

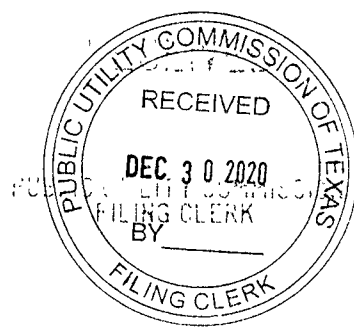


Control Number: 50244



Item Number: 39

Addendum StartPage: 0



**DOCKET NO. 50244**

<b>Application of Quadvest, LP to Amend</b>	<b>*</b>	<b>Public Utility Commission</b>
<b>Water Certificate of Convenience and</b>	<b>*</b>	<b>of Texas</b>
<b>Necessity in Harris County</b>	<b>*</b>	

**DOCKET NO. 51431**

<b>Application of Quadvest, LP to Amend</b>	<b>*</b>	<b>Public Utility Commission</b>
<b>Sewer Certificate of Convenience and</b>	<b>*</b>	<b>of Texas</b>
<b>Necessity in Harris County</b>	<b>*</b>	

**MOTIONS TO VACATE ORDER DENYING INTERVENTION**  
**AND**  
**MOTION TO INTERVENE**

**To the Members of the Texas Public Utility Commission:**

Comes now the HMW Special Utility District of Harris and Montgomery Counties("HMW"), filing its Motions to Intervene and Vacate Orders denying Intervention, and states as follows:

I.

These motions are filed under Public Utility Commission("PUC") Rule 22. 123. Reference is made to the final order denying intervention by HMW, Order No. 11 in Docket No. 50244, dated December 22, 2020, and to Orders No. 9 and No. 10.

Docket No. 50244 seeks the transfer of the water certificate of convenience and necessity to Quadvest, LLP, of the unlawfully decertified of a portion of HMW's Certificate of Convenience and Necessity No. 10342("CCN") in Docket No. 49280. In that proceeding the Commission allowed decertification of a portion of HMW's Certificate of Convenience and Necessity No. 10342. Judicial notice is requested of the contents of these two dockets.

II.

HMW has appealed the decertification to the 261<sup>st</sup> District Court of Travis County, Texas, in Cause No. D-1-GN-20-000905. Among other points, HMW contends that the applicant here, Quadvest,

was the real applicant party in interest in Docket No. 49280. Quadvest holds its own water certificate, No. 11612, and thus is prohibited from interference with HMW's operations under its CCN under Section 13.252, Texas Water Code.

As such, these proceedings are in furtherance of Quadvest's intention to assume immediate control of the decertified portion of HMW's CCN.

### III.

Based on the foregoing, HMW is in effect the respondent in this proceeding and entitled to intervene as a matter of right under Commission Rules 22.2(25) and (41), 22.102 and 22.103(b)(1).

Alternatively, HMW should be permitted to intervene under Rule 22.103(b)(2).

The Administrative Law Judge("ALJ") initially **GRANTED** HMW's request to intervene, but subsequently reversed himself and **DENIED** the motion, his final order being Order No. 11. The ALJ appears to have relied on HMW's response on May 7, 2020, to a notice from Quadvest's engineer, in which it stated that Quadvest had no authority to install a water system on the property. The notice is a procedural requirement of the Texas Commission for Environmental Quality and not related to proceedings before the PUC. See Exhibits 11 and 12. Further, the notice admits the intent of Quadvest to provide water service in violation of Water Code Section 13.252.

### IV.

In addition to the contentions in its appeal of Docket No. 49280, on or about November 19, 2020, HMW ascertained that the Applicant, Quadvest, LP, has poured concrete slabs to prepare for the installation of one or more water wells, pressure and ground storage tanks on the property. See the photographs attached as Exhibits 1-10. It has now brought in well drilling equipment. See Exhibit 13.

Quadvest is not authorized to commence the construction of water and/or sewer service facilities on the property subject to the decertification proceeding. The referenced construction activities are also violations of Water Code Section 13.252, given that they constitute an interference by Quadvest with the operations of HMW under its CCN. This is clearly at issue in Docket No. 49280 and in HMW's appeal to the district court.

The record in these two dockets show that they pertain to the same owner and the same property that is the subject of Docket No. 49280. Thus, they are inextricably linked to the outcome of Docket No. 49280 and its appeal to the district court.

Finally, HMW is entitled to the benefit of the status quo ante until its appeal of Docket No. 49280 is resolved. Quadvest is not entitled to seek or obtain water or sewer service unless and until its right to do is granted on appeal, assuming that is the result.

V.

Based on the foregoing, HMW is in effect the respondent in this proceeding and entitled to intervene as a matter of right under Commission Rules 22.2(25) and (41), 22.102, 22.103(b)(1) and 22.104(a).

Alternatively, HMW has a justiciable interest in the outcome of these two dockets for the reasons noted above. Accordingly, it requests leave to intervene to protect its interests as provided by Commission Rule 22.103(b)(2). The ALJ conceded this in Order No. 9.

Notwithstanding Commission Rule 22.104(b), this motion is also timely for the following reasons:

1. After the several months required to resolve the sufficiency of Quadvest's notice to the public and interested parties, HMW received and answered the correspondence shown as Exhibits 11 and 12 on May 7, 2020, to both Quadvest and its counsel in the referenced appeal. Despite the pendency of these proceedings, Quadvest did not obtain service on HMW as a party to these dockets, provide further notice that they were occurring or file HMW's response dated May 7, 2020.
2. After several more months of delays concerning notice and other issues, the Commission on August 19, 2020, established a new deadline of November 6, 2020, for a hearing on the merits. The latter deadline has now been extended to December 29, 2020.

Thus, while the ALJ has not done so formally, he has in effect extended the intervention deadline under Rule 22.104(b). Given the fact that HMW is in effect a legal respondent entitled to protect its interests, it should stand on equal footing with the Commission Staff for the purpose of being heard on the merits of these proceedings.

HMW will adhere to any additional deadlines the Commissioners may establish.

In addition:

1. No prejudice will accrue to the Applicant, as it has no right to the relief it seeks in its application until the referenced appeal of Docket No. 49280 is decided;
2. No disruption of this proceeding will occur because HMW will comply with any revised scheduling order, provided only that its intervention is expeditiously approved; and



3. The public interest is served by the resolution of the appeal prior to the granting to Quadvest of authority to proceed with construction and water service based on a false premise, i. e. the absence of its legal right to do so. See Rule 22.104(d)(1).

VI.

Based on the foregoing, HMW has fulfilled the requirements of PUC Rule 22.123. Order No. 11 is:

1. Unjustified as an order to exclude HMW from party status in Docket No. 50244;
2. Further prejudices a substantial right of HMW to Protect its CCN and maintain the *status quo ante* pending its judicial appeal; and
3. Materially affects the course of the hearing by denying the presentation of HMW's position on the merits. See PUC Rule 22.123(a)(3).

Wherefore, premises considered, HMW prays that Orders No. 10 and 11 be vacated, that its Motion to Intervene be granted, and for such other and further relief as the Commission deems just.

Respectfully submitted,

Law Offices of Patrick F. Timmons, Jr., P.C.

/s/

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Patrick F. Timmons, Jr.

1503 Buckmann Ct

Houston, Texas 77043

o. (713) 465 7638

f. (713) 465 9527

[pft@timmonslawfirm.com](mailto:pft@timmonslawfirm.com)

Certificate of Service

I hereby certify that a true copy of the foregoing Motion to Intervene was served on the Applicant and the PUC staff on this 30th day of December, 2020, by electronic means as provided by the applicable rules of the Texas Public Utility Commission.

/s/

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Patrick F. Timmons, Jr.



## **EXHIBITS 1-10**

DOCKET NO. 50244

Application of Quadvest, LP to Amend	*	Public Utility Commission
Water Certificate of Convenience and	*	of Texas
Necessity in Harris County	*	

DOCKET NO. 51431

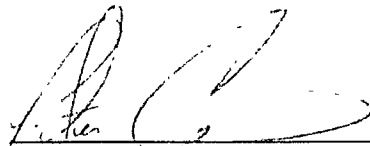
Application of Quadvest, LP to Amend	*	Public Utility Commission
Sewer Certificate of Convenience and	*	of Texas
Necessity in Harris County	*	

AFFIDAVIT OF PETER GARCIA

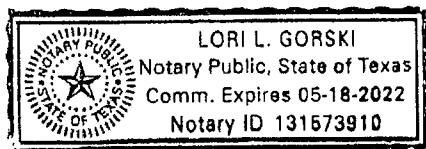
Peter Garcia, being duly sworn and on oath, deposes and says:

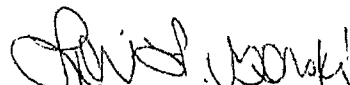
1. I am over the age of eighteen years and fully competent to provide this affidavit, which is based on my personal knowledge. I am an employee of the HMW Special Utility District of Harris and Montgomery Counties.
2. The attached photographs designated as Exhibits 1-10 were taken by me. They are each true and accurate depictions of the scenes and objects that I observed and photographed on and after November 19, 2020, at the location that is the subject of the above-styled proceedings before the Texas Public Utility Commission.

Signed this 30<sup>th</sup> day of November, 2020

  
Peter Garcia

The foregoing affidavit was signed and sworn to before me on November 30, 2020.



  
Notary Public in and for Texas

## **EXHIBITS 1-10**

Application of Quadvest, LP to Amend	*	Public Utility Commission
Water Certificate of Convenience and	*	of Texas
Necessity in Harris County	*	

<b>Application of Quadvest, LP to Amend</b>	<b>*</b>	<b>Public Utility Commission</b>
<b>Sewer Certificate of Convenience and</b>	<b>*</b>	<b>of Texas</b>
<b>Necessity in Harris County</b>	<b>*</b>	

David J. Bonick  
Notary Public in and for Texas













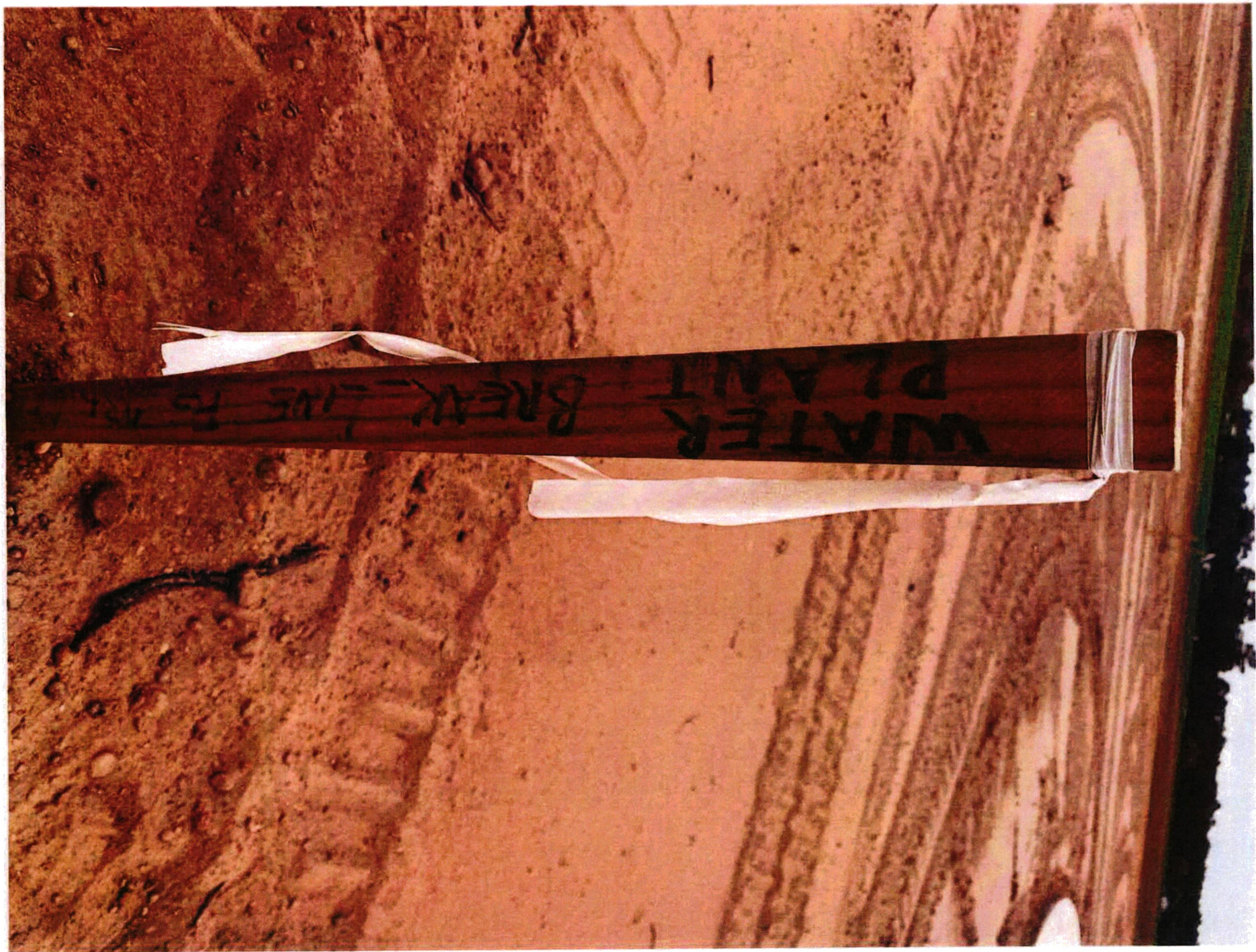




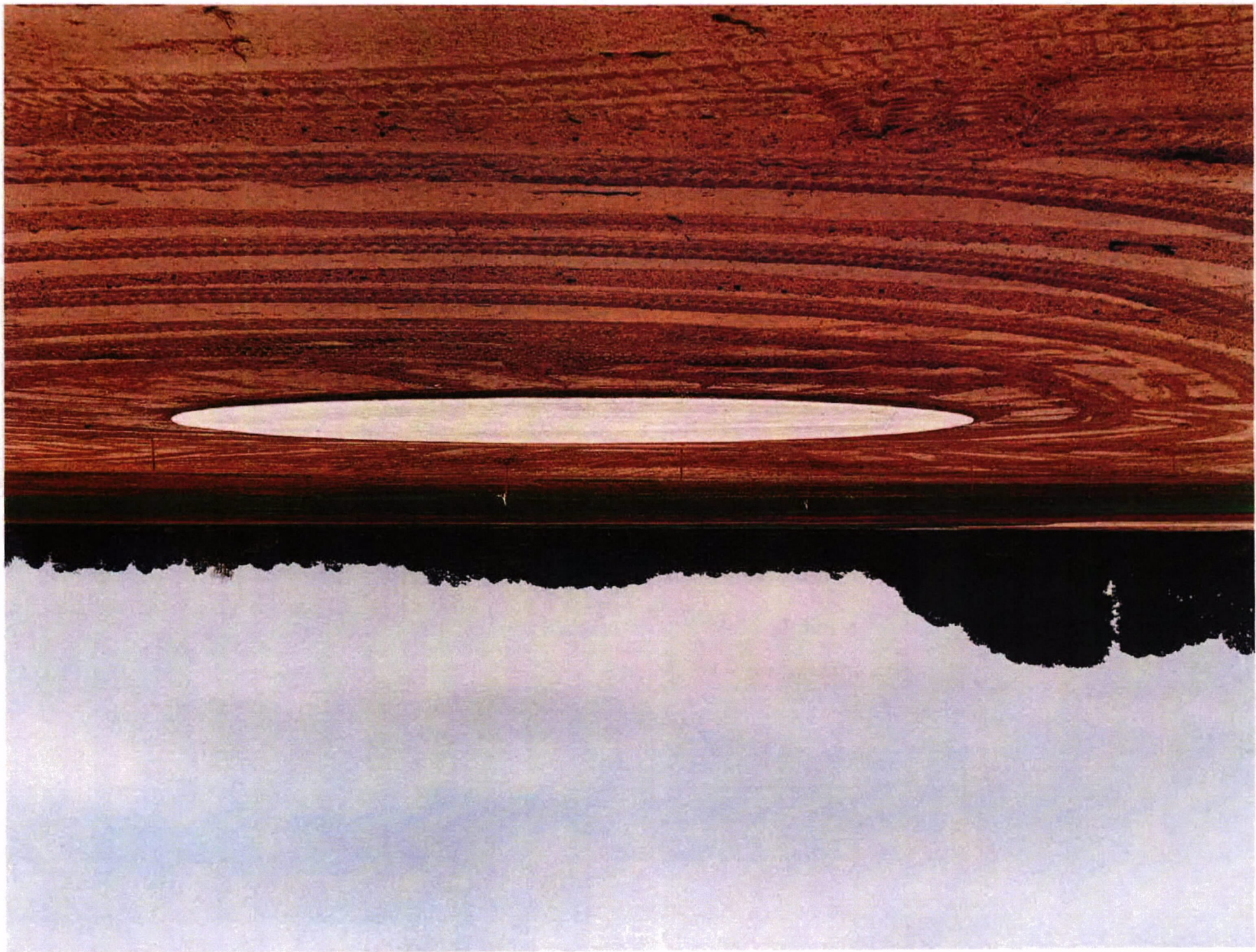




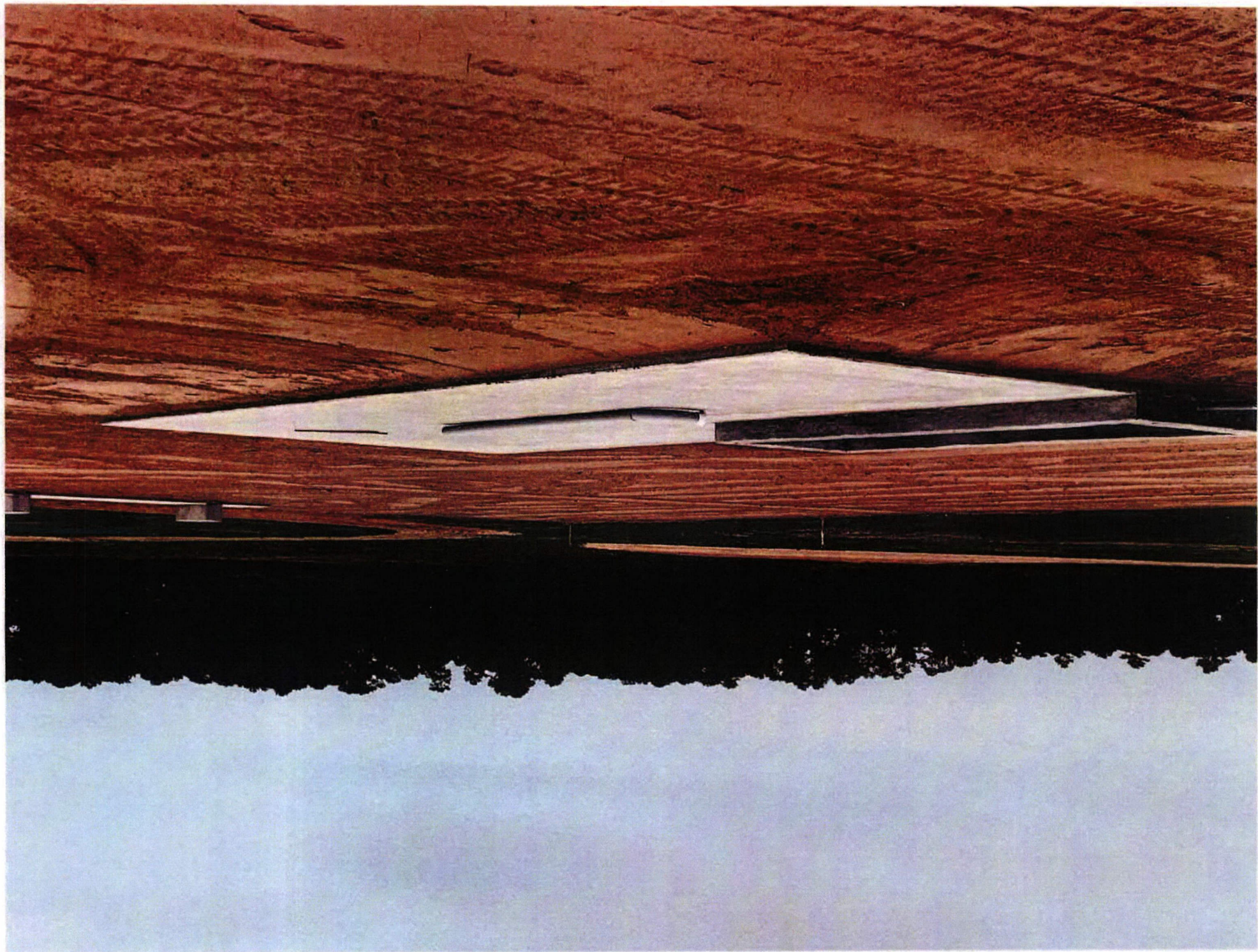








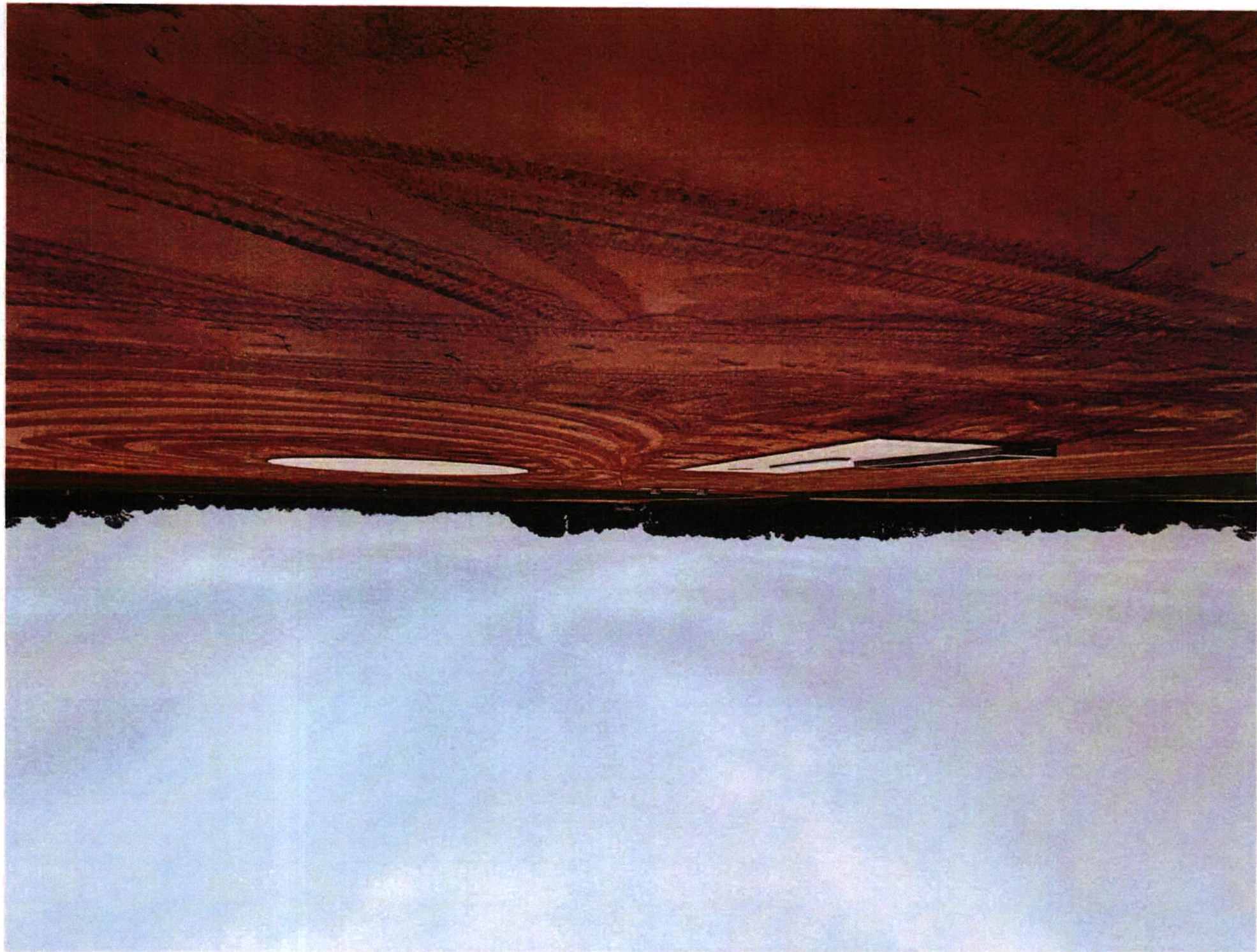
















Quadvest, L.P.  
26926 FM 2978  
Magnolia, TX 77354

Main: 281-356-5347  
Fax: 281-356-5382  
Quadvest.com

April 30, 2020

H-M-W SUD  
c/o CobbFendley  
Attn: Rachel Broom  
13430 Northwest Fwy.  
Suite 1100  
Houston, TX 77040

To Whom It May Concern:

Quadvest, L.P. is in the process of preparing a design submittal package to obtain approval from the TCEQ to construct a public water system to serve developments located in the vicinity of FM 2920 Road and Cypress Rosehill Road in Harris County, Texas, shown on enclosed map.

You have been identified as a neighboring utility of like kind and/or municipality with an extraterritorial jurisdiction (ETJ) within 2 miles of the proposed service area. Pursuant to TCEQ regulations, Quadvest, L.P. formally asks whether you are willing or able to provide water service to this proposed property sufficient to meet the TCEQ's minimum service standards plus local demands thereby providing continuous and adequate utility service to the consuming public. Please fill out the questionnaire below and return to us.

You may fax or email your response to 281-356-5382 or [murback@quadvest.com](mailto:murback@quadvest.com). If you have any questions please call me at 281-305-1108. Thank you for your assistance.

Sincerely,

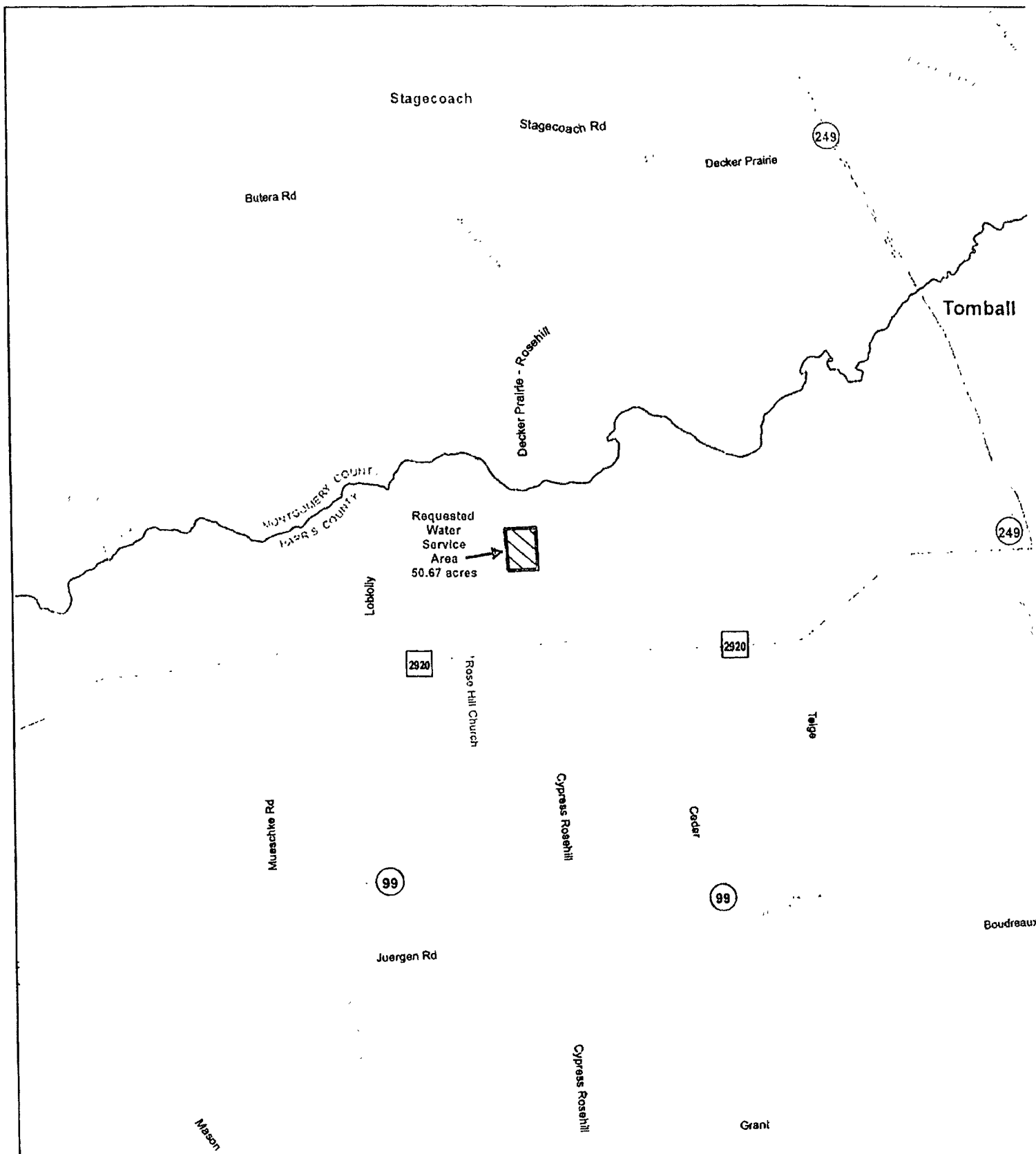
A handwritten signature in black ink, appearing to read 'Mark L. Urback', is written over a horizontal line.

Mark L. Urback, P.E.

Date of Reply: \_\_\_\_\_  
Name of Utility \_\_\_\_\_  
Ability to Provide Service?  
(Yes/No) \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Organization \_\_\_\_\_  
Email/Telephone \_\_\_\_\_

X 11





**General Location - Water**

Quadvest, L.P.  
Application to Amend Water CCN No. 11612  
in Harris County



Requested Water Service Area - 50.67 acres

**PATRICK F. TIMMONS, JR.**

ATTORNEY AT LAW  
1503 BUCKMANN CT  
HOUSTON, TX 77043

MEMBER  
COLLEGE OF THE STATE BAR OF TEXAS

TELEPHONE: (713) 465-7638  
TELECOPY: (713) 465-9527  
pft@timmonslawfirm.com  
www.timmonslawfirm.com

Via Email Only

May 7, 2020

Mr. Mark Urback  
Quadvest, L.P.  
26926 F.M. 2978  
Magnolia, Texas 77354

Dear Mark:

This refers to your letter dated April 30, 2020, to Rachel Broom, P.E., on behalf of HMW Special Utility District("HMW").

The territory described appears to be within HMW's CCN No. 10342. Its owner has filed a request to decertify the referenced territory, however, its right to do so is disputed by HMW in Cause No. D-1-GN-20-000905, pending before the 200th District Court of Travis County, Texas.

Accordingly, HMW does not recognize the authority of Quadvest to submit the request described by your letter. If such a request is filed, HMW will so advise the TCEQ.

Thank you for your assistance.

Sincerely,



Patrick F. Timmons, Jr.

cc: HMW Board of Directors  
Curran Walker

X 12