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DOCKET NO. 52515

PETITION OF BELKNAP, FP, LTD.	§	PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT’S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

MARILEE SPECIAL UTILITY DISTRICT’S VERIFIED RESPONSE TO PETITION OF BELKNAP, FP, LTD. TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE TA:

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (the “District”) and files this Verified Response (“Response”) to Belknap, FP, Ltd’s (“Petitioner”) Petition for Expedited Release Pursuant to Texas Water Code Section 13.2541 (“Petition”), filed in this docket, and respectfully shows as follows:

I. BACKGROUND

1. On September 3, 2021, Petitioner filed its Petition for streamlined expedited release seeking to use the Public Utility Commission’s (“Commission”) streamlined expedited release process, Texas Water Code (“TWC”) § 13.2541 and 16 Texas Administrative Code (“TAC”) § 24.245(h), to extract approximately 80.002 acres (“Property”) from the water utility service area the District serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.¹ The Petition alleges that the Property is greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.²

2. On September 8, 2021, the Honorable Administrative Law Judge (“ALJ”) Ta entered Order No. 1, requiring Commission Staff to file comments regarding the administrative

¹ Petition by Belknap, FP, Ltd for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Sept. 3, 2021).

² *Id.* at 2.

completeness of the Petition and notice by October 4, 2021, and permitting the CCN holder to file a verified response, supported by notarized affidavit, by October 11, 2021.³

3. On September 16, 2021, the District filed a Motion to Intervene, which was granted on September 24, 2021.⁴

4. On October 4, 2021, Commission Staff filed its Recommendation on Administrative Completeness, recommending that the Petition be found administratively incomplete due to mapping deficiencies.⁵ Commission Staff also filed Requests for Information to the Petitioner and District, responses to which were filed on October 8 and October 25, 2021, respectively.⁶

5. Petitioner filed maps to supplement the Petition on September 8, 2021. On November 3, 2021 the Petitioner filed its first Amended Petition. On December 1, 2021, the ALJ entered Order No. 5, finding the Petition as supplemented administratively complete and notice sufficient, and establishing a procedural schedule.

6. On December 13, 2021, the District moved for adoption of a protective order. The motion is still pending for decision.

7. Order No. 5 established a deadline of December 27, 2021, for the District to file its Response.⁷ The District's Response is timely filed.

³ Order No. 1 – Requiring Comments on Administrative Completeness, Notice, and Other Matters, and Establishing Procedural Schedule (Sept. 8, 2021).

⁴ Marilee Special Utility District's Motion to Intervene (Sept. 16, 2021); Order No. 2 – Granting Intervention (Sept. 24, 2021).

⁵ Commission Staff's Recommendation on Administrative Completeness and Notice (Oct. 4, 2021).

⁶ Belknap, FP, Ltd. Responses to Commission Staff's First Request for Information (Oct. 8, 2021); Marilee Special Utility District's Responses to Commission Staff's First Request for Information Question Nos. Staff 1-1 through 1-11 (Oct. 25, 2021).

⁷ Order No. 5 – Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Dec. 7, 2021).

II. RESPONSE

A. Petitioner Has Not Met Its Burden of Proof Under TWC § 13.2541

8. The District is a retail public utility and political subdivision of the State of Texas and the holder of CCN No. 10150. The District currently provides retail water service to approximately 2,592 active connections.⁸

9. Petitioner is Belknap, FP, Ltd, a Texas limited partnership.

10. 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.⁹ 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.

11. To obtain the release of property under TWC § 13.2541, a landowner must demonstrate with affirmative evidence in a verified petition 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.¹⁰ The TWC 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."¹¹

12. 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:

⁸ Exhibit A (Affidavit of Mike Garrison) at ¶ 2.

⁹ 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.

¹⁰ TWC § 13.2541(b).

¹¹ TWC § 13.002(21); see also 16 TAC § 24.3(33) (same definition).

- 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.¹²

13. 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” include:

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, furnished, or supplied for, by, or in connection with the business of any retail public utility.¹³

14. In the *Crystal Clear* decision, the Austin Court of Appeals held that when water lines are present within a tract and “committed” to the property, the tract is “receiving service,” and a petition for streamlined expedited release under TWC § 13.2541 may not be granted.¹⁴

15. 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. The Commission’s substantive rules, specifically 16 TAC § 24.245(h)(3)(D), provide that Petitioner must provide a “statement of facts that demonstrate that the property is not currently receiving service” as a required part of the verified petition.¹⁵

16. The verified “statement of facts” that Petitioner must show to meet its burden under 16 TAC § 24.245(h) is reflected in *Johnson County Special Utility District v. Public Utility Comm’n of Texas*.¹⁶ There, a land broker filed an affidavit swearing that he searched the property for several hours and found no district water meters or facilities, only “two shuttered ground well

¹² 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).

¹³ TWC § 13.002(9).

¹⁴ *Crystal Clear*, 449 S.W.3d at 140.

¹⁵ 16 TAC § 24.245(h)(3)(D).

¹⁶ No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App.—Austin May 11, 2018, pet. denied) (mem. op.).

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.”¹⁷ The Commission, based on this un rebutted recitation of facts, properly found that no part of the property requested to be extracted had received water service since at least 2005.¹⁸

17. The “statement of facts” that Petitioner must show in its verified petition to meet its burden under 16 TAC § 24.245(h) is also reflected in *Crystal Clear*. Petitioner in that case, the Texas General Land Office, supported the contention that the area requested to be decertified by explaining that there were “no active water meters or water connections on and no facilities providing current service” and that there was “one abandoned, empty meter box on the eastern portion of the property, which Crystal Clear itself classifies as inoperative.”¹⁹

18. In this case, Petitioner has not set out facts similar to that in *Johnson County* case or *Crystal Clear*. Petitioner has offered no statement of facts, but only a conclusory one-page affidavit.²⁰ Petitioner has not provided any information regarding an investigation of the tract it seeks to have decertified. Accordingly, Petitioner has not set out a “statement of facts” to establish that the Property is not receiving water service, as defined by TWC, and thus has not satisfied its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).

19. The District is currently defending against the decertification of 22 tracts of land in its service area, representing a total acreage of approximately 4,839,011 acres.²¹ The petitions in

¹⁷ *Id.* at **6-7.

¹⁸ *Id.* at **9-10 (citing Commission’s Finding of Fact No. 24).

¹⁹ *Crystal Clear*, 449 S.W.3d at 134.

²⁰ See Petition at Exhibit A (Affidavit of Phillip Huffines) at ¶ 3 (“Petitioner’s property is not receiving water or sewer service from Marilee SUD[.] The property has not requested water or sewer service from Marilee SUD or paid any fees or charges to initiate or maintain water or sewer service, and there are no billing records or other documents indicating an existing account for the Properties.”).

²¹ In addition to this case, the District is the CCN holder in 21 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 CCD-North Sky, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52101 (pending); *Petition of Celina Partners, L.P. 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 HC Celina 414, LLC to Amend Marilee Special Utility District’s Certificate of*

most of the 22 dockets are supported by conclusory, barebones affidavits like that provided in this case.

20. The District respectfully submits that it is inequitable and procedurally improper for the District to have to affirmatively prove, via verified response, that each of the properties, including the Property in this case, is receiving or is capable of readily receiving water service from the District. Rather, the Petitioner should be held to the burden of proof under 16 TAC § 24.245(h)(3)(D) to set out a verified statement of facts proving that the requested area is not receiving service before the petition may be granted.

21. Petitioner has not met its burden of proof to decertify the Property under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D). Accordingly, the District respectfully requests that the Petition be denied because it presents insufficient facts to prove that it is not receiving service from the District under TWC § 13.2541, 16 TAC § 24.245(h)(3)(D), and Texas law.

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 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 (Mesquaukee Ranch), Docket No. 52536 (pending); Petition by Mesquaukee Ranch, LLC for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County, Docket No. 52542 (pending); Petition of Eland Energy, Inc. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52653 (pending); Petition of Sater, L.P. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 52739 (pending); Petition of Charles D. Carter to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release, Docket No. 52916 (pending); Petition of Glenda Sue Winkler to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release, Docket No. 52917 (pending).

B. Decertifying the Requested Area Will Curtail and Limit the District’s Service Its Federal Debt

22. 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.²²

23. To be eligible for protection under § 1926(b), the District 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*.²³ Judge Smith, writing for the majority, characterized the “physical abilities” test broadly:

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.²⁴

24. The en banc court in *Green Valley* cited with approval precedent from the U.S. Court of Appeals for the Sixth Circuit stating that, to satisfy the “physical abilities” test, the utility must have “something in place to merit § 1926(b)’s protection.”²⁵ The Court further explained the broad interpretation, “Service may be ‘available’ even if it cannot be immediately used. No water

²² 7 U.S.C § 1926(b).

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

²⁴ *Id.* at 477.

²⁵ *Id.* at 477 & n.36 (quoting *Lexington—S. Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996)).

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.”²⁶

25. 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.

26. The District is now consolidated with Mustang Special Utility District (“Mustang SUD”), in accordance with TWC Chapter 65, Subchapter H.²⁷ Voters within the two districts passed measures consolidating the districts on November 2, 2021 and the elections have been canvassed.²⁸ The two districts are now in the 90-day statutory period required to settle the affairs of the districts.²⁹

27. Prior to consolidation with the District, Mustang SUD was already indebted to the United States of America Department of Agriculture, Rural Utilities Service, which purchased bonds from Mustang SUD in 2016, in the amount of \$2,442,000 and 2018, in the amount of \$1,000,000 (collectively, the “Bonds”).³⁰ The District assumed Mustang SUD’s federal indebtedness when the District and Mustang SUD were consolidated.³¹

28. On July 12, 2021, the District received approval from the United States Department of Agriculture (“USDA”) for a Water and Wastewater Guaranteed loan of \$1,553,000.³² The District has not closed on the USDA loan, but is working diligently to do so.

²⁶ *Id.* at n.38.

²⁷ See TWC § 65.723 (“Two or more districts governed by this chapter may consolidate into one district as provided by this subchapter.”); see also **Exhibit A** (Affidavit of Mike Garrison) at ¶¶ 6-7 & 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).

²⁸ See TWC § 65.724 (describing procedure).

²⁹ TWC § 65.725(b).

³⁰ See Exhibit B (Affidavit of Chris Boyd), at ¶ 5.

³¹ See TWC § 65.726 (“After two or more districts are consolidated, the debts of the original districts shall be protected and may not be impaired.”).

³² Exhibit A (Affidavit of Mike Garrison), at ¶¶ 4-5 & accompanying exhibits.

29. As the District is federally indebted due to consolidation with Mustang SUD, and with the scheduled closing of the District's USDA loan approaching, equity favors granting the District protection from the limiting or curtailment of its service area.

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

30. The Petition should be dismissed for the reasons the District has given; however, if the Commission does decertify the Property and reduce the District's CCN No. 10150, the District is entitled to a determination of just and adequate compensation.

31. 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, the District.³³ Under the TWC and the Commission's implementing regulations, "the value of 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,"³⁴ 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.³⁵

³³ 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.").

³⁴ 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.").

³⁵ *See* TWC § 13.254(g) ("The utility commission shall adopt rules governing the evaluation of these factors.").

32. If the Property is removed from the District's CCN No. 10150, the District is entitled to compensation under several of these factors including, but not limited to, the amount of its debt allocable for service to the area; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; 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 Petition.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, the District respectfully requests that the ALJ enter a Proposed Order denying the Petition because Petitioner failed to satisfy its burden of proof under TWC § 13.2541, 16 TAC § 24.245(h), and Texas state law; and because the District is protected from limitation or curtailment of its service area under 7 U.S.C. § 1926(b). Alternatively, if the ALJ proposes that the Petition be granted, the District seeks just and adequate compensation for the reduction of its CCN No. 10150. The District also seeks all other and further relief to which it may be justly entitled at law or in equity.

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 27th day of December 2021.



Grayson E. McDaniel

EXHIBIT A

**AFFIDAVIT OF MICHAEL GARRISON,
MARILEE SPECIAL UTILITY DISTRICT'S ASSISTANT MANAGER**

DOCKET NO. 52515

PETITION OF BELKNAP, FP, LTD. § 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 MICHAEL GARRISON,
ASSISTANT MANAGER OF MARILEE SPECIAL UTILITY DISTRICT

STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

1. "My name is Michael Garrison. 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 2017, I have been the duly appointed Assistant Manager of Marilee Special Utility District ("Marilee"). Marilee currently provides retail water service to approximately 2,592 active connections.
3. "On February 11, 2021, Marilee's Board of Directors authorized Donna Loiselle, General Manager for Marilee, 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.
4. "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. A true and correct copy of that letter is attached to this affidavit as Exhibit A-1.
5. "The United States Department of Agriculture ("USDA") sent correspondence to Ms. Loiselle, 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-2.
6. "On November 2, 2021, an election was held in Marilee on a proposition to authorize Marilee to consolidate with Mustang Special Utility District ("Mustang"). On the same day, an election was held in Mustang on a proposition to authorize Mustang to consolidate with Marilee. A true and correct copy of the proposition as it appeared on the ballot is attached hereto as Exhibit A-3.

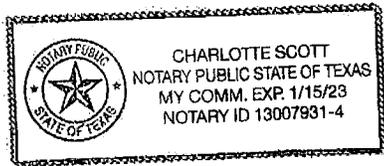
7. "The elections resulted in the Mustang's and Marilee's voters approving consolidation of Mustang with Marilee, authorizing the consolidated district be named Mustang Special Utility District (the "Consolidated District"), and authorizing each district to assume the other district's bonds, notes, and other obligations. A true and correct copy of the election results is attached hereto as Exhibit A-4.
8. "I am authorized to make this affidavit on behalf of Marilee in Docket 52515 in support of its response to Belknap FP, Ltd. ("Petitioner") request to remove 80.02 acres of Property ("Property") from areas for which Marilee holds water certificate of convenience and necessity ("CCN") No. 10150.

FURTHER, AFFIANT SAYETH NOT.

Michael Garrison

Michael Garrison
Assistant Manager of Marilee Special Utility
District

SWORN TO AND SUBSCRIBED before me by Michael Garrison on this 21 day of December 2021.



Charlotte Scott

Notary Public in and for the State of Texas

EXHIBIT A-1



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

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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.

EXHIBIT A-2



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)				

ORIGINAL - Borrower's Case Folder

COPY 1 - Applicant

COPY 2 - Lender

COPY 3 - State Office

Position 2

24

Exhibit A-2

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

39. TO THE APPLICANT/LENDER: As of this date JUL 12 2021, 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.

EXHIBIT A-3

November 2, 2021
 (2 de noviembre, 2021)

MARILEE SPECIAL UTILITIES DISTRICT
(Distrito Especial de Servicios Públicos de Marilee)

PROPOSITION A

FOR ()	Shall Marilee Special Utility District and Mustang Special Utility District be authorized to consolidate into one district; Authorize the name of the consolidated district to be Mustang Special Utility District; Authorize each district to assume the other district's bonds, notes, or other obligations?
AGAINST ()	Each voter may vote for or against the proposition by placing an "X" in the square beside the word "FOR" or in the square beside the word "AGAINST".

PROPOSICIÓN A

<i>A FAVOR ()</i>	<i>¿Serán autorizados el Distrito Especial de Servicios Públicos de Marilee y el Distrito Especial de Servicios Públicos de Mustang para que sean consolidados en un solo distrito; Autorizar que el nombre del distrito consolidado sea Distrito Especial de Servicios Públicos de Mustang; Autorizar que cada distrito asuma los bonos, pagarés, y otras obligaciones del otro distrito?</i>
<i>EN CONTRA ()</i>	<i>Cada votante puede votar a favor o en contra de la proposición marcando una "X" en el cuadro enseguida de la palabra "A FAVOR" o en el cuadro enseguida de la palabra "EN CONTRA".</i>

EXHIBIT A-4

Summary Results Report
 General and Special Elections
 November 2nd, 2021

Combined Accumulated Totals
 57 of 57 Vote Centers Reporting
 FINAL RESULTS Collin County

Marilee Special Utilities District - Proposition A

Vote For 1

	TOTAL	VOTE %	Election Day	Early Voting	Mail	Provisional	Limited
For	123	67.21%	82	37	4	0	0
Against	60	32.79%	42	16	2	0	0
Total Votes Cast	183	100.00%	124	53	6	0	0
Overvotes	0		0	0	0	0	0
Undervotes	17		12	5	0	0	0
Contest Totals	200		136	58	6	0	0

EXHIBIT B

**AFFIDAVIT OF CHRIS BOYD
MUSTANG SPECIAL UTILITY DISTRICT'S GENERAL MANAGER**

DOCKET NO. 52515

PETITION OF BELKNAP, FP, LTD. § 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 CHRIS BOYD,
GENERAL MANAGER FOR MUSTANG SPECIAL UTILITY DISTRICT

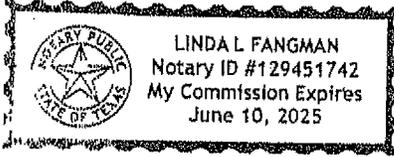
STATE OF TEXAS §
§
COUNTY OF COLLIN §

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

1. "My name is Chris Boyd. 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 the General Manager for Mustang Special Utility District ("Mustang"). I have been in that position for 17 years.
3. "On November 2, 2021, an election was held in Denton County on a proposition to authorize Mustang to consolidate with Marilee Special Utility District ("Marilee"). On the same day, an election was held in Collin County on a proposition to authorize Marilee to consolidate with Mustang. A true and correct copy of Mustang's proposition as it appeared on the ballot is attached hereto as Exhibit B-1.
4. "The election resulted in the Mustang's and Marilee's voters approving consolidation of Mustang with Marilee, authorizing the consolidated district be named Mustang Special Utility District (the "Consolidated District"), and authorizing each district to assume the other district's bonds, notes, and other obligations. A true and correct copy of the election results in Denton County is attached hereto as Exhibit B-2.
5. "Mustang has federal indebtedness that has been assumed by the Consolidated District. The United States of America Department of Agriculture, Rural Utilities Service, purchased bonds from Mustang in 2016, in the amount of \$14,142,000 and 2018, in the amount of \$1,000,000 (collectively, the "Bonds"). The Consolidated District will be required to make payments on the 2016 bonds until 2055. The Consolidated District will be required to make payments on the 2018 bonds until 2058.
6. "I am authorized to make this affidavit on behalf of the Consolidated District in Docket 52515 in support of Marilee's response to Belknap, FP, Ltd.'s ("Petitioner") request to

remove 80.002 acres of Property ("Property") from areas for which the Consolidated District holds water certificate of convenience and necessity ("CCN") No. 10150.

FURTHER, AFFIANT SAYETH NOT.




Chris Boyd
General Manager, Mustang Special Utility District

SWORN TO AND SUBSCRIBED before me by _____ on this 27 day of December 2021.

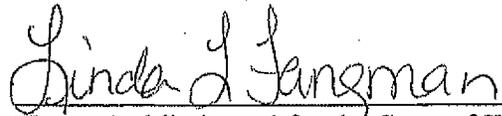

Linda L. Fangman
Notary Public in and for the State of Texas

EXHIBIT B-1

Mustang Special Utilities District Proposition A

Shall Mustang Special Utility District and Marilee Special Utility District be authorized to consolidate into one district; Authorize the name of the consolidated district to be Mustang Special Utility District; Authorize each district to assume the other district's bonds, notes, or other obligations?

For

Against

Contests: **1**

Options: **2**

EXHIBIT B-2

Cumulative Results Report**Denton County****Official Results**

Official Results

Mustang Special Utility District Special Election

Registered Voters

172 of 37553 = 0.46%

Precincts Reporting

15 of 15 = 100.00%

Run Time 11:02 AM

11/2/2021

Run Date 11/09/2021

Page 1

Mustang Special Utility District Proposition A

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
For		18	56.25%	39	76.47%	47	53.41%	104	60.82%
Against		14	43.75%	12	23.53%	41	46.59%	67	39.18%
	Cast Votes:	32	100.00%	51	100.00%	88	100.00%	171	100.00%
	Undervotes:	0		0		1		1	
	Overvotes:	0		0		0		0	

*** End of report ***