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**P.U.C. DOCKET NO. 46120  
SOAH DOCKET NO. 473-16-5823.WS**

**CITY OF MIDLOTHIAN NOTICE OF § BEFORE THE STATE OFFICE  
INTENT TO PROVIDE WATER §  
SERVICE TO LAND DECERTIFIED § OF  
FROM MOUNTAIN PEAK SPECIAL §  
UTILITY DISTRICT § ADMINISTRATIVE HEARINGS**

**CITY OF MIDLOTHIAN'S MOTION TO COMPEL RESPONSES TO SECOND SET OF REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION TO MOUNTAIN PEAK SPECIAL UTILITY DISTRICT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The City of Midlothian ("Midlothian") files this Motion to Compel Mountain Peak Special Utility District ("Mountain Peak") to respond to Midlothian's Second Set of Requests for Information and Requests for Admission. Midlothian received Mountain Peak's Objections to Midlothian's First Request for Information and Request for Admission on October 27, 2016. This motion is timely filed pursuant to 16 TAC § 22.144(e).<sup>1</sup> The parties continue to confer on discovery matters, however, this motion to compel addresses pending objections to the requests identified below.

**I. SUMMARY OF MATTER**

In Docket No, 44394, an approximately 97.7-acre tract of land (the "Park Property") owned by Midlothian was decertified from Mountain Peak's water CCN. The instant proceeding focuses on identifying: (1) "What property, if any, has been rendered useless or valueless to Mountain Peak by the decertification granted in Docket No. 44394;" and, (2) "a determination of compensation based on the value of property the Commission has determined to have been rendered useless or valueless."<sup>2</sup> The Water Code and PUC Substantive Rules identify factors that should be considered in making these determination in TWC § 13.254(g) and 16 TAC § 24.113(h-k).

<sup>1</sup> In addition to those terms or abbreviations defined in this filing, abbreviations and acronyms utilized include: "Commission" or "PUC" for the Public Utility Commission of Texas, "SOAH" for the State Office of Administrative Hearings, "RFI" for request for information, "RFA" for request for admission, "CCN" for certificate of convenience and necessity, "TAC" for the Texas Administrative Code, "TWC" for the Texas Water Code, and "TRCP" for the Texas Civil Rules of Procedure.

<sup>2</sup> Preliminary Order at 2-3 (September 23, 2016).

## II. ARGUMENTS & AUTHORITIES

Midlothian asserts that each RFI addressed in this motion to compel discovery responses is appropriate and necessary discovery for Midlothian to develop its testimony and arguments in this case.

The rules of discovery permit a party to obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action.<sup>3</sup> It is not a ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.<sup>4</sup> Because this case revolves around facts specific to Mountain Peak's water system, discovery by Midlothian is essential to the development of its case.

The Texas Supreme Court has explained that the "ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts revealed, not by what facts are concealed."<sup>5</sup> Likewise, requests for production must be "reasonably tailored to include only matters relevant to the case."<sup>6</sup> However, "[a] reasonably tailored discovery request is not overbroad merely because it may include some information of doubtful relevance."<sup>7</sup> Midlothian has taken significant steps to tailor discovery tied closely to matters relevant to this proceeding. The Texas Supreme Court has specifically recognized that parties must be allowed some latitude in creating discovery requests.<sup>8</sup>

For these reasons and others set forth herein, Mountain Peak's objections to Midlothian's requests for information are without merit and Mountain Peak should be ordered to provide responses.

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<sup>3</sup> TRCP R. 192.3(a)

<sup>4</sup> *Id.*

<sup>5</sup> *Jampole v. Touchy*, 673 S.W.2d 569, 573 (Tex. 1984).

<sup>6</sup> *In re Nolle*, 265 S.W.3d 487, 491-92 (Tex. App.—Houston [1st Dist.] 2008).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (quoting *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex.1995)).

### III. REQUESTS FOR INFORMATION MERIT RESPONSES

#### Midlothian's Argument In Support Of Motion To Compel RFI No. 2-7:

Request for Information No. 2-7: [AMENDED AS AGREED] Provide your Provided Production Capacity ("PPPC") in millions of gallons per day ("MGD"), on or about May 1 of each year since 2006 and identify each well and water supply interconnection to Mountain Peak providing a portion of your PPC in each year, including the amount of capacity provided.

Mountain Peak's Objection: Mountain Peak objects to this Request as vague and ambiguous in that Provided Production Capacity is not a defined term. Further, "PPPC" does not appear to be an acronym for Provided Production Capacity according to the TCEQ's Drinking Water Watch Database which refers to the Provided Production Capacity as the PPRC. For purposes of responding to this Request, Mountain Peak understands the Request to seek information about the PPRC.

Mountain Peak also objects to this Request because it is overly broad and unduly burdensome to require Mountain Peak to collect the requested data for each year from 2006 through the present.

Midlothian accepts Mountain Peak's interpretation of this request regarding the appropriate use of "PPRC" as an acronym for "Provided Production Capacity" in the TCEQ's Drinking Water Watch ("DWW") Database. *See* Exhibit A (TCEQ DWW "Water System Detail" for Mountain Peak).<sup>9</sup> Midlothian requests that the ALJ take official notice of this record from the TCEQ records. As discussed, the correction by Mountain Peak actually undermines its objections.

This request is reasonably and narrowly tailored as it is limited by time and seeks the quantity and component parts of a specific reported value, the Provided Production Capacity. The PPRC is a discrete number in the TCEQ DWW Database that is specific to each utility, such as Mountain Peak. *See* Exhibit A. The PPRC is believed to be reported by Mountain Peak on a periodic basis to the TCEQ. As such, Mountain Peak's claims that the RFI is "vague and ambiguous in that Provided Production Capacity is not a defined term" rings hollow. Clearly, Mountain Peak is aware of the TCEQ DWW Database and data associated with its own system.

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<sup>9</sup> Source:

[http://dww2.tceq.texas.gov/DWW/JSP/WaterSystemDetail.jsp?tinwsys\\_is\\_number=1490&tinwsys\\_st\\_code=TX&wsnumber=TX0700042 &DWWState=TX](http://dww2.tceq.texas.gov/DWW/JSP/WaterSystemDetail.jsp?tinwsys_is_number=1490&tinwsys_st_code=TX&wsnumber=TX0700042 &DWWState=TX) (visited Oct. 28, 2016). The row with Mountain Peak's PPRC is highlighted on page 4 of the report.

This request seeks the value of that number for a select number of years at critical issue under this proceeding. This cannot be either vague or ambiguous.

For purposes of this motion, Midlothian is *not* seeking to compel the amount of capacity of each well or interconnect providing a portion of the PPRC. As a result, the objections associated with this particular information (that the request is overly broad and unduly burdensome for asking for this data) are even less viable.<sup>10</sup> However, the mere identity of the limited number of specific wells or interconnections to Mountain Peak contributing to the PPRC should be readily and reasonably accessible by a retail public utility supplying water, as they are the sources of water needed ensuring sufficient production.

**Midlothian's Argument In Support Of Motion To Compel RFI No. 2-8:**

Request for Information No. 2-8: Provide your maximum daily demand ("MDD") in MGD for each year since 2006 and identify the date it occurred, your basis for calculating each MDD, the sources of supply used to meet each MDD, and the amount of supply on that day from each source.

Mountain Peak's Objection: Mountain Peak objects to this Request because it is overly broad and unduly burdensome to require Mountain Peak to collect the requested data for each year from 2006 through the present. Mountain Peak further objects to this Request to the extent it seeks the amount of supply on a given day from each source. This portion of this Request is unduly burdensome and not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

For purposes of this motion, Midlothian is *not* seeking to compel the amount of supply on a given day from each source. As such, Mountain Peak's objections related to that portion of the request as unduly burdensome and not relevant are moot.<sup>11</sup>

This request is neither overly broad nor unduly burdensome in that it has been reasonably tailored as limited by time, seeking information about a finite event occurring on a retail public

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<sup>10</sup> In effect, as reformulated, RFI No. 2-7 asks: Provide your Provided Production Capacity ("PPPC") in millions of gallons per day ("MGD") on or about May 1 of each year since 2006 and identify each well and water supply interconnection to Mountain Peak providing a portion of your PPPC in each year, ~~including the amount of capacity provided.~~

<sup>11</sup> In effect, as reformulated, RFI No. 2-8 asks: Provide your maximum daily demand ("MDD") in MGD for each year since 2006 and identify the date it occurred, your basis for calculating each MDD, and the sources of supply used to meet each MDD, ~~and the amount of supply on that day from each source.~~

utility's system.<sup>12</sup> The maximum daily demand represents a single, well-defined number corresponding to a single date that may actually carry over for several of the 10 years requested. This information should be readily available due to reporting requirements and its importance to internal operation monitoring functions as it represents the highest demand during a particular day of a particular year. Identifying the sources used to meet that demand should also not be unduly burdensome as it is reasonable to assume Mountain Peak would record whether or not any of its finite water sources were active on any date of the year there was a maximum daily demand. In sum, this request is not overbroad or unduly burdensome.

**Midlothian's Argument In Support Of Motion To Compel RFI No. 2-10:**

Request for Information No. 2-10: Identify your elevated storage tanks as of (a) the end of 2006, (b) May 1, 2015, and (c) today; including, for each tank, the date placed into operation, the cost of construction, its capacity, overflow elevation, and dates when it has been inactive/unavailable.

Mountain Peak's Objection: Mountain Peak objects to this Request to the extent it seeks the overflow elevation and the dates which each elevated has been inactive/unavailable. This portion of this Request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore it is unduly burdensome for Mountain Peak to identify each date when a storage tank may have been placed out of service for any reason.

For purposes of this motion, Midlothian is *not* seeking to compel the dates when each elevated storage tank has been inactive/unavailable. As such, Mountain Peak's objections related to that portion of the request as unduly burdensome and not relevant are moot.<sup>13</sup>

The responsive overflow elevations, however, are relevant as any such value may provide facts about Mountain Peak's facilities which are the central focus of this proceeding and will lead to admissible evidence whether or not any property contributing to the distribution or supply affected by the decertification of the Park Property. Specifically, the overflow elevation may confirm a storage tank's capability to serve various parts the distribution system by indicating

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<sup>12</sup> Paragraph J of the definitions in Midlothian's Second Set of RFIs and RFAs to Mountain Peak specifically incorporates the definition of "maximum daily demand" defined in the TCEQ rules: 30 TAC § 290.38(43).

<sup>13</sup> In effect, as reformulated, RFI No. 2-10 asks: Identify your elevated storage tanks as of (a) the end of 2006, (b) May 1, 2015, and (c) today; including, for each tank, the date placed in to operation, the cost of construction, its capacity, and overflow elevation, and ~~dates when it has been inactive/unavailable.~~

differences in the pressure planes of Mountain Peak's system.<sup>14</sup> As such, the values can help Midlothian confirm whether or not an elevated storage tank (or a portion of its capacity) is rendered useless or valueless by the Park Property's decertification.

**Midlothian's Argument In Support Of Motion To Compel RFI No. 2-11:**

Request for Information No. 2-11: If you cannot unequivocally admit the foregoing request (RFA No. 1-5) [that the usefulness or value of the facilities to Mountain Peak located within the Park Property have not decreased as a result of decertification], explain the factual basis for your belief that the usefulness or value of the facilities has decreased as a result of the decertification, identifying specifically which facilities were affected and the amount of any decrease in usefulness or value.

Mountain Peak's Objection: This Request improperly requires Mountain Peak to marshal its evidence and the evidence it intends to offer at trial in violation of Tex. R. Civ. P. 197.

Midlothian's request consists of a contention question. Under TRCP R. 197, a request for information may ask whether the party makes *specific legal or factual contentions* and may ask the party to state its legal theories and to describe, in general, the factual bases for the party's claims or defenses.<sup>15</sup> These requests do not seek Mountain Peak to describe in particularity "all" or "every" factual basis, and is therefore compliant with TRCP 197.1 by seeking to ascertain basic legal and factual claims.

Midlothian should be able to discover the property Mountain Peak is contending has been rendered useless or valueless in preparation of its arguments and written testimony. While Midlothian may suspect that the Mountain Peak property *on or within the Park Property* will be claimed by Mountain Peak to be rendered useless or valueless, Midlothian is entitled to confirm that suspicion. Midlothian does not know Mountain Peak's system, and therefore Midlothian is at

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<sup>14</sup> Although it does not appear that Mountain Peak objected to the production of overflow elevation on grounds of relevance, Midlothian would point out that the burden of producing this discrete information cannot reasonably be characterized as producing an undue burden on Mountain Peak.

<sup>15</sup> See Comment 1 to TRCP 197.1 ("*Interrogatories about specific legal or factual assertions* - such as, whether a party claims a breach of implied warranty, or when a party contends that limitations began to run - are proper, but interrogatories that ask a party to state *all* legal and factual assertions are improper. As with requests for disclosure, interrogatories may be used to ascertain basic legal and factual claims and defenses but may not be used to force a party to marshal evidence. Use of the answers to such interrogatories is limited, just as the use of similar disclosures under Rule 194.6 is.") (emphasis added).

a serious disadvantage in attempting to defend or contradict any of Mountain Peak's assertions that its properties are rendered useless or valueless by the Park Property's decertification.

Without this discovery Midlothian is forced to wait until Mountain Peak unilaterally identifies such property, via expert testimony or otherwise, before it can begin to determine whether or not such contentions are accurate. This will almost certainly result in additional delays in resolving this matter, despite the short statutory deadlines, the Commission's request for expedited handling, and the public's need for water service at the Park Property, which is scheduled to open soon. A response should be compelled from Mountain Peak.

**Midlothian's Argument In Support Of Motion To Compel RFI No. 2-16:**

Request for Information No. 2-16: [AMENDED AS AGREED] Provide all reports on your water distribution system and water supply prepared since 2006, including, but not limited to, water master plan reports. This request is limited to exclude water quality reports and other reports specifically requested in other RFIs, e.g., annual financial reports and audit reports. The focus is on water master plan-type of reports, but also including reports pertaining to projected system demand or capacity that might pertain to a segment of Mountain Peak's system since 2006.

Mountain Peak's Objection: Mountain Peak objects to this Request even as amended on the grounds that it is overly broad and unduly burdensome in seeking all reports on Mountain Peak's water distribution system and water supply prepared since 2006. Although Midlothian did narrow this Request to exclude certain examples of clearly irrelevant reports, this Request remains overly broad and unduly burdensome. Further, it lacks sufficient specificity and therefore constitutes a "fishing expedition." *See Loftin v. Martin*, 776 S.W.2d 145, 148 (Tex. 1989). Subject to and without waiving this objection, Mountain Peak will produce its water master plan reports since 2006.

This request is neither overly broad nor unduly burdensome in that it is narrowly tailored to be limited by time, type of document, and subject matter.<sup>16</sup> It seeks only *reports*; and limited to the *water distribution system and water supply*; and is further limited to only those prepared during a *discreet period of time* relevant to the issues in this matter. The water master plan reports produced since 2006, which Mountain Peak indicates that it will produce, are certainly within the intended scope of the request, but may not include all responsive information requested especially as to reports addressing only *portions* of Mountain Peak's the water distribution and supply, e.g., a

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<sup>16</sup> See *In re National Lloyds Ins.*, 449 S.W.3d 486, 489 (Tex.2014); *In re Allstate Cty. Mut. Ins.*, 227 S.W.3d 667, 670 (Tex.2007); *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex.1995); *In re Patel*, 218 S.W.3d 911, 915 (Tex.App.—Corpus Christi 2007, orig. proceeding).



report pertaining to the area of the Park Property. Those types of reports may not be included in the system-wide reports. The responsive information is relevant as any such reports may provide facts about Mountain Peak's facilities which are the central focus of this proceeding and will lead to admissible evidence whether or not any property contributing to the distribution or supply affected by the decertification of the Park Property.

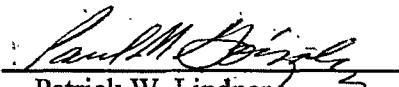
This request does not constitute a "fishing expedition" as it is reasonably specific to a certain class of document regarding specific subject matters which are critically important to this proceeding.<sup>17</sup> Further specificity is unreasonable and impossible, as Midlothian does not know the titles, authors, dates, or other identifying features of such responsive reports (if any), until those reports have been identified by Mountain Peak.

#### IV. CONCLUSION

Midlothian respectfully requests that the Honorable Administrative Law Judge expeditiously grant this motion and requests any and all other relief to which it is justly entitled.

Respectfully submitted,

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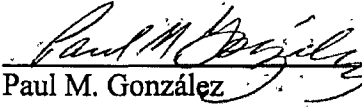
ATTORNEYS FOR CITY OF MIDLOTHIAN

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<sup>17</sup> See *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex.1995).

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this document was served on all parties of record in this proceeding on October 31, 2016, in the following manner: by facsimile.

  
Paul M. González

# Exhibit A

<u>Texas Commission on Environmental Quality</u>	<u>Office of Water</u>	<u>Public Drinking Water Section</u>
<u>County Map of TX</u>	<u>Water System Search</u>	<u>Office of Compliance and Enforcement</u>

<u>Water System Detail</u>		
<u>Water System Facilities</u>	<u>Violations Enforcement</u>	<u>TCR Sample Results</u>
<u>Source Water Assessment Results</u>	<u>Assistance Actions</u>	<u>Recent Positive TCR Results</u>
<u>Sample Points</u>	<u>Compliance Schedules</u>	<u>Other Chemical Results</u>
<u>Sample Schedules / FANLs / Plans</u>	<u>TOC/Alkalinity Results</u>	<u>Chemical Results: Sort by: Name Code</u>
<u>Site Visits Milestones</u>	<u>LRAA (TTHM/HAA5)</u>	<u>Recent Non-TCR Sample Results</u>
<u>Operators All POC</u>		<u>TCR Sample Summaries</u>
		<u>TTHM HAA5 Summaries</u>
		<u>PBCU Summaries</u>
		<u>Chlorine Summaries</u>
		<u>Turbidity Summaries</u>
		<u>TCR Sample Summaries</u>

Glossary

<u>Water System Detail Information</u>	
<u>Water System No.:</u>	TX0700042
<u>Water System Name:</u>	MOUNTAIN PEAK SUD
<u>Principal County Served:</u>	ELLIS
<u>Principal City Served:</u>	
<u>Population:</u>	12819
<u>System Type:</u>	C
<u>Primary Source Type:</u>	SWP
<u>System Status:</u>	A
<u>Activity Date:</u>	01-01-1913
<u>System Recognition:</u>	SUPERIOR

<u>Water System Contacts</u>	
<u>Type</u>	<u>Contact</u>
AC - Administrative Contact	Communication
	Phone Type
	Value
	BUS - Business
	972-775-3765

	BRYANT, CLYDE 5671 WATERWORKS RD MIDLOTHIAN, TX 76065-5851
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Sources of Water			
Name	Type	Activity	Availability
CITY OF MIDLOTHIAN - JOE POOL LAKE	CC	A	P
2 - APPLE LN	WL	A	P
4 - WESTFALL DR	WL	A	P
5 - 2200 WHITETAIL DR	WL	A	P
3 - 453 BARTON RD	WL	A	P
1 - 5671 WATERWORKS RD	WL	A	P
6 - 1521 TOWER RD	WL	A	P
2A - APPLE LN	WL	P	I
9A - TOWER RD	WL	P	I

Source Water Percentages		
	Surface Water Purchased	Ground Water Purchased
Surface Water	0	0
Ground Water	0	0
Ground Water UDI	0	0

Water Purchases
Water System \ Treatment Status
TX0700042 buys from CITY OF MIDLOTHIAN - TX0700005 / who is providing Treated and Filtered Water

Buyers of Water
Water System / Population / Availability (blank, (S)easonal, (E)mergency, (I)nterim, (P)ermanent, (O)ther
No Buyers

Total Population Served = 12819

Total Population Served included ALL active connections, including emergency.

Annual Operating Period(s)				
Effective Begin Date	Effective End Date	Start Month/Day	End Month/Day	Population
07-31-2015	No End Date	1/1	12/31	12819
				Type R

Service Connections			
Type	Count	Meter Type	Meter Size
RS	4273	ME	0

Service Area	
Code	Name
R	RESIDENTIAL AREA

Regulating Agencies	
Name	Alias/Inspector
TX COMMISSION ON ENVIRONMENTAL QUALITY	TCEQ

Water System Historical Names	
Historical Name(s)	
MOUNTAIN PEAK WSC	

System Certification Requirements		
Certification Name	Code	Begin Date

WS Flow Rates		
Type	Quantity	UOM
MDD - Maximum Daily Demand	6.569	MGD
PPRC - Provided Production Capacity	4.008	MGD
PSPC - Provided Service Pump Capacity	7.128	MGD
ADU - Average Daily Usage	1.21	MGD

WS Measures		
Type	Quantity	UOM
TSTC - Total Storage Capacity	4.105	MG
TPTC - Total Pressure Tank Capacity	7500	MG
PESC - Provided Elevated Storage Capacity	1.6	MG

WS Indicators		
Type	Value	Date
DBP2 - Stage2 DBPR Schedule Category	3 - 3	10-01-2013
MDDD - Maximum Daily Demand Date	MDDD - Maximum Daily Demand Date	06-21-2014
POWN - Previous Ownership Type Code. This is the WUD ownership code.	DIS - District	
PRFT - Status as a For or Non Profit Entity	NON - Non Profit	
SSWP - State Source Water Program	YES - Yes	09-15-2010
UCM3 - UCMR3 EPA Monitoring Required	YES - Yes	01-01-2013
XCON - Cross Connection control Program Ranking	ADQTE - Adequate	07-02-2014