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Received - 2022-03-18 11:41:39 AM

Control Number - 52517

ItemNumber - 21

DOCKET NO. 52517

PETITION OF AJ MALONE 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 AND MOTION TO DISMISS

On September 3, 2021, A. J. Malone (Malone) 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). Malone 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 16, 2021, Marilee SUD filed a motion to intervene and filed supplementary information on October 6, 2021. On October 11, 2021, an amended petition was filed to reflect new ownership of the property. The new owner, VPTM Cross Creek LB, LLC, (VPTM) 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.

On January 14, 2022, the administrative law judge (ALJ) filed Order No. 8, establishing a deadline of March 18, 2022, 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 DISPOSITON AND MOTION TO DISMISS

Commission Staff recommends VPTM’s petition be denied and files this motion to dismiss. Specifically, VPTM has failed to show ownership of the requested tract of land based on the provided mapping. Under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(E), a petitioner must show ownership of the tract of land with a copy of deeds. On September 3, 2022, Malone filed a deed for the requested tract of land in Collin County.¹ Malone asserted the requested tract of land is

¹ Application at 16 (Sept. 3, 2021).

62.671 acres.² On October 11, 2021, Malone filed an amended petition stating that the requested tract of land was sold to VPTM and submitted a special warranty deed showing a transfer from C and C Land, LLC to VPTM, not from Malone to VPTM.³ Based on the deeds provided, it does not appear that Malone transferred the tract of land to VPTM. Additionally, 16 TAC § 24.3(18) defines a landowner as an owner as shown on the appraisal roll of the appraisal district established for each county the property is located. Based on Commission Staff's review of the Collin County Appraisal District's records on the tract of land, VPTM does not own the entirety of the requested tract of land.⁴ This is supported by the deed submitted in this docket, as well as the deed filed in Docket No. 52518. Specifically, the deed submitted with VPTM's amended petition is identical to the deed submitted by VPTM in Docket No. 52518.⁵ The 62.7 acres in Tract 2 from the deed is for the land to be released in Docket No. 52518, while the 37.695 acres in Tract 1 is just a portion of the 62.671 acre tract of land requested for release in this docket.⁶ As evidenced by the Collin County Appraisal District's records, the remaining 24.976 acres is owned by TMBTR OF TEXAS LLC.⁷ Therefore, Staff recommends that VPTM cannot satisfy TWC § 13.2541 and 16 TAC § 24.245(h), since it has not demonstrated ownership of the requested tract of land.

Notably, Staff has previously informed counsel for VPTM of this ownership issue and it has not since been resolved. As such, Commission Staff recommends that, under 16 TAC § 22.181(d)(8), a proceeding may be dismissed for failure to state a claim for which relief may be granted. Based on its failure to show ownership of the entire requested tract of land, VPTM has no claim to the relief requested in this petition. As such, Commission Staff recommends that the petition be dismissed without prejudice on this ground. Alternatively, and in line with Commission

² *Id.* at 11.

³ First Amended Petition by VPTM Cross Creek LB, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Tract 1) at 15 (Oct. 11, 2021).

⁴ <https://www.collincad.org/propertysearch?prop=2841668>

⁵ First Amended Petition by VPTM Cross Creek LB, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Tract 1) at 15 (Oct. 11, 2021); *Petition of VPTM Cross Creek LB, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52518, First Amended Petition by VPTM Cross Creek LB, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Tract 2) at 13-20 (Oct. 6, 2021).

⁶ *Id.*

⁷ <https://www.collincad.org/propertysearch?prop=1011586>

precedent,⁸ Commission Staff recommends that the ALJ at least rescind Order No. 5, in which the ALJ found the petition administratively complete.

III. CONCLUSION

For the reasons detailed above, Commission Staff respectfully recommends that this petition be denied and dismissed without prejudice and respectfully requests the entry of an order consistent with these recommendations.

Dated: March 18, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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⁸ *Petition of Belknap, FP, LTD. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52515, Order No. 8 (Jan. 28, 2022).

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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 March 18, 2022, in accordance with the Order Suspending Rules issued in Project No. 50664.

/s/ Kourtnee Jinks

Kourtnee Jinks