



Control Number: 43114



Item Number: 33

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DOCKET NO. 43114

**APPLICATION OF CITY OF
MIDLOTHIAN AND MOUNTAIN
CREEK SUD FOR SALE, TRANSFER,
OR MERGER OF CERTIFICATE
RIGHTS IN ELLIS COUNTY (36233-C)**

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2016 FEB 12 PM 2:00
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
TEXAS

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Final Recommendation. In support thereof, Staff shows the following:

I. BACKGROUND

On October 30, 2008, the City of Midlothian (Midlothian) and Mountain Peak Special Utility District (Mountain Peak) (collectively Applicants) filed an application for the sale, transfer, or merger (STM or Application) of facilities and certificates of convenience and necessity (CCN) in Ellis County with the Texas Commission on Environmental Quality (TCEQ). Effective September 1, 2014, the Public Utility Commission of Texas (PUC or Commission) began the economic regulation of water and sewer utilities. This case formerly pending at the TCEQ was transferred to the Commission on September 1, 2014. By letter dated August 4, 2009, the TCEQ sought clarification from the Applicants regarding whether they wanted the Application to be processed as an STM or as a Tex. Water. Code § 13.248 contract (AIS Item No. 9). By letter dated August 29, 2009, David Miller, representing Mountain Peak, stated that the Application was to be processed pursuant to TWC § 13.248 (AIS Item No. 10). Patrick Linder, attorney for Midlothian, stated the same intent in a letter recently filed with the Commission (AIS Item No. 15). The intent of the Application or contract, as described in TCEQ's STM form, is that "The City of Midlothian is transferring a portion of its existing water CCN to Mountain Peak SUD in exchange for a portion of Mountain Peak SUD's existing water CCN that is being transferred to the City of Midlothian" (AIS Item No. 1). Letters from the TCEQ describe the intent of the Application as a transfer and

decertification of CCNs (AIS Item No. 12). On December 18, 2008, TCEQ staff issued an interoffice memorandum explaining that Mountain Peak had demonstrated financial, managerial, and technical capability to operate the transferred CCN portion from Midlothian (AIS Item No. 11). However, Staff was not able to find a final order in the docket approving the Application or contract. Staff is unaware as to what may have caused delay of approval by TCEQ.

The Applicants sent in consent forms to the final map and certificates On January 19th and January 25th of 2016 (AIS Item Nos 29 and 30).

Order No. 6 instructed Staff to make a recommendation by February 12, 2016.

II. RECOMMENDATION

Staff determined it was best to process the Application pursuant to TWC § 13.248. In processing the Application, Staff performed a financial, managerial, and technical analysis of the Application's underlying transaction. As noted memorandum of Heidi Graham of the Water Utilities Division (Attachment A), Staff recommends approval of the Application.

Also as noted in Attachment A, Staff recommends that good cause exists to not require notice, given the number of customers, the length of time the customers have been being served by the Applicants, and the age of the Application. Additionally, Staff's review of the record revealed no requirement by TCEQ to provide notice once the Application was being processed pursuant to TWC § 13.248. Notice could potentially be much more confusing than informative. Therefore, Staff requests that notice for this Application be waived.

Attachment B includes a map and certificates.

III. PROPOSED PROCEDURAL SCHEDULE

Staff proposes the following procedural schedule:

Deadline for parties to file a proposed joint notice of approval	March 30, 2016
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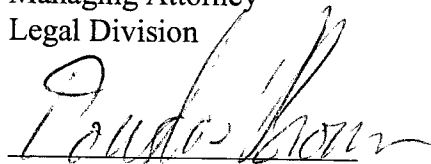
IV. CONCLUSION

Staff respectfully requests the entry of an order consistent with the above recommendations and request.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division




Douglas M. Brown
Attorney-Legal Division
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(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on February 12, 2016 in accordance with 16 Tex. Admin. Code § 22.74.


Douglas M. Brown

ATTACHMENT A

Public Utility Commission of Texas

Memorandum

TO: Doug Brown, Attorney
Legal Division

THRU: Tammy Benter, Director
Lisa Fuentes, Work Leader
Water Utilities Division

FROM: Heidi Graham, Staff Engineer
Water Utilities Division

DATE: November 30, 2015

SUBJECT: **Docket No. 43114:** *Application of the City of Midlothian and Mountain Peak Special Utility District for Sale Transfer and Merger of Certificate Rights in Ellis County (36233-C)*

On October 30, 2008, Mountain Peak Special Utility District (SUD or Applicant), Certificate of Convenience and Necessity (CCN) No. 10908, filed an application with the Texas Commission on Environmental Quality (TCEQ) to transfer a portion of CCN No. 11706, held by the City of Midlothian (City or Applicant), in Ellis County, pursuant to Texas Water Code (TWC), Chapter 13, and the TCEQ's rules outlined in Title 30, Texas Administrative Code (TAC), Chapter 291 §§ 291.109 and 291.112. On September 1, 2014, the Rates and CCN programs were transferred from the TCEQ to the Public Utility Commission (PUC). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under the PUC's Substantive Rules in Chapter 24, specifically § 24.117.

Texas Water Code (TWC) § 13.248 states that 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.

The total area to be transferred from the City to the SUD is approximately 119 acres. There were 3 existing customers within the 119 acres to be transferred when the application was filed in 2008. The total area to be transferred from the SUD to the City is approximately 43 acres with no existing customers when the application was filed in 2008.

Commission Staff has reviewed the 2014 financial information for the City of Midlothian on the Municipal Advisory Council's website. The City has a 1.42 debt coverage ratio, a debt to equity ratio of 0.59, and a total net position at the end of 2014 of \$173,281,003. Therefore, the City has the financial capability to provide continuous and adequate service to the proposed transfer area. The City also has the technical capability to provide continuous and adequate service to the proposed transfer area. The City has a TCEQ approved public water system, (PWS) No. 0700005. A review of TCEQ's Central Registry database indicates that the PWS has no unresolved violations.

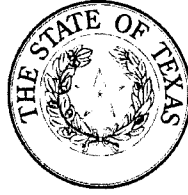
Commission Staff has reviewed the 2014 financial information for the Mountain Peak SUD on the Municipal Advisory Council's website. The SUD has a 2.00 debt coverage ratio, a debt to equity ratio of 0.28 and total cash and equivalents of \$4,653,923. Therefore, the SUD has the financial

capability to provide continuous and adequate service to the proposed transfer area. The SUD also has the technical capability to provide continuous and adequate service to the proposed transfer area. The SUD has a TCEQ approved public water system, (PWS) No. 0700042. A review of TCEQ's Central Registry database indicates that the PWS has no unresolved violations.

The City has no current customers in the transfer area they requested. The SUD was already serving the area they requested when this application was filed in 2008. The SUD is still serving their requested area and this transaction will have no effect on the SUD's current customers. To avoid unnecessary confusion on the part of the customers, Staff recommends that public notice be waived for this application.

The applicant meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to amend Mountain Peak SUD's CCN No. 10908 and the City of Midlothian's CCN No. 11706 is necessary for the service, accommodation, convenience and safety of the public. Staff recommends approval of the transfers.

ATTACHMENT B



Public Utility Commission of Texas

By These Presents Be It Known To All That City of Midlothian

having obtained 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, City of Midlothian is entitled to this

Certificate of Convenience and Necessity No. 11706

to provide continuous and adequate water utility service to that service area or those service areas in Ellis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43114 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Midlothian, 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 obtain 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, this _____ day of _____ 2015.



Public Utility Commission of Texas

By These Presents Be It Known To All That Mountain Peak Special Utility District

having obtained 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, Mountain Peak Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 10908

to provide continuous and adequate water utility service to that service area or those service areas in Ellis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43114 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Mountain Peak Special Utility District, 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 obtain 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, this _____ day of _____ 2015.

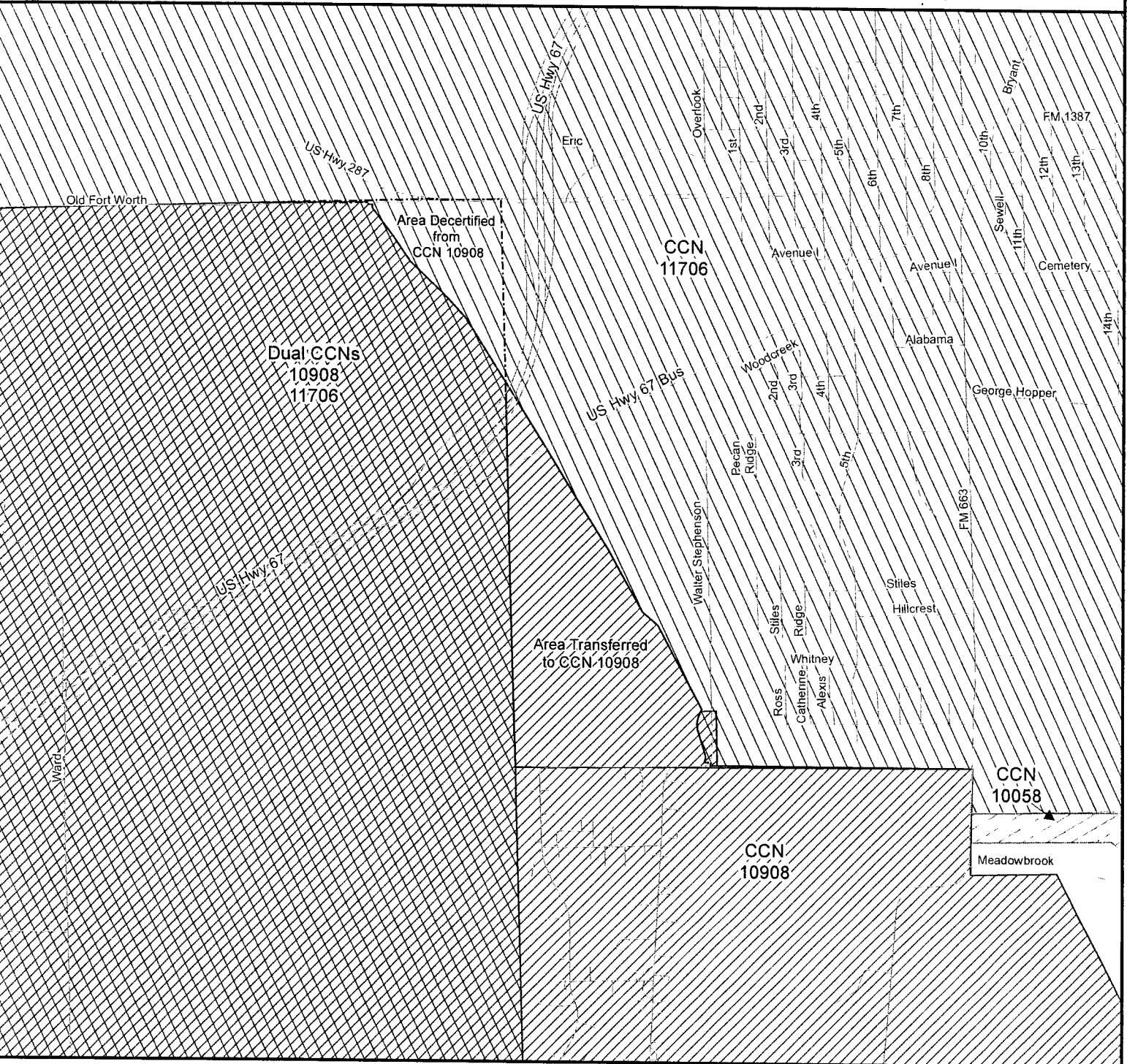
Mountain Peak Special Utility District

Portion of Water Service Area

CCN No. 10908

PUC Docket No.43114

Transferred a Portion of City of Midlothian, CCN No. 11706 and
Decertified a Portion of Mountain Peak SUD, CCN No. 10908 in Ellis County



Water CCN Service Areas



10908 - Mountain Peak SUD



11706 - City of Midlothian



10058 - Sardis-Lone Elm WSC



Area Decertified



Area Transferred

0 825 1,650
Feet



Map by Komal Patel

Date created January 12, 2016

Project Path n:\finalmapping\43114MountainPeakSUD.mxd