



## Filing Receipt

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Governor

## Public Utility Commission of Texas

TO: Stephen Journeay  
Commission Counsel

All Parties of Record

FROM: Gregory Siemankowski  
Administrative Law Judge

A handwritten signature in black ink, appearing to be "G. Siemankowski".

RE: **Docket No. 51842** – *Petition of Kenneth F. Jenkins, Trustee of the Hinsvark Family Trust to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Bastrop County By Expedited Release*

DATE: September 20, 2021

**Because of the COVID-19 state of disaster, the Commission has moved to a work at home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.**

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order by September 30, 2021.

**If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.**

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

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**DOCKET NO. 51842**

<b>PETITION OF KENNETH F. JENKINS,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TRUSTEE OF THE HINSVARK</b>	<b>§</b>	
<b>FAMILY TRUST TO AMEND AQUA</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TEXAS, INC.'S CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>BASTROP COUNTY BY EXPEDITED</b>	<b>§</b>	
<b>RELEASE</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the petition by Kenneth F. Jenkins, Trustee of the Hinsvark Family Trust for streamlined expedited release of a portion of a tract of land in Bastrop County from the service area under certificate of convenience and necessity (CCN) number 21116. Aqua Texas, Inc. is the holder of CCN number 21116. For the reasons stated in this Order, the Commission releases the portion of the tract of land from Aqua Texas' certificated service area. In addition, the Commission amends Aqua Texas' CCN number 21116 to reflect the removal of this tract of land from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to Aqua Texas, which will be addressed by separate order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Petitioner**

1. The petitioner owns a tract of land containing 269.692 acres in Bastrop County.

**CCN Holder**

2. Aqua Texas is a Texas corporation registered with the Texas secretary of state under filing number 800304878.
3. Aqua Texas holds CCN number 21116 that obligates Aqua Texas to provide sewer service in its certificated service area in Bastrop County.

**Petition**

4. On February 26, 2021, the petitioner filed a petition for streamlined expedited release of a portion of a tract of land from the CCN holder's service area under CCN number 21116.

5. The petition includes the affidavit, dated February 2, 2021, of Robert J. Gilliland, Jr., attorney for the petitioner; general location map; detailed property map; and a deed dated July 7, 2020.
6. On April 23, 2021, petitioners filed a supplement to the petition containing mapping information in PDF and shapefile format, general location map, and digital mapping data.
7. In Order No. 3 filed on May 19, 2021, the administrative law judge (ALJ) found the petition, administratively complete.

#### **Notice**

8. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on February 26, 2021.
9. In Order No. 3 filed on May 19, 2021, the ALJ found the notice sufficient.

#### **Intervention**

10. In Order No. 4 filed on June 22, 2021, the ALJ granted the CCN holder's motion to intervene.

#### **Response to Petition**

11. On June 7, 2021, the CCN holder filed response to the petition.
12. On June 22, 2021, the petitioner filed a reply to the CCN holder's response.
13. On June 25, 2021, the CCN holder filed a supplemental response.
14. On June 25, 2021, the petitioner filed a motion to strike the CCN holder's supplemental response.
15. On June 28, 2021, the CCN holder filed a response to petitioner's motion to strike.
16. In Order No. 6, filed on July 19, the ALJ denied petitioner's motion to strike.

#### **The Tract of Land**

17. The tract of land is approximately 269.692 acres in Bastrop County.
18. The portion of the tract of land for which the petitioner seeks streamlined expedited release (the release property) is approximately 217.9 acres.
19. The release property is located within the CCN holder's certificated service area.

**Ownership of the Tract of Land**

20. The petitioner acquired the 217.9-acre portion of land by a special warranty deed dated July 7, 2020.

**Qualifying County**

21. Bastrop County abuts Travis County and has a population of more than 47,500.
22. Travis County has a population greater than one million.

**Sewer Service**

23. The release property is not receiving actual sewer service from the CCN holder.
24. The petitioner has not requested that the CCN holder provide sewer service to the release property or paid any fees or charges to initiate or maintain such service.
25. There are no billing records or other documents indicating an existing account with the CCN holder for the provision of sewer service to the release property.
26. The CCN holder has not committed or dedicated any facilities or lines to the release property for sewer service.
27. The CCN holder has no facilities or lines that provide sewer service to the release property.
28. The CCN holder has not performed any acts for or supplied anything to the release property.

**Map and Certificate**

29. On June 21, 2021, Commission Staff filed its recommendation that included a certificate and a map on which it identified the release property in relationship to the CCN holder's certificated service area.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition for streamlined expedited release under Texas Water Code (TWC) §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 Texas Administrative Code (TAC) § 24.245(h)(3)(F).

3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition that must be verified by a notarized affidavit.
6. To obtain release under TWC § 13.2541(b), a landowner must demonstrate that the landowner 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 service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. The petitioner owns a tract of land that is at least 25 acres and includes the release property for which it seeks streamlined expedited release through the petition.
8. Bastrop County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
9. The release property is not receiving sewer service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. The petitioner is entitled under TWC § 13.2541(b) to the release of the release property from the CCN holder's certificated service area.
11. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail sewer service to the petitioner's release property.
12. The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail sewer service through the streamlined-expedited-release process under TWC § 13.2541(b).
13. The Commission processed the petition in accordance with the TWC and Commission rules.

14. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in the real property records of Bastrop County no later than the 31st day after the date the CCN holder receives this Order.
15. A retail public utility may not under TWC § 13.254(d) provide retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

### **III. Ordering Paragraphs**

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

1. The Commission releases the release property identified in the petition from the CCN holder's service area under CCN number 21116.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the tract of land.
3. The Commission amends CCN number 21116 in accordance with this Order.
4. The Commission approves the attached map.
5. The Commission issues the attached certificate.
6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.
7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 3. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PETER LAKE, CHAIRMAN**

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**WILL MCADAMS, COMMISSIONER**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**

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# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

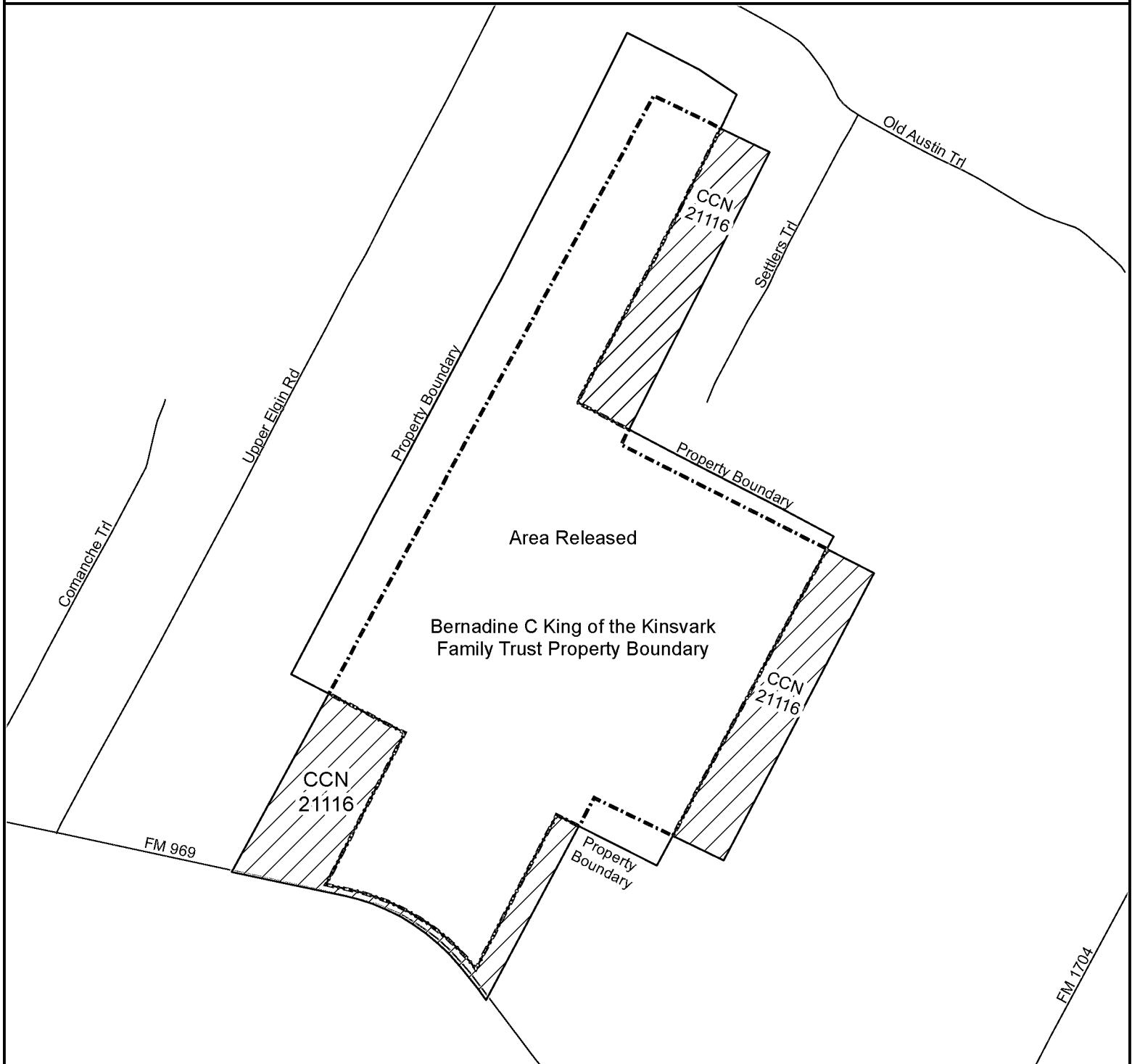
## **Aqua Texas, Inc.**

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, Aqua Texas, Inc. is entitled to this

### **Certificate of Convenience and Necessity No. 21116**

to provide continuous and adequate sewer utility service to that service area or those service areas in Bastrop, Burnet, Hays, Travis, and Williamson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51842 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 Aqua Texas, 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.

Aqua Texas, Inc.  
Portion of Sewer CCN No. 21116  
PUC Docket No. 51842  
Petition by Bernadine C. King of the Kinsvark Family Trust to Amend  
Aqua Texas, Inc.'s CCN by Expedited Release in Bastrop County



**Sewer CCN**



21116 - Aqua Texas Inc



Area Released



Property Boundary

0 500 1,000  
Feet

