

Control Number: 46168



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**DOCKET NO. 46168**

**APPLICATION OF LA PLAYA AND §  
SIMPLY AQUATICS, INC. FOR SALE, §  
TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN SAN AUGUSTINE COUNTY §**

**PUBLIC UTILITY COMMISSION**

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OF TEXAS PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION STAFF'S RECOMMEDATION ON THE APPROVAL OF SALE**

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

**I. Background**

On July 14, 2016, La Playa Subdivision Water System (La Playa) and Simply Aquatics, Inc. (Simply Aquatics) (collectively the Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in San Augustine County. Specifically, Simply Aquatics seeks approval to acquire the water system assets, customers and a portion of the certificated service area including the La Playa Subdivision, Public Water System (PWS) No. 2030015. The La Playa Subdivision is a part of the Sam Rayburn Water, Inc. (Sam Rayburn Water) utility, which holds Certificate of Convenience and Necessity (CCN) No. 11707. If approved, Simply Aquatics will be issued a new water CCN to serve the area formerly covered by CCN No. 11707 for the La Playa Subdivision and Sam Rayburn Water's CCN No. 11707 will be amended accordingly. The total area being requested includes approximately 25 acres and serves 21 current customers.

On March 15, 2017, Order No. 6 was issued requiring Staff to request a hearing or file a recommendation on the approval of the sale and on the CCN amendment by April 21, 2017. Accordingly, this pleading is timely filed.

**II. Recommendation**

As supported by the attached memorandum of Patricia Garcia, Engineering Specialist of the Commission's Water Utility Regulation Division, Staff recommends that the Applicants be approved to proceed with the proposed transaction. Staff recommends approval of the Application because it satisfies Tex. Water Code §§ 13.241, 13.246, and 13.301, and 16 Tex. Admin. Code §§

24.102, 24.109 and 24.112 (TAC). Approving this application to transfer a portion of the water CCN No. 11707 to Simply Aquatics and issuing a water CCN number to Simply Aquatics is necessary for the service, accommodation, convenience and safety of the public. Staff notes there are no deposits held by Sam Rayburn Water for the customers being served by the La Playa Subdivision Water System. Staff further recommends that a public hearing is not necessary and that the Applicants file documentation as evidence that all assets have been transferred to the acquiring entity as soon as possible.

### **III. Conclusion**

Staff respectfully requests that an order be issued consistent with this Recommendation.

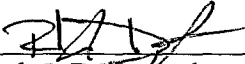
**Dated: April 21, 2017**

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on April 21, 2017, in accordance with 16 TAC § 22.74.

  
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Ralph J. Daigneault

## PUC Interoffice Memorandum

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**To:** Ralph Daigneault  
Legal Division

**Thru:** Tammy Benter, Director  
Heidi Graham, Manager  
Lisa Fuentes, Manager  
Water Utilities Division

**From:** Patricia Garcia, Engineering Specialist  
Water Utilities Division

**Date:** April 20, 2017

**Subject:** **Docket 46168**, *Application of La Playa Subdivision Water System and Simply Aquatics, Inc. for Sale, Transfer or Merger of Facilities and Certificate Rights in San Augustine County*

On July 14, 2016, Simply Aquatics, Inc., (Simply Aquatics or Purchaser) and Don Johnson (Seller), (collectively Applicants), filed an application for the sale, transfer, or merger of facilities and certificate rights in San Augustine County, Texas pursuant to Texas Water Code Ann. § 13.301 (TWC) and the 16 Tex. Admin. Code §§ 24.109 and 24.112 (TAC). Specifically, Simply Aquatics seeks approval to acquire the water system assets including the La Playa Subdivision Public Water System (PWS) ID No. 2030015, customers and service area. The La Playa Subdivision is a part of the Sam Rayburn Water, Inc., (Sam Rayburn Water) utility, which holds Certificate of Convenience and Necessity (CCN) No. 11707. If approved, Simply Aquatics will be issued a new water CCN to serve the La Playa Subdivision and Sam Rayburn Water's CCN No. 11707 will be amended accordingly. The proposed service area contains 93 acres and 21 current water customers. On January 30, 2017, Staff recommended that the application be deemed sufficient for filing and found administratively complete.

### **Notice**

Proper public notice of the application was provided to customers, neighboring systems, landowners, cities and affected parties San Augustine County. An affidavit stating notices were provided to all affected parties on February 20, 2017 was filed with the Commission on February 27, 2017. The comment period ended March 22, 2017, and no protests or opt-out requests were received.

### **Criteria Considered**

Pursuant to TWC §13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if the transaction will serve the public interest. For this case, Staff does not believe a hearing is necessary because the transaction will serve the public interest. Staff believes Simply Aquatics demonstrates adequate financial, managerial and technical (FMT) capability to provide continuous and adequate service to the existing service area plus the area currently under Sam Rayburn Water. TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Therefore, the following criteria were considered:

***TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.***

The public water systems (PWS) being transferred by this application is La Playa Subdivision Water System, Identification Number (ID No.) 2030015, which meets the Texas Commission on Environmental Quality's (TCEQ) drinking water standards as required by 16 TAC § 24.102(a)(1). The La Playa Subdivision Water System is a groundwater system with four groundwater wells to provide service to the customers in the area.

Simply Aquatics has been operating La Playa Subdivision Water System since September 2014 when the previous operator gave the system operations to them. A review of TCEQ's records indicates that the PWS has resolved several violations previously issued.

***TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.***

The purpose of the transaction is to transfer La Playa Subdivision Water System to Simply Aquatics. The customers are currently receiving water from the La Playa Subdivision Water System. Simply Aquatics is currently operating the water system.

***TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail water utility servicing the proximate area.***

Only the Applicants will be affected by this transaction.

***TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicants to provide adequate service.***

The La Playa Subdivision Water System is a groundwater system with four groundwater wells to provide service to the customers in the area. The system has the capacity to be able to provide service to the customers in the area.

***TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.***

The La Playa Subdivision Water System is currently serving customers and has sufficient capacity, therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

***TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the Applicant to pay for facilities necessary to provide continuous and adequate service.***

Based on the information provided by the Applicant in this filing, the Applicant has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area.

The requirements for the financial test to meet financial assurance are described in 16 TAC §24.11(e) and include the requirement that the applicant meet one or more of several leverage tests and an operations test.

The Applicant has a debt service coverage (DSC) ratio of 3.0. After unpaid bills are paid in full and net losses from the subsidiary utilities are covered, the Applicant has a DSC ratio of 1.39. A ratio of more than 1.25 is preferred because this means that the utility is able to pay back its debts comfortably. The DSC is calculated using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt service (payments). Therefore, the Applicant meets the leverage test requirement.

The operations test requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Applicant has enough net income, after unpaid bills are paid in full and debt service payments are made, to cover the utility's shortages. Therefore, the Applicant meets the operations test requirement.

***TWC §§ 13.246(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate.***

The environmental integrity of the land will not be effected as the La Playa Subdivision Water System is currently serving customers and has sufficient capacity.

***TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.***

The La Playa Subdivision Water System is currently being operated by Simply Aquatics. The approval of this application will allow Simply Aquatics to continue to provide service to the customers of the La Playa Subdivision Water System.

The Applicants meet all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer a portion of the water CCN No. 11707 to Simply Aquatics and issuing a water CCN number to Simply Aquatics is necessary for the service, accommodation, convenience and safety of the public.

#### **Recommendation on approval of sale**

Pursuant to 16 TAC § 24.109(f), Staff recommends that the transaction be found to serve the public interest and that the Applicants be approved to proceed with the proposed transaction. Staff notes there are no deposits held by Sam Rayburn Water for the customers being served by the La Playa Subdivision Water System. Staff further recommends that a public hearing is not necessary.