



## Filing Receipt

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**DOCKET NO. 52739**

<b>PETITION OF SATER, L.P TO AMEND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MARILEE SPECIAL UTILITY</b>	<b>§</b>	
<b>DISTRICT'S CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>COLLIN COUNTY BY EXPEDITED</b>	<b>§</b>	
<b>RELEASE</b>	<b>§</b>	

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

On October 20, 2021, Sater, L.P. (Sater) 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). On March 10, 2022, Sater filed an unopposed motion for extension of time to file an amended petition and revised mapping. On March 10, 2022, the administrative law judge (ALJ) filed Order No. 9, withdrawing the previous finding of administrative completeness and granting Sater's extension request. On March 22, 2022 and March 23, 2022, Sater filed a second amended petition and signed affidavit in support of the second amended petition. Sater asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, Texas, which is a qualifying county.

On June 24, 2022, the ALJ filed Order No. 12, establishing a deadline of July 1, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a supplemental recommendation on final disposition. Therefore, this pleading is timely filed.

**I. REVISED RECOMMENDATION ON FINAL DISPOSITION**

Staff has reviewed the second amended petition, Marilee SUD's response to the second amended petition, and Sater's reply to Marilee SUD's response, and, as detailed in the attached memorandum from Jolie Mathis, Infrastructure Division, recommends that the second amended petition satisfies the requirements of TWC § 13.2541 and 16 TAC § 24.245(h). In its response to the second amended petition, Marilee SUD stated that it should be denied.

Marilee SUD first argued that Sater cannot meet its burden of proof because the requested area is receiving water service.<sup>1</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>2</sup> To support its argument, Marilee SUD stated that there is one active meter, Meter No. 257, receiving water service that is located in the requested area.<sup>3</sup> Additionally, Marilee SUD provided accompanying exhibits showing the activity and presence of the meter in the requested area.<sup>4</sup> Sater however included in its second amended petition on March 22, 2022, an affidavit of Frank G. Abbott, who attested that Meter No. 257 is in fact not located in the requested area and that the structure or faucet served by Meter No. 257 is also not located in the requested area.<sup>5</sup> Mr. Abbott further attested that the structures served by the other active meters located outside the requested area are similarly located outside the requested area.<sup>6</sup> Additionally, Mr. Abbott attested that none of the structures located in the requested area are receiving service.<sup>7</sup> In support of Mr. Abbott’s affidavit, Sater also included an aerial map as Exhibit B-3 depicting the location of the meters and structures.<sup>8</sup> As such, Staff recommends that Sater has sufficiently evidenced that the requested area to be released is not receiving water service despite the presence and activity of the meters that Marilee SUD has identified in its response to the second amended petition.

Marilee SUD further argued that Marilee SUD has sufficient facilities in place to provide water service to Sater’s property through several water lines that are located within the requested area.<sup>9</sup> Marilee SUD’s argument is flawed. Specifically, the water lines located within the requested

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<sup>1</sup> Marilee Special Utility District's Verified Response and Motion to Dismiss at 5-8 and Exhibits A and B (Feb. 3, 2022) (Marilee SUD Response).

<sup>2</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>3</sup> Marilee SUD Response at 6-8.

<sup>4</sup> *Id.* at Exhibits A, A-1, B, and B-1.

<sup>5</sup> Second Amended Petition by Slater, L.P. for Expedited Release Pursuant to Texas Water Code Section 13.2541 at Exhibit A-2 (Mar. 22, 2022) and Letter supplementing Affidavit (Mar. 23, 2022).

<sup>6</sup> *Id.*

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

<sup>8</sup> *Id.* at Exhibit B-3

<sup>9</sup> Marilee SUD Response at 6-8.

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>10</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>11</sup> Based on Sater's second amended petition that the relevant meters are not located in the requested area and that none of the structures in the requested area are receiving service, Marilee SUD cannot demonstrate that any of its water lines are committed in any way separate from supplying water to the greater area.

Additionally, Marilee SUD argued that Sater has not met its burden of proof to decertify the property under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).<sup>12</sup> Specifically, Marilee SUD stated that Sater only provided a conclusory one-page affidavit and did not provide any information regarding an investigation of the requested area.<sup>13</sup> In turn, Marilee SUD argued that Sater 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>14</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>15</sup> Further, Marilee SUD disregards that Sater also included a second affidavit that provided information regarding Sater's investigation of the requested area, by determining the locations of meters and structures on the overall tract of land in relation to the requested area. As such, Staff recommends that Sater has met its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).

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

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<sup>10</sup> *Crystal Clear*, 449 S.W.3d at 140.

<sup>11</sup> *Id.*

<sup>12</sup> Marilee SUD Response at 8-10.

<sup>13</sup> *Id.*

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

<sup>15</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 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).

law.<sup>16</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>17</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>18</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.<sup>19</sup>

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.

Lastly, Marilee SUD claims that the Commission has violated TWC § 13.2541(c) when it failed to meet the 60-day statutory deadline to either grant or deny streamlined expedited release.<sup>23</sup> Specifically, Marilee SUD argued that, since Sater filed the petition on October 20, 2021, the Commission should have issued a decision 60 days thereafter or by December 19, 2021.<sup>24</sup> Marilee SUD however disregards the Commission's substantive rule on this issue and several of the ALJs

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<sup>16</sup> Marilee SUD Response at 11-13.

<sup>17</sup> *Id.*

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

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

<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).

<sup>23</sup> Marilee SUD Response at 13-14.

<sup>24</sup> *Id.*

previous orders in this proceeding. Specifically, 16 TAC § 24.245(h)(7) provides that the 60-day timeline starts with an order finding a petition administratively complete. As such, Marilee SUD erroneously relied on October 20, 2021 as being the start date. Subsequent to the October 20, 2021 filing, Sater filed a first amended petition on December 3, 2021. On January 10, 2022, the ALJ found the first amended petition administratively complete in Order No. 6, but withdrew that finding on March 10, 2022 in Order No. 9, based on Sater's need to file revised maps and reduce the requested area. It was not until the ALJ filed Order No. 11 on May 13, 2022, finding the second amended petition administratively complete, that the 60-day timeline started. Therefore, pursuant to the procedural schedule established in Order No. 11, the 60-day administrative approval deadline, for the Commission to either grant or deny streamlined expedited release, is July 12, 2022.

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 Sater's petition be approved and respectfully requests the entry of an order consistent with the foregoing recommendations.

Dated: July 1, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 52739**

**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 via electronic mail on July 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:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** July 1, 2022

**RE:** Docket No. 52739 – *Petition of Sater, LP to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

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On October 20, 2021, Sater, L.P. (Sater) 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 March 22, 2022 and March 23, 2022, Sater filed a second amended petition and a signed affidavit in support of the second amended petition. Sater 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.

Sater provided a warranty deed confirming ownership of the tract of land within Marilee SUD's certificated service area. In addition, Sater submitted a sworn affidavit attesting that the tract of land was not receiving water service from the CCN holder. Marilee SUD requested to intervene and filed a response to the second amended petition.

Based on the mapping review by Tracy Montes, Infrastructure Division, it was determined;

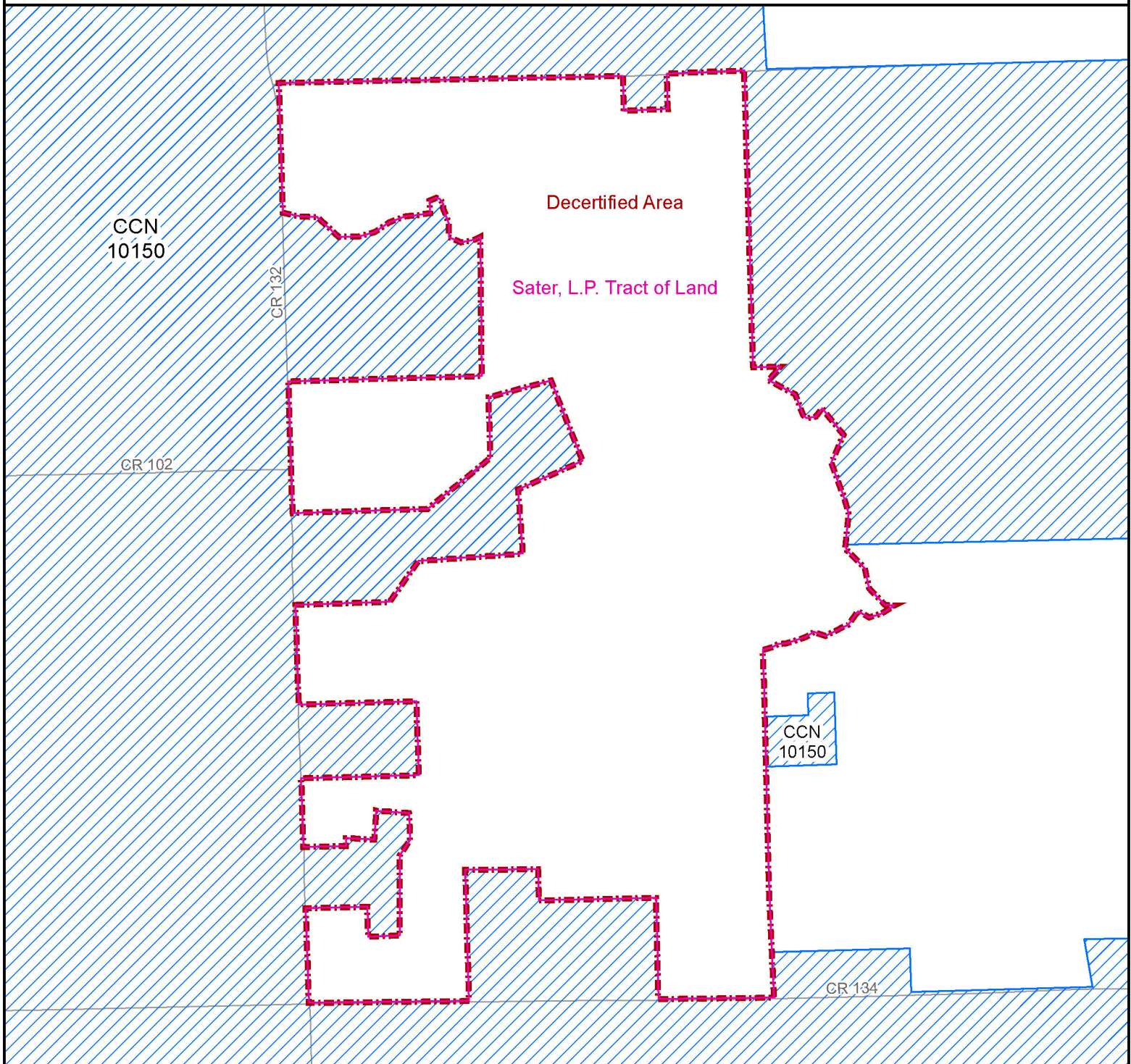
The landowner's total property is approximately 300 acres. The tract of land in the petition for streamlined expedited release is approximately 265.5 acres, of which approximately 265.5 acres overlap Marilee SUD (CCN No. 10150) and would be decertified from CCN No. 10150.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Sater 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.



Marilee Special Utility District  
Portion of Water CCN No. 10150  
PUC Docket No. 52739  
Petition by Sater, L.P. to Amend  
Marilee Special Utility District's CCN by Streamlined Expedited Release in Collin County



**Water CCN**

 10150 - Marilee SUD

 Decertified Area

 Tract of Land

0 400 800  
Feet





# **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. 52739 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.