



Control Number: 48565



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DOCKET NO. 48565

APPLICATION OF AQUA TEXAS, INC. §
AND THE TOWN OF BUFFALO GAP §
FOR SALE, TRANSFER, OR MERGER §
OF FACILITIES AND CERTIFICATE §
RIGHTS IN TAYLOR COUNTY (GAP §
WATER SYSTEM) §

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PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

NOTICE OF APPROVAL

This Notice of Approval addresses the application of Aqua Texas, Inc. and the Town of Buffalo Gap filed on August 2, 2018, for approval of a sale, transfer or merger of facilities and certificate of convenience and necessity (CCN) rights in Taylor County. The Commission approves the sale and transfer of Aqua's Gap Water System and the associated portion of Aqua's water service area under water CCN number 13201 to Buffalo Gap, and issues new water CCN number 13273 to Buffalo Gap.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Aqua is a Texas for-profit corporation registered with the Texas secretary of state under filing number 0800304878.
2. Aqua is a wholly owned subsidiary of Essential Utilities, Inc., formerly known as Aqua America, Inc., a Pennsylvania corporation.
3. Aqua operates, maintains, and controls facilities for providing water service in Texas under water CCN numbers 13201, 13203, and 13254.
4. Aqua owns and operates its Gap Water System, which is registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification number 2210023.
5. Buffalo Gap is a type-A general law municipality incorporated in 1959 under chapter 6 of the Texas Local Government Code.

6. Buffalo Gap owns and operates a water system and a sewer system in Taylor County, but does not currently hold a water CCN or sewer CCN.
7. Buffalo Gap owns and operates a public water system which is registered with the TCEQ under identification number 2210003.

Application

8. On August 2, 2018, Aqua and Buffalo Gap filed an application for the sale and transfer of Aqua's Gap Water System, and the associated water service area under Aqua's CCN number 13201 in Taylor County to Buffalo Gap. In addition, Buffalo Gap requests to obtain a water CCN for the transferred water service area.
9. The applicants filed supplements to the application on June 2, 2020, and January 12, 2021.
10. The requested area comprises approximately 1,782 acres and includes 269 current customers.
11. The requested area is located within Buffalo Gap, and is generally bounded on the north by Buffalo Gap Road and Bell Plains Road, on the east by County Road (CR) 650, on the south by CR 150, and on the west by East Street.
12. In Order No. 2 filed on September 5, 2018, the administrative law judge (ALJ) found the application administratively complete.

Notice

13. Notice of the application was published in the *Texas Register* on August 17, 2018.
14. On September 26, 2018, Aqua filed a publishers' affidavit attesting that notice of the application appeared in the *Abilene Reporter-News*, a newspaper in general circulation in Taylor County, on September 11 and 18, 2018.
15. On September 26, 2018, Aqua filed an affidavit attesting that notice was provided to current customers, neighboring utilities, and affected parties on September 13, 2018.
16. In Order No. 3 filed on October 9, 2018, the ALJ found the notice sufficient.

Evidentiary Record

17. On January 12, 2021, Commission Staff and the applicants filed a motion to admit evidence.

18. In Order No. 11 filed on February 9, 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) the application of Aqua and the Buffalo Gap filed on August 2, 2018; (b) the applicants' response to Order No. 1 filed on August 9, 2018; (c) the publisher's affidavit filed on September 26, 2018; (d) Aqua Texas' affidavit of notice to customers and entities filed on September 26, 2018; (e) Commission Staff's recommendation on approval of the transaction filed November 16, 2018; (f) Buffalo Gap's supplemental information filed on June 2, 2020; (g) applicants' final closing documents filed on October 19, 2020; (h) Aqua's confidential filing containing customer deposit information filed on October 20, 2020; (i) Commission Staff's recommendation on sufficiency of closing documents filed on November 10, 2020; (j) Aqua's consent form filed on December 22, 2020; (k) Buffalo Gap's consent form filed on December 28, 2020; (l) supplemental information related to the assignment of a Developer Extension Agreement between Aqua and Dale Morrison filed on January 12, 2021; and (m) the map and certificates attached to the proposed notice of approval filed by the parties on January 12, 2021.

Sale

19. In Order No. 4 filed on November 28, 2018, the ALJ approved the transaction to proceed and required the applicants to file proof that the transaction had closed and that customer deposits had been addressed.
20. In Order No. 5 filed on May 23, 2019, the ALJ granted Buffalo Gap's first request for a good cause extension of the 180-day deadline to complete the transaction.
21. In Order No. 7 filed on November 25, 2019, the ALJ granted Buffalo Gap's second request for a good cause extension of the 180-day deadline to complete the transaction.
22. In Order No. 8 filed on May 22, 2020, the ALJ granted Buffalo Gap's third request for a good cause extension of the 180-day deadline to complete the transaction.
23. On October 19, 2020, the applicants filed a bill of sale, special warranty deed, and affidavits of closing attesting that the transaction had closed on September 30, 2020, and that all customer deposits held by Aqua were refunded to customers on Aqua's final bills to those customers.

24. On October 20, 2020, the applicants filed a list of the customer deposits that were refunded.
25. In Order No. 10 filed on November 12, 2020, the ALJ found the closing documents sufficient.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(h)(3)(A), (h)(5)(I)

26. Gap Water System meets the requirements of chapter 341 of the Texas Health and Safety Code and the applicable TCEQ rules.
27. Aqua and Buffalo Gap do not currently have any outstanding compliance issues listed in the TCEQ database.
28. Buffalo Gap has worked with TCEQ to resolve compliance issues as they arise and intends to continue that practice following the approval of the proposed transaction.
29. Buffalo Gap has not been subject to any unresolved enforcement action by the Commission, the Texas Department of Health and Human Services, the Office of the Attorney General of Texas, or the Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.
30. There is no evidence that Buffalo Gap has a history of continuing mismanagement or misuse of revenues as a utility service provider.
31. Buffalo Gap has demonstrated a compliance status that is adequate for approval of the transaction.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(A)

32. The existing service provided by Aqua's Gap Water System is adequate and generally meets the requirements of chapter 341 of the Texas Health and Safety Code and the applicable TCEQ rules. However, Gap Water System has experienced occasional public drinking water quality exceedances of TCEQ's secondary standard for total dissolved solids. Additionally, Gap Water System has experienced intermittent fluctuation of water levels in its groundwater supply wells.
33. Aqua Texas has no existing violations for the Gap Water System, public water system number 2210023, listed in the TCEQ database.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)

34. The purpose of the transaction is to transfer to currently certificated area and the associated facilities from Aqua to Buffalo Gap.
35. There is a continuing need for service because Aqua's Gap Water System is currently serving 269 existing customers in the requested area.
36. There is no evidence of specific requests for additional service within the requested area.

Effect of Approving the Transaction—TWC § 13.245(c)(3); 16 TAC §§ 24.227(e)(3); 24.239(h)(5)(C)

37. This transaction will serve the public interest by enabling Gap Water System customers to have access to City of Abilene water, which is a more reliable and consistent water source than the wells upon which Aqua has relied.
38. On September 28, 2020, Buffalo Gap closed on a deal with the United States Department of Agriculture on a project to receive its wholesale water supply directly from the City of Abilene and plans to use that water source to establish better service in terms of reliability for both current and future customers in the requested area.
39. There will be no effect on any other retail public utility serving the proximate area because the application transfers existing assets used to serve customers in an area that is currently certificated.
40. There will be no effect on landowners in the requested area because the requested area is currently certificated.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), (b), 13.426(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), 24.239(e), (h)(2), (h)(5)(D)

41. Buffalo Gap is currently serving customers through its water system.
42. Buffalo Gap employs an experienced water system operator who holds a Class C water license issued by the TCEQ.
43. Buffalo Gap has consulted and will continue to consult with its engineers who are knowledgeable with regard to the operation of the Gap Water System.
44. Buffalo Gap has a sufficient number of licensed water operators to provide continuous and adequate service to the requested area.

45. Buffalo Gap will have access to an adequate supply of water to provide service to the requested area.
46. Buffalo Gap is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
47. Buffalo Gap has the technical and managerial capability to provide adequate and continuous service to the requested area.

Feasibility of Obtaining Service from Additional Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(h)(5)(E)

48. The requested area has existing facilities.
49. Until September 30, 2020, the requested area was being served by Aqua.
50. Since October 1, 2020, the requested area has been served by Buffalo Gap.
51. Utilities within a two-mile radius were noticed and no protests were received regarding the proposed transaction.
52. The applicants are currently serving customers and have sufficient capacity; therefore, it is not feasible to obtain service from another adjacent retail public utility.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (e)(6), 24.239(e), (h)(5)(F)

53. Buffalo Gap has a debt to equity ratio of less than one, thus satisfying the leverage test.
54. Buffalo Gap has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction, thus satisfying the operations test.
55. Buffalo Gap received a loan of \$2,885,000 from the United States Department of Agriculture to connect its existing water system and the Gap Water System to the City of Abilene's water supply.
56. Buffalo Gap demonstrated adequate financial ability and stability to provide continuous and adequate service to the requested areas.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§, 24.227(f), 24.239(f)

57. There is no need to require Buffalo Gap to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity and Effect on the Land—TWC § 13.246(c)(7), (c)(9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(G)

58. Gap Water System will no longer need to be fully reliant on groundwater wells within an arid region of Texas, which will improve environmental integrity, particularly in times of drought.
59. There will be effects on the land due to the installation of minor system upgrades and construction of facilities to connect to the City of Abilene's water supply, but the effects are not to such a degree that the application should not be granted.

Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)

60. Immediately following the proposed transfer of the Gap Water System and service area to Buffalo Gap, Buffalo Gap will continue to provide water service to existing customers in those areas at the same rates.
61. The quality of water provided to Gap Water System customers will improve after completion of Buffalo Gap's connection to the City of Abilene's water supply.
62. It is expected that, with the connection to a more reliable water source, Buffalo Gap will provide the same or a better level of continuous and adequate service as Aqua.

Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)

63. Because construction of a physically separate water system is not required to serve the requested area, consideration of regionalization or consolidation is not required.

Map and Certificates

64. On December 15, 2020, Commission Staff emailed to the applicants the final proposed map and certificates related to this docket.
65. On December 22, 2020, Aqua filed its consent to the proposed map and certificate.
66. On December 28, 2020, Buffalo Gap filed its consent to the proposed map and certificate.

67. On January 12, 2021, the proposed map and certificates were filed as attachments to the parties' joint proposed notice of approval.

Informal Disposition

68. More than 15 days have passed since the completion of notice provided in this docket.
69. No person filed a protest or motion to intervene.
70. Aqua, Buffalo Gap, and Commission Staff are the only parties to this proceeding.
71. No party requested a hearing and no hearing is needed.
72. Commission Staff recommends approval of the application.
73. 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 §§ 13.041, 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Aqua and Buffalo Gap are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Aqua and Buffalo Gap provided notice of the application that complies with TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,¹ and Commission Rules.
5. Aqua and Buffalo Gap completed the sale within the time required by 16 TAC § 24.239(m).
6. Aqua and Buffalo Gap complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
7. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Buffalo Gap demonstrated adequate financial, managerial, and technical

¹ Tex. Gov't Code §§ 2001.001–.903.

capability for providing adequate and continuous service to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239(e).

8. Buffalo Gap meets the requirements of TWC § 13.241(b) to provide water utility service.
9. It is not necessary for Buffalo Gap to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
10. Aqua and Buffalo Gap demonstrated that the sale and transfer of the Gap Water System and the associated service area held under water CCN number 13201 to Buffalo Gap will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d), (e).
11. Buffalo Gap must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Taylor County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording in accordance with TWC § 13.257(r), (s).
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

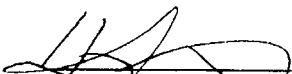
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the sale and transfer of the Gap Water System and the corresponding portion of the service area under CCN number 13201 to Buffalo Gap, to the extent provided in this Notice of Approval.
2. The Commission issues water CCN number 13273 to Buffalo Gap.
3. The Commission approves the certificates and map attached to this Notice of Approval.
4. Buffalo Gap must provide service to every customer or applicant for water service within the approved area under water CCN number 13273 that requests water service and meets the terms of Buffalo Gap's water service, and such service must be continuous and adequate.

5. Buffalo Gap must comply with the recording requirements in TWC §§ 13.257(r) and (s) for the areas in Taylor County affected by the application and must file evidence of the recording in this docket by no later than 45 days after receipt of this Notice of Approval.
6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

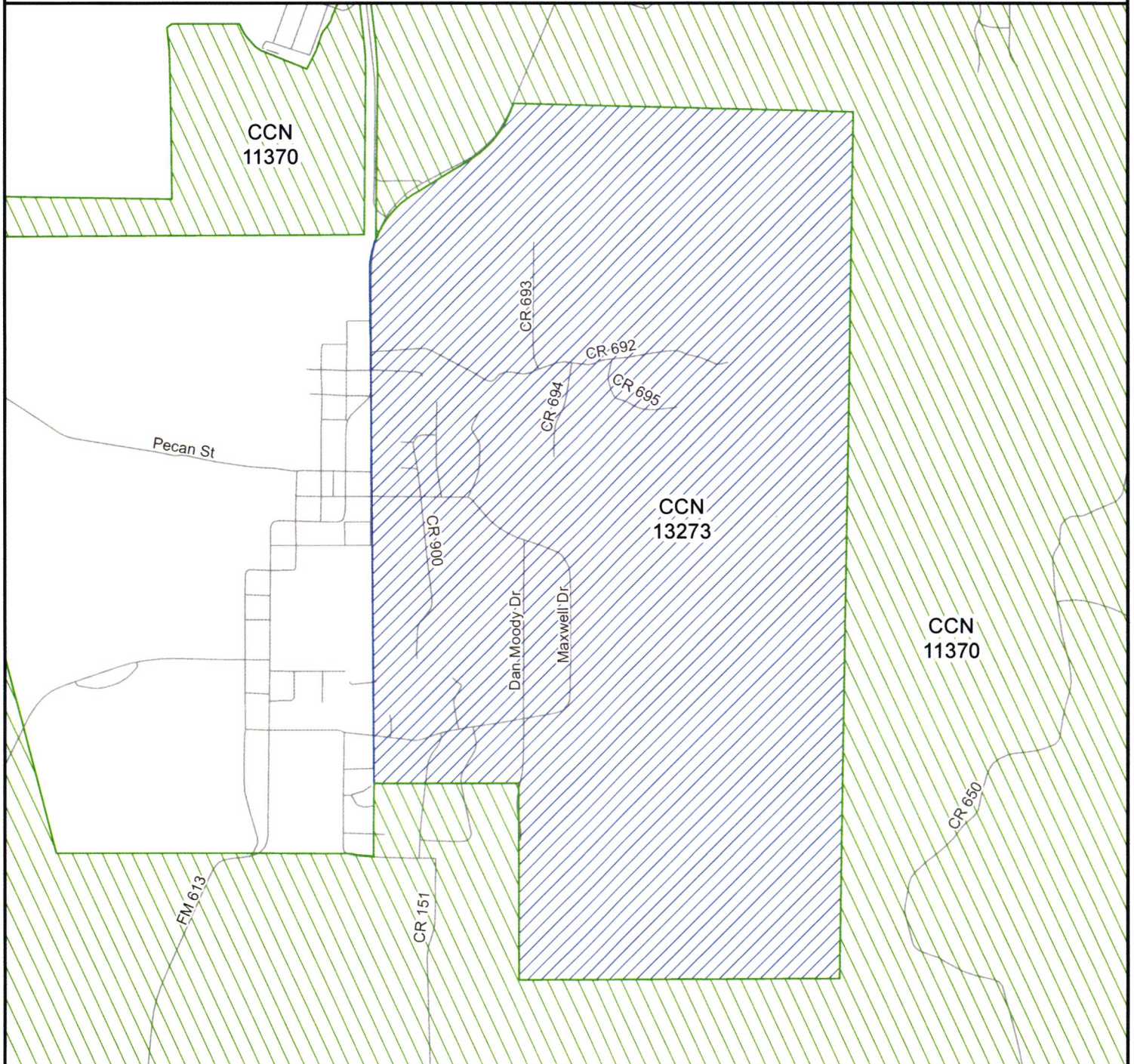
Signed at Austin, Texas the 10th day of February 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

Town of Buffalo Gap
Water CCN No. 13273
PUC Docket No. 48565
Transferred a Portion of Aqua Texas, Inc., CCN No. 13201 and
Obtained a New Water CCN in Taylor County



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

Water CCN



13273 - Town of Buffalo Gap



11370 - Steamboat Mountain WSC

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Feet



Map by: Komal Patel
Date created: December 2, 2020
Project Path: n:\finalmapping\
48565TownofBuffaloGap.mxd



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Aqua Texas, Inc.

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

Certificate of Convenience and Necessity No. 13201

to provide continuous and adequate water utility service to that service area or those service areas in Anderson, Bosque, Camp, Cherokee, Cooke, Denton, Erath, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Marion, McLennan, Parker, Smith, Somervell, Tarrant, Wise, and Wood Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48565 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 Aqua Texas, Inc. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 10th day of February 2021



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Town of Buffalo Gap

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, Town of Buffalo Gap is entitled to this

Certificate of Convenience and Necessity No. 13273

to provide continuous and adequate water utility service to that service area or those service areas in Taylor County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48565 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 Town of Buffalo Gap 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 10th day of February 2021