

Control Number: 42946



Item Number: 12

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014.

42946

**FREEMAN & CORBETT**

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8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

FAX (512) 453-0865

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2014 OCT 16 PM 2:23

PUBLIC UTILITY COMMISSION  
FILING CLERK

March 6, 2013

*Via Regular and Electronic Mail*

Ms. Tammy Benter, Manager  
Utilities & Districts Section  
Water Supply Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application from Mustang Special Utility District, CCN No. 11856, to Transfer Facilities and to Transfer and Cancel CCN No. 13020 from Denton County Fresh Water Supply District No. 9, in Denton County; Application No. 36966-S

Application from Mustang SUD, CCN No. 20930, to Transfer Facilities and to Transfer and Cancel No. 20922 from Denton County FWSD No.9 in Denton County, Application No. 36967-S

CN: 601363534; RN: 10122269 (water) 102946019 (sewer) (Mustang SUD)  
CN: 600739387; RN: 101410140 (water & sewer) (Denton FWSD No. 9)

Dear Ms. Benter:

On behalf of Mustang Special Utility District (the "Mustang SUD"), I am again writing in regard to the prior approval issued by the Texas Commission on Environmental Quality ("TCEQ") with respect to the above-referenced applications (the "Applications"). Specifically, I am writing to follow up a call that I received from Christiaan Siano on March 5, 2013 in response to my February 26, 2013 correspondence to you. Mr. Siano referenced a November 2, 2012 letter from Mark Zeppa, sent on behalf of Providence Village WCID of Denton County ("Providing Village WCID"), asserting that Mustang SUD had not previously requested an extension of TCEQ's prior approval of the Applications, and that therefore the approvals had expired and were no longer in effect. The District strongly disagrees with Providence Village WCID's assertions, both legally and factually.

As a preliminary matter, please note that although I am identified as a recipient to receive a copy of Mr. Zeppa's November 2, 2012 correspondence, I did not receive a copy of the letter. I have also conferred with John Rapier, who is also identified as an intended recipient of the letter. Mr. Rapier also did not receive a copy of the correspondence. Thus, Providence Village WCID apparently sought to withdraw the Applications without the consent of, or notice to, the co-applicant.

Ronald J. Freeman  
rfreeman@freemanandcorbett.com

Anthony S. Corbett  
tcorbett@freemanandcorbett.com

Providence Village WCID's correspondence has a number of factual and legal deficiencies:

1. The correspondence asserts that the District did not previously request an extension of TCEQ's approval of the Applications, and that the approval has therefore expired. This is factually incorrect. By correspondence dated July 6, 2012 (within the one year period), I informed you that the Town of Providence Village had appealed TCEQ's decision approving the Applications, and had otherwise filed litigation relating to the proposed transfer of assets and the validity of the underlying agreement between Mustang SUD and Providence Village WCID. In my correspondence, I requested the following: (i) that you notify Mustang SUD of any date on which TCEQ's prior approval of the Applications would expire in light of the litigation pertaining to the Applications and TCEQ's approval thereof; and (ii) in the event of any such expiration date, that TCEQ renew such approval as necessary so that it continues in effect during the pendency of the litigation proceedings. A copy of the July 6, 2012 correspondence is attached hereto.

2. My July 6, 2012 correspondence was sent both by regular mail and electronic mail. It was sent to you and to Brian Dickey. I have attached a copy of the email transmission to confirm transmission of the correspondence.

3. On February 26, 2013, I again sent correspondence to you and Mr. Dickey providing an update as to the status of the litigation, and informed you that the District anticipates that the parties will proceed with the contemplated transfer of assets in accordance with TCEQ's prior approval of the Applications upon conclusion of the litigation proceedings.

4. TCEQ has no legal authority to grant Providence Village WCID's request that the Applications be returned. TCEQ lost jurisdiction on, and the ability to take any action regarding, the Applications when administrative appeals were filed appealing TCEQ's decision. The administrative appeals remain pending, and TCEQ lacks jurisdiction to take any action with respect to the Applications.

5. Providence Village WCID has no authority to formally withdraw the Applications. The Applications were filed by Mustang SUD on behalf of both parties pursuant to a contract entered into by the parties. Withdrawal of the Applications would require the consent of co-applicant Mustang SUD, and Mustang SUD has not granted any such consent. Neither Mr. Zeppa, nor Providence Village WCID, have the authority to withdraw the Applications on behalf of Mustang SUD or to request that the Applications be returned to Mustang SUD.

6. I have attached a copy of a Rule 11 Agreement that was entered into by Mustang SUD and Providence Village WCID. The parties agreed to postpone

March 6, 2013

Page 3

conveyance of the System facilities for so long as the litigation in that proceeding remained pending. Providence Village WCID now seeks to withdraw the Applications due to a delay to which it agreed.

In summary, Providence Village WCID's assertions in its November 2, 2012 correspondence are deficient both factually and legally. A timely request for an extension was filed with TCEQ prior to the expiration of the approvals. Further, Providence Village WCID lacks the authority to withdraw the Applications without Mustang SUD's consent. Finally, TCEQ lacks any authority to act on the Applications due to the administrative appeals that remain pending in this proceeding.

Thus, it is Mustang SUD's position that TCEQ's approval remains in effect for all purposes.

We appreciate your attention to this matter and look forward to your reply. Please do not hesitate to contact me if you have any questions.

Sincerely,



Anthony S. Corbett

cc: John Rapier (via email)  
Christiaan Siano (via email)  
Brian Dickey (via email)  
Mark Zeppa (via email and regular mail)

**FREEMAN & CORBETT**

PHONE (512) 451-6689

8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

FAX (512) 453-0865

July 6, 2012

*Via Regular Mail*

Ms. Tammy Benter, Manager  
Utilities & Districts Section  
Water Supply Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application from Mustang Special Utility District, CCN No. 11856, to Transfer Facilities and to Transfer and Cancel CCN No. 13020 from Denton County Fresh Water Supply District No. 9, in Denton County; Application No. 36966-S

Application from Mustang SUD, CCN No. 20930, to Transfer Facilities and to Transfer and Cancel No. 20922 from Denton County FWSD No.9 in Denton County, Application No. 36967-S

CN: 601363534; RN: 10122269 (water) 102946019 (sewer) (Mustang SUD)  
CN: 600739387; RN: 101410140 (water & sewer) (Denton FWSD No. 9)

Dear Ms. Benter:

On behalf of Mustang Special Utility District (the "District"), I am writing in regard to the prior approval issued by the Texas Commission on Environmental Quality ("TCEQ") with respect to the above-referenced applications (the "Applications"). By correspondence dated August 24, 2011, TCEQ authorized Mustang SUD and Denton County FWSD No. 9 to proceed with the proposed transfer of facilities in accordance with the Applications.

As you may know, the Town of Providence Village subsequently appealed TCEQ's decision approving the Applications, and has otherwise filed litigation relating to the proposed transfer of assets and the validity of the underlying agreement between Mustang SUD and Denton County FWSD No. 9. As a result of this litigation, the parties have not completed the transfer of assets in accordance with TCEQ's prior approval of the Applications.

Your August 24, 2012 correspondence did not include a date for expiration of TCEQ's approval of the Applications, or otherwise specify a date by which the transfer of assets must be completed. The parties intend to complete the transfer of assets upon resolution of the pending litigation.

Ronald J. Freeman  
rfreeman@freemanandcorbett.com

Anthony S. Corbett  
tcorbett@freemanandcorbett.com

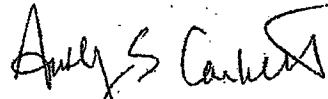
July 6, 2012

Page 2

We respectfully request the following: (i) that you notify Mustang SUD of any such date on which TCEQ's prior approval of the Applications expires; and (ii) in the event of any such expiration date, that TCEQ renew such approval as necessary so that it continues in effect during the pendency of the litigation proceedings.

We appreciate your attention to this matter and look forward to your reply. Please do not hesitate to contact me if you have any questions.

Sincerely,



Anthony S. Corbett

cc: John Rapier  
Brian Dickey

Ronald J. Freeman  
rfreeman@freemanandcorbett.com

Anthony S. Corbett  
tcorbett@freemanandcorbett.com

**From:** Anthony Corbett [<mailto:tcorbett@freemanandcorbett.com>] **Sent:** Friday, July 06, 2012 9:39 AM **To:** Tammy Benter ([tholquin@tceq.state.tx.us](mailto:tholquin@tceq.state.tx.us)) **Cc:** Brian Dickey ([bdickey@tceq.state.tx.us](mailto:bdickey@tceq.state.tx.us)); Rapiere, John ([rapiere@rapierewilson.com](mailto:rapiere@rapierewilson.com)) **Subject:** Mustang SUD

Tammy- Attached please find a copy of correspondence that is being mailed to you today regarding the STM approval that was previously issued by TCEQ for Mustang SUD. Please let me know if you have any questions.

Thank you  
Tony

Anthony S. Corbett  
Freeman & Corbett  
8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759  
Phone: (512) 451-6689  
Fax: (512) 453-0865

CAUSE NO. 2011-60876-393

PROVIDENCE VILLAGE,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
PROVIDENCE VILLAGE WATER CONTROL	§	393 <sup>RD</sup> JUDICIAL DISTRICT
AND IMPROVEMENT DISTRICT OF DENTON	§	
COUNTY f/k/a DENTON COUNTY FRESH	§	
WATER SUPPLY DISTRICT NO. 9 and	§	
MUSTANG SPECIAL UTILITY DISTRICT	§	
	§	
Defendants.	§	DENTON COUNTY, TEXAS

**RULE 11 AGREEMENT**

Pursuant to Rule 11 of the Texas Rules of Civil Procedure, Plaintiff, Providence Village ("Providence Village" or "Plaintiff"), and Defendants, Mustang Special Utility District ("Mustang") and Providence Village Water Control and Improvement District of Denton County f/k/a Denton County Fresh Water Supply District No.9 ("WCID")(hereinafter collectively the "Defendants"), agree to the following as evidenced by the signatures of their respective attorneys of record:

1. Subject to any challenges to the Court's subject matter jurisdiction, special exceptions, pleas in abatement or other dilatory pleas on file or that may be filed by either of the Defendants, Plaintiff and Defendants agree to submit this case to the Court for a decision on the merits by filing cross-motions for summary judgment in accordance with the following schedule:

EVENT	DEADLINE
HEARING on the parties' cross-motions for summary judgment and on any motions to dismiss for lack of subject matter jurisdiction, pleas to the jurisdiction, pleas in abatement and other dilatory pleas, and special exceptions filed by Defendants.	2:30 p.m. on Thursday, September 15, 2011, in the courtroom of the 393rd Judicial District Court, Denton County, Texas.



<b>Parties:</b> Deadline to file replies to responses to motions for summary judgment.	September 9, 2011
<b>Parties:</b> Deadline to file responses and objections to motions for summary judgment.	September 2, 2011
<b>Parties:</b> Deadline to file motions for summary judgment.	August 19, 2011
<b>Parties:</b> Deadline to file amended pleadings.	August 5, 2011

2. Defendants agree that the WCID will not transfer, convey, assign or lease to Mustang any of the sanitary sewer collection facilities or water distribution and storage facilities comprising the WCID's retail sewer and water systems, the same being referred to as "District Facilities" and more particularly described in the Merged, Amended, and Restated Agreement Related to Water and Sanitary Sewer Service by and between Mustang and the WCID, dated June 20, 2005, as amended by the First Amendment to Merged, Amended, and Restated Agreement Related to Water and Sanitary Sewer Service by and between Mustang and the WCID, dated October 1, 2007 (collectively, the "Agreement") prior to October 1, 2011 or the date the trial court enters a judgment or order disposing of Plaintiff's claims in the above cause, whichever occurs last. Notwithstanding the foregoing abatement, Mustang and the WCID may otherwise continue to perform as promised under the Agreement including, but not limited to, preparing documents and taking all necessary actions in anticipation of closing said transfer, conveyance, assignment and lease of the District Facilities from the WCID to Mustang on October 1, 2011.

3. The signatures below evidence the intent of Plaintiff and Defendants that this shall serve as a Rule 11 agreement, which shall become enforceable upon filing with the clerk of the court.

Respectfully submitted,

RAPIER, WILSON & WENDLAND, P.C.  
1333 W. McDermott Drive, Suite 100  
Allen, Texas 75013  
Tel. (972) 727-9904  
Fax. (972) 727-4273

By: 

JOHN RAPIER  
Texas Bar No. 16550500  
Email: [rapier@rapierwilson.com](mailto:rapier@rapierwilson.com)  
JAMES W. WILSON  
Texas Bar No. 00791944  
Email: [wilson@rapierwilson.com](mailto:wilson@rapierwilson.com)

ATTORNEYS FOR DEFENDANT,  
Mustang Special Utility District

AGREED TO BY:

  
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Texas Bar No. 00792519  
Phillip Mack Furlow, P.C.  
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For Plaintiff, Providence Village

  
Britton B. Harris *by permission J. Wilson*  
Texas Bar No. 09054500  
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Houston, Texas 77004-2812  
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Fax: (713) 224-5358  
Email: [bharris@hhstxlaw.com](mailto:bharris@hhstxlaw.com)

For Defendant, Providence Village Water  
Control and Improvement District of Denton  
County

**CERTIFICATE OF SERVICE**

I certify that on July 27, 2011 a true and correct copy of above and foregoing Rule 11 Agreement was served to each of the following persons by the method indicated:

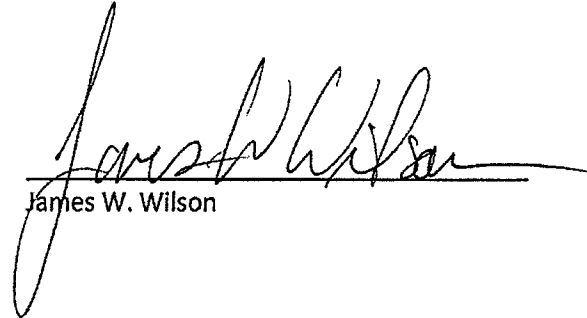
Attorneys for Plaintiff, Providence Village:

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Phillip Mack Furlow, P.C.  
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Denton, Texas 76201-3039  
VIA FACSIMILE: (888) 466-1204

Brandy Manning  
Manning Legal  
P.O. Box 136938  
Fort Worth, Texas 76136  
VIA FIRST CLASS U.S. MAIL, POSTPAID

Attorney for Defendant, Providence Village WCID:

Britton B. Harris  
Harris, Hilburn & Sherer, L.L.P.  
1111 Rosalie  
Houston, Texas 77004-2812  
VIA FACSIMILE: (713) 224-5358



James W. Wilson