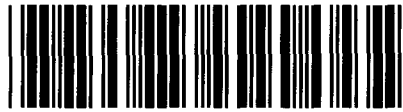




Control Number: 48680



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DOCKET NO. 48680



**APPLICATION OF BLUEBONNET  
HILLS WATER SUPPLY  
CORPORATION AND THE CITY OF  
CRESSON FOR SALE, TRANSFER,  
OR MERGER OF FACILITIES AND  
CERTIFICATE RIGHTS IN PARKER  
AND JOHNSON COUNTY**

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**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

**AGREED SUPPLEMENTAL MOTION TO ADMIT EVIDENCE AND PROPOSED  
NOTICE OF APPROVAL**

**COMES NOW**, the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Supplemental Joint Motion to Admit Evidence and Proposed Notice of Approval, with the agreement of Bluebonnet Hills Water Supply Corporation (Bluebonnet) and the City of Cresson (the City), (collectively, Parties). In support thereof, Staff shows the following:

**I. BACKGROUND**

On September 12, 2018, Bluebonnet and the City filed an application for sale, transfer, or merger of facilities and certificate rights in Parker and Johnson counties, Texas. Specifically, the City seeks approval to acquire facilities and to transfer water service area from Bluebonnet under water Certificate of Convenience and Necessity (CCN) No. 12290. The requested area includes approximately 436 acres and 164 connections. The Applicants filed supplemental information on September 27, 2018 and December 7, 2018.

On July 22, 2019, the instant docket was referred to the State Office of Administrative Hearings (SOAH). On September 5, 2019, the SOAH administrative law judge (ALJ) issued SOAH Order No. 2, finding the Applicants' notice sufficient, cancelling the previously scheduled prehearing conference, and ordering Staff to file a status report by October 4, 2019.

On October 4, 2019, Staff filed a status report requesting an additional 30 days to complete its review of the application. On October 7, 2019, the SOAH ALJ issued Order No. 3, requiring Staff to file a status report by November 4, 2019. On November 1, 2019, Staff filed a Motion to Remand to allow for continued processing of the Applicants' application. On November 5, 2019,

the SOAH ALJ issued Order No. 4, dismissing the docket from SOAH and remanding it to the Commission.

On February 12, 2020, the Commission ALJ issued Order No. 9 Approving Sale and Transfer to Proceed. On March 24, 2020 and March 25, 2020, the Applicants filed the Required Closing Documents and a statement regarding customer deposits. On April 9, 2020, Commission Staff filed a recommendation that the Applicants' closing documents were consistent with applicable Commission rules. On April 13, 2020, the Commission ALJ issued Order No. 10 Finding Closing Documentation Sufficient and Establishing Procedural Schedule.

On May 14, 2020, Commission Staff provided a final map and final certificate to the Applicants for review and consent. On May 28, 2020, the Applicants' filed consent forms concurring with the final map and certificate.

On April 13, 2020, Order No. 10 was issued establishing a deadline of June 11, 2020 for the Parties to jointly file a proposed Notice of Approval, including proposed findings of fact, conclusions of law, and ordering paragraphs. Therefore, this pleading has been timely filed.

## **II. SUPPLEMENTAL JOINT MOTION TO ADMIT EVIDENCE**

The Parties request the entry of the following items into the records of this proceeding;

- (1) Applicants' proof of closing documents, filed on March 24, 2020 and March 25, 2020 (AIS Item Nos. 47 and 48);
- (2) Commission Staff's recommendation on the sufficiency of the closing documents, filed on April 9, 2020 (AIS Item No. 49);
- (3) Applicants' consent forms, filed on May 28, 2020 (AIS Item No. 51); and,
- (4) The attached final map and certificate.

## **III. JOINT PROPOSED NOTICE OF APPROVAL**

The Parties have agreed to the attached Proposed Notice of Approval, which would approve the Applicants' application for the sale and transfer of all of Bluebonnet's water facilities and service area under water CCN No. 12290 to the City, cancel CCN No. 12290, and issue new CCN No. 13284 to the City. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the Notice of Approval.

#### IV. CONCLUSION

The Parties respectfully request that all items listed above be admitted into the record of the proceeding as evidence and that the Commission approve the attached Proposed Notice of Approval.

Dated: June 11, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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s/ Kourtnee Jinks  
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**DOCKET NO. 48680**

**CERTIFICATE OF SERVICE**

“I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on June 11, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.”

s/ Kourtnee Jinks  
Kourtnee Jinks

**DOCKET NO. 48680**

<b>APPLICATION OF BLUEBONNET</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>HILLS WATER SUPPLY</b>	<b>§</b>	
<b>CORPORATION AND THE CITY OF</b>	<b>§</b>	
<b>CRESSON FOR SALE, TRANSFER,</b>	<b>§</b>	
<b>OR MERGER OF FACILITIES AND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CERTIFICATE RIGHTS IN PARKER</b>	<b>§</b>	
<b>AND JOHNSON COUNTY</b>	<b>§</b>	

**PROPOSED NOTICE OF APPROVAL**

This Notice of Approval address the September 12, 2018 application of Bluebonnet Hills Water Supply Corporation (Bluebonnet) and the City of Cresson (the City) for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Parker and Johnson Counties. The Commission approves the sale and transfer of all of Bluebonnet’s facilities and service area under water CCN number 12290 to the City, the cancellation of water CCN number 12290, and the issuance of new water CCN No. 13284 to the City.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Bluebonnet is a non-profit corporation registered with the state of Texas on May 9, 1985, under filing number 75104201.
2. Bluebonnet operates, maintains, and controls facilities for providing retail water service in Johnson and Parker counties under CCN number 12290.
3. Bluebonnet controls facilities that are registered with the Texas Commission on Environmental Quality (TCEQ) under public water system (PWS) identification number 1840086.
4. The City is a municipality in the state of Texas.
5. The City, operating under the name Cresson Water Works, maintains, and controls facilities for providing retail water service under CCN number 11472.

### **Application**

6. On September 12, 2018, Bluebonnet and the City filed the application at issue in this proceeding.
7. Applicants filed supplemental information on September 27 and December 7, 2018, and May 21, July 10, November 1, and December 2, 2019.
8. In the application, the applicants seek approval of the following transaction: (a) the City will acquire all of Bluebonnet's facilities and water service area from Bluebonnet's water CCN number 12290; (b) CCN number 12290 will be cancelled; and (c) a new water CCN, number 13284, will be issued to the City.
9. The requested area is located approximately two miles north of downtown Cresson, and is generally bounded on the north by a line one mile north of the Parker/Johnson county line, on the east by a line three-quarters of a mile east of US Highway 377, on the south by a line 400 feet south of South Skyline Court, and on the west by US Highway 377.
10. The area to be transferred includes 436 acres and 164 current customers.
11. The area to be transferred lies within the City's municipal boundaries.
12. In Order No. 3 filed on February 14, 2019, the administrative law judge (ALJ) found the application administratively complete.

### **Referral to SOAH**

13. On July 22, 2019, this matter was referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.
14. On November 1, 2019, Commission Staff moved to have the case remanded from SOAH to allow for continued processing of the applicants' application on a non-contested basis.
15. In SOAH Order No. 4 filed on November 5, 2019, the SOAH ALJ remanded this matter to the Commission.

### **Notice**

16. Notice of the application appeared in the September 28, 2018 issue of the *Texas Register*.

17. On July 8, 2019, the applicants filed an affidavit, attesting that notice was provided to all current customers of Bluebonnet, neighboring utilities, and affected parties on March 5, 2019.
18. In SOAH Order No. 2 filed on September 5, 2019, the SOAH All found the Applicants' notice sufficient.

**Evidentiary Record**

19. On January 24, 2020, the parties filed an agreed motion to admit evidence.
20. In Order No. 8 issued on February 20, 2020, the ALJ admitted the following evidence into the record:
  - a. The Application, filed on September 12, 2018;
  - b. The applicants' supplement to the Application, filed on September 27, 2018;
  - c. The applicants' supplement to the Application, filed on December 7, 2018;
  - d. The applicants' supplement to the Application, filed on December 2, 2019;
  - e. Commission Staff's supplemental recommendation on administrative completeness, filed on February 14, 2019;
  - f. The applicants' proof of notice and supporting documentation, filed on May 21, 2019 and July 10, 2019;
  - g. Commission Staff's recommendation on notice, filed on July 22, 2019; and
  - h. Commission Staff's recommendation requesting the entry of an order permitting the proposed transaction to proceed, and attachments thereto, filed on December 20, 2019.
21. On June 11, 2020, Commission Staff filed an Agreed Supplemental Motion to Admit Evidence on behalf of the parties.
22. In Order No. 11, issued on \_\_\_\_\_, 2020, the ALJ admitted the following into the record: (a) applicants' proof of closing documents, filed on March 24, 2020 and March 25, 2020; (b) Commission Staff's supplemental recommendation on the sufficiency of the closing documents, filed April 9, 2020; (c) applicants' consent forms, filed on May 28, 2020; and (d) the attached map and certificate.



**Sale**

23. In Order No. 9, issued February 12, 2020, 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.
24. On March 24, 2020 and March 25, 2020, the applicants filed notice that the sale had closed effective as of March 13, 2020 and that Bluebonnet held no customer deposits to transfer as part of the transaction.
25. In Order No. 10, issued April 13, 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(j)(3)(A), (j)(5)(A)**

26. The City has not been subject to any enforcement action by the Commission, the TCEQ, the Texas Department of State Health 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.
27. The City does not have any violations listed in the TCEQ database.
28. There is no evidence that the City has a history of continuing mismanagement or misuse of revenues as a utility service provider.
29. The applicants have demonstrated a compliance status that is adequate for approval of the application.

**Adequacy of Existing Service — TWC § 13.301(c)(1); 16 TAC §§ 24.227(d)(1), (j)(5)(B)**

30. Bluebonnet's PWS number 1840086 has a violation listed in the TCEQ database for insufficient production capacity.
31. Bluebonnet's PWS number 1840086 needs improvements that will be implemented by The City following the transaction. Specifically, the City has obtained approval from the TCEQ to construct a new well to ensure sufficient capacity.
32. Additionally, the City has received a grant from the Texas Department of Agriculture which will fund the necessary improvements.
33. Other than the capacity problem, Bluebonnet's PWS number 1840086, which will be taken

over by the City, is TCEQ-approved and is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the TWC.

34. Once the well is constructed, the PWS will have access to an adequate supply of water.

**Need for Additional Service — TWC § 13.246(c)(2); 16 TAC §§ 24.227(d)(2), 24.239(j)(5)(C)**

35. There are currently 164 existing customers in the requested area who are receiving water from Bluebonnet's PWS number 1840086 and have an ongoing need for service.

36. This is an application to transfer only existing facilities, customers, and service area.

37. There is no evidence in the record indicating a need for additional service.

**Effect of Approving the Transaction and Granting the Amendment — TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)**

38. Bluebonnet and the City are the only utilities affected by this transfer.

39. Any landowners in the area that do not currently receive service from Bluebonnet will need to request service from the City if they require service after the transaction has been completed.

40. The quality of service provided in the area being transferred is expected to improve with the transfer because the City is better qualified to maintain and improve the system.

**Ability to Serve: Managerial and Technical — TWC §§ 13.241(a), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)**

41. The City has a public water system registered with the TCEQ under PWS identification number 1260053 and does not have violations listed in the TCEQ database.

42. The City has a demonstrated history of successfully providing continuous and adequate retail water service since 2004.

43. The City has a TCEQ-licensed operator who will be responsible for the operation of the water utility being transferred.

44. The City has filed documentation demonstrating that the needed improvements to the public water system will be implemented and that the construction of a new well has been approved by the TCEQ.

45. The City has the managerial and technical capability to provide continuous and adequate service to the area being transferred.

**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), (d)(6), 24.239(g), (j)(5)(G)**

46. The City meets at least two out of the five leverage tests: (a) the City has a debt to equity ratio of 0.16, which is less than one; and (b) the City has unrestricted cash available that is greater than two years of debt service.

47. The City demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations, thus meeting the operations test.

48. The City has demonstrated the financial capability and stability to provide continuous and adequate service to the area being transferred.

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

49. There is no need to require the City to provide a bond or other financial assurance to ensure continuous and adequate service.

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

50. Because the requested area will not require construction of a physically separate water system, concerns of regionalization or consolidation are not applicable.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility — TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)**

51. The area being transferred is currently being served by Bluebonnet and there will be no changes to land uses or existing CCN boundaries; therefore, it is not feasible to obtain service from another utility.

**Environmental Integrity — TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H)**

52. The environmental integrity of the land will be minimally affected by the construction of the new well aimed at improving the public water system.

**Effect on the Land — TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)**

53. The integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

**Improvement of Service or Lowering Cost to Consumers — TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)**

54. The City will continue to provide water service to the existing customers in the requested area and will make improvements to better serve the customers.

55. The rates charged to customers will change slightly. Specifically, Cresson will charge the same rates in the area being transferred that it charges to its existing customers. However, even though the city's rate formula is slightly different than Bluebonnet's rate formula, the actual rates paid by the typical customer are expected to be roughly equivalent.

**Certificate and Map**

56. On May 14, 2020, Commission Staff emailed to the applicants the final proposed map and certificate related to this docket.

57. On May 28, 2020, the Applicants filed their consent forms concurring with the final map and certificate.

58. The final map and certificate were filed as an attachment to the proposed Notice of Approval.

59. Bluebonnet has sold and transferred all of its facilities and service area under water CCN No. 12290 to the City.

**Informal Disposition**

60. More than 15 days have passed since the completion of the notice provided in this docket.

61. No person filed a protest or motion to intervene.

62. Bluebonnet, the City, and Commission Staff are the only parties to this proceeding
63. Commission Staff recommended approval of the application.
64. This decision is not adverse to any party.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding pursuant to Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254 and, 13.301.
2. Bluebonnet and the City are currently retail public utilities, as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Upon issuance of the Notice of Approval, Bluebonnet will no longer be a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
4. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a) through (c).
5. The Commission has processed the application as required by the TWC, the Administrative Procedure Act,<sup>1</sup> and Commission Rules.
6. Bluebonnet and the City completed the sale within the time required by 16 TAC § 24.239(o).
7. After consideration of the factors in TWC § 13.246(c), the City has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service in the requested area as required by TWC § 13.301(b).
8. Bluebonnet and the City have demonstrated that the sale of Bluebonnet's water system will serve the public interest and is necessary for the continued service, accommodation, convenience, and safety of the public as required by TWC §§ and 13.246(b), 13.301(d), (e).
9. Bluebonnet must record a certified copy of the certificate granted along with map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Parker and Johnson Counties within 31 days of this Notice of

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<sup>1</sup> Tex. Gov't Code ch. 2001.

Approval and submit to the Commission, evidence of the recording as required by TWC § 13.257 (r) and (s).

10. The requirement 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 orders the following.

1. The Commission approves the City's purchase of Bluebonnet's water facilities and the transfer of Bluebonnet's water service area in Parker and Johnson Counties, Texas to the extent provided in this Notice of Approval.
2. The Commission approves the cancellation of water CCN No. 12290.
3. The Commission approves the map and certificate attached to the Proposed Notice of Approval filed on June 11, 2020.
4. The City must serve every customer and applicant for service within the approved area under water CCN number 13284 that requests water service and otherwise meets the terms for the City's water service, and such service must be adequate and continuous.
5. The City must comply with the recording requirements as provided in TWC § 13.257 (r) and (s) for the areas in Parker and Johnson Counties affected by the application and submit to the Commission evidence of the recording no later than 30 days after the receipt of this Notice of Approval.
6. The Commission denies all other motions and any other requests for general or specific relief, not expressly granted herein.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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**ADMINISTRATIVE LAW JUDGE**