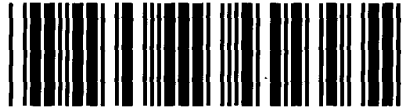


Control Number: 46648



Item Number: 8

Addendum StartPage: 0

DOCKET NO. 46648

**PETITION BY MCALISTER §
OPPORTUNITY FUND 2012, L.P. TO §
AMEND HMW SPECIAL UTILITY §
DISTRICT'S WATER CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN HARRIS COUNTY BY §
EXPEDITED RELEASE §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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FILING CLERK

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Administrative Completeness in response to Order No. 2 and would show the following:

I. Background

On December 7, 2016, McAlister Opportunity Fund 2012, L.P. (McAlister), filed a petition for expedited release from HMW Special Utility District's (HMW SUD) water certificate of convenience and necessity (CCN) No. 10342 in Harris County, pursuant to Tex. Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC). On December 8, 2016, McAlister filed a supplemental pleading providing digital map data with metadata.

In its application, McAlister asserted that it owns 585.23 acres in Harris County which it seeks to decertify.¹ McAlister further asserted that the property is not currently receiving water service from HMW SUD.² On January 6, 2017, Staff recommended that the petition be found administratively complete. On January 10, 2017, the Administrative Law Judge (ALJ) issued Order No. 2, finding the petition administratively complete and requiring Staff to file its final recommendation by January 24, 2017. This pleading is therefore timely filed. Furthermore, the Commission must make its final decision by March 13, 2017.

II. Jurisdiction and Legal Authority

As an alternative to decertification, the TWC and TAC permit a landowner to petition the Commission for an expedited release of land from a CCN. The TWC and TAC have separate

¹ Petition, p. 1.

² Petition, Exhibit A, p.2.

8

provisions for landowners seeking an expedited release.³ As it relates to McAlister's application, the relevant portion of the TWC states:

[T]he owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,00 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.⁴

The TAC similarly states:

[T]he owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Kaufman, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.⁵

Pursuant to TWC § 13.254(a-5) and 16 TAC § 24.113(r), the Commission must render a decision on an application for expedited release "not later than the 60th day after the date the landowner files the petition." However, at its March 31, 2015 Open Meeting, the Commission decided that counting for a determination of the 60th day does not begin until after a determination of the administrative completeness is made.⁶

III. Final Recommendation

Staff has reviewed McAlister's petition and, as supported by the attached memorandum of Debbie Reyes Tamayo, Gary Horton, and Komal Patel of the Water Utilities Division, Staff recommends that the Petition be approved. The maps and digital data filed by McAlister provide adequate information to demonstrate that McAlister satisfies the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r). Specifically, the Petition shows that the land McAlister seeks expedited release for is located in a qualifying county, is not receiving water or sewer service, and is approximately 585 contiguous acres. McAlister has shown through its Petition

³ See generally TWC § 13.254(a-1), (a-5); 16 TAC § 24.113(b), (r).

⁴ TWC 13.254(a-5).

⁵ 16 TAC § 24.113(r).

⁶ OM Transcript, at p. 114 (Mar. 31, 2015).

that it meets the requirements for expedited release; therefore, Staff recommends that McAlister's Petition be approved.

The proposed final map (Attachment B) and proposed CCN certificate (Attachment C) are attached to this filing.

IV. Conclusion

For the reasons stated above, Staff respectfully recommends that McAlister's Petition be approved.

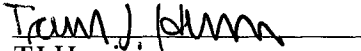
Dated: January 24, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney


TJ Harris
State Bar No. 24097804
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7216
(512) 936-7268 (facsimile)
TJ.Harris@puc.texas.gov

DOCKET NO. 46648

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 24, 2017 in accordance with 16 TAC § 22.74.

TJ Harris

ATTACHMENT A

PUC Interoffice Memorandum

To: TJ Harris, Attorney
Legal Division

Thru: Lisa Fuentes, Work Leader
Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Gary Horton, GIS Specialist
Komal Patel, GIS Specialist
Water Utilities Division

Date: January 24, 2017

Subject: **Docket No. 46648:** *Petition of McAlister Opportunity Fund 2012, L.P. to Amend H-M-W SUD's Water Certificate of Convenience and Necessity by Expedited Release in Harris County*

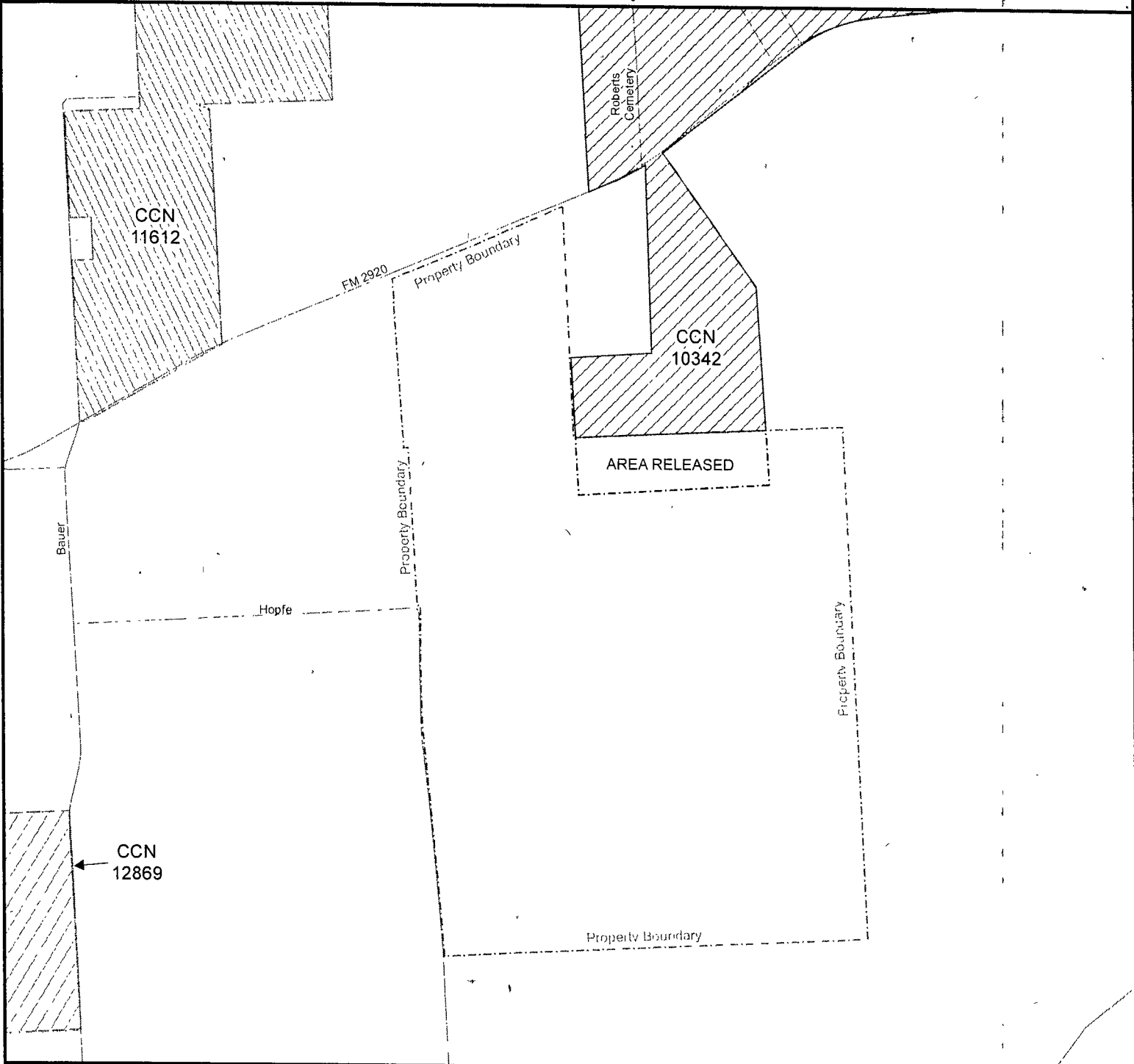
On December 7, 2016, McAlister Opportunity Fund 2012, L.P. (Petitioner) filed with the Public Utility Commission of Texas (Commission) a petition for expedited release from H-M-W SUD's water Certificate of Convenience and Necessity (CCN) No. 10342 in Harris County, pursuant to Tex. Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code §§ 24.113(r) and (s) (TAC). The Petitioner asserts that the land is at least 25 acres, is not receiving water service, and is located in Harris County which is a qualifying county.

The Petitioner submitted an adequate map delineating the requested area for decertification with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.113(r). The map and digital data are sufficient for determining the location of the requested release area within H-M-W SUD's certificated area. Staff was able to confirm the acreage of the total property, and determined that the tract is located within the subject property. Furthermore, the Petitioner provided a warranty deed confirming the Petitioner's ownership of the tract of land within the subject property. The area being requested for expedited release is approximately 585 contiguous acres of land. The petition also included a statement that pursuant to Commission rules, a copy of the Petition was sent via certified mail to H-M-W SUD, the current holder of CCN No. 10342.

On January 10, 2017, Order No. 2 deemed the petition administratively complete, starting the 60 day period which, therefore ends March 11, 2017. The procedural schedule required Staff's final disposition to be filed on January 24, 2017, and set January 31, 2017, as the deadline for the Petitioner's response. In accordance with the TWC, Chapter 13, and 16 TAC, the Petitioners have met the Commission's requirements to allow for the release of the requested area from H-M-W SUD's CCN No. 10342. Therefore, Staff recommends approval of the petition. Enclosed is a final map and certificate for Commission approval.




ATTACHMENT B



H-M-W SUD
 Portion of Water Service Area
 CCN No. 10342
 PUC Docket No. 46648
 Petition by McAlister Opportunity Fund 2012 to Amend H-M-W SUD's CCN by Expedited Release in
 Harris County

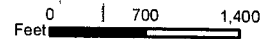


Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN Service Areas

-  10342 - H-M-W SUD
-  11612 - Quadvest LP
-  12869 - Bayou Shadows

-  Area Released
-  Property Boundary



ATTACHMENT C



Public Utility Commission of Texas

By These Presents Be It Known To All That

H-M-W SUD

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, H-M-W SUD is entitled to

Certificate of Convenience and Necessity No. 10342

to provide continuous and adequate water utility service to that service area or those service areas in Harris and Montgomery Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 46648 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of H-M-W SUD 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.

Issued at Austin, Texas, the _____ day of _____ 2017.