

Control Number: 42983



Item Number: 33

Addendum StartPage: 0

DOCKET NO. 42983

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| <b>APPLICATION OF CRYSTAL CLEAR<br/> WATER SUPPLY CORPORATION AND<br/> CITY OF SAN MARCOS FOR SALE,<br/> TRANSFER, OR MERGER OF<br/> FACILITIES AND TO AMEND A<br/> CERTIFICATE OF CONVENIENCE<br/> AND NECESSITY IN COMAL,<br/> GUADALUPE, AND HAYS COUNTIES<br/> (37671-S)</b> | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | 2015 JUL 27 AM 11:19<br>PUBLIC UTILITY COMMISSION<br><b>PUBLIC UTILITY COMMISSION</b><br><b>OF TEXAS</b> |
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**COMMISSION STAFF'S FINAL RECOMMENDATION ON THE APPLICATION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Final Recommendation.

**I. Background**

On July 26, 2013, Crystal Clear Water Supply Corporation (Crystal Clear) and City of San Marcos (collectively, the Applicants) filed an application for the sale, transfer, or merger of facilities and to amend a certificate of convenience and necessity (CCN) in Comal, Guadalupe, and Hays Counties pursuant to TEX. WATER CODE ANN. §§ 13.246 and 13.301 and 30 TEX. ADMIN. CODE § 291.109 (TAC). In its application, the City of San Marcos is seeking to amend its water CCN No. 10298 and to acquire a portion of CCN No. 10297, held by Crystal Clear. This docket is being processed in connection with Docket No. 42984, *Application of City of San Marcos and Crystal Clear Water Supply Corporation for Sale, Transfer, or Merger of Facilities and to Amend a Certificate of Convenience and Necessity in Comal, Guadalupe, and Hays Counties*.

On June 5, 2014, the Texas Commission on Environmental Quality (TCEQ) issued a letter stating that a determination was made that a public hearing was not going to be requested regarding the transaction and that the parties may complete their proposed transaction. Subsequently on September 1, 2014, the Public Utility Commission of Texas (Commission or PUC) began the economic regulation of water and sewer utilities and this case was transferred from the TCEQ to the Commission for further review. On April 13, 2015, the Applicants filed a response to Order No. 4 clarifying the transaction, transfers, and amendments requested in this proceeding, submitting a signed and dated copy of the agreement of the Applicants, submitting revised notices, and requesting an extension of the one-year deadline in 16 TAC § 24.112(e)

from June 5, 2015 until July 31, 2015. On April 24, 2015, Order No. 6 was issued requiring applicants to provide new notice and setting the deadline for Commission Staff to file a revised proposed notice of approval by July 13, 2015, if the Commission received no request for hearing. On July 13, 2015, Commission Staff requested they be given until August 27, 2015 to file a final recommendation on the Application. On August 13, 2015, Applicants filed a Bill of Sale. On July 14, 2015, Order No. 7 was issued establishing August 27, 2015 as the date for Commission Staff to file a final recommendation on the application. Therefore, this pleading is timely filed.

## **II. Recommendation**

Pursuant to 16 TAC § 24.109(g), the utility or water supply or sewer service corporation, within 30 days of the actual effective date of the transaction, must provide the Commission “a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.” On July 14, 2015 Applicants filed a Bill of Sale, which was executed on August 13, 2015. The Bill of Sale specifically states that the Grantor (Crystal Clear), for the consideration of ten dollars and other good and valuable consideration will transfer “[a] portion of the Grantor’s service area authorized by its certificate of convenience and necessity” to the Grantee (City of San Marcos). After finding the Applicants provided sufficient proof the transaction had been finalized and customer deposits transferred or refunded, Staff sent consent forms to the Applicants.

Consistent with the attached memorandum of Fred Bednarski of the Commission’s Water Utilities Division, Staff recommends the transaction be approved. Staff continues to find that the transaction serves the public interest and that the City of San Marcos is financially sound to provide continuous and adequate service. Staff finds that service is already being provided in the areas with adequate facilities. In addition, the City of San Marcos has the financial capability to pay for facilities necessary to provide continuous and adequate service as demonstrated by the debt service coverage ratio, which was calculated to be \$26.4 million to \$21.1 million, or 1.25 to 1.00. Per the Municipal Advisory Council of Texas, the City of San Marcos also has a Moody’s bond ratings of Aa2, which indicates the City has a very strong capacity to meet its financial commitments. With respect to the City of San Marcos’ managerial capability, the City’s water system has a superior rating from the TCEQ and has no outstanding violations with either the

TCEQ or the PUC. The City of San Marcos also currently services 34,344 connections and employs approximately 16 licensed operators.

During Staff's final review, after notice was published, Staff analyzed a map provided by the City which requested additional area be added to the CCN held by the City of San Marcos. The City requested, via this STM application, additional area be added to their CCN as shown by 4 separate distinct amendments (A/B/C/D). The applicant stated the majority of the area, area "A", is being requested based on future growth. At this time, though Staff believes the underlying transaction is in the public interest, Staff does not recommend approval of the City of San Marcos acquiring the new service area as designated as area "A" on their maps. Staff finds the City has not met their burden to show need as required by TWC §13.246(c)(2). The area designated as area A does not currently have any infrastructure to serve, nor was a preliminary engineering report submitted. In addition, the City of San Marcos did not submit a request for service from any developers in this area, but did state that City personnel had been informally approached by a land owner in the area. Staff does not find this to be a sufficient showing of need for acquiring this additional area at this time, though notes that the City of San Marcos is not prevented from submitting an application to amend their CCN in order to acquire this area.

As for the additional areas the City of San Marcos is requesting to acquire, the second largest area, "B" is bound on three sides by the City's CCN and has a 12" water transmission main running through the area; the purpose of this addition would be to clean up the existing boundaries, which Staff finds to be a valid reason to acquire this limited area. As for the area labeled "C", this area is proposed to follow the current property lines instead of having the CCN boundary diagonally bisecting the properties, which facilitates uniform development of the area, and therefore Staff recommends approval of this portion of the application. The remaining proposed area is occupied by an existing industrial water customer of the City, Heldenfels Enterprises, Inc, which Staff also supports as being included in the amended CCN.

At this time, Staff does not recommend that the addition of "A" be included in this STM application because Staff finds there to be a lack of supporting materials such as a request for service or a preliminary engineering plan, thus, Staff finds the City has not proven the need for service as required by TWC §13.246(c)(2). Staff has attached a copy of the maps with and without area "A." On August 21, 2015, the City of San Marcos consented to the map and

certificates Staff sent to them on August 21, 2015, representing the final transaction, removing area "A" from the final maps.

Staff will work with the parties to prepare and file a proposed notice of approval, including findings of facts, conclusions of law, and ordering paragraphs by September 10, 2015.

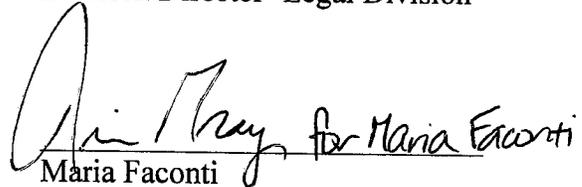
### III. Conclusion

Staff continues to recommend that the application, as modified by Staff, be approved. Staff intends to work with the parties to file a proposed findings of fact, conclusions of law, and ordering paragraphs by September 10, 2015.

**DATED:** August 27, 2015

Respectfully Submitted,

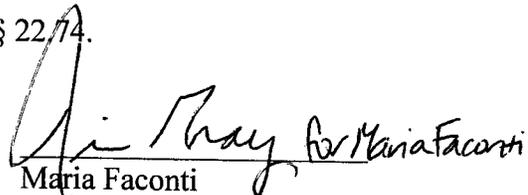
Margaret Uhlig Pemberton  
Division Director- Legal Division



Maria Faconti  
Attorney-Legal Division  
State Bar No. 24078487  
(512) 936-7235  
(512) 936-7268 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

### DOCKET NO. 42983 CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 27<sup>th</sup> of August, 2015, in accordance with 16 TAC § 22.74.



Maria Faconti

## PUC Interoffice Memorandum

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**To:** Maria Faconti, Attorney  
Legal Division

**Through:** Tammy Benter, Director  
Water Utilities Division

**From:** Fred Bednarski, Regulatory Financial and Managerial Review Specialist  
Elisabeth English, Engineer  
Water Utilities Division

**Date:** August 27, 2015

**Subject:** **Docket No. 42983**, *Application of Crystal Clear Water Supply Corporation (WSC) and the City of San Marcos for Sale, Transfer or Merger of Facilities and to Amend Certificate and Convenience and Necessity in Comal, Guadalupe, and Hays Counties*

On July 26, 2013, the City of San Marcos (“City” or “Purchaser”) and Crystal Clear Water Supply Corporation (WSC) (“Crystal Clear WSC” or “Seller”) (collectively called “Applicants”) filed an application with the Texas Commission on Environmental Quality (TCEQ) for the City to decertify a portion of their Certificate of Convenience and Necessity (CCN) No. 10298 and to amend their water CCN No. 10298 and to purchase facilities and transfer a portion of CCN No. 10297 held by Crystal Clear WSC in Guadalupe, Hays, and Comal Counties pursuant to the Tex Water Code §§ 13.301 and 13.246 (TWC). On September 1, 2014 the economic regulation of water and sewer utilities transferred from TCEQ to the Public Utility Commission (“PUC” or “Commission”). This case is now being reviewed pursuant to the criteria in the Tex Water Code §§ 13.246 & 13.301 (TWC) and 16 Tex. Admin Code §§ 24.109 and 24.112 (TAC).

The application was accepted for filing by TCEQ on January 10, 2014. Proper public notice was provided on April 28, 2015, to neighboring systems, landowners, cities, and affected parties. Notice was published in the San Marcos *Daily Record*, *Seguin Gazette*, and *New Braunfels Herald - Zeitung* on May 17, 2015 and May 24, 2015, respectively, in Hays, Guadalupe, and Comal Counties in accordance with 16 TAC § 24.112(c). The affidavit of notice was received by the Commission on June 11, 2015. The comment period ended June 23, 2015, and no protests, opt out requests, or requests for hearing were received.

Pursuant to TWC § 13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if transaction will serve the public interest. For this case, based on my review of the information in the application and the criteria listed below, a hearing is not necessary because the transaction will serve the public interest. The City has demonstrated adequate financial, managerial, and technical (FMT) capability to provide service to its existing service area

plus the area subject to this application. Under TWC § 13.246(c), the Commission shall consider the following nine criteria when amending a CCN:

- TWC § 13.426(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. The City operates a surface water treatment plant (SWTP), and has five wells that draw water from the Edwards Aquifer. The SWTP is supplied with water from Lake Dunlap, a reservoir on the Guadalupe River near the City of New Braunfels. There are a total of 27,187 connections served by the City, and 7157 connections served through wholesale service to the surrounding areas. The City currently meets TCEQ's minimum capacity requirements per TCEQ's last compliance inspection.

The City does not have any TCEQ issued violations pertaining to 30 TAC § 290 Subchapter F, which governs the drinking water quality and reporting requirements for public water systems (PWS's) in Texas. The standards are written to comply with the Federal Safe Drinking Water Act and Primary Drinking Water Regulations.

- TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area including whether any landowners, prospective landowners, tenants, or residents have requested service. Service is already being provided to customers in the areas being transferred and amended. Service will be provided by the City using their current rates if the transaction is approved.
- TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail utility servicing the proximate area. The area is already being served by the Applicants; therefore, there is minimal impact on any other retail utility serving the area. Additionally, no protest, opt out requests, or requests for hearing were received regarding the proposed transaction.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicant to provide adequate water service. The Applicants have TCEQ approved PWS's, City of San Marcos (ID No. TX1050001) and Crystal Clear Water Supply Corporation (ID No. TX0940015). Included in the application were a copies of investigation reports and letters received from TCEQ following the most recent comprehensive compliance investigations (CCI) conducted on August 20, 2012 and August 8, 2011 for Crystal Clear WSC and the City, respectively. These reports indicate that TCEQ compliance has been achieved by the City. Additionally, the Applicants employ TCEQ licensed water operators and the City has been rated a "Superior System" by TCEQ.

- TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. In this case, the area requested already contains facilities and is currently being served by the Applicants. Also, no protest, opt out requests, or requests for hearing were received regarding the proposed transaction. Therefore, it is not feasible to obtain service from an adjacent retail public utility.
- TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the Applicant to pay for facilities necessary to provide continuous and adequate service to the area and the Applicant's financial stability. Service is already being provided in the areas with adequate facilities. The transaction is considered an "even exchange" between the Applicants; therefore,

no monies are being exchanged. The City's recent audited financial statements were available. These statements indicate the City has the financial ability to serve the proposed area.

- TWC §§ 13.246(7) and (9) requires the Commission to consider the environmental integrity and the effect on the land to be included in the certificate. Since the area already contains facilities and is being served by TCEQ approved systems there will be minimal effect on the land and environmental integrity by granting the proposed amendment.
- TWC § 13.246(8) required the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers in the requested service area will be adjusted to match the rates charged by the City's existing customers and will receive service from the City's system. The City has been providing quality water service and has received a superior water system rating from TCEQ.

With respect to the City's financial and managerial capability, the City's water system has a superior rating from TCEQ. Moreover, the City has no outstanding violations with the TCEQ or PUC. The City currently service 34,344 connections and employs approximately 16 current licensed operators.

The City's audited financial statements for 2014 were available. The statements include an unqualified auditor's opinion that the financial statements present fairly, in all material respects, the financial position of the governmental activities, the business type activities, each major fund, and the aggregate remaining fund information of the City as of September 30, 2014, and the respective changes in financial position, and where applicable, cash flows thereof and the respective budgetary comparison for the General Fund for the years then ended in accordance with accounting principles generally accepted in the United States of America. The City's proprietary funds net position was \$135 million. The debt to net position ratio at September 30, 2014 was \$146 million to \$135 million, or 1.08 to 1.00. A ratio of less than 1 to 1 is preferred for analysis of financial/managerial capabilities. The City's proprietary funds current asset balance is \$99 million and current liability balance is \$28 million. Therefore, the current ratio is 3:54 to 1:00, which indicates the City has a good ability to meet liabilities within the next 12 months. Net income in the proprietary fund was \$16.5 million and depreciation was \$9.9 million. Long Term debt payments were \$21.1 million. Therefore, the debt service ratio calculates to be \$26.4 million to \$21.1 million, or 1.25 to 1.00. A ratio of at least 1.25:1 is preferred when reviewing financial capability to ensure that reserve funds for debt payment and repairs and maintenance are built up and maintained.

Although the City did not meet all the ratio requirements above, I additionally noted that the City's assets exceeded its liabilities by \$255 million (net position). Of this amount \$60.9 million (unrestricted net position) may be used to meet its on-going obligations. Per the Municipal Advisory Council of Texas, the City's Moody's bond ratings is Aa2 which indicates the City has a very strong capacity to meet its financial commitments.

In this application, the City has requested additional areas be included in their CCN. The City provided a map of the additional area requested via the STM application, in which the area was separated into 4 distinct amendments (A/B/C/D). The majority of the area, area "A", is being requested based on future growth. However, the City did not submit a request for service from any developers in this area, but did state that city personnel had been informally approached by a

land owner in the area. The area does not currently have any infrastructure to serve, nor was a preliminary engineering report submitted. The second largest area, "B" is bound on three sides by the City's CCN and has a 12" water transmission main running through the area; the purpose of this addition would be to clean up the existing boundaries. The area labeled "C" is proposed to follow the current property lines instead of having the CCN boundary diagonally bisecting the properties, which facilitates uniform development of the area. The remaining proposed area is occupied by an existing industrial water customer of the City, Heldenfels. Because the City has not demonstrated a need for service for area "A", it is recommended that this new territory not be included in their CCN as the request does not comply with TWC § 13.246(c)(2). The other areas should be approved as "clean-up" to the CCN boundary lines.

Based on a complete analysis of the application Staff recommends approval of the application as modified by the removal of area "A".

On August 13, 2015, the Applicants filed the closing bill of sale and affidavit regarding the disposition of customer deposits pursuant to 16 TAC § 24.109(f), and additionally filed consent to the final map and certificates on August 24, 2015. At this time, Staff recommends that the Applicant file certified copies of the CCN map along with a written description of the CCN service area in the county clerk's office pursuant to TWC § 13.257 (r) and (s).

TB/FB

MAILING LIST FOR  
Docket No. 42983

Mike Taylor, General Manager  
Crystal Clear WSC  
2370 FM 1979  
San Marcos, Texas 78666  
[miket@crystalclearwsc.com](mailto:miket@crystalclearwsc.com)

Mike Fournier, Administrator  
Crystal Clear WSC  
2370 FM 1979  
San Marcos, Texas 78666  
[mike@crystalclearwsc.com](mailto:mike@crystalclearwsc.com)

Jon Clack, Assistant Director  
City of San Marcos  
Public Services – Water /Wastewater  
630 East Hopkins  
San Marcos, Texas 78666  
[jclack@sanmarcostx.gov](mailto:jclack@sanmarcostx.gov)

**CONSENT FORM**

2015 AUG 24 AM 10:24

Applicant's Name: Crystal Clear Water Supply Corporation  
Docket No.: 42983 for CCN # 10297 (please check selection)

PUBLIC UTILITY COMMISSION  
FILING CLERK

- I concur with the maps and certificates transmitted by e-mail dated **August 21, 2015.**
- I do not concur with the maps and certificates transmitted by e-mail dated **August 21, 2015.**

I understand that I have 3 days from the date of this letter to provide my response.

I am authorized by Crystal Clear Water Supply Corporation to sign this form.

Signature: Mike Taylor

Printed Name: Mike Taylor

Relationship to Applicant: General Manager

Date signed: August 21, 2015

Mail to:  
Public Utility Commission of Texas  
Central Records  
1701 N Congress PO Box 13326  
Austin, Texas 78711-3326

or for Shipping/Overnight Delivery:  
Public Utility Commission of Texas  
Central Records  
1701 N. Congress, Suite 8-100  
Austin, Texas 78701

**CONSENT FORM**

Applicant's Name: City of San Marcos  
Docket No.: 42983 for CCN #10298 (please check selection)

2015 AUG 24 AM 10:25

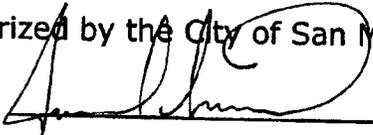
PUBLIC UTILITY COMMISSION  
FILMS CLERK

I concur with the maps and certificates transmitted by e-mail dated **August 21, 2015.**

I do not concur with the maps and certificates transmitted by e-mail dated **August 21, 2015.**

I understand that I have 3 days from the date of this letter to provide my response.

I am authorized by the City of San Marcos to sign this form.

Signature:  \_\_\_\_\_

Printed Name: Jared Miller

Relationship to Applicant: City Manager - City of San Marcos

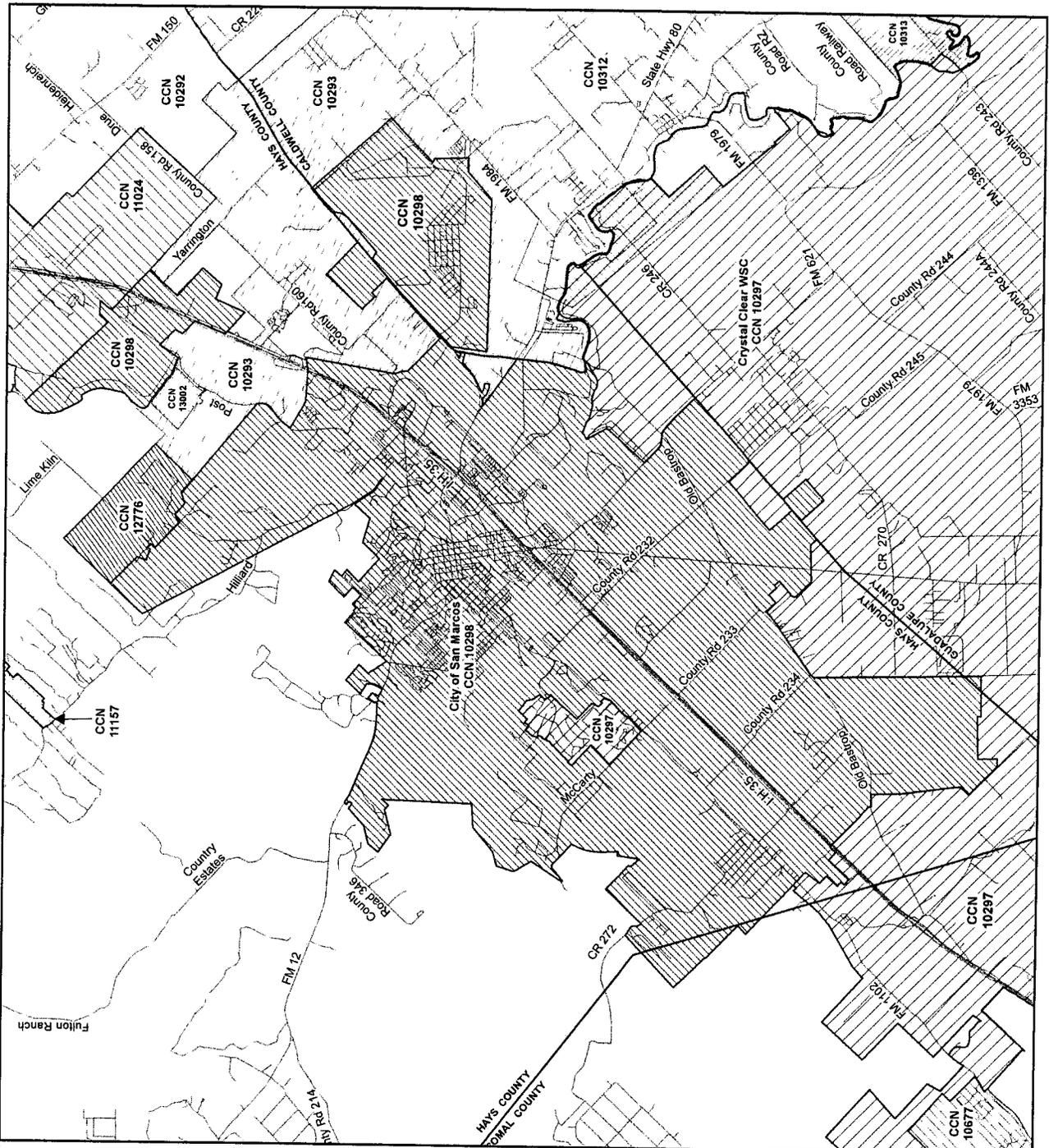
Date signed: August 21, 2015

Mail to:  
Public Utility Commission of Texas  
Central Records  
1701 N Congress PO Box 13326  
Austin, Texas 78711-3326

or for Shipping/Overnight Delivery:  
Public Utility Commission of Texas  
Central Records  
1701 N. Congress, Suite 8-100  
Austin, Texas 78701

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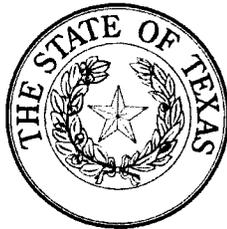
City of San Marcos  
 Water Service Area  
 CCN No. 10298  
 PUC Docket No. 42983  
 Transferred a Portion of Crystal Clear WSC, CCN No. 10297  
 and Amended City of San Marcos, CCN No. 10298  
 in Comal, Guadalupe and Hays Counties

**Water CCN Service Areas**

-  10298 - City of San Marcos
-  10297 - Crystal Clear WSC
-  10292 - County Line WSC
-  10293 - Maxwell WSC
-  10312 - Martindale WSC
-  10313 - Tri Community WSC
-  10677 - City of New Braunfels
-  11024 - City of Kyle
-  11157 - Aqua Texas Inc
-  12776 - Rocket Water Co Inc
-  13002 - Blanco River Ranch HOA



Public Utility Commission of Texas  
 1701 N. Congress Ave  
 Austin, TX 78701  
 Map by: Suzanne Jaeter  
 Date created: Oct 22, 2014  
 Updated by: K. J. ...  
 Project path: n:\finalmap\ppg42983\CityofSanMarcos.mxd



# Public Utility Commission of Texas

**By These Presents Be It Known To All That**

**City of San Marcos**

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

## **Certificate of Convenience and Necessity No. 10298**

to provide continuous and adequate water utility service to that service area or those service areas in Caldwell, Comal, Guadalupe, and Hays Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 42983 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of City of San Marcos to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, the \_\_\_\_\_ day of \_\_\_\_\_ 2015.



# Public Utility Commission of Texas

**By These Presents Be It Known To All That**  
**Crystal Clear Water Supply Corporation**

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

**Certificate of Convenience and Necessity No. 10297**

to provide continuous and adequate water utility service to that service area or those service areas in Caldwell, Comal, Guadalupe, and Hays Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 42983 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Crystal Clear Water Supply Corporation to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, the \_\_\_\_\_ day of \_\_\_\_\_ 2015.