



Control Number: 45848



Item Number: 1

Addendum StartPage: 0

45848 RECEIVED

PUC DOCKET NO. _____

2016 APR 12 PM 3:16

CITY OF CELINA
NOTICE OF INTENT TO
PROVIDE RETAIL WATER AND
SEWER SERVICE TO
127.930-ACRE AREA DECERTIFIED
FROM AQUA TEXAS, INC.
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 127.930-ACRE
TRACT DECERTIFICATED FROM AQUA TEXAS, INC.**

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

Pursuant to §13.254(e) *Water Code* and §24.113(i) of the Commission Rules the City of Celina ("Celina") notifies the Commission of Celina's intent ("Notice of Intent") to provide retail water and sewer service to the area decertificated by the Commission in Docket No. 45329 from Aqua Texas, Inc. (Aqua) as requested by CADG Sutton Fields II, LLC ("Sutton Fields II").

In support, 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 corporate limits and certain areas within its extraterritorial jurisdiction ("ETJ").
2. Celina intends to provide retail water and sewer service to the 127.930-acre tract owned by Sutton Fields II that was decertificated from Aqua in PUC Docket No. 45329 by Order dated March 22, 2016 pursuant to §13.254(a-5) *Water Code*.
3. A copy of the Commission Order in Docket No. 45329 as well as a copy of the map showing the location of the 127.930-acre tract is attached as Exhibit 1.
4. Section 13.254(d) *Water Code* and §24.113(h) of the Commission Rules prohibit Celina from rendering retail water or sewer service to the decertificated 127.930-acre area

without providing compensation for any of Aqua's property that the Commission determines has been rendered useless or valueless to Aqua as a result of the decertification.

5. Section 13.254(e) *Water Code* and §24.113(i) of the Commission's Rules hold 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 decertificated area and before service is actually provided. Furthermore, the Commission must determine the amount of monetary compensation, if any, no later than the 90th calendar day after the date of the filing of this notification of intention to serve.

6. Because the determination of the amount of monetary compensation to be provided to Aqua 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 pursuant to §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 statutory deadlines.

7. Celina will mail a copy of this Notice of Intent via certified mail, return receipt requested, to Aqua and to Sutton Fields II.

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 127.930-acre tract that Sutton Fields II owns and that the Commission decertificated from Aqua Texas, Inc. in PUC Docket No. 45329 by Order dated March 22, 2016; that the appropriate public notice of this Notice of Intent be published as the Commission Rules require; that a procedural schedule be established; that the monetary amount of compensation, if any, to be provided to Aqua Texas, Inc. be determined in accordance with the requirements of §13.254 *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 above and foregoing Notice of Intent was served on the following counsel of record on this the 12th day of April 2016, by electronic means, CMRRR or fax:

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Andrew N. Barrett
Andrew N. Barrett

EXHIBIT 1

DOCKET NO. 45329

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PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION OF CADG SUTTON §
FIELDS II, LLC TO AMEND AQUA §
TEXAS, INC.'S CERTIFICATES OF §
CONVENIENCE AND NECESSITY IN §
DENTON COUNTY BY EXPEDITED §
RELEASE §

PUBLIC UTILITY COMMISSION

OF TEXAS

ORDER

This Order addresses the petition of CADG Sutton Fields II, LLC for expedited release of approximately 128 acres from Aqua Texas, Inc.'s water certificate of convenience and necessity (CCN) No. 13201 and sewer CCN No. 21059 in Denton County, Texas under Texas Water Code § 13.254(a-5) (TWC) and 16 Texas Administrative Code § 24.113(r) (TAC). Commission Staff recommended approval of Sutton Fields' petition, as amended. Consistent with Commission Staff's recommendation, the petition, as amended, is approved.

I. Background

On November 10, 2015, Sutton Fields filed a petition under TWC § 13.254(a-5) and 16 TAC § 24.113(r), for expedited release of approximately 128 acres of land owned by the petitioner, located within Aqua's water CCN No. 13201 and sewer CCN No. 21059 in Denton County. The affidavit of Mehrdad Moayedi, Manager of 2M Ventures LLC, signing on behalf of CADG Sutton Fields II, LLC, was attached to the petition and asserted that the petitioner is not receiving water service from Aqua and there are no water or sewer connections or meters on the 128-acre tract.

On December 10, 2015, Aqua filed a motion to intervene, initial comments, and request for a deadline extension. Aqua stated that the petition was deficient and requested a 30-day comment period both after the application was found sufficient and again after Commission Staff's final recommendation. Both Sutton Fields and Commission Staff responded in opposition to

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Aqua's request for additional time. Aqua's motion to intervene was granted on December 18, 2015.¹

On January 19, 2016, Aqua filed a supplemental response to the petition, as well as the affidavit of Darryl Waldock, North Texas Area Manager. Aqua contended the property sought for release is receiving water and sewer service from Aqua. Aqua possesses active water facilities a short distance away from the property in the form of its Willow Wood Addition Meadow Vista water system (PWS No. 0610212) facilities, and argues the fact that those facilities may also be used for service to other properties is inconsequential.² Further, Aqua holds a wastewater permit obtained from the Texas Commission on Environmental Quality (TCEQ) specifically to serve the property at issue.³ Aqua maintained that the Commission has previously misapplied *Crystal Clear*⁴ when addressing whether a property is receiving water service, failing to recognize that planning for an active water supply to and wastewater collection for properties constitutes providing service.⁵ Regarding the General Land Office's contention that a tract of land is not receiving water service if the landowner is not receiving actual water on the property, Aqua reiterated that the *Crystal Clear* court held, "We find nothing in the text of the statute . . . that compels this interpretation."⁶

On January 25, 2016, Sutton Fields filed a reply to Aqua's supplemental response. Sutton Fields rejected Aqua's supplemental response, urging that the *Crystal Clear* court held that the facilities or improvements must be committed to the tract seeking expedited release; however, Aqua failed to claim that the facilities and improvements asserted by Aqua and Mr. Waldock are committed or dedicated to the property subject to this proceeding.⁷ Further, although Aqua and the prior property developer/owner, Denton County Development 128, LLC executed a letter of

¹ Order No. 4 (Dec. 18, 2015).

² Intervenor Aqua Texas, Inc.'s Supplemental Response to Petition at 6 (Jan. 19, 2016).

³ *Id.*

⁴ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W. 3d 130 (Tex. App.—Austin 2014, pet. denied).

⁵ Intervenor Supplemental Response at 4.

⁶ *Id.* at 5.

⁷ CADG Sutton Fields II, LLC's Reply to Aqua Texas, Inc.'s Supplemental Response to Petition at 2 (Jan. 25, 2016).

intent to provide water and wastewater service to the affected property on March 10, 2014, the letter states in paragraph 5 that it does not constitute a binding agreement to provide service to the property.⁸ Finally, the petitioner argued that the letter of intent was for the benefit of a past landowner and expired without Aqua taking any steps to provide service.⁹

Commission Staff's final recommendation was filed on January 26, 2016.¹⁰ Commission Staff recommended that Sutton Fields' petition be approved, as amended, because it provided adequate information to demonstrate that the 128-acre tract satisfies the requirements of TWC § 13.254(a-5) as defined by TWC § 13.002(21) and that the area should be released from Aqua's certificated area. Commission Staff noted that no facilities have been built specifically for the property and no water or sewer connections exist through which service can be provided.¹¹

The Commission finds that Sutton Fields has adequately shown that the 128-acre tract is not receiving water service under TWC § 13.254(a-5).

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

II. Findings of Fact

Procedural History

1. On November 10, 2015, Sutton Fields filed a petition to amend Aqua's water CCN No. 13201 and sewer CCN No. 21059 in Denton County by expedited release.
2. On November 13, 2015, Order No. 1 was issued, requiring comments on the administrative completeness of the petition and notice, establishing a procedural schedule, and addressing other procedural matters.
3. On December 8, 2015, Commission Staff filed a response to Order No. 1, identifying deficiencies in Sutton Fields' petition and recommending that the application be found deficient.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ Commission Staff's Recommendation on Final Disposition (Jan. 26, 2016).

¹¹ *Id.* at 5.

4. On December 10, 2015, Aqua filed a motion to intervene, initial comments on the petition, and request for a deadline extension.
5. On December 11, 2015, Sutton Fields responded to Aqua's initial comments and request for a deadline extension. Additionally, Sutton Fields filed supplemental information amending the petition to cure the deficiencies identified by Commission Staff.
6. On December 16, 2015, Order No. 3 was issued, finding the petition incomplete and deficient, establishing revised deadlines, and providing the petitioner an opportunity to cure.
7. On December 18, 2015, Order No. 4 was issued, granting Aqua's motion to intervene.
8. On January 6, 2016, Commission Staff filed a response to Order No. 3, recommending that the petition, as amended, and notice be deemed sufficient and that additional procedural deadlines be established.
9. Commission Staff filed a correction to its recommendation on January 8, 2016.
10. On January 11, 2016, Order No. 5 was issued, deeming the petition, as amended, administratively complete and adopting a procedural schedule.
11. Aqua filed a supplemental response to the petition on January 19, 2016, requesting the petition be denied.
12. Sutton Fields filed a reply to Aqua's supplemental response on January 25, 2016.
13. On January 26, 2016, Commission Staff recommended approval of the petition, as amended, and provided amended CCN certificates and service area maps.
14. Commission Staff submitted corrected certificates on January 28, 2016.
15. The amended maps and corrected CCN certificates are attached to this Order.
16. No protests, motions to intervene, or request for hearing were filed that were not dealt with in this proceeding.

Notice

17. Sutton Fields provided a copy of the petition and the amendment to Aqua.

18. Notice of the petition was published in the *Texas Register* on November 27, 2015.

Project Description

19. The 128-acre tract is situated in Denton County, a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).
20. The property is at least 25 acres.
21. There are no water utility lines, water utility meters, or water utility connections on the 128-acre tract.
22. Aqua has a water system facility about 1.2 miles away from the 128-acre tract; however, those facilities may be used for service to other properties and are not committed or dedicated to the 128-acre tract. Also, even though Aqua has a water system facility which is potentially available and capable of providing water service, that does not mean the facilities are committed and dedicated to serving the 128-acre tract.
23. Aqua has not committed facilities or lines providing water service to the 128-acre tract, nor has it performed acts or supplied anything to that particular tract.
24. Petitioner has not requested any water service to the 128-acre tract from Aqua.
25. Petitioner has not paid any service reservation or standby fees to Aqua for water service to the 128-acre tract.
26. Petitioner does not have any agreements with Aqua to provide water service to the 128-acre tract.
27. The 128-acre tract is not “receiving water service” as that term has been defined by the courts.¹²
28. There are no sewer utility lines, sewer utility meters, or sewer utility connections on the 128-acre tract.

¹² See *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130, 140-141 (Tex. App.—Austin 2014, pet. denied).

29. Aqua holds a wastewater discharge permit obtained from the TCEQ, but that permit is not limited to the 128-acre tract.
30. As part of a settlement negotiation to obtain its discharge permit, Aqua entered into a service agreement with the Upper Trinity Regional Water District regarding a legal framework for potential future sewer service to the 128-acre tract. The owner of the 128-acre tract did not join in the settlement.
31. Aqua entered into a letter of intent with a previous landowner regarding the 128-acre tract of land, but the letter of intent was not binding and was unassignable, and there was no evidence that Aqua took any steps to provide service. The letter of intent has expired.
32. Petitioner has not requested any sewer service to the 128-acre tract from Aqua.
33. Petitioner has not paid any service reservation or standby fees to Aqua for sewer service to the 128-acre tract.
34. Petitioner does not have any agreements with Aqua to provide sewer service to the 128-acre tract.
35. Aqua has not committed facilities or lines providing sewer service to the 128-acre tract, nor has it performed acts or supplied anything to that particular tract.
36. The 128-acre tract is not "receiving sewer service" as that term has been defined by the courts.¹³

III. Conclusions of Law

1. The Commission has jurisdiction over this petition under TWC §§ 13.041 and 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC § 24.113(s) and 16 TAC §§ 22.54 and 22.55.
3. This docket was processed in accordance with the requirements of the TWC and Commission rules.

¹³ *Id.*

4. Denton County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).
5. Even though a utility has facilities available and capable of providing water service upon request, that does not mean the facilities are committed and dedicated to serving that particular tract.
6. Facilities that are committed or used, and acts that are performed, for the general provision of service to a certificated area and not to a particular tract do not constitute that particular tract receiving water or sewer service.
7. The time that the petition is filed is the only relevant time period to consider when evaluating whether a tract of land is receiving water service under TWC § 13.254(a-5). Whether a tract might have previously received water or sewer service is irrelevant.
8. Sutton Fields is entitled to approval of the petition, having satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r) by adequately demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving water service.¹⁴
9. Sutton Fields is entitled to approval of the petition, having satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r) by adequately demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving sewer service.¹⁵
10. Under TWC § 13.257(r) and 16 TAC § 24.106(f), Aqua is required to record a certified copy of the approved CCN and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.
11. The requirements in 16 TAC § 22.35(b)(2) have been met in this proceeding.

¹⁴ TWC § 13.254(a-5); *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130, 140-141 (Tex. App.—Austin 2014, pet. denied).

¹⁵ TWC § 13.254(a-5); *Crystal Clear*, 449 S.W.3d at 140-141.

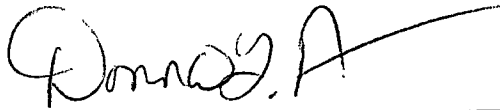
IV. Ordering Paragraphs

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

1. Sutton Fields' petition, as amended, is approved.
2. Petitioner's approximately 128-acre tract located within Aqua's certificated service area is removed from Aqua Texas, Inc.'s water CCN No. 13201.
3. Petitioner's approximately 128-acre tract located within Aqua's certificated service area is removed from Aqua Texas, Inc.'s sewer CCN No. 21059.
4. Aqua Texas, Inc.'s water CCN No. 13201 is amended in accordance with this Order and the attached map and certificate.
5. Aqua Texas, Inc.'s sewer CCN No. 21059 is amended in accordance with this Order and the attached map and certificate.
6. Aqua shall comply with the recording requirements in TWC § 13.257(r) for the area in Denton County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
7. 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 22nd day of March 2016.

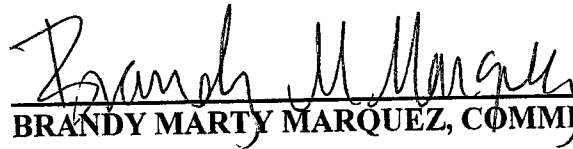
PUBLIC UTILITY COMMISSION OF TEXAS



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

Aqua Texas, Inc.

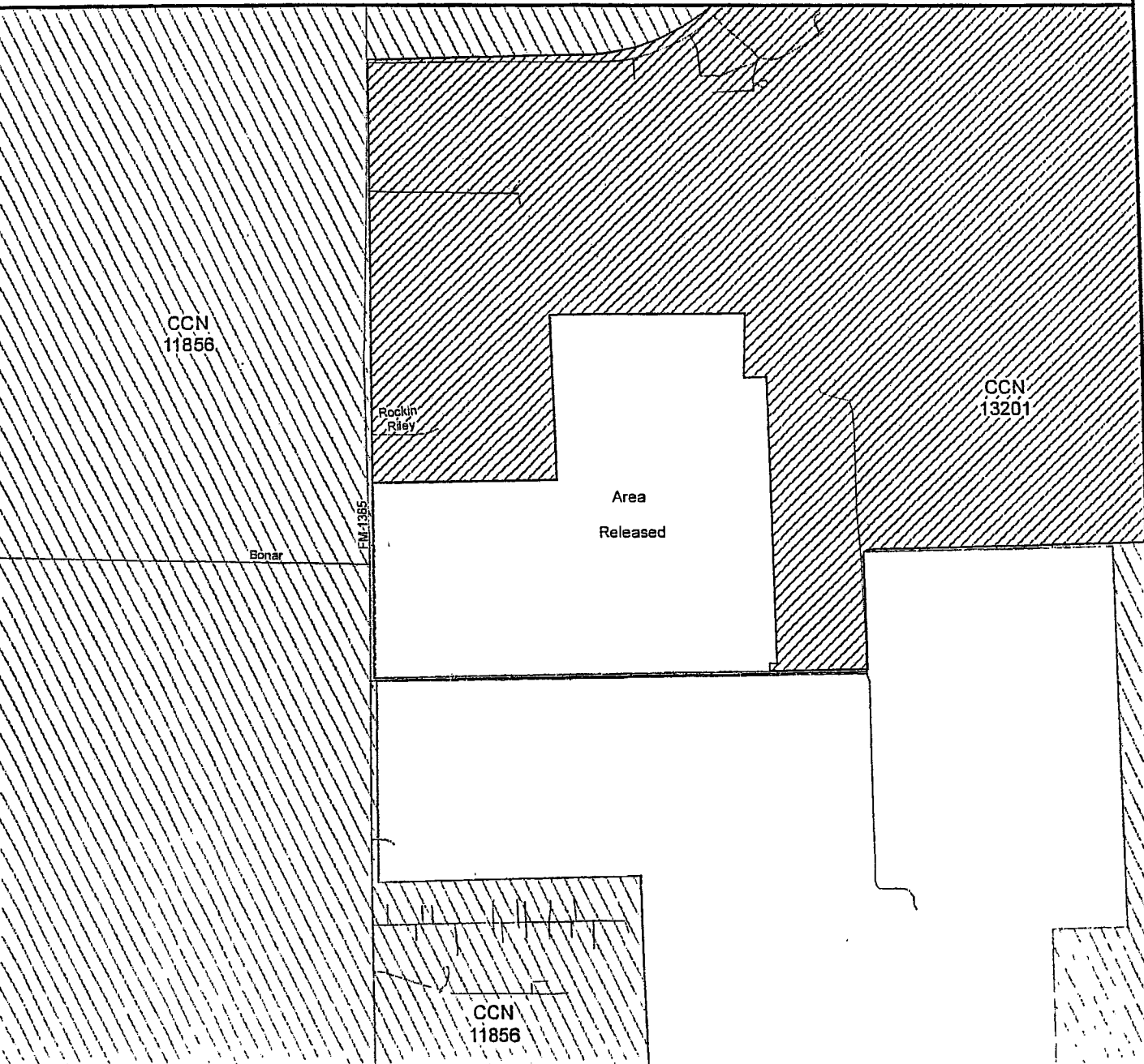
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Aqua Texas, Inc., is entitled to this

Certificate of Convenience and Necessity No. 13201

to provide continuous and adequate water utility service to that service area or those service areas in Anderson, Bosque, Camp, Cherokee, Collin, Cooke, Denton, Erath, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Kaufman, Marion, McLennan, Parker, Smith, Somervell, Tarrant, Taylor, Wise and Wood Counties as by final Order duly entered by this Commission, which Order or Orders resulting from Docket No. 45329 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Aqua Texas, Inc. 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, the 22nd day of March 2016.



Aqua Texas Inc.
 Water Service Area
 CCN No. 13201
 PUC Docket No. 45329
 Petition by CADG Sutton Fields II to Amend Aqua Texas Inc's CCN
 by Expedited Release in Denton County



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

 Area Released

Water CCN Service Areas

 13201 - Aqua Texas Inc
 11856 - Mustang SUD

0 500 1 000
 Feet



Map by: Komal Patel
 Date created: January 22, 2016
 Project Path: n:\finalmapping\45329AquaTexasWater.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

Aqua Texas, Inc.

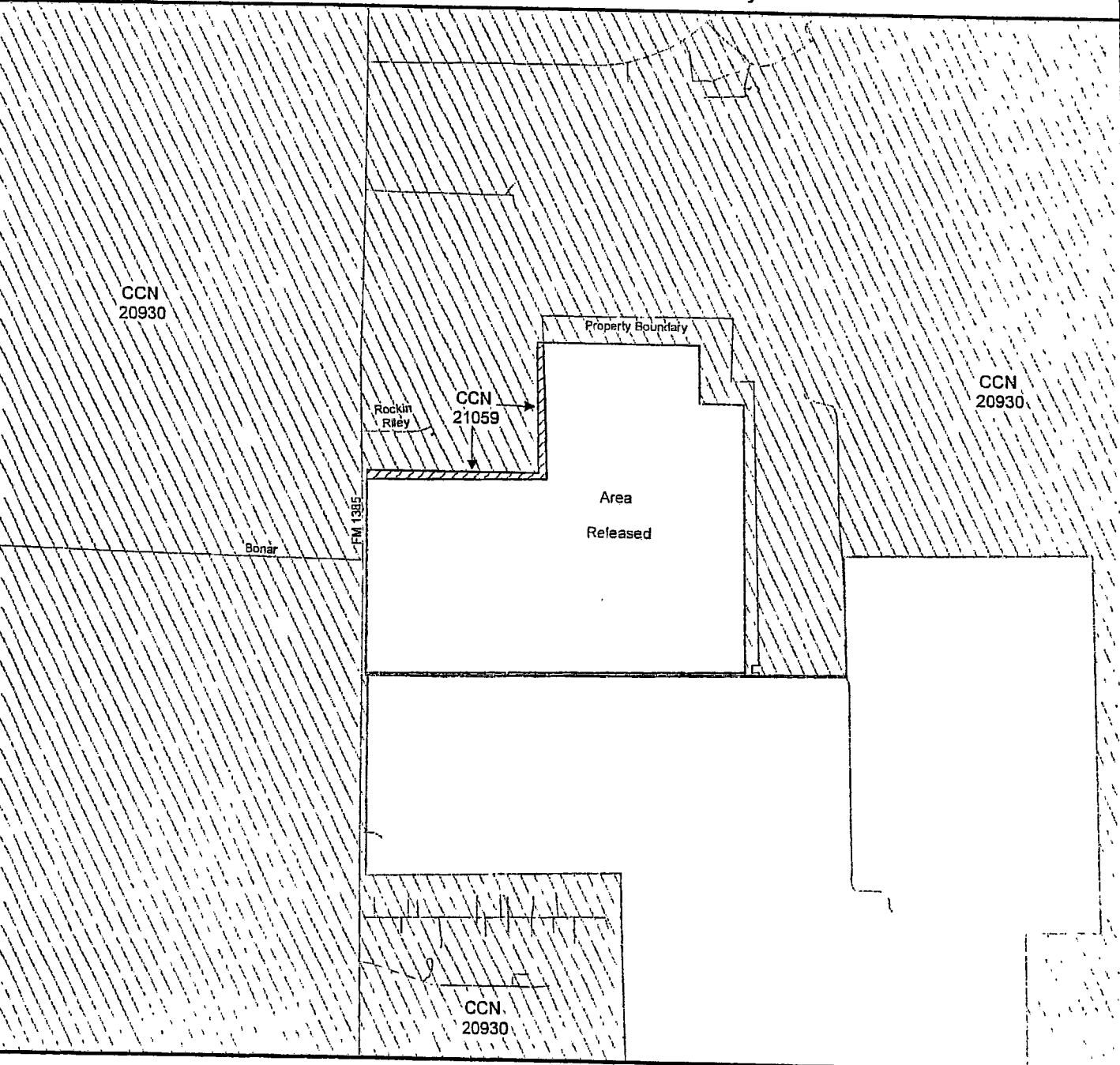
having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Aqua Texas, Inc., is entitled to this

Certificate of Convenience and Necessity No. 21059

to provide continuous and adequate sewer utility service to that service area or those service areas in Cherokee, Denton, Hood, Marion, Parker, Tarrant and Wise Counties as by final Order duly entered by this Commission, which Order or Orders resulting from Docket No. 45329 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Aqua Texas, Inc. 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, the 22nd day of March 2016.

Aqua Texas Inc.
Sewer Service Area
CCN No. 21059
PUC Docket No. 45329
Petition by CADG Sutton Fields II to Amend Aqua Texas Inc's CCN
by Expedited Release in Denton County



- Property Boundary
- Area Released

Sewer CCN Service Areas

- 21059 - Aqua Texas Inc
- 20930 - Mustang SUD

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