

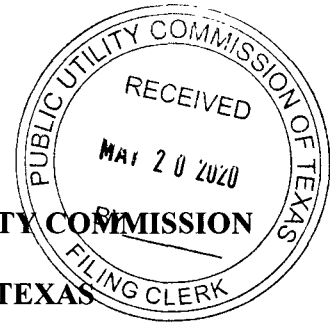
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DOCKET NO. 49386



**APPLICATION OF LAS LOMAS
MUNICIPAL UTILITY DISTRICT
NO. 4B OF KAUFMAN COUNTY AND
LAS LOMAS MUNICIPAL UTILITY
DISTRICT NO. 4 OF KAUFMAN
COUNTY FOR SALE, TRANSFER, OR
MERGER OF SEWER FACILITIES
AND CERTIFICATE RIGHTS IN
KAUFMAN COUNTY**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ORDER NO. 10
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the March 28, 2019, application of Las Lomas Municipal Utility District No. 4A of Kaufman County (Las Lomas 4A), formerly known as Las Lomas Municipal Utility District No. 4 of Kaufman County (Las Lomas 4), and Las Lomas Municipal Utility District No. 4B of Kaufman County (Las Lomas 4B) for approval of the sale, transfer, or merger of facilities and certificate rights in Kaufman County. The applicants seek approval to transfer all of the Las Lomas 4A's sewer certificate of convenience and necessity (CCN) number 21007 to Las Lomas 4B. On January 23, 2020, Commission Staff recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the transaction between applicants may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants and Interested Parties

1. Las Lomas 4 was created by Senate Bill 1894, passed during the 79th Regular Legislative Session, was a conservation and reclamation district created under Section 52, Article III, and Section 59, Article XVI of the Texas Constitution, and operates under Chapters 49 and 54 of the Texas Water Code (TWC).
2. On November 6, 2018, the residents of Las Lomas 4 voted to divide Las Lomas 4 into Las Lomas 4A, Las Lomas 4B, and Las Lomas 4C. As part of the division, Las Lomas 4A

assumed all contracts, agreements, assets, and liabilities, including sewer CCN number 21007.

3. Las Lomas 4A, 4B, and 4C are municipal utility districts created to provide sewer services under certificate of CCN number 21007.
4. Las Lomas 4A, 4B, and 4C have agreed that Las Lomas 4B will serve as the master district.
5. Las Lomas 4A was granted a Texas Commission on Environmental Quality (TCEQ) discharge permit, number WQ0014803001. A regional sewer system that will operate under the permit is being developed.
6. On August 12, 2019, the TCEQ transferred discharge permit number WQ0014803001 to Las Lomas 4B.

Application

7. On March 28, 2019, the applicants filed an application for approval to transfer all of Las Lomas 4A's sewer CCN number 21007 and all of the associated service area to Las Lomas 4B, to be held by Las Lomas 4B as the master district.
8. The applicants filed supplemental information on April 9, June 21, September 10, and November 21, 2019.
9. The requested area includes 6,168 acres and no current connections.
10. The requested area is located approximately five miles east of downtown Terrell, and is generally bounded on the north by United States Highway 80; on the east by Texas State Highway Spur 557; on the south by Farm-to-Market Roads FM 148 and 2578; and on the west by Farm-to-Market Road 1641.
11. In Order No. 6 filed on October 17, 2019, the ALJ found the application administratively complete.

Notice

12. On November 21, 2019, the applicants filed the affidavit of Joshua A. Bethke, attorney for the applicants, attesting that notice was provided to current customers, neighboring utilities, and affected parties on November 20, 2019.
13. In Order No. 7 filed on January 8, 2020, the ALJ found notice sufficient.

Evidentiary Record

14. On March 25, 2020, Commission Staff filed an agreed motion to admit evidence.
15. In Order No. 9 filed on April 14, 2020, the ALJ admitted the following evidence into the record: (a) the application filed on March 28, 2019; (b) the applicants' supplemental filing of maps and CCN boundaries filed on April 9, 2019; (c) the applicants' supplemental information in response to Commission Staff's recommendation on administrative completeness filed on June 21, 2019; (d) the applicants' supplemental information in response to Commission Staff's recommendation on administrative completeness filed on September 10, 2019; (e) Commission Staff's supplemental recommendation on administrative completeness and proposed procedural schedule filed on October 11, 2019; (f) the applicants' affidavit of notice and notices of intent to purchase and transfer sewer service area under CCN number 21007; and (g) Commission Staff's recommendation on the transaction filed on January 23, 2020.

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

16. Las Lomas 4B has not been under an enforcement action by the Commission, the TCEQ, the Texas Department of Health, the Office of the Attorney General, nor the United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.

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

17. There is no existing sewer service in the requested area.

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

18. The requested area is already certificated; therefore, this criterion was not considered.
19. This is an application to transfer only existing facilities, customers, and service area.

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

20. The transaction will transfer the requested area to Las Lomas 4B.
21. Las Lomas 4A, 4B, and 4C are the only entities affected by this transfer.

22. Any landowners in the area that do not currently receive service from Las Lomas 4A will need to request service from Las Lomas 4B if they require service after the transaction has been completed.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), (c), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), 24.239(2), (j)(5)(E)

23. Las Lomas 4B holds TCEQ discharge permit number WQ0014803001 and is capable of meeting the TCEQ's design criteria for sewer treatment plants and the requirements of the TWC.
24. Las Lomas 4B will contract with Inframark, LLC, which employs TCEQ-licensed operators, to operate its sewer system.
25. Las Lomas 4B has the managerial and technical capability to provide continuous and adequate service to the requested area.

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

26. There are currently no other sewer service providers in the adjacent area.
27. The area subject to the transaction is already certificated to Las Lomas 4A.
28. It is not feasible for an adjacent utility to provide service to the requested area.

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(2), (j)(5)(G)

29. Las Lomas 4B has a debt service coverage ratio that is greater than 1.25, which meets the leverage test.
30. Las Lomas 4B has demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations. Specifically, based on the projected income statement for five years, the first year shows a net loss of (\$12,915); however, net operating income before non-cash depreciation positive \$327,469, and years two to five show positive net income. Thus, there are no shortages to cover, which meets the operations test
31. Las Lomas 4B has the financial ability and stability necessary to provide continuous and adequate service to the requested area.

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

32. Serving the future development that is planned in the requested area will require the construction of facilities that cost approximately \$120,715,483.
33. Las Lomas 4B and the developer have executed an agreement under which the developer will finance the construction of the infrastructure needed to provide sewer service, and Las Lomas will reimburse the developer out of bond proceeds.
34. Las Lomas 4B is able to issue debt in the form of bonds to fully reimburse the costs of the sewer infrastructure needed to serve future development the area subject to the transaction.
35. There is no need to require Las Lomas 4B to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

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

36. This criterion was not considered because this transaction is only for the transfer of certificated area. Future construction may minimally affect the environmental integrity and the land.

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

37. This criterion was not considered because this transaction is only for the transfer of certificated area. Future construction may minimally affect the land.

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

38. These criteria were not considered because there are no existing customers and service is not being provided to the requested area in the area subject to the transaction.

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

39. Construction of a new facilities will be necessary for Las Lomas 4B to provide service to the requested area.
40. There are no retail public sewer utilities within one half mile from the outer boundary of the requested area.
41. Las Lomas has complied with the Commission's requirements on regionalization and consolidation.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Las Lomas 4B has demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area, as required by TWC § 13.301(b).
3. Las Lomas 4B and 4A have demonstrated that transferring sewer CCN number 21007 and the associated service area to Las Lomas 4B 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).

III. Ordering Paragraphs

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

1. The transfer is approved and the transaction between applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.109(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that sewer CCN number 21007 will be held by Las Lomas 4A until the transfer transaction is complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.

7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the 20th day of May 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'G. R. Siemankowski', written over a horizontal line.

**GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE**