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DOCKET NO. 47044

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**PETITION OF JEFF STOCKTON TO
AMEND JARRELL-SCHWERTNER
WATER SUPPLY CORPORATION
WATER CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
WILLIAMSON COUNTY BY
EXPEDITED RELEASE**

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PUBLIC UTILITY COMMISSION

OF TEXAS

PUBLIC UTILITY COMMISSION
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 Recommendation on Administrative Completeness and would show the following:

I. BACKGROUND

On April 7, 2017, Jeff Stockton ("Mr. Stockton" or "Applicant") filed a petition for expedited release from Jarrell-Schwertner Water Supply Corporation's (JSWSC) water certificate of convenience and necessity (CCN) No. 10002 in Williamson County.

In his application, Mr. Stockton asserted that he owns a 61.32 acre tract in Williamson County. Mr. Stockton further asserted that the property is not currently receiving water service from JSWSC. On May 8, 2017, JSWSC requested to intervene in the docket and filed a response to the petition on May 16, 2017. On June 20, 2017, the administrative law judge (ALJ) issued Order No. 4 which found the amended petition administratively complete and required Staff to file a final recommendation by July 6, 2017. This pleading is therefore timely filed.

II. JURISDICTION AND LEGAL AUTHORITY¹

As an alternative to decertification, the TWC and TAC permit a landowner to petition the Commission for an expedited release of land from a CCN. The TWC and TAC have separate provisions for landowners seeking an expedited release.² As it relates to Mr. Stockton's application, the relevant portion of the TWC states:

¹ Commission rules regarding Streamlined Expedited Releases have been amended since the filing of this petition. The rules discussed herein are prior versions, as they are the applicable rules.

² See generally TWC § 13.254(a-1), (a-5); 16 TAC § 24.113.

[T]he owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,00 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.³

The TAC similarly provides the owner of a tract of land may petition the Commission for the Streamlined Expedited Release (SER) of a tract when the following conditions are met:

- (A) The tract of land is at least 25 acres in size;
- (B) The tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and
- (C) At least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.⁴

The TWC defines "service" as

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under [TWC chapter 84] to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.⁵

In SER proceedings pursuant to TWC § 13.254(a-5), "it is essential that any qualifying services are being 'received' *by the property for which decertification is sought* before such property is rendered ineligible for decertification."⁶ "The question before the Commission in [such cases] . . . [is] not whether [the utility is] providing water service to customers within its certificated area . . . but whether the Decertified Property [is] *receiving* water service from [the utility]."⁷

A current CCN holder has a right to intervene in an SER proceeding and a right to a determination of useless or valueless property.⁸ The Commission must identify useless or

³ TWC 13.254(a-5).

⁴ 16 TAC § 24.113(l).

⁵ TWC § 13.002(12).

⁶ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App. – Austin 2014 *pet. denied*) (emphasis added).

⁷ *Id.* at 137 (emphasis in original).

⁸ 16 TAC § 24.113(n)(2).

valueless property in its order granting release under 16 TAC § 24.113(l).⁹ The current CCN holder bears the burden of proving what property is useless or valueless property.¹⁰

Pursuant to TWC § 13.254(a-5) and 16 TAC § 24.113(l)(5), the Commission must render a decision on an application for expedited release within 60 days of a finding of administrative completeness.

III. STAFF'S REPLY TO JARRELL-SCHWERTNER WATER SUPPLY CORPORATION'S RESPONSE

In their First Amended Petition, Applicants attached the affidavits of Jeffery Paul Stockton and Charley Ann Stockton, with both attesting that the subject tract is not receiving service from JSWSC.¹¹ In its reply to the petition, JSWSC attached the affidavit of David Yohe, JSWSC's general manager.¹² Mr. Yohe's attested to four actions which JSWSC asserts indicate that it is providing service to the subject tract. First, Mr. Yohe pointed to the installation of a six-inch water line at the eastern and northern boundaries of the subject tract. Second, he stated that JSWSC serves a property which is surrounded on three sides by the subject property. Third, he described a contract between JSWSC and the City of Jarrell regarding service of residential customers. JSWSC attached the contract to its response.¹³ Last, Yohe attested that JSWSC contracted with Lone Star Regional Water Authority ("Lone Star") for a supply of water.

None of the attested acts show that the subject tract is receiving service. With respect to the first and second acts, "a tract of land is not necessarily 'receiving water service simply because there are facilities or water lines near, or even on that tract if . . . such facilities are used to provide water only to other tracts.'"¹⁴ Yohe's affidavit contains no statement that the water lines on the northern and eastern boundaries were placed to serve the subject tract, and service to a neighboring tract does not address whether the subject tract is receiving service under the

⁹ 16 TAC § 24.113(n)(6).

¹⁰ 16 TAC § 24.113(n)(5).

¹¹ First Amended Petition, Exhibits B & C (May 10, 2017).

¹² Jarrell-Schwertner Water Supply Corporation's Response to Jeff Stockton's Petition for Expedited Release, Exhibit C (May 16, 2017).

¹³ JSWSC's Response, Exhibit B.

¹⁴ *Crystal Clear*, 449 S.W.3d at 140.

Crystal Clear standard. Moreover, the Commission has rejected this argument in several other Expedited Release proceedings.¹⁵

With respect to the third and fourth acts, both pertain not to service to the subject tract, but to JSWSC's general provision of service to customers in its certificated area. The contract, executed in 2011, makes no specific reference to the subject tract, and the agreement only provides "all current and future residential service customers will be served by WSC."¹⁶ Similarly, Yohe attested that JSWSC contracted with Lone Star "for purposes of insuring that the Property and others in the area would have sufficient water supply for years to come."¹⁷ Neither agreement indicates that the subject tract, in particular, was receiving service at the time the petition was filed.

Because none of the four acts JSWSC has offered pertained to the subject tract in particular, and because Petitioner submitted an affidavit attesting that the subject tract was not receiving service, Staff believes that the subject tract was not receiving service.

IV. FINAL RECOMMENDATION

As supported by the attached memorandum of Fred Bednarski of the Water Utilities Division, Staff recommends that the petition be approved. The maps submitted were adequate for mapping staff to determine the acreage and location of the subject property, and as explained above, Staff has determined that the property is not receiving service.

Under 16 TAC § 24.113(n), the current CCN holder has the burden of proving what property, if any, shall be rendered useless and valueless by release of the property. Order No. 4 required JSWSC to file its response to the administratively complete petition by June 27, 2017. JSWSC filed no response and made no assertions regarding property rendered useless and valueless other than the assertions made in JSWSC's response to the petition for expedited release filed May 16, 2017. Staff has therefore determined that no property shall be rendered useless and valueless by the release.

¹⁵ E.g., *Petition of Guadalupe Valley Development Corporation to Amend Green Valley Special Utility District's Certificate of Convenience and Necessity in Guadalupe County by Expedite Release*, Docket No. 45798, Conclusion of Law No. 8 (July 11, 2016).

¹⁶ JSWSC's Reply, Exhibit A, p. 2.

¹⁷ JSWSC's Reply, Exhibit C, p. 2 (emphasis added).

V. CONCLUSION

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

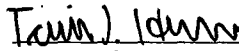
Dated: July 6, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

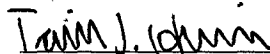
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DOCKET NO. 47044

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 6, 2017 in accordance with 16 TAC § 22.74.


TJ Harris

PUC Interoffice Memorandum

To: TJ Harris, Attorney
Legal Division

Thru: Tammy Benter, Director
Heidi Graham, Technical Manager
Water Utilities Division

From: Fred Bednarski, Financial Examiner
Water Utilities Division

Date: June 6, 2017

Subject: **Docket No. 47044:** *Petition of Jeff Stockton to Amend Jarrell-Schwertner Water Supply Corporation's Water Certificate of Convenience and Necessity in Williamson County by Expedited Release*

On April 07, 2017, Jeff Stockton ("Petitioner") filed a petition with the Commission for an expedited release from Jarrell-Schwertner Water Supply Corporation's ("JSWSC" or "Intervenor"), water Certificate of Convenience and Necessity (CCN) No. 10002, in Williamson County, under Texas Water Code § 13.254(a-5) (TWC) and 16 Texas Administrative Code § 24.113(r) (TAC).

On May 08, 2017 and May 18, 2017 the Petitioner filed supplemental documentation amending the petition. Staff reviewed the information and recommended that the application be sufficient for filing on June 7, 2017. 16 TAC 24.113 was updated and revised effective May 28, 2017 and the application was deemed administratively complete on June 20, 2017. Therefore, Staff is now reviewing the petition pursuant TWC 13.254 (a-5) and the revised rules 16 TAC 24.113(l).

Petition

Staff has reviewed the petition and supplemental filings and has determined that the Petitioner has submitted an adequate map delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.119. The map and digital data are sufficient for determining the location of the requested release area within the JSWSC's certificated area. Mapping Staff were able to confirm the acreage of the subject property, and determined that the requested area is located within the subject property. Furthermore, the Petitioner provided a copy of the Last Will and Testament of Betty Wynell Stockton and warranty deed confirming the Petitioner's ownership of the tract of land within the subject property. Additionally the Petitioner provided signed affidavits attesting to the petition. The area being requested for expedited release is approximately 6 acres and is located in Williamson County, within the subject property of approximately 61.3 acres and owned by the Petitioner who stated that the land is not receiving service.

Service to Subject Property

On May 8, 2017, JSWSC filed a motion to intervene and requested an extension to provide a response. The extension was granted and on May 16, 2017, JSWSC filed additional documentation

claiming the property subject to the petition was not eligible for expedited release since it has been receiving service from JSWSC pursuant to TWC § 13.002(21).

Staff reviewed the responses¹ provided by the Intervenor or JSWSC and was not able to verify the intervenor's claim that the property subject to the petition was receiving service pursuant to TWC § 13.002(21). A copy of a water bill or tap fee installation invoice for the subject property was not provided by JSWSC, therefore Staff was unable to determine that the subject property has or is expected to receive water service from JSWSC.

Useless and Valueless Property

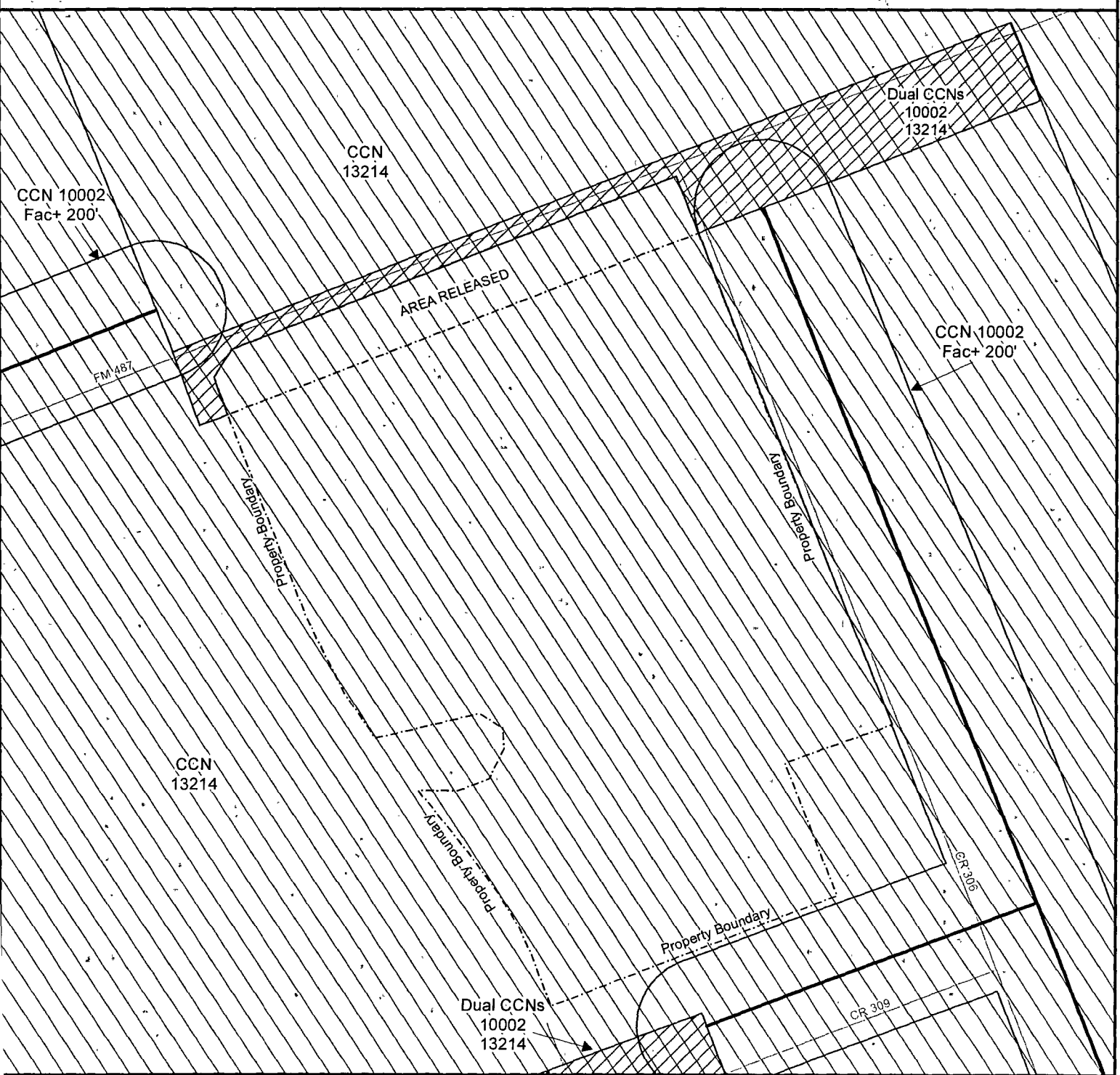
JSWSC did not identify property rendered useless or valueless. Pursuant to 16 TAC 24.113(n)(5) JSWSC bears the burden to prove what property is rendered useless and valueless in proceedings under 16 TAC 24.113(l). Staff recommends that there is no useless or valueless property as a result of this proceeding, in accordance with 24.113(n)(5).

Staff Recommendation



Therefore based on Staff's review this petition meets the criteria set forth in TWC 13.254 (a-5) and 16 TAC 24.113(l). Staff recommends that the petitioners request to be released from JSWSC's CCN service area be granted. Staff further recommends that a compensation proceeding not be required by the petitioner if the Commission determines that there is no useless or valueless property, pursuant to 24.113(n)(7).

¹ Docket 47044, Item 10, page 2 of 3

Jarrell-Schwertner Water Supply Corporation
Portion of Water CCN No. 10002
PUC Docket No. 45724
Petition by Jeff Stockton to Amend
Jarrell-Schwertner Water Supply Corporation's CCN by Expedited Release in Williamson County



Water CCN

-  10002 - Jarrell-Schwertner WSC
-  13214 - City of Jarrell

 Property Boundary

0 200 400
Feet



Water Facility CCN

-  10002 - Jarrell-Schwertner WSC