) and is authorized to discharge treated effluent at outfall 001 into the Harpeth River at mile 68.8.

VIII.

On July 14, 2011, the Nashville Environmental Field Office (N-EFO) received a NPDES renewal application from the Respondent. The N-EFO reviewed the application and forwarded comments to the Central Office and was received on July 20, 2011. In the renewal application, the Respondent failed to include data for Oil & Grease (O & G) and Total Dissolved Solids (TDS).

IX.

On August 16, 2011, the Division sent the Respondent a Notification of Incomplete Application (NOIA) letter. The Division requested that the additional information be submitted in duplicate to the N-EFO by September 23, 2011.

X.

On August 24, 2011, the Division received documentation in response to the NOIA. The documentation included analytical results for O&G and TDS along with an updated form to complete the permit application. The Division is still in the process of completing the necessary steps to issue the permit.

XI.

On March 17, 2011, personnel from the Division conducted a Compliance Sampling Inspection (CSI) of the Respondent's STP. A CSI is conducted to determine compliance with the NPDES permit with emphasis on sample collection.

A subsequent letter dated April 25, 2011, detailing the results of the CSI was sent to the Respondent. Observations from the CSI included the following:

- Analytical samples between the Respondent and the state laboratories were generally in good agreement,
- The standard operating procedure (SOP) needed further development, and
- New analytical equipment was ordered or had been received; however a new autoclave was still needed.

XII.

On July 23, 2012, the Division issued the Respondent a Notice of Violation (NOV) for multiple late submittals of their required monthly discharge monitoring reports (DMRs) including February of 2011, March of 2011, August of 2011, October of 2011, March of 2012, May of 2012, and June of 2012. Since the Division issued the NOV, the Respondent has submitted subsequent monthly DMRs by the 15th day of the month following the submittal period, as required by the permit.

XIII.

On April 5, 2013, the Division received an electronic message (e-mail) from the Respondent. In the e-mail, the Respondent details their response to a complaint of an overflow in the vicinity of 1035 Boxwood Drive, Franklin, Tennessee. Upon arrival at the scene, representatives from the Respondent observed water flowing around the manhole cover rim but were unable to estimate a total volume. The Respondent stated in the e-mail that they did not believe the overflow to be "continuous or substantial".

XIV.

On July 18, 2013, the Division received an e-mail concerning a complaint that a tree had fallen and ruptured an exposed collection system pipe that crosses Cartwright Creek. In the e-mail the Respondent suggests that the tree fell sometime on the afternoon of Wednesday, July 10, 2013. A representative of the Respondent arrived on site at approximately 3:30 the afternoon of July 12, 2013, and noticed the top of the pipe was dented and liquid was squirting from the top of the pipe. The representative estimated the

flow to be approximately 5 gallons per minute (gpm). After assessing the situation, the Respondent found that the downstream pumps were pumping erratically. Upon investigation, the cause was determined to be the bubbler lines inside the control panels. These were fixed causing the pumps to once again function normally. The Respondent advised the Division that they would be installing a pipe seal jacket to fix the section of pipe damaged by the fallen tree.

XV.

On December 18, 2013, the Division received a complaint about sewage leaking from an aerial sewer line crossing Cartwright Creek. On December 19, 2013, personnel from the Division investigated the complaint, and at the time of the visit, no sewage was discharging from the ductile iron pipe. This section of pipe was the same location that was damaged in July of 2013. During that time the Respondent indicated that the pipe would be repaired by installing a pipe seal jacket. The pipe was subsequently repaired.

XVI.

During the monitoring period of January 2011, to January 2014, the Department discovered numerous alleged, self-reported violations on Respondent's DMRs.

XVII.

Recently division personnel conducted a file review of Cartwright Creek's DMRs and Monthly Operating Reports (MORs). During the review, discrepancies were found between data that was submitted on DMRs and data contained on the MORs. Also

noticed during the review were reporting parameters that were being improperly reported or were not being reported at all. Respondent is currently working toward a reconciliation of the DMRs and MORs which it believes will correct all such discrepancies and other reporting shortcomings within the timeframe prescribed herein.

XVIII.

On February 11, 2014, personnel from the Division conducted a Compliance Sampling Inspection (CSI) of the Respondent's STP. Division personnel met with a representative of the Respondent while conducting the inspection.

A subsequent letter dated April 30, 2014, detailing the results of the CSI was sent to the Respondent including:

- Numerous discrepancies between MORs/DMRs,
- Problems with influent and effluent meters, and
- Equipment and units in poor condition or not operating at all.

XIX.

On April 2, 2014, the Division received revised and signed DMRs and MORs for the reporting years of 2012 and 2013, but the review is yet to be completed.

XX.

On May 19, 2014, Representatives from the Division's Compliance and Enforcement Unit along with a member from the Office of General Council (OGC) met with the Respondent. During the meeting The Respondent provided documentation

showing that all information required for the permit renewal application had been submitted to the Division.

XXI.

On May 21, 2014, Division personnel identified further mathematical errors contained in the DMRs that were resubmitted by the Respondent. Respondent shall correct any errors and deficiencies in their existing forms; future DMR's will use the newer forms. If Respondent is unsure of any past errors to be corrected, they may contact the Division for assistance.

XXII.

During the investigation, the Division incurred damages in the amount of FOUR THOUSAND SIX HUNDRED, EIGHTY-FOUR DOLLARS AND THIRTY-FIVE CENTS (\$4,684.35).

CONCLUSIONS OF LAW

XXIII.

By discharging wastewater effluent in violation of the terms and conditions of its NPDES permit, as stated herein, the Respondent has violated T.C.A. §§69-3-108(b)(1),(3), and (6), and 69-3-114(b), which state in-part:

T.C.A. §69-3-108(b)

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b)

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XXIV.

WHEREFORE, PREMISES CONSIDERED, the Commissioner Orders AND the Respondent agrees that:

1. Within 90 days of execution of this ORDER, the Respondent shall review all MOR and DMR data from the time period of January 1, 2011, through the current reporting period. All corrections, updated MORs and DMRs, shall be submitted for approval by the Division. The Respondent shall report all future information on Division supplied DMRs, once the permit issued, using the existing forms to retroactively report the required information. The Respondent shall submit the documents in duplicate to the manager of the Division's Nashville Environmental Field Office (EFO-N), located at 711 R.S. Gass Boulevard, Nashville, Tennessee,

37243, and to the manager of the Compliance and Enforcement Unit of Water Resources at the William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee 37243. All correspondence regarding this Order shall include the Respondent's name, order number, and county name.

2. Within 180 days of execution of this ORDER, the Respondent shall submit a corrective action plan (CAP) to the Division. The CAP shall include measures designed to insure data integrity, as well as measures to bring the STP into compliance with their permit. The CAP shall also focus on the overflow problems in and around the River Rest Subdivision that lead directly to Cartwright Creek. The Respondent shall submit the documents in duplicate to the manager of the Division's Nashville Environmental Field Office (EFO-N), located at 711 R.S. Gass Boulevard, Nashville, Tennessee, 37243, and to the manager of the Compliance and Enforcement Unit of Water Resources at the William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee 37243. All correspondence regarding this Order shall include the Respondent's name, order number, and county name.
3. Within 120 days of execution of the ORDER, the Respondent shall submit for approval by the Division, a sewer overflow response plan (SORP). The SORP shall include procedures for minimizing health impacts and shall include measures to be taken when overflows discharge onto local streets or other public areas. The SORP shall also include appropriate measures for the notification of

affected property owners and stream users, and shall include notification of the news media when necessary to protect public health. The SORP shall state specific procedures for notifying known downstream users in the event that untreated wastewater is discharged to waters of the state by sanitary sewer overflow (SSO). These procedures shall include, but not be limited to, provisions for posting warning signs at places where the general public could gain access to polluted waters. Further, posted signs shall remain in place until in-stream monitoring reveals that the water body has returned to normal background conditions. In the event that the Division requires the Respondent to modify/revise the SORP, the Respondent shall submit the modified/revise SORP to the Division within thirty days of the date of notification. The SORP shall be submitted to the EFO-N and a copy to the manager of the Compliance and Enforcement Unit at the respective addresses in Item 1. The SORP shall be initiated within 30 days of written approval by the Division.

4. The Respondent shall come into compliance with their permit no later than December 31, 2015, and submit a final report summarizing all actions taken to achieve compliance.
5. The Respondent shall, within 30 days of execution of this ORDER, pay damages to the Division in the amount of FOUR THOUSAND, SIX HUNDRED EIGHTY-FOUR DOLLARS AND THIRTY-FIVE CENTS (\$4,684.35).

6. The Respondent shall complete a Supplemental Environmental Project ("SEP") in lieu of paying an assessed CIVIL PENALTY of FORTY-TWO THOUSAND, SEVEN HUNDRED DOLLARS (\$42,700.00) in this case. The Division reserves the right to pursue the full civil penalty if the Respondent defaults on completion of the SEP after timely notice from the Division.
7. The SEP, attached as Exhibit A, has been approved by the Division and will be implemented accordingly. If the SEP is not approved by the Department of Justice or the U.S. District Court for the Middle District of Tennessee—as part of the proposed Consent Decree between the Respondent and the Harpeth River Watershed Association—the Respondent will so notify the Division to discuss further options for a SEP.

RESERVATION OF RIGHTS

By agreeing to and entering into this SETTLEMENT AGREEMENT AND CONSENT ORDER, Respondent wishes to settle and resolve this matter as expeditiously and efficiently as possible. The Respondent neither admits nor denies the factual allegations or the alleged violations of law contained in this SETTLEMENT AGREEMENT AND CONSENT ORDER. Respondent agrees to comply with this SETTLEMENT AGREEMENT AND CONSENT ORDER, in order to avoid the cost of protracted litigation and to voluntarily promote greater environmental protection. Respondents reserve the right to contest the factual allegations and alleged violations of law contained in this SETTLEMENT AGREEMENT AND CONSENT ORDER in any

proceeding other than a proceeding brought to enforce the terms of this SETTLEMENT AGREEMENT AND CONSENT ORDER.

NOTICE AND WAIVER OF RIGHT TO APPEAL

By entering into this Settlement Agreement and Consent Order, Respondent waives its statutory rights under T.C.A. §69-3-109 and T.C.A. §4-5-301 *et seq* to seek review of this Order.

**THIS CONSENT ORDER AND AGREEMENT SHALL BE EFFECTIVE UPON
BEING SIGNED ON BEHALF OF BOTH PARTIES.**

8/21/14
Date

Robert J. Martineau, Jr.
Robert J. Martineau, Jr., Commissioner *RJM*
Tennessee Department of Environment and
Conservation

8/20/2014
Date

Joshua K. Chesser
Joshua K. Chesser
Smith Cashion & Orr, PLC
231 Third Avenue North
Nashville, TN 37201
Counsel for Respondent

Exhibit A



Southern
Environmental
Law Center

2 Victory Avenue, Suite 300
Nashville, TN 37213
615-921-9470
Fax 615-921-8011
SouthernEnvironment.org

August 1, 2014

VIA EMAIL Joseph.Sanders@tn.gov & David.Henry@tn.gov

Joseph Sanders
Office of General Counsel
Tennessee Department of Environment and Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, TN 37243

David L. Henry
Office of General Counsel
Tennessee Department of Environment and Conservation
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, TN 37243

Re: *Commissioner's Order in the Matter of Cartwright Creek, LLC*, Case No. WPC14-0021

Dear Messrs. Sanders and Henry,

As you are aware, in January 2014, the Harpeth River Watershed Association ("HRWA") sent a notice of intent to sue Cartwright Creek, LLC pursuant to the citizens' suit provision of the Clean Water Act. HRWA alleged that Cartwright Creek's sewage treatment plant was violating its National Pollutant Discharge Elimination ("NPDES") permit issued by the Tennessee Department of Environment and Conservation. Since January, HRWA and Cartwright Creek have been negotiating a settlement of the claims identified by HRWA. The parties have now reached an agreement in principal, and it is anticipated that this agreement will be reflected in a proposed consent decree to be filed in the U.S. District Court for the Middle District of Tennessee, along with the complaint necessary to initiate the case. Of course, the consent decree must be approved by both the Department of Justice and the Court.

It is our understanding that the Commissioner's Order served upon Cartwright Creek in April 2014 by TDEC will be resolved as an Agreed Order between TDEC and Cartwright Creek.

This letter is to inform you that, to resolve the claims asserted by HRWA, Cartwright Creek has agreed to fund Supplemental Environmental Projects ("SEPs") at a cost of \$40,000 over four years. Funding for the SEPs will likely be paid by Cartwright Creek, LLC to the Tennessee Wildlife Resources Foundation ("TWRF"), a 501(c)(3) tax-exempt non-profit organization formed to support the Tennessee Wildlife Resources Agency ("TWRA"). As required, TWRF will have agreed to read the proposed consent decree, spend any monies it receives under the proposed consent decree for the purposes specified in the judgment, and will submit report to the Court and the parties describing how SEP funds were spent.

TDEC Office of General Counsel

July 29, 2014

Page 2 of 2

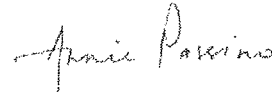
The specific SEP proposal is that TWRF will direct Cartwright Creek's funds to TWRA which, in cooperation with the U.S. Geological Survey ("USGS"), will site water quality gages at locations along the Harpeth River in order to support watershed-level receiving stream investigations and comprehensive data collection. It is the parties' goal that this data can be translated into water quality improvements by relevant regulatory agencies.

Cartwright Creek, LLC will fund the SEP through three annual grants, each estimated at \$10,000 (and not to exceed \$13,333), representing the actual cost per year charged to TWRA by USGS for funding the water quality gages. At the beginning of the fourth year, the balance of the \$40,000 in SEP funds (*i.e.*, those funds not used to fund USGS water quality gages in the first three years) will be used by TWRA to fund water quality monitoring, studies, or improvement projects in the Harpeth River Watershed. In spending the balance of the SEP funds, TWRA will act upon the advice and counsel of a stakeholder group, to include the parties and TDEC and/or EPA, created pursuant to the proposed consent decree.

The parties appreciate this opportunity to study and protect the Harpeth River. The proposed water quality monitoring and studies will help to improve water quality in and protect the Harpeth River watershed, an invaluable resource for Williamson County and the State of Tennessee and its citizens.

If the SEP is not approved by the Department of Justice or the U.S. District Court for the Middle District of Tennessee, HRWA will alert TDEC. Please let us know if you need additional information at this time.

Sincerely,



Anne Passino

cc: Joshua Chesser