



Control Number: 48801



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DOCKET NO. 48801

RECEIVED

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
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PUBLIC UTILITY COMMISSION
FILING CLERK
COMMISSION
OF TEXAS

**JONAH WATER SPECIAL UTILITY DISTRICT'S
MOTION TO INTERVENE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Jonah Water Special Utility District ("Jonah") files this Motion to Intervene and would respectfully show as follows:

I. INTRODUCTION

Jonah seeks to intervene, comment and fully participate in Public Utility Commission Docket No. 48801, pursuant to Sections 22.101 through 22.104 of the Commission's Procedural Rules. As set forth below, Jonah has a justiciable interest that may be adversely affected by the outcome of this proceeding.

II. AUTHORIZED REPRESENTATIVE

The name and address of the movant is:

Jonah Water Special Utility District
c/o Bill Brown, General Manager
4050 FM 1660
Hutto, Texas 78634

Jonah's authorized representative for service of all pleadings and other documents in this docket and legal representative is:

John J. Carlton
The Carlton Law Firm P.L.L.C.
4301 Westbank Drive, Suite B-130
Austin, Texas 78746
Telephone: (512) 614-0901
Fax: (512) 900-2855
Email: john@carltonlawaustin.com

All pleadings, motions and other documents in this proceeding should be served on Jonah's representative.

III. TIMELINESS OF INTERVENTION

Pursuant to Order No. 1, the deadline for Jonah to file a written protest or motion to intervene and file comments on the Petition is November 17, 2018. Therefore, this motion is timely filed.

IV. JUSTICIABLE INTEREST

Jonah is a political subdivision of the State of Texas operating under Texas Water Code Chapter 65 and the holder of a Certificate of Convenience and Necessity ("CCN") for water, No. 10970, and a CCN for sewer, No. 21053, in Williamson County, Texas. The Petitioner in Docket No. 48801 seeks to remove 256.33 acres of land from Jonah's CCNs, which will adversely affect Jonah.

V. INITIAL COMMENTS

Jonah has attached to this motion its initial comments on the Petition and an affidavit by its general manager. Jonah reserves the right to file additional comments on the Petition.

VI. REQUEST FOR BRIEFING AND CONTESTED HEARING

Jonah requests a contested case hearing, as well as full participation in this proceeding, including the opportunity to provide briefing on all contested issues.

VII. RESERVATION OF RIGHT TO COMPENSATION

In the alternative, Jonah files this intervention to preserve its right to a determination of useless or valueless property and will seek compensation for its property rendered useless or valueless.

VIII. PRAYER

Jonah respectfully requests that this Motion to Intervene be granted, that Jonah be granted party status, that a briefing and procedural schedule be issued, that a contested case hearing be

held, that its right to a determination of useless or valueless property is preserved and that Jonah receive any and all relief to which it shows it is justly entitled.

Respectfully submitted,

By: _____



John J. Carlton

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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 16th day of November, 2018.



John Carlton

DOCKET NO. 48801

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

**JONAH WATER SPECIAL UTILITY DISTRICT'S
COMMENTS ON THE PETITION**

Jonah is providing the following initial comments to T.J. Bradshaw's (the "Petitioner") petition claiming to qualify for expedited release under Texas Water Code § 13.254(a-5) for approximately 256.33 acres of land (the "Property"):

I. Jonah's service area is ineligible for streamlined expedited release and 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).¹ 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 ("USDA") pursuant to Section 1926(b) to construct its water infrastructure.² As such, Jonah is a federally indebted utility with its service area protected by federal law.³

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

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

³ 7 U.S.C. § 1926(b).

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

Petitioner does not own 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." 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.

III. The Petition is not administratively complete because it does not comply with the requirements in the Commission's Substantive Rules. .

A. The Petition does not comply with the Commission's mapping requirements.

Under Commission rules, the maps filed with the Petition do not comply with the mapping requirements.⁴ In addition, the Petition fails to provide any facts to demonstrate that the Property is not receiving service.⁵

B. The Petition does not demonstrate that the Petitioner owns the Property.

The Petition simply asserts that TJ Bradshaw Construction, Ltd., owns 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 provide evidence that the assertion of title is supported by the facts and chain of title preceding Petitioner's asserted ownership.

⁴ 16 Tex. Admin. Code §24.245(m) (TAC).

⁵ 16 TAC § 24.245(l)(4)(A)(iv).

C. 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 TJ Bradshaw Construction, Ltd. However, nothing in the Petition explains the ownership interests in or management authority structure of TJ 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.

IV. Alternatively, the property may not be decertified because the Property is receiving water service from Jonah.

The Petition alleges that the Property 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.”

A. Jonah holds a CCN that obligates it to provide service in the area and entitles the Property owner to receive service.

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).⁶

B. A service agreement exists for the Property.

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 waterline through the Property. In particular, Tract II 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 waterline remains operative and the Property continues to receive water service from Jonah.

C. Jonah has existing water lines on and adjacent to the Property providing service to the Property.

There is an existing water line on and adjacent to the Property. This waterline is operation and is currently providing service the Property.⁷ In addition, Jonah has existing water lines in multiple locations surrounding the Property that are capable of providing service to the Property.⁸

⁶ *North Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915-16 (5th Cir. 1996).

⁷ See Affidavit of Bill Brown, **Exhibit A**.

⁸ *Id.*

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

Jonah is obligated to provide service to all customers within its service area. 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 ("CIP") 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.

V. Conclusion.

The Petition may not be granted because Texas Water Code § 13.254(a-5) has been found to be preempted by 7 U.S.C. §1926(b) under the Supremacy Clause. In addition, the Petition is not administratively complete and cannot be approved in its current form because it does not meet the expedited release requirements under Texas Water Code § 13.254(a-5) and 16 TAC §24.245.

EXHIBIT A

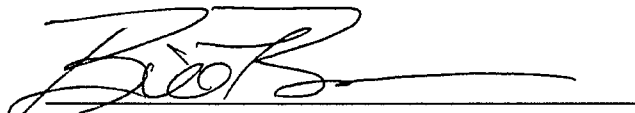
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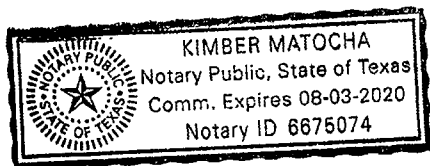
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COUNTY OF WILLIAMSON §

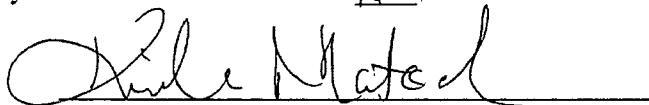
Before me, the undersigned notary, on this day personally appeared Bill Brown, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

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