



## Filing Receipt

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Executive Director

## ***Public Utility Commission of Texas***

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TO: Stephen Journeay  
Commission Counsel

All Parties of Record

FROM: Christina Denmark   
Administrative Law Judge

RE: **Docket No. 51973** – *Petition of 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, to Amend H-M-W Special Utility District's Certificate of Convenience and Necessity in Harris County by Expedited Release*

DATE: September 10, 2021

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 on or before September 24, 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.**

/lsw  
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**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>	

**PROPOSED ORDER**

This Order addresses the petition of 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, the petitioners) for streamlined expedited release of a tract of land in Harris County from the service area under water certificate of convenience and necessity (CCN) number 10342. H-M-W Special Utility District is the holder of CCN number 10342. For the reasons stated in this Order, the Commission releases the tract of land from H-M-W SUD's certificated service area. In addition, the Commission amends H-M-W SUD's CCN number 10342 to reflect the removal of the 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 H-M-W SUD, which will be addressed by separate order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Petitioners**

1. The petitioners are individuals.

**CCN Holder**

2. H-M-W SUD is a Texas water district and special utility district under chapters 49 and 65 of the Texas Water Code (TWC).

3. H-M-W SUD holds CCN number 10342 that obligates it to provide retail water service in its certificated service area in Harris and Montgomery counties.

**Petition**

4. On April 1, 2021, petitioners filed a petition for streamlined expedited release of their tract of land from the CCN holder's service area under water CCN number 10342.
5. On April 6 and 13 and May 27, 2021, the petitioners filed supplemental information which includes digital mapping data and ownership information.
6. The petition and its supplements to the petition include an affidavit, dated March 29, 2021, of Kenneth Wayne Mohnke, one of the petitioners and authorized agent on behalf of the other petitioners; maps; deed dated May 26, 1967, with a metes and bound description; warranty deed dated December 11, 1996, with a metes and bounds description; two copies of a warranty deed dated February 6, 1997, with a metes and bounds description; general warranty deed dated December 10, 2014, with a metes and bounds description; digital mapping data; affidavit of trust dated December 7, 1996; and limited power of attorney dated March 31, 2021.
7. In Order No. 5 filed on July 15, 2021, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

**Notice**

8. The petitioners sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on April 1, 2021, which was returned as undeliverable.
9. The petitioners sent a copy of the petition, as supplemented, by certified mail, return receipt requested, to the CCN holder on April 13, 2021.
10. In Order No. 5 filed on July 15, 2021, the ALJ found the notice sufficient.

**Intervention**

11. In Order No. 3 filed on June 25, 2021, the ALJ granted the CCN holder's motion to intervene.

**Response to the Petition, Motion to Reconsider, and Motion to Dismiss**

12. On June 14, 2021, H-M-W SUD filed initial comments to the petition.

13. On August 4, 2021, H-M-W SUD filed a response to the petition.
14. The CCN holder's response includes the notarized affidavit of Rachel Broom, P.E., district engineer of H-M-W SUD, with attachments.
15. In its response, H-M-W SUD asserted that the ALJ's finding of administrative completeness should be reconsidered because (1) the petitioners have not provided 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.
16. In its response, H-M-W SUD argued that the petition should be dismissed because (1) it is preempted by a Texas Natural Resource Conservation Commission order;<sup>1</sup> (2) it violates the rights of H-M-W SUD under TWC §§ 13.252 and 49.215; (3) it is an unconstitutional taking of property, without due process; (4) it is an unconstitutional retroactive application of TWC § 13.2541; (5) the petitioners cannot show ownership of the tract of land; and (6) H-M-W SUD is providing water service to the tract of land.
17. In Order No. 6 filed on August 11, 2021, the ALJ denied the H-M-W SUD's motion to dismiss on constitutional grounds, and deferred ruling on H-M-W SUD's remaining arguments.
18. In Order No. 8 filed on September 8, 2021, the ALJ denied the motions to reconsider and dismiss.

### **The Tract of Land**

19. The tract of land consists of approximately 99 acres and is in Harris County.
20. The tract of land is located within the CCN holder's certificated service area.

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<sup>1</sup> See, 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, Docket No. 97-0964-DIS (Mar. 13, 1998)(attached to H-M-W's response).

**Ownership of the Tract of Land**

21. The petitioners acquired the tract of land by deed dated May 26, 1967; warranty deed dated December 11, 1996; warranty deed dated February 6, 1997; and general warranty deed dated December 10, 2014.

**Qualifying County**

22. Harris County has a population greater than one million.

**Water Service**

23. The tract of land is not receiving water service from the CCN holder.
24. The petitioners have never requested that the CCN holder provide water service to the tract of land.
25. The petitioners have not paid no fees or charges to initiate or maintain water service to the CCN holder.
26. There are no billing records or other documents indicating an existing account with the CCN holder for the provision of water service to the tract of land.
27. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
28. The CCN holder has no facilities or lines that provide water service to the tract of land.
29. The CCN holder has not performed any acts for or supplied anything to the tract of land.

**Map and Certificate**

30. On September 9, 2021, Commission Staff filed its final recommendation that included a certificate and a map on which it identified the tract of land 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 TWC §§ 13.254 and 13.2541.
2. The petitioners 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 or 13.2541 and 16 TAC § 24.245(h)(7) 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 petitioners own a tract of land that is at least 25 acres, for which it seeks streamlined expedited release through the petition.
8. Harris County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
9. The petitioners' tract of land is not receiving water 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 petitioners are entitled under TWC § 13.2541(b) to the release of the tract of land 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 water service to the petitioners' tract of land.
12. The Commission may release only the property of the landowner from a CCN under TWC § 13.2541(b). The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail water 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 Harris 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 water 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 tract of land identified in the petition from the CCN holder's certificated service area under CCN number 10342.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the petitioners' tract of land.
3. The Commission amends CCN number 10342 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. 5. 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 M. 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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H-M-W Special Utility District  
Portion of Water CCN No. 10342  
PUC Docket No. 51973  
Petition by Mohnke Trust Trustees to Amend  
H-M-W Special Utility District's CCN by Expedited Release in Harris County



**Water CCN**

-  10342 - HMW SUD
-  11612 - Quadvest LP

-  Area Released
-  Property Boundary

0 250 500  
Feet





# **Public Utility Commission of Texas**

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

## **H-M-W Special Utility District**

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, H-M-W Special Utility District is entitled to this

### **Certificate of Convenience and Necessity No. 10342**

to provide continuous and adequate water utility service to that service area or those service areas in Harris and Montgomery Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51973 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of H-M-W Special Utility District 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 \_\_\_\_\_ 2021.