



Control Number: 49691



Item Number: 42

Addendum StartPage: 0



**DOCKET NO. 49691**

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

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

### **NOTICE OF APPROVAL**

This Notice of Approval addresses the application of Perry Water Supply Corporation and Tri-County Special Utility District for the sale, transfer, or merger of facilities and certificate rights in Falls county. The Commission approves the sale and transfer of all of Perry WSC's facilities and water service area under certificate of convenience and necessity (CCN) number 11129 to Tri-County SUD, the cancellation of water CCN number 11129, and the amendment of Tri-County SUD's water CCN number 10054 to include the area previously included in Perry WSC's CCN number 11129.

#### **I. Findings of Fact**

The Commission makes the following findings of fact.

##### **Applicants**

1. Perry WSC is a Texas non-profit corporation registered with the Texas secretary of state under file number 19799001.
2. Perry WSC operates, maintains, and controls facilities for providing water service in Falls county under CCN number 11129.
3. Perry WSC owns a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under public water system 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.
5. Tri-County SUD operates, maintains, and controls facilities that provide water service under CCN number 10054.

6. Tri-County SUD owns a public water system registered with the TCEQ under public water system identification number 0730004.

**Application**

7. On July 1, 2019, the applicants filed the application at issue in this proceeding.
8. The applicants filed supplemental information on August 23 and December 13, 2019.
9. In the application, the applicants seek approval of the following transaction: (a) Tri-County SUD will acquire all of Perry WSC's facilities and water service area under CCN number 11129; (B) Perry WSC's water CCN number 11129 will be cancelled; and (c) Tri-County SUD's water CCN number 10054 will be amended to include the area previously included in Perry WSC's CCN number 11129..
10. The requested area to be transferred 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.
11. The requested area includes 606 acres and 136 current customers.
12. In Order No. 3 filed on September 27, 2019, the administrative law judge (ALJ) found the application administratively complete.

**Notice**

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

**Evidentiary Record**

17. On January 17, 2020, the parties filed a joint proposed motion to admit evidence.
18. 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 SUD's proof of notice filed on October 11, 2019; (e) Tri-County SUD'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 SUD'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.
19. On September 18, 2020, the parties filed a joint proposed notice of approval and supplemental motion to admit evidence.
20. On September 23, 2020, the parties filed a corrected agreed motion to admit evidence.
21. In Order No. 13 filed on November 18, 2020, the ALJ admitted the following evidence into the record: (a) Applicants' report on completion of transfer filed on June 10, 2020; (b) Commission Staff's recommendation on sufficiency of the closing documents filed on June 25, 2020; (c) Applicants' consent forms filed on September 16, 2020; and (d) the final map and certificate filed on September 23, 2020.
22. In Order No. 14 filed on December 3, 2020, the ALJ admitted Tri-County SUD's response to Order No. 13 into the record.

**Sale**

23. In Order No. 9 filed on March 11, 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 June 10, 2020, the applicants filed a report of completion of transfer confirming that the sale had closed effective May 13, 2020, and that all deposit funds were transferred to Tri-County SUD as of May 21, 2020.

25. In Order No. 10 filed on July 2, 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. Perry WSC's public water system identification number 0730016 has violations listed in the TCEQ's database concerning maximum contaminant levels of arsenic.

27. Tri-County SUD's public water system identification number 0730004 has violations listed in the TCEQ's database concerning maximum contaminant levels of arsenic.

28. Tri-County SUD has been working with the United States Environmental Protection Agency (EPA) to try to resolve its arsenic violations and submits quarterly status reports to the agency.

29. On October 9, 2020, Tri-County SUD requested an extension from the EPA of the deadline to come into compliance with EPA's maximum contaminant levels for arsenic.

30. Tri-County SUD has been attempting to secure surface water to blend with groundwater to return to compliance with EPA's maximum contaminant levels for arsenic.

31. Tri-County SUD demonstrated that it is actively working with the EPA to resolve its arsenic violations.

32. There is no evidence that Tri-County SUD has a history of continuing mismanagement or misuse of revenues as a utility service provider.

33. Tri-County SUD 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(e)(1), 24.239(h)(5)(A)**

34. There are approximately 136 existing customers in the requested area that currently receive water service from Perry WSC's public water system.

35. Tri-County SUD currently provides all water used to serve Perry WSC's existing customers through an interconnection.

36. Other than the arsenic maximum contaminant level violation, Tri-County SUD's public water system number 0730004, which currently provides water to Perry WSC's public water system number 0730016 through an interconnection, is capable of providing continuous and adequate service to the requested area.

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

37. There are currently 136 existing customers in the requested area that are receiving water service from Perry WSC's public water system number 0730016 and have an ongoing need for service.

38. The application is to transfer only existing facilities, customers, and service area.

39. 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(e)(3), 24.239(h)(5)(C)*

40. Perry WSC and Tri-County SUD are the only utilities affected by this transfer.

41. Any landowner in the requested area that does not currently receive water service from Perry WSC will need to request water service from Tri-County SUD if they require service after the transaction has been completed.

42. The quality of service provided in the requested area is expected to improve with the transfer because Tri-County SUD is working to achieve compliance with the EPA's maximum contaminant levels for arsenic.

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

43. Tri-County SUD has a public water system registered with the TCEQ under public water system identification number 0730004.

44. Perry WSC currently purchases all of its water from Tri-County SUD.

45. Tri-County SUD has a TCEQ-licensed operator who will be responsible for the operation of the public water system being transferred.

46. Tri-County SUD filed documentation demonstrating that it continues to make efforts to implement and construct improvements necessary to achieve compliance with the EPA's maximum contaminant levels for arsenic.

47. Tri-County SUD has access to an adequate supply of water. After construction of the needed improvements, Tri-County SUD will be 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.

48. Tri-County SUD has the managerial and technical capability to provide continuous and adequate 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), and 24.239(e), (h)(5)(F)*

49. Tri-County SUD has a debt-to-equity ratio that is less than one and a debt-service coverage ratio that is greater than 1.25, both of which satisfy the leverage test.
50. Tri-County SUD demonstrated that it 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.
51. Tri-County SUD 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(f)*

52. 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.

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

53. Because the requested area will not require construction of a physically separate water system, consideration of regionalization or consolidation is not required.

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

54. The requested area is currently being served by Perry WSC 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 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)*

55. There may be minimal effect on the land or the environmental integrity of the requested area because additional construction may be necessary to improve Tri-County SUD's public water system identification number 0730004 to return to compliance with the EPA's maximum contaminant levels for arsenic.

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

56. Tri-County SUD will provide water service to the existing customers in the requested area and is working to achieve compliance with the EPA's maximum contaminant levels for arsenic.
57. Tri-County SUD will charge the same rates in the requested area that it charges to its existing customers. The rates paid by customers in the requested are expected to be roughly equivalent to the rates customers paid before the transaction.

**Map and Certificate**

58. On July 15, 2020, Commission Staff emailed to the applicants the proposed final map and certificates related to this docket.
59. On July 22 and September 3, 2020, the applicants filed their consent forms concurring with the map and certificates.
60. The final map and certificate were filed as an attachment to the corrected agreed motion to admit evidence filed on September 23, 2020.

**Informal Disposition**

1. More than 15 days have passed since the completion of notice provided in this docket.
2. No person filed a protest or motion to intervene.
3. Perry WSC, Tri-County SUD, and Commission Staff are the only parties to this proceeding.
4. No party requested a hearing and no hearing is needed.
5. Commission Staff recommended approval of the application.
61. 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, 13.244, 13.246, 13.251, and 13.301.



2. Perry WSC and Tri-County SUD are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Perry WSC is a water supply corporation as defined by TWC § 13.002(24) and 16 TAC § 24.3(40).
4. The applicants provided notice of the application that complies with TWC § 13.301(a)(2) and 16 TAC § 24.239 (a) through (c).
5. The Commission processed the application as required by the TWC, the Administrative Procedure Act,<sup>1</sup> and Commission Rules.
6. Perry WSC and Tri-County SUD completed the sale within the time required by 16 TAC § 24.239(m).
7. Perry WSC and Tri-County SUD complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
8. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Tri-County SUD demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area, as required by TWC § 13.301(b) and 16 TAC § 24.239(e).
9. It is not necessary for Tri-County WSC to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
10. Perry WSC and Tri-County SUD demonstrated that the sale of Perry WSC's public water system and water service area will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d).
11. Tri-County SUD 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 Falls County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording, as required by TWC § 13.257(r) and (s).

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<sup>1</sup> Tex. Gov't Code §§ 2001.001–.903

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 all of Perry WSC's facilities and water service area under certificate of CCN number 11129 to Tri-County, the cancellation of water CCN number 11129, and the amendment of Tri-County SUD's water CCN number 10054 to include the area previously included in Perry WSC's water CCN number 11129, to the extent provided in this Notice of Approval.
2. The Commission issues the certificate attached to this Notice of Approval.
3. The Commission approves the map attached to this Notice of Approval.
4. Tri-County SUD must provide service to every customer or applicant for service within the approved area under water CCN number 10054 that requests water service and meets the terms of Tri-County SUD's water service, and such service must be continuous and adequate.
5. Tri-County SUD must comply with the recording requirements in TWC §§ 13.257(r) and (s) for the areas in Falls County affected by the application and must file evidence of the recording in this docket 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 December 2020.**

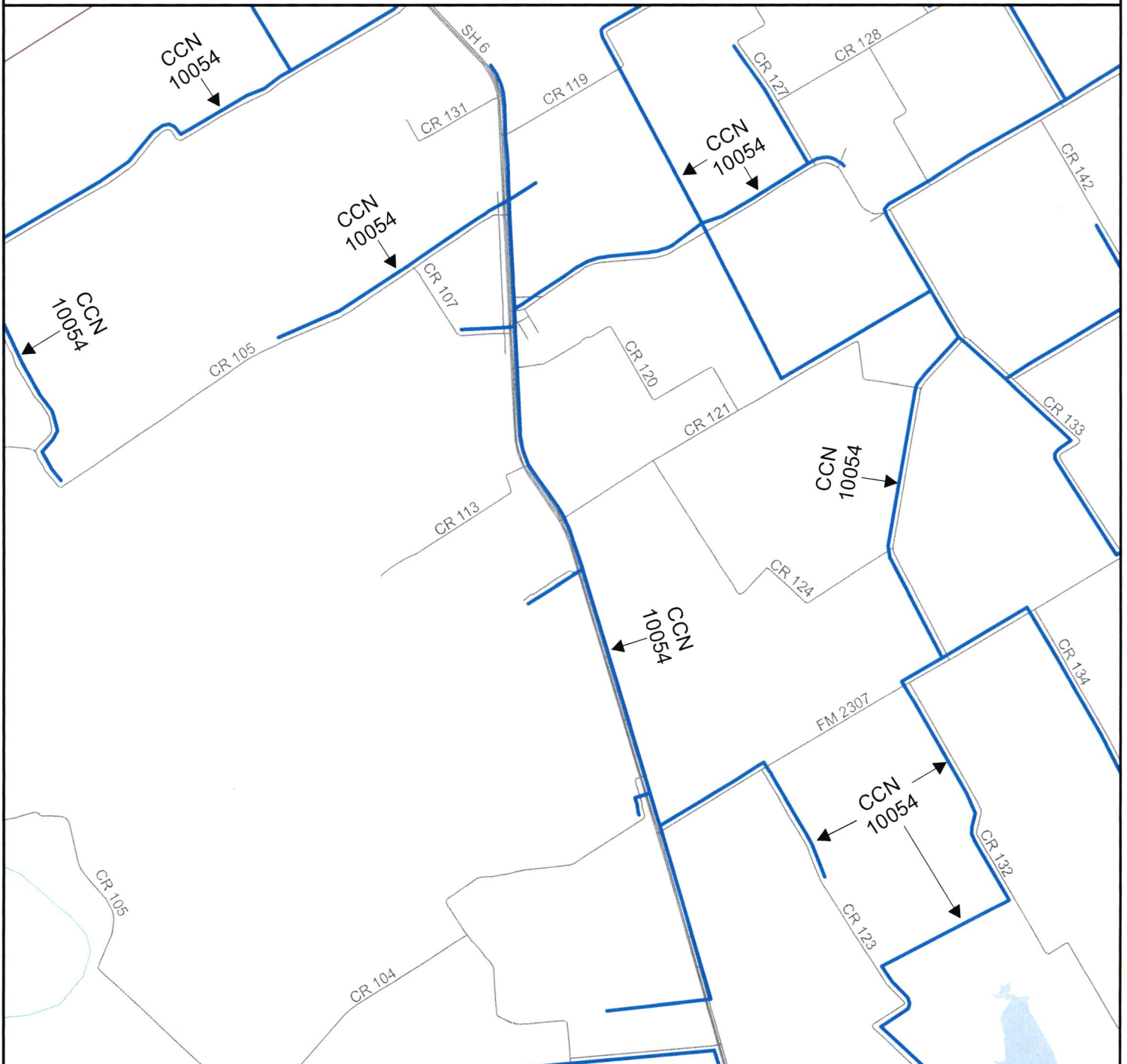
**PUBLIC UTILITY COMMISSION OF TEXAS**



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**ISAAC TA  
ADMINISTRATIVE LAW JUDGE**

Tri County Special Utility District  
Portion of Water Facilities +200'  
CCN No. 10054  
PUC Docket No. 49691  
Transferred all of Perry WSC, CCN No. 11129 in Falls County



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

**Water CCN  
Facilities +200'**

— 10054 - Tri County SUD

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Map by: Komal Patel  
Date created: July 6, 2020  
Project Path: n:\finalmapping\  
49691TriCountySUD.mxd



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

## **Tri-County SUD**

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, Tri-County SUD is entitled to this

### **Certificate of Convenience and Necessity No. 10054**

to provide continuous and adequate water utility service to that service area or those service areas in Falls, Limestone, McLennan, and Robertson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49691 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 Tri-County SUD 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 10<sup>th</sup> day of December 2020.