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Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Gregory R. Siemankowski
Administrative Law Judge

A handwritten signature in black ink, appearing to be "G. Siemankowski".

RE: **Docket No. 52696** – *Petition of Firmitas Investments, LLC to Amend Guadalupe-Blanco River Authority's Certificate of Convenience and Necessity in Comal County by Expedited Release*

DATE: March 3, 2022

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by March 17, 2022.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 52696

PETITION OF FIRMITAS	§	PUBLIC UTILITY COMMISSION
INVESTMENTS, LLC TO AMEND	§	
GUADALUPE-BLANCO RIVER	§	OF TEXAS
AUTHORITY'S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
COMAL COUNTY BY EXPEDITED	§	
RELEASE	§	

PROPOSED ORDER

This Order addresses the petition of Firmitas Investments, LLC for streamlined expedited release of a tract of land in Comal County from Guadalupe-Blanco River Authority's service area under sewer certificate of convenience and necessity (CCN) number 20892. For the reasons stated in this Order, the Commission releases the tract of land from GBRA's certificated service area. In addition, the Commission amends GBRA's CCN number 20892 to reflect the removal of this tract of land from the service area.

Following entry of this Order the amount of compensation, if any, to be awarded to GBRA will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Firmitas is a Texas limited liability company registered with the Texas secretary of state under filing number 802199918.

CCN Holder

2. GBRA is a conservation and reclamation district organized under article 16, section 59 of the Texas Constitution.
3. GBRA holds CCN number 20892 that obligates it to provide retail sewer service in its certificated service area in Comal County.

Petition

4. On October 12, 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 20892.

5. The petition includes an affidavit, dated September 24, 2021, of Douglas Miller, co-owner and managing member of Firmitas; maps of the tract of land with a metes-and-bounds description; digital mapping data; and a warranty deed with vendor's lien dated April 28, 2015.
6. On October 19, 2021, the petitioner supplemented the application, which includes supplemental maps and digital mapping data.
7. On November 23, 2022, the petitioner supplemented the application, which includes supplemental maps and corrections of typographical errors.
8. In Order No. 4 filed on January 12, 2022, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

Notice

9. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on October 12, 2021.
10. In Order No. 4 filed on January 12, 2022, the ALJ found the notice sufficient.

Intervention

11. In Order No. 3 filed on November 30, 2021, the ALJ granted the CCN holder's motion to intervene.

The Tract of Land

12. The tract of land for which petitioner seeks streamlined expedited release is approximately 100 acres.
13. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

14. The petitioner acquired the tract of land by a warranty deed with vendor's lien dated April 28, 2015.

Qualifying County

15. Comal County has a population of more than 47,500 and is adjacent to Bexar County.
16. Bexar County has a population of at least one million.

Sewer Service

17. The tract of land is not receiving actual sewer service from the CCN holder.
18. The CCN holder does not have any sewer connections or meters located on the tract of land.
19. The petitioner has not requested that the CCN holder provide sewer service to the tract of land.
20. The petitioner has not paid any service reservation or standby fees, nor does it have any agreements with the CCN holder.
21. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for sewer service.
22. The CCN holder has no facilities or lines that provide sewer 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 February 10, 2022, Commission Staff filed its recommendation on final disposition that included a certificate and a map on which it identified 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 Texas Water Code (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).
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.
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 sewer 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. Comal 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 sewer 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. After the date of this Order, the CCN holder has no obligation to provide retail sewer service to the tract of land.
15. The Commission may release only property of the landowner from a CCN under TWC § 13.2541(b). The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail sewer 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 Comal 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 sewer 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 20892.
2. The Commission does not decertify 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 20892 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 on the date of this Order in accordance with the schedule adopted in Order No. 4. 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

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Public Utility Commission of Texas

By These Presents Be It Known To All That

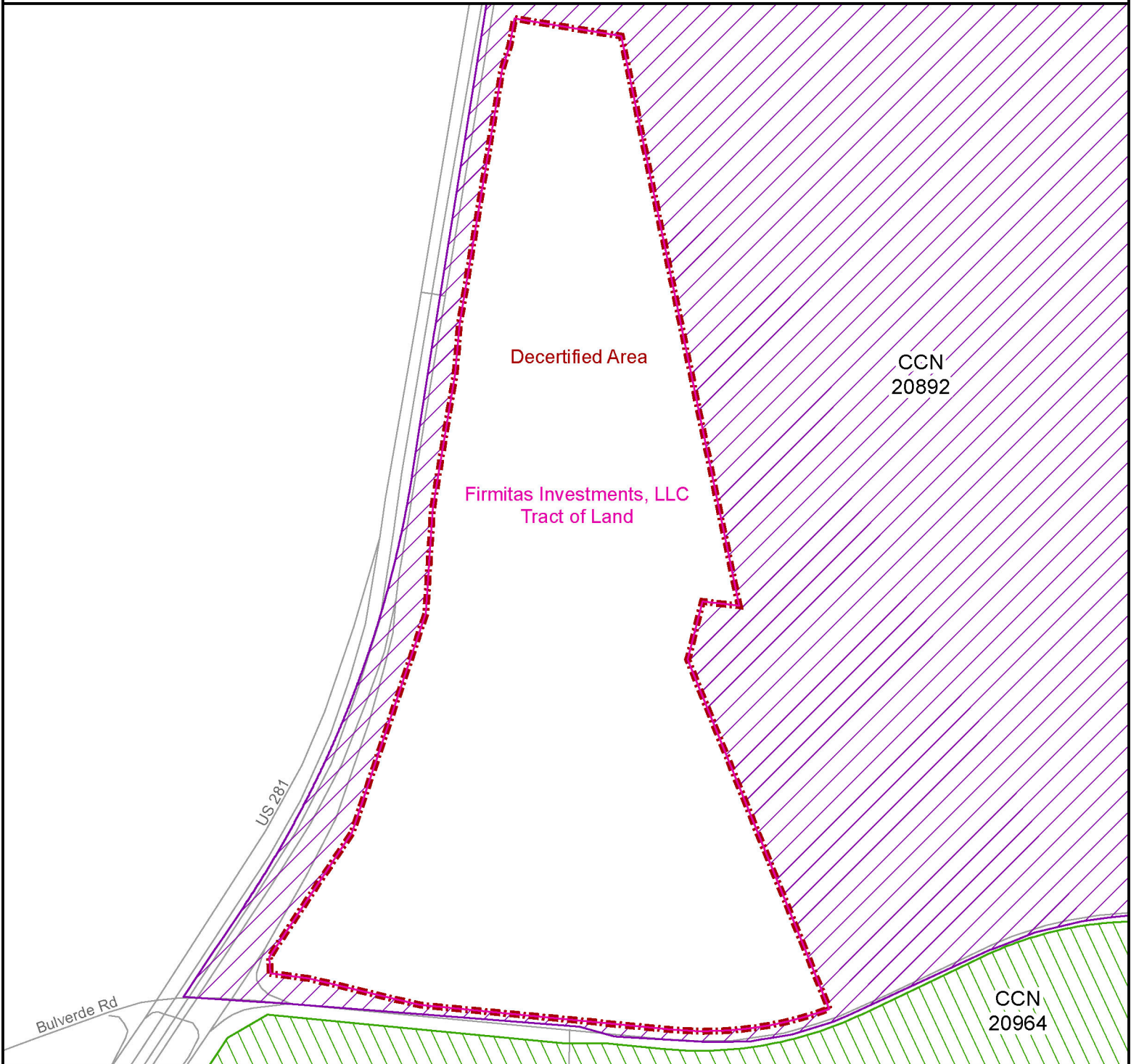
Guadalupe-Blanco River Authority

having obtained certification to provide sewer 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, Guadalupe-Blanco River Authority is entitled to this

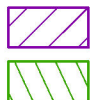
Certificate of Convenience and Necessity No. 20892

to provide continuous and adequate sewer utility service to that service area or those service areas in Comal County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52696 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 Guadalupe-Blanco River Authority 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.

Guadalupe-Blanco River Authority
Portion of Sewer CCN No. 20892
PUC Docket No. 52696
Petition by Firmitas Investments, LLC to Amend
Guadalupe-Blanco River Authority's CCN by Streamlined Expedited Release in Comal County



Sewer CCN



20892 - Guadalupe-Blanco River Authority

20964 - South Central Water Company



Decertified Area

Tract of Land

0 275 550
Feet

