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DOCKET NO. 52460

**APPLICATION OF MOUNTAIN PEAK § PUBLIC UTILITY COMMISSION
SPECIAL UTILITY DISTRICT TO §
AMEND ITS CERTIFICATE OF § OF TEXAS
CONVENIENCE AND NECESSITY IN §
ELLIS AND JOHNSON COUNTIES §**

NOTICE OF APPROVAL

This Notice of Approval addresses the application of Mountain Peak Special Utility District to amend its certificate of convenience and necessity (CCN) number 10908 in Ellis and Johnson counties. The Commission amends Mountain Peak SUD’s CCN number 10908 to add 33 acres and two customers to the extent provided in this Notice of Approval.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Mountain Peak SUD is a special utility district that operates, maintains, and controls facilities for providing water service under CCN number 10908 in Ellis and Johnson counties.
2. Mountain Peak SUD owns and operates a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification number 0700042.

Application

3. On August 23, 2021, Mountain Peak SUD filed the application at issue in this proceeding to amend its CCN number 10908 to add uncertificated area.
4. On October 25, 2021, Mountain Peak SUD filed a supplement to the application.
5. In the application, Mountain Peak SUD seeks to amend CCN number 10908 to add two separate tracts of land that, collectively, constitute approximately 33 acres, with two existing connections, to its certificated service area. The two tracts of land are in close proximity to one another.

6. The requested water service area is located approximately 1.45 miles south 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 Lake Grove Loop, and on the west by Farm to Market Road 663.
7. In Order No. 3 filed on November 29, 2021, the administrative law judge (ALJ) found the application administratively complete.

Notice

8. On January 4, 2022, Mountain Peak SUD filed the affidavit of Randel Kirk, Mountain Peak SUD's general manager, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on December 8, 2021.
9. On January 4, 2022, Mountain Peak SUD filed a publisher's affidavit attesting to the publication of notice in the *Waxahachie Sun*, a newspaper of general circulation in Johnson and Ellis counties, on December 15 and 22, 2021.
10. In Order No. 4 filed on January 21, 2022, the ALJ found the notice sufficient.

Evidentiary Record

11. On March 29, 2022, Mountain Peak SUD and Commission Staff filed a joint motion to admit evidence and proposed notice of approval.
12. In Order No. 5 filed on April 18, 2022, the ALJ admitted the following evidence into the record of this proceeding: (a) the application and all attachments filed on August 23, 2021; (b) Mountain Peak SUD's supplemental mapping information filed on October 25, 2021; (c) Commission Staff's supplemental recommendation on administrative completeness and proposed procedural schedule filed on November 23, 2021; (d) Mountain Peak SUD's proof of notice filed on January 4, 2022; (e) Commission Staff's recommendation on sufficiency of notice and proposed procedural schedule filed on January 19, 2022; (f) Mountain Peak SUD's consent form filed on February 26, 2022; and (g) Commission Staff's final recommendation, including all attachments, filed on March 21, 2022.

Adequacy of Existing Service

13. Mountain Peak SUD currently provides retail water service to the requested area.

14. The public water system that provides service to the requested area has already been constructed and is registered with the TCEQ under public water system identification number 0700042.
15. The Commission's complaint records, which go back to 2017, show five complaints against Mountain Peak SUD, all of which have been resolved or are on the path to compliance.

Need for Additional Service

16. There are currently two customers within the requested service area. Therefore, there is an ongoing need for service.
17. Mountain Peak SUD has received requests for additional service in the requested area.

Effect of Granting the Amendment

18. Granting the CCN amendment will obligate Mountain Peak SUD to provide service to future customers in the requested area.
19. All landowners with a tract of land of 25 acres or more that are located within the requested area received notice and did not file comments or a request to opt out.
20. The requested area is within the city limits of the City of Midlothian. The city and Mountain Peak SUD have agreed that Mountain Peak SUD should provide service to the requested area.
21. Mountain Peak SUD is better-positioned to provide service to the requested area than the other, proximately-located retail public utilities, because it owns and operates a nearby 16-inch water line that is available to service the requested area.
22. Mountain Peak SUD can more cost-effectively provide service to the requested area than the other retail public utilities in the area.
23. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this proceeding, and none requested to intervene.
24. There will be no adverse effect on any retail public utility servicing the proximate area.

Ability to Serve: Managerial and Technical

25. Mountain Peak SUD will provide water service to the requested area using public water system number 0700042.
26. Mountain Peak SUD is rated by the TCEQ as having a “superior” compliance history.
27. The Commission’s complaint records, which go back to 2017, show five complaints against Mountain Peak SUD, but all violations have been resolved or are on the path to resolution.
28. Mountain Peak SUD 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.
29. Mountain Peak SUD employs several TCEQ-licensed operators who are responsible for operating and maintaining public water system number 0700042.
30. Mountain Peak SUD has the managerial and technical capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Other Utilities

31. Mountain Peak SUD currently provides service in the requested area.
32. Unlike Mountain Peak SUD, the neighboring utilities do not have facilities near the requested area to provide water service to the requested area.
33. The water utilities within a two-mile radius were properly noticed to determine if an adjacent utility was willing and able to provide retail water service, and no utility intervened.
34. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

35. Because construction of a physically separate water system is not needed to serve the requested area, concerns of regionalization or consolidation are not applicable.

Ability to Serve: Financial Ability and Stability

36. Mountain Peak SUD has a debt-to-equity ratio that is less than one, satisfying the leverage test.

37. Mountain Peak SUD demonstrated that it has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years of operations after approval of the CCN amendment, satisfying the operations test.
38. Mountain Peak SUD has demonstrated the financial ability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

39. There is no need to require Mountain Peak SUD to provide a bond or other financial assurance to ensure continuous and adequate services to the requested areas.

Environmental Integrity and Effect on the Land

40. Because the construction of additional facilities is not necessary to serve the requested area, the land and environmental integrity of the requested area will not be adversely affected.

Improvement of Service or Lowering Cost to Consumers

41. Water service to the requested area will improve because Mountain Peak SUD will be obligated to provide service to existing and future customers in the requested area.
42. Mountain Peak SUD will provide water service to the future customers in the requested area with the same level of service and at the same rates it currently charges within the existing boundaries of its CCN.

Map and Certificate

43. On February 22, 2022, Commission Staff emailed its proposed final map and certificate to Mountain Peak SUD for review and consent.
44. On February 26, 2022, Mountain Peak SUD filed its consent to the proposed final map and certificate.
45. On March 21, 2022, Commission Staff filed the final map and certificate as attachments to its final recommendation.

Informal Disposition

46. More than 15 days have passed since completion of the notice provided in this docket.
47. No party filed a protest or motion to intervene.
48. Mountain Peak SUD and Commission Staff are the only parties to this proceeding.

49. No party requested a hearing and no hearing is necessary.
50. Commission Staff recommended approval of the application.
51. 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, and 13.246.
2. Mountain Peak SUD is a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Mountain Peak SUD's application meets the requirements of TWC § 13.244 and 16 TAC § 24.227.
4. Mountain Peak SUD provided notice of the application that complies with TWC § 13.246(a) and 16 TAC § 24.235.
5. The Commission processed the application as required by the TWC, the Administrative Procedure Act,¹ and Commission rules.
6. After consideration of the factors in TWC §§ 13.241(a) and 13.246(c) and 16 TAC § 24.227(a) and (e), Mountain Peak SUD demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area and its current 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 physically separate water system is not required.
8. It is not necessary for Mountain Peak SUD to provide a bond or other financial assurance under TWC § 13.246(d) or 16 TAC § 24.227(f).
9. Mountain Peak SUD 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

¹ Tex. Gov't Code §§ 2001.001–.903.

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).

10. Mountain Peak SUD demonstrated that the amendment to CCN number 10908 to add the requested area 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).
11. Under TWC § 13.257(r) and (s), Mountain Peak SUD must record a certified copy of the approved map and certificate, along with a boundary description of the service area, in the real property records of Ellis and Johnson counties within 31 days of this Notice of Approval and submit evidence of the recording to the Commission.
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

1. The Commission amends Mountain Peak SUD's CCN number 10908 to add the requested area as described in this Notice of Approval and shown on the attached map.
2. The Commission approves the map attached to this Notice of Approval.
3. The Commission issues the certificate attached to this Notice of Approval.
4. Mountain Peak SUD must provide water service to every customer and applicant for service within the approved area under CCN number 10908 who requests water service and meets the terms of Mountain Peak SUD's water service, and such service must be continuous and adequate.
5. Mountain Peak SUD must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Ellis and Johnson counties affected by this application and must file in this docket proof of the recording no later than 45 days after the date of this Notice of Approval.
6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

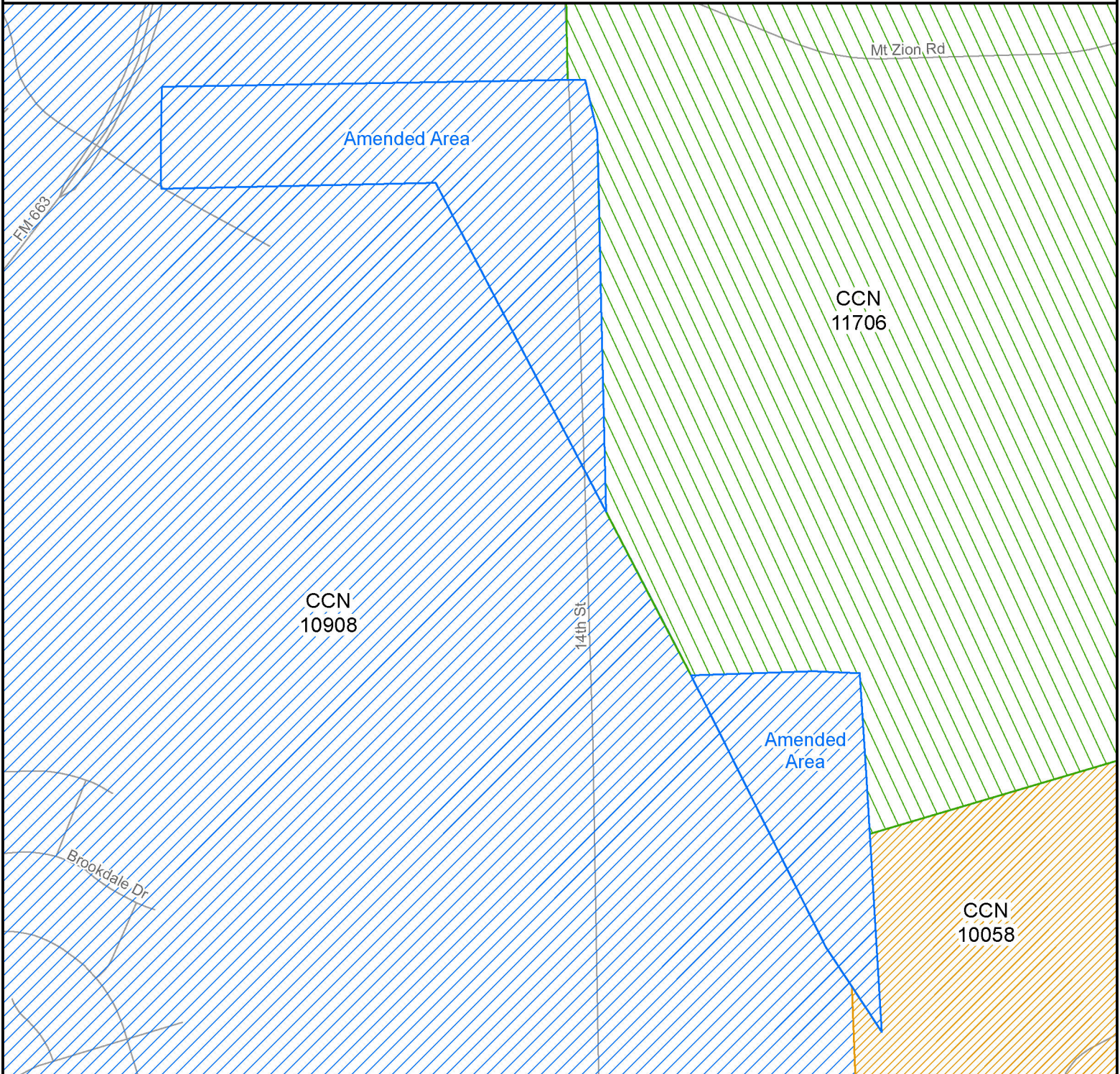
Signed at Austin, Texas the 19th day of April 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

Mountain Peak Special Utility District
Portion of Water CCN No. 10908
PUC Docket No. 52460
Amended CCN No. 10908 in Ellis County



Water CCN

-  10908 - Mountain Peak SUD
-  11706 - City of Midlothian
-  10058 - Sardis-Lone Elm WSC





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. 52460 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.