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DOCKET NO. 48350

**APPLICATION OF THE CITY OF
DAYTON FOR CERTIFICATES OF
CONVENIENCE AND NECESSITY IN
LIBERTY COUNTY**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

NOTICE OF APPROVAL

This Notice of Approval addresses the application of the City of Dayton for a water and sewer certificate of convenience and necessity (CCN) in Liberty County. The Commission issues water CCN number 13297 and sewer CCN number 21124 to Dayton for the requested area, to the extent provided in this Notice of Approval.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Dayton is a municipality located in Liberty County.
2. Dayton operates, maintains, and controls facilities for providing retail water and sewer service to customers in Liberty County.
3. Dayton owns and operates a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 1460002.
4. Dayton owns and operates a sewer system permitted with the with the TCEQ under Texas Pollutant Discharge Elimination system permit number WQ0010564004.

Application

5. On May 8, 2018, Dayton filed the application at issue in this proceeding.
6. The application originally requested a water service area and sewer service area that included approximately 80,045 acres and 1,080 existing connections.
7. The original requested water service area and sewer service area (the original requested area) are duplicative in acreage and boundaries.
8. Dayton filed supplemental information on May 25 and June 6, 2018.

9. In Order No. 2 filed on June 12, 2018, the Commission administrative law judge (ALJ) found the application administratively complete.
10. On October 19 and December 20, 2018, Dayton filed revised maps and digital data supplementing its application in response to landowner requests to be excluded from the requested area.
11. In Order No. 9 filed on February 5, 2019, the Commission ALJ found the supplemental mapping information sufficient.
12. On May 10, 2019, Dayton amended its application.
13. On July 10 and August 28, 2019; July 27 and November 30, 2020; and April 5 and May 12, 2021, Dayton supplemented the amended application.
14. The application, as amended and supplemented, requests a water service area and sewer service area that includes approximately 14,885.5 acres and 1,080 connections.
15. The amended and supplemented requested water service area and sewer service area (the requested area) are duplicative in acreage and boundaries.
16. The requested area is located entirely within Dayton's corporate boundaries in Liberty County.
17. The original requested area is generally bounded on the north by Luce Bayou and County Road 2322; on the east by the Trinity River; on the south by the Liberty and Chambers county lines; and on the west by the Liberty and Harris county lines.
18. The requested area is wholly located within the boundaries of the original requested area.
19. In Order No. 21 filed on May 19, 2021, the Commission ALJ found the revised maps and digital data sufficient.

Notice

20. On July 20, 2018, Dayton filed the affidavit of Kelly Hajek, Dayton's city engineer, attesting that notice was mailed to current customers, landowners, neighboring utilities, and affected parties on June 18, 2018.

21. On July 20, 2018, Dayton filed a publisher's affidavit attesting that notice of the application was published in the *Houston Chronicle*, a newspaper of general circulation in Liberty County, on June 27 and July 4, 2018.
22. In Order No. 3 filed on August 13, 2018, the Commission ALJ found the notice sufficient.
23. On March 25, 2020, Dayton filed the affidavit of Kimberly Judge, Dayton's authorized representative, attesting that supplemental notice of the application was sent on March 24, 2020, to certain landowners with defective opt-out requests.

Interventions and Referral to the State Office of Administrative Hearings (SOAH)

24. On July 16, 2018, T & W Water Service filed a motion to intervene and request for public hearing.
25. On July 16, 2018, Woodland Hills Water, LLC filed a notice of protest and motion to intervene.
26. On July 18, 2018, South Central Water Company filed a motion to intervene and request for public hearing.
27. On July 19, 2018, Woodland Hills filed an amended notice of protest and motion to intervene.
28. On July 19, 2018, Aqua Texas, Inc. filed a motion to intervene and request for hearing.
29. On August 20, 2018, River Ranch Municipal Utility District Nos. 2 through 7 and 13 through 15 filed a motion to intervene and request for hearing.
30. In Order No. 4 filed on August 22, 2018, the Commission ALJ granted the motions to intervene filed by T & W, Woodland Hills, South Central, Aqua Texas, and the River Ranch MUDs.
31. On January 8, 2019, South Central and T & W withdrew their motions to intervene and requests for hearing.
32. In Order No. 7 filed on January 9, 2019, the Commission ALJ granted T & W and South Central's motions to withdraw their interventions.
33. On January 17, 2019, the River Ranch MUDs withdrew their motion to intervene and request for hearing.

34. In Order No. 8 filed on January 24, 2019, the Commission ALJ granted the River Ranch MUDs motion to withdraw their interventions.
35. On February 5, 2019, the Commission referred this docket to SOAH.
36. On February 19, 2019, Woodland Hills withdrew its motion to intervene.
37. In SOAH Order No. 2 filed on February 20, 2019, the SOAH ALJ granted Woodland Hills's motion to withdraw its intervention.
38. On March 1, 2019, the Commission adopted a preliminary order.
39. On May 13, 2019, Aqua Texas withdrew its motion to intervene and hearing request.
40. In SOAH Order No. 6 filed on June 5, 2019, the SOAH ALJ granted Aqua Texas's motion to withdraw its intervention.
41. In SOAH Order No. 13 filed on February 10, 2020, the SOAH ALJ dismissed this proceeding from SOAH's docket and remanded it to the Commission.

Opt-out Requests

42. The deadline to file a written opt-out request with the Commission was July 18, 2018.
43. Timely opt-out requests were filed by the following: Gerald Dufrene; Stoesser Farms, Inc.; Joe Smesny; River Ranch Holdings, LLC; Rodney Porter, Stoesser Investments, LLC; Stoesser Drier, Inc.; Walter Wallace Wade; Michael Pomykal; Liberty RV, LLC; The Mary Gay Corporation; FVL, Ltd.; FPL Farming, Ltd.; Third Texas Resource, LLC; Precab, Inc.; Daniel and Lisa Simnacher; and Bill Kornegay.
44. Untimely opt-out requests were filed by the following: Weldon W. Alders; Alan Swenson; William D. Gay, II; Keith and Connie Fitzhenry; Cedar Bayou Wildlife, LLC; Gary Moreau; John M. Bartee; Eagle Heights Fellowship; Susan Nanette Daniel, Daniel Martin Parker, and Bill Daniel Trust et al.; Norma Hernandez; and Randal and Pamela Klimitchek.
45. Dayton submitted revised mapping, which amended its application to accommodate all opt-out requests, both timely and untimely, and exclude the opt-out tracts from the original requested service area.

Evidentiary Record

46. On August 6, 2021, the parties filed an agreed motion to admit evidence.

47. In Order No. 25 filed on August 18, 2021, the Commission ALJ admitted the following evidence into the record of this proceeding: (1) Dayton's application and all accompanying exhibits filed on May 8, 2018; (2) Dayton's revised maps and digital data filed on May 25, 2018; (3) Commission Staff's recommendation on administrative completeness and proposed notice filed on June 6, 2018; (4) Dayton's revised maps and digital data filed on June 6, 2018; (5) opt-out request of Gerald Dufrene filed on July 12, 2018; (6) opt-out request of Stoesser Farms, Inc. filed on July 12, 2018; (7) opt-out request of Joe Smesny filed on July 13, 2018; (8) opt-out request of River Ranch Holdings, LLC filed on July 13, 2018; (9) opt-out request of Rodney Porter filed on July 13, 2018; (10) opt-out request of River Ranch Holdings, LLC filed on July 16, 2018; (11) opt-out request of Stoesser Investments, LLC filed on July 16, 2018; (12) opt-out request of Stoesser Drier, Inc. filed on July 16, 2018; (13) opt-out request of Walter Wallace Wade filed on July 16, 2018; (14) opt-out request of Michael Pomykal filed on July 16, 2018; (15) opt-out request of Liberty RV, LLC filed on July 16, 2018; (16) opt-out request of The Mary Gay Corporation filed on July 17, 2018; (17) opt-out request of FVL Ltd. filed on July 17, 2018; (18) opt-out request of FPL Farming, Ltd. filed on July 17, 2018; (19) opt-out request of Third Texas Resource filed on July 17, 2018; (20) opt-out request of Precab, Inc. filed on July 18, 2018; (21) opt-out request of Daniel and Lisa Simnacher filed on July 18, 2018; (22) opt-out request of Bill Kornegay filed on July 18, 2018; (23) opt-out request of FVL, Ltd. filed on July 19, 2018; (24) opt-out request of FPL Farming, Ltd. filed on July 19, 2018; (25) opt-out request of Weldon W. Alders filed on July 19, 2018; (26) opt-out request of Alan Swenson filed on July 19, 2018; (27) opt-out request of FVL, Ltd. filed on July 20, 2018; (28) opt-out request of FPL Farming, Ltd. filed on July 20, 2018; (29) opt-out request of William D. Gay, II filed on July 23, 2018; (30) opt-out request of Keith and Connie Fitzhenry filed on July 20, 2018; (31) opt-out request of Cedar Bayou Wildlife, LLC filed on July 20, 2018; (32) Dayton's proof of notice filed on July 20, 2018; (33) opt-out request of FPL Farming Ltd. filed on July 23, 2018; (34) opt-out request of Gary Moreau filed on July 23, 2018; (35) opt-out request of John M. Bartee filed on July 25, 2018; (36) opt-out request of Eagle Heights Fellowship filed on July 25, 2018; (37) Commission Staff's recommendation on sufficiency of notice filed on July 25, 2018; (38) opt-out request of Susan Nanette Daniel, Daniel Martin Parker, and Bill Daniel Trust et al, filed on July 26,

2018; (39) opt-out request of Norma Hernandez filed on July 27, 2018; (40) opt-out request of Randal and Pamela Klimitchek filed on July 30, 2018; (41) Dayton's revised maps and digital data filed on October 19, 2018; (42) Dayton's revised maps and digital data filed on December 20, 2018; (43) Dayton's application amendment filed on May 10, 2019; (44) Dayton's response to Commission Staff's first request for information filed on July 10, 2019; (45) Dayton's response to Commission Staff's second request for information filed on August 28, 2019; (46) Dayton's affidavit of supplemental notice regarding nonconforming opt-out requests filed on March 25, 2020; (47) opt-out request of The Mary Gay Corporation filed on April 14, 2020; (48) opt-out request of Stoesser Farms, Inc. filed on April 17, 2020; (49) opt-out request of Mark Stoesser filed on May 14, 2020; (50) opt-out request of Jack Stoesser filed on May 19, 2020; (51) opt-out request of Gary Moreau filed on May 27, 2020; (52) Dayton's first supplement to the amended application filed on July 27, 2020; (53) Dayton's second supplement to the amended application filed on November 30, 2020; (54) Dayton's third supplement to the amended application filed on April 5, 2021; (55) Dayton's fourth supplement to the amended application filed on May 12, 2021; (56) Commission Staff's supplemental recommendation on sufficiency of mapping revisions filed on May 18, 2021; (57) Dayton's notice of consent filed on July 8, 2021; and (58) Commission Staff's second amended final recommendation including all attachments filed on July 21, 2021.

Adequacy of Existing Service

48. Dayton currently provides retail water and sewer service to 1,080 connections in the requested area through its public water system, number 1460002, and its sewer system, permit number WQ0010564004, and such service has been continuous and adequate.
49. No additional construction is necessary for Dayton to serve the requested area.
50. Dayton does not have any unaddressed violations listed in the TCEQ database.

Need for Service

51. There are currently 1,080 existing connections in the requested area that are receiving water and sewer service from Dayton and have an ongoing need for service.
52. The requested area is currently being developed to include an additional three subdivisions: Fordland Estates Section 4, Fordland Estates Section 5, and Luke Colbert Subdivision.

Dayton projects a total of 116 potential customer connections comprised of 44 connections for Fordland Estates Section 4, 52 connections for Fordland Estates Section 5, and 20 connections for Luke Colbert Subdivision.

Effect of Approving the Application and Issuing the Certificates

53. Issuing the CCNs will obligate Dayton to provide water and sewer service to current and future customers in the requested area.
54. All retail public utilities in the proximate area were provided notice of the application. All retail public utilities in the proximate area who intervened in this proceeding have subsequently withdrawn. There will be no effect on any retail public utility serving the proximate area.
55. All opt-out requests, both timely and untimely, have been accommodated.
56. Landowners in the requested area will benefit from the issuance of the CCNs because they will have a water and sewer provider available when they need to request water or sewer service.

Ability to Serve: Technical and Managerial

57. Dayton is currently providing service to 1,080 connections.
58. Dayton provides water service from a public water system that is registered with the TCEQ. Dayton provides sewer service from a TCEQ-permitted sewer system.
59. Dayton employs TCEQ-licensed operators who are responsible for operating the public water system and sewer system.
60. Dayton does not have any unaddressed violations listed in the TCEQ database.
61. The Commission's complaint records, which date back to 2014, show no complaints against Dayton.
62. Dayton's existing water system and sewer system have adequate capacity to provide continuous and adequate service to existing connections in the requested area.
63. Dayton has access to an adequate supply of water and is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the Texas Water Code (TWC), and the TCEQ's rules.

64. Dayton's sewer system meets the TCEQ's design criteria for sewer treatment plants and the requirements of chapter 13 of the TWC.
65. Dayton has the managerial and technical capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

66. Dayton is currently serving customers in the requested area, has facilities in the requested area to serve any future customers, and has sufficient capacity to serve current and future customers.
67. It is not feasible to obtain water or sewer service from an adjacent retail public utility because the requested area includes only area that is within Dayton's city limits, and no other utility can obtain the right to serve the requested area without Dayton's consent.

Regionalization or Consolidation

68. Because the requested area will not require construction of a physically separate water system or sewer system, consideration of regionalization or consolidation with another retail public utility is not required.

Ability to Serve: Financial Ability and Stability

69. Dayton has a debt-to-equity ratio that is less than 1.0 and sufficient unrestricted cash available as a cushion for two years of debt service, both of which satisfy the leverage test.
70. Dayton demonstrated it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after issuance of the CCNs, satisfying the operations test.
71. Dayton demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance

72. There is no need to require Dayton to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Environmental Integrity and Effect on the Land

73. There will be minimal effect on the land and on environmental integrity as distribution and collection lines are installed to provide service to future customers in the requested area.

74. The land and environmental integrity of the requested area will not be affected to such a degree that the application should not be granted.

Improvement in Service or Lowering Cost to Consumers

75. Dayton will continue to provide the same level of water and sewer service to existing customers in the requested area with no change to the cost to customers.
76. Water and sewer service to the requested area will improve because Dayton will be obligated to serve future customers in the requested area.

Maps, Tariff, and Certificate

77. On June 25, 2021, Commission Staff emailed its proposed final maps and certificates to Dayton.
78. On July 8, 2021, Dayton filed its consent form, concurring with the final maps and certificates proposed by Commission Staff.
79. On July 21, 2021, Commission Staff filed the proposed maps and certificates as attachments to its second amended final recommendation on the application.

Informal Disposition

80. More than 15 days have passed since the completion of notice provided in this docket.
81. All protests, hearing requests, and motions to intervene have been addressed or withdrawn.
82. Dayton and Commission Staff are the only remaining parties to this proceeding.
83. No hearing is necessary.
84. Commission Staff recommended approval of the application.
85. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.241, 13.242, 13.244, and 13.246.
2. Dayton is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).

3. Dayton application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
4. Dayton provided notice of the application that complies with TWC § 13.246 and 16 TAC § 24.235.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
6. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC §§ 24.11(e) and 24.227(e), Dayton demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area in Liberty County, as required by TWC § 13.241(a) and 16 TAC § 24.227(e).
7. Dayton meets the requirements of TWC § 13.241(b) and (c) to provide water and sewer utility service.
8. Regionalization or consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system or sewer system is not required.
9. It is not necessary for Dayton to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
10. Dayton demonstrated that issuance of water CCN number 13297 and sewer CCN number 21124 is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(c).
11. Under TWC §§ 13.257(r) and (s), Dayton is required to record a certified copy of the approved maps and certificates, along with a boundary description of the service areas, in the real property records of Liberty County, within 31 days of this Notice of Approval and must submit evidence of the recording to the Commission.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

¹ Tex. Gov't Code §§ 2001.001–.903.

1. The Commission issues water CCN number 13297 to Dayton, attached to this Notice of Approval, for the requested area described in this Notice of Approval and shown on the attached map.
2. The Commission issues sewer CCN number 21124 to Dayton, attached to this Notice of Approval, for the requested area described in Notice of Approval and shown on the attached map.
3. The Commission approves the maps attached to this Notice of Approval.
4. Dayton must provide service to every customer and applicant for service within the approved area under water CCN number 13297 who requests water service and meets the terms of Dayton's water service, and such service must be continuous and adequate.
5. Dayton must provide service to every customer and applicant for service within the approved area under sewer CCN number 21124 who requests sewer service and meets the terms of Dayton's sewer service, and such service must be continuous and adequate.
6. Dayton must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Liberty County affected by the application and file in this docket proof of the recording no later than 45 days after the date of this Notice of Approval.
7. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the 19th day of August 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

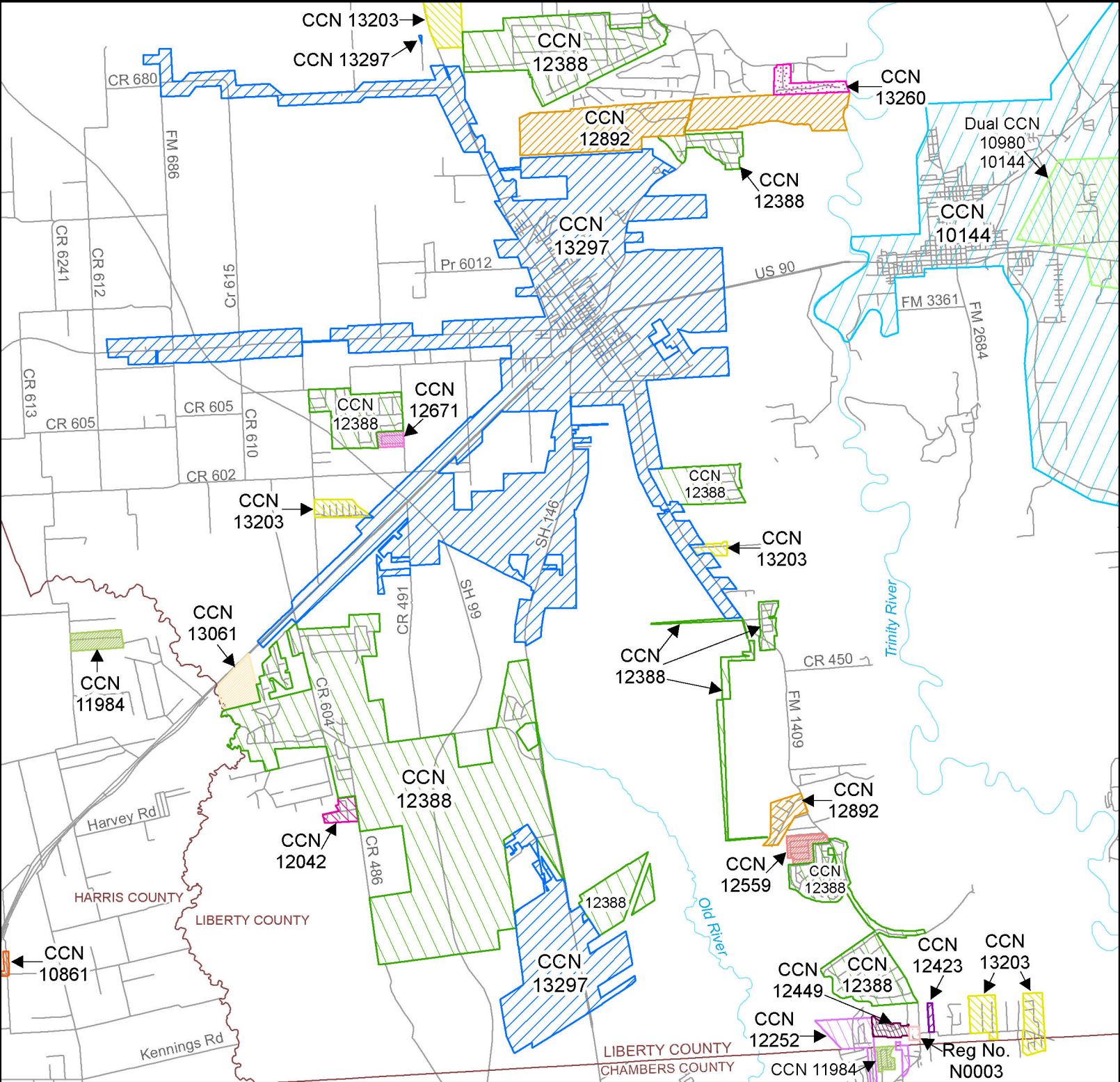
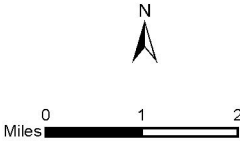


**ISAAC TA
ADMINISTRATIVE LAW JUDGE**

City of Dayton
Water CCN No. 13297
PUC Docket No. 48350
Obtained New CCN in Liberty County

Water CCN

- 13297 - City of Dayton
- 13203 - Aqua Texas Inc
- 12388 - Woodland Hills Water LLC
- 12892 - T & W Water Service Company
- 13260 - Undine Texas LLC
- 10144 - City of Liberty
- 10980 - Ames Minglewood WSC
- 12559 - Northpark WSC
- 12423 - Hunters Cove Section 1 WSC
- N0003 - Wildwood Subdivision
- 12449 - Woodcreek Water Corp of Liberty County
- 12252 - Nerro Supply Inc
- 11984 - Krebs Utilities Inc
- 12042 - East Houston Utilities Inc
- 13061 - South Central Water Company
- 12671 - Utilities Investment Company Inc
- 10861 - Crosby MUD





Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Dayton

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, City of Dayton is entitled to this

Certificate of Convenience and Necessity No. 13297

to provide continuous and adequate water utility service to that service area or those service areas in Liberty County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48350 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Dayton to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 19th day of August 2021.



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Dayton

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, City of Dayton is entitled to this

Certificate of Convenience and Necessity No. 21124

to provide continuous and adequate sewer utility service to that service area or those service areas in Liberty County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48350 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Dayton to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 19th day of August 2021.