

Control Number: 43355



Item Number: 31

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PUC DOCKET NO. 43355

**APPLICATION OF BEAR SPRINGS
WATER CO., INC. AND BEAR
SPRINGS TRAILS WATER SUPPLY
CORPORATION, INC. FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATES OF
CONVENIENCE AND NECESSITY IN
BANDERA COUNTY (37912-C)**

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PUBLIC UTILITY COMMISSION

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OF TEXAS**

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the staff (Staff) of the Public Utility Commission of Texas, representing the public interest and files this Final Recommendation, and would show the following:

I. BACKGROUND

On May 9, 2014, Bear Springs Water Co., Inc. and Bear Springs Trails Water Supply Corporation, Inc. (Applicants) filed an application for the sale, transfer, or merger of facilities and certificates of convenience and necessity (CCN) in Bandera County. On May 22, 2015, Order No. 8 was issued which gave approval of the sale/transfer to proceed, and that the Applicants shall file proof that the sale/transfer has been completed within 30 days after the effective date of the transaction. On August 12, 2015, the Applicants submitted the closing documents of the transaction.

II. STAFF RECOMMENDATION

Staff recommends final approval of the transaction, as supported by the attached memorandum of Debbie Reyes Tamayo, in the Commission's Water Utilities Division. Staff recommends that the Bear Springs Trails Water Supply Corporation, Inc. (Bear Springs WSC) has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the proposed area. Staff recommends that Applicants meet all of the requirements of Texas Water Code § 13.246 and the 16 Tex. Admin Code § 24.109. Approving this application to transfer CCN No. 12963 from Bear Springs Water Co., Inc. to Bear Springs WSC is necessary for the service, accommodation, convenience, and safety of the public.

III. PROCEDURAL SCHEDULE

Based on Staff's recommendation, Staff proposes the following procedural schedule:

Event	Deadline
Deadline for parties to submit a proposed Notice of Approval, including findings of fact, conclusions of law, and ordering paragraphs	October 23, 2015

DATED: October 9, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director - Legal Division


Karen S. Hubbard
Managing Attorney - Legal Division



Jason Haas
Legal Division
State Bar No. 24032386
(512) 936-7295
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 9, 2015, in accordance with 16 Tex. Admin. Code § 22.74.



Jason Haas

PUC Interoffice Memorandum

To: Jason Haas, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Water Utilities Division

Date: October 6, 2015

Subject: Docket No. 43355, *Application of Bear Springs Water Co., Inc. and Bear Springs Trails Water Supply Corporation, Inc. for Sale, Transfer, or Merger of Facilities and Certificates of Convenience and Necessity in Bandera County (37912-C)*

On May 9, 2014, Bear Springs Trails Water Supply Corporation (BST WSC or Purchaser) and Bear Springs Water Co., Inc. (Bear Springs Water or Seller) (collectively called Applicants) filed an application to transfer all the water facilities, customers and service area of water Certificate of Convenience and Necessity (CCN) No. 12963 from Bear Springs Water to BST WSC in Bandera County. The application was filed pursuant to the criteria in Tex. Water Code § 13.301 (TWC). On September 1, 2014, the economic regulation of water and sewer utilities was transferred from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission (PUC or Commission). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under 16 Tex. Admin Code §§ 24.109 and 24.112 (TAC) and TWC § 13.301.

The application was accepted for filing and deemed administratively complete on March 10, 2015. Proper public notice was provided on March 31, 2015, to neighboring systems, landowners, cities, and affected parties. Notice was published in the Bandera County Courier on April 2, 2015, and April 9, 2015 in Bandera County. Notice was filed in accordance with 16

TAC § 24.112(c). The affidavit of notice was received by the Commission on April 20, 2015. The comment period ended May 9, 2015, and no protests, requests for hearing nor requests to opt out were received. Notice was proper for the proposed transaction.

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, I believe that a hearing is not necessary because the transaction will serve the public interest. BST WSC has demonstrated adequate financial, managerial, and technical (FMT) capability to provide service to the area subject to this application. Under TWC § 13.246(c), the Commission shall consider the following nine criteria when granting or amending a CCN:

- TWC § 13.426(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. The area being requested includes the water utility service to the Pipe Creek subdivision, consisting of 305 acres and 21 current customer connections and facilities. Bear Springs Trails' Home Owner's Association, Inc. (Bear Springs Trails HOA) members are the customers affected by the sale and are assuming the costs of the formation of BST WSC, acquisition cost and transfer of assets from Bear Springs Water to BST WSC. In addition, BST WSC has hired a licensed operator, Mr. Greg S. Howard, to monitor the water system after the acquisition. The Applicants also indicate that the directors of BST WSC have experience and/or degrees encompassing law; agricultural economics; land economics and real estate; resource management; budget analysis; underground utility installation, maintenance, and repair, organizational management; information technology; and communications. Additionally the Applicants indicate that all the directors are residents of the service area and

therefore have a vested interest in the successful operation of BST WSC. BST WSC has no outstanding violations with the Texas Commission on Environmental Quality (TCEQ) as of May 4, 2015, 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 in place by Bear Springs Water and BST WSC. The plans are to assume operations under the existing CNN upon PUC's approval. Bear Springs Water was approved by TCEQ in November 2000 with the Certificate of Convenience and Necessity No. 12963. The system was created by the developer, Bear Springs Trails, LLC and will serve the property owners in the Bandera County approved subdivision of Bear Springs Trails HOA in Pipe Creek, TX. There has not been any requests from any other property owners outside the platted subdivision for water service. Water service is available to the 60 subdivision lots to include the current 21 customers that will be served.

- 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 Applicants already serve the area; therefore, there is minimal impact on any other retail utility serving the area.

- 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 Public Water System Identification No. 0100076. Included in the application were copies of investigation reports and letters received from TCEQ following the most recent comprehensive compliance

investigations (CCI) conducted on November 29, 2012, respectively. These reports indicate that TCEQ compliance has been achieved with adequate compliance documentation on June 12, 2013, to resolve the alleged violations documented during the investigation of the above-referenced regulated entity. Based on the information submitted, no further action was required concerning this investigation.

- 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 the Applicants already serve the area. 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. BST WSC currently has excess capacity to serve the requested area. BST WSC provided its recent audited financial statements. These statements indicate BST WSC has the financial ability as listed below.

- 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. There will be minimal effect on the land and environmental integrity by granting the proposed amendment. The area already contains facilities and the Applicants already serve the area by the TCEQ PWS approved systems.

- 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 BST WSC a newly formed entity and will receive service from the BST WSC system.

With respect to the financial and managerial capability, although the Seller's annual financial reports net income was (\$1,453) for FY2012, (\$13,386) for FY2013, and (\$7,987) for FY2014, projected income statements were provided from the Purchaser. Based upon approval of this proposed transaction, the Purchaser is planning on increasing its rates. As a member owned and member controlled WSC, BST WSC's elected board of directors can increase its rates without filing for a rate increase with the Commission. BST WSC's projected annual revenue amount will increase based on the proposed rate increase. In addition, BST WSC plans on reducing expenses by not contracting out for services. BST WSC projects net income of \$396 for Year 1, \$1,088 for Year 2, \$1,580 for Year 3, \$2,072 for Year 4, and \$2,564 for Year 5, for total 5 year income amount of \$7,700. Bear Springs Trail HOA is funding the purchase of the assets and providing the startup funds the WSC projects to have \$91,500 in total assets, \$0.00 long term liabilities and \$12,000 in current liabilities. A Financial Support Agreement between Bear Springs Trails HOA and BST WSC was additionally provided. This agreement establishes the HOA will be financially responsible for BST WSC and pay all amount due under the terms of the purchase documents as needed.

BST WSC is a newly formed entity. The by-laws have been presented to the board of directors and have been adopted by a quorum of the membership of BST WSC. The articles of incorporation are in good standing with the Office of the Secretary of State of Texas. Bear Springs Trails HOA provided their board meeting minutes from June 22, 2013, indicating that the Bear Springs HOA approved the decision to file the transaction. The purchase price of the facilities and area is \$70,000. The Bear Springs Trails HOA provided \$40,000 cash at closing

and executed a \$30,000 plus 5% interest bearing note for 60 months per the financing agreements provided with the application. The monthly payment will be \$566. The members of Bear Springs Trails HOA will additionally provide \$15,000 startup funds for the initial operation of the Purchaser. Bear Springs Trails HOA provided a bank statement dated March 31, 2015, with a current balance of \$79,400 and financial agreement between the Bear Springs Trail HOA and the Purchaser.

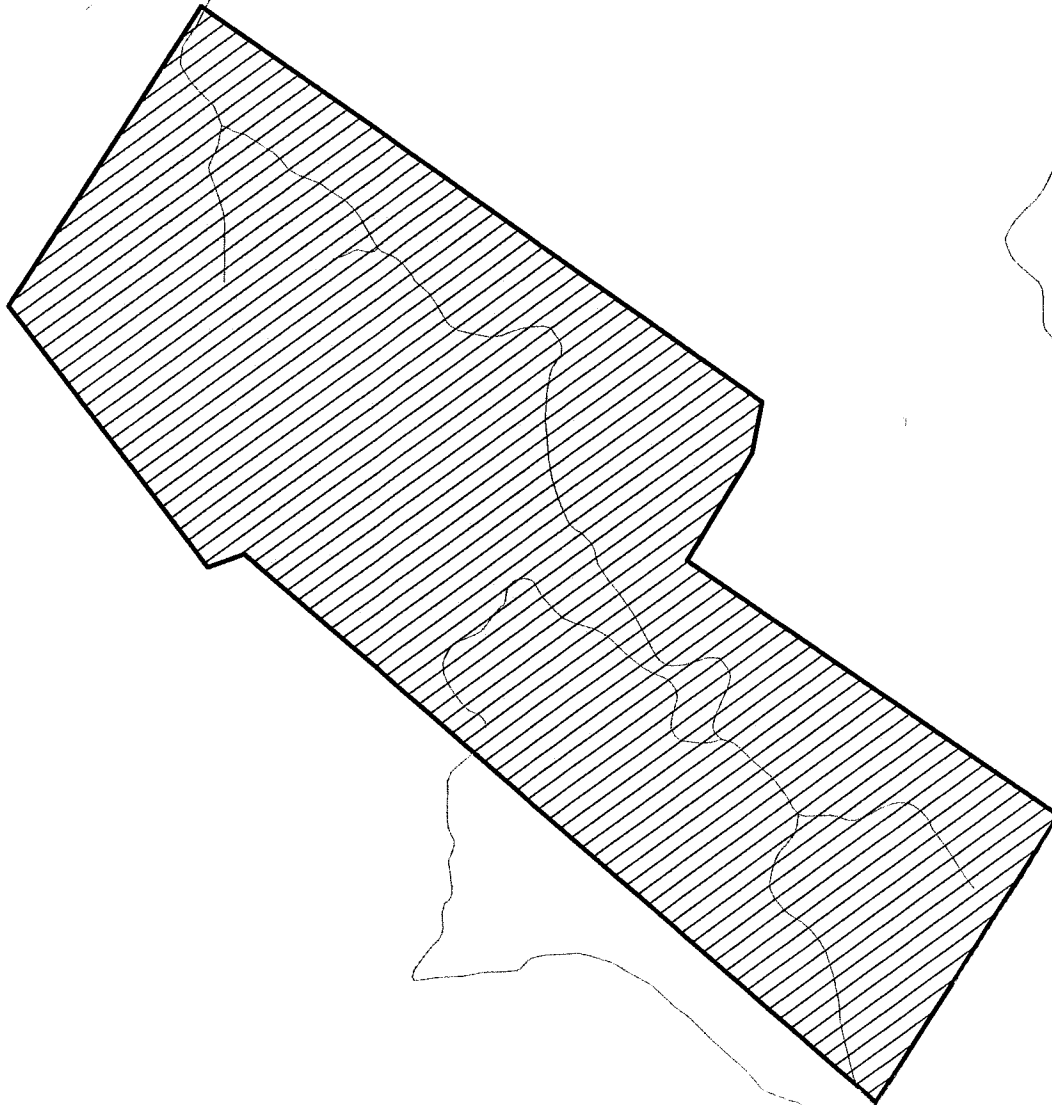
Staff recommends that the Purchaser meets all of the statutory requirements of TWC Chapter 13 and 16 TAC Chapter 24. Approving this application to transfer CCN No. 12963's facilities, customers, and service area from Bear Springs Water to BST WSC is necessary for the service, accommodation, convenience, and safety of the public. The Purchaser is capable of providing continuous and adequate service. Staff recommends approval of the application.

On August 12, 2015, BST WSC and Bear Springs Water filed with the Commission the sales documents to complete the sale transaction in compliance with 16 TAC § 24.109(g). There were no outstanding customer deposits held by the Seller.

The Applicant is capable of providing continuous and adequate service. Staff recommends approval of the application. The Applicants consented to the attached map and certificates on September 14, 2013 and October 6, 2015. Staff recommends that the Purchaser file certified copies of the CCN maps 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/DRT

Bear Springs Trails WSC
Water Service Area
CCN No. 12963
PUC Docket No. 43355
Complete Transfer from Bear Springs Water Co. Inc., CCN No. 12963
in Bandera County



Water CCN Service Area

 43355 - Bear Springs Trails WSC

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Feet



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Map by: Komal Patel
Date created: August 25, 2015
Project Path: n:\finalmapping\43355BearSpringsTrailsWSC.mxd



Public Utility Commission Of Texas

By These Presents Be It Known To All That

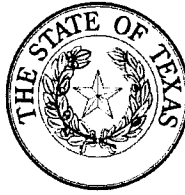
Bear Springs Trails WSC

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. 12963

to provide continuous and adequate water utility service to that service area or those service areas in Bandera County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43355 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 Bear Springs Trails WSC, 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, this _____ day of _____ 2015



Public Utility Commission Of Texas

**By These Presents Be It Known To All That
Bear Springs Water Co., Inc.**

CANCELATION OF CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Sewer Service Under V.T.C.A., Water Code
and Public Utility Commission of Texas Substantive Rules

Certificate No. 12963

Certificate No. 12963 was canceled and transferred by Order of the Commission in Docket No. 43355. Bear Springs Water Co., Inc.'s facilities were transferred to Bear Springs Trails WSC, CCN No. 12963, in Bandera County.

Please reference Certificate No. 12963 for the location of maps and other information related to the service area transferred.

Certificate of Convenience and Necessity No. 12963 is hereby CANCELED and TRANSFERRED by Order of the Public Utility Commission of Texas.

Issued at Austin, Texas, this _____ day of _____ 2015