

Control Number: 48944



Item Number: 7

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DOCKET NO. 48944

RECEIVED

PETITION BY MM WALDEN POND, §
LLC, FOR EXPEDITED RELEASE §
FROM WATER CCN NO. 10841 HELD §
BY HIGH POINT WATER SUPPLY §
CORP. IN KAUFMAN COUNTY §

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PUBLIC UTILITY COMMISSION
OF TEXAS

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. In support thereof, Staff shows the following:

I. BACKGROUND

On December 3, 2018, MM Walden Pond, LLC ("MM Walden"), filed a petition for expedited release from Water Certificate of Convenience and Necessity ("CCN") No. 10841, held by High Point Water Supply Corporation ("High Point WSC"), pursuant to (i) Texas Water Code Section 13.254(a-5); and (ii) Rule 24.245(l) of the Commission's Rules found at 16 Tex. Admin. Code Section 24.245.

MM Walden asserts that it owns over 25 acres of property in Kaufman County, Texas ("the Property"). Furthermore, MM Walden states that the entirety of the Property is located within the boundaries of water CCN No. 10841. Additionally, MM Walden claims that the Property is not receiving service from High Point WSC.

On January 4, 2019, Commission Counsel for the Office of Policy and Docket Management issued Order No. 2, finding MM Walden's petition administratively complete and notice sufficient and establishing a deadline of January 18, 2019, for Staff to file a recommendation on final disposition. 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,

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

[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 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 47,500.²

Comparatively, the Texas Administrative Code states:

[T]he 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 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.³

Pursuant to TWC § 13.254(a-6), the Commission must render a decision on a petition for expedited release "not later than the 60th calendar day after the date the landowner files the petition." A petition is not considered filed until after a determination of administrative completeness. MM Walden's petition was deemed administratively complete in Order No. 2, issued on January 4, 2019. Therefore, the sixty (60) day deadline for administrative approval is March 5, 2019.

¹ See generally TWC § 13.254(a-1), (a-5); 16 TAC § 24.245(l).

² TWC § 13.254(a-5).

³ 16 TAC § 24.245(l)(2).

III. FINAL RECOMMENDATION

As supported by the attached memorandum from Nabaraj Pokharel of the Commission's 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 MM Walden provide adequate information to demonstrate that MM Walden satisfies the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l). Specifically, the maps and digital data provided by MM Walden enable Staff to determine: (1) that 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 areas are located within WSC's certificated areas; and (4) the location of the requested release areas is within a qualifying county, specifically, Kaufman County. In addition, the deeds submitted by MM Walden provide confirmation of MM Walden's ownership of the Property. Consequently, MM Walden has shown through its petition that it meets the requirements for expedited release. Therefore, Staff recommends that MM Walden's petition be approved.

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

IV. CONCLUSION

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

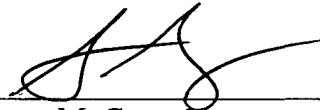
Dated: January 18, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 18, 2019, in accordance with 16 TAC § 22.74.



Steven M. Gonzalez

Attachment A

PUC Interoffice Memorandum

To: Steven Gonzalez, Attorney
Legal Division

Thru: Heidi Graham, Manager
Water Utility Regulation Division

From: Nabaraj Pokharel, Engineering Specialist
Water Utility Regulation Division

Date: January 14, 2018

Subject: **Docket No. 48944:** *Petition of MM Walden Pond, LLC to Amend High Point Water Supply Corporation's Certificate of Convenience and Necessity in Kaufman County by Expedited Release*

On December 3, 2018, MM Walden Pond, LLC (Petitioner) filed a petition with the Commission for expedited release from High Point Water Supply Corporation's water Certificate of Convenience and Necessity (CCN) No.10841 in Kaufman County, under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l). The Petitioner asserts that the land is at least 25 acres, is not receiving water service, and is located in Kaufman County which is a qualifying county.

The Petitioner submitted a sworn affidavit attesting that the petition is being filed in accordance with 16 TAC § 24.245(l), as well as proof that a copy of the Petition was sent via certified mail to the High Point Water Supply Corporation, the current holder of CCN No. 10841.

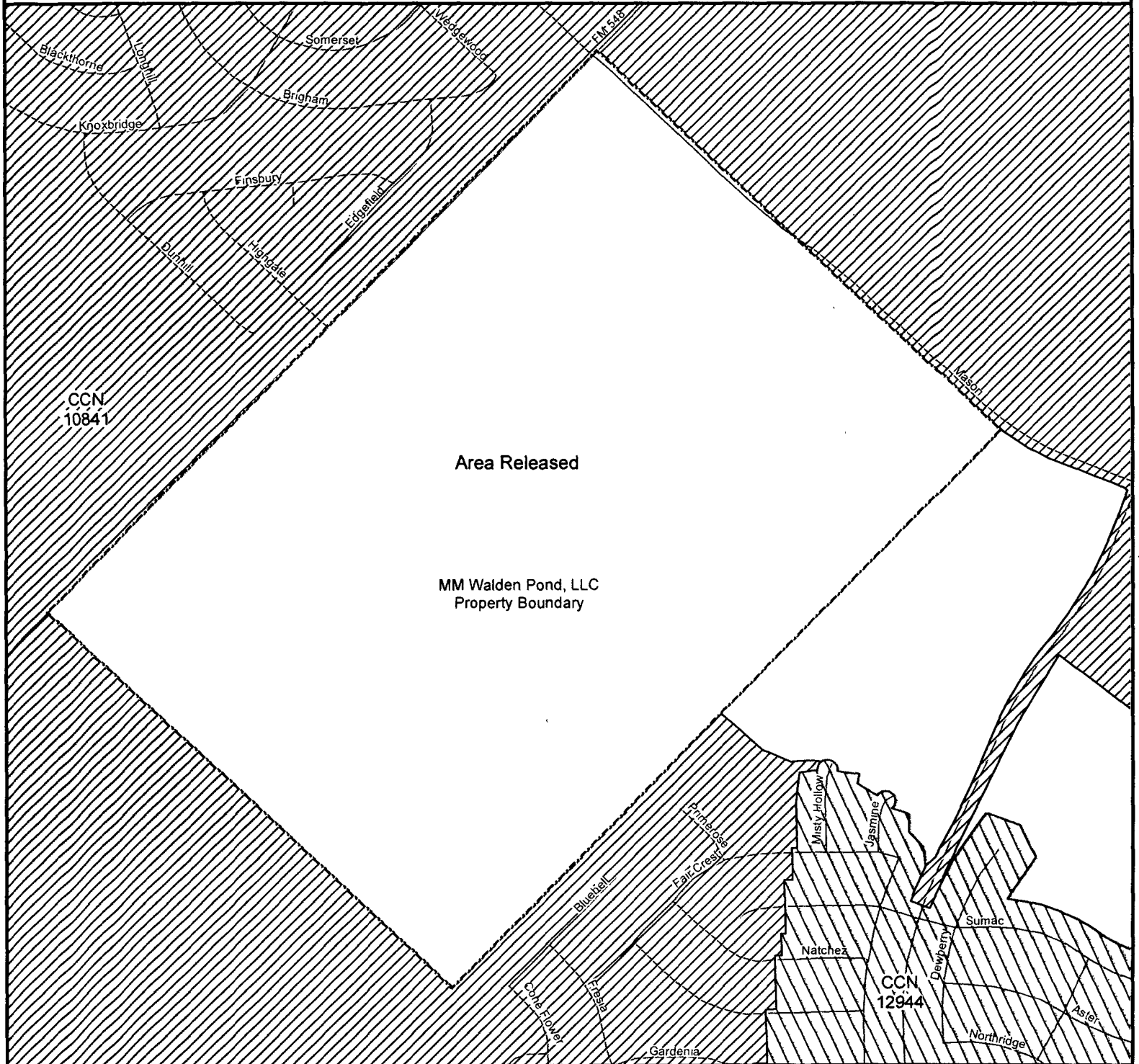
The Petitioner submitted an adequate map delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.257. The map and digital data were sufficient for determining the location of the requested release area within the High Point Water Supply Corporation'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 requested for expedited release is approximately 245 acres.

Staff recommends that there is no useless or valueless property, in accordance with 24.245(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 24.245(n) (7). High Point Water Supply Corporation did not request to intervene.

Staff recommends that the Petitioner has met the Commission's requirements to allow for the release of the requested area from High Point Water Supply Corporation's CCN No. 10841 and recommends approval of the petition. A final map and certificate is attached for Commission approval.

Attachment B

High Point Water Supply Corporation
Portion of Water CCN No. 10841
PUC Docket No. 48944
Petition by MM Walden Pond, LLC to Amend
High Point Water Supply Corporation's CCN by Expedited Release in Kaufman County



Water CCN



10841 - High Point WSC
 12944 - Kaufman Co Dev District 1



Area Released
 Property Boundary

0 350 700
 Feet



Attachment C



Public Utility Commission of Texas

By These Presents Be It Known To All That

High Point Water Supply Corporation

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, High Point Water Supply Corporation is entitled to this

Certificate of Convenience and Necessity No. 10841

to provide continuous and adequate water utility service to that service area or those service areas in Kaufman County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48944 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of High Point Water Supply Corporation 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, this _____ day of _____ 2019.