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PUC DOCKET NO. 52630

PETITION OF GJGTEB HOLDINGS,	§	BEFORE THE
LLC TO AMEND CREEDMOOR-	§	
MAHA WATER SUPPLY	§	
CORPORATION’S CERTIFICATE OF	§	PUBLIC UTILITY COMMISSION
CONVENIENCE AND NECESSITY IN	§	
CALDWELL COUNTY BY	§	
EXPEDITED RELEASE	§	OF TEXAS

**CREEDMOOR-MAHA WATER SUPPLY CORPORATION’S
RESPONSE TO PETITION OF GJGTEB HOLDINGS, LLC AND
MOTION TO ABATE**

COMES NOW, Creedmoor-Maha Water Supply Corporation (“Creedmoor”), and pursuant to Order No. 2, files this Response to the Petition for Expedited Release (“Response”) by GJGTEB Holdings, LLC (“GJGTEB” or “the Petitioner”) and Motion to Abate (“Motion”) in the above-styled proceeding pursuant to 16 TEX. ADMIN. CODE § 24.245(h) and TEX. WATER CODE § 13.2541. In support thereof, Creedmoor respectfully shows the following:

I. Procedural Background

1. On September 23, 2021, GJGTEB filed a petition (“the Petition”) with the Public Utility Commission of Texas (“Commission”) for streamlined expedited release from Creedmoor’s water Certificate of Convenience and Necessity (“CCN”) No. 11029 pursuant to TEX. WATER CODE § 13.2541 and 16 TEX. ADMIN. CODE § 24.245(h). GJGTEB seeks the expedited release of approximately 194 acres of land in Caldwell County (“the Property”) located within the boundaries of Creedmoor’s water CCN No. 11029.

2. On October 25, 2021, Commission Staff recommended that the Petition be found administratively complete.

3. On October 27, 2021, the Honorable Administrative Law Judge issued Order No. 2 finding the Petition administratively complete, finding notice sufficient, and establishing a deadline of November 15, 2021 for Creedmoor, the CCN holder, to file a response.

4. Pursuant to Order No. 2, and 16 TEX. ADMIN. CODE § 24.245(h)(6), Creedmoor hereby files this Response with the accompanying verified, notarized Affidavit of Matthew Pickle, General Manager of Creedmoor (attached hereto as “**Exhibit A**”), and objects to GJGTEB’s Petition.

II. Arguments and Authorities

A. Creedmoor has performed acts related to providing water to the Property.

Creedmoor has (1) actively supplied water to customers near the Property, (2) has the necessary physical facilities (including waterlines, connections, wells, and plants) to provide water service to the Property, and (3) is ready, willing, and able to serve the Property, depending on its specific needs, in furtherance of Creedmoor’s CCN obligations. In fact, Creedmoor has waterlines that run along the southern boundary of the Property and has multiple meters directly across the road from the Property. The location of this infrastructure in relation to the Property is depicted on Creedmoor’s Water System Map, attached as “**Attachment A**” to “**Exhibit A**.” This infrastructure—and the acts of planning, creating, and maintaining it—are all committed or used by Creedmoor in the performance of its duties to supply water within its CCN area.

The Petitioner in this matter has not yet filed a request for service with Creedmoor.¹ Regardless of such a request, however, a WSC must still plan and prepare for upcoming development on tracts within its CCN by developing water supply facility designs,

¹ See Affidavit of Todd Burek, *GJGTEB Holdings, LLC Petition to Amend Creedmoor Maha Water Supply Corporation’s Certificate of Convenience and Necessity in Caldwell County by Streamlined Expedited Release*, Exhibit D (September 22, 2021).

negotiating contracts to secure water sources, and obtaining necessary permits. Such items are difficult and expensive to obtain and are valuable to the CCN holders. In this case, Creedmoor would have been able to perform the necessary acts related to providing water to the Property had GJGTEB filed a request for service with Creedmoor before filing its Petition. However, GJGTEB's petition does not indicate what type of water service the Property requires, the timing that such service is needed, or the amount of water required. If GJGTEB had provided sufficient information as to the type, timing, and amount of requested water service to the Property, then Creedmoor would be in a better position to determine whether Creedmoor can adequately and continuously serve the Property. But as it stands currently, Creedmoor has sufficient infrastructure in place to adequately and continuously serve the Property, depending on the Property's specific needs.

Therefore, Creedmoor respectfully requests that the Honorable Administrative Law Judge deny the release of the Property because GJGTEB has failed to demonstrate that Creedmoor cannot adequately and continuously serve the Property. GJGTEB cannot make that demonstration until GJGTEB provides further information as to the type, timing, and amount of water service required for the Property and allows Creedmoor an opportunity to evaluate whether Creedmoor can accommodate GJGTEB's desired service. At the very least, this proceeding should be abated until GJGTEB provides further information about the type, timing, and amount of water service required for the Property, and until Creedmoor has an opportunity to evaluate whether it can adequately and continuously serve the Property based on that information. Accordingly, Creedmoor hereby moves for an abatement of this proceeding on that ground.

A second ground warranting an abatement of this proceeding is based on Creedmoor's federal indebtedness. The U.S.D.A. Rural Development loan program requires that upon receiving a loan, a water supply corporation such as Creedmoor cannot have its ability to repay that loan infringed upon. Creedmoor currently has such a loan. In addition, 7 U.S.C. § 1926(b) provides that water service providers with U.S.D.A loans are protected and their service "shall not be curtailed or limited."² As such, 7 U.S.C. § 1926(b) federally preempts this proceeding and serves as a basis for an abatement. Creedmoor respectfully moves for an abatement of this proceeding based on its federal indebtedness. The Commission has abated similar proceedings in the recent past due to the federal preemption of 7 U.S.C. § 1926(b).³

B. Creedmoor must be compensated if the Property is removed from its CCN area.

Creedmoor is entitled to compensation if its CCN area is reduced.⁴ TEX. WATER CODE § 13.2541(f) requires just and adequate compensation to retail public utilities regardless of whether property will be rendered useless or valueless by the decertification according to the factors set forth in TEX. WATER CODE § 13.254(g).⁵ The factors ensuring that the compensation to a retail public utility is just and adequate include the following:

the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.⁶

² 7 U.S.C. § 1926(b).

³ See Order No. 4, *Petition of the City of Red Oak Industrial Development Corporation to Amend Rocket, Special Utility District's Water Certificate of Convenience and Necessity in Dallas and Ellis Counties by Expedited Release*, Docket No. 49871 (order abating proceeding).

⁴ See TEX. WATER CODE §§ 13.254(g), 13.2541(f)-(h).

⁵ TEX. WATER CODE § 13.254(d).

⁶ TEX. WATER CODE §§ 13.254(g), 13.2541(h).

Creedmoor is entitled to compensation under several of these factors, including but not necessarily limited to obtaining permits, planning, design, and construction of facilities, and the necessary and reasonable legal expenses and professional fees that are incurred as a result of GJGTEB's Petition. The Petition does not address compensation at all. The amount of compensation shall be determined by an appraiser—either one agreed upon by the parties, or one hired by each individual party with a third Commission-appointed appraiser to review the individual appraisals.⁷

Decertification indisputably would deprive Creedmoor of the exclusive right to provide water service to the Property. Creedmoor acquired that right when obtaining CCN No. 11029, and has relied on it since. Possession of a CCN confers a contingent right that has value and is generally required to provide water utility service to the public. Obtaining the CCN required Creedmoor to make expenditures. Furthermore, decertification of the Property will diminish the value of CCN No. 11029 by reducing the potential service area and number of customers.

III. Conclusion and Prayer

For these reasons, Creedmoor respectfully requests that the Honorable Administrative Law Judge find that the Petition does not meet the streamlined expedited release requirements under 16 TEX. ADMIN. CODE § 24.245(h) and TEX. WATER CODE § 13.2541, and further, deny the Petition. Alternatively, Creedmoor moves for an abatement of this proceeding until GJGTEB provides further information about the type, timing, and amount of water service required for the Property, and until Creedmoor has an opportunity to evaluate whether it can adequately and continuously serve the Property based on that information. In the event that the Commission releases the Property from Creedmoor's CCN, then Creedmoor is entitled to just and adequate

⁷ TEX. WATER CODE §§ 13.2541(g), (i).

compensation before any other water service provider may in any way render retail water service directly or indirectly to the public in the decertified area. Creedmoor further prays for any other relief to which it may be entitled.

Respectfully submitted,

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/s/ *Duncan C. Norton*
DUNCAN C. NORTON
State Bar No. 15103950
SAMUEL L. BALLARD
State Bar No. 24091982

**ATTORNEYS FOR CREEDMOOR-MAHA
WATER SUPPLY CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was transmitted to all parties of record via electronic mail on November 15, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ *Duncan C. Norton*
Duncan C. Norton

EXHIBIT A

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MAHA WATER SUPPLY	§	
CORPORATION’S CERTIFICATE OF	§	PUBLIC UTILITY COMMISSION
CONVENIENCE AND NECESSITY IN	§	
CALDWELL COUNTY BY	§	
EXPEDITED RELEASE	§	OF TEXAS

AFFIDAVIT OF MATTHEW PICKLE

My name is Matthew Pickle. I am over the age of 18 years and reside in Hays County, Texas. I am of sound mind, have never been convicted of a felony or other crime involving moral turpitude, and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

I am the General Manager for Creedmoor-Maha Water Supply Corporation (“Creedmoor”), the Respondent in the above-styled and numbered case. I am authorized to make this affidavit on behalf of Creedmoor.

The Petitioner, GJGTEB Holdings, LLC (“GJGTEB” or “the Petitioner”), seeks the streamlined expedited release of approximately 194.362 acres of land (the “Property”) located within the boundaries of Creedmoor’s water Certificate of Public Convenience and Necessity (“CCN”) No. 11029, in Caldwell County.

Creedmoor has actively supplied water to customers near the Property, has the necessary physical facilities (including waterlines, connections, wells, and plants) to provide water service to the Property, and is ready, willing, and able to serve the Property, depending on its specific needs. In fact, Creedmoor has waterlines that run along the southern boundary of the Property and has multiple meters directly across the road from the Property. The location of this infrastructure

in relation to the Property is depicted on Creedmoor's Water System Map, attached hereto as **"Attachment A."**

Mr. Todd Burek accurately states in his affidavit, attached to GJGTEB's petition, that GJGTEB has not requested retail water service from Creedmoor, has not paid any service reservation or standby fees, nor does it have any agreements with Creedmoor to provide retail water service to the Property.¹ Had Mr. Burek, or someone else from GJGTEB, requested service to the Property, Creedmoor would have performed the necessary acts related to providing water to the Property. However, neither GJGTEB's petition nor Mr. Burek's affidavit indicates what type of water service the Property requires, the timing that such service is needed, or the amount of water required. If GJGTEB had provided sufficient information as to the type, timing, and amount of requested water service to the Property, then Creedmoor would be in a better position to determine whether Creedmoor can adequately and continuously serve the Property. But as it stands currently, Creedmoor has sufficient infrastructure in place to adequately and continuously serve the Property, depending on the Property's specific needs.

Water permits and CCNs are very difficult and expensive to obtain and require renewal. As such, CCNs and water permits are valuable assets for water supply corporations ("WSCs") that need to be protected to preserve the fiscal health of the WSCs and their ability to provide water to their members. In this case, Creedmoor has maintained permits and has infrastructure available to serve the Property. Creedmoor is also incurring legal expenses and may incur other professional expenses as a result of GJGTEB's petition for the decertification and removal of the Property from Creedmoor's CCN.

¹ Affidavit of Todd Burek, *GJGTEB Holdings, LLC Petition to Amend Creedmoor Maha Water Supply Corporation's Certificate of Convenience and Necessity in Caldwell County by Streamlined Expedited Release*, Exhibit D (September 22, 2021).

In sum, Creedmoor stands ready, willing, and able to serve the Property, depending on the extent and timing of GJGTEB's requested service to the Property. It is in the best interests of all parties if GJGTEB would file a request for service so Creedmoor can properly evaluate it and determine whether Creedmoor has sufficient water capacity to meet those needs. Until that occurs, Creedmoor respectfully requests that the Public Utility Commission abate GJGTEB's petition.

Therefore, it is the position of Creedmoor that the Public Utility Commission should not release the Property from Creedmoor's CCN. In the event the Property is released, Creedmoor is entitled to just and fair compensation.

Acknowledgement

I declare *under penalty* of perjury that the foregoing is *true* and correct. Affiant further sayeth not.

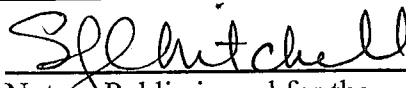
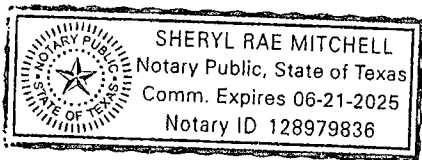


Matthew Pickle, General Manager
Creedmoor-Maha Water Supply Corporation

State of Texas §
County of Travis §

BEFORE ME, the undersigned authority, on this day personally appeared Matthew Pickle, as the General Manager of Creedmoor-Maha Water Supply Corporation, known to me to be the person whose name is subscribed on this document and acknowledged to me that he executed the same for the purposes and consideration herein expressed, in the capacity therein stated and he is authorized to do so.

Given under my hand and seal of office this 12th day of November 2021.



Notary Public in and for the
State of Texas

My commission expires: 06/21/2025

ATTACHMENT A



Note: The location and size of water system features shown are based on best available information. These maps are intended for CMWSC water system operation purposes only. The CMWSC and MRB Group do not make any warranties, expressed or implied, as to the accuracy of these maps. Unauthorized use or redistribution of these maps is strictly prohibited, without prior consent.



CREEDMOOR-MAHA WATER SUPPLY CORP.

12100 LAWS RD, BUDA, TX 78610

DRAFT - WATER SYSTEM MAP



DSA

1" = 500'

MAY 2020

Drawn By:

Scale:

Date:

MRB | group

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