

Control Number: 50271



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**DeAnn T. Walker**  
Chairman  
**Arthur C. D'Andrea**  
Commissioner  
**Shelly Botkin**  
Commissioner  
**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

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PUBLIC UTILITY COMMISSION  
FILING CLERK

## *Public Utility Commission of Texas*

TO: DeAnn T. Walker, Chairman  
Arthur C. D'Andrea, Commissioner  
Shelly Botkin, Commissioner  
  
All Parties of Record

FROM: Katie Moore *KCM*  
Administrative Law Judge

RE: **Open Meeting of January 14, 2021**  
**Docket No. 50271** – *Application of the City of Midland to Amend its Certificates of Convenience and Necessity in Martin and Midland Counties*

DATE: December 8, 2020

**Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.**

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, January 14, 2021, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Monday, December 21, 2020.

**If there are no corrections or exceptions, no response is necessary.**

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**DOCKET NO. 50271**

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MIDLAND TO AMEND ITS</b>	<b>§</b>	
<b>CERTIFICATES OF CONVENIENCE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND NECESSITY IN MARTIN AND</b>	<b>§</b>	
<b>MIDLAND COUNTIES</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the application of the City of Midland to amend its water certificate of convenience and necessity (CCN) number 10221 to add 24,076 acres and 44,622 customers to its water service area, and to amend its sewer CCN number 20083 to add 24,279 acres and 40,282 customers to its sewer service area, in Martin and Midland counties. The Commission amends water CCN number 10221 and sewer CCN number 20083 to the extent provided in this Order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

*Applicant—Texas Water Code (TWC) §§ 13.002(12), 13.244(a); 16 Texas Administrative Code (TAC) §§ 24.231, 24.233(a)*

1. Midland is a municipality located in Martin and Midland Counties.
2. Midland is a retail public utility that provides water service under CCN number 10221 and sewer service under CCN number 20083 in Martin and Midland Counties, Texas.
3. Midland owns and operates for compensation a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 1650001.
4. Midland serves 44,622 customers within the 24,076 acre-area it seeks to add to its water CCN service area.
5. Midland owns and operates for compensation a sewer system permitted with the TCEQ under Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0010223001.
6. Midland serves 40,282 customers within the 24,297 acre-area it seeks to add to its sewer CCN service area.

**Application— TWC § 13.244; 16 TAC §§ 24.233(a), 24.257**

7. On November 21, 2019, Midland filed an application to amend its water CCN number 10221 and sewer CCN number 20083 in Martin and Midland Counties, Texas, to add current customers and additional acreage to its service areas.
8. On September 14, 2020, Midland supplemented its application.
9. The requested water service area consists of approximately 24,076 acres and 44,622 current customers and the requested sewer service area consists of approximately 24,279 acres and 40,282 current customers.
10. The requested water and sewer service areas comprise the areas within Midland's city limits that are not already within Midland's existing water CCN and sewer CCN. The requested water service areas consist of Areas 1 through 6 identified below. The requested sewer service areas consist of Areas 1 through 7 identified below.
  - a. **Area 1:** includes the northeast portion of the City of Midland, is located approximately four miles north of downtown Midland, and is generally bounded on the north by State Highway 349, on the east by Elkins Road, on the south by Texas 250 Loop, and on the west by Holiday Hill Road and State Highway 349. Midland currently provides water and sewer service to the developed parts of Area 1.
  - b. **Area 2:** includes the area south of I-20, is located approximately two miles south of downtown Midland, and is generally bounded on the north by Interstate Highway 20, on the east by State Highway 158, on the south by a line approximately 1/2 mile south of Interstate Highway 20, and on the west by County Road 1270. Midland currently provides water and sewer service to the developed parts of Area 2.
  - c. **Area 3:** includes the space at the end of the west runway of the Midland International Air and Space Port, is located approximately nine miles west of downtown Midland, and is generally bounded on the north by State Highway 191, on the east by a line approximately one mile east of State Highway 349, on the south by Interstate Highway 20 Business Loop, and on the west by State Highway

349. Midland does not currently provide water and sewer service to Area 3, nor are there any existing water or sewer connections within Area 3.
- d. **Area 4:** includes the space at the end of the east runway of the Midland International Air and Space Port, is located approximately eight miles west of downtown Midland, and is generally bounded on the north by State Highway 191, on the east by a line approximately three miles east of State Highway 349, on the south by Interstate Highway 20 Business Loop, and on the west by State Highway 349. Midland does not currently provide water and sewer service to Area 4, nor are there any existing water or sewer connections within Area 4.
- e. **Area 5:** includes the area west of the city center, is located approximately five miles west of downtown Midland, and is generally bounded on the north by State Highway 349, on the east by Holiday Hill Road and Texas 250 Loop, on the south by Interstate Highway 20 Business Loop, and on the west by the Ector and Midland county line. Midland currently provides water and sewer service to the developed parts of Area 5.
- f. **Area 6:** includes the farthest northwest area within the city limits, is located approximately eight miles west-northwest of downtown Midland, and is generally bounded on the north by State Highway 349, on the east by North County Road 1255, on the south by State Highway 158, and on the west by North County Road 1260. Midland currently provides water and sewer service to the developed parts of Area 6.
- g. **Area 7:** includes the area between Area 5 and Area 6, is located approximately eight miles west-northwest of downtown Midland, and is generally bounded on the north by a line approximately 500 feet north of Dunblane Drive, on the east by Trobaugh Boulevard, on the south by Briarwood Avenue, and on the west by Dumfries Road. Area 7 is within Midland's existing water CCN, and Midland is requesting to expand its sewer CCN to Area 7. Midland currently provides sewer service to Area 7.
11. In Order No. 3 filed on January 22, 2020, the administrative law judge (ALJ) found the application administratively complete.

**Notice of the Application—TWC §§ 13.246(a)–(a-1); 16 TAC § 24.235**

12. On April 23, 2020, Midland filed the affidavit of Carl Craigo, Midland's authorized representative, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on March 20, 2020.
13. On April 23, 2020, Midland filed a publisher's affidavit attesting to publication of notice in the *Midland Reporter-Telegram*, a newspaper of general circulation in Martin and Midland counties, on March 20 and 27, 2020.
14. In Order No. 5 filed on May 21, 2020, the ALJ found the notice sufficient.

**Protestors**

15. On April 15, 2020, Jeff and Elizabeth Schwarzer filed protests.

**Maps and Certificates—TWC § 13.244(d); 16 TAC §§ 24.233(a)(2), 24.257**

16. On June 12, 2020, Commission Staff emailed the proposed maps and certificate to Midland.
17. On June 15, 2020, Commission Staff emailed an additional certificate to Midland.
18. On June 17, 2020, Midland filed its consent to the proposed maps and certificates.
19. On July 1, 2020, Commission Staff filed the proposed maps and certificates as attachments to Commission Staff's final recommendation.

**Evidentiary Record—16 TAC §§ 22.221–.228**

20. On July 16, 2020, the parties filed an agreed motion to admit evidence.
21. In Order No. 6 filed on July 31, 2020, the ALJ admitted the following into evidence: (a) Midland's application and attachments filed on November 21, 2019; (b) Midland's proof of notice filed on April 23, 2020; (c) Midland's consent to the final map and certificates filed on June 17, 2020; and (d) Commission Staff's final recommendation and attachments filed July 1, 2020.
22. In Order No. 8 filed on October 23, 2020, the ALJ admitted into evidence Midland's supplement to its application, filed on September 14, 2020.

**Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC § 24.227(e)(1)**

23. Midland is currently providing water service to 44,622 existing customers in the 24,076-acre requested water service area through public water system number 1650001, and such service has been continuous and adequate.
24. Midland is currently providing sewer service to 40,282 existing customers in the 24,279-acre requested sewer service area through its sewer system permitted with the TCEQ under TPDES permit number WQ0010223001, and such service has been continuous and adequate.

**Need for Additional Service—TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)**

25. There is a need for additional service because Midland is currently providing water and sewer service to portions of the requested water and sewer service areas.
26. 8,000 new water customers and 7,000 new sewer customers are anticipated with future development in the requested areas.

**Effect of Granting the Amendment—TWC § 13.246(c)(3); 16 TAC § 24.227(e)(3)**

27. Granting the CCN amendments will allow Midland to continue serving its existing customers and will obligate Midland to provide water and sewer service to the landowners and future customers within the requested areas.
28. Midland is already providing service to portions of the 24,076-acre requested water service areas and portions of the 24,279-acre requested sewer service areas.
29. No protests, adverse comments, or motions to intervene were filed by any adjacent retail public utility in this docket.
30. There will be no adverse effect on landowners in the 24,076-acre requested water service areas and the 24,279-acre requested sewer service areas or any retail public utility serving the proximate areas.
31. The planned infrastructure projects in Area 1 will improve service quality in the rapidly developing northeast area of Midland.

**Ability to Serve: Managerial and Technical—TWC §§ 13.241(a)–(c), 13.246(c)(4); 16 TAC § 24.227(a), (e)(4)**

32. Public water system number 1650001 through which Midland is currently providing service to 44,622 customers in the 24,076-acre requested water service areas has adequate capacity to meet the projected demands in the 24,076-acre requested water service areas.
33. Midland has access to an adequate supply of water and is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
34. Midland has a sewer system permitted with the TCEQ under TPDES permit number WQ0010223001 that serves the 24,279-acre requested sewer service areas.
35. Midland is capable of meeting the TCEQ's design criteria and the requirements of chapter 13 of the TWC.
36. Midland employs TCEQ-licensed operators to operate its public water system and sewer system.
37. Midland does not have any violations listed in the TCEQ database.
38. Midland has the managerial and technical capability to provide continuous and adequate service to the 24,076-acre requested water service areas and the 24,279-acre requested sewer service areas.

**Feasibility of Obtaining Service from Adjacent Utilities—TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)**

39. Midland has existing facilities that are providing service to portions of the 24,076-acre requested water service areas and the 24,279-acre requested sewer service areas.
40. The requested areas are within Midland's city limits.
41. Midland provided proper notice to utilities within a two-mile radius of the 24,076-acre requested water service areas and the 24,279-acre requested sewer service areas. No protests or motions to intervene were filed in this docket.
42. It is not feasible to obtain service from an adjacent retail public utility.



**Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 16 TAC §§ 24.11(e), 24.227(a), (e)(6)**

43. Midland has a debt-to-equity ratio of less than one, which satisfies the leverage test.
44. Midland demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the CCN amendments, satisfying the operations test.
45. Midland has the financial ability and stability to pay for the facilities necessary to provide continuous and adequate service to the 24,076-acre requested water service areas and the 24,279-acre requested sewer service areas.

**Financial Assurance—TWC § 13.246(d); 16 TAC § 24.227(f)**

46. There is no need to require Midland to provide a bond or other financial assurance to ensure continuous and adequate service.

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

47. Because construction of a physically separate public water system or sewer system is not necessary, concerns of regionalization or consolidation are not applicable.

**Environmental Integrity and Effect on the Land—TWC § 13.246(c)(7) and (c)(9), 16 TAC § 24.227(e)(7) and (e)(9)**

48. Future construction will be necessary for Midland to serve the requested areas as development occurs.
49. The environmental integrity of the requested areas will not be adversely affected to such a degree that the application should not be granted.
50. There will be effects on the land as development occurs and facilities are upgraded and improved, but the effects are not to such a degree that the application should not be granted.

**Improvement in Service or Lowering of Cost—TWC § 13.246(c)(8), 16 TAC § 24.227(e)(8)**

51. Midland's current customers in the 24,076-acre requested water service areas and the 24,279-acre requested sewer service areas will continue receiving service.
52. The planned infrastructure projects in Area 1 will improve service quality in the rapidly developing northeast area of Midland.

53. No lowering of costs to existing or future customers in the requested areas will result from granting the CCN amendments to the extent provided in this Order.

**Informal Disposition**

54. More than 15 days have passed since the completion of notice provided in this docket.
55. Elizabeth and Jeff Schwarzer filed a protest.
56. Midland and Commission Staff are the only parties to this proceeding.
57. No party requested a hearing and no hearing is needed.
58. Commission Staff recommended that the application be approved.
59. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, and 13.246.
2. Midland is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Midland provided notice of the application that complies with TWC § 13.246(a) and (a-1) and 16 TAC § 24.235.
4. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,<sup>1</sup> the TWC, and Commission rules.
5. After consideration of the factors in TWC § 13.246(c) and 16 TAC § 24.227(e), Midland demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the 24,076-acre requested water service areas, the 24,279-acre requested sewer service areas, and its current service area in Martin and Midland counties, as required by TWC § 13.241(a) and 16 TAC § 24.227.
6. Midland meets the requirements of TWC § 13.241(b) to provide water utility service.
7. Midland meets the requirements of TWC § 13.241(c) to provide sewer utility service.

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

8. It is not necessary for Midland to provide a bond or other financial assurance under TWC § 13.246(d).
9. Midland demonstrated that the amendment of its water CCN number 10221 and sewer CCN number 20083 will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public as under by TWC § 13.246(b) and 16 TAC § 24.227(d).
10. Under TWC § 13.257(r) and (s) Midland must record certified copies of the certificates granted along with the maps approved by this Order, along with a boundary description of the service areas, in the real property records of Martin and Midland counties within 31 days of receiving this Order and must 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 amends Midland's water CCN number 10221 to add the 24,076-acre requested water service areas and sewer CCN number 20083 to add the 24,279-acre requested sewer service areas as described in this Order and shown on the attached maps.
2. The Commission approves the maps and certificates attached to this Order.
3. Midland must provide service to every customer or applicant for service within the approved area under water CCN number 10221 who requests water service and meets the terms of Midland's water service, and such service must be continuous and adequate.
4. Midland must provide service to every customer or applicant for service within the approved area under sewer CCN number 20083 who requests sewer service and meets the terms of Midland's sewer service, and such service must be continuous and adequate.
5. Midland must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Martin and Midland counties affected by the application and must file evidence of the recording in this docket no later than 45 days after receipt of this Order.

6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**



# **Public Utility Commission of Texas**

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

## **City of Midland**

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, City of Midland is entitled to this

### **Certificate of Convenience and Necessity No. 20083**

to provide continuous and adequate sewer utility service to that service area or those service areas in Martin and Midland Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50271 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 City of Midland 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 \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.



# **Public Utility Commission of Texas**

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

## **City of Midland**

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, City of Midland is entitled to this

### **Certificate of Convenience and Necessity No. 10221**

to provide continuous and adequate water utility service to that service area or those service areas in Martin and Midland Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50271 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 City of Midland 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 \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

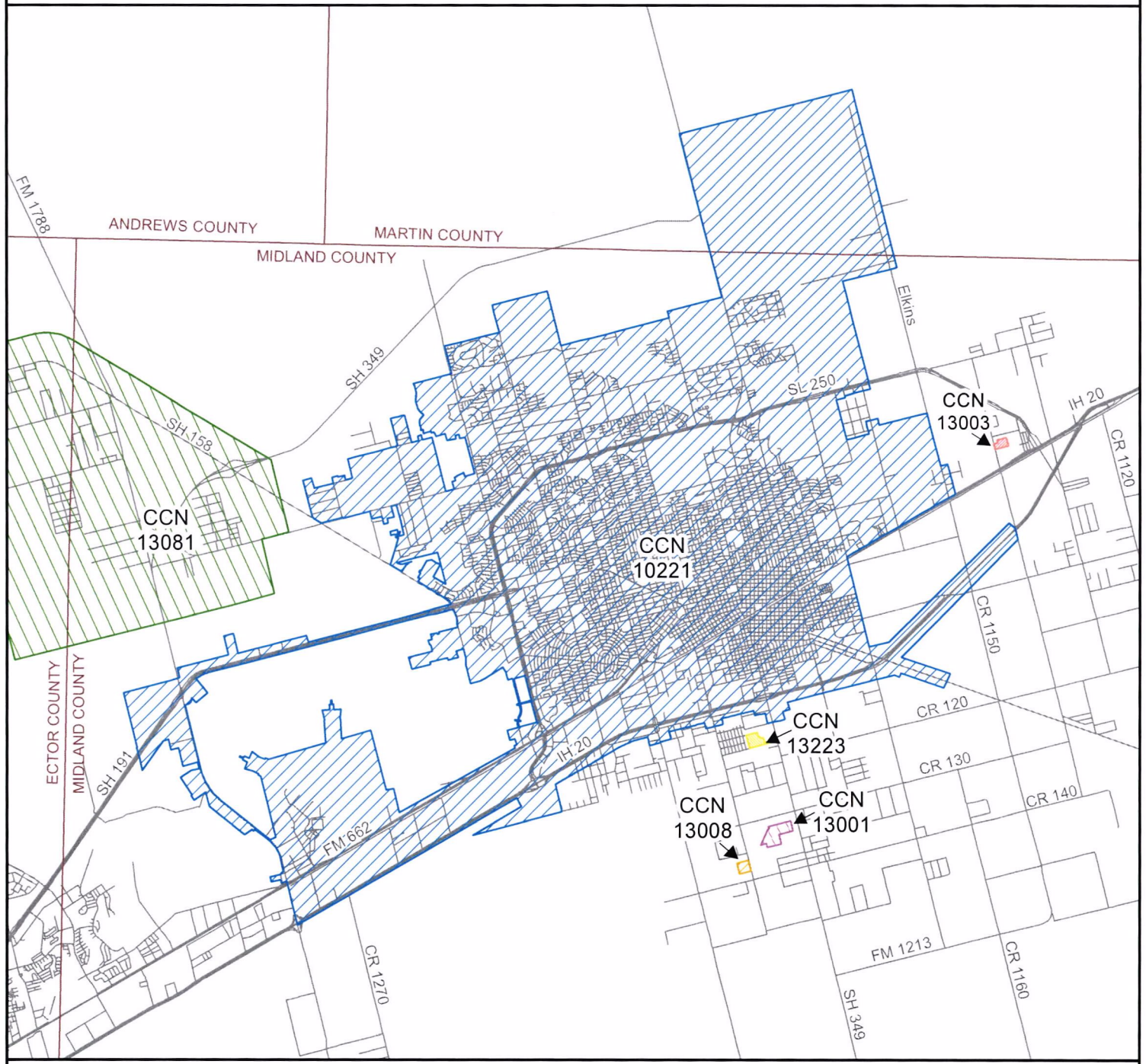
City of Midland  
Sewer CCN No. 20083  
PUC Docket No. 50271  
Amended CCN No. 20083 in Martin and Medina Counties



**Sewer CCN**  
 20083 - City of Midland



City of Midland  
 Water CCN No. 10221  
 PUC Docket No. 50271  
 Amended CCN No. 10221 in Martin and Medina Counties



**Water CCN**

-  10221 - City of Midland
-  13081 - Greater Gardendale WSC
-  13003 - Greenwood Terrace MHP LLC
-  13223 - South Midland Co Water System
-  13001 - Montfort Corporation
-  13008 - Twin Oaks Mobile Home Park



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

Map by: Komal Patel  
 Date created: June 9, 2020  
 Project Path: n:\finalmapping\  
 50271CityofMidlandWater.mxd