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DOCKET NO. 52792

PETITION OF PETRUS	§	PUBLIC UTILITY COMMISSION
INVESTMENT, LP TO AMEND AQUA	§	
TEXAS INC.'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
DENTON COUNTY BY	§	
STREAMLINED EXPEDITED	§	
RELEASE	§	

COMMISSION STAFF’S FINAL RECOMMENDATION

On November 5, 2021, Petrus Investment, L.P. (Petrus Investment) filed a petition for streamlined expedited release from Aqua Texas Inc.'s (Aqua Texas) water Certificate of Convenience and Necessity (CCN) No. 13201 under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Petrus Investment asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Denton County, which is a qualifying county.¹ According to the 2010 Census,² Denton County is adjacent to Dallas County, which has a population of at least one million,³ and does not have a population of more than 45,000 and less than 47,500.⁴ Petrus Investment filed supplemental information on January 6, 2022.

On February 9, 2022, the administrative law judge (ALJ) filed Order No. 3, establishing a deadline of March 15, 2022, for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file its 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 a qualifying county.

³ 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 Feb. 4, 2022).

⁴ U.S. Census Bureau, Census Data for Denton County, QuickFacts Denton County, Texas (2010), <https://www.census.gov/quickfacts/fact/table/dentoncountytexas/POP010210> (last accessed Feb 4, 2022).

I. FINAL RECOMMENDATION

Staff has reviewed the petition and, as detailed in the attached memorandum from Pai Liu of the Infrastructure Division, recommends that the petition be approved. Staff recommends that the petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h). Specifically, the petition demonstrates that the property for which Petrus Investment seeks streamlined expedited release is located in a qualifying county (Denton County), is at least 25 acres in size, is not receiving water service, and is located within Aqua Texas's water certificated area. In addition, Petrus Investment provided a warranty deed confirming its ownership of the property.

On March 1, 2022, Aqua Texas filed a response to the Petrus Investment's petition.⁵ In its response, Aqua Texas stated it has water service facilities near and within Petrus Investment's property and has performed various acts and expended money to extend water service to Petrus Investment's property,⁶ and argues this proves that Petrus Investment's property is receiving water service from Aqua Texas under TWC § 13.002(21).⁷ Staff disagrees.

Staff has concluded that neither the location of the water facilities nor the acts it performed demonstrate that Aqua Texas was providing water service to the Petrus Investment property. In *Crystal Clear*, the court determined that because existing lines and facilities located on or near a tract of land were constructed to serve the greater area, and not the particular property seeking expedited release, it did not constitute as receiving water service under TWC § 13.002(21).⁸ The court also concluded that in determining whether performed acts constitute receiving water service, the inquiry should focus on whether an entity "has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN."⁹ In its response to the petition, Aqua Texas did not demonstrate that the water lines were committed in any way separate from supplying water to the greater area. Instead, Aqua Texas merely states

⁵ Aqua Texas, Inc.'s Response to Petition of Petrus Investment, LP for Streamlined Expedited Release (Mar. 1, 2022) (Aqua Texas's Response).

⁶ *Id.* at 3.

⁷ *Id.* at 2.

⁸ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin, 2014, pet. denied).

⁹ *Id.*

that it has the infrastructure and capacity to service the Petrus Investment property.¹⁰ Aqua Texas also failed to demonstrate with any specificity that the acts it performed and expenditures it made were intended to service the Petrus Investment property in particular, as opposed to the general service area.¹¹ Essentially, Aqua Texas failed to present evidence that Aqua Texas has any tangible commitments to provide water service for this specific property. Accordingly, Staff recommends that the property is not receiving water service on that basis.

Staff recommends that the petition for streamlined expedited release be approved. The final water CCN map and certificate are attached to this filing. Staff additionally recommends that the final map and certificate be provided to Aqua Texas and that Aqua Texas be required to file a certificated copy of the CCN map and a boundary description of the CCN service area in the Denton County Clerk's office, as required under TWC § 13.257(r)-(s).

II. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that Petrus Investment's petition be approved and that an order be issued consistent with the foregoing recommendation.

¹⁰ Aqua Texas's Response, at 3; Aqua Texas's Response, Attachment A at 2.

¹¹ *Id.*

Dated: March 15, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52792

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 March 15, 2022, in accordance with the Order Suspending Rules issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Pai Liu, Infrastructure Analyst
Infrastructure Division

DATE: March 15, 2022

RE: Docket No. 52792 – *Petition of Petrus Investment, L.P. to Amend Aqua Texas Inc.'s Certificate of Convenience and Necessity in Denton County by Streamlined Expedited Release*

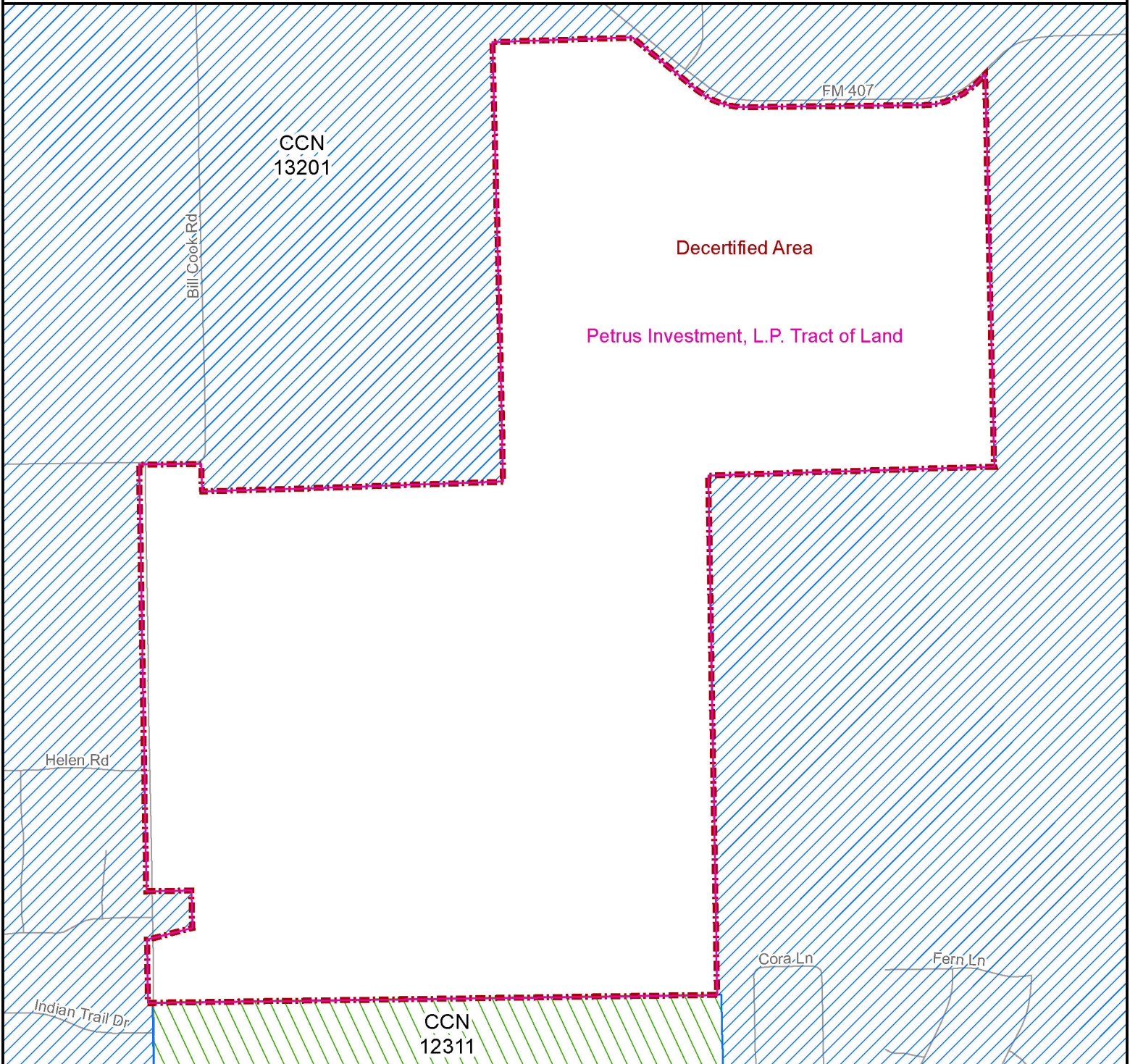
On November 5, 2021, Petrus Investment, L.P. (Petrus Investment) filed a petition for streamlined expedited release from Aqua Texas Inc.'s (Aqua) water certificate of convenience and necessity (CCN) No. 13201 in Denton County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Petrus Investment asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Denton County, which is a qualifying county.

Petrus Investment provided a warranty deed confirming ownership of the tract of land within Aqua's certificated service area. In addition, Petrus Investment submitted a sworn affidavit attesting that the tract of land was not receiving water service from the CCN holder. Aqua did not request to intervene.

Based on the mapping review by Tracy Montes, Infrastructure Division, it was determined the landowner's total property is approximately 749.3 acres. The tract of land in the petition for streamlined expedited release is approximately 749.3 acres, of which 748.9 acres overlap Aqua Texas Inc. (CCN No. 13201) and are to be decertified from CCN No. 13201.



In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Petrus Investment has met the Commission's requirements to allow for the release of the tract of land from Aqua's CCN No. 13201. Therefore, I recommend approval of the petition. Enclosed is a final map and certificate for Commission approval.



Aqua Texas, Inc.
Portion of Water CCN No. 13201
PUC Docket No. 52792
Petition by Petrus Investment, L.P. to Amend
Aqua Texas, Inc.'s CCN by Streamlined Expedited Release in Denton County

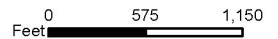


Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

-  13201 - Aqua Texas Inc
-  12311 - City of Fort Worth

-  Decertified Area
-  Tract of Land



Map by: Komal Patel
Date: February 22, 2022
Project: 52792AquaTexas.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

Aqua Texas, Inc.

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, Aqua Texas, Inc. is entitled to this

Certificate of Convenience and Necessity No. 13201

to provide continuous and adequate water utility service to that service area or those service areas in Anderson, Bosque, Camp, Cherokee, Collin, Cooke, Denton, Erath, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Kaufman, McLennan, Marion, Parker, Smith, Somervell, Tarrant, Wise, and Wood Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52792 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 Aqua Texas, Inc. 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.