



Control Number: 51166



Item Number: 36

Addendum StartPage: 0

RECEIVED

DOCKET NO. 51166

2020 DEC 14 AM 10:50

PETITION OF COLORADO RIVER PROJECT, LLC TO AMEND SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN TRAVIS COUNTY BY EXPEDITED RELEASE	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
--	---------------------------------	---

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Recommendation on Final Disposition. In support thereof, Staff shows the following:

I. BACKGROUND

On August 13, 2020, Colorado River Project, LLC (CRP) filed a petition to amend SWWC Utilities, Inc. dba Hornsby Bend Utility's (Hornsby Bend) certificates of convenience and necessity (CCNs) in Travis County by streamlined expedited release. CRP seeks the expedited release of the portion of the properties owned by CRP that lie within the boundaries of Hornsby Bend's water CCN number 11978 and sewer CCN number 20650. CRP filed supplemental information on August 31, 2020, September 9, 17, and 29, 2020, and October 9 and 29, 2020.

On November 19, 2020, the administrative law judge (ALJ) filed Order No. 7, finding the petition administratively complete, notice sufficient, and requiring Staff to file its recommendation on final disposition by December 14, 2020. Therefore, this pleading is timely filed.

II. STAFF REPLY TO HORNSBY BEND'S RESPONSE TO THE PETITION

On November 30, 2020, Hornsby Bend filed a supplemental response to CRP's petition in arguing that the petition should be denied because the requested release cannot lawfully be granted under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245 as the property receives "service" from Hornsby Bend.¹

In defining service Hornsby Bend cites to TWC § 13.002(21), which broadly defines

¹ SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc.'s Supplemental Response to Colorado River Project LLC's Petition at 3 (Nov 30, 2020) (Hornsby Bend's Response)

36

“service” 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 this chapter 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.²

Hornsby Bend further cites to TWC § 13.002(9) to define “facilities” as:

[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.³

Hornsby Bend argues that a property can receive water or sewer service under the statute without a utility delivering “actual water” onto or collecting wastewater from, a property. To support this argument Hornsby Bend cites to the *Texas General Land Office v. Crystal Clear Water Supply Corporation* decision.⁴ Hornsby Bend argues that in *Crystal Clear*, the Austin Third Court of Appeals held that facilities or lines “used” or “committed” to providing such service may cause a property to “receive service” under the statutory and regulatory definition.⁵

In that decision, the Third Court of Appeals also wrote the following:

The mere existence of water lines or facilities on or near a tract would not necessarily mean that tract was “receiving water service.” Rather, as discussed previously, such a determination is essentially 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 particular tract in furtherance of its obligation to provide water to that tract pursuant to its CCN. As noted above, the term “service” as defined in chapter 13 is very broad and appears intentionally so. It includes facilities and lines as well as acts performed and anything furnished or supplied. But its breadth is also constrained by limitations in the definition itself, as well as in Water Code section 13.254(a-5). The definition of “service” includes the

² TWC § 13.002(21); *see also*, 16 TAC § 24.3(33) (same definition).

³ TWC § 13.002(9); *see also*, 16 TAC § 24.3(15) (same definition).

⁴ Hornsby Bend’s Response at 3.

⁵ *Tex Gen Land Office v Crystal Clear Water Supply Corp*, 449 S.W 3d 130, 140 (Tex. App —Austin, 2014, pet denied).

condition that the facilities or lines be “committed or used” in the performance of Crystal Clear's duties as a retail public utility. Tex. Water Code § 13.002(21).⁶

Hornsby Bend argues that for a number of reasons the utility has “committed or used” facilities to serving the tract of land from which CRP seeks release. Hornsby Bend states that the Hornsby Bend water line adjacent to the property is capable of providing water to the tract and that Hornsby Bend has acquired water rights to provide adequate water resources to the tract and future development of the Property.⁷ Hornsby Bend provides an affidavit from Timothy Williford, Vice President of Operations of Texas Utilities for Hornsby Bend, which states:

- (1) Hornsby Bend’s water and wastewater facilities were originally built with the intent of serving the Property and the planned Austin Green Municipal Utility District (MUD);
- (2) Hornsby Bend acquired water rights in the Blue Water pipeline, and allocated 6,000 living unit equivalents of water capacity in that line to servicing the Property and the planned MUD; and
- (3) Hornsby Bend has other facilities immediately adjacent to the Property, and has performed various acts and supplied funds in furtherance of service to the Property and Hornsby Bend's CCN area that includes the Property.⁸

Hornsby Bend further argues that Hornsby Bend has entered into various agreements with neighboring utilities relating to the protection of Hornsby Bend's certificated service area and to ensure continuous and adequate service to both current and future customers, including to the Property.⁹

While it is undisputed that Hornsby Bend has a line and other facilities adjacent to the area in question, including the Austin Colony public water system and the factors described above are not sufficient on their own to demonstrate that these facilities are “committed” to the tract. As noted by the Third Court of Appeals:

[a] tract of land is not necessarily ‘receiving’ water service simply because there are facilities or water lines near, or even on that tract if, for example, such facilities are used to provide water only to other

⁶ *Id.*

⁷ Hornsby Bend’s Response at 3 and Exhibit A.

⁸ *Id.*

⁹ *Id.*

tracts. Rather, 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.¹⁰

In addition, the Commission recently decided to grant the expedited release of a tract¹¹ despite the fact that: (1) the CCN holder’s water and wastewater facilities were originally built with the intent of serving the tract to be released and the adjacent subdivision; (2) 1,000 linear feet of an active eight-inch water main line was located within the tract; (3) 400 linear feet of four-inch sewer force mains was located within the tract; and (4) the CCN holder had other facilities immediately adjacent to the tract and had performed various acts and supplied funds in furtherance of service to the tract.¹²

The map provided by Hornsby Bend as Exhibit B shows CRP’s property adjacent to two 5/8” lines and a water meter.¹³ In his affidavit, Mr. Williford states that the lines near CRP’s property in question were originally built with the intent of serving the property, “and the approved Austin Green Municipal Utility District (“MUD”) and the growth areas next to the Property.”¹⁴ This statement indicates that CRP’s property alone was not the sole reason for the construction of these lines. Given the fact that Hornsby Bend is not actively providing service to the property in question, and that the lines were also designed to serve the Austin Green MUD and growth areas next to the property, it seems that the facilities are not “committed” to serving the tract of land that CRP seeks to release from Hornsby Bend’s CCNs.

Further, during deliberations on Docket No. 51114, the Commissioners concluded that capacity dedicated to serving the property is not sufficient to demonstrate that the property is receiving service.¹⁵ Staff reads the majority of the statements in Mr. Williford’s affidavit to speak to the acts Hornsby Bend has undertaken to ensure the Austin’s Colony water system and the Austin’s Colony sewer system have the capacity to serve CRP’s property. Therefore, Staff recommends that the property is not receiving water or sewer service because Hornsby Bend has

¹⁰ *Crystal Clear*, 449 S.W.3d at 140.

¹¹ *Petition of Imperial Heights, Ltd to Amend Aqua Texas, Inc ’s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No 51114, Open Meeting Tr. at 74 (Nov. 19, 2020).

¹² *Id.*, Aqua’s Supplemental Response to Petition of Imperial Heights, Ltd. for Streamlined Expedited Release at 3 (Sep. 18, 2020).

¹³ Hornsby Bend’s Response at Exhibit B

¹⁴ *Id.* at Exhibit A at 1-2.

¹⁵ Docket No. 51114, Open Meeting Tr. at 27-28 (Nov 5, 2020)

not shown that it has facilities committed to serving CRP's property .

III. FINAL RECOMMENDATION ON THE PETITION

Staff has reviewed the petition and supplemental information filed by CRP and, as detailed in the attached memorandum from Patricia Garcia of the Commission's Infrastructure Division, and the analysis in Section II above, Staff recommends that the petition be approved.

CRP's petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h). Specifically, the petition demonstrates that the property for which CRP seeks streamlined expedited release is located in a qualifying county (Travis County), is at least 25 acres in size, is not receiving water or sewer service, and is located within Hornsby Bend's certificated service areas for water and sewer. In addition, CRP has provided a warranty deed confirming its ownership of the property.

Accordingly, Staff recommends that CRP's petition for streamlined expedited release be approved. The final water and sewer CCN maps and certificates are attached to this filing. Staff additionally recommends that the final maps and certificates be provided to Hornsby Bend and that Hornsby Bend file a certified copy of the CCN maps along with boundary descriptions of the water and sewer CCN service areas in the Travis County Clerk's office, as required under TWC § 13.257(r)-(s).

IV. CONCLUSION

Staff respectfully requests that the Commission approve CRP's petition and grant the release of its property from Hornsby Bend's water and sewer CCNs.

Dated: December 14, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Eleanor D'Ambrosio
Managing Attorney

/s/ John Harrison

John Harrison
State Bar No. 24097806
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7277
(512) 936-7268 (facsimile)
John.Harrison@puc.texas.gov

DOCKET NO. 51166

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on December 14, 2020, in accordance with the Order Suspending Rules, filed in Project No. 50664.

/s/ John Harrison

John Harrison

Public Utility Commission of Texas

Memorandum

TO: John Harrison, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: December 14, 2020

RE: Docket No. 51166 – *Petition of Colorado River Project, LLC to Amend SWWC Utilities, Inc. dba Hornsby Bend Utility’s Certificate of Convenience and Necessity in Travis County by Expedited Release*

Colorado River Project, LLC (CRP) filed a petition for streamlined expedited release from SWWC Utilities, Inc. dba Hornsby Bend Utility Company Inc.’s (Hornsby Bend) water certificate of convenience and necessity (CCN) No. 11978 and sewer CCN No. 20650 in Travis County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). CRP asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Travis County, which is a qualifying county.

Tracy Montes, Infrastructure Division, determined that CRP submitted adequate maps delineating the requested area for expedited release with enough detail to confirm the accurate positioning of its digital data under 16 TAC § 24.245(k). Ms. Montes also confirmed that the map and digital data are sufficient for determining the location of the requested release area within Hornsby Bend’s water and sewer certificated areas. The acreage of the entire subject property includes approximately 2,122.27 acres. The requested area for expedited release from Hornsby Bend’s water CCN No. 11978 includes approximately 1,322.36 acres, and the requested area for expedited release from Hornsby Bend’s sewer CCN No. 20650 includes approximately 1,331.62 acres. CRP provided a warranty deed confirming ownership of the tract of land within Hornsby Bend’s certificated area. In addition, CRP submitted an affidavit attesting that the property was not receiving water or sewer service from the CCN holder.

Hornsby Bend has intervened in this docket.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), CRP has met the Commission’s requirements to allow for the release of the requested area from Hornsby Bend’s Water CCN No. 11978 and Sewer CCN No. 20650. Therefore, I recommend approval of the petition. Enclosed are final maps and certificates for Commission approval. Additionally, I recommend that the final maps and certificates be provided to Hornsby Bend.



Public Utility Commission of Texas

By These Presents Be It Known To All That

SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc.

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, SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. is entitled to this

Certificate of Convenience and Necessity No. 11978

to provide continuous and adequate water utility service to that service area or those service areas in Travis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51166 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. 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, this _____ day of _____ 20__.



Public Utility Commission of Texas

By These Presents Be It Known To All That

SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc.

having obtained certification to provide sewer 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, SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. is entitled to this

Certificate of Convenience and Necessity No. 20650

to provide continuous and adequate sewer utility service to that service area or those service areas in Travis County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51166 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. 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, this _____ day of _____ 20__.

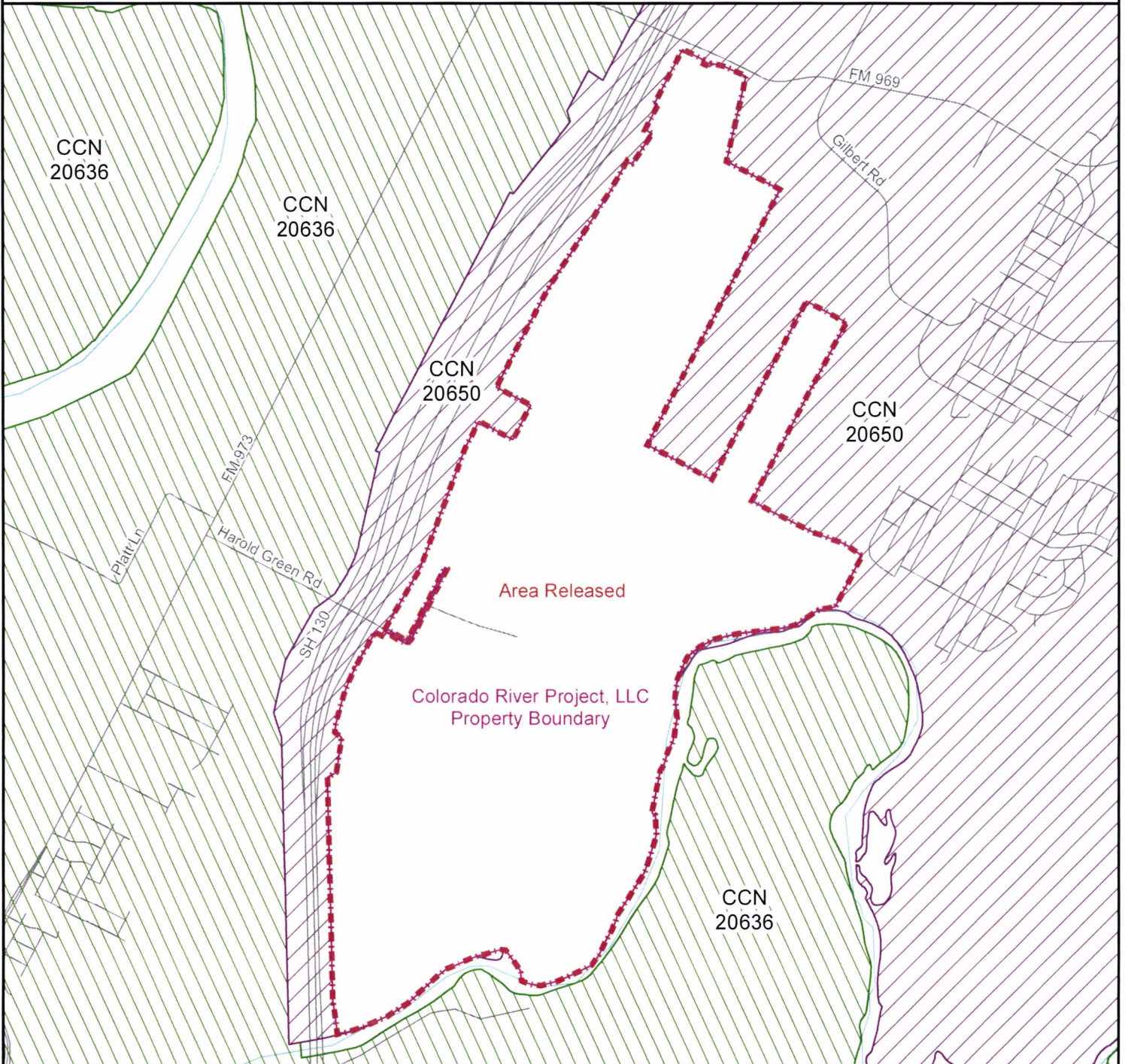
SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc.

Portion of Sewer CCN No. 20650

PUC Docket No. 51166

Petition by Colorado River Project, LLC to Amend


SWWC Utilities, Inc. dba Hornsby Bend Utility Company Inc.'s CCN by Expedited Release in Travis County





Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Sewer CCN

 20650 - SWWC Utilities Inc

 20636 - City of Austin

 Area Released

 Property Boundary



Map by: Komal Patel
Date created: November 16, 2020
Project Path: n:\finalmapping\
51166SWWCUtilitiesSewer.mxd

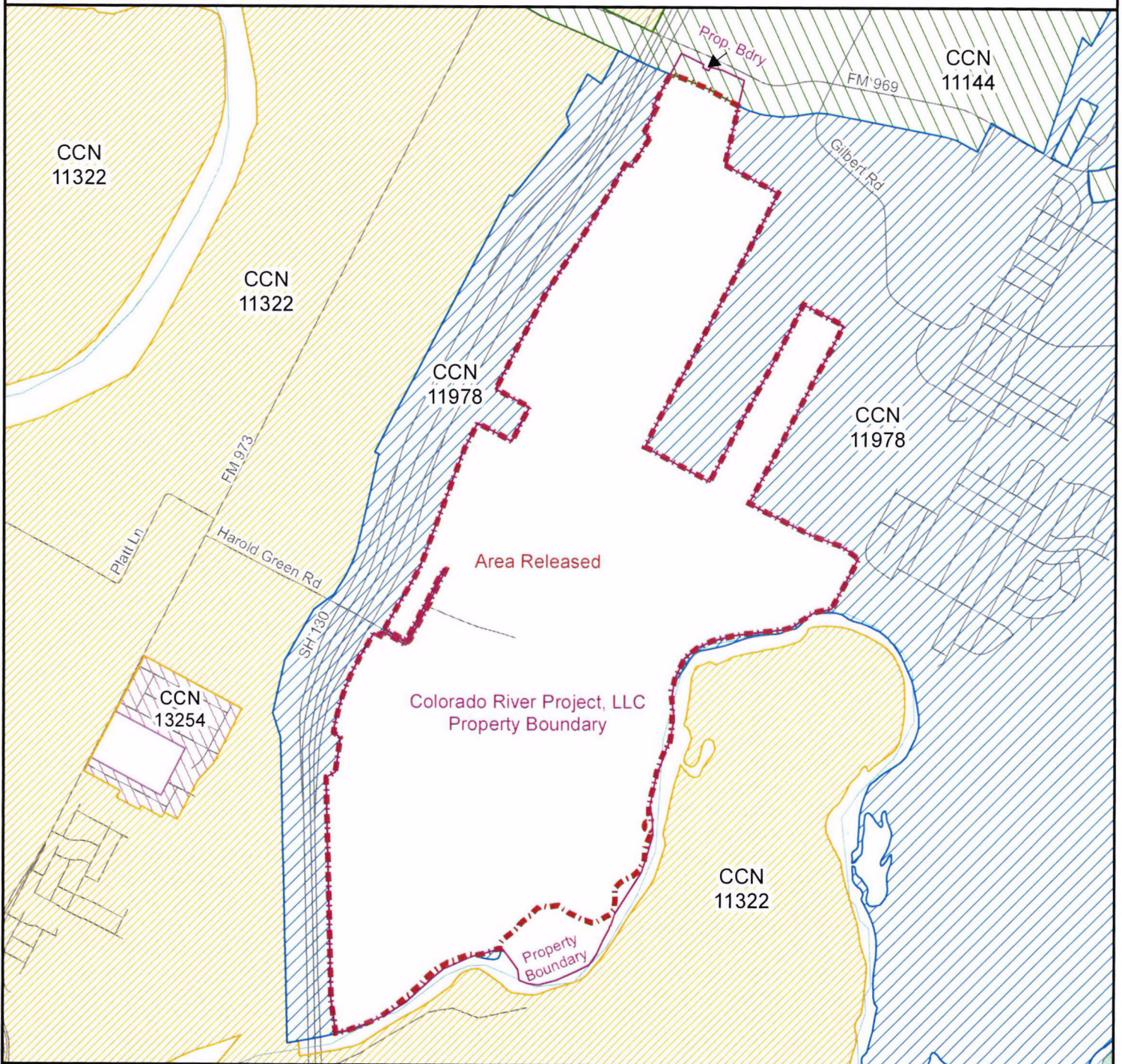
SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc.

Portion of Water CCN No. 11978

PUC Docket No. 51166

Petition by Colorado River Project, LLC to Amend

SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc.'s CCN by Expedited Release in Travis County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

-  11978 - SWWC Utilities Inc
-  11144 - Manville WSC
-  11322 - City of Austin
-  13254 - Aqua Texas Inc

-  Area Released
-  Property Boundary

0 1,100 2,200
Feet



Map by: Komal Patel
Date created: November 16, 2020
Project Path: n:\finalmapping\
51166SWWCUtilities.mxd