

Control Number: 46120



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BEFORE THE
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OF TEXAS

CITY OF MIDLOTHIAN NOTICE OF §
INTENT TO PROVIDE WATER §
SERVICE TO LAND DECERTIFIED §
FROM MOUNTAIN PEAK SPECIAL §
UTILITY DISTRICT §

**MOUNTAIN PEAK SPECIAL UTILITY DISTRICT'S RESPONSE TO
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 PUBLIC UTILITY COMMISSION OF TEXAS:

NOW COMES, Mountain Peak Special Utility District ("Mountain Peak") and, pursuant to PUC Procedural Rule 22.144(e) files this Response to City of Midlothian's ("Midlothian") Motion to Compel Responses to Second Set of Requests for Information and Requests for Admission to Mountain Peak Special Utility District. In support thereof, Mountain Peak would respectfully show as follows:

INTRODUCTION

In Docket No. 44394, an approximately 97.7-acre tract of land (the "Amended Park Property") owned by the City of Midlothian ("Midlothian") was decertified from Mountain Peak's water CCN.¹ The instant proceeding is about the compensation that is owed to Mountain Peak under Texas Water Code § 13.254 due to the decertification.

On October 17, 2016, Midlothian served its Second Set of Requests for Information and Requests for Admission on Mountain Peak.² After good faith negotiations between counsel for the parties failed to resolve certain disputes, Mountain Peak filed Objections to Requests for

¹ *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 (May 1, 2015). Mountain Peak has appealed this decertification, and the appeal remains pending in district court in Travis County, Texas. See *Mountain Peak Special Utility Dist. v. Public Utility Comm'n of Tex.*, No. D-1-GN-15-002843 (200th Judicial Dist. Ct., Travis County, Tex., July 14, 2015).

² City of Midlothian's Second Set of RFIs and RFAs to Mountain Peak Special Utility District (Oct. 17, 2016). A copy of these requests is attached hereto as Exhibit "A."

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Information Nos. 2-7, 2-8, 2-9, 2-10, 2-11, and 2-16. On October 31, 2016, Midlothian filed its Motion to Compel regarding Requests for Information Nos. 2-7, 2-8, 2-10, 2-11, and 2-16. This response is timely filed.

LEGAL STANDARD

Mountain Peak concurs with Midlothian's summary of the legal standard, but notes, as Midlothian has previously pointed out, there are limits to discovery. The Texas Supreme Court has explained that requests must be calculated to lead to the discovery evidence that has a tendency "to make the existence of any fact that is of consequence to the determination of the action more or less probable."³ Thus, requests must be reasonably tailored to include only matters relevant to the case. While Midlothian is correct that "a reasonably tailored discovery request is not overbroad *merely* because it *may* include some information of doubtful relevance," it nevertheless must be tailored to reveal facts *of consequence* to the matters in this case.⁴

ARGUMENTS

1. RFI Nos. 2-7 and 2-8

It appears that, through Mountain Peak's objections and Midlothian's Motion to Compel, the parties have resolved some of their disputes related to these Requests.⁵ However, Midlothian's requests for the PPRC and MDD for every year since 2006 are overly broad and unduly burdensome, particularly in light of the fact that this information is available through the TCEQ.

Request 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

³ *In re National Lloyds Ins.*, 449 S.W.3d 486, 489 (Tex. 2014).

⁴ *Id.*

⁵ Mountain Peak first objected to Request 2-7 because the term Provided Production Capacity was undefined and "PPPC" was vague and ambiguous. In its Motion to Compel, Midlothian accepted Mountain Peak's understanding of these terms. Also, by its Motion to Compel, Midlothian has further clarified that it is not seeking the amount of capacity provided by each well and water supply interconnection in each year. Mountain Peak objected to Request No. 2-8 to the extent it sought the amount of water supply Mountain Peak obtained on the specific day from each source. Midlothian clarified in its Motion to Compel that it is not seeking to compel the amount of water supply Mountain Peak obtained on any given day from each source.

Mountain Peak providing a portion of your PPPC in each year, including the amount of capacity provided.

Request 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 calculated each MDD, the sources of supply used to meet each MDD, and the amount of supply on that day from each source.

Because this information is submitted to TCEQ, Midlothian has equal access to it through a method less burdensome to Mountain Peak. Further, requiring Mountain Peak to dig through its records for ten years for information that is publicly available from TCEQ is unduly burdensome. Finally, RFI No. 2-7 in particular remains overbroad because the PPRC is simply a function of the capacity of Mountain Peak’s wells and its water supply contracts. And, the information from which the PPRC can be calculated is being provided to Midlothian through other requests, including RFI Nos. 1-14, 2-7, and 2-17. For these reasons, Midlothian’s Motion to Compel should be denied as it relates to RFI Nos. 2-7 and 2-8.

2. RFI No. 2-10

It appears that the parties’ disputes have been resolved through Mountain Peak’s objections and Midlothian’s Motion to Compel. Mountain Peak objected to this request to the extent it sought dates when the elevated storage tanks were inactive/unavailable. Although Mountain Peak also objected to providing the overflow elevation for each tank, this information will be provided as requested. Therefore, it appears the parties’ disputes are resolved.

3. RFI No. 2-11

Midlothian moved to compel the following request:

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 objected to this Request on the grounds that it requires Mountain Peak to marshal its evidence in violation of Tex. R. Civ. P. 197. Midlothian argues that this request makes a specific legal or factual contention and therefore is not barred by Rule 197. However, the comments to Rule 197 demonstrate what constitutes a “specific legal or factual contention” and the examples given are telling: “whether a party claims a breach of implied warranty, or

when a party contends that limitations began to run.” A request that asks Mountain Peak to “identif[y] specifically which facilities were affected and the amount of any decrease in usefulness or value” is not a permissible contention interrogatory. Furthermore, it requires Mountain Peak to marshal its evidence for the compensation portion of this proceeding as well as this first stage aimed at determining the property rendered useless or valueless.

4. RFI No. 2-16

Mountain Peak maintains that this Request is overly broad and unduly burdensome in seeking all reports related to the water distribution system and water supply of Mountain Peak.

RFI 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 agreed to produce water master plan reports, to the extent they exist, but objected to producing “all reports” because the request was overly broad and unduly burdensome. Midlothian argues that it has “narrowly tailored” and “limited” this request by seeking only those reports related to water distribution and water supply. However, virtually all of Mountain Peak’s business is related to water distribution and water supply. This is not a limiting description. Midlothian contends that it is not going on a “fishing expedition” in this Request although it openly acknowledges that it does not know what it is looking for – the very definition of a “fishing expedition.” Midlothian believes some report may be out there somewhere that may relate to the issues in this case but, rather than requesting such reports as it has in more targeted requests,⁶ Midlothian makes a general request for “all reports” which in any way relate to water distribution or water supply. Such a request simply asks for all reports in Mountain Peak’s possession since 2006. For these reasons, this Request is overly broad and unduly burdensome and Midlothian’s motion to compel should be denied.

⁶ For example, in RFI No. 1-22, Midlothian requested documents evaluating a proposed impact on Mountain Peak’s water system by an extension to serve the Park Property. This request included reports of Mountain Peak’s water system, but was not a “fishing expedition.” Similarly, in RFI Nos. 2-18 and 2-19, Midlothian asked specifically for financial audits and reports – which will be provided as requested. By contrast, this request simply asks for “all reports.”

CONCLUSION

For these reasons, Mountain Peak respectfully requests that the Honorable Administrative Law Judge issue an order denying Midlothian's Motion to Compel.

Respectfully submitted,

JACKSON WALKER L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November 2016, a true and correct copy of the foregoing document was served on the individuals listed below by facsimile.

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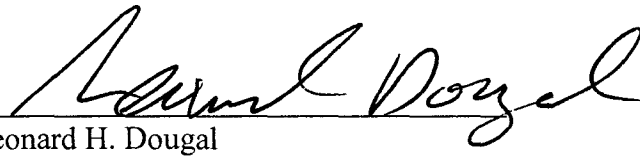

Leonard H. Dougal

EXHIBIT “A”

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PUBLIC UTILITY COMMISSION
CLERK

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

CITY OF MIDLOTHIAN NOTICE OF
INTENT TO PROVIDE WATER
SERVICE TO LAND DECERTIFIED
FROM MOUNTAIN PEAK SPECIAL
UTILITY DISTRICT

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§
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§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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

To: Mountain Peak Special Utility District ("Mountain Peak"), by and through its Attorney of Record:

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David A. Miller
MILLER MENTZER WALKER, PC
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Palmer, Texas 75152

The City of Midlothian, Texas, ("Midlothian" or "City") propounds the following Second Set of Requests for Information ("RFIs") and Requests for Admission ("RFAs") to Mountain Peak. You are hereby requested to answer the following written discovery separately, in writing, and, as for the Requests for Information, under oath, and, for this discovery, within twenty (20) days of the date of service, to the Law Offices of Davidson Troilo Ream & Garza, P.C., Attn: Paul M. Gonzalez, 601 N.W. Loop 410, Suite 100, San Antonio, Texas 78216. The written discovery questions are attached to this document and are incorporated for all purposes.

DEFINITIONS AND INSTRUCTIONS

A. When the word "documents" is used, it means any written, typed, printed, recorded, graphic or photographic matter, or sound reproductions, however produced or reproduced, including copies, or computer or data processing inputs or outputs in whatever form, or any means of electronic storage of information. These include, but are not limited to, all letters, telegrams, cables, wires, notes, studies, memoranda, accounts, invoices, ledgers, books, publications, diagrams, statements, drafts, transcripts, agreements, contracts, minutes, records, diaries, voice recordings, journals, logs, work papers, manuals, calendars, governmental forms, computer or data processing inputs or printouts, microfiche or microfilm recordings, statistical

compilations, slides, photographs, negatives, motion pictures or other films, samples or other physical objects of whatever nature, whether originals or reproductions, now or formerly in your possession, custody or control, or in the possession, custody or control of any employee, agent, representative, servant or attorney acting on your behalf. The term "documents" also includes every copy where the copy is not an identical reproduction of the original or where the copy contains any commentary, marginal comment or any notation that may not appear in the original. A document is deemed within your control if you have ownership, possession, custody, or constructive possession of the document, or a superior right to compel the production from a third party (including an agent, authority or representative). The term "documents" also includes electronic and magnetic data which are to be produced in native format, or a format mutually agreed to by the responding party and the requesting party.

B. When "identify", "identity", or "identification" is used in these discovery requests:

(1) When used in reference to a natural person, "identify", "identity", or "identification" means that you should state that person's full name, address and telephone number.

(2) When used with respect to a "document," as defined above, "identify", "identity", or "identification" means that you should state the date, subject and substance, author, type of document, (e.g., letter, telegram, memorandum, computer printout, sound reproduction, chart, photograph, film, etc.), its present location and the identity of each of its present custodians and shall include all documents including those that you may claim are privileged. If any document was, but no longer is, in your possession or subject to your control, state whether it is (a) missing or lost; (b) was destroyed; (c) was transferred voluntarily or involuntarily to others; or (d) otherwise disposed of, and in each such instance explain the circumstances surrounding any authorization for such disposition.

(3) When used in respect to any meeting or conversation, "identify", "identity", or "identification" means that you should state the date and specific location of the meeting or conversation plus the "identification" of all persons present, attending, participating, witnessing or having knowledge of the meeting or conversation.

(4) When used in respect to an occurrence, event or happening, "identify", "identity", or "identification" means that you should describe in detail what occurred or transpired at the occurrence, event or happening; the date, specific location and duration of the occurrence, event or happening and identify all persons present, attending, participating, witnessing or having knowledge of the occurrence, event or happening.

(5) When used in respect to a statement, "identify", "identity", or "identification" means that you should state the substance of the statement; the date and specific location of the statement; and the "identity" of all persons present, witnessing, making or having knowledge of the statement.

C. "Person" or "Persons" includes natural persons, firms, partnerships, associations, joint ventures, corporations and any other form of business organization or arrangement, as well as governmental or quasi-governmental agencies.

D. "You" or "Your" refers to the Mountain Peak Special Utility District, including its predecessor in interest, the Mountain Peak Water Supply Corporation, and either's board of directors, management, staff, agents or contractors.

E. "Park Property" refers to the approximately 97.7 acre property owned by the City of Midlothian, Texas, that was the subject of decertification in PUC Docket No. 44394, which is the subject of the notice to serve in this proceeding.

F. "Mountain Peak" refers to You, as defined herein.

G. "City" or "Midlothian" refers to the City of Midlothian, Texas.

H. Unless the context clearly provides otherwise, "decertification" refers to the action taken by the Public Utility Commission of Texas in Docket No. 44394 to remove the Park Property from the certificated water service area of Mountain Peak.

I. "Facilities" means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility. Texas Water Code § 13.002(9).

J. "Maximum daily demand" has the meaning provided in 30 Texas Administrative Code ("TAC") § 290.38(43).

K. "TCEQ" means the Texas Commission on Environmental Quality or its predecessor in interest.

L. Unless specifically defined in this document, other definitions may be found in the Rules and Regulations for Public Water Systems prepared by the Water Supply Division of the TCEQ, Publication RG-195 (revised November 2015) and available at www.tceq.texas.gov/publications/rg/rg-195.html, or in the rules or forms promulgated by the TCEQ.

M. With specific regard to the request for production of any documents or tangible things for inspection, copying or photographing, the following additional instructions apply:

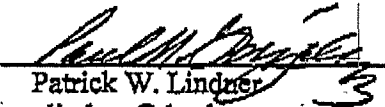
(1) If the document(s) requested cannot be fully and completely produced even with the help of your attorney or any expert that you may hire, then please state the reasons why you cannot produce the requested documents and also state what effort was made by you to try to obtain the requested document(s).

(2) If any document or tangible thing requested to be identified was, but no longer is, in your possession or control, or if it is no longer even in existence, please state whether the document is missing or lost, destroyed, in the possession or control of others (and, if so, whom), or otherwise disposed of.

(3) THE ORIGINAL OF EACH ITEM REQUESTED IS TO BE PRODUCED IF POSSIBLE, FOR INSPECTION AND COPYING BY THIS PARTY. IF YOU DO NOT HAVE THE ORIGINAL, STATE THE LOCATION OF THE ORIGINAL.

Respectfully submitted,

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ATTORNEYS FOR CITY OF MIDLOTHIAN

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 17, 2016, in the following manner: by facsimile.


Paul M. Gonzalez

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

Request for Information No. 2-1.

Excluding the acreage of the Park Property, what was the approximate total area (in square miles or acres) of Mountain Peak's service area under CCN No. 10908 as of May 1, 2015.

Request for Information No. 2-2.

To the extent not provided in response to Midlothian's RFI No. 1-4, identify any water service facilities of Mountain Peak *within* the Park Property, including for each facility:

- (a) The facility's use and available capacity as of May 1, 2015;
- (b) Identification of any remaining debt service for loans/bonds to finance design and/or construction as of May 1, 2015; and
- (c) Any changes to the facility's use and available capacity since May 1, 2015.

Request for Information No. 2-3.

To the extent not provided in response to Midlothian's RFI No. 1-7, identify any water service facilities of Mountain Peak *within 1000 feet* of (but not on or within) the Park Property, including for each facility:

- (a) The facility's use and available capacity as of May 1, 2015; and
- (b) Identification of any remaining debt service for loans/bonds to finance design and/or construction as of May 1, 2015 and
- (c) Any changes to the facility's use and available capacity since May 1, 2015.

Request for Information No. 2-4.

To the extent not provided in response to Midlothian's RFI No. 1-15, provide any maps showing the location and nature of the facilities that make up Mountain Peak's water system, indicating interconnections, transmission and distribution lines, pumping facilities, water wells, and storage facilities as they existed on or about May 1, 2015.

Request for Information No. 2-5.

To the extent not provided in response to Midlothian's RFI No. 1-19, identify Mountain Peak's debt, including, any unpaid balance as of (a) May 1, 2015 and (b) today.

Request for Information No. 2-6.

To the extent not provided in your response to Midlothian's RFI No. 1-30, identify any facility or other property Mountain Peak claims was rendered useless or valueless, in whole or in part, as the result of decertification of the Park Property, including, for each facility or other property:

- (a) Information on remaining debt service for loans or bonds to finance design and/or construction as of (i) May 1, 2015 and (ii) today.

Request for Information No. 2-7.

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 facility providing a portion of your PPPC in each year, including the amount of capacity provided.

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.

Request for Information No. 2-9.

Identify your water wells as of (a) the end of 2006, (b) May 1, 2015, and (c) today; including, for each well, its location, depth and diameter, the date it was placed into operation, the cost of construction, its as-constructed and current peak capacity, and dates when it has been inactive/unavailable.

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.

Request for Information No. 2-11.

Identify your ground 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.

Request for Information No. 2-12.

Identify the number of your total and active retail water service connections, by year, since 2000.

Request for Admission No. 2-1.

Admit that you have not received a waiver from the TCEQ to provide production capacity less than 0.6 gallons per minute ("gpm") per connection (30 TAC § 290.45) since 2000?

Request for Information No. 2-13.

As to any waiver from the TCEQ related to production capacity you have obtained since 2000, identify the reason(s) for the waiver, the date(s) such waiver was effective, the delivery capacity you were allowed to deliver under such waiver, and provide a copy of such waiver.

Request for Information No. 2-14.

Provide a map of your water distribution system, including interconnections, transmission and distribution lines, pumping facilities, water wells, and storage facilities as of 2000, 2010 and today.

Request for Information No. 2-15.

Provide a map or other document indicating plans to add, improve or expand facilities used in your water distribution system, including interconnections, transmission and distribution lines, pumping facilities, water wells, and storage facilities as of 2000, 2010, May 1, 2015, and today.

Request for Admission No. 2-2.

Admit that Midlothian acquired the Park property on November 9, 2010.

Request for Information No. 2-16.

Provide all reports on your water distribution system and water supply prepared since 2000, including, but not limited to, water master plan reports.

Request for Information No. 2-17.

Provide all current contracts you have for the purchase of water and any contracts in effect at any time since 2006.

Request for Information No. 2-18.

Provide copies of your annual financial reports and audits since 2006.

Request for Information No. 2-19.

Provide a copy of your annual budgets, as originally approved and as amended, since 2006.

Request for Information No. 2-20.

Provide reports, correspondence and other documents since 2000 relating to the adequacy of fire flow within all or a portion of your water distribution system.

Request for Information No. 2-21.

Please produce all correspondence or documents exchanged between you and any person who may be called to present expert testimony in this case.

Request for Information No. 2-22.

If you contend that any of your legal expenses and professional fees other than any related to this proceeding should be included as part of the compensation that Midlothian should pay, state the factual and legal basis for your contention.

Request for Information No. 2-23.

Identify actions you have taken to improve fire flow within all or a portion of your water distribution system, including dates such actions were taken, the costs for installing new water lines, providing additional water storage, installing service pumps, and obtaining increased water supply capacity in order to provide sufficient fire flow capability.

Request for Information No. 2-24.

Please produce the curriculum vitae of each witness you may call to present expert testimony in this case or by deposition.

Request for Information No. 2-25.

Please produce the curriculum vitae of each consulting expert whose opinions, impressions or work product have been reviewed by a testifying expert in connection with the issues presented in this proceeding.

Request for Information No. 2-26.

Please produce all documents prepared, considered, reviewed, or relied upon by each testifying expert and/or consulting expert whose opinions or impressions have been reviewed by a testifying expert or whose work has formed the basis, in whole or in part, for the mental impressions and opinions of an expert who may be called to testify.

Request for Information No. 2-27.

Please produce all documents relating to the charges or expenses you have incurred as result of the work done by any expert who may be called to testify as a witness in this proceeding and by each consulting expert whose opinions or impressions have been reviewed by a testifying expert or whose work has formed the basis, in whole or in part, for the mental impressions and opinions of a testifying expert.

Request for Information No. 2-28.

Please produce all documents relating to all impeachment or rebuttal witnesses that you may call to testify at a hearing in this proceeding, the necessity of whose testimony can be reasonably anticipated before the hearing.

Request for Information No. 2-29.

Please produce all writings, drawings, graphs, charts, maps, photographs, or other tangible items intended to be used by You as exhibits, including demonstrative exhibits, in a hearing in this proceeding.

Request for Information No. 2-30.

Please produce all documents containing or reflecting any admissions or statements and/or admissions You contend were made by Midlothian relating to the issues in this proceeding.

Request for Admission No. 2-3.

Admit that you are currently a borrower of funds from, and indebted to, the United States of America on one or more debt instruments through the United States Department of Agriculture.

Request for Interrogatory No. 2-31.

To the extent you admit, in whole or in part, the foregoing request (RFA No. 2-3), provide documents evidencing any loan to you from, and your indebtedness to, the United States of America on any debt instruments through the United States Department of Agriculture.