



Control Number: 48302



Item Number: 7

Addendum StartPage: 0

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<b>PETITION OF LACKLAND FAIRVIEW, LLC TO AMEND AQUA TEXAS, INC.'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN WISE COUNTY BY EXPEDITED RELEASE</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION OF TEXAS</b>
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### COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 2 files this Final Recommendation. Staff recommends that the petition be approved. In support thereof, Staff shows the following:

#### I. BACKGROUND

On April 20, 2018, Lackland Fairview, LLC (Lackland) filed a petition with the Public Utility Commission of Texas (Commission) for expedited release from Aqua Texas, Inc.'s (Aqua Texas) water Certificate of Convenience and Necessity (CCN) No. 13201, in Wise County pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Admin. Code (TAC) § 24.113(l).

Lackland asserts that it owns approximately 298.1 acres of contiguous property in Wise County (Property). Furthermore, Lackland states that the property is within the boundaries of water CCN No. 13201, held by Aqua Texas. Additionally, Lackland states that the property does not receive service from any water or sewer service provider.

On May 18, 2018, Staff filed a recommendation that the Petition be found administratively complete. Thereafter, on May 22, 2018, the Administrative Law Judge (ALJ) issued Order No. 2, whereby Staff was required to file a final recommendation by June 6, 2018. Therefore, this pleading is timely filed.

#### II. JURISDICTION AND LEGAL AUTHORITY

As an alternative to decertification, the Texas Water Code and the Texas Administrative Code permit a landowner to petition the Commission for an expedited release of land from a CCN. The Texas Water Code and the Texas Administrative Code have separate, though similar,

provisions for landowners seeking an expedited release.<sup>1</sup> The relevant portion of the Texas Water Code states:

The 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 of the area 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 220,000 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.<sup>2</sup>

Comparatively, the Texas Administrative Code states:

The owner of a tract of land may petition the Commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if 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. (D) A qualifying county under subparagraph (C) of this paragraph does not have a population of more than \$45,000 and less than \$47,500 and is in a county (i) with a population of at least one million, (ii) adjacent to a county with a population of at least one million, or (iii) with a population of more than 200,000 and less than 220,000 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. (iv) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this subparagraph.<sup>3</sup>

Pursuant to TWC §13.254(a-6), the Commission must render a decision on a petition for expedited release "not later than the 60<sup>th</sup> calendar day after the date the landowner files the petition." A petition is not considered filed until after a determination of administrative completeness. Lackland's petition was deemed administratively complete in Order No. 2, issued on May 22, 2018. Therefore, the sixty (60) day deadline for administrative approval is July 21, 2018.

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<sup>1</sup> See generally TWC § 13.254 (a-1), (a-5); 16 TAC § 24.113(l).

<sup>2</sup> TWC § 13.254 (a-5).

<sup>3</sup> 16 TAC § 24.113(l)(2).

### **III. FINAL RECOMMENDATION**

As supported by the attached memorandum of Greg Charles of the Water Utility Regulation Division (Attachment A), Staff has reviewed the petition for expedited release and recommends that it be approved. The maps and digital data filed by Lackland provide adequate information to demonstrate that Lackland satisfies the requirements of TWC §13.254(a-5) and 16 TAC §24.113(*l*). Specifically, the maps and digital data provided by Lackland enable Staff to determine: (1) the acreage of the property is at least 25 acres; (2) that the requested areas for release are not receiving water or sewer service; (3) that the requested area for release is located within Aqua Texas LLC's certificated areas; and (4) the location of the requested release areas is within a qualifying county, specifically, Wise County. In addition, the deeds submitted by Lackland provide confirmation of Lackland's ownership in the property. Consequently, Lackland has shown through its petition that it meets the requirements for expedited release. Therefore, Staff recommends that Lackland's petition be approved.

The final Water CCN map (Attachment B) and Water CCN certificate (Attachment C) are attached to this filing.

### **IV. CONCLUSION**

For the reasons detailed above, Staff respectfully recommends that Lackland's petition be approved.

June 5, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

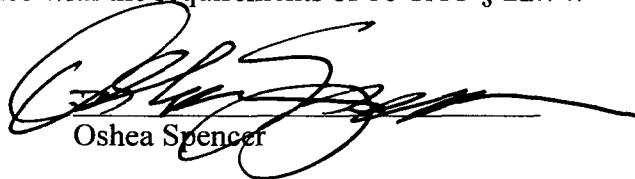
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**DOCKET NO. 48302  
CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record in this proceeding on June 5, 2018 in accordance with the requirements of 16 TAC § 22.74.



Oshea Spencer

# Attachment A

## PUC Interoffice Memorandum

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**To:** Oshea Spencer, Attorney  
Legal Division

**Thru:** Lisa Fuentes, Manager  
Water Utility Regulation Division

**From:** Greg Charles, Engineer  
Water Utility Regulation Division

**Date:** May 31, 2018

**Subject:** **Docket No. 48302:** *Petition of Lackland Fairview, LLC to Amend Aqua Texas, Inc.'s Water Certificate of Convenience and Necessity by Expedited Release in Wise County*

On April 20, 2018, Lackland Fairview, LLC (Petitioner) filed a petition with the Public Utility Commission (Commission) for expedited release from Aqua Texas, Inc.'s (Aqua Texas) water Certificate of Convenience and Necessity (CCN) No.13201 in Wise County, under Texas Water Code (TWC) Chapter § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.113(l). The Petitioner asserts that the land is at least 25 acres, is not receiving water service, and is located in Wise County which is a qualifying county.

The Petitioner submitted a sworn affidavit attesting that the petition is being filed in accordance with 16 TAC § 24.113(l), as well as proof that a copy of the Petition was sent via certified mail to Aqua Texas, the current holder of CCN No. 13201.

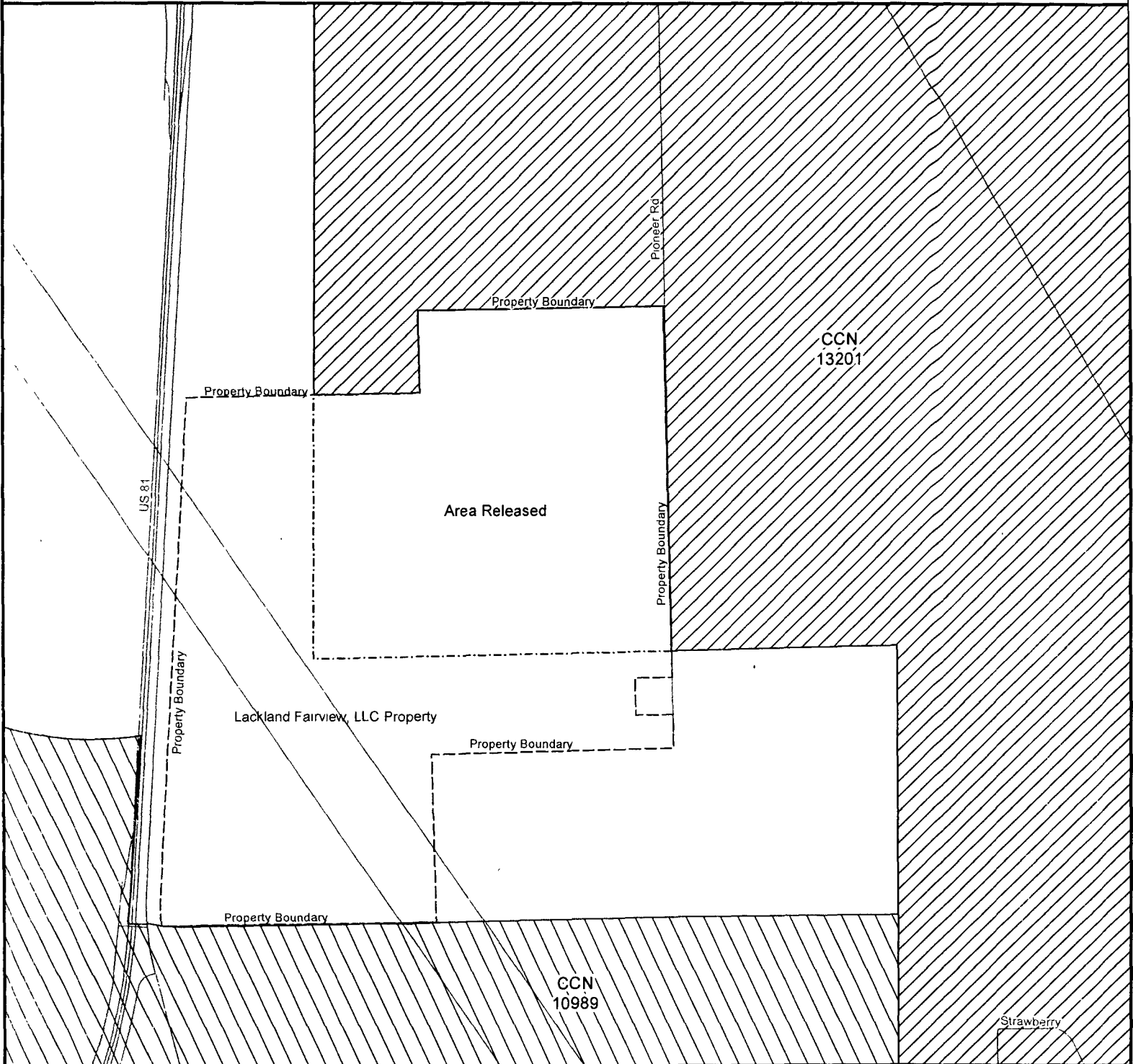
The Petitioner submitted an adequate map delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.119. The map and digital data were sufficient for determining the location of the requested release area within Aqua Texas's certificated area. Mapping Staff was able to confirm the acreage of the subject property, and determined that the requested area was located within the subject property. Furthermore, the Petitioner provided a warranty deed confirming the Petitioner's ownership of the tract of land within the subject property. The area being requested for expedited release is approximately 298.0 acres from Aqua Texas, which is adjacent to additional area within the subject property that is larger than 25 acres and is also owned by the Petitioner.

Staff recommends that there is no useless or valueless property, in accordance with 24.113(n)(3). Staff further recommends that a compensation proceeding is not necessary, if the Commission determines that there is no useless or valueless property, pursuant to 24.113(n)(7). Aqua Texas did not request to intervene.

On May 22, 2018, Order No. 2 deemed the petition administratively complete, starting the 60 day period which, therefore ends July 21, 2018. The procedural schedule required Staff's final disposition to be filed on June 6, 2018, and set June 13, 2018, as the deadline for the Petitioner's response. In accordance with the TWC, Chapter 13, and 16 TAC, the Petitioner has met the Commission's requirements to allow for the release of the requested area from Aqua Texas's CCN No. 13201. Therefore, Staff recommends approval of the petition. Enclosed is a final map and certificate for Commission approval.



# Attachment B

Aqua Texas, Inc.  
Portion of Water CCN No. 13201  
PUC Docket No. 48302  
Petition by Lackland Fairview, LLC to Amend Aqua Texas, Inc.'s CCN by Expedited Release in  
Wise County



Public Utility Commission of Texas  
1701 N. Congress Ave  
Austin, TX 78701

**Water CCN**

-  13201 - Aqua Texas Inc
-  10989 - City of Rhome

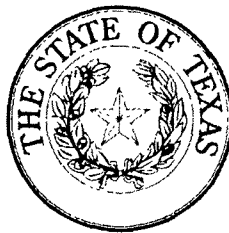
-  Area Released
-  Property Boundary

0 750 1,500  
Feet



Map by: Komal Patel  
Date created: May 23, 2018  
Project Path: n:\finalmapping\  
48302LacklandFairview.mxd

# Attachment C



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

**Aqua Texas, Inc.**

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 by Aqua Texas, Inc., is entitled to this

## **Certificate of Convenience and Necessity No. 13201**

to provide continuous and adequate water utility service to that service area or those service areas in Anderson, Bosque, Camp, Cherokee, Collin, Cooke, Denton, Erath, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Kaufman, Marion, McLennan, Parker, Smith, Somervell, Tarrant, Taylor, Wise, and Wood Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48302 are on file at the Commission offices in Austin, Texas; and is 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 Aqua Texas, Inc. 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 \_\_\_\_\_ 2018.