

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

September 2, 2008

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2007-1164-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Frisco (City) and the Mustang Special Utility District (SUD)

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the following items to be filed as backup materials for the September 10, 2008 agenda on a request for an order approving a contract designating water service areas between the City of Frisco and Mustang Special Utility District:

1. Agenda Executive Summary;
2. Caption;
3. Staff memo detailing financial, managerial, and technical capabilities of the City to provide continuous and adequate service in the affected area;
4. Request for Commission order approving a Texas Water Code section 13.248 agreement filed by the City on January 26, 2005;
5. Texas Water Code section 13.248 agreement between the SUD and the City executed on January 6, 2005;
6. Consent Forms
7. Proposed Order;
8. Proposed map of the service area subject to the section 13.248 agreement; and
9. Certificate of Convenience and Necessity (CCN) Nos. 11772 and 11856.

Please do not hesitate to contact me at 239-0635 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Trey Jackson".

Trey Jackson
Staff Attorney
Environmental Law Division

Enclosure

CC: Mailing List

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** 07/29/2008
THRU: LaDonna Castañuela, Chief Clerk
FROM: Trey Jackson, Staff Attorney, Environmental Law Division
SUBJECT: **TCEQ Docket No. 2007-1164-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between City of Frisco and the Mustang Special Utility District (Mustang SUD).

DESCRIPTION OF APPLICATION

Applicant: City of Frisco
Regulated Activity: Retail water utility service
Type of Application: Request for a Commission Order approving a contract
Commission Action: Hearing regarding approval of the contract
Authority: Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117

FACTUAL BACKGROUND

The City of Frisco, water certificate of convenience and necessity (CCN) No. 11772, and Mustang SUD, water CCN No. 11856, provide retail water service in Denton County, Texas. On January 6, 2005, the City of Frisco and Mustang SUD entered into an agreement regarding their respective water service areas pursuant to section 13.248 of the Texas Water Code.

Under the agreement, Mustang SUD will transfer two parcels of land that includes approximately 237.62 and 98.44 acres of its CCN area to the City of Frisco. There are no customers or facilities in the area being transferred.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the

public without first obtaining a CCN.¹ Conversely, a municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.³

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.⁴ A transfer of a water or sewer system that also includes the transfer of customers and/or facilities may, in some cases, also require separate Commission approval for the transfer of customers and/or facilities.⁵

The request to approve a 13.248 agreement is not subject to the notice provisions of section 291.106, Title 30 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to section 13.248 of the Texas Water Code with the appropriate notice under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Request for a Commission order approving the 13.248 agreement filed by the City of Frisco on January 26, 2005 (application no. 34858-C);
2. Agreement between the City of Frisco and the Mustang SUD, executed on January 6, 2005;

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon 2006).

² A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

³ *Id.* § 13.242(b).

⁴ *Id.* § 13.248; 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Env'tl. Quality, Contracts Valid and Enforceable). Section 13.248 states "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

⁵ TEX. WATER CODE § 13.301. The section requires that some applicants also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

3. Map of the service area subject to the 13.248 agreement submitted by the City of Frisco and Mustang SUD.
4. Financial, Managerial, and Technical analysis of the City of Frisco to operate in the affected area.

STAFF RECOMMENDATION

Based on the facts stated in the application and the supporting documentation submitted by the City of Frisco, Staff supports the request for a Commission order approving a contract designating service areas between the City and Mustang SUD. Staff has confirmed that both parties are retail public utilities with active water CCNs and that the area the parties are seeking to transfer is either dually certificated to both parties or abuts the CCN of the entity receiving the CCN. Further, staff is satisfied that the City possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred. Finally, the parties each received copies of the maps which will become part of the order and each has signed its approval for the proposed maps.

STAFF CONTACTS

Trey Jackson, Environmental Law Division (239-0635)
Tammy Holguin-Benter, Water Supply Division (239-6136)

CAPTION
CITY OF FRISCO
Application No. 34858-C

TCEQ Docket No. 2007-1164-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the Mustang Special Utility District ("Mustang SUD"), water certificate of convenience and necessity ("CCN") No. 11856, and the City of Frisco ("City"), water CCN No. 11772, in Denton County, Texas pursuant to section 13.248 of the Texas Water Code. Currently, Mustang SUD holds CCN No. 11856 that includes the area in question. Under the Agreement, Mustang SUD will transfer approximately 237.62 and 98.44 acres of its CCN area to the City. No customers or facilities are proposed to be transferred. (Trey Jackson, Tammy Holguin-Benter).

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Interoffice Memorandum

To: Trey Jackson Date: July 25, 2008

Thru: Doug Holcomb, P.E., Section Manager, Water Supply Division

From: Tammy Benter, Team Leader, Utilities Financial Review Team

Subject: Contract Service Agreement Pursuant to the Texas Water Code Section 13.248 from the City of Frisco, Certificate of Convenience and Necessity (CCN) No. 11772 to acquire a portion of CCN No. 11856 from Mustang Special Utility District (SUD), in Denton County, Application No. 34858-C

In completing a review of the City of Frisco's current financial, managerial and technical capability to provide continuous and adequate service for the additional area requested in this application, I reviewed the City of Frisco's 2005 Fiscal Year budget, Enterprise Funds Budget Summaries, Special Revenue Funds report and Debt Service Funds Budget Summary. I also reviewed the City of Frisco's historical enforcement information in CCEDS and all relevant fee information for the City of Frisco's water utility. During the course of this review, I found no outstanding enforcement actions or unpaid fee balances.

From an analysis of the records mentioned above, and additional updated information received from reports of the Municipal Advisory Council, it is reasonably assured that the City of Frisco has the financial, managerial and technical capability to provide continuous and adequate service to the area requested in this application.


Tammy Lee Holguin-Benter

RM&R

RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.
ATTORNEYS AT LAW

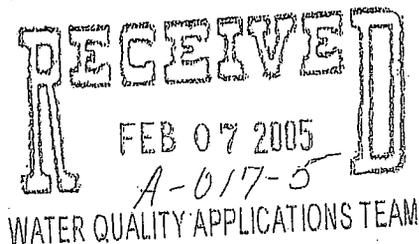
TEXAS HERITAGE PLAZA • 102 WEST MORROW STREET, SUITE 103
GEORGETOWN, TEXAS 78626
PHONE (512) 930-1317 • FAX (512) 930-7742

Email: arodriguez@rmrlawfirm.com

January 26, 2005

Via hand delivery

Ms. Michelle Abrams
Texas Commission on Environmental Quality
Utilities & Districts Section
P.O. Box 13087, MC-153
Austin, Texas 78711-3087



RE: *Application of the City of Frisco Requesting Certification to Provide Water Service to an Area Within its Corporate Limits, By Amending its Certificate of Convenience and Necessity (CCN) No. 11772 and Decertifying a Portion of CCN No. 11856 From Mustang Special Utility District; TCEQ Docket No. 2004-1116-UCR; SOAH Docket No. 582-05-0609*

Dear Ms. Abrams,

On June 4, 2004, the City of Frisco ("City") filed an application, with exhibits, to amend its Water Certificate of Convenience and Necessity (CCN) No. 11772 and to Decertify a Portion of Mustang SUD, CCN No. 11856 in Denton County. The above referenced application was referred to the State Office of Administrative Hearings. A jurisdictional hearing has not been conducted.

Fortunately, the City and Mustang Special Utility District worked out an agreement to transfer certain portions of Mustang SUD's water service territory to the City. A copy of the Agreement is attached hereto as Exhibit A. Because of the Agreement, the City no longer must proceed with the above-referenced proceeding and hereby withdraws its Texas Water Code § 13.255 application.

The City requests that the Agreement contained in Exhibit A be deemed valid and enforceable under Texas Water Code § 13.248 and that the area addressed in the Agreement be transferred to the City's water CCN No. 11772. The City further requests that the filing fee

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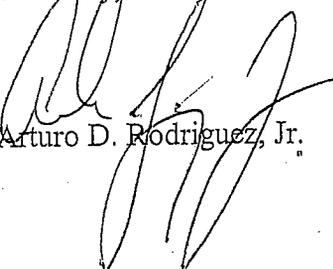
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TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

provided in filing the § 13.255 application be credited toward the filing fee for the § 13.248 application.

Thank you for your attention to this matter.

Sincerely,



Arturo D. Rodriguez, Jr.

Enclosure

cc: Mr. George Purefoy, City Manager, City of Frisco (w/o Enclosure)
Mr. John Rapier, Attorney for Mustang SUD (w/o Enclosure)

TRANSFER RETAIL WATER UTILITY SERVICE AREA
AGREEMENT

STATE OF TEXAS

§

COUNTY OF DENTON

§

§

THIS AGREEMENT to Transfer Retail Water Utility Service Area is made and entered into on this the 26 day of January, 2004 (the "Effective Date"), by and between the City of Frisco (hereinafter "Frisco"), and Mustang Special Utility District (hereinafter "Mustang SUD"). Frisco and Mustang SUD may be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Mustang SUD is a special utility district, organized and operating pursuant to Chapter 65 of the Texas Water Code, which holds water Certificate of Convenience and Necessity ("CCN") No. 11856 in and around Frisco, and provides retail water utility service to customers within its certificated service area;

WHEREAS, Frisco is a municipality which holds water CCN No. 11772 and owns water facilities, transmission lines and distribution lines in Denton County, and provides retail water utility service to customers within its certificated service area;

WHEREAS, a portion of Mustang SUD's water CCN lies within the corporate limits of Frisco, which is comprised of 237.62 acres of land and shown as Parcel 1 on Exhibit A, attached hereto and incorporated herein by reference ("City Limits Tract");

WHEREAS, on October 22, 2003, Frisco delivered notice to Mustang SUD pursuant to §13.255 of the Texas Water Code that Frisco intends to serve the City Limits Tract and to obtain single certification for the City Limits Tract;

WHEREAS, Frisco seeks to serve area the City Limits Tract and an area north of the City Limits Tract which is within Mustang SUD's water CCN area and Frisco's extra-territorial jurisdiction which is comprised of 98.44 acres of land and shown as Parcel 2 on Exhibit A ("ETJ Tract");

WHEREAS, Mustang SUD desires to transfer certain CCN area, and Frisco desires to certificate said CCN service area as more precisely defined later in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, Mustang SUD and Frisco agree as follows:

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Parcel 1
Exhibit 'B'
Proposed Water CCN Transfer
237.62 Acres

Being a 237.62 acre tract of land situated in the Bristow Survey #34, and the Hawkins Survey #580, City of Frisco, Denton County, Texas, being a portion of those certain tracts of land described in deeds to Underwood Financial, Ltd., as Tracts 12 and 13, Gary Bedford Davis, as Tract 1, and North West Ranch, Ltd., as Tract 2, and being more particularly described by metes and bounds as follows;

BEGINNING at a point in the southwest corner of a 175.850 acre tract of land conveyed to North West Ranch Ltd., being tract 2 of the Bristow Survey #35;

THENCE along the west line of said 175.850 acre tract, N 00°31'19" W a distance of 2,718.27 feet to a point being the southeast corner of a 50.00 acre tract of land conveyed to Underwood Financial, Ltd., being tract 1 and 2 of the Hawkins Survey #580;

THENCE along the south line of said 50.00 acre tract, S 88°32'21" W a distance of 1,416.97 feet to a point being the southwest corner of said 50.00 acre tract;

THENCE along the west line of said 50.00 acre tract, N 00°40'17" W a distance of 916.89 feet to a point in the southeast line of Doe Creek Road, said point also being the northwest corner of said 50.00 acre tract;

THENCE along the southeast line of said Doe Creek Road the following courses and distances to wit;

N 44° 17'01" E a distance of 540.38 feet to a point;

N 54°01'20" E a distance of 319.46 feet to a point;

N 54°52'05" E a distance of 416.97 feet to a point in the intersection of the southeast line of Doe Creek Road and the southwest line of a road;

THENCE along said road the following courses and distances to wit;

S 30°11'19" E a distance of 765.35 feet to a point;

N 89°32'55" E a distance of 2,316.76 feet to a point in the centerline of F.M. 423

THENCE along said centerline, S 00°16'04" E a distance of 3,748.89 feet to a point in the centerline of said F.M. 423;

THENCE departing said centerline and following along the south line of said 175.850 acre tract, S 89°27'32" W a distance of 2,243.96 feet to the **POINT OF BEGINNING** and containing approximately 237.62 acres of land;

Parcel 2
Exhibit 'A-B'
Proposed Water CCN Transfer
98.44 Acres

Being a 98.44 acre tract of land situated in the Barnes Survey #79, Hawkins Survey #580, and the MEP & PRR Survey #1476, Denton County, Texas, being a portion of those certain tracts of land described in deeds to Underwood Financial, Ltd., as Tracts 1 and 2, Rudman Partnership etal, as Tracts 12 and 13, and Rudman Partnership etal, as Tract 10, and being more particularly described by metes and bounds as follows;

BEGINNING at a point in the intersection of the centerline of Farm to Market Road 423 and the centerline of U.S. Hwy 380;

THENCE along the said centerline of F.M. 423, S 00°22'08" E a distance of 1,761.42 feet to a point in said centerline;

THENCE departing said centerline and following the south line of a road the following courses and distances to wit;

S 89°32'55" W a distance of 2,316.76 feet to a point;

N 30°11'19" W a distance of 765.35 feet to a point in the intersection of the south line of said road, and the southeast line of Doe Creek Road;

THENCE departing said south line and following along the said southeast line of Doe Creek Road the following courses and distances;

N 38°02'10" E a distance of 333.26 feet to a point;

N 26°26'20" E a distance of 547.94 feet to a point;

N 29°38'00" E a distance of 451.88 feet to a point in the centerline of said U.S. Hwy 380;

THENCE departing said south line and following along said centerline of U.S. Hwy 380, S 89°12'38" E a distance of 2,017.66 feet to the **POINT OF BEGINNING** and containing approximately 98.44 acres of land;

TERMS OF AGREEMENT

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Mustang SUD and Frisco agree as follows:

- (1) Transfer Area. The water utility service area to be transferred to Frisco is specifically identified on the attached map as Parcel 1 and Parcel 2, attached hereto and incorporated herein for all purposes as Exhibit A, described by metes and bounds in Exhibit B, attached hereto and incorporated herein for all purposes, and designated herein as the "Transfer Area."
- (2) Transfer to Frisco. Mustang SUD and Frisco agree that, after the Transfer Effective Date, Frisco shall have the sole right to provide retail water service within the Transfer Area, and Mustang SUD will have no further obligation or right to provide water service to any existing or future customers in the Transfer Area, except as may be agreed by the Parties in writing.
- (3) Current Customers in Transfer Area. All current retail water customers of Mustang SUD and any customers added between the date of this Agreement and the Transfer Effective Date whose place of use of water is located within the Transfer Area will, after the Transfer Effective Date, become customers of Frisco. It is understood and agreed that upon execution of this Agreement there are no customers in the Transfer Area.
- (4) Compensation to Mustang SUD. It is understood and agreed that Mustang SUD will be compensated by Frisco in the amount of \$750.00 per acre for Mustang SUD's agreement to transfer the Transfer Area for a total transfer price of \$252,045.00, which will be paid by Frisco within ten (10) business days following the last date of executing shown on the signature page of this Agreement. Mustang SUD agrees that the amount of compensation per acre received by Mustang SUD from Frisco is a just, adequate, and reasonable payment to Mustang SUD for the loss of revenue, service rights, and facilities in the Transfer Area. Frisco is not obligated to compensate Mustang SUD whatsoever for providing service in the Transfer Area or acquiring the service rights in the Transfer Area.
- (5) Facilities and Waterlines. There are no facilities, waterlines, easements, or equipment to be transferred to Frisco by this Agreement.

Transfer of Retail Water Utility Service Area
Frisco and Mustang SUD

- (6) Transfer and Amendment of Frisco's CCN. Frisco shall file appropriate documentation with the Texas Commission on Environmental Quality ("TCEQ") to formally transfer the Transfer Area from Mustang SUD's CCN to Frisco's CCN. Mustang SUD shall cooperate with Frisco and the TCEQ to ensure transfer of the CCN to Frisco. Frisco and Mustang SUD shall endeavor to obtain TCEQ approval in an expeditious manner and will support and cooperate with each other and the TCEQ to accomplish this goal. All costs associated with preparing and filing the transfer documents and the pursuit of regulatory approvals shall be borne by Frisco.
- (7) Transfer of Customers. Frisco and Mustang SUD shall cooperate in providing notice of the transfer to customers located within the Transfer Area. Mustang SUD shall be entitled to receive all water utility service revenues and fees for water utility services rendered by Mustang SUD prior to the execution date of the Agreement, unless otherwise contracted.
- (8) Effective Dates. This Agreement is effective and enforceable as between Frisco and Mustang SUD following execution by both parties. The transfer of the Transfer Area to Frisco is effective and enforceable upon notice to the customers in the Transfer Area of the intended date of transfer of the retail water service (the "Transfer Effective Date"). Frisco and Mustang SUD shall cooperate in the timing and drafting of the Notice to Customers.
- (9) Temporary Service. Should it be necessary to provide retail water service to the Transfer Area following execution of the Agreement by the Parties, but prior to approval of the CCN transfer by the TCEQ, the Parties agree that Frisco shall be entitled to provide temporary water service to the Transfer Area.
- (10) Filing of Agreement. After Execution of the Agreement by the Parties, a copy of the Agreement shall be filed with the TCEQ.
- (11) Section 13.248. This Agreement shall be construed and interpreted in accordance with Section 13.248 of the Texas Water Code.

MISCELLANEOUS

- (12) Applicable Texas Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
- (13) Performance. The obligations and undertakings of each of the parties to this Agreement shall be performed in the counties of Collin and Denton, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Collin County, Texas.

Transfer of Retail Water Utility Service Area
Frisco and Mustang SUD

- (14) Entire Agreement. This Agreement contains the entire agreement of Frisco and Mustang SUD with respect to the subject matter of the Agreement. No Agreement, statement, or promise made by any party or to any employee, agent, or officer of any party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the party or parties to be charged.
- (15) Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.
- (16) Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.
- (17) Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- (18) Attorney's Fees. In the event that the terms and conditions of this Agreement are breached by either party, and the parties participate in a proceeding before any state or federal tribunal because the terms and conditions of this Agreement are not being complied with by one of the parties, the prevailing party shall recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing party, general or special, at law or in equity, to which the prevailing party may show itself justly entitled.
- (19) Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

Transfer of Retail Water Utility Service Area
Frisco and Mustang SUD

IN WITNESS WHEREOF, EXECUTED by Mustang SUD Water Supply Corporation and
the City of Frisco under the authority of their respective governing bodies in Duplicate Originals on
the dates indicated below.

City of Frisco



BY: Guy Parsley

Date: January 6, 2005

ATTEST:

Nan Parker
City Secretary

MUSTANG SUD

M L Snow

Date: 1-17-05

ATTEST:

Mike Meyer
Mustang SUD Board Secretary

R&R
RUSSELL & RODRIGUEZ, L.L.P.
ATTORNEYS AT LAW

TEXAS HERITAGE PLAZA
102 W. MORROW STREET, SUITE 103
GEORGETOWN, TEXAS 78626

Email: arodriguez@txadminlaw.com

PHONE (512) 930-1317

FAX (512) 930-7742

WWW.TXADMINLAW.COM

February 26, 2008

VIA HAND DELIVERY

Ms. Tammy Benter
Texas Commission on Environmental Quality
Utilities & Districts Section
P.O. Box 13087, MC-153
Austin, Texas 78711-3087

RECEIVED
FEB 26 2008
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

Re: *Contract Service Agreement Pursuant to Texas Water Code Section 13.248 from the City of Frisco, Certificate of Convenience and Necessity (CCN) No. 11772 to Transfer a Portion of CCN No. 11856 from Mustang Special Utility District (SUD) in Denton County; Application No. 34858-C*

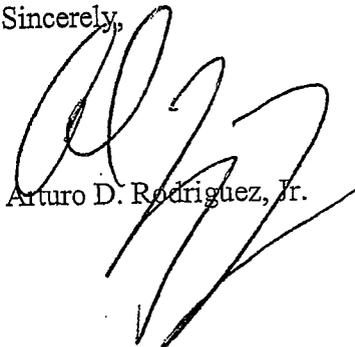
CN: 600245526; RN: 101430437

Dear Ms. Benter,

This firm represents the City of Frisco ("City"). We are in receipt of your map that was sent on January 28, 2008, wherein you transmitted the Consent Form and proposed water CCN map for the City and Mustang SUD. The City is in agreement with the proposed map and the City Manager has placed his signature on the Consent Form indicating the City's agreement. Please continue forward with the amendment of the City's CCN.

Thank you very much for your attention to this matter and if you have any questions, please do not hesitate to contact me at the number listed above.

Sincerely,



Arturo D. Rodriguez, Jr.

Enclosure

cc: Mr. George Purefoy
Mr. Henry Hill

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WATER SUPPLY DIV.
2008 FEB 26 AM 10 31

CONSENT FORM

Applicant's Name: City of Frisco & Mustang SUD
Application Nos.: 34858-C

- I concur with the maps transmitted by letter dated January 28, 2008
- I do not concur with and intend to respond to the maps contained with the letter dated January 28, 2008. I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by the City of Frisco to sign this form.

Signature: George A. Purefoy

Printed Name: GEORGE A. PUREFOY

Relationship to Applicant: CITY MANAGER

Date signed: 02-22-08

Mail or Fax to:
Tammy Lee Holguin-Benter
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-6972

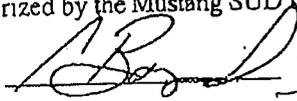
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TCEQ
WATER SUPPLY DIV.
2008 FEB 26 AM 10 31

CONSENT FORM

Applicant's Name: City of Frisco & Mustang SUD
Application Nos.: 34858-C

- I concur with the maps transmitted by letter dated January 28, 2008.
- I do not concur with and intend to respond to the maps contained with the letter dated January 28, 2008. I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by the Mustang SUD to sign this form.

Signature: 

Printed Name: CHRIS BOYD

Relationship to Applicant: GENERAL MANAGER

Date signed: 5 FEB 08

Mail or Fax to:
Tammy Lee Holguin-Benter
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-6972

AN ORDER approving an agreement designating service areas between the City of Frisco and Mustang Special Utility District pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2007-1164-UCR.

A request for a Commission order approving a contract designating service areas between the City of Frisco ("City"), Certificate of Convenience and Necessity (CCN) No. 11772, and Mustang Special Utility District ("Mustang SUD"), Certificate of Convenience and Necessity (CCN) No. 11856, in Denton County, Texas, was presented to the Texas Commission on Environmental Quality ("TCEQ" or "Commission") for approval pursuant to Section 13.248 of the Texas Water Code and Title 30, Section 291.117 of the Texas Administrative Code.

On January 6, 2005, the City and Mustang SUD entered into an agreement ("Agreement") regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Under the Agreement, Mustang SUD will transfer the rights to water service for approximately 237.62 and 98.44 acres of its water CCN area to the City and the City will be the sole retail water service provider in that service area. There are no customers in the area and there will be no transfer of facilities under the Agreement. The Agreement is attached to this Order.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE, §13.248.

The Commission held a hearing on the request at the _____ agenda and found the request had merit.

The City is capable of rendering continuous and adequate water service to every customer in the area, as described by the Agreement. The CCN transfer, which results in the City being the sole retail water service provider in that area, is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

The Agreement transferring a portion of Mustang SUD CCN No. 11856 to the City, CCN No. 11772, and designating that the City is the sole retail water service provider in that area, is hereby approved.

CCN No. 11856 in Denton County, held by Mustang SUD, is hereby amended in accordance with the Agreement.

CCN No. 11772 in Denton County, held by the City of Frisco, is hereby amended in accordance with the Agreement.

The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Denton County, Texas.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

TRANSFER RETAIL WATER UTILITY SERVICE AREA
AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF DENTON §

THIS AGREEMENT to Transfer Retail Water Utility Service Area is made and entered into on this the 27th day of January, 2004 (the "Effective Date"), by and between the City of Frisco (hereinafter "Frisco"), and Mustang Special Utility District (hereinafter "Mustang SUD"). Frisco and Mustang SUD may be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Mustang SUD is a special utility district, organized and operating pursuant to Chapter 65 of the Texas Water Code, which holds water Certificate of Convenience and Necessity ("CCN") No. 11856 in and around Frisco, and provides retail water utility service to customers within its certificated service area;

WHEREAS, Frisco is a municipality which holds water CCN No. 11772 and owns water facilities, transmission lines and distribution lines in Denton County, and provides retail water utility service to customers within its certificated service area;

WHEREAS, a portion of Mustang SUD's water CCN lies within the corporate limits of Frisco, which is comprised of 237.62 acres of land and shown as Parcel 1 on Exhibit A, attached hereto and incorporated herein by reference ("City Limits Tract");

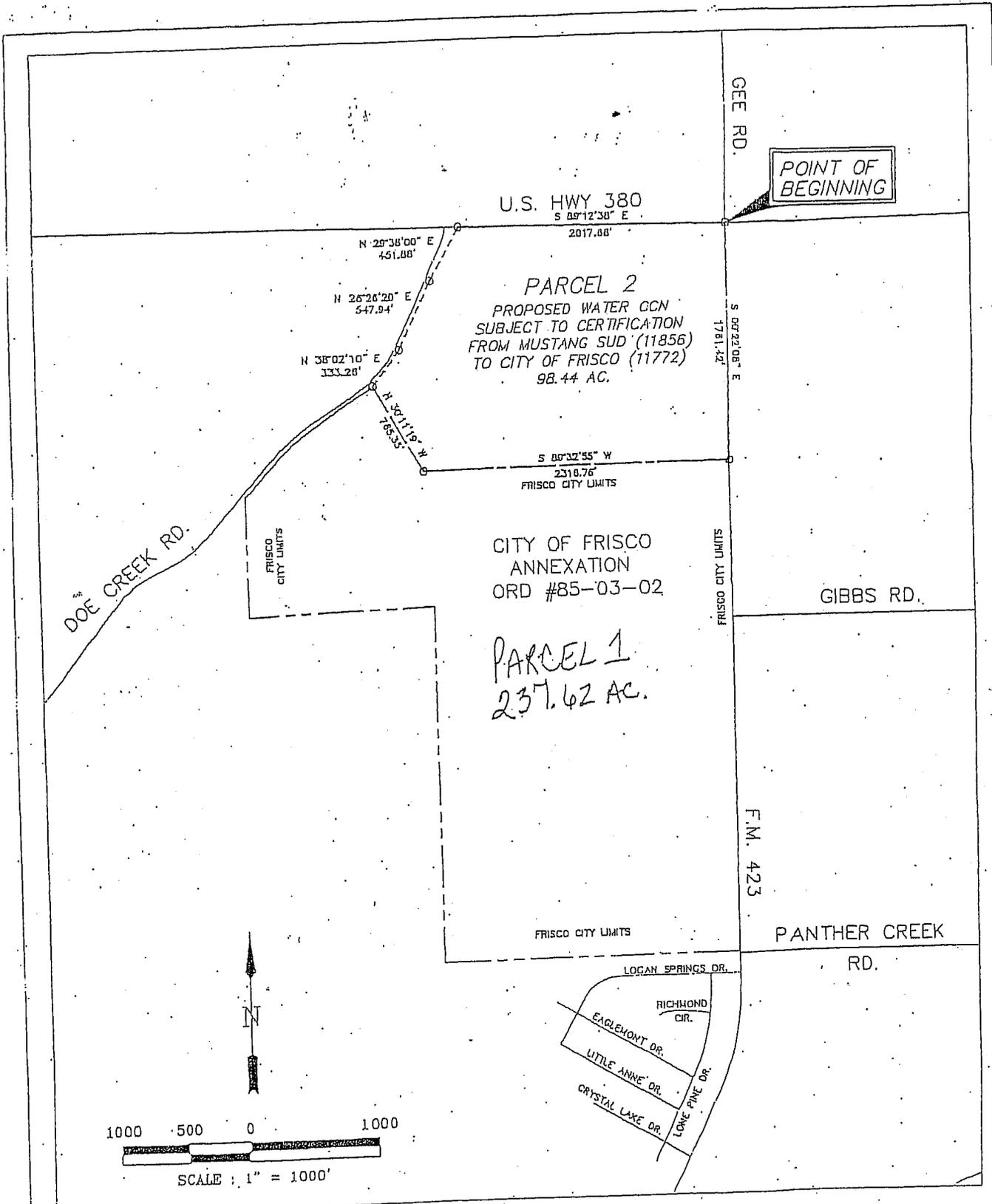
WHEREAS, on October 22, 2003, Frisco delivered notice to Mustang SUD pursuant to §13.255 of the Texas Water Code that Frisco intends to serve the City Limits Tract and to obtain single certification for the City Limits Tract;

WHEREAS, Frisco seeks to serve area the City Limits Tract and an area north of the City Limits Tract which is within Mustang SUD's water CCN area and Frisco's extra-territorial jurisdiction which is comprised of 98.44 acres of land and shown as Parcel 2 on Exhibit A ("ETJ Tract");

WHEREAS, Mustang SUD desires to transfer certain CCN area, and Frisco desires to certificate said CCN service area as more precisely defined later in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, Mustang SUD and Frisco agree as follows:

RECEIVED
JAN 26 2005
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY



CITY OF FRISCO
WATER CCN EXHIBIT



HUNTER ASSOCIATES TEXAS, LTD.
ENGINEERS/PLANNERS/SURVEYORS

DALLAS 214-240-9171 AUSTIN 512-317-8716 FRISCO 972-717-6100

Parcel 1
Exhibit 'B'
Proposed Water CCN Transfer
237.62 Acres

Being a 237.62 acre tract of land situated in the Bristow Survey #34, and the Hawkins Survey #580, City of Frisco, Denton County, Texas, being a portion of those certain tracts of land described in deeds to Underwood Financial, Ltd., as Tracts 12 and 13, Gary Bedford Davis, as Tract 1, and North West Ranch, Ltd., as Tract 2, and being more particularly described by metes and bounds as follows;

BEGINNING at a point in the southwest corner of a 175.850 acre tract of land conveyed to North West Ranch Ltd., being tract 2 of the Bristow Survey #35;

THENCE along the west line of said 175.850 acre tract, N 00°31'19" W a distance of 2,718.27 feet to a point being the southeast corner of a 50.00 acre tract of land conveyed to Underwood Financial, Ltd., being tract 1 and 2 of the Hawkins Survey #580;

THENCE along the south line of said 50.00 acre tract, S 88°32'21" W a distance of 1,416.97 feet to a point being the southwest corner of said 50.00 acre tract;

THENCE along the west line of said 50.00 acre tract, N 00°40'17" W a distance of 916.89 feet to a point in the southeast line of Doe Creek Road, said point also being the northwest corner of said 50.00 acre tract;

THENCE along the southeast line of said Doe Creek Road the following courses and distances to wit;

N 44° 17'01" E a distance of 540.38 feet to a point;

N 54°01'20" E a distance of 319.46 feet to a point;

N 54°52'05" E a distance of 416.97 feet to a point in the intersection of the southeast line of Doe Creek Road and the southwest line of a road;

THENCE along said road the following courses and distances to wit;

S 30°11'19" E a distance of 765.35 feet to a point;

N 89°32'55" E a distance of 2,316.76 feet to a point in the centerline of F.M. 423

THENCE along said centerline, S 00°16'04" E a distance of 3,748.89 feet to a point in the centerline of said F.M. 423;

THENCE departing said centerline and following along the south line of said 175.850 acre tract, S 89°27'32" W a distance of 2,243.96 feet to the POINT OF BEGINNING and containing approximately 237.62 acres of land;

Parcel 2
Exhibit 'A-B'
Proposed Water CCN Transfer
98.44 Acres

Being a 98.44 acre tract of land situated in the Barnes Survey #79, Hawkins Survey #580, and the MEP & PRR Survey #1476, Denton County, Texas, being a portion of those certain tracts of land described in deeds to Underwood Financial, Ltd., as Tracts 1 and 2, Rudman Partnership etal, as Tracts 12 and 13, and Rudman Partnership etal, as Tract 10, and being more particularly described by metes and bounds as follows;

BEGINNING at a point in the intersection of the centerline of Farm to Market Road 423 and the centerline of U.S. Hwy 380;

THENCE along the said centerline of F.M. 423, S 00°22'08" E a distance of 1,761.42 feet to a point in said centerline;

THENCE departing said centerline and following the south line of a road the following courses and distances to wit;

S 89°32'55" W a distance of 2,316.76 feet to a point;

N 30°11'19" W a distance of 765.35 feet to a point in the intersection of the south line of said road, and the southeast line of Doe Creek Road;

THENCE departing said south line and following along the said southeast line of Doe Creek Road the following courses and distances;

N 38°02'10" E a distance of 333.26 feet to a point;

N 26°26'20" E a distance of 547.94 feet to a point;

N 29°38'00" E a distance of 451.88 feet to a point in the centerline of said U.S. Hwy 380;

THENCE departing said south line and following along said centerline of U.S. Hwy 380, S 89°12'38" E a distance of 2,017.66 feet to the **POINT OF BEGINNING** and containing approximately 98.44 acres of land;

TERMS OF AGREEMENT

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Mustang SUD and Frisco agree as follows:

- (1) Transfer Area. The water utility service area to be transferred to Frisco is specifically identified on the attached map as Parcel 1 and Parcel 2, attached hereto and incorporated herein for all purposes as Exhibit A, described by metes and bounds in Exhibit B, attached hereto and incorporated herein for all purposes, and designated herein as the "Transfer Area."
- (2) Transfer to Frisco. Mustang SUD and Frisco agree that, after the Transfer Effective Date, Frisco shall have the sole right to provide retail water service within the Transfer Area, and Mustang SUD will have no further obligation or right to provide water service to any existing or future customers in the Transfer Area, except as may be agreed by the Parties in writing.
- (3) Current Customers in Transfer Area. All current retail water customers of Mustang SUD and any customers added between the date of this Agreement and the Transfer Effective Date whose place of use of water is located within the Transfer Area will, after the Transfer Effective Date, become customers of Frisco. It is understood and agreed that upon execution of this Agreement there are no customers in the Transfer Area.
- (4) Compensation to Mustang SUD. It is understood and agreed that Mustang SUD will be compensated by Frisco in the amount of \$750.00 per acre for Mustang SUD's agreement to transfer the Transfer Area for a total transfer price of \$252,045.00, which will be paid by Frisco within ten (10) business days following the last date of executing shown on the signature page of this Agreement. Mustang SUD agrees that the amount of compensation per acre received by Mustang SUD from Frisco is a just, adequate, and reasonable payment to Mustang SUD for the loss of revenue, service rights, and facilities in the Transfer Area. Frisco is not obligated to compensate Mustang SUD whatsoever for providing service in the Transfer Area or acquiring the service rights in the Transfer Area.
- (5) Facilities and Waterlines. There are no facilities, waterlines, easements, or equipment to be transferred to Frisco by this Agreement.

Transfer of Retail Water Utility Service Area
Frisco and Mustang SUD

- (6) Transfer and Amendment of Frisco's CCN. Frisco shall file appropriate documentation with the Texas Commission on Environmental Quality ("TCEQ") to formally transfer the Transfer Area from Mustang SUD's CCN to Frisco's CCN. Mustang SUD shall cooperate with Frisco and the TCEQ to ensure transfer of the CCN to Frisco. Frisco and Mustang SUD shall endeavor to obtain TCEQ approval in an expeditious manner and will support and cooperate with each other and the TCEQ to accomplish this goal. All costs associated with preparing and filing the transfer documents and the pursuit of regulatory approvals shall be borne by Frisco.
- (7) Transfer of Customers. Frisco and Mustang SUD shall cooperate in providing notice of the transfer to customers located within the Transfer Area. Mustang SUD shall be entitled to receive all water utility service revenues and fees for water utility services rendered by Mustang SUD prior to the execution date of the Agreement, unless otherwise contracted.
- (8) Effective Dates. This Agreement is effective and enforceable as between Frisco and Mustang SUD following execution by both parties. The transfer of the Transfer Area to Frisco is effective and enforceable upon notice to the customers in the Transfer Area of the intended date of transfer of the retail water service (the "Transfer Effective Date"). Frisco and Mustang SUD shall cooperate in the timing and drafting of the Notice to Customers.
- (9) Temporary Service. Should it be necessary to provide retail water service to the Transfer Area following execution of the Agreement by the Parties, but prior to approval of the CCN transfer by the TCEQ, the Parties agree that Frisco shall be entitled to provide temporary water service to the Transfer Area.
- (10) Filing of Agreement. After Execution of the Agreement by the Parties, a copy of the Agreement shall be filed with the TCEQ.
- (11) Section 13.248. This Agreement shall be construed and interpreted in accordance with Section 13.248 of the Texas Water Code.

MISCELLANEOUS

- (12) Applicable Texas Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
- (13) Performance. The obligations and undertakings of each of the parties to this Agreement shall be performed in the counties of Collin and Denton, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Collin County, Texas.

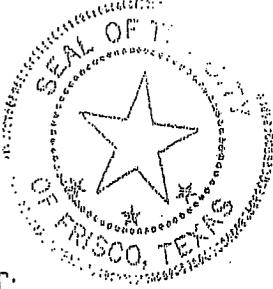
Transfer of Retail Water Utility Service Area
Frisco and Mustang SUD

- (14) Entire Agreement. This Agreement contains the entire agreement of Frisco and Mustang SUD with respect to the subject matter of the Agreement. No Agreement, statement, or promise made by any party or to any employee, agent, or officer of any party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the party or parties to be charged.
- (15) Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.
- (16) Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.
- (17) Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
- (18) Attorney's Fees. In the event that the terms and conditions of this Agreement are breached by either party, and the parties participate in a proceeding before any state or federal tribunal because the terms and conditions of this Agreement are not being complied with by one of the parties, the prevailing party shall recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing party, general or special, at law or in equity, to which the prevailing party may show itself justly entitled.
- (19) Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

Transfer of Retail Water Utility Service Area
Frisco and Mustang SUD

IN WITNESS WHEREOF, EXECUTED by Mustang SUD Water Supply Corporation and
the City of Frisco under the authority of their respective governing bodies in Duplicate Originals on
the dates indicated below.

City of Frisco



BY: Guy Paulson

Date: January 6, 2005

ATTEST:

Nan Parker
City Secretary

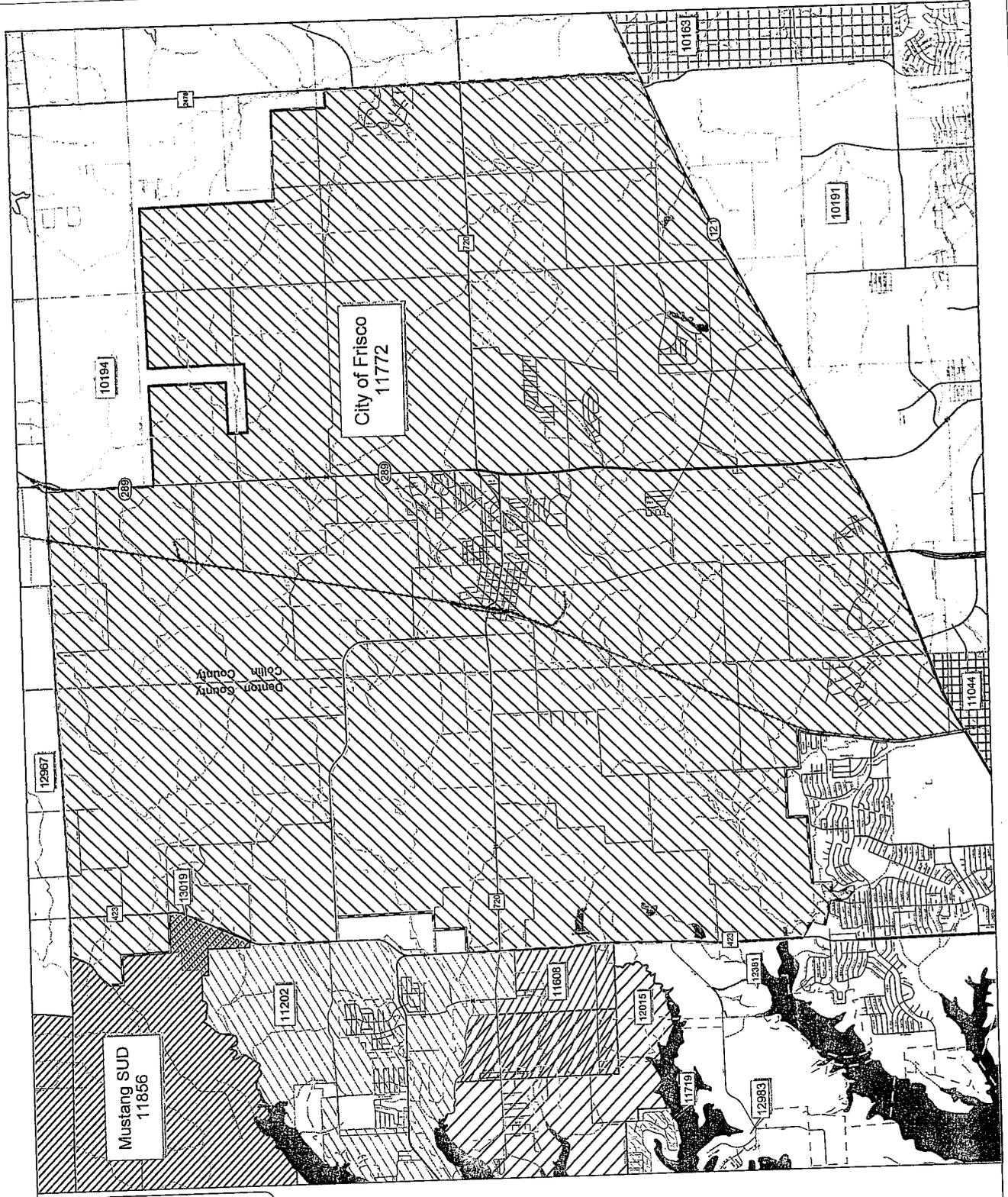
MUSTANG SUD

M L Snow

Date: 1-17-05

ATTEST:

[Signature]
Mustang SUD Board Secretary



City of Frisco
 Water Service Area
 CCN No. 11772
 Denton and Collin Counties
 Application No. 34858-C (13.248 Agreement
 between City of Frisco and Mustang SUD
 in Denton County)

- Water CCN Service Areas
- 11772 - CITY OF FRISCO
 - 11856 - MUSTANG SUD
 - 10163 - CITY OF ALLEN
 - 10191 - CITY OF PLANO
 - 10194 - CITY OF MCKINNEY
 - 11044 - CITY OF CARROLLTON
 - 11202 - TOWN OF LITTLE ELM
 - 11600 - TERRA SOUTHWEST INC
 - 11719 - CENTRAL TEXAS UTILITIES INC
 - 12015 - TOWN OF HACKBERRY
 - 12381 - BOYD ACRES WATER SYSTEM
 - 12987 - CITY OF PROSPER
 - 12983 - TECON WATER COMPANY LP
 - 13019 - DENTON COUNTY FWSD 88





Texas Commission On Environmental Quality

By These Presents Be It Known To All That

City of Frisco

having duly applied for 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 11772

to provide continuous and adequate water utility service to that service area or those service areas in Collin and Denton Counties as by final order or orders duly entered by this Commission, which Order or Orders resulting from Application No. 35118-C 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 Frisco 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 SEP 13 2007

Buddy Garcia
For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

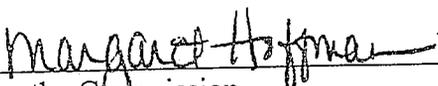
Mustang Special Utility District

having duly applied for 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 by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 11856

to provide continuous and adequate water utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 34044-S 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 Mustang 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.

Issued at Austin, Texas, this NOV 12 2003


For the Commission