



Filing Receipt

Received - 2021-10-07 02:07:11 PM

Control Number - 52101

ItemNumber - 27

DOCKET NO. 52101

PETITION OF CCD-NORTH SKY, LLC TO AMEND MARILEE SPECIAL UTILITY DISTRICT’S CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
---	----------------------------	--

MARILEE SPECIAL UTILITY DISTRICT’S VERIFIED RESPONSE TO THE FIRST AMENDED PETITION FOR EXPEDITED RELEASE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARX:

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (“Marilee”) and files this Verified Response (“Response”) to CCD-North Sky, LLC’s (“Petitioner”) First Amended Petition for Expedited Release Pursuant to Texas Water Code § 13.2541 (“Amended Petition”), filed in this docket, and respectfully shows as follows:

I. BACKGROUND

1. On May 10, 2021, Petitioner filed a Petition seeking to use the Public Utility Commission’s (the “Commission”) streamlined expedited release process, Texas Water Code (“TWC”) § 13.2541, to decertify 219.976 acres of property (the “Property”) from Marilee’s from the water utility service area Marilee serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas, pursuant to TWC § 13.2541 and 16 TAC § 24.245(h).¹ The Petition alleged that the Property was greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.²

2. On May 24, 2021, Marilee filed a Motion to Intervene.³ The Commission granted the Motion to Intervene on June 9, 2021.⁴

¹ Petition at 1 (May 10, 2021).
² *Id.* at 2.
³ Motion to Intervene (May 24, 2021).
⁴ Order No. 2 – Granting Intervention (June 9, 2021).

3. On June 9, 2021, Commission Staff filed its Recommendation on Administrative Completeness. Noting multiple errors and inconsistencies in Petitioner's maps of the Property, Commission Staff recommended that the Petition be found administratively incomplete. On June 11, 2021, the Commission entered Order No. 3, in which it found the Petition administratively incomplete, and gave Petitioner until July 7, 2021, to cure the deficiencies identified by Commission Staff.⁵

4. Order No. 1 permitted Marilee to file a response to the Petition, verified by notarized affidavit, by June 16, 2021. Order Nos. 2 and 3 did not extend this deadline. Thus, Marilee filed a verified response to and motion to dismiss the Petition on June 16.⁶

5. The ALJ requested responses from Commission Staff and Petitioner to Marilee's verified response and motion to dismiss. Petitioner stated in its response that Marilee's motion to dismiss should be denied because, among other reasons, Petitioner would carve out the part of the property where Marilee's active meter is located and provide supplemental maps and amend its Petition to reflect the change.⁷ After considering all pleadings and ordering supplemental mapping from the parties,⁸ the ALJ denied Marilee's motion to dismiss the Petition.⁹ A primary reason for denying the motion to dismiss was that, "Commission Staff has reviewed and confirmed that North Sky's amended petition removed a portion of the property in the general area of the residence receiving service from the requested area."¹⁰

6. On July 6, 2021, Petitioner filed its Amended Petition to extract approximately 219.67 acres of property ("Requested Area") from Marilee CCN No. 10150 in Collin County, Texas.¹¹ The only difference between the Petition and the Amended Petition was Petitioner's carving out of 0.306 acres of the Property that was at issue in the Petition.

⁵ Order No. 3 – Finding Petition Incomplete and Establishing an Opportunity to Cure (June 11, 2021).

⁶ Marilee Special Utility District Response to and Motion to Dismiss Petition (June 16, 2021).

⁷ See Petitioner's Response to Marilee Special Utility District's Motion to Dismiss at 3-4 (June 29, 2021) stating that Petitioner would provide "updated mapping information" such that the area sought to be decertified "will not include any existing meters or residences."

⁸ Order No. 6 – Requiring New Map and Responses (July 20, 2021).

⁹ See Order No. 9 – Denying Motion to Dismiss (Sept. 14, 2021).

¹⁰ *Id.* at 2.

¹¹ First Amended Petition by CCD-North Sky, LLC for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County (July 6, 2021).

7. On July 28, 2021, Marilee filed supplemental mapping of the Requested Area, which show that Marilee has an “active two-inch waterline located within the Property and Marilee has a residential meter, Meter #241, located within the Property that actively supplies water to a billed residential connection located at 3170 North Louisiana Drive, Celina, Texas 75009, and remains on today.”¹² Petitioner filed a response, stating that Marilee’s supplemental mapping improperly “reflect the Overall Property,” and that Petitioner’s Amended Petition “contain the proper mapping.”¹³ Marilee filed additional supplemental mapping on August 17, 2021, in response to Commission Staff’s request, after which Commission Staff and the ALJ found mapping sufficient.¹⁴

8. The ALJ found the Amended Petition to be administratively complete on September 15, 2021.¹⁵ The ALJ ordered Marilee and any other intervenor to file their verified response to the Amended Petition by October 7, 2021.¹⁶ Marilee’s verified response is timely filed.

II. RESPONSE

A. Streamlined Expedited Release Under TWC § 13.2541

9. Marilee is a retail public utility and political subdivision of the State of Texas and the holder of CCN No. 10150. Marilee is the successor of the CCN and all plant, equipment and customers of the former Gunter Rural Water Supply Corporation (“Gunter”). Marilee currently provides retail water service to approximately 2,592 active connections.

10. Petitioner is CCD North Sky, LLC, a Texas limited-liability company.

11. Before discussing why decertification is not permitted in this case, it is helpful to generally discuss the procedure for decertification from a CCN by streamlined expedited release.¹⁷

¹² Marilee Special Utility District’s Supplemental Mapping at 2 & Exhibit A, Affidavit of Eddy Daniel, at ¶ 3 (July 29, 2021).

¹³ Petitioner’s Response to Marilee Special Utility District’s Supplemental Mapping at 1 (Aug. 11, 2021).

¹⁴ Marilee Special Utility District’s Second Supplemental Map (Aug. 17, 2021); Commission Staff’s Comments on Mapping (Aug. 27, 2021); Order No. 8 – Finding Mapping Sufficient, Requiring Commission Staff Recommendations (Aug. 31, 2021).

¹⁵ Commission Staff’s Supplemental Recommendation (Sept. 13, 2021).

¹⁶ Order No. 10 – Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Sept. 15, 2021).

¹⁷ Streamlined expedited release was created in 2019 to be a simplified offshoot of expedited release that better codified the way CCN holders should be compensated for property decertified from their CCN service area.

To obtain the release of property from a CCN holder under TWC § 13.2541, a landowner must demonstrate with affirmative evidence 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.¹⁸ The statutory mechanism allows landowners who meet those criteria to decertify their property from the service area of the CCN holder, depriving the CCN holder of the opportunity to serve that landowner's property.

12. Public policy considerations are important in these cases, on both sides. On one hand, it is important for landowners to have the right to choose a new CCN holder if the CCN holder for their geographic area is not or cannot provide service to their property.¹⁹ On the other hand, it is important for a CCN holder who has invested in the infrastructure to readily provide service to be able to preserve their customer base. Just as it would be poor policy to force a landowner to remain in a CCN service area which is not and cannot serve their property, it is also poor policy to remove property from a CCN service area that is providing or can readily provide service to the property.²⁰

13. In order to foster and perpetuate these important public policies, the Texas legislature created, among other decertification mechanisms in the TWC, the expedited release process, located at TWC § 13.254, and the streamlined expedited release process, located at TWC § 13.2541, together with 16 Texas Administrative Code ("TAC") § 24.245(h). The process, when properly followed, honors both the policy of providing an efficient and cost-effective

See, e.g., Acts 2019, 86th Leg., R.S., Ch. 688, General and Special Laws of Texas (enrolled bill to be codified at TWC § 13.2541). The policies considered by the legislature regarding the substance of both TWC §§ 13.254 and 13.2541 are best reflected by the legislative history for TWC § 13.254, which was enacted in 2005 in House Bill 2876.

¹⁸ TWC § 13.2541(b).

¹⁹ *See, e.g.*, House Comm. Bill Analysis at 4-5, C.S.H.B. 2876, 79th Leg., R.S. (May 11, 2005) (noting in support that the bill would "would protect private property rights by unwanted imposition of a CCN on a landowner" and "address problems where residents of MUDs with substandard service are unable to receive improvements" due to the CCN holder's exclusive right to provide service in its area).

²⁰ *See, e.g., id.* at 4-5 (stating that TWC § 13.254 was designed to prevent "abuses of CCN authority" where "a landowner looking to develop his or her land might find that although the land was in a CCN, that utility was unable or unwilling to extend service to his or her property." Section 13.254 was not meant to arbitrarily deprive CCN holders of property they are actively servicing.)

decertification process for a landowner who is not or cannot receive service, and the policy of protecting the CCN service area of a utility that is or can readily provide service to the property.

i. What Is “Service” Under TWC § 13.2541?

14. The Water Code authorizes the decertification or expedited release only for property “that is not receiving water or sewer service.”²¹ The Water Code broadly defines “service” as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties...to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.”²²

15. Whether or not a tract is “receiving water or sewer service” under TWC § 13.2541 is a fact question. According to the plain text of that definition and how both the Commission and Texas courts have interpreted it, the question of whether or not a tract is receiving “service” is not dependent on whether water or sewer is being used or has been requested on the tract sought to be decertified. Instead, a tract is “receiving” water or sewer service if either of the following conditions are met:

- Any facilities or lines are committed or used in the performance of the CCN holder’s duties as a retail public utility providing service to the property; or
- Any lines are committed or used in the performance of the CCN holder’s duties as a retail public utility.²³

16. The inquiry into whether a tract is “receiving service” requires the Commission to consider any lines or facilities committed to providing water to the tract of land. As defined by TWC § 13.002(9), “facilities” includes “all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled,

²¹ TWC § 13.2541(b).

²² TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

²³ *See id.*; *see also Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 137 (Tex. App.—Austin 2014, pet. denied).

furnished, or supplied for, by, or in connection with the business of any retail public utility.” In the Austin Court of Appeals’ decision in *Texas General Land Office v. Crystal Clear Water Supply Corp.*, facilities or lines “used” or “committed” to providing such service are sufficient to cause a property to “receive service” under the statutory and regulatory definition.²⁴ But where water lines are actually present within a tract and “committed” to the property in that manner, the tract is unquestionably “receiving service,” so a streamlined expedited release petition may not be granted under TWC § 13.2541 when such facts are present.

ii. What Is Petitioner’s Burden of Proof?

17. Under the Commission’s procedural rules, the petitioner in a proceeding brought under TWC § 13.2541 has the burden to prove that the area requested to be decertified is not receiving service.²⁵ It is improper for the Commission to decertify property from a CCN when a petitioner fails to set forth facts to establish that the property is not receiving service, and it is improper for the Commission to grant a petition for decertification where the property is or can readily receive service. It is also improper for the Commission to reverse the burden of proof and decertify property unless the CCN holder establishes that the property is receiving or can readily receive service. In this case, for example, Petitioner has provided no facts to support the sworn contention that the property is not receiving or cannot receive service, when in fact has an active two-inch waterline located within the Property that is readily available to serve the Requested Area, and Marilee has a meter, Meter #241, located within the Property that currently supplies water to a billed residential connection located at 3170 North Louisiana Drive, Celina, Texas 75009. If Petitioner had provided a statement of facts, Petitioner would have to acknowledge that Marilee either serves or is readily able to serve the Requested Area with its existing waterlines and facilities.

18. The proper analysis of a Petitioner’s burden is reflected in *Johnson County Special Utility District v. Public Utility Comm’n of Texas*.²⁶ The petitioner in that case provided a detailed affidavit by a land broker on the grounds of the property to be decertified, in which the broker

²⁴ *Crystal Clear*, 449 S.W.3d at 140.

²⁵ 16 TAC § 24.245(h) (requiring that a Petitioner provide a “statement of facts that demonstrate that the property is not currently receiving service.”).

²⁶ No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App—Austin May 11, 2018, pet. denied) (mem. op.).

stated that he searched the property, which was inhabited, for several hours and found no district water meters or facilities, only “two shuttered ground well heads” and a “small, elevated water storage tank . . . implying that any dwelling on the [p]roperty required that water pressure be generated locally and not from a retail water utility service provider.”²⁷ The Commission, based on these facts, properly decertified the property as having not water service from at least 2005.²⁸

19. In this case, Petitioner has not set out a recitation of facts similar to that in the *Johnson County* case to prove that it is not receiving service—instead, Petitioner has provided a conclusory one-page affidavit.²⁹ Petitioner has not met its burden of proof to decertify the Property under TWC § 13.2541.

20. Marilee is currently defending against the decertification of 17 tracts of land in its service area, representing a total acreage of approximately 4,519.839 acres.³⁰

²⁷ *Id.* at **6-7.

²⁸ *Id.* at **9-10 (citing Commission’s Finding of Fact No. 24).

²⁹ Had Petitioner provided a proper recitation of facts, Petitioner would have had to admit that the Requested Area is wholly within a tract that currently receives service from the Meters and that Marilee has waterlines dedicated to serve the Property and Requested Area, as described in detail in Section B, *infra*.

³⁰ In addition to this case, Marilee is the CCN holder in 16 other streamlined decertification cases currently before the Commission. See *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 Collin County by Expedited Release*, Docket No. 50404 (pending); *Petition of Celina Partners, Ltd. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52434 (pending); *Petition of Legacy Equestrian Center LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52435 (pending); *Petition of Huffines Ranch, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52490 (pending); *Petition of HC Celina 414, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52497 (pending); *Petition of Belknap, FP, Ltd. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52515 (pending); *Petition of CCD-COIT Land, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52516 (pending); *Petition of AJ Malone to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52517 (pending); *Petition of Clifton Van McKnight and Bryan Jeffery McKnight to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52518 (pending); *Petition of East Tioga 581 LP to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Grayson County by Expedited Release*, Docket No. 52529 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 5)*, Docket No. 52530 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 4)*, Docket No. 52531 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 3)*, Docket No. 52532 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 2)*, Docket No. 52533 (pending); *Petition*

21. The petitions in many of the 17 dockets are supported by conclusory, barebones affidavits like that provided in this case, even where—as in this case—there is ample evidence that the requested area is and has been receiving water service from Marilee. Marilee respectfully submits that it is inequitable and procedurally improper for Marilee to have to affirmatively prove, via verified response, that each of the properties is receiving or is capable of readily receiving water service from Marilee. Rather, the petitioner should be held to its statutory burden of proof to set out a verified statement of facts proving that the requested area is not receiving service before the petition may be granted. Some petitioners in decertification cases under TWC § 13.2541 “artfully plead” that their property is not receiving service by carefully drawing their requested area to deliberately “cut out” waterlines and meters that are dedicated to the requested area, as is the case here. For example, as in this case, a petitioner will disingenuously swear that that the “requested area” is not receiving service, when the meter that is dedicated to providing service is just outside of the requested area and ample existing waterlines and facilities are within close proximity to the “requested area” to readily provide service.³¹ If petitioners are permitted by the Commission to decertify property that the CCN holder can service or is servicing, then the Commission is not taking into account the important public policy of preserving a CCN holder’s service area, and is subjecting CCN holders to abusive tactics of landowners that were not intended by the legislators.³² Such “artful pleading” should not be permitted to succeed because such a property is still receiving or capable of receiving “service” as defined by the TWC and *Crystal Clear*.³³

of Central Frisco, Ltd. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52534 (pending); Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Mesouaokee Ranch), Docket No. 52536 (pending); Petition by Mesquoakee Ranch, LLC for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County, Docket No. 52542 (pending).

³¹ Compare Petition at 2 (May 10, 2021) (seeking to decertify 219.976 acres of property), to Amended Petition at 2 (seeking to decertify 219.67 acres of property, reduced to remove the area of property where Marilee’s meter is located) (July 6, 2021); compare Docket 50404, Petition of Sterling Deason O’Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O’Donnell DD 2012, at 2 (Jan. 2, 2020) (seeking to decertify 260.372 acres of property), to Docket 50404, First Amended Petition of Sterling Deason O’Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O’Donnell DD 2012, at 2 (Apr. 27, 2021) (seeking to decertify 259.504 acres of property, reduced to remove the area of property where Marilee’s meter is located).

³² See *supra* nn.12-13 and accompanying text.

³³ See *supra* nn.14-16 and accompanying text.

22. For the reasons above, Marilee respectfully requests that the Amended Petition be denied because it presents insufficient facts to prove that it is not receiving service from Marilee under TWC § 13.2541 and Texas law.

B. Petitioner Cannot Meet Its Burden of Proof Because the Requested Area is Receiving Water Service

23. Marilee’s General Manager, Donna Loiselle, and engineer of record, DBI Engineers, are familiar with the Requested Area, and the history of Marilee’s service to the Property and Requested Area. Ms. Loiselle has provided an affidavit, attached hereto as “**Exhibit A**” to provide details about the service being provided to the Property and Requested Area. Jacob Dupuis, engineer for DBI Engineers, has provided an affidavit, attached hereto as “**Exhibit B**” to map the Requested Area and the meters, waterlines, and other Marilee facilities surrounding it and serving it.³⁴

24. Here, the Requested Area may not be released because Petitioner has failed to demonstrate that it is not receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Crystal Clear*.³⁵ Not only has Petitioner failed to carry its burden, Marilee demonstrates in its prior verified response and this verified response that the Requested Area is receiving water service from Marilee under any interpretation of the term “service,” under TWC and Texas case law, such that the Requested Area cannot be released from Marilee’s CCN under TWC § 13.2541.

25. Petitioner cannot establish that the Requested Area is not receiving water service from Marilee because the Requested Area is receiving service, despite Petitioner “carving out” Marilee’s active water meter # 241. Marilee has established that it is providing water service to

³⁴ Additionally, Marilee’s response and motion to dismiss the Petition and Marilee’s supplemental mapping were both supported by affidavits of Eddy Daniel of DBI Engineers, which are incorporated by reference into this response.

³⁵ 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied) (interpreting TWC § 13.2541’s predecessor statute, § 13.254(a-5); in 2019, the Legislature transferred § 13.245(a-5) to § 13.2451, its current place in the Water Code. See Tex. S.B. 2272, 86th Leg., R.S. (2019)). Marilee does not contest that the Property is less than 25 acres or that it is not located in Collin County, which is a qualifying county.

the Property and Requested Area under TWC §§ 13.002(21) and 13.254(a-5) and 16 TAC § 24.245(1), as interpreted by *Crystal Clear*. The exhibits attached to this Response demonstrate that:

- (1) Marilee has an active two-inch waterline located within the Property served off the 6” waterline at the corner of CR #99 and Louisiana through Meter #241 (the “Meter”);³⁶
- (2) The Meter is located within the Property and actively supplies water to a billed residential connection located at 3170 North Louisiana Drive, Celina, Texas 75009, and remains on today;³⁷
- (3) The Meter has been providing water service to the residence there since December 5, 1981;³⁸
- (4) Through the Meter and the 2” waterline connected to it, Marilee provides actual water service on the Property;³⁹ and
- (5) Though Marilee has not received a request for water service to the Requested Area specifically from Petitioner CCD-North Sky, LLC, if Petitioner did request service from Marilee, all facilities are in place to deliver water to the Requested Area.⁴⁰

26. With this evidence, Marilee has demonstrated that it has has supplied water service to the Property and has facilities, waterlines, and meter to serve the Requested Area.⁴¹ Under these facts, and because Petitioner has not met its burden to establish that the Requested Area is not receiving service, the Commission should deny release of the Requested Area and deny the Amended Petition.

C. Decertifying the Requested Area Will Impair Marilee’s Ability to Service Its Federal Debt

³⁶ See Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 6-7; Exhibit B, Affidavit of Jacob Dupuis, at ¶ 5.

³⁷ See Exhibit A at ¶¶ 7-9 (describing history of water service to the Property and related billing statements); Exhibit B at ¶ 5 (referring to maps of the Requested Area attached as Exhibits B-1 to B-4).

³⁸ See Exhibit A at ¶¶ 8-12 (describing the service and boiling history for Meter #241, which was designated Meter #120 until 1994, when Marilee transitioned to electronic records); see also Exhibits A-1 to A-5 (Billing Statements reflecting water service to Meter #120 (now Meter #241) beginning in 1981 from Marilee’s predecessor, Gunther Rural Water Supply Corporation, and reflecting continuing water service to Meter #241 into 2021 to Eduardo Brena and Serafina Gonzales, current occupants of 3170 North Louisiana Drive, Celina, Texas 75009).

³⁹ See Exhibit A, Affidavit of Donna Loiselle, at ¶ 8; Exhibit B at ¶ 5.

⁴⁰ See Exhibit B at ¶ 7.

⁴¹ *Crystal Clear*, 449 S.W.3d at 140.

27. Pursuant to the Consolidated Farm and Rural Development Act of 1961 and 7 U.S. Code § 1926, the USDA may make or insure loans to associations and public and quasi-public agencies. In order to protect a USDA debtor's ability to service its debt, it is prohibited by federal law to "curtail or limit" the service area of a USDA debtor. The statute provides:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.⁴²

28. On July 12, 2021, Marilee received approval from the United States Department of Agriculture ("USDA") for a Water and Wastewater Guaranteed loan of \$1,553,000.⁴³ Marilee has not closed on the USDA loan, but is working diligently to do so.

29. To be eligible for protection under § 1926(b), Marilee must show, in addition to federal indebtedness, that it satisfies the "physical abilities" test, as adopted by the U.S. Court of Appeals for the Fifth Circuit, sitting en banc in *Green Valley Special Utility District v. City of Schertz*.⁴⁴ Judge Smith, writing for the majority, characterized the "physical abilities" test this way:

To make the test easy to apply to both water and sewer service, we hold that a utility must show that it has (1) adequate facilities to provide service to the area within a reasonable time after a request for service is made and (2) the legal right to provide service. A utility cannot satisfy that test if it has no nearby infrastructure. But 'pipes in the ground' is a colloquial shorthand, not a strict requirement.⁴⁵

⁴² 7 U.S.C § 1926(b).

⁴³ Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 10-12 (describing actions taken to secure USDA-approved loan and supporting documentation).

⁴⁴ 969 F.3d 460 (5th Cir. 2020) (en banc).

⁴⁵ *Id.* at 477.

30. The en banc court cited with approval precedent from the U.S. Court of Appeals for the Sixth Circuit that to satisfy the “physical abilities” test, the utility must have “something in place to merit § 1926(b)’s protection.”⁴⁶ The Court further explained, “Service may be ‘available’ even if it cannot be immediately used. No water or sewer utility can make service immediately available to rural, undeveloped land; providing such service involves building or installing facilities, which necessarily takes time to accomplish.”⁴⁷

31. Under *Green Valley*, a federally indebted CCN holder has an equitable cause of action for prospective injunctive relief, preventing ongoing or future limitation or curtailment of its service area by the Commissioners.

32. Marilee’s ability to provide service to Petitioner satisfies the “physical abilities” test. Marilee can provide and has provided water service to the Property and the Requested Area through its existing Meter #241 and its waterline—Marilee placed the Meter for the specific purpose of serving the Property.⁴⁸

33. With the scheduled closing of Marilee’s USDA loan approaching, equity favors granting Marilee protection from the limiting or curtailment of its service area.

D. Alternatively, Marilee Must Be Compensated if the Amended Petition is Granted.

34. The Amended Petition should be denied for the reasons Marilee has given; however, if the Commission does decertify the Requested Area and reduce Marilee’s CCN No. 10150, Marilee is entitled to a determination of just and adequate compensation.

35. The TWC prohibits a retail public utility from “in any way render[ing] retail water or sewer service directly or indirectly to the public in an area that has been decertified ... unless just and adequate compensation ... has been paid to the decertified retail public utility,” in this case, Marilee.⁴⁹ Under the TWC and the Commission’s implementing regulations, “the value of

⁴⁶ *Id.* at 477 & n.36 (quoting *Lexington—S. Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996)).

⁴⁷ *Id.* at n.38.

⁴⁸ Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 6-8; Exhibit B, Affidavit of Jacob Dupuis, at ¶ 6.

⁴⁹ TWC § 13.254(d); see also TWC § 13.2541(a) (providing that “Sections 13.254(a-7), (c), (d), and (h) apply to a proceeding under this section.”).

real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain,”⁵⁰ and the value of personal property shall be determined according to the factors in that subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include:

The amount of the retail public utility’s debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility’s contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.⁵¹

36. If the Requested Area is removed from Marilee’s CCN No. 10150, Marilee is entitled to compensation under several of these factors including, but not limited to, the costs of obtaining permits, planning, design, and construction of facilities, and the necessary and reasonable legal expenses and professional fees that are incurred as a result of the Amended Petition. Marilee would also be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s).⁵²

37. The monetary amount required to provide just and reasonable compensation to Marilee shall be determined by an appraiser, either one agreed upon by Petitioner and Marilee, or one hired by each Petitioner and Marilee, and a third appointed by the Commission.⁵³

III. PRAYER

⁵⁰ TWC § 13.254(g); *see also* TWC § 13.2541(h) (providing that “Section 13.254(g) applies to a determination of the monetary amount of compensation under this section.”).

⁵¹ *See* TWC § 13.254(g) (“The utility commission shall adopt rules governing the evaluation of these factors.”).

⁵² *See* TWC § 13.257(r)-(s) (requiring notices).

⁵³ TWC § 13.2541(i).

WHEREFORE, PREMISES CONSIDERED, Marilee respectfully requests the Commission deny the Amended Petition because it cannot lawfully be granted under TWC § 13.2541 and *Crystal Clear*, and equity favors denying actions that could curtail or limit Marilee's service area and impair its ability to service its pending federal debt. Alternatively, if the Commission approves the Amended Petition, Marilee seeks just and adequate compensation for the reduction of its CCN No. 10150. Marilee also seeks all other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,



John J. Carlton
State Bar No. 03817600
Grayson E. McDaniel
State Bar No. 24078966
The Carlton Law Firm P.L.L.C.
4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
Fax (512) 900-2855
john@carltonlawaustin.com
grayson@carltonlawaustin.com

ATTORNEYS FOR MARILEE SPECIAL
UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this 7th day of October 2021.

A handwritten signature in black ink, appearing to be "J. W. [unclear]", written over a horizontal line.

EXHIBIT A

**AFFIDAVIT OF DONNA LOISELLE,
MARILEE'S GENERAL MANAGER**

DOCKET NO. 52101

PETITION OF CCD-NORTH SKY, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT'S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

**SUPPORTING AFFIDAVIT OF DONNA LOISELLE,
GENERAL MANAGER OF MARILEE SPECIAL UTILITY DISTRICT**

STATE OF TEXAS	§
	§
COUNTY OF COLLIN	§

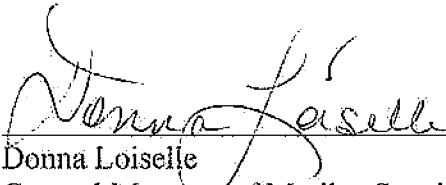
BEFORE ME, the undersigned authority, on this date personally appeared Donna Loiselle, who being by me first duly sworn, on her oath deposed and testified as follows:

1. "My name is Donna Loiselle. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "Since 1996, I have been the duly appointed general manager of Marilee Special Utility District ("Marilee") and I am the custodian of the records of Marilee. Marilee is the successor to Gunter Rural Water Supply Corporation ("Gunter").
3. "I am authorized to make this affidavit on behalf of Marilee in Docket 52101 in support of its response to CCD-North Sky, LLC ("Petitioner") request to release 219.67 acres of property ("Requested Area") from areas for which Marilee holds water certificate of convenience and necessity ("CCN") No. 10150.
4. "I have read Marilee Special Utility District's Verified Response to First Amended Petition in Docket No. 52101 (the "Response") and every factual statement contained therein is true and correct to the best of my knowledge.
5. "Attached as Exhibit B-1 through B-4 to the Response are true and correct copies of maps of the Requested Area in Marilee's water system map prepared by Marilee's engineer of record, DBI Engineers.
6. "Marilee provides water service to the Requested Area, specifically through a 2" waterline on the Property served off the 6" waterline at the corner of CR #99 and Louisiana Road through Meter #241 (the "Meter").
7. "The Meter and the 2" waterline connected to it provide water service to the residence located at 3170 North Louisiana Drive, Celina, Texas 75009, where the Requested Area is located.

8. "The Meter is currently active and Marilee has provided water to the meter continuously since December 5, 1981.
9. "Attached as Exhibits A-1 through A-5 to this Affidavit are true and correct copies of billing statements for water usage of the Meter, which, before Marilee transitioned to electronic records in 1994, was designated Meter #120 (the "Billing Statements").
 - a. Exhibit A-1 is a true and correct copy of a service agreement with Marilee's predecessor, Gunther, dated December 5, 1981, for water service to Meter #241, which before Marilee transitioned to electronic records in 1994, was designated Meter #120. Account 120 provided water service to the same address as Meter #241 does. Exhibit A-1 also reflects service to Meter #120A, which is located across Louisiana Road from the Requested Area and is not at issue in this proceeding.
 - b. Exhibit A-2 is a true and correct copy of the cost-of-service notice, service application, service agreement, and deposit check made between Marilee's predecessor, Gunther, and Chi Chu Chan, dated May 25, 2004, for water service to the Meter. Bank account numbers, telephone numbers, and driver's license numbers, if any, have been redacted.
 - c. Exhibit A-3 is a true and correct copy of the cost-of-service notice, service application, and service agreement made between Marilee and Eduardo Brena and Serafina Gonzales, current occupants of 3170 North Louisiana Drive, Celina, Texas 75009. Bank account numbers, telephone numbers, and driver's license numbers, if any, have been redacted.
 - d. Exhibit A-4 is a true and correct copy of reading and payment records for the Meter, reflecting payments up to the present. Bank account numbers, telephone numbers, and driver's license numbers, if any, have been redacted.
 - e. Exhibit A-5 is a true and correct copy of the customer detail sheet reflecting notes taken by Marilee regarding the Meter, with notes describing the owners and tenants who have occupied the residence from 1995-2019.
10. "On February 11, 2021, the Board of Directors of Marilee authorized me, as General Manager for the District, to prepare and submit application documents as needed to Live Oak Banking Company ("Live Oak") in an effort to secure funding for construction of a 300,000-gallon water tank. Attached as Exhibit A-6 is a true and correct copy of the Board's resolution.
11. "Live Oak sent a commitment letter to Marilee's Board on April 13, 2021, committing to provide Marilee with a \$1,553,000 loan through the USDA Water and Environmental Guaranteed Loan Program (the "Loan"). A true and correct copy of that letter is attached to this affidavit as Exhibit A-7.

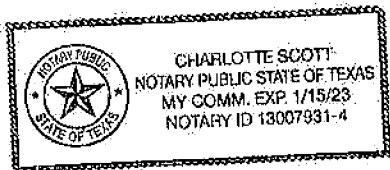
12. "The United States Department of Agriculture ("USDA") sent correspondence to me, dated July 19, 2021, stating that USDA Rural Development approved the Loan on July 12, 2021. A true and correct copy of that letter is attached to this affidavit as Exhibit A-8.
13. "Exhibits A-1 through A-8 were made at or near the time of each act, event or condition set forth. Exhibits A-1 through A-8 were made by or from information transmitted by persons with knowledge of the matters set forth.
14. "Exhibits A-1 through A-8 were kept in the course of regularly conducted business activity of Marilee.

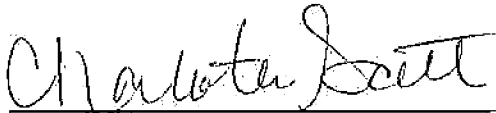
FURTHER, AFFIANT SAYETH NOT.



Donna Loïselle
General Manager of Marilee Special Utility
District

SWORN TO AND SUBSCRIBED before me by Donna Loïselle on this 6th day of October 2021.





Notary Public in and for the State of Texas

SERVICE AGREEMENT

AGREEMENT made this _____ day of DEC 05 1981, 19____, between,

GUINTEP DUBAI WATER CORP., a corporation organized under the

laws of the State of Texas (hereinafter called the Corporation) and _____

120--120A

A. L. Mahan, (hereinafter called the Member)

Witnesseth:

The Corporation agrees to sell and deliver water and/or sewer service to the Member and Member agrees to purchase and receive water and/or sewer service from the Corporation, in accordance with the bylaws and rules and regulations of the Corporation as amended from time to time by the Corporation.

The Member shall pay the Corporation for service hereunder at the rates and upon the terms and conditions set forth in the rate schedule adopted from time to time by the Corporation's Board of Directors.

The Board of Directors shall have the authority to sell the membership of any member in the event of nonpayment of any charges of assessments owing by said member within thirty (30) days after demand for payment by mail, properly addressed to such delinquent Member. The proceeds of any sale of membership over and above the amount due the Corporation shall be paid to the delinquent Member. In lieu of such sale of membership, the Board of Directors may purchase the membership on behalf of the Corporation at a price determined by the Board to be fair value of the membership, provided that in the event of either a sale of the membership or the purchase thereof by the Corporation the proceeds shall first be applied to the payment of any indebtedness due the Corporation by the delinquent Member.

In the event the Member shall breach this agreement by (1) refusing or failing, without just cause, to connect to the Corporation's facility and use same as soon as the facility is available, or (2) refusing or failing, without just cause, to pay the minimum monthly water rate as established by the corporation, upon the occurrence of either of said events the Member agrees to pay the Corporation a lump sum of Three Hundred Dollars (\$300.00) as liquidated damages.

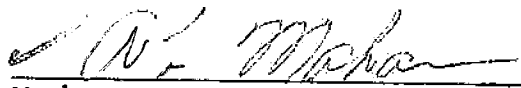
All water shall be metered by meters to be furnished and installed by the Corporation. The meter and /or connection is for the sole use of the member or customer and is to serve water to only one dwelling or only one business, and does not permit the extension of pipe or pipes to transfer water from one property to another, nor share, resell, or sub-meter water to any other persons, dwelling, business, property, etc.

In the event the total water supply be insufficient to meet all of the needs of the Members, or in the event there is a shortage of water the Corporation may prorate the water available among the various Members on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering the use of water for garden purposes by particular Members and require adherence thereto to prohibit the use of water for garden purposes; provided that, if at any time the total water supply be insufficient to all of the needs of all Members, the Corporation must first satisfy all of the needs of all Members for domestic purposes before supplying any water for livestock purposes and must satisfy all the needs of the Members for both domestic and livestock purposes before supplying any water for garden purposes.

The Member shall install at his own expense a service line from the water meter and or sewer connection to the point of use.

The Member shall hold the Corporation harmless from any and all claims or demands for damage to real or personal property occurring from the point the Member ties on to the sewer line and/or water meter to the final destination of the line installed by Member. The Member agrees to grant to the Corporation an easement of right-of-way for the purpose of installing, maintaining and operating such pipe lines, meters, valves, and any other equipment which may be deemed necessary for the Corporation on such form as is required by the Corporation.

The Corporation shall have the right to locate a sewer service connection and/or water service meter and the pipe necessary to connect the meter on the property of the Members at a point to be chosen by the Corporation, and shall have access to its property and equipment located upon Member's premises at all reasonable times for any purpose connected with or in the furtherance of its business operations, and upon discontinuance of service shall have the right to remove any of its property from the Member's premises.


Member

ACCEPTED AND APPROVED

President

Name: _____

Meter No. 120

Address: Bill Mahan
Rs. & Box 142
Celina, Texas 75009

Telephone: _____ Serial No. _____

2 meter 120A

Meter Reading Date	Current Reading	Previous Reading	Amount Used	Current Amount Due	Penalty*	Total Balance	Amount Paid	Date Paid
12-25	365900	359900	8000	14 60		14 60	14 60	1-10 80
1-25	375900	365900	10,000	16 20		16 20	16 20	2-10 80
2-25	382900	375900	7000	13 70		13 70	13 70	3-10 80
3-25	389900	382900	7000	13 70		13 70	13 70	4-10 80
4-25	393900	389900	4000	11 00		11 00	11 00	5-15 80
5-25	399900	393900	4000	11 00		11 00	11 00	6-15 80
6-25	402900	399900	5000	11 90		11 90	11 90	7-10
7-25	407900	402900	5000	11 90			11 90	8-10
8-25	411900	407900	8000	15 20			15 20	9-10
9-25	431900	411900	12000	17 80			17 80	10-10
10-25	440900	431900	9000	15 40			15 40	11-10
	448900	440900	8000	14 60			14 60	12-10
	455900	448900	7000	13 70			13 70	1-10
	465900	455900	10000	16 20			16 20	2-10
	473900	465900	8000	14 60			14 60	3-10
	482900	473900	9000	15 40			15 40	4-10
	486900	482900	4000	11 00			11 00	5-10

* 1. Late Charge 2. Reconnect

Name: Bill Mahan

Meter No. 120

Address: At. 2 Box 142 426 Celina

120A

Telephone: _____ Serial No. _____

75009

Meter Reading Date	Current Reading	Previous Reading	Amount Used	Current Amount Due	Penalty*	Total Balance	Amount Paid	Date Paid
10-82	608,200	600,200	8,000	14 50			14 50	11-12-82
11	615,200	608,200	7,000	13 70			13 70	12-9
12	622,200	615,200	7,000	13 70			13 70	1-22-83
1-83	628,200	622,200	6,000	14 70			14 70	2-4
2	635,200	628,200	7,000	16 10			16 10	3-4
3	638,200	635,200	3,000	10 50			10 50	4-8
4	642,200	638,200	4,000	11 90			11 90	5-10
5	648,200	642,200	6,000	14 70			14 70	6-10
6	651,200	648,200	3,000	10 50			10 50	7-8
7	654,200	651,200	3,000	10 50			10 50	8-6
8	657,200	654,200	3,000	10 50			10 50	9-8
9	663,200	657,200	6,000	14 70			14 70	10-10
10	668,200	663,200	5,000	13 30			13 30	11-16
11	671,200	668,200	3,000	10 50			10 50	12-10

Meter Reading Date	Current Reading	Previous Reading	Amount Used	Current Amount Due	Penalty*	Total Balance	Amount Paid
3-84	695,200	688,200	7,000	16 10			16 10
4	696,800	695,200	1,600	10 50			10 50
5	702,800	696,800	6,000	17 50			17 50
6	710,800	702,800	8,000	20 50			20 50
7	717,800	710,800	7,000	19 00			19 00
8	730,800	717,800	13,000	28 35			28 35
9	740,800	730,800	10,000	23 50			23 50
10	748,800	740,800	8,000	20 50			20 50
11	755,800	748,800	7,000	19 00			19 00
12	762,800	755,800	7,000	19 00			19 00
1-85	768,800	762,800	6,000	17 50			17 50
2	772,800	768,800	4,000	14 50			14 50
3	778,800	772,800	6,000	17 50			17 50
4	785,800	778,800	7,000	19 00			19 00
5	790,800	785,800	5,000	16 00			16 00
6	796,800	790,800	6,000	17 50			17 50
7	803,800	796,800	7,000	19 00			19 00

* 1. Late Charge 2. Reconnect

Name Mahan

Meter No. _

Address _____

Telephone _____

Serial No. _

Meter Reading Date	Current Reading	Previous Reading	Amount Used	Current Amount Due	Penalty*	Total Balance	Amount Paid
5	492900	486900	6000	12 80			12 80
6	497900	492900	5000	11 90			11 90
7-	503900	497900	6000	12 80			12 80
8-	511900	503900	8000	14 60			14 60
9-	518900	511900	7000	13 70			13 70
10	525900	518900	7000	13 70			13 70
11	532900	525900	7000	13 70			13 70
12	EST	532900		13 70			13 70
1	552100	532900	19,200	16 90			16 90
2	562300	552,100	10,200	16 10			16 10
3	564,200	562,300	1,900	9 00			9 00
4	569,200	564,200	5,000	11 90			11 90
5	575,200	569,200	6,000	12 80			12 80
6	585,200	575,200	10,000	16 10			16 10
7	587,200	585,200	2,000	9 00			9 00
8	593,200	587,200	6,000	12 80			12 80
9	600,200	593,200	7,000	13 70			13 70

* 1. Late Charge 2. Reconnect

Exhibit A-2

GUNTER SPECIAL UTILITY DISTRICT
P.O. Box 1017
Celina, Texas 75009
972-362-3222

#241

COST OF SERVICE NOTICE
(Residential Service)

APPLICANT(S): CHI CHU CHAN

DATE: MAY 25, 2004

PROPERTY: 2926 N Bus Hwy 289

The District has determined the cost for providing service to your property in the amount stated below. By signing this notice, you acknowledge that all charges and fees for service are non-refundable except for the Deposit. If you sell or vacate the property, you must request a final monthly bill and provide a forwarding address. The District will apply your Deposit to the final bill and refund the difference. This notice is provided in accordance with Section E.2(b)(5) of the District's Rate Order and shall remain in effect for thirty (30) days from the date above.

Check all that apply:

- Deposit \$ 200.00
 - Activation Fee 25.00
 - Connection Fee ~~9,200.00~~
 - Reserved Service Charges
 - Easement Fee
 - Street Crossing: County Road
 - Street Crossing: State Highway
 - (Other)
- TOTAL: \$ 225.00

Applicant Signature: Chi Chu Chan

DL #: [REDACTED]

Assistant Signature: _____

DL #: _____

Previous owner, John Rasor,

Please fill this form out & return.
Thanks,

RUS-TX Bulletin 1780-B (Revised 09/02)

OWNER #241

GUNTER SPECIAL UTILITY DISTRICT
P.O. Box 1017
Celina, Texas 75009
972-382-3222

DISTRICT USE ONLY	
Date Approved:	_____
Svc. Classification:	_____
Cost:	_____
Work Order #:	_____
Account No.:	_____
Service Inspection Date:	_____

SERVICE APPLICATION

DATE: MAY 24, 2004

APPLICANT'S NAME: CHI CHU CHAN

CO-APPLICANT'S NAME: _____

CURRENT BILLING ADDRESS:

4120 Hampshire
PLANO, TX. 75093

HOME PHONE: 

WORK PHONE: () SAME

STREET ADDRESS OF PROPERTY: 2926 DUBOIS HWY 259

LEGAL DESCRIPTION OF PROPERTY (if applicable, subdivision with lot and block number): _____

ACREAGE: 1.53 Acres

DWELLING SIZE: SMALL FRAME HOUSE

NUMBER IN FAMILY: N/A

LIVESTOCK & NO.: VARIOUS

PREVIOUS OWNER'S NAME: JOHN AASOR

SPECIAL SERVICE NEEDS OF APPLICANT: None

NOTE: This service application form must be completed by the applicant(s) only. A map or plat of the service location must be submitted with this application copy as well as a copy of the warranty deed for the location.

EQUAL OPPORTUNITY PROGRAM:

The following information is requested by the Federal Government in order to monitor compliance with Federal laws prohibiting discrimination against applicants seeking to participate in this program. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, we are required to note the race/national origin of individual applicants on the basis of visual observation or surname.

[] White, Not of Hispanic Origin [] Black, Not of Hispanic Origin [] American Indian or Alaskan Native [] Hispanic [] Asian or Pacific Islander [] Other (Specify) [] Male [] Female

GUNTER SPECIAL UTILITY DISTRICT
P.O. Box 1017
Celina, Texas 75009
972-382-3222

SERVICE AGREEMENT

This agreement is made on this 25 day of MAY, 2004, between CHI CHU CHAN ("Customer") and Gunter Special Utility District (the "District"). The District will maintain a copy of this agreement as long as the Customer and/or the property is connected to the District's water system. The District and Customer must execute this service agreement before service is provided to Customer.

The District agrees to provide retail water utility service to Customer at the property described below, and Customer agrees to pay all applicable fees for such service, in accordance with the Rate Order of the District, as amended.

All bills shall be due and payable upon receipt and are past due beyond the date indicated on the bill; allowing approximately fifteen (15) days to pay. A one-time penalty of \$2.00 or 5.0%, which ever is larger, shall be applied to delinquent bills. A monthly bill for utility service is delinquent if full payment, including any outstanding late fees and regulatory assessments, is not received at the District by 5:00 p.m. on the due date. Payments made by mail will be considered late if postmarked after the past due date. If full payment is not timely received by the District, a final notice shall be mailed allowing ten (10) additional days for payment prior to disconnection. If Customer's service is disconnected, the District shall charge Customer a Reconnect Fee (\$35.00 during regular business hours; \$50.00 at any other time) before restoring Customer's service. The District's regular business hours are from 8:00 a.m. to 4:30 p.m., Monday - Friday.

Customer agrees to comply with the District's Drought Contingency Plan in the event the District's total water supply becomes insufficient to meet the needs of all District customers.

All water furnished by the District shall be metered by meters installed, maintained and owned by the District. The meter and connection is for the sole use of Customer and is to provide service to only one (1) dwelling or one (1) business. Any attempt to tamper with or to by-pass a meter, or to divert water utility service from one property to another, or to share, resell or submeter water to any other person, dwelling, business or property is prohibited. Unauthorized users of District services shall be prosecuted to the extent allowed by law under the Texas Penal Code § 28.03.

Customer agrees to hold the District harmless from any and all claims or demands for damage to real or personal property occurring from the point the user ties onto the District's meter to the final destination of customer service line installed on the property by Customer.

The District shall have the right to select the location of the water service meter, pipe and appurtenant equipment on Customer's property necessary to connect Customer to the

District's water system. The District shall have access to its meter and equipment located on Customer's property at all reasonable times for any purpose connected with or in the furtherance of the District's business operations, and upon disconnection or discontinuance of service, the District shall have the right to remove any of the District's property from Customer's property.

In the event that Customer leases or rents the property, it is understood and agreed that Customer's Deposit shall guarantee the payment of the lessee's/renter's monthly bills for service to the property, and all charges in connection therewith, as though Customer was the user of said service.

(Please initial in the space below upon reading the following)

Chi Chu Chan Applicant acknowledges that the District's water distribution system provides potable water for domestic consumption only and does not provide "fire flows" as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.

Chi Chu Chan
Customer Signature

Customer Signature

Legal Description/Service Address: 2926 N. Bus Hwy 289

Security Deposit of \$ 200⁰⁰ paid by (signature): Chi Chu Chan

ACCEPTED AND APPROVED:

Gunter Special Utility District

Account No.: _____

By:

Work Order No.: _____

CHI-CHU CHAN
TSUN HUEI CHAN
4120 HAMPSHIRE ST.
PLANO, TX 75093-6063

2178

Date 5.25.04

35-2/1130 TX
4074

© Bank of America REDEEMABLE

Pay to the Order of Gunter special utility District \$ 225.
Two hundred twenty-five and 00/100 Dollars

Security features are included. Details on back.

Bank of America.



Bank of America Advantage®

ACH R/T 111000025

For _____

Chi Chu Chan MP



#241

Marilee Special Utility District
P. O. Box 1017
Celina, TX 75009
972-382-3222

COST OF SERVICE NOTICE
(Residential Service)

APPLICANT(S): EDUARDO Brena, Serafina Gonzalez DATE: 10/15/19
PROPERTY: 3770 N LOUISIANA DR. CELINA TX, 75009


The District has determined the cost for providing service to your property in the amount stated below. By signing this notice, you acknowledge that all charges and fees for service are non-refundable except for the deposit. If you sell or vacate the property, you must request a final monthly bill and provide a forwarding address. The District will apply your deposit to the final bill and refund the difference. This notice is provided in accordance with Section E.2(b)(5) of the District's Rate Order and shall remain in effect for thirty (30) days from the date above.

Check all that apply:

- Deposit.....\$ 200.00
- Activation Fee.....\$ 25.00
- Connection Fee.....\$ _____
- Reserved Service Charges....._____
- Easement Fee....._____
- Street Crossing: County Road (Road Bore)....._____
- Street Crossing: State Highway (Road Bore)....._____
- Other _____

TOTAL: \$ 225.00

Applicant Signature: Eduardo Brena Drivers License# _____

Co-Applicant Signature: Serafina Gonzalez Drivers License# 

NON DISCLOSURE

I/we hereby request that the District keep the personal information in my/our account record confidential, including my/our address, telephone number and social security number(s), to the extent permitted by federal and state law.

Applicant Signature

Serafina Gonzalez
Co-Applicant Signature

MARILEE SPECIAL UTILITY DISTRICT
P.O. Box 1017
Celina, Texas 75009
972-382-3222

DISTRICT USE ONLY	
Date Approved:	_____
Service Classification:	_____
Cost:	_____
Work Order #	_____
Account No.	_____
Service Inspection Date:	_____

SERVICE APPLICATION

DATE: 10/15/19

APPLICANT'S NAME: EDUARDO BREÑA

CO-APPLICANT'S NAME: SERAFINA GONZALEZ

CURRENT BILLING ADDRESS
3170 N. LOUISIANA DR.
CELINA TX, 75009

EMAIL ADDRESS: _____
HOME PHONE: _____

WORK PHONE: (____) _____

STREET ADDRESS OF PROPERTY: 3170 N. LOUISIANA DR. CELINA TX, 75009

LEGAL DESCRIPTION OF PROPERTY (If applicable, subdivision with lot and block number): _____

ACREAGE: _____ DWELLING SIZE: _____

NUMBER IN FAMILY: _____ LIVESTOCK & NO.: _____

PREVIOUS OWNER'S NAME: _____

SPECIAL SERVICE NEEDS OF APPLICANT: _____

NOTE: This service application form must be completed by the applicant(s) only. A map or plat of the service location must be submitted with this application copy as well as a copy of the warranty deed for the location.

EQUAL OPPORTUNITY PROGRAM:

The following information is requested by the Federal Government in order to monitor compliance with Federal laws prohibiting discrimination against applicants seeking to participate in this program. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, we are required to note the race/national origin of individual applicants on the basis of visual observation or surname.

[] White, Not of Hispanic Origin [] Black, Not of Hispanic Origin [] American Indian or Alaskan Native [] Hispanic [] Asian or Pacific Islander [] Other (Specify) [] Male [] Female

MARILEE SPECIAL UTILITY DISTRICT
P.O. Box 1017
Celina, Texas 75009
(972) 382-3222

SERVICE AGREEMENT

This agreement is made by _____
("Customer") and Marilee Special Utility District (the "District") and is effective upon approval and acceptance by the District as shown below. The District will maintain a copy of this agreement as long as the Customer and/or the property is connected to the District's water system. The District and Customer must execute this service agreement before the District provides service to Customer.

The District agrees to provide retail water utility service to Customer at the property described below, and Customer agrees to pay all applicable fees for such service, in accordance with the Rate Order of the District, as amended.

All bills shall be due and payable upon receipt and are past due beyond the date indicated on the bill; allowing approximately fifteen (15) days to pay. A one-time penalty of \$10.00 or 10.0%, whichever is larger, shall be applied to delinquent bills. A monthly bill for utility service is delinquent if full payment, including any outstanding late fees and regulatory assessments, is not received at the District by 5:00 p.m. on the due date. Payments made by mail will be considered late if postmarked after the past due date. If full payment is not timely received by the District, a final notice shall be mailed allowing ten (10) additional days for payment prior to disconnection. If Customer's service is disconnected, the District shall charge Customer a Reconnect Fee (\$50.00 during regular business hours; \$85.00 at any other time) before restoring Customer's service. The District's regular business hours are from 8:00a.m. to 4:30p.m., Monday to Friday.

Customer agrees to comply with the District's Drought Contingency Plan in the event the District's total water supply becomes insufficient to meet the needs of all District customers.

All water furnished by the District shall be metered by meters installed, maintained and owned by the District. The meter and connection is for the sole use of Customer and is to provide service to only one (1) dwelling or one (1) business. Any attempt to tamper with or to by-pass a meter, or to divert water utility service from one property to another, or to share, resell or submeter water to any other person, dwelling, business or property is prohibited. Unauthorized users of District services shall be prosecuted to the extent allowed by law under the Texas Penal Code § 28.03.

If required by the District in its sole discretion, the Customer agrees that the Customer and all persons or entities owning an interest in the property served by the meter will execute before a notary public the District's standard waterline easement adopted by the District pursuant to its Rate Order. At the sole option of the District, this requirement is a prerequisite for water service from the District.

The District shall have the right to select the location of the water service meter, pipe and appurtenant equipment on Customer's property necessary to connect Customer to the District's water system. The District shall have access to its meter and equipment located on Customer's property at all reasonable times for any purpose connected with or in the furtherance of the District's business operations, and upon disconnection or discontinuance of service, the District shall have the right to remove any of the District's property from Customer's property.

The District is responsible for protecting the drinking water supply from contamination or pollution, which could result from improper plumbing practices. This Service Agreement serves notice to each customer of the plumbing restrictions in place to provide this protection. The District shall enforce these restrictions to ensure the public health and welfare. The following unauthorized practices are prohibited by state regulations:

(1) Direct connections between a public drinking water supply and a potential source of contamination are prohibited. Potential sources of contamination shall be isolated from the public water system by an air gap or an appropriate backflow prevention assembly in accordance with state plumbing regulations. Additionally, all pressure relief valves and thermal expansion devices must be in compliance with state plumbing codes.

(2) Cross-connections between a public drinking water supply and a private water system are prohibited. These potential threats to the public drinking water supply shall be eliminated at the service connection by proper installation of an air gap or a reduced pressure-zone backflow prevention assembly and a service agreement must exist for an annual inspection and testing by a certified backflow prevention inspector.

(3) Connections that allow condensing, cooling, or industrial process water to be returned to a public drinking water supply are prohibited.

(4) Pipe and pipe fittings containing more than 8.0% lead may not be used to install or repair plumbing at any connection that provides water for human consumption installed on or after July 1, 1988; or pipe and pipe fittings that contain more than 0.25% lead installed on or after January 4, 2014.

(5) Beginning July 1, 1988, solder or flux containing more than 0.2% lead may not be used to install or repair plumbing at any connection that provides water for human consumption.

(6) The installation of any plumbing fixture not in compliance with a state approved plumbing code is prohibited.

The District shall maintain a copy of this Service Agreement as long as the Customer and/or premise is connected to the District's water system. The Customer shall allow the District to inspect the Customer's property for possible cross-connections and other unauthorized plumbing practices during the District's regular business hours.

The District shall notify the Customer in writing of any cross-connection or other unauthorized plumbing practices found by the District during the initial or subsequent

inspections. The Customer shall immediately correct any unauthorized plumbing practice on their premises. The Customer shall, at Customer's expense, properly install, test and maintain any backflow prevention assembly required by the District. Customer shall provide the District with a copy of all backflow prevention assembly test and maintenance records. Failure to comply with the terms of this Service Agreement shall cause the District to either terminate service or, at its sole discretion, to install, test and maintain an appropriate backflow prevention assembly at the service connection. Any expenses associated with the enforcement of this Service Agreement shall be billed to the Customer.

By execution hereof, the Customer shall hold the District harmless from any and all claims for damages caused by service interruptions due to waterline breaks by utility or like contractors, tampering by other persons or customers of the District, normal failures of the system, or other events beyond the District's control.

By execution hereof, the Customer expressly agrees that Customer's failure to comply the terms of this Service Agreement shall entitle the District to deny or discontinue service until such time as the violation(s) are corrected to the satisfaction of the District.

Any misrepresentation of facts by the Customer on this Service Agreement or the Service Application shall entitle the District to deny or discontinue service pursuant to the terms and conditions of the District's Rate Order.

(Please initial in the space below upon reading the following)

EB **Customer acknowledges that the District's water system provides potable water for domestic consumption only and may not provide "fire flows" to the Service Address below as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.**

Eduardo Breña
Customer Signature

[Signature]
Customer Signature

Service Address: 3170 N LOUISIANA DR ARLING TX, 75009

Attach or State Legal Description: _____

ACCEPTED AND APPROVED by _____ on _____, 20__

Account No. _____ Work Order No. _____

Deposit Paid: \$ _____ By: _____

Marilee SUD

Customer Detail

Brena, Eduardo

Brena, Eduardo
 Serafina Gonzalez
 3170 N Louisiana
 Celina
 75009
 Service Address: 3170 N Louisiana Dr.

Account Number 241

Chan, Chi Chu
 4120 Hampshire St

Plano
 75093-0
 Months On System 330
 Total Usage 2,349,100
 Average Usage 7,118
 Sequence Number 1800
 Meter Serial Number 180310075
 Route Number 1
 Last Read Date 5/21/2021
 12 Month Average 7,775
 Last Year Average 8,100
 Previous Year Average 4,700
 Last "Paid On Time" Date 5/5/2021
 Last Late Charge Date 1/18/2021
 Number Of Late Months 141
 Next Due Date 6/15/2021
 Year To Date Charges \$282.50

Driver License #: [REDACTED]

Date Turned On
 Date Turned Off
 Meter Check Date 3/6/2020
 Rate Code 1
 Pump/Well Number 23
 Last Reading 1142
 Previous Reading 1094
 Usage 4,800
 # of Units 1

Meter 87783598 Z
 Old Account # 241
 Servicezipcode 75,009.00

Readresolution 1.00 brand&size Badger .625

Deposit Information

Deposit Amount	\$200.00	Deposit Date	Certificate Number	0
Deposit Amount 2	\$200.00	Deposit 2 Date	Services	Current Balance
0	Usage	Charges	Read Date	Reading
January	4,900	62.82	1/19/2021	897 L
February	12,100	99.31	2/24/2021	1018
March	2,700	15.37	3/22/2021	1045
April	4,900	52.82	4/20/2021	1094
May	4,800	52.18	5/21/2021	1142
June	13,500	107.18	6/22/2020	344
July	10,600	97.27	7/21/2020	450 L
August	11,100	99.66	8/20/2020	561 L
September	8,800	75.33	9/23/2020	649
October	5,600	65.39	10/20/2020	705 L
November	7,300	75.98	11/18/2020	778 L
December	7,000	74.12	12/21/2020	848 L
Last Payment 5/5/2021 \$52.82 Check Number				Previous Charges \$52.18
Age 1 \$52.18	Age 2 \$0.00	Age 3 \$0.00	Current Balance 52.18	

[REDACTED]@gmail.com

Brena, Eduardo

Account Number

241

Extended Notes

8/24/1995

Adjusted bill for Dorothy, John Rasors` cows trampled hydrant at fence. Her average bill is 3300 gallons, billed her for 20.65 Johns` bill for the 25100 gallons is 50.45

2/9/1996

Adjusted bill for Dorothy, she had a leak at a hydrant at her barn on 12/18/9 We repaired that. She had another leak in January, a pipe froze under her dish-washer in her kitchen. I explained our adjustment policy to her in August and again this

month about only allowing one adjustment per year or 12 months apart. She did not think her kitchen leak was that much. I adjusted the bill by \$331.29.

3/4/1997

Transferred from Dorothy Mahan, 2926 Bus Hwy 289N, Celina, T

3/24/1997

Mailed final bill to Dorothy Mahan for 18.08

3/26/1997

I billed Dorothy in error on final bill. This goes to the new owner.

1/20/1999

Transferred to John Rasor, 11709 Marilee, Gunter TX 75058

1/20/1999

John Rasor instructed us to start sending bill to David Boswell, mailed him a tenant information form.

7/9/1999

Boswell moved out, forwarding address is P O Box 250625, Plano, TX 75025

1/28/2000

Map page # 45

3/23/2001

Gave adjustment for leak to Cleve Rasor.

5/20/2004

Cory Johnson at Herrin Real Estate contacted the office to say that Chi Chu Chan

5/20/2004

Continue from previous entry , Mr. Chan had purchased this property, sending an application to him.

5/26/2004

Kay Millar is a renter & paid a \$200.00 customer deposit, Mr. Chan deposit is only \$100.00 carried over from John Rasor.

6/1/2004

Chi Chu Chan also paid \$200.00 customer deposit.

6/8/2005

Sam Warren moved out after 3 weeks, paid final bill put back in owners name

11/21/2006

Daniel Stanphill moved out 9-29-2006.

11/21/2006

Owner Chi Chu Chan rented to Heather Martin on 11-13-2006.

1/21/2008

Mark & Heather Martin moved out 1-17-2008.

2/7/2008

Chi Chu Chan rented property to Tonda Heist on 2-7-2008.

Tonda paid \$25 activation and \$75 on her deposit.

She will payout \$25 for 1 month and \$50 for 2 months to have a \$200 deposit.

1/25/2010

Lock meter for non payment

6/18/2010

Billy herrin brought in Mr. Chan's Auto Pay authorization so his credit card would be charged each month. He hopes to rent the place so if the renter leaves, Mr. Chan's account needs to revert back to credit card charge. CSE

7/27/2010

Meter with transmitter installed 06/10/2005

7/24/2014

Larry Bannister moved out 7-19-14, customer said use this months meter reading as final read meter 7-23-14, Put back in owners name mailed refund to the Bannisters of \$109.60. vld

9/21/2017

Deposit for Melanie/Othal Vest was org on account 67 that deposit was refunded on 7/3/7 so they have no deposit on file - CS
10/16/2019
Eduardo Brena is renting property set up payout for deposit paid \$75.00 on 10-16-19 - cs

RESOLUTION NO. 2021-001

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARILEE SPECIAL UTILITY DISTRICT, COLLIN AND GRAYSON COUNTIES, TEXAS (THE DISTRICT), DESIGNATING THE GENERAL MANAGER AS AUTHORIZED REPRESENTATIVE OF THE DISTRICT REGARDING ANY APPLICATION TO LIVE OAK BANKING COMPANY FOR FUNDING OF THE DISTRICT'S 300,000 GALLON TANK AT PUMP STATION 3E; AND PROVIDING FOR AN EFFECTIVE DATE.

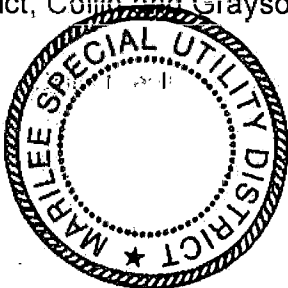
WHEREAS, the Board of Directors of Marilee Special Utility District (the "District") approved initiating an application to Live Oak Banking Company, a North Carolina financial institution ("Live Oak"), for funding of a 300,000 gallon tank at the District's Pump Station 3E (the "Project"), among other actions related thereto, at its monthly meeting on February 1, 2021, open to the public; and

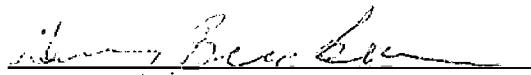
WHEREAS, the Board of Directors finds it is in the best interest of the District and its customers, including for efficiency of the application process, to designate the District's General Manager Donna Loiselle as the authorized representative on behalf of the District to conduct the preparation and submission of any and all documents and information related to any application to Live Oak for funding of the Project.

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF DIRECTORS OF MARILEE SPECIAL UTILITY DISTRICT THAT:

The District's General Manager, Donna Loiselle is hereby approved and designated as the authorized representative on behalf of the District, and she shall conduct the preparation and submission of any and all documents and information related to any application to Live Oak Banking Company for funding of a 300,000 gallon tank at the District's Pump Station 3E. This Resolution is effective immediately upon its passage.

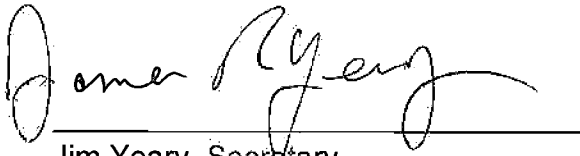
APPROVED and PASSED by the Board of Directors of Marilee Special Utility District, Collin and Grayson Counties, Texas, on this the 11th day of February, 2021.




Denny Brackeen, President

ATTEST:

APPROVED AS TO FORM:



Jim Yeary, Secretary
or Donna Loiselle, Assistant Secretary

Maria Huynh, Attorney



LOAN COMMITMENT LETTER

April 13, 2021

Board of Directors
 Marilee Special Utility District
 230 W. Pecan Street
 Celina, TX 75009

Dear Board of Directors:

Live Oak Banking Company dba Live Oak Bank ("Live Oak") is pleased to commit to provide Marilee Special Utility District (Borrower), a credit facility (Loan) in the principal amount of \$1,553,000 through the USDA Water and Environmental Guaranteed Loan Program. The following credit facility described is subject to all the terms and conditions contained herein, provided there has been no material adverse change in Borrower's financial condition as determined by the Bank.

Borrower: Marilee Special Utility District

Borrowing Amount: \$1,553,000; funded under USDA Water and Environmental Program Guaranteed term loan

Purpose: To provide funds to finance a new 300,000-gallon elevated storage tank; related soft costs and closing costs.

Construction Phase

Interest Rate: The loan will have an interest rate that is adjusted quarterly during the construction phase based on Wall Street Journal Prime plus 2.00% at the time of closing. If the loan were to close today, the fully indexed rate would be 5.25%. The interest rate will continue to adjust quarterly at the then current index plus applicable spread until the loan is converted to the permanent phase.

Floor Rate: 5.00%

Repayment: Interest only during the construction phase up to a maximum of 12 months.

Prepayment Penalty: A 10% penalty will be applied on any amount prepaid prior to conversion to the permanent phase.

**DEDICATED
 TO THE
 DOERS™**

1741 Tiburon Dr
 Wilmington, NC 28403
liveoakbank.com



Construction Origination Fee: 1% of the total loan amount

Permanent Phase

Interest Rate: The loan will have an interest rate that fixed for fifteen years based on the Fifteen-Year LIBOR (or similar index if that index becomes unavailable) plus 3.75%, adjusting at the end of the initial fixed rate period based on the then current index (or index equivalent) plus the original spread. If the loan were to close today, the fully indexed rate would be 5.71%.

Repayment: 348 regular monthly payments (29 years) of principal and interest payments. If the loan were to fund today, the monthly payments of principal and interest would be \$9,225.

Prepayment Penalty: There will be a sliding prepayment allowed over the life of the proposed loan request (10% in year one, 9% in year two, 8% in year three, 7% in year four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, 2% in year nine, 1% in year 10). The ten-year prepayment timeline begins once the loan is fully disbursed.

Maturity Date: 360 months from the date the loan closes.

USDA Fee: 1.00% of the guaranteed portion of the loan

Origination Fee: 1% of the total loan amount

USDA Annual Renewal Fee: N/A – The USDA does not charge an annual renewal fee on WEP Guaranteed Loans per Fiscal Year 2021 Annual Notice.

Source and Use of Proceeds:

Use of Proceeds:	Total
Construction – Elevated Tank	\$ 1,057,500
Contingency	\$ 106,317
Engineering, Testing, Inspection	\$ 171,525
Interest Reserve	\$ 92,644
USDA Guaranty Fee	\$ 12,424
LOB Origination Fee	\$ 31,060
Closing Costs & Other Misc.	\$ 81,530
Total	\$ 1,553,000

Borrower acknowledges that they must notify Live Oak Bank before proceeding with any changes as it relates to the use of funds as referenced above. All loan funds are to be used to cover cost



associated with the expansion of the facility and cannot be used for any capital expenditures that have not been approved. (Initial)

CO

Collateral: The loan will be evidenced by a water and sewer revenue bond issued by the District. The bond will be payable from and secured by a pledge of net revenues of the District's water and sewer system, on parity with the Districts outstanding Water and Sewer Revenue Bonds; UCC-1 financing statement on all business assets in best available position.

Insurance: Business Personal Property Insurance
Borrower to provide Business Personal Property Insurance (Business Contents) in the amount of the replacement cost of the business assets collateral listed above with a Mortgagee Clause, or a Lender's Loss Payable Endorsement in favor of Live Oak Banking Company, ISAOA (satisfactory to the bank) prior to final disbursement of the loan. A Loss Payable Endorsement equivalent to a Lender's Loss Payable may be permissible if a copy of the endorsement on the policy is received and approved by the Bank.

Worker's Compensation Insurance
Worker's Compensation Insurance in an amount meeting the state law requirement and with an insurance company satisfactory to Live Oak Bank.

General Liability Insurance
General Liability Insurance policy in an amount meeting typical requirements for a manufacturing facility of similar size and an amount that is deemed acceptable by the USDA.

Disbursements: The loan will be disbursed over 12 months following closing. All disbursements from the control account will be made in accordance with the USDA authorization and as defined in the Loan Agreement.

Financial Reporting:

Quarterly:

- Internally prepared financial statements in accordance with GAAP within 45 days of quarter end for the borrowing entity and consolidated.

Annually:

- Audited financial statements prepared in accordance with GAAP within 120 days after fiscal year end for the borrowing entity and consolidated.
- Officer Compliance Certificate
- Annual approved operating budget



Covenants:

- Minimum DSCR $\geq 1.10x$ (tested annually based on audited financial statements)
- Borrower must obtain approval to from Live Oak Bank prior to any purchases over \$5,000,000 related to fixed assets

**Power of Attorney
For UCC Filings:**

Borrower appoints Live Oak its true attorney in fact to prepare, execute, file, record, or deliver financing statements, continuation statements, termination statements, statements of assignment, applications for registration, or like papers to perfect, preserve, or release Live Oak's interests in the Collateral; cause any Collateral to be transferred to Live Oak's name or the name of Live Oak's nominee; and execute all documents in the name of Borrower or otherwise as Live Oak deems necessary, proper, or convenient in order to preserve, perfect, or enforce its rights in the Collateral.

**Material Adverse
Change:**

Live Oak's obligations and Commitments under this letter are subject to the accuracy of all information, representations, and materials submitted with or in support of the Borrower's request for the Loan and any material and inaccuracy, omission or change therein, shall, in the Live Oak's discretion, operate to terminate this offer and the Live Oak's Commitment hereunder. This Commitment letter may also be terminated by Live Oak upon the occurrence of any material adverse change in the financial condition, business, prospects, properties, or management of the Borrower or the occurrence of any other event as a result of which Live Oak believes that the prospect of the Borrower repaying its liabilities to Live Oak as contemplated herein may be impaired. Without limiting the generality of the foregoing, the Commitment hereunder shall immediately terminate in the event the Borrower becomes the subject of any proceeding under the United States Bankruptcy Code or any other insolvency, reorganization, liquidation, or moratorium of law.

Expenses:

The Loan shall be made and administered without cost to the Live Oak. The Borrower's and any guarantor acceptance of this Commitment shall constitute the unconditional agreement, jointly and severally, whether or not the Loan closes, to pay all reasonable fees, expenses, taxes, costs and charges incurred in connection with the Loan, or in any way incident to the making of or the ongoing administration of the Loan, including, but not limited to, reasonable attorneys' fees and expenses (including fees and expenses of the Live Oak's counsel), appraisal fees, title searching fees, title or other insurance premiums, fees and costs for environmental tests and studies, engineer's and architect's fees, inspector's fees, surveyor's fees, recording costs, and recordation and transfer taxes. The Live Oak shall not pay any brokerage fees or commissions arising from the Loan, and the borrower and all guarantors agree, jointly and severally, to defend, indemnify, and hold the Live Oak harmless against any and all expenses,



liabilities and losses (including attorneys' fees) arising from any such claims. The Borrower and each of the guarantors, jointly and severally, promise to pay to the Live Oak on demand all costs and expenses incurred by the Live Oak in connection with the enforcement of this Commitment or any of the Live Oak's rights hereunder or any defense of the Live Oak against any claim made in connection with or arising out of this Commitment, including, without limitation, all of the Live Oak's reasonable attorneys' fees and expenses and court costs, whether or not proceedings are brought.

LIBOR

Replacement:

Notwithstanding any provision to the contrary set forth in this letter, the applicable interest rate for this loan shall be subject to LIBOR replacement rate language, stating that, in the event the Lender determines that reasonable means do not exist for ascertaining the applicable LIBOR rate and the Lender determines that the syndicated loan market has broadly accepted a replacement standard for the LIBOR rate, then the Lender may, without the consent of the borrower, apply such new broadly accepted market standard and make such other changes as shall be necessary or appropriate in the good faith determination of the Lender in order to implement such new market standard.

Commitment Fee: A \$10,000 commitment fee is required upon execution of the commitment letter and due within fourteen days from the date of this letter; otherwise, this commitment will have expired. The commitment fee will be applied to engage legal counsel and any other third-party costs incurred. The deposit held by Live Oak will be applied to any expenses incurred by Live Oak in connection with the Loan, including without limitation, lien and judgement searches, title searching fees, appraisals, business valuations, surveys, environmental tests and studies, and reasonable attorneys' fees and expenses, should the Loans not close. At the time the Loan closes, any unused portion of the deposit, if any, shall be returned to the borrower.

This Commitment letter is addressed solely to you, it is solely for your benefit, and may not be relied upon or used by any other person or entity and may not be disclosed by you without LOB's prior written consent to any person other than your attorneys and other advisors. This Commitment letter and the Commitment evidenced herein may not be assigned by you to any other person or entity.

This Commitment letter shall be governed by the laws of the state of North Carolina.

Live Oak's obligations and/or Commitments as contained in this letter are also subject to approval by the United States Department of Agriculture and the issuance of a written loan authorization by the USDA setting forth the terms and conditions of such Loan. In the event that there is any discrepancy between the terms of the Commitment as contained herein and the loan authorization as issued and approved by the USDA for this Loan, then the terms of the USDA loan authorization shall control. In the event that the USDA should fail or refuse to issue a Loan Note Guarantee as to this Loan, then this



Commitment shall terminate, and Live Oak shall have no further obligations or responsibilities hereunder. Furthermore, Live Oak's obligations hereunder are contingent upon the Borrower and/or Guarantor(s) being in compliance with all terms and conditions of any USDA Conditional Commitment which may be issued as to this Loan, and failure to comply with such will likewise terminate the terms and conditions of the Commitment letter and Live Oak shall have no further obligations hereunder in such event.

This credit accommodation is made available subject to the terms, conditions, and provisions of comprehensive loan documents to be executed within 180 days from Live Oak's Credit approval dated April 12, 2021. Should the loan not close within 180 days of same approval, updated financials and re-approval will be required.

If the terms outlined in this commitment letter are acceptable to you, please execute and return a copy to Live Oak Bank.

Sincerely,

Anna West
Loan Officer
Live Oak Bank

Accepted By:

Name: Donna Loiselle
Title: General Manager
Date:

Other Conditions:

Please note that a detailed checklist will be prepared for use during the closing process by your closing specialist.



JUL 19 2021

Ms. Donna Loiselle
Marilee Special Utility District (SUD)
P. O. Box 1017
Celina, TX 75009

Dear Ms. Loiselle:

Congratulations on being selected to receive a \$1,553,000 Water and Waste Guaranteed Loan for Marilee SUD.

We have enclosed a copy of USDA-RD Form RD 1940-3, "Request for Obligation of Funds Guaranteed Loan." This form indicates that on July 12, 2021, USDA Rural Development approved loan of \$1,553,000 for Marilee SUD.

USDA Rural Development works to support the sustainable development of rural communities and to improve the quality of life in rural areas.

Sincerely,

DANIEL TORRES
Acting State Director

Enclosure

Rural Development • Texas State Office
101 South Main Street, Suite 102, Temple, Texas 76501
Voice 254.742-9789 • Fax 844.767.7087

USDA is an equal opportunity provider, employer, and lender.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
FARM SERVICE AGENCY

**REQUEST FOR OBLIGATION OF FUNDS
GUARANTEED LOANS**

INSTRUCTIONS: Complete Items 1 through 25 and applicable Items 26 through 35. See FMI.				
1. CASE NUMBER ST CO BORROWER ID 49-093-*****8804		2. LOAN NUMBER 40	3. FISCAL YEAR 21	4. SOURCE OF FUNDS 1 (See FMI)
5. BORROWER NAME Marilee Special Utility District		6. NUMBER NAME FIELDS (1, 2, or 3 from Item 5)		
7. STATE NAME Texas		8. COUNTY NAME Collin		
9. RACE CODE 1 - WHITE 4 - HISPANIC 2 - BLACK 5 - A/PI 3 - A/IN 1	10. EMPLOYEE RELATIONSHIP CODE (See FMI)	11. SEX CODE 1 - MALE 4 - ORGANIZATION MALE OWNED 2 - FEMALE 5 - ORGANIZATION FEMALE OWNED 3 - FAMILY UNIT 6 - PUBLIC BODY 6		12. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED OR DIVORCED)
13. VETERAN CODE 1 - YES 2 - NO	14. TYPE OF PAYMENT 3 1 - MONTHLY 3 - SEMI-ANNUALLY 2 - ANNUALLY 4 - QUARTERLY		15. COMMUNITY SIZE 1 - 10,000 OR LESS (FOR SFH ONLY) 2 - OVER 10,000	
16. TYPE OF ASSISTANCE 061 (See FMI)	17. PURPOSE CODE		18. GUARANTEE PERCENT OF LOAN 1 %	
19. TERM OF INTEREST ASSISTANCE	20. SUBMISSION CODE 2 1 - INITIAL 2 - SUBSEQUENT		21. AMOUNT OF LOAN 1,553,000.0	
22. APPROVAL DATE MO DA YR JUL 12 2021	23. NOTE INTEREST RATE 5.7100 %		24. BORROWER EFFECTIVE INTEREST RATE %	
25. REPAYMENT PERIOD 30	26. INCOME CATEGORY 1 - VERY LOW 2 - LOW 3 - MODERATE		27. ADJUSTED FAMILY INCOME	
28. TYPE OF UNIT 1 - FARM TRACT 2 - NON-FARM TRACT	29. DWELLING TYPE USE OF FUNDS CODE (See FMI)		30. INTEREST ASSISTANCE CODE 1 - ELIGIBLE FOR INTEREST ASSIST PROGRAM 2 - INELIGIBLE FOR INTEREST ASSIST PROGRAM	
31. PERCENT OF INTEREST ASSISTANCE %	32. HIGH COST AREA Y = YES N = NO		33. BORROWER HISTORY CODE (See FMI)	
34. AMOUNT AGENCY DIRECT DEBT REFINANCE		35. OBLIGATION DATE (Finance Office use only) MO DA YR JUL 12 2021		
36. BEGINNING FARMER/RANCHER (See FMI)				

CERTIFICATION APPROVAL

APPROVAL CONDITIONS:

(1) (Farm Loan Programs Only) This loan guarantee is approved subject to the availability of funds. If this loan guarantee is not issued for any reason within 90 calendar days from the date of approval on this document, the approval official may request updated information concerning the lender and the loan applicant. The approval official will have 14 working days to review any updated information and decide whether to submit this document for obligation of funds.

(2) This loan guarantee is approved subject to the conditions on the Conditional Commitment.

37. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL

38. I HEREBY CERTIFY that all determinations and certifications required by the respective United States Department of Agriculture (USDA) Agency regulations prerequisite to providing assistance of the type indicated above have been made and that evidence thereof is in the docket, and that all requirements of pertinent regulations have been complied with. I hereby approve the above-described assistance in the amount set forth above, subject to the availability of funds, and subject to conditions prescribed by Agency regulations applicable to this type of assistance.

I further certify that USDA has complied with the applicable provisions of Title XI, Public Law 95-630, seeking financial information regarding the applicant.


(Signature of Approval Official)

Typed or Printed Name: Daniel Torres

JUL 12 2021

Date Approved _____ Title: Acting State Director

JUL 12 2021

39. TO THE APPLICANT/LENDER: As of this date _____, this is notice that your application for the above loan guarantee/Interest Assistance from USDA has been approved, as indicated above, subject to the availability of funds and other conditions required by the respective USDA Agency. If you have any questions contact the Approval Official.



**Assurance Regarding Felony Conviction
or Tax Delinquent Status for Corporate Applicants**

AD-3031

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). The authority for requesting the following information for U.S. Department of Agriculture (USDA) agencies and staff offices is in § 744 and 745 of the Consolidated Appropriations Act, 2019, Pub. L. 116-6 as amended and/or subsequently enacted. The information will be used to confirm applicant status concerning entity conviction of a felony criminal violation, and/or unpaid Federal tax liability status.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0025. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal, civil, fraud, privacy, and other statutes may be applicable to the information provided.

This award is subject to the provisions contained in the Consolidated Appropriations Act, 2019, Pub. L. 116-6, Division E, Title VII, sections § 744 and 745, as amended and/or subsequently enacted for U.S. Department of Agriculture (USDA) agencies and offices regarding corporate felony convictions and corporate federal tax delinquencies.

Accordingly, by accepting this award the corporation recipient acknowledges: (1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, **and/or** (2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the USDA has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.

Donna Loiselle

APPLICANT'S SIGNATURE

Gen. Mgr

TITLE/RELATIONSHIP OF THE INDIVIDUAL IF SIGNING IN A REPRESENTATIVE CAPACITY

Manlee Special Utility District

BUSINESS NAME

7-27-2021

DATE SIGNED (MM-DD-YYYY)

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint (<https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer>) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442.

ACCEPTANCE OF CONDITIONS

To: USDA

Address:

U.S.D.A Rural Development
101 South Main Street, Suite 1.1
Temple, Texas 76501

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction.

(Execute and complete Form RD 5001-1, "Application for Loan Guarantee" using the version dated 1-2021.)

(Name of Lender)

Date: _____

By _____

(Signature for Lender)

Date: 1-27-2021

Anna Reiselle

(Signature for Lender)

EXHIBIT B

**AFFIDAVIT OF JACOB DUPUIS, PE NO. 133398
MARILEE'S ENGINEER OF RECORD**

DOCKET NO. 52101

**PETITION OF CCD-NORTH SKY,
LLC TO AMEND MARILEE
SPECIAL UTILITY DISTRICT'S
CERTIFICATE OF
CONVENIENCE AND NECESSITY
IN COLLIN COUNTY BY
EXPEDITED RELEASE**

§
§
§
§
§
§

**PUBLIC UTILITY
COMMISSION
OF TEXAS**

**SUPPORTING AFFIDAVIT OF JACOB DUPUIS,
PROFESSIONAL ENGINEER FOR MARILEE SPECIAL UTILITY DISTRICT**

STATE OF TEXAS

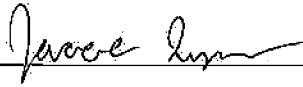
§
§
§

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this date personally appeared Jacob Dupuis, who being by me first duly sworn, on her oath deposed and testified as follows:

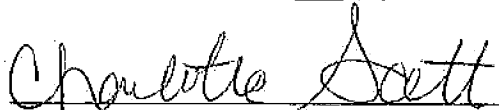
1. "My name is Jacob Dupuis. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am an engineer and the employee of DBI Engineers. The company serves as the engineer of record for Marilee Special Utility District, the Intervenor in this matter, and I am the project engineer for the utility. I have been in that position for seven years.
3. "I am authorized to make this affidavit on behalf of Marilee in Docket 52101 in support of its response to CCD-North Sky, LLC ("Petitioner") First Amended Petition ("Amended Petition") to release 219.67 acres of property ("Requested Area") from areas for which Marilee holds water certificate of convenience and necessity ("CCN") No. 10150.
4. "I have read Marilee Special Utility District's Verified Response to the First Amended Petition for Expedited Release from Water CCN No. 10150 in Docket No. 52101 (the "Response") and each and every factual statement contained therein is true and correct to the best of my knowledge.
5. "I am familiar with the maps of the Requested Area, being 219.67 acres of contiguous property acres attached to this Affidavit as Exhibits B-1 through B-4. Marilee has a 2" waterline on the Property served off the 6" waterline at the corner of CR #99 and Louisiana through Meter #241 (the "Meter"). The Meter is visible within the maps provided.
6. "In my professional opinion, Marilee provides and has the ability and facilities dedicated to continue to provide water service to the Requested Area.

FURTHER, AFFIANT SAYETH NOT.



Jacob Dupuis
Professional Engineer for Marilee Special Utility
District

SWORN TO AND SUBSCRIBED before me by Jacob Dupuis on this 6 day of October 2021.



Notary Public in and for the State of Texas

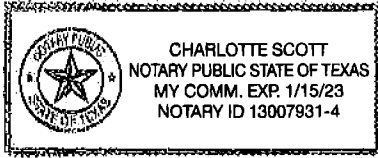
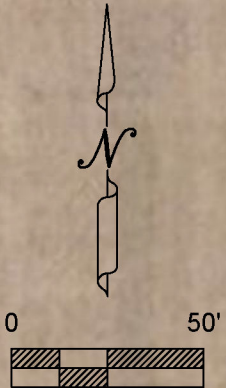


Exhibit
B-1

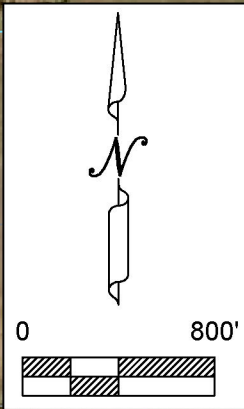


EXISTING METER
#241 CHAN

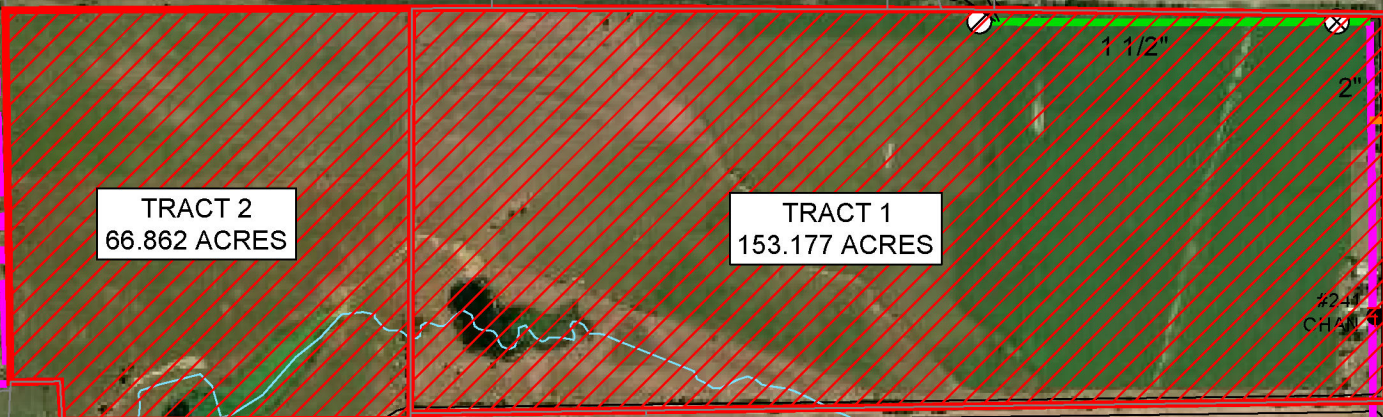
36'

45'

Spur 483



CCN BOUNDARY



TRACT 2
66.862 ACRES

TRACT 1
153.177 ACRES

Exhibit
B-2

CR 58

PR 5524

#244
HUBBARD

#466
MOORE

#318
ROSEBERRY

DEAD METER
#112

#992
HOWETH

#1224
BLACK

#1663

#2448

#861 WILLARD

#102 SHETH

#356 ELDRIDGE

#371
WILLARD

#369
WILLARD

#187
WILLARD

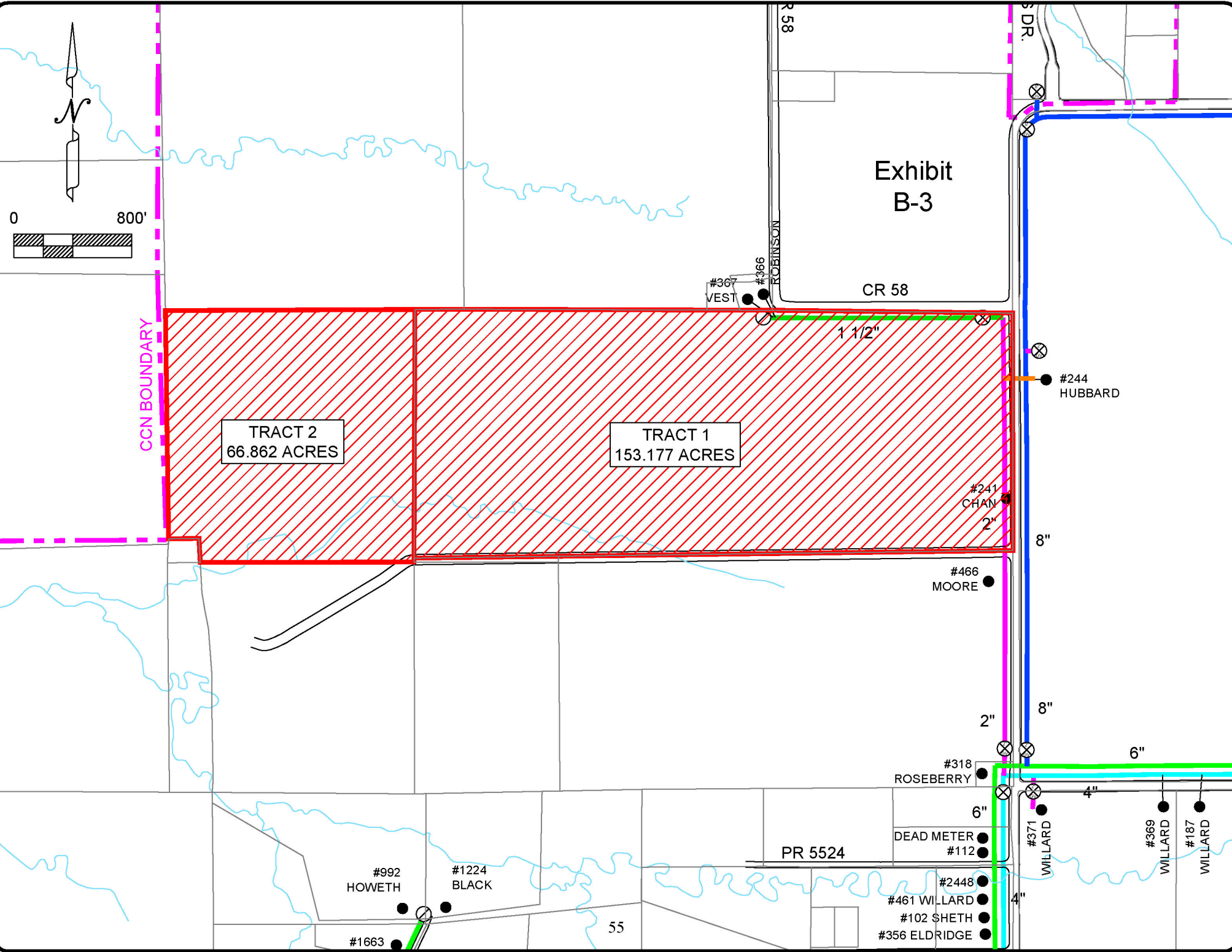


Exhibit
B-3

TRACT 2
66.862 ACRES

TRACT 1
153.177 ACRES

CCN BOUNDARY

CR 58

PR 5524

#244
HUBBARD

#466
MOORE

#318
ROSEBERRY

#992
HOWETH

#1224
BLACK

DEAD METER
#112

#2448
#461 WILLARD

#102 SHETH
#356 ELDRIDGE

#371
WILLARD

#369
WILLARD

#187
WILLARD

1 1/2"

2"

8"

2"

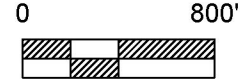
8"

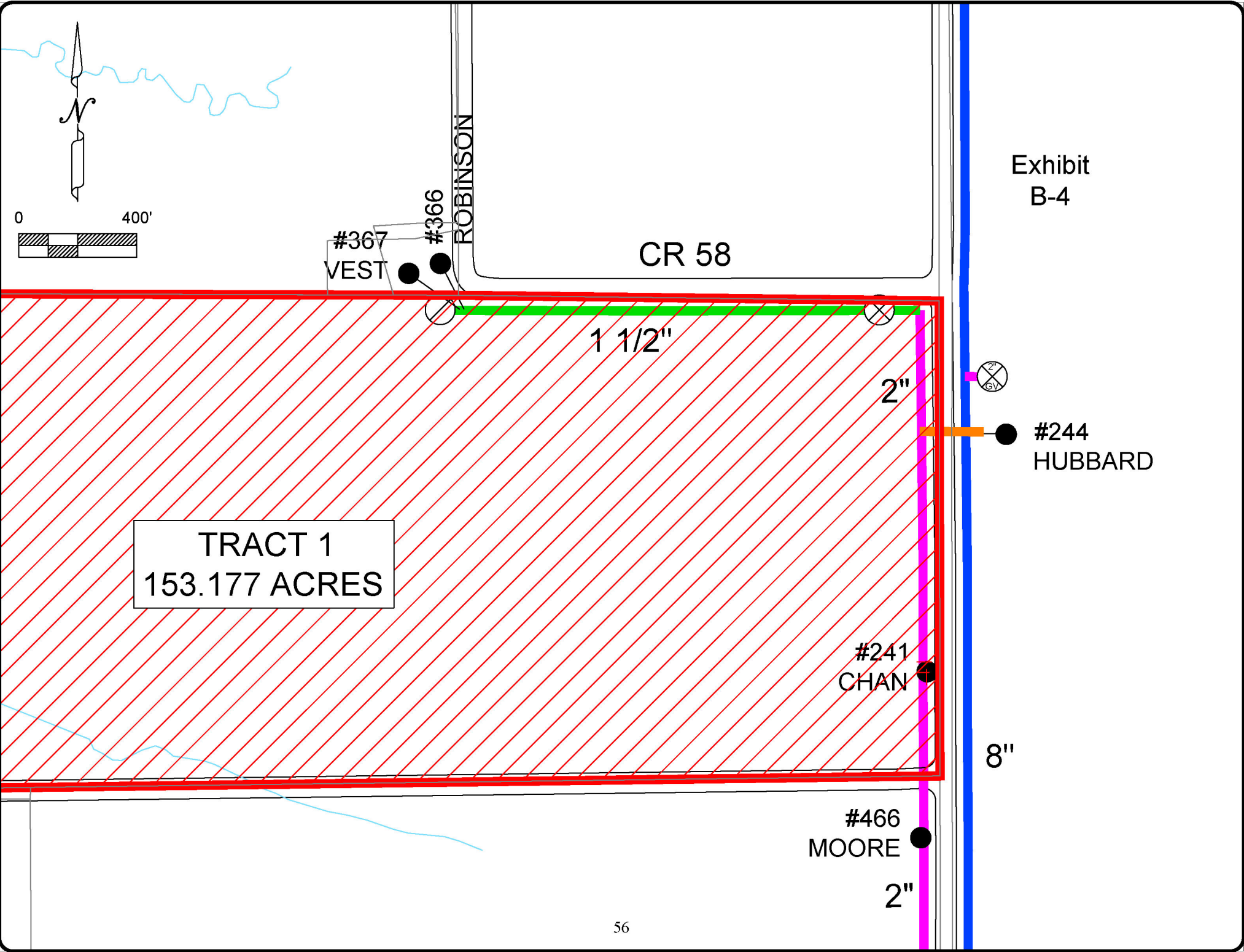
6"

4"

6"

4"





TRACT 1
153.177 ACRES

#367
VEST

#366

ROBINSON

CR 58

1 1/2"

2"

#244
HUBBARD

#241
CHAN

8"

#466
MOORE

2"

Exhibit
B-4