



Control Number: 51249



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DOCKET NO. 51249

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PETITION OF CROOK ROSE, INC. TO	§	BEFORE THE PUBLIC UTILITY
AMEND LINDALE RURAL WATER	§	COMMISSION
SUPPLY CORPORATION'S	§	COMMISSION OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN SMITH COUNTY	§	
BE EXPEDITED RELEASE	§	

**LINDALE RURAL WATER SUPPLY CORPORATION'S
SUPPLEMENTAL RESPONSE TO PETITION**

Lindale Rural Water Supply Corporation (LRWSC or Intervenor) files this Supplemental Response to Crook Rose, Inc.'s (Applicant) Petition for streamlined expedited release (SER) pursuant to Texas Water Code § 13.2541 (Petition) that initiated this docket. In support, LRWSC shows as follows.

I. PROCEDURAL BACKGROUND

On September 3, 2020, Applicant submitted its Petition for SER from LRWSC's water CCN No. 10758 service area for a 69.197-acre tract of land in Smith County, Texas (Property). The Petition was deemed administratively complete on October 6, 2020.¹ Intervenor timely filed a response to the Petition on November 5, 2020.² Commission Staff filed a recommendation to deny the Petition on November 19, 2020.³ Applicant filed a reply to both Intervenor and Commission Staff on November 30, 2020.⁴

Applicant's reply raises new issues. Intervenor will address those issues here, but it maintains that the Commission should deny the Petition.

¹ Order No. 2 Finding Petition Administratively Complete and Notice Sufficient and Establishing Procedural Schedule (Oct. 6, 2020).

² Lindale Rural Water Supply Corporation's Response to Petition (Nov. 5, 2020).

³ Commission Staff's Recommendation on Final Disposition (Nov. 19, 2020).

⁴ Crook Rose Reply to Responses filed by Lindale Rural Water Supply Corporation and Commission Staff (Nov. 30, 2020).

II. ARGUMENTS AND AUTHORITIES

Intervenor's General Manager, Jamie Davlin,⁵ has reviewed the competing affidavit filed by Applicant and executed by its consultant, Rea Boudreaux.⁶ LRWSC notes that Applicant failed to note either the existence of LRWSC facilities within its property or federal debt when it filed the Petition. Mr. Davlin agrees with Mr. Boudreaux's affidavit in part. However, Mr. Davlin disagrees with the remainder. Further, Applicant is incorrect about their legal contentions related to federal debt.

A. Facility Location Issues

Petitioner acknowledges there is a LRWSC 8" water line across the south side of the Property as LRWSC reported in its Response.⁷ However, after closer review, Mr. Davlin can confirm that the LRWSC water line he believed was across the north side of the Property is actually further north along CR 472, which is approximately 1,000 feet north of the Property.⁸ Mr. Davlin has executed a new affidavit with a revised map that represents the approximate locations of LRWSC's water lines with this change.⁹

Petitioner contends that the LRWSC water line to the west of the Property is in the City of Lindale's CCN.¹⁰ LRWSC disputes that claim. In fact, that line is just outside City of Lindale's CCN area within a county right of way along CR 433, which makes it inside the LRWSC CCN No. 10758 service area directly across the road from the Property. Mr. Boudreaux is wrong.

⁵ Applicant incorrectly refers to Mr. Davlin as "Mr. Devlin" in its reply.

⁶ Crook Rose Reply at Exhibit A (Nov. 30, 2020).

⁷ Compare Crook Rose Reply at Exhibit A (Nov. 30, 2020), with Lindale Rural Water Supply Corporation's Response to Petition (Nov. 5, 2020).

⁸ See **Exhibit A**.

⁹ *Id.*

¹⁰ Crook Rose Reply at Exhibit A (Nov. 30, 2020).

To the extent the remainder of Mr. Boudreaux's affidavit conflicts with Mr. Davlin's previous affidavit without correction in Mr. Davlin's affidavit submitted here, Mr. Davlin stands by his previous testimony. Mr. Davlin maintains that LRWSC has more than enough water supply capacity to serve the Property. Moreover, the fact that LRWSC has an 8" water line on the Property renders many of Mr. Boudreaux's opinions about the state of LRWSC's other water facilities irrelevant.

B. Federal Debt Issue

LRWSC responds to Petitioner's federal debt arguments as follows. First, Petitioner argues that Section 1926(b) "only applies if (1) the tract is included within the boundaries of a municipality or other public body, or (2) the Commission grants a 'private franchise' for water service within the tract" without citing any authority for this interpretation. In its recent *Green Valley* decision, the Fifth Circuit did not consider whether Section 1926(b) is limited in this fashion as opposed to simply preventing curtailment that allows another provider to serve,¹¹ and the Western District of Texas did not apply this limitation in deciding a Section 1926(b) case in 2019 involving a developer SER application.¹² Further, on information and belief, Petitioner is seeking release in order to seek water service from City of Lindale, a nearby municipality that does not require a CCN to serve.

Second, Petitioner has the burden of proof to show LRWSC cannot supply the Property according to the new *Green Valley* test and has clearly not met that burden.¹³ Petitioner has presented no details about its specific development needs to LRWSC or the Commission. But LRWSC knows better than Petitioner's consultant what it can or cannot supply to the Property as

¹¹ See *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460 (5th Cir. Aug. 7, 2020).

¹² See Final Judgment, Cause No. 1:17-CV-254-LY; *Crystal Clear Special Utility District v. Deann T. Walker, et al.*; in the United States District Court, Western District of Texas, Austin Division (W.D. Tex., Mar. 27, 2019).

¹³ 16 TAC § 24.12.

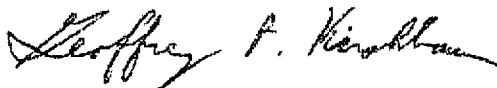
opposed to Petitioner's consultant. Plus, the existence of a LRWSC 8" water line within the Property should put the issue to rest.

In sum, Petitioner's legal analysis is flawed as is its contention that Petitioner cannot meet the Fifth Circuit's latest Section 1926(b) test. But Staff's position is that LRWSC's water line within the Property resolves the issue without the application of Section 1926(b).¹⁴ LRWSC concurs, but LRWSC maintains Section 1926(b) protection applies to this dispute.

III. CONCLUSION AND PRAYER

For all the reasons discussed herein, Intervenor Lindale Rural Water Supply Corporation respectfully requests that the Honorable Administrative Law Judge and the Commission deny or dismiss the Petition because the Property receives water service from Intervenor and LRWSC's CCN service area that includes the Property is protected from decertification by 7 U.S.C. § 1926(b). Alternatively, if the Commission grants the SER Petition over LRWSC's objections, LRWSC demands just and adequate compensation pursuant to TWC § 13.254(d) and (g), TWC § 13.2541(f)-(j), and 16 TAC § 24.245(i)-(j).

Respectfully submitted,

By: 

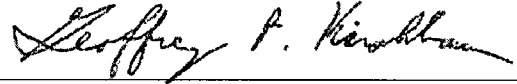
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**ATTORNEY FOR LINDALE RURAL WATER SUPPLY
CORPORATION**

¹⁴ Commission Staff's Recommendation on Final Disposition (Nov. 19, 2020).

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on December 7, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

A handwritten signature in black ink, reading "Geoffrey P. Kirshbaum". The signature is written in a cursive style with a horizontal line underneath it.

Geoffrey P. Kirshbaum

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BY EXPEDITED RELEASE	§	

AFFIDAVIT OF JAMIE DAVLIN

THE STATE OF TEXAS §
 §
COUNTY OF SMITH §

BEFORE ME, the undersigned official on this day personally appeared Jamie Davlin, who is personally known to me and first being duly sworn according to law, upon his oath deposed and said:

My name is Jamie Davlin. I am over the age of 18 years, reside in Wood County, Texas, and work in Smith County, Texas. I am of sound mind and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

I am the General Manager for Lindale Rural Water Supply Corporation (LRWSC), Intervenor in the above styled and numbered case, and I am authorized to make this affidavit on behalf of LRWSC.

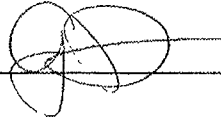
I have reviewed the November 30, 2020 Affidavit of Rea Boudreaux presented to the Commission by Crook Rose, Inc. (Petitioner) in this Docket No. 51249 in relation to its application for streamlined expedited release (SER) from LRWSC CCN territory. On November 5, 2020, LRWSC filed a response to the Petition that included a map showing the property sought for release (Property) and the locations of several LRWSC lines in the area. The attached map, **Attachment 1**, is a revised version of that map. After reviewing Petitioner's affidavit and facts on the ground, I am correcting the location of the LRWSC water line on the northern side of the Property. As Mr.

Boudreaux noted, and I have now confirmed, the location of that line is approximately 1,000 feet north of the Property along County Road (CR) 472. I previously thought the Property extended all the way to CR 472, but it does not. I will note that is actually a 6" inch water line at that location and not a 8" water line as I previously stated. LRWSC does have a new 8" water line planned which will be located along CR 472 and that LRWSC will use to serve a new development just north of that location.

However, as also shown in **Attachment 1**, the location of LRWSC's other lines in the area, including the 8" line that crosses the south side of the Property, were correctly shown. I disagree with Mr. Boudreaux's contention that the LRWSC water line on the west side of CR 433 is within the service area of City of Lindale CCN No. 12795 (that water line is actually a 8" water line and not a 6" water line as I previously stated). In fact, that line is just outside City of Lindale's CCN area within a county right of way along CR 433, which makes it inside the LRWSC CCN No. 10758 service area directly across the road from the Property. Mr. Boudreaux is mistaken.

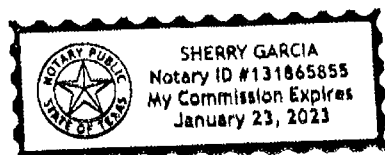
I stand by the remainder of my previous affidavit, including the fact that LRWSC has more than enough water supply capacity to serve the Property. All statements by Mr. Boudreaux that conflict with the remainder of my previous affidavit not addressed here are wrong.

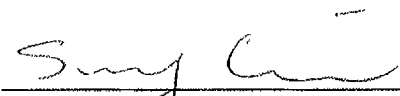
Further Affiant sayeth not.



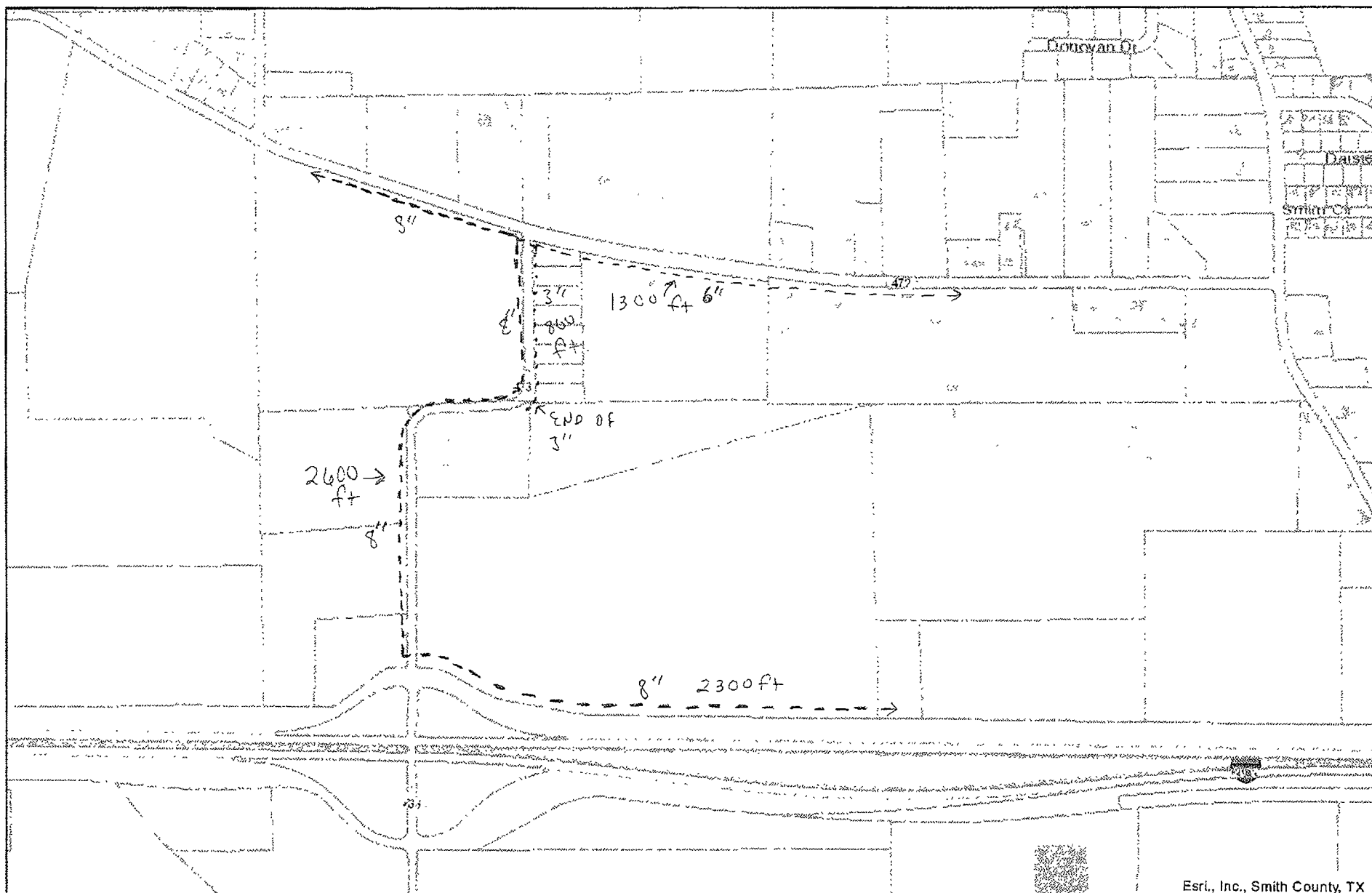
Jamie Davlin
General Manager
Lindale Rural Water Supply Corporation

SUBSCRIBED AND SWORN TO BEFORE ME on this the 7th day of December, 2020, to which witness my hand and official seal.





Notary Public in and for
The State of Texas




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Web AppBuilder for ArcGIS

Web AppBuilder for ArcGIS

 Tax Parcels

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

<http://www.smithcountymapsite.org>

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