



## Filing Receipt

**Received - 2021-10-18 10:18:19 AM**

**Control Number - 52435**

**ItemNumber - 12**

**DOCKET NO. 52435**

<b>PETITION OF LEGACY EQUESTRIAN</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CENTER LLC TO AMEND MARILEE</b>	<b>§</b>	
<b>SPECIAL UTILITY DISTRICT'S</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN COLLIN</b>	<b>§</b>	
<b>COUNTY BY EXPEDITED RELEASE</b>	<b>§</b>	

**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION**

On August 16, 2021, Legacy Equestrian Center LLC (Legacy Equestrian) filed a petition for streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water certificate of convenience and necessity (CCN) number 10150 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). Legacy Equestrian 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.

On September 15, 2021, the administrative law judge (ALJ) filed Order No. 2, establishing a deadline of October 18, 2021 for the Staff of the Public Utility Commission of Texas (Staff) 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 Jolie Mathis of the Commission's Infrastructure Division, Staff has reviewed the petition and recommends that it be approved. The affidavit, maps and digital data, and warranty deed filed by Legacy Equestrian 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 Legacy Equestrian 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 Legacy Equestrian “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.<sup>1</sup> 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.<sup>2</sup> Staff therefore recommends that Legacy Equestrian has met its burden of proof under TWC § 13.2541.

Marilee SUD further asserts that Legacy Equestrian cannot meet its burden of proof because the requested area is receiving service. Marilee SUD’s argument hinges on the fact that Legacy Equestrian’s total property, i.e., the full 76.866 acres owned by Legacy Equestrian, receives water from two Marilee SUD water meters.<sup>3</sup> However, Legacy Equestrian requests release of only 67.696 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.<sup>4</sup> The Commission approved 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 . . . .”<sup>5</sup>

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<sup>1</sup> Marilee Special Utility District’s Verified Response at 5 (Oct. 4, 2021) (Response).

<sup>2</sup> *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); *Id.*, Order (Oct. 12, 2021).

<sup>3</sup> *Id.*, Petition at 8 (Oct. 4, 2021).

<sup>4</sup> *Id.*, Order at Conclusion of Law No. 9.

<sup>5</sup> *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d.130, 140 (Tex. App.—Austin 2014, 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, Finding 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).

First, the two active meters are not within the release area. As Marilee SUD's response indicates, the meters are within the metes and bounds of the total property, but the requested area does not include the tracts to which Marilee SUD provides service.<sup>6</sup> If the active meters are not located within the 67.696 acres for which release is sought they 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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."<sup>10</sup> Marilee SUD claims that, because it can show federal indebtedness and the physical ability to serve a portion of Legacy Equestrian's total property, the protections of § 1926(b) prohibit the Commission from granting the release of the proposed area.

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<sup>6</sup> See Response at Exhibit B-1.

<sup>7</sup> *Crystal Clear*, 449 S.W.3d at 140.

<sup>8</sup> *Id.*

<sup>9</sup> Response at 10.

<sup>10</sup> *Id.* at 9.

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."<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.

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<sup>11</sup> TWC § 13.2541(d).

<sup>12</sup> *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

<sup>13</sup> *Green Valley Special Util Dist v. City of Schertz*, 969 F.3d 460, 411 and 478 (5th Cir. Aug. 7, 2020) (en banc).

Dated: October 18, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 52435**

**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 on October 18, 2021 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander  
Merritt Lander

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Merritt Lander, Attorney  
Legal Division

**FROM:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** October 18, 2021

**RE:** Docket No. 52435 – *Petition of Legacy Equestrian Center LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*

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On August 16, 2021, Legacy Equestrian Center (Legacy Equestrian) 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). Legacy Equestrian 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.

Gary Horton, Infrastructure Division, determined the map and digital data are sufficient for determining that the location of the tract of land considered for streamlined expedited release is located within Marilee SUD’s water CCN. Furthermore, Legacy Equestrian provided a warranty deed confirming ownership of the tract of land within Marilee SUD’s certificated service area. In addition, Legacy Equestrian submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder.

The entire tract of land is approximately 76.866 acres. The portion of the tract considered for release is approximately 67.696 acres. The area to be released from Marilee SUD (CCN No. 10150) is approximately 67.696 acres.

On August 25, 2021, Marilee SUD filed a motion to intervene, which was granted by the administrative law judge (ALJ) on September 17, 2021. On October 4, 2021, Marilee SUD filed a response to the petition, which stated that Legacy Equestrian 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 further states that, if the Commission approves the Petition, Marilee SUD seeks just and adequate compensation.

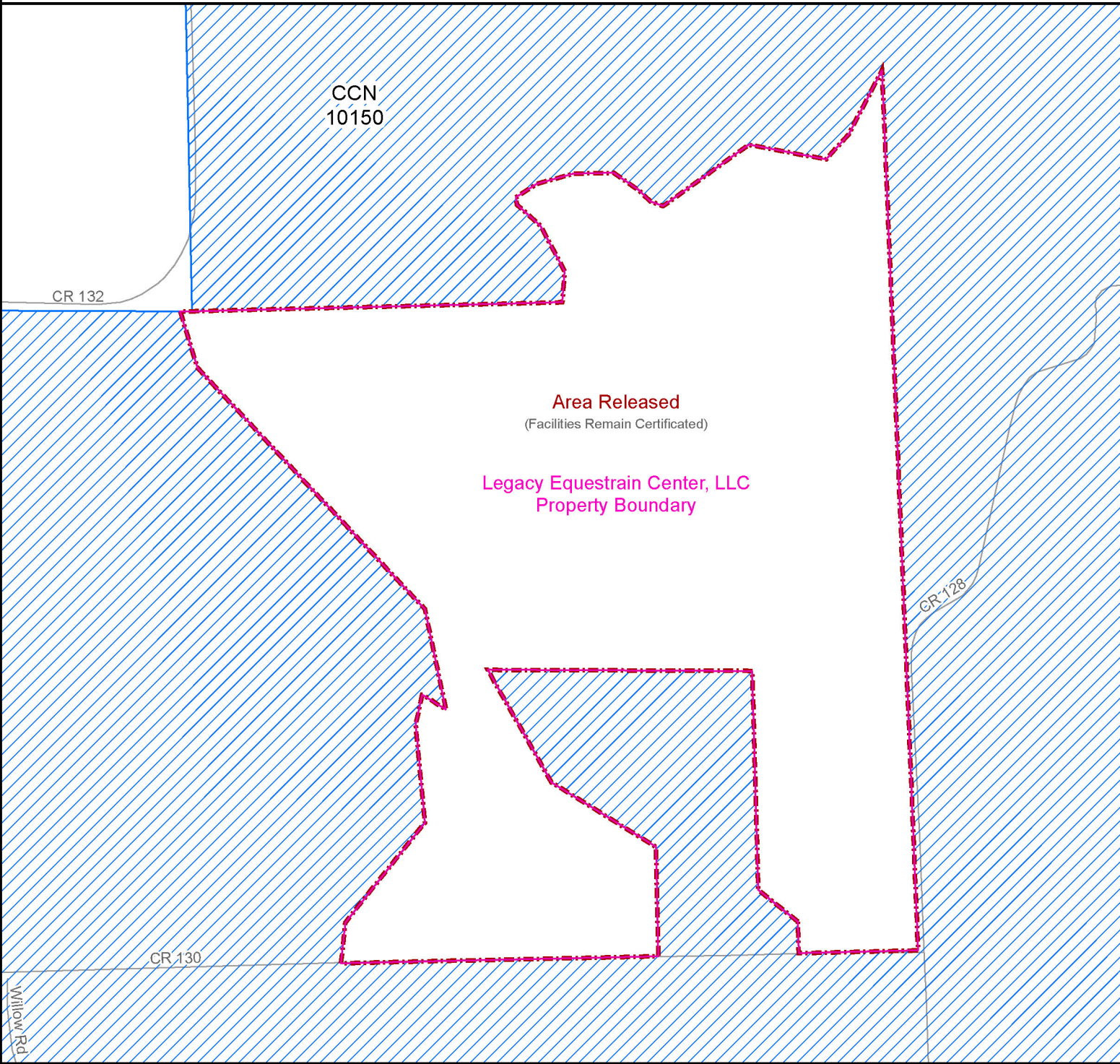
In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Legacy Equestrian has met the Commission’s requirements to allow for the release of the tract of land from Marilee SUD’s CCN

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. 52435  
Petition by Legacy Equestrain Center, LLC to Amend  
Marilee Special Utility District's CCN by Expedited Release in Collin County



**Water CCN**  
 10150 - Marilee SUD

 Area Released  
 Property Boundary

0 200 400  
Feet





# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

## **Marilee Special Utility District**

having duly applied for 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 by this Applicant, is entitled to and is hereby granted this

## **Certificate of Convenience and Necessity No. 10150**

to provide continuous and adequate water utility service to that service area in Collin County as by final Order duly entered by this Commission, which Order resulting from Docket No. 52435 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of 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.