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DOCKET NO. 52515

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

COMMISSION STAFF’S RECOMMENDATION ON FINAL DISPOSITION

On September 3, 2021, Belknap, FP, LTD. (Belknap) 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). Belknap 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.¹ According to the U.S. Census Bureau, Collin County has a population of 782,341.² Additionally, Collin County is adjacent to Dallas County, which has a population of 2,368,139.³

On December 7, 2021, the administrative law judge (ALJ) filed Order No. 5, establishing a deadline of January 10, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file its recommendation on final disposition. Therefore, this pleading is timely filed.

I. FINAL RECOMMENDATION

After review, and as supported by the attached memorandum of Pai Liu of the Infrastructure Division, Staff recommends approval of the application. Staff’s review indicates that Belknap meets the requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter

¹ TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).

² U.S. Census Bureau, Census Data for Collin County, QuickFacts Collin County, Texas (2010) <https://www.census.gov/quickfacts/fact/table/collincountytexas/POP010220>

³ U.S. Census Bureau, Census Data for Dallas County, QuickFacts Dallas County, Texas (2010) <https://www.census.gov/quickfacts/fact/table/dallascountytexas/POP010220>

24 of the Texas Administrative Code, to allow for the release of the tract of land from Marilee SUD's CCN number 10150.

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 Belknap has not met its burden of proof to provide verified statements of facts required under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D) because it did not provide any statement of facts and only provided a “conclusory one-page affidavit” stating that the requested property is not receiving service.⁴ However, in Docket No. 50404, 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.⁵ Staff therefore recommends that Belknap has met its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).

B. Marilee's Federal Debt

Marilee SUD states that it consolidated with Mustang Special Utility District (Mustang SUD) on November 2, 2021 and that the two districts are in the 90-day statutory period required to settle the affairs of the districts.⁶ Marilee SUD asserts that Mustang SUD was indebted to the United States of America Department of Agriculture (USDA), Rural Utilities Service, which purchased bonds from Mustang SUD in 2016 in the amount of \$2,442,000 and 2018 in the amount of \$1,000,000.⁷ Marilee SUD states that it assumed Mustang SUD's federal indebtedness when the two districts were consolidated and 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 that was approved by the United States Department of Agriculture (USDA) on July 12, 2021.⁸ In its response, Marilee SUD states that, under the Consolidated Farm and Rural Development Act of

⁴ Marilee Special Utility District's Verified Response to Petition of Belknap, FP, Ltd. to Amend Certificate of Convenience and Necessity in Collin County by Expedited Release at 5 (Dec. 27, 2021) (Response).

⁵ *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).

⁶ Response at 8.

⁷ *Id.* at 8.

⁸ *Id.* at 8.

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.”⁹ Marilee SUD claims that, because it can show federal indebtedness and the physical ability to serve a portion of Belknap’s total property, the protections of 7 U.S.C. § 1926(b) prohibit the Commission from granting the release of the proposed area.

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.”¹⁰ 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.¹¹ 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.¹² 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

For the reasons detailed above, Staff respectfully recommends that Belknap’s petition be approved.

⁹ *Id.* at 7.

¹⁰ TWC § 13.2541(d).

¹¹ *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

¹² *Green Valley Special Util Dist. v. City of Schertz*, 969 F. 3d 460, 411 and 418 (5th Cir. Aug. 1, 2020) (en banc).

Dated: January 10, 2022

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 January 10, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Andy Aus
Andy Aus

Public Utility Commission of Texas

Memorandum

TO: Andrew Aus, Attorney
Legal Division

FROM: Pai Liu, Infrastructure Analyst
Infrastructure Division

DATE: January 10, 2022

RE: Docket No. 52515 – *Petition of Belknap, FP, Ltd. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

On September 3, 2021, Belknap, FP, Ltd. (Belknap) 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). Belknap 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.

Belknap submitted a sworn affidavit attesting that the property was not receiving water service from Marilee SUD and a warranty deed confirming Belknap's ownership of the tract of land. Gary Horton, Infrastructure Division, determined the maps submitted with Item 14 on November 3, 2021 are sufficient for determining the location of the tract of land considered for streamlined expedited release is located within Marilee SUD's water CCN.

Based on the mapping review by Mr. Horton it was determined the entire tract of land is approximately 318 acres. The area to be released from Marilee SUD (CCN No. 10150) is approximately 35 acres. The petition also includes a statement indicating a copy of the petition was sent via certified mail to Marilee SUD on the date the petition was filed with the Commission.

Marilee SUD requested to intervene. Marilee SUD provided documentation (Item 13) that indicates a water line is located approximately 850 feet from the western boundary of the Tract. Marilee SUD also filed a response to the petition stating that Belknap has not met its burden of proof. Marilee SUD, however, did not allege any facts to rebut Belknap's statement that the land is not receiving water service

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Belknap 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 is a final map and certificate for Commission approval.

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



Public Utility Commission of Texas

By These Presents Be It Known To All That

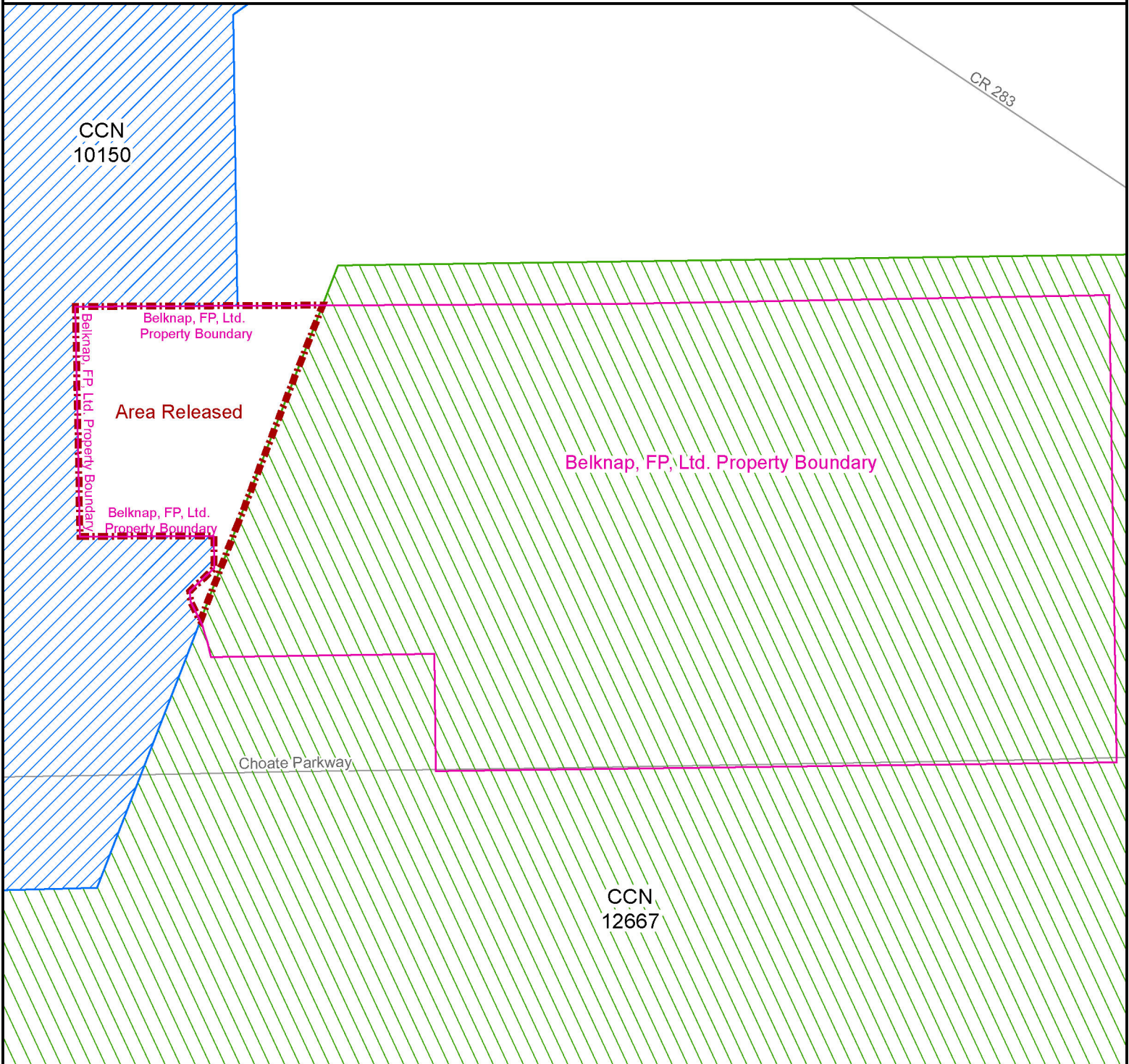
Marilee Special Utility District

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. 52515 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.

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52515
Petition by Belknap, FP, Ltd. to Amend
Marilee Special Utility District's CCN by Streamlined Expedited Release in Collin County



Water CCN

-  10150 - Marilee SUD
-  12667 - City of Celina

-  Area Released
-  Property Boundary

