



Filing Receipt

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PETITION OF LAS COLINAS	§	
SAN MARCOS PHASE I TO AMEND	§	
CRYSTAL CLEAR	§	
SPECIAL UTILITY DISTRICT'S	§	PUBLIC UTILITY COMMISSION
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN TRAVIS	§	OF TEXAS
COUNTY BY EXPEDITED RELEASE	§	

**APPLICANT'S MOTION TO WITHDRAW APPLICATION, VACATE ORDER
DATED SEPTEMBER 28, 2016, AND REINSTATE PROPERTY BACK INTO
CRYSTAL CLEAR'S WATER CERTIFICATE OF CONVENIENCE AND NECESSITY
SERVICE AREA**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS

COMES NOW Las Colinas San Marcos Phase One, LLC ("Las Colinas" or "Applicant") and files this motion to withdraw its Petition for Expedited Release ("Petition"), originally filed on July 11, 2016, seeking release of a 79.964 acre tract of land (the "Property") in Hays County, Texas from the water certificate of convenience and necessity ("CCN") No. 10297 service area of Crystal Clear Special Utility District ("Crystal Clear"); to vacate the Public Utility Commission of Texas' ("PUC" or "Commission") September 28, 2016 Order ("Order") releasing the Property from Crystal Clear; and to reinstate the Property back into Crystal Clear's service area. Las Colinas and Crystal Clear have mediated the protracted, five-year dispute that followed issuance of the Order, and have also agreed to resolve related pending lawsuits in state and federal court involving both parties and the Commission. Crystal Clear agrees with and supports this motion, thus the motion is uncontested. In support thereof, Las Colinas shows the following.

I. Background

A. Prior Commission Proceedings:

The background of this case is complicated, but the solution set forth in this motion is simple. On July 11, 2016, Las Colinas filed the Petition in this docket, seeking release of a 79.964-acre tract of land in Hays County from Crystal Clear's water CCN No. 10297. Las Colinas filed the Petition pursuant to TEXAS WATER CODE ("TWC") § 13.254(a-5),¹ the "expedited release" provision of the Water Code. Las Colinas asserted that the petitioned property was not receiving water service from Crystal Clear. Notice of the Petition was published in the Texas Register on July 29, 2016.

On August 9, 2016, Crystal Clear responded to the Petition, claiming, among other things, that the subject property was receiving water service from Crystal Clear and was therefore not entitled to expedited release, and that, because Crystal Clear was indebted to the federal government pursuant to 7 U.S.C. § 1926(a), the PUC was prohibited from granting the Petition. More specifically, Crystal Clear claimed that 7 U.S.C. § 1926(b) preempted TWC § 13.254(a-5) under the Supremacy Clause of the U. S. Constitution, and therefore the PUC lacked the authority to grant the Petition. On August 16, 2016, Commission Staff recommended approval of the petition.

On September 28, 2016 the Commission issued the Order at issue, finding that it could not deny a petition under TWC § 13.254(a-5) on the basis that a certificate holder is a borrower under the § 1926(a) federal loan program, and that Las Colinas had adequately proven that the petitioned property was not receiving actual water service under TWC § 13.254(a-5). The Order approved the Petition.

¹ Since Las Colinas filed its petition, TWC § 13.254(a-5) has been amended and recodified at TWC § 13.2541.

B. Judicial Review in State and Federal Courts:

Pursuant to § 5.351 of the Texas Water Code, Crystal Clear filed an appeal of the Order in the 53rd Judicial District Court of Travis County, Texas, Cause No. D-1-GN-005840. Crystal Clear's appeal sought judicial review of the Order granting the expedited release, naming the Commission, its individual commissioners in their official capacity, and Las Colinas as defendants. Crystal Clear's suit for judicial review argued that the Commission erred in determining that Las Colinas' property was not receiving water service, and that decertification of the property was barred by 7 U.S.C. § 1926(b), which provides, in relevant part, that "(t)he service provided or made available through any such [federally indebted] association shall not be curtailed or limited . . . by the granting of any private franchise for similar service within such area during the term of such loan."

Concurrently, Crystal Clear also filed suit in the United States District Court for the Western District of Texas, Docket No. 1:17-cv-00254-LY, naming the individual commissioners and executive director in their official capacities, and Las Colinas, and seeking declaratory and injunctive relief against the Order's enforcement pursuant to 42 U.S.C. § 1983. As with its state-court appeal of the Order, Crystal Clear's federal lawsuit argued that the Commission's issuance of the Order violated 7 U.S.C. § 1926(b).

In the state-court appeal, no hearing on the merits was ever held, although briefing regarding summary judgment was completed. In January 2018, the District Court informally abated the case pending the outcome of Crystal Clear's parallel federal lawsuit. The state-court case remained in abatement until recently, when the Parties took steps to effectuate their agreed settlement.

In the federal suit, Judge Yeakel initially ruled in favor of Crystal Clear, declaring the Order void as entered in violation of federal law, enjoining its enforcement, and awarding attorney's fees to Crystal Clear. Both the PUC officials and Las Colinas appealed that judgment to the United States Court of Appeals for the Fifth Circuit, where the Fifth Circuit stayed the appeals pending the hearing and decision in a different case involving § 1926(b), *Green Valley Special Utility District v. City of Schertz*, No. 18-51092. In *Green Valley*, the en banc Fifth Circuit reversed prior circuit precedent that had held that service is made available under § 1926(b) by virtue of the federal debt holder's duty to provide service pursuant to its CCN. The court also adopted a new fact-specific test as to whether service is made available to a particular tract, thus bringing the Fifth Circuit more closely in line with other federal circuits' interpretations of the statute. *Green Valley Special Util. Dist. V. City of Schertz*, 969 F. 3d 460 (5th Cir. 2020). Subsequently, in light of *Green Valley*, the Fifth Circuit vacated Crystal Clear's federal district court judgment against the PUC officials and Las Colinas and remanded the case back to the Western District for further proceedings applying the Fifth Circuit's revised interpretation of § 1926(b)'s scope.

C. The Settlement Agreement:

Following the remand in Crystal Clear's federal suit, Crystal Clear and Las Colinas mediated their differences in April 2021 and entered into a settlement agreement ("Settlement Agreement") regarding the Order at issue in this motion. Pursuant to the Settlement Agreement, Crystal Clear and Las Colinas agreed, *inter alia*, that the Parties would return to the PUC and ask the Commission to:

1. Vacate the Order releasing Las Colinas' property from Crystal Clear's service area, and
2. Reinstate that property back into Crystal Clear's service area.

Through today's motion, Las Colinas (with Crystal Clear's support) is, in effect, asking this Commission to put things back into the same place they were before Las Colinas filed its Petition in 2016. A copy of the Settlement Agreement is appended to this motion as Exhibit A, although a key provision unrelated to the Commission's jurisdiction over this matter has been redacted in the interest of the Parties.

D. Status of the Federal and State Lawsuits:

On April 29, 2021, upon an agreed motion filed by the Parties and the PUC officials, Judge Yeakel stayed the federal case because the Settlement Agreement, if approved by the PUC, would eliminate the need for any further litigation.

On August 5, 2021, upon an agreed motion filed by Las Colinas, Crystal Clear, and Commission and PUC officials, Judge Maria Cantu Hexsel of the Travis County district court entered an order in the state-court appeal remanding the Order to the Commission "for further proceedings and consideration of the settlement agreement." A copy of Judge Cantu Hexsel's order is attached as Exhibit B.

As things now stand, the lawsuit in state court has been resolved, the Commission's plenary jurisdiction over the Order has been restored, and the lawsuit in federal court has been abated pending the outcome of today's motion. If the PUC agrees to vacate the Order and reinstate the Property into Crystal Clear's service area, then Crystal Clear will voluntarily dismiss the federal lawsuit. Thus, five years of expensive and acrimonious litigation involving the Commission and the Parties will conclude.

II. Requested Relief and Prayer

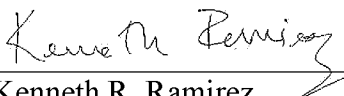
Based on the facts and circumstances set forth in this Motion, and in the interest of resolving this longstanding litigation and minimizing further expenditure of resources by the

Commission, its officials, Las Colinas and Crystal Clear, Las Colinas, with the support of Crystal Clear, requests that the Commission:

- 1) enter a final order withdrawing Las Colinas' Petition;
- 2) vacate its September 28, 2016 Order in this Docket; and
- 3) reinstate the Property into Crystal Clear's water CCN No. 10297 service area.

The Parties further request that the Commission cause an updated water CCN to be issued and that the PUC's official mapping be updated accordingly. The Parties further request that the Commission grant such further relief to which they show themselves to be entitled.

Respectfully submitted,
LAW OFFICES OF KEN RAMIREZ, PLLC

By: 
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COUNSEL FOR LAS COLINAS SAN MARCOS
PHASE ONE LLC

Exhibit A

United States District Court
Western District of Texas
Austin Division

Crystal Clear Special Utility District,

Plaintiff

v.

DeAnn T. Walker et al.,

Defendants

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No. A-17-CV-00254-LY

Mediated Settlement Agreement

Today the undersigned mediated with Patrick Keel under Local Rule CV-88. After consulting with their attorneys, the undersigned parties and their attorneys (collectively, the Parties) now sign this document to memorialize the terms of their agreement. For purposes of clarity, neither the Public Utility Commission (PUC) nor any of its members are parties to this agreement.

Although the mediator assisted in drafting this agreement, the Parties and their attorneys thoroughly reviewed the document and made or had the opportunity to make any changes to it that the parties desired. The Parties sign this agreement of their own free will and without duress, relying on their own understanding of the agreement and the advice of their attorneys.

The agreement is:

1. This agreement is subject to approval by Crystal Clear's board of directors at its next meeting on May 27, 2021. The undersigned representative of Crystal Clear and the undersigned attorney for Crystal Clear will recommend such approval.
2. The Parties will notify the court about this contingent agreement and jointly request that the court abate this action and suspend all deadlines.
3. The Parties will jointly seek abatement of the state court action, *Crystal Clear Special Util. Dist. v. PUC*, cause no. D-1-GN-16-005840 in the 53rd District Court of Travis County, Texas.
4. The Parties will jointly seek the PUC's approval for reinstatement of the acreage that was removed from Crystal Clear's CCN in PUC docket no. 46148 (Final Order dated September 28, 2016). Each party will bear its own attorney fees and expenses in connection with the PUC proceeding.

5. After the PUC has approved the reinstatement described above, the Parties will jointly move to dismiss all claims against all parties in this action and in the state court action without prejudice, each Party to bear its own attorney fees and court costs.

6.

REDACTED
REDACTED

REDACTED Effective upon such reinstatement and dismissals, Crystal Clear and Las Colinas will exchange mutual releases of all claims that each Party has already made against the other in or arising out of the federal action and the state court action.


7. The Parties agree to cooperate in good faith in the drafting of the additional documents contemplated in this agreement and to take all additional actions that may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this agreement.

Signed on April 23, 2021.

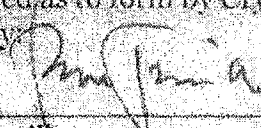
Plaintiff:

Crystal Clear Special Utility District
("Crystal Clear")

By:


Mike Taylor, General Manager
Regina Franke, Assistant General
Manager


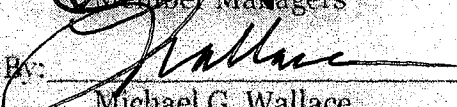
Approved as to form by Crystal Clear's
attorney:


Paul Terrill
Terrill & Waldrop
810 W 10th St
Austin, Texas 78701-2005

Defendant:

Las Colinas San Marcos Phase I LLC
("Las Colinas")

By:


Margaret T. Peterson
Member Managers
By: 
Michael G. Wallace
Member Managers

Approved as to form by Las Colinas's
attorney:

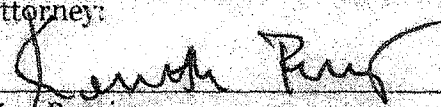

Ken Ramirez
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Exhibit B

Cause No. D-1-GN-16-005840

CRYSTAL CLEAR SPECIAL
UTILITY DISTRICT,

Plaintiff,

V.

PUBLIC UTILITY COMMISSION OF TEXAS; DONNA L. NELSON, KENNETH W. ANDERSON, JR., AND BRANDY MARTY MARQUEZ, in their official capacities as Commissioners of the Public Utility Commission of Texas; BRIAN H. LLOYD, in his official capacity as Executive Director of the Public Utility Commission of Texas; and LAS COLINAS SAN MARCOS PHASE I, LLC,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

**AGREED ORDER TO REMAND
TO THE PUBLIC UTILITY COMMISSION OF TEXAS**

Before the Court is the parties' Agreed Motion for Remand filed by Crystal Clear Special Utility District ("Crystal Clear SUD" or "Plaintiff"), the Public Utility Commission of Texas and its Commissioners and Executive Director (collectively, the "PUC Defendants") and Las Colinas San Marcos Phase I, LLC ("Las Colinas"). Crystal Clear SUD and Las Colinas have entered into a settlement agreement, contingent upon additional relief to be requested from the Public Utility Commission of Texas ("PUC").

Exhibit B

I. Background

1. This is an appeal from an order of the Public Utility Commission of Texas of September 28, 2016 releasing property owned by Las Colinas from Crystal Clear SUD's certificated water-utility service area pursuant to the expedited release provision in Tex. Water Code § 13.254(a-5).¹

2. Las Colinas filed an application in July 2016 for expedited release of the property at issue under section 13.254(a-5) of the Texas Water Code. *Id.* The PUC granted the application and removed the 79.964-acre property from Las Colinas' service area by its order of September 28, 2016. Tex. Pub. Util. Comm'n, *Petition of Las Colinas San Marcos Phase I LLC to Amend Crystal Clear Special Utility District's Certificate of Convenience and Necessity in Hays County by Expedited Release*, Docket No. 46148.

3. Pursuant to section 5.351 of the Texas Water Code, Crystal Clear SUD sought judicial review of the order granting the expedited release, naming both the PUC Defendants and Las Colinas as defendants.

4. This case originally was assigned to Judge Scott Jenkins pursuant to Travis County Local Rule 10.2. After Judge Jenkins' retirement from the bench, the

¹ Since the release of the property at issue from the Crystal Clear SUD service area pursuant to Tex. Water Code § 13.254(a-5), the provision has been amended and moved to Tex. Water Code § 13.2541.

case was reassigned to Judge Maria Cantu Hexsel by Local Administrative Judge Lora Livingston on March 10, 2021.

5. No hearing on the merits has been held in the case, although briefing regarding summary judgment has been completed. By Order dated November 29, 2017, Judge Jenkins entered a scheduling order that would have governed the remainder of the case. But in January of 2018, Judge Jenkins informally abated the case pending the outcome of the parallel lawsuit filed in the United States District Court for the Western District of Texas, Docket No. 1:17-cv-00254-LY. The case has remained in abatement since that time.

6. Crystal Clear's federal lawsuit challenged the release order at issue in this case under 7 U.S.C. § 1926(b), a pivotal federal statute that bears upon a state regulatory agency such as the PUC's legal authority to remove acreage from certain utilities' service areas. Judge Yeakel ultimately ruled in favor of Crystal Clear, but that judgment was appealed to the United States Court of Appeals for the Fifth Circuit. After the en banc Fifth Circuit issued an opinion in a related but different case involving Section 1926(b), thereby reversing prior Fifth Circuit interpretations of that statute, the Fifth Circuit vacated the judgment in favor of Crystal Clear and remanded the case back to the United States District Court for the Western District of Texas for further proceedings in light of the en banc decision.

II. The interested parties have settled their dispute

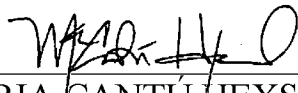
7. In April 2021, Crystal Clear SUD and Las Colinas entered into a settlement agreement regarding the release order at issue in this suit. Pursuant to this settlement agreement, Crystal Clear SUD and Las Colinas will jointly ask the PUC to allow Las Colinas to withdraw its petition for release of the property from Crystal Clear SUD's service area and thus order that the property at issue be reinstated into Crystal Clear SUD's service area.

8. At the request of all parties, Judge Yeakel has stayed the related federal case, as the settlement between Crystal Clear and Las Colinas, if approved by the PUC, should eliminate any need for any further litigation between the parties in state or federal court.

9. Thus, Crystal Clear SUD, the PUC Defendants, and Las Colinas jointly ask the Court to remand this matter to the PUC so the PUC may consider the settlement between Crystal Clear SUD and Las Colinas. The PUC's potential approval of the settlement, and its vacatur of its previous order releasing the property from Crystal Clear SUD's service area, should eliminate the need for judicial review of this matter by the Travis County District Court. Under the terms of the settlement agreement, the federal lawsuit will be dismissed upon the PUC's reinstatement of the property in question to Crystal Clear's water certificate of convenience and necessity service area, thus terminating all litigation in this case.

The Court finds that the motion has merit and should be granted. It is therefore ORDERED that the parties' Agreed Motion to Remand to the Public Utility Commission of Texas is hereby GRANTED. This matter is remanded to the Public Utility Commission of Texas for further proceedings and consideration of the settlement agreement.

Signed on this day, August 5, 2021.



MARIA CANTÚ HEXSEL
Presiding Judge

AGREED AS TO FORM AND SUBSTANCE:

/s/ John R. Hulme
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THE PUBLIC UTILITY COMMISSION
OF TEXAS AND ITS COMMISSIONERS**

Cause No. D-1-GN-16-005840, 53rd Judicial District, Travis County, Texas
Agreed Order to Remand to the PUC

/s/ Paul M. Terrill, III (by John R. Hulme with permission)

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/s/ Ken Ramirez (by John R. Hulme with permission)

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Cause No. D-1-GN-16-005840, 53rd Judicial District, Travis County, Texas
Agreed Order to Remand to the PUC