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DOCKET NO. 52434

PETITION OF CELINA PARTNERS,	§	PUBLIC UTILITY COMMISSION
LTD. TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT'S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

On August 16, 2021, Celina Partners, Ltd. (Celina Partners) filed a petition for streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water Certificate of Convenience and Necessity (CCN) No. 10150 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). Celina Partners asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county. Celina Partners filed supplemental information on September 28, 2021, September 29, 2021, and September 30, 2021.

On November 9, 2021, the administrative law judge (ALJ) filed Order No. 7, establishing a deadline of December 13, 2021 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on final disposition. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON FINAL DISPOSITION

As detailed in the attached memorandum of Pai Liu of the Commission's Infrastructure Division, Staff has reviewed the petition and recommends that it be approved. The affidavit, maps and digital data, and deeds filed by Celina Partners provide adequate information to demonstrate that the petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h). Specifically, the petition shows that the property for which Celina Partners seeks expedited release is located in Collin County, which is a qualifying county, is not receiving water utility service, and is at least 25 contiguous acres. The final water CCN map and water CCN certificate are attached to this filing. Therefore, Staff recommends that the petition be approved.

In its response to the petition, Marilee SUD contends that the application should be denied. Staff will address those arguments here.

A. Receiving Water Service

Marilee SUD argues that Celina Partners has not met its burden of proof to decertify the Property under TWC § 13.2541, because it has provided only a “conclusory one-page affidavit” stating that the requested property is not receiving service.¹ However, on October 12, 2021, the Commission granted the release of a tract of land from Marilee SUD’s CCN area, partly on the basis of an affidavit that is, in relevant part, identical to the affidavit filed in this docket.² Staff therefore recommends that Celina Partners has met its burden of proof under TWC § 13.2541.

Marilee SUD further asserts that Celina Partners cannot meet its burden of proof, because the requested area is receiving service. Marilee SUD’s argument hinges on the fact that Celina Partners’ total property, i.e., the full 298.075 acres owned by Celina Partners, receives water from a Marilee SUD water meter.³ However, Celina Partners requests release of only 295.854 acres of its total property, an area which includes no meters or service lines. In Docket No. 50404, the Commission rejected the same argument, in which Marilee SUD conflated the petitioner’s total property with the release property, arguing that the location of meters and lines on the total property made release inappropriate.⁴ The Commission approve the release of the property from Marilee SUD’s certificated service area.

Staff recommends that these elements are not sufficient to meet the standard of “receiving” water service. To receive water service, a retail water utility must have “facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the particular tract”⁵

First, the active meter is not within the release area. As Marilee SUD’s response indicates, the meter is within the metes and bounds of the total property, but the requested area does not

¹ Marilee Special Utility District’s Verified Response to Petition for Expedited Release from Water CCN No. 10150 at 6 (Nov. 29, 2021) (Response).

² *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 50404, Petition at Exhibit A (Jan. 2, 2020) (Deason Petition); *Id.*, Order (Oct. 12, 2021).

³ Response at 8-9.

⁴ Deason Petition at 8; *Id.*, Order at Conclusion of Law No. 9.

⁵ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App. - Austin 1014, pet. denied); *Petition of LGI Homes-Texas, LLC to Amend Bolivar Water Supply Corporation's Water Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 49433, Findings of Fact Nos. 17-18 (Mar. 2, 2020); *Petition of Frost Bank National Bank as Trustee of the Freeman Educational Foundation to Amend the City of San Marcos' Water Certificate of Convenience and Necessity in Hays County by Expedited Release*, Docket No. 49366, Findings of Fact Nos. 17-18 (Dec. 13, 2019).

include the tracts to which Marilee SUD provides service.⁶ If the active meter is not located within the 295.854 acres for which release is sought, it should not be considered when determining whether the requested area is receiving service.

Second, the water lines running through and adjacent to the property have not been shown to be committed to providing water to the particular tract. Through its various responses, Marilee SUD has not demonstrated that these water lines are committed to the requested area. In *Crystal Clear*, the CCN holder raised the issue of existing water lines and facilities.⁷ The court looked to whether those lines or facilities were constructed for the purpose of providing water to the property in question. Finding that the facilities were constructed to serve the greater area, and not the particular property, the court determined that the facilities were not committed to the particular tract of land, and therefore, the property in question was not receiving service.⁸ Similarly, Marilee SUD does not demonstrate that the water lines were installed for the purpose of providing water to the requested area. As such, they cannot be considered to be committed to the particular property and the requested area is not, therefore, receiving water service from Marilee SUD. Accordingly, Staff recommends that the requested area is not receiving water service.

B. Marilee's Federal Debt

Marilee SUD asserts that releasing the requested area would impair its ability to service the debt on the Water and Wastewater Guaranteed loan of \$1,553,000, which was approved by the United States Department of Agriculture (USDA) on July 12, 2021.⁹ In its response, Marilee SUD states that, under the Consolidated Farm and Rural Development Act of 1961 and 7 U. S. Code § 1926(b), “it is prohibited by federal law to ‘curtail or limit’ the service area of a USDA debtor.”¹⁰ Marilee SUD claims that, because it can show federal indebtedness and the physical ability to serve a portion of Celina Partners’ total property, the protections of § 1926(b) prohibit the Commission from granting the release of the proposed area.¹¹

⁶ See Response at Exhibits B-1 and B-2.

⁷ *Crystal Clear*, 449 S.W.3d at 140.

⁸ *Id.*

⁹ Response at 10.

¹⁰ *Id.*

¹¹ *Id.* at 10-11.

Staff recommends that Marilee SUD'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."¹² 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.¹³ 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.¹⁴ Absent any federal court ruling on preemption, Staff's recommendation must comply with state law. As such, Staff's recommendation does not take Marilee SUD's federally indebted status into consideration.

II. CONCLUSION

Staff respectfully requests the entry of an order consistent with the foregoing recommendation.

¹² TWC § 13.2541(d).

¹³ *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

¹⁴ *Green Valley Special Util Dist. v. City of Schertz*, 969 F. 3d 460, 411 and 418 (5th Cir. Aug. 1, 2020) (en banc).

Dated: December 13, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 via electronic mail on December 13, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Jenna Keller
Jenna Keller

Public Utility Commission of Texas

Memorandum

TO: Jenna Keller, Attorney
Legal Division

FROM: Pai Liu, Infrastructure Analyst
Infrastructure Division

DATE: December 13, 2021

RE: Docket No. 52434 – *Petition of Celina Partners, Ltd. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

On August 16, 2021, Celina Partners, Ltd. (Celina Partners) filed a petition for streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water certificate of convenience and necessity (CCN) No. 10150 in Collin County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Celina Partners asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county.

Celina Partners submitted a sworn affidavit attesting that the property was not receiving water service from Marilee SUD and deeds confirming Celina Partners' ownership of the tract of land. The petition also included a statement indicating that a copy of the petition was sent via certified mail to Marilee SUD on the date the petition was filed with the Commission.

Tracy Montes, with the Infrastructure Division, evaluated the additional mapping documentation filed by Celina Partners on September 28, 29, and 30, 2021. Celina Partners' petition included four deeds showing that Celina Partners owns four tracts of land totaling 297.355 acres (entire tract). The additional mapping documentation included an affidavit signed by Celina Partners' engineer, David Surdukan, indicating that a revised boundary survey of the entire tract completed on August 11, 2021 resulted in 0.72 acres more than the acreage shown by the four deeds, for a total of 298.075 acres owned by Celina Partners instead of 297.355 acres. Celina Partners is seeking to release 295.854 acres, a portion of the entire tract, from Marilee SUD's CCN No. 10150.

Tracy Montes assessed the revised boundary survey attached to the petition as Exhibit E and determined that the entire tract of land is 298.075 acres. The portion of the tract considered for release from Marilee SUD (CCN No. 10150) is 295.854 acres and is bisected by CR 131. The tract north of CR 131 includes 127.813 acres, and the tract south of CR 131 includes 170.262 acres. The portions of the tract considered for release that are north and south of CR 131 are

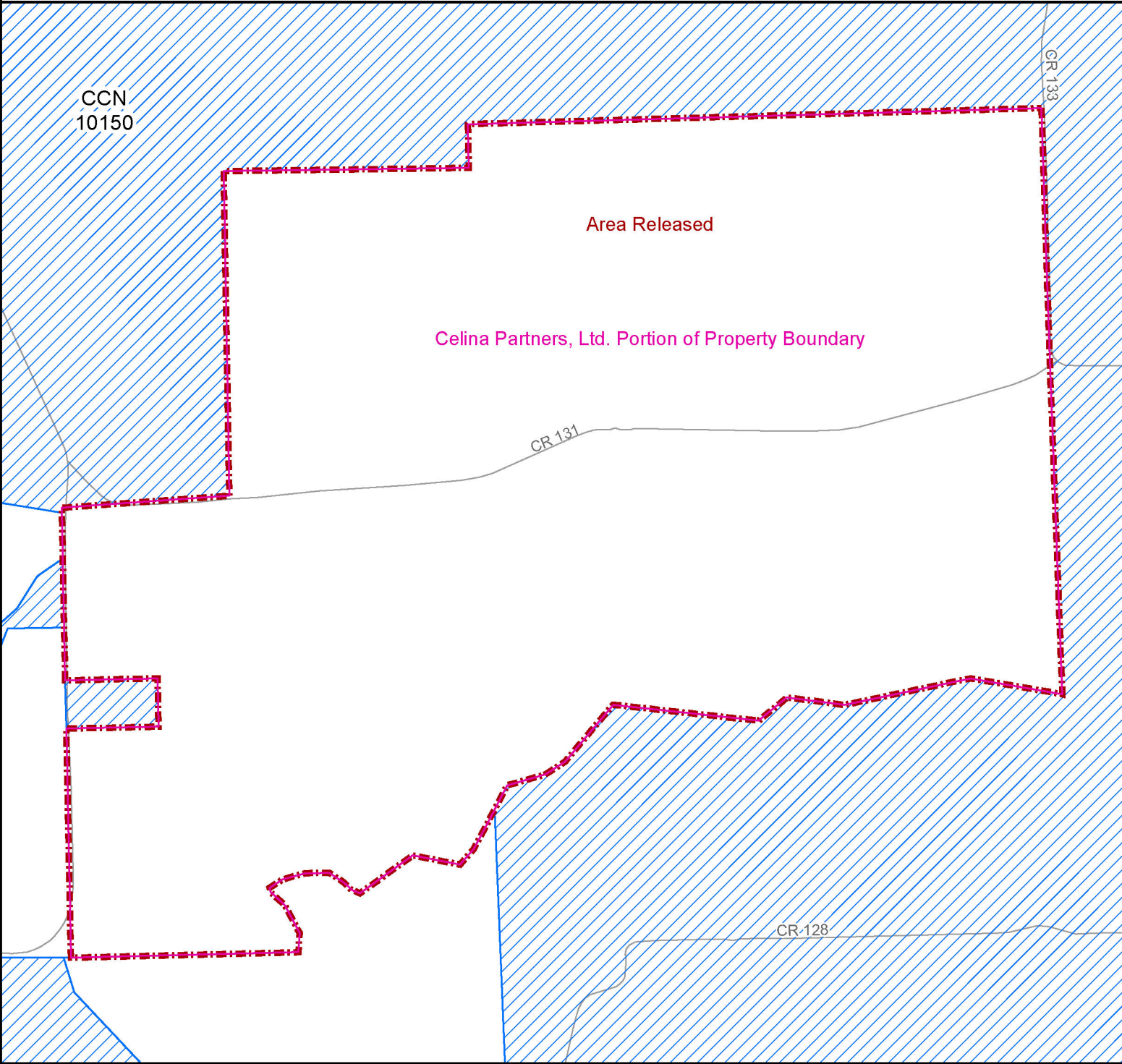
both more than 25 acres. Based on the mapping review by Ms. Montes, the additional mapping documentation is sufficient.

On August 25, 2021, Marilee SUD filed a motion to intervene, which was granted by the administrative law judge (ALJ) on September 15, 2021. On November 29, 2021, Marilee SUD filed a response to the petition, which stated that Celina Partners is a customer, does not have any records indicating a request for termination of service, and has not met its burden of proof to satisfy the requirements for expedited release. Marilee SUD also stated that plans for new facilities are in place to serve growth in the vicinity of the property and that it has other planning efforts to ensure its water system continues to meet the needs of its service area. Marilee SUD further stated that, if the Commission approves the petition, Marilee SUD seeks just and adequate compensation.


In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Celina Partners has met the Commission's requirements to allow for the release of the tract of land from Marilee SUD's CCN No. 10150. Therefore, I recommend approval of the petition. Enclosed are a final map and certificate for Commission approval.


Additionally, I recommend that a final map and certificate be provided to the CCN holder.

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52434
Petition by Celina Partners, Ltd. to Amend
Marilee Special Utility District's CCN by Expedited Release in Collin County



Water CCN

 10150 - Marilee SUD

 Area Released

 Portion of Property Boundary

0 325 650
Feet





Public Utility Commission of Texas

By These Presents Be It Known To All That

Marilee 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, Marilee Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 10150

to provide continuous and adequate water utility service to that service area or those service areas in Collin and Grayson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52434 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 Marilee 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.