



Control Number: 50404



Item Number: 56

Addendum StartPage: 0

**DOCKET NO. 50404**

RECEIVED

**PETITION OF STERLING DEASON §  
O'DONNELL AND DARWIN DEASON, §  
CO-TRUSTEES OF THE STERLING §  
DEASON O'DONNELL DD 2012 §  
TRUST UNDER AGREEMENT OF §  
THE DD 2014-B GRANTOR §  
RETAINED ANNUITY TRUST TO §  
AMEND MARILEE SPECIAL UTILITY §  
DISTRICT'S CERTIFICATE OF §  
CONVENIENCE AND NECESSITY IN §  
COLLIN COUNTY BY EXPEDITED §  
RELEASE §**

**2021 JUN 25 AM 11:34  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
FILING CLERK**

**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this recommendation. Staff recommends that the petition be approved. In support thereof, Staff would show the following:

**I. BACKGROUND**

On January 2, 2020, Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust under agreement of the DD 2014-B Grantor Retained Annuity Trust (Petitioner), filed a petition for streamlined expedited release to amend Marilee Special Utility District's (Marilee SUD) water certificate of convenience and necessity (CCN) No. 10150 in Collin County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(I). The Petitioner filed an amended application on April 27, 2021. The Petitioner supplemented the amended application on April 28, 2021.

On June 10, 2021, Order No. 12 was issued, establishing a deadline of June 25, 2021, for Staff to file a recommendation on final disposition. This pleading, therefore, is timely filed.

**II. RECOMMENDATION**

As detailed in the attached memorandum from Patricia Garcia in the Commission's Infrastructure Division, Staff has reviewed the amended petition for streamlined expedited release and supplemental information filed by the Petitioner and recommends that it be approved. The map and digital data submitted by the Petitioner provide adequate information to demonstrate that

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the amended petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(l). Specifically, the petition shows that the property for which the Petitioner seeks expedited release is located in Collin County, which is a qualifying county; is not receiving water utility service; and that the aggregated, contiguous tracts of land make up a single property that is at least 25 acres. Therefore, Staff recommends that the amended petition be approved.

In its pleadings, Marilee SUD contends that the application should be denied. Staff will address those arguments here.

#### **A. Petitioner Addressed Commissioners' Concerns**

On April 7, 2021, the Commission remanded this case to Docket Management to give the Petitioner an opportunity to amend its original petition. In its Order, the Commission noted that the petition in Docket No. 46866 was denied because the petitioner failed to demonstrate that the residence served by water meter 1528 was not on the tract of land to be released.<sup>1</sup> In this docket, the Petitioner did provide documentation relating to that residence, however the petition did not provide evidence that meter 1528 itself was not on the tract of land to be released. As detailed in the attached memorandum from Patricia Garcia in the Commission's Infrastructure Division, Petitioner's amended petition requests release of an area of land that does not contain any of Marilee SUD's meters.

Marilee SUD states that the current amended petition should be denied for the same reasons the Commission denied the petition in Docket No. 46866.<sup>2</sup> However, as noted above, the Commission denied the petition in Docket No. 46866 because the Petitioner did not prove that the requested area to be released did not contain actual meters or residences served by Marilee SUD. The Petitioner's current petition and map do provide evidence that the property to be released does not contain meters owned by or residences served by the utility.<sup>3</sup> Therefore, the Commission's decision in Docket No. 46866 is distinguishable from this proceeding and is not precedent for denial of the Petitioner's amended petition. Rather, Staff asserts that the decision in Docket No. 46866 weighs in favor of approval of the current petition.

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<sup>1</sup> Order Remanding to Docket Management (Apr. 7, 2021).

<sup>2</sup> Marilee Special Utility District's Response to Administratively Complete Amended Petition at 14 (Jun. 17, 2021).

<sup>3</sup> See Staff's recommendation in the below attached memorandum from Patricia Garcia of the Commission's Infrastructure Division.

## **B. Receiving Water Service**

Staff provided arguments relating to the standard governing water service in its first final recommendation. For review, Staff provides those arguments again. Marilee SUD asserts that the requested area is receiving water service through three active water meters, three water lines running through the property, and a 6" water line running adjacent to the property.<sup>4</sup> Staff recommends that these three elements are not sufficient to meet the standard of "receiving" water service. To receive water service, a retail water utility must have "facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the particular tract . . . ."<sup>5</sup>

First, the three active meters are not within the requested area. As the Petitioner indicates, the three active meters are within the metes and bounds of the greater property, but the requested area does not include the tracts or addresses where those meters are located and provide service.<sup>6</sup> As such, the active meters do not meet the standard for the requested area to be considered to be receiving service.

Second, the three water lines running through the property and the 6" water line running adjacent to the property have not been shown to be committed to providing water to the particular tract. Through its various pleadings, Marilee SUD has not demonstrated that the three water lines and the adjacent 6" water line are committed to the particular tract that comprises the requested area. In *Crystal Clear*, the CCN holder raised the issue of existing water lines and facilities.<sup>7</sup> The court looked to whether those lines or facilities were constructed for the purpose of providing water to the property in question. Finding that the facilities were constructed to serve the greater area, and not the particular property, the court determined that the facilities were not committed to the

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<sup>4</sup> Marilee Special Utility District's Response to Administratively Complete Petition and Petitioner's Brief in Support of Finding Thereof at 3 (Jun. 19, 2020).

<sup>5</sup> *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex.App.—Austin 2014, pet. denied); *Petition of LGI Homes-Texas, LLC to Amend Bolivar Water Supply Corporation's Water Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 49433, Finding of Fact Nos. 17-18 (Mar. 2, 2020); *Petition of Frost Bank National Bank as Trustee of the Freeman Educational Foundation to Amend the City of San Marcos' Water Certificate of Convenience and Necessity in Hays County by Expedited Release*, Docket No. 49366, Findings of Fact Nos. 17-18 (Dec. 13, 2019).

<sup>6</sup> Reply to Marilee Special Utility District's Response to Petition for Expedited Release at 4-5 (Apr. 8, 2020).

<sup>7</sup> *Crystal Clear*, 449 S.W.3d at 140.

particular tract of land and therefore, the property in question was not receiving service.<sup>8</sup> Similarly, Marilee SUD does not demonstrate that the water lines were installed for the purpose of providing water to the requested area. As such, they are not committed to the particular property and the requested area is not, therefore, receiving water service from Marilee SUD.

Accordingly, Staff recommends that the requested area is not receiving water service.

## **B. Policy**

Staff provided arguments relating to policy in its first final recommendation. For review, Staff provides those arguments again. Marilee SUD asserts that allowing a petitioner to carve out areas receiving water service from a greater property and then granting release to the remaining area would have “grave” effects on utilities.<sup>9</sup> However, there is consistent precedent for allowing landowners to carve out both large and small sections of their properties for the purposes of expedited release. Most relevant is Docket No. 44394 where the petitioner amended a request for streamlined expedited release, carving out 6.7 acres from the 104-acre tract that originally comprised the requested area.<sup>10</sup> The 6.7-acre section had a sewer lift station and a 1” water line on it, and the remainder of the requested area was not receiving water service. The Commission approved the amended application and the Third Court of Appeals of Texas agreed with the Commission’s decision.<sup>11</sup> The appeals court noted that TWC § 13.254(a-5) (now 13.2541(b)) “does not have an ‘all or nothing’ requirement that prevents a landowner from choosing to seek expedited release of some, but not all, of its property located in a certificated service area.”<sup>12</sup> As such, Staff recommends that carving out a portion of a greater property for expedited release is consistent with Commission precedent and has not led to the “grave” results of which Marilee SUD portends. Rather, the Commission’s policy of permitting a landowner to determine the portions of its property for which to seek release is consistent with the Legislature’s and the Commission’s longstanding respect for landowners’ property rights.

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<sup>8</sup> *Id.*

<sup>9</sup> Marilee Special Utility District’s Response to Administratively Complete Petition and Petitioner’s Brief in Support of Finding Thereof at 5-6 (Jun. 19, 2020).

<sup>10</sup> *Petition of City of Midlothian to Amend Mountain Peak Special Utility District’s Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Order (May 1, 2015).

<sup>11</sup> *Mountain Peak Special Util. Dist v. Pub. Util. Comm’n of Tex*, No. 3-16-00796-CV, 2017 WL 5078034 at \*3 (Tex. App.—Austin Nov. 2, 2017).

<sup>12</sup> *Id.*

### **III. CONCLUSION**

Staff respectfully requests the issuance of an order consistent with the foregoing recommendation.

Dated: June 25, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Davida Dwyer  
Deputy Division Director

/s/ David Hoard  
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**DOCKET NO. 50404**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on June 25, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ David Hoard  
David Hoard

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** David Hoard, Attorney  
Legal Division

**FROM:** Patricia Garcia, Senior Engineering Specialist  
Infrastructure Division

**DATE:** June 25, 2021

**RE:** Docket No. 50404 – *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustee of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

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On January 2, 2020, Sterling Deason O'Donnell and Darwin Deason, Co-Trustee of the Sterling Deason O'Donnell DD 2012 Trust under agreement of the DD 2014-B Grantor Retained Annuity Trust (Petitioners) filed a petition for streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water convenience and necessity (CCN) No. 10150 in Collin County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). The Petitioners assert that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County which is a qualifying county.

The Petitioners submitted adequate maps delineating the tract of land for expedited release with enough detail to confirm the accurate positioning of its digital data under 16 TAC § 24.245(k). Tracy Montes, Infrastructure Division determined the map and digital data are sufficient for determining the location of the area considered for expedited release is within Marilee SUD's water CCN 10150. The entire tract of land is approximately 265.679 acres. The portion of the tract of land considered for release is approximately 259.5 acres. The area to be released from Marilee SUD, CCN No. 10150, is approximately 259.5 acres.

Furthermore, the Petitioners provided a warranty deed confirming ownership of the tract of land within Marilee SUD's certificated area. In addition, the Petitioners submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder.

Marilee SUD requested to intervene on January 16, 2020. The request was granted on January 30, 2020. Marilee SUD submitted documentation indicating the property was receiving service. Based on the maps and digital data filed by the Petitioner on April 28, 2021, and the maps filed by

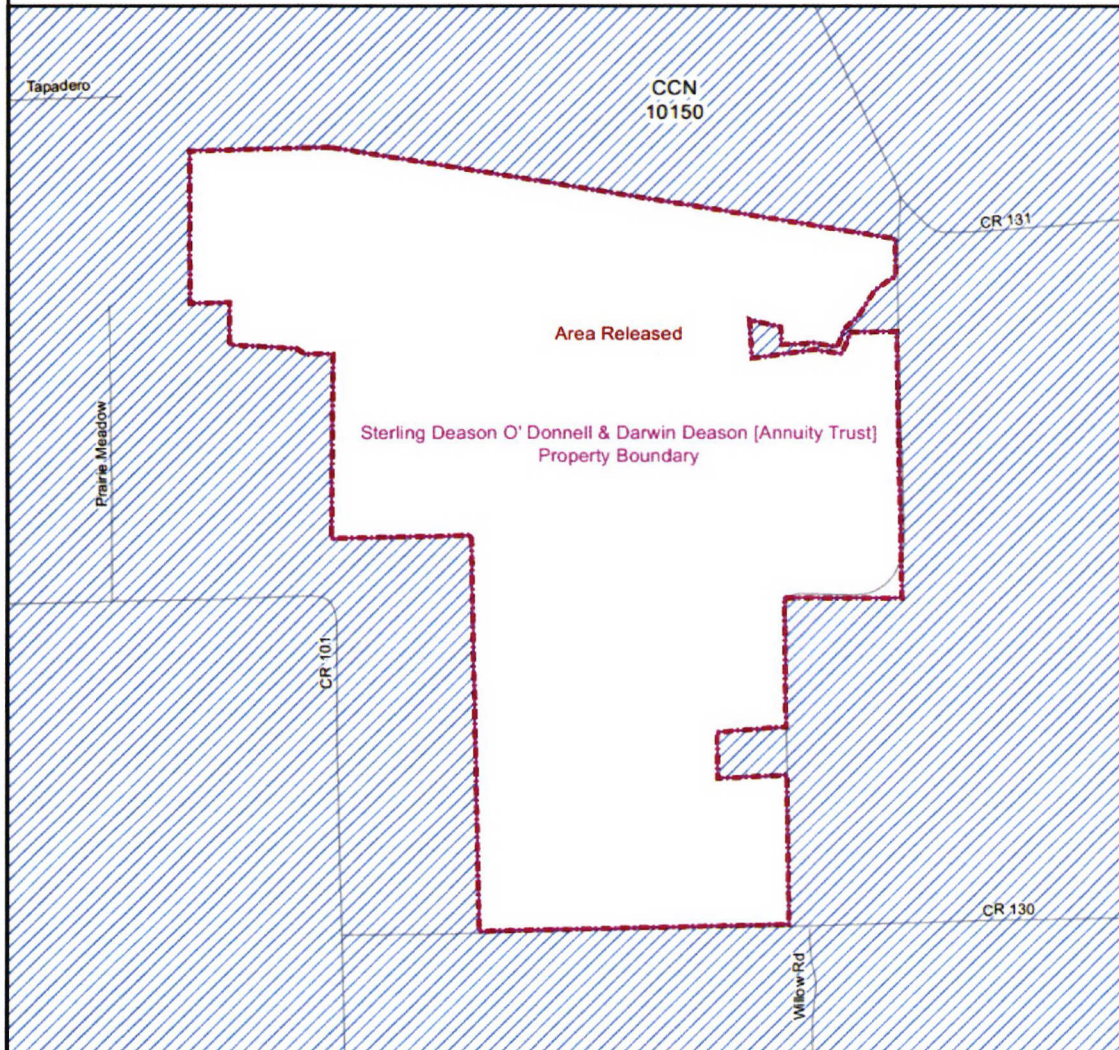


Marilee SUD on May 13, 2021, the Petitioner has adequately removed Marilee SUD's water meters from the portion of the tract.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Petitioners have met the Commission's requirements to allow for the release of the requested area from Marilee SUD's CCN No. 10150. Therefore, I recommend approval of the petition. Enclosed is a final map and certificate for Commission approval.


Additionally, I recommend that the final map and certificate be provided to the CCN holder.

Marilee Special Utility District  
 Portion of Water CCN No. 10150  
 PUC Docket No. 50404  
 Petition by Sterling Deason O' Donnell & Darwin Deason [Annuity Trust] to Amend  
 Marilee Special Utility District's CCN by Expedited Release in Collin County



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

**Water CCN**

 10150 - Marilee SUD



Area Released



Property Boundary

0 400 800  
 Feet



Map by: Komal Patel  
 Date created: June 21, 2020  
 Project Path: n:\fnaimapping\50404MarileeSUD.mxd



## **Public Utility Commission of Texas**

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

### **Marilee Special Utility District**

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, Marilee Special Utility District is entitled to this

#### **Certificate of Convenience and Necessity No. 10150**

to provide continuous and adequate water utility service to that service area or those service areas in Collin and Grayson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50404 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 Marilee Special Utility District 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.