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DOCKET NO. 52516

PETITION OF CCD-COIT LAND, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT' S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY	§	
STREAMLINED EXPEDITED	§	
RELEASE	§	

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

On September 3, 2021, CCD-COIT Land, LLC (CCD-COIT Land) 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). CCD-COIT Land 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 2010 Census,² Collin County has a population of 782,341³ and is adjacent to Dallas County, which has a population of 2,368,139.⁴ CCD-COIT Land filed supplemental information on September 9 and October 27, 2021.

On December 3, 2021, the administrative law judge (ALJ) filed Order No. 5, establishing a deadline of January 6, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on the final disposition of the petition. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON FINAL DISPOSITION

Staff has reviewed the petition and supplemental information and, as detailed in the attached memorandum from Pai Liu, Infrastructure Division, recommends that the petition be

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

² See Tex. Gov't Code § 2058.0021 for applicability of 2010 Census for determination whether the land is in a qualifying county.

³ U.S. Census Bureau, Census Data for Collin County, QuickFacts Collin County, Texas (2010), <https://www.census.gov/quickfacts/fact/table/collincountytexas/PST045221> (last accessed on Jan. 4, 2022).

⁴ U.S. Census Bureau, Census Data for Dallas County, QuickFacts Dallas County, Texas (2010), <https://www.census.gov/quickfacts/fact/table/dallascountytexas/PST045221> (last accessed on Jan. 4, 2022).

approved. Staff recommends that CCD-COIT Land has met the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h), and further recommends that the petition for release of the requested area from Marilee SUD's CCN No. 10150 in Collin County be granted. The final water CCN map and certificate are attached hereto and Staff recommends that they be provided to Marilee SUD.

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 CCD-COIT Land 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.⁵ 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.⁶ Staff therefore recommends that CCD-COIT Land 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.⁷ 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 \$1,000,000.⁸ 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

⁵ Marilee Special Utility District's Verified Response to Petition of CCD-COIT Land, LLC to Amend Certificate of Convenience and Necessity in Collin County by Expedited Release at 5 (Dec. 23, 2021) (Response).

⁶ *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).

⁷ Response at 7.

⁸ *Id.* at 7-8.

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 CCD-COIT Land’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.”¹¹ 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.¹² 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.¹³ 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 the petition be approved and that the Commission issue an order consistent with this recommendation.

⁹ *Id.* at 8.

¹⁰ *Id.* at 6.

¹¹ TWC § 13.2541(d).

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

¹³ *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 6, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52516

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 6, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Forrest Smith
Forrest Smith

Public Utility Commission of Texas

Memorandum

TO: Forrest Smith, Attorney
Legal Division

FROM: Pai Liu
Infrastructure Division

DATE: January 4, 2022

RE: Docket No. 52516 – *Petition of CCD-COIT Land, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

On September 3, 2021, CCD-COIT Land, LLC (CCD-COIT Land) 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). CCD-COIT 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.

CCD-COIT Land submitted a sworn affidavit attesting that the property was not receiving water service from Marilee SUD and a warranty deed confirming CCD-COIT Land's ownership of the tract of land. Based on the mapping review by Tracy Montes, Infrastructure Division, the revised maps submitted on October 27, 2021 (Item 6) and digital mapping data submitted on September 3, 2021 (Item 1) are sufficient. County Road (CR) 283 runs through the tract of land for which release has been requested and is not owned by CCD-COIT Land. Ms. Montes determined that CR 283 divides the tract of land into two non-contiguous tracts; however, each tract includes more than 25 acres and may be released from Marilee SUD (CCN No. 10150).

Based on the mapping review by Ms. Montes it was determined the tract of land is approximately 118.9 acres. The area to be released from Marilee SUD (CCN No. 10150) is approximately 118.3 acres.

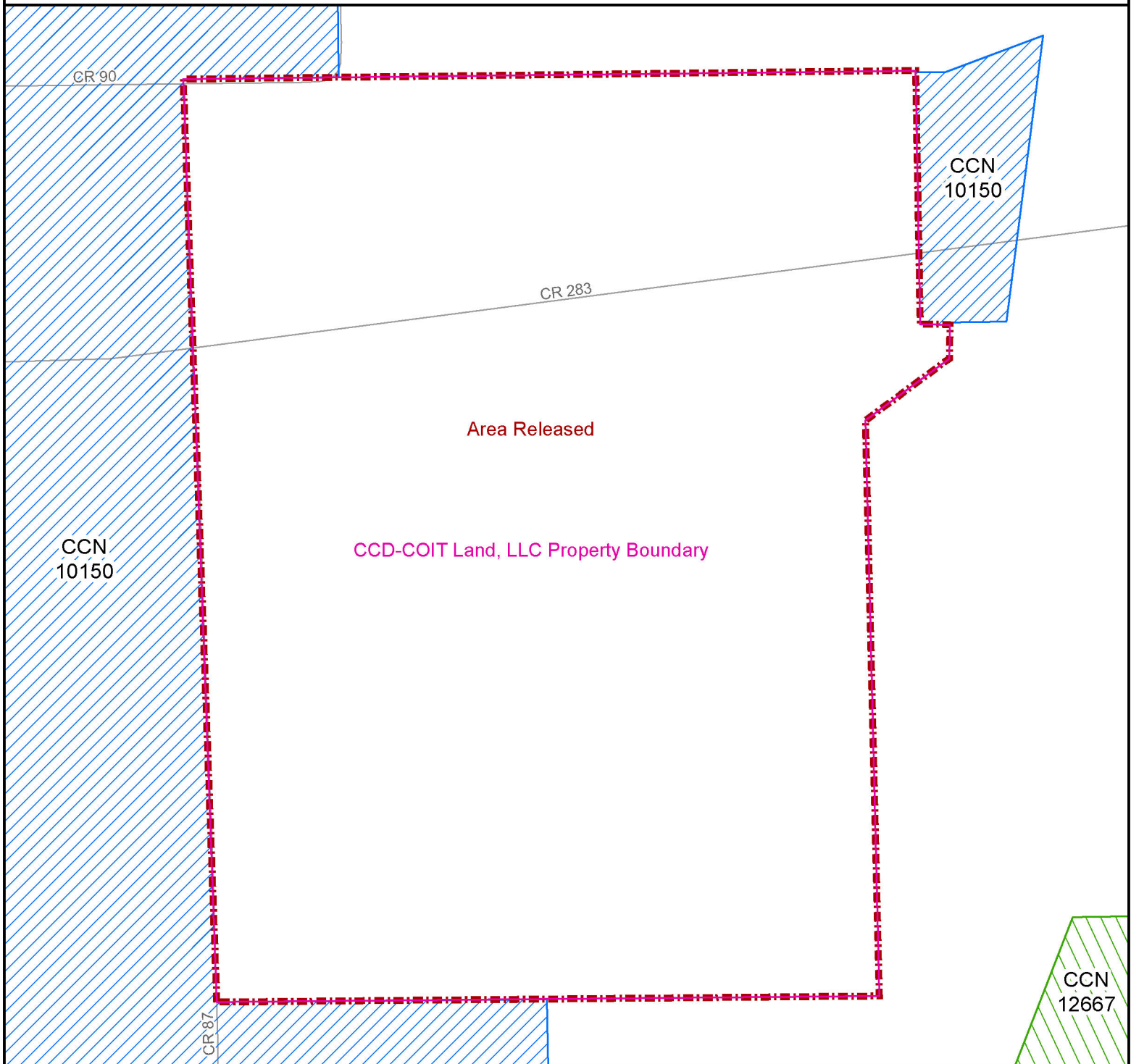
The petition also includes a statement indicating a copy of the petition was sent via certified mail to Marilee SUD on the date the petition was filed with the Commission.

Marilee SUD requested to intervene and also filed a response to the petition stating that CCD-COIT Land has not met its burden of proof. Marilee SUD, however, did not allege any facts to rebut CCD-COIT Land's statement that the land is not receiving water service.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), CCD-COIT Land 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.

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52516
Petition by CCD-COIT Land, LLC to Amend
Marilee Special Utility District's CCN by Streamlined Expedited Release in Collin County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

-  10150 - Marilee SUD
-  12667 - City of Celina

-  Area Released
-  Property Boundary

0 200 400
Feet



Map by: Komal Patel
Date: December 21, 2021
Project: 52516MarileeSUD.mxd



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. 52516 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.