



Control Number: 43712



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APPLICATION OF LAKE §
 LIVINGSTON WATER SUPPLY AND §
 SEWER SERVICE CORPORATION §
 AND TYLER COUNTY WATER §
 SUPPLY CORPORATION FOR SALE, §
 TRANSFER, OR MERGER OF §
 FACILITIES AND CERTIFICATE §
 RIGHTS IN TYLER COUNTY (37966-S) §

PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S FINAL RECOMMENDATION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Final Recommendation. In support of its Final Recommendation, Staff states the following:

I. Background

Lake Livingston Water Supply and Sewer Service Corporation (Lake Livingston WSC) filed an application requesting approval of the sale and transfer of its water facilities and corresponding water certificate of convenience and necessity (CCN No. 10147) for the Wayward Winds Estates subdivision in Tyler County, Texas. Lake Livingston WSC is the seller, and Tyler County Water Supply Corporation (Tyler County WSC) is the purchaser. Additionally, ratepayers in the Wayward Winds Estates subdivision will be charged the same rates that Tyler County WSC charges its current ratepayers.

Staff recommended that the Commission approve the application and the sale and transfer transaction between Lake Livingston WSC and Tyler County WSC.

On August 19, 2015, the Administrative Law Judge entered Order No. 12, which approved the sale and transfer transaction. Order No. 12 also required Lake Livingston WSC and Tyler County WSC to submit closing documents regarding the consummation of their sale and transfer transaction.

On March 3 and April 8 2016, Lake Livingston WSC filed closing documents regarding the sale and transfer transaction with Tyler County WSC. Staff subsequently recommended that Lake Livingston WSC and Tyler County WSC consummated their sale and transfer transaction.

On April 19, 2016, the Administrative Law Judge entered Order No. 15, which established May 13, 2016 as the deadline for Staff to file its final recommendation regarding Lake Livingston

WSC and Tyler County WSC's sale and transfer transaction.

II. Applicable Statutes and Rules

The Texas Water Code details the requirements for the sale of a water or system. The relevant portions of the Texas Water Code state:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

- (1) file a written application with the utility commission; and
- (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.¹

The Commission's substantive rules detail similar requirements.² The purchaser of the water or sewer system "must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person."³

With regard to the sale and transfer of a certificate of convenience and necessity (CCN), the Texas Water Code states that a CCN may not be sold "unless the utility commission has determined that the purchaser . . . is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under Section 13.246(c) [of the Water Code]."⁴ The factors to be considered by the Commission are:

¹ Tex. Water Code § 13.301(a)-(b).

² See generally 16 Tex. Admin. Code § 24.109.

³ 16 Tex. Admin. Code § 24.109(b).

⁴ Tex. Water Code § 13.251. See also 16 Tex. Admin. Code § 24.112(b).

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.⁵

Approval of the sale and transfer of a certificate of convenience and necessity expires one year after the date of approval.⁶

III. Staff's Recommendation

Staff recommends that the Commission: (1) approve the sale and transfer transaction between Lake Livingston WSC and Tyler County WSC; (2) approve the attached proposed amended water certificates of convenience and necessity for Lake Livingston WSC and Tyler County WSC; and (3) approve the proposed map for the water service area that will be transferred

⁵ Tex. Water Code § 13.246(c).

⁶ 16 Tex. Admin. Code § 24.112(e).

to Tyler County Water.⁷

A. Tyler County WSC has adequate financial, managerial, and technical capability

Staff has determined that W&W Water has adequate financial, managerial, and technical capability to provide continuous and adequate service to the certificated service area under water CCN No. 10147. With regard to financial capability, Staff reviewed various financial documents submitted by Lake Livingston WSC and Tyler County WSC as part of their application. For fiscal year 2012, Tyler County WSC had long-term debt of \$1.8 million and total net assets of \$1.3 million, resulting in a debt-to-equity ratio of 1.38 to 1. While a debt-to-equity ratio of less than 1 to 1 is preferred, Tyler County WSC had other financial ratios that were more favorable. Tyler County WSC's debt service coverage ratio was 2.57 to 1, which is greater than the preferred ratio of 1.25 to 1. Additionally, Tyler County WSC's current ratio was 3.16 to 1, which is greater than the preferred ratio of 1 to 1. With regard to managerial and technical capability, Tyler County WSC provides service to over 2,000 customers in Tyler County, Texas. Tyler County WSC has an operator that holds a Class C operator license, an operator that holds a Class B Ground Water Treatment operator license, and a customer service inspector that maintains and operates public water systems.

B. Tyler County WSC is capable of providing adequate and continuous service

Staff has determined that W&W Water is capable of providing continuous and adequate service to the certificated service area under water CCN No. 10147. Staff's determination is based on the following factors listed in Tex. Water Code § 13.246(c):

1. Adequacy of service currently provided to the certificated area under water CCN No. 10147. Based on its review of records at the Texas Commission on Environmental Quality (TCEQ), Staff has determined that adequate service is currently being provided to the service area. Retail water utility service is currently provided by the Wayward Winds Estates Public Water System No. 2290014. TCEQ records indicate that this system has no unresolved violations, pending enforcement actions, or complaints.

⁷ Staff's recommendation is based on the attached memorandum from Debbie Reyes Tamayo of the Water Utilities Division.

2. Need for service in the certificated area under water CCN No. 10147. There are currently sixteen (16) existing customers that need service.

3. The effect of granting an amendment to water CCN No. 10147. Only Lake Livingston WSC's current customers in the service area will be affected with respect to having a different retail water provider.

4. The ability of Tyler County WSC to provide adequate service. Tyler County WSC is an existing retail water utility, and it will provide water service using the existing water system. Additionally, Tyler County WSC is closer in proximity to the Wayward Wind Estates than Lake Livingston WSC, which would allow Tyler County WSC to be more responsive should operational issues arise.

5. The feasibility of obtaining water service from an adjacent retail public utility. Staff did not evaluate this factor.

6. The financial ability for Tyler County WSC to pay for facilities necessary to provide continuous and adequate service. The existing water system does not have any outstanding violations and does not require major capital improvements or repairs.

7. Impact on environmental integrity. There will be no impact on environmental integrity because there is a pre-existing water system in place.

8. Improvement of service or lower of cost to customers. Lake Livingston WSC customers will be charged the rates that Tyler County WSC charges its other customers.

9. Effect on land. There will be no effect on the land in the certificated area under water CCN No. 10147 because there is a pre-existing water system in place, and this pre-existing water system does not currently need any repairs or improvements.

IV. Conclusion

Staff recommends that the Commission approve the sale and transfer transaction between Lake Livingston WSC and Tyler County WSC.

Date: May 13, 2016

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director

Legal Division

Stephen Mack
Managing Attorney
Legal Division



Sam Chang
State Bar No. 24078333
Attorney, Legal Division

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
(512) 936-7268 (facsimile)
sam.chang@puc.texas.gov

*Commission Staff of the Public Utility
Commission of Texas*

DOCKET NO. 43712

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on May 13, 2016
in accordance with 16 Tex. Admin. Code § 22.74.



Sam Chang

DOCKET NO. 42914

APPLICATION OF SAN ANTONIO	§	PUBLIC UTILITY COMMISSION
RIVER AUTHORITY AND W&W	§	
WATER, INC. FOR THE SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN WILSON COUNTY	§	

MEMORANDUM OF DEBBIE REYES TAMAYO

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Through: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Water Utilities Division

Date: May 13, 2016

Subject: **Docket No. 43712;** *Application of Tyler County Water Supply Corporation and Lake Livingston Water Supply and Sewer Service for Sale, Transfer and Merger of Water Certificate Rights*

On July 3, 2014, Tyler County Water Supply Corporation ("Tyler County WSC" or "Buyer"), Certificate of Convenience and Necessity (CCN) No. 11528, and Lake Livingston Water Supply and Sewer Service ("Lake Livingston" or "Seller") (jointly called "Applicants") filed an application with the Texas Commission on Environmental Quality (TCEQ) to transfer a portion of CCN No. 10147 from Lake Livingston to Tyler County WSC in Tyler County. The proposed transaction transfers the customers, facilities and service area for the Wayward Winds Estates Subdivision from Lake Livingston to Tyler County WSC. As a result of the transaction, service for the Applicants' respective water CCNs will be amended to reflect the transfer. The application was filed pursuant to the criteria in the Texas Water Code §§ 13.241, 13.246, and 13.301 (TWC). On September 1, 2014, the rates and CCN programs were transferred from the Texas Commission on Environmental Quality (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 16 Tex. Admin. Code §§24.102, 24.109 and 24.112 (TAC) and TWC §§13.241, 13.246 and 13.301.

The Applicant filed a sufficient large scale map on June 3, 2015, and a sufficient small scale map on July 7, 2015. The Notice updates and 2-mile notice list provided in overlap check was completed on May 6, 2015. After review of the maps and documents the Applicant has cured the deficiencies therefore, Staff recommends that the application be deemed sufficient for filing.

Proper public notice was provided on May 28, 2015, to neighboring systems, landowners, cities and affected parties in Tyler County in accordance with 16 TAC § 24.112(c). The affidavit was received by the PUC Commission on June 3, 2015. The comment period ended June 28, 2015, and no protests or requests for hearing were received.

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, I do not believe a hearing is necessary because the transaction will serve the public interest based on my review of the information in the application and the criteria listed below. I believe Tyler County WSC demonstrates adequate financial, managerial and technical (FMT) capability to provide service to the area subject to this application. In my review of the public interest factors and the FMT capability of the Applicant, I reviewed the requested amendment pursuant to TWC §13.246(c). Under this statute, the Commission shall consider the following nine criteria when amending a CCN:

Docket No. 43712

- TWC §13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. The requested transaction includes the retail water utility service provided by the Wayward Winds Estates Public Water System (PWS) No. 2290014. The requested transaction consists of 93 acres, 16 current customer connections, and the Wayward Winds Estates PWS' facilities. Reviews of TCEQ records indicate that the PWS has no unresolved violations, enforcement actions or complaints. Therefore, I believe adequate service is currently provided in the requested area.
- TWC §13.246(c)(2) requires the Commission to consider the need for service in the requested area. The fact that there are 16 existing customers in the requested area demonstrates the need for service.
- TWC §13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail water utility servicing the proximate area. Only the Applicants and the current customers will be affected by this transaction. Lake Livingston will be positively affected by the sale of the system to Tyler County WSC. Lake Livingston's offices are over 40 miles away, and they are currently having to travel 90 miles round trip to maintain and operate the Wayward Winds Estates PWS to serve only 16 connections. Lake Livingston stated that this is inefficient from a cost perspective to their utility. Tyler County WSC services in close proximity to the Wayward Winds Estates PWS and therefore, it is more cost effective and efficient for Tyler County WSC to serve the proposed area.
- TWC §13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service. The Applicant is an existing water utility and will provide water service using the existing system, pending the closure and approval of the transaction.
- 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 is already receiving service from the Applicant and no additional service is needed. Therefore, it is not necessary to consider the feasibility of obtaining service from another entity since the area is already being served.
- 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. The existing system does not have any outstanding violations and does not require major capital improvements or repairs.
- TWC §§13.246(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate. In this situation, there will no impact on the environment or the land as the system is already in place and does not need any repairs or improvements at this time.
- TWC § 13.246(8) required the commission to consider the probable improvement in service or lowering of cost to consumers. The customers' rates will be charged the same rates as all other Tyler County WSC customers appearing to be less. The transaction will have no impact on the quality of service and only applies to the Wayward Winds Estates subdivision. Tyler County WSC provides adequate and continuous service to over 2,000 customers in Tyler County and has done so for over 30 years. This transaction is to help the subdivision become very efficient from cost perspectives.

Tyler County WSC has the financial and managerial capability to provide continuous and adequate service to the proposed area. Tyler County WSC proposes to purchase the Wayward Winds Estates subdivision portion of Lake Livingston's existing water CCN service area. Customers of the proposed area will be charged the same rate as the Tyler County WSC's current customers. Tyler County WSC provided audited financial statements for Fiscal Year (FY) 2012 and FY 2011. The auditor issued an unqualified opinion. Total net assets for FY 2012 were reported in the amount of \$1.3 million. Applicant's total long term debt to equity ratio for 2013 was \$1.8 million to \$1.3 million, or 1.38 to 1.00. A ratio of less than 1 to 1 is preferred for analysis of financial/managerial capabilities. This ratio measures the proportion of assets that are funded by debt to those funded by equity and it gives you an idea of how much a company uses debt to pay for operations. Although this ratio is greater than 1 to 1,

I also considered that Tyler County WSC's operating income for FY 2012 was \$152,000 and depreciation expense was \$251,000; principle and interest expense on long term debt for FY 2013 was \$157,000. Therefore, the debt service coverage ratio calculates to be \$403,000 to \$157,000 or 2.57 to 1.00. A ratio of at least 1.25:1 is preferred when reviewing financial capability to ensure that reserve funds for debt payment and repairs and maintenance are built up and maintained. Additionally, I noted current assets were reported for FY 2013 in the amount of \$576,000 and current liabilities in the amount of \$182,000. The current ratio calculates to be \$576,000 to \$182,000 or 3.16 to 1.00. A ratio of at least 1:00 is preferred when reviewing financial capability because it demonstrates an entity's ability to pay current debts. Tyler County WSC also provide a compiled income statement for January through October 2013 which indicated operating income was \$123,000 inclusive of depreciation expense of \$123,000.

With respect to the Buyer's technical capability, the Buyer has experienced operators on staff with thorough knowledge about water operations and the requirement for continuous and adequate service of operation for water utility systems. The experienced operator's hold a Class C operator license, Class B Ground Water Treatment operator license and also have a customer service inspector to implement, maintain, and operate public water systems.

On March 3, 2016, the Buyer and Seller filed with the Commission the sales documents to complete the transaction. On April 7, 2016, documentation was provided for the remaining customer deposits held by the Seller.

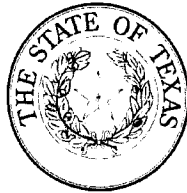
I believe that approving this application and transferring the customers, facilities and service area of the Wayward Winds Estates Subdivision from Lake Livingston, CCN 10147, to Tyler County WSC, CCN 11528, is necessary for the service, accommodation, convenience and safety of the public. As a result of the transaction, service for the Applicants' respective water CCNs will be amended to reflect the transfer. Attached are the maps, and certificates that, if adopted, would effectuate the requested transaction.

Based on the above information, Staff recommends the Commission do the following:

- Issue the orders and certificates approving the transaction;
- Provide the attached maps to the Applicants.

Staff further recommends that the Applicants be ordered to file certified copies of their new CCN maps along with a written description of the CCN service area in the county clerk's office pursuant to TWC 13.257 (r)-(s).

TB/DRT



Public Utility Commission Of Texas

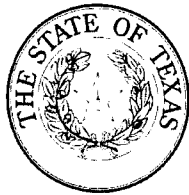
By These Presents Be It Known To All That Lake Livingston Water Supply and Sewer Service Corporation

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. 10147

to provide continuous and adequate water utility service to that service area or those service areas in Hardin, Liberty, Polk, San Jacinto, Trinity, Tyler and Walker Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43712 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 Lake Livingston Water Supply and Sewer Service Corporation, 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 _____ 2016



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Tyler County

Water Supply Corporation

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. 11528

to provide continuous and adequate water utility service to that service area or those service areas in Tyler and Hardin Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43712 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 Tyler County Water Supply Corporation, 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 _____ 2016

Tyler County Water Supply Corporation

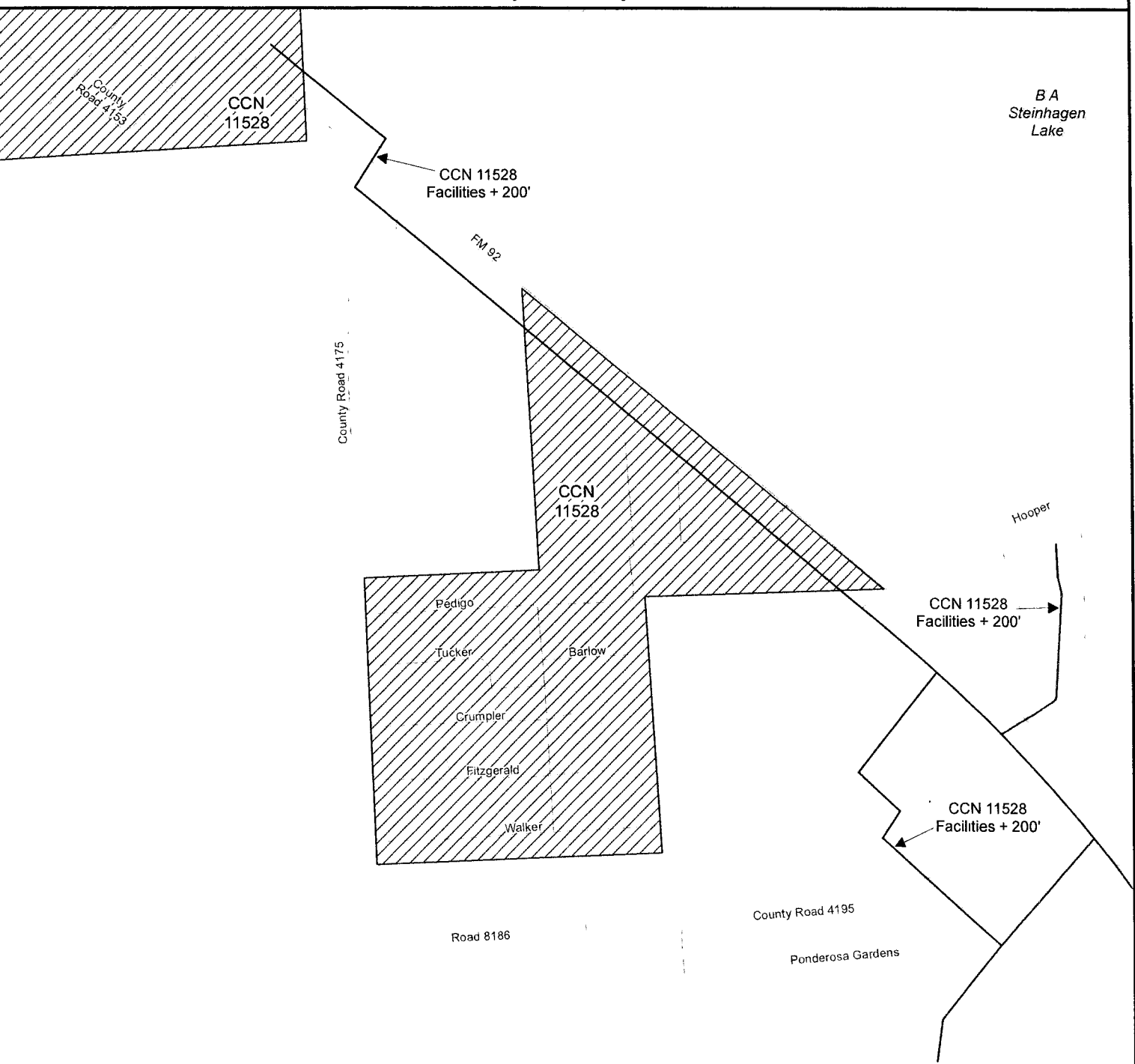
Water Service Area

CCN No. 11528

PUC Docket No. 43712

Amended CCN No. 11528 and

Decertified a Portion of Lake Livingston Water Supply and Sewer Service Corporation, CCN No. 10147
in Tyler County



Water CCN Service Area

 11528 - Tyler County WSC

Water Facility CCN

 11528 - Tyler County WSC - Facilities + 200'

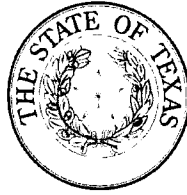
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DOCKET NO. 42914

APPLICATION OF SAN ANTONIO	§	PUBLIC UTILITY COMMISSION
RIVER AUTHORITY AND W&W	§	
WATER, INC. FOR THE SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN WILSON COUNTY	§	

PROPOSED CERTIFICATES OF CONVENIENCE AND NECESSITY



Public Utility Commission Of Texas

By These Presents Be It Known To All That Lake Livingston Water Supply and Sewer Service Corporation

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. 10147

to provide continuous and adequate water utility service to that service area or those service areas in Hardin, Liberty, Polk, San Jacinto, Trinity, Tyler and Walker Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43712 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 Lake Livingston Water Supply and Sewer Service Corporation, 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 _____ 2016



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Tyler County

Water Supply Corporation

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. 11528

to provide continuous and adequate water utility service to that service area or those service areas in Tyler and Hardin Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 43712 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 Tyler County Water Supply Corporation, 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 _____ 2016

DOCKET NO. 42914

APPLICATION OF SAN ANTONIO	§	PUBLIC UTILITY COMMISSION
RIVER AUTHORITY AND W&W	§	
WATER, INC. FOR THE SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN WILSON COUNTY	§	

PROPOSED MAP OF THE WATER SERVICE AREA

Tyler County Water Supply Corporation

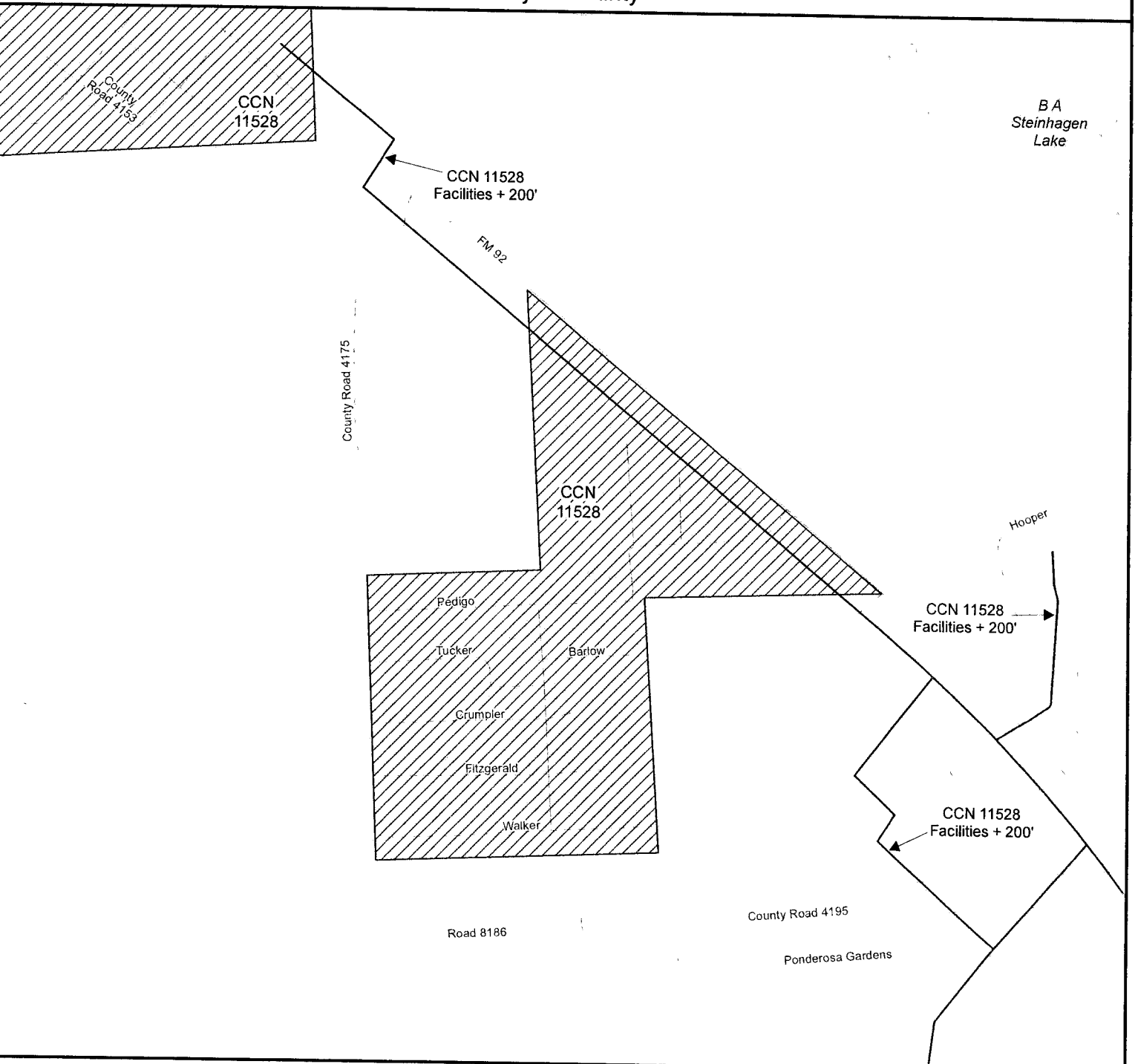
Water Service Area

CCN No. 11528

PUC Docket No. 43712

Amended CCN No. 11528 and

Decertified a Portion of Lake Livingston Water Supply and Sewer Service Corporation, CCN No. 10147
in Tyler County



Water CCN Service Area



11528 - Tyler County WSC

Water Facility CCN



11528 - Tyler County WSC - Facilities + 200'

0 400 800
Feet

