



Control Number: 43819



Item Number: 4

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

43819

**SOAH DOCKET NO. 582-12-5098
TCEQ DOCKET NO. 2012-0217-UCR**

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2014 NOV 25 AM 9:43
PUBLIC UTILITY COMMISSION
FILING CLERK

**APPLICATION OF COLLEGE MOUND WSC TO AMEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY NO. 10825
KAUFMAN COUNTY, APPLICATION
NO. 37094-C**

§ **BEFORE THE STATE OFFICE**
§
§
§ **OF**
§
§
§ **ADMINISTRATIVE HEARINGS**

**EXECUTIVE DIRECTOR'S
MOTION TO CANCEL THE PRELIMINARY HEARING AND REMAND BACK
TO THE EXECUTIVE DIRECTOR**

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) and files this motion. The above referenced application has been withdrawn by College Mound WSC (Applicant). As evidenced by the attached documents, Applicant no longer wishes to amend CCN No. 10825 at this time. I have conferred with all the parties, and none object to this motion.

THEREFORE, the ED request that the Court order that the preliminary hearing scheduled for April 23rd at 10:00 a.m. be cancelled and the matter be remanded to the ED.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By *Douglas Brown*
Douglas M. Brown, Staff Attorney
Environmental Law Division
State Bar of Texas No. 24048366
MC-173, P.O. Box 13087

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Austin, Texas 78711-3087
Phone: (512) 239-2253
Fax: (512) 239-0606

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2012, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, electronic mail, or hand-delivered to the following:

State Office of Administrative
Hearings
300 West 15th Street, Suite 502
PO Box 13025
Austin, Texas 78711-3025
Fax: 512-322-2061


Blas Coy, Attorney
Office of Public Interest Counsel
TCEQ-MC 103
PO Box 13087
Austin, Texas 78711-3087
Fax: 512-239-6377

Shirley Barkley
General Manager
College Mound WSC
12731 FM 429
Terrell, Texas 75161
Fax: 972.551.7176
sblakely@collegemoundwater.com

Bill Wynn
General Manager
P.O. Box 10
Elmo, TX 75118
Fax: 972.563.3842
elmowscbill@etxrn.com

John Simmons
General Manager
MacBee Special Utility District
PO Box 780
Wills Point, TX 75169
Fax: 903-873-2748
johns.macsud@sbcglobal.net

Docket Clerk
Office of Chief Clerk – MC 105
Texas Commission on Environmental
Quality
PO Box 13087
Austin, Texas 78711-3087
Fax: 512-239-3311



Douglas M. Brown

**AGREEMENT AMONG COLLEGE MOUND WSC,
ELMO WSC AND MACBEE SUD REGARDING CCN
CERTIFICATION AND SERVICE IN CERTAIN AREAS**

WHEREAS, College Mound Water Supply Corporation located at 12731 FM 429, Terrell, Texas 75161 has CCN No. 10825 and provides retail water service to the area depicted on Exhibit A hereto;

WHEREAS, Elmo Water Supply Corporation located at P.O. Box 10, Elmo, Texas 75118 has CCN No. 10813 and provides retail water service to the area depicted on Exhibit A;

WHEREAS, MacBee Special Utility District located at P.O. Box 780, Wills Point, Texas 75169 has CCN No. 10845 and provides retail water service to the area depicted on Exhibit A;

WHEREAS, an un-certificated land area, (referred to herein as "No Man's Land") exists between each of the CCNs belonging to the parties to this agreement (the "Agreement"). The No Man's Land is depicted on Exhibit A.

WHEREAS, College Mound WSC submitted a CCN Amendment Request Application No. 37094-C to the TCEQ seeking to include the No Man's Land in its exclusive service area;

WHEREAS, Elmo WSC and MacBee SUD oppose College Mound's Amendment Request and MacBee SUD filed written objections with the TCEQ and all parties to this Agreement desire to settle and resolve the current disagreement as follows;

WHEREAS, all parties have agreed that it is in their respective mutual interests to refrain from certificating the No Man's Land until a prospective customer requests service from that party.

AGREEMENT

NOW THEREFORE, College Mound WSC, Elmo WSC and MacBee SUD, for good and valuable consideration hereby agree as follows:

1. The parties each agree, that they will not seek to provide water service to, establish service infrastructure in, or attempt to seek CCN certification through the TCEQ of any areas shown as No Man's Land on Exhibit A unless and until such party receives a bona fide written request for service by a prospective customer who is the owner or designee thereof of real property located in the No Man's Land to which the service relates in the area. The parties' rights under §13.243 of the Texas Water Code remain unaffected by this Agreement provided there is a bona fide request for service by an owner of real property in the No Man's Land.

2. In reliance upon the enforceable assurances made in this Agreement, College Mound WSC will withdraw its CCN Amendment Request pending with TCEQ without prejudice and Elmo WSC and MacBee SUD will withdraw any opposition to such Amendment Request.
3. The intent of this Agreement and the mutual promises made herein is to leave the entirety of the No Man's Land un-certificated until such time that water service is requested from one of the parties to this Agreement from a prospective customer or designee who owns real property in the No Man's Land. And, it is further intended that the future customers in the No Man's Land shall have the right to select and choose their water provider.
4. Upon the receipt of a bona fide written request for water service from a prospective customer who owns real property in the No Man's Land, any party to this Agreement may then seek to amend its CCN boundaries to include that service area without violating this Agreement. The proposed amendment shall include only those areas of the No Man's Land that are necessary for service to the customer(s) that made the request. All other areas of the No Man's Land on Exhibit A shall remain subject to this Agreement. Such party filing an amendment request shall provide ten day's advance notice of the filing to the parties to this Agreement and provide a copy to the other parties to this Agreement concurrent with the filing.
5. Any party to this Agreement receiving a request for service is not required to notify the other parties but shall document the service request in its books and records.
6. Any CCN amendment request made pursuant to Paragraph 4 shall not be opposed directly or indirectly by the other parties to this Agreement so long as the party's CCN amendment request only seeks amendment of its CCN for the purpose of providing service to the requesting property owner and the real property described in the CCN amendment filing made pursuant to this Agreement. If the amendment request seeks to deprive another party to this Agreement of the use of its infrastructure or service in place on the date of this Agreement, such party shall be entitled to seek reasonable compensation from TCEQ, but no claim may be asserted if the amendment request allows the continued use of the infrastructure.
7. In the event that any party violates this Agreement in any manner, including providing service within or seeking to include the No Man's Land within its CCN boundaries without a customer request, the other parties may pursue all available rights under law, including an action in court for equitable injunctive relief and/or legal damages in addition to any opposition at TCEQ.

8. In the event that this Agreement is breached by any party and legal action becomes necessary, the breaching party shall be responsible for attorneys' fees and costs reasonably necessary to bring such action.
9. This Agreement may be filed as evidence in any action to enforce its terms or in a proceeding before TCEQ regarding the No Man's Land.
10. The above is the complete and entire agreement between the parties and there are no oral understandings. No amendment to this Agreement shall be binding on any party unless such amendment is reduced to writing and executed by all parties.
11. The signatures below reflect the decision of the Board of Directors of each party to the Agreement. A copy of the resolutions by each Board of Directors is attached hereto as Exhibit B.

Agreed on this 12th day of April 2012.

COLLEGE MOUND WATER SUPPLY CORPORATION

By: Marcia P. Homan

President

ELMO WATER SUPPLY CORPORATION

By: Charles Bueger

Vice President

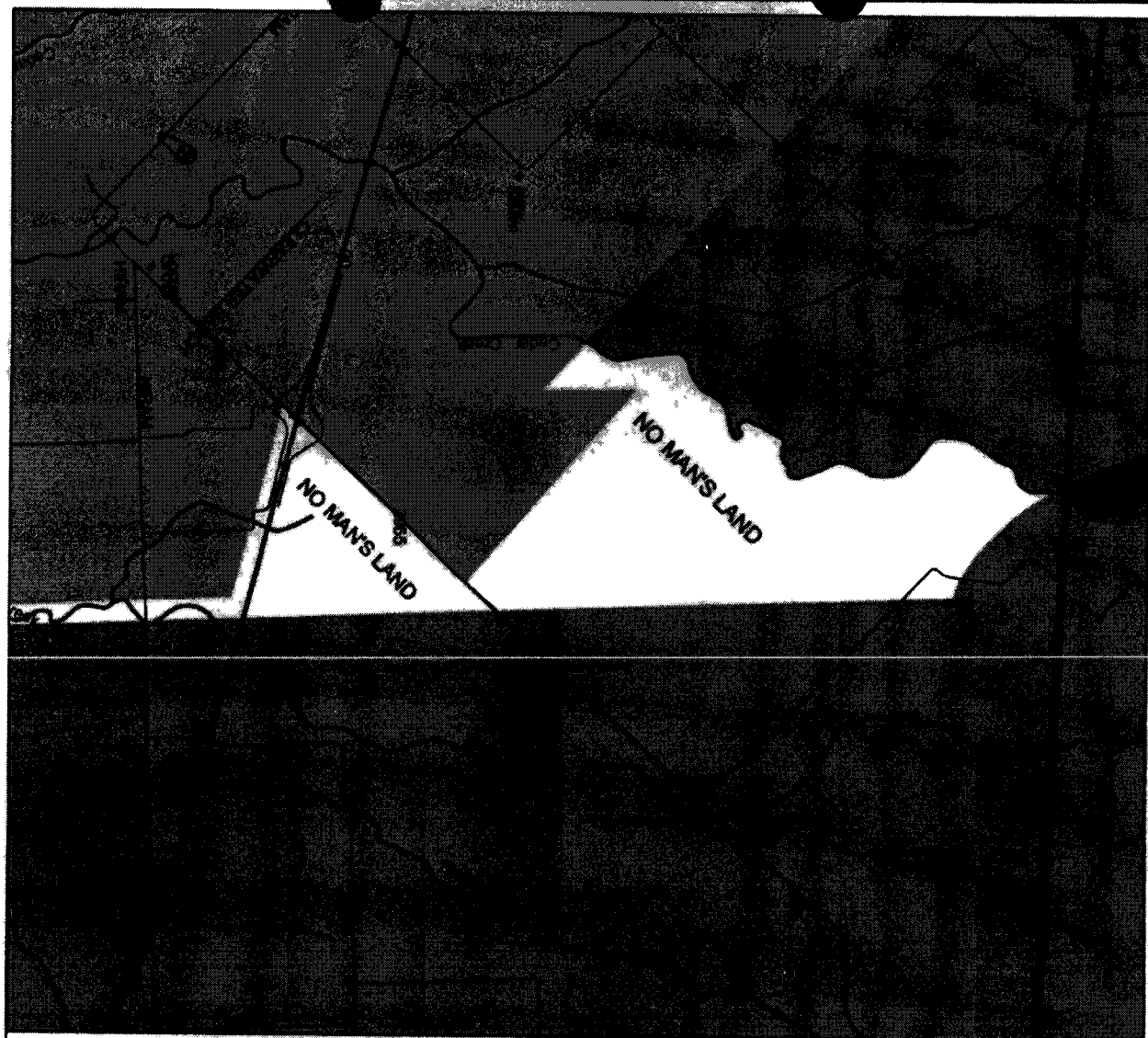
MACBEE SPECIAL UTILITY DISTRICT

By: William R. Summitt

President

EXHIBIT A

**Map of CCN Areas and
Designated "No Man's Land"**



COLLEGE MOUND csn
MACBEE csn
ELMO csn

EXHIBIT B

1. **Board Resolution by College Mound Water Supply Corporation.**
2. **Board Resolution by Elmo Water Supply Corporation.**
3. **Board Resolution by MacBee Special Utility District.**

RESOLUTION

On this 24th day of January, 2012, the Board of Directors of College Mound Water Supply Corporation came together at a duly noticed meeting, a quorum being present and considered the Agreement attached hereto as Exhibit 1. The Board finds that:

WHEREAS, College Mound Water Supply Corporation located at 12731 FM 429, Terrell, Texas 75161 has CCN No. 10825 and provides retail water service to the area depicted on Exhibit A hereto;

WHEREAS, Elmo Water Supply Corporation located at P.O. Box 10, Elmo, Texas 75118 has CCN No. 10813 and provides retail water service to the area depicted on Exhibit A:

WHEREAS, MacBee Special Utility District located at P.O. Box 780, Wills Point, Texas 75169 has CCN No. 10845 and provides retail water service to the area depicted on Exhibit A:

WHEREAS, an un-certificated land area, commonly referred to as "No Man's Land" exists between each of the CCNs belonging to the parties to this agreement (the "Agreement"). The un-certificated area that is the subject of this Agreement is depicted on Exhibit A.

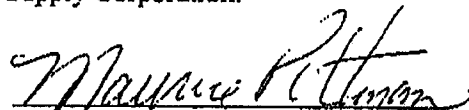
WHEREAS, College Mound WSC submitted a CCN Amendment Request to the TCEQ seeking to include the No Man's Land in its exclusive service area;

WHEREAS, Elmo WSC and MacBee SUD oppose College Mound's Amendment Request and all parties to this Agreement desire to settle and resolve the current disagreement as follows to avoid the expenditure of unnecessary expense in the form of attorneys' fees and costs;

WHEREAS, all parties have agreed that it is in their respective mutual interests to refrain from certifying the No Man's Land until a prospective customer requests service from that party.

BE IT RESOLVED BY THE BOARD OF DIRECTORS that the Agreement attached hereto is approved by the Board of Directors and the President is authorized to execute this Agreement on behalf of College Mound Water Supply Corporation.


Secretary Chuck Currie


President Maurice Pittman

RESOLUTION

On this 12th day of April, 2012, the Board of Directors of Elmo Water Supply Corp. came together at a duly noticed meeting, a quorum being present and considered the Agreement attached hereto as Exhibit 1. The Board finds that:

WHEREAS, College Mound Water Supply Corporation located at 12731 FM 429, Terrell, Texas 75161 has CCN No. 10825 and provides retail water service to the area depicted on Exhibit A hereto;

WHEREAS, Elmo Water Supply Corporation located at P.O. Box 10, Elmo, Texas 75118 has CCN No. 10813 and provides retail water service to the area depicted on Exhibit A:

WHEREAS, MacBee Special Utility District located at P.O. Box 780, Wills Point, Texas 75169 has CCN No. 10845 and provides retail water service to the area depicted on Exhibit A:

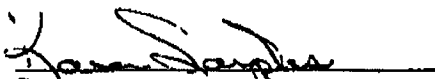
WHEREAS, an un-certificated land area, commonly referred to as "No Man's Land" exists between each of the CCNs belonging to the parties to this agreement (the "Agreement"). The un-certificated area that is the subject of this Agreement is depicted on Exhibit A.

WHEREAS, College Mound WSC submitted a CCN Amendment Request to the TCEQ seeking to include the No Man's Land in its exclusive service area;

WHEREAS, Elmo WSC and MacBee SUD oppose College Mound's Amendment Request and all parties to this Agreement desire to settle and resolve the current disagreement as follows to avoid the expenditure of unnecessary expense in the form of attorneys' fees and costs;

WHEREAS, all parties have agreed that it is in their respective mutual interests to refrain from certificating the No Man's Land until a prospective customer requests service from that party.

BE IT RESOLVED BY THE BOARD OF DIRECTORS that the Agreement attached hereto is approved by the Board of Directors and the Vice President is authorized to execute this Agreement on behalf of Elmo Water Supply Corp.


Secretary


Vice President

RESOLUTION

On this 9th day of January, 2012, the Board of Directors of ~~MACBEE Special Utility District~~ came together at a duly noticed meeting, a quorum being present and considered the Agreement attached hereto as Exhibit 1. The Board finds that:

WHEREAS, College Mound Water Supply Corporation located at 12731 FM 429, Terrell, Texas 75161 has CCN No. 10825 and provides retail water service to the area depicted on Exhibit A hereto;

WHEREAS, Elmo Water Supply Corporation located at P.O. Box 10, Elmo, Texas 75118 has CCN No. 10813 and provides retail water service to the area depicted on Exhibit A;

WHEREAS, MacBee Special Utility District located at P.O. Box 780, Wills Point, Texas 75169 has CCN No. 10845 and provides retail water service to the area depicted on Exhibit A;

WHEREAS, an un-certificated land area, commonly referred to as "No Man's Land" exists between each of the CCNs belonging to the parties to this agreement (the "Agreement"). The un-certificated area that is the subject of this Agreement is depicted on Exhibit A.

WHEREAS, College Mound WSC submitted a CCN Amendment Request to the TCEQ seeking to include the No Man's Land in its exclusive service area;

WHEREAS, Elmo WSC and MacBee SUD oppose College Mound's Amendment Request and all parties to this Agreement desire to settle and resolve the current disagreement as follows to avoid the expenditure of unnecessary expense in the form of attorneys' fees and costs;

WHEREAS, all parties have agreed that it is in their respective mutual interests to refrain from certificating the No Man's Land until a prospective customer requests service from that party.

BE IT RESOLVED BY THE BOARD OF DIRECTORS that the Agreement attached hereto is approved by the Board of Directors and the President is authorized to execute this Agreement on behalf of ~~MACBEE Special Utility District~~.

Ronnie Chapp
Secretary

William R. Summit
President