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PUC DOCKET NO. 52442

PETITION OF MERITAGE HOMES OF TEXAS, LLC TO AMEND NORTH COLLIN SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**NORTH COLLIN SPECIAL UTILITY DISTRICT'S RESPONSE TO
MERITAGE HOMES OF TEXAS, LLC'S MOTION FOR REHEARING**

North Collin Special Utility District, a political subdivision of the State of Texas (North Collin) files this Response to Meritage Homes of Texas, LLC's Motion for Rehearing filed on August 16, 2022 requesting that the Public Utility Commission of Texas (PUC) reconsider its remand of the petition in this docket based on "the fact that the two-inch (2") waterline and meter box in question are not located within the application area," which North Collin contends is factually incorrect. In accordance with 16 Texas Administrative Code (TAC) § 22.78, this Response is timely filed.

BACKGROUND

On August 23, 2021, Meritage Homes of Texas, LLC (Meritage) filed its Petition for Streamlined Expedited Release Pursuant to Texas Water Code § 13.2541 (the Petition). In the Petition, Meritage states that it owns around 273.5 acres of property in Collin County, Texas (the Property), which is located within the municipal boundaries of the City of Princeton and within the boundaries of North Collin's CCN.¹

On September 7, 2021, Commission Staff filed its Recommendation on Administrative Completeness and Notice (the Recommendation), recommending that the Petition is deficient.² The Commission deemed the Petition not administratively complete in accordance with 16 TAC §24.245(h)(5). The Memorandum attached to Commission Staff's Recommendation states that "[t]he proposed area to be released from North Collin SUD is approximately 73.6 acres."³

¹ Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release Pursuant to Texas Water Code Section 13.2541, at 2 (Aug. 23, 2021).

² Commission Staff's Recommendation on Administrative Completeness and Notice, at 1 (Sept. 7, 2021).

³ *Id.* at 4 (providing the Memorandum dated September 7, 2021 from Jolie Mathis, Utility Engineering Specialist in the Commission's Infrastructure Division).

On March 28, 2022, the Petitioner filed Supplemental Mapping Items for Docket No. 52442. Then on May 13, 2022, the Commission Staff filed its Recommendation on Administrative Completeness and Notice recommending that the supplemented petition be found administratively complete and requested the entry of an order consistent with its recommendation.

On June 17, 2022, the Commission Staff filed its Recommendation on Final Disposition. Then on July 6, 2022, the PUC filed its Memorandum and Proposed Order, requiring that proposed corrections or exceptions be filed by July 18, 2022.

On July 18, 2022, North Collin timely filed its Response, Objections and Corrections to the Proposed Order, and on July 19, 2022, the Commission Staff filed its recommendation that the Proposed Order remains ready for the PUC's consideration.

At its August 4, 2022 Commission meeting, the PUC considered and recommended that the Petition be remanded so that Petitioner could remove the area that contains the two-inch water line and meter box on the Property.

On August 16, 2022, Meritage Homes filed a Motion for Rehearing suggesting that “the two-inch (2”) waterline and meter box in question are not located within the application area,” which North Collin contends is factually incorrect.

North Collin renews its previously filed “England Reservation,” reserving all of its federal rights and remedies and its entitlement to have such rights and remedies resolved and adjudicated exclusively in a federal forum in accordance with *England v. Louisiana State Board of Med. Examiners*, 375 U.S. 411, 421 (1964). Along with requesting that the Petition be denied on state law grounds for the reasons set forth in North Collin's prior briefing, North Collin also requests, subject to and in furtherance of North Collin's England Reservation, that this proceeding be abated pending the outcome of the motion for preliminary injunction, and requests that the Public Utility Commission or the Administrative Law Judge immediately abate this proceeding until the preliminary injunction has been resolved in a federal forum.

I. ARGUMENTS AND AUTHORITIES

The primary basis for Meritage's motion for rehearing is that they contend a two-inch line and water meter are not located on the Property. The sole new basis for this assertion is the August 16, 2022 affidavit of David Aughinbaugh, stating that although a survey crew hired by Meritage searched the Property, they could not find a meter box anywhere except south of the Property.⁴ Mr. Aughinbaugh also asserts that the crew did not locate the water line, either.

⁴ Meritage's Motion for Rehearing at Exhibit 2, ¶ 4 (Aug. 16, 2022).

North Collin has already submitted undisputed evidence of the water line and meter. Nonetheless, and to remove all doubt, as stated in the affidavit of Allen Knight, attached as Attachment A to this response, North Collin has confirmed the location of the waterline and meter box, and that both are on the Property. On August 19, 2022, North Collin sent out two technicians, Austin Scott and Colton Harrison, to locate the meter box and two-inch waterline on the Property. Attachment A at ¶ 4. The technicians first went to a water valve south of the Property, and south of FM 1827. Attachment A at ¶ 4. They then located a pothole location of the two-inch waterline just north of FM 1827. Using GPS tracking, the technicians then located a meter box on the Property. Attachment A at ¶ 4. Although the meter box was empty, to confirm that the water line running to it was active, the technicians turned on the water valve on the south side of FM 1827. Attachment A at ¶ 4. After turning on the valve, the technicians observed water entering the meter box on the Property, confirming that the two-inch line is still running from the valve south of FM 1827, through a pothole location north of FM 1827, and continuing to the meter box on the Property. Attachment A at ¶ 4.

The Property is thus receiving water service and both the Petition and Petitioner's Motion for Rehearing must be denied.

II. PRAYER

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein and, in its Response, North Collin Special Utility District respectfully requests that the Commission Staff's Recommendation on Final Disposition be denied. In the alternative, North Collin requests that this matter be abated pending resolution of the federal dispute between North Collin and the Commission.

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/s/ Will W. Allensworth

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**ATTORNEYS FOR NORTH COLLIN
SPECIAL UTILITY DISTRICT**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following parties of record on August 23, 2022, by e-mail in accordance with the Commission's Order.⁵

via e-mail: forrest.smith@puc.texas.gov

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Attorney for Petitioner

/s/ Will W. Allensworth

Will W. Allensworth

⁵ *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).

ATTACHMENT A

PUC DOCKET NO. 52442

PETITION OF MERITAGE HOMES OF	§	PUBLIC UTILITY COMMISSION
TEXAS, LLC TO AMEND NORTH	§	
COLLIN SPECIAL UTILITY	§	
DITSRICT'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

**SUPPORTING AFFIDAVIT OF ALLEN KNIGHT,
GENERAL MANAGER OF NORTH COLLIN SPECIAL UTILITY DISTRICT**

STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this date personally appeared Allen Knight, who being by me first duly sworn states as follows:

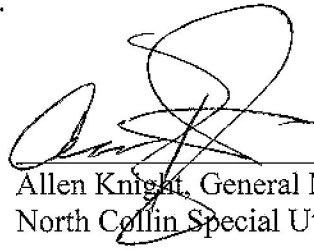
"1. My name is Allen Knight. I am more than 18 years of age, and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

2. Since 1998, I have been the duly appointed General Manager of North Collin Special Utility District ("North Collin"). I am the custodian of the records of North Collin.

3. North Collin has an existing water line and a water meter box physically located on the property sought to be decertified in this Public Utility Commission Docket No. 52442.

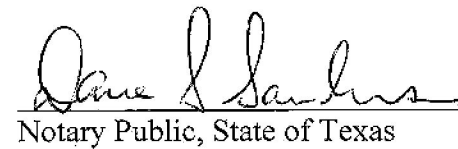
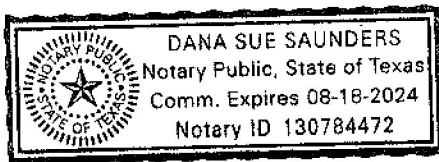
4. I reviewed Meritage's Motion for Rehearing, alleging that there was not a two-inch water line or meter box on the property that Meritage is seeking to decertify ("the Property"). On August 19, 2022, North Collin's technicians, Austin Scott and Colton Harrison, with the assistance of North Collin's expert witness, Eddy Daniel, P.E., located the meter box and waterline depicted in the photos and video attached to this Affidavit as Exhibit 1. Specifically, Austin and Colton located the water valve (to and from which North Collin's two-inch water line runs) south of FM 1827. They then located a pothole location north of FM 1827; the two-inch water line runs between the water valve and the pothole location. Austin and Colton then located the water meter box on the Property. To confirm that the two-inch line connected the water meter box to the water valve south of FM 1827, the technicians turned on the valve, and then observed water filling the water meter box on the Property. I spoke with Austin and Colton about their investigation, and reviewed the documentation provided as Exhibit 1 to this affidavit. In addition, I separately checked North Collin's internal maps, which similarly show the two-inch water line and the water meter box on the Property, consistent with Austin and Colton's visual observations as documented in Exhibit 1.

5. I have read North Collin's Response to Meritage Homes of Texas, LLC's Motion for Rehearing, and the factual statements relating to the location of the two-inch water line and water meter box contained in it are true and correct."



Allen Knight, General Manager
North Collin Special Utility District

SUBSCRIBED AND SWORN TO before me on the 22 day of August, 2022, by Allen Knight, General Manager of North Collin Special Utility District.



Notary Public, State of Texas

EXHIBIT 1



8/19/20

METER
BOX ON
PROPERTY



METER BOX
AFTER OPENING
VALVE ON SOUTH
SIDE OF FM 1827

8/19/22



METER BOX
FULL OF
WATER

8/19/22



8/19/22



SOUTH

WATERLINE





8/19/22

F.M. 1827

SOUTH

WATER LINE

8/19/22



NORTH

POTHOLE
LOCATION

FM 1827



8/19/22

POT HOLE LOCATION
OF WATERLINE

WATERLINE

VALVE ON SOUTH
SIDE OF FM1827

VIEW LOOKING
NORTH TOWARDS
METER

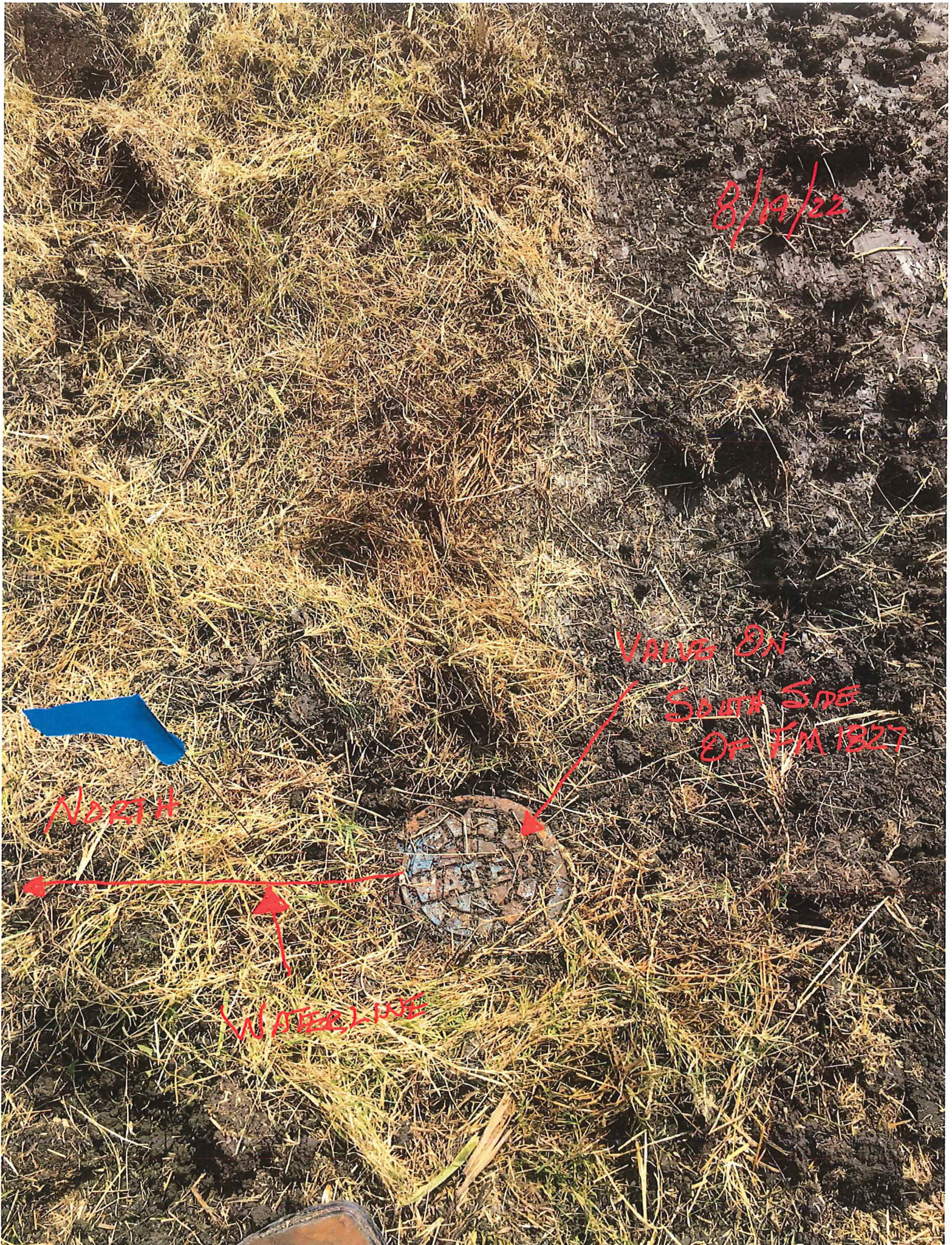


8/19/22

VALVE ON
SOUTH SIDE
OF FM 1827

NORTH

WATERLINE



FM 1027

RED BRICK
HOUSE

EAST

0/17/22

VALVE SOUTH
SIDE FM
1027



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