

Control Number: 42946



Item Number: 30

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
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

RECEIVED
WATER SUPPLY DIV.

TCEQ DOCKET NO. 2011-1763-DIS 2011 OCT 21 PM 4 23

APPLICATION BY PROVIDENCE	§	BEFORE THE TEXAS
VILLAGE WATER CONTROL &	§	
IMPROVEMENT DISTRICT AND	§	COMMISSION ON
MUSTANG SPECIAL UTILITY	§	
DISTRICT FOR SALE, TRANSFER,	§	ENVIRONMENTAL
MERGER APPROVAL, APPLICATION	§	
NOS. 36966-w AND 36967-S	§	QUALITY

BD
 2014 OCT 16 PM 2:25
 RECEIVED
 PUBLIC UTILITY COMMISSION
 FILING CLERK

RESPONSE OF PROVIDENCE VILLAGE WATER CONTROL & IMPROVEMENT DISTRICT TO MOTION TO OVERTURN EXECUTIVE DIRECTOR'S DECISION

Providence Village Water Control & Improvement District (Providence WCID) files this Response to the Motion to Overturn Executive Director's Decision on the above-referenced STM Applications filed by the Town of Providence Village ("Protestant"), and in support thereof shows as follows:

I. Purpose of Providence WCID's Response

By the letter attached hereto as Exhibit A, dated October 10, 2011, Mr. Les Trobman, General Counsel to the Texas Commission on Environmental Quality ("TCEQ"), notified Providence Village Water Control & Improvement District, among others, that it was encouraged to file responses to the issues raised in the Motion to Overturn Executive Director's Decision Not to Hold Public Hearings on Application Nos. 36966-S and 36967-S filed by the Town of Providence Village, Texas. Providence WCID accepts Mr. Trobman's invitation as an opportunity to file a short position statement of Providence WCID in this matter, as well as to clarify or correct certain misunderstandings or misstatements made by the Town of Providence Village ("Town") and Mustang Special Utility District ("Mustang") in their respective filings/briefs.

II.

Providence WCID Does Not Oppose The Town's Requested Public Hearing

Mustang states at Page 5 of its Response to Motion to Overturn Executive Director's Decision as follows:

"While the Protestant complains about the impact of the transaction on the WCID, it is meaningful to note that the WCID has not requested a hearing or corroborated the Protestant's assertions. In fact, the WCID signed the STM Application to complete the current transaction."

Mustang further states at Page 7 of its Response that, "The WCID does not oppose the transaction."

However, Providence WCID wishes to make clear to the TCEQ and any other party that Providence WCID does not object to or oppose in any manner the Town's request for public hearing on Application No. 36966-S and No. 36967-S ("the Applications"). Furthermore, the fact that Providence WCID executed the Applications and did not request a public hearing on the Applications should not be construed as a comment by the District upon the merits of or disagreement with assertions made by the Town in its various pleadings submitted in connection with the Application or request for a public hearing.

III.

Circumstances Giving Rise to the Existence of the Contracts

At Page 2 of the Town of Providence Village's Motion to Overturn, the Town states, "The STM application seeks to cancel the District's CCN and gift all of the District's water and sewer infrastructure to Mustang." The Providence

WCID believes such language to mischaracterize the circumstances that led to the series of contracts about which the Town complains.

The contracts with Mustang were negotiated and approved by Providence WCID prior to the enactment of and amendments to Section 13.254 (a-1) and 13.246(h) of the TEXAS WATER CODE. Consequently, as the Mustang water and sewer certificates of convenience and necessity were in place at the time of the Contracts entered into with Mustang, there was no effective statutory process or remedy available to a landowner requiring service other than a time consuming and costly contested decertification proceedings with criteria biased in favor of the CCN holder. Consequently, the District's negotiation position with Mustang was severely limited by the then existing CCN regulatory process. Thus, Providence WCID takes issue with the Town's characterization of the Contracts as an intended "gift" to Mustang by the Providence WCID.

As to another issue, Mustang states at Page 2 of Mustang's Response to Motion To Overturn Executive Director's Decision as follows: "'Mustang consented to dual certification of service territory on an interim basis not because of any inability to fund infrastructure, but in cooperation with the developer's funding requirements.'" The Providence WCID believes such language to mischaracterize the circumstances that led to the series of contracts about which the Town complains.

At the time of creation of the Providence WCID, Mustang was unable to purchase water from the Upper Trinity Regional Water District, the wholesale water supplier for the region, in amounts and at times sufficient to meet the

needs of the area within Providence WCID as it developed. Mustang's status as a non-profit water supply corporation jeopardized the tax exempt status of Upper Trinity's outstanding bonds and would prevent it from issuing bonds on a tax-exempt basis in the future. Consequently, Upper Trinity agreed to provide wholesale water directly to Providence WCID provided that provision of service would be coordinated with Mustang in a manner satisfactory to Upper Trinity. The terms of the initial contracts between Mustang and Providence WCID giving Mustang certain rights to acquire the Providence WCID water and sewer system were drafted to satisfy Mustang and Upper Trinity. Thus, Providence WCID also takes issue with Mustang's characterization of the background information relating to the Applications and circumstances that led to the series of contracts about which the Town complains.

IV.

Providence WCID is Awaiting the Outcome of Denton County Litigation

The Applications were executed by the District pursuant to the contractual requirements of that 2005 contract with Mustang entitled, "Merged, Amended, and Restated Agreement Related to Water and Sanitary Sewer Service", and as amended by that contract with Mustang dated October 1, 2007, entitled, "First Amendment to Merged, Amended, and Restated Agreement Related to Water and Sanitary Sewer Service." Providence WCID entered into this series of contracts with Mustang in the good faith belief that such contracts were legal, valid and enforceable.

Subsequently, the Town filed Cause No. 2011 – 60876 – 393, in the 393rd Judicial District Court, Denton County, Texas, styled *Providence Village v.*

Providence Village Water Control and Improvement District of Denton County f/k/a Denton County Fresh Water Supply District No. 9 and Mustang Special Utility District (the "Denton County Litigation"), in which Denton County Litigation the Town challenged the validity, legality and enforceability of the contracts, including specifically whether Providence WCID's agreement to convey its water and sewer facilities and its certificates of convenience and necessity ("CCNs") are legally binding upon the current board of directors of Providence WCID.

In a ruling issued September 16, 2011, the Honorable Douglas M. Robison, Judge of the 393rd Judicial District Court of Denton County, Texas, announced his decision that the validity of the contracts entered into between Providence WCID and Mustang is contingent upon certain factual determinations which have not yet been resolved in the Denton County Litigation. In the event that a judicial decision is rendered in the Denton County Litigation and confirmed upon any subsequent appeal that the current board of directors of Providence WCID is not legally bound by the Contracts with Mustang to convey Providence WCID's water and sewer facilities and CCNs to Mustang, the current Board of Directors of Providence WCID reserves its right to re-evaluate whether it is in the best interest of Providence WCID to consummate such transactions on the terms as set out in the Contracts with Mustang.

V.

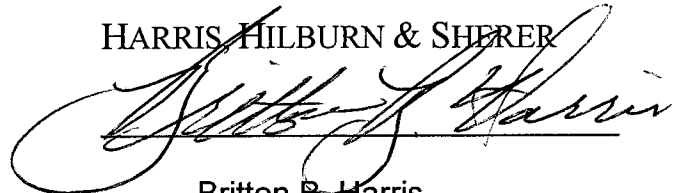
Request that Providence WCID Be Copied on All Filings

Providence WCID asks as a professional courtesy among counsel for all involved that Providence WCID be copied on all filings in this matter by any other parties. Providence WCID may be copied at the address of the undersigned

counsel, Britton B. Harris, at HARRIS, HILBURN & SHERER, 1111 Rosalie, Houston,
Texas 77004; Phone (713) 223-3936; Fax (713) 224-5358; email
bharris@hhstxlaw.com.

Respectfully submitted,

HARRIS, HILBURN & SHERER

A handwritten signature in cursive script, appearing to read "Britton B. Harris", is written over a horizontal line.

Britton B. Harris
State Bar No. 09054500
Brett J. Sileo
State Bar No. 00794634
1111 Rosalie
Houston, Texas 77004
Telephone: (713) 223-3936
Telecopier: (713) 224-5358

ATTORNEYS FOR
DEFENDANT PROVIDENCE VILLAGE
WATER CONTROL AND
IMPROVEMENT DISTRICT

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 10, 2011

- To: Persons on the attached mailing list (by mail and facsimile as indicated)
- Re: Motion to Overturn filed by the Town of Providence Village concerning the Executive Director's decision not to request a hearing on the applications filed by Mustang Special Utility District for the "Sale, Transfer, or Merger" of water and sewer systems in Denton County: TCEQ Docket No. 2011-1763-DIS, Application Nos. 36966-S & 36967-S

This letter is in response to the Motion to Overturn ("Motion") filed on July 2, 2009, by the Town of Providence Village ("Town"), concerning the Executive Director's decision not to request a hearing on the applications filed by Mustang Special Utility District ("Mustang") for the "Sale, Transfer, or Merger" ("STM applications") for water and sewer systems and CCNs owned and operated by Providence Village Water Control and Improvement District of Denton County f/k/a Denton County Freshwater Supply District No. 9 ("District") in Denton County. A complete copy of the Motion may be obtained from the Office of Chief Clerk, TCEQ, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087.


Title 30, Section 50.139 of the Texas Administrative Code authorizes the General Counsel to extend the time period for filing a motion to overturn and for the Commission to act on a motion to overturn up to 90 days after the date written notice of the Executive Director's action is mailed to the Applicant. Accordingly, this letter shall serve as the order extending the time for filing a motion to overturn on the Executive Director's decision to **Monday, September 26, 2011**, and the order extending the time for the Commission to act on the Motion until **Friday, November 18, 2011**.

The Executive Director, the Office of Public Interest Counsel, Mustang and the District are hereby notified that they are encouraged to file response briefs with regard to the issues raised in the Motion. These briefs must be filed with the Chief Clerk's Office no later than **5:00 p.m. on Friday, October 21, 2011**. The Town may file a reply brief with the Chief Clerk's Office no later than **5:00 p.m. on Friday, October 28, 2011**. The response and reply briefs may be filed electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and 7 copies with the Chief Clerk of the TCEQ. The parties must also mail a copy of the response briefs to all other persons on the attached mailing list on the same day the briefs are submitted to the Office of Chief Clerk.

The Commission's Office of General Counsel will notify the entities on the attached mailing list by separate letter if the Commission decides to set the above-referenced matter for consideration at a future public meeting.

If you have any questions about this matter, please contact Todd Burkey, Assistant General Counsel, at (512) 239-2941.

Respectfully,


Les Thomas
General Counsel

Mailing List

P.O. Box 13087

Austin, Texas 78711-3087

512-239-1000

Internet address: www.tceq.state.tx.us

printed on recycled paper using soy-based ink



TCEQ Docket No. 2011-1763-DIS
Service List

<p>John Rapier Rapier, Wilson & Wendland, P.C. 1333 W. McDermott, Suite 100 Allen, Texas 75013 <i>Via facsimile 972-727-4273</i></p>	<p>Misti R. Howell 1365 Portsmouth Drive Providence Villages, Texas 76227 <i>Via priority mail</i></p>
<p>Anthony S. Corbett Freeman & Corbett 8500 Bluffstone Cove, Suite B-104 Austin, Texas 78759 <i>Via facsimile 512-453-0865</i></p>	<p>Tammy Benter Brian Dickey TCEQ Water Supply Division, MC 153 P.O. Box 13087 Austin, Texas 78711-3087 <i>Via priority mail</i></p>
<p>John Mitchell 1208 Oakcrest Drive Aubrey, Texas 76227 <i>Via priority mail</i></p>	<p>Erin Selvera TCEQ Environmental Law Division, MC 173 P.O. Box 12087 Austin, Texas 78711-3087 <i>Via priority mail</i></p>
<p>Julie Y. Fort McKamie Krueger, LLP 2007 N. Collins Blvd., Suite 501 Richardson, Texas 75080 <i>Via facsimile 210,546.2130</i></p>	<p>Blas Coy TCEQ Office of Public Interest Counsel, MC 103 P.O. Box 13087 Austin, Texas 78711-3087 <i>Via priority mail</i></p>
<p>Russell Pfeiffer 10303 Lakeview Drive Providence Village, Texas 76227 <i>Via priority mail</i></p>	<p>Docket Clerk, TCEQ Office of the Chief Clerk-MC-105 P.O. Box 13087 Austin, Texas 78711-3087 <i>Via CMRRR</i></p>
<p>Mr. and Mrs. Garcia 10245 Lakeview Drive Providence Village, Texas 76227 <i>Via priority mail</i></p>	<p>Brian Christian TCEQ SBEA Division Public Participation and Education Program, MC 108 P.O. Box 13087 Austin, Texas 78711-3087 <i>Via priority mail</i></p>
<p>Mr. and Mrs. Trimboli 1316 Kingston Drive Providence Village, Texas 76227 <i>Via priority mail</i></p>	
<p>Mr. Brian D. Roberson 1315 Oakcrest Drive Providence Village, Texas 76227 <i>Via priority mail</i></p>	