



Control Number: 45151



Item Number: 1

Addendum StartPage: 0

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CITY OF CELINA
NOTICE OF INTENT TO
PROVIDE RETAIL WATER AND
SEWER SERVICE TO
494.819-ACRE AREA DECERTIFIED
FROM MUSTANG SPECIAL
UTILITY DISTRICT
IN DENTON COUNTY

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BEFORE THE
PUBLIC UTILITY COMMISSION
FILING CLERK
PUBLIC UTILITY COMMISSION
OF TEXAS

**THE CITY OF CELINA’S NOTICE OF INTENT
TO PROVIDE RETAIL WATER AND SEWER SERVICE TO THE 494.819-ACRE
TRACT DECERTIFIED FROM MUSTANG SPECIAL UTILITY DISTRICT**

To the Public Utility Commission of Texas (“Commission” or “PUC”):

Pursuant to Section 13.254(e) of the Texas Water Code and Section 24.113(i) of the Commission Rules, the City of Celina (“Celina”) herewith notifies the Commission of Celina’s intent (“Notice of Intent”) to provide retail water and sewer service to the area decertified by the Commission in Docket No. 44629 from Mustang Special Utility District (“Mustang”) as requested by CADG Sutton Fields, LLC. In support hereof, Celina would respectfully show the Commission as follows:

1. Celina is a retail public utility currently providing water and sewer service to the area within its incorporated limits and certain areas within its extra-territorial jurisdiction (“ETJ”).
2. Celina intends to provide retail water and sewer service to the 494.819-acre tract owned by CADG Sutton Fields, LLC which was decertified from Mustang Special Utility District (“Mustang”) in PUC Docket No. 44629 on July 16, 2015 pursuant to Section 13.254(a-5) of the Texas Water Code.

3. A copy of the Commission Order issued in Docket No. 44629 as well as a copy of the map showing the location of the 494.819-acre tract is attached hereto as Exhibit 1.
4. Section 13.254(d) of the Texas Water Code and Section 24.113(h) of the Commission's Rules, prohibits Celina from rendering retail water or sewer service to the decertified 494.819-acre area without providing compensation for any of Mustang's property that the Commission determines is rendered useless or valueless to Mustang as a result of the decertification.
5. Section 13.254(e) of the Texas Water Code and Section 24.113(i) of the Commission's Rules, holds that the determination of the monetary amount of compensation, if any, must be determined at the time Celina seeks to provide service in the previously decertified area and before service is actually provided. Furthermore, the monetary amount of compensation must be determined no later than the 90th calendar day after the date of the filing of this notification of intent to serve.
6. Because the determination of the amount of monetary compensation to be provided to Mustang is a statutory 90-day process involving the naming of one or more appraisers and the submittal of appraisals within certain time frames (see, e.g., the 60-day deadline for submitting appraisals under Section 13.254(g-1)), this Notice of Intent should be docketed as a new case with appropriate notice published as in other Section 13.254 cases, and a procedural schedule established to ensure compliance with the statutory deadlines.
7. A copy of this Notice of Intent is being mailed via certified mail, return receipt requested, to Mustang and to CADG Sutton Fields, LLC.

THEREFORE, the City of Celina prays that the Commission take notice of the City of Celina's intent to provide retail water and sewer service to the 494.819-acre tract owned by CADG Sutton Fields, LLC which was decertified from Mustang Special Utility District in PUC

Docket No. 44629 on July 16, 2015; that appropriate public notice of this Notice of Intent be published as required by Commission Rules; that a procedural schedule be established; that the monetary amount of compensation to be provided to Mustang be determined in accordance with the requirements of Section 13.254 of the Texas Water Code; and that Celina have all such other relief as to which it may show itself entitled.

Respectfully submitted,

Andy Barrett & Associates, PLLC

By: Andrew N. Barrett

Andrew N. Barrett

State Bar No. 01808900

3300 Bee Cave Road, Suite 650 #189

Austin, Texas 78746

512-600-3800

512-330-0499 FAX

ATTORNEY CITY OF CELINA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all Parties of record as required by PUC Procedural Rules on this 14th day of September, 2015.

Via Email and Certified Mail – Return Receipt Requested

Leonard Dougal

ldougal@jw.com

JACKSON WALKER L.L.P.

100 Congress, Suite 1100

Austin, TX 78701

Tel: (512) 236-2233

Fax (512) 391-2112

ATTORNEY FOR MUSTANG SPECIAL UTILITY DISTRICT

Via Email

Andrew N. Barrett

andy@thebarrettfirm.com

Andy Barrett & Associates, PLLC

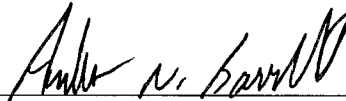
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Austin, Texas 78746

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Fax: (512) 330-0499

ATTORNEY FOR CADG SUTTON FIELDS, LLC



Andrew N. Barrett

EXHIBIT 1

DOCKET NO. 44629

PETITION OF CADG SUTTON §
FIELDS, LLC TO AMEND MUSTANG §
SPECIAL UTILITY DISTRICT'S §
CERTIFICATES OF CONVENIENCE §
AND NECESSITY IN DENTON §
COUNTY BY EXPEDITED RELEASE §

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PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

ORDER

This Order addresses the petition of CADG Sutton Fields, LLC (CADG Sutton) for expedited release of a tract of land from the water and sewer certificates of convenience and necessity (CCNs) of Mustang Special Utility District (Mustang SUD) in Denton County. For the reasons discussed in this Order, CADG Sutton's petition is granted and Mustang SUD's water CCN 11856 and sewer CCN 20930 are amended to remove CADG Sutton's property.

I. Background

On April 9, 2015, CADG Sutton filed a petition, under Tex. Water Code Ann. § 13.254 (a-5) (West 2008 & Supp. 2014) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC), for the expedited release of 494.819 acres of land owned by CADG Sutton and located within Mustang SUD's water and sewer service certificated area in Denton County.¹ On May 6, 2015, the petition and notice were found administratively complete for further processing.

On May 13, 2015, Mustang SUD responded to the petition, requesting denial of CADG Sutton's petition² and stating that the property was ineligible for expedited release because water and wastewater services are provided to the property. CADG Sutton replied to Mustang's response.³ On May 21, 2015, Mustang SUD moved to intervene as a necessary party pursuant to 16 TAC § 22.2(4).⁴ Neither Commission Staff nor CADG Sutton had an objection to Mustang

¹ Petition of CADG Sutton to Amend Mustang Special Utility District's Certificates of Convenience and Necessity in Denton County (Apr. 9, 2015) (Petition).

² Mustang Special Utility District's Response to Petition for Expedited Decertification (May 13, 2015) (Mustang Response).

³ CADG Sutton's Reply to Mustang Special Utility District's Response to Petition for Expedited Decertification (May 19, 2015) (CADG Sutton Reply).

⁴ Mustang Special Utility District's Motion to Intervene (May 21, 2015).

SUD's motion to intervene. On June 8, 2015, Commission Staff recommended approval. On June 15, 2015, Mustang SUD requested a hearing.⁵

TWC § 13.254(a-5) contains the criteria that an applicant for expedited release from a CCN must demonstrate: (1) the applicant owns a tract of land; (2) that is at least 25 acres in area; (3) that is not receiving water or sewer service; and (4) that is located in a qualifying county. No party disputes that CADG Sutton owns the 494.819-acre tract, that expedited release of at least 25 acres is requested, or that the tract is located in a qualifying county. The only criterion that is contested in this proceeding is whether the tract is receiving water or sewer service from Mustang SUD. TWC § 13.254(a-6) establishes a 60-day timeline for the processing of a petition filed under TWC § 13.254(a-5). The petition was declared administratively complete on May 6, 2015. The 60th day is July 6, 2015.⁶

Both parties rely on the decision by the Texas Third Court of Appeals in *Crystal Clear*⁷ to support their respective interpretation of whether the 494.819-acre tract is receiving water and sewer service. In that case, the Texas Commission on Environmental Quality granted the Texas General Land Office's petition for expedited release of a portion of property from the certificated area of Crystal Clear Water Supply Corporation under TWC § 13.254(a-5).⁸ Crystal Clear appealed the decision, claiming that the property was in fact "receiving water service" under § 13.254(a-5).⁹ The Third Court of Appeals reviewed the decision under the substantial evidence standard and held, in relevant part, as follows:

1. The fact that a tract is not receiving actual water on the property does not suffice as proof that the tract is not "receiving water service" under TWC § 13.254(a-5).¹⁰
2. "The mere existence of water lines or facilities on or near a tract [does] not necessarily mean that tract [is] 'receiving water service.'"¹¹

⁵ Mustang Special Utility District's Response to PUC Staff's Recommendation on Final Disposition (Jun. 15, 2015).

⁶ *Petition of City of Midlothian to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Conclusion of Law No. 13 (May 1, 2015).

⁷ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. filed).

⁸ *Id.* at 132.

⁹ *Id.*

¹⁰ *Id.* at 140.

¹¹ *Id.*

3. Rather, determining whether a tract is “receiving water service” is a “fact-based inquiry requiring the commission to consider whether the retail public utility has facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the particular tract All of these considerations are matters committed to the Commission’s sound discretion and authority to decide issues of fact.”¹²

In this proceeding, each party submitted separate affidavits attesting that the 494.819-acre tract is or is not receiving water or sewer service.¹³ The affiant for Mustang SUD attested that (1) Mustang SUD has committed water service to the tract through Mustang Well No. 6 located immediately adjacent to the 494.819 acre tract and a 24” waterline located approximately 1100 feet from the 494.819 acre tract;¹⁴ (2) Mustang SUD owns an elevated storage tank that is located approximately 3200 feet from the 494.819 acre tract;¹⁵ (3) Mustang SUD has committed wastewater service to the tract by and through treatment capacity in the Upper Trinity Regional Water District’s Riverbend Water Reclamation Plant (Riverbend Plant).¹⁶

The affiants for CADG Sutton attested that (1) CADG Sutton is the owner of the tract;¹⁷ (2) the tract is located within the water and sewer CCNs of Mustang SUD;¹⁸ (3) there are no active meters or connections on the 494.819 acre tract;¹⁹ and (4) the property does not receive any water and sewer services from Mustang SUD.²⁰

The Commission finds that CADG Sutton has adequately proved that the 494.819-acre tract is not receiving water service under TWC § 13.254(a-5); therefore, CADG Sutton’s petition should be granted.

The Commission adopts the following findings of fact and conclusions of law:

¹² *Id.* at 140-41 (emphasis original).

¹³ Petition, at 2-3 (Affidavit of Mehrdad Moayedi); Mustang Response, Exhibit A (Affidavit of Christian Boyd); CADG Sutton Reply, Exhibit A (Affidavit of Art Barraza).

¹⁴ Affidavit of Christian Boyd at ¶ 9.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Affidavit of Mehrdad Moayedi at 1.

¹⁸ *Id.*

¹⁹ Affidavit of Art Barraza at 1.

²⁰ Affidavit of Mehrdad Moayedi at 1; Affidavit of Art Barraza at 1.

II. Findings of Fact

Procedural History

1. On April 9, 2015, CADG Sutton filed a petition to amend Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930 in Denton County by expedited release.
2. On April 10, 2015, Order No. 1 was issued, establishing a procedural schedule.
3. On April 20, 2015, Commission Staff recommended that the petition be deemed administratively incomplete.
4. On April 27, 2015, the Commission issued Order No. 2, finding the application to be administratively incomplete.
5. On April 30, 2015, Commission Staff recommended that the petition and notice be deemed administratively complete.
6. On May 6, 2015, the Commission issued Order No. 3, finding the petition, and notice administratively complete.
7. On May 13, 2015, Mustang SUD responded to CADG Sutton's petition for expedited release.
8. On May 19, 2015, CADG Sutton replied to Mustang SUD's response.
9. On May 21, 2015, Mustang SUD filed a motion to intervene in this docket.
10. On May 29, 2015, the Commission issued Order No. 5, granting Mustang SUD's unopposed motion to intervene.
11. On June 8, 2015, Commission Staff recommended approval of CADG Sutton's petition for expedited release.
12. On June 15, 2015, Mustang SUD responded to Commission Staff's recommendation on final disposition.
13. On June 15, 2015, CADG Sutton replied to Commission Staff's recommendation on final disposition.
14. The amended maps and CCN certificates are attached to this Order.

Project Description

15. The approximately 494.819 acre tract of land CADG Sutton seeks to have released from Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930 is situated in Denton County, a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).
16. The area CADG Sutton seeks to have decertified from water CCN No. 11856 and sewer CCN No. 20930 is at least 25 acres and is not receiving water or sewer service.
17. Commission Staff recommended approval of the release of CADG Sutton's tract located within Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930.

Water and Sewer Service

18. Both parties submitted affidavits in support of their relative positions regarding whether the 494.819 acre tract is receiving water utility service or sewer utility service from Mustang SUD.
19. CADG Sutton submitted affidavits from Art Barraza and Mehrdad Moayedi.
20. According to Mr. Moayedi, the 494.819 acre tract does not receive any water service or sewer service from Mustang SUD.²¹
21. According to Mr. Barraza, the 494.819 acre tract does not receive any water service or sewer service from Mustang SUD.²²
22. According to Mr. Barraza, there are no active meters or connections on the 494.819 acre tract.²³
23. According to Mr. Barraza, Mustang SUD is not currently servicing the 494.819 acre tract.²⁴
24. According to Mr. Barraza, Mustang SUD's improvements and facilities are not dedicated solely to serve the 494.819 acre tract.²⁵

²¹ Affidavit Mehrdad Moayedi at 1.

²² Affidavit of Art Barraza at 1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 2.

25. According to Mr. Barraza, CADG Sutton and Mustang SUD have not entered into any agreements with respect to the potential allocated capacity for water or sewer service to be used on the 494.819 acre tract.²⁶
26. Mustang SUD submitted an affidavit from Christian Boyd.
27. According to Mr. Boyd, Mustang SUD has committed water service to the tract through Mustang Well No. 6, a 24" waterline, and a 2.25 million gallon elevated tank.²⁷
28. According to Mr. Boyd, Mustang SUD has committed wastewater service to the 494.819 acre tract by and through treatment capacity that Mustang SUD has in the Riverbend Plant.²⁸
29. According to Mr. Boyd, an elevated storage tank is located approximately 3200 feet from the boundary to the 494.819 acre tract.²⁹
30. According to Mr. Boyd, Mustang Well No. 6 is located immediately adjacent to the 494.819 acre tract.³⁰
31. According to Mr. Boyd, the 24" waterline is located approximately 1100 feet from the 494.819 acre tract.³¹
32. The 494.819 acre tract is not receiving actual water service from Mustang SUD.
33. The 494.819 acre tract is not receiving actual sewer service from Mustang SUD.

Notice

34. CADG Sutton provided a copy of the petition to Mustang SUD on April 9, 2015.
35. Notice of the petition was published in the *Texas Register* on April 24, 2015.
36. The need to have CADG Sutton's petition considered within the 60-day timeline set forth in TWC § 13.254(a-6) serves as good cause to waive the 20-day requirement in 16 TAC §

²⁶ *Id.*

²⁷ Affidavit of Christian Boyd at ¶ 9.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

22.35 and have the petition considered at the next available regularly scheduled open meeting.

37. Mustang SUD has not committed facilities or lines providing water or sewer service to the 494.819-acre tract, nor has it performed acts or supplied anything to that particular tract.
38. The 494.819-acre tract is not receiving water or sewer service from Mustang SUD under TWC § 13.254(a-5).

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TWC §§ 13.041 and 13.254(a-5) and 16 TAC § 24.113(r)-(s).
2. Notice of the petition was provided in compliance with 16 TAC § 24.113(s) and 16 TAC §§ 22.54 - .55.
3. Mustang SUD filed a motion to intervene pursuant to 16 TAC § 22.2(4).
4. CADG Sutton has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC §§ 24.113(r) and (s) for the 494.819-acre tract.
5. This docket was processed in accordance with the requirements of PURA and Commission rules.
6. Pursuant to 16 TAC § 22.5(b), there is good cause and the 20-day notice requirement in 16 TAC § 22.35(b)(2) is waived.
7. Mustang SUD has not committed facilities or lines providing water or sewer service to the 494.819-acre tract, nor has it performed acts or supplied anything to that particular tract.
8. The 494.819-acre tract is not receiving water or sewer service from Mustang SUD under TWC § 13.254(a-5).

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. CADG Sutton's petition for expedited release is approved.
2. CADG Sutton's 494.819-acre tract is removed from Mustang SUD's water CCN No. 11856.
3. CADG Sutton's 494.819-acre tract is removed from Mustang SUD's sewer CCN No. 20930.
4. Mustang SUD's water CCN No. 11856 is amended in accordance with this Order and the attached map and certificate.
5. Mustang SUD's sewer CCN No. 20930 is amended in accordance with this Order and the attached map and certificate.
6. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 16th day of July 2015.

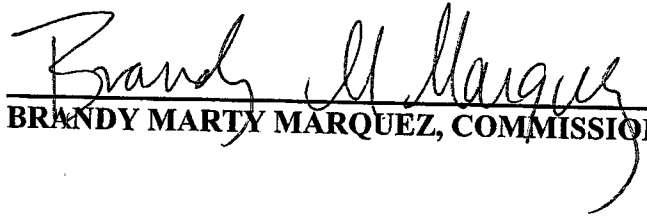
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER



Public Utility Commission Of Texas

By These Presents Be It Known To All That Mustang 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 by Mustang Special Utility District, is entitled to this

Certificate of Convenience and Necessity No. 11856

to provide continuous and adequate water utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 44629 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 Mustang 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 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 16th day of July 2015.



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Mustang Special Utility District

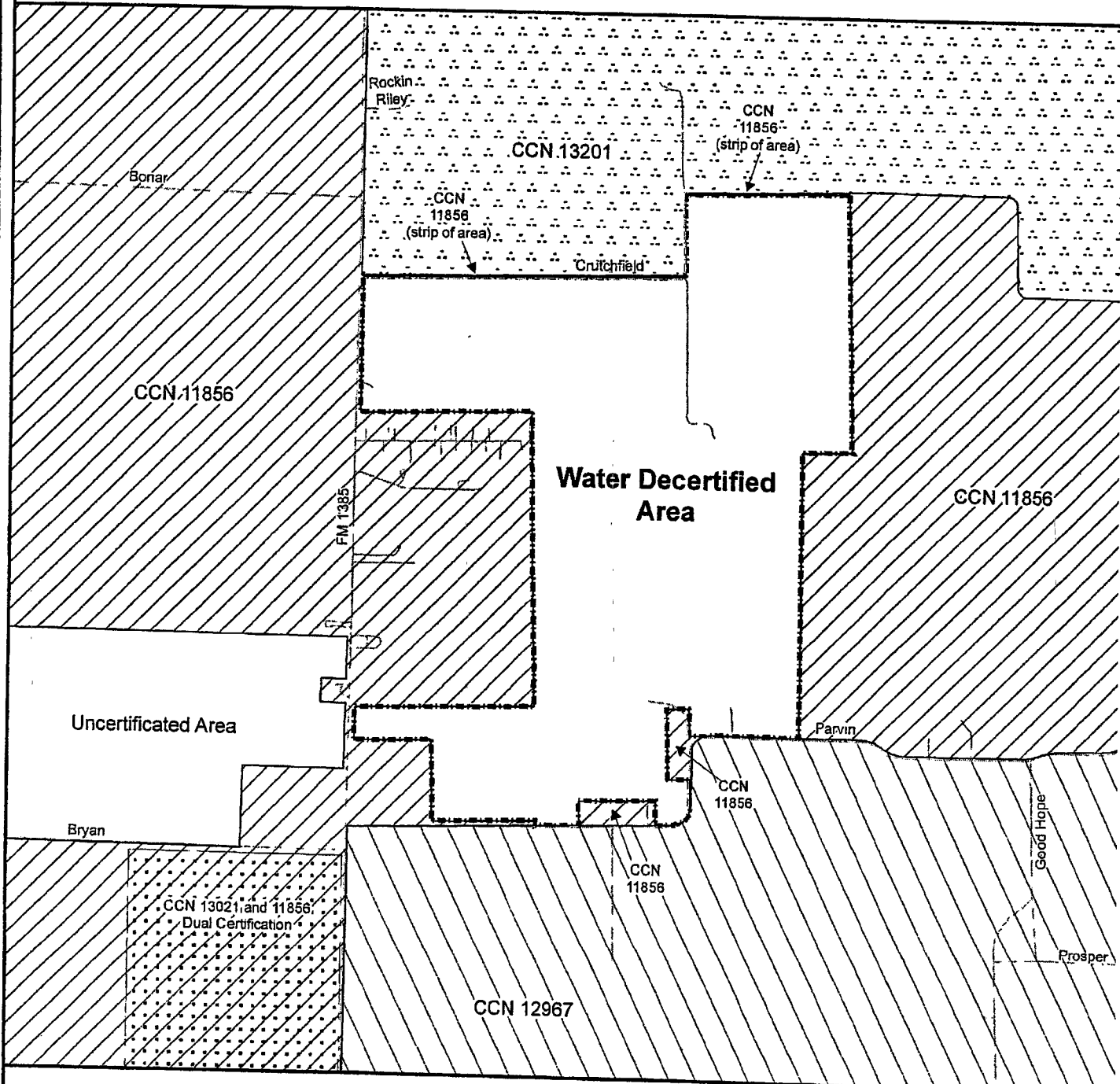
having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by Mustang Special Utility District, is entitled to this

Certificate of Convenience and Necessity No. 20930

to provide continuous and adequate sewer utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 44629 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 Mustang 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 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 16th day of July 2015.





Mustang Special Utility District
 Portion of Water Service Area
 CCN No. 11856
 PUC Docket No. 44629
 Petition by CADG Sutton Fields, LLC to Amend Mustang SUD's Water CCN by Expedited Release
 in Denton County

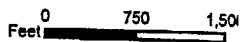


Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

 Area Decertified from Water CCN 11856

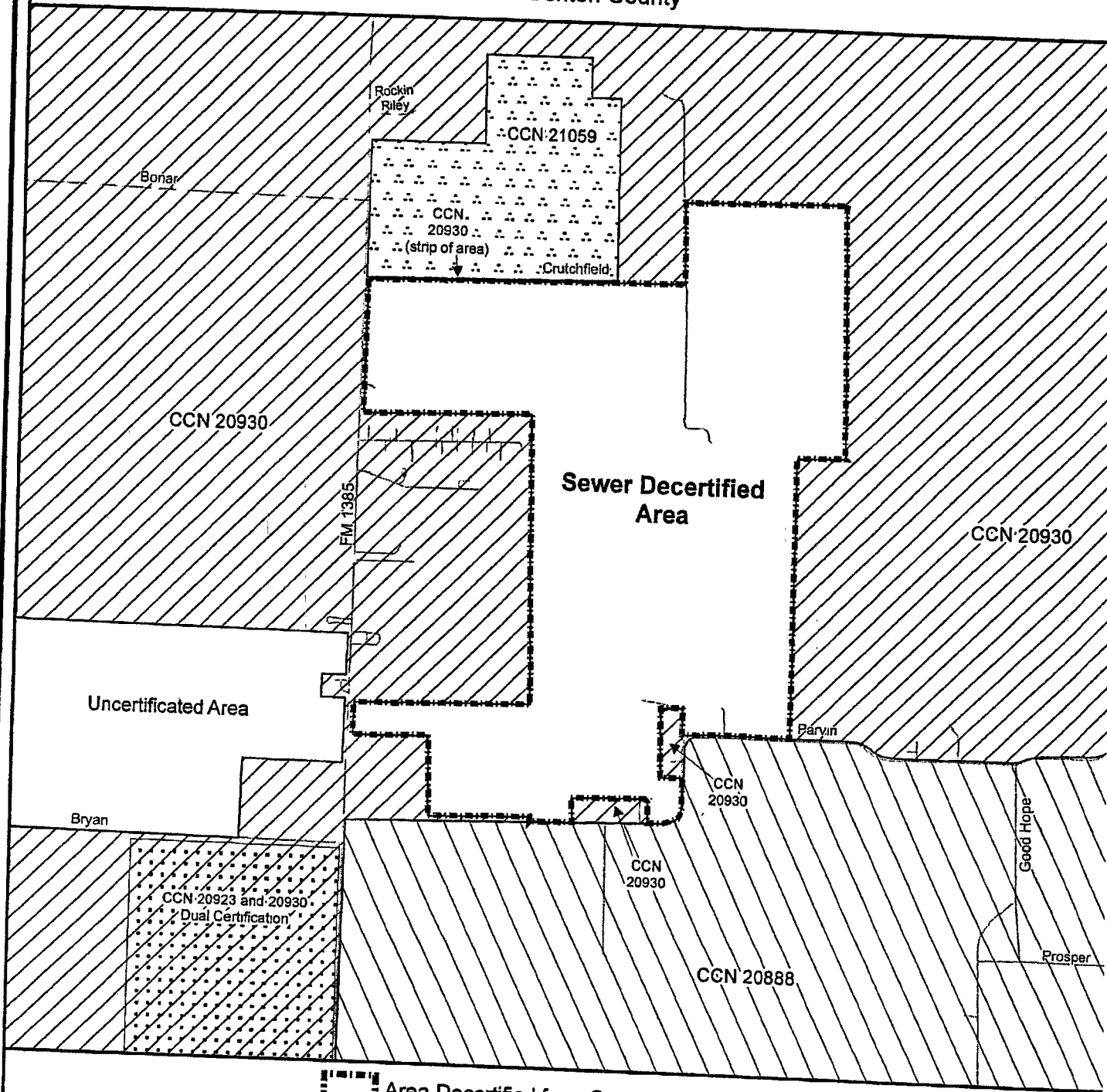
Water CCN Service Areas

-  11856 - Mustang SUD
-  12967 - City of Prosper
-  13021 - Denton County FWSD 10
-  13201 - Aqua Texas Inc




Map by Tracy Harbo
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



Mustang Special Utility District
 Portion of Sewer Service Area
 CCN No. 20930
 PUC Docket No. 44629
 Petition by CADG Sutton Fields, LLC to Amend Mustang SUD's Sewer CCN by Expedited Release
 in Denton County



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

 Area Decertified from Sewer CCN 20930

Sewer CCN Service Areas

-  20930 - Mustang SUD
-  20888 - City of Prosper
-  20923 - Denton County FWSD 10
-  21059 - Aqua Texas Inc

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 Feet



Map by: Tracy Harbou
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