

To: Administrative Reviewer

Date Complete: July 31, 2013

From: Cartographer-Utilities & Districts Section

Subject: Overlap & Notice Check for Administrative Review No. A-102-13/37671-S
City of San Marcos (10298) to acquire a portion of Crystal Clear WSC (10297) in Guadalupe
and Hays counties.

1. No new overlap of service areas exists.
2. An overlap:
3. Dual certification:
4. An overlap exists with the city limits of:
5. If this is a Sale, Transfer, or Merger, is additional area being requested?
7. Map submitted is digital request digital data.
9. Utility notice was sufficient.
10. Utility notice was insufficient. In addition to those systems listed in the application, they will also need to notify:
TWO MILES:

All cities and etj's within 2 miles of proposed area


Any other Utility, District or entity that would be required to receive notice

11. Notice: **DO NOT NOTICE**

- X 12. Other comments: **Maps do not meet requirements. Please submit the following. (No digital data (drive only had pdf's). Maps and data should be specific to the application, show only the intent of the specific application and not show things happening in other applications. It appears that existing CCN boundaries have been modified and portions of the areas could be uncertificated. Data for existing CCNs is available from the Water Utilities Map Viewer. Need 4 copies of all maps and digital data that is specific to the application.)**

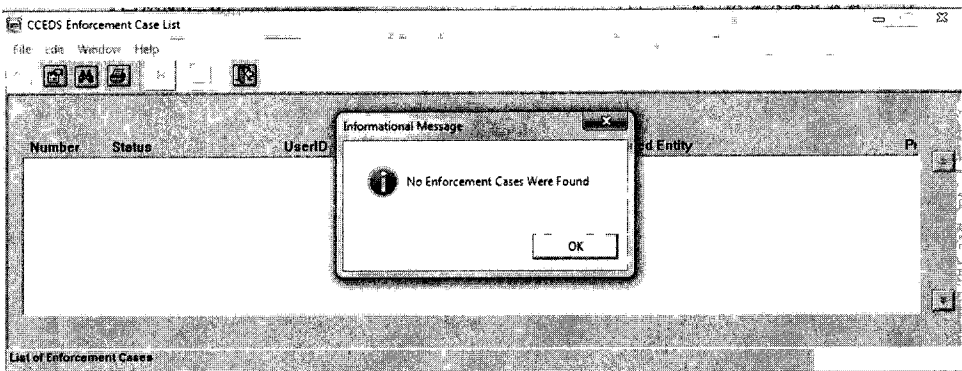
- A. A general location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county.
- B. A map showing only the proposed area by:

- i. metes and bounds survey certified by a licensed state or register professional land surveyor; or
 - ii. projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also, a data disk labeled with the applicant's name must be provided; or
 - iii. following verifiable natural and man-made landmarks; or
 - iv. a copy of recorded plat map with metes and bounds.
- C. A written description of the proposed service area.
- D. Provide separate and additional maps of the proposed area(s) to show the following:
 - i. all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
 - ii. any facilities, customers or area currently being served outside the applicant's certificated area(s).



Kent Steelman

Crystal Clear WSC, CCN No. 10297



City of San Marcos, CCN No. 10298



Completed Application: Ok

List of Notice:

Seller's Inspection Report and Response: Ok

Buyer's (if IOU) Current Annual Report: (WSC)

Buyer's (if IOU) Question 13A: (WSC)

Buyer's (WSCs) Current Tariff: Ok

Agreement between Parties: not signed

Financials: Ok

Overlap Check: NOD

Oath: Ok

STM Checklist

Administrative Review #A - 102 - 13

Application Number (s) 37671-C, _____

Date TCEQ Received Application 7/26/13

Date Assigned to program area 7/29/13

Name of Seller on Application City of San Marcos

CCN(s) # 10298

County(s) Hays

Name of Buyer Crystal Clear Water Supply Corporation

CCN(s) # 10297

County(s) Hays

- ☒ Not on file in Central Registry. Needs Core Data Form
- ☒ **Attach a copy of CN and RN from WUD of both the seller and buyer involved**
- ☒ Account Fees due none
- ☒ Regulatory Assessment Fees due none
- ☒ Original and three copies of completed application and all required attachments, maps and exhibits. (Item 1 on page 1 of General Information and Instructions)
- ☒ Proposed action and CCN numbers involved.

[IWUD Main](#)[Districts](#)[Utilities](#)[PWS](#)[Reports](#)[Documents](#)[Maps](#)

? Utility details for CITY OF SAN MARCOS (10298)


Affiliations
Documents
Site Visits
Schedules

Properties

CR Regulated Entity Number: **RN101427946**CCEDS Status: **NO ACTIVE NOE EXISTS**Utility Type: **WATER UTILITY**Ownership Type: **MUNICIPALITY**Primary County: **HAYS**County Code: **105**

Customers

Reference Number
CN600521272**Name**
CITY OF SAN MARCOS**Role**
RESPONSIBLE PARTY

Comments

Comment Date	Text	Staff Name
03/19/2008	Appl 35680-S City of San Marcos purchase and transfer of CCN 11954 from Diamond Pure Water Company in Comal and Hays Counties	IRMA
06/14/2001	POR DUAL CERT W/10297; 30310-S & 31247C	SANTANA
06/14/2001	POR DUAL CERT W/10297; 30310-S & 31247C	

Occurrences retrieved.

Responsible Party

Individual: **JIM DESMOND**Organization: **CITY OF SAN MARCOS**Mailing Address: **630 EAST HOPKINS****SAN MARCOS , TEXAS 78666-0000**Business telephone: **(512) 353-4444**

Extension:

Official Address / Phone

Address: **630 EAST HOPKINS****SAN MARCOS , TEXAS 78666-0000**Telephone: **(512) 353-4444**

PWS for this Utility

PWS Name	PWS ID	Status	District(Number)
<u>CITY OF SAN MARCOS</u>	1050001	A	
<u>DIAMOND PURE WATER</u>	1050087	M	

Water System occurrences retrieved.

Counties

Code	County Name	Primary
28	CALDWELL	N
46	COMAL	N
94	GUADALUPE	N
105	HAYS	Y

Activity

Activity Status: ACTIVE
Start Date: 04/08/1985
End Date: 12/31/9999
Activity Date: 04/08/1985

[Run Utility Cases Report](#)
[Run Utility Summary Report](#)
[Show Map](#)

Utility successfully retrieved.

For questions or comments regarding information on this page, contact the
[TCEQ iWUD Web Manager](#)

Version V2.5.3

AGREEMENT REGARDING RETAIL WATER SERVICE AREAS

This Agreement Designating Retail Water Service Areas between Crystal Clear Water Supply Corporation ("CCWSC") and the City of San Marcos, Texas, a home-rule municipal corporation ("City"), is made and entered into effective the _____ day of _____, 2013 (the "Effective Date"). CCWSC and the City may be collectively referred to herein as the "Parties."

ARTICLE I. RECITALS

WHEREAS, CCWSC is a water supply corporation authorized by of the State of Texas; and

WHEREAS, the City is a home-rule municipal corporation under Article XI, § 5 of the Texas Constitution; and

WHEREAS, CCWSC holds water Certificate of Convenience and Necessity ("CCN") No. 10297; and City holds water Certificate of Convenience and Necessity No. 10298, and each entity is a retail public utility providing retail water utility service as defined in §13.002(19) of the Texas Water Code; and

WHEREAS, CCWSC and City are dually certificated to serve the areas that are being transferred between the Parties which are depicted in Exhibits A and B attached hereto and incorporated herein by reference; and

WHEREAS, the Parties agree it is mutually beneficial to designate the City as the sole retail service provider for the area described in the map attached hereto in Exhibit A (illustrated in tan color) under CCN No. 10298 and to designate CCWSC as the sole retail service provider for the area described in the map attached hereto in Exhibit B (illustrated in tan color) under CCN No. 10297 rather than each entity being dually certificated in both of these areas;

WHEREAS, the City is best positioned to provide future continuous and adequate retail public water utility service to the area described in the map in Exhibit A under CCN No. 10298;

WHEREAS, CCWSC is best positioned to provide future continuous and adequate retail public water utility service to the area described in the map in Exhibit B under CCN No. 10297;

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE II.
TRANSFER OF SERVICE AREA,
CERTAIN FACILITIES AND COMPENSATION**

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, the Parties agree as follows:

2.1 **Service Area.** CCWSC is the retail public utility providing retail water service in the area certificated under CCN No. 10297. The City is the retail public utility providing retail water service in area certificated under CCN No. 10298. Both entities are currently dually certificated to provide retail water service in the areas designated on the maps attached hereto as Exhibits A and B illustrated in the tan color on each map.

2.2 **Amendment of CCN.** The Parties shall jointly file a copy of this Agreement with the Texas Commission on Environmental Quality ("TCEQ") in conjunction with the filing of the Parties' joint STM application to effectuate the transfer of service area and customers between the parties, decertify service areas, amend service area boundaries, and for the sale and transfer of facilities and utility easements.

2.3 **Transfer Areas and Customers.** The Parties are seeking to amend their respective water service areas as follows:

(a) Transfer Areas. The City is seeking the addition of approximately 2,462 acres to its CCN (includes the parcels north of Kingswood) and to release, decertify and transfer approximately 4,044 acres of its service area to CCWSC. CCWSC is seeking the addition of approximately 1,360 acres to its CCN and to release, decertify and transfer approximately 4,510 acres of its service area to the City of San Marcos.

(b) Customers. The number of customers being transferred from the CITY to CCWSC on the Effective Date is 239 customers in the City's ETJ. The number of customers being transferred from CCWSC to the CITY on the Effective Date is 206 within the City's ETJ.

2.4 **Sale, Transfer and Exchange of Certain Water Facilities.** Subject and pursuant to the terms and conditions set forth in this Agreement, each Party shall sell, transfer and exchange water lines, appurtenances, meter boxes and hydrants (excluding the water meters themselves) owned by each Party as well as the easements that are no longer necessary to provide service resulting from the transfer of service area to the other Party ("Surplus Waterlines"). The Surplus Waterlines are identified in Exhibit C and will be conveyed at Closing.

(a) The Parties acknowledge and agree that the Surplus Waterlines are currently used and at Closing will be conveyed by a Bill of Sale, **AS IS, WHERE IS, AND WITH ALL DEFECTS** and after such conveyance neither party shall have any obligation whatsoever to maintain, replace or repair any of the Surplus Waterlines. Prior to closing each Party shall maintain the Surplus Waterlines in accordance with best practices and industry standards.

(b) Those easements or rights-of-way (or portions thereof) which are located within the Transfer Areas and are specifically described in Exhibit D will be assigned (without representations or warranty) to the other Party at Closing.

(c) City will construct approximately 2,269 linear feet of 8" pipe along Hunter Road between Reimer and McCarty to be transferred to CCWSC upon completion of construction.

2.5 **Compensation.** The Parties agree that the value of the service rights, customers and Surplus Waterlines in the Transfer Areas being exchanged is sufficient just, adequate, and reasonable compensation; and therefore, no additional compensation other than the service areas and Surplus Waterlines exchanged shall be paid by either Party to the other Party.

2.6 **Deposits and Memberships.** CCWSC shall refund membership fees to those customers being transferred to the City. City shall waive deposits for all customers being transferred to it through this CCN amendment.

ARTICLE III. REGULATORY APPROVALS

3.1 The Parties shall prepare, file and pursue a joint Sale, Transfer, Merger Application ("STM Application") with the TCEQ requesting the transfer of the of the service areas specified in this Agreement. Prior to filing each Party will provide a complete copy of the STM Application to the other Party for its review and approval. The Parties agree to cooperate with each other in the filing,

review and approval of the STM Application, and to execute documents consistent with this Agreement which are needed in support of the STM Application.

3.2 Unless waived by TCEQ, notice of the STM Application shall be as required by law. The Parties agree to request TCEQ approval to waive notice of the STM Application.

3.3 The Parties shall endeavor to obtain TCEQ approval of this Agreement in an expeditious manner and each Party will support and cooperate with the other, and the TCEQ to accomplish this goal. The Parties have prepared all of the required documents and maps required by the TCEQ as part of their respective STM Applications for their respective CCN amendment.

3.4 Statutory Basis. This Agreement shall be construed and interpreted in accordance with Sections 13.248 and/or 13.301 of the Texas Water Code.

ARTICLE IV. CONDITIONS

4.1 Conditions Precedent to Closing. The obligations of the Parties to consummate the transactions to be performed hereunder in connection with the Closing are subject to satisfaction of all of the following conditions (collectively, the "Conditions Precedent"):

(a) TCEQ's approval of the STM Application to be filed by the Parties as set forth in Article III herein, which approval shall be shown by the TCEQ's issuance of a letter or order authorizing the Parties to complete the proposed transaction.

ARTICLE V. CLOSING

5.1 Closing. Within sixty (60) days after the TCEQ approves the Parties' applications or at such other time agreed to by the City and CCWSC, a closing (the "Closing") shall be held. All matters to take place at the Closing shall take place simultaneously, and no delivery shall be considered to have been made until all such proceedings have been completed.

5.2 Delivery. At the Closing, each Party shall deliver or cause to be delivered to the other Party for its respective Transfer Area:

(a) A Bill of Sale and Assignment duly executed and acknowledged transferring and assigning all rights, title, and interest in the CCN rights to the Transfer Area and in the Surplus Waterlines;

(b) An updated list of all customer names;

(c) An assignment of the easements, rights-of-way or portions thereof, described in Section 2.4(b);

(d) A written statement affirming that all customer deposits for those customers located in the CCN Transfer Area have been returned to the Customer;

(e) Any additional documents as in the mutual opinion of the City's counsel and CCWSC's counsel reasonably necessary to complete this transaction.

ARTICLE VI. POST-CLOSING MATTERS

6.1 Service Transfer Date. On or after the date of Closing, but not later than 6 months after the date of Closing ("Service Transfer Date"), each Party will begin providing retail water service to all retail water customers whose place of use of water is located within the Transfer Area, unless otherwise agreed to in writing by the City and CCWSC.

6.2 Notice and Charges to Customers within the Transfer Area. Each Party shall provide notice of the transfer to each customer located within its respective Transfer Area. No existing customer located in the Transfer Area shall be required to pay, or be charged, any connection fee, tap fee, impact fee or like charge for continuing their existing level of retail service. Customers may be required on a case-by-case basis to relocate their respective customer-owned service lines if necessary to effectuate the change in service providers. CCWSC shall be entitled to charge a membership fee to customers within its Transfer Area.

6.3 No Impairment of Other Customers. Nothing in this Agreement shall in any way impair, or adversely affect each Party's right to provide water to any customers located outside of the Transfer Area. Except for the Surplus Waterlines, each Party shall continue to own and have the right to use, repair, replace, and upgrade all of its water transmission and distribution lines and facilities, including those that are located within the Transfer Area, provided however, that each Party shall not provide retail water service to any customer within the other Party's Transfer Area.

6.4 Revenues for Service Prior to the Service Transfer Date. All revenues due to, or received by each Party for water utility service rendered for the period prior to the Service Transfer Date in the area transferred will remain the property of the Party providing such service and be retained by

said Party. All revenues from water utility services rendered by each Party to customers in the area transferred from and after the Service Transfer Date shall be the property of the Party to which the Transfer Area has been transferred. The Parties shall cooperate with each other as necessary including the termination of water service, to collect the revenues from any customers who fail to timely pay for service rendered by the Party providing service prior to the Service Transfer Date.

6.4 Prevention of Service Interruption. The Parties shall cooperate to prevent any interruption of water service to the customers located with the Transfer Areas.

6.5 The parties shall request that TCEQ not formally approve the their request to incorporate the Agreement into their respective CCNs as specified in Article II unless and until the Parties have closed on the transfer of facilities as provided by this Agreement. If the Parties fail to close on the transfer of the facilities, this Agreement shall terminate.

ARTICLE VII. MISCELLANEOUS

7.1 **Applicable Texas Law and Performance.** This Agreement shall be governed by and construed and enforced under the laws of the State of Texas. The obligations and undertakings of each of the parties to this Agreement shall be performed in Hays County, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the Parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Hays County, Texas.

7.2. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter of the Agreement. No agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the Parties.

7.3 **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns.

7.4 **Agreement Drafted Equally.** This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

7.5 **Severability.** Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

7.6 **Covenant of Authority.** The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

7.7 **Notices.** Unless expressly required otherwise, any notice required or permitted hereunder shall be in writing and shall be deemed to be delivered on the date received if delivered by hand to the address shown hereinafter for each Party, as appropriate, or, if deposited in the mail, such notice shall be deemed to be delivered, whether actually received or not, on the first business day after having been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to each Party, as appropriate, at the address shown hereinafter. The addresses for each Party for all purposes under this Agreement shall be the following:

If to CCWSC

Mike Taylor, General Manager
Crystal Clear Water Supply Corporation
2370 FM 1979
San Marcos, TX 78666
Phone: (830) 372-1031
Email: miket@crystalclearwsc.com

With a copy to:

Mark H. Zeppa
Law Offices of Mark H. Zeppa, PC
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
Phone: (512) 346-4011
Email: markzeppa@austin.rr.com

If to the City:

City of San Marcos
Attn: City Manager
630 E. Hopkins Street
San Marcos, TX 78666
Phone: (512) 393-8101
FAX: (855) 759-2844

With a copy to:

City Attorney
630 E. Hopkins Street
San Marcos, TX 78666
Phone: (512) 393-8150
FAX: (855) 759-2846

The Parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party.

7.8 Business Days. In the event that any date or any period provided for in this agreement shall end on a Saturday, Sunday or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Texas.

7.9 Recitals. The recitals in this agreement are true, correct, and incorporated by reference.

ARTICLE VIII. LIST OF EXHIBITS

8.1 The following Exhibits are attached hereto and incorporated herein:

Exhibit A Map

Exhibit B Map

Exhibit C Description of the Surplus Waterlines

Exhibit D Easements and Rights-of-Way in Transfer Areas to be assigned to each Party.

IN WITNESS WHEREOF, each party hereto has signed this Agreement or caused this Agreement to be signed in its corporate name by its officer thereunto duly authorized, as of the date set forth in the opening paragraph to this Agreement.

CRYSTAL CLEAR WATER SUPPLY CORPORATION

By: _____
Mike Taylor, General Manager

CITY OF SAN MARCOS

By: _____
James R. Nuse, P.E.
City Manager

EXHIBIT A
CITY OF SAN MARCOS MAP

EXHIBIT B
CRYSTAL CLEAR WSC MAP

EXHIBIT C
Inventory of Surplus Waterlines

CCWSC to City:

<u>Line Size</u>	<u>Number of Linear Feet</u>
8"	2,140
6"	4,840
4"	8,810
3"	5,680
2" and smaller	13,965

Number of Meter Boxes transferred from CCWSC to City = 206

Number of Fire Hydrants transferred from CCWSC to City = 0

City to CCWSC:

<u>Line Size</u>	<u>Number of linear feet</u>
8"	2,269
6"	6,787
4"	6,561
3"	714
2"	25,813

Number of Meter Boxes transferred from City to CCWSC = 239

Number of Fire Hydrants transferred from City to CCWSC = 0

EXHIBIT D
Easements and Rights-Of-Way in Transfer Areas to Be Assigned