

SOAH DOCKET NO. 582-08-1318
TCEQ DOCKET NO. 2007-1956-UCR

APPLICATION OF MUSTANG
SPECIAL UTILITY DISTRICT (SUD) TO
DECERTIFY A PORTION OF THE
SEWER CERTIFICATE OF
CONVENIENCE AND NECESSITY
(CCN) NO. 20867 FROM
AQUASOURCE DEVELOPMENT, INC,
DBA AQUA TEXAS, INC., AND TO
AMEND SEWER CCN NO. 20930 IN
DENTON COUNTY TEXAS;
APPLICATION NO. 35709-C

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

2010 JAN -4 PM 1:59

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

AQUA TEXAS, INC.'S EXCEPTIONS TO PROPOSAL FOR DECISION

Aqua Utilities, Inc. dba Aqua Texas, Inc. (Aqua) files its Exceptions to the administrative law judge's (ALJ) proposal for decision (PFD) on the Mustang Special Utility District (Mustang) certification application in the above-referenced docket.

1. Upper Trinity Regional Water District's regional wastewater master plan

The PFD accepted Mustang's stated goal that certification was necessary to complete full sewer CCN certification of the Doe Branch drainage basin in a manner consistent with the Upper Trinity Regional Water District's (UTRWD) regional wastewater master plan. There is no evidence from the UTRWD about what the district's regional master plan is. All the record shows is how Mustang plans to exclusively serve the region using UTRWD as a source of wholesale wastewater treatment. Aqua does not doubt Mustang's plans, but planning does not make something a reality. Mustang's plans do not take into account

Aqua being serviced by the same Doe Branch facilities yet there is an agreement in the record to this effect between Aqua and UTRWD.

2. Adequacy of Existing Service

Mustang has attempted to extrapolate a service study for area to which it is already certificated to the requested territory. No cogent evidence was presented that the target area would develop as projected. Mustang declares without supporting evidence that the target area does not have sewer service. Yet, its own witnesses testified that there were on-site septic facilities (OSSF) being used by the residents of the area. OSSF service counts as sewer utility service under the TCEQ's holding in SOAH Docket No. 582-00-0546, TCEQ Docket No. 2000-0018-UCR, *Application of Creedmoor-Maha Water Supply Corporation to Amend CCN No. 10229 in Travis and Hays Counties*, ("Creedmoor") November 6, 2002; motion for reconsideration granted to correct mapping error only July 23, 2003; Executive Director's Order approving corrected map and affirming CCN amendment issued September 29, 2005.

3. Need for Additional Service

The ALJ found that there is need for additional service in the contested area merely because Mustang projects the area will develop. No showing has been made that the residents and landowners of the area need or want Mustang's sewer service. If no one

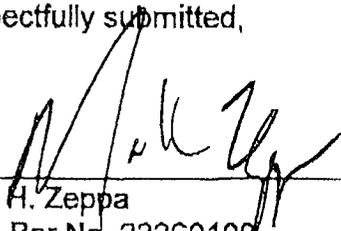
needs or wants Mustang's service, there is no one to pay for the sewer mains Mustang wants to build. If Mustang really needs to build oversized mains, there is nothing in the CCN rules that would stop them. As a water district, Mustang does not need a CCN. [Water Code §13.242(a)] There is no violation of a neighboring utility's certificated service area to construct and operate sewer truck mains through that territory.

4. Feasibility of Obtaining Service from an Adjacent Retail Public Utility

Mustang claimed that it is not possible to obtain service from adjacent retail public utilities because none are serving in or around the contested area. The ALJ overlooks the fact that, by its definition of "service" Mustang does not serve any one in or around the contested area. Aqua has a state approved service area next to the contested territory and a wastewater permit that would allow it to accept sewage from this area.

For these reasons, Mustang's application for the designated contested area should be denied in its entirety.

Respectfully submitted,

By: 
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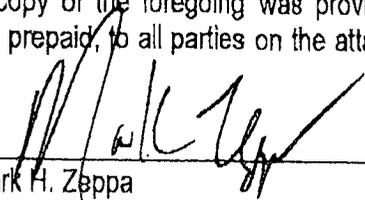
ATTORNEY FOR AQUA UTILITIES, INC. DBA
AQUA TEXAS, INC.

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CERTIFICATE OF SERVICE

I, Mark H. Zeppa, hereby certify that a true and correct copy of the foregoing was provided by hand delivery, overnight courier, or U. S. mail, first class, postage prepaid, to all parties on the attached service list this 4th day of January 2010.



Mark H. Zeppa

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Re: SOAH DOCKET NO. 582-08-1318
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Exceptions to PFD

SENDER: Mark Zeppa

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