

Control Number: 47523



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Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
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Brandy D. Marty
Commissioner

Brian H. Lloyd
Executive Director



Rick Perry
Governor

Public Utility Commission of Texas

TO: Central Records

FROM: Stephen Journeay 
Commission Advising and Docket Management

DATE: August 23, 2017

RE: *Remand of TCEQ Application No. 37683-C (Petition of State of Texas for Expedited Release of Property from Maxwell Water Supply Corporation Certified Service Area (TCEQ Docket No. 2013-2032-UCR)), Docket No. 47523, District Court's Agreed Order of Remand*

Please file in the above referenced docket the attached copy of the court's Agreed Order *Maxwell Water Supply Corporation v. Texas Commission on Environmental Quality*, No. D-1-GN-13-003767 (201st Dist. Ct., Travis County, Texas, Dec. 16, 2016) remanding the matter to the Commission for consideration of an agreement that settles the dispute between the parties.

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DEC 16 2016

At 8:48 A.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-13-003767

MAXWELL WATER SUPPLY CORPORATION, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Defendant.	§	
	§	
	§	201st JUDICIAL DISTRICT

AGREED ORDER

Before the Court is the parties' Agreed Motion for Remand filed by Maxwell Water Supply Corporation ("Maxwell" or "Plaintiff") and the Public Utility Commission of Texas ("PUC"), as successor to the Texas Commission on Environmental Quality ("TCEQ"). Certain interested parties have entered into a settlement agreement ("Settlement Agreement") that would resolve this administrative appeal, contingent on additional relief to be requested from the Texas Public Utility Commission ("PUC").¹

This is an appeal from an administrative order of the Executive Director of the TCEQ ("ED"), predecessor to the PUC in this matter, issued on October 4, 2013 (the "Order"), granting TCEQ Application No. 37682-C ("Application") to decertify a portion of Maxwell's certificated water service area under Certificate of Convenience and Necessity ("CCN") No. 10293 ("Maxwell's CCN").

On or about August 6, 2013, Jerry E. Patterson, as then Commissioner of the Texas General Land Office and Chairman of the School Land Board ("GLO"), filed the Application for expedited decertification of the Property under section 13.254(a-5) of the Texas Water Code. At the time of the Application, GLO was the owner of the Property. The ED granted the Application and signed

¹ In the 83rd Regular Session, the Texas legislature transferred the economic regulation of water and sewer utilities from the TCEQ to the PUC. Act of May 15, 2013, 83rd Leg., R.S., ch. 170, 2013 Tex. Gen. Laws 771 (HB 1600).

the Order releasing, on an expedited basis without hearing, 504.853 acres of real property (the "Property") within Maxwell's CCN.

Pursuant to section 5.351 of the Texas Water Code, on November 11, 2013, Maxwell sought judicial review of the Order, challenging TCEQ's decision to grant the Application. TCEQ filed an answer on November 26, 2013. Maxwell filed an amended petition on December 16, 2013. On February 21, 2014, the GLO moved to intervene in the case, which motion was granted.

The Property is part of a proposed development and Public Improvement District ("PID") within the city limits or extra-territorial jurisdiction of the City of San Marcos. The PID is to be developed by Whisper Master Community, L.P., which owns or controls through affiliated entities the parcels of real property included in the PID, including the Property ("Developer").

The interested parties in this case mediated and engaged in significant and complicated settlement discussions, which discussions involved Maxwell, GLO, Developer, and the City of San Marcos ("Interested Parties"). The Interested Parties reached a settlement agreement that could dispose of this case. The Settlement Agreement was fully executed on December 18, 2015. The Settlement Agreement contemplates that several conditions must be met according to a timeline. If the conditions are met, the Settlement Agreement contemplates a motion to remand this case to the PUC² to request relief that would complete the settlement as contemplated by the parties. That relief is to request recertification of approximately 100 acres from within the Property to Maxwell's CCN. The recertification of this 100 acres to Maxwell requires action by the PUC to approve the recertification and update the CCN maps and records on file at the PUC. Maxwell represents the conditions for remand in the Settlement Agreement have been met. Accordingly, it

² In the 83rd Regular Session, the Texas legislature transferred the economic regulation of water and sewer utilities from the TCEQ to the PUC. Act of May 15, 2013, 83rd Leg., R.S., ch. 170, 2013 Tex. Gen. Laws 771 (HB 1600). While the TCEQ is the originally named defendant agency in this cause, the TCEQ no longer has jurisdiction over the issues in this case. The PUC is the proper agency to which a remand should be directed.

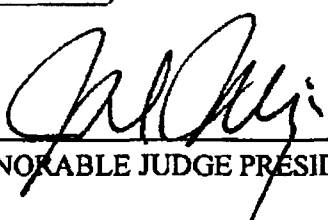
is necessary to remand the case to the PUC for consideration of the Settlement Agreement and request for recertification.

As part of the settlement the GLO sold its parcel to Developer, such that Developer now owns or controls the Property at issue in this case. No longer having an interest in the litigation, the GLO nonsuited its intervention on February 5, 2016. Although Developer is interested in the case, it has not intervened. Maxwell and PUC are the only parties to this case on appeal.

Having considered the Agreed Motion, the record, and all papers on file, the Court GRANTS the parties' Agreed Motion. It is, therefore,

ORDERED that the appeal in this cause is remanded to the PUC for consideration of the Settlement Agreement.

SIGNED this the 16 day of December, 2016.


HONORABLE JUDGE PRESIDING

AGREED AS TO FORM:

/s/ Carl R. Galant

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