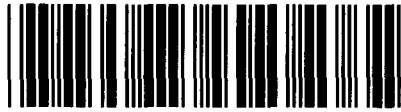


Control Number: 49280



Item Number: 33

Addendum StartPage: 0

DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director




Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Christopher Oakley 
Administrative Law Judge
Office of Policy & Docket Management

RE: **Open Meeting of December 13, 2019**
Docket No. 49280 – *Petition of Previllege, LLC to Amend HMW Special Utility District's Water Certificate of Convenience and Necessity in Harris County by Expedited Release*

DATE: November 21, 2019

The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Friday, December 13, 2019, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties may file corrections or exceptions to the Proposed Order on or before Thursday, December 5, 2019.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 49280

PETITION OF PREVILLAGE, LLC TO	§	PUBLIC UTILITY COMMISSION
AMEND HMW SPECIAL UTILITY	§	
DISTRICT'S WATER CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN HARRIS COUNTY BY EXPEDITED	§	
RELEASE	§	

PROPOSED ORDER

This Order addresses the petition of Previllage, LLC, requesting the streamlined expedited release of an approximately 50-acre tract of land located within the boundaries of HMW Special Utility District's water certificate of convenience and necessity (CCN) number 10342 in Harris County. The Commission grants the release of the requested area.

I. Background

On March 1, 2019, Previllage filed its petition under Texas Water Code (TWC) § 13.254(a-5)¹ and 16 Texas Administrative Code (TAC) § 24.245(l). The petition seeks expedited release from HMW's water CCN number 10342 of an approximately 50-acre tract of land the applicant owns in Harris County. The petition includes a notarized letter from Ahmet Ozan, General Partner of Previllage, certifying that: (1) the tract is not receiving water service from HMW; (2) the tract is at least 25 acres in size; and (3) the tract is located in a qualifying county.

On April 2, 2019, HMW filed two motions: (1) a motion for intervention; and (2) a motion to strike and dismiss Previllage's petition. The motion to intervene was unopposed and was granted on April 24, 2019. In its motion to dismiss, HMW asserted that the Commission should dismiss Previllage's petition because the petition erroneously named Montgomery County as the location of the tract of land to be released. HMW also alleged that the affidavit was false, without specifying what was false or providing any evidence to support its allegation. On May 3, 2019, Previllage filed an amended petition containing a revised affidavit that correctly named Harris County as the location of the tract of land to be released.

¹ All cites to the Texas Water Code in this Proposed Order are to the version of the statutes in effect prior to September 1, 2019, which apply to this application because it was filed prior to that date. *See*, Act of May 26, 2019, 86th Leg., R.S., S.B. 2272, § 6.

In Order No. 4 filed on June 11, 2019, responses were requested from the parties regarding HMW's motion to strike and dismiss. On July 10, 2019, Previllage filed its response, and stated that the error alleged in HMW's motion was corrected in the amended petition filed on May 3, 2019. Commission Staff filed its response on July 19, 2019, and stated that HMW had provided no evidence to rebut the factual assertions in Previllage's amended petition.

On July 23, 2019, HMW filed a reply to the responses. In its reply, HMW maintained its assertion that the error contained in the original affidavit was fatal to the petition. HMW also made additional assertions as follows: (1) the petitioner could not use expedited release to deprive HMW of service area held under a CCN, because a CCN is a vested property right; (2) the amendments to the TWC that became effective on September 1, 2019 precluded the granting of the petition; and (3) the facts of the case revealed that the petition was an attempt by Quadvest, L.P., a water utility and CCN holder, to provide service to the requested area.

In Order No. 7 filed on November 20, 2019, the administrative law judge (ALJ) denied HMW's motion to strike and dismiss.

Commission Staff filed its final recommendation on September 25, 2019, and subsequently filed two supplemental recommendations on October 11, 2019 and November 4, 2019. Commission Staff recommends that the petition be granted and that HMW is not entitled to any compensation.

Based on the facts summarized above and in Previllage's amended petition, the Commission finds: (1) the petitioner has established that it is entitled to have its petition granted; and (2) HMW failed to prove that any of its property will be rendered valueless or useless by the decertification of the approximately 50-acre tract under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n).

II. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Previllage is a domestic limited liability company registered with the Texas secretary of state on October 17, 2016, under file number 802563967.
2. Previllage owns an approximately 50-acre tract of land located within the boundaries of HMW's water CCN number 10342 in Harris County.

Petition

3. On March 1, 2019, Previllage filed a petition requesting the expedited release of the tract of land from HMW's water CCN number 10342.
4. On May 3, 2019, Previllage filed an amended petition, clarifying that the tract of land is located in Harris County.
5. The petition, as amended, includes a supporting affidavit from Ahmet Ozan, General Partner at Previllage, attesting to the truth of the facts alleged in the petition.
6. The tract of land from which Previllage seeks release is at least a total of 25 contiguous acres, is not receiving water service, and is within the boundaries of Harris County, a qualifying county.
7. Previllage provided a warranty deed with vendor's lien, confirming ownership of the tract of land, and maps confirming the land's location.
8. The tract of land is within HMW's water service area for CCN number 10342.
9. In Order No. 5 filed on September 5, 2019, the ALJ found the petition administratively complete.

Notice

10. Previllage sent a true and correct copy of the petition, via certified mail, to HMW on April 29, 2019.
11. In Order No. 5 filed on September 5, 2019, the ALJ found the notice sufficient.

Intervention

12. HMW filed a motion to intervene on April 2, 2019.
13. In Order No. 3 filed on April 24, 2019, the ALJ granted HMW's motion to intervene.

Response to Petition

14. HMW asserted, through a motion to dismiss filed on April 2, 2019, that the petition failed to provide an accurate location of the tract of land, and that the attestations of Mr. Ozan's affidavit were false.
15. On May 3, 2019, Previllage, through an amended petition, named Harris County as the location of the tract of land.
16. HMW provided no evidence that contradicted the assertions made in Previllage's petition, as amended.
17. In Order No. 7 filed on November 20, 2019, the ALJ denied the motion to dismiss.

Water Service

18. HMW has not committed or dedicated facilities or lines providing water service to the tract of land.
19. HMW has not performed acts regarding or supplied anything to the tract of land.
20. The tract of land is not receiving water service from HMW.

Determination of Useless or Valueless Property

21. No property of HMW is rendered useless or valueless by the decertification.
22. Because no property of HMW is rendered useless or valueless by decertification, compensation is not necessary.
23. HMW's existing water facilities can still be used and useful to provide service in the remainder of its CCN service area.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this petition under TWC § 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC §§ 22.55 and 24.245(l).

3. No opportunity for a hearing on a petition for expedited release is provided under TWC § 13.254(a-5) and (a-6) or 16 TAC § 24.245(l).
4. Petitions for expedited release filed under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are not contested cases.
5. Landowners seeking expedited release under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.
6. To obtain release under TWC § 13.254(a-5), a 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 is not receiving water service.
7. Harris County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(l).
8. The tract of land is not receiving water service under the standards of TWC §§ 13.002(21) and 13.254(a-5), and 16 TAC § 24.245(l), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
9. Previllage has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l) 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.
10. HMW failed to prove that any of its property will be rendered useless or valueless by the decertification under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n); therefore, under TWC § 13.254(d) through (g) and 16 TAC § 24.245(n)(3), no compensation is owed to HMW.
11. Because no compensation is owed under TWC § 13.254(d) through (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.
12. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,² and Commission rules.

² Tex. Gov't Code ch. 2001.

13. Under TWC § 13.257(r) and (s), HMW 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.

IV. Ordering Paragraphs

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

1. The Commission grants the petition and removes the approximately 50-acre tract of land owned by Previllage from HMW's water CCN number 10342 in Harris County.
2. The Commission amends HMW's CCN number 10342 in accordance with this Order.
3. The Commission's official service area boundary maps for HMW's CCN will reflect this change as shown on the attached map.
4. The Commission grants the certificate attached to this Order.
5. HMW must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Harris County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of December 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

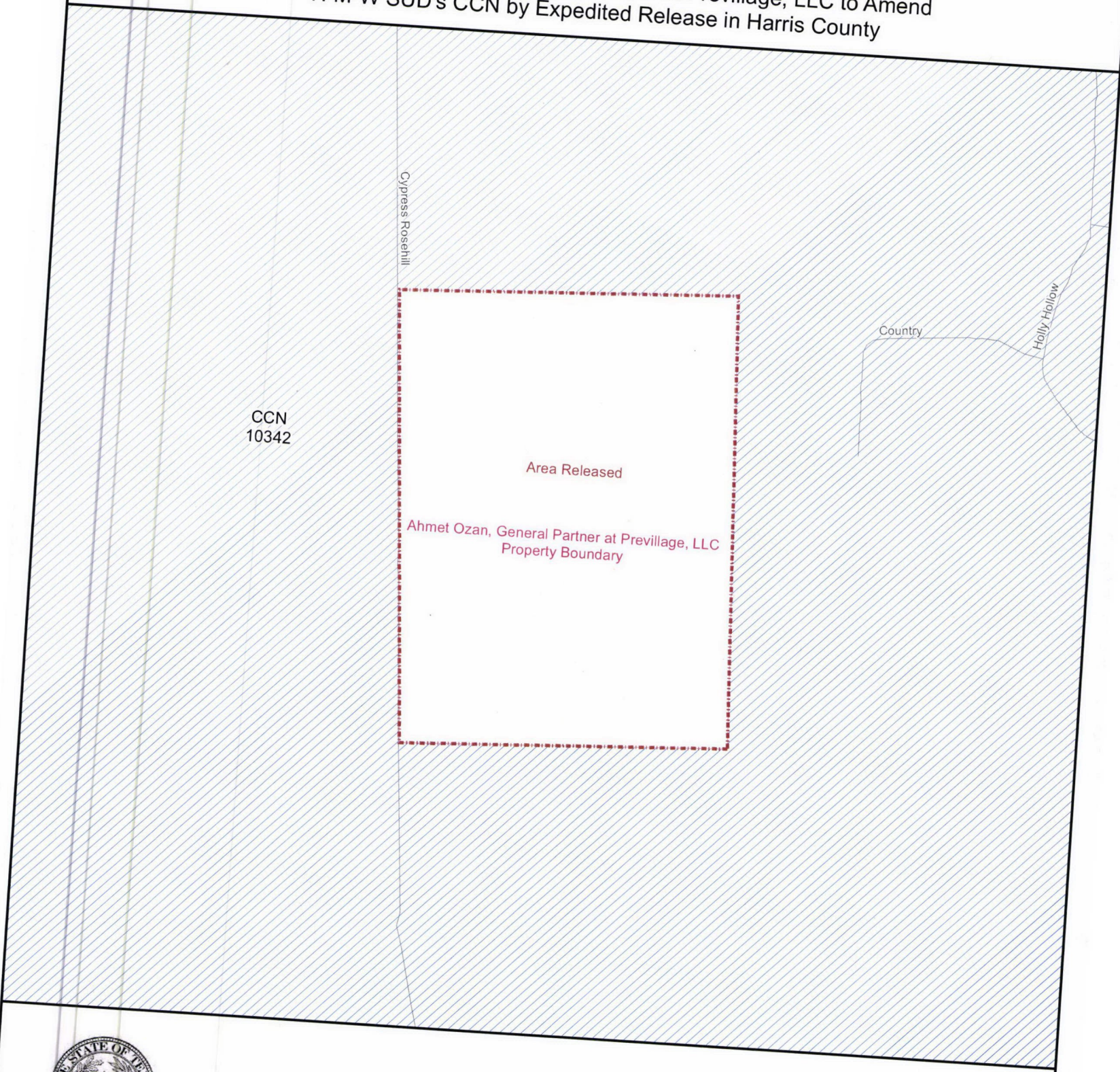
DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER



H-M-W SUD
Portion of Water CCN No. 10342
PUC Docket No. 49280
Petition by Ahmet Ozan, General Partner at Previllege, LLC 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

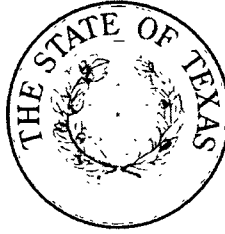
Water CCN
 10342 - H-M-W SUD

 Area Released
 Property Boundary



Map by: Komal Patel
Date created: September 17, 2019
Project Path: n:\finalmapping\
49280HMWSUD.mxd

000009.



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, 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 Harris and Montgomery Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49280 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 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 _____ 2019.