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PETITION OF CROOK ROSE, INC. TO §
AMEND LINDALE RURAL WATER §
SUPPLY CORPORATION'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN SMITH COUNTY §
BY EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION

OF TEXAS
FILING CLERK

COMMISSION STAFF'S AMENDED RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this amended recommendation on final disposition and would show the following:

I. BACKGROUND

On September 3, 2020, Crook Rose, Inc. (Crook Rose) filed a petition to amend Lindale Rural Water Supply Corporation's (Lindale Rural) water certificate of convenience and necessity (CCN) No. 10758 in Smith County by streamlined expedited release under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Crook Rose asserts that the tract of land is at least 25 acres, is not receiving water service, and is located in Smith County, which is a qualifying county.

Order No. 4, filed December 16, 2020, granted Staff's request to file an amended final recommendation by December 18, 2020. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON FINAL DISPOSITION

Staff has reviewed the petition for streamlined expedited release, the information filed by Crook Rose on November 30, 2020, and the information filed by Lindale Rural on November 5 and December 7, 2020. As supported by the attached memorandum of Jolie Mathis of the Commission's Infrastructure Division, Staff recommends that the petition be approved. The maps and digital data filed by Crook Rose provide adequate information demonstrating that the petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h). Specifically, the maps and digital data provided by Crook Rose enable Staff to determine that the property to be released: (1) is at least 25 acres; (2) is located within Lindale Rural's certificated area; and (3) is located within Smith County, which is a qualifying county.

Staff further recommends that Crook Rose's property is not receiving water service. Lindale Rural initially claimed that there are active water lines that cross the north and south sides of the property, an active water line located "across the road" from the property, and a new well and storage tank "very close" to the property.¹ Lindale Rural later clarified that the active water line on the north side of the property is not actually located within the property.² Lindale Rural also asserts that it has the capacity to serve approximately 250 additional connections equivalent to a single-family connection.³

Crook Rose asserts that the water line across the road from the property is not located within Lindale Rural's water CCN, that the new well that is close to the property is not yet functional or connected to Lindale Rural's water system, and that the new storage tank does not exist.⁴ Crook Rose also disputes the claim that Lindale Rural's facilities have sufficient capacity to meet the planned use of the tract, arguing that there is not sufficient information available to determine how much capacity is available to serve the tract;⁵ however, Crook Rose did not expand upon what the planned use of the tract is or how many connections it includes.⁶

After Staff filed its initial recommendation on final disposition, the Commission filed an order in Docket No. 51114 granting a petition for streamlined expedited release.⁷ In that case, the CCN holder was not providing actual sewer service to the property; had a sewage treatment plant and sewage lift station adjacent to the property, and a sewer force main located within the tract; and had not committed or dedicated any facilities or lines to the property for sewer service.⁸ The record also contained information sufficient to determine that the CCN holder did not have adequate capacity to provide sewer service to the 238 connections planned for the property.⁹

¹ Lindale Rural Water Supply Corporation's Response to Petition at 3 (Nov. 5, 2020) (Lindale Rural's Response).

² Lindale Rural Water Supply Corporation's supplemental Response to Petition at 2 (Dec. 7, 2020).

³ Lindale Rural's Response, Exhibit A at 2.

⁴ Crook Rose Reply to Responses Filed by Lindale Rural Water Supply Corporation and Commission Staff at 3 (Nov. 30, 2020).

⁵ *Id.* at 4.

⁶ *Id.*, Affidavit of Rea Boudreaux at 3.

⁷ *Petition of Imperial Heights, Ltd. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114, Order (Dec. 17, 2020)

⁸ *Id.*, Order at Findings of Fact Nos. 29, 31-33, 36.

⁹ *Id.*, Order at Findings of Fact Nos. 34-35.

Assuming that all of Lindale Rural's revised representations regarding the location and existence of its facilities are accurate, the main difference between the facts on which the Commission decided Docket No. 51114 and the facts presented here, is the absence of definitive information demonstrating that Lindale Rural lacks adequate capacity to serve the planned use of the property. Otherwise, the facts presented by Lindale Rural to support the claim that Crook Rose's property is receiving water service are strikingly similar to the facts presented by the CCN holder in Docket No. 51114. Lindale Rural is not actually providing water service to the property and has not shown how the facilities that are near the property have been committed to serve it. Therefore, Staff recommends that the property is not receiving water service.

Finally, Staff recommends that Lindale Rural's claim of protection under 7 U.S.C. § 1926(b) is moot. The TWC explicitly states that "[t]he utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal loan program."¹⁰ While a federal district court had previously held that 7 U.S.C. § 1926(b) preempted TWC § 13.2541 (formerly, TWC § 13.254(a-5) and (a-6)), that decision has been vacated by the Fifth Circuit.¹¹ Further, the Fifth Circuit decision in *Green Valley Special Utility District v. City of Schertz* specifically dismissed Green Valley SUD's preemption claim and determined that the court lacked jurisdiction to consider such a claim.¹² Absent any federal court ruling on preemption, Staff's recommendation must comply with state law. As such, Staff's recommendation does not take Lindale Rural's federally indebted status into consideration.

Attached to Ms. Mathis' memorandum is a final map and certificate. Staff recommends that the Commission approve this map and certificate if the petition is granted.

III. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that Crook Rose's petition be granted.

¹⁰ TWC § 13.2541(d).

¹¹ *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

¹² *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 472 and 478 (5th Cir. Aug. 7, 2020) (en banc).

Dated: December 18, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

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CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on December 18, 2020, in accordance with the Order Suspending Rules, filed in Project No. 50664.

/s/ Eleanor D'Ambrosio
Eleanor D'Ambrosio

Public Utility Commission of Texas

Memorandum

TO: Eleanor D'Ambrosio, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: December 18, 2020

RE: Docket No. 51249 – *Petition of Crook Rose, Inc. to Amend Lindale Rural Water Supply Corporation's Certificate of Convenience and Necessity in Smith County by Expedited Release*

On September 3, 2020, Crook Rose, Inc. (Crook Rose) filed an application for streamlined expedited release from Lindale Rural Water Supply Corporation's (Lindale Rural) water Certificate of Convenience and Necessity (CCN) No. 10758 in Smith County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Crook Rose asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Smith County, which is a qualifying county.

Crook Rose included a statement indicating that a copy of the petition was sent via certified mail to Lindale Rural, the current holder of CCN No. 10758, on the date the petition was filed with the Commission. On October 5, 2020, Lindale Rural filed a motion to intervene.

Crook Rose submitted adequate maps delineating the requested area for expedited release with enough detail to confirm the accurate positioning of its digital data under 16 TAC § 24.245(k). The map and digital data are sufficient for determining the location of the requested release area within Lindale Rural's certificated area. Mapping Staff was able to confirm the acreage of the subject property, and determined that the requested area is located within Lindale Rural's water CCN. Furthermore, Crook Rose provided warranty deeds confirming Crook Rose's ownership of the tracts of land within Lindale Rural's certificated area. In addition, Crook Rose submitted a sworn affidavit attesting that the property was not receiving water from the CCN holder. The area for which release is requested is approximately 69 acres.

On November 5, 2020, Lindale Rural filed a response to the administratively complete petition, asserting that 1) even though Lindale Rural does not actively deliver water to Crook Rose, Crook Rose's property is receiving service because Lindale Rural maintains water facility lines located within Crook Rose's tract and facilities nearby Crook Rose's tract, and 2) because Lindale Rural is federally indebted, removal of the tract from the CCN is not permitted under

federal law. In support of its first argument, Lindale Rural provided the affidavit of Jamie Davlin, Lindale Rural's General Manager, asserting that:

- (1) Lindale Rural's water facilities were originally built with the intent of serving Crook Rose's tract,
- (2) Lindale Rural has 1,650 linear feet of active water main line located within Crook Rose's tract that crosses Crook Rose's north side,
- (3) Lindale Rural has 2,260 linear feet of active water main line located within Crook Rose's tract that crosses Crook Rose's south side,
- (4) Lindale Rural has 1,206 linear feet of active water main line that is located directly across the road from Crook Rose on Crook Rose's west side, and (5) Lindale Rural has other facilities very close to Crook Rose.

On November 19, 2020, I recommended that the petition be denied due to Lindale Rural's assertion that multiple facility lines are maintained on Crook Rose's tract.

On November 30, 2020, Crook Rose filed a reply to responses filed by Lindale Rural and asserted: "The mere presence of a single water line on the edge of the property that is not providing service to the property is insufficient to lead to a conclusion that the [t]ract is 'receiving water service' from Lindale Rural under the standards of TWC §§ 13.002(21) and 13.2541(b), and 16 Texas Administrative Code § 24.245([h]), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*."

On December 7, 2020, Lindale Rural filed a supplemental response that significantly altered the facts relevant to the determination of whether Crook Rose's property is receiving service. Specifically, there is 1,650 linear feet of 8" water line that Lindale Rural originally asserted crossed through Crook Rose's tract that is actually a 6" water line that is located 1,000 feet north of the tract.

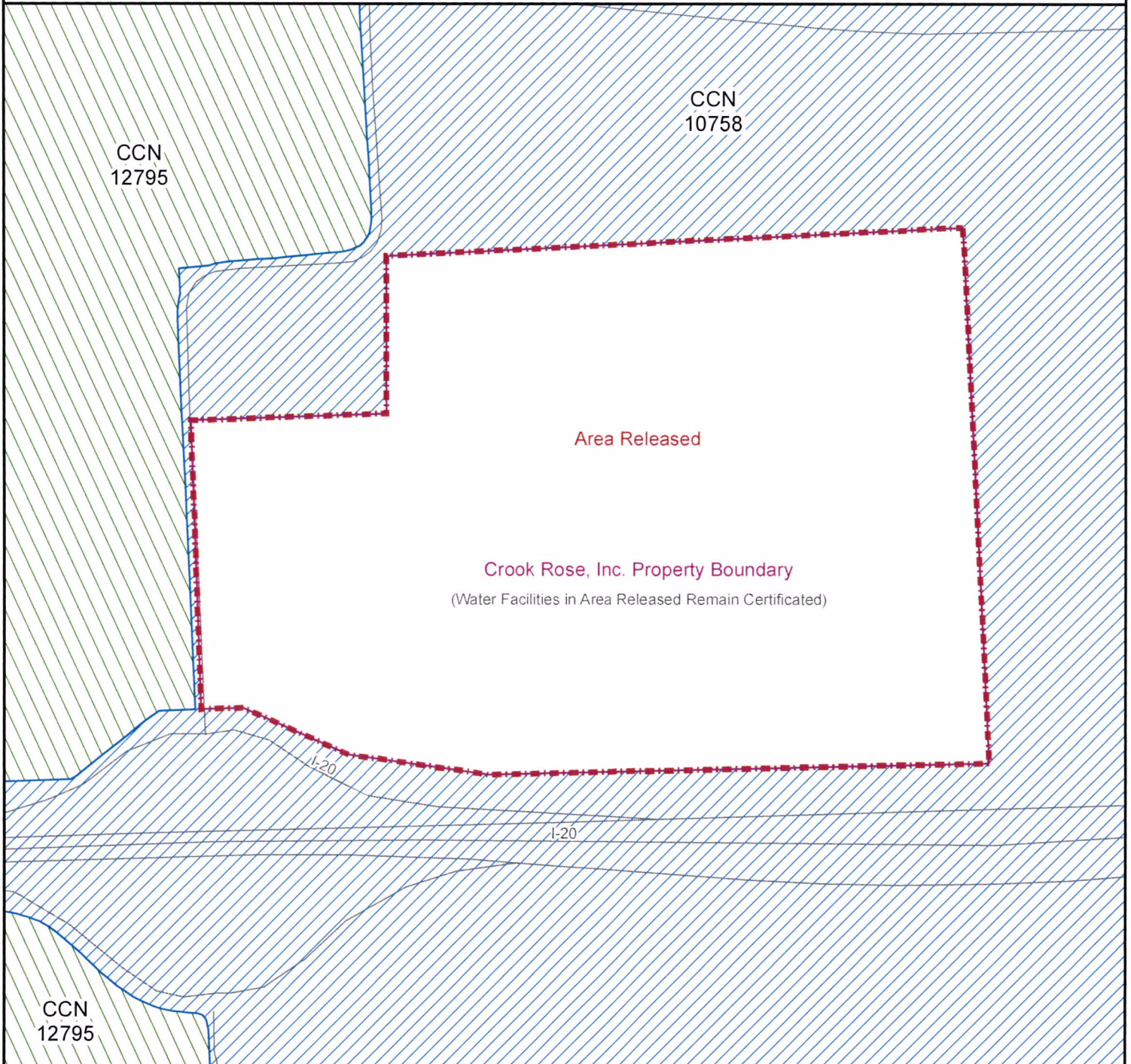
Based on the revised information, and the Commission's recent discussion on Docket No. 51114,¹ I recommend approval of the petition. In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), it is my opinion that Crook Rose has met the Commission's requirements to allow for the release of the requested area from Lindale Rural's CCN No. 10758. Enclosed is the final map and certificate for Commission approval.

Additionally, I recommend that a final map that indicates that the water facilities in the released area, but not the land, remain certificated to Lindale Rural and that a certificate be provided to the CCN holder to reflect that the CCN has been amended to remove the Crook Rose's tract.²

¹ *Petition of Imperial Heights, Ltd to Amend Aqua Texas, Inc 's Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114, Order (Dec. 17, 2020).



² *See id.*, Order at Ordering Paragraph No. 4 (approving the maps filed by Commission Staff on December 8, 2020); *see also*, Sewer and Water Maps (Dec. 8, 2020) (stating that "Sewer Facilities in the Area Released Remain Certificated").



Lindale Rural Water Supply Corporation
Portion of Water CCN No. 10758
PUC Docket No. 51249
Petition by Crook Rose, Inc. to Amend
Lindale Rural Water Supply Corporation's CCN by Expedited Release in Smith County



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

Water CCN

-  10758 - Lindale Rural WSC
-  12795 - City of Lindale

-  Area Released
-  Property Boundary

0 200 400
Feet



Map by: Komal Patel
Date created: November 10, 2020
Project Path: n:\finalmapping\
51249LindaleRuralWSC.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

Lindale Rural Water Supply Corporation

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Lindale Rural Water Supply Corporation is entitled to this

Certificate of Convenience and Necessity No. 10758

to provide continuous and adequate water utility service to that service area or those service areas in Smith County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51249 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Lindale Rural Water Supply Corporation to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 2020.