



## Filing Receipt

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**DOCKET NO. 52518**

**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** §  
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**PUBLIC UTILITY COMMISSION OF TEXAS**

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

On September 3, 2021, Clifton Van McKnight and Bryan Jeffrey McKnight (Petitioners) 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). Since filing the petition, the property at issue was sold to VPTM Cross Creek LB, LLC (VPTM). As such, on October 6, 2021, VPTM filed an amended petition. VPTM asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, Texas, which is a qualifying county.<sup>1</sup> According to the 2010 Census,<sup>2</sup> Collin County has a population of 782,341.<sup>3</sup> Additionally, Collin County is adjacent to Dallas County, which has a population of 2,368,139.<sup>4</sup> On November 4, 2021 and December 9, 2021, VPTM filed supplemental information. On January 4, 2022, the Staff (Staff) of the Public Utility Commission of Texas (Commission) filed its first requests for information (RFI) to VPTM and Marilee SUD. VPTM filed its response to Staff's RFI on January 24, 2022. Marilee SUD filed its response to the petition on January 18, 2022 and its response to Staff's RFI on January 24, 2022.

On December 29, 2021, the administrative law judge (ALJ) filed Order No. 6, establishing a deadline of February 1, 2022 for Staff to file a recommendation on final disposition. Therefore, this pleading is timely filed.

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<sup>1</sup> TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).

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

<sup>3</sup> U.S. Census Bureau, Census Data for Collin County, QuickFacts Collin County, Texas (2010) <https://www.census.gov/quickfacts/fact/table/collincountytexas/POP010210> (last accessed Jan. 10, 2022).

<sup>4</sup> U.S. Census Bureau, Census Data for Dallas County, QuickFacts Dallas County, Texas (2010) <https://www.census.gov/quickfacts/fact/table/dallascountytexas/POP010210> (last accessed Jan. 10, 2022).

## I. RECOMMENDATION ON FINAL DISPOSITION

Staff has reviewed the petition and, as detailed in the attached memorandum from Patricia Garcia, Infrastructure Division, recommends that the petition satisfies the requirements of TWC § 13.2541 and 16 TAC § 24.245(h). In its response to the petition, Marilee SUD stated that the petition should be denied.

Marilee SUD first argued that because the petition was filed by the Petitioners and not VPTM, and the Petitioners do not own the land, the Petitioners have failed to state a claim upon which relief may be granted. Additionally, Marilee SUD argued that VPTM cannot “substitute in” for the Petitioners in this docket. On December 1, 2021, Marilee SUD filed a motion to dismiss on the same basis that VPTM cannot “substitute in” for the Petitioners. On December 8, 2021, Staff filed a response to Marilee SUD’s motion for dismissal. In accordance with that response, Staff re-urges its recommendation that the original petition was not administratively complete at the time the land was sold from the Petitioners to VPTM and thus for purposes of this docket, had not been filed.<sup>5</sup> As such, in order to cure deficiencies in the petition, including to revise the proof of ownership, VPTM’s amended petitions were properly filed. Additionally, Staff re-urges its recommendation that it would be a waste of judicial resources to dismiss this docket on this basis and require VPTM to refile its petition under a new docket.

Marilee SUD also argued that VPTM has not met its burden of proof to decertify the property under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).<sup>6</sup> Specifically, Marilee SUD stated that VPTM only provided a conclusory one-page affidavit and did not provide any information regarding an investigation of the requested area.<sup>7</sup> In turn, Marilee SUD argued that VPTM did not provide a sufficient statement of facts, as required by 16 TAC § 24.245(h)(3)(D), to establish the property is not receiving water service.<sup>8</sup> However, the Commission has previously granted, in Docket No. 50404, 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>9</sup> Staff therefore

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<sup>5</sup> 16 TAC § 24.8(d)

<sup>6</sup> Marilee Special Utility District’s Verified Response at 6-9 (Jan. 18, 2022) (Response).

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.* at 8-9.

<sup>9</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*

recommends that VPTM has met its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).

Marilee SUD further asserted that VPTM cannot meet its burden of proof because the requested area is receiving service.<sup>10</sup> 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>11</sup> Marilee SUD specifically argued that Marilee SUD has sufficient facilities in place to provide water service to VPTM’s property through multiple water lines that are adjacent to the requested area.<sup>12</sup> Marilee SUD’s argument is flawed.

Specifically, the water lines running adjacent to the requested area have not been shown to be committed to providing water to the requested area. In *Crystal Clear*, the court looked to whether existing lines and facilities, located on or near property, were constructed for the purpose of providing water to the property in question.<sup>13</sup> 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>14</sup> In its response to the petition, Marilee SUD did not demonstrate that the water lines were committed in any way separate from supplying water to the greater area. Instead, Marilee SUD merely referenced the presence of water meters on properties north of the requested area for the proposition that Marilee SUD is capable and has the capacity to serve the requested area.<sup>15</sup> However, merely having the capacity to serve the requested area is not sufficient to demonstrate that the requested area is receiving water.<sup>16</sup> Staff therefore recommends that Marilee

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*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); *Id.*, Order on Rehearing (Jan. 14, 2022).

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

<sup>11</sup> *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d.130, 140 (Tex. App.—Austin 2014, pet. denied); *see also* TWC § 13.002(21), 16 TAC § 24.33, and Docket No. 50404, Order at Findings of Fact Nos. 38-48.

<sup>12</sup> Response at 9-10.

<sup>13</sup> *Crystal Clear*, 449 S.W.3d at 140.

<sup>14</sup> *Id.*

<sup>15</sup> Response at 10.

<sup>16</sup> *Petition of Imperial Heights, Ltd. to Amend Aqua Texas, Inc.’s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114, Open Meeting Tr. at 26-28 (Nov. 5, 2020); *see also* November 5, 2020 Open Meeting Discussion of Item No. 6 at 17:52 – 26:44 ([http://www.adminmonitor.com/tx/puct/open\\_meeting/20201105/](http://www.adminmonitor.com/tx/puct/open_meeting/20201105/), last visited September 3, 2021).

SUD's statements and arguments are not adequate to demonstrate that the water lines are committed to serve the requested area.

In addition to the first three arguments, Marilee SUD also asserted that releasing the requested area would curtail or limit its ability to service its federal debt, in violation of federal law.<sup>17</sup> Specifically, Marilee SUD stated that it is federally indebted through a Water and Wastewater Guaranteed loan that received approval from the United States Department of Agriculture (USDA) on July 12, 2021, as well as the USDA loans that it assumed from the Mustang Special Utility District when the two districts consolidated on November 2, 2021.<sup>18</sup> Marilee SUD argued 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>19</sup> Marilee SUD claimed that, because it can show federal indebtedness, the protections of § 1926(b) prohibit the Commission from granting the release of the requested 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."<sup>20</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>21</sup> Further, the Fifth Circuit decision in *Green Valley Special Utility District v. City of Schertz* specifically dismissed the preemption claim and determined that the court lacked jurisdiction to consider it.<sup>22</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.

Accordingly, Staff recommends that the petition for streamlined expedited release be approved. Further, the final water CCN map and certificate are attached to this filing. Staff recommends that the final map and certificate be provided to Marilee SUD and for Marilee SUD

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<sup>17</sup> Response at 10-12.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> TWC § 13.2541(d).

<sup>21</sup> *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

<sup>22</sup> *Green Valley Special Util Dist. v. City of Schertz*, 969 F.3d 460, 472 and 478 (5th Cir. 2020) (en banc).

to file a certified copy of the CCN map and a boundary description of the CCN service area in the Collin County Clerk's office, as required under TWC § 13.257(r)-(s).

## II. CONCLUSION

For the reasons detailed above, Staff recommends that the petition be approved and respectfully requests the entry of an order consistent with the foregoing recommendations.

Dated: February 1, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 52518**

### **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 February 1, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles  
Scott Miles

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Scott Miles, Attorney  
Legal Division

**FROM:** Patricia Garcia, Senior Engineering Specialist  
Infrastructure Division

**DATE:** February 1, 2022

**RE:** Docket No. 52518 – *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*

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On September 3, 2021, Clifton Van McKnight and Bryan Jeffrey McKnight (Petitioners) 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). On October 6, 2021, legal counsel for the Petitioners submitted an amendment to the petition indicating that the land had been sold to VPTM Cross Creek LB, LLC (VPTM) since the filing of the original petition and that VPTM wishes to continue pursuing the streamlined expedited release from Marilee SUD’s water CCN No. 10150 in Collin County, under TWC § 13.2541(b) and 16 TAC § 24.245(h). The amendment to the petition was accepted by the Commission and the docket was restyled to include VPTM and remove the original petitioners. 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.

VPTM provided a warranty deed confirming ownership of the tract of land within Marilee SUD’s certificated service area. In addition, VPTM submitted a sworn affidavit attesting that the tract of land was not receiving water service from the CCN holder.

Based on the mapping review by Tracy Montes, Infrastructure Division, it was determined the landowner’s total property is approximately 62.7 acres. The tract of land in the petition for streamlined expedited release is approximately 62.7 acres, of which 62.7 acres overlap Marilee SUD, CCN No. 10150, and are to be decertified from CCN No. 10150.

Marilee SUD requested to intervene and provided documentation stating there are facilities just outside the tract of land that could provide water service to the property.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), VPTM 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**

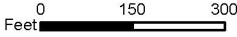
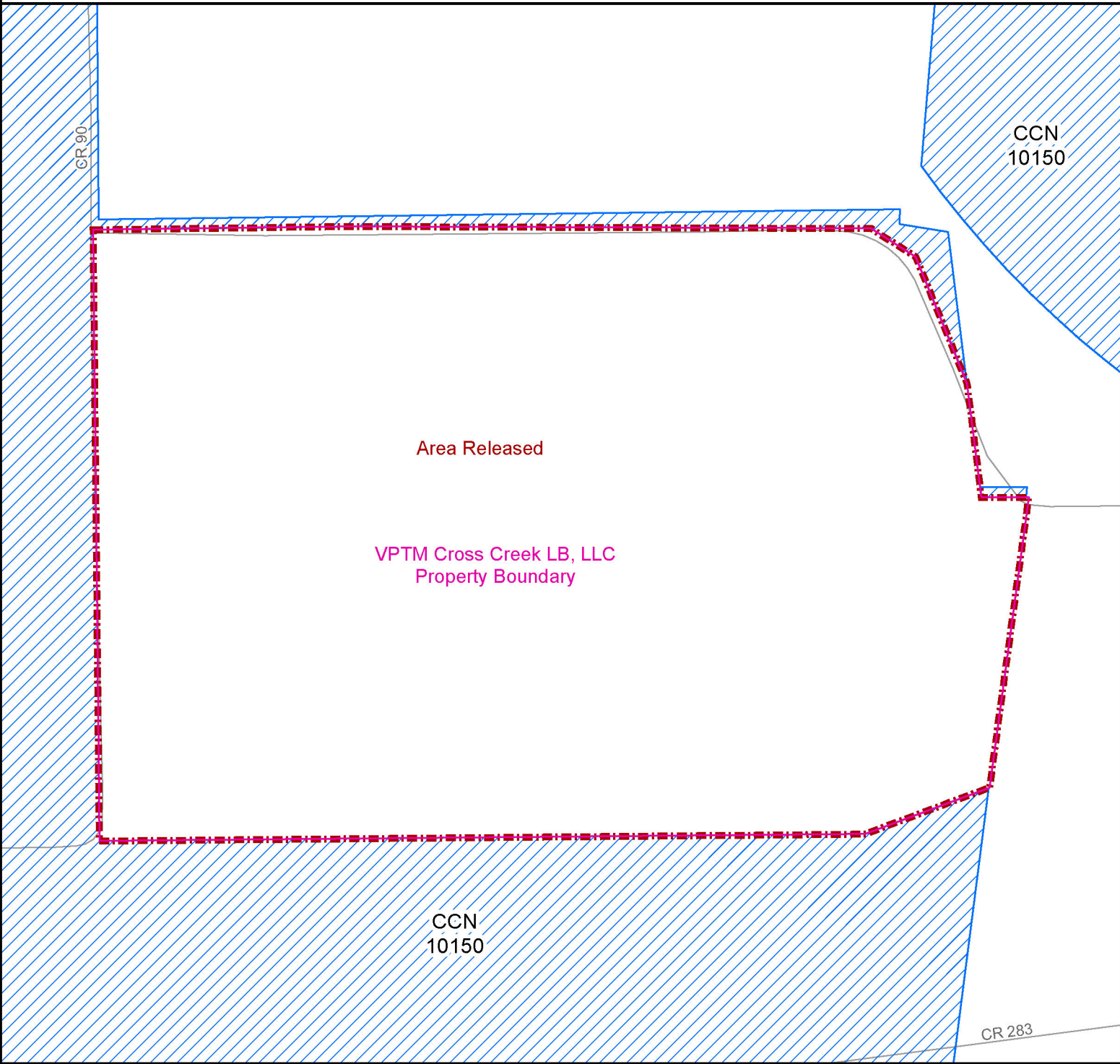
## **Marilee Special Utility District**

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. 52518 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. 52518  
Petition by VPTM Cross Creek LB, LLC to Amend  
Marilee Special Utility District's CCN by Expedited Release in Collin County



**Water CCN**  
 10150 - Marilee SUD

 Area Released  
 Property Boundary