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APPLICATION OF PERRY WATER §  
 SUPPLY CORPORATION AND §  
 TRI-COUNTY SPECIAL UTILITY §  
 DISTRICT FOR SALE, TRANSFER, OR §  
 MERGER OF FACILITIES AND §  
 CERTIFICATE RIGHTS IN FALLS, §  
 MCLENNAN, ROBERTSON AND §  
 LIMESTONE COUNTIES §

PUBLIC UTILITY COMMISSION

OF TEXAS

PUBLIC UTILITY COMMISSION  
FILING CLERK

**ORDER NO. 9**  
**APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the July 1, 2019, application of Perry Water Supply Corporation and Tri-County Special Utility District for sale, transfer, or merger of facilities and certificate rights in Falls, McLennan, Robertson, and Limestone counties. The applicants seek to transfer all of Perry's facilities and water service area under certificate of convenience and necessity (CCN) number 11129 to Tri-County's water CCN number 10054 and to cancel CCN number 11129. On December 20, 2019, Commission Staff recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Perry WSC is a domestic non-profit corporation registered with the Texas secretary of state on November 21, 1963 under file number 19799001.
2. Perry WSC operates, maintains, and controls facilities that provides water service under CCN number 11129.
3. Perry WSC owns a public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 0730016.
4. Tri-County SUD is a political subdivision of the State of Texas organized under Texas Water Code (TWC) Chapters 49 and 65.

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5. Tri-County SUD operates, maintains, and controls facilities that provides water service under CCN number 10054.
6. Tri-County SUD owns a PWS in Falls County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 0730016.

#### **Application**

7. On July 1, 2019, the applicants filed an application requesting approval for Perry WSC to sell and transfer all of its facilities and water service area under CCN number 11129 to Tri-County SUD.
8. The requested area subject to this transaction is located approximately three miles south of downtown Riesel and is generally bounded on the north by County Road 109, on the east by County Road 120, on the south by County Road 115, and on the west by County Road 110 and County Road 116.
9. The total area affected by the transfer comprises 606 acres and 136 current customers.
10. In Order No. 3 filed on September 27, 2019, the administrative law judge (ALJ) found the application administratively complete.

#### **Notice**

11. On October 11, 2019, Tri-County SUD filed the affidavit of Patricia Ferguson, Tri-County SUD's attorney, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on October 4, 2019.
12. On October 29, 2019, Tri-County SUD filed a copy of the notice mailed to neighboring utilities, county authorities, municipalities, and affected parties and a publisher's affidavit attesting to publication of notice in the *Marlin Democrat*, a newspaper of general circulation in Falls County, on October 9 and October 16, 2019.
13. In Order No. 5 filed on November 1, 2019, the ALJ found the notice sufficient.

#### **Evidentiary Record**

14. On January 17, 2020, the parties filed a joint proposed motion to admit evidence.
15. In Order No. 8 filed on February 12, 2020, the ALJ admitted the following evidence into the record: (a) the application filed on July 1, 2019; (b) supplement to the application filed

on August 23, 2019; (c) Commission Staff's supplemental recommendation on administrative completeness and proposed notice filed on September 20, 2019; (d) Tri-County Special Utility District's proof of notice filed on October 11, 2019; (e) Tri-County Special Utility District's supplement to its proof of notice filed on October 29, 2019; (f) Commission Staff's supplemental recommendation on sufficiency of notice filed on October 31, 2019; (g) Tri-County's response to Commission Staff's first request for information filed on December 13, 2019; and (h) Commission Staff's recommendation on the transaction filed on December 20, 2019.

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

16. The TCEQ database shows unresolved violations for Tri-County SUD's PWS for maximum contamination levels (MCL) of arsenic.
17. Tri-County SUD has been working with the Environmental Protection Agency (EPA) to try to resolve the arsenic violations and submits quarterly status reports to the agency.
18. The EPA has extended Tri-County SUD's deadline to come into compliance with arsenic MCL's to May 31, 2020.
19. Tri-County SUD has demonstrated that it is actively working with the EPA to resolve all arsenic violations.
20. The applicants have demonstrated a compliance status that is adequate for approval of the sale.

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

21. There are approximately 136 existing customers in the requested area that currently receive water service from Perry WSC's public water system.
22. Tri-County SUD currently provides all water used to serve Perry WSC's existing customers through an interconnect.

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

23. The transaction will transfer only existing customers, facilities, and service area.
24. No additional water service is needed in the requested area.

**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)**

25. There is no effect on any retail public utility, other than the applicants, servicing the proximate area.
26. Any landowner in the area that is the subject of the transaction that does not currently receive water service from Perry WSC, and will require service after the transaction has been completed, will need to request water service from Tri-County SUD.
27. Landowners in the area will benefit from the transaction because they will receive an improved level of water service.

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

28. Tri-County SUD's PWS is operated and maintained by an individual with a Class C Water Operator's License issued by the TCEQ.
29. Perry WSC currently purchases all of its water from Tri-County SUD; therefore Tri-County SUD has sufficient capacity to serve Perry WSC's existing customers.
30. Tri-County SUD has the managerial and technical capability to provide continuous and adequate service to the area that is the subject of the transaction.

**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)**

31. Tri-County SUD is already providing all of the water used to serve the area that is the subject of the transaction.
32. 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), (d)(6), and 24.239(g), (j)(5)(G)**

33. Tri-County SUD has a debt to equity ratio of 0.60, which is less than one, and has a debt service-coverage ratio of 2.67, which is greater than 1.25, satisfying the leverage tests.
34. Tri-County SUD has sufficient cash available to cover any projected operations and maintenance shortages during the first five years of operations following the transaction, satisfying the operations test.

35. Tri-County SUD has the financial ability and financial stability necessary to provide continuous and adequate service to the area that is the subject of the transaction.

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

36. There is no need to require Tri-County SUD 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(d)(7), 24.239(j)(5)(H)**

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

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

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

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

39. There will be no change in the rates charged to the existing customers in the requested area.
40. Existing customers will benefit from planned improvements to Tri-County SUD's water system.

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

41. Since Tri-County SUD does not anticipate building any new facilities to continue serving the requested area, regionalization or consolidation is not applicable.

## **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), Tri-County SUD has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
3. Perry WSC and Tri-County SUD have demonstrated that transferring Perry WSC's facilities and water service area held under CCN number 11129 to Tri-County SUD will

serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public. 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 sale 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 certificate of convenience and necessity number 11129 will be held by Perry WSC until the sale and transfer transaction is complete in accordance with the Commission's 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 11<sup>th</sup> day of March 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**

A handwritten signature in black ink, appearing to read 'Steven Leary', is written over a horizontal line.

**STEVEN LEARY**  
**ADMINISTRATIVE LAW JUDGE**

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