



Control Number: 45235



Item Number: 15

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RECEIVED

PETITION OF RONJON RANCH, LTD.,
CHERRYVILLE #3, LTD., AND
CHERRYVILLE #5, LTD. TO AMEND
MAXWELL WATER SUPPLY
CORPORATION'S CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
CALDWELL COUNTY BY
EXPEDITED RELEASE

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PUBLIC UTILITY COMMISSION

JAN 28 AM 11:35
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Final Recommendation. In support thereof, Staff shows the following:

I. BACKGROUND

On October 8, 2015, Ronjon Ranch, Ltd., Cherryville #3, Ltd., and Cherryville #5, Ltd. (collectively Petitioners) filed a petition (Petition) with the Commission for expedited release from Maxwell Water Supply Corporation's (Maxwell) water certificate of convenience and necessity (CCN) No. 10293, pursuant to Tex. Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code § 21.113(r)-(s) (TAC). The Commission published notice of the Petition in the *Texas Register* on October 23, 2015. On December 1, 2015, Petitioners filed an amended petition

On January 14, 2016, Order No. 4 was entered, requiring Staff to file a final recommendation by January 28, 2016. This pleading is timely filed.

II. RECOMMENDATION

As discussed below and consistent with the attached memorandum of Andrew Novak (Attachment A), Water Utilities Division, Staff recommends that the petition be granted.

1. The petition satisfies the criteria for expedited release.

A. The affected property is not presently receiving water service.

The tract of land sought to be released from a CCN must not be receiving water or sewer service. Service is defined as "any act performed, anything furnished or supplied, and any facilities

or lines committed or used by the retail public utility in the performance of its duties . . .”¹ In *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*,² the court stated:

The mere existence of water lines or facilities on or near a tract would not necessarily mean that a tract was “receiving water service.” Rather, . . . the Commission [is required] to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN.³

The court in *Crystal Clear* further states that a tract of land would not be considered to be receiving service “simply because the retail public utility has performed an act, such as entering into a contract to secure water supply, unless the act was performed in furtherance of providing water to the tract seeking decertification.”⁴ As such, a utility must show that the property is receiving active water service or must show that facilities have been committed to serving the affected property in particular, rather than the utility’s service area in general, in order to establish that the Petitioners’ property is receiving service.

In this case, Petitioners provided an affidavit by a professional engineer indicating that the affected property does not presently receive water or sewer service. By contrast, Maxwell alleges that the property is receiving service because Maxwell owns a water line bordering the affected property and has constructed “a network of water lines to serve its service area and anticipates serving all of the property within its certificated area.” Maxwell further states such facilities constitute facilities or lines committed or used by’ Maxwell in the performance of its duties to serve the property,” but Maxwell does not appear to assert with particularity that it has made any commitment to the affected property beyond its duty to serve generally within its service area. As a result, Maxwell’s generalized assertions regarding its intent to serve its entire certificated area or regarding the proximity of certain facilities does not establish, per the *Crystal Clear* standard, that facilities have been committed to the particular tract in question. Accordingly, Maxwell has not rebutted Petitioners’ assertion that the property is not receiving service.

¹ TWC § 13.002(21); *see also* 16 TAC § 24.3(44).

² *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

³ *Id.* at 140 (emphasis in original).

⁴ *Id.*

B. The affected property meets other statutory requirements.

In addition to the above consideration, Petitioners must also assert that the tract of land sought to be released is located within a qualifying county, and that it is at least 25 contiguous acres and that it is owned by the same property owner(s).⁵ As indicated in the attached memorandum of Andrew Novak, Water Utilities Division, the 25-acre threshold has been satisfied in this proceeding.

Petitioners have claimed that the above criteria are satisfied, and this claim does not appear to be in dispute.

2. This proceeding is not preempted by 7 U.S.C. § 1926(b).

Maxwell asserts that it is a federal loan recipient under 7 U.S.C. § 1926 and that, as a result, this proceeding is preempted by federal law. Specifically, federal law states that a loan recipient's service territory "shall not be curtailed or limited by inclusion of the area served . . . within the boundaries of any . . . public body, or by the granting of any private franchise for similar service."⁶ On these grounds, Maxwell asserts that its service territory may not be curtailed as the petition requests.

As an initial matter, it should be noted that the Legislature has instructed that the Commission "may not deny a petition . . . based on the fact that a certificate holder is a borrower under a federal loan program."⁷ Staff also notes that the Commission has previously rejected similar arguments against decertification that rely on 7 U.S.C. § 1926(b).⁸ In *Petition of View-Caps*, the Commission ordered the decertification of a portion of a loan recipient's CCN and certificated the same area to a municipality.⁹ The loan recipient had argued that 7 U.S.C. § 1926(b) prevented the decertification of the affected area, but the hearings officer rejected this argument.¹⁰ The hearings officer explained that the decertification was ordered, not as a result of any curtailment by a public body or competing franchise, which are forbidden by 7 U.S.C. § 1926(b),

⁵ See TWC § 13.254(a-5); 16 TAC § 24.113(r).

⁶ 7 U.S.C. § 1926(b).

⁷ TWC § 13.254(a-6).

⁸ *Petition of View-Caps Water Supply Corporation for a Cease and Desist Order Against the City of Abilene, Taylor County and Application of City of Abilene for a Certificate of Convenience and Necessity to Provide Water Utility Service Within Taylor County*, Consolidated Docket Nos. 5033 and 5059, 10 P.U.C. Bull 206 (Sept. 7, 1984). The Commission's order was upheld by the Federal District Court for the Northern District of Texas. *View-Caps Water Supply Corporation v. City of Abilene*, Civ. A. No. CA-1-83-119-W., 1985 WL 8800 (N. D. Tex. Jan. 10, 1985).

⁹ *Id.* at 236, Ordering Paragraph No. 2.

¹⁰ *Id.* at 227.

but rather as a result of the utility's failure to provide continuous and adequate service within the decertified area.¹¹ Likewise, in this proceeding, the area is decertified as a result of the request of a landowner who is not receiving service, rather than as a result of an encroachment by any other entity.

Petitioners also note that the protections of 7 U.S.C. § 1926(b) have been construed by the Third Court of Appeals to apply only to areas in which the loan recipient is providing service. Because, as discussed above, the property in question is not receiving service, the protections of 7 U.S.C. § 1926(b) do not apply.

Based on these precedents, Staff recommends that the 7 U.S.C. § 1926(b) does not apply to the current application.

Attachment B includes a certificate and map.

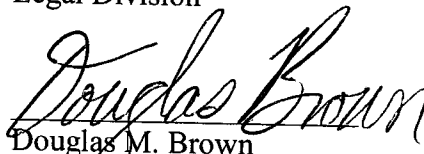
III. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the above recommendations.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

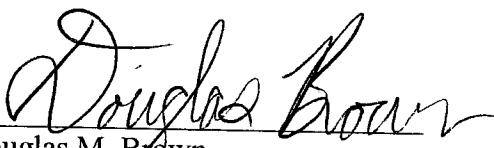


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¹¹ *Id.*

DOCKET NO. 45235
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record January 28, 2016, in accordance with 16 TAC § 22.74.



Douglas M. Brown

Attachment A

PUC Interoffice Memorandum

To: Douglas Brown, Attorney
Legal Division

From: Andrew Novak, Financial Analyst
Kristy Nguyen, GIS Specialist
Komal Patel, GIS Specialist
Water Utilities Division

Thru: Lisa Fuentes, Work Leader
Tammy Benter, Director
Water Utilities Division

Date: January 20, 2016

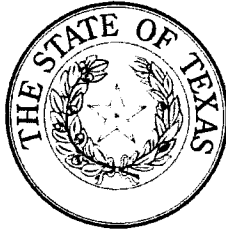
Subject: **Docket No. 45235**, *Petition of Ronjon Ranch Ltd., Cherryville #3 Ltd., and Cherryville #5, Ltd. to Amend Maxwell Water Supply Corporation's Certificate of Convenience and Necessity in Caldwell County by Expedited Release*

On October 8, 2015, Ronjon Ranch, Ltd., Cherryville #3, Ltd, and Cherryville #5, Ltd. (collectively, Petitioners) submitted to the Public Utility Commission of Texas (Commission) a petition for expedited release from Maxwell Water Supply Corporation's (Maxwell) water Certificate of Convenience and Necessity No. 10293, in Caldwell County pursuant to Tex. Water Code § 13.254(a-5) and 16 Tex. Admin. Code § 24.113(r) (TAC). The Petitioners assert that the land is at least 25 acres, is not receiving water service, and is located in Caldwell County, which is a qualifying county.

The Petitioners submitted an adequate map delineating the requested area for decertification with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.113(r). The map and digital data are sufficient for determining the location of the requested release area within Maxwell's certificated area. Staff was able to confirm the acreage of the total property, and determined that the tract is located within the subject property. Furthermore, the Petitioners provided a warranty deed confirming the Petitioners' ownership of the tract of land within the subject property. The area being requested for expedited release is 37.3365 acres. The requested acreage for release meets the threshold for an expedited release. The petition also included a statement that, pursuant to Commission rules, a copy of the petition was sent via certified mail to Maxwell, the current holder of CCN No. 10293.

On January 14, 2016, Order No. 4 deemed the petition administratively complete, starting the 60 day period which, therefore ends March 14, 2016. The procedural schedule required Staff's final disposition to be filed on January 28, 2016, and set February 4, 2016, as the deadline for the Petitioner's response. In accordance with the TWC, Chapter 13, and 16 TAC the Petitioners have met the Commission's requirements to allow for the release of the requested area from Maxwell, CCN No. 10293. Therefore, Staff recommends approval of the petition. Enclosed is a final map and certificate for Commission approval.

Attachment B



Public Utility Commission of Texas

By These Presents Be It Known To All That

Maxwell Water Supply Corporation

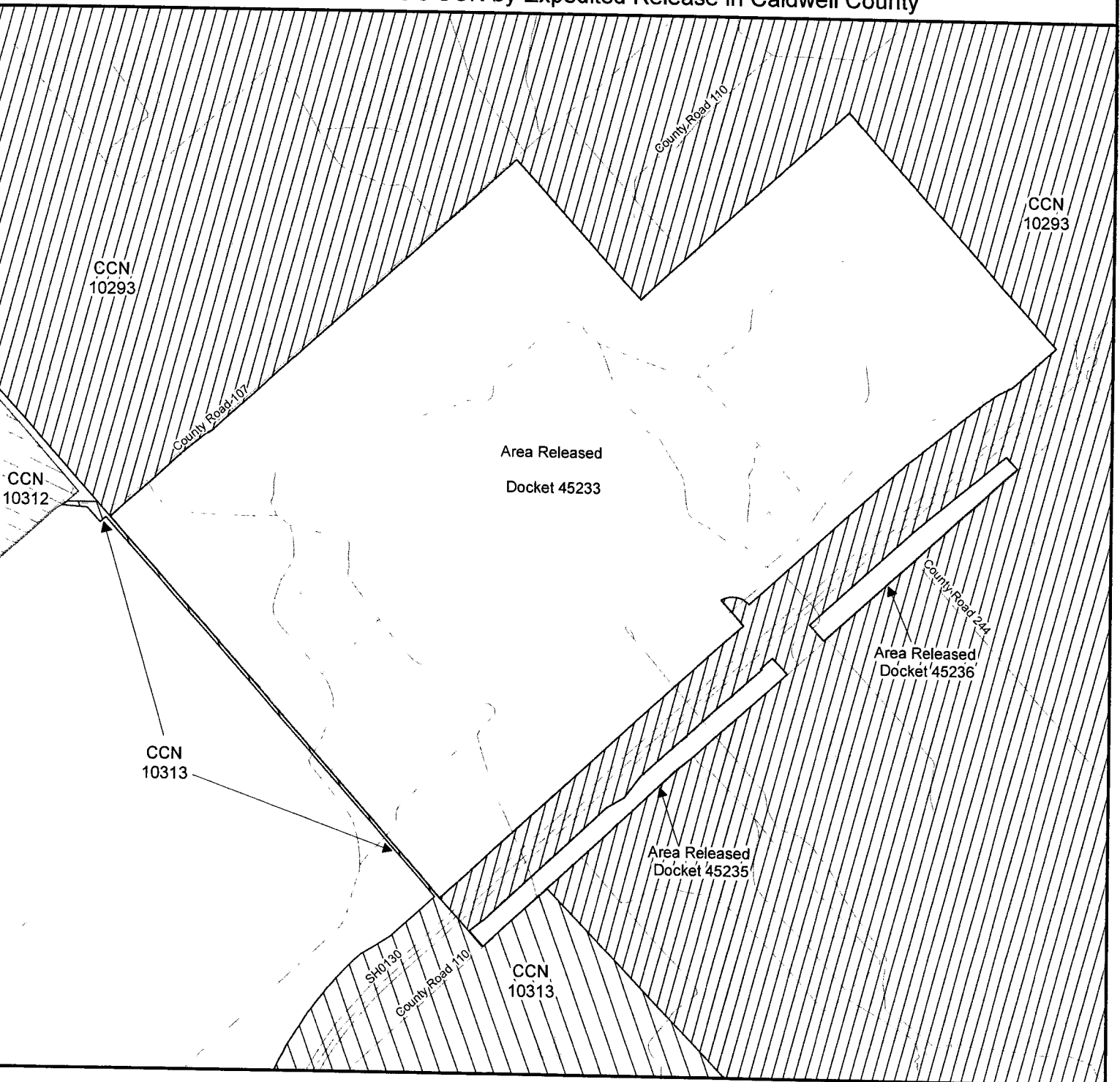
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Maxwell Water Supply Corporation, is entitled to

Certificate of Convenience and Necessity No. 10293

to provide continuous and adequate water utility service to that service area or those service areas in Caldwell and Hays Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 45235 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Maxwell Water Supply Corporation 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, the _____ day of _____ 2016.

Maxwell WSC
 Portion of Water Service Area
 CCN No. 10293
 PUC Docket No. 45235
 Petition by Ronjon Ranch Ltd, Cherryville #3 & Cherryville #5 to
 Amend Maxwell WSC's CCN by Expedited Release in Caldwell County

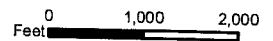


Public Utility Commission of Texas
 701 N. Congress Ave
 Austin, TX 78701

Water CCN Service Areas

-  10293 - Maxwell WSC
-  10313 - Tri Community WSC
-  10312 - Martindale WSC

 Area Released



Map by: Komal Patel
 Date created: January 19, 2016
 Project Path: n:\finalmapping\45235MaxwellWSC.mxd