



## **Filing Receipt**

**Filing Date - 2024-10-11 01:03:43 PM**

**Control Number - 56457**

**Item Number - 13**

**DOCKET NO. 56457**

<b>PETITION OF DENTON OLIVER</b>	<b>§</b>	<b>BEFORE THE PUBLIC UTILITY</b>
<b>CREEK, LP TO AMEND AQUA TEXAS,</b>	<b>§</b>	
<b>INC.’S CERTIFICATE OF</b>	<b>§</b>	<b>COMMISSION OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>DENTON COUNTY BY STREAMLINED</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

**AQUA’S RESPONSE TO PETITION FOR STREAMLINED EXPEDITED RELEASE**

Aqua Texas, Inc. (Aqua) files this Response to the Petition of Denton Oliver Creek, LP (Applicant or Petitioner) to Amend Aqua Texas, Inc’s Certificate of Convenience and Necessity in Denton County by Expedited Release (the Petition).<sup>1</sup> In support, Aqua shows as follows.

**I. PROCEDURAL BACKGROUND**

On April 5, 2024, Applicant filed the Petition seeking streamlined expedited release (SER) from Aqua water certificate of convenience and necessity (CCN) No. 13201 of approximately 103.812 acres of contiguous property Petitioner alleges it owns in Denton County (Property). The presiding Commission Administrative Law Judge (ALJ) deemed the Petition administratively complete on September 20, 2024, and set a deadline of October 11, 2024 for Aqua to file its response to same.<sup>2</sup> Therefore, this pleading is timely filed.

**II. RESPONSE TO SER PETITION**

The Commission should deny the Petition because the SER requested cannot lawfully be granted under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245. The Property is receiving service from Aqua and not eligible for SER. Alternatively, if

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<sup>1</sup> For purposes of this proceeding, the Petition is considered the Application as defined in the Commission’s Procedural Rules under 16 TAC § 22.2(6).

<sup>2</sup> Order No. 5 Finding Petition, as Supplemented and Amended, Administratively Complete, Finding Notice Sufficient, and Establishing Procedural Schedule (Sept. 20, 2024).

the Commission releases the Property despite this fact, Aqua is entitled to just and adequate compensation.

**A. The Property Receives Service from Aqua**

The Property receives water service from Aqua according to the term “service” as the TWC defines it, and the Property cannot be released from Aqua’s CCN under TWC § 13.2541.<sup>3</sup> The Water Code broadly defines “service” as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties...to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.<sup>4</sup>

The embedded term “facilities” is defined as:

[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.<sup>5</sup>

Actually delivering water to a property is plainly “service,” but a property can also receive water or sewer service under the statute without a utility delivering “actual water” onto a property.<sup>6</sup> In the *Crystal Clear* Austin Third Court of Appeals decision, the court held that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.<sup>7</sup>

The Petition is supported by an affidavit from Justin Bono, Manager of Astra Investments GP, LLC, the Managing General Partner of Denton Oliver Creek, LP, which states “The Property

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<sup>3</sup> TWC § 13.2541(b) (allowing streamlined expedited release of a tract of land that “is not receiving water or sewer service.”); *see also* 16 TAC § 24.245(h)(1)(B).

<sup>4</sup> TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

<sup>5</sup> TWC § 13.002(9); *see also* 16 TAC § 24.3(15) (same definition).

<sup>6</sup> *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pct. denied).

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

is not receiving water service from Aqua Texas, Inc. or any other service provider.”<sup>8</sup> Yet, as shown by the attached affidavit of Joseph McDaniel, North Area Manager of Aqua Texas, Inc., Aqua’s Trail Creek Water System (PWS ID No. 0610203), Dove Hollow Water System (PWS ID No. 0610210), Foxbane Water System (PWS ID No. 0610164), and Kings Rest Water System (PWS ID No. 2490032) service facilities are immediately proximate to the south and west of the Property, respectively.<sup>9</sup> Thus, Aqua has performed various acts and supplied funds in furtherance of water service to the Property and Aqua’s CCN No. 13201 service area that includes the Property.<sup>10</sup> Mr. McDaniel’s affidavit includes a map showing the location of its facilities located immediately adjacent to the Property.<sup>11</sup>

Here, these facilities and the acts of planning, creating, and maintaining them—are all plainly “committed” or “used” by Aqua in the performance of its duties to supply water service to the targeted CCN area and Property. The Property receives water service from Aqua through its commitments to, and existing facilities and capacity proximate to, the Property. Mr. McDaniel’s affidavit also describes different ways Aqua has served the property through its various acts and funds supplied.<sup>12</sup> Under these facts, the Commission should deny the Petitioner’s request to release the Property from Aqua’s CCN No. 13201 because that would violate TWC § 13.2541.

**B. Aqua Must be Compensated if the Property is Removed from Aqua’s CCN Area**

Aqua is entitled to a determination of just and adequate compensation if its CCN area is reduced.<sup>13</sup> The value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing

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<sup>8</sup> Petition at Exhibit “A”, Affidavit of Justin Bono (March 22, 2024).

<sup>9</sup> **Exhibit A** – Affidavit of Joseph McDaniel.

<sup>10</sup> *Id.*

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

<sup>12</sup> *Id.*

<sup>13</sup> TWC §§ 13.254(d), (g), and 13.2541(a), (f)–(h).

actions in eminent domain, and compensation for personal property is to be based on several factors, including 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.<sup>14</sup>

If the Property is removed from Aqua's CCN No. 13201, Aqua would be entitled to compensation under several of these factors.<sup>15</sup> Aqua would also be compelled to spend time and resources to make the filing required by TWC § 13.257 (r)-(a) and be entitled to receive compensation for that too. If required, the monetary amount shall be determined by an appraiser—either one agreed upon by the retail public utilities involved, or one hired by each retail public utility, and a third appointed by the Commission.<sup>16</sup>

### III. CONCLUSION

Aqua respectfully requests the Commission deny the Petition because it cannot lawfully be granted under TWC § 13.2541. Alternatively, if the Commission approves the Petition, Aqua seeks just and adequate compensation for the decertification of portions of its water CCN No. 13201. Aqua also seeks all and further relief to which it may be justly entitled at law or in equity.


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<sup>14</sup> TWC §§ 13.245(g) and 13.2541(h).

<sup>15</sup> See **Exhibit A**.

<sup>16</sup> TWC § 13.2541(g), (i).

**Respectfully submitted,**

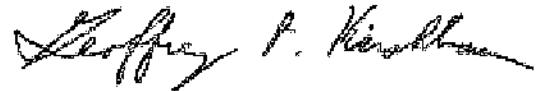
By:   
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Geoffrey P. Kirshbaum  
State Bar No. 24029665  
Elena M. Folgueras  
State Bar No. 24140087  
TERRILL & WALDROP  
810 W. 10<sup>th</sup> Street  
Austin, Texas 78701  
(512) 474-9100  
(512) 474-9888 (fax)  
gkirshbaum@terrillwaldrop.com  
efolgueras@terrillwaldrop.com

**ATTORNEYS FOR AQUA TEXAS, INC.**

**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 October 11, 2024, in accordance with the Orders Suspending Rules filed in Project No. 50664.



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Geoffrey P. Kirshbaum

DOCKET NO. 56457

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

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**AFFIDAVIT OF JOSEPH MCDANIEL**

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THE STATE OF TEXAS     '

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COUNTY OF JOHNSON     '

BEFORE ME, the undersigned official on this day personally appeared Joseph McDaniel, who is personally known to me and first being duly sworn according to law, upon his oath deposed and said:

My name is Joseph McDaniel. I am over the age of 18 years and reside in Johnson County, Texas. I am of sound mind 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 North Texas Area Manager for Aqua Texas, Inc. dba Aqua Texas ("Aqua"), Intervenor in the above styled and numbered case, and I am authorized to make this affidavit on behalf of Aqua.

On April 5, 2024, Denton Oliver Creek, LP ("Petitioner") filed a petition to decertify 103.812 acres of contiguous property (the "Property"), in Denton County, Texas for which Aqua holds a water certificate of convenience and necessity (CCN) No. 13201. Justin Bono, a manager of the general partner of the Petitioner submitted an affidavit contending that the Property is not receiving service from Aqua.

I understand “service” to mean any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities. Further, I understand “facilities,” as used above, means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

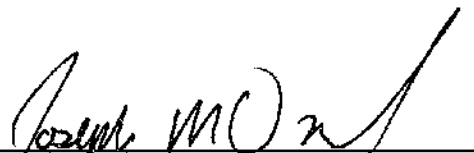
Aqua has undertaken various acts of service for the Property. The attached map, **Attachment 1**, shows the Property the Petitioner in PUC Docket No. 56457 seeks to remove through streamlined expedited release (“SER”). Within Attachment 1, I have illustrated the location of Aqua’s existing facilities in relation to the Property. Aqua has proximate facilities that are part of Aqua’s Trail Creek Water System (PWS ID No. 0610203) (“Trail Creek Water System”), Dove Hollow Water System (PWS ID No. 0610210) (“Dove Hollow Water System”) and Foxbane Water System (PWS ID No. 0610164) (“Foxbane Water System”), all located south of the Property. Aqua also has proximate facilities that are a part of Aqua’s Kings Rest Water System (PWS ID No. 2490032) (“Kings Rest Water System”) located west of the Property.

Aqua has also performed other acts of service for the Property including: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate its Trail Creek, Dove Hollow and Foxbane Water Systems which are all directly south of the Property and Kings Rest Water System which is directly west of the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 13201 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain,

transfer, renew, and maintain permits for the Trail Creek Water System, Dove Hollow Water System, Foxbane Water System, and Kings Rest Water System so that they may be used to serve the Property and CCN No. 13201 area that includes the Property; and (4) maintaining a regional office in Fort Worth, Texas with personnel specifically dedicated to operations within Aqua's geographic North Texas Region water CCN No. 13201 service areas, including the Property and CCN No. 13201 area that includes the Property. I will also note that CCNs and groundwater permits have value that purchasers of utilities will pay for when acquiring a utility because of the rights to serve the public that they accord and because the time and expense to acquire the CCNs and permits has already been spent.

In sum, Aqua has performed numerous acts, supplied funds, and committed facilities to the Property and proximate areas within CCN No. 13201. Aqua is incurring legal expenses and is likely to incur other professional expenses as a result of the decertification and Petition. If the decertification is approved, Aqua will be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s). Aqua is actively supplying water to nearby properties and the Property receives service from Aqua through the acts, supplied funds, and facilities I have described. Aqua stands ready to perform additional acts of service and commit additional facilities to the Property as necessary.

Further Affiant sayeth not.

  
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Joseph McDaniel  
North Texas Area Manager  
Aqua Texas, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 8 day of October 2024,  
to which witness my hand and official seal.

Notary Public in and for  
The State of Texas

*DBarnes*

