



## Filing Receipt

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**PUC DOCKET NO. 52090**

|                                     |          |                                  |
|-------------------------------------|----------|----------------------------------|
| <b>PETITION BY REDBIRD</b>          | <b>§</b> | <b>BEFORE THE</b>                |
| <b>DEVELOPMENT, LLC FOR</b>         | <b>§</b> |                                  |
| <b>EXPEDITED RELEASE</b>            | <b>§</b> |                                  |
| <b>FROM WATER CCN NO. 11052</b>     | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>HELD BY DOBBIN PLANTERSVILLE</b> | <b>§</b> |                                  |
| <b>WATER SUPPLY CORPORATION</b>     | <b>§</b> | <b>OF TEXAS</b>                  |

**DOBBIN PLANTERSVILLE WSC’S NOTICE  
OF NON-AGREEMENT ON APPRAISER AND  
OBJECTION TO COMPENSATION PHASE AND  
MOTION TO ABATE**

COMES NOW, Dobbin Plantersville Water Supply Corporation ("Dobbin Plantersville" or "CCN holder") and files this Notice of Non-Agreement on Appraiser and Objection to Compensation Phase and Motion to Abate. The Order issued on October 7, 2021, in this docket requires the proceeding to determine the amount of compensation to be awarded to the CCN holder in accordance with the schedule adopted in Order No. 3. Under the Commission’s Order, Dobbin Plantersville and petitioner Redbird Development LLC ("Petitioner" or "Redbird") must select an agreed upon appraiser within 10 days after the Commission files its Order approving expedited release. The Order was filed on October 12, 2021. This notice and objection are timely filed.

**I. NOTICE OF NON-AGREEMENT ON APPRAISER**

Dobbin Plantersville hereby notifies the Commission and other parties that Petitioner and Dobbin Plantersville have not reached agreement on an appraiser. Further, Dobbin Plantersville plans to file a motion for rehearing of the Commission's decision in this proceeding and if not granted, will appeal the Order, which is effective October 12, 2021, in state district court, on state law grounds. As discussed below, Dobbin Plantersville objects to the compensation phase of this docket and moves that it be abated; Dobbin Plantersville will not participate in that phase.

## II. OBJECTION TO COMPENSATION PHASE AND MOTION TO ABATE

Dobbin Plantersville objects to the compensation phase of this docket and requests that it be abated until a decision in *Dobbin Plantersville v. Peter Lake, Will McAdams, et al.*, Case 1:21-cv-00612 (W.D. Texas) (“the federal lawsuit”) is entered by the court.

The Fifth Circuit has created a bright-line rule prohibiting the taking of any territory from a water supply corporation that has qualified for the protections of 7 United States Code section 1926(b) (“§ 1926(b)”). Dobbin Plantersville has previously informed the Commission that Dobbin Plantersville qualifies for the protections of § 1926(b) because Dobbin Plantersville is indebted on two loans made by the United States Department of Agriculture (USDA). Even if fair compensation would be paid to Dobbin Plantersville as part of the takings process under Texas Water Code section § 13.2541, that entire process is preempted and forbidden by federal law. The Fifth Circuit held:

*Even if fair value is paid on the lost facilities, such an action would inevitably have an adverse effect on the remaining customers of Bear Creek, in the form of lost economies of scale and resulting higher per-user costs.* To allow expanding municipalities to “skim the cream” by annexing and condemning those parts of a water association with the highest population density (and thus the lowest per-user cost) *would undermine Congress’s purpose of facilitating inexpensive water supplies for farmers and other rural residents and protecting those associations’ ability to repay their FmHA debts.* See *Public Utility District No. 1 of Franklin County v. Big Bend Electrical Cooperative, Inc.*, 618 F.2d 601 (9th Cir.1980) (similarly rejecting utility’s attempt to condemn property owned by cooperative financed by the Rural Electrical Administration).

*City of Madison, Miss. v. Bear Creek Water Ass’n, Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987) (emphasis added). Although *Bear Creek* involves a municipality annexing part of a water association’s water service area, the case applies equally to this case where a developer seeks a release of part of a water supply corporation’s water service area. There is a direct conflict for Dobbin Plantersville to participate in the compensation process in any way, while objecting to and challenging this process in Dobbin Plantersville’s motion for rehearing and related pending federal suit filed against the Commissioners, in their official capacities, and the Petitioner, among others.

**A. Dobbin Plantersville is Obligated to Prosecute Violations of its Federal Rights Under 7 C.F.R. § 1782.14**

Title 7 Code of Federal Regulations section 1782.14 (“§ 1782.14”) obligates Dobbins Plantersville to "initiate action" to protect its territory and prosecute any violation of its federal rights under § 1926(b)<sup>1</sup> such as the release of Petitioner’s property from Dobbin Plantersville’s CCN No. 11052 service area, which has been ordered in this docket. Because the Redbird petition and the Public Utility Commission process to determine compensation to Dobbin Plantersville for the taking of part of its territory is prohibited by § 1926(b) and by the law announced in *City of Madison, Miss. v. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987), Dobbin Plantersville will not participate in the compensation phase of this docket.

The Commissioners of the Public Utility Commission of Texas are named in their official capacities only as defendants in the pending federal lawsuit in which Dobbin Plantersville seeks "prospective" injunctive relief to preclude the enforcement of any findings, rulings, or orders issued in this docket. Thus, Dobbin Plantersville must-and has been and continues to-vigorously prosecute violations of § 1926(b) and must defend against the release of the Redbird property from Dobbin Plantersville’s CCN in all available forums.

In its Order executed on October 12, 2021, the Commission ordered the release of property owned by Petitioner. Dobbin Plantersville will challenge that order in its motion for rehearing. If the

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<sup>1</sup> Section 1782.14 reads as follows:

(a) **7 U.S.C 1926(b) was enacted to protect the service area of Agency borrowers** with outstanding loans, or those loans sold in the sale of assets authorized by the "Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99-591, 100 Stat. 3341 (1986)," from loss of users due to actions or activities of other entities in the service area of the Agency financed system. ***Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower's ability to repay its Agency debt.***

(b) ***Responsibility for initiating action in response to those actions prohibited by 7 U.S.C 1926(b) rests with the borrower.***

7 C.F.R. § 1782.14 (emphasis added).

motion is denied, Dobbin Plantersville will appeal the Commission's decision. Additionally, Dobbin Plantersville requests that the Commission abate proceedings in this docket for determining whether Redbird will be required to compensate Dobbin Plantersville for release of the Redbird property from CCN No. 11052. Any further conduct by the Petitioner or the Commission in this docket, continues the violation of Dobbin Plantersville's federal rights under § 1926(b).

Pending the Commission's decision on abatement, Dobbin Plantersville is prohibited from engaging in any activity that violates its federal rights, including submitting an appraisal regarding compensation for removal of Redbird's property from CCN No. 11052. Thus, Dobbin Plantersville will not participate in any proceedings regarding compensation in this docket because of its federal statutory obligations.

#### **B. Petitioner's Contention on Compensation in the Federal Lawsuit**

Further, Petitioner has filed in the federal lawsuit a motion to dismiss based in part on Petitioner's contention that that the compensation provisions in Texas Water Code section 13.2541 eliminate any conflict between state and federal law. Dobbin Plantersville disagrees and reserves its right to adjudicate that disagreement in federal court, including in the federal lawsuit. Redbird's position on this issue in the federal lawsuit is an additional reason that Dobbin Plantersville declines to join that issue in this docket.

### **III. ENGLAND RESERVATION**

Dobbin Plantersville has informed the Commission of the federal issues in accordance with the decision in *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S. Ct. 461, 11 L. Ed.2d 440 (1964). Dobbin Plantersville is not asking the Commission to adjudicate any federal issues directly or indirectly.

**IV. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Dobbin Plantersville respectfully requests that the compensation phase of this docket be abated until the federal court has issued a decision in the federal lawsuit.

Respectfully submitted,

**MARY K. SAHS, P.C.**

*Mary K. Sahs*

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Mary K. Sahs  
State Bar No. 17522300  
P.O. Box 40970 Austin,  
Texas 78704  
Telephone: (512) 585-1705  
Facsimile: (512) 597-2516 Email:  
[marysahs@sahslaw.com](mailto:marysahs@sahslaw.com)

**ATTORNEY FOR DOBBIN  
PLANTERSVILLE WATER  
SUPPLY CORPORATION**

**CERTIFICATE OF SERVICE**

Pursuant to Docket No. 50664, Second Order Suspending Rules (July 16, 2020) the undersigned hereby certifies that a copy of foregoing Dobbin Plantersville Water Supply Corporation's Notice of Non-Agreement on Appraiser and Objection to Compensation Phase and Motion to Abate was served on all parties of record in this proceeding on October 18, 2021, by electronic mail.

*Mary K. Sahs*

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Mary K. Sahs