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DOCKET NO. 46727

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APPLICATION OF H-M-W SPECIAL §
UTILITY DISTRICT TO AMEND A §
WATER CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
MONTGOMERY COUNTY §

BEFORE THE COMMISSION
FILING CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

**PRIMEWOOD INVESTMENTS, LP'S BRIEF REGARDING THE RELEASE OF
APPROXIMATELY 143 ACRES FROM H-M-W SPECIAL UTILITY DISTRICT'S
WATER CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 10342**

COMES NOW, Primewood Investments, LP ("Primewood") and files this Brief Regarding the Release of Approximately 143 Acres from H-M-W Special Utility District's (the "District") Water Certificate of Convenience and Necessity ("CCN") No. 10342 (the "Brief"), and states as follows:

I. BACKGROUND

On January 5, 2017, the District filed an application at the Public Utility Commission ("Commission") to amend the boundaries of its water CCN No. 10342 (the "Application"), which is the subject matter of this Docket. However, the Application requested that the Commission add land to the District's water CCN that overlapped in part with Primewood's approximately 1,295 acres of land in Montgomery County, Texas (the "Tract"). On March 24, 2017, Primewood filed its request to opt-out of the Application, asking that the District and Commission remove the portion of the District's requested water CCN area that overlapped with the Tract. In accordance with applicable Texas law and Commission regulations, such opt-out request has thus far been accommodated. However, a new issue has arisen regarding the Commission's proposed water CCN map for the Application ("Draft Map"), and for the following reasons, Primewood opposes such map at this time.

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II. ARGUMENT

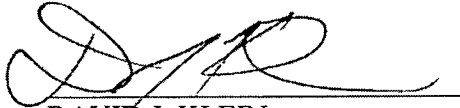
Primewood opposes the Draft Map because it inadvertently and mistakenly includes land that was previously released by the Commission in Commission Docket No. 47918. In addition to this current Docket No. 46727, on January 2, 2018, Primewood filed a petition with the Commission under Texas Water Code § 13.254(a-5) to release another, separate 143 acre portion of the Tract that overlapped with the District's current water CCN No. 10342 boundaries ("Decertification Petition"), styled as Commission Docket No. 47918. At a Commission open meeting held on Thursday, March 29, 2018, the Commissioners granted the Decertification Petition, and the Order granting such relief in Docket No. 47918 is attached hereto as Exhibit A. However, the Draft Map in Docket No. 46727 does not reflect the removal of the 143 acre tract. Primewood recognizes that this discrepancy was unavoidable, since the Draft Map was issued prior to the Commission's Order granting the Decertification Petition. But, now that the Decertification Petition has been granted, the draft map in this Docket must be updated to reflect the removal of the 143 acres; otherwise, these 143 acres would be inadvertently added back into the District's water CCN, creating further delay and costs to all parties to correct.

III. CONCLUSION AND PRAYER

THEREFORE, Primewood Investments, LP respectfully requests that the Public Utility Commission revise the proposed water CCN boundary map for H-M-W Special Utility District's application to amend water CCN No. 10342 in this Docket, to reflect the release of the 143 acres, in accordance with the Commission Order provided in Exhibit A. Primewood further requests any and all other relief to which it is justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
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ATTORNEYS FOR PRIMEWOOD
INVESTMENTS, LP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 2nd day of April, 2018 to the parties of record.



David J. Klein

Exhibit A

Order Issued March 29, 2018 in Docket No. 47918

DOCKET NO. 47918

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PETITION OF PRIMEWOOD §
INVESTMENTS, LP TO AMEND §
H-M-W SPECIAL UTILITY §
DISTRICT'S CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
MONTGOMERY COUNTY BY §
EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

ORDER

This Order addresses the petition of Primewood Investments, LP for expedited release from H-M-W Special Utility District's (HMW SUD) water certificate of convenience and necessity (CCN) number 10342 in Montgomery County. Commission Staff recommended approval of the petition. The petition is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History, Description, and Background

1. On January 2, 2018, Primewood Investments filed a petition for the expedited release of a 1,295-acre tract of land from HMW SUD's CCN No. 10342 in Montgomery County. The petition included a warranty deed confirming Primewood Investments' ownership of the 1,295-acre tract of land and an affidavit confirming that the tract of land is not receiving water service from HMW SUD or any other water service provider and that the tract of land is located in Montgomery County. The petition also stated that 188.64 acres of the 1,295-acre tract of land were within HMW SUD's CCN and were subject to release in this proceeding.
2. On January 11, 2018, Order No. 1 was issued setting a deadline for comments on the administrative completeness of the petition and notice and establishing a procedural schedule.
3. On February 1, 2018, HMW SUD filed a motion to intervene in this proceeding stating that it is capable of serving the area Primewood Investments seeks to decertify. HMW SUD's

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motion did not identify any property that would be rendered useless or valueless by the decertification.

4. On February 1, 2018, Commission Staff recommended that the petition be found administratively complete and that the notice issued be found sufficient. Commission Staff also clarified that the accurate acreage to be released by this petition is approximately 143 acres, not 188.64 acres.
5. On February 5, 2018, Order No. 2 was issued deeming the petition administratively complete, finding the notice sufficient, adopting a procedural schedule, and granting HMW SUD's motion to intervene.
6. On February 9, 2018, HMW SUD responded to Primewood Investments' petition and moved for denial of the petition either as not administratively complete or on the merits. In the alternative, HMW SUD moved that Primewood Investments should be required to pay compensation to HMW SUD.
7. On February 20, 2018, Primewood Investments filed a corrected signature page to the affidavit of Dominic Leung.
8. On February 20, 2018, Commission Staff recommended the approval of Primewood Investments' petition and provided an amended service area map for HMW SUD. In that map, Commission Staff identified three distinct areas within the 1,295-acre tract of land that make up the 143 acres to be released from HMW SUD's CCN.
9. The amended map and certificate for HMW SUD are attached to this Order.

Notice

10. Primewood Investments provided a copy of the petition to HMW SUD on January 2, 2018.
11. On January 11, 2018, notice of the petition was submitted to the *Texas Register* for publication.

Project Description

12. Primewood Investments owns the 1,295-acre tract of land.
13. The 1,295-acre tract of land is at least 25 acres in area.

14. Primewood seeks the release from HMW SUD's CCN of three distinct areas within the 1,295-acre tract of land, which total 143 acres.
15. The tract of land is not receiving water service.
16. The 1,295-acre tract of land is located in a qualifying county.

Water Service

17. The 1,295-acre tract of land is not receiving any water service from HMW SUD as that term has been defined by the Courts.
18. The 1,295-acre tract of land is not receiving actual water service from HMW SUD.

Useless and Valueless

19. HMW SUD did not identify any property that is rendered useless or valueless by the decertification.

II. Conclusions of Law

1. Montgomery County is a qualifying county as defined in Texas Water Code § 13.254(a-5)¹ and 16 Texas Administrative Code (TAC) § 24.113.
2. The Commission has jurisdiction over this petition under TWC §§ 13.041 and 13.254(a-5).
3. Notice of the petition was provided in compliance with 16 TAC § 24.113(l)(3)(A)(vi) and 16 TAC §§ 22.54 and 22.55.
4. The 1,295-acre tract of land is not receiving water service from HMW SUD under TWC § 13.254(a-5).
5. The area or areas to be released from a CCN under TWC § 13.254(a-5) and 16 TAC § 24.113(l) may be smaller in acreage than the tract of land.²

¹ Tex. Water Code Ann. § 13.254(a-5) (West 2008 & and Supp. 2017) (TWC).

² See generally *Petition of Carma Easton LLC to Amend Creedmoor-Maha Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release*, Docket No. 45902, Order, Findings of Fact Nos. 22-24 and Conclusion of Law No. 5 (Sept. 28, 2016).

6. A tract of land under TWC § 13.254(a-5) and 16 TAC § 24.113(I) must form a connected, uninterrupted whole.³
7. The requirement that facilities be committed and dedicated to serve a tract of land is not satisfied just by facilities that are available and capable of providing water service.
8. The requirement that facilities be committed and dedicated, or acts be performed, to serve a tract of land is not satisfied just by facilities that are committed or used, or acts that are performed, for the general provision of service to a certificated area.
9. No property of HMW SUD is rendered useless or valueless by the decertification; therefore, under TWC § 13.254(d)-(g), no compensation is owed to HMW SUD.
10. Because no compensation is owed, under TWC § 13.254(d)-(g), a retail public utility may render retail water service directly or indirectly to the public in the decertified area without providing compensation to HMW SUD.
11. Primewood Investments is entitled to approval of the petition having sufficiently satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113 by adequately demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving water service.
12. The petition was processed in accordance with the Administrative Procedure Act,⁴ the Texas Water Code, and Commission rules.
13. Under TWC § 13.257(r) and (s), HMW SUD is required to record a certified copy of the approved certificate and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.

³ 16 TAC § 24.3(73); *Petition by Carmu Easton, LLC to Amend Creedmoor-Mahu Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release*, Docket No. 46802, Order, Conclusion of Law No. 5 (Apr. 13, 2017); see also *Petition of SLF IV – 114 Assemblage, L.P. to Amend Aqua Texas, Inc.'s Sewer Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 44668, Order at 5-6 (Sept. 11, 2015).

⁴ Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2016 & Supp. 2017).

III. Ordering Paragraphs


In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:


1. The petition is approved.
2. The 143 acres identified in the attached map, which are part of Primewood Investments' 1,295-acre tract of land, are removed from HMW SUD's water CCN No. 10342.
3. HMW SUD's water CCN No. 10342 is amended in accordance with this Order.
4. A copy of HMW SUD's amended water CCN No. 10342 is attached to this Order.
5. The Commission's official service-area boundary map for HMW SUD shall reflect this change, as provided in the attached map.
6. HMW SUD shall comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Montgomery County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
7. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 24th day of March 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

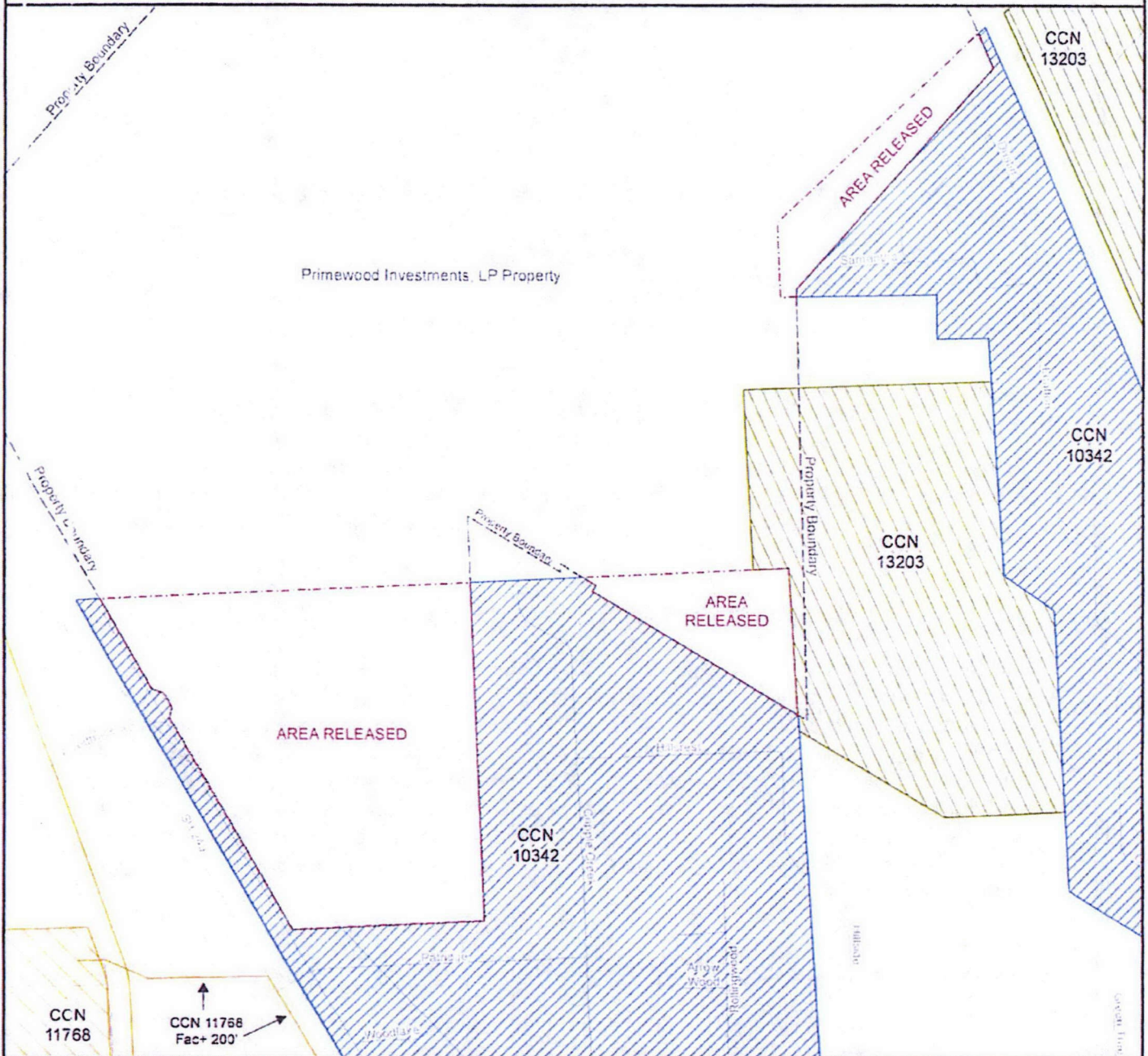

DEANN T. WALKER, CHAIRMAN


BRANDY MARTY MARQUEZ, COMMISSIONER


ARTHUR C. D'ANDREA, COMMISSIONER

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H-M-W SUD
Portion of Water CCN No. 10342
PUC Docket No. 47918
Petition by Primewood Investments, LP to
Amend H-M-W SUD's CCN by Expedited Release in Montgomery County





Water CCN

-  10342 - H-M-W SUD
-  13203 - Aqua Texas Inc
-  11768 - Pinehurst Decker Prairie WSC

Water Facility CCN

-  11768 - Pinehurst Decker Prairie WSC
- Facilities + 200'

-  Area Released
-  Property Boundary

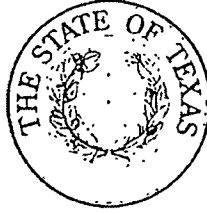


Public Utility Commission of Texas
701 N. Congress Ave
Austin, TX 78701

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Map by: Komal Patel
Date created: February 13, 2018
Project Path: n:\finalmapping\47918HMSUD.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

H-M-W 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 by H-M-W Special Utility District, is entitled to this

Certificate of Convenience and Necessity No. 10342

to provide continuous and adequate water utility service to that service area or those service areas in Montgomery County as by final Order or Orders duly entered by this Commission, which Order resulting from Docket No. 47918 is on file at the Commission offices in Austin, Texas; and is 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 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.

Issued at Austin, Texas, the 29th day of March 2018.