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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 \*

2018 MAR -2 AM 9:39 PUBLIC UTILITY COMMISSION OF TEXAS

RESPONSE OF HMW SPECIAL UTILITY DISTRICT TO PUC STAFF RECOMMENDATION AND REPLY BY PRIMEWOOD INVESTMENTS, L.P.

Comes now the HMW SPECIAL UTILITY DISTRICT OF HARRIS AND MONTGOMERY COUNTIES ("HMW"), filing its Response to the Public Utility Commission("PUC") Staff Recommendation and Reply by Primewood Investments, L.P., and states as follows:

I.

On December 19, 2017, Primewood Investments, L.P. ("Applicant"), filed its application for expedited release of a portion of a 188.64 acre tract of land owned by the Applicant from HMW's water certificate of convenience and necessity ("CCN") No. 10342 in Montgomery County, Texas (the "Application").

II.

HMW holds Certificate of Convenience and Necessity No. 10342. It is a proper party to this proceeding, its Motion to Intervene having been granted on February 5, 2018.

III.

HMW restates its contention that the Application is not administratively complete, in that HMW is a water district with boundaries that are co-extensive with its Certificate of Convenience and Necessity No. 10342. The Application makes no provision for resolving that

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conflict of authority, in which HMW will continue to retain its expansion authority under Texas Water Code Section 49.215.

#### IV.

On the merits, HMW incorporates and restates the allegations in Paragraph III. above, its Motion to Intervene, and in the following paragraph.

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. HMW currently serves, has served and is willing and able to serve all unserved portions of the entire CCN. Therefore, HMW should be permitted to serve the area, or alternatively should receive compensation for the appropriate portion of its investment in planning, design, water lines, plant and equipment that were invested with the intent to serve and have served portions of the immediate area, and can serve the area sought to be decertified. See Texas Water Code, Subsection 13.254(a-6).

#### V.

##### **Response to Staff Recommendation**

The PUC Staff recommendation is deficient in the following particulars:

1. Notwithstanding its citation of the Crystal Clear<sup>1</sup> case, it has neither conducted nor presented a fact-based analysis of whether the tract is receiving water service or, on the issue of compensation, whether HMW's obvious investment in the area defined by the CCN merits compensation for its recommended loss. See Crystal Clear, at 140-141. No such analysis appears in either the PUC Staff Recommendation or its supporting staff memorandum. Instead, the staff offers only references to previous

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<sup>1</sup> See Texas General Land Office v. Crystal Clear Water Supply Corporation, 449 S.W. 3d 130 (Tex. App. Austin 2014).

actions taken by the Commission itself, presumably on the basis of evidence, in which the Commission restated applicable law as it related to facts that may or may not be similar.

2. Further, the PUC Staff's contention that HMW's existing systems serve only limited areas, and were not designed to serve its entire CCN, is unsupported by any evidence, factually inaccurate and contrary to the inquiry called for in Crystal Clear.
3. Finally, the Staff Recommendation avoids the question of compensation to HMW in the event of a decertification, even though the evidentiary presumption, if any, should be that HMW's design and construction of its facilities were always intended to serve its entire CCN.

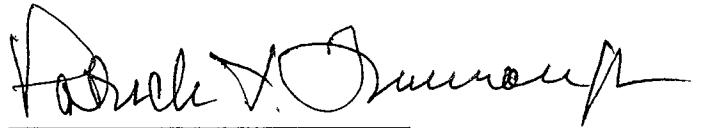
Consequently, the PUC Staff Recommendation affords no evidentiary basis for the Commission to act on its recommendations, and instead suggests to the Commission that it avoid such an inquiry and act as it has acted in other cases that its staff claims to be similar, again without facts that support that assertion, while citing case law that requires a fact-based inquiry.

**Response to Reply by Primewood Investments, L.P.**

Primewood's Reply likewise fails to respond to the compensation provision at Water Code Section 13.254(a-6), despite the fact that the very existence of HMW's facilities within the CCN suggests that it has invested in the probability of expansion in and to all of its areas as growth and demand occurs.

Wherefore premises considered, HMW moves the PUC to deny the Application as not administratively complete, or alternatively to deny it on its merits, or alternatively to require the payment of compensation to HMW, and for such other and further relief as the PUC deems just.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Response of HMW Special Utility District, has been forwarded to Primewood Investments, LP, by and through its attorney of record, David J. Klein, Lloyd Gosselink, 816 Congress Avenue, Suite 1900, Austin, Texas 78701, via facsimile to (512) 472-0532, and Matthew A. Arth, Attorney for the Texas Public Utility Commission, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, via facsimile to (512) 936-7268, on this 1st day of March, 2018.

Respectfully submitted,



Patrick F. Timmons, Jr.