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PUC DOCKET NO. 43114

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APPLICATION OF CITY OF §
MIDLOTHIAN AND MOUNTAIN PEAK §
SPECIAL UTILITY DISTRICT FOR §
SALE, TRANSFER AND MERGER OF §
CERTIFICATE RIGHTS IN ELLIS §
COUNTY (36233-C) §

PUBLIC UTILITY COMMISSION
OF TEXAS
PUBLIC UTILITY COMMISSION
FILING CLERK

JOINT RESPONSE TO ORDER NO. 3

TO THE HONORABLE JUDGE SUSAN E. GOODSON:

NOW COME, the City of Midlothian (the "City") and Mountain Peak Special Utility District ("Mountain Peak") and files this Response to Order No. 3, which provided Mountain Peak and the City with a deadline of November 14, 2015 to file the proposed notice and list of recipients to receive the notice.

I. BACKGROUND

The joint applicants have requested the Commission effectuate their mutual service area agreement¹ under Texas Water Code § 13.248. The Agreement affects two distinct areas:

- As to "Area 1," the Agreement transfers a 119-acre residential development and immediately adjoining lands from the City to Mountain Peak²; and
- As to "Area 2," the Agreement converts a 43-acre dually-certificated area into an area singly-certificated to the City.³

Although no party in this proceeding could identify an order by the Texas Commission on Environmental Quality approving either the form of notice or approving the service area agreement, it was clearly established that application is appropriately handled as a request pursuant to Texas Water Code § 13.248.⁴ Indeed, as shown below, the Commission's Water and Sewer CCN Viewer

¹ *Retail Water Service Area Agreement Among the City of Midlothian and Mountain Peak Special Utility Agreement*, Attachment #1 to the Application, PUC Docket 43114, Interchange No. 1 at PDF p. 29-32 (Agreement). The Agreement was amended in 2012, but not in any way that changes the nature of this proceeding. A copy of the *Amendment to Retail Water Service Area Agreement Among the City of Midlothian and Mountain Peak Special Utility District* was attached to the District's Response to Order No. 2 (Sept. 29, 2015) (Interchange No. 19, PDF pp. 9-12) and the City's Response to Order No. 2 (Sept. 29, 2015) (Interchange No. 20, PDF pp. 6-9).

² In 2008, only 3 retail water customers existed at the site, but the development has added other customers who, in the interim, have been served by Mountain Peak.

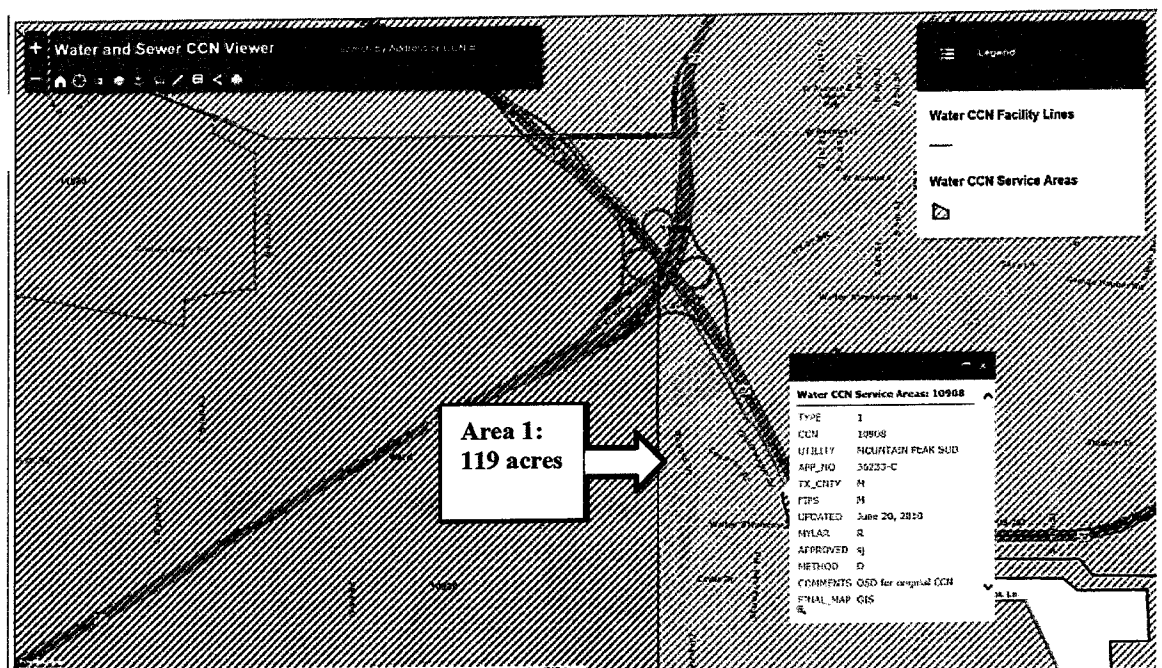
³ This area has no retail water customers.

⁴ Section 13.248 ("Contracts Valid and Enforceable"): provides:

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depicts the respective entity's CCNs as if the Agreements had been fully implemented by Order of the TCEQ. As such, further notice may be unnecessary.

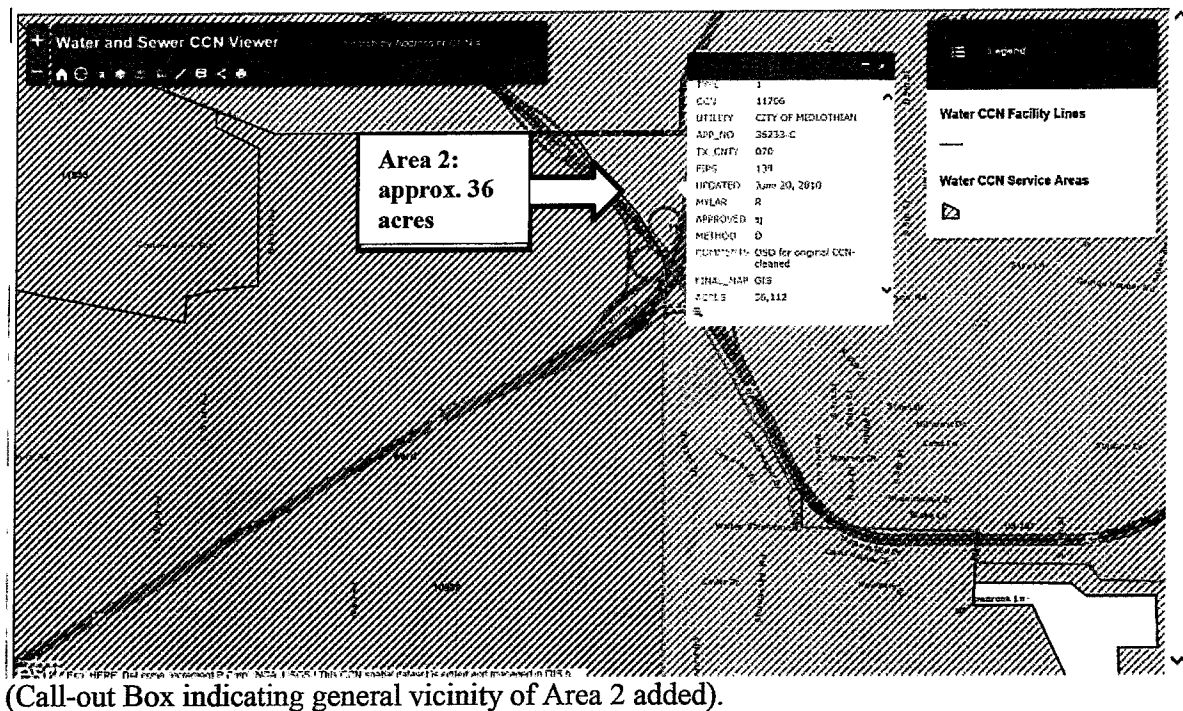
Area 1 involves the transfer of approximately 119 acres from the City's CCN to the District's CCN. Area 1 is already shown to be singly certificated to Mountain Peak Special Utility District, which was one of the principal objectives of the parties in the Agreement.



(Call-out Box indicating general vicinity of Area 1 added).

Area 2 is an area that was dually certificated to both the City and the District, but the Agreement reflects the parties' desire to have this area singly certificated to the City. No customers are present in this area. Consistent with the Agreement, Area 2 is already shown to be singly certificated to the City of Midlothian on the Commission's CCN Viewer:

Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.



(Call-out Box indicating general vicinity of Area 2 added).

As such, notice may indeed be required so that all aspects of the statutory requirements are met, but care should be taken so that the public, which has apparently operated under the same perception as to the status of these areas for several years, is not needlessly confused.

II. PROPOSED FORM OF NOTICE

Order No. 3 also references the recommendation of the Commission Staff that the parties and the Commission look to currently pending dockets involving the transfer of CCNs. Mountain Peak and City appreciated the Staff's guidance and have also reviewed these dockets.

It appears that the City of Giddings' application (Docket No. 44030), particularly, mirrors this current docket, in that two vetted service providers, in good standing, holding certificates of convenience and necessity, sought to transfer an already certificated area pursuant to Texas Water Code §13.248. As such, Mountain Peak and the City have modeled the form of proposed *Notice to Current Customers, Neighboring Systems, and Cities* attached hereto after the form of notice approved by the Staff and the Commission in that docket. However, because the application in this docket affects two areas, a single notice is proposed in order to minimize public confusion and associated expenses for providing notice.

This proposed notice is also in compliance with Texas Water Code § 13.248 and 16 T.A.C. § 24.106. The following are the list of recipients who will receive the proposed notice:

City of Venus
105 E. Highway 67
Venus, Texas 76084

City of Mansfield
1050 N. Highway 67
Service Road
Midlothian, Texas 76065

City of Grand Prairie
206 W. Church Street
Grand Prairie, Texas 75050

Sardis-Lone Elm
Water Supply Corporation
6681 West Highland Road
Midlothian, Texas 76065

Walter J. Carroll Water
Company, Inc.
513 Winding Creek Trail
Red Oak, Texas 75154

Ellis County
109 S. Jackson Street
Waxahachie, Texas 75165

Prairielands Groundwater
Conservation District
205 South Caddo Street
P.O. Box 3128
Cleburne, Texas 76033

III. CONCLUSION

Mountain Peak and the City submit the attached notice for the Staff's review and comment. If approved, the parties will then send the notice to the listed recipients, allowing them time to provide input or objections, if any, related to the parties Application in this matter. Mountain Peak and the City respectfully reserves its right to remain involved with the decision-making process regarding this matter and respond to any Staff recommendations.

Respectfully submitted,

/s/ Paul M. Gonzalez

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F: (972) 845-3398

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November 2015, a true and correct copy of the foregoing document was served on the individuals listed below by hand delivery, email, facsimile or First Class Mail.

Douglas Milton Brown
Attorney-Legal Division
Public Utilities Commission of Texas
1701 N. Congress Ave.
P.O. Box 13326
Austin, Texas 78711-3326
Telephone: (512) 936-7203
Facsimile: (512) 936-7268
Email: Douglas.Brown@puc.texas.gov

Attorney for Commission Staff

/s/ Paul M. Gonzalez

Notice to Current Customers, Neighboring Systems, and Cities

**NOTICE OF INTENT OF THE CITY OF MIDLOTHIAN TO TRANSFER A PORTION OF
WATER CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11706 TO MOUNTAIN
PEAK SPECIAL UTILITY DISTRICT IN ELLIS COUNTY, TEXAS ("AREA 1")**

AND

**NOTICE OF INTENT OF THE MOUNTAIN PEAK SPECIAL UTILITY DISTRICT TO
TRANSFER A PORTION OF WATER CERTIFICATE OF CONVENIENCE AND
NECESSITY NO. 10908 TO THE CITY OF MIDLOTHIAN IN ELLIS COUNTY, TEXAS
("AREA 2")**

To: _____ Date Notice Mailed _____, 2015

(Name of Customer, Neighboring System, or City)

(Address)

(City, State, Zip)

City of Midlothian	104 West Avenue E	Midlothian, Texas 76065
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Mountain Peak Special Utility District, 5471 Waterworks Road, Midlothian, Texas 78065

(Transferors Name)	(Address)	(City, State, Zip)
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The City of Midlothian (City) and Mountain Peak Special Utility District (District) have jointly submitted an application with the Public Utility Commission of Texas (Commission) for approval of an agreement to transfer a portion of the City's water CCN No. 11706 in Ellis County, Texas (Area 1) to:

Mountain Peak Special Utility District 5671 Waterworks Road Midlothian, Texas 76065

(Transferee's Name) (Address) (City, State, Zip)

The City and District have also requested Commission approval of an agreement to have a portion of the District's water CCN No. 10908 in Ellis County, Texas (Area 2) singly certificated to:

City of Midlothian 104 West Avenue E Midlothian, Texas 76065

(Transferee's Name)	(Address)	(City, State, Zip)
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Area 1: The area subject to this transaction is located approximately 1.3 miles southwest of downtown Midlothian, Texas, in the Cotton Creek Ranch Addition. The area is generally bound on the north by U.S. Highway 67; on the east by the U.S. 287 Bypass; on the south by Walter Stephenson Road; and on the west by Newton Cemetery. The total area being transferred includes approximately 119 acres and 109 current customers, all of whom are currently being served by Mountain Peak SUD. As such, the transaction will not have any effect on the current customer's rates and services as water rates will be in accordance with Mountain Peak SUD's current residential rates and the sewer rates will be in accordance with the City of Midlothian's sewer-only rates already in effect.

Area 2: This is an approximate 43 acre area that was dually certificated to both the City and District as of the application's filing in 2008, that is generally bound on the north by Old Ft. Worth Rd. from US Highway 287 to US Highway 67, on the west and south by US Highway 287, and on the east by US Highway 67. The City has infrastructure in place adjacent to this area and can extend service at

minimal costs. No customers currently exist within this area.

A map of the areas being transferred is attached.

A request for a public hearing must be in writing. You must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent, would be adversely affected by the granting of the application for a STM; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Persons who wish to intervene or comment should file a request in writing with the:

Filing Clerk
Public Utility Commission of Texas
1701 North Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the Commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

If a public hearing is requested, Commission will not transfer the CCN and will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, the SOAH will submit a recommendation to the Commission for final decision. If an evidentiary hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Si desea informacion en Espanol, puede llamar al 1-888-782-8477

City of Midlothian

By: _____
Its: _____

Mountain Peak Special Utility District

By: _____
Its: _____

EXHIBIT A CCN TRANSFER

APR 2008

Legend

- Water Lines
- Railroad
- Streets
- CCN
- District
- Midlothian
- Midlothian/Mountain Peak
- Mountain Peak
- Sards
- Pecan Acres (Inactive)
- Midlothian/Sards
- Parcels



1 inch equals 1,000 feet

-43 acres

-119 acres



Legend

- Water Lines
- Railroad
- Streets
- CCN
- District
- Midlothian
- Midlothian/Mountain Peak
- Mountain Peak
- Sards
- Pecan Acres (Inactive)
- Midlothian/Sards
- Parcels

