



## Filing Receipt

**Received - 2021-10-22 07:47:28 AM**

**Control Number - 52090**

**ItemNumber - 50**

**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>

**REDBIRD DEVELOPMENT, LLC’S RESPONSE TO DOBBIN  
PLANTERSVILLE WATER SUPPLY CORPORATION’S  
OBJECTION TO COMPENSATION PHASE AND MOTION TO ABATE**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, Redbird Development, LLC (Redbird) and files this, its response to the Dobbin Plantersville Water Supply Corporation’s (Dobbin Plantersville) Objection to Compensation Phase and Motion to Abate, and would respectfully show the following:

**I. BACKGROUND**

On October 12, 2021, the Public Utility Commission of Texas (PUC or Commission) issued its Final Order granting Redbird’s petition for streamlined expedited release of its property from Dobbin Plantersville’s water certificate of convenience and necessity (CCN) number 11052 pursuant to Texas Water Code § 13.2541. Within ten (10) days after the Final Order, the parties must attempt to agree to an appraiser for the appraisal phase of the release process. *See* Tex. Water Code § 13.2541. If the parties cannot agree to an appraiser, the parties are to notify the Commission. Redbird, in an effort to reach an agreement regarding the appraisal, proposed an appraiser for the process. Based on Dobbin Plantersville’s Objections to Compensation Phase and Motion to Abate, it appears that Dobbin Plantersville does not agree to the appraiser, and does not intend to propose its own appraiser or participate in the appraisal process in any way. Dobbin Plantersville also requests that the Commission abate the appraisal process. Responses to motions

must be filed within five (5) working days after the receipt of the pleading to which the response is made. The deadline to respond to the Motion to Abate is October 25, 2021, therefore, this response is timely.

## **II. ARGUMENT**

The Commission does not have the authority under Texas Water Code § 13.2541 to abate the appraisal process outlined in the statute. A state agency may exercise only those powers the law, in clear and express statutory language, confers upon the state agency. *See Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002). Nothing in Texas Water Code § 13.2541 allows the Commission to abate the appraisal process. In fact, Section 13.2541(i) and (j) are specific in terms of the timeframes for each step in the appraisal process. Section 13.2541(i) provides that when the parties cannot agree to an independent appraiser, each party's appraisal "shall" be submitted to the Commission within 70 calendar days after the approval of the petition.<sup>1</sup> The PUC staff is then required to submit a third appraisal within 100 calendar days after the approval of the petition. Tex. Water Code § 13.2541(i). The Water Code also has specific deadlines by which the Commission must approve the amount of the compensation and when the petitioner is required to pay that compensation. Tex. Water Code § 13.2541(j). All of these deadlines ensure that the process happens quickly so that there is certainty in the process. Nothing in Section 13.2541 of the Water Code allows for a deviation from that schedule.

Moreover, Dobbin Plantersville has not shown good cause to abate the appraisal process. Dobbin Plantersville cites to its federal lawsuit against the Commission and Redbird and the fact that it intends to file a motion for rehearing and appeal the decision in state court as reasons to delay the appraisal phase of this proceeding. Yet, Dobbin Plantersville also declares that it will

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<sup>1</sup> Under the Code Construction Act, "shall" is mandatory language, and imposes a duty. Texas Government Code § 311.016(2).

not participate in the appraisal process. Dobbin Plantersville cites *City of Madison, Miss. V. Bear Creek Water Ass'n, Inc.* and 7 C.F.R. § 1782.14 for the proposition that Dobbin Plantersville's participation in the appraisal process is in direct conflict with its opposition to the Section 13.2541 process.<sup>2</sup> Because Dobbin Plantersville has already declared it has no intention of participating in the appraisal process, abating that process serves no purpose but to delay this proceeding.

For these reasons, Redbird respectfully requests that the Commission deny Dobbin Plantersville's Motion to Abate.

Respectfully submitted,

Emily W. Rogers  
State Bar No. 24002863  
[erogers@bickerstaff.com](mailto:erogers@bickerstaff.com)

Kimberly G. Kelley  
State Bar No. 24086651  
[kkelley@bickerstaff.com](mailto:kkelley@bickerstaff.com)

Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway  
Building One, Suite 300  
Austin, TX 78746  
Telephone: (512) 472-8021  
Facsimile: (512) 320-5638

BY:   
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Emily W. Rogers

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<sup>2</sup> It should be noted that the *City of Madison* case is distinguishable from this matter. In the *City of Madison* case, the City sought to condemn through eminent domain 60 percent of the utility's facilities (including its water plant, wells, and mains) and 40 percent of its customers. See *City of Madison, Miss. V. Bear Creek Water Ass'n, Inc.*, 816 F.2d 1057, 1059 (5<sup>th</sup> Cir. 1987). In this case, there are no customers or facilities that will be transferred from Dobbin Plantersville.

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record via email on October 22, 2021, in accordance with the requirements of 16 Tex. Admin. Code § 22.74 and PUC Order No. 2 in Docket No. 50664.

*Emily W. Rogers*  
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