

Control Number: 47918



Item Number: 11

Addendum StartPage: 0

PUC DOCKET NO. 47918

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	§ § § § § §	<div data-bbox="1108 291 1436 355">2018 FEB 20 PM 1:13</div> PUBLIC UTILITY COMMISSION OF TEXAS
---	----------------------------	--

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 2, Staff's Recommendation on Final Disposition. Staff recommends that the petition be approved. In support thereof, Staff shows the following:

I. BACKGROUND

On January 2, 2018, Primewood Investments, L.P. (Primewood) filed a petition with the Commission for streamlined expedited release (SER) of approximately 188 acres from H-M-W Special Utility District's (H-M-W SUD) water certificate of convenience and necessity (CCN) No. 10342 in Montgomery County, Texas.¹ The petition was filed pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.113(l). In the petition, Primewood asserted that it owns approximately 1,295 acres in Montgomery County, the certificated portions of which it seeks to have released from H-M-W SUD's water CCN.² Primewood also asserts that the property is not receiving water service from H-M-W SUD and that Primewood has never requested such service.³

On February 1, 2018, H-M-W SUD filed a motion to intervene in this proceeding. On February 9, 2018, H-M-W SUD filed a response alleging that the petition is not administratively

¹ As indicated in the attached memorandum of Sean Scaff, Staff determined that the accurate acreage to be released by this petition is approximately 143 acres.

² Petition at 2 (Jan. 2, 2018).

³ *Id.*

complete⁴ and further asserting that because it has facilities capable of providing service to its entire certificated service area that Primewood's property is accordingly receiving service.⁵

On February 5, 2018, the Commission administrative law judge (ALJ) issued Order No. 2, finding Primewood's petition administratively complete, granting H-M-W SUD's motion to intervene, and requiring Staff to file a recommendation on final disposition by February 19, 2018. Because February 19 is a holiday when the Commission is closed, Staff's deadline is the following day that the Commission is open, February 20, 2018.⁶ Therefore, this pleading is timely filed.

II. RESPONSE TO H-M-W SUD'S SERVICE ARGUMENT

In H-M-W SUD's Response, it argues that the property at issue in Primewood's petition is receiving water service because "HMW and its predecessors have built, modified and paid for their adjacent Coe Country and Meadowood water systems, with the intent to serve its entire CCN in the immediate area, including the area for which Applicant seeks decertification."⁷ Staff disagrees that the property is receiving service.

In asserting that the property is receiving service, H-M-W SUD raises the same arguments that other CCN holders have raised in streamlined expedited release dockets and the Commission has consistently denied such service arguments.⁸ The Texas Third Court of Appeals in *Tex. Gen. Land Office v. Crystal Clear Water Supply Corporation* affirmed that determining whether a tract is receiving service is a, "fact-based inquiry requiring the commission to consider whether the retail public utility has facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the

⁴ Response of HMW Special Utility District at 1 (Feb. 9, 2018).

⁵ *Id.* at 2.

⁶ Pursuant to 16 Tex. Admin. Code § 22.4(a), if a period established by order of the Commission concludes on a day that the Commission is not open for business, then "the designated period runs until the end of the next day on which the commission is open for business."

⁷ Response of HMW Special Utility District at 2.

⁸ See e.g. *Petition of Guadalupe Valley Development Corporation to Amend Green Valley Special Utility District's Certificate of Convenience and Necessity in Guadalupe County by Expedited Release*, Docket No. 45798 (Jul. 11, 2016) (in which the CCN holder argued that it had built facilities capable of providing service to the entirety of its certificated service area and the Commission found that this did not amount to service and approved the streamlined expedited release at issue).

particular tract.”⁹ The Court there made clear that, “[I]t is essential that any qualifying services are being ‘received’ by the property for which expedited decertification is sought before such property is rendered ineligible for decertification pursuant to section 13.254(a-5).”¹⁰ In applying the rule of *Crystal Clear*, the Commission has specifically denied this capable-of-providing-service argument made by CCN holders in other streamlined expedited release dockets.¹¹ Here, the only facilities committed or acts performed that H-M-W SUD asserts constitute service are the presence of two water systems in the vicinity that are capable of providing service to Primewood’s property.¹² However, H-M-W SUD’s Coe Country and Meadowood water systems serve H-M-W SUD’s water CCN generally and no allegation is made that Primewood’s property is receiving service from either of these water systems or any other. Therefore, no fact raised by H-M-W SUD rises to the level of a facility or an action specifically committed to serving Primewood’s petitioned property. Even in H-M-W SUD’s statement that “HMW currently serves, has served, and is willing and able to serve all *unserved portions* of the entire CCN,” H-M-W SUD tacitly acknowledges that areas including Primewood’s property are parts of its certificated service area that are unserved.¹³ Accordingly, Staff agrees with Primewood that Primewood’s property is not receiving water service.

III. APPROVAL RECOMMENDATION

As further detailed in the attached memorandum of Sean Scaff of the Commission’s Water Utility Regulation Division, Staff has reviewed Primewood’s petition and recommends that the petition meets the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(l) and therefore should be granted. Specifically, Staff verified the location, acreage, and ownership of

⁹ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin, 2014, pet. denied) (emphasis original).

¹⁰ *Id.* at 140.

¹¹ See e.g., *Petition of SLF IV – 114 Assemblage, L.P. to Amend Aqua Texas, Inc.’s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 44667, Order at 6-9 (Sept. 11, 2015); *Petition of HMP Ranch, Ltd. to Amend Johnson County Special Utility District’s Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release*, Docket No. 45037, Finding of Fact No. 23 (Dec. 18, 2015) (“Consistent with the Commission’s other recent decisions, even though a utility has facilities available and capable of providing water service, that does not mean the facilities are committed and dedicated to serving that particular tract.”).

¹² Response of HMW Special Utility District at 2.

¹³ *Id.* at 2 (emphasis added).

the area subject to the petition for release. Furthermore, Primewood attests that Primewood has never requested and the property is not receiving water service from H-M-W SUD.¹⁴

Staff did not identify any property that would be rendered useless or valueless by the decertification under 16 TAC § 24.113(n). Therefore, Staff recommends that no property be found to be useless or valueless and, pursuant to 16 TAC § 24.113(n)(7), that no compensation proceeding is necessary. In accordance with Staff's recommendation, the proposed release map and certificate are attached to this filing.

IV. CONCLUSION

For the reasons stated above, Staff respectfully recommends that the petition be granted releasing the requested property. Staff further recommends that no compensation proceeding is necessary because no property will be rendered useless or valueless by the granting of the petition.

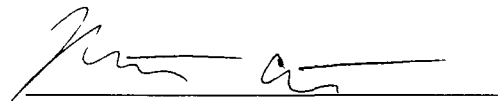
Dated: February 20, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney



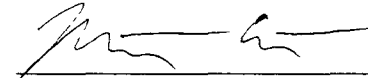
Matthew A. Arth
State Bar No. 24090806
(512) 936-7021
(512) 936-7268 (facsimile)
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
Matthew.Arth@puc.texas.gov

¹⁴ Petition at 2.

PUC DOCKET NO. 47918

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on February 20, 2018, in accordance with the requirements of 16 TAC § 22.74.


Matthew A. Arth

Attachment A
Staff Memorandum

PUC Interoffice Memorandum

To: Matthew Arth, Attorney
Legal Division

From: Sean Scaff, Engineering Specialist
Water Utility Regulation Division

Thru: Lisa Fuentes, Manager
Water Utility Regulation Division

Date: February 16, 2018

Subject: **Docket No. 47918:** *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*

On January 2, 2018, Primewood Investments, LP (Petitioner) filed a petition for a streamlined expedited release from H-M-W Special Utility District's (SUD) water Certificate of Convenience and Necessity (CCN) No. 10342 in Montgomery County. This petition is being reviewed under Tex. Water Code (TWC) § 13.254(a-5), and 16 Tex. Admin. Code (TAC) § 24.113(l).

The Petitioner submitted an adequate map delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC §§ 24.113(m) and 24.119. The map and digital data are sufficient for determining the location of the requested release area within the SUD's certificated area. Mapping Staff were able to confirm the acreage of the subject property and determined that the requested area 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 Petitioner also submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder, H-M-W SUD. Staff determined that the area being requested for streamlined expedited release is approximately 143 acres.

The Petitioner also provided a statement attesting that a copy of the petition was sent to the CCN holder the same day that the petition was sent to the Public Utility Commission (Commission) pursuant to 16 TAC § 24.113(l)(3)(A)(vi).

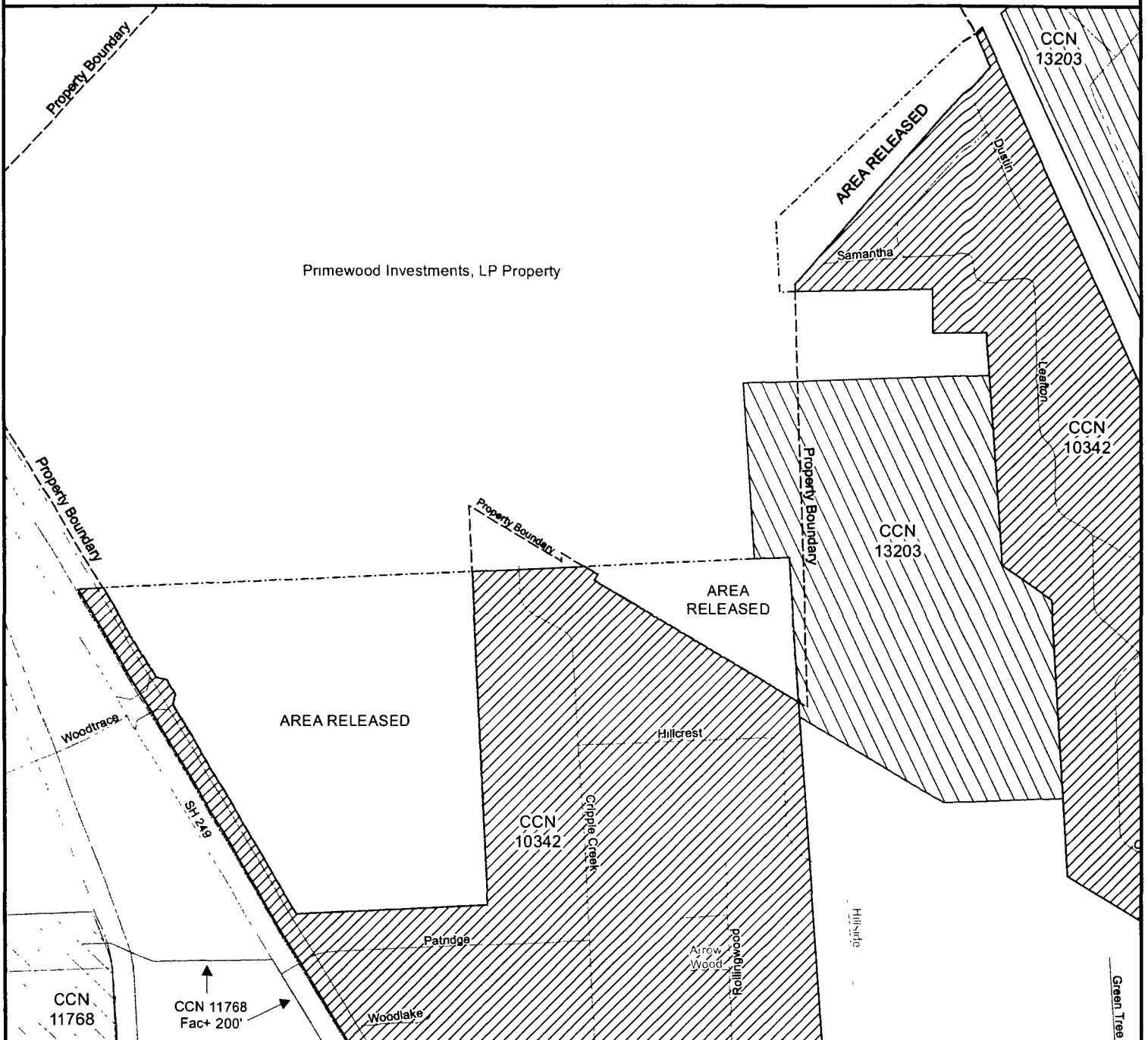
Order No. 1 gave a deadline for H-M-W SUD to intervene by February 1, 2018. H-M-W SUD requested to intervene on February 1, 2018. A Staff review found that there is no property that would be rendered useless or valueless, in accordance with 16 TAC § 24.113(n). Staff further recommends that a compensation proceeding is not necessary, if the Commission determines that there is no useless or valueless property, pursuant to 16 TAC § 24.113(n)(7).

The Petitioner has met the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(l) to allow for the release of the requested area from H-M-W SUD's water Certificate of Convenience and Necessity No. 10342. Staff recommends that the petition be approved.




Attachment B

Map

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
1701 N. Congress Ave
Austin, TX 78701

Map by: Komal Patel
Date created: February 13, 2018
Project Path: n:\final\mapping\47918HMWSUD.mxd

Attachment C

Certificate



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 _____ day of _____ 2018.