



Control Number: 49891



Item Number: 1

Addendum StartPage: 0



Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN)

Pursuant to 16 Texas Administrative Code (TAC) Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers, Subchapter G: Certificates of Convenience and Necessity

CCN Application Instructions

- I. **COMPLETE:** In order for the Commission to find the application sufficient for filing, you should be adhere to the following:
- Answer every question and submit all required attachments.
 - Use attachments or additional pages if needed to answer any question. If you use attachments or additional pages, reference their inclusion in the form.
 - Provide all mapping information as detailed in Part F: Mapping & Affidavits.
 - Provide any other necessary approvals from the Texas Commission on Environmental Quality (TCEQ), or evidence that a request for approval is being sought at the time of filing with the Commission.
- II. **FILE:** Seven (7) copies of the completed application with numbered attachments. One copy should be filed with no permanent binding, staples, tabs, or separators; and 7 copies of the portable electronic storage medium containing the digital mapping data.
- SEND TO:** Public Utility Commission of Texas, Attention: Filing Clerk, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 (**NOTE: Electronic documents may be sent in advance of the paper copy; however, they will not be processed and added to the Commission's on-line Interchange until the paper copy is received and file-stamped in Central Records.**)
- III. The application will be assigned a docket number, and an administrative law judge (ALJ) will issue an order requiring Commission Staff to file a recommendation on whether the application is sufficient. The ALJ will issue an order after Staff's recommendation has been filed:
- DEFICIENT (Administratively Incomplete):** Applicant will be ordered to provide information to cure the deficiencies by a certain date (usually 30 days from ALJ's order). **Application is not accepted for filing.**
 - SUFFICIENT (Administratively Complete):** Applicant will be ordered by the ALJ to give appropriate notice of the application using the notice prepared by Commission Staff. **Application is accepted for filing.**
- IV. Once the Applicant issues notice, a copy of the actual notice sent (including any map) and an affidavit attesting to notice should be filed in the docket assigned to the application. Recipients of notice may choose to take one of the following actions:
- HEARING ON THE MERITS:** an affected party may request a hearing on the application. The request must be made within 30 days of notice. If this occurs, the application may be referred to the State Office of Administrative Hearings (SOAH) to complete this request.
 - LANDOWNER OPT-OUT:** A landowner owning a qualifying tract of land (25+ acres) may request to have their land removed from the requested area. The Applicant will be requested to amend its application and file new mapping information to remove the landowner's tract of land, in conformity with this request.
- V. **PROCEDURAL SCHEDULE:** Following the issuance of notice and the filing of proof of notice in step 4, the application will be granted a procedural schedule for final processing. During this time the Applicant must respond to hearing requests, landowner opt-out requests, and requests for information (RFI). The Applicant will be requested to provide written consent to the proposed maps, certificates, and tariff (if applicable) once all other requests have been resolved.
- VI. **FINAL RECOMMENDATION:** After receiving all required documents from the Applicant, Staff will file a recommendation on the CCN request. The ALJ will issue a final order after Staff's recommendation is filed.

FAQ:

Who can use this form?

Any retail public utility that provides or intends to provide retail water or wastewater utility service in Texas.

Who is required to use this form?

A retail public utility that is an investor owned utility (IOU) or a water supply corporation (WSC) must use this form to obtain or amend a CCN prior to providing retail water or sewer utility service in the requested area.

What is the purpose of the application?

A CCN Applicant is required to demonstrate financial, managerial, and technical (FMT) capability to provide continuous and adequate service to any requested area. The questions in the application are structured to support an Applicant's FMT capabilities, consistent with the regulatory requirements.

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Application Summary

Applicant: Mustang Special Utility District

CCN No. to be amended: 11856 and 20930

or ☐ Obtain NEW CCN ☒ Water ☒ Sewer

County(ies) affected by this application: Denton

Dual CCN requested with: _____

CCN No.: _____ (name of retail public utility)
☐ Portion or ☐ All of requested area

Decertification of CCN for: _____

CCN No.: _____ (name of retail public utility)
☒ Portion or ☐ All of requested area

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Please mark the items included in this filing

<input type="checkbox"/> Partnership Agreement	Part A: Question 4
<input type="checkbox"/> Articles of Incorporation and By-Laws (WSC)	Part A: Question 4
<input type="checkbox"/> Certificate of Account Status	Part A: Question 4
<input checked="" type="checkbox"/> Franchise, Permit, or Consent letter	Part B: Question 7
<input type="checkbox"/> Existing Infrastructure Map	Part B: Question 8
<input checked="" type="checkbox"/> Customer Requests For Service in requested area	Part B: Question 9
<input type="checkbox"/> Population Growth Report or Market Study	Part B: Question 10
<input type="checkbox"/> TCEQ Engineering Approvals	Part B: Question 11
<input checked="" type="checkbox"/> Requests & Responses For Service to ½ mile utility providers	Part B: Question 12.B
<input checked="" type="checkbox"/> Economic Feasibility (alternative provider) Statement	Part B: Question 12.C
<input type="checkbox"/> Alternative Provider Analysis	Part B: Question 12.D
<input type="checkbox"/> Enforcement Action Correspondence	Part C: Question 16
<input checked="" type="checkbox"/> TCEQ Compliance Correspondence	Part D: Question 20
<input checked="" type="checkbox"/> Purchased Water Supply or Treatment Agreement	Part D: Question 23
<input type="checkbox"/> Rate Study (new market entrant)	Part E: Question 28
<input type="checkbox"/> Tariff/Rate Schedule	Part E: Question 29
<input checked="" type="checkbox"/> Financial Audit	Part E: Question 30
<input checked="" type="checkbox"/> Application Attachment A & B	Part E: Question 30
<input type="checkbox"/> Capital Improvement Plan	Part E: Question 30
<input type="checkbox"/> Disclosure of Affiliated Interests	Part E: Question 31
<input checked="" type="checkbox"/> Detailed (large scale) Map	Part F: Question 32
<input checked="" type="checkbox"/> General Location (small scale) Map	Part F: Question 32
<input checked="" type="checkbox"/> Digital Mapping Data	Part F: Question 32
<input checked="" type="checkbox"/> Signed & Notarized Affidavit	Page 12

Part A: Applicant Information

1. A. Name: Mustang Special Utility District
(individual, corporation, or other legal entity)
☐ Individual ☐ Corporation ☐ WSC ☒ Other: District
- B. Mailing Address: 7985 FM 2931
Aubrey, Texas 76227
Phone No.: (940) 440-9561 Email: cboyd@mustangwater.com
- C. Contact Person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title.
Name: Leonard Dougal Title: Attorney
Mailing Address: Jackson Walker, LLP, 100 Congress Ave. Suite 1100, Austin, TX 78701
Phone No.: (512) 236-2233 Email: ldougal@jw.com
2. If the Applicant is someone other than a municipality, is the Applicant currently paid in full on the Regulatory Assessment Fees (RAF) remitted to the TCEQ?
☒ Yes ☐ No ☐ N/A
3. If the Applicant is an Investor Owned Utility (IOU), is the Applicant current on Annual Report filings with the Commission?
☐ Yes ☒ No If no, please state the last date an Annual Report was filed: _____
4. The legal status of the Applicant is:
☐ Individual or sole proprietorship
☐ Partnership or limited partnership (*attach* Partnership agreement)
☐ Corporation: _____ Charter number (recorded with the Texas Secretary of State): _____
☐ Non-profit, member-owned, member controlled Cooperative Corporation [Article 1434(a) Water Supply or Sewer Service Corporation, incorporated under TWC Chapter 67]
Charter number (as recorded with the Texas Secretary of State): _____
☐ Articles of Incorporation and By-Laws established (*attach*)
☐ Municipally-owned utility
☒ District (MUD, SUD, WCID, FWSD, PUD, etc.)
☐ County
☐ Affected County (a county to which Subchapter B, Chapter 232, Local Government Code, applies)
☐ Other (please explain): _____
5. If the Applicant operates under an assumed name (i.e., any d/b/a), provide the name below:
Name: N/A

Part B: Requested Area Information

6. Provide details on the existing or expected land use in the requested area, including details on requested actions such as dual certification or decertification of service area.

The existing and expected land use in the requested areas is residential development on:
Requested Area 1 for water: Denton Sorrells and Punkadilly Ltd., CADG Crutchfield, CADG Sutton Fields,
Requested Area 1a and 1b: CADG Crutchfield and CADG Sutton Fields
Requested area 2: Shahan Prairie

See Attachments under Part B.6. for details on land use and requested action.

7. The requested area (check all applicable):

☒ Currently receives service from the Applicant ☒ Is being developed with no current customers

☒ Overlaps or is within municipal boundaries ☐ Overlaps or is within district boundaries

Municipality: City of Celina; City of Little Elm District: _____

Provide a copy of any franchise, permit, or consent granted by the city or district. If not available please explain:

Some of Requested Area 1 overlaps with the city limits of the City of Celina; In July, 2017, Mustang SUD and City of Celina signed an Interlocal Agreement for Billing Services and Provisions of Retail Water Service between Mustang SUD and The City of Celina, Texas. (See Attachment Part B.7.1)

Some of the Requested Area 2 overlaps with the city limits of the City of Little Elm; Mustang SUD already provides service within the city limits because the City of Little Elm is unable to serve due to the intervening lake. Mustang SUD and Shahan Prairie, L.P. have a Non-Standard Service Contract for Phase 1 and Future Phases that cover this area ((See Attachment Part B.7.2).

8. Describe the circumstances (economic, environmental, etc.) driving the need for service in the requested area:

The landowners have requested water service from Mustang SUD. Such Services will economically benefit the land and region by allowing the area to develop into a residential subdivision. See Attachment B.9 (referenced below) for copies of applicable requests for service and or NSAs.

9. Has the Applicant received any requests for service within the requested area?

☒ Yes* ☐ No *Attach copies of all applicable requests for service and show locations on a map
See Attachments Part B.9.1 and Part B.9.2

10. Is there existing or anticipated growth in the requested area?

☒ Yes* ☐ No *Attach copies of any reports and market studies supporting growth - Mustang SUD has no reports or studies but growth is evidenced by the requests listed in B.9 above.

11. A. Will construction of any facilities be necessary to provide service to the requested area?

☒ Yes* ☐ No *Attach copies of TCEQ approval letters NA

B. Date Plans & Specifications or Discharge Permit App. submitted to TCEQ: Construction needed is mostly minor or internal facility changes that are exempt from TCEQ Plan & Specifications review.

- C. Summarize an estimated timeline for construction for any required facilities to serve the requested area:

Construction is done as needed by the builder or developer of the subdivision.

- D. Describe the source and availability of funds for any required facilities to serve the requested area:

Builders or developers will build internal facilities for the subdivisions.

Note: Failure to provide applicable TCEQ construction or permit approvals, or evidence showing that the construction or permit approval has been filed with the TCEQ may result in the delay or possible dismissal of the application.

12. A. If construction of a physically separate water or sewer system is necessary, provide a list of all retail public water and/or sewer utilities within one half mile from the outer boundary of the requested area below:

There will be no separate facilities constructed.

- B. Did the Applicant request service from each of the above water or sewer utilities?

☐ Yes*

☒ No

*Attach copies of written requests and copies of the written response

- C. Attach a statement or provide documentation explaining why it is not economically feasible to obtain retail service from the water or sewer retail public utilities listed above.
- D. If a neighboring retail public utility agreed to provide service to the requested area, attach documentation addressing the following information:
- (A) A description of the type of service that the neighboring retail public utility is willing to provide and comparison with service the applicant is proposing;
 - (B) An analysis of all necessary costs for constructing, operating, and maintaining the new facilities for at least the first five years of operations, including such items as taxes and insurance; and
 - (C) An analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility for at least the first five years of operations.

13. Explain the effect of granting the CCN request on the Applicant, any retail public utility of the same kind serving in the proximate area, and any landowners in the requested area. The statement should address, but is not limited to, regionalization, compliance, and economic effects.

See response in Attachment Part B.13

Part C: CCN Obtain or Amend Criteria Considerations

14. Describe the anticipated impact and changes in the quality of retail utility service for the requested area:

Mustang SUD is currently provided water and sewer services to these areas and the quality of retail utility service will not change. See Attachment Part C.14 for additional information.

15. Describe the experience and qualifications of the Applicant in providing continuous and adequate retail service:

See response in Attachment Part C.15

16. Has the Applicant been under an enforcement action by the Commission, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG), or the Environmental Protection Agency (EPA) in the past five (5) years for non-compliance with rules, orders, or state statutes?

☐ Yes* ☒ No

*Attach copies of any correspondence with the applicable regulatory agency concerning any enforcement actions, and attach a description of any actions or efforts the Applicant has taken to comply with these requirements.

17. Explain how the environmental integrity of the land will or will not be impacted or disrupted as a result of granting the CCN as requested:

Granting the proposed CCN amendment will allow the area to receive service from Mustang SUD and to be developed in the manner requested by the landowners. The proposed areas currently contain 582 5/8" water residential connections, four 1" connections and three 1.5" water connection and 582 sewer connections. Growth in the area is anticipated of additional residential customers, currently estimated at approximately 1931 proposed water connections sewer connections over the next 4 years. Additionally, an organized water and wastewater utility will provide better environmental protection than if the land is developed with individual wells and septic systems per lot.

18. Has the Applicant made efforts to extend retail water or sewer utility service to any economically distressed area located within the requested area?

N/A - no requests of this nature have been received by the Applicant at this time.

19. List all neighboring water or sewer retail public utilities, cities, districts (including ground water conservation districts), counties, or other political subdivisions (including river authorities) providing the same service located within two (2) miles from the outer boundary of the requested area:

See Attachment Part C.19.

Part D: TCEQ Public Water System or Sewer (Wastewater) Information

20. A. Complete the following for all Public Water Systems (PWS) associated with the Applicant's CCN:

TCEQ PWS ID:	Name of PWS:	Date of TCEQ inspection*:	Subdivisions served:
0610036	Mustang SUD	2/8/2019	N/A
0610226	Mustang SUD Light Ranch Estates	1/30/2017	N/A
0610200	Countryview Estates	1/30/2017	N/A
0610022	Midway Water Utility	2/8/2017	N/A

*Attach evidence of compliance with TCEQ for each PWS
See Attachment Part 20.A

- B. Complete the following for all TCEQ Water Quality (WQ) discharge permits associated with the Applicant's CCN:

TCEQ Discharge Permit No:	Date Permit expires:	Date of TCEQ inspection*:	Subdivisions served:
WQ- 0015536001	10/1/2021		N/A
WQ- Other wastewater is			
WQ- treated by Upper Trinity			
WQ- Regional Water District			

*Attach evidence of compliance with TCEQ for each Discharge Permit

- C. The requested CCN service area will be served via: PWS ID: 0610036
WQ - 0015536001 at Requested Area 1
See Attachment Part D.20.A and 20.B

21. List the number of existing connections for the PWS & Discharge Permit indicated above (Question 20. C.):

Water				Sewer	
	Non-metered		2"	582	Residential
582	5/8" or 3/4"		3"		Commercial
4	1"		4"		Industrial
3	1 1/2"		Other		Other
Total Water Connections:			582	Total Sewer Connections:	582

22. List the number of additional connections projected for the requested CCN area:

Water				Sewer	
	Non-metered		2"	1,931	Residential
1,931	5/8" or 3/4"		3"		Commercial
	1"		4"		Industrial
	1 1/2"		Other		Other
Total Water Connections:			1,931	Total Sewer Connections:	£ 1,931

23. A. Will the system serving the requested area purchase water or sewer treatment capacity from another source?

☒ Yes* ☐ No

*Attach a copy of purchase agreement or contract.

Capacity is purchased from:

See Attachment Part D.23.A for a recent Upper Trinity Regional Water District Billing Statement -Contracts are too voluminous to attach here.

Water: Upper Trinity Regional Water

Sewer: Upper Trinity Regional Water

B. Are any of the Applicants PWS's required to purchase water to meet the TCEQ's minimum capacity requirements or TCEQ's drinking water standards?

☒ Yes ☐ No

C. What is the amount of supply or treatment purchased, per the agreement or contract? What is the percent of overall demand supplied by purchased water or sewer treatment (if any)?

	Amount in Gallons	Percent of demand
Water:	4.48	70%
Sewer:	2.73	95%

24. Does the PWS or sewer treatment plant have adequate capacity to meet the current and projected demands in the requested area?

☒ Yes ☐ No

25. List the name, class, and TCEQ license number of the operators that will be responsible for the operations of the water or sewer utility service provided to the requested area:

Name (as it appears on license)	Class	License No.	Water/Sewer
See Attachment Part D.25 for License Information			

26. A. Are any improvements required for the existing PWS or sewer treatment plant to meet TCEQ or Commission standards?

☒ Yes ☐ No

B. Provide details on each required major capital improvement necessary to correct deficiencies to meet the TCEQ or Commission standards (attach any engineering reports or TCEQ approval letters):

Description of the Capital Improvement:	Estimated Completion Date:	Estimated Cost:
See Attachment Part D.26.B for the most recent Engineer's Report		

27. Provide a map (or maps) showing all facilities for production, transmission, and distribution, and the location of existing or proposed customer connections, in the requested area. Facilities should be identified on subdivision plats, engineering planning maps, or other large scale maps. Color coding can be used, and is encouraged, to distinguish types of facilities.

Not applicable. All new facilities will be minor extensions of Mustang SUD's existing regional water and sewer facilities.

Part E: Financial Information

28. If the Applicant seeking to obtain a CCN for the first time is an Investor Owned Utility (IOU) and under the original rate jurisdiction of the Commission, a proposed tariff must be attached to the application. The proposed rates must be supported by a rate study, which provides all calculations and assumptions made. Once a CCN is granted, the Applicant must submit a rate filing package with the Commission within 18 months from the date service begins. The purpose of this rate filing package is to revise a utility's tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. It is the Applicant's responsibility in any future rate proceeding to provide written evidence and support for the original cost and installation date of all facilities used and useful for providing utility service. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the Commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes.

29. If the Applicant is an existing IOU, please attach a copy of the current tariff and indicate:

A. Effective date for most recent rates: _____

B. Was notice of this increase provided to the Commission or a predecessor regulatory authority?

☐ No

☐ Yes

Application or Docket Number: _____

C. If notice was not provided to the Commission, please explain why (ex: rates are under the jurisdiction of a municipality)

If the Applicant is a Water Supply or Sewer Service Corporation (WSC/SSC) and seeking to obtain a CCN, attach a copy of the current tariff.

30. **Financial Information**

SEE ATTACHMENT PART E.30 2018 COMPREHENSIVE ANNUAL FINANCIAL REPORT

Applicants must provide accounting information typically included within a balance sheet, income statement, and statement of cash flows. If the Applicant is an existing retail public utility, this must include historical financial information and projected financial information. However, projected financial information is only required if the Applicant proposes new service connections and new investment in plant, or if requested by Commission Staff. If the Applicant is a new market entrant and does not have its own historical balance sheet, income statement, and statement of cash flows information, then the Applicant should establish a five-year projection.

Historical Financial Information may be shown by providing any combination of the following that includes necessary information found in a balance sheet, income statement, and statement of cash flows:

1. Completed Appendix A;
2. Documentation that includes all of the information required in Appendix A in a concise format; or
3. Audited financial statements issued within 18 months of the application filing date. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

Projected Financial Information may be shown by providing any of the following:

1. Completed Appendix B;
2. Documentation that includes all of the information required in Appendix B in a concise format;
3. A detailed budget or capital improvement plan, which indicates sources and uses of funds required, including improvements to the system being transferred; or
4. A recent budget and capital improvements plan that includes information needed for analysis of the operations test for the system being transferred and any operations combined with the system. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

31. Attach a disclosure of any affiliated interest or affiliate. Include a description of the business relationship between all affiliated interests and the Applicant.

DO NOT INCLUDE ATTACHMENTS A OR B IF LEFT BLANK

Part F: Mapping & Affidavits See Attachments Part F.32.1, Part F.32.2, Part F.32.3iii

32. Provide the following mapping information with each of the seven (7) copies of the application:

1. A general location (small scale) map identifying the requested area in reference to the nearest county boundary, city, or town. The Applicant should adhere to the following guidance:
 - i. If the application includes an amendment for both water and sewer certificated service areas, separate maps must be provided for each.
 - ii. A hand drawn map, graphic, or diagram of the requested area is not considered an acceptable mapping document.
 - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
2. A detailed (large scale) map identifying the requested area in reference to verifiable man-made or natural landmarks such as roads, rivers, and railroads. The Applicant should adhere to the following guidance:
 - i. The map should be clearly labeled and the outer boundary of the requested area should be marked in reference to the verifiable man-made or natural landmarks. These verifiable man-made and/or natural landmarks must be labeled and marked on the map as well.
 - ii. If the application includes an amendment for both water and sewer certificated service area, separate maps need to be provided for each.
 - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
3. One of the following identifying the requested area:
 - i. A metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor. Please refer to the mapping guidance in part 2 (above);

- ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part 2 (above); or
- iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
 - a. The digital mapping data must correspond to the same requested area as shown on the general location and detailed maps. The requested area must be clearly labeled as either the water or sewer requested area.
 - b. A shapefile should include six files (.dbf, .shp, .shx, .sbx, .sbn, and the projection (.prj) file).
 - c. The digital mapping data shall be filed on a data disk (CD or USB drives), clearly labeled, and filed with Central Records. Seven (7) copies of the digital mapping data is also required.

Part G: Notice Information

The following information will be used to generate the proposed notice for the application.
DO NOT provide notice until the application is deemed sufficient for filing and the Applicant is ordered to provide notice.

33. Complete the following using verifiable man-made and/or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from the outermost boundary of the requested area:

The total acreage of the requested area is approximately: 1,013

Number of customer connections in the requested area: 376

The closest city or town: Prosper, TX

Approximate mileage to closest city or town center: 5

Direction to closest city or town: southeast

The requested area is generally bounded on the North by: FM 428

on the East by: Smiley Road

on the South by: Parvin Road

on the West by: FM 1385

34. A copy of the proposed map will be available at 7985 FM 2931, Aubrey, Texas 76227; Telephone (940) 440-9561

- ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part 2 (above); or
- iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
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Part G: Notice Information

The following information will be used to generate the proposed notice for the application.
DO NOT provide notice until the application is deemed sufficient for filing and the Applicant is ordered to provide notice.

33. Complete the following using verifiable man-made and/or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from the outermost boundary of the requested area:

The total acreage of the requested area is approximately: 115

Number of customer connections in the requested area: 86

The closest city or town: Prosper, TX

Approximate mileage to closest city or town center: 5

Direction to closest city or town: southeast

The requested area is generally bounded on the North by: FM 428

on the East by: Smiley Road

on the South by: Parvin Road

on the West by: FM 1385

34. A copy of the proposed map will be available at 7985 FM 2931, Aubrey, Texas 76227; Telephone (940) 440-9561

MSUD SEWER CCN No. 20930 REQUESTED AREA - TRACT 1B

- ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part 2 (above); or
- iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
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 - c. The digital mapping data shall be filed on a data disk (CD or USB drives), clearly labeled, and filed with Central Records. Seven (7) copies of the digital mapping data is also required.

Part G: Notice Information

The following information will be used to generate the proposed notice for the application.
DO NOT provide notice until the application is deemed sufficient for filing and the Applicant is ordered to provide notice.

33. Complete the following using verifiable man-made and/or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from the outermost boundary of the requested area:

The total acreage of the requested area is approximately: 493

Number of customer connections in the requested area: 287

The closest city or town: Prosper, TX

Approximate mileage to closest city or town center: 5

Direction to closest city or town: southeast

The requested area is generally bounded on the North by: FM 428

on the East by: Smiley Road

on the South by: Parvin Road

on the West by: FM 1385

34. A copy of the proposed map will be available at 7985 FM 2931, Aubrey, Texas 76227; Telephone (940) 440-9561

MSUD WATER CCN No. 11856 REQUESTED AREA - TRACT 2

- ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part 2 (above); or
- iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
 - a. The digital mapping data must correspond to the same requested area as shown on the general location and detailed maps. The requested area must be clearly labeled as either the water or sewer requested area.
 - b. A shapefile should include six files (.dbf, .shp, .shx, .sbx, .sbn, and the projection (.prj) file).
 - c. The digital mapping data shall be filed on a data disk (CD or USB drives), clearly labeled, and filed with Central Records. Seven (7) copies of the digital mapping data is also required.

Part G: Notice Information

The following information will be used to generate the proposed notice for the application.
DO NOT provide notice until the application is deemed sufficient for filing and the Applicant is ordered to provide notice.

33. Complete the following using verifiable man-made and/or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from the outermost boundary of the requested area:

The total acreage of the requested area is approximately: 195

Number of customer connections in the requested area: 212

The closest city or town: Oak Point

Approximate mileage to closest city or town center: 2

Direction to closest city or town: west

The requested area is generally bounded on the North by: Lloyd's Road

on the East by: Lake Lewisville

on the South by: Cedar Lane

on the West by: Grouse Ridge Lane

34. A copy of the proposed map will be available at 7985 FM 2931, Aubrey, Texas 76227; Telephone (940) 440-9561

Applicant's Oath

STATE OF TEXAS


COUNTY OF DENTON

I, Chris Boyd being duly sworn, file this application to
obtain or amend a water or sewer CCN, as General Manager, Mustang Special Utility District
(owner, member of partnership, title as officer of corporation, or authorized representative)

I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I further represent that the application form has not been changed, altered, or amended from its original form.

I further represent that the Applicant will provide continuous and adequate service to all customers and qualified applicants within its certificated service area should its request to obtain or amend its CCN be granted.



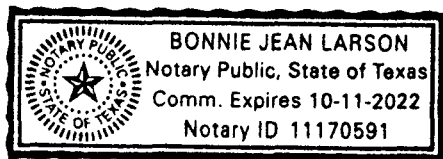
AFFIANT

(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of Texas
this day the 19 of August, 20 19

SEAL





NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

Bonnie Larson

PRINT OR TYPE NAME OF NOTARY

My commission expires: 10-11-2022

Appendix A: Historical Financial Information (Balance Sheet and Income Schedule)

(Audited financial statements may be substituted for this schedule – see item 29 of the instructions)

HISTORICAL BALANCE SHEETS (ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
CURRENT ASSETS						
Cash						
Accounts Receivable						
Inventories						
Other						
A. Total Current Assets						
FIXED ASSETS						
Land						
Collection/Distribution System						
Buildings						
Equipment						
Other						
Less: Accum. Depreciation or Reserves						
B. Total Fixed Assets						
C. TOTAL Assets (A + B)						
CURRENT LIABILITIES						
Accounts Payable						
Notes Payable, Current						
Accrued Expenses						
Other						
D. Total Current Liabilities						
LONG TERM LIABILITIES						
Notes Payable, Long-term						
Other						
E. Total Long Term Liabilities						
F. TOTAL LIABILITIES (D + E)						
OWNER'S EQUITY						
Paid in Capital						
Retained Equity						
Other						
Current Period Profit or Loss						
G. TOTAL OWNER'S EQUITY						
TOTAL LIABILITIES+EQUITY (F + G) = C						
WORKING CAPITAL (A – D)						
CURRENT RATIO (A / D)						
DEBT TO EQUITY RATIO (E / G)						

DO NOT INCLUDE ATTACHMENTS A OR B IF LEFT BLANK

HISTORICAL NET INCOME INFORMATION

(ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
METER NUMBER						
Existing Number of Taps						
New Taps Per Year						
Total Meters at Year End						
METER REVENUE						
Revenue per Meter (use for projections)						
Expense per Meter (use for projections)						
Operating Revenue Per Meter						
GROSS WATER REVENUE						
Revenues- Base Rate & Gallonage Fees						
Other (Tap, reconnect, transfer fees, etc.)						
Gross Income						
EXPENSES						
General & Administrative (see schedule)						
Operating (see schedule)						
Interest						
Other (list)						
NET INCOME						

HISTORICAL EXPENSE INFORMATION (ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
GENERAL/ADMINISTRATIVE EXPENSES						
Salaries & Benefits–Office/Management						
Office (services, rentals, supplies, electricity)						
Contract Labor						
Transportation						
Insurance						
Telephone						
Utilities						
Property Taxes						
Professional Services/Fees (recurring)						
Regulatory- other						
Other (describe)						
Interest						
Other						
Total General Admin. Expenses (G&A)						
% Increase Per Year	0%	0%	0%	0%	0%	0%
OPERATIONS & MAINTENANCE EXPENSES						
Salaries & Benefits (Employee, Management)						
Materials & Supplies						
Utilities Expense-office						
Contract Labor						
Transportation Expense						
Depreciation Expense						
Other(describe)						
Total Operational Expenses (O&M)						
Total Expense (Total G&A + O&M)						
Historical % Increase Per Year	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
ASSUMPTIONS						
Interest Rate/Terms						
Depreciation Schedule (attach)						
Other assumptions/information (List all)						

Appendix B: Projected Information

HISTORICAL BALANCE SHEETS (ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
CURRENT ASSETS						
Cash						
Accounts Receivable						
Inventories						
Income Tax Receivable						
Other						
A. Total Current Assets						
FIXED ASSETS						
Land						
Collection/Distribution System						
Buildings						
Equipment						
Other						
Less: Accum. Depreciation or Reserves						
B. Total Fixed Assets						
C. TOTAL Assets (A + B)						
CURRENT LIABILITIES						
Accounts Payable						
Notes Payable, Current						
Accrued Expenses						
Other						
D. Total Current Liabilities						
LONG TERM LIABILITIES						
Notes Payable, Long-term						
Other						
E. Total Long Term Liabilities						
F. TOTAL LIABILITIES (D + E)						
OWNER'S EQUITY						
Paid in Capital						
Retained Equity						
Other						
Current Period Profit or Loss						
G. TOTAL OWNER'S EQUITY						
TOTAL LIABILITIES+EQUITY (F + G) = C						
WORKING CAPITAL (A - D)						
CURRENT RATIO (A / D)						
DEBT TO EQUITY RATIO (F / G)						

PROJECTED NET INCOME INFORMATION

(ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
METER NUMBER						
Existing Number of Taps						
New Taps Per Year						
Total Meters at Year End						
METER REVENUE						
Revenue per Meter (use for projections)						
Expense per Meter (use for projections)						
Operating Revenue Per Meter						
GROSS WATER REVENUE						
Revenues- Base Rate & Gallonage Fees						
Other (Tap, reconnect, transfer fees, etc.)						
Gross Income						
EXPENSES						
General & Administrative (see schedule)						
Operating (see schedule)						
Interest						
Other (list)						
NET INCOME						

PROJECTED EXPENSE DETAIL	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTALS
GENERAL/ADMINISTRATIVE EXPENSES						
Salaries						
Office						
Computer						
Auto						
Insurance						
Telephone						
Utilities						
Depreciation						
Property Taxes						
Professional Fees						
Other						
Total						
% Increase Per projected Year	0%	0%	0%	0%	0%	0%
OPERATIONAL EXPENSES						
Salaries						
Auto						
Utilities						
Depreciation						
Repair & Maintenance						
Supplies						
Other						
Total						

PROJECTED SOURCES AND USES OF CASH STATEMENTS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTALS
SOURCES OF CASH						
Net Income						
Depreciation (If funded by revenues of system)						
Loan Proceeds						
Other						
Total Sources						
USES OF CASH						
Net Loss						
Principle Portion of Pmts.						
Fixed Asset Purchase						
Reserve						
Other						
Total Uses						
NET CASH FLOW						
DEBT SERVICE COVERAGE						
Cash Available for Debt (CADS)						
A: Net Income (Loss)						
B: Depreciation, or Reserve Interest						
C: Total CADS (A + B = C)						
D: DEBT SERVICE						
Annual Principle Plus Interest						
E: DEBT SERVICE COVERAGE RATIO						
CADS Divided by DS (E = C / D)						

LIST OF ATTACHMENTS

Attachment Part B.6	Requested Area Information
Attachment Part B.6.1	PUC 48700 Denton Sorrells Water CCN Notice of Approval
Attachment Part B.6.2	PUC 48975 Punkadilly Water CCN Notice of Approval
Attachment Part B.6.3a	PUC 44629 Order on Petition of CADG Sutton Fields Water and Sewer CCN Decertification
Attachment Part B.6.3b	PUC 45151 CADG Sutton Fields Water CCN Notice of Approval
Attachment Part B.6.4	PUC 45848 City of Celina/Crutchfield CCN Order
Attachment Part B.7.1	Non-Standard Service Agreement between Mustang SUD and Sutton Fields
Attachment Part B.7.2	Non-Standard Service Agreement between Mustang SUD and Shahan Prairie Lakeview, L.P.
Attachment Part B.9.1	CCN Water and Sewer Service Request from Denton Sorrells LLC
Attachment Part B.9.2	CCN Water and Sewer Service Request from Punkadilly, Ltd.
Attachment Part B.13	Explanation of effect of granting CCN request on the applicant, any retail public utility of the same kind serving in the area and any landowners in the requested area.
Attachment Part C.14	Ability to Provide Adequate Service
Attachment Part C.15	Experience and Qualifications to Provide Service
Attachment Part C.19	List of all neighboring water or sewer retail public utilities, cities, counties, or other political subdivisions, within two miles from out boundary of requested area
Attachment Part D.20.A	Evidence of compliance with TCEQ for each PWS
Attachment Part D.20.B	Startup Notification for water quality facility
Attachment Part D.23.A	Upper Trinity Regional Water District Billing Statement
Attachment Part D.25	Operator License Information
Attachment Part D.26.B	Steger & Bizell Engineer's Report for May 13, 2019, Board Meeting
Attachment Part E.30	Mustang SUD 2018 Comprehensive Annual Financial Report
Attachment Part F.32.1	General Location Maps for Water Requested Areas (RA) 1 and RA 2 and Sewer RA 1A and Sewer RA 1B
Attachment Part F.32.2	Detailed Maps for Water Requested Areas (RA) 1 and RA 2 and Sewer RA 1A and Sewer RA 1B
Attachment Part F.32.3	CD of digital mapping data

ATTACHMENT PART B.6.

Part B.6: Provide details on the existing or expected land use in the requested area, including details on requested actions such as dual certification or decertification of service area.

Requested Area 1 for Water: Requested Area 1 consists of approximately 324.64 acres owned by Denton Sorrells, LLC and approximately 61.58 acres owned by Punkadilly, LTD, both of which have been decertified from Aqua Texas, Inc.'s water CCN No. 13201.

On January 29, 2019, the PUC signed a Notice of Approval in PUC Docket No. 48700 approving Denton Sorrells, LLC's petition to amend Aqua Texas, Inc.'s certificate of convenience and necessity (CCN) No. 13201 by expedited release. The PUC Notice of Approval (see Attachment Part B.6.1) approved the petition and released the 324.64 acres owned by Denton Sorrells, LLC from Aqua Texas, Inc.'s water CCN No. 13201 in Denton County.

On January 29, 2019, the PUC signed a Notice of Approval in PUC Docket No. 48975 approving Punkadilly, LTD's petition to amend Aqua Texas, Inc.'s certificate of convenience and necessity (CCN) 13201 by expedited release. The PUC Notice of Approval (see Attachment Part B.6.2) approved the petition and released the 61.58 acres owned by Punkadilly, LTD from Aqua Texas, Inc.'s water CCN No. 13201 in Denton County.

There are currently no customers and no service being provided in this area. Both of these tracts are already located within the Mustang SUD sewer CCN No. 20930.

Additionally, Requested Area 1 includes the CADG Sutton Fields 494.819-acre tract that was decertified from Mustang SUD water CCN No. 11856 and sewer CCN No. 20930 in Docket No. 44629 (see Attachment Part B.6.3a). Later, the City of Celina in PUC Docket No. 45151 (see Attachment Part B.6.3b) sought PUC approval to provide water and sewer service to this area and was ordered to pay \$258,081 to Mustang SUD prior to serving. The payment has not been made, and the City has chosen to not provide retail water or sewer service to the area. The PUC's mapping database shows the area is currently under no CCN for water or sewer.

Requested Area 1 also includes the CADG Crutchfield 128-acre tract that the City of Celina was allowed to provide water and sewer service to in PUC Docket No. 45848 (see Attachment Part B.6.4). The City of Celina has chosen not to provide retail water or sewer service. The PUC's mapping database shows the area is currently under no CCN for water or sewer.

Homes are already construction or are being built in these area and Mustang is already providing water and sewer service in these two areas.

Requested Area 1A and 1B for Sewer: CADG Sutton Fields is a 494.819-acre tract that was decertified from Mustang SUD water CCN No. 11856 and sewer CCN No. 20930 in Docket No. 44629 (see Attachment Part B.6.3a). Later, the City of Celina in PUC Docket No. 45151 (see

Attachment Part B.6.3b) sought to provide water and sewer service to this area but the PUC's mapping database shows the area is currently under no CCN for water or sewer.

CADG Crutchfield is a 128-acre tract that the City of Celina was allowed to provide water and sewer service to in PUC Docket No. 45848 (see Attachment Part B.6.4) but the PUC's mapping database shows the area is currently under no CCN for water or sewer.

Homes are already construction or are being built in these areas and Mustang is already providing water and sewer service in these two areas.

Requested Area 2 for Water: Shahan Prairie Tract is a 180-acre tract which was decertified from Terra Southwest, CCN No. 11608 TCEQ Application No. 37389-C. Mustang SUD is already providing water service to homes in this area and currently it is within the Mustang SUD sewer CCN No. 20930.

DOCKET NO. 48700

**PETITION OF DENTON SORRELLS,
LLC TO AMEND AQUA TEXAS,
INC.'S CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
DENTON COUNTY BY EXPEDITED
RELEASE**

§
§
§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

2019 JAN 29 PM 2:00

FILED CLERK

NOTICE OF APPROVAL

This Notice of Approval addresses the petition of Denton Sorrells, LLC to amend Aqua Texas, Inc.'s certificate of convenience and necessity (CCN) 13201 by expedited release. The Commission approves the petition and releases 324.64 acres owned by Denton Sorrells from Aqua Texas's water CCN number 13201 in Denton County.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Petitioner

1. Denton Sorrells is a domestic limited liability company registered with the Texas secretary of state on December 2, 2016, under file number 802596138.
2. Denton Sorrells owns 324.64 contiguous acres of land located within the boundaries of Aqua Texas, Inc.'s water CCN number 13201 in Denton County.

Petition

3. In Docket No. 48700 filed on September 19, 2018, Denton Sorrells and Punkadilly, Ltd jointly filed a petition for expedited release of roughly 386 acres land from the service area of Aqua Texas, Inc. CCN number 13201. Of the 386 acres to be released, Denton Sorrells owns 324.64 acres and Punkadilly owns 61.58 acres.
4. On December 3, 2018, Denton Sorrells and Punkadilly jointly filed a motion to sever the joint petition into two separate petitions for expedited release, one for the land owned by Denton Sorrells and the other for the land owned by Punkadilly. An amended petition for

the tract of land owned by Denton Sorrells and a separate petition for the tract of land owned by Punkadilly were attached to the motion to sever.

5. In Order No. 3 in the present docket, issued December 14, 2018, the ALJ granted the motion to sever.
6. The property owned by Denton Sorrells is located in Denton County, which is qualifying county.
7. Denton Sorrells provided a general warranty deed confirming its ownership of the tract of land and maps confirming the land's location.
8. Stephanie Sorrells, registered agent of Denton Sorrells, provided a notarized affidavit signed on September 14, 2018, affirming that the tract of land is owned by Denton Sorrells, is more than 25 acres, is not receiving water or sewer service, is within the boundaries of CCN number 13201 held by Aqua Texas, and is located entirely in Denton County.
9. In Order No. 4 issued January 7, 2019, the ALJ found the petition administratively complete.

Notice

10. On December 3, 2018, Denton Sorrells certified that a true and correct copy of the amended petition was sent via certified mail to Aqua Texas.
11. In Order No. 4 issued on January 7, 2019, the ALJ found the notice sufficient.

Intervention

12. Aqua Texas did not seek to intervene in this proceeding.

Water Service

13. There is no evidence that Aqua Texas has committed or dedicated facilities or lines providing water service to the tract of land.
14. There is no evidence that Aqua Texas has performed acts or supplied anything to the tract of land.

15. Aqua Texas has not committed facilities or lines providing water service to the tract of land.
16. Aqua Texas has not performed acts or supplied anything to the tract of land.
17. The tract of land is not receiving water service from Aqua Texas.

Determination of Useless or Valueless Property

18. There is no evidence that Aqua Texas owns any property that will be rendered useless or valueless by the decertification.

Informal Disposition

19. More than 15 days have passed since the completion of the notice in this docket.
20. Commission Staff and Denton Sorrells are the only parties to this proceeding.
21. There were no protests, motions to intervene, or requests for hearing filed.
22. The granting of the petition will not be adverse to any party; therefore, no hearing is required.
23. No party disputed any issue of law or fact.
24. On January 18, 2019, Commission Staff recommended approval of the petition.

II. Conclusions of Law

1. The Commission has jurisdiction over this petition under Texas Water Code (TWC) § 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 Texas Administrative Code (TAC) §§ 22.55 and 24.245(I).
3. To obtain release under TWC § 13.254(a-5), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving water service.
4. Denton County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(I)

5. The tract of land is not receiving water service from Aqua Texas in accordance with TWC § 13.254(a-5).
6. Because Aqua Texas did not intervene in this case, it can be presumed that no property has been rendered useless or valueless by the decertification; therefore, under TWC § 13.254(d) through (g) and 16 TAC § 24.245(n)(3) no compensation is owed to Aqua Texas.
7. Because no compensation is owed under TWC § 13.254(d) through (g), a retail public utility may render retail water service directly or indirectly to the public in the decertified area without providing compensation to Aqua Texas.
8. Sorrell has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l) by adequately demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving water service.
9. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,¹ and Commission rules.
10. Under TWC § 13.257(r) and (s), Aqua Texas is required to record a certified copy of the approved certificate and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.
11. The requirements for informal disposition in 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 grants the petition and removes the 324-acre tract of land owned by Denton Sorrells from Aqua Texas's water CCN number 13201.

¹ Administrative Procedure Act, Tex. Gov't Code ch. 2001.

2. The Commission amends Aqua Texas's CCN number 13201 in accordance with this Notice of Approval.
3. The Commission's official service area boundary maps for Aqua Texas's CCN will reflect this change, as shown on the attached map.
4. Aqua Texas must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Denton County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice of Approval.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

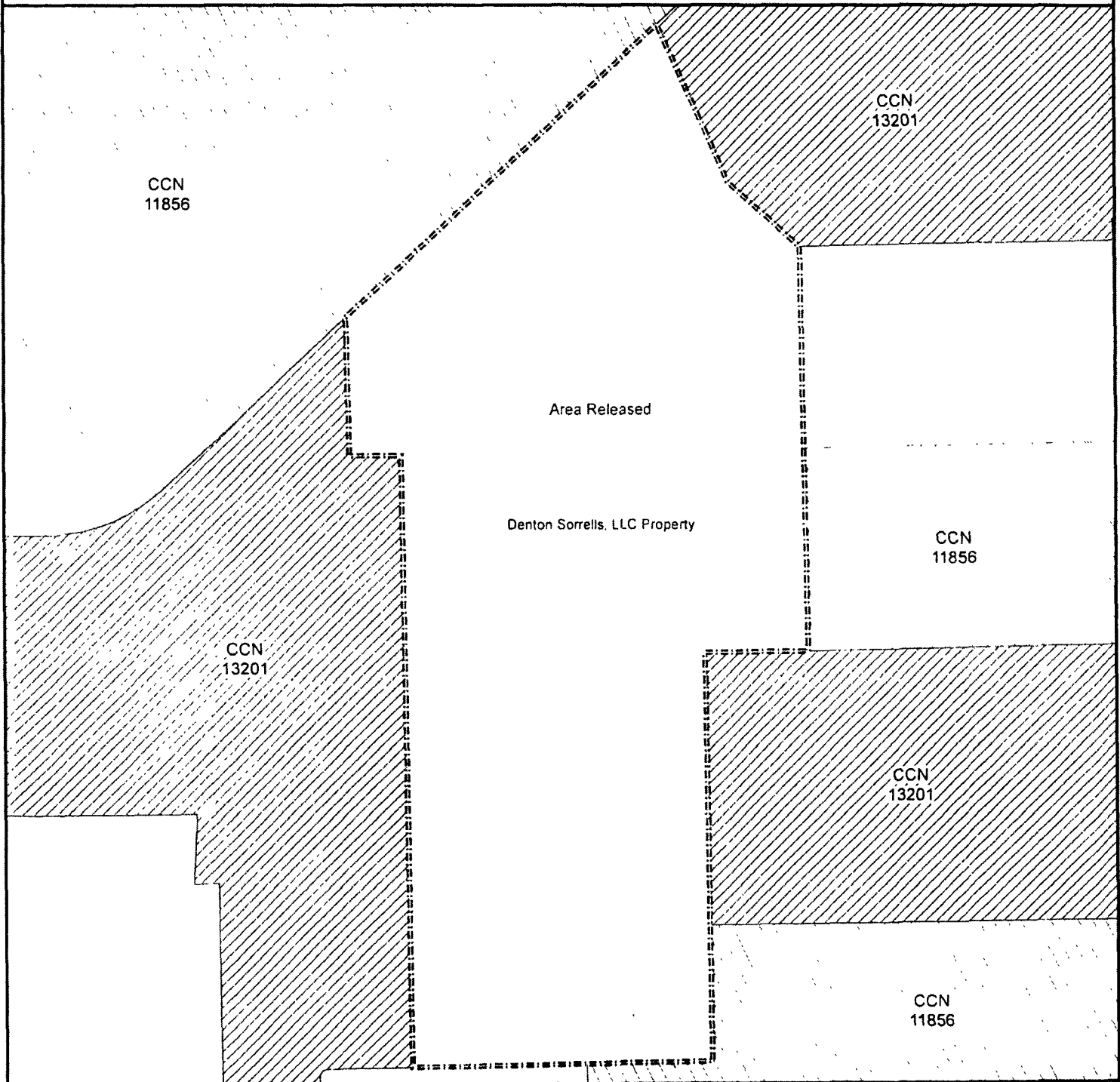
Signed at Austin, Texas the 29th day of January 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE

Q:\CADM\Docket Management\Water\CCN_EXPEDITED\48xxx\48700 NOA.docx

Aqua Texas, Inc.
Portion of Water CCN No. 13201
PUC Docket No. 48700
Petition by Denton Sorrells, LLC to Amend
Aqua Texas, Inc.'s CCN by Expedited Release in Denton County



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

Water CCN



13201 - Aqua Texas Inc



11856 - Mustang SUD



Property Boundary

Area Released

0 450 900
Feet



Map by: Komal Patel
Date created: January 18, 2019
Project Path: n:\finalmap\p\g\48700AquaTX.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 by 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, Collin, Cooke, Denton, Erath, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Kaufman, Marion, McLennan, Parker, Smith, Somervell, Tarrant, Taylor, Wise, and Wood Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48700 are on file at the Commission offices in Austin, Texas; and is a matter 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, the 29th day of January 2019.

PETITION OF PUNKADILLY, LTD. § PUBLIC UTILITY COMMISSION
 TO AMEND AQUA TEXAS, INC.'S §
 CERTIFICATE OF CONVENIENCE § OF TEXAS
 AND NECESSITY IN DENTON §
 COUNTY BY EXPEDITED RELEASE §

NOTICE OF APPROVAL

This Notice of Approval addresses the petition of Punkadilly, LTD to amend Aqua Texas, Inc.'s certificate of convenience and necessity (CCN) 13201 by expedited release. The Commission approves the petition and releases 61.58 acres owned by Punkadilly from Aqua Texas's water CCN number 13201 in Denton County.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Petitioner

1. Punkadilly is a domestic limited liability partnership registered with the Texas secretary of state on September 11, 2002, under file number 800122368.
2. Punkadilly owns 61.58 contiguous acres of land located within the boundaries of Aqua Texas, Inc.'s water CCN number 13201 in Denton County.

Petition

3. In Docket No. 48700 filed on September 19, 2018, Denton Sorrells, LLC and Punkadilly jointly filed a petition for expedited release of roughly 386 acres of land from the service area of Aqua Texas, Inc. CCN number 13201. Of the roughly 386 acres to be released, Denton Sorrells owns roughly 324 acres and Punkadilly owns 61.58 acres.
4. On December 3, 2018, Denton Sorrells and Punkadilly jointly filed a motion to sever the joint petition into two separate petitions for expedited release, one for the land owned by Denton Sorrells and the other for the land owned by Punkadilly. An amended petition for

the tract of land owned by Denton Sorrells and a separate petition for the tract of land owned by Punkadilly were attached to the motion to sever.

5. In Order No. 3 in Docket No. 48700¹ and Order No. 1 in the present docket, issued December 14, 2018, the administrative law judge (ALJ) granted the motion to sever.
6. The property owned by Punkadilly is located in Denton County, which is qualifying county.
7. Punkadilly provided a special warranty deed confirming its ownership of the tract of land and maps confirming the land's location.
8. Stephanie Sorrells, president of Punkadilly, provided a notarized affidavit signed on September 14, 2018, affirming that the tract of land is owned by Punkadilly, is more than 25 acres, is not receiving water or sewer service, is within the boundaries of CCN number 13201 held by Aqua Texas, and is located entirely in Denton County.
9. In Order No. 2, issued January 4, 2019, the ALJ found the petition administratively complete.

Notice

10. On December 3, 2018, Punkadilly certified that a true and correct copy of the petition was sent via certified mail to Aqua Texas.
11. In Order No. 2 issued on January 4, 2019, the ALJ found the notice sufficient.

Intervention

12. Aqua Texas did not seek to intervene in this proceeding.

Water Service

13. There is no evidence that Aqua Texas has committed or dedicated facilities or lines providing water service to the tract of land.
14. There is no evidence that Aqua Texas has performed acts or supplied anything to the tract of land.

¹ *Petition of Denton Sorrells, LLC and Punkadilly Ltd. to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 48700, Order No. 3 (Dec. 14, 2018).

15. Aqua Texas has not committed facilities or lines providing water service to the tract of land.
16. Aqua Texas has not performed acts or supplied anything to the tract of land.
17. The tract of land is not receiving water service from Aqua Texas.

Determination of Useless or Valueless Property

18. There is no evidence that Aqua Texas owns any property that will be rendered useless or valueless by the decertification.

Informal Disposition

19. More than 15 days have passed since the completion of the notice in this docket.
20. Commission Staff and Punkadilly are the only parties to this proceeding.
21. There were no protests, motions to intervene, or requests for hearing filed.
22. The granting of the petition will not be adverse to any party; therefore, no hearing is required.
23. No party disputed any issue of law or fact.
24. On January 23, 2019, Commission Staff recommended approval of the petition.

II. Conclusions of Law

1. The Commission has jurisdiction over this petition under Texas Water Code (TWC) § 13.254(a-5)."
2. Notice of the petition was provided in compliance with 16 Texas Administrative Code (TAC) §§ 22.55 and 24.245(l).
3. To obtain release under TWC § 13.254(a-5), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving water service.
4. Denton County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(l)

5. The tract of land is not receiving water service from Aqua Texas in accordance with TWC § 13.254(a-5).
6. Because Aqua Texas did not intervene in this case, it can be presumed that no property has been rendered useless or valueless by the decertification; therefore, under TWC § 13.254(d) through (g) and 16 TAC § 24.245(n)(3) no compensation is owed to Aqua Texas.
7. Because no compensation is owed under TWC § 13.254(d) through (g), a retail public utility may render retail water service directly or indirectly to the public in the decertified area without providing compensation to Aqua Texas.
8. Punkadilly has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l) by adequately demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving water service.
9. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,² and Commission rules.
10. Under TWC § 13.257(r) and (s), Aqua Texas is required to record a certified copy of the approved certificate and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.
11. The requirements for informal disposition in 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 grants the petition and removes the 61.58-acre tract of land owned by Punkadilly from Aqua Texas's water CCN number 13201.

² Administrative Procedure Act, Tex. Gov't Code ch. 2001.

2. The Commission amends Aqua Texas's CCN number 13201 in accordance with this Notice of Approval.
3. The Commission's official service area boundary maps for Aqua Texas's CCN will reflect this change, as shown on the attached map.
4. Aqua Texas must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Denton County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice of Approval.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

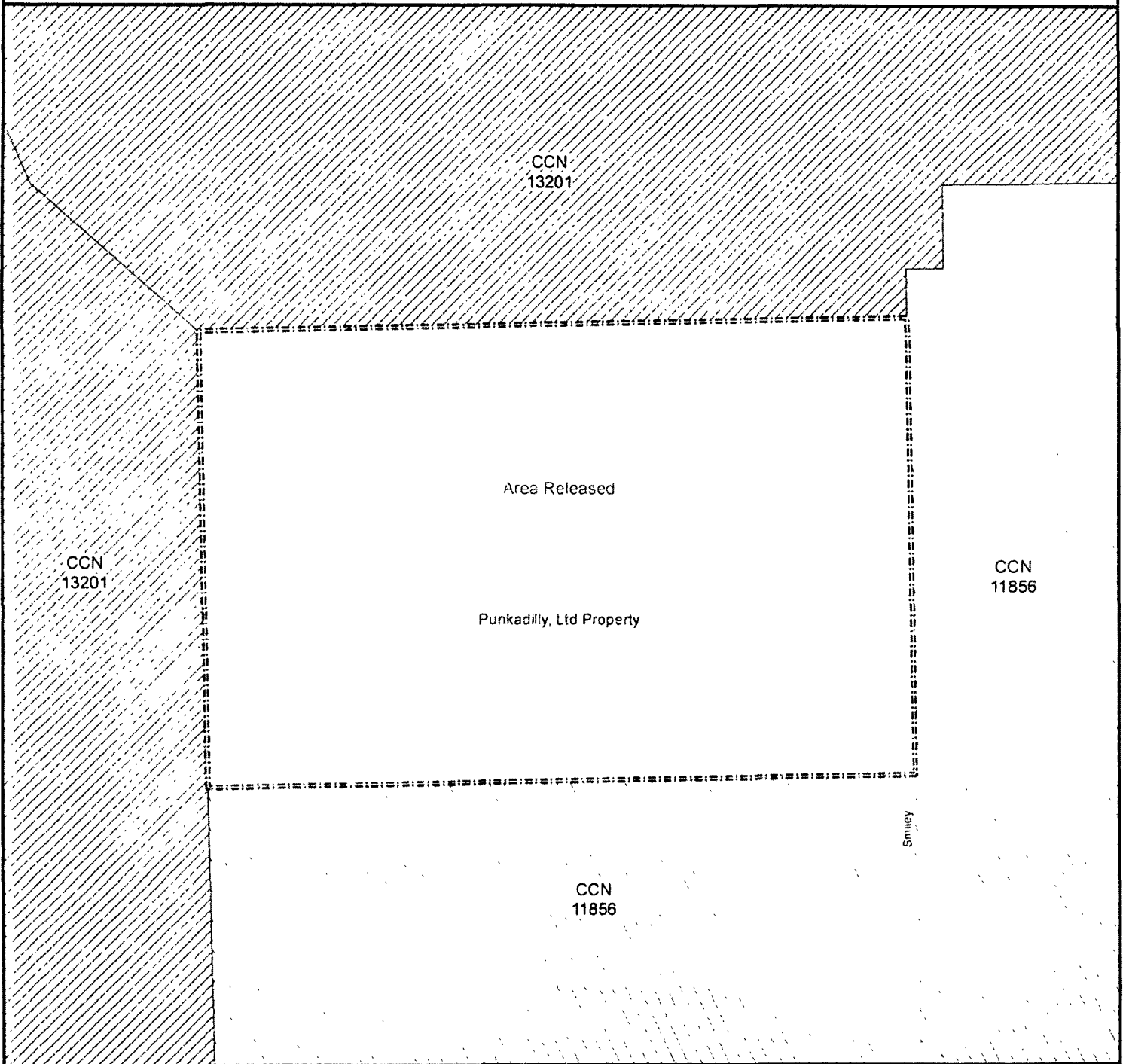
Signed at Austin, Texas the 29th day of January 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE

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Aqua Texas, Inc.
Portion of Water CCN No. 13201
PUC Docket No. 48975
Petition by Punkadilly, LTD to Amend
Aqua Texas, Inc.'s CCN by Expedited Release in Denton County



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

Water CCN



13201 - Aqua Texas Inc



11856 - Mustang SUD



Area Released

Property Boundary

0 200 400
Feet



Map by: Komal Patel
Date created: January 14, 2019
Project Path: n:\finalmap\puc
48975AquaTX.docx

00006



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 by 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, Collin, Cooke, Denton, Erath, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Kaufman, Marion, McLennan, Parker, Smith, Somervell, Tarrant, Taylor, Wise, and Wood Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48975 are on file at the Commission offices in Austin, Texas; and is a matter 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, the 29th day of January 2019.

DOCKET NO. 44629

**PETITION OF CADG SUTTON
FIELDS, LLC TO AMEND MUSTANG
SPECIAL UTILITY DISTRICT'S
CERTIFICATES OF CONVENIENCE
AND NECESSITY IN DENTON
COUNTY BY EXPEDITED RELEASE**

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§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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ORDER

This Order addresses the petition of CADG Sutton Fields, LLC (CADG Sutton) for expedited release of a tract of land from the water and sewer certificates of convenience and necessity (CCNs) of Mustang Special Utility District (Mustang SUD) in Denton County. For the reasons discussed in this Order, CADG Sutton's petition is granted and Mustang SUD's water CCN 11856 and sewer CCN 20930 are amended to remove CADG Sutton's property.

I. Background

On April 9, 2015, CADG Sutton filed a petition, under Tex. Water Code Ann. § 13.254 (a-5) (West 2008 & Supp. 2014) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC), for the expedited release of 494.819 acres of land owned by CADG Sutton and located within Mustang SUD's water and sewer service certificated area in Denton County.¹ On May 6, 2015, the petition and notice were found administratively complete for further processing.

On May 13, 2015, Mustang SUD responded to the petition, requesting denial of CADG Sutton's petition² and stating that the property was ineligible for expedited release because water and wastewater services are provided to the property. CADG Sutton replied to Mustang's response.³ On May 21, 2015, Mustang SUD moved to intervene as a necessary party pursuant to 16 TAC § 22.2(4).⁴ Neither Commission Staff nor CADG Sutton had an objection to Mustang

¹ Petition of CADG Sutton to Amend Mustang Special Utility District's Certificates of Convenience and Necessity in Denton County (Apr. 9, 2015) (Petition).

² Mustang Special Utility District's Response to Petition for Expedited Decertification (May 13, 2015) (Mustang Response).

³ CADG Sutton's Reply to Mustang Special Utility District's Response to Petition for Expedited Decertification (May 19, 2015) (CADG Sutton Reply).

⁴ Mustang Special Utility District's Motion to Intervene (May 21, 2015).

SUD's motion to intervene. On June 8, 2015, Commission Staff recommended approval. On June 15, 2015, Mustang SUD requested a hearing.⁵

TWC § 13.254(a-5) contains the criteria that an applicant for expedited release from a CCN must demonstrate: (1) the applicant owns a tract of land; (2) that is at least 25 acres in area; (3) that is not receiving water or sewer service; and (4) that is located in a qualifying county. No party disputes that CADG Sutton owns the 494.819-acre tract, that expedited release of at least 25 acres is requested, or that the tract is located in a qualifying county. The only criterion that is contested in this proceeding is whether the tract is receiving water or sewer service from Mustang SUD. TWC § 13.254(a-6) establishes a 60-day timeline for the processing of a petition filed under TWC § 13.254(a-5). The petition was declared administratively complete on May 6, 2015. The 60th day is July 6, 2015.⁶

Both parties rely on the decision by the Texas Third Court of Appeals in *Crystal Clear*⁷ to support their respective interpretation of whether the 494.819-acre tract is receiving water and sewer service. In that case, the Texas Commission on Environmental Quality granted the Texas General Land Office's petition for expedited release of a portion of property from the certificated area of Crystal Clear Water Supply Corporation under TWC § 13.254(a-5).⁸ Crystal Clear appealed the decision, claiming that the property was in fact "receiving water service" under § 13.254(a-5).⁹ The Third Court of Appeals reviewed the decision under the substantial evidence standard and held, in relevant part, as follows:

1. The fact that a tract is not receiving actual water on the property does not suffice as proof that the tract is not "receiving water service" under TWC § 13.254(a-5).¹⁰
2. "The mere existence of water lines or facilities on or near a tract [does] not necessarily mean that tract [is] 'receiving water service.'"¹¹

⁵ Mustang Special Utility District's Response to PUC Staff's Recommendation on Final Disposition (Jun. 15, 2015).

⁶ *Petition of City of Midlothian to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Conclusion of Law No. 13 (May 1, 2015).

⁷ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. filed).

⁸ *Id.* at 132.

⁹ *Id.*

¹⁰ *Id.* at 140.

¹¹ *Id.*

3. Rather, determining whether a tract is “receiving water service” is a “fact-based inquiry requiring the commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* All of these considerations are matters committed to the Commission’s sound discretion and authority to decide issues of fact.”¹²

In this proceeding, each party submitted separate affidavits attesting that the 494.819-acre tract is or is not receiving water or sewer service.¹³ The affiant for Mustang SUD attested that (1) Mustang SUD has committed water service to the tract through Mustang Well No. 6 located immediately adjacent to the 494.819 acre tract and a 24” waterline located approximately 1100 feet from the 494.819 acre tract;¹⁴ (2) Mustang SUD owns an elevated storage tank that is located approximately 3200 feet from the 494.819 acre tract;¹⁵ (3) Mustang SUD has committed wastewater service to the tract by and through treatment capacity in the Upper Trinity Regional Water District’s Riverbend Water Reclamation Plant (Riverbend Plant).¹⁶

The affiants for CADG Sutton attested that (1) CADG Sutton is the owner of the tract;¹⁷ (2) the tract is located within the water and sewer CCNs of Mustang SUD;¹⁸ (3) there are no active meters or connections on the 494.819 acre tract;¹⁹ and (4) the property does not receive any water and sewer services from Mustang SUD.²⁰

The Commission finds that CADG Sutton has adequately proved that the 494.819-acre tract is not receiving water service under TWC § 13.254(a-5); therefore, CADG Sutton’s petition should be granted.

The Commission adopts the following findings of fact and conclusions of law:

¹² *Id.* at 140-41 (emphasis original).

¹³ Petition, at 2-3 (Affidavit of Mehrdad Moayedi); Mustang Response, Exhibit A (Affidavit of Christian Boyd); CADG Sutton Reply, Exhibit A (Affidavit of Art Barraza).

¹⁴ Affidavit of Christian Boyd at ¶ 9.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Affidavit of Mehrdad Moayedi at 1.

¹⁸ *Id.*

¹⁹ Affidavit of Art Barraza at 1.

²⁰ Affidavit of Mehrdad Moayedi at 1; Affidavit of Art Barraza at 1.

II. Findings of Fact

Procedural History

1. On April 9, 2015, CADG Sutton filed a petition to amend Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930 in Denton County by expedited release.
2. On April 10, 2015, Order No. 1 was issued, establishing a procedural schedule.
3. On April 20, 2015, Commission Staff recommended that the petition be deemed administratively incomplete.
4. On April 27, 2015, the Commission issued Order No. 2, finding the application to be administratively incomplete.
5. On April 30, 2015, Commission Staff recommended that the petition and notice be deemed administratively complete.
6. On May 6, 2015, the Commission issued Order No. 3, finding the petition, and notice administratively complete.
7. On May 13, 2015, Mustang SUD responded to CADG Sutton's petition for expedited release.
8. On May 19, 2015, CADG Sutton replied to Mustang SUD's response.
9. On May 21, 2015, Mustang SUD filed a motion to intervene in this docket.
10. On May 29, 2015, the Commission issued Order No. 5, granting Mustang SUD's unopposed motion to intervene.
11. On June 8, 2015, Commission Staff recommended approval of CADG Sutton's petition for expedited release.
12. On June 15, 2015, Mustang SUD responded to Commission Staff's recommendation on final disposition.
13. On June 15, 2015, CADG Sutton replied to Commission Staff's recommendation on final disposition.
14. The amended maps and CCN certificates are attached to this Order.

Project Description

15. The approximately 494.819 acre tract of land CADG Sutton seeks to have released from Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930 is situated in Denton County, a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).
16. The area CADG Sutton seeks to have decertified from water CCN No. 11856 and sewer CCN No. 20930 is at least 25 acres and is not receiving water or sewer service.
17. Commission Staff recommended approval of the release of CADG Sutton's tract located within Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930.

Water and Sewer Service

18. Both parties submitted affidavits in support of their relative positions regarding whether the 494.819 acre tract is receiving water utility service or sewer utility service from Mustang SUD.
19. CADG Sutton submitted affidavits from Art Barraza and Mehrdad Moayedi.
20. According to Mr. Moayedi, the 494.819 acre tract does not receive any water service or sewer service from Mustang SUD.²¹
21. According to Mr. Barraza, the 494.819 acre tract does not receive any water service or sewer service from Mustang SUD.²²
22. According to Mr. Barraza, there are no active meters or connections on the 494.819 acre tract.²³
23. According to Mr. Barraza, Mustang SUD is not currently servicing the 494.819 acre tract.²⁴
24. According to Mr. Barraza, Mustang SUD's improvements and facilities are not dedicated solely to serve the 494.819 acre tract.²⁵

²¹ Affidavit Mehrdad Moayedi at 1.

²² Affidavit of Art Barraza at 1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 2.

25. According to Mr. Barraza, CADG Sutton and Mustang SUD have not entered into any agreements with respect to the potential allocated capacity for water or sewer service to be used on the 494.819 acre tract.²⁶
26. Mustang SUD submitted an affidavit from Christian Boyd.
27. According to Mr. Boyd, Mustang SUD has committed water service to the tract through Mustang Well No. 6, a 24" waterline, and a 2.25 million gallon elevated tank.²⁷
28. According to Mr. Boyd, Mustang SUD has committed wastewater service to the 494.819 acre tract by and through treatment capacity that Mustang SUD has in the Riverbend Plant.²⁸
29. According to Mr. Boyd, an elevated storage tank is located approximately 3200 feet from the boundary to the 494.819 acre tract.²⁹
30. According to Mr. Boyd, Mustang Well No. 6 is located immediately adjacent to the 494.819 acre tract.³⁰
31. According to Mr. Boyd, the 24" waterline is located approximately 1100 feet from the 494.819 acre tract.³¹
32. The 494.819 acre tract is not receiving actual water service from Mustang SUD.
33. The 494.819 acre tract is not receiving actual sewer service from Mustang SUD.

Notice

34. CADG Sutton provided a copy of the petition to Mustang SUD on April 9, 2015.
35. Notice of the petition was published in the *Texas Register* on April 24, 2015.
36. The need to have CADG Sutton's petition considered within the 60-day timeline set forth in TWC § 13.254(a-6) serves as good cause to waive the 20-day requirement in 16 TAC §

²⁶ *Id.*

²⁷ Affidavit of Christian Boyd at ¶ 9.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

22.35 and have the petition considered at the next available regularly scheduled open meeting.

37. Mustang SUD has not committed facilities or lines providing water or sewer service to the 494.819-acre tract, nor has it performed acts or supplied anything to that particular tract.
38. The 494.819-acre tract is not receiving water or sewer service from Mustang SUD under TWC § 13.254(a-5).

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TWC §§ 13.041 and 13.254(a-5) and 16 TAC § 24.113(r)-(s).
2. Notice of the petition was provided in compliance with 16 TAC § 24.113(s) and 16 TAC §§ 22.54 - .55.
3. Mustang SUD filed a motion to intervene pursuant to 16 TAC § 22.2(4).
4. CADG Sutton has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC §§ 24.113(r) and (s) for the 494.819-acre tract.
5. This docket was processed in accordance with the requirements of PURA and Commission rules.
6. Pursuant to 16 TAC § 22.5(b), there is good cause and the 20-day notice requirement in 16 TAC § 22.35(b)(2) is waived.
7. Mustang SUD has not committed facilities or lines providing water or sewer service to the 494.819-acre tract, nor has it performed acts or supplied anything to that particular tract.
8. The 494.819-acre tract is not receiving water or sewer service from Mustang SUD under TWC § 13.254(a-5).

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. CADG Sutton's petition for expedited release is approved.
2. CADG Sutton's 494.819-acre tract is removed from Mustang SUD's water CCN No. 11856.
3. CADG Sutton's 494.819-acre tract is removed from Mustang SUD's sewer CCN No. 20930.
4. Mustang SUD's water CCN No. 11856 is amended in accordance with this Order and the attached map and certificate.
5. Mustang SUD's sewer CCN No. 20930 is amended in accordance with this Order and the attached map and certificate
6. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 16th day of July 2015.

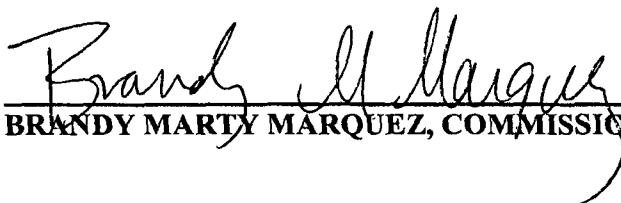
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

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Public Utility Commission Of Texas

By These Presents Be It Known To All That

Mustang Special Utility District

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 by **Mustang Special Utility District**, is entitled to this

Certificate of Convenience and Necessity No. 11856

to provide continuous and adequate water utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 44629 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 Mustang Special Utility District, 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 16th day of July 2015.



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Mustang Special Utility District

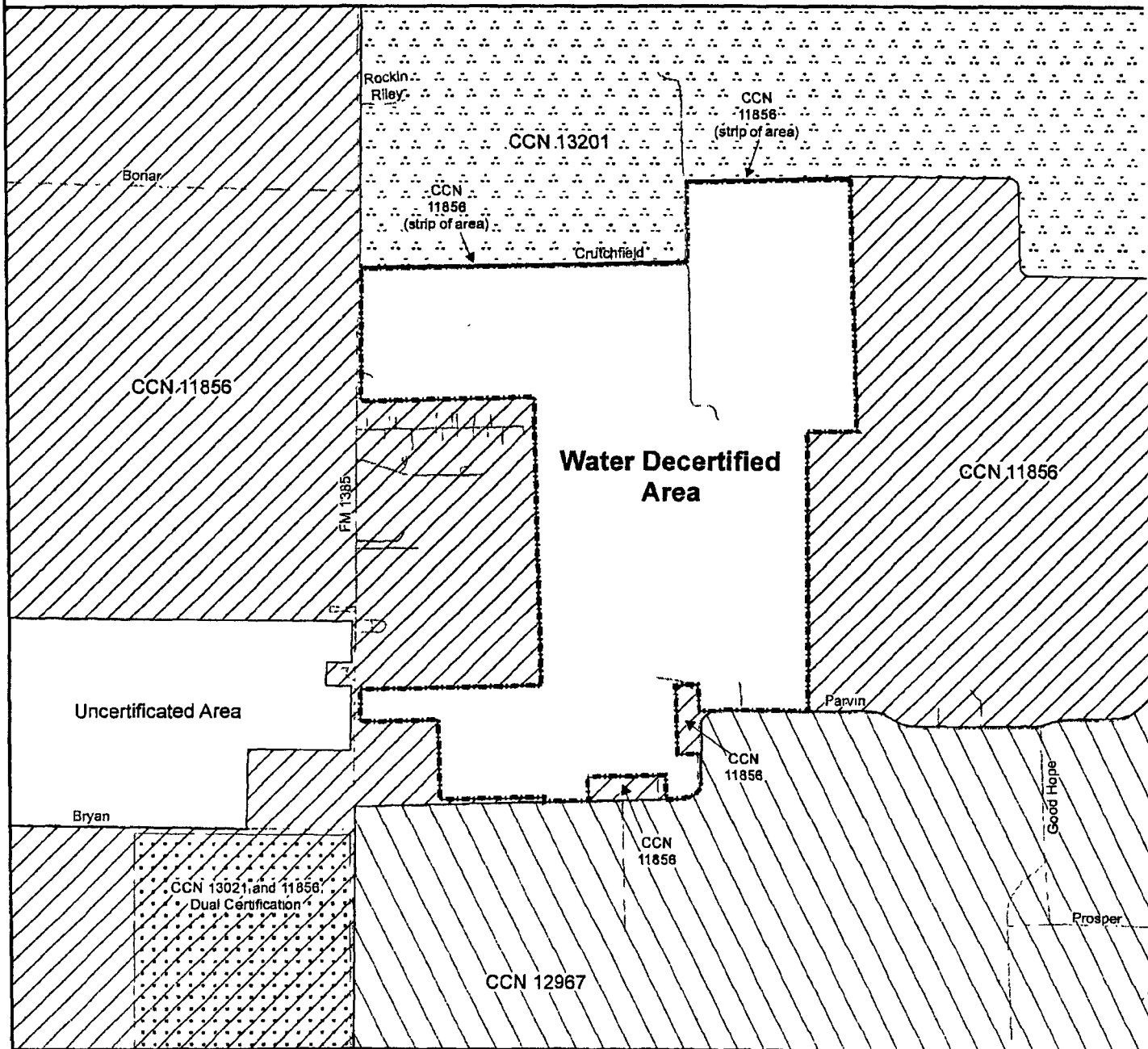
having **obtained** certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service by **Mustang Special Utility District**, is entitled to this

Certificate of Convenience and Necessity No. 20930

to provide continuous and adequate sewer utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 44629 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 Mustang Special Utility District, 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 16th day of July 2015.





Mustang Special Utility District
 Portion of Water Service Area
 CCN No. 11856
 PUC Docket No. 44629
 Petition by CADG Sutton Fields, LLC to Amend Mustang SUD's Water CCN by Expedited Release
 in Denton County



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

 Area Decertified from Water CCN 11856

Water CCN Service Areas

-  11856 - Mustang SUD
-  12967 - City of Prosper
-  13021 - Denton County FWSD 10
-  13201 - Aqua Texas Inc

0 750 1,500
 Feet

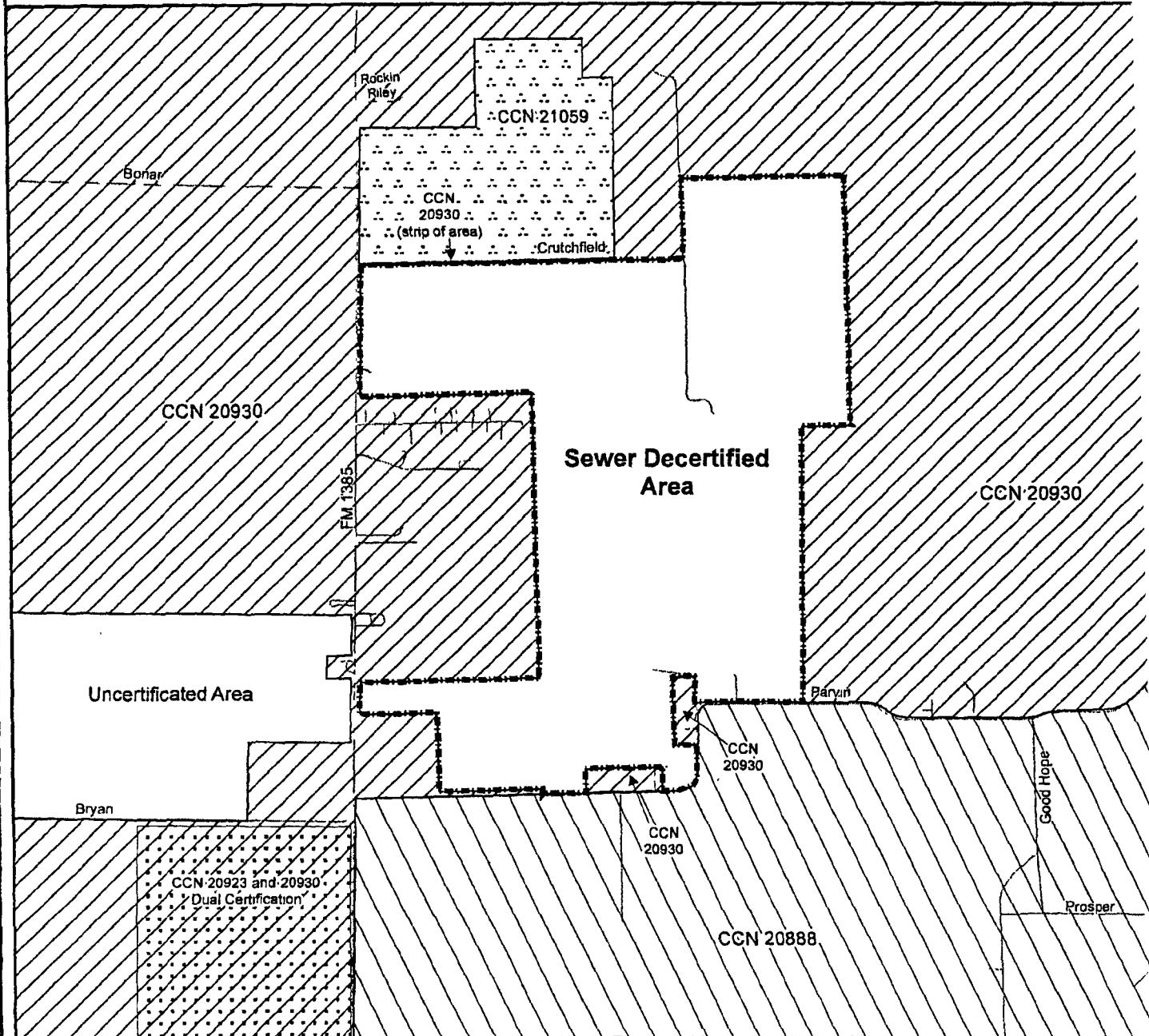


Map by: Tracy Harbour
 Date created: July 3, 2015
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Mustang Special Utility District
Portion of Sewer Service Area
CCN No. 20930

PUC Docket No. 44629





Petition by CADG Sutton Fields, LLC to Amend Mustang SUD's Sewer CCN by Expedited Release
in Denton County



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

Area Decertified from Sewer CCN 20930

Sewer CCN Service Areas

-  20930 - Mustang SUD
-  20888 - City of Prosper
-  20923 - Denton County FWSD 10
-  21059 - Aqua Texas Inc

0 750 1,500
Feet



Map by: Tracy Harbour
Date created: July 3, 2015
Project path: q:\gis\applications\44629_sewer-tmh mxd

DOCKET NO. 45151

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2015 DEC 15 PM 4:31
PUBLIC UTILITY COMMISSION
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CITY OF CELINA'S NOTICE OF
INTENT TO PROVIDE WATER AND
SEWER SERVICE TO AREA
DECERTIFIED FROM MUSTANG
SPECIAL UTILITY DISTRICT IN
DENTON COUNTY

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PUBLIC UTILITY COMMISSION
OF TEXAS

NOTICE OF APPROVAL

This Notice addresses the city of Celina's (Celina) notice of intent to provide water and sewer service to an area decertified from water Certificate of Convenience and Necessity (CCN) No. 11856 and sewer CCN No. 20930 held by Mustang Special Utility District (Mustang SUD) in Denton County.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History, Description and Background

1. On July 16, 2015, a 494.819-acre tract of land owned by CADG Sutton Fields, LLC was decertified pursuant to TWC § 13.254(a-5) from Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930 (CADG Tract) in Docket No. 44629.¹
2. On September 14, 2015, Celina filed a notice of intent to provide retail water and sewer service to the CADG Tract.
3. On September 18, 2015, Order No. 1 was issued requiring Celina and Mustang SUD to notify the Commission whether they have agreed on an independent appraiser.
4. On September 24, 2015, Celina and Mustang SUD notified the Commission that they did not agree on an independent appraiser.
5. On September 24, 2015, Mustang SUD filed a Motion to Intervene.

¹ Petition of CADG Sutton Fields, LLC to Amend Mustang Special Utility District's Certificates of Convenience and Necessity in Denton County by Expedited Release, Docket No. 44629, Order (Jul. 16, 2015).

6. On September 29, 2015, Order No. 2 established a deadline of November 13, 2015 for the parties to file independent appraisals. Order No. 2 also granted Mustang SUD's Motion to Intervene.

Appraisal

7. On November 12, 2015, Celina filed an independent appraisal prepared by Jones-Heroy & Associates, Inc. on behalf of Celina. Jones-Heroy & Associates, Inc. stated that in its opinion the value of the property associated with that portion of the water and sewer CCN decertified from Mustang SUD and associated with the CADG Tract is \$181,900.
8. On November 13, 2015, Mustang SUD filed an independent appraisal prepared by NewGen Strategies & Solutions on behalf of Mustang SUD. According to NewGen Strategies & Solutions' analysis the property rendered useless or valueless as a result of the decertification is \$1,850,192.
9. On November 19, 2015, Mustang SUD filed a response to Celina's appraisal.
10. On November 19, 2015, the Commission appointed Brett W. Fenner, P.E. as a third appraiser to determine the value of any property rendered valueless and useless to Mustang SUD.
11. On December 4, 2015, Jones-Heroy & Associates, Inc., on behalf of Celina, filed a review of the appraisal prepared by NewGen Strategies & Solutions.
12. On December 12, 2015, Brett W. Fenner, P.E. filed the third appraisal. Brett W. Fenner, P.E. determined that the value of the property rendered useless or valueless to Mustang SUD is \$258,081.
13. The value of any property rendered useless or valueless to Mustang SUD by decertification of the CADG Tract is \$258,081.

Evidentiary Record

14. On December 15, 2015, Order No. 4 was issued admitting the following evidence into the record:
 - a) Celina's notice of intent to provide retail water and sewer service to the CADG Tract, filed September 14, 2015;

- b) The independent appraisal prepared Jones-Heroy & Associates, Inc. dated November 11, 2015;
- c) The independent appraisal prepared by NewGen Strategies & Solutions, dated November 12, 2015;
- d) NewGen Strategies & Solutions' review of Jones-Heroy & Associates, Inc.'s appraisal, dated November 19, 2015;
- e) Jones-Heroy & Associates, Inc.'s review of NewGen Strategies & Solutions' appraisal, dated December 4, 2015; and
- f) The third appraisal prepared by Brett W. Fenner, P.E., dated December 11, 2015.

II. Conclusions of Law

1. The Commission has jurisdiction over these matters pursuant to TWC §§ 13.041 and 13.254.
2. Celina is a retail public utility as defined in TWC § 13.002 (19) and 16 TAC § 24.3(58).
3. Notice was provided as required by 16 TAC § 24.106.
4. Property of Mustang SUD has been rendered useless or valueless by the decertification, under TWC § 13.254(a-5), of the CADG Tract from Mustang SUD's water CCN No. 11856 and sewer CCN No. 20930.
5. Compensation in the amount of \$258,081 must be paid to Mustang SUD by Celina before Celina may in any way provide water or sewer service directly or indirectly to the CADG Tract in accordance with TWC § 13.254(e) and 16 TAC § 24.113(i).
6. The determination of compensation by third party appraiser Brett W. Fenner, P.E. is not less than the lower appraisal or more than the higher appraisal pursuant to TWC § 13.254(g-1).
7. Celina and Mustang SUD shall each pay half the cost of the third appraisal pursuant to TWC § 13.254(g-1).
8. The application was processed in accordance with the requirements of TWC § 13.254 and 16 TAC § 24.113.
9. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

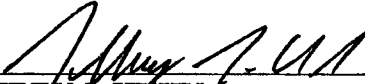
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Before Celina may provide service to the CADG Tract Celina must pay compensation to Mustang SUD in the amount of \$258,081.
2. Within 30 days of receipt of an invoice from Brett W. Fenner, P.E., Celina and Mustang SUD shall each pay half the cost of the third appraisal.
3. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS the 15th day of December 2015.

PUBLIC UTILITY COMMISSION OF TEXAS



JEFFREY J. HUHN
ADMINISTRATIVE LAW JUDGE

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CITY OF CELINA'S NOTICE OF
INTENT TO PROVIDE WATER AND
SEWER SERVICE TO AREA
DECERTIFIED FROM AQUA TEXAS,
INC. IN DENTON COUNTY

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PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER

This Order addresses whether Aqua Texas, Inc. had any property rendered useless or valueless by the decertification of a 128-acre tract from its water and sewer certificates of convenience and necessity (CCNs) in Docket No. 45329.¹ This Order also addresses the amount of compensation due to Aqua.

The City of Celina filed a notice of intent to provide service to the decertified tract on March 22, 2016. The matter was referred to the State Office of Administrative Hearings (SOAH) to determine what property, if any, had been rendered useless and valueless by the decertification. After hearing, the administrative law judges (ALJs) issued a proposal for decision in this docket.² In their proposal, the ALJs recommended that the following property be found to have been rendered useless and valueless to Aqua: (1) expenditures for planning, design, or construction of service facilities allocable to service the area in question; and (2) necessary and reasonable legal expenses and professional fees. The ALJs also determined that Aqua was not entitled to compensation for lost future profits.

For the reasons discussed in this Order, the Commission finds that Aqua had no property that was rendered useless or valueless by the decertification in Docket No. 45329. Accordingly, the Commission does not adopt those portions of the proposal for decision that conflict with its decisions in this Order. Because Aqua has no facilities that were rendered useless and valueless as a result of the decertification, Aqua is not entitled to any compensation and the City of Celina may provide retail water and sewer service to the 128-acre tract.

¹ *Petition of CADG Sutton Fields II, LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 45329 (Mar. 22, 2016).

² Proposal for Decision (Jan. 27, 2017) (PFD).

I. Background and Procedural History

The owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may file a petition with the Commission for expedited release of the tract from a certificate of public convenience and necessity.³ A landowner is entitled to the release of the property if the tract is located in a specified county,⁴ and the Commission is to act on the petition within 60 days.⁵ CADG Sutton Fields II, LLC filed such a petition with the Commission for the release of the 128-acre tract at issue in this docket.⁶ On March 22, 2016, the Commission granted the petition and released the tract from Aqua Texas, Inc.'s water certificate (number 13201) and its sewer certificate (number 21059). In its order, the Commission found that the property was not receiving service from Aqua and was entitled to expedited release under section 13.254 of the Texas Water Code.

When a tract has been released from a certificate of public convenience and necessity under section 13.254, before another retail public utility may provide service to the tract, the retail utility from whose certificate the tract was released must be "compensated for any property that the utility commission determines is rendered useless and valueless to the decertified retail public utility as a result of the decertification."⁷ The amount of compensation is to be determined at the time another retail utility seeks to provide service, and the Commission is directed to ensure that the amount of compensation is determined within 90 days of the date a retail utility notifies the Commission that it intends to provide service to the tract.⁸ On April 12, 2016, the City of Celina filed notice of its intent to provide retail water and sewer service to the 128-acre tract of land that was decertified from Aqua Texas, Inc.'s water and sewer certificates in Docket No. 45329. Celina's notice filing initiated this docket for a determination of what compensation, if any, is owed to Aqua for property rendered useless and valueless, if any, due to the decertification.⁹

³ Tex. Water Code Ann. § 13.254(a-5) (West 2008 & Supp. 2016) (TWC); 16 Tex. Admin. Code § 24.113(r) (TAC).

⁴ TWC § 13.254(a-6); 16 TAC § 24.113(r).

⁵ TWC § 13.254 (a-7); 16 TAC § 24.133(r).

⁶ Docket No. 45329, Petition (Nov. 10, 2015).

⁷ TWC § 13.254(d); 16 TAC § 24.113(h).

⁸ TWC § 13.254(e); 16 TAC § 24.113(i).

⁹ TWC § 13.254(d); 16 TAC § 24.113(i).

The amount of compensation is to be determined by a qualified entity serving as an independent appraiser agreed upon by both retail utilities,¹⁰ but if the two utilities cannot timely agree on an independent appraiser, each utility must engage its own appraiser.¹¹ After it receives the two appraisals, the Commission appoints a third appraiser who makes a determination of compensation that must be between the two utilities' appraisals submitted to the Commission.¹²

In this docket, a Commission administrative law judge issued an order requiring Celina and Aqua to inform the Commission by April 22, 2016 whether they had agreed on an independent appraiser, and, if they could not agree, to obtain their own appraisers and submit their appraisals within 60 days of the filing of the notice of intent to serve.¹³ On April 22, 2016, Celina filed notice that the parties were not able to agree on a single appraiser. On the same day, Aqua moved to intervene in the case and also notified the Commission ALJ that the parties could not agree on a single appraiser and would therefore be filing separate appraisals. Subsequently, the Commission ALJ ordered Celina and Aqua to submit their appraisals by June 13, 2016.¹⁴ On June 13, Celina and Aqua each filed an appraisal. The appraisal submitted by Celina assigned a value of \$38,000 to the property associated with Aqua's water and sewer certificated area.¹⁵ The appraisal submitted by Aqua determined that Aqua was owed \$985,946 in compensation.¹⁶ On July 6, 2016, the third appraisal valuing the property at \$69,839 was filed after being prepared at the request of the Commission.¹⁷

The appraisal submitted by Celina was not limited to valuing property rendered useless and valueless, in fact it did not identify or even mention property rendered useless and valueless. This appraisal valued "property associated with the Aqua Texas Water and Sewer Certificate of

¹⁰ TWC § 13.254(f); 16 TAC §24.113(j).

¹¹ TWC § 13.254(g-1); 16 TAC §24.113(j).

¹² *Id.*

¹³ Order No. 1 (Apr. 14, 2016).

¹⁴ Order No. 2 (Apr. 25, 2016).

¹⁵ City of Celina's Appraisal at 2 (Jun. 13, 2016).

¹⁶ Aqua's Appraisal at 1 (Jun. 13, 2016).

¹⁷ B&D Environmental, Inc. Appraisal at 5 (Jul. 7, 2016).

Convenience and Necessity”¹⁸ The appraisal submitted by Aqua likewise failed to identify any property rendered useless and valueless and this appraisal provided a valuation for certain of the factors listed in section 13.254(g) of the Texas Water Code to value personal property.¹⁹ The appraisal submitted by the third appraiser also did not address any property that had been rendered useless and valueless; it sought “to determine a compensation value for the approximately 128 acre tract that had been decertified”²⁰ This appraisal also focused on valuing the factors in section 13.254(g). Whether appraisals are properly limited to property rendered useless and valueless has been addressed previously by the Commission.

In another case seeking to establish compensation for an expedited release, the Commission questioned whether submitted appraisals were properly limited to property rendered useless and valueless due the decertification.²¹ After a Commission ALJ issued an order approving the amount of compensation,²² the Commission granted rehearing for the purpose of referring the matter to SOAH to determine what property, if any, was rendered useless and valueless.²³ In making this decision, the Commission recognized the tension in the statute between the compensation deadline and the Commission’s obligation to make the determination of what property, if any, was rendered useless and valueless and that referral to SOAH was appropriate to assist the Commission in making this determination.²⁴ That docket eventually settled.²⁵

Because of concerns that the appraisals in this docket are not limited to property that was rendered useless and valueless, the Commission referred this case to SOAH.²⁶ As in *Zipp Road*, the preliminary order in this docket was limited to two questions: What property, if any, was

¹⁸ City of Celina’s Appraisal at 1.

¹⁹ Aqua’s Appraisal at 4-7.

²⁰ B&D Environmental, Inc. Appraisal at 1.

²¹ *Zipp Road Utility Company LLC’s Notice of Intent to Provide Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679, Order (Feb. 21, 2017).

²² Docket No. 45679, Corrected Notice of Approval (May 27, 2016).

²³ Docket No. 45679, Order on Rehearing at 1 (Jul. 7, 2016).

²⁴ Docket No. 45679, Order on Rehearing at 1; *see also, id.*, Memorandum of Chairman Donna L. Nelson (Jun. 28, 2016); Preliminary Order at 1 (Jul. 20, 2016); Open Meeting Tr. at 35:7-38:17 (Jun. 29, 2016).

²⁵ Docket No. 45679, Order (Feb. 21, 2017).

²⁶ Preliminary Order (Jul. 20, 2016).

rendered useless and valueless due to the decertification in Docket No. 45329; and are the existing appraisals limited to such property.²⁷

The hearing on the merits was held on September 16, 2016. Commission Staff, the City of Celina and Aqua participated. The record closed on January 10, 2017. Exceptions to the proposal for decision were filed on February 15, 2017. Aqua filed a response to the exceptions on February 22. Aqua and the City of Celina agreed that finding of fact 1 should be revised to refer to “retail public utilities” rather than “public utilities.”²⁸ On March 1, the ALJs filed a letter in response to the exceptions to the proposal for decision agreeing with that change.²⁹

II. Discussion

A. Texas Water Code § 13.254(g)

After a tract of land has been decertified under Texas Water Code (TWC) § 13.354(a-5) and (a-6), a retail public utility may not provide service to that area until the retail public utility holding the certificate from which the tract was removed is compensated for any property that the Commission determines is rendered useless and valueless because of the decertification.³⁰ The amount of compensation is to reflect the value of the property rendered useless and valueless and is to be determined at the time that a retail public utility notifies the Commission of its intent to provide service to the tract.³¹ The statute specifies how the value of the property that is rendered useless and valueless shall be determined.³² In determining the value of personal property, subsection (g) lays out an exclusive list of nine factors,³³ but the last factor allows consideration of “other relevant factors.”³⁴ The definition of property and the manner of determining the value of property was addressed in the proposal for decision.

²⁷ *Id.* at 3.

²⁸ Aqua’s Response to Exceptions to the PFD at 1 (Feb. 22, 2017); Celina’s Exceptions to the PFD at 1 (Feb. 15, 2017).

²⁹ ALJs’ Response to Exceptions (Mar. 1, 2017).

³⁰ TWC § 13.254(d).

³¹ TWC §§ 13.254 (d), (e), (f), (g).

³² TWC § 13.254(g).

³³ *Id.* (“the value of personal property shall be determined according to the factors of this subsection.”)

³⁴ *Id.*

Aqua argued that subsection (g) “outlines certain property interests that must be considered in determining the value of property rendered useless and valueless,”³⁵ and also argued that *property* must have a broad meaning.³⁶ The ALJs concurred with Aqua “that the factors listed in Water Code § 13.254(g) identify a utility’s *property interests*, which must be broadly interpreted.”³⁷ In disagreeing with the city and Commission Staff that subsection (g) provides “mere ‘compensation factors,’ and . . . [does] not describe property interests,”³⁸ the ALJs concluded that such a construction “separates property from its value” and that subsection (g) must be read “such that property is indivisible from its value.”³⁹

The Commission disagrees with the ALJs and agrees with Commission Staff and the City of Celina: TWC § 13.254(g) identifies factors to be used to value property and does not identify property, or property interests, for which compensation is required under TWC § 13.543(d). The statute explicitly requires compensation only “for property that the utility commission determines is rendered useless and valueless due to the decertification.”⁴⁰ The Commission agrees with the ALJs that property, as generally understood, has a broad meaning and includes property real and personal, tangible and intangible. Subsection (g) does not, however, identify property interests, it identifies the factors that must be used to *value* the property found to be useless and valueless. By properly valuing property rendered useless and valueless due to a decertification, just and adequate compensation can be determined in accordance with the standards of TWC § 13.254.

Accordingly, based on the plain language of the statute, the Commission concludes that the factors listed in TWC § 13.254(g) are intended to be used only to value the property that has been determined to be useless and valueless as a result of decertification and these factors do not identify property interests.

³⁵ PFD at 6.

³⁶ *Id.* at 6-8.

³⁷ PFD at 17 (emphasis added); *see also, id.* at 15 (Water Code § 13.254(d) and (g) must be read consistent with a broad interpretation of property); 21 (“the plain text of Water Code § 13.254(g), Factor 3, describes a utility’s property interest, not a mere compensation factor”); 36.

³⁸ PFD at 18.

³⁹ *Id.*

⁴⁰ TWC § 13.254(d).

To reflect its decision, the Commission deletes conclusion of law 9, modifies conclusions of law 8 and 10, and adds conclusion of law 8A.

B. Expenditures

The third factor listed in subsection (g) is “the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question.”⁴¹ The ALJs concluded that “*expenditures* for planning and design of service facilities allocable to the [t]ract are also compensable property under Water Code § 13.254(d) and (g).”⁴² The basis of the ALJs’ decision is that a utility must obtain a permit to plan, design, and build a service facility;⁴³ that Aqua spent money on planning, designing, and permitting a planned service facility and on litigating the decertification;⁴⁴ that money is property and that the money Aqua spent on planning and design “produced property rights;”⁴⁵ and that “Aqua retained property rights in the monies it [spent],”⁴⁶ even though a permit is not property and the service facility was never built.⁴⁷ The ALJs also noted testimony that “permit-related expenses are capitalized by a utility into the related asset and are considered property.”⁴⁸

The Commission disagrees with the ALJs: *expenditures* by the utility are not property of the utility; even capital expenditures are not property of the utility. These expenditures may have been made using money that was formerly the property of the utility, but upon payment ceased being the property of the utility: an expenditure represents the transfer of the utility’s property (money or otherwise) to another. One generally does not retain any property interest in money spent to obtain products or services. And whether such retained rights can be found by contract or special laws, there is no evidence in this case that would support a conclusion that Aqua retained any property interest in the money it spent on planning or designing.

⁴¹ TWC § 13.254(g).

⁴² PFD at 10 (emphasis added); *see also, id.* at 14, 16, 18, 21.

⁴³ *Id.* at 16.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 16.

⁴⁸ *Id.* at 17.

The Commission agrees with the ALJs that costs to obtain property, whether by purchase or by construction or manufacture, may be capitalized and form the book value of a utility's assets.⁴⁹ In fact, generally there are special accounts to accumulate such amounts until the asset is dedicated to public service by the utility and the amounts are transferred to the plant-in-service account. There are accounting requirements that must be satisfied to capitalize expenses into an asset account. The included expenses establish the value of the asset on the utility's books, and assuming that the Commission finds the costs were prudently incurred and are reasonable and necessary costs to provide service, may be recovered through the utility's rates. The Commission sees no discussion in this docket regarding how any of the amounts at issue here were recorded in the utility's books. While these costs are too recent to have been addressed by the Commission in a rate proceeding, the manner in which the costs were recorded in the utility's books, and the assets the costs were associated with, might have been informative in this case.

In a similar fashion, the factors in subsection (g) recognize the general proposition that the value of a utility's property is determined by a number of factors, including the amounts spent for planning, designing, and constructing service facilities. But the costs—expenditures—are not themselves property, or a property interest; they are a factor to determine the value of the property, as expressly provided by TWC §13.254(g). Once a utility proves that property was rendered useless and valueless as a result of decertification, the utility would then bear the burden to prove that any expenditures are appropriate to establish the value of such property. But here, Aqua simply failed to prove that any property was rendered useless and valueless.

The Commission also disagrees with the ALJs' contention that money spent by Aqua remained the property of Aqua.⁵⁰ Under TWC § 13.254(g), expenditures can be a factor in determining the value of property or services, but they are not themselves property. Once Aqua spent its money on designing, planning, legal, professional or other services, Aqua had no remaining property interest in that money because it became the property of those entities that Aqua paid to provide the services.

⁴⁹ *Id.* at 18 (“Aqua was entitled to capitalize those expenses and recover them through rates”); *id.* Proposed Finding of Fact Nos. 46 and 48.

⁵⁰ *Id.* at 14.

To reflect this decision, Commission declines to adopt those portions of the PFD to the contrary. Specifically, the Commission deletes findings of fact 36, 37, 38, 39, 40, 41, 42, 45 and 46. The Commission also deletes conclusions of law 13, 14, 15, 17 and 21. In addition, the Commission adds conclusions of law 7A and 7B.

C. Expenditures for Legal Expenses

As they did for the previous expenditures, the ALJs recommended that “expenditures for legal and professional services are property”⁵¹ These are expenses Aqua incurred to litigate the decertification in Docket No. 45329 and this docket.⁵² Because Aqua spent the money to participate in these proceedings, the ALJs concluded that “expenditures for legal or professional services are Aqua’s property [under subsection (g)].”⁵³ “When Aqua spent its money,” the ALJs state, “it [the money] did not transform into non-property.”⁵⁴ The Commission agrees the money did not turn into non-property; it became the property of someone else. Expenditures are not property. Under TWC § 13.254, expenditures are a factor that is to be used to value property rendered useless and valueless—no such property has been identified. Simply showing that it spent money is not enough; Aqua must identify property and prove that it has been rendered useless and valueless. Once property has been identified, then the factors in TWC § 13.254(g) can be used to value that property.

To reflect its decision, the Commission adds conclusion of law 7C. In addition, the Commission deletes finding of fact 48 and conclusions of law 16, 18 and 22.

D. Lost Economic Opportunity

The Commission agrees with the ALJs that the legislature did not intend future revenue from future customers to be included in the factors listed in subsection (g). Again, lost economic opportunity is not property, even in its broadest meaning. Further, the lost opportunity Aqua complains of—“its goal of making money through service to future customers on the [t]ract”⁵⁵—is not, as the ALJs noted, properly considered as a factor under subsection (g).

⁵¹ *Id.* at 23.

⁵² *Id.* at 21, 22.

⁵³ *Id.* at 23-24.

⁵⁴ *Id.* at 24.

⁵⁵ *Id.* at 25.

E. Property Rendered Useless and Valueless

All parties agree that no real or tangible personal property of Aqua was rendered useless and valueless by the decertification. The only property Aqua asserts is rendered useless and valueless is intangible personal property composing expenditures for planning, design, or construction of service facilities, legal and professional fees, and lost economic opportunity.⁵⁶ As discussed previously, none of these items are property. Accordingly, Aqua has failed to show that it has any property that was rendered useless and valueless as a result of the decertification in Docket No. 45329.

To reflect this decision, the Commission does not adopt that portion of the PFD and deletes conclusions of law 20, 21, 22, 23 and 24.

F. Permit and CCN are Not Property

The Commission adopts the ALJs' finding that Aqua's wastewater permit and certificates are not property. In addition to the reasons stated in the PFD, the Commission also notes that neither is subject to Aqua's ownership.

The Commission modifies and deletes some of the ALJs' findings of fact related to the wastewater permit to better support the conclusion that the permit is not personal property. Specifically, the Commission deletes findings of fact 36, 37, 38, 39, 40, 41 and 42. The Commission also modifies findings of fact 23, 26, 27 and 28.

G. Non-Substantive Changes to the Proposal for Decision

In addition to the changes described above, the Commission makes non-substantive changes to findings of fact and conclusions of law for such matters as capitalization, spelling, punctuation, style, grammar, and readability.

The Commission adopts the following findings of fact and conclusions of law:

III. Findings of Fact

Procedural History

1. On March 22, 2016, the Commission issued an order in *Petition of CADG Sutton Fields II, LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton*

⁵⁶ *Id.* at 32.

County by Expedited Release, Docket No. 45329, approving the petition of CADG Sutton Fields II, LLC for expedited release of approximately 128 acres (the tract) from Aqua's water certificate of convenience and necessity (CCN) 13201 and sewer CCN 21059 in Denton County, Texas.

2. On April 12, 2016, the City of Celina filed with the Commission a notice of intent to provide retail water and sewer service to the tract decertified in Docket No. 45329.
3. On April 14, 2016, a Commission Administrative Law Judge (ALJ) issued Order No. 1, requiring the parties to notify the Commission whether they agreed on an independent appraiser by April 22, 2016.
4. Notice of Celina's notice of intent to serve was published in the *Texas Register* on April 14, 2016.
5. On April 22, 2016, the City of Celina filed a notice of non-agreement on single appraiser and Aqua filed a motion to intervene.
6. On April 25, 2016, the Commission ALJ issued Order No. 2 requiring Aqua and the City of Celina to each file an appraisal by June 13, 2016. Aqua and the City of Celina timely filed appraisals.
7. On July 7, 2016, an independent third appraisal was filed.
8. On July 7, 2016, the Commission issued an order of referral, referring this matter to the State Office of Administrative Hearings (SOAH) requesting the assignment of an ALJ to conduct a hearing and issue a proposal for decision (PFD), if necessary.
9. On July 13, 2016, a SOAH ALJ issued SOAH Order No. 1, setting a prehearing conference and granting Aqua's motion to intervene.
10. On July 20, 2016, the Commission issued a preliminary order identifying the following issues for SOAH to address:
 1. What property, if any, has been rendered useless or valueless to Aqua by the decertification granted in Docket No. 45329? Water Code § 13.254(d) and 16 Texas Administrative Code § 24.113(h).

2. Are the existing appraisals limited to property that has been determined to have been rendered useless or valueless by decertification?
11. On July 26, 2016, Aqua, the City of Celina, and Commissions Staff attended an initial prehearing conference in this matter and the SOAH ALJs adopted a procedural schedule, which was memorialized in SOAH Order No. 2, issued July 29, 2016.
12. The hearing on the merits was held on September 16, 2016, and was attended by the City of Celina, Aqua, and Commission Staff.
13. On October 28, 2016, all parties filed their initial post-hearing briefs on closing arguments.
14. On November 14, 2016, all parties filed their respective replies to post-hearing briefs.
15. On December 27, 2016, the SOAH ALJ issued SOAH Order No. 6 which requested parties file proposed findings of fact and conclusions of law.
16. On January 10, 2017, the parties filed proposed findings of fact and conclusions of law. The record closed on that day.

Appraisals

17. Aqua filed an appraisal report for its decertified CCN areas prepared by KOR Group and Texas state-licensed appraiser Joshua M. Korman.
18. The City of Celina's appraisal report was prepared by Jason S. Jones, P.E.
19. A third party engineering appraisal report was filed by Bret W. Fenner, P.E. at the request of the Commission's executive director.
20. The three appraisals filed in this docket are different in terms of the property identified as rendered useless or valueless by the CCN decertifications in Docket No. 45329.
21. The three appraisals filed in this docket all find that Aqua is owed some amount of compensation for expenditures it made to obtain the Texas Commission on Environmental Quality (TCEQ)-approved wastewater discharge permit, Texas Pollutant Discharge Elimination System Permit No. WQ0014234001 (referred to as the permit) and necessary and reasonable legal expenses and professional fees.

Aqua's Property

22. Aqua does not own any real or personal property on the tract.
23. Aqua has no physical improvements or infrastructure, such as water or sewer lines, pipes, or tanks, built to serve the tract.
24. Aqua has been certificated to the tract since approximately 2004.
25. There has been no development on the tract.
26. The TCEQ or its predecessor agency issued the wastewater discharge permit to Aqua, which authorized Aqua to provide wastewater service to the tract and to construct facilities, such as a treatment plant, force mains, and other wastewater facilities on the tract. *See* TWC § 26.027(c), prohibiting construction of wastewater facilities until the TCEQ issues a permit.
27. No wastewater treatment plant or any attendant physical infrastructure, improvements or structures have been constructed.
28. No actual water or sewer service was received on the tract.
29. The tract's current landowner did not request service from Aqua.
30. Aqua serves a residential subdivision located approximately 1.5 miles from the tract called the Willow Wood Addition Meadow Vista with retail water service but not with sewer service.
31. Aqua has no debt allocable to the tract.
32. Aqua has no service facilities on the tract.
33. Aqua has no existing customers on the tract.
34. Aqua has no contractual obligations allocable to the tract.
35. There is no demonstrated impairment of Aqua's service to other customers or increase of cost to other customers of Aqua as a result of the decertification.
36. [Deleted.]
37. [Deleted.]

38. [Deleted.]
39. [Deleted.]
40. [Deleted.]
41. [Deleted.]
42. [Deleted.]
43. Aqua ceased permit renewal activities as a result of the sewer CCN decertification in Docket No. 45329.
44. The permit is now expired.
45. [Deleted.]
46. [Deleted.]
47. Aqua incurred necessary legal expenses and professional fees in this docket and Docket No. 45329 as a result of the decertifications in Docket No. 45329.
48. [Deleted.]

IV. Conclusions of Law

1. The City of Celina and Aqua are retail public utilities as defined in Texas Water Code (TWC) § 13.002(19).
2. The Commission has jurisdiction and authority over this docket under TWC §§ 13.041 and 13.254(d)-(e).
3. SOAH has jurisdiction over matters related to the hearings of this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code §§ 2001.058 and 2003.049.
4. Notice of the hearing was provided consistent with Texas Government Code § 2001.052 and 16 Texas Administrative Code (TAC) § 24.106.
5. Aqua has the burden of proof in this case. 16 Tex. Admin. Code § 24.12 and 1 Tex. Admin. Code § 155.427.

6. TWC § 13.254(d) and 16 TAC § 24.113(h) prohibit a retail public utility from providing service to an area that has been decertified under that section without providing compensation for any property that the Commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.
7. TWC §§ 13.254(e) and 24.113(i) require that the Commission determine the amount of monetary compensation, if any, that must be paid when a retail public utility seeks to provide service to a previously decertified area.
 - 7A. Expenditures are not property.
 - 7B. Aqua's expenditures on permitting, planning, and design activities to serve the tract are not property.
 - 7C. Aqua's expenditures on reasonable and necessary legal expenses and professional fees incurred in this docket and in Docket No. 45329 are not property.
8. TWC § 13.254(g) requires the value of personal property, if any, to be determined according to the following factors to ensure that the compensation to a retail public utility is just and adequate: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.
 - 8A. The factors listed in TWC § 13.254(g) are limited to determining the value of personal property, if any, and are not themselves property interests.
9. [Deleted.]
10. The term property in TWC § 13.254 includes all property, real and personal, and tangible and intangible.

11. A CCN is not property. 16 Tex. Admin. Code §§ 24.113(a) and 24.116.
12. A wastewater permit issued by the TCEQ or the Commission is not property. Tex. Water Code § 26.029(c).
13. [Deleted.]
14. [Deleted.]
15. [Deleted.]
16. [Deleted.]
17. [Deleted.]
18. [Deleted.]
19. TWC § 13.254(g) limits recovery for the impact on future revenues to losses from existing customers. Aqua's lost future revenues from currently non-existing customers are not property and are not compensable under TWC §§ 13.254(d) and (g).
20. [Deleted.]
21. [Deleted.]
22. [Deleted.]
23. [Deleted.]
24. [Deleted.]

V. Ordering Paragraphs

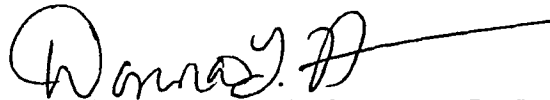
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. Aqua does not have any property that was rendered useless or valueless as a result of the decertification in Docket No. 45329.
2. Celina does not owe any compensation to Aqua and may provide water and sewer service to the tract that was decertified in Docket No. 45329.
3. Aqua and the City of Celina shall each pay half the cost of the transcript.

4. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 13th day of April 2017.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

**NON-STANDARD SERVICE CONTRACT
BY AND BETWEEN
MUSTANG SPECIAL UTILITY DISTRICT
AND
CADG SUTTON FIELDS, LLC, a Texas Limited Liability Company, and CADG
SUTTON FIELDS II, LLC, a Texas Limited Liability Company.**

[SUTTON FIELDS I & II]

This Non-Standard Service Contract ("Contract") is entered into on the date set forth below by and between, Mustang Special Utility District, of Denton County, Texas ("Mustang"), a special utility district operating under the authority of Chapters 49 and 65 of the Texas Water Code, as amended, and CADG Sutton Fields, LLC, a Texas limited liability company, and CADG Sutton Fields II, LLC, Ltd., a Texas limited liability company ("CADG"). The consideration for this Non-Standard Service Contract is set forth below.

DEFINITIONS

"CADG" shall refer to and mean CADG Sutton Fields, LLC, a Texas limited liability company, and CADG Sutton Fields II, LLC, Ltd., a Texas limited liability company, collectively (unless individually denominated).

"CCN" shall refer to and mean a Certificate of Convenience and Necessity issued by the Texas Natural Resource Conservation Commission or its predecessor/successor agency as prescribed by the Texas Water Code.

"Connection Fee" shall refer to and mean the fee charged by Mustang for obtaining Water Service or Wastewater Service as defined in Mustang's Rate Order.

"Decertification" shall mean either a decertification permitted by either Section 13.254 and/or Section 13.255 of the Texas Water Code and/or any other means by which a CCN of a holder may be decertified.

"Mustang" shall refer to and mean "Mustang Special Utility District" which is located in Denton County, Texas.

"Off-site Improvement" or "Off-site Improvements" shall refer to and mean all water and sewer pipelines, wells, pump stations, both ground and elevated storage tanks and other facilities located at the take point for the Water System, or the discharge point for the Wastewater System, or needed to complete or connect the Water System constructed outside the boundaries of the Property, as well as metering stations, and ground and elevated storage tanks, to the Water System constructed or completed inside the boundaries of the Property.

"Party" or "Parties" shall refer collectively to and mean "Mustang Special Utility District", "CADG Sutton Fields, LLC, a Texas limited liability company, and "CADG Sutton Fields II, LLC, Ltd., a Texas limited liability company."

“Property” shall mean and refer to approximately 607 acres, as more particularly described and shown in Exhibit "A" (also known as “Sutton Fields and Sutton Fields II”) that CADG owns and on which currently intends to develop 2302 residential lots.

“Project” shall mean and refer to the development of the Property, as well as installation of the Water System and other infrastructure required to develop the Property.

“Water System” shall mean and refer to both the retail water facilities (“Fresh Water System”) and retail wastewater facilities (Wastewater System”) to be constructed within the Property for the provision of water and sewer service to the Property.

Some terms used herein are defined by the Texas Water Code or Mustang’s Rate Order. To the extent a term or phrase is defined therein, each shall mean and refer to the definition prescribed by Texas Water Code or Mustang’s Rate Order.

RECITALS

WHEREAS, Mustang was created, organized and exists for the purpose of furnishing potable water and wastewater service as a retail public utility within its certificated service area (the "Service Area") under Certificate of Convenience and Necessity Nos. 11856 and 20930 (the "CCN") and within Mustang political boundaries;

WHEREAS, CADG Sutton Fields, LLC, a Texas limited liability company, and CADG Sutton Fields II, LLC, Ltd., a Texas limited liability company are both a limited liability company organized under the laws of the State of Texas who owns the Property;

WHEREAS, the Property is located within Mustang’s Service Area and CADG has requested that retail water service (and retail wastewater service (collectively the “Water System”) be provided to the Property by Mustang. CADG desires to make a financial commitment for the construction of the Water System. Mustang has agreed to provide retail water service and retail wastewater service to the Property in accordance with the terms of this Agreement;

WHEREAS, CADG and Mustang intend that the Water System facilities (such as groundwater wells, well permits, water mains, pumping facilities, storage facilities, elevated storage tanks, and appurtenances thereto), and land, easements and rights-of-way therefore will be acquired, constructed and installed for the benefit of the Property, and that such facilities will be dedicated to Mustang in accordance with this Agreement, and when such facilities have been accepted by Mustang in accordance with the terms of this Agreement, those facilities (excepting any oversized facilities as provided for in Section 2.1.5, of this Agreement) will adequately serve the Property with Water Service;

WHEREAS, CADG intends for the Water System to be phased-in over a period of time commensurate with the projected build-out schedule for the Property;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged and confessed by the Parties, Mustang and CADG agree as follows:

1.1 Decertification.

A. Decertification. CADG intends for Mustang to be the retail water service and retail wastewater service provider for the Property. CADG agrees that Mustang shall be the holder of both the water CCN and wastewater CCN for the Property. CADG agrees further not to seek decertification of any CCN held by Mustang for the Property or to aide, encourage or cooperate with any third party to do so. CADG agrees to cooperate with and aid Mustang in the defense of Mustang's CCN in any action brought by any third party.

1.2 Service.

A. Retail Water Service and Wastewater Service. Subject to the terms and conditions of this Agreement and Mustang's Rate Order, Mustang will provide retail public water service and retail wastewater service of sufficient quality and quantity for all uses within the Property;

B. Fire Flow. Mustang will at all times provide "fire flows" to the developed portions of the property as defined by the applicable fire code or similar code or regulation to fight structure fires under normal conditions and at a rate consistent with the capacity of the Water System existing at the time of any required "fire flow." CADG will take all reasonable actions necessary to ensure that permanent non-residential structures which would require fire flows in excess of 1,500 GPM will be required to have an internal fire suppression system installed that will mitigate the necessity of extraordinary fire flow requirements;

C. Conditions Precedent. Notwithstanding the foregoing provisions in this section above, Mustang will have no obligation to provide water service or wastewater service to the property until: (i) a final plat for such property has been approved by the applicable governmental authority and recorded in the appropriate property records, (ii) all of the improvements for the Project (as defined herein) are completed for each respective phase of development, become operational and are inspected and tested, are approved by Mustang, and are accepted by Mustang, (iii) all required fees and charges have been paid, and all applicable expenses and costs have been paid to Mustang as set forth herein or as otherwise applicable, (iv) all other applicable requirements for service as set forth in this Agreement and in Mustang's Rate Order are satisfied; and/or (v) upon execution of a mutually acceptable agreement by the Parties concerning the wastewater lift station to be or being constructed by CADG on the Property. If a provision of the Rate Order conflicts with this Agreement, the terms and provisions of this Agreement shall control.

D. Water Services for Construction Purposes. Notwithstanding any of the foregoing provisions in this section, Mustang will provide reasonable water service for construction

purposes so long as CADG has delivered a preliminary or similar plat in accordance with CADG's development agreement with any applicable political subdivision and paid to Mustang the necessary and reasonable expenses for temporary water service. Alternatively, water for construction or irrigation purposes can be provided in a non-potable or pretreated condition from other sources.

2.1 Construction.

A. Engineering, Design, Inspection and Easements.

1. Plans and Specifications. Development of the Property will be in phases and in accordance with the development plans of CADG. CADG shall cause the Water System to be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of Mustang and all applicable regulatory agencies having jurisdiction, including but not limited to the Upper Trinity Regional Water District ("UTRWD"). All plans and specifications for the Water System must be reviewed and approved by Mustang's consulting engineer prior to construction and to the extent required, by the UTRWD. Mustang shall use its best efforts to obtain the UTRWD's approval of the plans and specifications if required. Upon written approval of the plans and specifications by the District's consulting engineer and to the extent required by the UTRWD, the plans and specifications shall become part of this Contract by reference and shall more particularly define the Water System improvements. The design, plans (including engineering plans), specifications, and contract documents for the construction and installation of the Water System shall be prepared by CADG at CADG's sole cost and shall be approved by Mustang. CADG shall construct the Water System in a good and workmanlike manner and fit for its intended purpose.

2. Approval of Plans and Specifications. The Water System shall be constructed in accordance with the plans and specifications approved by Mustang's engineer, Mustang's Rate Order, Mustang's rules and regulations and any other agencies having jurisdiction. Mustang shall have the right to inspect and approve all phases of the construction of the Water System. CADG must give written notice to the Mustang of the date on which construction is scheduled to commence so that the Mustang may assign an inspector.

3. Inspection and Inspection Fees. Mustang shall have the right to inspect all phases of the construction of the Project, and Mustang may charge and CADG will be obligated to pay Mustang its standard inspection fee for such inspections. Inspection Fees may include the actual costs of labor, travel and incidental expenses of the inspectors, plus ten percent (10%) overhead, as well as all other incidental expenses. Mustang agrees that the inspection fees shall remain the same as those in existence at the time of execution of this Agreement. CADG agrees that Mustang's engineers or other representatives may inspect, test and approve the construction of the Water System at any time to determine compliance with the approved designs, plans and specifications. Mustang is entitled to receive at least twenty-four (24) hours' notice prior to any test of any portion of the Water System or prior to the covering of any portion of any facilities that are constructed below grade. Only Mustang will make

connections to the Water System and CADG may request that Mustang permit CADG be allowed to use third party inspectors. Each third party inspector proposed by CADG shall be subject to Mustang's approval, which will not be unreasonably withheld. In the event that CADG uses an approved third party inspector, no inspection fee shall be required or paid to Mustang.

4. Stoppage for Non-Conformance. Mustang may stop any work on any portion of the Water System until such time as CADG and CADG's contractor(s) agree, in consultation with Mustang's engineer, to construct that portion of the Water System in accordance with Mustang's regulations and standards and the approved plans and specifications. In addition, the Mustang may require that any substandard work be removed or corrected prior to resuming construction of the remainder of such system improvements yet to be constructed.

5. Oversizing. The Water System shall be sized to provide continuous and adequate water service and wastewater service, including adequate fire flow to the Property based on plats and plans for the Development submitted to Mustang by CADG. Should Mustang require any part of the Project to be oversized, Mustang shall deliver written notice to CADG no later than the time of Mustang's review of CADG's plans and specifications for the Water System. In the event that CADG elects to construct any portion of the Water System using lines sized ten inches (10") or greater where an eight inch (8") is acceptable to Mustang or has otherwise been specified in the approved plans and specifications for the Project, then Mustang shall determine and credit the cost difference between the design and construction of the ten inch (10") or greater line and the eight inch (8") line against Connection Fees.

6. Easements and Land Costs. CADG shall be responsible for dedicating or acquiring all easements, rights-of-way and land necessary for construction of the Water System, and water distribution lines or wastewater gathering lines, at its sole expense, which Mustang may determine is necessary for the construction or operation of the Water System, including but not limited to obtaining any governmental approvals necessary to construct the Water System in public right-of-ways. CADG and Mustang agree that the easements or right-of-ways acquired by CADG to be used in conjunction with the take point for the Water System or the discharge point for the Wastewater System shall be dedicated and assigned by CADG to Mustang, and that the ownership and control of such easements or right-of-ways shall remain the property of Mustang thereafter. The legal instruments by which CADG shall dedicate and assign any such easements or right-of-way to Mustang must be approved by Mustang prior to the dedication or assignment of such easements or right-of-way by CADG. If necessary, CADG agrees to support Mustang's condemnation efforts relating to the acquisitions of easements and right-of-way. Mustang's property rights pursuant to this paragraph shall not be assigned without prior written consent of CADG. CADG and Mustang agree to work cooperatively with each other to obtain the assignment of certain easements currently held by the City of Celina that are necessary for the construction and/or completion of the Water System.

7. Pre-Construction Meeting. Prior to commencing construction and installation of any of the Water System, CADG shall provide advance written notification to Mustang of such commencement so that a pre-construction meeting may be scheduled. At least seventy-two hour advance prior notice to Mustang's engineer shall be given before making any tap or connection into the Water System.

8. Drawings. CADG shall furnish Mustang with a copy of the as-built plans or drawings in an appropriate AutoCAD format or other electronic format acceptable to Mustang for each phase of the Water System promptly upon completion of construction and installation of such facilities and improvements. If required, Mustang agrees to use its best efforts to obtain UTRWD approval of the drawings, as needed.

9. Agency Approval. If any approval or authorization from any applicable governmental body is required for the installation of the Water System, Mustang and CADG agree to cooperate fully to obtain the approval or authorization necessary to construct or complete the Water System

2.2 Service Connection Fees.

A. Connection Fees.

CADG intends to develop the Property in phases, with Phase 1 consisting of approximately 130 acres to be divided into approximately 515 lots of various sizes.

1. Connection Fee Rate. The District currently charges a Connection Fee of \$2,500.00 for a standard water service connection and Connection Fee of \$3,000.00 for a standard sewer service connection. For purposes of this Contract, the Connection Fee for water service includes all fees and charges required for a residential customer to obtain water and sewer service from Mustang except for the cost of meter installation and the customer Deposit. CADG and/or the Builder shall pay to Mustang a total Connection Fee of \$ 5,500.00 per lot for the standard (residential) service connections in the Development according to the following schedule:

a. Payment of Connection Fees. Payment: CADG and/or the Builder shall pay the sum of \$5,500.00 to Mustang for each connection at the time a request is made for any connection and shall be paid prior to and before the placement of any meter for any lot or parcel located within the Property.

b. Reimbursement for Wastewater Construction Costs. Mustang agrees to reimburse CADG up to the sum of four hundred thousand dollars and no cents (\$400,000.00) for the cost of constructing certain wastewater facilities. Such reimbursement shall be made from the connection fees collected by Mustang solely for sewer service connections and shall only be reimbursed after Mustang has collected sewer service connections fees in an aggregate which exceed the total cost of construction. CADG agrees to submit an accounting with supporting documentation to Mustang showing all the cost of

construction. Once the sum of all sewer service connections fees collected exceeds the cost of construction enumerated herein. Mustang shall pay CADG the reimbursement within thirty (30) days.

2. UTRWD Building Activity Fee. In addition to the Connection Fees listed in Mustang Rate Order, the UTRWD requires Mustang to collect an Upper Trinity Regional Water District Building Activity Fee in the amount of \$500.00 for each wastewater connection ("UTRWD Fee"). Mustang shall collect the UTRWD Fee for each lot in all phases of the Property in accordance with the requirements of the UTRWD.

2.3. Construction Costs.

A. Payment of Construction Costs. CADG agrees to pay or cause to be paid all costs of permitting, designing and constructing the Water System in accordance with the phased development of the Property, including but not limited to, the costs for all planning, surveying, geotechnical, materials, labor, inspection, and general liability insurance, maintenance bond coverage, interest costs, easement acquisition costs, of all (1) groundwater wells, any ground or elevated storage tank(s), water mains, water lines, and related fittings, equipment and appurtenances necessary to transmit water within and for the Property and (2) sewer lines, sewer mains, and lift stations, and for the collection and treatment of wastewater produced within the Property.

2.4 Improvements.

A. Fresh Water Service Improvements. CADG shall be solely responsible for the permitting, design, payment, construction or installation of the portion of the Project necessary for installation of the Water System within the Property including but not limited to water pipelines, in accordance with the terms and conditions of this Agreement.

B. Wastewater Service Improvements. CADG shall be solely responsible for the permitting, design, payment, construction and installation of the portion of the Project necessary for installation of the Wastewater System within the Property including a wastewater collection system and lift stations (such facilities and improvements referred to hereinafter as the "Wastewater Facilities") in accordance with the terms and conditions of this Agreement.

C. Facilities or Off-site Improvements. CADG shall be solely responsible for the permitting, design, payment, construction or installation of that portion of the Project necessary for installation of the Off-site Improvements. Once any Off-site Improvement is completed and dedicated to Mustang, CADG shall be entitled to be reimbursed 125% of the cost of the improvements by offset against connections fees until fully satisfied. In the event that CADG fails to fund and construct all Off-site improvements required by Mustang, then Mustang may undertake to complete the Off-site Improvements; and as a result, no off set shall be permitted and all Connection Fees shall be then be charged thereafter at the rate established by Mustang's Rate Order in effect at the time.

D. **Permits and Approvals.** It is understood and agreed by the parties that the obligation of Mustang to provide water service in the manner contemplated by this Contract is subject to the issuance of all permits, certificates, or approvals required to lawfully provide retail water service by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction. Without the prior approval of Mustang, CADG shall not:

(1) construct or install additional water or sewer lines or facilities to service areas outside the Property;

(2) add any additional lands to the Property for which water or sewer service is to be provided pursuant to this Contract; or

(3) connect or serve any person or entity who, in turn, sells water or sewer service directly or indirectly to any other person or entity.

2.5 Maintenance and Maintenance Bond.

A. **Maintenance Bond.** After completion of construction of any phase of the Water System, CADG will provide to Mustang a concurrence letter from CADG's engineers certifying that the construction of the Water System has been completed in accordance with the designs, plans, specifications and change orders, and that the facilities have been tested and approved for use in accordance with the approved contract documents, TCEQ rules and Mustang's Rate Order. CADG and/or its contractors shall also provide Mustang with a two-year maintenance bond in the amount of not less than 20%, as stated in Mustang's Rate Order, of the final construction cost of the applicable portion of the Water Facilities and the Wastewater Facilities.

B. **Maintenance.** Upon CADG's dedication of each of the Water System and Mustang's inspection and acceptance of the same, Mustang shall be solely responsible for operation, maintenance and administration of the accepted Water System. Notwithstanding the foregoing, it is expressly understood and agreed by the Parties that Mustang shall not accept ownership of, shall have no responsibility for, and shall not operate or maintain any facilities constructed on the customer's side of individual meters located within any property within the Property, and Mustang will own all of the Water System up to the point of connection with the customer's service line.

C. **Meters.** Mustang agrees to install standard water meters to serve each approved service address within the Property that receives Water Service and Wastewater Service from Mustang hereunder, in accordance with Mustang's Rate Order governing the same and subject to payment of all applicable security deposits and installation fees (other than payment of any Connection Fee). Any connection of individual customers to the Water System shall be made only by Mustang.

3.1 Service from the Water System.

A. Continuous Water Flow. After proper completion and dedication of the Water System to Mustang, Mustang shall provide continuous and adequate water service sufficient to meet all of the fire flow requirements and potable needs of the Property and wastewater service sufficient to collect and treat wastewater of the Property, subject to all duly adopted and general applicable rules and regulations of Mustang and payment of the following:

- (1) all standard rates, fees and charges adopted by Mustang;
- (2) all service investigation fees; and
- (3) all connection fees.

4.1 Dedication of Water System and Ground Water.

A. Dedication of Water System. Upon proper completion of construction of a phase of the Water System, and final inspection and approval thereof by Mustang, CADG shall dedicate the Water System to Mustang by Bill of Sale or other conveyance document in form reasonably acceptable to Mustang. Mustang agrees that the Water System conveyed to Mustang shall be used to serve customers located within the Property, except that capacity in any overhead or ground storage provided for herein or oversized facilities funded may be used to serve customers located outside the Property, subject to the needs of the customers located within the Property. Mustang's rights pursuant to this Paragraph may not be assigned without prior written consent of CADG.

B. Ground Water and Ground Water Rights. Concomitant with this Agreement, CADG will execute a Deed for Groundwater Rights in substantially the same form as contained in Exhibit "B" attached hereto, that sells, grants, quitclaims and conveys to Mustang the Groundwater Rights of the Property, together with all and singular the rights and appurtenances thereto or in any way relating to the ground water belonging to CADG for the Property. Mustang and CADG agree to cooperate in the placement of any well, if any, to be drilled by Mustang on the Property, and CADG agrees to cooperate with Mustang in the location of such well in order to maximize the efficiency of any such well. Notwithstanding the grant herein, CADG shall have the right to operate the well now existing under TCEQ Well Tracking No. 430171(the "Well"), and to use the water produced by the Well up to its current capacity, for irrigation needs and to maintain other surface amenities located on the Property. CADG shall have the right to drill and operate two (2) additional wells on the property at its own expense, after consultation with Mustang, and use the groundwater therefrom to serve any additional irrigation needs and other surface amenities located on the Property. Use of the ground water produced by any well shall not be used as fresh water or to provide retail water service to the property.

5.1 Effect of Force Majeure.

In the event that any Party is rendered unable by force majeure to carry out any of its obligations under this Contract, in whole or in part, then the obligations of that Party, to the extent affected by the force majeure shall be suspended during the continuance of the inability,

provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other Party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, restraints of government and civil disturbances, explosions, breakage or accidents to equipment, pipelines or canals, partial or complete failure of water supply, and any other inabilities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable in the judgment of the party having the difficulty. Notwithstanding any term to the contrary in this section, "force majeure" does not apply to the failure of a party to timely make any payments required by this contract.

6.1 Warranties and Representations.

CADG acknowledges, represents and agrees that:

A. CADG has not created or permitted any third person to create any liens, leases, options, claims, encumbrances or any other adverse rights, claims or interests with respect to the Water System or the Property, that will prevent or hinder its ability to transfer good and warrantable title in same to Mustang;

B. Upon acceptance of the Water System, Mustang will be the true and lawful owner of the Water System to be conveyed hereunder and, no other third person or entity, public or private, will possess a right or interest, legal or equitable, nor any lien, encumbrance or other adverse claim, present or contingent, in or to the Water System;

C. Execution of this Agreement and the consummation of the transactions contemplated hereunder will not constitute an event of default under any contract, covenant or agreement binding upon it;

D. Except as provided herein, it has not previously entered into any agreement or caused or otherwise authorized any action that would diminish, eliminate or adversely affect Mustang's contemplated ownership or use of the System or the value of same.

7.1 Notices.

Any notice to be given hereunder by either party to the other party shall be in writing and may be by delivery in person or by facsimile, or by sending said notices by certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given by mail when deposited with the United States Postal Service with sufficient postage affixed.

To Mustang: Mustang Special Utility District
Attn: General Manager
7985 FM 2931
Aubrey, Texas 76227
Fax: 940-440-7686

To CADG: CADG Sutton Fields, LLC.
Attn. Mehrdad Moayed, Manager
1800 Valley View Lane, Suite 300
Farmers Branch, Texas 75234
Phone: (469) 892 - 7200
Email: Travis@CenturionAmerican.com
Fax: (469) 892 – 7202

CADG Sutton Fields II, LLC.
Attn. Mehrdad Moayed, Manager
1800 Valley View Lane, Suite 300
Farmers Branch, Texas 75234
Phone: (469) 892 - 7200
Email: Travis@CenturionAmerican.com
Fax: (469) 892 – 7202

Either party may change the address for notice to it by giving written, notice of such change in accordance with the provisions of this paragraph.

8.1 Breach of Contract and Remedies.

If any Party breaches any term or condition of this Contract, the non-breaching party shall provide the breaching party with notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon its receipt of a notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party shall have all rights and remedies at law and in equity including, without limitation, the right to enforce specific performance of this Contract by the breaching party and the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith. Notwithstanding the preceding, neither party shall have the right to terminate this Contract. The rights and remedies granted in this Contract to the parties in the event of default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Contract.

9.1 Indemnity.

To the extent permitted by law, Mustang and CADG shall indemnify and save harmless the other and its officers, agents, representatives and employees from all suits, actions, losses, damages, claims or liability of any character, type or description, including without limiting the generality of the foregoing all expenses of litigation, court costs and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of it or its agents, representatives or employees in connection with or related to the Development, the construction of the Water System or its execution or performance of this Contract.

10.1 Waiver of Sovereign Immunity.

Mustang, and CADG agree that this Contract constitutes an agreement for providing goods and services to Mustang and is subject to the provisions of the Subchapter I of Chapter 271, Texas Local Government Code, as amended, and any successor statute(s), as and if in effect. In accordance with Sections 271.152 and 271.153 thereof, to the extent limited, however, by the provisions thereof, Mustang hereby waives any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and liable to the extent necessary for the other party hereto to enforce this Contract, but only as to the parties hereto and this Agreement. This waiver shall not extend to any third party or non-signatory. Notwithstanding the foregoing, this Section is not intended by the Parties to expand or increase the liability or the measure of damages that Mustang or CADG may have for a breach of this Agreement pursuant to §271.151 through §271.160 of the Texas Local Government Code.

11.1 No Third Party Beneficiaries.

This Contract is solely for the benefit of the parties hereto, and no other person or entity shall have any right, interest or claim whatsoever under this Contract. Should a third party seek to either enforce or invalidate this Contract for any reason whatsoever, the Parties, collectively and individually, agree to defend the validity of this Contract, and will seek to enforce all its provisions, as well as the Parties CCNs, in any action brought by any third party.

12.1 Context.

Whenever the context requires, the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words shall include singular and plural.

13.1 Litigation Expenses.

Either party to this Contract who is the prevailing party in any legal proceeding against the other party, brought in relation to this Contract, shall be entitled to recover court costs, expenses and reasonable attorneys' fees from the non-prevailing party.

14.1 Intent.

The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are, or may become, necessary or convenient to effectuate and carry out the intent of this Contract. In particular, in the event a court of competent jurisdiction should ever rule all or any provision of the contract to be unconstitutional or otherwise unenforceable to parties agree to negotiate in good faith to otherwise accomplish the intent of the invalid provisions.

15.1 Authority.

The signatories hereto represent and affirm that they have authority to execute this Contract on behalf of the respective parties hereto.

16.1 Severability.

The provisions of this Contract are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of such word, phrase, clause, sentence, paragraph, section, or other party of this Contract to other persons or circumstances shall not be affected thereby and this Contract shall be construed as if such invalid or unconstitutional portion had never been contained therein.

17.1 Entire Agreement.

This Contract, including any exhibits and/or addendums attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Contract. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

18.1 Amendment.

No amendment of this Contract shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of Mustang and CADG, respectively, which amendment shall incorporate this Contract in every particular not otherwise changed by the amendment.

19.1 Governing Law.

This Contract shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Denton County, Texas.

20.1 Venue.

Any action at law or in equity brought to enforce or interpret any provision of this Contract shall be brought in a state court of competent jurisdiction with venue in Denton County, Texas.

21.1 Successors and Assigns.

This Contract shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

22.1 Assignability.

The rights and obligations of CADG and/or Mustang hereunder may not be assigned without the prior written consent of the other, which consent shall not unreasonably be withheld. Absent the express written consent of Mustang, CADG shall not assign this Agreement, in part or whole, or any right or obligation hereunder to any entity or municipality or other water service provider who could alter, lessen, affect, diminish or decertify Mustang's CCN's, rights or interests hereunder or in the Water System. Each assignment shall be in writing executed by CADG and the Assignee, and each such assignment shall obligate the Assignee to be fully bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to all Parties within 15 days after execution. From and after such assignment, Mustang agrees to look solely to the Assignee for the performance of all obligations assigned to the Assignee and agrees that CADG shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations.

23.1 Effective Date.

This Contract shall be effective from and after the date of due execution by both parties.

24.1 Compliance with Laws.

The Parties are of the understanding that this Contract complies with all federal and state statutes and constitutions, local law and common law which may govern the validity of this Contract at the time of execution.

IN WITNESS WHEREOF each of the parties has caused this Contract to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

/signatures below/

EXECUTED on this the 28th day of June, 2017.

CADG Sutton Fields, LLC,
a Texas limited liability company

By: CADG Holdings, LLC,
a Texas limited liability company
Its Sole Member

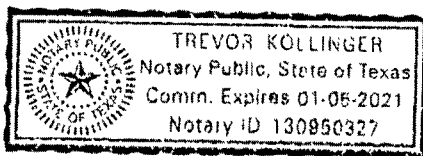
By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability company
Its Manager

By: [Signature]
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 28 day of June 2017 by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of CADG Holdings, LLC, as Sole Member of CADG Sutton Fields, LLC, a Texas limited liability company on behalf of said company.



(SEAL)

[Signature]
Notary Public, State of Texas

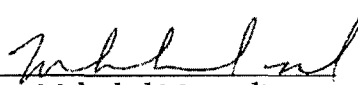
EXECUTED on this the 28th day of June, 2017.

CADG Sutton Fields II, LLC,
a Texas limited liability company

By: CADG Holdings, LLC,
a Texas limited liability company
Its Sole Managing Member

By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability company
Its Manager

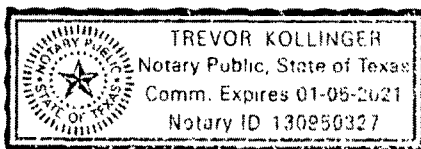
By: 
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §


§

COUNTY OF DALLAS §

This instrument was acknowledged before me on the 28 day of June 2017 by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of CADG Holdings, LLC, as Sole Managing Member of CADG Sutton Fields II, LLC, a Texas limited liability company on behalf of said company.



(SEAL)


Notary Public, State of Texas

EXECUTED on this the _____ day of _____, 2017.

MUSTANG SPECIAL UTILITY DISTRICT

By: _____

Dean Jameson, President

STATE OF TEXAS

COUNTY OF DENTON

Before me the undersigned notary public appeared Dean Jameson, President of Mustang Special Utility District, a political subdivision of the State of Texas, on behalf of such District for the consideration therein expressed.

Notary Public for the State of Texas

(SEAL)

EXHIBIT A

PROPERTY DESCRIPTION

SUTTON FIELDS I & II

LEGAL DESCRIPTION 494.883 ACRE TRACT

BEING that certain tract of land situated in the Freeman Wilkerson Survey, Abstract No. 1411, the Thomas B. Cox Survey, Abstract No. 309, the Carrol Jackson Survey, Abstract No. 1546, the Jacob Rue Survey, Abstract No. 1109, and the Hiram Rue Survey, Abstract No. 1111, in Denton County, Texas, and being all of that certain tract of land described in deed to Tarsan Corporation recorded in Document No. 2002-108524, of the Real Property Records of Denton County, Texas (RPRDCT), being all of those certain tracts of land described in deeds to Mike A. Myers Investment Holdings, L.P. recorded in Document No. 2005-33384, RPRDCT, Document No. 2007-53939 RPRDCT, and Document No. 2005-93340, RPRDCT, all of that certain tract of land described in deed to The Amanda S. Myers Irrevocable Asset Trust recorded in Document No. 2011-125051, RPRDCT, all of that certain tract of land described in deed to Ok Kyun and Youngmoo Kim, Trustees of the Kim Family Living Trust recorded in Document No. 2005-86220, RPRDCT, and part of that certain tract of land described in deed to Frisco Industrial Partners recorded in Document NO. 2008-66233, RPRDCT, and being more particularly described as follows;

BEGINNING at a 1/2 inch capped iron rod found, said iron rod being located on the east right-of-way line of Farm to Market (FM) Road No. 1385 (variable width R.O.W.), and also being the northwest corner of Countryview Addition, an addition to Denton County according to Final Plat recorded in Cabinet F, Page 267, of the Plat Records of Denton County, Texas;

THENCE North 01°28'19" East, with said east right-of-way line of FM No. 1385, a distance of 310.72 feet to a 1/2 inch iron rod found for corner, said iron rod being the northwest corner of the aforementioned Mike A. Myers Investment Holdings, L.P. tract, recorded in Document No. 2007-53939 RPRDCT, and a southwest corner of the aforementioned Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-93340 RPRDCT;

THENCE North 01°22'30" East, continuing with the east right-of-way line of FM No. 1385, a distance of 204.07 feet to a 1/2 inch iron rod found for corner, said iron rod being the northwest corner of said Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-93340 RPRDCT, and the southwest corner of the aforementioned tract of land described in deed to Tarsan Corporation recorded in Document No. 2002-108524, RPRDCT;

THENCE North 01°32'20" East, continuing with the east right-of-way line of FM No. 1385, a distance of 455.39 feet to a 1/2 inch iron rod found for corner;

THENCE North 01°55'54" East, continuing with the east right-of-way line of FM No. 1385, a distance of 446.59 feet to a 1/2 inch iron rod found for corner at the intersection of the east right-

of-way line of FM No. 1385, and the approximate center of Crutchfield Road (undedicated public road), and the northwest corner of said Tarsan Corporation tract;

THENCE North 89°43'38" East, with said approximate center of Crutchfield Road, and the north line of the Tarsan tract, and the aforementioned Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-33384, RPRDCT, a distance of 3428.14 feet to a railroad spike found for corner at the northeast corner of said Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-33384, RPRDCT;

THENCE North 00°08'37" West, continuing with the approximate center of Crutchfield Road, and with the west line of the aforementioned Amanda S. Myers Irrevocable Asset Trust tract, a distance of 858.91 feet to a 1/2 inch iron rod found for corner, said iron rod being the northwest corner of said Amanda S. Myers Irrevocable Asset Trust tract, and the southeast corner of that certain tract of land described in deed to Fashand Farm, Ltd. recorded in Document No. 2004-135532, RPRDCT;

THENCE North 89°30'51" East, continuing with the approximate center of Crutchfield Road, and with the north line of the Amanda S. Myers Irrevocable Asset Trust tract, a distance of 1759.29 feet to a 1/2 inch iron rod found for corner;

THENCE South 00°23'19" East, with the east line of the Amanda S. Myers Irrevocable Asset Trust tract, and the west line of that certain tract of land described in deed to Smiley Road, Ltd. recorded in Document No. 2006-2064, RPRDCT, a distance of 2685.16 feet to a 5/8 inch iron rod found for corner;

THENCE South 89°13'31" West, with a line described in Boundary Line Agreement recorded in Instrument No. 2005-122140, RPRDT, a distance of 527.69 feet to a 1/2 inch iron rod found for corner;

THENCE South 00°41'45" West, with a line described in said Boundary Line Agreement recorded in Instrument No. 2005-122140, RPRDT, a distance of 2985.21 feet to a 60d nail found in asphalt for corner, said nail being located in the approximate center of Parvin Road (undedicated public road);

THENCE North 89°11'44" West, with said approximate center of Parvin Road, and with a line described in said Boundary Line Agreement recorded in Instrument No. 2005-122140, RPRDT, a distance of 1163.46 feet to a 3/8 inch iron rod found for corner;

THENCE North 00°42'55" West, leaving the approximate center of Parvin Road, and with the west line of the Amanda S. Myers Irrevocable Asset Trust tract, the east line of that certain tract of land described in deed to Donald K. Estep and Sonja K. Estep recorded in Document No. 2011-67774, RPRDCT, and that certain tract of land described in deed to Donald Kenny Estep and Sonja Kay Estep recorded in Document No. 2001-99806, RPRDCT, a distance of 280.30 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE South 89°32'42" West, with a south line of that certain tract of land described in deed

to Ok Kyun and Youngmoo Kim, Trustees of the Kim Family Living Trust recorded in Document No. 2005-86220, RPRDCT, a distance of 239.66 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE South 00°49'27" East, with an easterly line of said Kim Family Living Trust tract, the west line of said Estep tracts, and the west line of that certain tract of land described in deed to Claude Adams and Kathleen Adams recorded in Document No. 2011-67775, RPRDCT, and the west line of that certain tract of land described in deed to David P. Brewer and Carolyn Brewer recorded in Document No. 2012-34990, RPRDCT, a distance of 734.88 feet to a 1/2 inch iron rod found for corner at the southwest corner of said Brewer tract, and an interior "ell" corner of the Kim Family Living Trust tract;

THENCE North 89°20'27" East, a distance of 238.85 feet to a 1/2 inch iron rod found for corner, said iron rod being located at the southwest corner of the Brewer tract, a northeast corner of the Kim Family Living Trust tract, and also being located in the aforementioned approximate center of Parvin Road;

THENCE South 00°32'10" East, with an easterly line of the Kim Family Living Trust tract, and said approximate center of Parvin Road, a distance of 490.79 feet to a 1/2 inch iron rod found for corner at the most southerly southeast corner of the Kim Family Living Trust tract;

THENCE South 89°26'22" West, with the south line of the Kim Family Living Trust tract, and the approximate center of Parvin Road, a distance of 378.96 feet to a nail in asphalt found for corner;

THENCE North 00°17'53" East, leaving the approximate center of Parvin Road, and with a west line of the Kim Family Living Trust tract, and the east line of that certain tract of land described in deed to John M. Cospier and Jackie Cospier recorded in Volume 626, Page 706, RPRDCT, passing at a distance of 27.73 feet a 5/8 inch iron rod in concrete found, continuing in all, a distance of 267.98 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner, from which a 5/8 inch iron rod in concrete found bears South 00°17'53" West, a distance of 2.99 feet;

THENCE South 89°25'59" West, with a south line of the Kim Family Living Trust tract, and the north line of the Cospier tract, a distance of 824.19 feet to a 1/2 inch iron rod found for corner;

THENCE South 00°39'57" East, with the west line of the Cospier tract, and an easterly line of the Kim Family Living Trust tract, passing at a distance of 244.64 feet a 1/2 inch iron rod found, continuing in all, a distance of 265.80 feet to a 1/2 inch iron rod found for corner at a southeast corner of Kim Family Living Trust tract, and also being located in the aforementioned approximate center of Parvin Road;

THENCE South 89°09'41" West, with the south line of the Kim Family Living Trust tract, and the approximate center of Parvin Road, passing at a distance of 411.81 feet a 1/2 inch iron rod found at the northeast corner of that certain tract of land described in deed to Swisher Partners, L.P. recorded in Document No. 2004-7927, RPRDCT, continuing in all, a distance of 462.41 feet

to a 1/2 inch iron rod found for corner at the southeast corner of that certain tract of land described in deed to the City of Celina, Texas recorded in Document No. 2008-62468, RPRDCT;

THENCE North 00°41'57" West, with the east line of said City of Celina, Texas tract, a distance of 60.00 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE South 89°18'56" West, with a north line of the City of Celina, Texas tract, and Parvin Road, a distance of 1107.30 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE North 00°41'04" West, leaving said north line of Parvin Road, a distance of 843.46 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE South 89°18'56" West, a distance of 815.06 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner, said iron rod being located on an easterly line of said City of Celina, Texas tract, and the aforementioned east right-of-way line of FM No. 1385;

THENCE North 01°32'26" East, with said east right-of-way line of FM No. 1385 according to City of Celina, Texas tract deed, a distance of 350.05 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE North 89°22'47" East, leaving the east right-of-way line of FM No. 1385, and with the north line of the aforementioned tract of land described in deed to Frisco Industrial Partners recorded in Document No. 2008-66233, RPRDCT, and the south line of that certain tract of land described in deed to Anna Liz Hong recorded in Document No. 2014-15601, RPRDCT, a distance of 1908.52 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE North 00°41'47" West, with the east line of said Anna Liz Hong tract, and the most westerly line of the aforementioned Kim Family Living Trust tract, a distance of 1546.84 feet to an old wood corner post found for corner, from which a 5/8 inch iron rod found bears South 16°28'53" West, a distance of 1.57 feet;

THENCE North 00°24'23" West, with the west line of the aforementioned Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-33384, RPRDCT, passing at a distance of 479.75 feet a 5/8 inch iron rod found at the southeast corner of that certain tract of land described in deed to Lee A. Brown recorded in Document No. 2003-122624, RPRDCT, continuing with said west line of the Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-33384, RPRDCT, and the east line of said Lee A. Brown tract, in all, a total distance of 951.64 feet to a 5/8 inch iron rod found for corner at the southeast corner of the aforementioned Countryview Addition;

THENCE North 00°07'02" West, continuing with the west line of the Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-33384, RPRDCT, and the east line of said Countryview Addition, a distance of 588.61 feet to a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner, from which a 1/2 inch iron rod found bears South 89°26'31" West, a distance of 1.51 feet;

THENCE South 89°18'14" West, with the south line of the aforementioned Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-93340, RPRDCT, a distance of 1301.63 feet to a 1/2 inch iron rod found for corner at the most southerly southwest corner of said Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-93340 RPRDCT, and the southeast corner of the aforementioned Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2007-53939 RPRDCT;

THENCE South 89°15'45" West, with the south line of said Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2007-53939 RPRDCT, a distance of 522.72 feet to the POINT OF BEGINNING of herein described tract of land containing an area of 494.883 acres of land.

LEGAL DESCRIPTION – 112.886 ACRE TRACT

BEING that certain tract of land situated in the Thomas H. McIntyre Survey, Abstract No. 903, in Denton County, Texas, and being part of that certain tract of land described in deed to Denton County 128 Development LLC recorded in Document No. 2013-135475, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described as follows:

LEGAL DESCRIPTION – 127.930 ACRES

BEING that certain tract of land situated in the Thomas H. McIntyre Survey, Abstract No. 903, in Denton County, Texas, and being all of that certain tract of land described in deed to Denton County 128 Development LLC recorded in Document No. 2013-135475, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described as follows;

COMMENCING at a 1/2 inch iron rod found at the intersection of the east right-of-way line of Farm to Market (FM) Road No. 1385 (variable width R.O.W.), and the approximate center of Crutchfield Road (undedicated public road), said iron rod also being the northwest corner of that certain tract of land described in deed to Tarsan Corporation recorded in Document No. 2002-108524, RPRDCT;

THENCE North 89°43'38" East, continuing with the east right-of-way line of FM No. 1385, a distance of 2.88 feet to the POINT OF BEGINNING of herein described tract, a 1/2 inch iron rod found for corner, said iron rod being the southwest corner of said Denton County 128 Development LLC tract;

THENCE North 01°41'02" East, continuing with the east right-of-way line of FM No. 1385, a distance of 606.22 feet to a 1/2 inch iron rod found for corner;

THENCE North 00°48'15" East, continuing with the east right-of-way line of FM No. 1385, a distance of 797.75 feet to a 1/2 inch iron rod found for corner at the most westerly northwest corner of said Denton County 128 Development LLC tract, and the southwest corner of that certain tract of land described in deed to Munish Gupta and Anusha Gupta recorded in Document No. 2013-84112, RPRDCT;

THENCE North 89°33'57" East, leaving the east right-of-way line of FM No. 1385, and with the north line of said Denton County 128 Development LLC tract, and the south line of said Gupta tract, a distance of 1280.98 feet to a 1/2 inch iron rod found for corner;

THENCE North 00°21'49" West, with a west line of said Denton County 128 Development LLC tract, the east line of said Gupta tract, and the east line of that certain tract of land described in deed to Dena C. Riley recorded in Document No. 00-R0050894, RPRDCT, a distance of 547.19 feet to a 5/8 inch capped iron rod ("J-E #3700) found for corner at the southeast corner of that certain tract of land described in deed to Jeff Hamner recorded in Volume 2156, Page 762, RPRDCT;

THENCE North 00°25'32" West, with a west line of said Denton County 128 Development LLC tract, and an east line of said Jeff Hamner tract, a distance of 553.05 feet to a 1/2 inch iron rod found for corner at the northeast corner of said Jeff Hammer tract, and the southeast corner of that certain tract of land described in deed to 28 & 12 Arm on Preston Road, Ltd. recorded in Instrument No. 2004-137416, RPRDCT;

THENCE North 00°02'29" East, with a west line of said Denton County 128 Development LLC tract, and the east line of said 28 & 12 Arm on Preston Road, Ltd. tract, a distance of 73.81 feet to a 1/2 inch iron rod found for corner at the most northerly northwest corner of said Denton County 128 Development LLC tract, and the most southerly southwest corner of that certain tract of land described in deed to Blue Angus Ranch, LP, recorded in Instrument No. 2007-107216, RPRDCT;

THENCE South 89°46'58" East, with the most northerly north line of said Denton County 128 Development LLC tract, and the most southerly south line of said Blue Angus Ranch, LP tract, a distance of 959.75 feet to a 3/8 inch iron rod found for corner at the most southerly southeasterly corner of said Blue Angus Ranch, LP tract, and a southwest corner of that certain tract of land described in deed to Fashand Farm, Ltd. recorded in Document No. 2004-135532, RPRDCT;

THENCE South 89°47'30" East, continuing with the most northerly north line of said Denton County 128 Development LLC tract, and with a south line of said Fashand Farm, Ltd. tract, a distance of 395.36 feet to a 1/2 inch iron rod found for corner;

THENCE South 02°55'32" West, with an east line of said Denton County 128 Development LLC tract, and a west line of said Fashand Farm, Ltd. tract, a distance of 454.72 feet to a 1/2 inch iron rod found for corner;

THENCE North 89°27'35" East, with a north line of said Denton County 128 Development LLC tract, and a south line of said Fashand Farm, Ltd. tract, a distance of 156.79 feet to 1/2 inch iron rod found for corner at a northeast corner of said Denton County 128 Development LLC tract, and the northwest corner of that certain tract of land described in deed to Fashand Farm, Ltd. recorded in Document No. 2005-21653, RPRDCT;

THENCE South 00°09'07" East, with the most easterly east line of said Denton County 128

Development LLC tract, the west line of said Fashand Farm, Ltd. tract recorded in Document No. 2005-21653, RPRDCT, and the west line of that certain tract of land described in deed to Jan M. Paliwoda and Margaret Paliwoda recorded in Volume 4364, Page 1631, RPRDCT, a distance of 2035.13 feet to a 1/2 inch capped iron rod (#6005) found for corner at the northeast corner of that certain tract of land described in deed to SBA Towers IV, LLC recorded in Document No. 2013-94302, RPRDCT;

THENCE South 89°09'16" West, with the north line of said SBA Towers IV, LLC tract, a distance of 50.18 feet to a 1/2 inch capped iron rod (#6005) found for corner;

THENCE South 00°57'44" East, with the west line of said SBA Towers IV, LLC tract, a distance of 50.16 feet to a 1/2 inch capped iron rod (#6005) found for corner;

THENCE North 89°07'28" East, with the south line of said SBA Towers IV, LLC tract, a distance of 49.90 feet to a 1/2 inch iron rod found for corner on said most easterly east line of said Denton County 128 Development LLC tract, and the west line of said Jan M. Paliwoda and Margaret Paliwoda tract;

THENCE South 00°54'46" East, with said most easterly east line of said Denton County 128 Development LLC tract, and the west line of the Jan M. Paliwoda and Margaret Paliwoda tract, a distance of 31.06 feet to a 1/2 inch iron rod found for corner on said approximate center of Crutchfield Road, and being the southeast corner of said Denton County 128 Development LLC tract;

THENCE South 89°43'38" West, with said approximate center of Crutchfield Road, the north line of that certain tract of land described in deed to Mike A. Myers Investment Holdings, L.P. tract recorded in Document No. 2005-33384, RPRDCT, and the north line of said Tarsan tract, a distance of 2797.59 feet to the POINT OF BEGINNING of herein described tract of land containing an area of 127.930 acres of land;

SAVE AND EXCEPT the following 15.044 Acre Tract of land being more particularly described as follows:

LEGAL DESCRIPTION – 15.044 ACRE TRACT

BEING that certain tract of land situated in the Thomas H. McIntyre Survey, Abstract No. 903, in Denton County, Texas, and being part of that certain tract of land described in deed to Denton County 128 Development LLC recorded in Document No. 2013-135475, of the Real Property Records of Denton County, Texas (RPRDCT), and being more particularly described as follows;

COMMENCING at a 1/2 inch iron rod found at the intersection of the east right-of-way line of Farm to Market (FM) Road No. 1385 (variable width R.O.W.), and the approximate center of Crutchfield Road (undedicated public road), said iron rod also being the southwest corner of said Denton County 128 Development LLC tract, from which a 1/2 inch iron rod found on said east right-of-way line of FM Road No. 1385 bears North 01°41'02" East, a distance of 606.22 feet;

THENCE North 89°43'38" East, with said approximate center of Crutchfield Road, with said south line of the Denton County 128 Development LLC tract, and the north line of that certain tract of land described in deed to Tarsan Corporation recorded in Document No. 2002-108524, RPRDCT, a distance of 53.68 feet, from which a 1/2 inch iron rod found at the most southerly southeast corner of said Denton County 128 Development LLC tract bears North 89°43'38" East, a distance of 2743.91 feet;

THENCE North 00°16'22" West, leaving said approximate center of Crutchfield Road, and said common line of the Denton County 128 Development LLC tract, and the Tarsan Corporation tract, a distance of 45.00 feet to the POINT OF BEGINNING of herein described tract of land;

THENCE the following bearings and distances to 5/8 inch iron rods with plastic caps marked "PETITT-RPLS 4087" set for corner;

North 44°17'26" West, a distance of 34.74 feet;

North 01°41'30" East, a distance of 125.09 feet;

North 03°30'57" West, a distance of 110.18 feet;

North 01°41'30" East, a distance of 223.64 feet;

North 06°12'20" East, a distance of 118.95 feet;

North 00°48'41" East, a distance of 118.28 feet;

North 45°48'41" East, a distance of 35.36 feet;

And South 89°11'19" East, a distance of 531.97 feet, said iron rod being the beginning of a tangent curve to the left;

THENCE with said curve having a central angle of 44°12'24", a radius of 340.00 feet, a chord which bears North 68°42'29" East, a chord distance of 255.87 feet, for an arc distance of 262.33 feet to the end of said curve, a 5/8 inch iron rod with plastic cap marked "PETITT-RPLS 4087" set for corner;

THENCE the following bearings and distances to 5/8 inch iron rods with plastic caps marked "PETITT-RPLS 4087" set for corner;

South 43°16'28" East, a distance of 81.39 feet;

South 10°26'21" East, a distance of 50.00 feet;

South 00°18'36" East, a distance of 717.45 feet;

And South 89°43'38" West, being 45 feet north of and parallel to said approximate center

of Crutchfield Road, said south line of the Denton County 128 Development LLC tract, and the north line said Tarsan Corporation tract, a distance of 858.23 feet to the POINT OF BEGINNING of herein described tract of land containing an area of 15.044 acres of land.

LEAVING A NET AREA OF 112.886 ACRES OF LAND.

Note: The bearings shown and recited hereon are referenced to the Texas State Plane Coordinate System ~ Texas North Central Zone No. 4202 – NAD 83

EXHIBIT B
GROUND WATER DEED