



Control Number: 43114

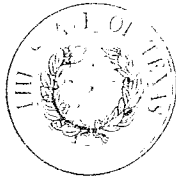


Item Number: 7

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.

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 5, 2008

RECEIVED
2014 SEP 24 AM 11:35
PUBLIC UTILITY COMMISSION
FILING CLERK

Mr. David A. Miller, Attorney
Miller Mentzer, P.C.
P.O. Box 130
Palmer, Texas 75152

Re: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from Mountain Peak Special Utility District (SUD), Certificate of Convenience and Necessity (CCN) No. 10908, to Transfer a Portion of CCN No. 11706 from the City of Midlothian and to Decertify a Portion of CCN No. 10908, in Ellis County; Application No. 36233-C

CN: 602721979; RN: 104424601 (Mountain Peak SUD)
CN: 600488373; RN: 101403350 (City of Midlothian)

Dear Mr. Miller:

Your contract service agreement for Mountain Peak SUD and the City of Midlothian was received on October 30, 2008, and has been accepted for filing. Thank you for providing the items we requested with Mr. Mike Adams' letter dated November 17, 2008. Ms. Sheresia Perryman has been assigned to perform the technical review.

After further technical review additional financial, technical or other information may also be requested through future correspondence.

If you have any questions, please contact Ms. Sheresia Perryman at 512/239-3654, or if by correspondence, include Mail Code 153 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Benter".

Tammy Benter, Team Leader
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental Quality

KLB/ln

To: Administrative Reviewer

Date: December 2, 2008

From: Cartographer-Utilities & Districts Section

Subject: Overlap & Notice Check for Administrative Review No. A-156-8 / 36233-S
13.248? Mountain Peak SUD(10908) / City of Midlothian(11706) in Ellis county.

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:

11. Notice:

X 12. Other comments: it appears this is a 13.248 but may not be??

Data submitted may not give desired results



Kent Steelman

SP

Miller
entzer, P.C.

ATTORNEYS AND COUNSELORS

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DALLAS, TEXAS 75219

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972.845.2222
972.845.3398

WEBSITE: WWW.MILMEN.COM

DAVID MILLER
EMAIL: DMILLER@MILMEN.COM

December 17, 2008

Via First Class Mail

Tammy Benter, Team Leader
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

RECEIVED
DEC 22 2008
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

Re: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from Mountain Peak Special Utility District (SUD), Certificate of Convenience and Necessity (CCN) No. 10908, to Transfer a Portion of CCN No. 11706 from the City of Midlothian and to Decertify a Portion of CCN No. 10908, in Ellis County; Application No. 36233-C

CN: 602721979; RN: 104424601 (Mountain Peak SUD)
CN: 600488373; RN: 101403350 (City of Midlothian)

Dear Ms. Benter:

Thank for your letter of December 5. I noted that in the reference to your letter, quoted above, that you included a provision "to Decertify a Portion of CCN No. 10908". While that is certainly not inconsistent with the application, I have also attached for you a copy of the letter of November 4, 1996 (mentioned in the agreement between the City of Midlothian and Mountain Peak which was attached to the application) and a copy of the Order of the Texas Natural Resource Conservation Commission dated May 28, 1997. While your approach is not inconsistent with the agreement and prior Order, it appears to me that it may not be necessary to decertify a portion of CCN No. 10908, as the existing Order provides that the area in question is dual certificated and consequently Mountain Peak could consent to allowing the City to provide service to "other-than-industrial customers".

I raise this issue only in an attempt to simplify and streamline the process.

10-13-08 10:00 AM
10-13-08 10:00 AM

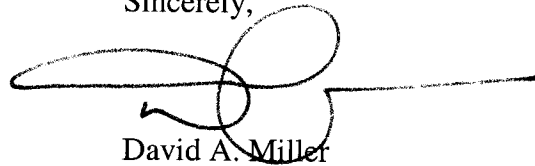
Miller Mentzer, P.C.

Tammy Benter
TCEQ
December 17, 2008
Page 2

If you need any further information in this regard, please feel free to let me know.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Miller", with a long horizontal line extending to the right.

Encls.

Q:\7\7070\036\to TBenter-TCEQ 081217 decertify a portion of CCN.doc

cc: Mike Adams
City of Midlothian
104 W. Avenue E.
Midlothian, Texas 76065

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



City of Midlothian

November 4, 1996

Jack Holt, Manager
Mountain Peak Water Supply Corporation
5671 Waterworks Road
Midlothian, TX 76065

Dear Mr. Holt:

This letter confirms the following agreement:

Midlothian will support the application of Mountain Peak to amend its Water Certificate of Convenience and Necessity, docketed with the Texas Natural Resource Conservation Commission (the "TNRCC") under Docket No. 96-1192-UCR (the "Application") for establishing the boundaries of Mountain Peak's CCN as reflected on the map attached hereto as Exhibit "A".

Mountain Peak will support an application (and/or allow the Application to include the application) of Midlothian to establish CCN boundaries such that the area indicated on the attached map as dual certificated (the "Dual Certificated Area") will be so allowed by the TNRCC, with the following qualifications:

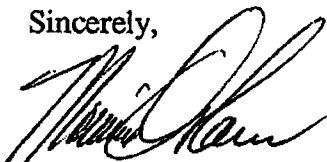
- a. In the Dual Certificated Area, Midlothian will provide water distribution service only to industrial¹ customers, and Mountain Peak will provide water

¹For purposes of these arrangements, an "industrial" customer is any customer applying for service with an expected, projected or actual, usage of water for manufacturing, fabricating of process water, or for usage within a warehouse or distribution facility, excluding dairies and other agricultural uses, and excluding retail establishments such as neighborhood convenience stores.

distribution service only to other-than-industrial² customers, provided that either may consent on a case-by-case basis to the other providing water distribution service to a customer who would otherwise be ineligible for service from that party, without waiving the limitation herein provided;

- b. Neither Midlothian nor Mountain Peak will apply to any regulatory, judicial or governing body to change, alter or amend the boundaries between their CCNs or the arrangements herein described for the Dual Certificated Area, and will jointly utilize all reasonable actions to resist any change thereto; and
- c. Midlothian will not allow, encourage or cause any change in regulation, law or ordinance which will result in limiting or prohibiting other-than-industrial customers in the Dual Certificated Area (other than ordinances generally applicable to all geographic areas in the City's jurisdiction).

Sincerely,



Maurice Osborn
Mayor of Midlothian



V.H. Easterwood, Jr.
President, Midlothian Water District

²The term "other than industrial" customers when used in connection with these arrangements shall mean any customer not classified as an "industrial" customer which include, without limitation, residential customers, whether single family or multi-family, and customers who do not project or estimate water usage, at the time of application for service, for such uses as would qualify the customer as an "industrial" customer. The terms "industrial" customer and "other-than-industrial" customer are intended to be mutually exclusive.

THE STATE OF TEXAS
COUNTY OF TRAVIS

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

I hereby certify that this is a true and correct copy of a Texas Natural Resource Conservation Commission document, which is filed in the permanent records of the Commission. Given under my hand and the seal of office on



Eugenia K. Brumm

JUN 05 1997

Eugenia K. Brumm, Chief Clerk
Texas Natural Resource
Conservation Commission

AN ORDER

amending the certificate of convenience and necessity (CCN No. 10908) issued to Mountain Peak Water Supply Corporation; TNRCC Docket No. 96-1192-UCR and SOAH Docket No. 582-96-1383

On May 14, 1997 the Texas Natural Resource Conservation Commission (Commission) considered the application of Mountain Peak Water Supply Corporation (Mountain Peak) for amendment of its certificate of convenience and necessity (CCN).

An Administrative Law Judge (ALJ) with the State Office of Administrative Hearings conducted a preliminary hearing regarding the application on September 10, 1996, and a hearing on the merits on February 4, 1997. The following were designated as parties to the proceeding: Johnson County; City of Midlothian; Midlothian Water District; Crest Water Company; J.B. Clopton, Jr.; the Executive Director of the Commission (ED); and the Public Interest Counsel of the Commission (PIC). Prior to the evidentiary hearing, all matters in dispute were settled with Johnson County, the City of Midlothian, the Midlothian Water District, and Crest Water Company.

After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On April 9, 1996, Mountain Peak Water Supply Corporation applied to the Commission for an amendment to its Certificate of Convenience and Necessity No. 10908 which authorizes the provision of water utility service in Ellis and Johnson Counties.

2. If the application is approved, Mountain Peak's CCN would include 81,000 acres and in excess of 1300 customers. (The Commission amended this finding to that stated herein to remove an incorrect description of Mountain Peak's CCN as evidenced by the record for this matter.)
3. Notice of the application was sent to neighboring utilities and affected parties on April 12, 1996.
4. Notice of the application was published in the Waxahachie Daily Light, a newspaper of general circulation in Ellis County, Texas, on May 12 and 19, 1996.
5. Notice of the application was published in the Times Review, a newspaper of general circulation in Johnson County, Texas, on May 12 and 19, 1996.
6. A preliminary hearing was held regarding Mountain Peak's application on September 10, 1996. The hearing on the merits was held on February 4, 1997.

Adequacy of Current Service

7. Service to the areas requested by Mountain Peak is inadequate because some portions have no service and other portions have insufficient service given the projected growth and resulting demands on the system.

Need for Additional Service

8. There is a need for additional service in the requested areas because of anticipated development.

The Effect of Granting the Certificate on the Applicant and Other Utilities

9. The Applicant is well situated to provide service and has worked with surrounding utilities to prepare a regionalization of utility services.

Ability to Provide Adequate Service

10. Mountain Peak is capable of providing adequate service to the requested CCN area:
- a. Mountain Peak has entered into a water purchase contract with the City of Midlothian which establishes a source of water in addition to the wells currently owned and operated by Mountain Peak;
 - b. Through the dual-certification agreement with the City of Midlothian, Mountain Peak is not responsible for providing water to industrial users who might over-burden its system;
 - c. Although Mountain Peak has experienced problems with water loss, these have been addressed and will not hinder Mountain Peak's ability to provide service;
 - d. If additional facilities are necessary, Mountain Peak will be able to pay for those facilities through developer contributions, current funds, or low interest loans;
 - e. Although over 10 percent of the pipes in Mountain Peak's system are under 2 inches in diameter, they met Commission requirements when installed; should larger pipes be necessary, Mountain Peak has the financial resources to replace these pipes.

The Feasibility of Obtaining Service from an Adjacent Retail Public Utility

11. None of the adjacent retail public utilities have expressed any interest in nor claimed it would be feasible for them to provide service to the requested CCN area.

Financial Stability

12. Mountain Peak is financially stable as it has debt of \$833,000 in comparison to \$2,342,000 in equity including \$634,000 in cash.

Environmental Integrity

13. If Mountain Peak's application is granted, it will improve the environmental integrity in the area by creating a regional facility, thereby, preventing the development of several small facilities which might have a tendency to pollute the aquifer.

Probable Improvement in Service and Lowering of Costs to Consumers

14. If Mountain Peak's application is granted, it will lower the costs of service to consumers by allowing for the consolidation of facilities and a larger customer base over which to spread costs.
15. If Mountain Peak's application is granted, it will be capable of providing service in areas without service and of improving the service to areas with limited service.

CONCLUSIONS OF LAW

1. Mountain Peak is a public utility as defined in TEX. WATER CODE ANN. §13.002(23)(Vernon 1997) (Texas Water Code).
2. The public hearing on Mountain Peak's proposed Certificate of Convenience and Necessity was held under the authority of Chapter 13 of the Texas Water Code and 30 TEX. ADMIN. CODE 291 of the Commission's substantive rules.
3. Proper notice of the application was given by Mountain Peak as required by Section 13.246 of the Texas Water Code, by the Commission Rules at 30 TEX. ADMIN. CODE §291 (West 1996), and by the Texas Administrative Procedure Act.
4. The Texas Natural Resource Conservation Commission has jurisdiction to consider Mountain Peak's application for a certificate of convenience and necessity.
5. It is necessary for the service, accommodation, convenience, and safety of the public to grant Mountain Peak's application for an amendment of its CCN.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION THAT:

1. Mountain Peak's application for an amendment to its CCN No. 10908 is GRANTED.
2. The Executive Director of the Commission shall amend the official maps for Ellis and Johnson Counties to reflect the Commission's decision consistent with the maps attached to this Order.
3. The Chief Clerk of the Commission shall forward a copy of this Order to all parties.
4. If any provisions, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

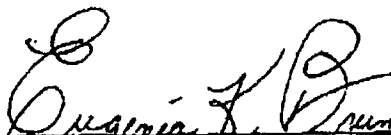
Issue date: **MAY 28 1997**

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



Barry R. McBee, Chairman

ATTEST:



Eugenia K. Brumm, Ph.D., Chief Clerk

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code
and Texas Natural Resource Conservation Commission Substantive Rules

Certificate No. 10908

I. Certificate Holder:

Name: Mountain Peak Water Supply Corporation

Address: 5671 Waterworks Road
Midlothian, Texas 76065

II. General Description and Location of Service Area:

This area covered by the certificate includes a large bounded service area and several facilities plus 200 feet service areas located in Ellis and Johnson Counties as follows:

The large bounded service area is generally located approximately 10 miles west of downtown Waxahachie, Texas on the Ellis/Johnson County Line. The service area is generally bounded on the north by the City of Midlothian and State Highway 287, on the east by the City of Maypearl, on the west by the City of Alvarado, and on the south by Farm to Market Road 916.

Dual certification exists in portions of the service area with Johnson County Rural Water Supply Corporation, CCN No. 10081; the City of Midlothian, CCN No. 11706; Buena Vista-Bethel Special Utility District, CCN No. 10898; and Sardis-Lone Elm Water Supply Corporation, CCN No. 10058.

The facilities plus 200 feet service areas in Ellis County are located along Farm to Market Road 157 near the City of Maypearl and off of Farm to Market Road 663 near the City of Midlothian.

The facilities plus 200 feet service areas in Johnson County are located along Farm to Market Road 157, off of State Highway 67, and along unnamed county roads north and east of the City of Venus.



MRS-127
JOHNSON COUNTY
Mountain Peak Water Supply Corp.
Water Service Area
CEN No. 10908