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DOCKET NO. 50442

**PETITION OF MM WALDEN POND
LLC TO AMEND HIGH POINT
WATER SUPPLY CORPORATION'S
WATER CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
KAUFMAN COUNTY BY EXPEDITED
RELEASE**

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PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S STATUS REPORT

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Status Report. In support thereof, Staff shows the following.

I. BACKGROUND

On January 13, 2020, MM Walden Pond, LLC (Walden Pond) filed a petition for expedited release of the portion of its 214-acre tract that lies within the boundaries of the High Point Water Supply Corporation's (High Point) water Certificate of Convenience and Necessity (CCN) No. 10841, in Kaufman County. This petition was filed under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(I). Walden Pond asserts that the tract of land is at least 25 acres, is not receiving water service, and is located in Kaufman County, which is a qualifying county.

On March 30, 2020 the Administrative Law Judge (ALJ) issued Order No. 5 which gave Staff until June 1, 2020 to file a status report concerning abatement of this proceeding and federal litigation related to the applicability of 7 U.S.C. § 1926(b). This pleading is therefore timely filed.

II. STATUS REPORT

There are currently two cases at the United States Court of Appeals for the Fifth Circuit regarding federal preemption and the applicability of 7 U.S.C. § 1926(b) which affect abatement in this case. The first, cited by Staff in its March 26, 2020 reply brief, is *Crystal Clear Special Utility District v. DeAnn Walker, et. al.*¹ On February 26, 2020 that case was stayed pending the

¹ *Crystal Clear Special Utility District v. DeAnn Walker, et. al.*, No. 20-50043 (5th Cir. Filed January 16, 2020).

disposition of the 5th Circuit appeal in *Green Valley Special Utility District v City of Schertz*.² In *Green Valley Special Utility District v City of Schertz* answers to written questions were requested by the court on May 18, 2020 and the parties submitted answers to those questions on May 19, 2020.³ By all appearances, both cases and the issues therein remain contested. As these issues remain contested, Staff recommends that the present matter continue to be abated pending the issuance of an opinion in both cases.

III. CONCLUSION

Staff respectfully requests that this proceeding continue to be abated pending the 5th Circuit's decision in *Crystal Clear Special Utility District v. DeAnn Walker, et. al.* and *Green Valley Special Utility District v City of Schertz*.

Dated: June 1, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Robert Dakota Parish
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² *Green Valley Special Util. Dist. v. City of Schertz*, No. 18-51092 (5th Cir. filed Dec. 31, 2018).

³ *Id.*

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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 1, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish
Robert Dakota Parish