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PETITION OF WEST BASTROP VILLAGE, LTD. TO AMEND AQUA WATER SUPPLY CORPORATION'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN BASTROP COUNTY BY EXPEDITED RELEASE §
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PUBLIC UTILITY COMMISSION
OF TEXAS

**ORDER NO. 3
GRANTING STREAMLINED EXPEDITED RELEASE**

This Order addresses the petition by West Bastrop Village, Ltd. for streamlined expedited release of a tract of land in Bastrop County from the service area under certificate of convenience and necessity (CCN) number 10294. Aqua Water Supply Corporation is the holder of CCN number 10294. For the reasons stated in this Order, the Commission releases the tract of land from Aqua WSC's certificated service area. In addition, the Commission amends Aqua WSC's CCN number 10294 to reflect the removal of this property from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to Aqua WSC, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. West Bastrop is a Texas limited partnership registered with the Texas secretary of state under filing number 801402568.

CCN Holder

2. Aqua WSC is a Texas nonprofit corporation registered with the Texas secretary of state under filing number 25894701 and operating under chapter 67 of the Texas Water Code.
3. Aqua WSC holds CCN number 10294 that obligates it to provide retail water service in its certificated service area in Bastrop County.

Petition

4. On October 16, 2020, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10294.
5. The petition includes an affidavit, dated October 6, 2020, of Myra Goepp, manager of WBV GP, LLC, the general partner of the petitioner; maps of the subject property and digital data; a correction special warranty deed dated March 31, 2015; and a joint filing by the petitioner and the CCN holder regarding compensation.
6. On November 9, 2020, the petitioner filed a corrected petition, to correct an error in the size of the tract of land, which includes an affidavit of Ms. Goepp, dated November 9, 2020.
7. In Order No. 2 filed on December 9, 2020, the administrative law judge (ALJ) found the petition administratively complete.

Notice

8. The petitioner sent a copy of the petition by certified mail to the CCN holder on October 16, 2020.
9. In Order No. 2 filed on December 9, 2020, the ALJ found the notice sufficient.

Response to Petition

10. On November 30, 2020, the CCN holder filed the affidavit, dated November 30, 2020, of Ty Embry, general counsel for the CCN holder, indicating that the CCN holder does not object to the release of the tract of land from its water CCN service area.

The Tract of Land

11. The tract of land for which the petitioner seeks streamlined expedited release is approximately 346.518 acres and is located in Bastrop County.
12. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

13. The petitioner acquired the tract of land by a special warranty deed dated March 31, 2015.

Qualifying County

14. Bastrop County is adjacent to Travis County and has a population of more than 47,500.

15. Travis County has a population greater than one million people.

Water Service

16. The tract of land is not receiving actual water service from the CCN holder.
17. The petitioner has not requested that the CCN holder provide water service to the tract of land, or paid any fees or charges to initiate or maintain such service.
18. There are no billing records or other documents indicating an existing account with the CCN holder for the provision of water service to the tract of land.
19. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
20. The CCN holder has no facilities or lines that provide water service to the tract of land.
21. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

22. On January 7, 2021, Commission Staff filed its recommendation that included a certificate and a map on which it identified the tract of land in relationship to the CCN holder's certificated service area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition for streamlined expedited release under Texas Water Code (TWC) §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 Texas Administrative Code (TAC) § 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 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 that must be verified by a notarized affidavit.

6. To obtain release under TWC § 13.2541(b), 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.
7. The petitioner owns a tract of land, which is at least 25 acres, for which it seeks streamlined expedited release through the petition.
8. Bastrop 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 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*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. The petitioner is entitled under TWC § 13.2541(b) to the release of the tract of land from the CCN holder's certificated service area.
11. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail water service to the petitioner's tract of land.
12. The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under TWC § 13.2541(b).
13. The Commission processed the petition in accordance with the TWC and Commission rules.
14. Under TWC § 13.257(r) and (s), the CCN holder 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 Bastrop County no later than the 31st day after the date the CCN holder receives this Order.

15. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

III. Ordering Paragraphs

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

1. The Commission releases the tract of land identified in the amended petition from the CCN holder's service area under CCN number 10294.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the petitioner's tract of land.
3. The Commission amends CCN number 10294 in accordance with this Order.
4. The Commission approves the map filed by Commission Staff on January 7, 2021.
5. The Commission approves the certificate filed by Commission Staff on January 7, 2021.
6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.
7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with Order No. 2. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

Signed at Austin, Texas the 14th day of January 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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