



## **Filing Receipt**

**Filing Date - 2023-04-17 01:56:29 PM**

**Control Number - 52442**

**Item Number - 75**

**PUC DOCKET NO. 52442**

<b>PETITION OF MERITAGE HOMES OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TEXAS, LLC TO AMEND NORTH</b>	<b>§</b>	
<b>COLLIN SPECIAL UTILITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>DISTRICIT'S CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>COLLIN COUNTY BY EXPEDITED</b>	<b>§</b>	
<b>RELEASE</b>	<b>§</b>	

**NORTH COLLIN SPECIAL UTILITY DISTRICT'S MOTION FOR REHEARING**

North Collin Special Utility District ("North Collin") files this Motion for Rehearing pursuant to PUC Rule 22.264 and Chapter 2001 of the Texas Government Code, requesting that the Public Utility Commission of Texas (the "Commission") reconsider its Order granting the Petition to Amend North Collin's Certificate of Convenience and Necessity ("CCN") No. 11035 by expedited release filed by Meritage Homes of Texas, LLC, an Arizona limited liability company ("Petitioner" or "Meritage") and deny said petition. In support thereof, North Collin would respectfully show as follows:

**I. INTRODUCTION**

On August 23, 2021, Meritage filed a petition for streamlined expedited release, pursuant to Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h), from North Collin's water CCN No. 11035 (the "Initial Petition"). In the Initial Petition, Meritage states that it owns approximately 273.5 acres of property in Collin County, Texas (the "Property"), which is located within the municipal boundaries of the City of Princeton and within the boundaries of North Collin's CCN.<sup>1</sup>

On September 29, 2022, Meritage filed its Amended Petition, requesting streamlined expedited release of a portion of the Property which excluded some of North Collin's facilities located on the Property, leaving a requested tract of land that is now a total of 272.23 acres (the "Amended Property").

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<sup>1</sup> Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release Pursuant to Texas Water Code Section 13.2541, at 2 (Aug. 23, 2021).



On March 23, 2023, the Commission issued its Order releasing the Amended Property from North Collin's service area under CCN No. 11035.<sup>2</sup> Thus, this Motion for Rehearing is timely filed pursuant to PUC Rule 22.264 and Texas Government Code § 2001.146.

North Collin is a political subdivision of the State of Texas with an elected board of directors. North Collin respectfully requests the Commission reconsider the Order and deny the Amended Petition. Specifically, North Collin requests the Commission reconsider the Findings of Fact Conclusions of Law set forth below in its Arguments and Authorities. Alternatively, North Collin requests that the Commission abate the proceeding until after North Collin's federal water rights have been fully adjudicated by the federal court system.

Because the Amended Property is receiving water service from North Collin under state law, the Order should be reconsidered, and the Amended Petition be denied. North Collin's evidence demonstrates that it has the water facilities and capacity committed to provide service to the Amended Property and has, thus, met the requirements for showing that the Amended Property is receiving water service. The former version of Texas Water Code § 13.2541 placed the burden on Petitioner to prove that it was not receiving water "service." The Water Code defines "service" broadly to include "*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 [under Chapter 13] 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." Tex. Water Code § 13.002(21) (emphasis added). Petitioner did not meet its burden. The undisputed evidence demonstrated that North Collin has committed or dedicated facilities or lines for providing service to the area that Meritage seeks to decertify.

North Collin specifically requests the Commission reconsider Findings of Fact Nos. 48, 51, 52, 53, 54, and 55; Conclusions of Law Nos. 1, 4, 8, 12, 13, 14, and 16; and Ordering Paragraphs Nos. 1 and 3.

## II. EVIDENCE

In support of this Motion for Rehearing and for the convenience of the Commission, North Collin attaches copies of the following documents which were made part of the record:

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<sup>2</sup> Order at 8, ¶ 1 (Mar. 23, 2023).

<b><u>Attachment No.</u></b>	<b><u>Document</u></b>
1.	The Affidavit of Allen Knight executed December 27, 2022, which was attached as Attachment A-1 to North Collin's Response filed December 28, 2022.
2.	The Affidavit of Allen Knight executed August 22, 2022, which was attached as Attachment A-2 to North Collin's Response filed December 28, 2022.
3.	A map identifying the Property and location of North Collin's existing waterlines and facilities, which was prepared by North Collin's consulting engineer of record and attached as Attachment B to North Collin's Response filed December 28, 2022.
4.	The Phasing Exhibit to the Project, showing the location of North Collin's proposed 12" domestic water meter and 12" waterline that connects to Petitioner's internal waterlines, which was attached as Attachment B to North Collin's Response filed December 28, 2022.

### **III. FACTUAL HISTORY**

On August 23, 2021, Meritage filed its Petition for Streamlined Expedited Release Pursuant to Texas Water Code Section 13.2541. In the Initial Petition, Meritage stated that it owns approximately 273.5 acres of property in Collin County, Texas, which is located within the municipal boundaries of the City of Princeton and within the boundaries of North Collin's CCN.<sup>3</sup>

On August 25, 2022, an Order Remanding to Docket Management was issued, to allow Meritage to amend the Petition to exclude from the Property certain areas on which North Collin has existing facilities.<sup>4</sup> Further, the Order provided, among other things, that "[North Collin's] two-inch waterline appears to be committed to providing service to Meritage Homes' tract of land, the Commission determines that Meritage Homes did not demonstrate that this facility is

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<sup>3</sup> Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release Pursuant to Texas Water Code Section 13.2541, at 2 (Aug. 23, 2021).

<sup>4</sup> Order Remanding to Docket Management, at 3 (Aug. 25, 2022).

not committed to providing service to its tract of land.”<sup>5</sup> Since that order, Petitioner has put on no evidence that the two-inch water line has been removed or taken out of service. To the contrary, the undisputed evidence is that the two-inch water line remains committed to serving the Property and the Amended Property.

On September 26, 2022, Order No. 17 Establishing Deadlines was issued as discussed above.

On September 29, 2022, Meritage filed its Amended Petition, requesting streamlined expedited release of a portion of the Property which excluded North Collin’s facilities located on the Property, where the requested tract of land is now a total of 272.23 acres.

On November 15, 2022, Order No. 18 Finding Amended Petition Administratively Complete; Establishing Deadlines was issued and found the Amended Petition, supplemented with revised mapping,<sup>6</sup> was administratively complete.

On March 23, 2023, the Commission issued its Order releasing the Amended Property from North Collin’s service area under CCN No. 11035.

#### **IV. ARGUMENT AND AUTHORITY**

##### **A. The Amended Property Cannot be Released Because the Amended Property Does Not Qualify for Expedited Release.**

North Collin proved that the Amended Property cannot be released from North Collin’s territory, and North Collin’s CCN No. 11035 cannot be amended, under TWC 13.2541 because the Amended Property is receiving water “service” as defined by state law. The Order states incorrect facts and conclusions of law that are contrary to the evidence regarding North Collin’s “service” to the Amended Property. The Order disregards that North Collin’s facilities and waterlines are serving the Amended Property and are committed or dedicated to providing water service to the Amended Property. The Order also disregards evidence provided by North Collin that it is performing acts to supply water to the Amended Property.

##### **B. Objections and Corrections to Findings of Fact.**

The Order incorrectly states that North Collin, as the CCN holder of the Amended Property in which Petitioner is seeking to decertify in this proceeding, has not committed or dedicated any facilities or lines, does not have any facilities or lines, and has not performed any

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<sup>5</sup> *Id.*, at 2.

<sup>6</sup> Order No. 18 at 1, ¶ 2 (Nov. 15, 2022).

acts for or supplied anything to the tract of land. In response, North Collin provided facts and details in this proceeding that North Collin is providing water service (as defined by state law) to the Amended Property. The Order ignores or misconstrues that evidence.

The Commission's findings of fact and conclusions of law violate Texas Government Code Section 2001.174(2), which states that a court:

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) in violation of a constitutional or statutory provision;
- (B) in excess of the agency's statutory authority;
- (C) made through unlawful procedure;
- (D) affected by other error of law;
- (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
- (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.<sup>7</sup>

The Commission's findings of fact and conclusions of law violate each category in sections (A) through (F) as described in more detail below.

In North Collin's Response and Objection to the Administratively Complete Amended Petition filed on December 28, 2022, North Collin argued that the Amended Petition should be dismissed on the basis that the Property is receiving water "service" per 16 TAC §§ 24.245(h), 24.3(33) and TWC §§ 13.002, 13.2541. The Order fails to acknowledge that North Collin's bases for dismissal are supported by these state statutes.

Findings of Facts Nos. 48, 51, 52, 53, 54, and 55 in the Order incorrectly stated that the Amended Property is not receiving actual water service from North Collin, that North Collin has not committed or dedicated any facilities or lines to the Amended Property, that North Collin does not provide water service to the Amended Property, and that North Collin has not performed any acts for or supplied anything to the Amended Property. But North Collin has provided evidence that the Amended Property is receiving actual water service.

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<sup>7</sup> Tex. Gov't Code. Section 2001.174(a)(A)-(F).

# **1. The Amended Property is Receiving Actual Water Service from North Collin.**

Findings of Fact No. 48 incorrectly states that “[t]he tract of land is not receiving actual water service from [North Collin].” North Collin presented evidence that it has provided service to the Amended Property, and that North Collin has specific infrastructure that is committed to servicing the development *on* the Amended Property.<sup>8</sup> Meritage has not presented legally or factually sufficient evidence that the Amended Property is not receiving water service.

Additionally, Findings of Fact No. 51 misstates the evidence. While it is true that Altoga provided water service to the Amended Property 15 years ago, this gives the false impression that the Amended Property has not been receiving service in the past 15 years. North Collin has provided evidence that it has provided water service to the Amended Property for approximately 15 years.<sup>9</sup>

Lastly, Findings of Fact No. 52 incorrectly states that “[n]one of [North Collin’s nearby] infrastructure provides water service to the tract of land.” North Collin has provided service to the Amended Property, and North Collin has specific infrastructure committed to servicing the development of the Amended Property.<sup>10</sup> To the extent the Commission is relying on the affidavit of David Aughinbaugh, his statement that “[t]he tract of Land – Portion is not receiving water service from North Collin Special Utility District or any other water service provider”<sup>11</sup> is conclusory and does not constitute legally or factually sufficient evidence.<sup>12</sup> Meritage had the burden of establishing that North Collin’s infrastructure was not committed to the Amended Property and has failed to meet that burden.

Mr. Aughinbaugh’s conclusory statement is unreliable for another reason. The inquiry is whether North Collin has *committed* infrastructure to the Amended Property, not whether it is

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<sup>8</sup> North Collin’s Response and Objection to the First Amended Petition by Meritage for Streamlined Expedited Release and Motion to Dismiss and Motion to Abate at 17–18, Attachment A-1 ¶ 2, 5, and Attachment A-2 ¶ 4 (Dec. 28, 2022).

<sup>9</sup> *Id.* at 17–18, Attachment A-1 ¶ 2, 5.

<sup>10</sup> *Id.*

<sup>11</sup> First Amended Petition by Meritage for Streamlined Expedited Release pursuant to TWC § 13.2541 at Exhibit A ¶ 3 (Sept. 29, 2022).

<sup>12</sup> *See, e.g., Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (“Conclusory affidavits are not enough to raise fact issues.”).

providing actual service today. Tex. Water Code § 13.002(21). Mr. Aughinbaugh would not have any personal knowledge concerning whether and how North Collin committed existing nearby infrastructure to the Amended Property. His opinions should be disregarded as they are not based on personal knowledge concerning facts relevant to this proceeding.

**2. North Collin Committed and/or Dedicated Facilities or Lines to the Amended Property and Performed Acts for Providing Water Service to the Amended Property.**

The Order's Findings of Fact Nos. 53 and 54 incorrectly state that North Collin "has not committed or dedicated any facilities or lines to the [Amended Property] for water service" and "has no facilities or lines that provide water service to the [Amended Property]." As stated previously and shown by evidence in this proceeding, Findings of Facts Nos. 53 and 54 are not true. North Collin has committed and dedicated facilities and lines to serve the Amended Property, and has facilities and lines that provide water service to the Amended Property—including the fact that North Collin has installed and provided water to the Amended Property through a 5/8" x 3/4" meter and 2" water line on the Property, extended from a 4" waterline and connected to its 8" waterline which transmits water from its facilities at two locations: (1) at the corner of FM 1827 and FM 75, facilities consisting of a pump station, 138 gallon per minute well, 150,000 gallon ground storage tank, and 10,000 gallon pressure tank, and (2) through various 2", 4", 6", 8", and 10" waterlines from Well #2 located at 200 Crystal Creek Lane, McKinney, Texas located northeast of the Amended Property.<sup>13</sup> This evidence is unrebutted.

Finding of Fact No. 55 in the Order also states that North Collin "has not performed any acts for or supplied anything to the tract of land." This is wrong. North Collin's general manager attested that the existing waterlines and facilities are committed and used to provide "service" to the Amended Property. North Collin performed numerous acts to provide water "service" to the Amended Property, including the fact that North Collin is in the process of constructing a proposed 500,000-gallon elevated tank located southwest of the Amended Property and installing proposed 12" waterlines that will provide additional capacity and directly provide water service to the Amended Property.<sup>14</sup>

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<sup>13</sup> North Collin's Response to Amended Petition at 4–7, 9–11 (Oct. 6, 2022).

<sup>14</sup> *Id.*

Correcting these Findings of Fact is imperative to the analysis that North Collin was indeed providing water service to the Amended Property.

**C. Objections and Corrections to Conclusions of Law.**

Since the Commission's Findings of Fact are erroneous, the Commission's following Conclusions of Law are incorrect and should be changed as follows:

- **Conclusion of Law No. 1.** This Conclusion of Law is incorrect because the Amended Petition does not qualify for streamlined expedited release under TWC §§ 13.254 and 13.2541. North Collin has provided un rebutted evidence that the Initial and Amended Petition, as well as the Property, do not qualify for streamlined expedited release.<sup>15</sup>
- **Conclusions of Law No. 4.** This Conclusions of Law is incorrect. While Tex. Water Code §§ 13.254 and 13.2541 and 16 TAC § 24.245(h)(7) do not explicitly provide for a contested case hearing, North Collin is still entitled to a contested case hearing under Texas law. There is nothing in those provisions that purports it is not a contested case, or that North Collin is not entitled to same. Furthermore, the Texas Administrative Procedures Act applies, and it includes a right to a contested case hearing. Tex. Water Code § 13.003 ("Chapter 2001, Government Code applies to all proceedings under this chapter except to the extent inconsistent with this chapter."); Tex. Gov't Code § 2001.003(1) (defining contested cases as any "proceeding . . . in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing"). When the Legislature intended that disputes under Chapter 13 *not* be contested, they opt out explicitly. *See, e.g.*, Tex. Water Code § 13.188(b). Similarly, when the Legislature wanted to opt out of the APA, it does so explicitly, not implicitly. *See* current version of Tex. Water Code § 13.254(a-4).
- **Conclusion of Law No. 8.** There is nothing the TWC § 13.2541(b), or any other Commission rules, that supports the Commission's

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<sup>15</sup> North Collin's Response to Amended Petition at 3.

interpretation about timing of receiving water service as stated in this conclusion of law. Texas Water Code § 13.2541 only states that the property may be released *if it is not receiving water service*. North Collin has submitted sufficient evidence into the record to show that the Release Property has been receiving water service for many years and is “receiving water service” consistent with the opinion in *Crystal Clear*, 449 S.W.3d at 140.

- **Conclusion of Law No. 12.** This Conclusion of Law is incorrect because the undisputed evidence proves the tract of land is receiving water service. North Collin has provided evidence of the waterlines and meters providing water service to the Release Property, the facilities committed to providing water service to the Release Property, and acts performed to dedicate facilities and lines to the Release Property.<sup>16</sup>
- **Conclusion of Law No. 13.** Petitioner is not entitled to decertify North Collin’s CCN. This Conclusion of Law is not supported by substantial or any evidence and is belied as a matter of law by the undisputed evidence in this proceeding.
- **Conclusion of Law No. 14.** This Conclusion of Law is inconsistent with the evidence presented in the proceeding and should be removed in its entirety.
- **Conclusion of Law No. 16.** The Commission processed the petition in violation of state and federal law, both of which the Commission is bound to follow. This Conclusion of Law is not supported by substantial or any evidence and is belied as a matter of law by the undisputed evidence in this proceeding.

The bases for North Collin’s corrections to the above-listed conclusions of law are explained in more detail below.

The Order incorrectly states that the “[Property] is not receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h) as interpreted in *Texas General*

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<sup>16</sup> North Collin’s Response to Amended Petition at 4–7, 9–11, Attachments A-B.



*Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).<sup>17</sup> The facts in this proceeding show the Amended Property is receiving water service under these statutes and as interpreted by the court in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*

**1. The Amended Property is Receiving Water “Service” Under TWC and TAC.**

16 TAC § 24.245(h) authorizes the streamlined expedited release if all conditions provided thereunder are met, including subsection “(B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN . . . . (emphasis added).” 16 TAC § 24.3(33) and TWC § 13.002(21) define “**service**” as follows:

**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 under TWC Chapter 13 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. (emphasis added).**

Further, the *Crystal Clear* court stated that “a tract of land would not necessarily be ‘receiving’ water service simply because the retail public utility has performed an act . . . , unless the act was performed in furtherance of providing water to the tract seeking decertification.”<sup>18</sup>

Not only has North Collin provided water service to the Amended Property, North Collin has also performed actions in furtherance of providing water service to the Amended Property by planning and beginning the process of construction a proposed 500,000-gallon elevated tank located southwest of the Amended Property and installing proposed 12” waterlines that will provide additional capacity and directly provide service to the Amended Property.<sup>19</sup> By these actions, the Commission cannot conclude that North Collin has not performed any acts, furnished or supplied anything (water) to the Amended Property, or committed or used any of its facilities and waterlines to provide “service” (including actual water service) to the Property, in furtherance of its duties as a retail water utility.

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<sup>17</sup> Order at 7, ¶ 12 (Mar. 23, 2023).

<sup>18</sup> *Crystal Clear Water Supply Corp.*, 449 S.W.3d at 140 (emphasis added).

<sup>19</sup> North Collin’s Response to Amended Petition at 4–7, 9–11 (Oct. 6, 2022).

**2. Actual Present Delivery of Water to the Tract is Not Required (though North Collin's Water is Presently Delivering Water to the Property).**

In *Crystal Clear*, the court found that “in [the Commission and petitioner’s] view, a tract of land is not receiving water service ‘if the landowner is not receiving actual water on the property.’ We find *nothing* in the text of the statute, *however, that compels this interpretation*.”<sup>20</sup>

The court also stated that “it is important to consider whether the facilities and lines are ‘committed’ to the tract seeking expedited release or ‘used’ to provide water to that tract.”<sup>21</sup> In North Collin’s Response to the Amended Petition and North Collin’s Response and Objection to the Administratively Complete Amended Petition, North Collin’s general manager attested that the specific meter, waterlines and facilities that are used to provide actual water service to the Amended Property.

Further, unlike the facts in *Crystal Clear* where the Commission reasonably declined to attribute any evidentiary weight to a deficient exhibit not supported or proved up by an affidavit or bearing the stamp of a licensed engineer,<sup>22</sup> North Collin has provided a depiction of the location of the waterlines and facilities, as prepared by North Collin’s consulting engineer of record and supported and proved up by the affidavit of North Collin’s general manager.

Lastly, North Collin informed the Commission of the federal issues (in accord with *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964)). North Collin is not asking the Commission to adjudicate any federal issues, or federal law concerning “service.” North Collin has already demonstrated by evidence filed in the record that the Property is receiving “service” consistent with the *Crystal Clear* case.

## **V. CONCLUSION**

North Collin established that it is providing water service to the Property under Tex. Water Code §§ 13.002(21) and 13.2541(b) and 16 Tex. Admin. Code § 24.245(h), including as interpreted by *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.* North Collin provided substantial evidence that the Property is receiving water “service.” North Collin has committed or dedicated its facilities and lines to provide water service to the Property and Amended Property when North Collin provided such service and continues to do so. North

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<sup>20</sup> *Id.* at 140 (emphasis added).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 141.

Collin performed acts and supplied/dedicated substantial infrastructure in furtherance of providing water service to the Property.

WHEREFORE, North Collin respectfully requests that the Commission reconsider its March 23, 2023 Order, deny Meritage's Amended Petition and amend its Order, or alternatively, set this matter for rehearing and abate the proceeding until North Collin's federal protections are fully adjudicated by the federal court system.

Respectfully submitted,

**ALLENSWORTH & PORTER, L.L.P.**

303 Colorado Street, Suite 2800

Austin, Texas 78701

(512) 708-1250 (Phone)

(512) 708-0519 (Fax)

By: /s/ Will W. Allensworth

Will W. Allensworth

State Bar No. 24073843

wallensworth@allensworthlaw.com

Karly A. Houchin

State Bar No. 24096601

khouchin@allensworthlaw.com

and

Maria Huynh

State Bar No. 24086968

mhuynh@jww-law.com

James W. Wilson

State Bar No. 00791944

jwilson@jww-law.com

**JAMES W. WILSON & ASSOCIATES,  
PLLC**

103 W. Main Street

Allen, Texas 75013

(972) 727-9904 (Phone)

(972) 755-0904 (Fax)

**ATTORNEYS FOR NORTH COLLIN SPECIAL  
UTILITY DISTRICT**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 17<sup>th</sup> 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.<sup>23</sup>

/s/ Will W. Allensworth

Will W. Allensworth

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<sup>23</sup> *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).

# **ATTACHMENT 1**

PUC DOCKET NO. 52442

PETITION OF MERITAGE HOMES OF TEXAS, LLC TO AMEND NORTH COLLIN SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE	§ § § § § §	PUBLIC UTILITY COMMISSION  OF TEXAS
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**SUPPORTING AFFIDAVIT OF ALLEN KNIGHT, GENERAL MANAGER  
OF NORTH COLLIN SPECIAL UTILITY DISTRICT**

STATE OF TEXAS	§
	§
COUNTY OF COLLIN	§

BEFORE ME, the undersigned authority, on this date personally appeared Allen Knight, who being by me first duly sworn states as follows:

"1. My name is Allen Knight. 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 1998, I have been the duly appointed general manager of North Collin Special Utility District ("North Collin"). I am the custodian of the records of North Collin. North Collin was formerly a water supply corporation, known as North Collin Water Supply Corporation ("WSC"), and converted to a special utility district ("SUD"), granted by an order of the Texas Commission on Environmental Quality ("TCEQ") issued on August 25, 2015. North Collin merged with Altoga Water Supply Corporation ("Altoga") in 2019, as granted and approved by the Public Utility Commission of Texas in Docket No. 46452. There are various portions of North Collin's CCN where there is a dual water CCN with another entity.

3. I have read North Collin's Response and Objection to the First Amended Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release and Motion to Dismiss and Motion to Abate (the "Response") and each and every factual statement contained therein is true and correct.

4. Attachment B is a true and correct copy of a portion of North Collin's water system map prepared by North Collin's engineer of record, Eddy Daniel, P.E. of the firm Dunaway DBI Engineers ("Engineer") including and surrounding the 273.5 acre tract of land (the "Property") that is the subject of the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release filed on August 23, 2021 (the "Petition"). The Property is located wholly in North Collin's service area under CCN No. 11035. The Property is accurately located in Attachment B in relation to the current facilities and waterlines of North Collin, including those assigned to North Collin by Altoga.

5. North Collin has a 2-inch (2") waterline on the Property, extended from a 4-inch (4") waterline and connected to its 8-inch (8") waterline which transmits water from its facilities

at two locations, (1) at the corner of FM 1827 and FM 75, consisting of a pump station, 138 gallon per minute (GPM) well, 150,000 gallon ground storage tank, and 10,000 gallon pressure tank; and (2) through various 2", 4", 6", 8", and 10" waterlines transmitted water from Well #2 located at 200 Crystal Creek Lane, McKinney, Texas, located northeast of the Property. Rodney McDaniel, the former general manager of Altoga, communicated with me that the Property was receiving actual water over 15 years ago from a 5/8" x 3/4" meter at the end of the 2" waterline located on the Property.

6. North Collin is currently in the process of constructing a proposed 500,000 gallon elevated tank on the west side of CR 989, located southwest of the Property, and installing proposed 12-inch (12") waterlines along CR 989, FM 1827, and CR 409, that will provide additional capacity and water service to the development of the Property.

7. Depending on specific plans for future development of the Property, North Collin may further extend the proposed 12" waterline northerly along CR 409 and have additional waterlines installed throughout the Property. North Collin is also currently providing water service to the subdivision north of the Property and maintains various 8" waterlines with the subdivision, as well as the 2" and 1½" waterlines west of the subdivision.

8. North Collin has loans issued by the USDA and North Collin also assumed the USDA loans of Altoga. These loans remain outstanding and North Collin is currently indebted to the USDA. Attached to the Response are true and correct copies of the Assumption Agreement of North Collin WSC's USDA loan by North Collin SUD (Attachment C-1); the Assumption Agreement of Altoga's USDA loan by North Collin (Attachment C-2); and the Promissory Note and Utility Security Instrument (Attachment C-3), all of which evidence North Collin's current indebtedness to the USDA.

9. Attachment D to the Response is a true and correct copy of the Order issued by the TCEQ on August 25, 2015, granting the conversion of North Collin WSC to North Collin SUD.

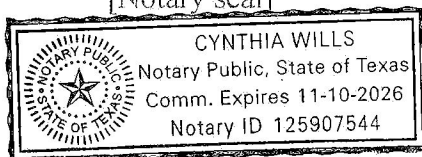
10. Attachment E to the Response is a true and correct copy of the Order granting the sale, transfer, and merger of Altoga to North Collin in Docket No. 46452, issued on March 13, 2019.



Allen Knight, General Manager  
North Collin Special Utility District

**SUBSCRIBED AND SWORN TO** before me on the 27 day of December, 2022, by Allen Knight, General Manager of North Collin Special Utility District.

[Notary seal]



  
Notary Public, State of Texas

## **ATTACHMENT 2**



**PUC DOCKET NO. 52442**

<b>PETITION OF MERITAGE HOMES OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TEXAS, LLC TO AMEND NORTH</b>	<b>§</b>	
<b>COLLIN SPECIAL UTILITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>DISTRIC'T'S CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>COLLIN COUNTY BY EXPEDITED</b>	<b>§</b>	
<b>RELEASE</b>	<b>§</b>	

**SUPPORTING AFFIDAVIT OF ALLEN KNIGHT,**  
**GENERAL MANAGER OF NORTH COLLIN SPECIAL UTILITY DISTRICT**

STATE OF TEXAS                   §  
  §  
COUNTY OF COLLIN           §

BEFORE ME, the undersigned authority, on this date personally appeared Allen Knight, who being by me first duly sworn states as follows:


“1. My name is Allen Knight. 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 1998, I have been the duly appointed General Manager of North Collin Special Utility District (“North Collin”). I am the custodian of the records of North Collin.


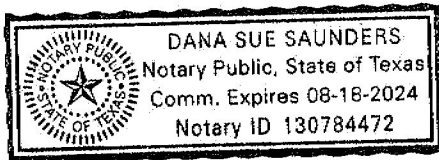
3. North Collin has an existing water line and a water meter box physically located on the property sought to be decertified in this Public Utility Commission Docket No. 52442.

4. I reviewed Meritage’s Motion for Rehearing, alleging that there was not a two-inch water line or meter box on the property that Meritage is seeking to decertify (“the Property”). On August 19, 2022, North Collin’s technicians, Austin Scott and Colton Harrison, with the assistance of North Collin’s expert witness, Eddy Daniel, P.E., located the meter box and waterline depicted in the photos and video attached to this Affidavit as Exhibit 1. Specifically, Austin and Colton located the water valve (to and from which North Collin’s two-inch water line runs) south of FM 1827. They then located a pothole location north of FM 1827; the two-inch water line runs between the water valve and the pothole location. Austin and Colton then located the water meter box on the Property. To confirm that the two-inch line connected the water meter box to the water valve south of FM 1827, the technicians turned on the valve, and then observed water filling the water meter box on the Property. I spoke with Austin and Colton about their investigation, and reviewed the documentation provided as Exhibit 1 to this affidavit. In addition, I separately checked North Collin’s internal maps, which similarly show the two-inch water line and the water meter box on the Property, consistent with Austin and Colton’s visual observations as documented in Exhibit 1.

5. I have read North Collin's Response to Meritage Homes of Texas, LLC's Motion for Rehearing, and the factual statements relating to the location of the two-inch water line and water meter box contained in it are true and correct."

  
\_\_\_\_\_  
Allen Knight, General Manager  
North Collin Special Utility District

**SUBSCRIBED AND SWORN TO** before me on the 22 day of August, 2022, by Allen Knight, General Manager of North Collin Special Utility District.

  
\_\_\_\_\_  
Notary Public, State of Texas

## **EXHIBIT 1**





METER  
BOX ON  
PROPERTY

8/19/20





8/19/22

METER BOX  
UNDER TREES  
OF OLD HOME  
SITE



METER BOX  
AFTER OPENING  
VALVE ON SOUTH  
SIDE OF FM 1827

8/19/22









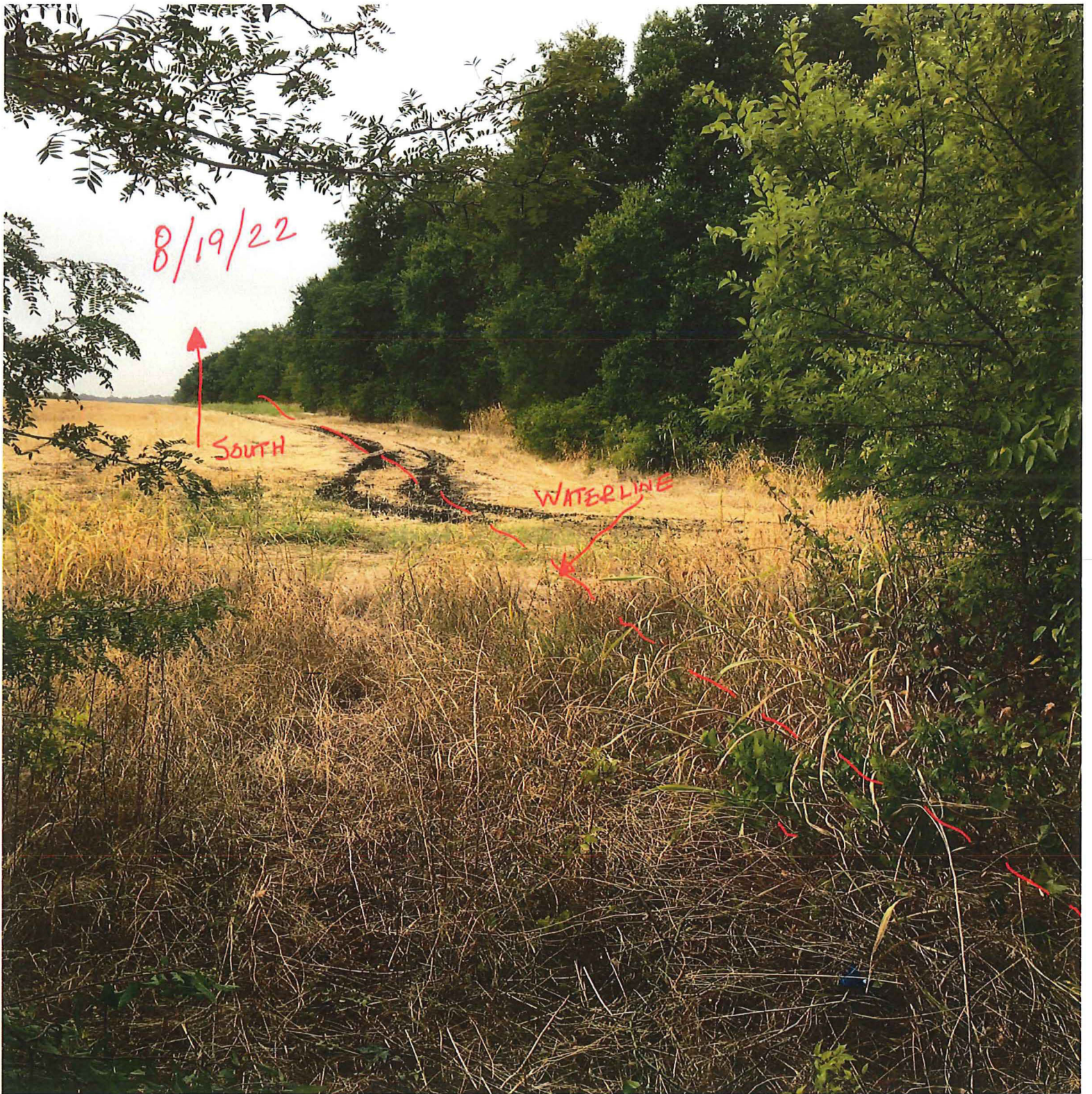


8/19/22



SOUTH

WATERLINE







F.M. 1827

SOUTH

WATER LINE

8/19/22



8/19/22



NORTH

POTHOLE  
LOCATION

FM 1827





8/19/22

POT HOLE LOCATION  
OF WATERLINE

WATERLINE

VALVE ON SOUTH  
SIDE OF FM1827

VIEW LOOKING  
NORTH TOWARDS  
METER



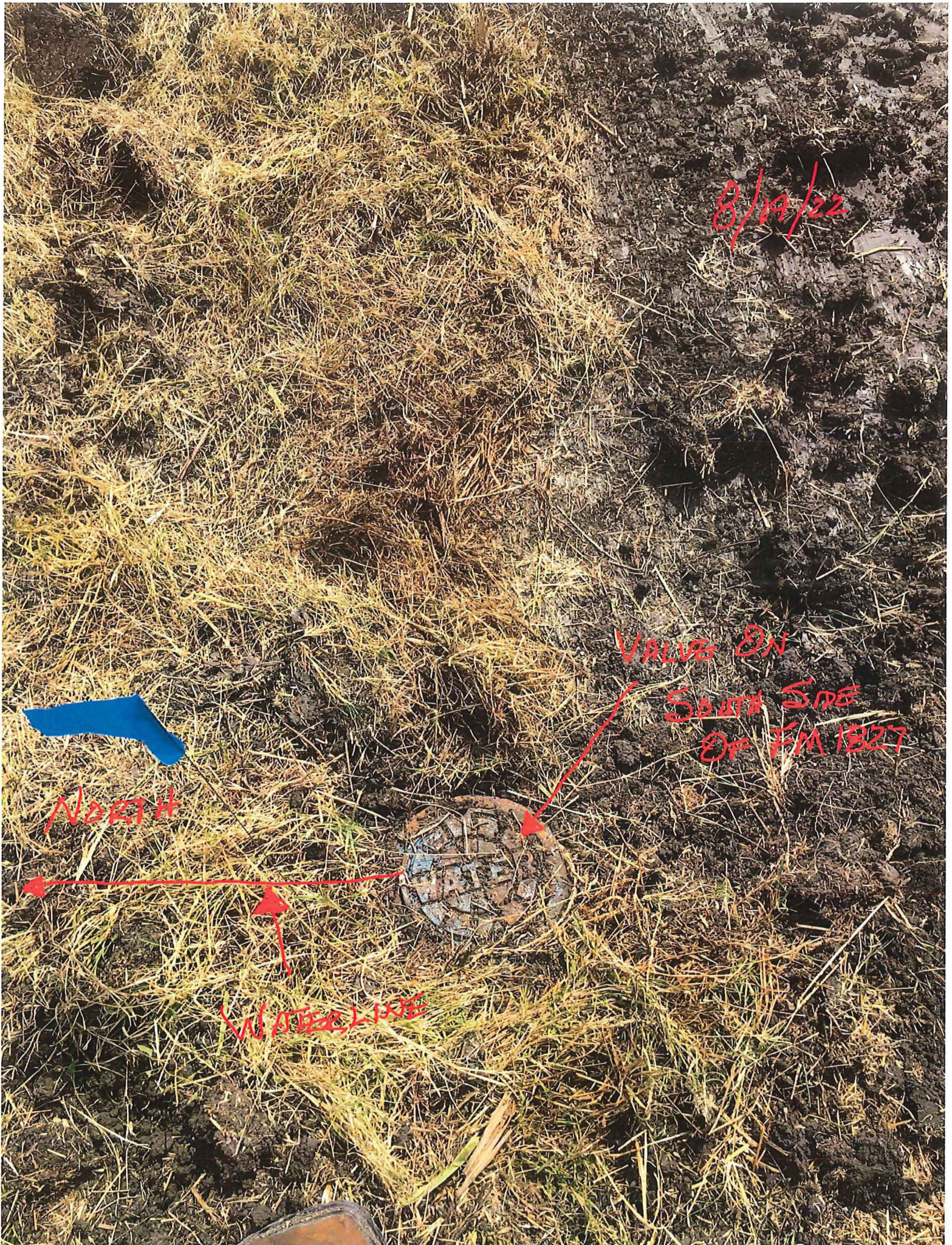


8/19/22

VALVE ON  
SOUTH SIDE  
OF FM 1827

NORTH

WATERLINE





FM 102

RED BRICK  
HOUSE

EAST

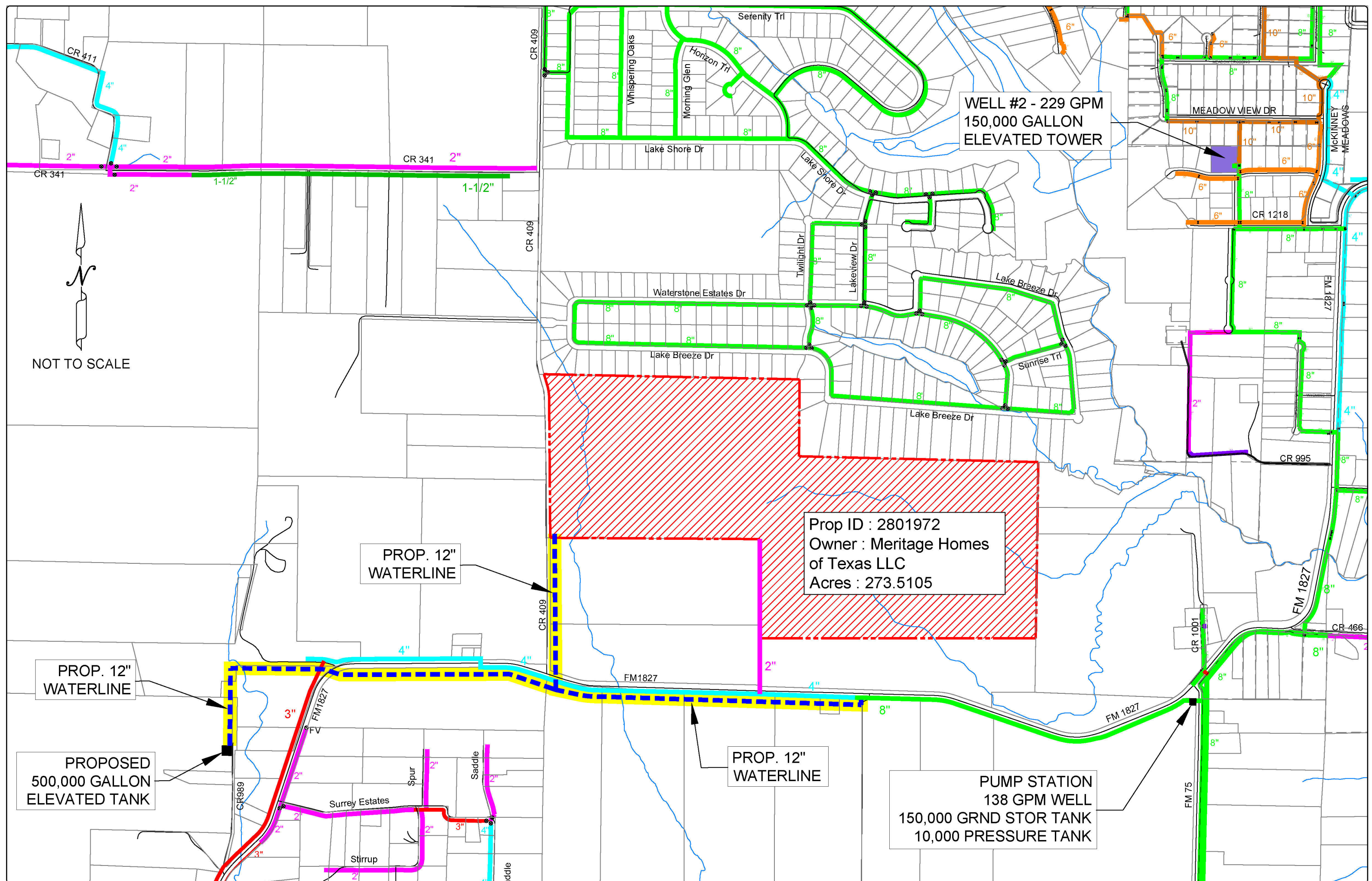
0/17/22

VALVE SOUTH  
SIDE FM  
1827





## **ATTACHMENT 3**





## **ATTACHMENT 4**

