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PUBLIC UTILITY COMMISSION  
FILING CLERK

DOCKET NO. 46867

PETITION OF CELINA PARTNERS §  
LTD. TO AMEND MARILEE SPECIAL §  
UTILITY DISTRICT'S CERTIFICATE §  
OF CONVENIENCE AND NECESSITY §  
IN COLLIN COUNTY BY EXPEDITED §  
RELEASE §

PUBLIC UTILITY COMMISSION  
OF TEXAS

**CELINA PARTNERS, LTD'S REPLY TO MARILEE SPECIAL UTILITY DISTRICT'S  
RESPONSE TO PETITION FOR EXPEDITED DECERTIFICATION**

Celina Partners, Ltd. (the "Petitioner") files this Reply to Marilee Special Utility District's ("Marilee") Response to Petition for Expedited Decertification and Requests a Motion for Leave with respect to responding to Marilee.

**I. Background**

On February 17, 2017, Celina Partners, Ltd. filed a petition pursuant to Texas Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC), for expedited release of a 297.09-acre tract of land (the "Property") owned by Petitioner located within Marilee's water service area in Collin County. Marilee filed a response to the petition asserting that the Property is not eligible for expedited decertification under TWC § 13.254(a-5) because Marilee provides "service" to the Property, as defined under TWC § 13.002(21).

**II. Argument and Authority**

Petitioner's expedited decertification request meets the requirements of 13.254(a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC). Petitioner's property is greater than 25 acres and is located within a county designated by section 13.254(a-5). Marilee is not providing "service" to Petitioner's property as defined under TWC section 13.002(21). Specifically, any improvements that Marilee made are not dedicated solely to serving the land seeking

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decertification. Accordingly, TWC section 13.254(a-5) entitles Petitioner to an expedited release from Marilee's CCN.

Marilee asserts in their Response to Petition for Expedited Decertification that the Petitioner is not eligible for expedited decertification due to the fact that Marilee provides "service" to the Property. Marilee bases its argument on the fact that there are two water meters, a 6-inch waterline on the Property, and an 8-inch waterline adjacent to the Property.<sup>1</sup> Petitioner disputes the arguments and offers the following explanation.

**A. Amendment to Exclude 0.5 Acres of Northeast Section of the Property Cures any Alleged Deficiency**

Without waiving its right to assert that the application can and should be granted as-filed, Petitioner amends its petition to exclude 0.5 acres of the northeast section of the Property, the area of the Property that Marilee asserts water meters are located. See Affidavit ¶ 6. The remaining approximately 297.04 acres (the "Amended Property") is depicted in Exhibit D to the Affidavit of Frank G. Abbott, Jr., P.E., which represents the Amended Property. The removal of the 0.5 acres from the petition assures that the two (2) water meters that Marilee refers to are not located within the Amended Property seeking decertification.

Upon review of the submitted maps and metadata, along with the affidavit attached from Frank G. Abbott, Jr., P.E., the Public Utility Commission of Texas will see that the two (2) water meters that Marilee refers to are not included within the boundaries of the Amended Property seeking decertification. The result is consistent with *City of Midlothian*, where Midlothian amended its application to exclude 6.7 acres that included a lift station and the Public Utility Commission of Texas determined that Midlothian had met all of the elements of TWC §

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<sup>1</sup> Marilee Special Utility District's Response to Petition for Expedited Decertification (March 15, 2017)

13.254(a-5).<sup>2</sup> Furthermore, the result is consistent with the *Crystal Clear* case, which upheld the decision made by the Texas Commission on Environmental Quality to respect a landowner's discretion in defining which tracts of land are involved in the Section 13.254(a-5) proceeding. In *Crystal Clear*, the Third Court of Appeals held "section 13.254(a-5) does not contain an 'all or nothing' requirement."<sup>3</sup>

A copy of this amendment is being sent to Marilee by certified mail, return receipt requested. A CD with digital data in the state plane coordinate system with appropriate metadata is also included as Attachment B. Celina Partners, Ltd. asserts that no additional or amended notice is required.

**B. Lines On and Near a Tract Do Not Equate to Service**

Marilee's second assertion in regard to "service" is that there is a 6-inch waterline on the Property and an 8-inch waterline adjacent to the Property. Marilee made the same assertion of a waterline on the property equates to "service" in Marilee's Response to Petition for Expedited Decertification for the petition submitted by The Parks at Wilson Creek, L.P.<sup>4</sup> In *The Parks at Wilson Creek*, the Public Utility Commission of Texas determined that the 8-inch waterline on the property did not equate to "service".<sup>5</sup> A 6-inch waterline on the Property and an 8-inch waterline adjacent to the Property do not rise to the level of "service" to the Property.

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<sup>2</sup> *Petition of City of Midlothian to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Commission Staff's Response to Order No. 2 & Supplemental Recommendation at 2 (March 16, 2015)

<sup>3</sup> *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 136 (Tex. App.—Austin 2014, no writ).

<sup>4</sup> *Petition of Parks at Wilson Creek to Amend Marilee SUD's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 45184, Response to Petition for Expedited Decertification at 2 (October 23, 2015)

<sup>5</sup> *Petition of Parks at Wilson Creek to Amend Marilee SUD's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 45184, Order at 2 (December 4, 2015)

In *City of Midlothian*, the Public Utility Commission of Texas determined that land subject to that petition was not receiving service even if facilities and lines were on that land.

The Public Utility Commission of Texas offered the following explanation:

The dueling affidavits demonstrate that while facilities and lines are near and even on the 97.7-acre tract and capacity to serve that tract may exist, Mountain Peak has not committed facilities or lines to provide water to the 97.7-acre tract. Mountain Peak has also not performed acts or supplied anything to that tract.<sup>6</sup>

In *Crystal Clear*, the Texas Commission on Environmental Quality (the “Commission”) granted the Texas General Land Office’s petition for expedited release of a portion of property from the certificated area of Crystal Clear Water Supply Corporation under TWC § 13.254(a-5).<sup>7</sup> Crystal Clear Water Supply Corporation appealed the decision claiming that the property was in fact “receiving water service” under § 13.254(a-5).<sup>8</sup> The Third Court of Appeals reviewed the decision under the substantial evidence standard and held “the mere existence of water lines or facilities on or near a tract [does] not necessarily mean that tract [is] ‘receiving water service.’”<sup>9</sup>

Furthermore, the Third Court of Appeals held that “determining whether a tract is receiving water service is a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* . . . . All of these considerations are matters committed to the Commission’s sound discretion and authority to decide issues of fact.”<sup>10</sup>

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<sup>6</sup> *Petition of City of Midlothian to Amend Mountain Peak Special Utility District’s Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Order at 4 (May 1, 2015)

<sup>7</sup> *Tex. Gen. Land Office v Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 132 (Tex. App.—Austin 2014, no writ).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 140

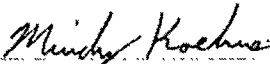
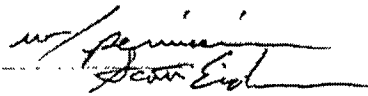
<sup>10</sup> *Id.* at 140-41

In addition to items previously stated, nothing in the affidavit submitted by Marilee indicates that the water lines underneath or adjacent to the property are for the particular purpose or committed to serving only Petitioner's property. The determination of whether land is receiving service "is essentially a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN."<sup>11</sup>

### Conclusion

Petitioner is not receiving service from Marilee. The water meters that Marilee offers as proof of service are not located within the Amended Property seeking decertification. The 6-inch waterline and 8-inch waterline that Marilee refers to are not improvements or facilities that are dedicated and committed solely to Petitioner's 297.04 acres.

Respectfully submitted,  
COATS ROSE, P.C.

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[mkoehne@coatsrose.com](mailto:mkoehne@coatsrose.com)

ATTORNEYS FOR PETITIONER  
CELINA PARTNERS, LTD.

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<sup>11</sup> *Id.* at 140-41

**PUC DOCKET NO. 46867  
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on or before April 4, 2017 in accordance with Tex. Admin. Code § 22.74.

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Attorneys for Commission Staff

  
Mindy L. Koehne 

**ATTACHMENT A**

**AFFIDAVIT OF FRANK G. ABBOTT, JR., P.E.**

**THE STATE OF TEXAS**

**COUNTY OF DALLAS**

§  
§  
§

**BEFORE ME**, the undersigned authority, personally appeared Frank G. Abbott, Jr., P.E., who, being by me duly sworn, deposed as follows:

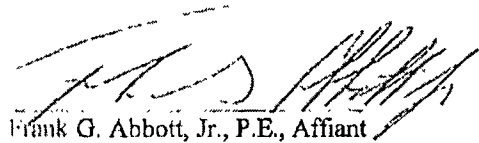
1. My name is Frank G. Abbott, Jr., P.E., I am of sound mind, capable of making this affidavit, and I am a registered professional engineer in the State of Texas and have been licensed since 1992. My license number is 72881.
2. I am a Senior Vice President at Kimley-Horn and Associates, Inc., State of Texas Registration No. F-928, located at 5750 Genesis Ct. Suite 200, Frisco, Texas, 75034.
3. Since 1987, I have been involved in real estate development projects that include designing and installing water facilities. I have worked on such projects in Denton, Collin, Dallas and Tarrant Counties for 27 years. I have been working with the Petitioner on this decertification matter. I have personal knowledge of the facts stated herein.
4. I have reviewed the Subject Property and water service maps provided by Marilee Special Utility District ("Marilee") in Marilee's Response to Petition for Expedited Decertification and I have knowledge of the facts stated herein.
5. Based on our experience as Consulting and District Engineers for master planned communities throughout Dallas-Fort Worth region, it is our opinion that Marilee's improvements and facilities are not dedicated solely to serve Petitioner's property. It is our opinion that Marilee's improvements are intended to serve the general service area.



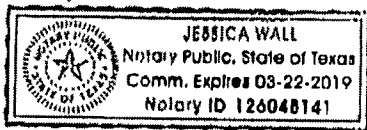
6. Celina Partners, Ltd. is amendable to amending the Petition to remove the approximately 0.5 acres of the northeast section of the Property from the Petition. If removed, the Property subject to the Petition is approximately 297.04 acres ("Amended Property"). Marilee provides no service to the Amended Property. The attached **Exhibit D** has been prepared on behalf of Celina Partners, Ltd. by Kimley-Horn and Associates, Inc. to depict the Amended Property and illustrate the area where Marilee asserts water meters are located has been removed and its depiction of the Amended Property is accurate.

7. This affidavit is in support of de-certifying Marilee's Water Certificate of Convenience and Necessity over Petitioner's land pursuant to Section 13.254(a-5), *Water Code* and 16 TAC Section 24.113(r).

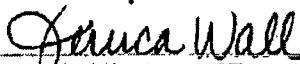
SIGNED on this 3<sup>rd</sup> day of April, 2017.

  
Frank G. Abbott, Jr., P.E., Affiant

**SWORN TO and SUBSCRIBED TO BEFORE ME** by Frank G. Abbott, Jr., P.E., the above identified affiant, on April 3<sup>rd</sup>, 2017



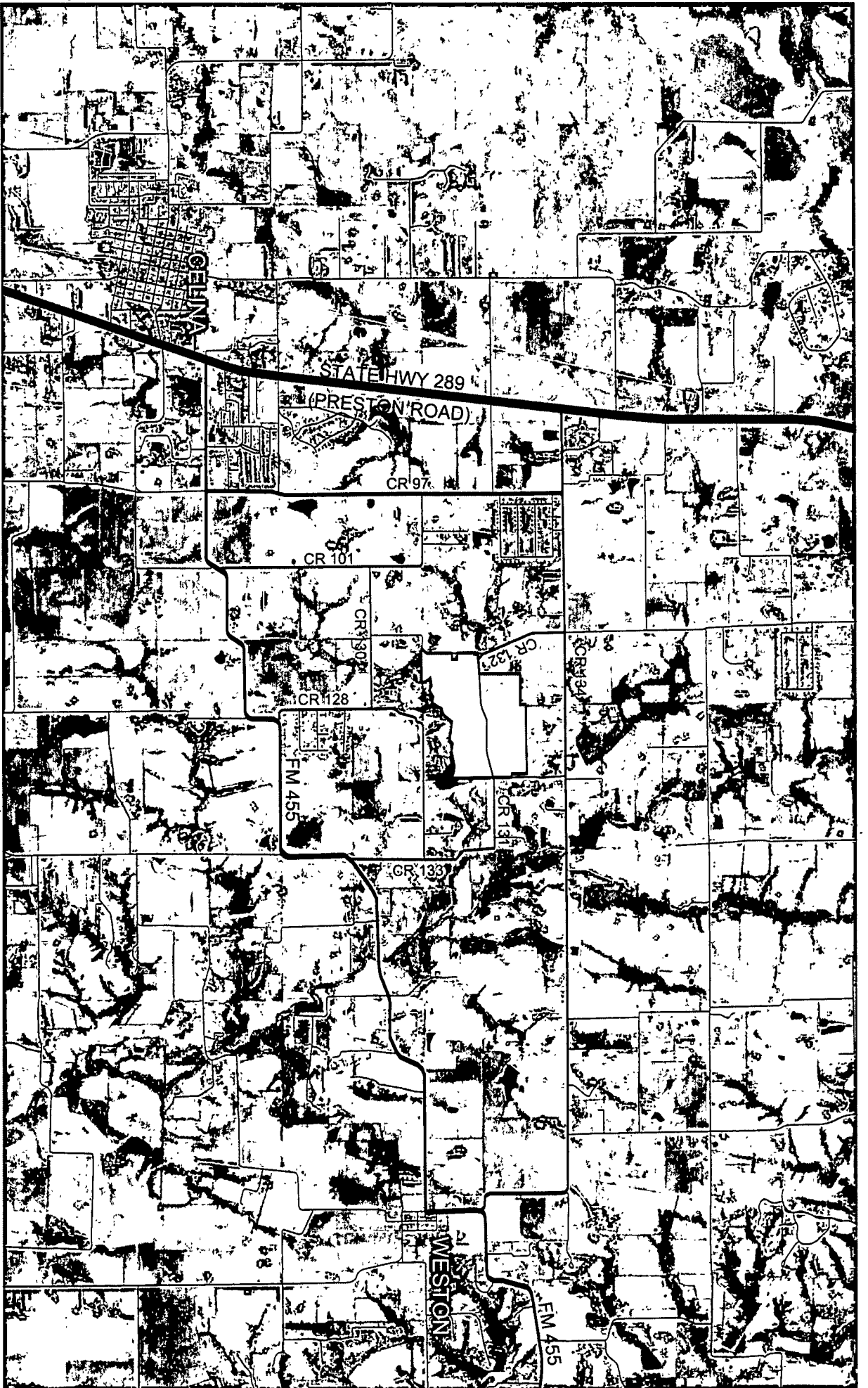
(NOTARY SEAL)

  
Notary Public, State of Texas

## Exhibit D —Map Showing Amended Property

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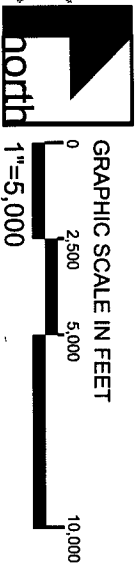




LOCATION EXHIBIT

# Celina Partners, Ltd. Tract

COLLIN COUNTY, TEXAS



**Kimley»Horn**

5750 Commerce Court  
 Suite 200  
 Plano, Texas 75034  
 972-335-5560  
 State of Texas Registration No. F-928  
NOT BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF KIMLEY-HORN

# **OVERSIZED MAP(S)**

**To View  
OVERSIZED Map**

**Or**

**Documents**

**You can call CENTRAL RECORDS**

**Main Line**

**(512) 936-7180**

# CD ATTACHED

PLEASE SEE CENTRAL RECORDS

FOR ANY QUESTIONS

PLEASE CALL **CR** MAIN LINE

(512) 936-7180

**ATTACHMENT B**

**Petition for Expedited Release**

**Celina Partners, Ltd.**

**Digital Data, State Plane Coordinate System**

**With Metadata**