

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 4, 2010

2010 FEB - 4 PM 3: 36
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

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

VIA FACSIMILE NO. 239-5533

Re: SOAH Docket No. 582-08-1318; TCEQ Docket No. 2007-1956-UCR;
Application of Mustang Special Utility District to Amend Sewer Certificate of
Convenience and Necessity No. 20930 in Denton County, Texas

Dear Mr. Trobman:

I have reviewed the Executive Director's Exceptions to the Proposal for Decision (ED's Exceptions), Aqua Texas, Inc.'s Exceptions to the Proposal for Decision (ATI's Exceptions) and Mustang Special Utility District's Reply to Exceptions. Most of the exceptions focus on disagreements aired at the hearing on the merits and already discussed in the Proposal for Decision and the Proposed Order. I will not address those exceptions. Several of the ED's Exceptions reference proposed corrections. I have addressed only the items that I believe should be corrected.

With respect to Finding of Fact No. 1, I agree with the ED's Exception. The reference should be to 30 TAC § 291.3(40) rather than 30 TAC § 291.3(4).

With respect to Finding of Fact No. 13, the additional information noted in the ED's Exception is currently found in Finding of Fact No. 32.

With respect to Finding of Fact No. 19, I agree with the ED's Exception. The meeting on March 10, 2009, was a prehearing conference and not an additional preliminary hearing.

With respect to the ED's Exceptions to Findings of Fact Nos. 85 and 86, I would amend Section X of the Proposal for Decision to correct the oversight and include a discussion of the ED's position, but find no need to amend the findings of fact. The amended discussion would be as follows:

Mustang's ability to providing adequate service to the Proposed Service Area is not disputed by Aqua Texas. The ED contends Mustang has not shown it has the technical capability to provide service to the Contested Service Area because it questions

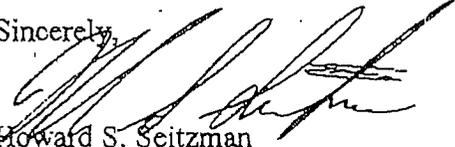
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the plant capacity and/or infrastructure available to Mustang to serve the Contested Service Area. In addition to UTRWD's expansion capacity that Mustang will be able to access, there is reserved but unutilized capacity available to Mustang.¹ The ED's argument assumes that all reserved but unutilized capacity is unavailable to Mustang. This assumption would require UTRWD to build-out all capacity that is anticipated but not yet needed. The ED's assumption is neither reasonable nor financially feasible. Mustang has the ability to provide adequate service to the entire Proposed Service Area.

With respect to the 30 TAC § 291.102(d)(9) factor of the effect on the land to be included in the certificated area, I believe that factor is considered and addressed during the overall discussion in the Proposal for Decision and in the Findings of Fact and Conclusions of Law in the Proposed Order. I did not duplicate those findings under a separate heading.

With the change to Section X of the Proposal for Decision and the corrections to Findings of Fact Nos. 1 and 19, I believe the Proposal for Decision and Proposed Order correctly apply the applicable statutes and rules to the facts set forth in the evidentiary record.

Sincerely,


Howard S. Seitzman
Administrative Law Judge

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¹ Mustang Ex. 2, pp. 8-9.

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STYLE/CASE: MUSTANG SPECIAL UTILITY DISTRICT
SOAH DOCKET NUMBER: 582-08-1318
REFERRING AGENCY CASE: 2007-1956-UCR

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