



## Filing Receipt

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**DOCKET NO. 51192**

<b>APPLICATION OF LULA MAE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>HEILIGMANN DBA WHISPERING</b>	<b>§</b>	
<b>OAKS WATER WORKS AND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>MIBROMA 3 LLC FOR SALE,</b>	<b>§</b>	
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN GILLESPIE COUNTY</b>	<b>§</b>	

**NOTICE OF APPROVAL**

This Notice of Approval addresses the application of Lula Mae Heiligmann dba Whispering Oaks Water Works and MiBroMa 3 LLC for the sale, transfer, or merger of facilities and certificate rights in Gillespie County. The Commission approves the sale and transfer of all facilities and service area held under Whispering Oaks' certificate of convenience and necessity (CCN) number 12446 to MiBroMa and the transfer of Whispering Oaks' CCN number 12446 to MiBroMa.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Lula Mae Heiligmann is an individual doing business as Whispering Oaks Water Works.
2. Whispering Oaks operates, maintains, and controls facilities for providing retail water service in Gillespie County under CCN number 12446.
3. Whispering Oaks owns and operates a public water system that is registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 0860006.
4. MiBroMa is a Texas limited liability company registered with the Texas secretary of state under file number 0803458416.

**Application**

5. On August 19, 2020, Whispering Oaks and MiBroMa filed the application at issue in this proceeding.

6. The applicants filed supplemental information on August 25 and November 19, 2020, and January 20, 2021.
7. On January 25, 2021, the applicants filed an amended application.
8. In the application, as amended, the applicants seek approval of the following transaction: (1) to sell and transfer all of Whispering Oaks' facilities and service area under CCN number 12446 to MiBroMa; and (2) to transfer CCN number 12446 to MiBroMa.
9. The requested area is located approximately six miles south of downtown Fredericksburg, Texas, and is generally bounded on the north by the terminus of Whispering Oaks Drive, on the east by US Highway 87, on the south by Paradise Ranch Road, and on the west by Paradise Ranch Road.
10. The requested area includes approximately 51 acres and 69 customers.
11. In Order No. 4 filed on February 2, 2021, the administrative law judge (ALJ) found the application, as supplemented and amended, administratively complete.

### Notice

12. On February 10, 2021, the applicants filed the affidavit of Bonifacio Arreola, Jr., manager of MiBroMa, attesting that notice of the application was provided to all current customers, neighboring utilities, and affected parties on February 4, 2021.
13. On March 4, 2021, the applicants filed a list of customers who were provided in person notices.
14. On March 22, 2021, the applicants filed the affidavit of Mr. Arreola attesting that revised notice of the application was provided to all current customers, neighboring utilities, and affected parties on March 19, 2021.
15. On May 20, 2021, the applicants filed the affidavit of Mr. Arreola attesting that revised notice of the application was mailed to current customers, neighboring utilities, county authorities, municipalities, ground water conservation districts, and affected parties on April 29 and May 19, 2021.
16. In Order No. 7 filed on May 26, 2021, the ALJ found the notice sufficient.

**Evidentiary Record**

17. In Order No. 8 filed on August 26, 2021, the ALJ admitted the following evidence into the record: (a) the application and all attachments filed on August 19, 2020; (b) applicants' supplemental mapping information filed on August 25, 2020; (c) MiBroMa's supplemental documentation filed on November 19, 2020; (d) applicants' supplemental information filed on January 20, 2021; (e) applicants' amended application filed on January 25, 2021; (f) Commission Staff's second supplemental recommendation on administrative completeness and proposed procedural schedule filed on January 29, 2021; (g) applicants' proof of notice and supplemental proof of notice filed on February 10, March 4 and 22, April 19, 28, and 29, and May 19 and 20, 2021; (h) Commission Staff's second supplemental recommendation on sufficiency of notice filed on May 25, 2021; and (i) Commission Staff's recommendation on approval of the transaction filed on July 19, 2021.
18. In Order No. 17 filed on May 20, 2022, the ALJ admitted the following additional evidence into the record: (a) MiBroMa's notice of completed transaction filed on October 5, 2021; (b) Commission Staff's recommendation on closing documents filed on January 7, 2022; (c) the final map and certificate attached to the joint motion to admit evidence filed on March 14, 2022; (d) MiBroMa's consent form filed on April 25, 2022; (e) Whispering Oaks' consent form filed on April 27, 2022; and (f) the tariff attached to Commission Staff's supplemental joint motion to admit evidence filed on May 16, 2022.

**Sale**

19. In Order No. 9 filed on September 1, 2021, the ALJ approved the sale and transaction to proceed and required the applicants to file proof that the transaction had closed and that customer deposits had been addressed.
20. On October 5, 2021, the applicants filed a purchase and sale agreement dated September 29, 2021, a warranty deed dated September 29, 2021, a bill of sale dated September 30, 2021, and a statement that customer deposits had been addressed.
21. In Order No. 11 filed on January 10, 2022, the ALJ found the closing documents sufficient.

**System Compliance**

22. Whispering Oaks does not have any violations listed in the TCEQ database.

23. MiBroMa has not been subject to any enforcement action by the Commission, TCEQ, Texas Department of State Health Services, Office of the Attorney General of Texas, or United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.
24. MiBroMa has demonstrated a compliance status that is adequate for approval of the sale to proceed.

**Adequacy of Existing Service**

25. Whispering Oaks currently provides retail water service to 69 existing customers in the requested area through its public water system, number 0860006, and such service has been continuous and adequate.
26. No additional construction is necessary for MiBroMa to serve the requested area.

**Need for Additional Service**

27. There are currently 69 existing water customers in the requested area that are receiving service and have an ongoing need for service.
28. There is no evidence of specific requests for additional service within the requested area.

**Effect of Approving the Transaction and Granting the Amendment**

29. Approving the transaction to proceed and granting the CCN amendment will obligate MiBroMa to provide continuous and adequate service to existing and future customers in the requested area.
30. Because this application is to transfer only existing facilities, customers, and service area, there will be no effect on any other retail public utility serving the proximate area.
31. There will be no effect on landowners in the requested area because the requested area is currently certificated.
32. Any landowners in the requested area that do not currently receive service from Whispering Oaks will need to request service from MiBroMa if they require service after the transaction has been completed.

**Ability to Serve: Managerial and Technical**

33. MiBroMa will employ a TCEQ-licensed operator who will be responsible for the testing and operation of the public water system being transferred.
34. No additional construction is necessary for MiBroMa to provide service to the requested area.
35. MiBroMa has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the Texas Water Code (TWC), and the TCEQ's rules.
36. MiBroMa has the technical and managerial capability to provide adequate and continuous service to the requested area.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

37. The requested area is currently being served by Whispering Oaks and there will be no changes to land uses or existing CCN boundaries.
38. Utilities within a two-mile radius were properly noticed and no protests or requests to intervene were filed in this docket.
39. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed. At a minimum, an interconnect would need to be installed in order to connect to a neighboring retail public water utility.
40. It is not feasible to obtain service from an adjacent retail public utility.

**Regionalization or Consolidation**

41. MiBroMa will not need to construct a physically separate water system to provide service to the requested area.
42. Because the requested area will not require the construction of a physically separate water system, consideration of regionalization or consolidation with another retail public utility is not required.

**Ability to Serve: Financial Ability and Stability**

43. MiBroMa has a debt-to-equity ratio that is less than one, satisfying the leverage test.

44. MiBroMa 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 transaction, satisfying the operations test.
45. MiBroMa demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

**Financial Assurance**

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

**Environmental Integrity and Effect on the Land**

47. There will be no effect on the land or environmental integrity as a result of the proposed transaction because customers will continue to be served using existing infrastructure and no additional construction is necessary.

**Improvement of Service or Lowering of Cost to Consumers**

48. There will be no change in the quality of service or cost of service to consumers as a result of the transaction.

**Map, Tariff, and Certificate**

49. On February 22, 2022, Commission Staff emailed to the applicants the final proposed map certificate related to this docket.
50. On February 22, 2022, MiBroMa filed its consent form concurring with the proposed final map and certificate.
51. On February 24, 2022, Whispering Oaks filed their consent form concurring with the proposed final map and certificate.
52. On April 25, 2022, Commission Staff emailed to the applicants the final proposed map, tariff, and certificate.
53. On April 25, 2022, MiBroMa filed its consent form concurring with the proposed final map, tariff, and certificate.
54. The proposed final map and certificate were included as attachments to the joint motion to admit evidence and proposed notice of approval filed on March 14, 2022.

55. The proposed tariff was included as an attachment to Commission Staff's supplemental motion to admit evidence filed on May 16, 2020.

**Informal Disposition**

56. More than 15 days have passed since the completion of notice provided in this docket.
57. No person filed a protest or motion to intervene.
58. Whispering Oaks, MiBroMa, and Commission Staff are the only parties to this proceeding.
59. No party requested a hearing, and no hearing is needed.
60. Commission Staff recommended approval of the application.
61. This decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.241, 13.242, 13.244, 13.246, 13.251, and 13.301.
2. Whispering Oaks and MiBroMa are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Whispering Oaks and MiBroMa provided notice of the application in compliance with TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. Whispering Oaks and MiBroMa's application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
5. The Commission processed the application as required by the TWC, the Administrative Procedure Act,<sup>1</sup> and Commission Rules.
6. Whispering Oaks and MiBroMa completed the sale within the time frame required by 16 TAC § 24.239(m).
7. Whispering Oaks and MiBroMa have complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.

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



8. After consideration of the factors in TWC § 13.246(c), MiBroMa demonstrated that it is capable of rendering continuous and adequate service to every customer within the requested area, as required by TWC § 13.251.
9. MiBroMa demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area, as required by TWC §§ 13.241 and 13.301(b) and 16 TAC § 24.239.
10. MiBroMa has access to an adequate supply of water to serve the requested area, and the public water system being transferred is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the rules of the TCEQ in accordance with TWC § 13.241(b) and 16 TAC § 24.227(a)(1).
11. MiBroMa meets the requirements of TWC § 13.241(b) to provide water utility service.
12. It is not necessary for MiBroMa to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
13. Regionalization or consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
14. Whispering Oaks and MiBroMa demonstrated that transferring Whispering Oaks' facilities and service area held CCN number 12446 to MiBroMa and transferring CCN number 12446 to MiBroMa will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).
15. MiBroMa must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Gillespie County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording as required by TWC § 13.257(r) and (s).
16. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

### III. Ordering Paragraphs

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

1. The Commission approves the sale and transfer of all facilities and service area held under Whispering Oaks' CCN number 12446 to MiBroMa.
2. The Commission approves the transfer of Whispering Oaks' CCN number 12446 to MiBroMa.
3. The Commission approves the map and tariff attached to this Notice of Approval.
4. The Commission issues the certificate attached to this Notice of Approval.
5. MiBroMa must provide service to every customer or applicant for service within the approved area under CCN number 12446 that requests service and meets the terms of MiBroMa's water service policies, and such service must be continuous and adequate.
6. MiBroMa must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Gillespie County affected by the application and must submit to the Commission evidence of the recording no later than 45 days after receipt of the Notice of Approval.
7. Within ten days of the date of the Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff books.
8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

**Signed at Austin, Texas the 20th day of May 2022.**

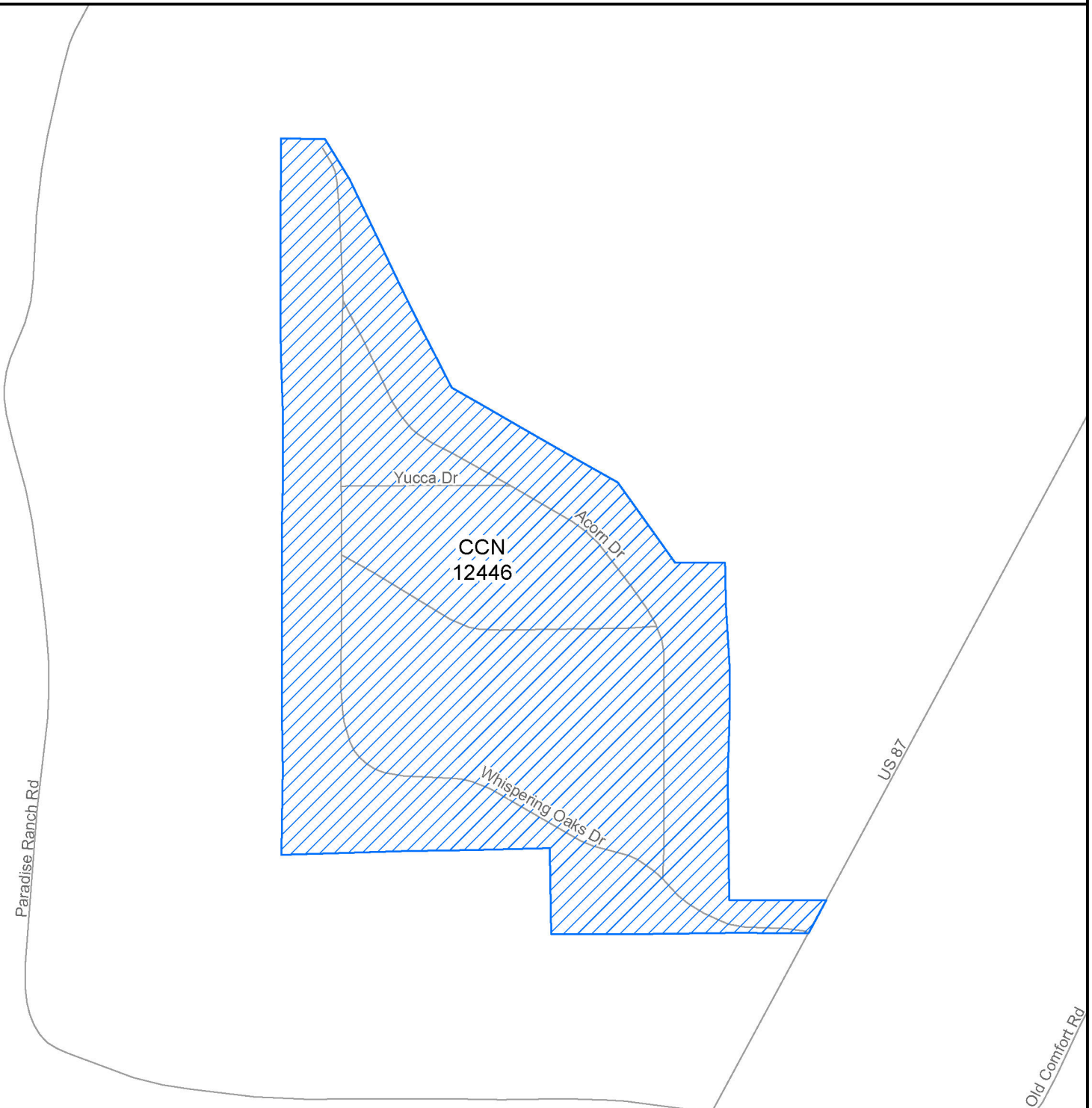
**PUBLIC UTILITY COMMISSION OF TEXAS**



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**ISAAC TA  
ADMINISTRATIVE LAW JUDGE**

MiBroMa 3, LLC  
Water CCN No. 12446  
PUC Docket No. 51192  
Transferred all of Whispering Oaks Water Works, CCN No. 12446 in Gillespie County



**Water CCN**



12446 - MiBroMa 3 LLC

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# **Public Utility Commission of Texas**

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

## **MiBroMa 3 LLC**

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, MibroMa 3 LLC is entitled to this

### **Certificate of Convenience and Necessity No. 12446**

to provide continuous and adequate water utility service to that service area or those service areas in Gillespie County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51192 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 MibroMa 3 LLC 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.