



Control Number: 51973



Item Number: 11

Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
HEARING CLERK

DOCKET NO. 51973

Petition of Rodney Earl Mohnke, et al to	*	Before the Public Utility Commission
Amend HMW Special Utility District's Water	*	of Texas
Certificate of Convenience and Necessity in	*	
Harris County by Expedited Release	*	

Response to Petition
and Supplement to Motion to Extend

Comes now the HMW Special Utility District of Harris and Montgomery Counties ("HMW"), filing its Response to the Petition of Rodney Earl Mohnke, et al, and Supplement to its Motion to Extend ("Response"), and states as follows:

I.

HMW incorporates by reference the facts and argument in its Motion to Extend Date for Response by HMW to Administratively Complete Petition ("Motion"), and requests judicial notice thereof by the Public Utility Commission ("PUC").

Pleading further, a review of HMW's records shows that actual service of the petition appears to have been delivered no earlier than April 15, 2021.

Pleading further, regarding whether an extension of time will delay this proceeding, the undersigned counsel accepts responsibility for the missed deadline and the mistaken belief that a motion to intervene was required.

Nevertheless, (1) Petitioners required two extra weeks to effect service on HMW, (2) Petitioners' application is not yet administratively complete, while HMW has filed its Response, and (3) Petitioners' application continues to have unresolved issues with administrative completeness. See Section II. below.

Pleading further, Petitioners have not asserted that they are prejudiced in any way by HMW's participation in this proceeding, which applicable law clearly contemplates, and there is no basis for such a contention.

Pleading further, regarding the public interest, HMW has raised and will raise issues that affect the interpretation of the statute on which Petitioners rely, as well as its application to HMW and to water districts generally. Their resolution is clearly in the public interest.

11

II.

Pleading further, records of the Harris County Appraisal District show that the property is held in its entirety by Rodney Earl Mohnke, without co-owners or the existence of a trust. See Exhibit 1, of which judicial notice is requested. Based on both the Petition and its Supplement, this continues to raise the question of how many property interests constitute ownership off the Property and what persons or entities own the entirety of the interest sought to be decertified.

The Harris County deed records offer little assistance. They show that numerous undivided interests were conveyed from the original undivided Property. Nevertheless, those interests do not appear to be traceable to the ownership alleged in the Petition based on the records of the Harris County Clerk. Further, such records conflict with the record maintained by the Harris County Appraisal District.

Subject to the PUC's ruling on administrative completeness, HMW reserves the right to submit additional argument based on matters allowed by the PUC to be argued by Petitioners as the result of such ruling.

III.

Pleading further, HMW asserts it was created on May 2, 1998, as the result of a favorable confirmation election authorized by the Texas Commission for Environmental Quality ("TCEQ"), the then predecessor of the PUC for jurisdiction of certificates of convenience and necessity("CCN's"). Such authorization, dated March 13, 1998, ordered the transfer of CCN No. 10342. Paragraph 8. of the TCEQ's order provides as follows:

"in order to ensure continued service for all customers currently served by the WSC under Coe Utilities certificates of convenience and necessity, CCN's 10342 and 20734 will be issued....in the name of H-M-W Special Utility District". (emphasis supplied). See Exhibit 2.¹

HMW asserts that as a matter of law, the ratification of the TNRCC's order by the voters requires that CCN No. 10342, in its entirety at the time, was and is required to "ensure continued service for all customers...". Thus, no portion of CCN may be decertified.

Agency orders are entitled to enforcement in the public interest on any reasonable basis, especially after decades of undisturbed application. Further, any approval of the requested decertification by the PUC constitutes the prohibited retroactive application of the statute under which the Petitioners arguably proceed. Texas Constitution, Article I., Section 16.

HMW will present further argument at the time directed by the PUC.

¹ HMW's predecessors were, in order, Coe Utilities, Inc., a private utility, and the HMW Water Supply Corporation. The list of subdivisions that are a part of HMW's CCN is excluded from this exhibit.

IV.

Pleading further, HMW asserts that decertification cannot divest HMW of rights held by HMW as a Texas water district. HMW may maintain and expand its service without geographical limits under Water Code Section 49.215. It does not require a CCN to do so. Accordingly, an order for decertification cannot as a matter of law deprive HMW of the right to expand into the area that is the subject of the Petition.

HMW will present further argument at the time directed by the PUC.

V.

Pleading further, HMW can and will provide service to the Property through an expanded water system that is across the street and slightly to the north of the Property. Design work is underway, approval of the design by the Texas Commission for Environmental Quality has been submitted, capacity is available and construction will commence in a matter of months. To summarize, HMW is far closer to providing water service to the property than any other entity with whom the Petitioners have a contract of sale or a contingent agreement to provide water service.

HMW will present further argument at a time directed by the PUC.

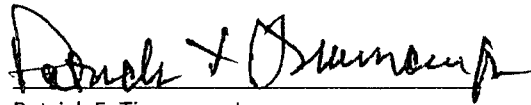
VI.

Pleading further, HMW will seek discovery to ascertain whether the Petitioners have already arranged for water service through an entity that holds a CCN. If such an arrangement exists or is contingent on decertification, any such entity will have interfered with HMW's operation of its water system in violation of Water Code Section 13.252.

HMW will present further argument at a time directed by the PUC based on the completion of its discovery.

Respectfully submitted,

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



Patrick F. Timmons, Jr.

1503 Buckmann Ct

Houston, Texas 77043

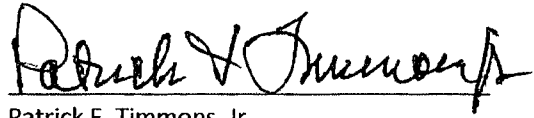
o. (713) 465 7638

f. (713) 465 9527

pft@timmonslawfirm.com

Certificate of Service

I hereby certify that a true copy of the foregoing Motion was served on the Applicant, PUC staff and all other parties on this 14th day of June, 2021, both electronically and by facsimile transmission, as provided by 16 TAC Section 22.74.

A handwritten signature in black ink, appearing to read "Patrick F. Timmons, Jr.", written over a horizontal line.

Patrick F. Timmons, Jr.



Real Property Records

Tax Year: **2021**

HARRIS COUNTY APPRAISAL DISTRICT
 REAL PROPERTY ACCOUNT INFORMATION
040220000160

Print E-mail

[File A Protest](#) [Similar Owner Name](#) [Nearby Addresses](#) [Same Street Name](#) [Related Map 4571D](#)

Ownership History

Owner and Property Information

Owner Name & Mailing Address: **MOHNKE RODNEY
 KENNETH KATHLEEN PAULINE
 215 OAK WOOD RD
 KERRVILLE TX 78028-9174**

Legal Description: **PT TRS 9 & 10 (AG-USE)
 ABST 20 J H EDWARDS**
 Property Address: **22414 DECKER PRAIRIE ROSEHILL RD
 TOMBALL TX 77377**

State Class Code	Land Use Code	Building Class	Total Units
D1 -- Real, Qualified Agricultural Land	9910 -- Agricultural Land		0
Land Area	Net Rentable Area	Market Area	Key Map [®]
4,268,880 SF	0	400 -- ISD 26 - Tomball ISD	287J
Building Area	Neighborhood	Map Facet	
0	2575	4571D	

Value Status Information

Value Status	Notice Date	Shared CAD
Noticed	06/04/2021	No

Exemptions and Jurisdictions

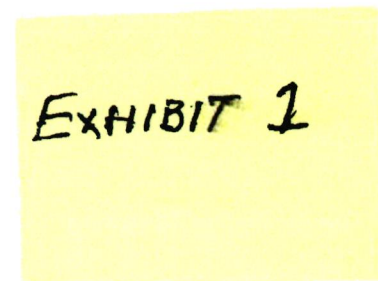
Exemption Type	Districts	Jurisdictions	Exemption Value	ARB Status	2020 Rate	2021 Rate	Online Tax Bill
None	026	TOMBALL ISD		Not Certified	1.290000		
	040	HARRIS COUNTY		Not Certified	0.391160		
	041	HARRIS CO FLOOD CNTRL		Not Certified	0.031420		
	042	PORT OF HOUSTON AUTHY		Not Certified	0.009910		
	043	HARRIS CO HOSP DIST		Not Certified	0.166710		
	044	HARRIS CO EDUC DEPT		Not Certified	0.004993		
	045	LONE STAR COLLEGE SYS		Not Certified	0.107800		
	648	HC EMERG SRV DIST 21		Not Certified	0.100000		
673	HC EMERG SRV DIST 3		Not Certified	0.100000			

Texas law prohibits us from displaying residential photographs, sketches, floor plans, or information indicating the age of a property owner on our website. You can inspect this information or get a copy at **HCAD's information center at 13013 NW Freeway.**

Valuations

	Value as of January 1, 2020		Value as of January 1, 2021	
	Market	Appraised	Market	Appraised
Land	4,699,035	Land	4,699,035	
Improvement	0	Improvement	0	
Ag/Tmbr/Spc	13,000	Ag/Tmbr/Spc	13,080	
Total	4,699,035	13,000 Total	4,699,035	13,080

5-Year Value History



Harris County Appraisal District
13013 Northwest Freeway
Houston, Texas 77040-6305

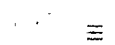
Office Hours
Hours: 8:00 AM - 5:00 PM
Monday - Friday
Saturday Hearings: Jun, Jul, Aug



Telephone Information Center
(713) 957-7800
Hours: 8:00 AM - 5:00 PM
Monday - Friday

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[Harris County Appraisal District](#)



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



THE COUNTY OF TRAVIS
Attest: I, _____, County Clerk, do hereby certify that this is a true and correct copy of a Texas Natural Resource Conservation Commission document, which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on
March 17 1998
Eugenie K. Drumm, Chief Clerk
Texas Natural Resource
Conservation Commission

DOCKET NO. 97-0964-DIS

AN ORDER GRANTING A REQUEST FOR CONVERSION TO
AND CREATION OF H-M-W SPECIAL UTILITY DISTRICT OF HARRIS
AND MONTGOMERY COUNTIES; APPOINTING TEMPORARY DIRECTORS;
AND AUTHORIZATION TO ISSUE CERTIFICATES OF CONVENIENCE AND
NECESSITY NO. 10342 AND 20734 TO H-M-W SPECIAL UTILITY
DISTRICT OF HARRIS AND MONTGOMERY COUNTIES

On March 4, 1998, the Texas Natural Resource Conservation Commission (the "Commission") met in regular session at its offices in Austin, Texas, notice of the meeting having been distributed in compliance with the Open Meetings Act, TEX. GOV'T CODE ANN. Title 5, Chapter 551 (Vernon 1994 & Supp. 1998) and the Administrative Procedure Act, TEX. GOV'T CODE ANN. Title 10, Chapter 2001 (Vernon Pamph. 1998), to consider a petition from H-M-W Water Supply Corporation (the "WSC") requesting conversion to H-M-W Special Utility District of Harris and Montgomery Counties (the "District").

After considering all the arguments presented at agenda, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On September 2, 1997, a petition requesting the conversion of H-M-W Water Supply Corporation to H-M-W Special Utility District of Harris and Montgomery Counties was filed with the Commission.
2. Proper notice of the application on this petition was given by publishing a copy thereof on January 30, 1998, and February 6, 1998, in the Houston Chronicle, a newspaper regularly published in Harris County and generally circulated in Harris and Montgomery Counties, Texas, counties in which the proposed District is to be located.
3. All customers and other affected parties in the proposed District were notified by mail of the hearing on the petition requesting conversion to and creation of the District.
4. The appropriate and necessary deposits and fees associated with the filing of the petition requesting conversion to and creation of the District have been paid to the Commission.

EXHIBIT 2

5. According to the WSC's petition for conversion, the proposed District's initial board of directors will consist of the following seven persons each of whom is qualified to be a director pursuant to Section 65.102 of the Texas Water Code:

Mark Pinter
Joe Conely
Deborah Stachowiak
Diana Sansing
Lance Stahl
Mike Jackson
Bill Wittner

6. Each of the persons named in Finding of Fact No. 5 is qualified to serve as a temporary director of the proposed District as each (1) is over the age of 18 years, (2) is a resident of the State of Texas, (3) either owns land subject to taxation within the proposed District, is a user of the facilities of the proposed District, or is a qualified voter of the proposed District, and (4) has completed and filed with the Commission an application for consideration of appointment as temporary director in the form and substance required by the Rules of the Commission.
7. The boundary description of the proposed District as described in Exhibit "A", a copy of which is attached hereto, has been examined by Commission staff and found to form an acceptable boundary for the proposed District. Exhibit "A" consists of a 33-page boundary description submitted on September 22, 1997, and a revised Tract H-13 boundary description attached to the District engineer's letter dated January 30, 1998.
8. The resolution adopted by the WSC requesting conversion to and creation of the District conforms to the requirements of TEX. WATER CODE ANN. §65.015 (Vernon 1988).
9. The request for conversion to and creation of the District is feasible and practicable and is necessary and will be a benefit to the land included in the District.
10. The proposed District and its system and subsequent development within the District will not have an unreasonable effect on the following: topography, floodplain, land elevations, subsidence, groundwater levels, recharge capabilities of a groundwater source, natural runoff rates and drainage, and water quality.

CONCLUSIONS OF LAW

1. The public hearing regarding the petition was held under the authority of and in accordance with TEX. WATER CODE ANN., Chapter 65 and the applicable provisions of the Texas Natural Resource Conservation Commission Permanent Rules.

2. The Commission has jurisdiction to consider this petition and is authorized to make and enter its Findings of Fact, Conclusions of Law, and Orders with respect to the request for conversion of the WSC to and creation of the District.
3. All of the land and property proposed may properly be included within the District.
4. By Order dated January 20, 1998, the Commission determined that a certificate of convenience and necessity for H-M-W Water Supply Corporation was not necessary, waived Title 30 TAC §293.11(h)(6), and declared the application technically complete.
5. All statutory and regulatory requirements for conversion of H-M-W Water Supply Corporation to H-M-W Special Utility District of Harris and Montgomery Counties, have been fulfilled, in accordance with TEX. WATER CODE ANN., Chapter 65 and Title 30 TAC Section 281.19.

NOW THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION THAT:

1. The petition for the conversion of H-M-W Water Supply Corporation to H-M-W Special Utility District of Harris and Montgomery Counties is hereby granted.
2. The District is created under the terms and conditions of Article XVI, Section 59 of the Texas Constitution and TEX. WATER CODE ANN., Chapter 65.
3. The District shall have all of the rights, powers, privileges, authority, and functions conferred and shall be subject to all duties imposed by the Texas Natural Resource Conservation Commission and the general laws of the State of Texas relating to special utility districts.
4. The following persons are hereby named and appointed as temporary directors of the District, to serve until their successors are elected or have been appointed in accordance with applicable law:

Mark Pinter
Joe Conely
Deborah Stachowiak
Diana Sansing
Lance Stahl
Mike Jackson
Bill Wittner

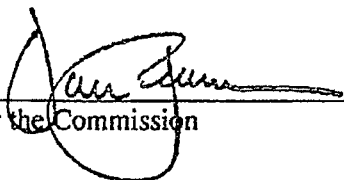
5. The foregoing temporary directors shall, as soon as practicable after the date of entry of this Order, execute their official bonds and take their official oath of office. All such

bonds shall be approved by the Board of Directors of the District and each bond and oath shall be filed with the District and retained in its records.

6. The District's Board of Directors is directed to send to the Commission's District Administration Section an order canvassing the confirmation election returns not later than 30 days after the election.
7. Upon a successful confirmation election, the WSC is directed to transfer assets and debts to the District as expeditiously as practicable and to institute dissolution proceedings immediately after such transfer.
8. In order to ensure continued service for all customers currently served by the WSC under Coe Utilities certificates of convenience and necessity, Certificates of Convenience and Necessity No. 10342 and 20734 will be issued by the Commission in the name of H-M-W Special Utility District of Harris and Montgomery Counties, contingent upon a successful confirmation election, and Commission receipt of evidence that the WSC has been dissolved.
9. This Order shall in no event be construed as an approval of any proposed agreements or of any particular items in any documents provided in support of the conversion petition, nor as a commitment or requirement of the Commission in the future to approve or disapprove any particular items or agreements in future applications submitted by the District for Commission consideration.
10. The Chief Clerk of the Commission shall forward a copy of this Order to all affected persons.
11. If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issued Date: **MAR 13 1998**

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



For the Commission