



Control Number: 51367



Item Number: 13

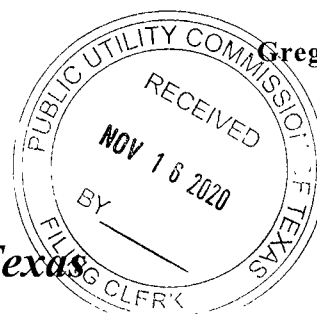
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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Katie Moore *KCM*
Administrative Law Judge

RE: **Open Meeting of December 17, 2020**
Docket No. 51367 – *Petition of Destiny Development, LLC, on Behalf of Cyd Bailey, to Amend West Wise Special Utility District's Certificate of Convenience and Necessity in Wise County by Expedited Release*

DATE: November 16, 2020

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, December 17, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Monday, December 7, 2020.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

/lsw
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DOCKET NO. 51367

PETITION OF DESTINY	§	PUBLIC UTILITY COMMISSION
DEVELOPMENT, LLC, ON BEHALF	§	
OF CYD BAILEY, TO AMEND WEST	§	OF TEXAS
WISE SPECIAL UTILITY DISTRICT'S	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN WISE COUNTY	§	
BY EXPEDITED RELEASE	§	

**PROPOSED ORDER
GRANTING STREAMLINED EXPEDITED RELEASE**

This Order grants to Cyd Bailey, on whose behalf Destiny Development, LLC filed the current petition,¹ streamlined expedited release of an approximately 31-acre tract of land owned by Ms. Bailey from West Wise Special Utility District's water certificate of convenience and necessity (CCN) number 10284 in Wise County. Following entry of this Order, the second phase of this docket—the determination of whether any compensation is owed by Ms. Bailey to West Wise—will commence. At completion of the compensation phase, an order addressing compensation will be entered.

I. Background

On September 25, 2020, Destiny Development filed a petition on behalf of Ms. Bailey, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). The petition seeks to remove from West Wise's water CCN number 10284 a 31-acre tract of land that Ms. Bailey owns in Wise County. On October 14, 2020, Destiny Development filed a supplement to the petition. The petition includes a declaration signed under penalty of perjury from Ms. Bailey, owner of the subject tract, declaring, among other things, that she owns the 31-acre tract, the tract is not receiving water service from West Wise, and that she authorizes Destiny Development and its counsel to seek the streamlined expedited release for the property at issue in this proceeding on her behalf.

On October 2, 2020, West Wise moved to intervene and filed initial comments. The motion to intervene was granted in Order No. 2 filed on October 14, 2020. West Wise is opposed to the petition due to the loss of its certificated service rights and the potential for stranded capacity in its existing utility infrastructure. On November 3, 2020, West Wise filed a response to the petition,

¹ Petition at exhibit A.

requesting that the petition be dismissed because, argues West Wise, the petition was not filed by the landowner, but by Destiny Development. Additionally, West Wise contends that it is fully capable of providing continuous and adequate retail water service to the property and that, in the event streamlined expedited release is granted, it is entitled to compensation. West Wise does not contend that the tract in question is receiving water service from West Wise. West Wise did not include in its response to the petition a notarized affidavit.

On October 21, 2020, West Wise filed responses to Commission Staff's first request for information, question numbers 1-1 through 1-4, in which West Wise confirmed that it has not entered into any contracts for water service with Destiny Development for the tract of land, there are no bills for water service to Destiny Development for the tract of land, there are no documents showing that West Wise is providing water service to Destiny Development for the tract of land, and that Destiny Development has never received water service from West Wise for the tract of land.

On November 10, 2020, Commission Staff filed a recommendation on final disposition in which it recommended that the petition be granted. Commission Staff also addressed West Wise's response to the petition, arguing that 16 TAC § 24.245(h)(3) does not prohibit a landowner from being represented by another party and Ms. Bailey has provided Destiny Development express permission to do so.

Based on the facts summarized above, the Commission finds that Destiny Development has established that Ms. Bailey is entitled to have the petition granted, including proving that the 31-acre tract is not receiving water service under the standards of TWC §§ 13.002(21) and 13.2541(b), and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*.²

II. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Ms. Bailey owns a 31-acre tract of land in Wise County located within the boundaries of West Wise's water CCN number 10284.

² 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

2. Destiny Development has express permission from Ms. Bailey to file and act on her behalf in this petition.
3. Destiny Development is a Texas limited liability company registered with the Texas secretary of state under filing number 803530185.

Petition

4. On September 25, 2020, on behalf of Ms. Bailey, Destiny Development filed a petition for streamlined expedited release of the 31-acre tract from West Wise's water CCN number 10284.
5. Destiny Development provided a warranty deed confirming Ms. Bailey's ownership of the tract and maps confirming the tract's location.
6. The tract is not receiving water service from West Wise, is owned by Ms. Bailey, is more than 25 acres, is within the boundaries of CCN number 10284 held by West Wise, and is located in Wise County.
7. Wise county is listed as a qualifying county approved for streamlined expedited release on the Commission's website.
8. The petition includes an unsworn, signed declaration from Ms. Bailey, declaring, among other things, that the tract is not receiving water service from West Wise.
9. In Order No. 3 filed on October 27, 2020, the administrative law judge (ALJ) found the petition administratively complete.

Notice

10. The petitioner sent a true and correct copy of the petition to West Wise on or about September 25, 2020.
11. In Order No. 3 filed on October 27, 2020, the ALJ found the notice sufficient.

Intervention and Response to Petition

12. On October 2, 2020, West Wise filed a motion to intervene.
13. In Order No. 2 filed on October 14, 2020, the ALJ granted the motion to intervene.
14. On November 3, 2020, West Wise filed a response to the petition.

15. In its response to the petition, West Wise asserted, among other things, that it has the capability to provide continuous and adequate retail water service to the property.

Water Service

16. West Wise has not committed or dedicated facilities or lines providing water service to the tract.
17. West Wise has not performed acts or supplied anything to the tract.
18. The tract is not receiving water service from West Wise.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition under TWC §§ 13.254 and 13.2541.
2. Notice of the petition was provided in compliance with 16 TAC §§ 22.55 and 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC § 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC § 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC § 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.
6. Because Ms. Bailey's unsworn declaration satisfies the requirements in Tex. Civ. Prac. & Rem. Code § 132.001, it constitutes satisfactory compliance with the requirement in 16 TAC § 24.245(h)(3) that an application for streamlined expedited release be accompanied by a notarized affidavit from the landowner.
7. To obtain release under TWC § 13.2541, a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
8. Wise County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).

9. The tract is not receiving water service under the standards of TWC §§ 13.002(21) and 13.2541 and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,³ and Commission rules.
11. Under TWC § 13.257(r) and (s), West Wise is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in the real property records of Wise County, and submit to the Commission evidence of the recording.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission removes the 31-acre tract owned by Ms. Bailey from the certificated area under West Wise's water CCN number 10284.
2. The Commission amends water CCN number 10284 in accordance with this Order.
3. The Commission's official service area boundary map for West Wise's water CCN number 10284 will reflect this change as shown on the attached map.
4. The Commission grants the certificate attached to this Order.
5. West Wise must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Wise County affected by the petition and file in this docket evidence of the recording no later than 45 days after receipt of this Order.
6. The amount of compensation owed by Ms. Bailey to West Wise, if any, will be determined by a separate order.
7. The procedural schedule specified in Order No. 3 remains in effect.
8. A copy of this Order will be provided to West Wise.

³ Tex. Gov't Code §§ 2001.001-.903.

9. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of December 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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Public Utility Commission of Texas

By These Presents Be It Known To All That

West Wise Special Utility District

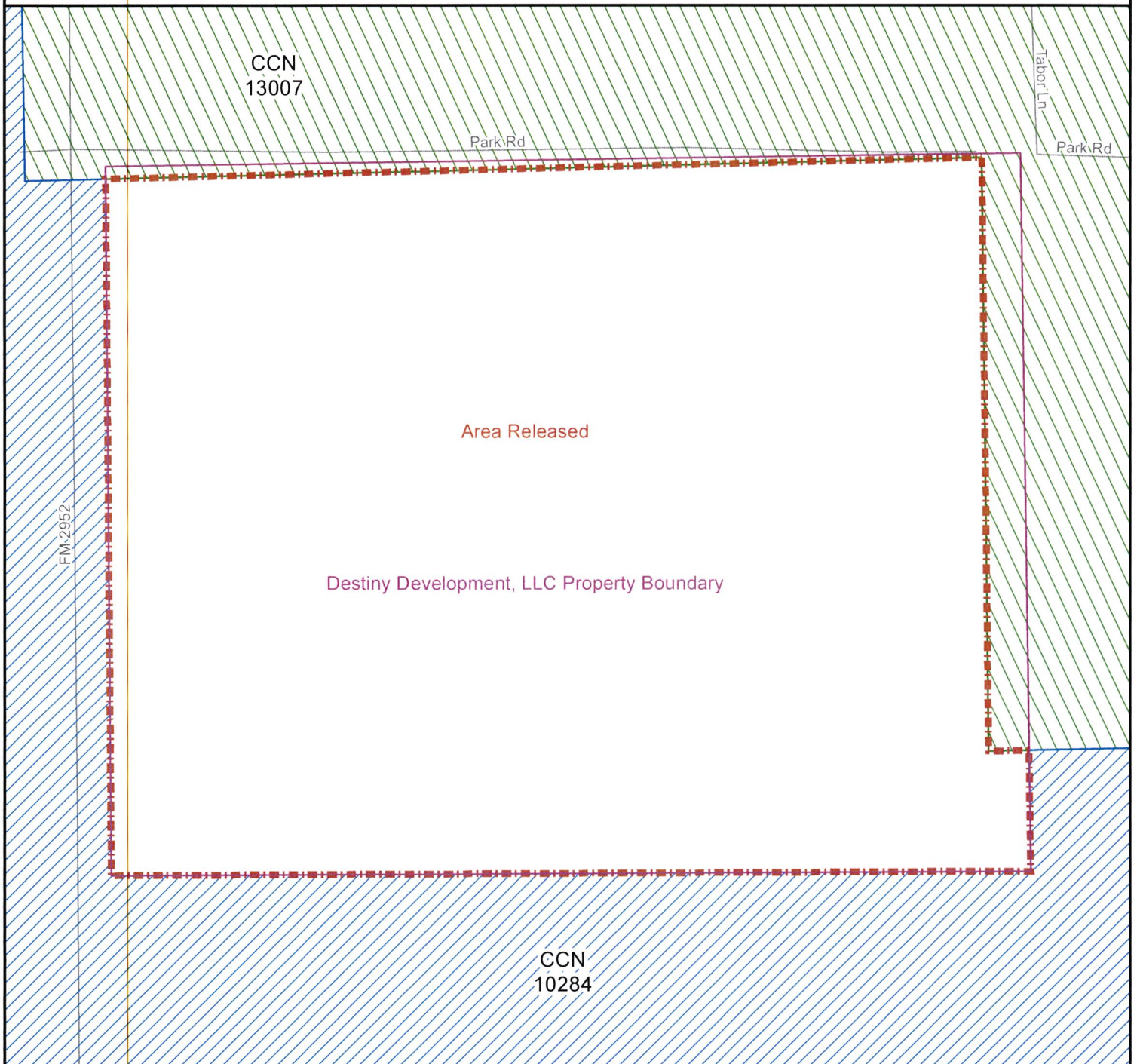
having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, West Wise Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 10284

to provide continuous and adequate water utility service to that service area or those service areas in Wise County as by Final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51367 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 West Wise Special Utility District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.



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

West Wise Special Utility District
 Portion of Water CCN No. 10284
 PUC Docket No. 51367
 Petition by Destiny Development, LLC to Amend
 West Wise Special Utility District's CCN by Expedited Release in Wise County



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

Water CCN

-  10284 - West Wise SUD
-  13007 - City of Chico

-  Area Released
-  Property Boundary

0 100 200
 Feet



Map by: Komal Patel
 Date created: November 5, 2020
 Project Path: n:\finalmapping\
 51367WestWiseSUD.mxd