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DOCKET NO. 51864

**APPLICATION OF THE CITY OF § PUBLIC UTILITY COMMISSION
MIDLOTHIAN TO AMEND ITS §
WATER CERTIFICATE OF § OF TEXAS
CONVENIENCE AND NECESSITY IN §
ELLIS COUNTY §**

NOTICE OF APPROVAL

This Notice of Approval addresses the application of the City of Midlothian to amend its certificate of convenience and necessity (CCN) number 11706 in Ellis County. To the extent provided in this Notice of Approval, the Commission: (1) amends CCN number 11706 to add 53 acres of service area; and (2) decertifies 12 acres of Mountain Peak Special Utility District’s service area under CCN number 10908.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Midlothian is a municipality in Ellis County, Texas.
2. Midlothian operates, maintains, and controls facilities for providing retail water service in Ellis County under CCN number 11706.
3. Midlothian owns and operates a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 0700005.

Application

4. On March 2, 2021, Midlothian filed the application at issue in this proceeding.
5. Midlothian filed supplemental information on March 10, April 19 and 21, and August 23, 2021.
6. In the application, as supplemented, Midlothian requests to add approximately 53 acres to its certificated service area under CCN number 11706 (requested area).

7. In the application, as supplemented, Midlothian requests to decertify approximately 12 acres from Mountain Peak SUD's certificated service area under CCN number 10908 (decertification area).
8. The requested area is 1.5 miles south-southeast of downtown Midlothian, and is generally bounded on the north by Mount Zion Road; on the east by Oak Tree Lane; on the south by SCS Reservoir No. 5; and on the west by South 14th Street.
9. In Order No. 5 filed on September 28, 2021, the administrative law judge (ALJ) found the application, as supplemented, administratively complete.

Notice

10. On October 29, 2021, Midlothian filed the affidavit of Mike Adams, Midlothian's executive director of engineering and utilities, attesting that notice was mailed to current customers, landowners, neighboring utilities, and affected parties on October 7, 2021.
11. On October 29, 2021, Midlothian filed a publisher's affidavit attesting to the publication of notice in the *Midlothian Mirror*, a newspaper of general circulation in Ellis County, on October 7 and 14, 2021.
12. In Order No. 6 filed on November 29, 2021, the ALJ found the notice sufficient.

Map and Certificates

13. On December 13, 2021, Commission Staff emailed the proposed final map and certificates to Midlothian and Mountain Peak SUD.
14. On December 17, 2021, Midlothian and Mountain Peak SUD filed their consent to the proposed map and certificates.
15. On February 1, 2022, Commission Staff filed the proposed map and certificates as attachments to the revised joint motion to admit evidence and proposed order.

Evidentiary Record

16. On February 1, 2022, Midlothian and Commission Staff filed a revised joint motion to admit evidence.
17. In Order No. 8 filed on February 4, 2022, the ALJ admitted the following into evidence: (a) Midlothian's application and all attachments filed on March 2, 2021; (b) revised maps

and digital data filed on March 10, 2021; (c) Midlothian's capital improvement plan filed on April 19, 2021; (d) Midlothian and Mountain Peak SUD's CCN agreement filed on April 21, 2021; (e) Midlothian's response to Commission Staff's first request for information filed on April 23, 2021; (f) Mountain Peak SUD's letter agreeing to decertification of area of overlap with Midlothian filed on August 23, 2021; (g) Commission Staff's supplemental recommendation on administrative completeness filed on September 27, 2021; (h) Midlothian's proof of notice filed on October 29, 2021; (i) Midlothian's proof of the inactive water district status of Midlothian Municipal Management District No. 3 filed on November 12, 2021; (j) Commission Staff's recommendation on sufficiency of notice filed on November 19, 2021; (k) Midlothian and Mountain Peak SUD's consent forms filed on December 17, 2021; (l) Commission Staff's final recommendation filed on January 4, 2022; and (m) the map and certificate attached to the revised joint motion to admit evidence and proposed order filed on February 1, 2022.

Adequacy of Existing Service

18. No entity currently provides retail water service to the requested area.
19. Midlothian's service through its existing public water system, identification number 0700005, to the rest of its certificated service area has been continuous and adequate.

Need for Service

20. The requested area is planned for development, which will include residential homes and a school.
21. Midlothian provided growth studies demonstrating anticipated growth in the area.

Effect of Granting the Amendment

22. Granting the CCN request will obligate Midlothian to provide water service to future customers in the requested area.
23. All landowners in the requested area will have a water provider available when they need to request water service.
24. Mountain Peak SUD consented, in writing, to the decertification of a portion of its certificated service area.

25. Landowners in the decertified area will no longer be able to request service from Mountain Peak SUD.
26. Adjacent retail public utilities were properly noticed. No protests, adverse comments, or motions to intervene were by filed by any adjacent retail public utility in this docket.
27. There will be no adverse effect on any retail public utility serving the proximate area.

Ability to Serve: Managerial and Technical

28. Midlothian currently provides water service to the areas surrounding the requested area and such service has been continuous and adequate.
29. Midlothian's public water system has been rated "superior" by the TCEQ.
30. Midlothian does not have any violations listed in the TCEQ database.
31. The Commission's complaint records, which go back to 2014, show one complaint against Midlothian.
32. Midlothian employs TCEQ-licensed operators who operate its public water system.
33. Midlothian 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.
34. Midlothian has the managerial and technical capability to provide continuous and adequate service to the requested area.

Ability to Serve: Financial Ability and Stability

35. Midlothian has a debt-to-equity ratio that is less than one, satisfying the leverage test.
36. Midlothian demonstrated it has sufficient cash available to cover any operations and maintenance shortages during the first five years after the CCN amendment is granted, satisfying the operations test.
37. Midlothian demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance

38. It is not necessary to require Midlothian to provide a bond or other financial assurance to ensure continuous and adequate service.

Regionalization or Consolidation

39. Concerns of regionalization or consolidation do not apply because construction of a physically separate water system is not needed to provide service to the requested area.

Feasibility of Obtaining Service from Adjacent Utilities

40. The requested area is within Midlothian's city limits.

41. Midlothian's existing facilities are immediately adjacent to the requested area and have sufficient capacity to provide continuous and adequate service to the requested area.

42. Midlothian has a service agreement with Mountain Peak SUD, in which they agreed that Midlothian is better able to meet the needs of the requested area.

43. It is not feasible to obtain service from an adjacent retail public utility.

Environmental Integrity and Effect on the Land

44. There will be minimal effects on the land and environmental integrity as additional distribution lines are constructed to provide service to the requested area.

Improvement in Service and Lowering of Cost

45. Water service to the requested area will improve because Midlothian will be obligated to provide service to future customers in the requested area.

46. No lowering of cost will result from granting the CCN amendment.

Informal Disposition

47. More than 15 days have passed since the completion of notice provided in this docket.

48. No person filed a protest or motion to intervene.

49. Midlothian and Commission Staff are the only parties to this proceeding.

50. No party requested a hearing and no hearing is needed.

51. Commission Staff recommended that the application be approved.

52. 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 §§ 13.041, 13.241, 13.242, 13.244, and 13.246.
2. Midlothian is a retail public utility as defined by TWC § 13.002(19) and 16 (Texas Administrative Code (TAC) § 24.3(31).
3. Midlothian's application meets the requirements of TWC § 13.244 and 16 TAC § 24.227.
4. Midlothian provided notice of the application that complies with TWC § 13.246(a) and 16 TAC § 24.235.
5. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
6. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC § 24.227(e), Midlothian demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area and its current certificated service area as required by TWC § 13.241(a) and 16 TAC § 24.227.
7. Regionalization and consolidation concerns under TWC § 13.241(d) do not apply in this proceeding because construction of a physically separate water system is not required.
8. It is not necessary for Midlothian to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
9. Midlothian demonstrated that the amendment of its CCN number 11706 to include the requested area and to decertify a portion of Mountain Peak SUD's certificated service area under CCN number 10908 is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
10. Midlothian has access to an adequate supply of water to serve the requested area, and its public water system 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).

¹ Tex. Gov't Code §§ 2001.001–.903.

11. Under TWC § 13.257(r) and (s), Midlothian must record a certified copy of the approved map and its certificate, along with a boundary description of the service area, in the real property records of Ellis County within 31 days of this Notice of Approval and must submit evidence of the recording to the Commission.
12. Under TWC § 13.257(r) and (s), Mountain Peak SUD must record a certified copy of the approved map and its certificate, along with a boundary description of the service area, in the real property records of Ellis County within 31 days of this Notice of Approval and must submit evidence of the recording to the Commission.
13. 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 Midlothian's CCN number 11706 to add the requested area as described in this Notice of Approval and shown on the map attached to this Notice of Approval.
2. The Commission amends Mountain Peak's CCN number 10908 to remove the decertification area as described in this Notice of Approval and shown on the map attached to this Notice of Approval.
3. The Commission issues the certificates attached to this Notice of Approval.
4. The Commission approves the map attached to this Notice of Approval.
5. Midlothian must provide service to every customer and applicant for service within the approved area under water CCN number 11706 who requests water service and meets the terms of Midlothian's water service policies, and such service must be continuous and adequate.
6. Midlothian and Mountain Peak SUD must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Ellis County affected by this application and file in this docket proof of the recording no later than 45 days after the date of this Notice of Approval.

7. Within ten days of the date of this Notice of Approval, Commission Staff and Midlothian must file proof that a copy of this Notice of Approval was provided to Mountain Peak SUD.
8. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

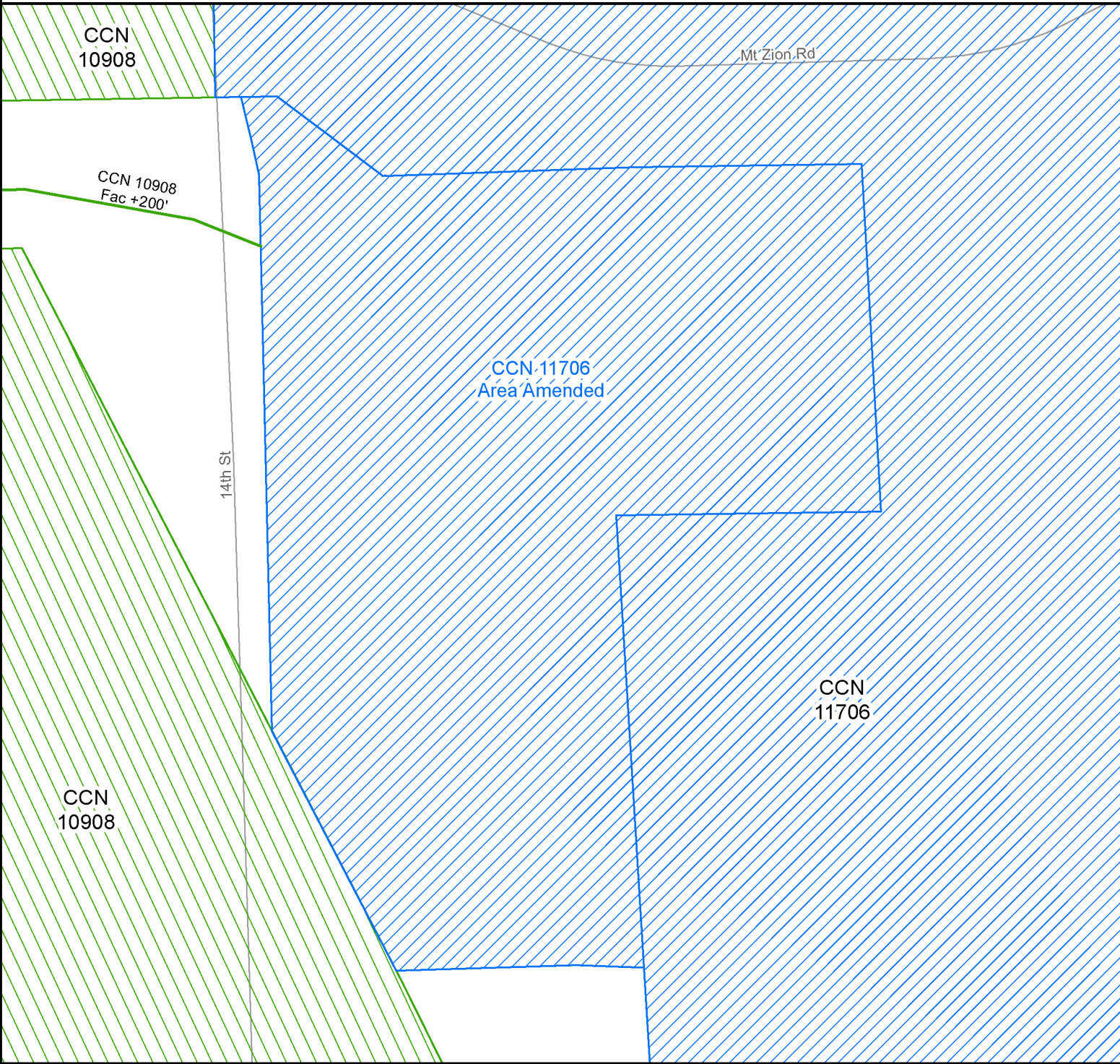
Signed at Austin, Texas the 8th day of February 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read "Isaac TA", written over a horizontal line.

**ISAAC TA
ADMINISTRATIVE LAW JUDGE**

City of Midlothian
 Portion of Water CCN No. 11706
 PUC Docket No. 51864
 Amended CCN No. 11706 and
 Decertified a Portion of Mountain Peak Special Utility District, CCN No. 10908 in Ellis County



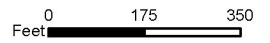
Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN

- 11706 - City of Midlothian
- 10908 - Mountain Peak SUD

Water CCN Facilities +200'

- 10908 - Mountain Peak SUD



Map by: Komal Patel
 Date: December 10, 2021
 Project: 51864CityofMidlothian.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Midlothian

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, the City of Midlothian is entitled to this

Certificate of Convenience and Necessity No. 11706

to provide continuous and adequate sewer utility service to that service area or those service areas in Ellis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51864 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 Midlothian, 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.



Public Utility Commission of Texas

By These Presents Be It Known To All That

Mountain Peak 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, Mountain Peak Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 10908

to provide continuous and adequate sewer utility service to that service area or those service areas in Johnson and Ellis Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51864 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 Mountain Peak 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.