

Control Number: 49366



Item Number: 28

Addendum StartPage: 0



**DOCKET NO. 49366**

<b>PETITION OF FROST BANK</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>NATIONAL BANK, AS TRUSTEE OF</b>	<b>§</b>	
<b>THE FREEMAN EDUCATIONAL</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FOUNDATION TO AMEND THE CITY</b>	<b>§</b>	
<b>OF SAN MARCOS' WATER</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN HAYS COUNTY</b>	<b>§</b>	
<b>BY EXPEDITED RELEASE</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the petition of Frost Bank National Bank as trustee of the Harold M. Freeman Educational Foundation (applicant) requesting the streamlined expedited release of approximately 525 acres of land located within the boundaries of the City of San Marcos' water certificate of convenience and necessity (CCN) number 10298 in Hays County. The Commission grants the release of the requested area.

**I. Background**

On March 22, 2019, applicant filed its petition under Texas Water Code (TWC) § 13.254(a-5)<sup>1</sup> and 16 Texas Administrative Code (TAC) § 24.245(*I*). The petition was supplemented on April 2, 11, and 25, May 22, August 19, and September 6, 2019. The petition seeks expedited release from San Marcos' water CCN number 10298 of an approximately 525-acre tract of land applicant owns in Hays County. The petition includes a notarized letter from Robert Wynn, applicant's senior vice president, certifying that the tract is not receiving water service from San Marcos.

San Marcos filed a motion to intervene on April 22, 2019. The motion was granted in Order No. 3 issued on April 30, 2019. In its motion to intervene, San Marcos asserted, without further elaboration and without any supporting affidavit or other evidence, that applicant's property receives water service from the city. In response to discovery propounded by Commission Staff, San Marcos admitted that there are no contracts for water or sewer service

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<sup>1</sup> All cites to the Texas Water Code in this Order are to the version of the statutes in effect prior to September 1, 2019, which are applicable to this application because it was filed prior to that date. *See*, Act of May 26, 2019, 86<sup>th</sup> Leg., R.S., S.B. 2272, § 6.

between applicant and San Marcos, and that it has no bills for water or sewer service to applicant's property. San Marcos also provided, in response to discovery, a copy of what appears to be a map, though the quality of the photocopy is poor. The map appears to show applicant's property and surrounding area, with portions of San Marcos' water supply infrastructure depicted. None of that infrastructure appears to be on applicant's property, though some water lines appear to run nearby and parallel to the boundaries of applicant's property. Finally, in response to discovery, San Marcos stated that it installed a 30-inch water line "that borders the Frost Bank property" in 2005, and a 12-inch line "near" the property in 2015.<sup>2</sup>

Commission Staff filed its final recommendation on September 25, 2019, in which it recommended that applicant's petition be granted and that San Marcos is not entitled to any compensation. Commission Staff did not directly evaluate San Marcos' claim that it is providing water service to the tract.

Based on the facts summarized above, the Commission finds: (1) applicant has established that it is entitled to have its application granted, including proving that the 525-acre tract is not receiving water service under the standards of TWC §§ 13.002(21) and 13.254(a-5), and 16 TAC § 24.245(l), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*;<sup>3</sup> and (2) San Marcos failed to prove that any of its property will be rendered valueless or useless by the decertification of the 525-acre tract under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n).

## II. Findings of Fact

The Commission makes the following findings of fact.

### Applicant

1. Frost Bank National Bank is a Texas state financial institution registered with the Texas secretary of state under filing number 800854456.

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<sup>2</sup> City of San Marcos' Response to Commission Staff's First Request for Information RFI Nos. 1-1 through 1-4 at 2 through 5.

<sup>3</sup> 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

2. The Harold M. Freeman Educational Foundation is a domestic non-profit organization registered with the Internal Revenue Service under employer identification number 74 - 6334098.
3. Applicant owns approximately 525 contiguous acres of land in Hays County.

**Petition**

4. On March 22, 2019, applicant filed a petition for expedited release of 476 acres from its tract of land in Hays County.
5. On April 25, 2019, applicant amended the petition to clarify that it seeks the expedited release of the entire 525-acre tract.
6. The petition was supplemented on April 2, 11, and 25, May 22, August 19, and September 6, 2019.
7. Hays County is adjacent to Travis County, which is a county with a population of over one million.
8. Applicant provided various deeds, and estate, trust, and bank documents confirming its ownership of the tract of land and maps confirming the land's location.
9. The tract of land for which applicant seeks expedited release exceeds 25 contiguous acres, is not receiving water service, is within the boundaries of CCN number 10298 held by San Marcos, and is located entirely in Hays County.
10. In Order No. 6, issued on September 11, 2019, the administrative law judge (ALJ) found the petition administratively complete.

**Notice**

11. Applicant sent a true and correct copy of the petition, via certified mail, to San Marcos on the day the petition was filed with the Commission.
12. Proof of notice to San Marcos was filed with the Commission as an attachment to the application on March 22, 2019.
13. In Order No. 6, issued on September 11, 2019, the ALJ found the notice sufficient.

**Intervention**

14. On April 22, 2019, San Marcos filed a motion to intervene in this proceeding.
15. In Order No. 3 issued on April 30, 2019, the ALJ granted the motion to intervene.

**Response to Petition**

16. San Marcos asserted that the petition should be denied because the tract is receiving water service.

**Water Service**

17. San Marcos has not committed or dedicated facilities or lines for providing water service to the tract.
18. San Marcos has not performed acts or supplied anything to the tract.
19. The tract is not receiving water service from San Marcos.

**Determination of Useless or Valueless Property**

20. No property of San Marcos is rendered useless or valueless by the decertification.
21. Because no property of San Marcos is rendered valueless or useless by the decertification, compensation is not necessary.
22. San Marcos' existing water facilities can still be used and useful to provide service in the remainder of its CCN service area.

**III. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this petition under TWC § 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC §§ 22.55 and 24.245(l).
3. No opportunity for a hearing on a petition for expedited release is provided under TWC § 13.254(a-5) and (a-6) or 16 TAC § 24.245(l).
4. Petitions for expedited release filed under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are not contested cases.

5. Landowners seeking expedited release under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are required to submit a verified petition through a notarized affidavit and the CCN holder may submit a response to the petition.
6. To obtain release under TWC § 13.254(a-5), applicant must demonstrate that it owns a tract of land that is at least 25 acres, that the tract is located in a qualifying county, and that the tract is not receiving water service.
7. Hays County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(l).
8. The tract is not receiving water service under the standards of TWC §§ 13.002(21) and 13.254(a-5), and 16 TAC § 24.245(l), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
9. Applicant has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l) by adequately demonstrating ownership of a tract that is at least 25 acres, is located in a qualifying county, and is not receiving water service.
10. San Marcos failed to prove that any of its property will be rendered useless or valueless by the decertification under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n); therefore, under TWC § 13.254(d) through (g) and 16 TAC § 24.245(n)(3), no compensation is owed to San Marcos.
11. Because no compensation is owed under TWC § 13.254(d) through (g), a retail public utility may render retail water service directly or indirectly to the public in the decertified area without providing compensation to San Marcos.
12. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,<sup>4</sup> and Commission rules.
13. Under TWC § 13.257(r) and (s), San Marcos is required to record a certified copy of the approved certificate and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.

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<sup>4</sup> Tex. Gov't Code ch. 2001.

#### IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission grants the petition and removes the 525-acre tract owned by applicant from San Marcos' water CCN number 10298.
2. The Commission amends San Marcos' CCN number 10298 in accordance with this Order.
3. The Commission's official service area boundary maps for San Marcos' CCN will reflect this change as shown on the attached map.
4. The Commission grants the certificate attached to this Order.
5. San Marcos must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Hays County affected by the petition and submit to the Commission evidence of the recording no later than 45 days after receipt of this Order.
6. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

#### PUBLIC UTILITY COMMISSION OF TEXAS

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DEANN T. WALKER, CHAIRMAN

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ARTHUR C. D'ANDREA, COMMISSIONER

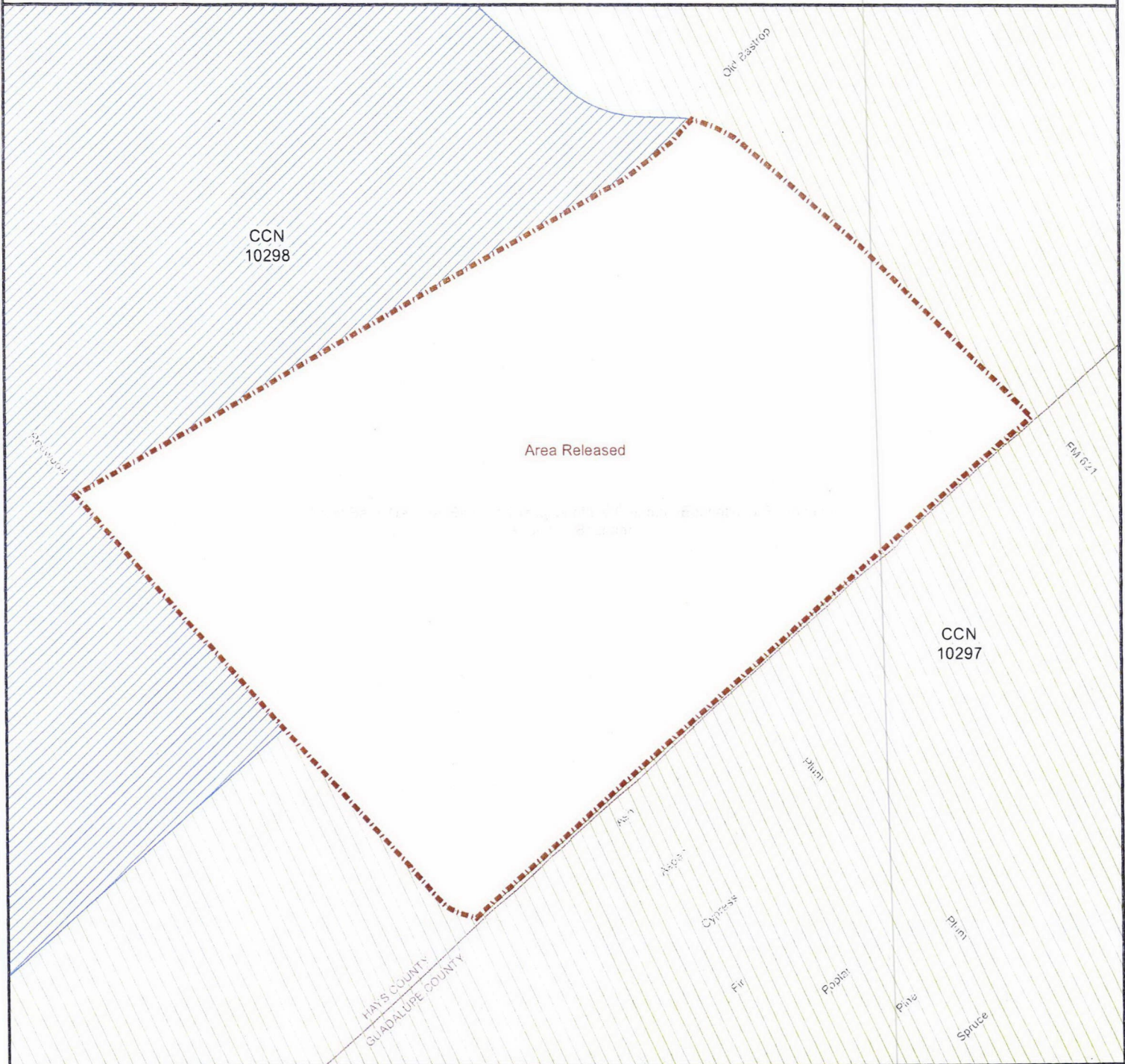
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SHELLY BOTKIN, COMMISSIONER





City of San Marcos  
Portion of Water CCN No. 10298  
PUC Docket No. 49366

Petition by Frost Bank National Banks as Trustee of the Freeman Educational Foundation  
to Amend City of San Marcos' CCN by Expedited Release in Hays County



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

**Water CCN**

-  10298 - City of San Marcos
-  10297 - Crystal Clear SUD



Area Released



Property Boundary

0 550 1,100  
Feet



Map by: Komal Patel  
Date created: June 19, 2019  
Project Path: n:\finalmapping\  
49366SanMarcos.mxd



# **Public Utility Commission of Texas**

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

## **City of San Marcos**

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, the City of San Marcos is entitled to this

### **Certificate of Convenience and Necessity No. 10298**

to provide continuous and adequate water utility service to that service area or those service areas in Hays County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49366 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 the City of San Marcos 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.