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Commissioner



Greg Abbott
Governor

Connie Corona
Executive Director

Public Utility Commission of Texas

TO: Shelah Cisneros
Commission Counsel

All Parties of Record

FROM: Rebecca Bromley Williams 
Administrative Law Judge

RE: **Docket No. 56457** – *Petition of Denton Oliver Creek, LP to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County By Streamlined Expedited Release*

DATE: November 21, 2024

On November 6, 2024, I filed a Proposed Order in the above-styled and numbered docket.

On November 20, 2024, Commission Staff recommended a correction to the Proposed Order. Finding of Fact 12 is corrected as follows:

12. In Order No. 4-5 filed on ~~May 29~~ September 20, 2024, the ALJ found notice sufficient.

Also on November 20, 2024, Aqua Texas, Inc. filed exceptions to the Proposed Order. I do not recommend any changes to the Proposed Order in response to Aqua Texas's exceptions.

The Revised Proposed Order is attached and ready for the Commission's consideration.

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DOCKET NO. 56457

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

REVISED PROPOSED ORDER

This Order addresses the petition by Denton Oliver Creek, LP for streamlined expedited release of a tract of land in Denton County from Aqua Texas, Inc.'s service area under certificate of convenience and necessity (CCN) number 13201. For the reasons stated in this Order, the Commission releases the tract of land from Aqua Texas' certificated service area. In addition, the Commission amends Aqua Texas' CCN number 13201 to reflect 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 Aqua Texas, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Denton Oliver Creek, the petitioner, is a Texas limited partnership registered with the Texas secretary of state under filing number 804351505.

CCN Holder

2. Aqua Texas, the CCN holder, is a Texas corporation registered with the Texas secretary of state under filing number 800304878.
3. Aqua Texas holds CCN number 13201 that obligates it to provide retail water service in its certificated service area in Denton County.

Petition, Amended Petition, and Supplemental Materials

4. On April 5, 2024, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 13201.

5. The petition includes an affidavit, dated March 22, 2024, of Justin Bono, manager of Astra Investments GP, LLC, the managing general partner of the petitioner; maps; a special warranty deed, dated December 10, 2021; a general warranty deed, dated July 20, 2022; a special warranty deed with vendor's lien dated February 22, 2022; and digital mapping data.
6. On June 5, 2024, the petitioner supplemented the petition with revised maps and shape files.
7. On August 1, 2024, the petitioner filed an amended petition.
8. The amended petition includes an amended affidavit, dated July 31, 2024, of Mr. Bono; a special warranty deed, dated December 10, 2021; a general warranty deed, dated July 20, 2022; a special warranty deed with vendor's lien, dated February 22, 2022; maps; and digital mapping data.
9. In Order No. 5 filed on September 20, 2024, the administrative law judge (ALJ) found the petition, as supplemented and amended, administratively complete.

Notice

10. On April 5, 2024, the petitioner sent a copy of the petition to the CCN holder by certified mail, return receipt requested.
11. On August 1, 2024, the petitioner sent a copy of the amended petition to the CCN holder by certified mail, return receipt requested.
12. In Order No. 5 filed on September 20, 2024, the ALJ found notice sufficient.

Intervention and Response to the Petition

13. In Order No. 3 filed on July 10, 2024, the ALJ granted the CCN holder's motion to intervene.
14. On October 11, 2024, the CCN holder filed a response to the petition.
15. The response to the petition included an affidavit, dated October 8, 2024, of Joseph McDaniel, the north Texas area manager for the CCN holder and a map.

The Petitioners' Reply to the CCN Holder's Response to the Petition

16. On October 16, 2024, the petitioner filed a reply to the CCN holder's response to the petition.

The Tract of Land

17. The petitioner owns property in Denton County that is approximately 559.7 acres.

18. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 160.5 acres.

19. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

20. The petitioner acquired the 559.7-acre tract of land through the following series of transactions.

21. The petitioner acquired an approximately 570.9-acre property via a special warranty deed dated December 10, 2021.

22. The petitioner then sold portions of the 570.9-acre property to third parties as follows:

- a. approximately one acre via a special warranty deed with vendor's lien, dated February 22, 2022; and
- b. approximately 10.2 acres via a general warranty deed dated July 20, 2022.

23. As a result of these transactions, the petitioner owns the 559.7-acre tract of land.

Qualifying County

24. Denton County has a population of more than 52,000 and is adjacent to Dallas and Tarrant counties.

25. Dallas and Tarrant counties each has a population of at least 1.2 million.

Water Service to the Tract of Land

26. The tract of land is not receiving actual water service from the CCN holder, or any other service provider.

27. The petitioner has not asked the CCN holder to provide water service to the tract of land for which the petitioner seeks release or paid any fees or charges to initiate or maintain such service.

28. The CCN holder owns and operates water system infrastructure located directly adjacent to the tract of land. None of this infrastructure provides water service to the tract of land.
29. The CCN holder maintains a regional office in Fort Worth.
30. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
31. The CCN holder has no facilities or lines that provide water service to the tract of land.
32. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

33. On October 29, 2024, Commission Staff filed its recommendation on final disposition that included a certificate and a map on which it identified the tract of land in relation 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 the 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 this petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 and, under 16 TAC § 24.245(h)(6), no hearing will be held on the petitioner's petition.
4. This petition for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) is not a contested case.
5. The petitioner, under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h), is 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)(6), the Commission's decision in this proceeding is based on the information submitted by the petitioner, the CCN holder, and Commission Staff.

7. To obtain streamlined expedited release under TWC § 13.2541(b), the petitioner must demonstrate that it 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 for which the petitioner seeks release is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
8. The time that this petition was filed is the only relevant time period to consider when evaluating whether the tract of land is receiving water service under TWC § 13.2541(b). Whether the tract of land might have previously received water service is irrelevant.
9. The petitioner is not required to seek the streamlined expedited release of all of its property.
10. The petitioner owns a tract of land that is at least 25 acres, and 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) and 13.2541(a), 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 petitioner's tract of land from CCN number 13201 under TWC § 13.2541(b). The Commission has no authority to decertify any facilities or equipment owned and operated by the holder of CCN number 13201 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) and 13.2541(a), 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 holder of CCN number 13201.

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 13201.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the released tract of land.
3. The Commission amends CCN number 13201 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. 5. 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 _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS J. GLEESON, CHAIRMAN

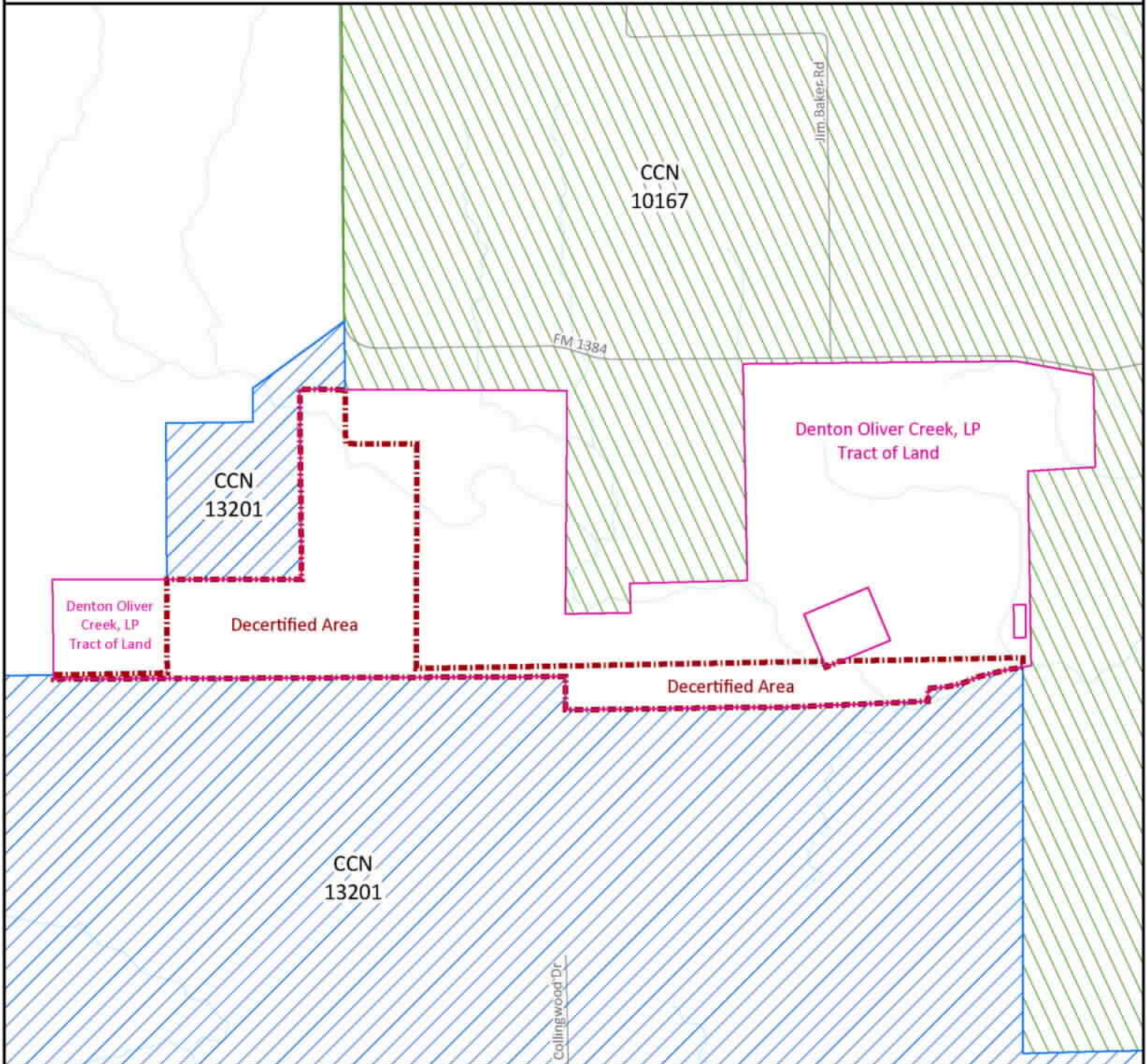
LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

COURTNEY K. HJALTMAN, COMMISSIONER

PUCT Docket No. 56457
Aqua Texas, Inc.
Portion of Water CCN No. 13201
Petition by Denton Oliver Creek, LP to Amend
Aqua Texas, Inc.'s CCN by Streamlined Expedited Release in Denton County



Water CCN

-  13201 - Aqua Texas Inc
-  10167 - City of Justin

-  Decertified Area
-  Tract of Land





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, Freestone, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Kaufman, McLennan, Marion, Navarro, 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. 56457 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 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.