



Control Number: 49863



Item Number: 65

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DOCKET NO. 49863

PETITION OF ALAMO MISSION LLC §  
 TO AMEND ROCKETT SPECIAL §  
 UTILITY DISTRICT'S WATER §  
 CERTIFICATE OF CONVENIENCE §  
 AND NECESSITY IN ELLIS COUNTY §  
 BY EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION  
 OF TEXAS

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**ROCKETT SPECIAL UTILITY DISTRICT'S**  
**MOTION FOR REHEARING**

Rockett Special Utility District ("Rockett") files this Motion for Rehearing pursuant to PUC Rule 22.264 and Texas Government Code Chapter 2001 requesting that the Public Utility Commission of Texas (the "Commission") reconsider its Order granting Alamo Mission LLC's ("Alamo" or "Petitioner") Petition to Amend Rockett's Certificate of Convenience and Necessity ("CNN") No. 10099 by expedited release. In support thereof, Rockett would respectfully show as follows:

**I. INTRODUCTION**

On January 14, 2021, the Commissioners issued an Order in the above-referenced docket granting the Petition (the "Order"), which amended Rockett's water CNN No. 10099 to remove a 167-acre tract of land (the "Property"). This Motion for Rehearing is timely filed pursuant to PUC Rule 22.264 and Texas Government Code § 2001.146.

Rockett is a political subdivision of the State of Texas with an elected board of directors. Rockett respectfully requests the Commission reconsider the Order and deny Alamo's Petition. Specifically, Rockett requests the Commission reconsider the Findings of Fact Conclusions of Law set forth below in its Arguments and Authorities. Alternatively, Rockett requests that the Commission abate the proceeding until after Rockett's federal water rights have been fully adjudicated by the federal court system.<sup>1</sup>

The property identified in Alamo's Petition (the "Property") is receiving water service from Rockett under applicable law and the Order should be reconsidered and Alamo's Petition denied. Rockett's evidence demonstrates that it has water facilities *on the Property* and has the

<sup>1</sup> Rockett currently has two federal lawsuits seeking to adjudicate Rockett's federal rights. A third case, dismissed by the U.S. District Court for the Western District of Texas, is currently pending before the U.S. Fifth Circuit Court of Appeals.

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capacity to provide service to the Property meeting the requirements for showing that the Property is receiving water service. The former version of Texas Water Code § 13.254(a-5)<sup>2</sup> placed the burden on Alamo to prove that it was not receiving water “service.” The Water Code defines service broadly as including “*any* act performed, *anything* furnished or supplies, and *any* facilities or lines *committed or used* by a retail public utility in the performance of its duties [under Chapter 13] as well as the interchange of facilities between two or more retail public utilities.” Tex. Water Code § 13.002(21) (emphasis added). Alamo did not meet its burden. The undisputed evidence demonstrated that Rockett was providing service to the area that Alamo seeks to decertify.

Rockett specifically requests the Commission reconsider Findings of Fact Nos. 29, 30, 35, 36, 37, and 38; Conclusions of Law Nos. 3, 4, 9, 10, 11, 12, and 15; and Ordering Paragraphs Nos. 1 and 3.

## **II. EVIDENCE**

In support of this Motion for Rehearing and for the convenience of the Commission, Rockett attaches copies of the following documents which were made part of the record:

<b><u>Attachment No.</u></b>	<b><u>Document</u></b>
1	The Affidavit of Kay Phillips, executed September 23, 2019 and attached as Exhibit B to Rockett’s Response dated September 24, 2019.
2	A map showing the waterline and water connection tap directly on the Property, which was attached as Exhibit A to Rockett’s Response dated September 24, 2019.

## **III. FACTUAL HISTORY**

On August 16, 2019, Alamo filed an original Petition for expedited release to amend Rockett’s water CNN No. 10099 to remove a 167-acre tract of land.

On September 13, 2019, Rockett filed a Motion to Intervene.

On September 24, 2019, Rockett filed its Response and Objection to the Petition for Expedited Release and attached the supporting Affidavit of Rockett’s General Manager Kay

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<sup>2</sup> After Alamo filed its petition for decertification, Texas Water Code § 13.254(a-5) was moved to current § 13.2541.

Phillips. As stated by Ms. Phillips, Rockett installed a 12" waterline on the Property and Account #24-0405-00 was established to initiate water service in 2005 to the Property through a 5/8" x 3/4" water meter and said 12" waterline. In 2012, a subsequent request for water service to the Property was made, and Rockett established Account #24-0405-01 to provide water service to the Property.

#### **IV. ARGUMENT AND AUTHORITY**

##### **A. The Property Cannot be Released Because the Property Does Not Qualify for Expedited Release**

Rockett proved that the Property cannot be released from Rockett's territory, and Rockett's Certificate of Convenience and Necessity (CCN) No. 10099 cannot be amended, under Texas Water Code (TWC) § 13.254(a-5) because the Property is receiving water "service" as defined by state law. The Order states incorrect facts and conclusions of law regarding Rockett's "service" to the Property, including Rockett's facilities and waterlines serving the Property which are committed or dedicated to providing such water service, and Rockett's performance of many acts and supplying water to the Property.

##### **B. Objections and Corrections to Findings of Fact**

The Order incorrectly states that Rockett, as the CCN holder of the tract of land in which Alamo Mission LLC (Petitioner) is seeking to decertify in this proceeding (the Property), has not committed or dedicated any facilities or lines, does not have any facilities or lines, and has not performed any acts for or supplied anything to the tract of land. In response, Rockett provided facts and details in this proceeding that Rockett is providing water service (as defined by state law) to the Property. The Order ignores or misconstrues the information provided.

The Commission's findings of fact and conclusions of law violate Texas Government Code Section 2001.174(2), which states that a court:

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) in violation of a constitutional or statutory provision;
- (B) in excess of the agency's statutory authority;
- (C) made through unlawful procedure;
- (D) affected by other error of law;

- (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
- (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Tex. Gov't Code. Section 2001.174(a)(A)-(F). The Commission's findings of fact and conclusions of law violate each category in sections (A) through (F) as described in more detail below.

**1. The Meter Box Is Located *On* The Property**

The Order incorrectly states that no meters exist on the Property and that a water meter box is located outside of the southern boundary of the tract.<sup>3</sup> Rockett provided a depiction prepared by Rockett's consulting engineer of record with a water connection tap (meter box) located *on* the Property, accompanied by the affidavit of Rockett's General Manager Kay Phillips stating that Rockett provided water service to the Property through a 5/8" x 3/4" meter installed in the meter box, along with copies of the service agreement and a check for the deposit of the meter evidencing water service to the Property.<sup>4</sup> Petitioner confirmed that the meter box is located on the Property but outside of a fence line, not outside of the Property boundaries.<sup>5</sup> Although there is not currently a meter in the meter box, Rockett can drop in a meter in the meter box and immediately turn on water in an hour or less, as attested by Rockett's general manager.<sup>6</sup>

Facts #29-30 in the Order must be corrected to reflect that although no meter is currently installed in the existing meter box, the meter box is located *on* the southern boundary of the tract (and therefore "on the tract"), and that fact (along with others) establishes that the Property was "receiving water service" as provided further below.

**2. Petitioner Requested A Large Volume of Water Per Year By 2021, Without Providing Verifiable Data and Required Information for Proper Analysis**

The Order misleads in the statement that Rockett informed Petitioner that it does not have sufficient water supply and any existing waterlines that can provide service to the Property as

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<sup>3</sup> Order at 4, Findings of Fact ¶ 29-30 (Dec. 22, 2020).

<sup>4</sup> Rockett Special Utility District's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019).

<sup>5</sup> Alamo Mission LLC's Reply to Rockett SUD's Response to Petition at 5, Exhibit 1 ¶ 3 (Oct. 4, 2019).

<sup>6</sup> Rockett Special Utility District's Surreply to Petitioner's Reply at 3, Exhibit A (Oct. 11, 2019).

requested by Petitioner.<sup>7</sup> Petitioner refused to provide Rockett with actual volume requirements, so Rockett was unable to estimate its capabilities based on the lack of information provided by Petitioner at that time. This is not a reflection of Rockett's ability to provide water service as defined under state law, but rather a reflection of Petitioner's refusal to provide forthcoming, quantitative data to Rockett.

The requirement to allow release of the Property from Rockett's CCN is *not* whether Rockett has the water supply to provide a massive and speculative amount of water to the Property within a very short time period, as requested by Petitioner. Rather, the Commission must determine whether the Property is *currently* receiving water "service"<sup>8</sup> including any lines and facilities committed to provide such "service." "Service" is defined broadly as "*any* act performed, *anything* furnished or supplied, and *any* facilities or lines *committed or used* by a retail public utility in the performance of its duties under [Chapter 13 of the Water Code] to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities." Tex. Water Code § 13.002(21). Finding of Fact #35 in the Order as written should be removed, as it falsely suggests that a CCN holder must be able to provide the exact water quantity requested in the amount of time demanded by Petitioner (even if there is no support for such demand); or, alternatively, the fact should be revised to accurately reflect the circumstances. It is not true that Rockett "does not have any existing water lines that can provide service to the tract[.]"<sup>9</sup>

Petitioner refused to provide verifiable data and required documentation as listed in the non-standard service application submitted to Rockett to support its specific request for water, which denied Rockett's engineer the ability to determine what sufficient improvements would be required (if any) for Petitioner's specific request of water usage and timeline.<sup>10</sup> Although various representatives of Petitioner were told that the information was needed, the representatives demanded an analysis and response based on the grossly deficient information.<sup>11</sup> Petitioner submitted an email from Rockett's general manager regarding a misleading statement

<sup>7</sup> Proposed Order at 4-5, Findings of Fact ¶ 35 (Dec. 22, 2020).

<sup>8</sup> Tex. Water Code § 13.254(a-5), *amended by* Acts 2019, 86th Leg., ch. 688 (S.B. 2272), § 4, eff. Sept. 1, 2019.

<sup>9</sup> Proposed Order at 4-5, Findings of Fact ¶ 35 (Dec. 22, 2020).

<sup>10</sup> Rockett's Surreply to Petitioner's Reply at 6-7, Exhibit A (Oct. 11, 2019).

<sup>11</sup> *Id.* at 7-9, Exhibit A.

that Rockett could not provide water service; however, Petitioner failed to also submit the preceding email where Petitioner's representative Stephanie Sunico elicited a specific response from Rockett.<sup>12</sup> Petitioner requested a large volume of water annually, with a very high per day usage by 2021 without showing any water plans or details of the use of water including how much water would be allotted for fire flow or fire protection, or other required documentation.<sup>13</sup>

These details are important. If fact #35 in the Order is left as written, it is contrary to the undisputed fact that Rockett is providing water "service" to the Property, including by dropping a meter (like the 5/8" x 3/4" meter previously providing water service to the Property) in the existing meter box *and existing 12" waterline*, both of which are on the Property and are capable of providing immediate water service.<sup>14</sup>

### **3. Rockett Has Committed or Dedicated Facilities or Lines to the Property for Water Service**

The Order incorrectly states that Rockett "has not committed or dedicated any facilities or lines to the [Property] for water service."<sup>15</sup> No one in this proceeding disputes that Rockett installed a 12" waterline and water connection tap (meter box) directly on the Property, as shown in the depiction prepared by Rockett's consulting engineer of record showing the location of the 12" waterline and including the affidavit of Rockett's General Manager Kay Phillips stating the same.<sup>16</sup> Rockett also provided (1) that water service was requested for the Property in 2005 by Roy Lee Filgo, (2) a copy of the receipt for the deposit of the meter installed in the meter box, and (3) the Account #24-0405-00 that was established to bill for water usage on the Property through the meter box and a 5/8" x 3/4" meter.<sup>17</sup>

Additionally, Rockett provided a copy of the water service agreement with Goodloe Farms and a check for the deposit of a meter on or about January 3, 2012, for water service to the

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<sup>12</sup> *Id.* at 10-11, Exhibit D.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> Rockett's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019); Rockett's Surreply at 2-3 (Oct. 11, 2019).

<sup>15</sup> Proposed Order at 5, Findings of Fact ¶ 36 (Dec. 22, 2020).

<sup>16</sup> Rockett's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019).

<sup>17</sup> *Id.* at 2-3, Exhibit A (providing the location of the Property and Rockett's 12" waterline and meter box where the Property received water through a 5/8" x 3/4" meter) and Exhibit B (p. 10-12).

Property through the same meter box and a 5/8" x 3/4" meter.<sup>18</sup> The service agreement states, "[a]ll water furnished by the District shall be metered by meters installed, maintained and owned by the District. The meter and connection is for the sole use of Customer and is to provide service ...."<sup>19</sup>

At minimum, Rockett provided service to the Property beginning in 2005. When water service was initiated and established for the Property in 2005, Rockett committed or dedicated the meter, meter box, and the 12" waterline on the Property, in addition to Rockett's other waterlines and facilities used to transmit water to the Property, to provide water service to the Property. The Commission cannot find that there was not "any act performed" or "anything furnished or supplied" or "any facilities or lines committed or used by a retail public utility in the performance of its duties" under Chapter 13 since there are facilities and waterlines committed or dedicated to providing water service to the Property. Rockett provides water service to the Property, and customers pay for such water service on the Property.

This fact #36 in the Order must be corrected, as it is imperative along with other findings to conclude that the Property was receiving water "service" as explained further herein.

#### **4. Rockett Has Facilities Or Lines That Provide Service To The Property**

The Order incorrectly states that Rockett "has no facilities or lines that provide water service to the [Property]."<sup>20</sup> As previously stated, in addition to other Rockett waterlines and facilities that transmitted water to Rockett's 12" waterline located on the Property, the Property received water service through a 5/8 x 3/4" meter in the water connection tap (meter box) installed on the Property.<sup>21</sup> The undisputed evidence (the service request/agreements and deposits for the meter from Roy Lee Filgo and Goodloe Farms) demonstrates as a matter of law that Rockett has facilities and waterlines that provide water service to the Property. Nothing more is required to prove that the Property is receiving "service" under state law.

This fact #37 in the Order must be corrected, as it is imperative along with other findings to conclude that the Property was receiving water "service" as explained further herein.

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<sup>18</sup> *Id.* at 2-3, Exhibit A and Exhibit B (p. 10, 13-18).

<sup>19</sup> *Id.* at Exhibit B (p. 16).

<sup>20</sup> Proposed Order at 5, Findings of Fact ¶ 37 (Dec. 22, 2020).

<sup>21</sup> Rockett's Response and Objection to the Petition at 2-3, Exhibits A-B (Sept. 24, 2019).



## 5. Rockett Has Performed Actions For Or Supplied Something To The Property

The Order incorrectly states that Rockett “has not performed any acts for or supplied anything to the [Property].”<sup>22</sup> As noted above and proven in this proceeding, Rockett installed a 12” waterline on the Property, received requests for water service to the Property and thus installed a water connection tap (meter box) on the Property, and Rockett supplied water to the Property through a 5/8” x 3/4” meter in the meter box.

Further, the engineers for Rockett and the City of Red Oak, Texas (the “City”) analyzed Rockett’s facilities in 2017-2018 for proposed water usage for future development of the Property (owned by Walton Development at the time) and adjacent tracts owned by the City’s non-profit corporation, Red Oak Industrial Development Corporation (“ROIDC”), as communicated to Rockett by City staff and representatives. Based on that information, Rockett proposed infrastructure improvements, including the installation of a 16” waterline *on* the Property and upsizing approximately 2,600 linear feet (LF) of the proposed 16” waterline to 24” waterline to serve the Property and adjacent ROIDC tracts.<sup>23</sup> In this proceeding, Rockett provided the City’s proposed plans in color, showing the location of the proposed 16” waterline along the western boundary of the Property running south, then running east across the southern boundary *on* the Property and connecting to Rockett’s McKenna Pump Station.<sup>24</sup> Rockett’s Board of Directors approved the installation of approximately 6,500 LF of 16” waterline and upsizing approximately 2,600 LF to a 24” waterline, and expenditure of Rockett’s funds in the amount of \$270,000 for that improvement, to provide the project water service to the proposed development for the Property and tracts owned by ROIDC.<sup>25</sup> Rockett also paid the invoice in the amount of \$5,325.00 for Westfall Engineering, the City’s Engineers, for survey, waterline design, easement preparation, and construction bid services.<sup>26</sup>

<sup>22</sup> Order at 5, Findings of Fact ¶ 38 (Dec. 22, 2020).

<sup>23</sup> Rockett’s Response and Objection to the Petition at 3-4, Exhibit C (pp. 20-35) (providing the City’s proposed development and plans for the Property and tracts owned by ROIDC).

*See* Petition at Exhibits C-1 and C-2 (providing the location of the Property).

<sup>24</sup> Rockett’s Response and Objection to the Petition at 3-4, Exhibit C (p. 29).

<sup>25</sup> Rockett’s Response and Objection to the Petition at 4, Exhibit D.

<sup>26</sup> Rockett’s Response and Objection to the Petition at 4, Exhibit C (p. 36).

By installing the 12" waterline, meter box, and 5/8" x 3/4" meter and providing water service to the Property, in addition to planning and approving the installation and construction of the 16" and 24" waterlines throughout the Property to serve the future development on the Property and surrounding tracts owned by ROIDC, Rockett demonstrated as a matter of law that it has performed some acts and supplied something (water) to the Property. This fact #38 in the Order must be corrected.

### **C. Objections and Corrections to Conclusions of Law**

The following conclusions of law are incorrect and should be changed as follows:

- **Conclusion of Law No. 4.** This Conclusion of Law is incorrect. While Tex. Water Code § 13.254(a-5) and (a-6), and 16 TAC § 24.245(l) do not explicitly provide for a contested case hearing, Rockett is still entitled to a contested case hearing under Texas law. There is nothing in those provisions that purports it is not a contested case, or that Rockett is not entitled to same. Furthermore the Texas Administrative Procedures Act applies, and it includes a right to a contested case hearing. Tex. Water Code § 13.003 ("Chapter 2001, Government Code applies to all proceedings under this chapter except to the extent inconsistent with this chapter."); Tex. Gov't Code § 2001.003(1) (defining contested cases as any "proceeding . . . in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing"). When the Legislature intended that disputes under Chapter 13 *not* be contested, they opt out explicitly. *See, e.g.*, Tex. Water Code § 13.188(b). Similarly, when the Legislature wanted to opt out of the APA, it does so explicitly, not implicitly. *See* current version of Tex. Water Code § 13.254(a-4).
- **Conclusion of Law No. 9.** The tract of land is receiving water service as a matter of state law. This Conclusion of Law is not supported by substantial or any evidence and is belied as a matter of law by the undisputed evidence in this proceeding.
- **Conclusion of Law No. 10.** Petitioner is not entitled to decertify Rockett's CCN. This Conclusion of Law is not supported by substantial or

any evidence and is belied as a matter of law by the undisputed evidence in this proceeding.

- **Conclusion of Law No. 11.** Rockett has provided evidence that its property will be rendered useless and valueless without the territory. This Conclusion of Law is not supported by substantial or any evidence and is belied as a matter of law by the undisputed evidence in this proceeding.
- **Conclusion of Law No. 15.** The Commission processed the petition in violation of state and federal law, both of which the Commission is bound by. This Conclusion of Law is not supported by substantial or any evidence, and is belied as a matter of law by the undisputed evidence in this proceeding.

The bases for Rockett’s corrections to the above-listed conclusions of law are explained in more detail below.

The Order incorrectly states that the “[Property] is not receiving water service under TWC §§ 13.002(21) and 13.254(a-5) and 16 TAC § 24.245(l),<sup>27</sup> as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).”<sup>28</sup> The facts in this proceeding show the Property is receiving water service under these statutes and as interpreted by the court in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.* Unlike the *Crystal Clear* case, there is no evidence in the record concerning the purported amount of water the petitioner (Alamo) claimed. And unlike the *Crystal Clear* case, the evidence conclusively shows that Rockett has lines and facilities *on* the Property, not merely “*adjacent to the Decertified Property.*” *Crystal Clear Water Supply Corporation*, 449 S.W.3d at 141.

#### 1. The Property Is Receiving Water “Service” Under TWC and TAC

16 TAC § 24.245(l) authorizes the streamlined expedited release if all conditions provided thereunder are met, including subsection “(B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN . . . . (emphasis added).” 16 TAC § 24.3(33) and TWC § 13.002(21) define “**service**” as follows:

<sup>27</sup> Now 16 Tex. Admin. Code § 24.245(h), adopted to be effective July 2, 2020, 45 TexReg 4321.

<sup>28</sup> Order at 6, ¶ 9 (Dec. 22, 2020).

**Any act performed, anything furnished or supplied, and any facilities or lines committed or used** by a retail public utility **in the performance of its duties** under TWC Chapter 13 to its patrons, employees, other retail public utilities and the public, as well as the interchange of facilities between two or more retail public utilities (emphasis added).

Further, the *Crystal Clear* court stated that “a tract of land would not necessarily be ‘receiving’ water service simply because the retail public utility has performed an act . . . , unless the act was performed in furtherance of providing water to the tract seeking decertification.”<sup>29</sup>

Not only has Rockett actually provided water service to the Property (as evidenced by the water service requests/agreements, installing the meter box on the Property, setting up the account and receiving deposits for and installing the 5/8” x 3/4” meter, where water was supplied to the Property and transmitted from Rockett’s waterlines and facilities to the 12” waterline on the Property, and customers paid for such water usage), Rockett has also performed actions in furtherance of providing water service to the Property by planning and approving the installation, expenditure, and construction of the 16” and 24” waterlines throughout the Property to serve the future development on the Property and surrounding tracts owned by ROIDC. By these actions (and Petitioner’s refusal to provide adequate engineering support for anticipated future consumption), the Commission cannot conclude that Rockett has not performed any acts, furnished or supplied anything (water) to the Property, or committed or used any of its facilities and waterlines to provide “service” (including actual water service) to the Property, in furtherance of its duties as a retail water utility.

## **2. Actual Present Delivery of Water to The Tract Is Not Required**

In *Crystal Clear*, the court found that “in [the Commission and petitioner’s] view, a tract of land is not receiving water service ‘if the landowner is not receiving actual water on the property.’ We find *nothing* in the text of the statute, *however, that compels this interpretation*.”<sup>30</sup> Even though there is not currently a meter installed in the meter box located on the Property, Rockett previously provided water service to the Property through a 5/8” x 3/4” meter installed in the existing meter box and transmitted water through the 12” waterline located on the Property from other Rockett waterlines and facilities.

<sup>29</sup> *Crystal Clear Water Supply Corp.*, 449 S.W.3d at 140.

<sup>30</sup> *Id.* at 140 (emphasis added).

The court also stated that “it is important to consider whether the facilities and lines are ‘committed’ to the tract seeking expedited release or ‘used’ to provide water to that tract.”<sup>31</sup> As provided, at minimum, Rockett committed and used the 5/8” x 3/4” meter, meter box, and 12” waterline installed on the Property, in addition to the various Rockett waterlines and facilities, to transmit water to the Property as evidenced by the submitted meter deposits and requests and agreement for water service with Roy Lee Filgo and Goodloe Farms. Rockett’s undisputed records reflect that the Property received water service as used and paid for by Roy Lee Filgo and Goodloe Farms.

Further, unlike the facts in *Crystal Clear* where the Commission reasonably declined to attribute any evidentiary weight to a deficient exhibit not supported or proved up by an affidavit or bearing the stamp of a licensed engineer,<sup>32</sup> Rockett has provided a depiction of the location of the water connection tap (meter box) and 12” waterline on the Property where water service was received, as prepared by Rockett’s consulting engineer of record and supported and proved up by the affidavit of Rockett’s general manager. Further, Rockett’s general manager attested to providing water service to the Property, at minimum, by evidencing the service request and initiation of the account and meter deposit by Roy Lee Filgo in 2005 and the request and service agreement and meter deposit by Goodloe Farms in 2012.

**3. Under *Crystal Clear*, Rockett Is Not Required To Have The Water Supply To Serve Petitioner’s Requested Water Amount Within The Time Period Demanded By Petitioner**

The Order misleads in its statement that Rockett informed Petitioner that it does not have sufficient water supply and any existing waterlines that can provide service to the Property as requested by Petitioner.<sup>33</sup> This statement implies that there is a requirement authorizing expedited release if CCN holders are unable to immediately provide the exact water usage requested by petitioners by the timeline requested, instead of the actual statutory language in 16 TAC § 24.245(l) and TWC § 13.254(a-5).

Neither *Crystal Clear* nor Texas law require that landowners are only “receiving service” if the utility has the capacity to immediately serve the water usage requested by Petitioner in the

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 141.

<sup>33</sup> Order at 4-5, Findings of Fact ¶ 35 (Dec. 22, 2020).

time period demanded by the Petitioner. Here, the Petitioner requested a large volume of water annually by 2021 and did not provide verifiable engineering data or what amount would be designated for fire protection or fire flow, or other documentation required by Rockett for its engineer to provide a complete analysis. 2021 has arrived and Petitioner has still not constructed anything that could be used to consume any volume of water, let alone a large volume of water. Petitioner cannot use unsupported future speculative volumes of water demand, to contend that water service is not being provided. If that were so, any landowner could immediately cause any applicable tract to decertify merely by making an unreasonable and excessive demand for water. Petitioner had the burden to show it was not receiving water and failed to meet that burden.

Moreover, Rockett's enjoyment of protection under 7 U.S.C. § 1926(b), which the Commission is ignoring altogether in violation of the Supremacy Clause,<sup>34</sup> and case law related to "service" under 7 U.S.C. § 1926(b) among other issues, allows Rockett to provide water service within a reasonable amount of time and construction or installation of waterlines and/or facilities and other necessities, if required to determine if service was made available.<sup>35</sup> Although Rockett is informing the Commission of the federal issues (in accord with *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964)), Rockett is not asking the Commission to adjudicate federal issues, federal law concerning "service." Rockett has already demonstrated by evidence filed in the record that the Property received actual water service and is receiving "service" consistent with the *Crystal Clear* case.

## V. CONCLUSION

Rockett established that it is providing water service to the Property under Tex. Water Code §§ 13.002(21) and 13.254(a-5) and 16 Tex. Admin. Code § 24.245(l), as interpreted by *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*. Rockett provided substantial evidence that the Property is receiving water "service" because (1) Rockett provided *actual* water service to the Property through the 5/8" x 3/4" meter and water connection tap installed on the Property for usage by customers Roy Lee Filgo and Goodloe Farms, (2) because Rockett's 12" waterline (on the Property) and connecting waterlines and facilities providing such water service to the Property, and (3) Rockett has committed or dedicated its facilities and lines to provide water service to the Property when Rockett provided such service and continues to do so.

<sup>34</sup> Rockett's Reply to Commission Staff's Response to Order No. 12, at 2-4 (Dec. 28, 2020).

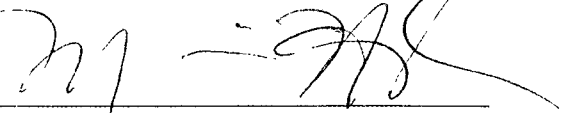
<sup>35</sup> See Rockett's Surreply at 5-11 (Oct. 11, 2019) (citing various caselaw).

Rockett performed acts and supplied/dedicated substantial infrastructure, including actual water service to the Property, in furtherance of providing water service to the Property.

WHEREFORE, Rockett respectfully requests that the Commission reconsider its January 14, 2021 Order, deny Alamo's Petition and amend its Order, or alternatively, set this matter for rehearing and abate the proceeding until Rockett's federal protections are fully adjudicated by the federal court system.

Respectfully submitted,

**JAMES W. WILSON & ASSOCIATES, PLLC**

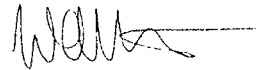
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(512) 708-1250 Telephone  
(512) 708-0519 Facsimile



By: \_\_\_\_\_

Will W. Allensworth  
State Bar No. 24073843  
wwa@aaplaw.com  
Karly A. Houchin  
State Bar No. 24096601  
kah@aaplaw.com

**ATTORNEYS FOR ROCKETT SPECIAL  
UTILITY DISTRICT**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was served on the following parties of record on January 20, 2021, via e-mail in accordance with the Commission's Order.<sup>36</sup>

via e-mail: creighton.mcmurray@puc.texas.gov

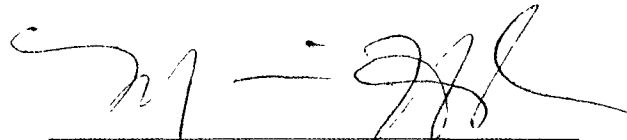
Creighton R. McMurray  
Attorney-Legal Division  
Public Utility Commission  
1701 N. Congress  
P.O. Box 13326  
Austin, Texas 78711-3326

*Attorney for the Commission*

via e-mail: ldougal@jw.com

Leonard Dougal  
Jackson Walker L.L.P.  
100 Congress, Suite 110  
Austin, Texas 78701

*Attorney for Petitioner*

A handwritten signature in black ink, appearing to read 'Maria Huynh', is written over a horizontal line.

Maria Huynh

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<sup>36</sup> *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).



## **ATTACHMENT 1**

**SUPPORTING AFFIDAVIT OF KAY PHILLIPS**

STATE OF TEXAS  
COUNTY OF ELLIS

§  
§  
§

BEFORE ME, the undersigned authority, on said date personally appeared Kay Phillips, who being first duly sworn states as follows:

"My name is Kay Phillips. I am over the age of 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

Since 2007, I have been the duly appointed general manager of Rockett Special Utility District (the "District") and I am custodian of the records of the District.

I have read the District's Response to the Petition for Expedited Release in Docket No. 49863 (the "Response") and each and every factual statement contained therein is true and correct.

The Exhibit A attached to the Response is a true and correct copy of a map showing a portion of the District's water system, as prepared by the District's engineer of record, Benjamin S. Shanklin, P.E. The Property that is the subject matter of Docket No. 49863 is accurately located on the map and outlined in blue.

The District installed the 12" waterline indicated on the Property and Account #24-0405-00 was established to initiate water service in 2005 to the Property through a 5/8" x 3/4" water meter and said 12" waterline. In 2012, a subsequent request for water service to the Property was made, and the District established Account #24-0405-01 to provide water service to the Property.

The following shall be referred to individually and collectively as the "Records":

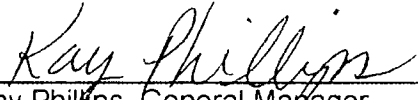
1. Attached to this Affidavit is a true and correct copy of District's records for the receipt of payment for the deposit of Account #24-0405-00, dated August 10, 2005, for customer Roy Lee Filgo;

2. Also attached to this Affidavit is a true and correct copy of the contents of the District's files for Account #24-0405-01, including a service agreement between the District and Goodloe Farms, as well as payment and receipt of the meter deposit and activation fee of the meter;

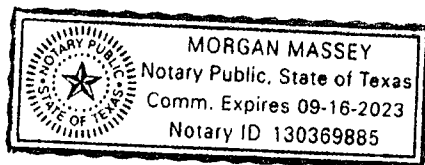
3. The invoice found in Exhibit C attached to the Response is a true and correct copy of the invoice submitted to and paid by the District to Westfall Engineering;

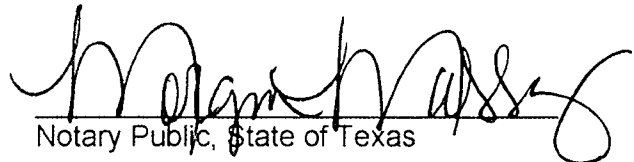
4. The minutes found in Exhibit D attached to the Response is a true and correct copy of the Minutes of the District's Board of Directors' regular meeting, open to the public, on December 17, 2017.

The Records were made at or near the time of each act, event or condition set forth. The Records were kept in the course of regularly conducted business activity of the District. It is the regular practice of the District activity to make the Records."

  
\_\_\_\_\_  
Kay Phillips, General Manager  
Rockett Special Utility District

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on the 23<sup>rd</sup> day of September, 2019, by Kay Phillips, General Manager of Rockett Special Utility District, a political subdivision of the State of Texas



  
\_\_\_\_\_  
Notary Public, State of Texas

# Receipt Inquiry

File Edit Options Help

3

Receipt   
 Operator   
 Terminal   
 Batch   
 Date   
 Time

## Payments

Method	Reference	Name	Amount
2-Check	1156		100.00CR

## Charges

Tran Code	SYS	Account #	Name	Amount
2.0000- SECURITY DEPOSIT	USD	24-0405-00	FILGO, ROY LEE	100.00CR

Receipt

Clear

mmassey



The District is responsible for protecting the drinking water supply from contamination or pollution which could result from improper practices. This Agreement serves as notice to each customer of the restrictions which are in place to provide this protection. The District shall enforce these restrictions to ensure the public health and welfare. The following undesirable practices are prohibited by state regulations:

1. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an airgap or an appropriate backflow prevention assembly in accordance with state plumbing regulations. Additionally, all pressure relief valves and thermal expansion devices must be in compliance with state plumbing codes.
2. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the proper installation of an airgap or a reduced pressure-zone backflow prevention assembly and a service agreement must exist for annual inspection and testing by a certified backflow prevention device tester.
3. All Industrial, Commercial, and Residential, will install a Backflow Device at the meter. Upon completion or construction, Rockett Special Utility District will conduct a CSI (Customer Service Inspection) to identify any other possible cross connections. Backflow Device must be tested when installed and tested annually by a certified inspector.
4. No connection which allows condensing, cooling, or industrial process water to be returned to the public drinking water supply is permitted.
5. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing on or after July 1, 1988, at any connection which provides water for human consumption.
6. No solder or flux which contains more than 2.0% lead may be used for the installation or repair of plumbing on or after July 1, 1988, at any connection which provides water for human consumption.
7. All irrigation systems must have a proper backflow prevention device installed and tested.

The District shall maintain a copy of this Agreement as long as the Customer and/or premises are connected to the public water system. The Customer agrees to permit their property to be inspected for possible cross-connections, potential contamination hazards, and illegal lead materials. These inspections shall be conducted by the District or its designated agent prior to initiating service and periodically thereafter. The inspections shall be conducted during the District's normal business hours, except in emergencies.

The District shall notify the Applicant in writing of any cross-connections or other potential contamination hazard which has been identified during the initial or the periodic reinspection. The Customer shall immediately remove or adequately isolate any potential cross-connections or other potential contamination hazards on their premises. The Applicant shall, at his/her expense, properly install, test, and maintain any backflow prevention device required by the District. Copies of all testing and maintenance records shall be provided to the District as required. Failure to comply with the terms of this service agreement shall cause the District to terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.

**ENFORCEMENT:** If the Customer fails to comply with the terms of this Agreement, the District shall, at its option, terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.



**COST OF SERVICE NOTICE**

(Residential Service)

APPLICANT(S) GOODLOE FARMS DATE January 3, 2012

PROPERTY PASTURE OVILLA RD

The District has determined the cost for providing service to your property in the amount stated below. By signing this notice, you acknowledge that all charges and fees for service are non-refundable except for the Deposit. If you sell or vacate the property, you must request a final monthly bill and provide a forwarding address. The District will apply your Deposit to the final bill and refund the difference. This notice is provided in accordance with Section E 2(b)(5) of the District's Rate Order and shall remain in effect for thirty (30) days from the date above.

**Check all that apply:**

<u>XX</u>	Deposit	\$	100.00
<u>XX</u>	Activation Fee		50.00
<u>      </u>	Hydraulic Analysis Fee		200.00
<u>      </u>	Connection Fee		3,500.00
<u>      </u>	Sewer and/or Garbage Service Deposit		<u>      </u>
<u>      </u>	Easement Fee		<u>      </u>
<u>      </u>	Street Crossing County Road		<u>      </u>
<u>      </u>	Street Crossing State Highway		<u>      </u>
<u>      </u>	(Other) <u>      </u>		<u>      </u>

TOTAL: \$ 150.00

Customer Signature [Signature] DL #       

Co- Customer        DL #       

**NON-DISCLOSURE**

I/we hereby request that the District keep the personal information in my/our account record confidential, including my/our address, telephone number and social security number(s), to the extent permitted by federal and state law.

[Signature]  
Customer Signature



### EMERGENCY LEAK AGREEMENT

Customer(s) GOODLOE FARMS Phone \_\_\_\_\_  
Account Number(s) 24-0405-01

I, the customer/applicant, request that Rockett SUD notify the person(s) listed below or turn off my meter service if a water leak is discovered on my property and I am not available

In case of emergency contact

1 Name \_\_\_\_\_ Phone \_\_\_\_\_

2 Name \_\_\_\_\_ Phone \_\_\_\_\_

YES / NO I hereby authorize District personnel to turn off my meter valve in case of a water leak or other type of emergency on my property

By signing this agreement I agree to pay applicable service trip charges and understand that these charges must be paid with the next monthly utility service bill or my service will be disconnected in accordance with Section E 14(a) of the District's Rate Order

**I ALSO UNDERSTAND AND ACKNOWLEDGE THAT THE DISTRICT IS UNDER NO OBLIGATION OR LIABILITY TO LOOK FOR ANY WATER LEAKS OCCURRING ON MY PROPERTY AND THAT THE DISTRICT MAY NOT KNOW WHEN OR IF A LEAK IS ON MY PROPERTY.**

Customer Signature [Signature] Date January 3, 2012

District Witness McAdams Date January 3, 2012





Is an irrigation system located on the Property? ☐ YES ☒ NO

Do you plan on installing [or replacing] an irrigation system on the Property? ☐ YES ☒ NO

(Initials): DE The Customer understands that prior to the installation or replacement of an irrigation system on the Property, the Customer must submit an irrigation system plan and obtain the District's written approval of such plan. The customer further understands that failure to obtain prior written approval for the installation of an irrigation system will result in substantial penalties being assessed by the District.

All water furnished by the District shall be metered by meters installed, maintained and owned by the District. The meter and connection is for the sole use of Customer and is to provide service to only one (1) dwelling or one (1) business. Any attempt to tamper with or to by-pass a meter, or to divert water utility service from one property to another, or to share, resell or sub meter water to any other person, dwelling, business or property is prohibited. Unauthorized users of District services shall be prosecuted to the extent allowed by law under the Texas Penal Code § 28.03.

Customer agrees to hold the District harmless from any and all claims or demands for damage to real or personal property occurring from the point the user ties onto the District's meter to the final destination of customer service line installed on the property by Customer.

The District shall have the right to select the location of the water service meter, pipe and appurtenant equipment on Customer's property necessary to connect Customer to the District's water system. The District shall have access to its meter and equipment located on Customer's property at all reasonable times for any purpose connected with or in the furtherance of the District's business operations, and upon disconnection or discontinuance of service, the District shall have the right to remove any of the District's property from Customer's property.

In the event that Customer leases or rents the property, it is understood and agreed that Customer's Deposit shall guarantee the payment of the lessee's/renter's monthly bills for service to the property, and all charges in connection therewith, as though Customer was the user of said service.

Customer: GOODLOE FARMS

Co- customer: \_\_\_\_\_

**Billing Address**

PO BOX 882

RED OAK, TEXAS 75154

Property Legal Description/Service Address: PASTURE OVILLA RD

Account No.: 24-0405-01

Work Order No.: 345118

ACCEPTED AND APPROVED:

Rockett Special Utility District

By: Don Werner  
President of the Board

Customer Signature

[Signature]



R L OR BRIAN GOODLOE  
CATTLE ACCOUNT  
P O BOX 125  
RED OAK, TX 75154

2658

88-480/1119  
01

Pay to the  
Order of

1-3-12 Date

Rockett SUTD \$ 150.00

One Hundred Fifty & 00/100 Dollars

**VINTAGE**  
**BANK**

300 Highway 77 N • Waco, Texas 76786  
www.vintagebank.net

For

Water meter

R L Goodloe MP

Hand Clone

GUARDIAN SAFETY BLUE

**Rockett Special Utility District**

P.O. Box 40 Phone (972) 617-3524

RED OAK, TEXAS 75154

**NEW SERVICE****GOODLOE FARMS**

Name of Customer

DATE 01/11/12**PO BOX 882**

Billing Address

**RED OAK, TEXAS 75154**

City - Town

Zip Code

**New Service**

Deposit 100.00

Activation Fee 50.00

**Total \$150.00**

Previous Owner:

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Legal Description:

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MARIA C. CADENA

Taken By:

## **ATTACHMENT 2**

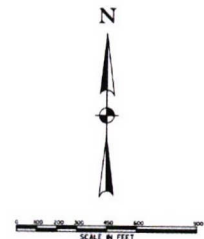
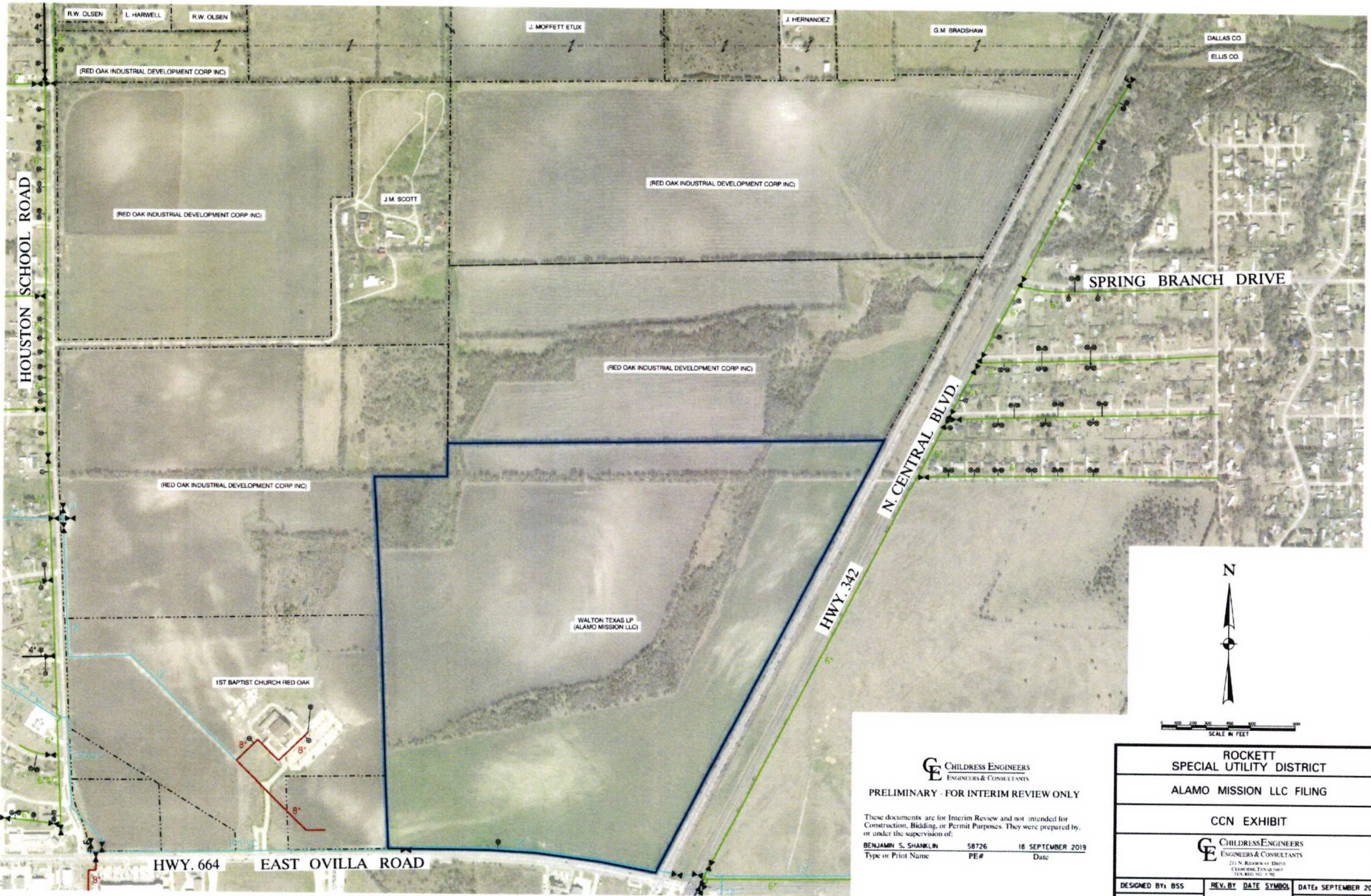


SCALE 1"=400'

10/26/2019

PLAT DATES 9/18/2019

10/26/2019 10:40:30 AM



**CHILDRENS ENGINEERS**  
ENGINEERS & CONSULTANTS  
PRELIMINARY - FOR INTERIM REVIEW ONLY

These documents are for Interim Review and not intended for Construction, Bidding, or Permit Purposes. They were prepared by, or under the supervision of:

BENJAMIN S. SHANKLIN 58726 18 SEPTEMBER 2019  
Type or Print Name PE# Date

ROCKETT SPECIAL UTILITY DISTRICT		
ALAMO MISSION LLC FILING		
CCN EXHIBIT		
<b>CHILDRENS ENGINEERS</b> ENGINEERS & CONSULTANTS 211 N. RICHMOND STREET DALLAS, TEXAS 75201 TEL: 972.382.1100 FAX: 972.382.1101		
DESIGNED BY: BSS	REV. BY: DATE	SYMBOLS
DRAWN BY: JSD	DATE: SEPTEMBER 2019	
CHECKED BY: BSS	JOB NO: 19083	
	SHEET NO. 1 OF 1	

10/26/2019 10:40:30 AM