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**SOAH DOCKET NO. 473-16-5823.WS**
**PUC DOCKET NO. 46120**



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| **CITY OF MIDLOTHIAN'S NOTICE OF INTENT TO SERVE AREA DECERTIFIED FROM MOUNTAIN PEAK SPECIAL UTILITY DISTRICT IN ELLIS COUNTY** | § § § § § | **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS** |

# SOAH ORDER NO. 4
# RULING ON MOTIONS TO COMPEL RESPONSES TO DISCOVERY REQUESTS

## I. FIRST MOUNTAIN PEAK RFI

On September 23, 2016, Mountain Peak Special Utility District (Mountain Peak) served its First Request for information (First Mountain Peak RFI) on the City of Midlothian (City). On October 3, 2016, the City filed objections to Question Nos. 1-6 and 8-14 of the First Mountain Peak RFI. On October 10, 2016, Mountain Peak filed a motion to compel responses to Question Nos. 1-5, 8, 9, 11, and 12 of the First Mountain Peak RFI. The City responded to the motion to compel on October 17, 2016.

### A. Question Nos. 1-5

The City objected to the following questions on the grounds of relevance:

**Request No. 1:** Please produce the December 16, 2013, Memorandum prepared by Freese and Nichols related to the Midlothian Community Park Water Assessment, including all exhibits and attachments.

**Request No. 2:** Please produce all documents related to the December 16, 2013 Memorandum prepared by Freese and Nichols related to the Midlothian Community Park Water Assessment (the "Memorandum"), including, but not limited to, all communications with Freese and Nichols, all drafts or earlier versions of the Memorandum or any part thereof, and all documents reflecting any information supplied to Freese and Nichols in preparing the Memorandum.

**Request No. 3:** Please produce all evaluations, assessments, written communications, or reports relating to the provision of water service to the Subject Tract, including, but not limited to, any updates of the December 16, 2013

Memorandum prepared by Freese and Nichols related to the Midlothian Community Park Water Assessment.

**Request No. 4:** Please produce all correspondence, notes and documents of any kind reflecting or relating to communications between You and Mountain Peak relating to the provision of water service to the Subject Tract.

**Request No. 5:** Please produce all documents relating to Midlothian's consideration of or decision to not obtain water service from Mountain Peak for Midlothian's proposed development on the Subject Tract.

Mountain Peak responded to the objection by stating that before decertification of the park property, the City commissioned a report to assess the costs of obtaining water service through Mountain Peak versus the costs for the City to provide water service to the park property. In doing so, the City's consultant (Freese and Nichols) assessed the capacity of Mountain Peak's facilities which would be used to serve the park property. This assessment and any documentation relied upon and related to this assessment are directly related to Mountain Peak's property that may be rendered useless or valueless by the decertification. Communications related to this assessment are reasonably calculated to lead to the discovery of admissible evidence related to the City's claims and defenses regarding Mountain Peak's property. Any additional reports or updates to this report and any documentation indicating the City's consideration of this property are also relevant to the subject matter of this proceeding.

The City responded that Mountain Peak is the utility that may have (or may not have) developed or acquired property that was rendered useless or valueless as a result of decertification in 2015. The City confirmed that it is prepared to compensate Mountain Peak the just and adequate amount determined through this process. However, it contends that no action by the City (including any updates to the 2013 report) can be relevant to this proceeding: the City simply did not request or cause any system changes. These questions do not develop any facts "of consequence" to the proceeding.

The City further argued that if Mountain Peak's objections are sustained, Mountain Peak will needlessly cloud issues and infuse matters irrelevant to the determination here: what (if any)

Mountain Peak property was rendered useless and valueless upon decertification of the park property. Additionally, the City notes that it and Mountain Peak are neighbors. Portions of the Mountain Peak retail service area are (or, in the case of the park property, had been) inside the City's city limits. Portions of the certificated service areas of the two utilities are dually certificated, so they share service area. These entities have had countless interactions. To the extent Mountain Peak is preparing to argue that their entire water system is a large, indivisible unit that was adversely impacted by the decertification, argued the City, basically any communication between the parties or any document relating to any part of their water systems is potentially responsive.

Finally, and with respect to Question No. 5 only, the City argues that the decision whether or not to obtain water service from Mountain Peak was a business decision made by the City. At no time did the City apply or pay for service by Mountain Peak to the park property. Additionally, a landowner's decision to exercise its statutory right under Texas Water Code § 13.254(a-5) is not an appropriate subject to discovery in the subsequent proceeding to determine compensation for any property rendered useless or valueless by decertification.

The Administrative Law Judge (ALJ) notes that the scope of discovery is far broader than the scope of admissibility. The question of relevance in discovery is whether the information sought may lead to the discovery of admissible evidence, not whether the information sought is admissible. With respect to Questions 1 through 4, Mountain Peak has made inquiries that meet the looser standard of relevance for discovery (but, as to the City's contention that this will lead to an impermissible broadening of the scope of this proceeding, the ALJ notes that there is only one issue here and it is to identify any property rendered useless or valueless by the decertification of the park property and the limited scope of that issue will be strictly enforced in this proceeding). With respect to Question No. 5, the City has argued persuasively that a landowner's decision to exercise statutory rights does not rise to the level of even the looser standard of relevance for discovery when the ultimate question is what property has been rendered useless or valueless. Accordingly, with respect to Question Nos. 1 through 4, the objections ore overruled. With respect to Question No. 5, the objection is sustained.

**B. Question Nos. 8 and 9**

The City objected to Question Nos. 8 and 9 on the grounds of relevance. Those questions are set forth below:

> **Request No. 8:** Please describe the number of LUEs to be served as of the date of decertification on the Subject Tract.
>
> **Request No. 9:** Please provide all documents relating to your response to RFI No. 8.

Mountain Peak argued that the number of living unit equivalents (LUEs) to be served is directly tied to its property that is rendered useless or valueless by the decertification of the park property because the number of LUEs informs the size, capacity, and other needs of the physical facilities needed to serve the park property. The City's production of this information will, according to Mountain Peak, aid in the resolution of at least one dispute related to the property rendered useless or valueless – the capacity of that property that would have been used by the development on the park property.

The City incorporated its arguments relating to the lack of relevance of Question Nos. 1 through 4 and added that if Mountain Peak used LUEs prior to the City's ownership of the park property, it has the information used to plan or design its own system: the City never applied or paid for service at the park property.

The ALJ finds that Mountain Peak has presented the more persuasive argument on these questions. The objections to Question Nos. 8 and 9 are overruled.

**C. Question Nos. 11 and 12**

The City objected to the following questions on the grounds of relevance and, as to Question No. 11, on the grounds that the request is unreasonable and unduly burdensome.

**Request No. 11:** Please provide all documents related to the conveyance of the Subject Tract to Midlothian, including any and all communications related to water service between Midlothian and the seller of the Subject Tract.

**Request No. 12:** Please produce any development plans approved by Midlothian for the Subject Tract or for property of which the Subject Tract was a portion in the last 10 years.

Mountain Peak argued that communications and documents related to the conveyance of the park property related to water service are reasonably calculated to lead to admissible evidence as they may contain information indicating the seller's knowledge of property owned by Mountain Peak that was intended to be used to provide water service to the park property. This information could support the claims by Mountain Peak regarding the specific property rendered useless or valueless by the decertification of the park property and could aid in the resolution of the disputes in this proceeding.

As to the City's burdensome objection to Question No. 11, Mountain Peak argued that Question No. 11 specifically sought documents related to the conveyance of the park property, including communications related to water service between the City and the seller of the park property. Mountain Peak agreed to narrow the scope of this request to focus on documents and communications related to water service, which it contends should eliminate the vast majority of conveyance and communication documents between the City and the seller. Thus, Mountain Peak states that it is unclear how this request remains unduly burdensome and, as a consequence, the City's objection appears to simply be an extension of its relevance objection.

The City incorporated its arguments relating to the lack of relevance of Question Nos. 1 through 4 and added, as to Question No. 11, that the fact of what the seller may or may not have known, or what knowledge was or was not transferred to the City, is of no consequence to what Mountain Peak property was rendered useless or valueless and any compensation owed as a result. As to Question No. 12, the City added that the decertification docket found that the park property is unplatted farmland that is not receiving water service from Mountain Peak. Existence of even a final plat is no guarantee that utility facilities will be planned or constructed.

This question asks for "any" development plans approved by the City, which (according to the City) are even of less consequence. Mountain Peak may or may not condition its planning based upon the status of a developer's plats, but it certainly expects an application for service and some form of payment. The City argued that this inquiry is not relevant to what Mountain Peak decides, but, if it were, Mountain Peak would have equal or superior access to that information in their files.

The ALJ finds that the City has presented the more persuasive arguments. Question No. 11, whether in its original form or as narrowed by Mountain Peak, requests information that has no relevance to this proceeding. The request does not satisfy the discovery standard of relevance. Similarly, Question No. 12 requests information that is not relevant. What would impact (or potentially impact) property of Mountain Peak would be information in Mountain Peak's files, not the City's. As a result, the objections to Question Nos. 11 and 12 are sustained.

## II. FIRST CITY DISCOVERY REQUEST

On October 4, 2016, the City served its First Request for Information and Request for Admission (First City Discovery Request) on Mountain Peak. On October 14, 2016, Mountain Peak filed objections to RFI Nos. 1-1, 1-3, 1-4(c), 1-6, 1-7(c), 1-11, 1-29, 1-30, and 1-31 of the First City Discovery Request. On October 20, 2016, the City filed a motion to compel responses to RFI Nos. 1-1, 1-3, 1-4(c), 1-6, 1-7(c), 1-11, 1-29, 1-30, and 1-31 of the First City Discovery Request. Mountain Peak responded to the motion to compel on October 27, 2016.

### A. RFI No. 1-3

Mountain Peak objected to the following question on the grounds that it was not relevant to this proceeding.

> **Request No. 1-3:** If you cannot unequivocally admit the foregoing Request (RFA 1-3) [that Mountain Peak's financial ratings were unaffected by the decertification], identify each financial rating allegedly affected by decertification

of the Park Property, including the date of such change, and provide documents evidencing such changes.

Mountain Peak argued that its financial ratings are not relevant to its property – tangible or intangible – rendered useless or valueless by decertification. The factors identified in Texas Water Code § 13.254(g) do not include financial ratings.

The City argued that both Texas Water Code § 13.254(g) and 16 Texas Administrative Code § 24.113(k) list identical factors that should be used in determining the appropriate compensation for personal property (if any) rendered useless or valueless because of decertification. These include "any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification." Changes to financial ratings can affect the *cost to consumers* because they may affect, e.g., the utility's interest and borrowing costs, bonding capacity, or likelihood an entity might be provided a loan or grant, etc. Ultimately, this discovery is tied closely to a factor affecting the compensation the City might pay to Mountain Peak as a result of this case. Therefore, changes to any financial ratings associated with the decertification of the park property are both relevant and narrowly tailored to matters addressed in this case.

The ALJ finds that, at this juncture, the City has presented the more persuasive argument. If we had a list of the property that Mountain Peak claimed had been rendered useless or valueless, we could determine with more clarity whether financial ratings had an impact. The fact is, we have no such list. Therefore, as the matter stands we must presume that Mountain Peak will assert the diminution in value of property affected by financial ratings and, thus, this question is relevant. The objection is overruled.

**B. RFI Nos. 1-4(c) and 1-7(c)**

Mountain Peak objected to these two questions on the grounds that they are not relevant to this proceeding.

> **Request No. 1-4(c):** Identify any water service facilities of Mountain Peak located within the Park Property, including for each facility: . . . c. The dates of Mountain Peak's decision to build, of construction, and of placement into service. . . .
>
> **Request No. 1-7(c):** Identify any water service facilities of Mountain Peak located within 1000 feet of (but not on or within) the Park Property, including for each facility: . . . c. The dates of Mountain Peak's decision to build, of construction, and of placement into service . . .

Mountain Peak's objection to each of these requests is limited to the "dates of Mountain Peak's decision to build" and "of construction" of each of its facilities. This information is not likely to reveal facts of consequence to the determination of specific property belonging to Mountain Peak that has been rendered useless or valueless.

The City argued that the dates of Mountain Peak's decisions to build, the dates of construction, and the dates of placement of its facilities into service are relevant because they related to the facilities most likely to be claimed by Mountain Peak to have been rendered useless or valueless through the decertification – the facilities on or within 1,000 feet of the park property. According to the City, this data, together with information produced in response to the portions of the questions that were not the subject of objections, will indicate, or lead to an indication of, basis and/or purpose(s) of each specific water facility and Mountain Peak's actions to place any facilities or property in use. To the extent Mountain Peak intends to prove that the purpose or value of a facility within or near the park property was adversely affected by decertification, the requested data may substantiate or refute the claim. In addition, the City contended that the facts may demonstrate that a facility's construction or use was incidental to water service other than the park property and, therefore, it cannot reasonably be deemed useless or valueless after decertification.

The ALJ once again finds that the City has presented the more persuasive argument. The date a facility was constructed can have a significant bearing on its current value, which is an indication that the information would be relevant to this proceeding. That, in addition to the

reasons stated by the City, render the requested information in both questions relevant to this proceeding for purposes of discovery. The objections are overruled.

**C. RFI No. 1-11**

Mountain Peak objected to this question on the grounds it is not relevant to this proceeding.

> **Request No. 1-11:** If you cannot unequivocally admit the foregoing request (RFA No. 1-10) [that a developer is required to pay costs of any improvements to Mountain Peak's system necessary for Mountain Peak to provide service to a proposed subdivision], identify each instance since 1995 when a developer has not been required to pay all costs of any improvements to Mountain Peak's system necessary for Mountain Peak to provide service to a proposed subdivision and produce the documents waiving or reducing requirement for the developer.

Mountain Peak argued that whether developers paid costs of any improvements to Mountain Peak's system is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. This information is not likely to make any fact of consequence to the determination of the property rendered useless or valueless to Mountain Peak more or less probable.

The City argued that the developer/seller of the park property is not a party to this case. Facts associated with any developer's payment to Mountain Peak (or waiver of that payment by Mountain Peak) for facilities and other property impacts the manner in which Mountain Peak prepares its system for new development, which may lead to information regarding how it prepared its system for the development proposed by the developer/seller of the park property, including information indicating which facilities that Mountain Peak may argue are associated with the park property, as well as some indication of property rendered useless or valueless by the decertification of the park property. These facts are, according to the City, plainly relevant and this request is reasonably calculated to lead to the City's discovery of admissible evidence or

lead to the discovery of other admissible evidence as to whether Mountain Peak's real or personal property related to the park property was developed as of decertification.

The ALJ finds that the City has again presented the more cogent and persuasive argument. If a developer is required to pay a portion of the costs of facilities, it impacts whether the facility is rendered useless or valueless to Mountain Peak and, thus, is a relevant line of inquiry. The objection is overruled.

**D. RFI Nos. 1-1, 1-6, 1-29, 1-30, and 1-31**

Mountain Peak objected to the following questions on the grounds that they require Mountain Peak to marshal its evidence or the proof it will offer at trial in violation of Texas Rule of Civil Procedure 197.1.

> **Request No. 1-1:** If you cannot unequivocally admit the foregoing request (RFA No. 1-1) [that no real property was rendered useless or valueless, to Mountain Peak as a result of the decertification], identify the real property rendered useless or valueless to Mountain Peak, in whole or part, as a result of the decertification in Docket No. 44394, including, for each parcel, the date and purchase price of the property, any current or planned uses for the property, any appraisals related to the property, and information on remaining debt service for loans or bonds to acquire the same.
>
> **Request No. 1-6:** 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 Amended 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.
>
> **Request No. 1-29:** If you contend that any intangible property is rendered useless or valueless, in whole or in part, by the decertification of the Park Property, state the legal and factual basis for your claim(s), identify each type of intangible property affected and amounts paid for the intangible property and the claimed reduction in value or usefulness of the intangible property and produce any document relied upon in making such claim(s).

**Request 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. A description and the location of each;
b. The dates of construction and of placement into service;
c. The costs of construction and of design;
d. Information on remaining debt-service for loans or bonds to finance design and/or construction as of May 1, 2016.

To the extent that you have identified the facility or other property in response to RFI No. 1-4 or No. 1-7, no further response is solicited.

**Request No. 1-31:** If you cannot unequivocally admit the foregoing request (RFA No. 1-14) [that the usefulness or value of the facilities within 1000 feet of the Amended Park Property have not decreased as a result of decertification], explain the factual basis for your belief that the usefulness and/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 argued that, collectively, these requests ask it to identify all of its property which has been rendered useless or valueless as well as the dates of construction, costs of construction, and debt service related to physical property, and the amount of any decrease in the value of the property. In other words, these requests ask Mountain Peak to state all its legal and factual contentions in this case – which is clearly prohibited by Texas Rule of Civil Procedure 197.1.

The City responded that its requests consist of contention questions. Under Texas Rule of Civil Procedure 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.[1] These requests do not seek Mountain Peak

[1] *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).

to describe in particularity "all" or "every" factual basis, and are therefore, according to the City, compliant with Texas Rule of Civil Procedure 197.1 by seeking to ascertain basic legal and factual claims.

After advancing this specific response to Mountain Peak's marshalling objection, the City went on to describe how the information requested in each question is relevant to this proceeding. In its conclusion, the City made the following plea regarding the state of discovery in this matter:

> [The City] should be able to discover the real, personal or intangible property Mountain Peak is contending has been rendered useless or valueless in preparation of its arguments and written testimony. [The City] does not know Mountain Peak's system, and therefore Midlothian is at 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 [the City], 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.[2]

The City's requests do not require Mountain Peak to marshal its evidence. They do seek information that goes to the very heart of this proceeding. Mountain Peak's objections are overruled.

## III. SECOND CITY DISCOVERY REQUEST

On October 17, 2016, the City served its Second Request for Information and Request for Admission (Second City Discovery Request) on Mountain Peak. On October 27, 2016, Mountain Peak filed objections to Definition L and RFI Nos. 2-7 (as amended by agreement), 2-8, 2-9, 2-10, 2-11, 2-16 (as amended by agreement), 2-20 (as amended by agreement), and

[2] City's Motion to Compel Responses to First Discovery Request at 10-11.

2-23 (as amended by agreement) of the Second City Discovery Request. On October 31, 2016, the City filed a motion to compel responses to RFI Nos. 2-7 (as amended by agreement), 2-8, 2-10, 2-11, and 2-16 (as amended by agreement) of the Second City Discovery Request. Mountain Peak responded to the motion to compel on November 7, 2016.

## A. RFI Nos. 2-7 and 2-8

Mountain Peak objected to the following question on the grounds that:

> **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 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.

Mountain Peak first noted that it appears that the parties have resolved some of their disputes related to these questions. However, Mountain Peak argued that the City's requests for the Provided Production Capacity and maximum daily demand for every year since 2006 are still overly broad and unduly burdensome, particularly in light of the fact that this information is available through the Texas Commission on Environmental Quality (TCEQ). Because this information is submitted to TCEQ, the City 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, Mountain Peak contended that Question No. 2-7 in particular remains overbroad because the Provided Production Capacity is simply a function of the capacity of Mountain Peak's wells and its water supply contracts and the information from which the Provided Production Capacity can be calculated is being provided to the City through other responses to discovery.

The City responded by, first, stating that it is excluding the phrase ", including the amount of capacity provided" from RFI No. 2-7 and the phrase ", and the amount of supply on that day from each source" from RFI No. 2-8, and then stating that the remaining portions of each question are not objectionable because the request in RFI No. 2-7 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. Mountain Peak is aware of the TCEQ Drinking Water Watch Database and data associated with its own system. RFI No. 2-7 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. As to RFI No. 2-8, the City argued that 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.

The ALJ finds that these requests, as modified by the City, are not overbroad or unduly burdensome. They seek specific information that is within Mountain Peak's possession and control. Although it may be possible for the City to obtain the same information from TCEQ's records, there can be no assurance that the results of its inquiry into TCEQ's records will produce accurate results. Having Mountain Peak produce the information ensures accuracy. Mountain Peak's objections are overruled.

**B. RFI No. 2-10**

In its response to the City's motion to compel, Mountain Peak stated that the disputes related to this request have been resolved.

## C. RFI No. 2-11

Mountain Peak objected to this question on the grounds that it requires Mountain Peak to marshal its evidence or the proof it will offer at trial in violation of Texas Rule of Civil Procedure 197.1.

> **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 argued that this request asks it to identify which facilities were affected by decertification and the amount of any decrease in usefulness or value is not a permissible contention interrogatory and, in effect, asks Mountain Peak to state all its legal and factual contentions in this case – which is clearly prohibited by Texas Rule of Civil Procedure 197.1.

The City responded that its requests consist of contention questions. Under Texas Rule of Civil Procedure 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. These requests do not seek Mountain Peak to describe in particularity "all" or "every" factual basis, and are therefore, according to the City, compliant with Texas Rule of Civil Procedure 197.1 by seeking to ascertain basic legal and factual claims.

As discussed in more detail in Section 0.D., the City's requests do not require Mountain Peak to marshal its evidence. They do seek information that goes to the very heart of this proceeding. Mountain Peak's objections are overruled.

**D. RFI No. 2-16**

Mountain Peak objected to this question on the grounds that it is overly broad and unduly burdensome.

> **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 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. It argued that virtually all of its business is related to water distribution and water supply and, therefore, the limitation offered by the City is not a limiting description. Mountain Peak contended that this is nothing more than a "fishing expedition," which is prohibited. The City 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, Mountain Peak argued that this question is overly broad and unduly burdensome and Midlothian's motion to compel should be denied.

The City responded that this question 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 water distribution and supply, *e.g.*, a 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 was affected by the decertification of the park property.

The City disclaims that this constitutes 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. Further it argued that specificity is unreasonable and impossible, as the City 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.

The ALJ finds that Mountain Peak's agreement to provide water master plan reports, to the extent they exist is, at this juncture, sufficient and that the balance of the City's questions are, at this point of the proceeding, overly broad and unduly burdensome. The objections are sustained.

## IV. TIME FOR RESPONSE TO DISCOVERY REQUESTS

The party on whom the discovery request was served and who is subject to an order to produce information as set forth above shall provide the responsive information to the requesting party no later than December 16, 2016.

**SIGNED December 8, 2015.**

Steven D. Arnold

**STEVEN D. ARNOLD**
**ADMINISTRATIVE LAW JUDGE**
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**