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PETITION TO REVOKE HORSESHOE LAKE PROPERTY OWNERS ASSOCIATION’S CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO TEX. WATER CODE § 13.254 AND 16 TAC § 24.113	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF'S PETITION TO REVOKE HORSESHOE LAKE PROPERTY OWNERS ASSOCIATION’S CERTIFICATE OF CONVENIENCE AND NECESSITY AND NOTICE OF OPPORTUNITY FOR A HEARING

The Staff (Commission Staff) of the Public Utility Commission of Texas (Commission) files this Petition to Revoke Horseshoe Lake Property Owners Association’s Certificate of Convenience and Necessity and Notice of Opportunity for a Hearing. In support thereof, Commission Staff would show the following:

I. JURISDICTION AND LEGAL AUTHORITY

Texas Water Code (TWC) § 13.002(23) defines the term “water utility” to include any person or certain corporations owning or operating, for compensation, equipment or facilities used for the transmission, storage, distribution, sale, resale, or provision of potable water to the public. As detailed under TWC §§ 13.041(a) and 13.042(e), the Commission has jurisdiction and authority to regulate and supervise the business, rates, services, and operations of each water utility in Texas that is not located within the incorporated limits of a municipality exercising exclusive original jurisdiction under TWC § 13.042(b).

As established under TWC § 13.242 and 16 Texas Administrative Code (TAC) § 24.225, a prospective water utility must obtain a certificate of convenience and necessity (CCN) issued by the Commission before rendering water utility service to the public. A water utility that has received a CCN from the Commission is obligated under TWC § 13.250(a) and 16 TAC § 24.247 to provide continuous and adequate service to every consumer within the boundaries of its certificated area. Under TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A), the Commission may revoke the CCN of a water utility if, after notice and opportunity for hearing, the Commission finds that the CCN holder is no longer providing or has failed to provide continuous and adequate service to all or part of the area located within its certificated boundaries.

Section 2001.051 of the Administrative Procedure Act (APA)¹ provides that each party in a contested case must receive an opportunity for hearing after reasonable notice of not less than 10 days, as well as an opportunity to respond to and present evidence and argument on each issue involved in the case. Under 16 TAC §§ 22.183(a)-(b), a party that fails to request a hearing within 30 days after service of notice of a CCN revocation proceeding may be subject to a default order revoking the CCN without hearing.

III. FACTUAL ALLEGATIONS

On September 23, 1991, the Texas Water Commission granted water CCN number 12601 to Jesse Grady d/b/a Horseshoe Lake Property Owners Association (Horseshoe Lake POA), the owner and operator of an investor-owned water utility in Bastrop County.² Commission records indicate that Horseshoe Lake POA's water CCN number 12601 is located approximately 15.5 miles east of downtown Bastrop, Texas, as demonstrated by the attached map of the Horseshoe Lake POA's certificated area.³

As detailed in the attached memorandum from Utility Outreach Administrator, Celia Eaves, a review of records related to water CCN number 12601 indicates that Horseshoe Lake POA is no longer providing water utility service to customers, and that any facilities previously used to provide continuous and adequate water service are no longer active.⁴ Therefore, Commission Staff asserts that Horseshoe Lake POA neither provides nor is currently capable of providing continuous and adequate water utility service to customers in the certificated area.

¹ Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

² Prior to September 1, 1986, applications for water certificates of convenience and necessity were processed by the Commission. From September 1, 1986 to September 1, 1993, applications for water certificates of convenience and necessity (CCN) were processed by the Texas Water Commission (TWC). On September 1, 1993, authority over water utilities was transferred to the Texas Natural Resource Conservation Commission (TNRCC), which changed its name to the Texas Commission on Environmental Quality (TCEQ) on September 1, 2002. On September 1, 2014, jurisdiction over water utilities, including the authority to issue and revoke a water CCN, was transferred back to the Commission.

³ See Attachment 1.

⁴ See Attachment 2.

IV. RECOMMENDATION FOR REVOCATION

Commission Staff recommends that water CCN number 12601 should be revoked under TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A) because Horseshoe Lake POA is no longer providing continuous and adequate water service to the certificated area and because the facilities necessary to provide continuous and adequate water service to the certificated area are inactive. Accordingly, Commission Staff recommends that it is in the public interest for the Commission to revoke Horseshoe Lake POA's water CCN number 12601.

V. NOTICE OF OPPORTUNITY FOR HEARING

Under 16 TAC § 22.54, Commission Staff is required to provide reasonable notice to persons affected by a proceeding in accordance with the APA. In license revocation proceedings, APA § 2001.054 requires that notice be given "by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action." Additionally, in order to revoke a CCN on a default basis, 16 TAC § 22.183(b) requires Commission Staff to provide notice by certified mail, return receipt requested, to the certificate holder's last known address in the Commission's records. If Horseshoe Lake POA fails to request a hearing, the presiding officer may issue a default order on an informal basis without a hearing on the merits in accordance with APA § 2001.056(4) and 16 TAC § 22.183.

In compliance with these notice requirements, Commission Staff will provide a copy of this petition by certified mail, return receipt requested, to Horseshoe Lake POA's last known address in the Commission's records:

Mr. Jesse Grady
PO Box 8014
Smithville, TX 78957

In accordance with 16 TAC § 22.183, Commission Staff hereby notifies Horseshoe Lake POA that the factual allegations in this petition could be deemed admitted and the relief sought herein granted by default if Horseshoe Lake POA fails to request a hearing within 30 days after service of this petition.

VI. REQUEST FOR RELIEF

Commission Staff respectfully requests that the Commission revoke water CCN number 12601 belonging to Horseshoe Lake POA in accordance with TWC § 13.254(a)(1) and 16 TAC § 24.245(d)(1)(A). In the event that Horseshoe Lake POA fails to timely request a hearing on the merits, Commission Staff respectfully requests that the Commission issue a default Final Order revoking water CCN number 12601 with no further notice to Horseshoe Lake POA in accordance with 16 TAC § 22.183.

Date: February 14, 2022

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS

**COMPLIANCE AND ENFORCEMENT
DIVISION**

Barksdale English
Division Director

/s/Van Moreland
Van Moreland
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CERTIFICATE OF SERVICE

I certify that on February 14, 2022, a copy of this document was sent via certified mail, return receipt requested, to the Commission’s last known address of Horseshoe Lake POA in accordance with 16 TAC § 22.183(b).



/s/Van Moreland
Van Moreland

ATTACHMENT 1
MAP OF CCN NO. 12601 CERTIFIED AREA

Horseshoe Lake POA Water CCN No. 12601 in Bastrop County



Water CCN

-  12601 - Horseshoe Lake POA
-  10294 - Aqua WSC



ATTACHMENT 2

SUPPORTING MEMO FROM UTILITY OUTREACH ADMINISTRATOR

Public Utility Commission of Texas

Memorandum

TO: Van Moreland, Attorney
Division of Compliance and Enforcement

FROM: Celia Eaves, Utility Outreach Administrator
Division of Utility Outreach

DATE: January 13, 2022

RE: *Review of Horseshoe Lake Property Owners Association in Bastrop County and Certificate of Convenience and Necessity Number 12601*

Mr. Jesse Grady dba Horseshoe Lake Property Owners Association (Horseshoe Lake POA) is located in Bastrop County, Texas. On September 23, 1991, Horseshoe Lake POA was granted certificate of convenience and necessity (CCN) No. 12601. Commission Staff's review of the records and information discussed in the paragraphs below indicate that Horseshoe Lake POA is no longer in business and does not possess facilities to provide continuous and adequate service to its service area. Therefore, based on 16 Texas Administrative Code (TAC) § 24.245(d)(1), Staff believes that Horseshoe Lake POA is not currently providing and is incapable of providing continuous and adequate service in its CCN area and, therefore, Staff recommends that the CCN should be revoked.

Commission Staff reviewed the information in the Commission's Water Utility Database for Horseshoe Lake POA. Commission Staff's review indicates that the water utility is inactive. The associated infrastructure, Horseshoe Lake Water System, Public Water System (PWS) No. 0110042, has been inactivated by the Texas Commission on Environmental Quality (TCEQ).

Commission Staff reviewed the TCEQ's Central Registry database. The TCEQ's Central Registry database is a centralized location for core information on regulated or other entities that own, operate, are responsible for, or are affiliated with a regulated entity. Commission Staff's review of this information indicates that Horseshoe Lake Water System, PWS No. 0110042, is inactive and is no longer in service.

Commission Staff reviewed the TCEQ's Texas Drinking Water Watch (DWW) database, a searchable database with information on PWSs, confirms that the PWS for Horseshoe Lake POA is inactive. The DWW database lists the groundwater source as "*inactive-deleted PWS*" and the distribution system as "*inactive-abandoned*". In addition, the CCN service area is dually certificated with Aqua Water Supply Corporation, CCN No. 10294, who owns and operates PWS No. 0110013.

Commission Staff's review of the Secretary of State's website did not find a record of Horseshoe Lake POA. Commission Staff's review of relevant records indicates that Horseshoe Lake POA has no affiliated active water service infrastructure, has ceased to operate, and is incapable of providing continuous and adequate service. Therefore, I recommend the cancellation of CCN No. 12601.