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Commissioner



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Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

A handwritten signature, likely of the Chief Administrative Law Judge, Hunter Burkhalter.

FROM: Hunter Burkhalter
Chief Administrative Law Judge

RE: **Docket No. 52655** – *Petition of McCart St, LLC to Amend Bolivar Water Supply Corporation's Certificate of Convenience and Necessity in Denton County by Expedited Release*

DATE: March 24, 2022

The Commission will consider the enclosed Revised Proposed Order in this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, March 31, 2022, at the Commission's office, 1701 North Congress Avenue, Austin, Texas.

On March 21, 2022, Commission Staff filed a new proposed map in this matter. The map was updated to reflect the changed circumstances caused by the issuance of an order granting streamlined expedited release in Docket No. 52744.¹ This Revised Proposed Order has been issued to incorporate the new map.

By copy of this memo, the parties to this proceeding are being served with the Revised Proposed Order.

/lsw
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¹ *Petition of McCart St, LLC to Amend City of Denton's Certificate of Convenience and Necessity in Denton County by Expedited Release, Docket No. 52774, Order No. 4 (Feb. 17, 2022).*



DOCKET NO. 52655

PETITION OF MCCART ST, LLC TO	§	PUBLIC UTILITY COMMISSION
AMEND BOLIVAR WATER SUPPLY	§	
CORPORATION’S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
DENTON COUNTY BY EXPEDITED	§	
RELEASE	§	

REVISED PROPOSED ORDER

This Order addresses the petition of McCart St, LLC for streamlined expedited release of a tract of land in Denton County from Bolivar Water Supply Corporation’s service area under water certificate of convenience and necessity (CCN) number 11257. For the reasons stated in this Order, the Commission releases the tract of land from Bolivar WSC’s certificated service area. In addition, the Commission amends Bolivar WSC’s CCN number 11257 to reflect the removal of the tract of land from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to Bolivar WSC, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. McCart St, LLC is a Delaware limited liability company registered with the Texas secretary of state under filing number 804234840.

CCN Holder

2. Bolivar WSC is a Texas nonprofit corporation registered with the Texas secretary of state under filing number 25730701.
3. Bolivar WSC holds CCN number 11257 that obligates it to provide retail water service in its certificated service area in Denton County.

Petition

4. On September 28, 2021, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder’s service area under CCN number 11257.

5. The petition includes a special warranty deed dated January 10, 2018; a metes-and-bounds description of the subject property; maps; digital mapping data; and an affidavit, dated September 21, 2021, of William J. Savage, the petitioner's chief executive officer.
6. In Order No. 2 filed on October 29, 2021, the administrative law judge (ALJ) found the petition administratively complete.

Notice

7. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on September 28, 2021.
8. In Order No. 2 filed on October 29, 2021, the ALJ found the notice sufficient.

Response to the Petition

9. On November 4, 2021, the CCN holder filed a response to the petition, which includes a declaration, dated November 4, 2021, of James Parkman, the CCN holder's general manager.

The Tract of Land

10. The petitioner owns property in Denton County that is approximately 298.204 acres.
11. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 250 acres.
12. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

13. The petitioner acquired the property by a special warranty deed dated January 10, 2018.

Qualifying County

14. Denton County abuts Dallas and Tarrant counties and has a population of more than 47,500.
15. Dallas and Tarrant counties each have a population of at least one million.

Water Service

16. The tract of land is not receiving actual water service from the CCN holder.
17. There are no water connections or meters on the tract of land.

18. The petitioner has not requested that the CCN holder provide water service to the tract of land.
19. The petitioner has not paid to the CCN holder any service reservation or standby fees.
20. The petitioner does not have any agreements with the CCN holder for the provision of water service to the tract of land.
21. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
22. The CCN holder has no facilities or lines that provide water service to the tract of land.
23. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

24. On December 2, 2021, Commission Staff filed its recommendation on final disposition that included a map and certificate on which it identified the tract of land in relationship to the CCN holder's certificated service area.
25. On March 21, 2022, Commission Staff filed a new map which is updated to reflect the changed circumstances caused by the issuance of an order granting streamlined expedited release in Docket No. 52744.¹ On the new map, Commission Staff identifies the tract of land in relationship to the CCN holder's certificated service area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition for streamlined expedited release under TWC §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 Texas Administrative Code (TAC) § 24.245(h)(3)(F).

¹ *Petition of McCart St, LLC to Amend City of Denton's Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 52774, Order No. 4 (Feb. 17, 2022).

3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 and, under 16 TAC § 24.245(h)(7), no hearing will be held on such a petition.
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 or 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition that must be verified by a notarized affidavit.
6. Under 16 TAC § 24.245(h)(7), the Commission's decision is based on the information submitted by the landowner, the CCN holder, and Commission Staff.
7. To obtain release under TWC § 13.2541(b), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
8. The time that the petition is filed is the only relevant time period to consider when evaluating whether a tract of land is receiving water service under TWC § 13.2541(b). Whether a tract of land might have previously received water or sewer service is irrelevant.
9. A landowner is not required to seek the streamlined expedited release of all of its property.
10. The petitioner owns the tract of land that is at least 25 acres for which it seeks streamlined expedited release.
11. Denton County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
12. The tract of land is not receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
13. The petitioner is entitled under TWC § 13.2541(b) to the release of the tract of land from the CCN holder's certificated service area.

14. Under TWC §13.254(h), after the date of this Order the CCN holder has no obligation to provide retail water service to the tract of land.
15. The Commission may release only the property of the landowner from a CCN under TWC § 13.2541(b). The Commission has no authority to decertificate any facilities or equipment owned and operated by the CCN holder to provide retail water service through the streamlined-expedited-release process under TWC § 13.2541(b).
16. The Commission processed the petition in accordance with the TWC and Commission rules.
17. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in the real property records of Denton County no later than the 31st day after the date the CCN holder receives this Order.
18. A retail public utility may not under TWC § 13.254(d) provide retail water service to the public within the tract of land unless just and adequate compensation under TWC § 13.254(g) has been paid to the CCN holder.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission releases the tract of land identified in the petition from the CCN holder's certificated service area under CCN number 11257.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the tract of land.
3. The Commission amends CCN number 11257 in accordance with this Order.
4. The Commission approves the map attached to this Order.
5. The Commission issues the certificate attached to this Order.
6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.

7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 2. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

Signed at Austin, Texas the _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

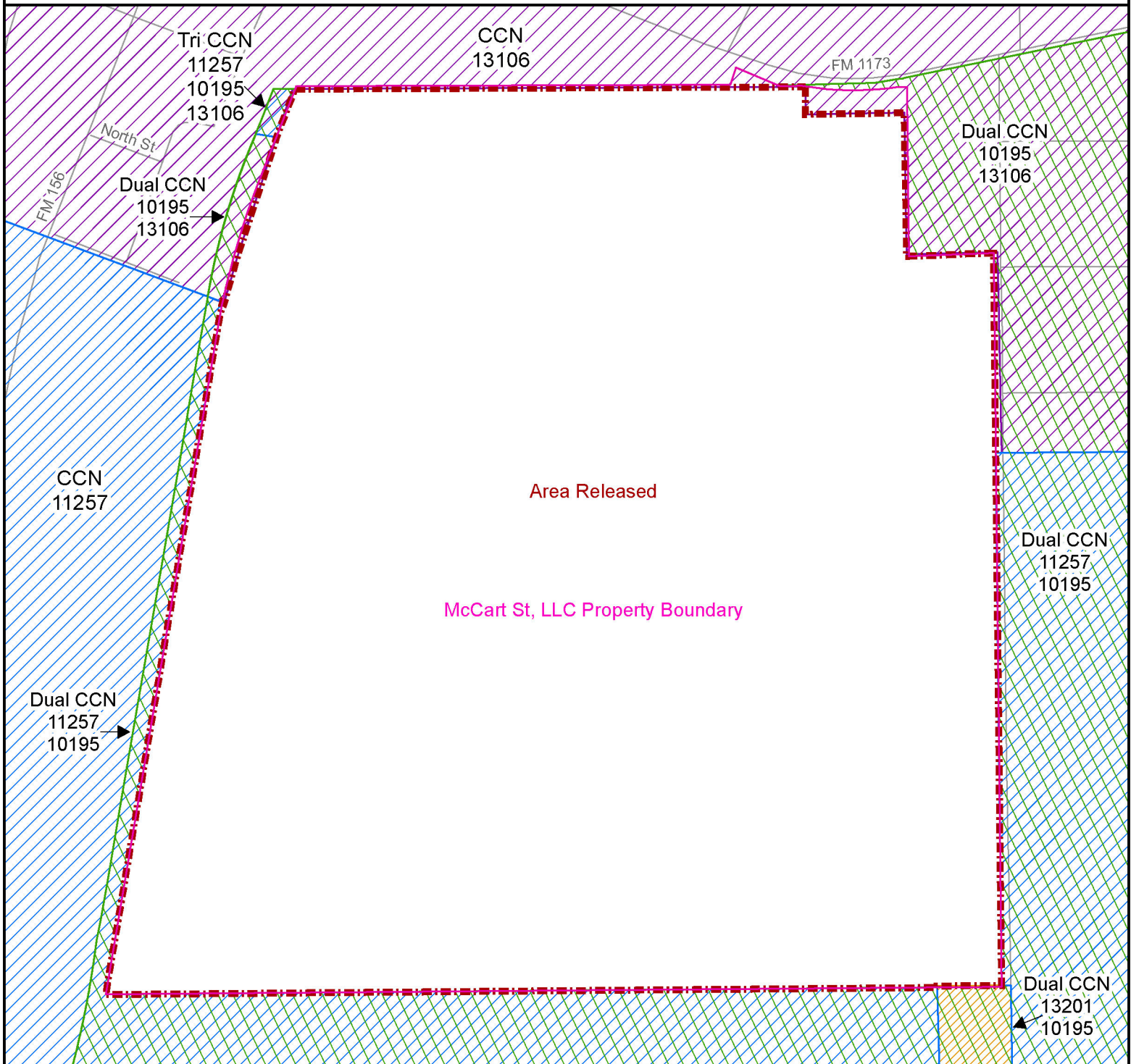
PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER





JIMMY GLOTFELTY, COMMISSIONER

Bolivar Water Supply Corporation
 Portion of Water CCN No. 11257
 PUC Docket No. 52655
 Petition by McCart St, LLC to Amend
 Bolivar Water Supply Corporation's CCN by Expedited Release in Denton County



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

Water CCN

-  11257 - Bolivar WSC
-  10195 - City of Denton
-  13201 - Aqua Texas Inc
-  13106 - City of Krum

-  Area Released
-  Property Boundary

0 275 550
 Feet



Map by: Komal Patel
 Date: March 14, 2022
 Project: 52655BolivarWSCREDO.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

Bolivar Water Supply Corporation

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, Bolivar Water Supply Corporation, is entitled to this

Certificate of Convenience and Necessity No. 11257

to provide continuous and adequate water utility service to that service area or those service areas in Denton County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52655 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 Bolivar Water Supply Corporation, 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.