



## Filing Receipt

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**DOCKET NO. 52490**

<b>PETITION OF HUFFINES RANCH,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LLC TO AMEND MARILEE SPECIAL</b>	<b>§</b>	
<b>UTILITY DISTRICT'S CERTIFICATE</b>	<b>§</b>	
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>IN COLLIN COUNTY BY EXPEDITED</b>	<b>§</b>	
<b>RELEASE</b>	<b>§</b>	

**MARILEE SPECIAL UTILITY DISTRICT'S  
CORRECTIONS AND EXCEPTIONS TO THE PROPOSED ORDER**

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (the "District") and files these Corrections and Exceptions ("Corrections and Exceptions") to the Proposed Order ("Proposed Order") entered by Honorable Administrative Law Judge ("ALJ") Isaac Ta on February 16, 2022, proposing that the Public Utility Commission of Texas (the "Commission") amend the District's Certificate of Convenience and Necessity ("CCN") No. 10150 to release approximately 666 acres of property ("Property") in Collin County, Texas.<sup>1</sup> The Proposed Order requires the parties of this proceeding to file corrections or exceptions by March 3, 2022. Thus, the District's Corrections and Exceptions are timely filed. In support thereof, the District respectfully shows as follows:

**CORRECTIONS AND EXCEPTIONS**

The ALJ's Proposed Order, which recommends that the Commission grant Huffines Ranch, LLC's ("Petitioner") Petition,<sup>2</sup> is in error. The Proposed Order is based on factual, procedural, and legal errors that require correction in order to prevent the unlawful and inequitable decertification of Property from the District and to prevent the District from being materially prejudiced. Accordingly, the District respectfully requests that the Commission its Exceptions and Corrections to the Proposed Order be granted, that the Commission deny the Petition and dismiss this proceeding.

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<sup>1</sup> Proposed Order and Memorandum (Feb. 16, 2022).

<sup>2</sup> Petition of Huffines Ranch, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Aug. 31, 2021).

**1. The Proposed Order Impermissibly Recommends the Curtailment or Limitation of the District’s Service Area in Violation of 7 U.S. Code § 1926 (COL 13, Ordering Paragraph 1).**

Pursuant to the Consolidated Farm and Rural Development Act of 1961 and 7 U.S. Code § 1926, the United States Department of Agriculture (“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, Congress enacted 7 U.S.C. § 1926(b) to prohibit “curtail[ing] or limit[ing]” 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.<sup>3</sup>

A federal law, such as 7 U.S.C. § 1926(b), is supreme and binding authority over a state law, such as TWC § 13.02541.<sup>4</sup> 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, in the event that the Commission enters an order curtailing or limiting the CCN holder’s service area in violation of 7 U.S.C. § 1926(b).<sup>5</sup>

To be eligible for protection under 7 U.S.C. § 1926(b), the District must show that it satisfies the “physical abilities” test, as adopted by the United States Court of Appeals for the Fifth

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<sup>3</sup> 7 U.S.C § 1926(b).

<sup>4</sup> See, e.g., *Murphy v. NCAA*, 138 S. Ct. 1461, 1479 (2018) (“[F]ederal law is supreme in case of a conflict with state law.”); see also *Green Valley Special Utility District v. City of Schertz*, 969 F.3d 460, 492 (5th Cir. 2020) (en banc) (Jones, J., concurring) (noting, “the final PUC decision” in a case involving streamlined expedited release, “is reviewable de novo in state courts, which would have to enforce Section 1926(b) pursuant to the Supremacy Clause.”).

<sup>5</sup> See, e.g., *Green Valley*, 969 F.3d at 475 (“Because . . . Green Valley has satisfied *Young*’s requirements, its suit for injunctive relief against the PUC Officials may go forward.”) (citing *Ex Parte Young*, 209 U.S. 123 (1908)).

Circuit, sitting *en banc* in *Green Valley Special Utility District v. City of Schertz*.<sup>6</sup> To satisfy the “physical abilities,” the District must show that it has “adequate facilities to provide service to the area within a reasonable time” after service is requested, and that the District has “the legal right to provide service.”<sup>7</sup> The District need not show “pipes in the ground” at the specific tract, as long as it has some “nearby infrastructure.”<sup>8</sup> The District’s ability to provide service to the Property satisfies the “physical abilities” test.<sup>9</sup>

In addition to satisfying the “physical abilities” test, an entity must show federal indebtedness to qualify for protection under 7 U.S.C. § 1926(b). As described in the District’s verified response, the District has been consolidated with Mustang Special Utility District (“Mustang SUD”), pursuant to the provisions of TWC Chapter 65, Subchapter H.<sup>10</sup> Mustang SUD is indebted to the USDA, Rural Utilities Service, which has twice purchased bonds from Mustang SUD: in 2016, in the amount of \$14,142,000, and 2018, in the amount of \$1,000,000 (collectively, the “Bonds”).<sup>11</sup> The District assumed Mustang SUD’s federal indebtedness under the Bonds when

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<sup>6</sup> 969 F.3d 460 (5th Cir. 2020) (*en banc*).

<sup>7</sup> *Id.* at 477.

<sup>8</sup> *Id.* at 477 & n.36 (quoting *Lexington—S. Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996)).

<sup>9</sup> See Marilee Special Utility District’s Responses to Commission Staff’s First Request for Information Question Nos. Staff 1-1 through 1-11 (Oct. 20, 2021) (describing the District’s meters, waterlines, and facilities near the Property).

<sup>10</sup> See TWC § 65.723 (“Two or more districts governed by this chapter may consolidate into one district as provided by this subchapter.”); see also Marilee Special Utility District’s Verified Response to Petition of Huffines Ranch, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, at ¶¶ 26-27 & Exhibit A (Affidavit of Mike Garrison), at ¶¶ 6-8 & accompanying exhibits (affirming that the District has been consolidated with Mustang SUD) and Exhibit B (Affidavit of Chris Boyd), at ¶¶ 3-4 & accompanying exhibits (affirming that Mustang SUD has been consolidated with the District) (Dec. 21, 2021).

<sup>11</sup> See *id.* at Exhibit C (Affidavit of Chris Boyd), at ¶ 5.

the District and Mustang SUD were consolidated.<sup>12</sup> In addition to its existing federal indebtedness, the District is also working diligently to close on a USDA loan that was approved in June 2021.<sup>13</sup>

As the District is federally indebted and satisfies the “physical abilities” test, curtailing or limiting the District’s service area with regard to the Property is prohibited by 7 U.S.C. § 1926(b). The Proposed Order must be revised and corrected to propose the denial of the Petition on the grounds that the 7 U.S.C. § 1926(b) prohibits the Commission from curtailing or limiting the District’s service area.

### **PRAYER**

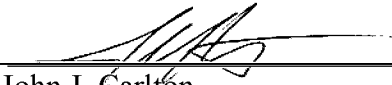
WHEREFORE, PREMISES CONSIDERED, the District respectfully requests that its Exceptions and Corrections to the Proposed Order be granted, that the ALJ enter a corrected and revised Proposed Order that proposes denying the Petition and dismissing this proceeding on the independently sufficient grounds that the Property is receiving service from the District, and that 7 U.S.C. § 1926(b) prohibits the curtailment or limitation of the federally indebted District. The District also respectfully requests all other relief in law and equity to which it may be entitled.

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<sup>12</sup> See TWC § 65.726

<sup>13</sup> Marilee Special Utility District’s Verified Response to Petition of Huffines Ranch, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release, at Exhibit A (Affidavit of Michel Garrison) at ¶¶ 3-5 (Dec. 21, 2021).

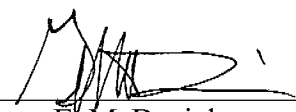
Respectfully submitted,

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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 3<sup>rd</sup> day of March 2022.

  
Grayson E. McDaniel