



## Filing Receipt

**Received - 2021-09-08 11:30:01 AM**  
**Control Number - 51973**  
**ItemNumber - 26**

**DOCKET NO. 51973**

<b>PETITION OF RODNEY EARL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MOHNKE, STEPHEN LEE MOHNKE,</b>	<b>§</b>	
<b>MELVIN MAX MOHNKE, KENNETH</b>	<b>§</b>	<b>OF TEXAS</b>
<b>WAYNE MOHNKE, KATHLEEN ANN</b>	<b>§</b>	
<b>MOHNKE-BLAKELY, AND MEL</b>	<b>§</b>	
<b>MOHNKE, TRUSTEE OF THE</b>	<b>§</b>	
<b>MOHNKE LIVING TRUST DATED</b>	<b>§</b>	
<b>DECEMBER 7, 1996, TO AMEND H-M-</b>	<b>§</b>	
<b>W SPECIAL UTILITY DISTRICT'S</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN HARRIS COUNTY</b>	<b>§</b>	
<b>BY EXPEDITED RELEASE</b>	<b>§</b>	

**ORDER NO. 8**  
**DENYING H-M-W SPECIAL UTILITY DISTRICT'S MOTION TO**  
**RECONSIDER AND MOTION TO DISMISS**

In Order No. 5 filed on July 15, 2021, the administrative law judge (ALJ) found the petition filed in this matter to be administratively complete. On August 4, 2021, H-M-W Special Utility District objected to the administrative completeness determination and argued that the petition should be dismissed for various reasons. Although the pleading is not entirely clear, the ALJ deemed H-M-W SUD's August 4, 2021 pleading to constitute a motion to reconsider the finding of administrative completeness and a motion to dismiss. In Order No. 6 filed on August 11, 2021, the ALJ partially denied the motion to dismiss and gave Rodney Earl Mohnke, Stephen Lee Mohnke, Melvin Max Mohnke, Kenneth Wayne Mohnke, Kathleen Ann Mohnke-Blakely, and Mel Mohnke, Trustee of the Mohnke Living Trust dated December 7, 1996 (collectively, petitioners) and Commission Staff until August 31, 2021 to respond to the remainder of the motion to dismiss and to the motion to reconsider. The petitioners and Commission Staff each responded to the motions to reconsider and dismiss on August 31, 2021.

**I. MOTION TO RECONSIDER**

H-M-W SUD objects to the finding of administrative completeness, arguing that the petitioners cannot prove ownership of the tract of land at issue. Specifically, H-M-W SUD argues that (1) the petitioners have not proved a conveyance to the correct Max Mohnke, and (2) the chain of title as set forth cannot establish ownership of the tract of land at issue because petitioners have not shown ownership of the mineral estate.

The petitioners have met the threshold requirements for administrative completeness because, under Texas Water Code (TWC) § 13.2541, the petitioners have shown that they are “the owner of a tract of land that is at least 25 acres.” Under 16 Texas Administrative Code (TAC) § 24.245(h)(3)(E), a landowner seeking streamlined expedited release must file a petition with supporting documentation, including copies of deeds demonstrating ownership of the tract of land by the landowner. The petition filed on April 1, 2021 included several deeds and the affidavit of Kenneth Wayne Mohnke, on behalf of himself and as the authorized agent on behalf of the other petitioners, providing that the petitioners are the owners of the land and that all the deeds demonstrating ownership have been attached. Further, in their response to Order No. 2 filed on May 27, 2021 the petitioners clarified the ownership of the tract of land.

#### **A. Conveyance to Max Mohnke**

The petitioners included a deed dated May 26, 1967 to Max E. Mohnke that included a note that the Max E. Mohnke in the deed is also known as Max E. Mohnke Jr. H-M-W SUD objected to the note clarifying ownership arguing it was hearsay and “[a]s such, it does not constitute evidence of anything over any party’s objection.” Under 16 TAC § 22.221, the Texas Rules of Civil Evidence apply in contested cases. This is not a contested case and no hearing will be held as provided in 16 TAC § 24.245(h)(7). Therefore, H-M-W SUD’s objection is not relevant to the finding of administrative completeness. The petitioners have provided sufficient documentation, in the form of deeds and an affidavit, confirming that they are the owner of the tract of land at issue, as required by TWC § 13.2541 and 16 TAC § 24.245(h)(3)(E).

#### **B. Ownership of the mineral estate**

Under 16 TAC § 24.245(h)(3)(E), a landowner seeking streamlined expedited release must file a petition and supporting documentation, including “copies of deeds demonstrating ownership of the tract of land by the landowner.” The rule does not provide that “mineral deeds” must be filed. Accordingly, the petitioners were not required to submit mineral deeds showing ownership of the mineral estate in this case. The petitioners have provided deeds confirming ownership of the surface estate, as required by TWC § 13.2541 and 16 TAC § 24.245(h)(3)(E).

The ALJ denies H-M-W SUD’s motion to reconsider.

### **II. MOTION TO DISMISS**

H-M-W SUD argues that the petition should be dismissed because any order granting streamlined expedited release for the petitioners’ tract of land would violate a Texas Natural

Resource Conservation Commission (TNRCC)<sup>1</sup> order and would violate the rights of H-M-W SUD under TWC §§ 13.252 and 49.215.<sup>2</sup>

**A. TNRCC Order**

The argument by H-M-W SUD that any order granting streamlined expedited release for the petitioners' tract of land would violate a TNRCC order is unpersuasive. This case was brought under TWC § 13.2541 and 16 TAC § 24.245, which govern and control this case. Streamlined expedited release of a tract of land within H-M-W SUD's certificated service area is allowable under TWC § 13.2541 and 16 TAC § 24.245. H-M-W SUD has cited no legal authority, and the ALJ knows of none, to support the proposition that the streamlined expedited release process set forth in TWC § 13.2541 and 16 TAC § 24.245 is somehow subordinate to the text of a TNRCC order.

**B. TWC § 13.252**

Under TWC § 13.252,

[i]f a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

The petitioners are not a retail public utility, which is defined as “any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation,” under TWC § 13.002(19). In addition, the petitioners are not constructing or extending a line, plant, or system; they are seeking streamlined expedited release of their tract of land under TWC § 13.2541. Accordingly, TWC § 13.252 has no applicability to this case.

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<sup>1</sup> The TNRCC is the predecessor agency to the Texas Commission on Environmental Quality.

<sup>2</sup> The other grounds for dismissal asserted by H-M-W SUD were denied Order No. 6.

**C. TWC § 49.215**

H-M-W SUD contends that it is a water district governed by TWC chapter 49. TWC § 49.215 provides that a water district may own, operate, or extend all facilities, plants, and equipment necessary to provide any services authorized to be provided by the district to areas contiguous to or in the vicinity of the district provided the district does not duplicate a service or facility of another public utility; that a district may furnish financial resources for such purposes; and that a district can maintain or collect relevant charges or fees to meet the expense of operating its services. TWC § 49.215 does not mention or contemplate explicitly petitions for expedited release. Specifically, TWC § 49.215 does not provide that a special utility district may unilaterally veto a petition for streamlined expedited release under TWC § 13.2541. Instead, streamlined expedited releases are governed by TWC § 13.2541. The ALJ finds that H-M-W SUD's argument that its rights will be violated under TWC § 49.215 is not compelling.

The ALJ denies H-M-W SUD's motion to dismiss.

**Signed at Austin, Texas the 8th day of September 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

A handwritten signature in black ink, appearing to read "Christina Denmark", written over a horizontal line.

**CHRISTINA DENMARK**  
**ADMINISTRATIVE LAW JUDGE**