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DOCKET NO. 50404

2020 DEC -8 PM 3: 07

PETITION OF STERLING DEASON §
O'DONNELL AND DARWIN DEASON, §
CO-TRUSTEES OF THE STERLING §
DEASON O'DONNELL DD 2012 TRUST §
UNDER AGREEMENT OF THE DD 2014- §
B GRANTOR RETAINED ANNUITY §
TRUST TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE §
OF CONVENIENCE AND NECESSITY IN §
COLLING COUNT BY EXPEDITED §
RELEASE §

PUBLIC UTILITY COMMISSION
PROPERTY AND PUBLIC UTILITIES DIVISION
FILING CLERK

OF

TEXAS

PETITIONER'S BRIEF IN RESPONSE TO ORDER NO. 7

Sterling Deason O'Donnell and Darwin Deason, co-trustees of the Sterling Deason O'Donnell DD 2012 Trust under agreement of the DD 2014-B Grantor Retained Annuity Trust (the "Petitioner") files this Brief in Response to Order No. 7 and in support thereof, respectfully shows as follows:

I. Background and Procedural Status

On January 2, 2020, Petitioner filed its petition (the "Petition") for expedited release of approximately 260.372 acres of property (the "Property" or "Requested Area") from Marilee SUD's water Certificate of Convenience and Necessity ("CCN") No. 10150 in Collin County, under Texas Water Code §13.2541(b) and 16 Texas Administrative Code §24.245(l).

On February 11, 2020, Marilee SUD ("Marilee") filed its Response to the Petition asserting, in part, that it provides "service" to the Requested Area and requesting dismissal. Petitioner replied, with accompanying proof, that there is no service to the Property. Public Utility Commission ("PUC") Staff filed its Recommendation on Final Disposition recommending that the Petition be approved on June 26, 2020. On November 19, 2020 the ALJ entered an Order denying Marilee's Motion to Dismiss. Order No. 7 was issued on November

24, 2020 requiring “clarification from the parties as to the specifics of where Marilee’s infrastructure lies in relation to: (1) the entire tract owned by petitioner; and the specific acreage for which petitioner seeks release.” As an initial matter, Petitioner owns an approximately 266-acre tract of land in Collin County (the “Entire Acreage”). The Entire Acreage is not the subject of this Petition; rather it is the 260.372 Requested Acreage identified by the maps, survey, and metes and bounds description attached to the Petition that is the proper subject of this Petition.

II. Argument and Authority

Petitioner’s request for expedited release from CCN No. 10150 meets the requirements of Texas Water Code Section 13.2541(b) and 16 Texas Administrative Code Section 24.245(l). The Requested Acreage is greater than twenty-five (25) acres and is located within a qualifying county. Additionally, the Requested Acreage is not receiving “service,” as defined under Texas Water Code Section 13.001(21). While Marilee argues that it is providing “service” to portions of the Entire Acreage, that is irrelevant to this inquiry. The statutory provisions apply only to the property identified in the petition - the Requested Acreage.

A. Marilee SUD does *not* provide service to the Requested Acreage

The Requested Acreage contains approximately 260.372 acres of contiguous property, as shown by the mapping information included in Petitioner’s Supplemental Mapping Information. Marilee argues that the Petition should be denied because it provides “service” to the Requested Area. The question of “service” relates the following: (1) an 8-inch waterline to the south of the Requested Acreage; (2) a 2-inch waterline running off the 8 inch line; (3) a small line running off the 2-inch line that connects to meter number 309; (4) a 4-inch waterline running through the northwestern corner of the Entire Acreage; (5) meter 721; and (6) a 6-inch waterline running east

of the Entire Acreage and meter 1528 (collectively, the “Facilities”). The Facilities are addressed below:

1. The Eight-Inch Waterline

The referenced eight-inch waterline merely crosses the Requested Acreage along the south portion. *See* Affidavit in Support of Brief Responding to Order No. 7, attached as Exhibit “A.”

2. The Two-Inch Waterline Running off the Eight-Inch Waterline

The referenced two-inch waterline is neither located in the Entire Acreage nor the Requested Acreage. It lies to the east of the Entire Acreage and across the road that abuts the Entire Acreage. *See id.*

3. The Small Waterline Running off the Two-Inch Waterline to Meter No. 309

This small line travels from the two-inch waterline referenced in the preceding paragraph underneath the road that abuts the Entire Acreage and connects to meter 309 which, is located in the Entire Acreage and not within the Requested Acreage. The two-inch water line and meter 309 are not located within the Requested Acreage. *See id.*

4. The Four-Inch Waterline

The referenced four-inch waterline crosses the Requested Acreage and the Entire Acreage along the northwest portion. *See id.*

5. Water Meter No. 721 and the Lot it Serves

The referenced water meter 721 is neither on the Entire Acreage nor the Requested Acreage. The map attached as Exhibit B to Marilee Special Utility District’s Response to Petition for Expedited Release, filed February 11, 2020, is erroneous regarding the location of meter 721. The correct location of meter 721 is the meter designated as “Cavness” off of the 4

inch line to the west of the Property, as shown on the map attached as Exhibit B to Marilee Special Utility District's Response to Petition for Expedited Release, filed February 11, 2020. As shown on Marilee Special Utility District's Exhibit B, the "Cavness" meter 721 is neither on the Entire Acreage nor the Requested Acreage. There is a second marking of a meter 721 on Marilee Special Utility District's Exhibit B in the northwest corner and included within the Requested Acreage, but that meter does not exist and is incorrectly marked. *See id.* at Exhibit 1.

6. The 6-inch Waterline and Meter 1528

The referenced six-inch waterline is not in the Entire Acreage or Requested Acreage. Similar to the two-inch waterline discussed above, this waterline is to the east of the Entire Acreage and across the road that abuts the Entire Acreage. *See id.* Similar to the two-inch line and meter 309, there is a small line that travels underneath the road from the 6-inch line to meter 1528, and meter 1528 is located in the Entire Acreage and not in the Requested Acreage.

B. The Facilities locations do not amount to "service" to the Requested Acreage or Entire Acreage.

Service is defined as "any act performed, anything furnished or supplied, and any facilities or lines committed or used by the retail public utility in the performance of its duties." *See* Texas Water Code § 13.002(21); *see also* 16 Tex. Admin. Code § 24.3(44). In *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, the court explained that the determination of whether a tract was receiving water 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* [(the Requested Acreage; not the Entire Acreage)] or has performed acts or supplied anything *to the [Requested Acreage]*." 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied) (emphasis added). Additionally, "the mere existence of water

lines or facilities on or near a tract would not necessarily mean that a tract was ‘receiving water service.’” *See Id.*

As noted above, the Facilities are limited to areas outside the Requested Acreage or Entire Acreage, or merely cross the Entire Acreage in two instances – this does not amount to the Facilities providing service to the Requested Acreage or *particular tract*. Moreover, the Facilities are not *committed* to providing water to the Requested Acreage, as further required under *Crystal Clear*. The mere fact that the Facilities are located along or near the Requested Acreage or Entire Acreage does not mean the Requested Acreage is receiving service from Marilee. PUC Staff strongly agreed with Petitioner’s position in its Recommendation that the Petition be Approved and stated:

First, the three active meters are not within the requested area. As the Petitioner indicates, the three active meters are within the metes and bounds of the greater property, but the requested area does not include the tracts or addresses where those meters are located and provide service. As such, the active meters do not meet the standard for the requested area to be considered to be receiving service. Second, the three water lines running through the property and the 6" water line running adjacent to the property have not been shown to be committed to providing water to the particular tract. Through its various pleadings, Marilee SUD has not demonstrated that the three water lines and the adjacent 6" water line are committed to the particular tract that comprises the requested area. In *Crystal Clear*, the CCN holder raised the issue of existing water lines and facilities. The court looked to whether those lines or facilities were constructed for the purpose of providing water to the property in question. Finding that the facilities were constructed to serve the greater area, and not the particular property, the court determined that the facilities were not committed to the particular tract of land and therefore, the property in question was not receiving service. Similarly, Marilee SUD does not demonstrate that the water lines were installed for the purpose of providing water to the requested area. As such, they cannot be considered to be committed to the particular property and the requested area is not, therefore, receiving water service from Marilee SUD. Accordingly, Staff recommends that the requested area is not receiving water service.

PUC Staff’s Recommendation of Final Disposition.

This analysis makes it clear that the Facilities locations do not amount to “service” to the Requested Acreage or Entire Acreage.

III. Conclusion

The Petitioner meets the requirements of Texas Water Code Section 13.2541(b) and 16 Texas Administrative Code Section 24.245(l). The Requested Acreage is greater than 25 acres and is entirely within Collin County, a qualifying county. Additionally, the Requested Acreage is not receiving service, and Marilee SUD has failed to meet the standard provided under *Crystal Clear* that the Facilities are committed or used in providing water to the Property. See 449 S.W.3d at 140. Therefore, under Section 13.2541(c), the Petition should be granted.”

Respectfully submitted,

COATS ROSE, P.C.

By:



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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following attorney of record on or before December 8th, 2020 in accordance with 16 Tex. Admin. Code § 22.74(c).

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Joshua A. Bethke/Natalie. Scott

Exhibit A – Affidavit of Sterling Deason O’Donnell

DOCKET NO. 50404

PETITION BY STERLING DEASON	§	BEFORE THE
O'DONNELL AND DARWIN DEASON,	§	
CO-TRUSTEES OF THE STERLING	§	
DEASON O'DONNELL DD 2012 TRUST	§	
UNDER AGREEMENT OF THE DD 2014-B	§	
GRANTOR RETAINED ANNUITY TRUST	§	PUBLIC UTILITY COMMISSION
DATED SEPTEMBER 5, 2012 FOR	§	
EXPEDITED RELEASE FROM WATER	§	
CCN NO 10150 HELD BY MARILEE	§	
SPECIAL UTILITY DISTRICT IN	§	
COLLIN COUNTY	§	OF TEXAS

AFFIDAVIT IN SUPPORT OF BRIEF RESPONDING TO ORDER NO. 7

STATE OF TEXAS §

COUNTY OF COLLIN §

BEFORE ME, the undersigned notary, personally appeared Sterling Deason O'Donnell, the affiant, a person who is known to me. After administering an oath, the affiant testified that:

1. "My name is Sterling Deason O'Donnell. I am over the age of eighteen years, of sound mind, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am Co-Trustee of the Sterling Deason O'Donnell DD 2012 Trust under agreement of the DD 2014-B Grantor Retained Annuity Trust Dated September 5, 2012 (the "Trust"), the Petitioner in the above-captioned matter. The Trust owns approximately 260.372 acres of land (the "Requested Acreage" or "Property"), which is located within the boundaries of Water CCN No. 10150 issued to Marilee Special Utility District. The Property is located in Collin County, Texas, is over 25 acres in size, and consists of contiguous tracts of land.

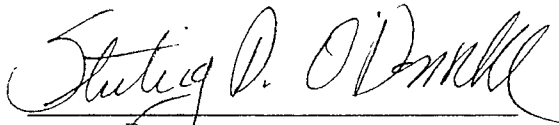
3. The Requested Area is not receiving water service from Marilee Special Utility District or any other water service provider. The Trust has not requested water service from Marilee Special Utility District or paid any fees or charges to initiate or maintain water service, and there are no billing records or other documents indicating an existing account for the Property.

4. I have read the Brief in Response to Order No. 7, and the statements contained in it are true and correct. With regard to meter 721, it is neither on the Entire Acreage (as defined in Order No. 7) nor the Requested Acreage. The map attached as Exhibit B to Marilee Special Utility District's Response to Petition for Expedited Release, filed February 11, 2020, is erroneous regarding the location of meter 721. The correct location of meter 721 is the meter designated as "Cavness" off of the 4 inch line to the west of the Property, as shown on the map attached as

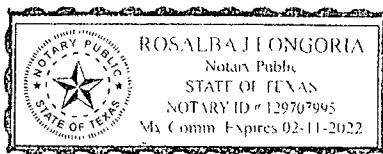
Exhibit B to Marilee Special Utility District's Response to Petition for Expedited Release, filed February 11, 2020. As shown on Marilee Special Utility District's Exhibit B, the "Cavness" meter 721 is neither on the Entire Acreage nor the Requested Acreage. There is a second marking of a meter 721 on Marilee Special Utility District's Exhibit B in the northwest corner, but that meter does not exist and is incorrectly marked. See map attached as Exhibit 1.

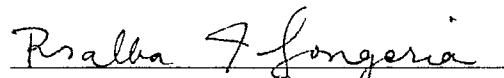
5. The attached records are kept by the Trust in the regular course of business.
6. It is the regular practice of the Trust for an employee or representative with knowledge of the act, event, incident, order, transaction, invoice, condition, photo, video recording, audio recording, opinion, or diagnosis, to make the record, or to transmit information thereof to be included in the records.
7. Exhibit 1 attach is the original or exact duplicate of the original.

FURTHER AFFIANT SAYETH NOT.


Sterling Deason O'Donnell

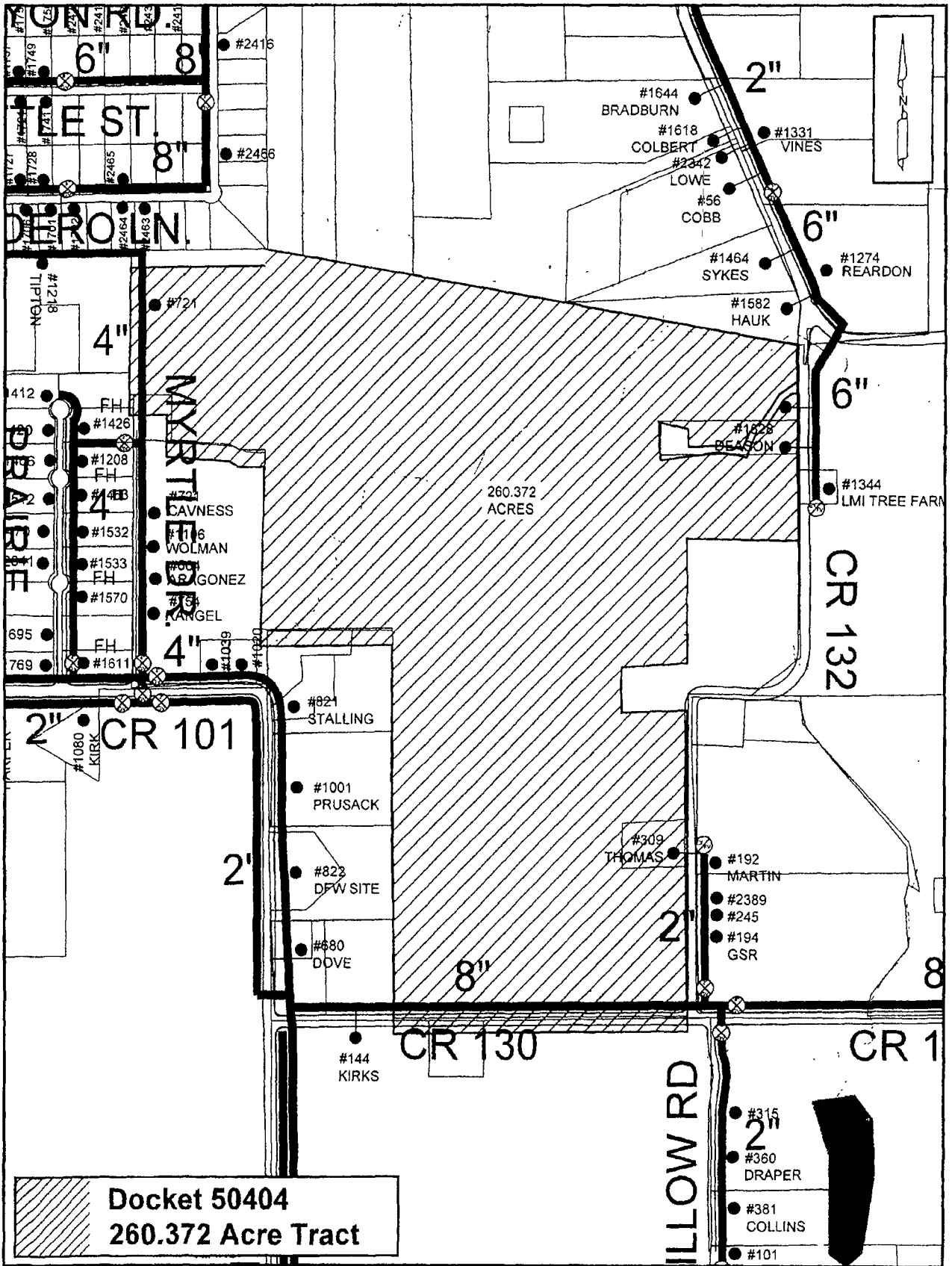
SWORN TO AND SUBSCRIBED TO BEFORE ME by Sterling Deason O'Donnell on December 4, 2020.




Rosalba J Longoria
Notary Public, State of Texas

**Exhibit B to Marilee Special Utility District's Response to Petition for Expedited Release,
filed February 11, 2020**

014988.000001\4842-0859-4643.v2



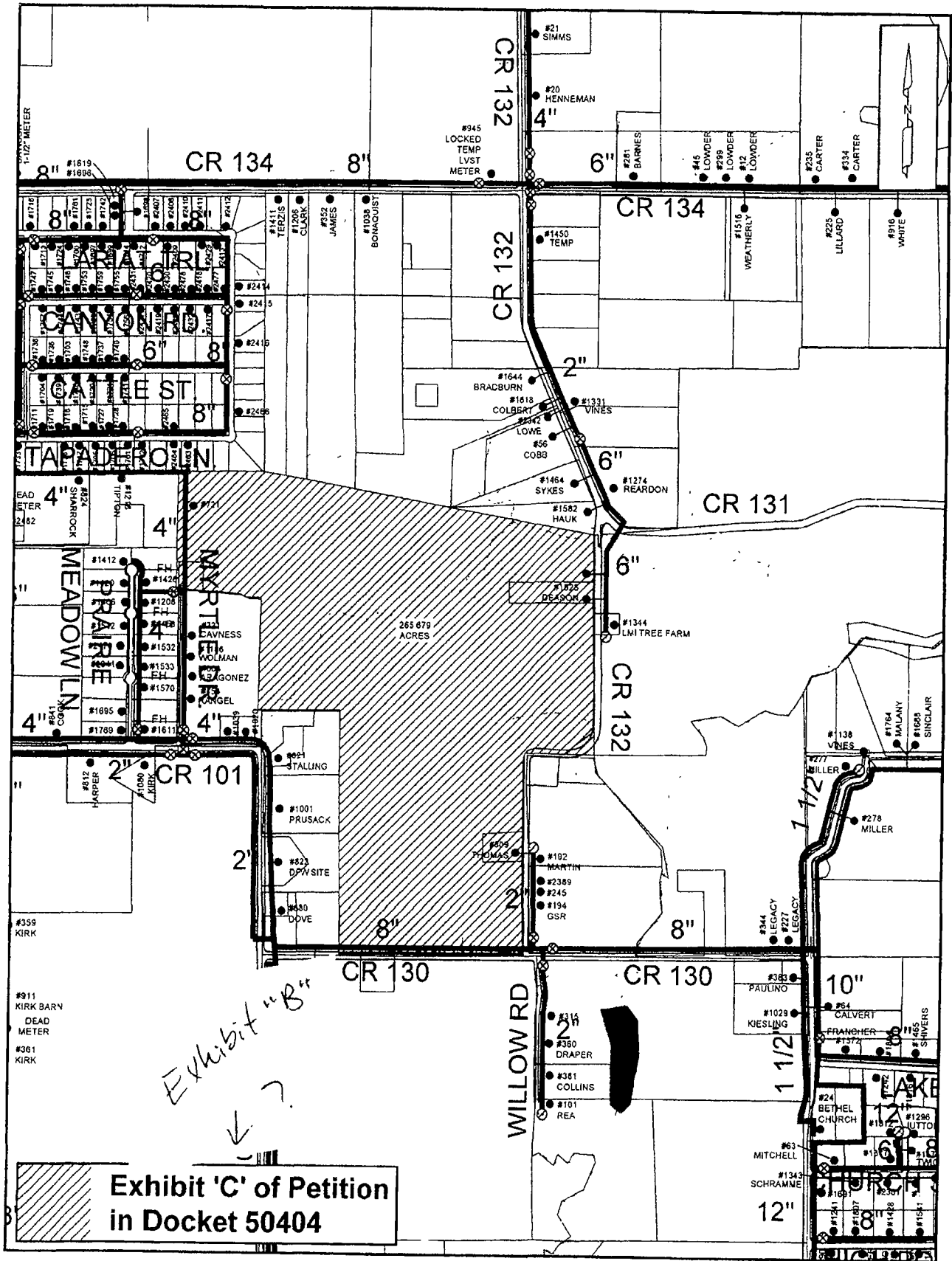


Exhibit 'C' of Petition
in Docket 50404

Exhibit "B"
↓ ?

Exhibit 1

014988.000001\4842-0859-4643.v2

J. BOSS SURVEY, ABSTRACT NO. 52
G. JOY SURVEY, ABSTRACT NO. 488



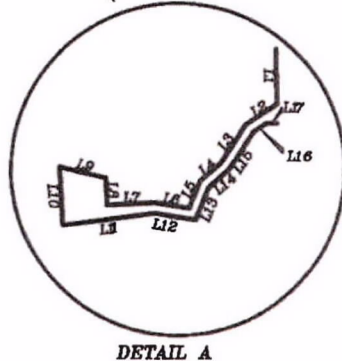
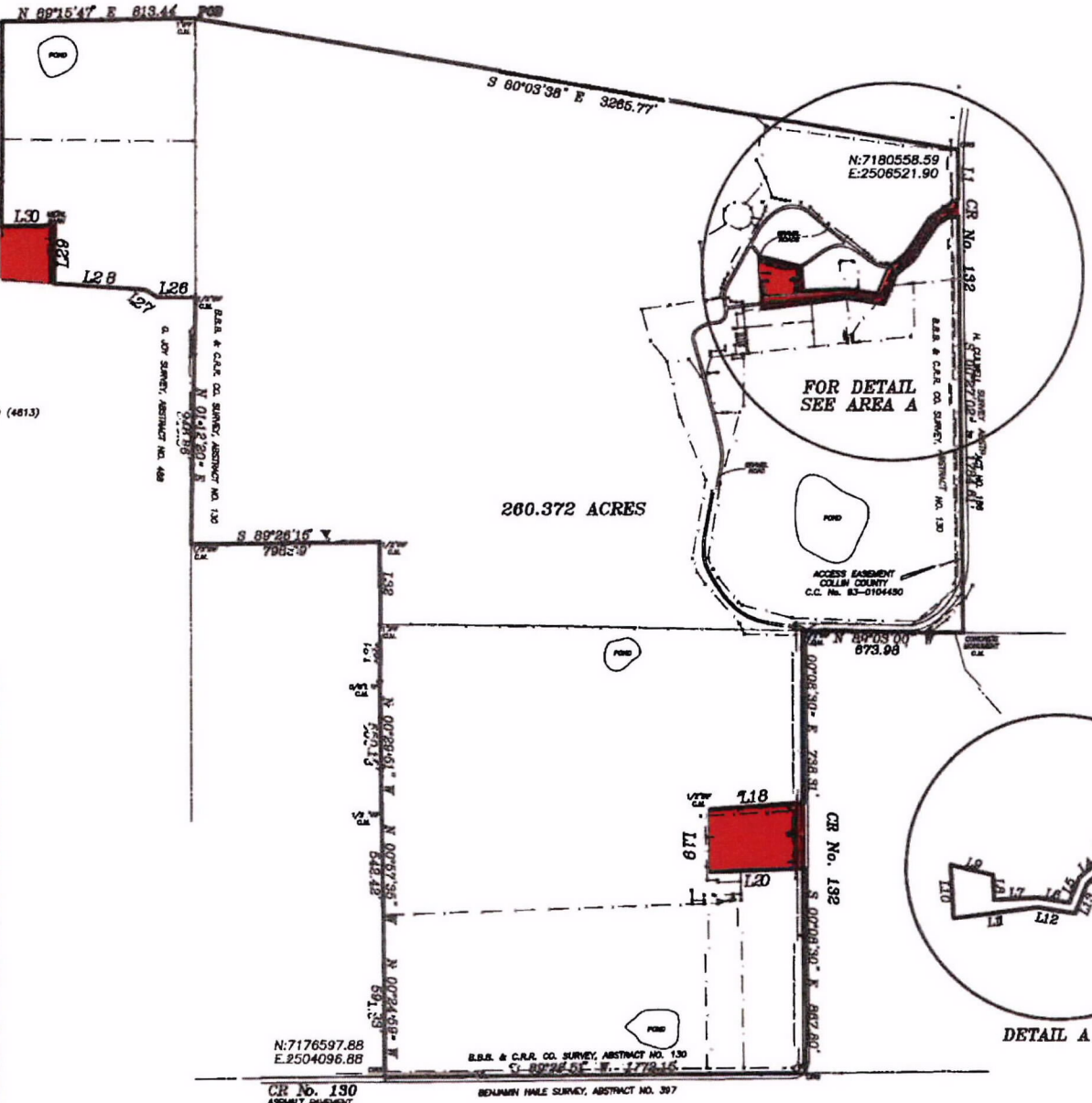
NORTH
SCALE 1" = 300'

LEGEND

- C.M. = CONTROLLING MONUMENT
- CRS = CAPPED 1/2" IRON ROD SET STAMPED (4813)
- IRF = IRON ROD FOUND
- ⊥ = POWER POLE
- J- = GUYWIRE
- ◆ = SIGN
- = ELECTRIC METER
- = WELL
- ⊙ = WATER METER
- ⊞ = AC UNIT
- * = LIGHT POLE
- ☐ = TELEPHONE BOX

AREA NOT PART OF SITE

LINE	BEARING	DISTANCE
1	S 00°27'02" E	213.37
2	S 56°45'21" W	144.08
3	S 32°47'46" W	178.77
4	S 48°28'19" W	104.37
5	S 21°57'01" W	113.29
6	N 80°58'48" W	134.43
7	S 87°29'46" W	186.90
8	N 03°13'17" W	104.31
9	N 78°18'39" W	182.28
10	S 03°07'15" E	224.79
11	N 82°49'11" E	359.80
12	S 80°58'48" E	160.80
13	N 21°57'01" E	135.73
14	N 48°26'39" E	100.45
15	N 32°47'46" E	175.66
16	N 57°03'49" E	81.71
17	N 89°21'28" E	40.33
18	S 86°08'28" W	397.83
19	S 00°26'17" E	285.54
20	N 87°55'08" E	395.85
21	N 00°24'59" W	591.33
22	N 00°57'35" W	542.42
23	N 00°29'51" W	550.18
24	N 00°38'01" E	247.35
25	N 00°21'11" W	352.84
26	S 89°40'54" W	159.40
27	N 57°15'30" W	82.20
28	N 86°53'33" W	382.17
29	N 00°25'57" E	247.69
30	S 89°14'02" W	224.34



SURDUKAN SURVEYING, INC.
P.O. BOX 126
ANNA, TEXAS 75409
(972) 924-8200
FIRM NO. 10069500

PUD EXHIBIT
260.372 ACRES
B.B.B. & C.R.R. CO. SURVEY
ABSTRACT NO. 130
G. JOY SURVEY
ABSTRACT NO. 488
COLLIN COUNTY, TEXAS

SCALE 1" = 300'

DATE: DECEMBER 20, 2019

JOB No. 2018-143