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DOCKET NO. 52542

**PETITION OF MESQUOAKEE RANCH, § PUBLIC UTILITY COMMISSION
LLC TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE § OF TEXAS
OF CONVENIENCE AND NECESSITY §
IN COLLIN COUNTY BY EXPEDITED §
RELEASE §**

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

On September 9, 2021, Mesquaukee Ranch, LLC (Mesquaukee Ranch) 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). Mesquaukee Ranch 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 782,341.³ Additionally, Collin County is adjacent to Dallas County, which has a population of 2,368,139.⁴ Mesquaukee Ranch filed an amended petition on September 23, 2021 and supplemental information on October 8, 2021 and October 27, 2021. On December 10, 2021, the Staff (Staff) of the Public Utility Commission of Texas (Commission) filed its first requests for information (RFI) to Mesquaukee Ranch and Marilee SUD. Mesquaukee Ranch filed its response to Staff's RFI on December 29, 2021. Marilee SUD filed its response to the petition on December 29, 2021 and its response to Staff RFI on December 30, 2021.

On December 10, 2021, the administrative law judge (ALJ) filed Order No. 5, establishing a deadline of January 12, 2022 for Staff to file a recommendation on final disposition. Therefore, this pleading is timely filed.

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 in 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/POP010210> (last accessed Jan. 10, 2022).

⁴ 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 Mesquoakee Ranch has not met its burden of proof to decertify the property under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).⁵ Specifically, Marilee SUD stated that Mesquoakee Ranch only provided a conclusory one-page affidavit and did not provide any information regarding an investigation of the requested area.⁶ In turn, Marilee SUD argued that Mesquoakee Ranch 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.⁷ 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.⁸ Staff therefore recommends that Mesquoakee Ranch has met its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).

Marilee SUD further asserted that Mesquoakee Ranch cannot meet its burden of proof because the requested area is receiving service.⁹ 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”¹⁰ Marilee SUD specifically argued that Marilee SUD provides water service to Mesquoakee Ranch's property through multiple meters and water lines.¹¹ Marilee SUD's argument is flawed in two respects.

⁵ Marilee Special Utility District's Verified Response at 3-7 (Dec. 29, 2021) (Response).

⁶ *Id.* at 5.

⁷ *Id.* at 5-6.

⁸ *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); *Id.*, Order (Oct. 12, 2021).

⁹ Response at 7-8.

¹⁰ *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.

¹¹ Response at 7-8.

First, the property, to which Marilee SUD refers, is detailed in Mesquoakee Ranch's initial petition, filed on September 9, 2021, and includes three tracts of land with approximately 857.021 acres owned by Mesquoakee Ranch. However, as indicated by the amended petition, filed on September 23, 2021, Mesquoakee Ranch only seeks to decertify a portion of just one of the tracts, Tract 1, which is approximately 556.5 acres, with approximately 554.5 acres being requested for release. Except for Meter No. 722, all of the meters referenced by Marilee SUD, as being on the property, are not located on Tract 1.¹² Further, as indicated by Ms. Garcia, the land, where Meter No. 722 is located, is not being requested for expedited release in this docket. As such, there are no meters located on the requested area. Staff interprets Marilee SUD's argument here to be that because there are meters and lines on Mesquoakee Ranch's overall property, it would not be appropriate for any release to be granted. In Docket No. 50404, the Commission rejected a similar argument, in which Marilee SUD conflated the petitioner's total property with the release property to argue that release was not appropriate.¹³

Second, the water lines running through and adjacent to the property 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.¹⁴ 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.¹⁵ 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 aforementioned meters. Since the meters are not located in the requested area, Staff recommends that the water lines are not committed to the requested area. As such, Staff recommends that Marilee SUD has not shown any indication that the water lines are committed to serve the requested area.

Lastly, to help in its attempt to prove the requested area is receiving water service, Marilee SUD also included that it received an application for non-standard service from Elevated Property

¹² *Id.* at Exhibit B-1.

¹³ Docket No. 50404, Order at Conclusions of Law No. 9.

¹⁴ *Crystal Clear*, 449 S.W.3d at 140.

¹⁵ *Id.*

Management on behalf of Mesquoakee Ranch.¹⁶ However, based on the complete response provided by Marilee SUD, the service request was for proposed lots that will be located below Tract 1, on portions of the other tracts owned by Mesquoakee Ranch.¹⁷ As such, the service request is not relevant to the tract of land and the requested area in this docket. Accordingly, Staff recommends that the requested area is not receiving water service.

In addition to its arguments that the requested area is receiving water service, 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.¹⁸ 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, 2021.¹⁹ 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.²⁰ Marilee SUD claimed that, because it can show federal indebtedness and the physical ability to serve a portion of Mesquoakee Ranch's total property, 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."²¹ 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.²² 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.²³

¹⁶ Response at Exhibit A and Exhibit A-2.

¹⁷ *Id.* at Exhibit B, Exhibit B-1, and Exhibit B-2.

¹⁸ *Id.* at 8-10.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 8-9.

²¹ TWC § 13.2541(d).

²² *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

²³ *Green Valley Special Util Dist. v. City of Schertz*, 969 F.3d 460, 472 and 478 (5th Cir. 2020) (en banc).

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 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: January 12, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52542

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 January 12, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles

Public Utility Commission of Texas

Memorandum

TO: Scott Miles, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: January 12, 2022

RE: Docket No. 52542 – *Petition of Mesquoakee Ranch, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*

On September 9, 2021, Mesquoakee Ranch, LLC (Mesquoakee Ranch) 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). Mesquoakee Ranch 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.

Gary Horton, Infrastructure Division, determined the map and digital data are sufficient for determining the location of the tract of land considered for streamlined expedited release is located within Marilee SUD’s water CCN. Furthermore, Mesquoakee Ranch provided warranty deeds confirming ownership of the tract of land within Marilee SUD’s certificated service area. In addition, Mesquoakee Ranch submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder.

Based on the mapping review by Mr. Horton, it was determined the entire tract of land is approximately 556.5 acres. The portion of the tract considered for release is approximately 554.5 acres. The area to be released from Marilee SUD, CCN No. 10150, is approximately 554.5 acres.

Marilee SUD requested to intervene. Marilee SUD provided documentation showing that there are meters on three tracts of land owned by Mesquoakee Ranch, as well as water lines that serve the above-described meters, among others. However, two of the tracts of land, on which Marilee SUD indicates there are meters, are not being requested for release in this docket. There is one meter being served by Marilee SUD located within Mesquoakee Ranch’s entire tract of land (556.5 acres) in this docket. However, the land, where the meter is located, is not being requested for expedited release in this docket. As noted above, the portion of the tract

considered for release is approximately 554.5 acres. As such, there is no indication that the water lines are committed to serve the requested area.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Mesquoakee Ranch 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

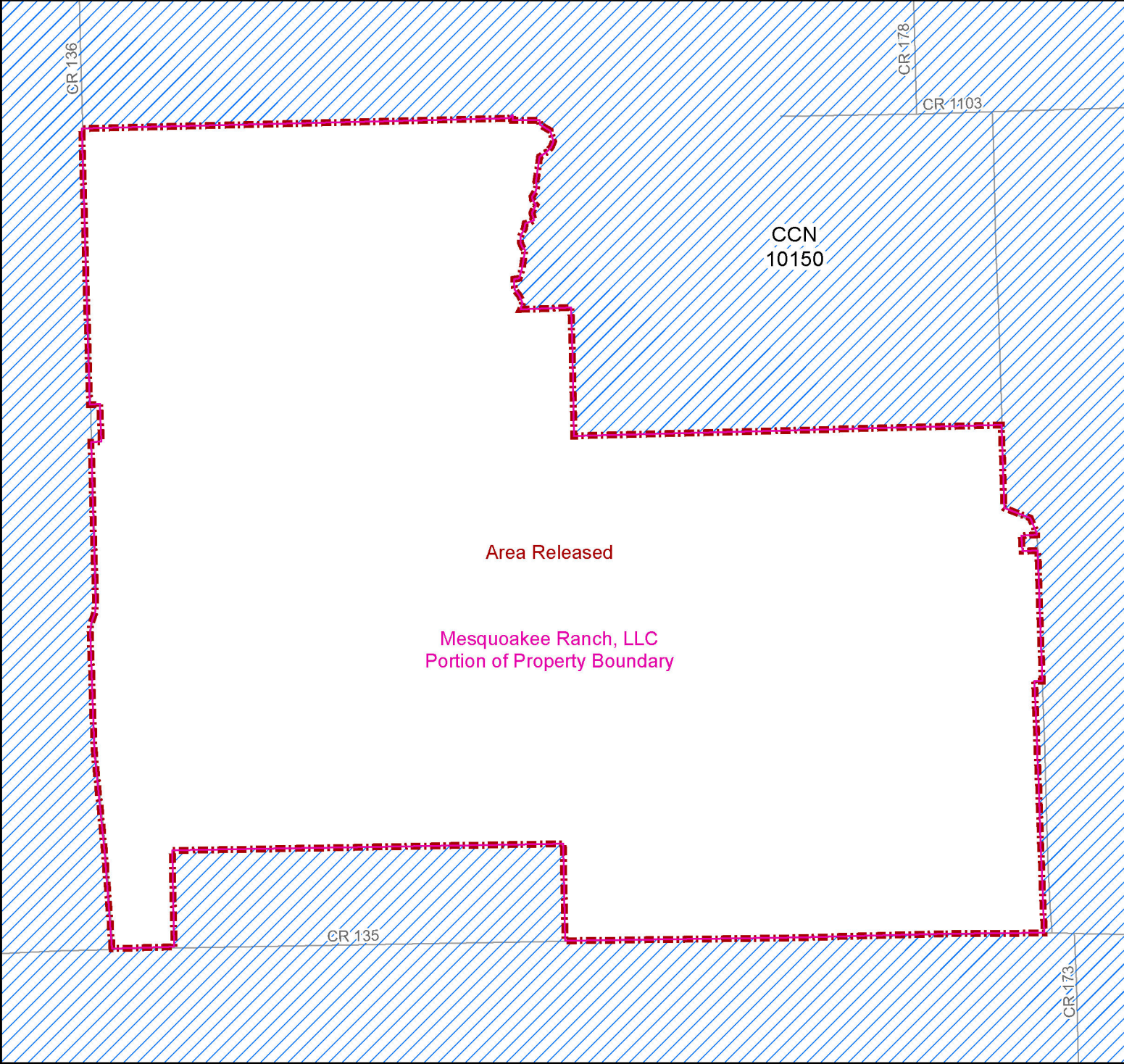
Marilee Special Utility District

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. 52542 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. 52542
Petition by Mesquoakee Ranch, LLC to Amend
Marilee Special Utility District's CCN by Expedited Release in Collin County



Water CCN
 10150 - Marilee SUD

 Area Released
 Portion of Property Boundary

