

Control Number: 50442



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PUC DOCKET NO. 50442

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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 §

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

High Point Water Supply Corporation ("High Point") files this response and motion to dismiss MM Walden Pond, LLC's ("Petitioner") petition to amend High Point's Certificate of Convenience and Necessity (CCN) No. 10841 in Kaufman County by streamlined expedited release (the "Petition") and would respectfully show the following:

I. Timeliness

The ALJ issued Order No. 2 on February 14, 2020, setting a deadline of February 24, 2020, for High Point to file a response to the Petition; therefore, this Response is timely filed.

II. Overview

The Petition seeks to decertify approximately 213 acres of real property in Kaufman County (the "Property") located within High Point's CCN pursuant to provisions for streamlined expedited release under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code ("TAC") § 24.245(l).

The Petition must be denied because TWC § 13.2541 is preempted by 7 U.S.C. § 1926(b).¹ Granting the Petition would violate the Supremacy Clause of the United States Constitution. U.S. CONST. art. VI, cl. 2. High Point WSC has an existing 7 U.S.C. § 1926 ("Section 1926") loan from the

¹ The court in *Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019) declared TEX. WATER CODE §§ 13.254(a-5) and (a-6) void relative to entities that enjoy the protection of Section 1926(b). TEX. WATER CODE § 13.254(a-5) was redesignated as TEX. WATER CODE § 13.2541(b) and TEX. WATER CODE § 13.254(a-6) was redesignated as TEX. WATER CODE § 13.2541(c-f). The redesignated statutes became effective on September 1, 2019. See also *City of Cowan, Tenn. v. City of Winchester, Tenn.*, 121 F.Supp.3d 795, 808 (E.D.Tenn. 2015).

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United States of America, through the United States Department of Agriculture (USDA), for construction of water system infrastructure. As such, High Point WSC is a federally indebted utility and its certificated service area is protected by federal law.²

Moreover, the Property is not eligible for streamlined expedited release under TWC § 13.2541(b) and 16 TAC § 24.245(l) because, contrary to statements made in the Petition and supporting affidavit of Mehrdad Moayed, High Point is currently providing water utility service to the Property.

III. High Point's Federal Protected Service Area

Prior to the Petition being filed, High Point received federal funding under Section 1926 establishing its indebtedness to the federal government and eligibility for protections under Section 1926(b).

A rural water association seeking the protections of Section 1926(b) must establish that: (1) it is an association as defined in Section 1926; (2) the association has an outstanding qualifying federal loan; and, (3) the utility provided or made service available.³ High Point satisfies these requirements, as shown by the following:

High Point is a member-owned Texas nonprofit water supply corporation organized under TEX. REV. CIV. ST. art 1434a. High Point now operates under Chapter 67 of the Texas Water Code as a retail public utility furnishing water to rural areas in Kaufman and Rockwall Counties. High Point is therefore considered a rural water association under Section 1926.

Attached as Exhibit "A" to this Response is the supporting affidavit of Linda Stewart, General Manager of High Point, which attests to the federal funding received by High Point among other facts herein. Attached as Exhibit "B" to this Response is a true and correct copy of a Real Estate Deed of Trust for Texas⁴ dated November 22, 1989, showing High Point is indebted to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (USDA), for the principal amount of \$751,300.00 with a final installment due on November 22, 2027. The foregoing exhibits confirm that High Point is

² 7 U.S.C. § 1926(b); *See N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915-6 (5th Cir. 1996) ("The service area of a federally indebted water association is sacrosanct").

³ *See Crystal Clear Special Utility District v. Marquez, et. al.*, 316 F.Supp.3d 965, 969 (W.D. Tex. 2018).

⁴ USDA/FmHA Case No. 50-029-0751251613

currently indebted to the United States of America, through the USDA, as contemplated by Section 1926(a) and (b).⁵

Attached as Exhibit "C" to this Response is a map prepared by High Point WSC's consulting engineer showing the location of a 5/8" x 3/4" water meter (#382) through which High Point WSC is currently serving the Property. Also attached as Exhibit "D" to this Response is a Customer History Report for Petitioner's service account with High Point showing Petitioner's bill payment history and the volume of water that passed through Petitioner's meter #382 on the Property during the last billing period of 2019 and the first billing period of 2020.

Alternatively, the Fifth Circuit held that "[w]here a certificate of convenience and necessity imposes a duty on a utility to provide a service, that utility has 'provided or made available' that service under § 1926."⁶ In the *Crystal Clear* case, there was no dispute that Crystal Clear possessed a CCN covering the disputed property and that it had a legal duty to provide service in accordance with Texas law; therefore, the District Court concluded Crystal Clear had provided or made available service to the property under binding precedent.⁷ There is no dispute by Petitioner or High Point that the Property is located within High Point's CCN area, as evidenced in the Petition and this Response. Therefore, in accordance with previous Fifth Circuit decisions, High Point has provided or made service available to the Property as required for purposes of Section 1926(b) protection.

For the reasons stated above, High Point has satisfied the requirements of eligibility for CCN protection under 7 U.S.C. § 1926(b).

IV. Section 1926 Preempts and Voids TWC § 13.2541(d)

TWC § 13.2541(d) [formerly codified as TWC § 13.254(a-6)]⁸ prohibits the Commission from denying a petition for expedited release "based on the fact that a certificate holder is a borrower under the federal loan program." However, on March 27, 2019, the United States

⁵ See *Crystal Clear Special Utility District v. Marquez, et. al.*, 316 F.Supp.3d 965, 969 (W.D. Tex. 2018) (an affidavit from Crystal Clear SUD's general manager together with loan documents confirmed a USDA loan remained outstanding and were sufficient to establish indebtedness).

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

⁷ See *Crystal Clear*, 316 F.Supp.3d at 971.

⁸ TWC § 13.254(a-6) redesignated as subsecs. (c) to (f) of V.T.C.A., Water Code § 13.2541 and amended by Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4.

District Court for the Western District of Texas ordered and declared that Section 1926 preempts and voids TWC § 13.254(a-6):

"The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program **To the extent that Tex. Water Code § 13.254(a-5) directs PUC Officials to grant a petition for decertification** that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and **otherwise entitled to the protections of 7 U.S.C. § 1926(b), the statute is preempted and is void.**" (emphasis added)⁹

Because High Point is eligible for Section 1926 protection, TWC § 13.2541(d) is void as it relates to the Petition and this Docket, in accordance with the *Crystal Clear* ruling. Should the Petition be granted, the Commission's order would be issued in violation of 7 U.S.C. § 1926(b) and be void.

V. Motion to Dismiss

High Point moves the Commission to summarily dismiss Petitioner's Petition for the reasons expressed in the *Proposal for Decision* ("PFD") filed by Mayson Pearson, Administrative Law Judge, as Item 26 in PUC Docket No. 48801, regarding a Petition filed by T.J. Bradshaw Construction Ltd. for expedited release under Texas Water Code § 13.254(a-5) ("Bradshaw Petition"). A copy of the PDF is attached hereto as Exhibit "E". The PFD recommended the Bradshaw Petition be dismissed because Texas Water Code § 13.254(a-6) is preempted by federal law. The facts and circumstances here are identical to those in the Bradshaw Petition, namely that (1) the land at issue is within High Point's CCN and (2) High Point is indebted to the USDA. Because of this, the Petition in this docket is preempted by federal law and must be dismissed.

High Point further moves the Commission to take "judicial notice" of the attached PFD.

VI. Conclusion

First, Petitioner is not entitled to expedited decertification from High Point's CCN under TWC § 13.2541 because High Point serves or makes service available to the Property.¹⁰ Second, and more notably, High Point is eligible for Section 1926(b) protection because the Western District of Texas found TWC § 13.2541(d) to be preempted by Section 1926 and therefore void.

⁹ See *Crystal Clear Special Utility District v. Walker, et. al*, No. 1:17-CV-254-LY, 2019 WL 2453777, at *2 (W.D. Tex. Mar. 27, 2019).

¹⁰ See § 13.2541(b)

For these reasons the Petition must be immediately dismissed in light of U.S. District Judge Yeakel's decision in the *Crystal Clear* case issued on March 27, 2019. Otherwise, High Point will be compelled to bring a federal action against the Commission seeking identical injunctive and either relief that Judge Yeakel granted against the Commissioners

Finally, High Point hereby submits its "England Reservation," reserving all of High Point's federal rights and remedies, and also its entitlement to have such rights and remedies resolved/adjudicated in a federal forum in accordance with *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964).

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC
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By: 


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ATTORNEYS FOR RESPONDENT,
HIGH POINT WATER SUPPLY CORPORATION

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on all parties of record on February 21, 2019, in accordance with 16 TAC § 22.74.


James W. Wilson

SERVICE LIST

<p><u>Via email: seidman@winstead.com</u> Scott W. Eidman WINSTEAD PC 2728 N. Harwood Street, Suite 500 Dallas Texas 75201 Tel: (214) 745-5484 Fax: (214) 745-5390 <i>Attorney for Petitioner</i></p>	<p><u>Via email: robert.parish@puc.texas.gov</u> Robert Parish Legal Division Public Utility Commission 1701 N Congress Ave Ste 8-110 Austin, TX 78711 (512) 936-7442</p>
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EXHIBIT "A"

PUC DOCKET NO. 50442

PETITION OF MM WALDEN POND, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND HIGH POINT WATER SUPPLY	§	
CORPORATION'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
KAUFMAN COUNTY BY EXPEDITED RELEASE	§	

SUPPORTING AFFIDAVIT OF LINDA STEWART

STATE OF TEXAS	§
	§
COUNTY OF KAUFMAN	§

BEFORE ME, the undersigned authority, on said date personally appeared Linda Stewart, who being first duly sworn states as follows:

"My name is Linda Stewart. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein. I have been employed as General Manager of High Point Water Supply Corporation ("High Point WSC") for nearly 20 years and I am custodian of the records of High Point WSC. I have read High Point WSC's Response to MM Walden Pond, LLC's Petition to Amend High Point WSC's Certificate of Convenience and Necessity in Kaufman County by Expedited Release in Docket No. 50442 (the "Response") and each and every factual statement contained therein is true and correct.

"High Point WSC has an outstanding federal USDA guaranteed loan qualifying High Point WSC for 7 U.S.C. § 1926(b) Protection. Exhibit "B" attached to the Response is a true and correct copy of a Real Estate Deed of Trust for Texas dated November 22, 1989, showing High Point WSC is indebted to the United States of America, acting through the Farmers Home Administration. United States Department of Agriculture (USDA), for the principal amount of \$751,300.00 with a final installment due on November 22, 2027.

"The map attached as Exhibit "C" to the Response shows High Point WSC owned water system facilities and waterlines on the property that is the subject matter of Docket No. 50442 (the "Property"). The map was prepared by High Point WSC's engineer of record, Tyler Hendrickson, P.E. The location of the 5/8" x 3/4" water meter through which High Point WSC serves the Property is accurately located on the map.

"A true and correct copy of a Customer History Report for Petitioner MM Walden Pond, LLC ("Petitioner") is attached as Exhibit "D" to the Response. The report shows Petitioner's service account number and the volume of water that passed through the meter on the Property during the last billing period of 2019 and the first billing period of 2020.

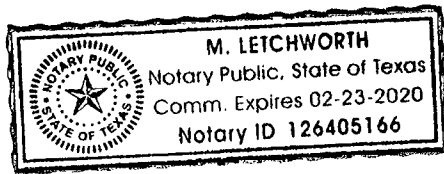
The documents attached as Exhibits to the Response are records that were made at or near the time of each act, event or condition set forth. These records were kept in the course of regularly conducted business activity of High Point WSC. It is the regular practice of High Point WSC to make such records."



A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart, General Manager,
High Point Water Supply Corporation

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the 19th day of February, 2020, by Linda Stewart, General Manager of High Point Water Supply Corporation, a Texas nonprofit corporation.



A handwritten signature in cursive script, appearing to read "M. Letchworth".

Notary Public, State of Texas



EXHIBIT "B"

USDA-FmHA

UTILITY SECURITY INSTRUMENT

THIS INSTRUMENT GRANTS A SECURITY INTEREST BY A UTILITY
 REAL ESTATE DEED OF TRUST FOR TEXAS
 THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS

High Point Water Supply Corporation, a corporation organized and

existing under the laws of the State of Texas.

County of ~~Rockwall~~ whose post
 office address is 530 Valley View Road, Forney, Texas 75126

herein called "Borrower," and J. Lynn Futch, 101 S. Main, Suite 102, Temple, TX 76501, State Director of the Farmers Home Administration for the State of Texas, and State Director's successors in office as State Director or Acting State Director, as trustee, herein called "Trustee," and the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, as beneficiary, herein called the "Government," and;

WHEREAS Borrower is indebted to the Government as evidenced by one or more promissory note(s) or assumption agreement(s), herein called "note," which has been executed by Borrower, is payable to the order of the Government, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by Borrower, and is described as follows:

<u>Date of Instrument</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>	<u>Due Date of Final Installment</u>
November 22, 1989	\$751,300.00	6.625%	November 22, 2027

(The interest rate for limited resource farm ownership or limited resource operating loan(s) secured by this instrument may be increased as provided in the Farmers Home Administration regulations and the note.)

And the note evidences a loan to Borrower, and the Government, at any time, may assign the note and insure payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949, or any other statutes administered by the Farmers Home Administration.

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity mortgage to secure the Government against loss under its insurance contract by reason of any default by Borrower;

And this instrument also secures the recapture of any interest credit or subsidy which may be granted to the Borrower by the Government pursuant to 42 U.S.C. §1490a.

NOW, THEREFORE, in consideration of the loan(s) Borrower does hereby grant, sell, convey, and assign unto Trustee the following property situated in the State of Texas, County(ies) of Kaufman and Rockwall

See attached Exhibit A
 Pages 1 through 4

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together with all rights (including the rights to mining products, gravel, oil, gas, coal or other minerals), interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein-all of which are herein called "the property":

TO HAVE AND TO HOLD the property unto Trustee, Trustee's successors, grantees and assigns forever;

IN TRUST, NEVERTHELESS, (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, including any provision for the payment of an insurance or other charge, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described, and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement.

AND BORROWER for Borrower's self, Borrower's heirs, executors, administrators, successors and assigns WARRANTS the property unto Trustee for the Benefits of the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyances specified hereinabove, and COVENANTS AND AGREES as follows:

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay the the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration.

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by Borrower when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described in this instrument, with interest, shall be immediately due, and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of Borrower's covenant to pay. Any payments made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purposes authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges, and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments.

(8) To keep the property insured as required by and under insurance policies approved by the Government and, at its request, to deliver such policies to the Government.

(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner; comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe; and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

(10) To comply with all laws, ordinances, and regulations affecting the property.

(11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

(12) Except as otherwise provided by the Farmers Home Administration regulations, neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as beneficiary hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.

(13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in supplementary agreement are being performed.

(14) The Government may (a) extend or defer the maturity of, and renew and reschedule the payments on, the debt evidenced by the note or any indebtedness to the Government secured by this instrument, (b) release any party who is liable under the note or for the debt from liability to the Government, (c) release portions of the property and subordinate its lien, and (d) waive any other of its rights under this instrument. Any and all this can and will be done without affecting the lien or the priority of this instrument or Borrower's or any other party's liability to the Government for payment of the note or debt secured by this instrument unless the Government says otherwise in writing. HOWEVER, any forbearance by the Government-whether once or often-in exercising any right or remedy under this instrument, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

(15) The power to appoint a substitute trustee is hereby granted to the Government and its assigns, to be exercised at any time hereafter, without notice and without specifying any reason therefor, by filing for record in the office where this instrument is recorded an instrument of appointment, whereupon the substitute trustee shall succeed to all the estates, rights, powers, and trusts herein granted to or vested in Trustee, and the former trustee or substitute trustee shall be divested thereof; and notice of the exercise of this power and any requirement of, or right to require, a bond from any trustee hereunder, are hereby waived.

(16) If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal Land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan.

(17) Default hereunder shall constitute default under any other real estate, or under any personal property or other security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.

(18) SHOULD DEFAULT occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should the parties named as Borrower die or be declared incompetent, or should any one of the parties named as Borrower be discharged in bankruptcy or declared an insolvent or make an assignment for the benefit of creditors, the Government at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this instrument, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, and (d) authorize and request Trustee to foreclose this instrument and sell the property as prescribed by law.

(19) Upon default aforesaid: (a) at the request of the Government, Trustee may foreclose this instrument either by court action pursuant to law or by advertisement and sale of the property as provided by law, for cash or secured credit at the option of the Government, personal notices of which sale need not be served on Borrower; (b) such sale may be adjourned from time to time without other notice than oral proclamation at the time and place appointed for such sale and correction made on the posted notices, and at such sale the Government and its agents may bid and purchase as a stranger; (c) Trustee at Trustee's option may conduct such sale, without being personally present, through Trustee's delegate authorized by Trustee for such purpose orally or in writing and without notice to Borrower of such authorization; and (d) if the property is situated in two or more counties, the sale may be held in any one of such counties selected by the Government in its sole discretion: Provided, however, that in any deed or deeds executed by Trustee hereunder, any and all statements of fact and other recitals therein made as to the nonpayment of the money secured, the nonperformance of covenants herein, the request to Trustee to enforce this Trust, the proper and due appointment of any substitute Trustee, the advertisement or due publication of sale, the due authorization by Trustee of Trustee's delegate to conduct the sale, or as to any other preliminary act or thing having been duly done by said Trustee shall be taken by any and all courts of law and equity as prima facie evidence that said statements or recitals do state facts, and without further questioning shall be accepted as such by Borrower; and provided further, that in the event of foreclosure sale, Borrower shall give up and deliver immediately possession of the property to the purchaser thereof or assume the status of a tenant at will and be subject to summary dispossession as by law provided.

(20) The proceeds of foreclosure sale shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower. In the case the Government is the successful bidder at foreclosure or other sale of all or any part of the property, the Government may pay its share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

(21) All powers and agencies granted in this instrument are coupled with an interest and are irrevocable by death or otherwise; and the rights and remedies provided in this instrument are cumulative to remedies provided by law.

(22) Borrower agrees that the Government will not be bound by any present or future State laws, (a) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action must be brought, (b) prescribing any other statute of limitations, or (c) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefit of any such State laws.

(23) If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for Borrower will, after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion, sex, or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not comply with or attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, sex, or national origin.

(24) Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

(25) This instrument shall be subject to the present regulations of the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

(26) Notices given hereunder shall be sent by certified mail, unless otherwise required by law, and addressed, unless and until some other address is designated in a notice so given, in the case of the Government to Farmers Home Administration at Temple, Texas 76701, and in the case of Borrower at the address shown in the Farmers Home Administration Finance Office records (which normally will be the same as the post office address shown above).

(27) If this deed of trust should be invalid for any purpose for which it is executed, such invalidity for such purpose shall not impair its validity for any other purpose and in the event that any portion of the indebtedness under the note when it is held by the Government or any assignee of this deed of trust, or any portion of the indebtedness to the Government under this deed of trust, is not validly secured hereunder, then in that event, the first payments made upon any such indebtedness shall be applied in payment of that portion of the indebtedness which is not validly secured, and no payment shall be applied toward that portion of the indebtedness secured by a valid lien hereunder until any indebtedness not so secured shall have been paid in full.

(28) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable.

~~IT IS AGREED by and between Borrower and the Government that the Government will, for the sum of \$~~
erect, construct, complete and repair buildings or other improvements upon, and will furnish all labor and material necessary for the purpose of making such repairs and improvements upon said property as are described in the Development Plan agreed to in writing by Borrower and the Government and made a part hereof and incorporated herein by reference, except labor to be performed by Borrower; to secure which sum Borrower hereby gives and creates a valid constitutional and contractual lien upon said property; and that if said sum is not actually expended for such repairs and improvements, any amount not so expended shall be credited on the indebtedness evidenced by the note. It is further agreed that a failure to complete said repairs and improvements, or failure to complete same according to said Development Plan, shall not defeat said indebtedness and lien, but in such event said indebtedness and lien upon said property shall exist in favor of the Government or its assigns for the amount herein agreed upon, less such amount as would be reasonably necessary to complete said repairs and improvements according to said Development Plan.

~~BORROWER, for the express purpose of inducing the Government to make or insure the loan evidenced by the note described herein, represent that Borrower does not reside upon, use, or claim, as either a business or residence homestead, the property described above, but that Borrower now resides upon, used and claims as a homestead the following described tract, lot or parcel of land, the fee simple title to which is vested in Borrower:~~

(29) IMPORTANT NOTICE FOR HOMESTEAD IMPROVEMENT LIENS: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

WITNESS the signature(s) of borrower on this 22nd day of November, 1989.

ATTEST:

Curtis Colegrove Sec.
Secretary

STATE OF TEXAS

COUNTY OF KAUFMAN

HIGH POINT WATER SUPPLY CORPORATION

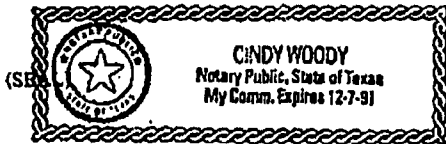
By Sammie Bland

Sammie Bland, President

ACKNOWLEDGMENT

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____
Samme Bland, President of High Point Water Supply Corporation, a Texas corporation
known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing instrument, and acknowledged to me that he(~~she~~) executed the same for the purposes and consideration therein expressed., on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 22nd day of November, 1989.



Cindy Woody
Notary Public in and For
the State of Texas

~~Cindy Woody~~

STATE OF TEXAS }
COUNTY OF _____ }
I, the undersigned, do hereby certify that the foregoing instrument was filed for record in my office on the _____ day of _____ A. D., 19____, at _____ o'clock _____ M., and was duly recorded on this _____ day of _____, A. D., 19____, in Volume _____, page _____ of the Deed of Trust Records of said County.

WITNESS MY HAND and the seal of the County Court of Said County at my office in _____ the day and year last above written.

County Clerk _____ County, Texas
By _____ Deputy

I.

FIRST TRACT:

BEING a part of the Juan Lopez 26 Labor Survey, and being 1.0 acres of land out of a 60 acre tract of land as described in deed from J. J. Davis, Jr. to R. D. Davis and recorded in Volume 246, Page 237 of the Deed Records of Kaufman County, Texas, dated March 31, 1936, and being more particularly described as follows:

BEGINNING at a point in the West line of said 60 acre tract, said point being South 45 degrees West, 348 feet along said West line from the North corner of said 60 acre tract;

THENCE South 45 degrees East, 208.71 feet to a point for corner;
THENCE South 45 degrees West, 208.71 feet to a point for corner;
THENCE North 45 degrees West, 208.71 feet to a point for corner;
THENCE North 45 degrees East, 208.71 feet to the place of beginning, and containing 1.0 acre of land.

SECOND TRACT:

BEING a tract of land out of the Evert E. Samuels and William D. Samuels 402.6 acre tract of land, the latter tract being out of a survey of one league and one labor of land known as Survey No. 52, and described in Volume 278, Pages 254 and 255, of the Deed Records of Kaufman County, Texas, the former tract being described by metes and bounds as follows:

BEGINNING at a point in the most Northeasterly corner of said 402.6 acre tract, said point being in the centerline of a County Road;

THENCE South 45 degrees East, along the Northeast line of said 402.6 acre tract, and along the centerline of said County Road, a distance of 100 feet to a point;

THENCE South 45 degrees West, 115 feet to a point;

THENCE North 45 degrees West, 100 feet to a point in the Northwest line of said 402.6 acre tract;

THENCE North 45 degrees East along said Northwest line a distance of 115 feet to the place of beginning, and containing 0.264 acres of land.

THIRD TRACT:

BEING all that tract of land in Kaufman County, Texas, a part of the W. E. Sullivan Survey Abstract No. 480, and being a part of the tract conveyed from C. C. Bennett to H. J. Myrio, of record in Volume 121, Page 57, Kaufman County Deed Records, and being further described as follows:

COMMENCING at a steel rod for the Southwest corner of Michael Ray Fulton 5.0 acre tract, said point also being in the Northeast ROW line of Colquitt Road (County Road);

THENCE in a Southeasterly direction along the West line of the Fulton 5 acre tract and the Northeast ROW line of a County Road, a distance of 251.53 feet to the point and place of beginning,

said point being the Southeast corner of the Fulton five acre tract and the Southwest corner of this tract;
THENCE North 45 degrees 00 minutes 30 seconds East, 290.4 feet along the East property line of the Fulton tract to a stake for the Northwest corner of this tract;
THENCE Southeast perpendicular to the East line of the Fulton tract, 150 feet to a stake for the Northeast corner of this tract;
THENCE South 45 degrees 00 minutes 30 seconds West, a distance of 290.4 feet to a point in the Northeast ROW line of Colquitt Road, said point being the Southeast corner of this one acre tract;
THENCE Northwesterly along the Northeast ROW line of Colquitt Road a distance of 150 feet to the Southwest corner of this tract for the point and place of beginning, containing one acre of land.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Deed of Trust dated July 7, 1988 from High Point Water Supply Corporation to Don A. Robinson, Trustee, securing payment of one promissory note in the original principal amount of \$181,222.01 payable to The American National Bank of Terrell, Texas recorded in Volume 934, Page 209, Real Estate Records, Kaufman County, Texas.
2. Utility Security Instrument from High Point Water Supply Corporation to Don A. Robinson, Trustee for the benefit of The American National Bank of Terrell, Texas, filed for record on July 13, 1988 under File No. 88-185244 in the Office of the Secretary of State of Texas.
3. Reservation of an undivided 1/4 of all oil, gas and other minerals as described in Warranty Deed dated January 2, 1943 from Aetna Life Insurance Company to Evert E. Samuels and William D. Samuels recorded in Volume 278, Page 254, Deed Records, Kaufman County, Texas. (SECOND TRACT)
4. Reservation of an undivided 1/4 mineral interest as described in Warranty Deed dated September 11, 1951 from Agnes Moreland et al. to M. Z. Hooten recorded in Volume 348, Page 298, Deed Records, Kaufman County, Texas. (THIRD TRACT)
5. Easement dated February 3, 1954 from R. D. Davis to Kaufman-Van Zandt Soil Conservation District recorded in Volume 381, Page 41, Real Estate Records, Kaufman County, Texas. (FIRST TRACT)
6. Easement dated September 20, 1962 from M. W. Hooten et ux. to Lone Star Gas Company recorded in Volume 459, Page 828, Deed Records, Kaufman County, Texas. (THIRD TRACT)

Exhibit A to Utility Security Instrument- Real Estate Deed of Trust for Texas dated November 22, 1989 from High Point Water Supply Corporation to J. Lynn Futch, Trustee, Page 2 of 4

Q.C. SB

Together with any and all other real property now owned, held, leased, or claimed or which may hereafter be owned, held, leased or claimed by Borrower in said counties.

II. 3 0 3 0 2 7 3 3 6 9

All right, title and interest of Borrower in, to and under any and all rights, grants, privileges, rights of way and easements now owned, held, leased, enjoyed or exercised, or which may hereafter be owned, held, leased, acquired, enjoyed or exercised by Borrower for the purposes of, and in connection with, the construction or operation by or on behalf of Borrower of water distribution lines, or systems, and facilities, whether underground or overhead or otherwise, or of any water pumping and filter plants and facilities, wherever located in said counties.

III.

All right, title and interest of Borrower in, to and under any and all licenses, franchises, ordinances, privileges and permits heretofore granted, issued or executed, or which may hereafter be granted, issued or executed, to it or to its assignors by the United States of America, or any state or by any county, city, municipality, or other political subdivision thereof, or by any agency, board, commission or department of any of the foregoing, or by any individual, partnership or corporation, authorizing the construction, acquisition, or operation of water pumping or filter plants or distribution lines, or systems, in the said counties.

IV.

All right, title and interest of Borrower in, to and under any and all contracts heretofore or hereafter executed by and between Borrower and any individual, partnership, corporation, state, county, city, municipality, or other political subdivision thereof, providing for the purchase of water by Borrower. Borrower does hereby agree not to modify or terminate any contract providing for the purchase of water without first obtaining the consent of FmHA to such modification or termination.

V.

All water charges and other income from the sale of water, tolls, assessments, accounts receivable and other choses in action of whatever nature.

VI.

Water well equipment and distribution lines thereof together with all appurtenances thereto presently owned or which may

Exhibit A to Utility Security Instrument- Real Estate Deed of Trust for Texas dated November 22, 1989 from High Point Water Supply Corporation to J. Lynn Futch, Trustee,
Page 3 of 4

CC. SB

hereafter be acquired by Borrower, including but not limited to pump house and mechanical equipment, pumps, motors, electrical material, pipes, valves, meters, couplings, drills, casings, reservoirs and tanks located on the above-described property, and all collateral similar to the above, hereafter acquired by Borrower, and all substitutes and replacements for, accessions, attachments and other additions to, and tools, parts and equipment used in connection with the above collateral.

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

A.C. SB.

EXHIBIT "C"

OVERSIZED DOCUMENT(S)

TO VIEW

OVERSIZED DOCUMENT(S)

PLEASE GO TO

CENTRAL RECORDS

(512) 936-7180

EXHIBIT "D"

BY: ML

Customer History Report
 Select Customer By: Account Range: From 102735 To 102735
 Status: All Accounts
 Transaction Types: Range: >= 12/1/2019 <= 2/19/2020

Date	Type	Cls	Amount	Applied	Reference	Usage	Balance
Account: 102735 MM WALDEN POND, WILLIAM HAMILTON							
Location: 09-1321 14111 FM 548							
12/10/19	PAYMENT	CHK	-42.89		6000024		0.00
12/20/19	WAT SURCHG	SC1	0.21	0.21	REGULATORY FEE		0.21
12/20/19	WATER	WAT	42.45	42.45	39490-44140 A12/17/20	4650	42.66
12/20/19	OTHER	OTH	1.00	1.00			43.66
01/13/20	PAYMENT	CHK	-43.66		6000025		0.00
01/24/20	WAT SURCHG	SC1	0.26	0.26	REGULATORY FEE		0.26
01/24/20	WATER	WAT	51.39	51.39	44140-50400 A1/21/202	6260	51.65
01/24/20	OTHER	OTH	1.00	1.00			52.65
02/11/20	PAYMENT	CHK	-52.65		6000030		0.00

ENDING BAL							0.00

* Denotes an unposted transaction.

<< End of Customer History Report: 1 Page(s) >>

EXHIBIT "E"

DOCKET NO. 48801

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

PROPOSAL FOR DECISION

This Proposal for Decision (PFD) recommends that the Commission dismiss the application of T.J. Bradshaw Construction, Ltd. to amend Jonah Special Utility District's certificate of convenience and necessity (CCN) in Williamson County by expedited release due to the preemption of federal law.

I. Background

On October 18, 2018, T.J. Bradshaw filed a petition with the Commission for expedited release from Jonah SUD's water certificate of CCN number 10970 and sewer CCN number 21053¹ under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l). In support of its petition, T.J. Bradshaw provided an affidavit from Troy Bradshaw, partner in T.J. Bradshaw, certifying that the applicant is the sole owner of the 256.33-acre tract for which expedited release is sought, and that the tract is more than 25 contiguous acres, not receiving water service, and located entirely within Williamson County.²

On November 16, 2018, Jonah SUD filed a motion to intervene. In Order No. 3 issued on November 27, 2019, the administrative law judge (ALJ) granted Jonah SUD's motion to intervene. On December 7, 2018, Jonah SUD filed its response to the petition arguing, among other things, that decertification of any portion of its service area would be a violation of 7 United States Code (U.S.C.) § 1926(b).³ In support of its argument, Jonah SUD included an affidavit from Bill Brown,

¹ On December 18, 2018, Commission Staff clarified that T.J. Bradshaw's property does not overlap with the sewer CCN area for Jonah SUD, and there was no need for the requested release from Jonah SUD's sewer CCN.

² 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, at 4.

³ Jonah Water SUD's Response to Petition for Expedited Release, at 2.

General Manager of Jonah SUD, certifying that the district has an outstanding loan issued by the United States Department of Agriculture Rural Development Division (USDA) in 1998, Case Number 51-046-0741773048.⁴ On December 18, 2018, Commission Staff recommended the approval of the expedited release from the water CCN.

On March 27, 2019, the United States District Court for the Western District of Texas issued its final judgment in *Crystal Clear Special Utility District v. Walker*, Cause No. AU-17-CV-254-LY (W.D. Tex.). This judgment is currently on appeal to the United States Court of Appeals for the Fifth Circuit;⁵ however, because the court has not issued its final judgment on appeal, this proposal for decision is based on the judgment of the district court. In its judgment, the district court ordered and declared:

(1) Public Utility Commission's Final Order of September 28, 2016, in the matter titled Tex. Pub. Util. Comm'n, *Petition of Las Colinas San Marcos Phase I LLC*, Docket No. 46148 was entered in violation of 7 U.S.C. § 1926(b) and is void.

(2) 7 U.S.C. § 1926 preempts and voids the following section of Tex. Water Code § 13.254(a-6): "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program."

(3) To the extent that Tex. Water Code § 13.254(a-5) directs the Public Utility Commission to grant a petition for decertification that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b), the statute is preempted and is void.⁶

In response to the judgment in *Crystal Clear*, the ALJ in the present docket issued Order No. 4 on May 24, 2019, requesting additional information from Jonah SUD regarding its federal loan. On June 7, 2019, Jonah SUD filed, along with the requested loan documentation, a motion to dismiss requesting that the Commission dismiss the petition on two grounds: (1) federal preemption by 7 U.S.C. § 1926; and (2) lack of subject matter jurisdiction based on the Commission's failure to act on the petition within 60 days of its filing as indicated by TWC § 13.254(a-6).

⁴ *Id.*, at 7.

⁵ *Crystal Clear Special Utility District v. Walker, D'Andrea, Botkin, et.al.*, No. 19-50556 (5th Cir. filed June 18, 2019).

⁶ *Crystal Clear Special Utility District v. Walker, D'Andrea, Botkin, et.al.*, No. 1-17-CV-254-LY (W.D. Tex. March 27, 2019), *appeal docketed*, 19-50556 (5th Cir. June 18, 2019).

On July 12, 2019, Commission Staff filed its response to Jonah SUD's motion to dismiss. Commission Staff agreed⁷ that the Commission cannot interfere with Jonah SUD's exclusive right to provide service to T.J. Bradshaw under § 1926(b), but disagreed with Jonah SUD's subject matter jurisdiction argument noting that Jonah SUD provided no legal basis for its assertions.⁸ On July 26, 2019, Jonah SUD filed a reply to Commission Staff's response, again requesting that the Commission dismiss the petition because Texas Water Code § 13.254(a-6) is preempted by federal law.⁹

II. Analysis

A. 7 U.S.C. § 1926

The USDA's water and sewer utility loan program is governed by 7 U.S.C. § 1926. Section 1926 provides protection for loan holders under subsection (b) which states:

The service provided or made available through any such association [i.e. a utility that provides water or sewer service and has an outstanding federal loan] shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

Congress enacted the protections of 7 U.S.C. § 1986(b) for two primary purposes, "(1) to encourage rural water development by expanding the number of potential users of such systems, thereby decreasing the per-user cost, and (2) to safeguard the viability and financial security of such associations . . . by protecting them from the expansion of nearby cities and towns."¹⁰

According to the court in *Crystal Clear*, in order to be eligible for protection under 7 U.S.C. § 1926(b), Jonah SUD must establish, "(1) that it is an association as defined in Section 1926, (2) that the association has an outstanding qualifying federal loan, and (3) that the utility provided

⁷ Commission Staff's response stated, "Staff disagrees with the District's assertion that §13.254(a-5) is preempted by federal law." However, based on a full reading of the text, the ALJ construes "disagrees" to be a typographical error.

⁸ Reply to Commission Staff's Response to Jonah's Motion to Dismiss, at 2.

⁹ Jonah Water SUD's Reply to Commission Staff's Response to Jonah's Motion to Dismiss, at 1.

¹⁰ *Green Valley Special Utility District v. Walker*, 315 F. Supp.3d 992, 1001 (W.D. Tex 2018) (quoting *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915-16 (5th Cir. 1996)).

or made water service available.”¹¹ Under 7 U.S.C. § 1926, an association includes, “corporations not operated for profit, . . . , and public and quasi-public agencies.”¹² Special utility districts are political subdivisions established under Texas Water Code chapter 65. As a special utility district, Jonah SUD has established that it is an association under 7 U.S.C. § 1926.

Jonah SUD has also established that it has an outstanding qualifying loan. In support of its position, Jonah SUD included an affidavit from Bill Brown, General Manager of Jonah SUD, certifying that it has an outstanding loan issued by the United States Department of Agriculture Rural Development Division in 1998, Case Number 51-046-0741773048. According to the affidavit, the original loan amount was \$1,053,000, and Jonah SUD continues to make payments under the loan. In addition to the affidavit, on June 7, 2019, Jonah SUD filed its promissory note and security agreement dated April 9, 1998, confirming the stated loan amount of \$1,053,000. The affidavit and loan documents are sufficient to establish that Jonah SUD has an outstanding qualifying federal loan.

Jonah SUD also satisfies the third criteria, that it has provided or made water service available. “Fifth Circuit case law is clear that ‘provided or made available’ is satisfied if an association has a legal duty to provide service to the property at issue under Texas law, *i.e.*, it has a certificate of convenience and necessity that includes the relevant parcel.”¹³ Jonah SUD has a legal duty to provide service to T.J. Bradshaw’s tract which is located entirely within its water CCN number 10970.

Under the standard set out in *Crystal Clear*, after determining that Jonah SUD is eligible for protection under 7 U.S.C. § 1926(b), the Commission must determine whether granting the petition would violate the terms of § 1926(b) by curtailing the service provided or made available by Jonah SUD. Unlike the petitioner in *Crystal Clear*, T.J. Bradshaw does not specify the reason for its request or name the utility that would provide service to the tract after the requested release. However, it can be presumed that it will not remain service-less in perpetuity. Even without a named preferred service provider, “[t]here is . . . preemption of any local or state law that purports

¹¹ *Crystal Clear Special Utility District v. Marquez*, 316 F. Supp. 3d at 969 (W.D. Tex 2018), *appeal docketed*, 19-50556 (5th Cir. June 18, 2019).

¹² 7 U.S.C. § 1926(b).

¹³ *Crystal Clear.*, 316 F. Supp. 3d at 971.

to take away from an indebted rural water association *any territory* for which the association is entitled to invoke the protection of § 1926 (b).”¹⁴ Removing any service area that Jonah SUD may potentially serve while they are federally indebted would be curtailing the service made available by Jonah SUD. The Commission’s approval of T.J. Bradshaw’s petition to remove its 256.33-acre tract from Jonah’s water CCN number 10970 would curtail the service provided or made available by Jonah SUD. According to the precedent set in *Crystal Clear*, the Commission’s authority to grant T.J. Bradshaw’s petition is preempted by 7 USC § 1926(b).

B. Subject Matter Jurisdiction

Because the ALJ is recommending that the motion to dismiss be granted on the grounds of federal preemption, it is unnecessary to discuss dismissal on the grounds of lack of subject matter jurisdiction.

For these reasons, the ALJ concludes that, under 16 TAC § 22.181(d)(11), the petition of T.J. Bradshaw should be dismissed.

III. Findings of Fact

The ALJ makes the following findings of fact.

1. T.J Bradshaw owns a tract of land in Williamson County that is approximately 256.33 acres.
2. Jonah SUD is a political subdivision of the State of Texas operating under TWC chapter 65 and holding water CCN number 10970.
3. On October 18, 2018, T.J. Bradshaw filed a petition for the expedited release of the 256.33- acre tract in Williamson County from Jonah SUD’s water CCN number 10970.
4. T.J Bradshaw provided an affidavit from Troy Bradshaw, partner in T.J. Bradshaw, certifying that the company is the sole owner of the 256.33-acre tract, and that the tract is more than 25 contiguous acres, not receiving water service, and located entirely within Williamson County.

¹⁴ *Crystal Clear*, 316 F. Supp. 3d at 973 (quoting *Pittsburg Cty. Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694, 716 (10th Cir. 2004)) (emphasis added).

5. The entirety of T.J Bradshaw's 256.33-acre tract is located within Jonah SUD's water CCN number 10970.
6. On November 16, 2018, Jonah SUD filed a motion to intervene.
7. In Order No. 3 issued on November 27, 2019, the ALJ granted Jonah SUD's motion to intervene.
8. On December 7, 2018, Jonah SUD filed its response to the petition.
9. Jonah SUD included in its motion to intervene and its response to the petition an affidavit from Bill Brown, General Manager of Jonah SUD, certifying that it has an outstanding loan issued by the United States Department of Agriculture Rural Development Division in 1998, Case Number 51-046-0741773048.
10. On December 18, 2018, Commission Staff recommended the approval of the expedited release from the water CCN.
11. On December 21, 2018, Commission Staff filed an amended recommendation on final disposition reaffirming their recommendation and providing a corrected map.
12. On March 27, 2019, the United States District Court for the Western District of Texas issued its final judgment in *Crystal Clear* declaring, among other things, that 7 U.S.C. § 1926 preempts and voids the section of TWC § 13.254(a-6) that reads, "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program." In addition, the court held that U.S.C. § 1926 preempts and voids TWC § 13.254(a-5) to the extent it directs the Commission to grant a petition for decertification that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b).
13. In Order No. 4 issued on May 24, 2019, the ALJ requested additional information from Jonah SUD regarding its federal loan.
14. On June 7, 2019, Jonah SUD filed a motion to dismiss requesting that the Commission dismiss the petition on two grounds: (1) federal preemption by 7 U.S.C. § 1926, and (2) lack of subject matter jurisdiction based on the Commission's failure to act on the petition within 60 days of its filing as indicated by TWC § 13.254(a-6).

15. On June 7, 2019, Jonah SUD provided copies of its USDA loan promissory note and security agreement, dated April 9, 1998.
16. On July 12, 2019, Commission Staff filed its response to Jonah SUD's motion to dismiss in which it conceded that T.J. Bradshaw's petition was preempted by federal law.
17. On July 26, 2019, Jonah SUD filed a response to Commission Staff's response requesting that the Commission dismiss the petition because TWC § 13.254(a-6) is preempted by federal law.

IV. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under TWC §§ 13.041 and 13.241.
2. Under 16 TAC § 22.181(c), no hearing was held in this matter, and none is necessary, because the facts are established as a matter of law by the administrative record, of which the ALJ takes official notice.
3. The Commission may dismiss a proceeding with or without prejudice for, among other reasons: "other good cause shown" (16 TAC § 22.181(d)(11)).
4. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than 16 TAC § 22.181(g)(1) or (2) requires preparation of a proposal for decision.
5. Jonah SUD is an association under 7 USC § 1926.
6. Jonah SUD is federally-indebted under 7 USC § 1926(b).
7. Jonah SUD has "provided or made service available" under 7 USC § 1926(b).
8. According to the precedent set in *Crystal Clear*, Jonah SUD is entitled to the protections of 7 USC § 1926(b).
9. According to the precedent set in *Crystal Clear*, the following section of TWC §13.254(a- 6): "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program," is preempted by 7 U.S.C. §1926 and void.

10. According to the precedent set in *Crystal Clear*, TWC § 13.254(a-5) is preempted and void to the extent that it directs the Commission to grant a petition for decertification that meets the requirements of the provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 USC § 1926(b).
11. According to the precedent set in *Crystal Clear*, the Commission's approval of T.J. Bradshaw's petition would curtail the service provided or made available by Jonah SUD.
12. According to the precedent set in *Crystal Clear*, the Commission's authority to grant T.J. Bradshaw's petition is preempted by 7 USC § 1926(b).
13. Because the Commission is preempted by federal law from granting the petition, according to the precedent set in *Crystal Clear*, dismissal of this proceeding is warranted under 16 TAC § 22.181(d)(11).

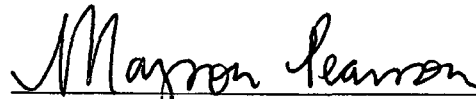
V. Ordering Paragraphs

The ALJ proposes the following ordering paragraphs.

1. The application is dismissed due to federal preemption.
2. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 17th day of October 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



MAYSON PEARSON

ADMINISTRATIVE LAW JUDGE

PUC DOCKET NO. 50442

PETITION OF MM WALDEN POND, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND HIGH POINT WATER SUPPLY	§	
CORPORATION'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
KAUFMAN COUNTY BY EXPEDITED RELEASE	§	

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

High Point Water Supply Corporation ("High Point") files this response and motion to dismiss MM Walden Pond, LLC's ("Petitioner") petition to amend High Point's Certificate of Convenience and Necessity (CCN) No. 10841 in Kaufman County by streamlined expedited release (the "Petition") and would respectfully show the following:

I. Timeliness

The ALJ issued Order No. 2 on February 14, 2020, setting a deadline of February 24, 2020, for High Point to file a response to the Petition; therefore, this Response is timely filed.

II. Overview

The Petition seeks to decertify approximately 213 acres of real property in Kaufman County (the "Property") located within High Point's CCN pursuant to provisions for streamlined expedited release under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code ("TAC") § 24.245(l).

The Petition must be denied because TWC § 13.2541 is preempted by 7 U.S.C. § 1926(b).¹ Granting the Petition would violate the Supremacy Clause of the United States Constitution. U.S. CONST. art. VI, cl. 2. High Point WSC has an existing 7 U.S.C. § 1926 ("Section 1926") loan from the

¹ The court in *Crystal Clear Special Util. Dist. v. Walker*, No. 1:17-CV-254-LY, 2019 WL 2453777 (W.D. Tex. Mar. 27, 2019) declared TEX. WATER CODE §§ 13.254(a-5) and (a-6) void relative to entities that enjoy the protection of Section 1926(b). TEX. WATER CODE § 13.254(a-5) was redesignated as TEX. WATER CODE § 13.2541(b) and TEX. WATER CODE § 13.254(a-6) was redesignated as TEX. WATER CODE § 13.2541(c-f). The redesignated statutes became effective on September 1, 2019. See also *City of Cowan, Tenn. v. City of Winchester, Tenn.*, 121 F.Supp.3d 795, 808 (E.D.Tenn. 2015).

United States of America, through the United States Department of Agriculture (USDA), for construction of water system infrastructure. As such, High Point WSC is a federally indebted utility and its certificated service area is protected by federal law.²

Moreover, the Property is not eligible for streamlined expedited release under TWC § 13.2541(b) and 16 TAC § 24.245(I) because, contrary to statements made in the Petition and supporting affidavit of Mehrdad Moayedi, High Point is currently providing water utility service to the Property.

III. High Point's Federal Protected Service Area

Prior to the Petition being filed, High Point received federal funding under Section 1926 establishing its indebtedness to the federal government and eligibility for protections under Section 1926(b).

A rural water association seeking the protections of Section 1926(b) must establish that: (1) it is an association as defined in Section 1926; (2) the association has an outstanding qualifying federal loan; and, (3) the utility provided or made service available.³ High Point satisfies these requirements, as shown by the following:

High Point is a member-owned Texas nonprofit water supply corporation organized under TEX. REV. CIV. ST. art 1434a. High Point now operates under Chapter 67 of the Texas Water Code as a retail public utility furnishing water to rural areas in Kaufman and Rockwall Counties. High Point is therefore considered a rural water association under Section 1926.

Attached as Exhibit "A" to this Response is the supporting affidavit of Linda Stewart, General Manager of High Point, which attests to the federal funding received by High Point among other facts herein. Attached as Exhibit "B" to this Response is a true and correct copy of a Real Estate Deed of Trust for Texas⁴ dated November 22, 1989, showing High Point is indebted to the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (USDA), for the principal amount of \$751,300.00 with a final installment due on November 22, 2027. The foregoing exhibits confirm that High Point is

² 7 U.S.C. § 1926(b); *See N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915-6 (5th Cir. 1996) ("The service area of a federally indebted water association is sacrosanct").

³ *See Crystal Clear Special Utility District v. Marquez, et. al.*, 316 F.Supp.3d 965, 969 (W.D. Tex. 2018).

⁴ USDA/FmHA Case No. 50-029-0751251613

currently indebted to the United States of America, through the USDA, as contemplated by Section 1926(a) and (b).⁵

Attached as Exhibit "C" to this Response is a map prepared by High Point WSC's consulting engineer showing the location of a 5/8" x 3/4" water meter (#382) through which High Point WSC is currently serving the Property. Also attached as Exhibit "D" to this Response is a Customer History Report for Petitioner's service account with High Point showing Petitioner's bill payment history and the volume of water that passed through Petitioner's meter #382 on the Property during the last billing period of 2019 and the first billing period of 2020.

Alternatively, the Fifth Circuit held that "[w]here a certificate of convenience and necessity imposes a duty on a utility to provide a service, that utility has 'provided or made available' that service under § 1926."⁶ In the *Crystal Clear* case, there was no dispute that Crystal Clear possessed a CCN covering the disputed property and that it had a legal duty to provide service in accordance with Texas law; therefore, the District Court concluded Crystal Clear had provided or made available service to the property under binding precedent.⁷ There is no dispute by Petitioner or High Point that the Property is located within High Point's CCN area, as evidenced in the Petition and this Response. Therefore, in accordance with previous Fifth Circuit decisions, High Point has provided or made service available to the Property as required for purposes of Section 1926(b) protection.

For the reasons stated above, High Point has satisfied the requirements of eligibility for CCN protection under 7 U.S.C. § 1926(b).

IV. Section 1926 Preempts and Voids TWC § 13.2541(d)

TWC § 13.2541(d) [formerly codified as TWC § 13.254(a-6)]⁸ prohibits the Commission from denying a petition for expedited release "based on the fact that a certificate holder is a borrower under the federal loan program." However, on March 27, 2019, the United States

⁵ See *Crystal Clear Special Utility District v. Marquez, et. al.*, 316 F.Supp.3d 965, 969 (W.D. Tex. 2018) (an affidavit from Crystal Clear SUD's general manager together with loan documents confirmed a USDA loan remained outstanding and were sufficient to establish indebtedness).

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

⁷ See *Crystal Clear*, 316 F.Supp.3d at 971.

⁸ TWC § 13.254(a-6) redesignated as subsecs. (c) to (f) of V.T.C.A., Water Code § 13.2541 and amended by Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4.

District Court for the Western District of Texas ordered and declared that Section 1926 preempts and voids TWC § 13.254(a-6):

"The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program **To the extent that Tex. Water Code § 13.254(a-5) directs PUC Officials to grant a petition for decertification** that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and **otherwise entitled to the protections of 7 U.S.C. § 1926(b), the statute is preempted and is void.**" (emphasis added)⁹

Because High Point is eligible for Section 1926 protection, TWC § 13.2541(d) is void as it relates to the Petition and this Docket, in accordance with the *Crystal Clear* ruling. Should the Petition be granted, the Commission's order would be issued in violation of 7 U.S.C. § 1926(b) and be void.

V. Motion to Dismiss

High Point moves the Commission to summarily dismiss Petitioner's Petition for the reasons expressed in the *Proposal for Decision* ("PFD") filed by Mayson Pearson, Administrative Law Judge, as Item 26 in PUC Docket No. 48801, regarding a Petition filed by T.J. Bradshaw Construction Ltd. for expedited release under Texas Water Code § 13.254(a-5) ("Bradshaw Petition"). A copy of the PDF is attached hereto as Exhibit "E". The PFD recommended the Bradshaw Petition be dismissed because Texas Water Code § 13.254(a-6) is preempted by federal law. The facts and circumstances here are identical to those in the Bradshaw Petition, namely that (1) the land at issue is within High Point's CCN and (2) High Point is indebted to the USDA. Because of this, the Petition in this docket is preempted by federal law and must be dismissed.

High Point further moves the Commission to take "judicial notice" of the attached PFD.

VI. Conclusion

First, Petitioner is not entitled to expedited decertification from High Point's CCN under TWC § 13.2541 because High Point serves or makes service available to the Property.¹⁰ Second, and more notably, High Point is eligible for Section 1926(b) protection because the Western District of Texas found TWC § 13.2541(d) to be preempted by Section 1926 and therefore void.

⁹ See *Crystal Clear Special Utility District v. Walker, et. al*, No. 1:17-CV-254-LY, 2019 WL 2453777, at *2 (W.D. Tex. Mar. 27, 2019).

¹⁰ See § 13.2541(b)

For these reasons the Petition must be immediately dismissed in light of U.S. District Judge Yeakel's decision in the *Crystal Clear* case issued on March 27, 2019. Otherwise, High Point will be compelled to bring a federal action against the Commission seeking identical injunctive and either relief that Judge Yeakel granted against the Commissioners

Finally, High Point hereby submits its "England Reservation," reserving all of High Point's federal rights and remedies, and also its entitlement to have such rights and remedies resolved/adjudicated in a federal forum in accordance with *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964).

Respectfully submitted,

JAMES W. WILSON & ASSOCIATES, PLLC
103 W. Main Street
Allen, Texas 75013
Tel: (972) 727-9904
Fax: (972) 755-0904

By: 

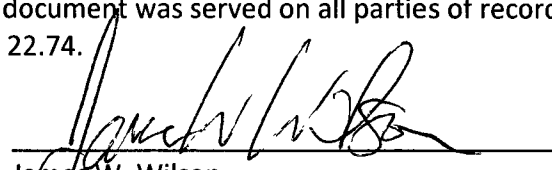
James W. Wilson
State Bar No. 00791944
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Maria Huynh
State Bar No. 24086968
mhuynh@jww-law.com

ATTORNEYS FOR RESPONDENT,
HIGH POINT WATER SUPPLY CORPORATION

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on all parties of record on February 21, 2019, in accordance with 16 TAC § 22.74.


James W. Wilson

SERVICE LIST

<u>Via email: seidman@winstead.com</u> Scott W. Eidman WINSTEAD PC 2728 N. Harwood Street, Suite 500 Dallas Texas 75201 Tel: (214) 745-5484 Fax: (214) 745-5390 <i>Attorney for Petitioner</i>	<u>Via email: robert.parish@puc.texas.gov</u> Robert Parish Legal Division Public Utility Commission 1701 N Congress Ave Ste 8-110 Austin, TX 78711 (512) 936-7442
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EXHIBIT "A"

PUC DOCKET NO. 50442

PETITION OF MM WALDEN POND, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND HIGH POINT WATER SUPPLY	§	
CORPORATION'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
KAUFMAN COUNTY BY EXPEDITED RELEASE	§	

SUPPORTING AFFIDAVIT OF LINDA STEWART

STATE OF TEXAS	§
	§
COUNTY OF KAUFMAN	§

BEFORE ME, the undersigned authority, on said date personally appeared Linda Stewart, who being first duly sworn states as follows:

"My name is Linda Stewart. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein. I have been employed as General Manager of High Point Water Supply Corporation ("High Point WSC") for nearly 20 years and I am custodian of the records of High Point WSC. I have read High Point WSC's Response to MM Walden Pond, LLC's Petition to Amend High Point WSC's Certificate of Convenience and Necessity in Kaufman County by Expedited Release in Docket No. 50442 (the "Response") and each and every factual statement contained therein is true and correct.

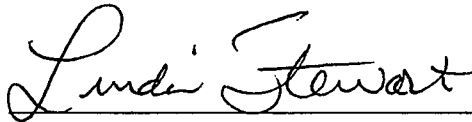
"High Point WSC has an outstanding federal USDA guaranteed loan qualifying High Point WSC for 7 U.S.C. § 1926(b) Protection. Exhibit "B" attached to the Response is a true and correct copy of a Real Estate Deed of Trust for Texas dated November 22, 1989, showing High Point WSC is indebted to the United States of America, acting through the Farmers Home Administration. United States Department of Agriculture (USDA), for the principal amount of \$751,300.00 with a final installment due on November 22, 2027.

"The map attached as Exhibit "C" to the Response shows High Point WSC owned water system facilities and waterlines on the property that is the subject matter of Docket No. 50442 (the "Property"). The map was prepared by High Point WSC's engineer of record, Tyler Hendrickson, P.E. The location of the 5/8" x 3/4" water meter through which High Point WSC serves the Property is accurately located on the map.

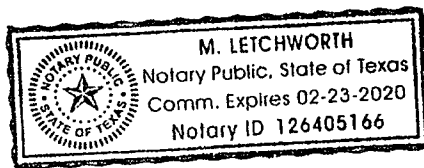
"A true and correct copy of a Customer History Report for Petitioner MM Walden Pond, LLC ("Petitioner") is attached as Exhibit "D" to the Response. The report shows Petitioner's service account number and the volume of water that passed through the meter on the Property during the last billing period of 2019 and the first billing period of 2020.

The documents attached as Exhibits to the Response are records that were made at or near the time of each act, event or condition set forth. These records were kept in the course of regularly conducted business activity of High Point WSC. It is the regular practice of High Point WSC to make such records."




Linda Stewart, General Manager,
High Point Water Supply Corporation

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the 19th day of February, 2020, by Linda Stewart, General Manager of High Point Water Supply Corporation, a Texas nonprofit corporation.



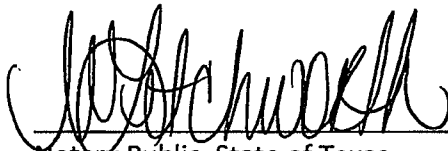

Notary Public, State of Texas

EXHIBIT "B"

USDA-FmHA

UTILITY SECURITY INSTRUMENT

THIS INSTRUMENT GRANTS A SECURITY INTEREST BY A UTILITY
REAL ESTATE DEED OF TRUST FOR TEXAS

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS

TRUST is made and entered into by and between the undersigned

High Point Water Supply Corporation, a corporation organized and

existing under the laws of the State of Texas,

residing at

County, Texas, whose post

office address is 530 Valley View Road, Forney, Texas 75126

herein called "Borrower," and J. Lynn Futch, 101 S. Main, Suite 102, Temple, TX 76501, State Director of the Farmers Home Administration for the State of Texas, and State Director's successors in office as State Director or Acting State Director, as trustee, herein called "Trustee," and the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, as beneficiary, herein called the "Government," and;

WHEREAS Borrower is indebted to the Government as evidenced by one or more promissory note(s) or assumption agreement(s), herein called "note," which has been executed by Borrower, is payable to the order of the Government, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by Borrower, and is described as follows:

<u>Date of Instrument</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>	<u>Due Date of Final Installment</u>
November 22, 1989	\$751,300.00	6.625%	November 22, 2027

(The interest rate for limited resource farm ownership or limited resource operating loan(s) secured by this instrument may be increased as provided in the Farmers Home Administration regulations and the note.)

And the note evidences a loan to Borrower, and the Government, at any time, may assign the note and insure payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949, or any other statutes administered by the Farmers Home Administration.

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity mortgage to secure the Government against loss under its insurance contract by reason of any default by Borrower;

And this instrument also secures the recapture of any interest credit or subsidy which may be granted to the Borrower by the Government pursuant to 42 U.S.C. §1490a.

NOW, THEREFORE, in consideration of the loan(s) Borrower does hereby grant, sell, convey, and assign unto Trustee the following property situated in the State of Texas, County(ies) of Kaufman and Rockwall

See attached Exhibit A
Pages 1 through 4

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FmHA 427-FHX (Rev. 2-89)

together with all rights (including the rights to mining products, gravel, oil, gas, coal or other minerals), interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein all of which are herein called "the property":

TO HAVE AND TO HOLD the property unto Trustee, Trustee's successors, grantees and assigns forever;

IN TRUST, NEVERTHELESS, (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, including any provision for the payment of an insurance or other charge, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described, and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement.

AND BORROWER for Borrower's self, Borrower's heirs, executors, administrators, successors and assigns WARRANTS the property unto Trustee for the Benefits of the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyances specified hereinabove, and COVENANTS AND AGREES as follows:

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government, as collection agent for the holder.

(2) To pay the the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration.

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by Borrower when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described in this instrument, with interest, shall be immediately due, and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of Borrower's covenant to pay. Any payments made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purposes authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges, and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipts evidencing such payments.

(8) To keep the property insured as required by and under insurance policies approved by the Government and, at its request, to deliver such policies to the Government.

(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner; comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe; and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

(10) To comply with all laws, ordinances, and regulations affecting the property.

(11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default), including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.

(12) Except as otherwise provided by the Farmers Home Administration regulations, neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as beneficiary hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.

(13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in supplementary agreement are being performed.

(14) The Government may (a) extend or defer the maturity of, and renew and reschedule the payments on, the debt evidenced by the note or any indebtedness to the Government secured by this instrument, (b) release any party who is liable under the note or for the debt from liability to the Government, (c) release portions of the property and subordinate its lien, and (d) waive any other of its rights under this instrument. Any and all this can and will be done without affecting the lien or the priority of this instrument or Borrower's or any other party's liability to the Government for payment of the note or debt secured by this instrument unless the Government says otherwise in writing. HOWEVER, any forbearance by the Government whether once or often in exercising any right or remedy under this instrument, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

(15) The power to appoint a substitute trustee is hereby granted to the Government and its assigns, to be exercised at any time hereafter, without notice and without specifying any reason therefor, by filing for record in the office where this instrument is recorded an instrument of appointment, whereupon the substitute trustee shall succeed to all the estates, rights, powers, and trusts herein granted to or vested in Trustee, and the former trustee or substitute trustee shall be divested thereof; and notice of the exercise of this power and any requirement of, or right to require, a bond from any trustee hereunder, are hereby waived.

(16) If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal Land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan.

(17) Default hereunder shall constitute default under any other real estate, or under any personal property or other security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.

(18) SHOULD DEFAULT occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should the parties named as Borrower die or be declared incompetent, or should any one of the parties named as Borrower be discharged in bankruptcy or declared an insolvent or make an assignment for the benefit of creditors, the Government at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this instrument, without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, and (d) authorize and request Trustee to foreclose this instrument and sell the property as prescribed by law.

(19) Upon default aforesaid: (a) at the request of the Government, Trustee may foreclose this instrument either by court action pursuant to law or by advertisement and sale of the property as provided by law, for cash or secured credit at the option of the Government, personal notices of which sale need not be served on Borrower; (b) such sale may be adjourned from time to time without other notice than oral proclamation at the time and place appointed for such sale and correction made on the posted notices, and at such sale the Government and its agents may bid and purchase as a stranger; (c) Trustee at Trustee's option may conduct such sale, without being personally present, through Trustee's delegate authorized by Trustee for such purpose orally or in writing and without notice to Borrower of such authorization; and (d) if the property is situated in two or more counties, the sale may be held in any one of such counties selected by the Government in its sole discretion: Provided, however, that in any deed or deeds executed by Trustee hereunder, any and all statements of fact and other recitals therein made as to the nonpayment of the money secured, the nonperformance of covenants herein, the request to Trustee to enforce this Trust, the proper and due appointment of any substitute Trustee, the advertisement or due publication of sale, the due authorization by Trustee of Trustee's delegate to conduct the sale, or as to any other preliminary act or thing having been duly done by said Trustee shall be taken by any and all courts of law and equity as prima facie evidence that said statements or recitals do state facts, and without further questioning shall be accepted as such by Borrower; and provided further, that in the event of foreclosure sale, Borrower shall give up and deliver immediately possession of the property to the purchaser thereof or assume the status of a tenant at will and be subject to summary dispossession as by law provided.

(20) The proceeds of foreclosure sale shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower. In the case the Government is the successful bidder at foreclosure or other sale of all or any part of the property, the Government may pay its share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

(21) All powers and agencies granted in this instrument are coupled with an interest and are irrevocable by death or otherwise; and the rights and remedies provided in this instrument are cumulative to remedies provided by law.

(22) Borrower agrees that the Government will not be bound by any present or future State laws, (a) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action must be brought, (b) prescribing any other statute of limitations, or (c) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefit of any such State laws.

(23) If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for Borrower will, after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion, sex, or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not comply with or attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, sex, or national origin.

(24) Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

(25) This instrument shall be subject to the present regulations of, the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

(26) Notices given hereunder shall be sent by certified mail, unless otherwise required by law, and addressed, unless and until some other address is designated in a notice so given, in the case of the Government to Farmers Home Administration at Temple, Texas 76501, and in the case of Borrower at the address shown in the Farmers Home Administration Finance Office records (which normally will be the same as the post office address shown above).

(27) If this deed of trust should be invalid for any purpose for which it is executed, such invalidity for such purpose shall not impair its validity for any other purpose and in the event that any portion of the indebtedness under the note when it is held by the Government or any assignee of this deed of trust, or any portion of the indebtedness to the Government under this deed of trust, is not validly secured hereunder, then in that event, the first payments made upon any such indebtedness shall be applied in payment of that portion of the indebtedness which is not validly secured, and no payment shall be applied toward that portion of the indebtedness secured by a valid lien hereunder until any indebtedness not so secured shall have been paid in full.

(28) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable.

~~IT IS AGREED by and between Borrower and the Government that the Government will, for the sum of \$~~
erect, construct, complete and repair buildings or other improvements upon, and will furnish all labor and material necessary for the purpose of making such repairs and improvements upon said property as are described in the Development Plan agreed to in writing by Borrower and the Government and made a part hereof and incorporated herein by reference, except labor to be performed by Borrower; to secure which sum Borrower hereby gives and creates a valid constitutional and contractual lien upon said property; and that if said sum is not actually expended for such repairs and improvements, any amount not so expended shall be credited on the indebtedness evidenced by the note. It is further agreed that a failure to complete said repairs and improvements, or failure to complete same according to said Development Plan, shall not defeat said indebtedness and lien, but in such event said indebtedness and lien upon said property shall exist in favor of the Government or its assigns for the amount herein agreed upon, less such amount as would be reasonably necessary to complete said repairs and improvements according to said Development Plan.

~~BORROWER, for the express purpose of inducing the Government to make or insure the loan evidenced by the note described herein, represent that Borrower does not reside upon, use, or claim, as either a business or residence homestead, the property described above, but that Borrower now resides upon, used and claims as a homestead the following described tract, lot or parcel of land, the fee simple title to which is vested in Borrower:~~

(29) IMPORTANT NOTICE FOR HOMESTEAD IMPROVEMENT LIENS: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

WITNESS the signature(s) of borrower on this 22nd day of November, 1989.

ATTEST:

Curtis Colegrove Sr.
Secretary

HIGH POINT WATER SUPPLY CORPORATION

By

Sammie Bland

Sammie Bland, President

STATE OF TEXAS

COUNTY OF KAUFMAN

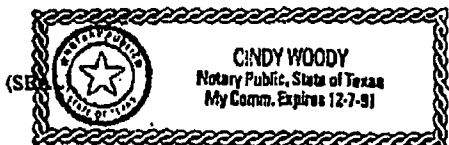
ACKNOWLEDGMENT

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____

Sammie Bland, President of High Point Water Supply Corporation, a Texas corporation

known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing instrument, and acknowledged to me that he (she) (they) executed the same for the purposes and consideration therein expressed., on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 22nd day of November, 1989.



Cindy Woody

Notary Public in and For
the State of Texas

~~CLERK OF DISTRICT COURT~~

STATE OF TEXAS

COUNTY OF _____

I, the undersigned, do hereby certify that the foregoing instrument was filed for record in my office on the

____ day of _____ A. D., 19____,

at _____ o'clock _____ M., and was duly recorded

on this _____ day of _____, A. D.,

19____, in Volume _____, page _____

of the Deed of Trust Records of said County.

WITNESS MY HAND and the seal of the County Court

of Said County at my office in _____

the day and year last above written.

County Clerk _____ County, Texas

By _____ Deputy

I.

FIRST TRACT:

BEING a part of the Juan Lopez 26 Labor Survey, and being 1.0 acres of land out of a 60 acre tract of land as described in deed from J. J. Davis, Jr. to R. D. Davis and recorded in Volume 246, Page 237 of the Deed Records of Kaufman County, Texas, dated March 31, 1936, and being more particularly described as follows:

BEGINNING at a point in the West line of said 60 acre tract, said point being South 45 degrees West, 348 feet along said West line from the North corner of said 60 acre tract;

THENCE South 45 degrees East, 208.71 feet to a point for corner;
THENCE South 45 degrees West, 208.71 feet to a point for corner;
THENCE North 45 degrees West, 208.71 feet to a point for corner;
THENCE North 45 degrees East, 208.71 feet to the place of beginning, and containing 1.0 acre of land.

SECOND TRACT:

BEING a tract of land out of the Evert E. Samuels and William D. Samuels 402.6 acre tract of land, the latter tract being out of a survey of one league and one labor of land known as Survey No. 52, and described in Volume 278, Pages 254 and 255, of the Deed Records of Kaufman County, Texas, the former tract being described by metes and bounds as follows:

BEGINNING at a point in the most Northeasterly corner of said 402.6 acre tract, said point being in the centerline of a County Road;

THENCE South 45 degrees East, along the Northeast line of said 402.6 acre tract, and along the centerline of said County Road, a distance of 100 feet to a point;

THENCE South 45 degrees West, 115 feet to a point;

THENCE North 45 degrees West, 100 feet to a point in the Northwest line of said 402.6 acre tract;

THENCE North 45 degrees East along said Northwest line a distance of 115 feet to the place of beginning, and containing 0.264 acres of land.

THIRD TRACT:

BEING all that tract of land in Kaufman County, Texas, a part of the W. E. Sullivan Survey Abstract No. 480, and being a part of the tract conveyed from C. C. Bennett to H. J. Myric, of record in Volume 121, Page 57, Kaufman County Deed Records, and being further described as follows:

COMMENCING at a steel rod for the Southwest corner of Michael Ray Fulton 5.0 acre tract, said point also being in the Northeast ROW line of Colquitt Road (County Road);

THENCE in a Southeasterly direction along the West line of the Fulton 5 acre tract and the Northeast ROW line of a County Road, a distance of 251.53 feet to the point and place of beginning,

said point being the Southeast corner of the Fulton five acre tract and the Southwest corner of this tract;
THENCE North 45 degrees 00 minutes 30 seconds East, 280.4 feet along the East property line of the Fulton tract to a stake for the Northwest corner of this tract;
THENCE Southeast perpendicular to the East line of the Fulton tract, 150 feet to a stake for the Northeast corner of this tract;
THENCE South 45 degrees 00 minutes 30 seconds West, a distance of 280.4 feet to a point in the Northeast ROW line of Colquitt Road, said point being the Southeast corner of this one acre tract;
THENCE Northwesterly along the Northeast ROW line of Colquitt Road a distance of 150 feet to the Southwest corner of this tract for the point and place of beginning, containing one acre of land.

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Deed of Trust dated July 7, 1968 from High Point Water Supply Corporation to Don A. Robinson, Trustee, securing payment of one promissory note in the original principal amount of \$181,222.01 payable to The American National Bank of Terrell, Texas recorded in Volume 834, Page 208, Real Estate Records, Kaufman County, Texas.
2. Utility Security Instrument from High Point Water Supply Corporation to Don A. Robinson, Trustee for the benefit of The American National Bank of Terrell, Texas, filed for record on July 13, 1968 under File No. 88-185244 in the Office of the Secretary of State of Texas.
3. Reservation of an undivided 1/4 of all oil, gas and other minerals as described in Warranty Deed dated January 2, 1943 from Aetna Life Insurance Company to Evert E. Samuels and William D. Samuels recorded in Volume 278, Page 254, Deed Records, Kaufman County, Texas. (SECOND TRACT)
4. Reservation of an undivided 1/4 mineral interest as described in Warranty Deed dated September 11, 1951 from Agnes Moreland et al. to M. Z. Hooten recorded in Volume 348, Page 298, Deed Records, Kaufman County, Texas. (THIRD TRACT)
5. Easement dated February 3, 1954 from R. D. Davis to Kaufman-Van Zandt Soil Conservation District recorded in Volume 381, Page 41, Real Estate Records, Kaufman County, Texas. (FIRST TRACT)
6. Easement dated September 20, 1962 from M. W. Hooten et ux. to Lone Star Gas Company recorded in Volume 459, Page 82B, Deed Records, Kaufman County, Texas. (THIRD TRACT)

Exhibit A to Utility Security Instrument- Real Estate Deed of Trust for Texas dated November 22, 1989 from High Point Water Supply Corporation to J. Lynn Futch, Trustee,
Page 2 of 4

O.C. SB

Together with any and all other real property now owned, held, leased, or claimed or which may hereafter be owned, held, leased or claimed by Borrower in said counties.

II. 1 0 0 0 2 7 3 3 6 9

All right, title and interest of Borrower in, to and under any and all rights, grants, privileges, rights of way and easements now owned, held, leased, enjoyed or exercised, or which may hereafter be owned, held, leased, acquired, enjoyed or exercised by Borrower for the purposes of, and in connection with, the construction or operation by or on behalf of Borrower of water distribution lines, or systems, and facilities, whether underground or overhead or otherwise, or of any water pumping and filter plants and facilities, wherever located in said counties.

III.

All right, title and interest of Borrower in, to and under any and all licenses, franchises, ordinances, privileges and permits heretofore granted, issued or executed, or which may hereafter be granted, issued or executed, to it or to its assignors by the United States of America, or any state or by any county, city, municipality, or other political subdivision thereof, or by any agency, board, commission or department of any of the foregoing, or by any individual, partnership or corporation, authorizing the construction, acquisition, or operation of water pumping or filter plants or distribution lines, or systems, in the said counties.

IV.

All right, title and interest of Borrower in, to and under any and all contracts heretofore or hereafter executed by and between Borrower and any individual, partnership, corporation, state, county, city, municipality, or other political subdivision thereof, providing for the purchase of water by Borrower. Borrower does hereby agree not to modify or terminate any contract providing for the purchase of water without first obtaining the consent of FmHA to such modification or termination.

V.

All water charges and other income from the sale of water, tolls, assessments, accounts receivable and other choses in action of whatever nature.

VI.

Water well equipment and distribution lines thereof together with all appurtenances thereto presently owned or which may

Exhibit A to Utility Security Instrument- Real Estate Deed of Trust for Texas dated November 22, 1989 from High Point Water Supply Corporation to J. Lynn Futch, Trustee,
Page 3 of 4

CC. SB

hereafter be acquired by Borrower, including but not limited to pump house and mechanical equipment, pumps, motors, electrical material, pipes, valves, meters, couplings, drills, casings, reservoirs and tanks located on the above-described property, and all collateral similar to the above hereafter acquired by Borrower, and all substitutes and replacements for, accessions, attachments and other additions to, and tools, parts and equipment used in connection with the above collateral.

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

EXHIBIT "C"

OVERSIZED DOCUMENT(S)

TO VIEW

OVERSIZED DOCUMENT(S)

PLEASE GO TO

CENTRAL RECORDS

(512) 936-7180

EXHIBIT "D"

BY: ML

Customer History Report
 Select Customer By: Account Range: From 102735 To 102735
 Status: All Accounts
 Transaction Types: Range: >= 12/1/2019 <= 2/19/2020

Date	Type	Cls	Amount	Applied	Reference	Usage	Balance
Account: 102735 MM WALDEN POND, WILLIAM HAMILTON							
Location: 09-1321 14111 FM 548							
12/10/19	PAYMENT	CHK	-42.89		6000024		0.00
12/20/19	WAT SURCHG	SCI	0.21	0.21	REGULATORY FEE		0.21
12/20/19	WATER	WAT	42.45	42.45	39490-44140 A12/17/20	4650	42.66
12/20/19	OTHER	OTH	1.00	1.00			43.66
01/13/20	PAYMENT	CHK	-43.66		6000025		0.00
01/24/20	WAT SURCHG	SCI	0.26	0.26	REGULATORY FEE		0.26
01/24/20	WATER	WAT	51.39	51.39	44140-50400 A1/21/202	6260	51.65
01/24/20	OTHER	OTH	1.00	1.00			52.65
02/11/20	PAYMENT	CHK	-52.65		6000030		0.00

ENDING BAL							0.00

* Denotes an unposted transaction.

<< End of Customer History Report: 1 Page(s) >>

EXHIBIT "E"

DOCKET NO. 48801

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

PROPOSAL FOR DECISION

This Proposal for Decision (PFD) recommends that the Commission dismiss the application of T.J. Bradshaw Construction, Ltd. to amend Jonah Special Utility District's certificate of convenience and necessity (CCN) in Williamson County by expedited release due to the preemption of federal law.

I. Background

On October 18, 2018, T.J. Bradshaw filed a petition with the Commission for expedited release from Jonah SUD's water certificate of CCN number 10970 and sewer CCN number 21053¹ under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l). In support of its petition, T.J. Bradshaw provided an affidavit from Troy Bradshaw, partner in T.J. Bradshaw, certifying that the applicant is the sole owner of the 256.33-acre tract for which expedited release is sought, and that the tract is more than 25 contiguous acres, not receiving water service, and located entirely within Williamson County.²

On November 16, 2018, Jonah SUD filed a motion to intervene. In Order No. 3 issued on November 27, 2019, the administrative law judge (ALJ) granted Jonah SUD's motion to intervene. On December 7, 2018, Jonah SUD filed its response to the petition arguing, among other things, that decertification of any portion of its service area would be a violation of 7 United States Code (U.S.C.) § 1926(b).³ In support of its argument, Jonah SUD included an affidavit from Bill Brown,

¹ On December 18, 2018, Commission Staff clarified that T.J. Bradshaw's property does not overlap with the sewer CCN area for Jonah SUD, and there was no need for the requested release from Jonah SUD's sewer CCN.

² 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, at 4.

³ Jonah Water SUD's Response to Petition for Expedited Release, at 2.

General Manager of Jonah SUD, certifying that the district has an outstanding loan issued by the United States Department of Agriculture Rural Development Division (USDA) in 1998, Case Number 51-046-0741773048.⁴ On December 18, 2018, Commission Staff recommended the approval of the expedited release from the water CCN.

On March 27, 2019, the United States District Court for the Western District of Texas issued its final judgment in *Crystal Clear Special Utility District v. Walker*, Cause No. AU-17-CV-254-LY (W.D. Tex.). This judgment is currently on appeal to the United States Court of Appeals for the Fifth Circuit;⁵ however, because the court has not issued its final judgment on appeal, this proposal for decision is based on the judgment of the district court. In its judgment, the district court ordered and declared:

(1) Public Utility Commission's Final Order of September 28, 2016, in the matter titled Tex. Pub. Util. Comm'n, *Petition of Las Colinas San Marcos Phase I LLC*, Docket No. 46148 was entered in violation of 7 U.S.C. § 1926(b) and is void.

(2) 7 U.S.C. § 1926 preempts and voids the following section of Tex. Water Code § 13.254(a-6): "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program."

(3) To the extent that Tex. Water Code § 13.254(a-5) directs the Public Utility Commission to grant a petition for decertification that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b), the statute is preempted and is void.⁶

In response to the judgment in *Crystal Clear*, the ALJ in the present docket issued Order No. 4 on May 24, 2019, requesting additional information from Jonah SUD regarding its federal loan. On June 7, 2019, Jonah SUD filed, along with the requested loan documentation, a motion to dismiss requesting that the Commission dismiss the petition on two grounds: (1) federal preemption by 7 U.S.C. § 1926; and (2) lack of subject matter jurisdiction based on the Commission's failure to act on the petition within 60 days of its filing as indicated by TWC § 13.254(a-6).

⁴ *Id.*, at 7.

⁵ *Crystal Clear Special Utility District v. Walker, D'Andrea, Botkin, et.al.*, No. 19-50556 (5th Cir. filed June 18, 2019).

⁶ *Crystal Clear Special Utility District v. Walker, D'Andrea, Botkin, et.al.*, No. 1-17-CV-254-LY (W.D. Tex. March 27, 2019), *appeal docketed*, 19-50556 (5th Cir. June 18, 2019).

On July 12, 2019, Commission Staff filed its response to Jonah SUD's motion to dismiss. Commission Staff agreed⁷ that the Commission cannot interfere with Jonah SUD's exclusive right to provide service to T.J. Bradshaw under § 1926(b), but disagreed with Jonah SUD's subject matter jurisdiction argument noting that Jonah SUD provided no legal basis for its assertions.⁸ On July 26, 2019, Jonah SUD filed a reply to Commission Staff's response, again requesting that the Commission dismiss the petition because Texas Water Code § 13.254(a-6) is preempted by federal law.⁹

II. Analysis

A. 7 U.S.C. § 1926

The USDA's water and sewer utility loan program is governed by 7 U.S.C. § 1926. Section 1926 provides protection for loan holders under subsection (b) which states:

The service provided or made available through any such association [i.e. a utility that provides water or sewer service and has an outstanding federal loan] shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

Congress enacted the protections of 7 U.S.C. § 1986(b) for two primary purposes, "(1) to encourage rural water development by expanding the number of potential users of such systems, thereby decreasing the per-user cost, and (2) to safeguard the viability and financial security of such associations . . . by protecting them from the expansion of nearby cities and towns."¹⁰

According to the court in *Crystal Clear*, in order to be eligible for protection under 7 U.S.C. § 1926(b), Jonah SUD must establish, "(1) that it is an association as defined in Section 1926, (2) that the association has an outstanding qualifying federal loan, and (3) that the utility provided

⁷ Commission Staff's response stated, "Staff disagrees with the District's assertion that §13.254(a-5) is preempted by federal law." However, based on a full reading of the text, the ALJ construes "disagrees" to be a typographical error.

⁸ Reply to Commission Staff's Response to Jonah's Motion to Dismiss, at 2.

⁹ Jonah Water SUD's Reply to Commission Staff's Response to Jonah's Motion to Dismiss, at 1.

¹⁰ *Green Valley Special Utility District v. Walker*, 315 F. Supp.3d 992, 1001 (W.D. Tex 2018) (quoting *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 915–16 (5th Cir. 1996)).

or made water service available.”¹¹ Under 7 U.S.C. § 1926, an association includes, “corporations not operated for profit, . . . , and public and quasi-public agencies.”¹² Special utility districts are political subdivisions established under Texas Water Code chapter 65. As a special utility district, Jonah SUD has established that it is an association under 7 U.S.C. § 1926.

Jonah SUD has also established that it has an outstanding qualifying loan. In support of its position, Jonah SUD included an affidavit from Bill Brown, General Manager of Jonah SUD, certifying that it has an outstanding loan issued by the United States Department of Agriculture Rural Development Division in 1998, Case Number 51-046-0741773048. According to the affidavit, the original loan amount was \$1,053,000, and Jonah SUD continues to make payments under the loan. In addition to the affidavit, on June 7, 2019, Jonah SUD filed its promissory note and security agreement dated April 9, 1998, confirming the stated loan amount of \$1,053,000. The affidavit and loan documents are sufficient to establish that Jonah SUD has an outstanding qualifying federal loan.

Jonah SUD also satisfies the third criteria, that it has provided or made water service available. “Fifth Circuit case law is clear that ‘provided or made available’ is satisfied if an association has a legal duty to provide service to the property at issue under Texas law, *i.e.*, it has a certificate of convenience and necessity that includes the relevant parcel.”¹³ Jonah SUD has a legal duty to provide service to T.J. Bradshaw’s tract which is located entirely within its water CCN number 10970.

Under the standard set out in *Crystal Clear*, after determining that Jonah SUD is eligible for protection under 7 U.S.C. § 1926(b), the Commission must determine whether granting the petition would violate the terms of § 1926(b) by curtailing the service provided or made available by Jonah SUD. Unlike the petitioner in *Crystal Clear*, T.J. Bradshaw does not specify the reason for its request or name the utility that would provide service to the tract after the requested release. However, it can be presumed that it will not remain service-less in perpetuity. Even without a named preferred service provider, “[t]here is . . . preemption of any local or state law that purports

¹¹ *Crystal Clear Special Utility District v. Marquez*, 316 F. Supp. 3d at 969 (W.D. Tex 2018), *appeal docketed*, 19-50556 (5th Cir. June 18, 2019).

¹² 7 U.S.C. § 1926(b).

¹³ *Crystal Clear.*, 316 F. Supp. 3d at 971.

to take away from an indebted rural water association *any territory* for which the association is entitled to invoke the protection of § 1926 (b).”¹⁴ Removing any service area that Jonah SUD may potentially serve while they are federally indebted would be curtailing the service made available by Jonah SUD. The Commission’s approval of T.J. Bradshaw’s petition to remove its 256.33-acre tract from Jonah’s water CCN number 10970 would curtail the service provided or made available by Jonah SUD. According to the precedent set in *Crystal Clear*, the Commission’s authority to grant T.J. Bradshaw’s petition is preempted by 7 USC § 1926(b).

B. Subject Matter Jurisdiction

Because the ALJ is recommending that the motion to dismiss be granted on the grounds of federal preemption, it is unnecessary to discuss dismissal on the grounds of lack of subject matter jurisdiction.

For these reasons, the ALJ concludes that, under 16 TAC § 22.181(d)(11), the petition of T.J. Bradshaw should be dismissed.

III. Findings of Fact

The ALJ makes the following findings of fact.

1. T.J Bradshaw owns a tract of land in Williamson County that is approximately 256.33 acres.
2. Jonah SUD is a political subdivision of the State of Texas operating under TWC chapter 65 and holding water CCN number 10970.
3. On October 18, 2018, T.J. Bradshaw filed a petition for the expedited release of the 256.33- acre tract in Williamson County from Jonah SUD’s water CCN number 10970.
4. T.J Bradshaw provided an affidavit from Troy Bradshaw, partner in T.J. Bradshaw, certifying that the company is the sole owner of the 256.33-acre tract, and that the tract is more than 25 contiguous acres, not receiving water service, and located entirely within Williamson County.

¹⁴ *Crystal Clear*, 316 F. Supp. 3d at 973 (quoting *Pittsburg Cty. Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694, 716 (10th Cir. 2004)) (emphasis added).

5. The entirety of T.J Bradshaw's 256.33-acre tract is located within Jonah SUD's water CCN number 10970.
6. On November 16, 2018, Jonah SUD filed a motion to intervene.
7. In Order No. 3 issued on November 27, 2019, the ALJ granted Jonah SUD's motion to intervene.
8. On December 7, 2018, Jonah SUD filed its response to the petition.
9. Jonah SUD included in its motion to intervene and its response to the petition an affidavit from Bill Brown, General Manager of Jonah SUD, certifying that it has an outstanding loan issued by the United States Department of Agriculture Rural Development Division in 1998, Case Number 51-046-0741773048.
10. On December 18, 2018, Commission Staff recommended the approval of the expedited release from the water CCN.
11. On December 21, 2018, Commission Staff filed an amended recommendation on final disposition reaffirming their recommendation and providing a corrected map.
12. On March 27, 2019, the United States District Court for the Western District of Texas issued its final judgment in *Crystal Clear* declaring, among other things, that 7 U.S.C. § 1926 preempts and voids the section of TWC § 13.254(a-6) that reads, "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program." In addition, the court held that U.S.C. § 1926 preempts and voids TWC § 13.254(a-5) to the extent it directs the Commission to grant a petition for decertification that meets the requirements of that provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 U.S.C. § 1926(b).
13. In Order No. 4 issued on May 24, 2019, the ALJ requested additional information from Jonah SUD regarding its federal loan.
14. On June 7, 2019, Jonah SUD filed a motion to dismiss requesting that the Commission dismiss the petition on two grounds: (1) federal preemption by 7 U.S.C. § 1926, and (2) lack of subject matter jurisdiction based on the Commission's failure to act on the petition within 60 days of its filing as indicated by TWC § 13.254(a-6).

15. On June 7, 2019, Jonah SUD provided copies of its USDA loan promissory note and security agreement, dated April 9, 1998.
16. On July 12, 2019, Commission Staff filed its response to Jonah SUD's motion to dismiss in which it conceded that T.J. Bradshaw's petition was preempted by federal law.
17. On July 26, 2019, Jonah SUD filed a response to Commission Staff's response requesting that the Commission dismiss the petition because TWC § 13.254(a-6) is preempted by federal law.

IV. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under TWC §§ 13.041 and 13.241.
2. Under 16 TAC § 22.181(c), no hearing was held in this matter, and none is necessary, because the facts are established as a matter of law by the administrative record, of which the ALJ takes official notice.
3. The Commission may dismiss a proceeding with or without prejudice for, among other reasons: "other good cause shown" (16 TAC § 22.181(d)(11)).
4. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than 16 TAC § 22.181(g)(1) or (2) requires preparation of a proposal for decision.
5. Jonah SUD is an association under 7 USC § 1926.
6. Jonah SUD is federally-indebted under 7 USC § 1926(b).
7. Jonah SUD has "provided or made service available" under 7 USC § 1926(b).
8. According to the precedent set in *Crystal Clear*, Jonah SUD is entitled to the protections of 7 USC § 1926(b).
9. According to the precedent set in *Crystal Clear*, the following section of TWC §13.254(a- 6): "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program," is preempted by 7 U.S.C. §1926 and void.

10. According to the precedent set in *Crystal Clear*, TWC § 13.254(a-5) is preempted and void to the extent that it directs the Commission to grant a petition for decertification that meets the requirements of the provision without regard to whether the utility holding the certification is federally indebted and otherwise entitled to the protections of 7 USC § 1926(b).
11. According to the precedent set in *Crystal Clear*, the Commission's approval of T.J. Bradshaw's petition would curtail the service provided or made available by Jonah SUD.
12. According to the precedent set in *Crystal Clear*, the Commission's authority to grant T.J. Bradshaw's petition is preempted by 7 USC § 1926(b).
13. Because the Commission is preempted by federal law from granting the petition, according to the precedent set in *Crystal Clear*, dismissal of this proceeding is warranted under 16 TAC § 22.181(d)(11).

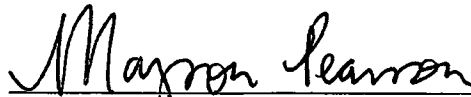
V. Ordering Paragraphs

The ALJ proposes the following ordering paragraphs.

1. The application is dismissed due to federal preemption.
2. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 17th day of October 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



MAYSON FEARSON

ADMINISTRATIVE LAW JUDGE