

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
July 22, 2008

CHIEF CLERKS OFFICE

2008 JUL 22 PM 4:11

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-06-1367; TCEQ Docket No. 2005-2089-UCR; In Re: Application of the City of Meridian to Amend its Water Sewer Certificates of Convenience and Necessity Nos. 10884 and 20349 in Bosque County; Applications Nos. 35057-C and 35058-C

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than Monday, August 11, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than Thursday, August 21, 2008.

This matter has been designated **TCEQ Docket No. 2005-2089-UCR; SOAH Docket No. 582-06-1367**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,


Kerry D. Sullivan
Administrative Law Judge

KDS/cm
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AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
(TCEQ)

STYLE/CASE: CITY OF MERIDIAN

SOAH DOCKET NUMBER: 582-06-1367

TCEQ DOCKET NUMBER: 2005-2089-UCR

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE

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SOAH DOCKET NO. 582-06-1367
TCEQ DOCKET NO. 2005-2089-UCR

APPLICATION OF THE CITY OF
MERIDIAN TO AMEND ITS WATER
AND SEWER CERTIFICATES OF
CONVENIENCE AND NECESSITY NOS.
10884 AND 20349 IN BOSQUE COUNTY;
APPLICATIONS NOS. 35057-C AND
35058-C

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

2006 JUL 22 PM 4:15

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

PROPOSAL FOR DECISION

I. INTRODUCTION

The City of Meridian ("Meridian" or "the City") seeks to amend its water and sewer certificates of convenience and necessity (CCNs) to increase the area in Bosque County where it would be certificated to provide retail water and sewer utility service. The Administrative Law Judge (ALJ) finds that the applications satisfy the regulatory criteria and recommends that the requested amendments be approved.

II. PROCEDURAL HISTORY, OVERVIEW, AND LEGAL STANDARDS

A. Procedural History

This case has an extended procedural history. Meridian filed its application with the Texas Commission on Environmental Quality (TCEQ or Commission) on August 3, 2005. After hearing requests were filed, the Commission's Chief Clerk referred the applications to the State Office of Administrative Hearings (SOAH) for a contested-case hearing. ALJ Kerry D. Sullivan held a preliminary hearing on May 2, 2006, at which jurisdiction was established and the following parties were designated: the City of Meridian (City)(represented by Arturo D. Rodriguez, Jr.); Mustang Valley Water Supply Corporation (represented by Patricia Coy); Jeffrey M. Hewlett (representing himself); the Executive Director of the TCEQ (now represented by Stefanie Skogen); and the Office of Public Interest Counsel (OPIC) of the TCEQ (represented by Scott Humphrey).

The hearing on the merits was originally set for November 30, 2006, but was continued in order to accommodate eventually successful settlement negotiations between the City and Mustang Valley

WSC. As a result of these negotiations, the City filed an amended application to reflect the agreement reached between these parties, and Mustang Valley WSC withdrew as a party to this proceeding. The City also subsequently amended its application to remove Mr. Hewlett's land from the requested certification, but Mr. Hewlett has remained an active party in these proceedings.¹ The hearing on the merits occurred on October 3-4, 2007, and June 4, 2008.² The record closed on June 4, 2008.

B. Overview

The City of Meridian is a Texas municipality located in Bosque County. It had a population of 1,491 as of the 2000 census. Meridian currently provides service to 730 water customers and 677 sewer customers.³ Municipalities are not required to possess a CCN in order to provide water or sewer utility service.⁴ Nevertheless, there is no applicable prohibition against municipalities applying for and receiving CCNs. The ED observes that the typical rationale for a municipality to request a CCN is to protect against other retail public utilities providing service in an area targeted for service by the municipality. The ED acknowledges that such an approach is understandable in order to allow a municipality to protect its investment in infrastructure. Even so, because the granting of a CCN would generally prevent customers in the area from obtaining service from another retail public utility, the ED

¹ Following this excision, the ALJ denied the City's motion to dismiss Mr. Hewlett as a party to this proceeding in light of Mr. Hewlett's long-standing participation in this case, the potential that the targeted carving out of his property from the amended CCN area could impact the availability of service to Mr. Hewlett's tract, and the fact that Mr. Hewlett's mother (who requested to be designated as a party in response to Meridian's request to dismiss Mr. Hewlett) owns property within the amended CCN area. (Order No. 7)

² During the hearing in October 2007, the ED stated that the exact CCN boundaries he recommended could not be identified because the City had not provided metes and bounds descriptions of the properties for which requests for service had been made. The City had been under no obligation to provide this information because it sought a larger general CCN for the area rather than one more narrowly tailored to specific requests for service. In order to provide the Commission with a complete record from which to render an informed decision, it was ultimately agreed that the City would obtain and provide the property descriptions required by the ED, and the ED would prepare a CCN map setting out the ED's recommended boundaries. After receipt of the information from the City, the ED filed a revised map and supplemental testimony of its expert witness, Kamal Adhikari, on April 25, 2008. The hearing then reconvened on June 4, 2008, in order to allow the ED to present this information and for the parties to have an opportunity to cross examine Mr. Adhikari and present responsive testimony.

³ Meridian Ex. 1 (Application), p. APP0768.

⁴ See 30 TEX. ADMIN. CODE § 291.101(a) (requiring only utilities, utilities operated by affected counties, and water supply or sewer service corporations to possess a CCN to provide service). A "retail public utility" is defined in section 291.3(39). A "utility" is defined in section 291.3(51). A municipality is a retail public utility but not a utility.

asserts that it is important to ensure that a municipal applicant fully satisfies the regulatory requirements.

The requested water service area would include approximately 32 square miles. The requested sewer service area would include approximately 35.8 square miles.⁵ If approved, the CCNs would represent approximately a five-fold increase in Meridian's certificated area.⁶ A map of the requested area is included as Attachment 1 to this PFD.

C. The Legal Standards for Certification.

The primary substantive requirements applicable to this proceeding are set out in TEX. WATER CODE § 13.246(c), which provides:

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted on a nondiscriminatory basis after consideration by the commission of:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;

⁵ ED brief, p. 8 of 13.

⁶ ED Ex.1 (Checklist); Meridian Ex. 1(Application) at APP0779.

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.⁷

III. DISCUSSION

As discussed below, Meridian is financially sound and capable of providing service in the requested area. The primary contested issues are the related questions of the adequacy of current service and the need for additional service throughout the area.

A. Adequacy of Existing Service.

The City currently provides water and sewer service to an undetermined number of residents in the proposed service areas, most or all of whom reside within the Extraterritorial Jurisdiction (ETJ) of the City. Mustang Valley WSC is the only other retail provider of water utility service in the requested area. It provides service in the Northwest portion of the service area, including approximately sixty connections within the City's ETJ⁸ (although it is currently not certificated in the area). The City is the only provider of centralized sewer service in the requested area. Some area residents meet their water and waste disposal needs through private water wells and septic systems. The region has a chronic failure rate of 12 per cent for on-site sewage facilities (OSSFs).⁹

⁷ The Commission has also adopted rules implementing these requirements at 30 TEX. ADMIN. CODE, Ch. 290. The rules applicable to this proceeding are the ones in place on August 5, 2005, when the application was filed.

⁸ Tr. 231.

⁹ Meridian Ex. 4 (Cline Direct), p. 12.

While the ED acknowledges at least a limited need for additional service in the area, as addressed below, he nevertheless states, "Overall, evidence regarding the adequacy of service issue is limited but does not indicate that service currently provided to the requested area is inadequate."¹⁰

Although the dispute between the City and the ED is generally semantic with respect to this consideration, the ALJ concurs with the City that service in the area is currently not adequate. With the exception of the currently unauthorized and limited service provided by Mustang Valley WSC, there is no existing "service" provided to the area. As observed by the City, "service" in this context is defined as service provided "by a retail public utility."¹¹ The self-service individual wells and OSSFs in the area do not fall within this definition. In the ALJ's view, if there is a need for service in an area where none currently exists, the service in the area is, by definition, inadequate. In any event, the ED does not see this consideration as a bar to certification for the City, and the ALJ concurs with that conclusion.

B. Need for Additional Service.

Summary of Evidence and Arguments. In attempting to demonstrate the need for additional service in the requested area, Meridian relies on oral and written inquiries from area residents and businesses interested in obtaining water and sewer utility service from it. The record includes eleven letters expressing interest in water or sewer utility service, one letter from a bank asking the City to annex the land on which it is located, a list of five additional new customers inside the City's extraterritorial jurisdiction who have been added since the application was filed, and the identification of two additional residents who orally inquired into the availability of service from the City.¹² The service inquiries have been scattered fairly evenly throughout the requested service area, which is in the shape of a rectangle and surrounds the city limits and ETJ. Approximately ten out of the total of 17

¹⁰ ED Closing Statement, p. 5.

¹¹ 30 TEX. ADMIN. CODE § 291.103(42).

¹² ED Exs. 3, 6, and 7.

inquiries dating back to July 2005 have related to locations inside the City's ETJ.¹³ As observed by Mr. Hewlett, none of the written inquiries, at least, constituted unequivocal requests for utility service or specified the level of service or number of connections required.

Mr. Kerry Maroney, an engineer retained by the City, testified that typically one request for service in an area also serves to indicate the presence of others who have not taken this initiative but who would also be interested in obtaining service. Along these line, he stated that it is common to receive additional requests for service as the "ditcher comes along." Mr. Maroney testified that he is currently working on three different projects where that scenario is occurring.¹⁴ Accordingly, Mr. Maroney believed that, once need in a region is established, prudent planning requires a utility to request CCN boundaries that could be constructed in a sequential and economic manner and which could be served by the available facilities.¹⁵

Mr. Maroney also testified that the population of Meridian is projected to grow from its year 2000 level of 1,491 to approximately 1,852 by the year 2030.¹⁶ Mr. Maroney stated that the area around the City's corporate limits has been growing faster than the City itself and that this trend is expected to continue in the future.¹⁷

ED witness Kamal Adhikari testified that, in his view, the City's certificates should be amended to include all of the City's ETJ and the areas where there have been written requests for additional service. He did not believe, however, that the City has demonstrated a need for certification beyond these areas. In particular, the ED asserts that Mr. Maroney's assessment that areas outside the city limits are growing faster than the population of the City itself is inadequately supported. The ED also observes that two of the written requests for service outside the ETJ are for an area and class of

¹³ Meridian. Exs. 8 and 9 (Water and Sewer Maps depicting approximate locations of service requests). A reduced copy of Ex. 8 is included as Attachment 1 to this PFD.

¹⁴ Tr. 127-28.

¹⁵ Tr. 326.

¹⁶ Meridian Ex. 3 (Maroney Direct) p. 10.

¹⁷ Tr. at 125.

customer that would require Mustang Valley WSC to provide them water service under the terms of the settlement between these entities.¹⁸

In the October 2007 hearing session, Mr. Adhikari also testified that, because the City did not provide information identifying the locations of the property boundaries pertaining to the tracts for which utility service has been requested, he could not yet state the appropriate boundaries for the amended CCN. He did offer his opinion, however, that the service area should be continuous, encompass the properties where service has been requested, and follow natural boundaries such as roads and creeks, if possible.¹⁹

When the hearing reconvened on June 4, 2008, Mr. Adhikari had been provided the property descriptions of the persons who had inquired about service. Based on these descriptions, and following the criteria he outlined in his prior testimony, Mr. Adhikari recommended the water and sewer CCN boundaries identified in two maps he sponsored.²⁰ These maps would exclude a total of approximately 6,475 acres from the requested area. More specifically, about 2,750 acres would be removed from the southeast portion of the certificated area, another 2,750 acres would be excluded from the southwest portion, and a final 975 acres would be deleted from the northeast quadrant of the area.²¹ A copy of the ED's Water CCN map (which is the same as the sewer map) is included as Attachment 2 to this PFD.

The Office of Public Interest Counsel joins in the ED's position. OPIC asserts that granting certification beyond the areas identified by Mr. Adhikari would be "purely speculative."²² Mr. Hewlett goes even further in his objections. He believes the City should be restricted to the area within its ETJ because he believes the need for service beyond this area has not been established in view of the

¹⁸ As discussed below, the City and Mustang Valley WSC have agreed to overlapping service areas in part of the northwest quadrant of the requested area. According to their agreement, the City will serve lots less than one acre in size as well as non-residential and non-agricultural uses. Mustang Valley WSC will serve tracts larger than one acre.

¹⁹ Tr. 286-87, 311-312.

²⁰ ED. Ex. 13.

²¹ Tr. 431-432.

²² OPIC Closing Statement, p. 3.

general and non-committal nature of the additional service inquiries and his belief that the location of the properties subject to the inquiries has not been determined with adequate assurance.

In response to these objections, the City presented additional testimony by its engineer, Mr. Maroney. In addition to the planning considerations he had previously addressed, Mr. Maroney criticized the ED's approach in this proceeding as arbitrary and contrary to the efficient and economical development of the area. In particular, he observed that the entire requested area is in a common drainage basin, which renders it most efficient and economical for a single utility to provide service. This efficiency appears to be more pronounced with respect to the provision of sewer service, where Mr. Maroney described gravity flow as cheaper and more reliable than a system forced to rely heavily on pumping.²³

Also with respect to the topography, Mr. Maroney testified more specifically that the most feasible way to serve part of the area the ED proposes for inclusion in the northeast quadrant of the service area would be for the City to run a line along a drainage path that cuts through the middle of the area the ED proposes to exclude in this quadrant. According to Mr. Maroney, "It makes zero sense from an engineering standpoint to not include that area in the CCN."²⁴

According to Mr. Maroney, these geographic features combined with the relatively long distance to any other potential water or sewer provider (discussed in more detail below) render the City the only economically and technically feasible provider of centralized water or sewer service for the area (with the exception of Mustang Valley, with whom the City has worked out an agreed approach to the provision of service). Accordingly, Mr. Maroney believed there was no reason to exclude these areas from the City's request. Doing so, he said, would inhibit appropriate planning in terms of the placement and sizing of lines as it developed its system because the City would not be guaranteed the exclusive right to serve in the area and would, in fact, be operating under the cloud of having previously been denied a CCN in the area. Accordingly, he believes the City might size lines and

²³ Tr. 434.

²⁴ Tr. 433.

facilities only to serve a customer who has firmly requested service rather than to plan for growth the City would not be guaranteed a right to serve.²⁵

The City also argues that the ED's approach fails to account for economies of scale that would be present if the City is certificated for the entire area. City witness Darrell Cline testified that there are high fixed costs associated with the provision of water and sewer service and that spreading those costs over a larger customer base would allow the City to lower the per unit cost of providing service. In particular, the City's contract to purchase potable water from the City of Clifton indicates the annual cost for 50,000 gallons per day of water is only five percent lower than the cost of purchasing 100,000 gallons per day (\$66,703 verses \$70,170), rendering the per gallon cost of water much cheaper at the higher volume. Finally, Mr. Maroney also stated that the Clifton-to-Meridian waterline, which will parallel Highway 1991 along the ED's recommended southeastern boundary, could also be used to provide distribution service to new customers in the area. Again, he expressed concern that the City would not be certificated to serve customers to the east of this road.²⁶

Analysis. By all accounts, the City and surrounding area are growing at a steady, measured pace. The approximately nine recent requests for service within the City's ETJ support extension of the CCNs to include the entire ETJ, as depicted on Attachment 1 to this PFD, and as acknowledged by all parties. This will nearly double the size of the City's certificated area.

The more difficult question is whether, and to what extent, the City has also demonstrated need for additional service in the substantial portion of the requested area located outside of the City's ETJ. This is a significantly larger area than the requested area within the ETJ. Approximately eight inquiries have been documented in this area. Although Mr. Hewlett questions the accuracy of the City's mapping of these service inquiries, the documentation provided by the City was the normal type of

²⁵ Tr. 446-47.

²⁶ See Tr. 429-30.

information provided in support of CCN applications. While there was some initial confusion regarding the exact location of the properties pertaining to some service inquiries, the ALJ concurs with the City, ED, and OPIC that they are adequate to demonstrate a need for service in the areas inquired about.

As originally calculated by the ED, the service inquiries outside the ETJ relate to only about 1.15 percent of the land included in the amended application. The revised maps appear to indicate this percentage is actually in the range of ten percent.²⁷ Additionally, the properties that are the subject of the inquiries are scattered diffusely to the far reaches of the requested area. While Mr. Adhikari has made a reasonable effort to scale back the size of the CCNs in order to more narrowly include only the regions where service has been sought, the ALJ is persuaded that the reductions are somewhat artificial and could inhibit efficient long-term planning for the provision of service to the area.

While the most concretely demonstrated need pertains to the specific service inquiries, the ALJ accepts Mr. Maroney's testimony, based on his experience, that more people would probably like to have water and sewer utility service than have taken the initiative to formally inquire about it. And while the expected population growth in the certificated area has not been quantified with any precision, the general evidence of increasing population provides some additional support for a finding of need in the area.

Additionally, where there are pockets of need established, as here, the ALJ is persuaded that this supports the need for certification of a reasonable zone encompassing the areas of specific need in order to facilitate prudent planning and to encourage economies of scale. In the ALJ's view this is consistent with the language of the statute, which sets out the assessment of need as one of multiple factors for consideration without prescribing a specific minimum level. Additionally, while service

²⁷ Applicant Ex. 17

requests are to be considered in assessing need, the natural reading of the statute indicates that they are not intended as the only consideration in making this assessment.²⁸ This is particularly true where, as addressed below, there is no reason to expect another utility could emerge to provide better or cheaper services within the area requested for certification.

The ALJ also believes the issue of need should be assessed within the context of the apparent rationale behind the requirement that it be considered. This is presumably to prevent land grabs by overzealous applicants. Put another way, because a prospective customer would bear the cost of extending the line to the customer's location, it could be seen as counterproductive to grant certification in an area where the need is not strong and the cost of extending service would be high. Doing so could inhibit other utilities from venturing into the market while at the same time providing no benefit to the consumer.

As addressed more specifically in Subsection D., below, the other utilities in the area would all have to extend lines further than would the City in order to serve even those portions of the requested area that are most remote from the City's existing lines.²⁹ And no utilities in the vicinity, other than Mustang Valley WSC, have expressed any interest in serving the area or objected to the City's application. Accordingly, it appears unlikely that certification of the City for the entire requested area would inhibit another utility from extending service to the region.

Still, the immediate benefits of certification to residents in the far reaches of the requested service area are questionable. Mr. Maroney testified that a service line would have to be extended about two miles to provide service to a hypothetical customer in a far corner of the certificated area, and that this could take about a year.³⁰ He further testified that the cost of extending a two inch pipe,

²⁸ The Commission is to assess the "need for additional service in the requested area, *including* whether any landowners, prospective landowners, tenants, or residents have requested service." Tax Water Code § 13.246(c)(2). (Emphasis added.) The term "including" typically indicates a partial list. Black's Law Dictionary (8th ed. 2004).

²⁹ Mr. Maroney testified that Walnut Springs is about seven miles to the north, the City of Morgan is about 3.2 miles from the northeast corner, Childress Creek WSC is just under three miles to the Southeast, Clifton is 6.2 miles to the South, and Mustang Valley is 3.6 miles to the west. (Tr. 327-29, 453-56)

³⁰ Tr. 114

which is the smallest line authorized by the Commission, is approximately six to twelve dollars per foot, which would total between \$63,000 and \$126,000. While this would likely be prohibitively expensive to a potential customer in these remote areas,³¹ Mr. Maroney viewed such a scenario as unlikely both because the lines would more likely be extended incrementally and because multiple customers typically join in service requests and would therefore share in the cost of the line extension.³² The ALJ accepts this assessment.

The ALJ acknowledges, however, that these are policy considerations completely within the Commission's discretion, and there is no urgent need to certificate the entire requested area. As a municipality, the City is authorized to extend service outside of its certificated area and, because the City has already obtained most of the required infrastructure – wells, lift stations, a treated surface water supply, and a wastewater treatment plant – the rationale for protecting this historical investment is perhaps less compelling than if the City had requested the CCNs before acquiring these facilities.

Additionally, aside from extrapolating from the size of the area, there is no evidence identifying the approximate number of residences and businesses inside the requested service area that might potentially seek service. Mr. Maroney testified that larger landowners typically subdivide their property when they request water service, but he had no information regarding whether this was in fact occurring or planned in the area.³³ He also testified that there is no rule of thumb for estimating potential connections based on the size of a CCN area.³⁴

Even so, the CCN would provide the City with a defined service area that would provide it with a reasonable level of assurance in planning future facilities including, in particular, the size of service line extensions. Because no other utility appears interested in servicing the area and landowners would retain their current rights to obtain service from their own wells and OSSFs, there is limited downside

³¹ Mr. Maroney testified that the customer bears the entire cost of extending a two-inch line to provide service, although the City would likely install a six-inch line and pay the difference. (TR. 117, 141)

³² Tr. 142-43.

³³ Tr. 136-37.

³⁴ Tr. 97.

to certificating the entire requested area. Under these circumstances, and in the absence of regulations quantifying the level of need required in order to support certification, the ALJ recommends that the Commission find there is a need for additional service in the entire requested area.

C. Ability of Meridian to Provide Adequate Service

The City's wastewater treatment plant is permitted to discharge 0.45 million gallons per day ("MGD") of treated effluent. It has the ability to provide service to approximately 280 additional homes without any expansions to the plant.³⁵ Meridian employs two certified wastewater operators and has no outstanding violations regarding its wastewater system. Meridian is the only utility with the existing wastewater capacity to serve the requested service territory.³⁶

With respect to water service, Meridian has three existing water wells and a Water Use Permit to Appropriate State Water from the Bosque River.³⁷ The City has entered into an Interlocal Agreement with the City of Clifton for diversion, storage, and treatment of up to 100,000 gallons per day of surface water for Meridian's use,³⁸ making Meridian the only provider in the requested service territory with access to surface water. Mr. Adhikari testified for the ED that the City has a water production capacity of 0.835 MGD. The City currently provides water service to 730 water connections and has a sufficient water supply to serve approximately 1,082 connections in compliance with TCEQ minimum capacity rules.³⁹ There is no controverting evidence regarding Meridian's ability to provide adequate water and sewer service to the requested service territory, and the ALJ finds that the City has met its burden on this issue.

³⁵ Meridian Ex. 3 (Maroney Direct), p. 11; ED Ex. 6 (Adhikari Direct) p. 8.

³⁶ Meridian Ex. 2A (Hauerland Direct), p. 8; Meridian Ex. 3 (Maroney Direct), pp. 6, 13.

³⁷ Meridian Ex. 2A (Hauerland Direct), p. 4 and Attachment JEH-3.

³⁸ Meridian Ex. 2A (Hauerland Direct), p. 4.

³⁹ ED Ex. 6 (Adhikari Direct), p 7.

D. The Effect of Granting a Certificate on Meridian and on Any Retail Public Utility of the Same Kind Serving the Proximate Area

As Meridian observes, this criterion encompasses evaluation of the effect the certificate will have on both the certificate seeker and other water or sewer providers in the proximate area. The effect on Meridian would be to increase the number of connections and service area for which Meridian is obligated to provide continuous and adequate service.⁴⁰ However, as discussed in Subsections B and C, above, the City appears to have the ability to meet this obligation for the foreseeable future if the relatively small number of recent service requests serves as a guide.⁴¹ Because of the high fixed costs associated with the provision of water and sewer utility service, the additional customers should lead to lower per unit costs to the City and its customers.

Darrell W. Cline, a utility rate consultant for the City, addressed the effect of granting the requested certificates on other retail public utilities. He stated that the City's use of surface water to supplement its groundwater wells would reduce the demand on groundwater relied upon by the other water utilities in the area.⁴² He also opined that improving the City's ability to coordinate development in and around the City would benefit the general economic condition of the area which, in turn, would benefit other retail utilities in the area.

The City also observes that, of the three closest retail public utilities that provide service in the vicinity,⁴³ only Mustang Valley WSC objected to the application, and that it and the City have since resolved their differences subject to the Commission's approval. These entities have agreed that, in areas inside Meridian's city limits and ETJ in which Mustang Valley WSC is currently serving an existing customer, that area will be dually certificated to both Mustang Valley WSC and the City. They further agreed to designate a region outside the ETJ to the northwest as an "Overlap" area in

⁴⁰ Meridian Ex. 3 (Maroney Direct), p. 10; ED Ex. 6 (Adhikari Direct), p. 7.

⁴¹ The parties have not cited any information in the record quantifying the number of existing homes and businesses in the requested service area.

⁴² App. Ex. 4 (Cline Direct) pp. 18-19.

⁴³ These utilities are Childress Creek WSC, City of Morgan, and Mustang Valley WSC. Meridian Ex. 1 (Application), p. APP0859.

which the City will serve tracts of more than one acre as well as other non-residential and non-agricultural customers.⁴⁴ Subject to this agreement, then, no retail public utilities in the proximate area complain that certificating the City as requested would harm them. No other party suggests that service could feasibly be obtained from another neighboring utility, and Mr. Adhikari affirmatively concurred that “no other utilities have shown any interest in serving the proposed area.”⁴⁵

Accordingly, certificating Meridian, which is already serving the area and has additional capacity, would be more efficient, less disruptive, and would promote regionalization.⁴⁶ With the City and Mustang Valley WSC having resolved their differences, the record indicates that the City can most feasibly provide the service for which it requests certification.

E. The Financial Stability of Meridian

Mr. Cline, testified that the City has been proactive in obtaining grant funding, is in “excellent financial condition,” and has the financial ability to provide continuous and adequate service to the entirety of the requested service area.⁴⁷ According to Mr. Cline, the City has a low tax rate, almost no debt, a favorable working capital ratio, ample operating reserves, and could readily raise capital in order to finance any improvements necessary to its water or wastewater system.⁴⁸ Mr. Adhikari concurred that Meridian is financially able to provide service to the requested service area.⁴⁹ No party contested the City’s financial ability to provide service to the area, and the ALJ accepts the

⁴⁴ Tr. 9, 47-48. A map depicting this agreement is provided in Meridian Ex. 2A (Hauerland Direct), Attachment JEH-10.

⁴⁵ ED-6 at 8, (Prefiled Testimony of Mr. Kamal Adhikari, E.I.T.).

⁴⁶ Regionalization is perhaps not a direct consideration in these CCN proceedings. Pursuant to Section 26.0282 of the Texas Water Code, however, the Commission would be required to consider the availability of a regional sewage provider before granting a waste discharge permit to another potential sewer service provider.

⁴⁷ Tr. at 190.

⁴⁸ Meridian Ex. 4 (Cline Direct), p. 7, 9.

⁴⁹ ED Ex. 6 (Adhikari Direct), p. 8; Exhibit ED-1 at 1, wherein the ED’s financial reviewer, Mr. Dan Smith, wrote “In my opinion, this applicant has demonstrated adequate financial and managerial capability to provide service to the requested area.”

uncontroverted evidence that the City is financially stable and capable of providing continuous and adequate service to the area.

F. Environmental Integrity

Mr. Maroney testified that the entire service area drains to Lake Bosque and ultimately to Lake Waco, which is a major watershed. He testified that it would be preferable from an environmental perspective to have the area served by a regional sewage provider rather than from less reliable and less environmentally protective on-site sewage facilities.⁵⁰ Mr. Adhikari testified similarly on behalf of the ED that a properly constructed centralized sewer system is better for the environment than individual on-site sewage facilities. With respect to the provision of water service, he observed that the environmental integrity would be temporarily disturbed due to the construction of wells, water distribution lines, and pumping and storage facilities.⁵¹ There is no contrary evidence, although Mr. Hewlett observes that there have been no studies of the failure rate of OSSFs within the requested area.

The ALJ concurs with the City and the ED that granting the CCNs will not deteriorate environmental integrity and would improve it with respect to the centralized sewage collection system. The ALJ's only reservation pertains to the agreement with Mustang Valley WSC that would authorize and require both entities to provide water service to different classes of customers in the northwest portion of the requested service area.

Plainly, the temporary disruptions described by Mr. Adhikari will be increased if two sets of facilities have to be installed in this area. But the ALJ respects the negotiated agreement of these parties in order to allow them both to provide service to their targeted classes of customers. Additionally, Mr. Adhikari testified that he believed there would be no problems associated with these entities providing service to different customer classes in this area, and there is no evidence

⁵⁰ Tr. 426-451-452.

⁵¹ ED Ex. 8 (Adhikari Direct), p. 9.

affirmatively indicating that the overlap area would be detrimental to environmental integrity.⁵² Finally, Meridian has provided TCEQ precedent showing that the Commission has previously granted dual certification of utilities that will provide service to different classes of customers within a single area.⁵³

G. Probable Improvement in Service or Lowering of Costs to Consumers in the Area

Obviously, as stated by Mr. Maroney and Mr. Adhikari, the provision of water and sewer service where none now exists will improve the service to the requested service area.⁵⁴ The current City rates will be applicable to any person and/or entity requesting service from the City and the requestor has to pay the rate as set by the Meridian City Council.⁵⁵ As there are no providers in the requested service area,⁵⁶ there cannot be a direct comparison between the cost of service now and the cost of service that will be provided by Meridian. Again, residences and businesses in the area that prefer to stay on their own wells or septic systems would not be required to become customers of the City. Additionally, as addressed in relation to the discussion on need, the City has additional capacity available, and the inclusion of additional water and sewer customers should further spread fixed costs and lower the per unit cost for the City and its customers.

⁵² Tr. 309.

⁵³ Meridian Ex. 15 [Order Granting CCNs to the Cities of McKinney, Melissa, and Anna and North Collin Water Supply Corporation; TCEQ Docket Nos. 2001-1300-UCR, 2001-0813-UCR, 2002-1278-UCR, and 2002-1281-UCR; SOAH Docket Nos. 582-02-1652, 582-03-1820, 582-03-1821, and 582-03-1824 (December 20, 2005)]

⁵⁴ Meridian Ex. 3 (Maroney Direct), p. 17; ED Ex. 6 (Adhikari Direct), p.9.

⁵⁵ ED Ex. 6 (Adhikari Direct), p. 9.

⁵⁶ Although Mustang Valley provides water service in a portion of the City's requested service territory, both Mustang Valley and the City seek CCNs that differentiate based on class of customers. See Meridian Ex. 2A (Hauerland Direct), Attachment JEH-13.

IV. ALLOCATION OF COSTS

The City requests that half of the total transcription costs of \$1,812.20 be allocated to Mr. Hewlett.⁵⁷ After consideration of the factors set out in 30 TEX. ADMIN. CODE § 80.23, the ALJ disagrees. The most pertinent considerations include the fact that the City ordered the transcript, has the demonstrated financial ability to pay for it, participated most extensively in the hearing, and benefitted most directly from receiving a transcript in that it allowed the City to cite to the record in establishing its entitlement to the requested CCN areas. Additionally, a hearing would have been required even if Mr. Hewlett had not participated because of the significant disagreements between the ED and OPIC on one side and the City on the other.

V. CONCLUSION

The City's application meets all requirements for issuance of water and sewer CCNs for the entire requested area. The City is experienced at providing such service and has an adequate supply of surface and groundwater. It has additional capacity in its wastewater treatment plant, and it is in the best position to efficiently serve the requested area, most of which has no centralized water supply and sewage facilities available.

The need for service throughout the requested area is the closest question pertaining to this application. The ALJ believes that the seventeen recent service inquiries coupled with projected population growth and the lack of service currently available in the area indicate that water and sewer utility service is needed. While the CCN lines could be drawn more narrowly around the requests for service, doing so would render the extension of service in the area excluded a less certain proposition for the City and could impede the efficient planning and provision of water and sewer service throughout the area.

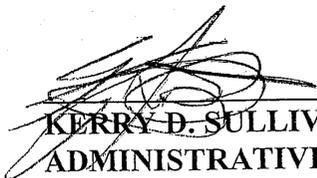
⁵⁷ These costs were calculated before the June 4, 2008 hearing session, for which a transcript has been prepared.

Accordingly, the ALJ recommends that the Commission adopt the attached Proposed Order approving the requested amendments to the City's certificates of convenience and necessity.

VI. ADDITIONAL FACTS

In addition to the facts discussed above concerning contested issues, the Findings of Fact contained in the attached Proposed Order include other facts, as established during the hearing, that are necessary to show compliance with regulatory requirements applicable to this proceeding. These additional undisputed facts are incorporated by reference into this Proposal for Decision.

SIGNED July 22, 2008.



KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER granting in part the Application of the City of Meridian to Amend Water Certificate of Convenience and Necessity (CCN) No. 10884 and Sewer CCN No. 20349 in Bosque County, Texas; SOAH Docket No. 582-06-1367; TCEQ Docket No. 2005-2089-UCR

On _____, 2008, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the application of the City of Meridian to amend Water Certificate of Convenience and Necessity (CCN) No. 10884 and Sewer CCN No. 20349 in Bosque County, Texas.

Kerry D. Sullivan, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a preliminary hearing on the Application on May 2, 2006, and a contested case hearing on the merits of the Application on October 3 and 4, 2007 and June 4, 2008. ALJ Sullivan prepared a proposal for decision (PFD), which recommended that the Commission approve the Application. The following are the Parties to the proceeding: the City of Meridian; the Executive Director of the Commission; the Public Interest Counsel (PIC) of the Commission; and Jeffrey M. Hewlett.

After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The City of Meridian ("Meridian") is a retail public utility.

2. Meridian has applied to the Commission to amend its water and sewer certificates of convenience and necessity (UCCN") numbers 10884 and 20349 to provide water and sewer service in Bosque County, Texas.
3. Meridian's application was filed August 3, 2005.
4. Notice of the application was published in the Bosque County News on September 14, 2005, and September 21, 2005.
5. Notice of the application was mailed by Meridian on September 26, 2005, to municipalities and neighboring utilities providing similar service within two miles of the area for which certification was sought as well as all landowners in the requested area as obtained from the Bosque County Appraisal District.
6. Notice of the public hearing on the application was mailed on April 3, 2006, by the Chief Clerk of the Commission to Meridian and all interested parties.
7. A preliminary hearing was held on May 4, 2006. Designated as parties at the preliminary hearing were Meridian, the Executive Director of the Commission (ED), the Office of Public Interest Counsel (OPIC), Mustang Valley Water Supply Corporation (Mustang Valley), and Mr. Jeffrey Martin Hewlett.
8. On February 26, 2007, Mustang Valley filed a notice of withdrawal of protest of Meridian's application in this case. On March 27, 2007, the ALJ issued Order No. 5 dismissing Mustang Valley as a party to this proceeding.
9. Prehearing Conferences were held on September 26, 2006, January 10, 2007, February 6, 2007, April 12, 2007, and October 1, 2007.
10. Meridian amended its Application on February 20, 2007, to make its Application consistent with a Settlement Agreement entered into with Mustang Valley.

11. Meridian further amended its Application on March 2, 2007, to remove Mr. Hewlett's property from the area being requested.
12. The Hearing on the Merits was conducted on October 3-4, 2007, and June 4, 2008. The record closed on June 4, 2008.

Description of the Applicant

13. Meridian is a municipality of approximately 1,490 people, located in Bosque County, Texas.
14. Meridian currently holds water CCN No. 10884 and sewer CCN No. 20349.

Compliance with the Legal Standards

The adequacy of service currently provided to the requested area

15. Meridian is currently the only sewer service provider in the area requested by Meridian.
16. Existing sewer service within Meridian's proposed area is not adequate.
17. There is currently no other utility provider certificated to provide water service to the proposed area.

The need for additional service in the requested area

18. At least seventeen potential customers in the area requested by Meridian have expressed interest in service.
19. Population growth is occurring in Meridian and in Bosque County as well as in Meridian's requested service territory.

20. There is currently no centralized sewer service to the requested service territory, and there is an environmental need for centralized sewer service.
21. Meridian currently provides water and sewer services within its corporate limits.
22. Meridian currently provides some water services beyond the City's corporate limits and ETJ.
23. Granting the CCNs for the entire requested service areas rather than to more narrowly drawn areas tailored closely to the service inquiries will provide Meridian with a defined service area that would provide it with a reasonable level of assurance in planning future facilities including, in particular, the size of service line extensions.

The effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area.

24. Granting the entire requested sewer CCN to Meridian would increase Meridian's number of connections and would obligate Meridian to provide continuous and adequate services to the entirety of the requested service area.
25. Meridian holds a Water Use Permit to Appropriate State Water.
26. Meridian is permitted to discharge 0.45 million gallons of treated wastewater per day under TCEQ Permit No. WQOOI0113-002.
27. Granting Meridian's CCNs would not have an adverse effect on neighboring utilities, as there is no other utility currently certificated to provide services in the requested area. Mustang Valley has a CCN application pending and provides water service to some customers in the northwest portion of the requested area (the overlap area). No other utility is providing service in the requested area, and none have expressed any interest in doing so.

28. Mustang Valley and Meridian have executed an Agreement that will allow Mustang Valley to serve a certain class of customers within an overlap area. According to the Agreement, in areas inside Meridian's city limits and ETJ in which Mustang Valley WSC is currently serving an existing customer, that area will be dually certificated to both Mustang Valley WSC and the City. The Agreement further designates a region outside the ETJ to the northwest as an "Overlap" area in which the City will serve tracts of more than one acre as well as other non-residential and non-agricultural customers.

The ability of the applicant to provide adequate service

29. Meridian has historically provided, and is currently providing, adequate sewer service in its CCN territory.
30. Meridian currently has available capacity to provide sewer service to approximately 280 additional homes without any expansions to its existing wastewater treatment plant.
31. Meridian has entered into an Interlocal Agreement with the City of Clifton for diversion, storage, and treatment of surface water for Meridian's use.
32. Meridian has a water production capacity of 0.835 MGD and has sufficient water supply to serve approximately 1,082 connections and remain in compliance with TCEQ minimum capacity rules.

The feasibility of obtaining service from an adjacent retail public utility

33. There are no other utilities within two miles of Meridian's requested service area. No other utilities, with the exception of Mustang Valley, which has settled its differences with Meridian, have shown interest in serving the proposed area.

The financial stability of the applicant, including if applicable, the adequacy of the applicant's debt-equity ratio

34. Meridian has a capital structure of 0% debt and 100% equity.
35. Meridian's working capital ratio for the City's water and sewer revenue fund is 26.47:1, while the working capital ratio for primary government is 23.57:1.
36. Meridian's water and sewer fund had \$1,645,719 in unrestricted cash and cash equivalents as of FYE 2005, which is 2.78 times in excess of its operating expenses for FYE 2005.
37. Meridian's current property tax rate is \$0.4365 per \$100 of taxable value.
38. Meridian has the financial capability to provide continuous and adequate service to the entirety of the requested service area.

Environmental integrity

39. The environmental integrity of the requested service area will be improved by Meridian's provision of a centralized sewer system.
40. The environmental integrity of the requested service area will not be harmed by the granting of the requested water CCN amendment which would allow Meridian to provide potable water meeting the State's health regulations.

The probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate

41. The provision of water and sewer services where none now exists will improve the service to the requested area.
42. Meridian's current rates will be applicable to any person/entity requesting service from the City and the requestor has to pay the rate as set by the Meridian City Council.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case under TEX. WATER CODE ANN. Ch. 13.
2. The State Office of Administrative Hearings ("SOAH") has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Meridian published notice and provided notice to neighboring utilities and affected parties, as well as all landowners in the requested area as required by TEX. WATER CODE ANN. § 13.246 and 30 TEX. ADMIN. CODE §291.106.
4. Meridian has met the substantive criteria for granting a water and sewer CCN amendment set forth in TEX. WATER CODE ANN. § 13.246 and 30 TEX. ADMIN. CODE § 291.102(d).
5. Issuing the amended CCN for water and sewer service to Meridian is necessary for the service, accommodation, convenience, or safety of the public.
6. Meridian has met its burden of proof regarding the entire area set out in its published notice.
7. Meridian's water and sewer CCN amendment should be granted for the entire area set out in the published notice.

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

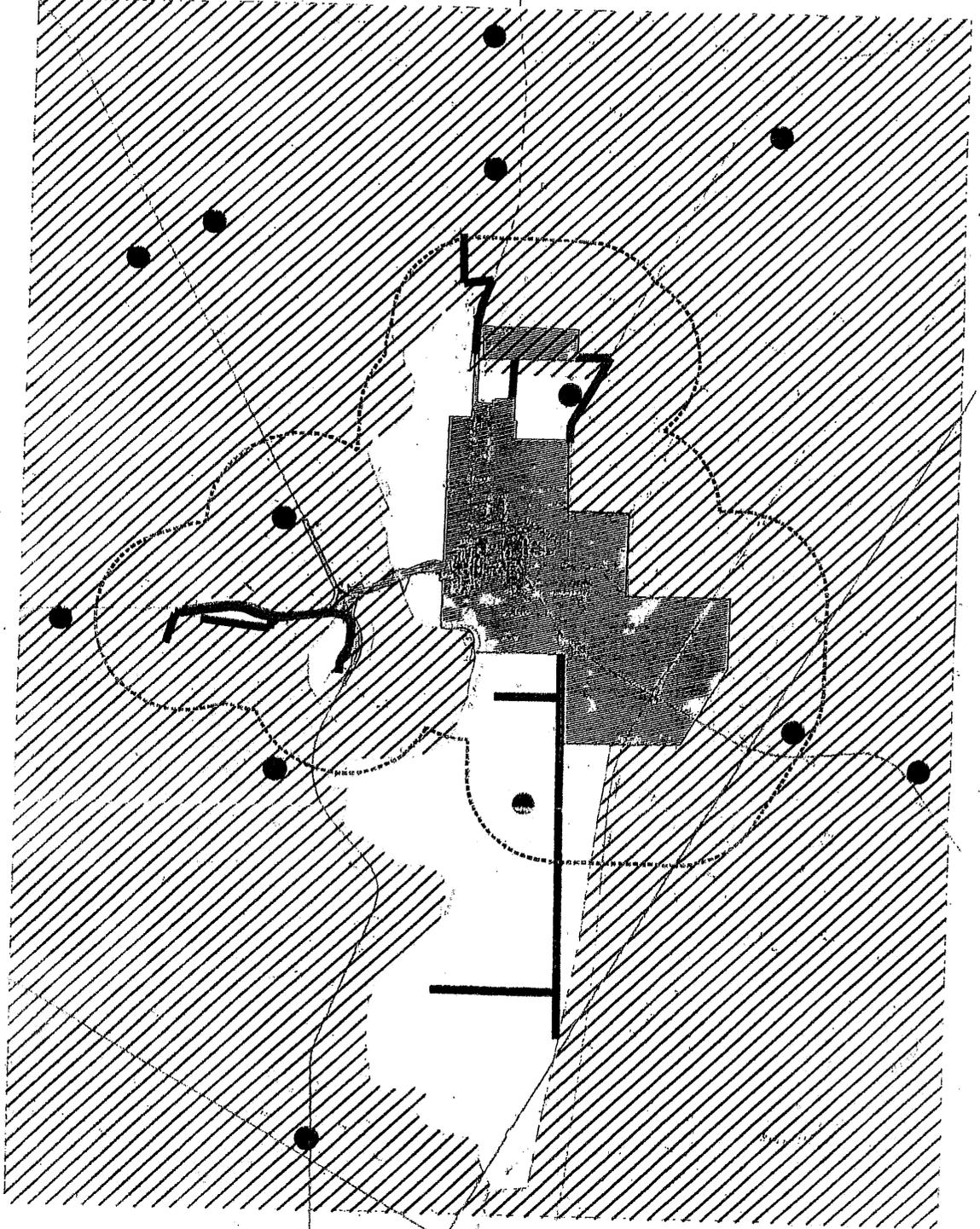
1. The application of the City of Meridian to amend its Certificate of Convenience and Necessity Nos. 10884 and 20349, in Bosque County, Texas is GRANTED.

2. The CCNs shall include the area described in the published notice, set forth in Finding of Fact No.5.
3. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to all parties.
4. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
5. The Executive Director of the Texas Commission on Environmental Quality shall amend the official maps to reflect this decision.
6. 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.

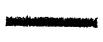
Issue Date:

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

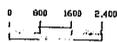
Buddy Garcia, Chairman



MERIDIAN PROPOSED WATER CCN

-  MERIDIAN PROPOSED CCN AREA
-  REQUESTS FOR SERVICE LOCATIONS
-  MERIDIAN CITY LIMITS
-  MERIDIAN ETJ
-  MERIDIAN WATER LINE

CITY OF MERIDIAN



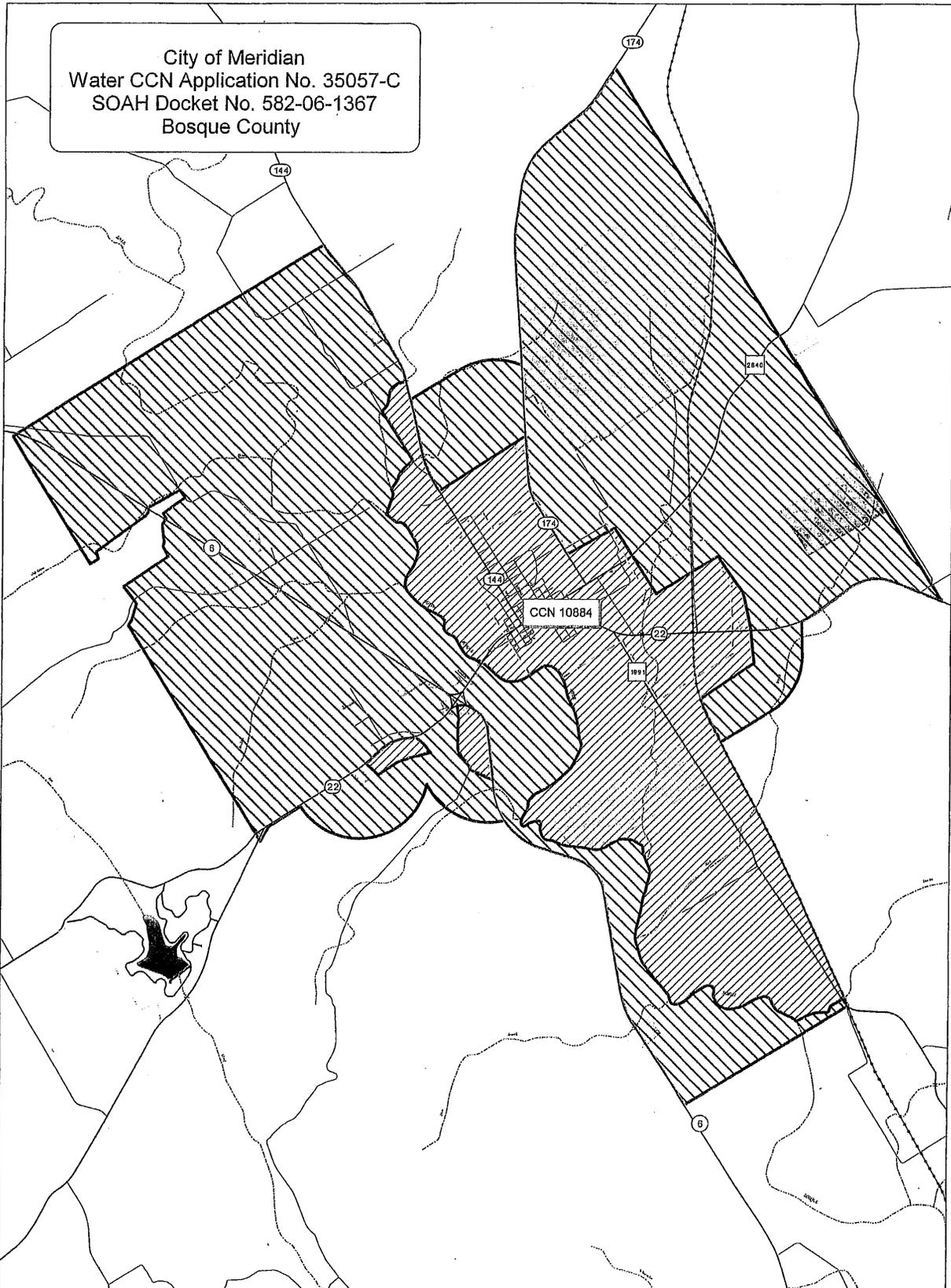
MARCH, 2006



EXHIBIT

ED-2

City of Meridian
Water CCN Application No. 35057-C
SOAH Docket No. 582-06-1367
Bosque County



 ED's Proposed Water CCN Area

 CCN 10884 - CITY OF MERIDIAN (existing water CCN)

 Requests for Service

3500 0 3500 Feet
1 Inch = 3,500 feet

Map dated: 4/21/2008

Record Copy
JUN 04 2008
EXHIBIT
ED-13

