



## Filing Receipt

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**DOCKET NO. 53243**

<b>APPLICATION OF MAUKA WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LP AND JAMES A. DYCHE DBA</b>	<b>§</b>	
<b>CREST WATER COMPANY FOR</b>	<b>§</b>	<b>OF TEXAS</b>
<b>SALE, TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN JOHNSON COUNTY</b>	<b>§</b>	
	<b>§</b>	

**COMMISSION STAFF’S FINAL SALE RECOMMENDATION**

On February 18, 2022, Mauka Water LP (Mauka Water) and James A. Dyche dba Crest Water Company (Crest Water) (jointly, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Johnson County. Applicants seek approval to sell and transfer Mauka Water’s facilities and all of Mauka Water’s certificated area under CCN No. 12917 to Crest Water. The application reflects a requested area of 340 acres and 339 customers.

On August 15, 2022, the administrative law judge (ALJ) filed Order No. 6, establishing a deadline of September 16, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation approving the sale or request a hearing. Therefore, this pleading is timely filed.

**I. FINAL RECOMMENDATION**

As described in the attached memoranda of James Harville of the Commission’s Infrastructure Division, and Ethan Blanchard, Rate Regulation Division, Staff recommends that the transaction be approved to proceed. Staff’s review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in TWC Chapter 13 and 16 TAC Chapter 24. Staff further recommends that the Applicant has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction.

**II. CONCLUSION**

For the reasons detailed above, Staff recommends that the sale be approved to proceed.

Dated: September 16, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Keith Rogas  
Division Director

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/s/ Kevin R. Bartz

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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 16, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz

Kevin R. Bartz

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Kevin Bartz, Attorney  
Legal Division

**FROM:** James Harville, Infrastructure Analyst  
Infrastructure Division

**DATE:** September 16, 2022

**RE:** *Application of Mauka Water LP and James A. Dyche DBA Crest Water Company for Sale, Transfer, or Merger of Facilities and Certificate Right in Johnson County*

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### **1. Application**

James A. Dyche dba Crest Water Company (Crest Water) and Mauka Water LP (Mauka Water) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Johnson County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Crest Water, Certificate of Convenience and Necessity (CCN) No. 12037, seeks approval to acquire facilities and to transfer all of the water service area from Mauka Water under water CCN No. 12917.

Based on the mapping review by Dave Babicki, Infrastructure Division:

The requested area includes 339 customer connections and approximately 371 acres, comprised of transferred area from Mauka Water, LTD (CCN No. 12917) to James A. Dyche (CCN No. 12037).

The application proposes the subtraction of approximately 371 acres from CCN No. 12917 and the addition of approximately 371 acres to CCN No. 12037.

The application indicates that the total acreage being requested is approximately 340 acres. Based on the mapping review by Dave Babicki, Infrastructure Division, it was determined the requested area is approximately 371 acres.

## **2. Notice**

Crest Water provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was August 17, 2022; there were no motions to intervene, protests, or opt-out requests received.

## **3. Factors Considered**

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

**3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(D)).***

Mauka Water has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS registered as Mauka, PWS ID No. 1260123. The last TCEQ compliance investigation of the Mauka Water system was on March 12, 2020. Mauka Water does not have any violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show 88 complaints against Mauka Water.

**3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).***

There are currently 339 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

**3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).***

Crest Water will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

**3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).***

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed

operator of a public water system may be an employee, contractor, or volunteer. Crest Water plans to use a contract operator for plant operations, which would include one or more appropriately qualified and licensed operator(s). The contract operator(s) would be responsible for day-to-day inspections, checks, sampling, reporting, meter reading, and any necessary system repairs.

Crest Water will have licensed operators to run the system operations. Class B and C operators will be the responsible operator for the system.

Crest Water has the ability to provide adequate service in the requested area. Crest Water has several TCEQ approved public water systems (PWS) registered. Crest Water does not have any violations listed in the TCEQ database. In addition, the Commission's complaint records, which date back to 2017, show 18 complaints against Crest Water.

**3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

The construction of a physically separate system is not necessary for Crest Water to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

**3.6 *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).***

Crest Water is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

**3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

**3.8. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).***

The Rate Regulation Division will be addressing this criterion in a separate memo.

**3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).***

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).*

The customers' rates will be higher than the current rates for the Mauka Water. Reliability and quality of water service is expected to improve under Crest Water's management.

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

**4. Recommendation**

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are 335 deposits held by Mauka Water for the customers being served by Mauka Water. I further recommend that a public hearing is not necessary.

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Kevin Bartz  
Legal Division

**FROM:** Ethan Blanchard  
Rate Regulation Division

**DATE:** August 18, 2022

**RE:** Docket No. 53243 – *Application of Mauka Water LP and James A. Dyche dba Crest Water Company for Sale, Transfer, or Merger of Facilities and Certificate Right in Johnson County*

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On February 18, 2022, James A. Dyche dba Crest Water Company (Crest Water) and Mauka Water, LP filed an application for the sale and transfer of facilities and certificate rights in Johnson County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. Crest Water must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

### ***Leverage Test***

My analysis is based on Crest Water's annual report ending December 31, 2020. Crest Water has also previously filed annual reports for the fiscal years 2018 and 2019, demonstrating compliance with 16 TAC § 24.11(e)(4)(B)(iii).<sup>1,2</sup>

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<sup>1</sup> See *2018 Annual Reports of Water and Wastewater Utilities*, Docket No. 48918, item no. 299 (Feb. 21, 2020).

<sup>2</sup> See *2019 Annual Reports of Water and Wastewater Utilities*, Docket No. 50316, item no. 257 (Oct. 14, 2020).



Based upon my review of Crest Water's financial statements, I calculate the debt-to-equity ratio equal to 0.03.<sup>3</sup> Because the ratio is less than one, I recommend a finding that Crest Water meets the leverage test specified in 16 TAC § 24.11(e)(2)(A).

### ***Operations Test***

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

Crest Water's financial projections show that there are not projected shortages.<sup>4</sup> Therefore, I recommend a finding that Crest Water meets the operations test specified in 16 TAC § 24.11(e)(3).

### ***Purchase Price***

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

The applicant has filed documentation demonstrating adequate cash and a loan approved for the purchase price for the Mauka water system.<sup>5</sup> Therefore, I recommend a finding that Crest Water satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

### ***Recommendation***

Because Crest Water meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Crest Water demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Crest Water before the date of this memorandum and may not reflect any changes in Crest Water's status after this review.

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<sup>3</sup> The calculations for which can be found in confidential Attachment EB-1.

<sup>4</sup> Application, *Confidential STM Application Attachments*, item no. 2, at bates 50 (Feb. 18, 2022).

<sup>5</sup> The calculations for which can be found in confidential Attachment EB-1.