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DOCKET NO. 48801

PETITION OF T.J. BRADSHAW §  
CONSTRUCTION, LTD. TO AMEND §  
JONAH SPECIAL UTILITY §  
DISTRICT'S CERTIFICATES OF §  
CONVENIENCE AND NECESSITY IN §  
WILLIAMSON COUNTY BY §  
EXPEDITED RELEASE §

PUBLIC UTILITY  
COMMISSION  
OF TEXAS

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**JONAH WATER SPECIAL UTILITY DISTRICT'S  
RESPONSE TO PETITION FOR EXPEDITED RELEASE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Jonah Water Special Utility District ("Jonah") and files this, its Response to T.J. Bradshaw Construction, Ltd.'s Petition for Streamlined Expedited Release ("Petition"), and in support thereof, would respectfully show as follows:

**I. BACKGROUND**

T.J. Bradshaw Construction, Ltd. (referred to herein as "Bradshaw" or "Petitioner") filed its Petition on October 18, 2018, and a correction thereto on October 23<sup>rd</sup>. Bradshaw's Petition was deemed "administratively complete" on November 26, 2018, pursuant to Order No. 2 Finding the Petition Administratively Complete and Notice Sufficient; and Establishing a Procedural Schedule. Jonah filed its Motion to Intervene on November 16, 2018, which was granted on November 27<sup>th</sup> per Order No. 3 Granting Motion to Intervene. As required by the procedural schedule described in Order No. 2, Jonah's Response to Bradshaw's Petition is due December 7, 2018; therefore, Jonah's Response is timely filed.

## II. ARGUMENT

### A. Decertification of any portion of Jonah's service area is an unconstitutional violation of the Supremacy Clause.

Texas Water Code § 13.254(a-5) is preempted by 7 U.S.C. § 1926(b).<sup>1</sup> Thus, the granting of this Petition is prohibited under federal law and would be a violation of the Supremacy Clause of the United States Constitution. Jonah is the recipient of a loan issued by the United States Department of Agriculture Rural Development Division, pursuant to Section 1926(b), to construct its water infrastructure.<sup>2</sup> As such, Jonah is a federally indebted utility with its service area protected by federal law.<sup>3</sup>

### B. Petitioner is not the owner of Tract II as required under the Texas Water Code.

Petitioner does not own a 100% interest in the real property described as Tract II in Petitioner's Deed. Under the Texas Water Code, the streamlined expedited release process is only available to "the *owner of a tract of land* that is at least 25 acres" (emphasis added). Tract II was conveyed as an access strip in which the adjacent owners retain a nonexclusive easement over and across the property for construction and maintenance of utilities. The grantor further retained the right to dedicate the property as a dedicated road at any time.

### C. The Petition does not demonstrate that the Petitioner owns the Property.

The Petition simply asserts that T.J. Bradshaw Construction, Ltd., owns the property for which it seeks decertification (the "Property"), and attaches a recorded deed purporting to show such ownership. A copy of a deed is insufficient evidence to support the assertion that the recipient under the deed has a clear title to the property. The petitioner has the burden of proof and must

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<sup>1</sup> *Crystal Clear Special Utility District v. Marquez et al.*, No. 1:17-cv-00254 (W.D. Tex. filed March 29, 2018).

<sup>2</sup> See Affidavit of Bill Brown, General Manager for Jonah Water Special Utility District, attached as **Exhibit A**.

<sup>3</sup> 7 U.S.C. § 1926(b).

provide evidence that the assertion of title is supported by the facts and chain of title preceding Petitioner's asserted ownership.

**D. The Petition does not demonstrate that the Property owner authorized the filing of the Petition.**

The Petition contains an affidavit from Troy Bradshaw asserting that he has the authority to act on behalf of T.J. Bradshaw Construction, Ltd. However, nothing in the Petition explains the ownership interests in or management authority structure of T.J. Bradshaw Construction, Ltd. Consequently, it is not clear that the Petition has been authorized by the appropriate individual for the alleged owner. Petitioner has not satisfied its burden of proof.

**E. The property is receiving water service from Jonah.**

The Petition alleges that the property for which decertification is sought is not receiving service from Jonah. Only property that is "not receiving water service" may be decertified under Texas Water Code § 13.254(a-5). In *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex.App.—Austin 2014, pet. denied), the Court confirmed that the term "service" is a broad definition under Texas Water Code § 13.002(21) and includes "facilities and lines as well as acts performed and anything furnished or supplied."

As a utility in possession of a certificate of convenience and necessity ("CCN"), Jonah is providing service to the Property and has a duty to provide continuous and adequate service to all customers within its service area, including the owner of the Property, under Texas Water Code § 13.250(a).<sup>4</sup>

In addition, the property described in the Petitioner's Corrected Special Warranty Deed ("Petitioner's Deed") is subject to a service agreement with Jonah in which Jonah is providing service through an existing and operational water line through the Property. In particular, Tract II

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<sup>4</sup> *North Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915-16 (5<sup>th</sup> Cir. 1996).

contains a water line on the Property through which Jonah continues to provide water service as part of the service agreement to secure water service to the parcel as set forth in the Affidavit of Bill Brown attached as **Exhibit A**. This water line remains operative and the Property continues to receive water service from Jonah.

Finally, there is an existing water line on and adjacent to the Property. This water line is in operation and is currently providing service to the property.<sup>5</sup> Jonah also has existing water lines in multiple locations surrounding the Property that are capable of providing service to the Property.<sup>6</sup> Jonah is obligated to provide service to all customers within its service area.

**F. Jonah has outstanding loans and bonds to fund facilities that provide service to the Property and the remainder of Jonah's CCN.**

Jonah has entered into loan agreements, has contractual debt obligations and issued bonds to fund and provide service within its CCN as required by Section 13.250(a). Jonah adopted its Capital Improvement Project Plan in January 2016, and has issued debt and issued over \$20 million in bonds in September 2018 to fund improvements to provide service to the Property and other tracts of land within its CCN.

### **III. PRAYER**


WHEREFORE, PREMISES CONSIDERED, Jonah Water Special Utility District respectfully requests that a contested case hearing be held, that the Petition be denied and that, alternatively, Jonah's right to a determination of useless or valueless property be preserved, and that it receive any and all relief to which it shows itself justly entitled.

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<sup>5</sup> See Affidavit of Bill Brown, **Exhibit A**.

<sup>6</sup> *Id.*

Respectfully submitted,


By:   
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ATTORNEY FOR JONAH WATER SPECIAL  
UTILITY DISTRICT

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 7<sup>th</sup> day of December, 2018.

  
\_\_\_\_\_  
John Carlton

**EXHIBIT A**

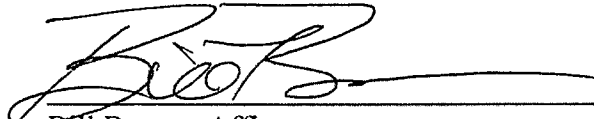
**AFFIDAVIT OF BILL BROWN**

## AFFIDAVIT OF BILL BROWN

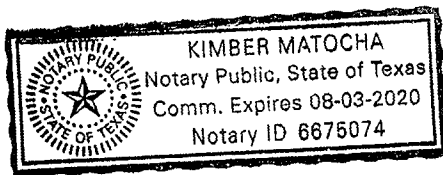
STATE OF TEXAS                   §  
   §  
COUNTY OF WILLIAMSON       §

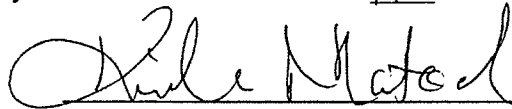
Before me, the undersigned notary, on this day personally appeared Bill Brown, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Bill Brown and I am the General Manager of Jonah Water Special Utility District ("District").
2. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
3. The District has an outstanding loan issued by the United States Department of Agriculture Rural Development Division in 1998, Case Number 51-046-0741773048. The original amount was \$1,053,000.00 and the District continues to make payments under the loan.
4. The District has an operational waterline through the tract of land described as the "Wolf Tract," which includes the 5.97± acres.
5. The District has a service agreement to provide service to the Wolf Tract, which includes the 5.97± acres.
6. The District has waterlines to provide service on and adjacent to the approximate 256.33 acres of land (the "Property").

  
Bill Brown, Affiant

Sworn to and subscribed before me by Bill Brown on November 16, 2018.



  
Notary Public in and for the State of Texas

My commission expires: 08-03-2020