



## Filing Receipt

**Received - 2021-12-29 02:41:05 PM**

**Control Number - 52517**

**ItemNumber - 16**

**DOCKET NO. 52517**

<b>PETITION OF A.J. MALONE TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMEND MARILEE SPECIAL</b>	<b>§</b>	
<b>UTILITY DISTRICT’S CERTIFICATE</b>	<b>§</b>	
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>IN COLLIN COUNTY BY EXPEDITED</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RELEASE</b>	<b>§</b>	

**MARILEE SPECIAL UTILITY DISTRICT’S VERIFIED RESPONSE TO  
 PETITION OF A.J. MALONE TO AMEND CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE DENMARK:

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (the “District”) and files this Verified Response (“Response”) to A.J. Malone’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 streamlined expedited release process found in Texas Water Code (“TWC”) § 13.2541 and 16 Texas Administrative Code (“TAC”) § 24.245(h) to extract approximately 62.671 acres from the water utility service area the District serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.<sup>1</sup> The Petition alleges that the property is greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.<sup>2</sup>

2. On September 8, 2021, the Honorable Administrative Law Judge (“ALJ”) Denmark entered Order No. 1, requiring Staff for the Public Utility Commission (the “Commission”) to file comments regarding the administrative 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.<sup>3</sup>

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<sup>1</sup> Petition by A.J. Malone for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Sept. 3, 2021).

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

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

3. On September 16, 2021, the District filed a Motion to Intervene, which was granted on September 29, 2021.<sup>4</sup>

4. On October 5, 2021, the ALJ ordered that the Petition was administratively incomplete, based on Commission Staff's recommendation, and gave Petitioner a deadline of November 4, 2021, to cure the deficiencies and the District, as CCN holder, a deadline of December 10, 2021 to file a verified response to the petition.<sup>5</sup>

5. On October 6, 2021, the District filed a Motion for Clarification of Orders No. 1 and 3 regarding the deadline for its verified response.<sup>6</sup>

6. On October 7, 2021, the ALJ entered Order No. 4, clarifying December 10, 2021 as the District's deadline to file its verified response.<sup>7</sup>

7. On October 11, 2021, a wholly new petitioner, VPTM Cross Creek LB, LLC, ("VPTM Cross Creek") filed a First Amended Petition seeking streamlined expedited release of the Property.<sup>8</sup>

8. On October 27, 2021, VPTM Cross Creek filed maps to supplement the First Amended Petition.<sup>9</sup>

9. On December 6, 2021, the ALJ entered Order No. 5, finding the First Amended Petition administratively complete and notice sufficient, based on Commission Staff's recommendation, and establishing a procedural schedule.<sup>10</sup>

10. Order No. 5 established a deadline of December 29, 2021, for the District to file its Response.<sup>11</sup> The District's Response is timely filed.

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<sup>4</sup> Marilee Special Utility District's Motion to Intervene (Sept. 16, 2021); Order No. 2 – Granting Intervention (Sept. 29, 2021).

<sup>5</sup> Order No. 3 – Finding Petition Administratively Incomplete and Establishing an Opportunity to Cure (Oct. 5, 2021).

<sup>6</sup> Marilee Special Utility District's Motion for Clarification (Oct. 6, 2021).

<sup>7</sup> Order No. 4 – Clarifying Deadline (Oct. 7, 2021).

<sup>8</sup> First Amended Petition by VPTM Cross Creek LB, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Tract 1) (Oct. 11, 2021).

<sup>9</sup> Letter filing updated high-resolution and/or full-sized maps (Oct. 27, 2021).

<sup>10</sup> Order No. 5 – Finding Petition Administratively Complete and Notice Sufficient, Restyling Docket, and Establishing Procedural Schedule (Dec. 6, 2021).

<sup>11</sup> *See id.* at 2.

11. On December 8, 2021, the District filed a Motion for Adoption of a Protective Order, which was granted on December 9, 2021.<sup>12</sup>

## II. RESPONSE

### A. Neither Petitioner Nor VPTM Cross Creek Have Met Petitioner's Burden of Proof Under TWC § 13.2541

12. 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.<sup>13</sup>

13. Petitioner is A.J. Malone, who does not own the property.

14. VPTM Cross Creek LB, LLC, author of the First Amended Petition, is a Texas limited liability corporation.

15. 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.<sup>14</sup> 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.

16. To obtain the release of property under TWC § 13.2541, Petitioner 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.<sup>15</sup>

### *1. Petitioner Cannot Obtain Streamlined Expedited Release Because Petitioner Does Not Own the Property*

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<sup>12</sup> Marilee Special Utility District's Motion for Adoption of Protective Order (Dec. 8, 2021); Order No. 6 – Entering Protective Order (Dec. 9, 2021).

<sup>13</sup> Exhibit A (Affidavit of Mike Garrison) at ¶ 2.

<sup>14</sup> See, e.g., Acts 2019, 86<sup>th</sup> 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.

<sup>15</sup> TWC § 13.2541(b).

17. In VPTM Cross Creek’s October 11, 2021 filing containing its First Amended Petition, attorney for Petitioner stated that Petitioner does not own the Property.<sup>16</sup>

18. The Petitioner’s Petition must be dismissed or voluntarily withdrawn because, as a non-owner, Petitioner is not legally able to obtain streamlined expedited release of the Property.

**2. *Petitioner Failed to Set Out the Verified Statement of Facts Required by 16 TAC § 24.245(h)***

19. 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.”<sup>17</sup>

20. Whether or not a tract is receiving “service” is not dependent on whether water or sewer is being used or has been requested on the tract sought to be decertified. Instead, a tract is “receiving” water or sewer service if either of the following conditions are met:

- Any facilities or lines are committed or used in the performance of the CCN holder’s duties as a retail public utility providing service to the property; or
- Any lines are committed or used in the performance of the CCN holder’s duties as a retail public utility.<sup>18</sup>

21. 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

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<sup>16</sup> Letter Re: PUC Docket 52517 ¶ 1 (Oct. 11, 2021).

<sup>17</sup> TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

<sup>18</sup> *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).

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.<sup>19</sup>

22. 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.<sup>20</sup>

23. 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.<sup>21</sup>

24. 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*.<sup>22</sup> 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 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.”<sup>23</sup> 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.<sup>24</sup>

25. 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 was not receiving water service 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,

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<sup>19</sup> TWC § 13.002(9).

<sup>20</sup> *Crystal Clear*, 449 S.W.3d at 140.

<sup>21</sup> 16 TAC § 24.245(h)(3)(D).

<sup>22</sup> No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App—Austin May 11, 2018, pet. denied) (mem. op.).

<sup>23</sup> *Id.* at \*\*6-7.

<sup>24</sup> *Id.* at \*\*9-10 (citing Commission’s Finding of Fact No. 24).

empty meter box on the eastern portion of the property, which Crystal Clear itself classifies as inoperative.”<sup>25</sup>

26. In this case, Petitioner has not set out facts similar to that in *Johnson County* case or *Crystal Clear*.<sup>26</sup> Petitioner has offered no statement of facts, but only a conclusory one-page affidavit.<sup>27</sup> 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).

27. 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.<sup>28</sup> The petitions in

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<sup>25</sup> *Crystal Clear*, 449 S.W.3d at 134.

<sup>26</sup> The same argument applies to the First Amended Petition which is not supported by a verified “statement of facts”, but the nearly identical one-page affidavit.

<sup>27</sup> See First Amended Petition at Exhibit A-1 (Affidavit of Brendan Bosman) at ¶ 3 (“The Requested Area is not receiving water or sewer service from Marilee SUD or any other water or sewer service provider. The Requested Area 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 Requested Area.”).

<sup>28</sup> 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 Huffines Ranch, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52490 (pending); *Petition of 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 HC Celina 414, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52497 (pending); *Petition of 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*

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

28. 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.

29. Petitioner has not met its burden of proof to decertify the Property under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D) because (1) Petitioner does not own the Property, and (2) no verified “statement of facts” has been provided. Accordingly, the District respectfully requests that the Petition be denied because it is ineligible for streamlined expedited release and 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.

**B. The Property Is Receiving Water Service from the District.**

30. As described in the previous section, the TWC and *Crystal Clear* define “water service” broadly. Marilee’s General Manager, Donna Loiselle, and engineer of record, DBI Engineers, are familiar with the Property, and the District’s service to the Property. Ms. Loiselle has provided an affidavit, attached hereto as “**Exhibit A**” to provide details about the service being provided to the Property. Eddy Daniel, engineer for DBI Engineers, has provided an affidavit, attached hereto as “**Exhibit B**” to map the Property and the meter, waterlines, and other District facilities surrounding it and serving it.

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*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).*

31. The District operates Meter Nos. 44 and 817 on the Property and has multiple waterlines that do and can provide water service to the meter and to the Property.<sup>29</sup>

32. Meter Nos. 44 and 817 receive water service from the District through a 4” waterline that serves the Property and is inside the Property.<sup>30</sup>

33. The District maintains the following additional facilities to provide water service to the property:

- An 8” waterline, on the east side of the Property; and
- A 6” waterline, extending from the northeast side of the Property and running to the northwest side of the Property.<sup>31</sup>

34. The District’s engineer has stated that in his “professional opinion, Marilee provides and has the ability and facilities dedicated to continue to provide water service to the Property.”<sup>32</sup>

**C. Decertifying the Requested Area Will Curtail and Limit the District’s Ability to Service Its Federal Debt**

35. 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

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<sup>29</sup> See Exhibit A (Affidavit of Donna Loiselle) at ¶ 3; Exhibit B (Affidavit of Eddy Daniel) at ¶¶ 4-8 and accompanying exhibit.

<sup>30</sup> See Exhibit A (Affidavit of Donna Loiselle) at ¶ 4.

<sup>31</sup> See Exhibit B (Affidavit of Eddy Daniel) at ¶ 8.

<sup>32</sup> *Id.* at ¶ 9.

as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.<sup>33</sup>

36. 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*.<sup>34</sup> 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.<sup>35</sup>

37. 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.”<sup>36</sup> The Court further explained the broad interpretation, “[s]ervice may be ‘available’ even if it cannot be immediately used. No water or sewer utility can make service immediately available to rural, undeveloped land; providing such service involves building or installing facilities, which necessarily takes time to accomplish.”<sup>37</sup>

38. 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.

39. The District is now consolidated with Mustang Special Utility District (“Mustang SUD”), in accordance with TWC Chapter 65, Subchapter H.<sup>38</sup> Voters within the two districts passed measures consolidating the districts on November 2, 2021 and the elections have been

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<sup>33</sup> 7 U.S.C § 1926(b).

<sup>34</sup> 969 F.3d 460 (5th Cir. 2020) (en banc).

<sup>35</sup> *Id.* at 477.

<sup>36</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>37</sup> *Id.* at n.38.

<sup>38</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 Exhibit A (Affidavit of Donna Loiselle) at ¶¶ 7-8 & accompanying exhibits (affirming that the District has been consolidated with Mustang SUD) and Exhibit C (Affidavit of Chris Boyd) ¶¶ 3-4 & accompanying exhibits (affirming that Mustang SUD has been consolidated with the District).

canvassed.<sup>39</sup> The two districts are now in the 90-day statutory period required to settle the affairs of the districts.<sup>40</sup>

40. 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”).<sup>41</sup> The District assumed Mustang SUD’s federal indebtedness when the District and Mustang SUD were consolidated.<sup>42</sup>

41. 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.<sup>43</sup> The District has not closed on the USDA loan, but is working diligently to do so.

42. 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.**

43. 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.

44. 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.<sup>44</sup> 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

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<sup>39</sup> See TWC § 65.724 (describing procedure).

<sup>40</sup> TWC § 65.725(b).

<sup>41</sup> See Exhibit C (Affidavit of Chris Boyd), at ¶ 5

<sup>42</sup> See TWC § 65.726

<sup>43</sup> Exhibit A (Affidavit of Donna Loiselle), at ¶¶ 4-6 & accompanying exhibits.

<sup>44</sup> 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.”).

domain,”<sup>45</sup> 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.<sup>46</sup>

45. 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; because Petitioner does not own the Property and has not set out the required verified “statement of facts” establishing that the Property is not receiving water service from the District; 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

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<sup>45</sup> 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.”).

<sup>46</sup> *See* TWC § 13.254(g) (“The utility commission shall adopt rules governing the evaluation of these factors.”).

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,

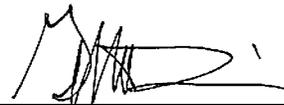
By: \_\_\_\_\_

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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 29<sup>th</sup> day of December 2021.

\_\_\_\_\_  
Grayson E. McDaniel

**EXHIBIT A**

**AFFIDAVIT OF DONNA LOISELLE  
MARILEE SPECIAL UTILITY DISTRICT'S GENERAL MANAGER**

**DOCKET NO. 52517**

**PETITION OF A.J. MALONE  
TO AMEND MARILEE  
SPECIAL UTILITY DISTRICT'S CERTIFICATE  
OF CONVENIENCE AND NECESSITY  
IN COLLIN COUNTY BY  
EXPEDITED RELEASE**

**§ PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS  
§  
§**

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

**STATE OF TEXAS**

**§**

**COUNTY OF COLLIN**

**§**

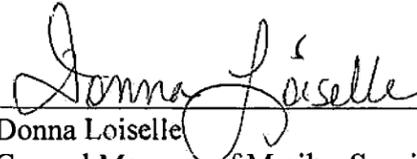
**§**

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

1. "My name is Donna Loiselles. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "Since 1996, I have been the duly appointed General Manager of Marilee Special Utility District ("District").
3. "The District maintains two active water meters, Meter No. 44 and Meter No. 817, on the 62.671 acres of Property ("Property") sought to be decertified in this proceeding from the District's water certificate of convenience and necessity ("CCN") No. 10150. The meter and the District's facilities near the Property are accurately reflected in Exhibit B-1 to the affidavit of the District's engineer.
4. "Meter Nos. 44 and 817 receive water service from the District through a 4" waterline that serves the Property, which waterline is extended from the 6" waterline and the 8" waterline at the intersection of County Road 90 and County Road 92. The 4" waterline is inside the Property. All of these waterlines are marked on Exhibit B-1.
5. "Meter No. 44 is in the name of Bellevue Partners. Account details for the meter are attached hereto as Exhibit A-1. Exhibit A-1 reflects that Meter No. 44 receives water service from the District and the most recent payment on the account was made on November 4, 2021.
6. "Meter No. 44 was transferred to Bellevue Partners by the prior owner, Joseph Miller, in on or around July 2016. Account details for the meter when it was in the name of Joseph Miller are attached hereto as Exhibit A-2. Exhibit A-2 reflects that Meter No. 44 received water service from the District and the most recent payment on the account was made on July 26, 2016. A true and correct copy of a District work order reflecting the final meter read date for Joseph Miller as July 26, 2016 is attached hereto as Exhibit A-3.

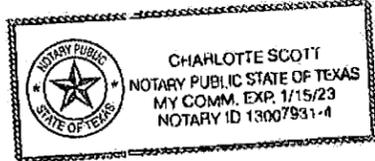
7. "Meter No. 44 was transferred to Joseph Miller in August 1992 by the prior owner, J.R. Bussey, who was a customer of the District's predecessor, Gunter Water Supply Corporation. A true and correct copy of the Membership Transfer Authorization is attached hereto as Exhibit A-4.
8. "On February 11, 2021, the District's Board of Directors authorized me, as the District's General Manager, 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.
9. "Live Oak sent a commitment letter to the District's Board on April 13, 2021, committing to provide the District 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-5.
10. "The United States Department of Agriculture ("USDA") sent correspondence to me, dated July 19, 2021, stating that USDA Rural Development approved the Loan on July 12, 2021. A true and correct copy of that letter is attached to this affidavit as Exhibit A-6.
11. "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-7.
12. "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-8.
13. "I am authorized to make this affidavit on behalf of the District in Docket 52517 in support of its response to A.J. Malone's ("Petitioner") request to remove 62.671 acres of Property from areas for which the District holds water certificate of convenience and necessity ("CCN") No. 10150.

FURTHER, AFFIANT SAYETH NOT.



Donna Loïselle  
General Manager of Marilee Special Utility  
District

SWORN TO AND SUBSCRIBED before me by Donna Loïselle on this 29<sup>th</sup> day of  
December 2021.





Notary Public in and for the State of Texas

**EXHIBIT A-1**

**METER NO. 44 ACCOUNT DETAILS**

Marilee SUD

### Customer Detail

**Bellevue Partners**

**Account Number**

**44**

Bellevue Partners  
 Pat Richey  
 11518 Reeder Rd  
 Dallas TX  
 75229 (972)241-6774  
 Service Address: 5711 CR# 90

Months On System 336  
 Total Usage 3,235,200  
 Average Usage 9,629  
 Sequence Number 13590  
 Meter Serial Number 200677051  
 Route Number 2  
 Last Read Date 11/18/2021  
 12 Month Average 5,683  
 Last Year Average 8,800  
 Previous Year Average 6,100  
 Last "Paid On Time" Date 11/4/2021  
 Last Late Charge Date 11/18/2019  
 Number Of Late Months 2  
 Next Due Date 12/15/2021  
 Year To Date Charges \$709.59

Date Turned On  
 Date Turned Off  
 Meter Check Date 8/31/2020  
 Rate Code 1  
 Pump/Well Number 23  
 Last Reading 986  
 Previous Reading 983  
 Usage 300  
 # of Units 1

Meter 120687872J  
 Old Account # 44  
 Service/zipcode 75,009.00

Readresolution 0.01 brand&size Badger .625

#### Deposit Information

Deposit Amount	\$0.00	Deposit Date	Certificate Number	0
Deposit Amount 2	\$200.00	Deposit 2 Date	Services	Current Balance
0	Usage	Charges	Read Date	Reading
January	900	32.80	1/18/2021	400
February	700	32.08	2/23/2021	407
March	1,900	36.42	3/18/2021	426
April	1,100	33.53	4/19/2021	437
May	3,700	45.49	5/19/2021	474
June	3,600	44.98	6/21/2021	510
July	2,200	37.81	7/19/2021	532
August	400	30.99	8/18/2021	536
September	14,500	119.09	9/21/2021	681
October	30,200	265.77	10/18/2021	983
November	300	30.63	11/18/2021	986
December	8,700	74.71	12/17/2020	391
Last Payment 11/4/2021 \$350.00 Check Number 2,939				Previous Charges (\$231.17)
Age 1 \$0.00 Age 2 \$0.00 Age 3 \$0.00				<b>Current Balance -231.17</b>

**EXHIBIT A-2**

**METER NO. 44 ACCOUNT DETAILS - PRIOR OWNER**

Marilee SUD

### Customer Detail

**Miller, Joseph A**

**Account Number**

**44**

Miller, Joseph A  
6778 Firenze Lane

Frisco TX  
75034 (214)384-1677  
Service Address: 5711 CR# 90

Date Turned On  
Date Turned Off  
Meter Check Date 8/10/2006  
Rate Code 1  
Pump/Well Number 23  
Last Reading 12612  
Previous Reading 12587  
Usage 2,500

Months On System 271  
Total Usage 2,795,500  
Average Usage 10,315  
Sequence Number 11650  
Meter Serial Number 33413540  
Route Number 2  
Last Read Date 7/25/2016  
12 Month Average 8,017  
Last Year Average 8,100  
Previous Year Average 6,300  
Last "Paid On Time" Date 7/26/2016  
Last Late Charge Date 3/16/1999  
Number Of Late Months 2  
Next Due Date 8/15/2016  
Year To Date Charges \$180.27

Meter 71079185 Z  
Old Account # 44

USER DEFINED 1

### Deposit Information

Deposit Amount	\$100.00	Deposit Date	Certificate Number	0	
Deposit Amount 2	\$0.00	Deposit 2 Date	Services	Current Balance	
0	Usage	Charges	Read Date	Reading	
January	2,700	29.74	1/22/2016	12447	
February	2,700	29.74	2/23/2016	12474	
March	2,500	28.99	3/23/2016	12499	
April	3,100	31.22	4/22/2016	12530	
May	2,600	29.36	5/24/2016	12556	
June	3,100	31.22	6/22/2016	12587	
July	10,200	63.85	7/22/2015	11727	
August	19,500	117.20	8/21/2015	11922	
September	31,200	203.34	9/23/2015	12234	
October	13,400	80.73	10/21/2015	12368	
November	3,000	30.85	11/23/2015	12398	
December	2,200	27.88	12/21/2015	12420	
Last Payment	7/26/2016	\$227.50	Check Number	5	
Age 1	\$0.00	Age 2	\$0.00	Age 3	\$0.00

Services	Current Balance
Water	\$28.60
GW Con fee	\$0.25
Adjustments	\$227.50
Tax	\$0.14
Previous Charges	\$31.22
Paid This Month	\$258.72
<b>Current Balance</b>	<b>28.99</b>

**EXHIBIT A-3**  
**DISTRICT WORK ORDER**

# Marilee Special Utility District

P.O. Box 1017 • Celina, Texas 75009

(972) 382-3222

No 13235

## WORK ORDER

Acct. # 44

Date 7-25-16

Meter Reading

Previous: \_\_\_\_\_

Current: 12614

Phone#: \_\_\_\_\_

Name: Joseph Miller

57110 CR #490

Celina TX

Cust. Concern: \_\_\_\_\_

Line Locate: \_\_\_\_\_

Other: \_\_\_\_\_

Person Issuing Order \_\_\_\_\_

Instructions: Final on July 26, 2016

Sold property

tran # 71079185

Action taken and time spent: got final reading

Parts and equipment used: \_\_\_\_\_

Entered  
7-27-16  
AG

Date Completed: 7-26-16

22

Signed: Gary/Mike

**EXHIBIT A-4**

**MEMBERSHIP TRANSFER AUTHORIZATION**

MEMBERSHIP TRANSFER AUTHORIZATION

TRANSFEROR hereby surrenders Membership in the Gunter Rural WSC by execution of the attached Stock Certificate. Water service rights granted by Membership and other qualification hereby cease contingent upon further qualification of the Transferee in accordance with the policies of the Gunter Rural WSC.

By execution hereof, the undersigned hereby acknowledges that the Membership Transfer complies with the terms of one of the following items (1) through (4), thereby qualifying for transfer of Membership in accordance with the laws of the State of Texas.

- (1) The Membership is transferred by will to a person related to the Transferor within the second degree by consanguinity; or
- (2) The Membership is transferred without compensation to a person related to the Transferor within the second degree by consanguinity; or
- (3) The Membership is transferred without compensation or by sale to the Corporation; or
- (4) The Membership is transferred as a part of the conveyance of real estate from which the Membership arose.

Transferee understands that qualification for Membership is not binding on the Corporation and does not qualify the Member for continued water service unless the following terms and conditions are met:

- (1) This Membership Transfer Authorization Form is completed by the Transferor and Transferee;
- (2) The Transferee has completed the required Application packet;
- (3) All indebtedness due the Corporation has been paid;
- (4) The Membership Certificate has been surrendered, properly endorsed, by the record Transferor;
- (5) The Transferee demonstrates satisfactory evidence of ownership of the property designated to receive service and from which the Membership arose; and
- (6) Any other terms and conditions of the Corporation's Tariff are properly met.

  
 \_\_\_\_\_  
 Signature of TRANSFEROR

  
 \_\_\_\_\_  
 Signature of TRANSFEEE

*Plak # 613 \$125<sup>00</sup>  
 8/14/92*

MEMBERSHIP TRANSFER AUTHORIZATION (CONT'D)

J R Bussey  
Transferor's Name

Joseph A. Miller  
Transferee's Name

Box 339  
Forwarding Address

P.O. Box 796218  
Current Address

Celina TX 75009  
City, State, Zip Code

DALLAS, TX 75379-6218  
City, State, Zip Code

Phone # \_\_\_\_\_

214 / 385-9600  
Phone#

Account Number 17 Final Reading \_\_\_\_\_ Reading Date \_\_\_\_\_

Location of Meter CR#89

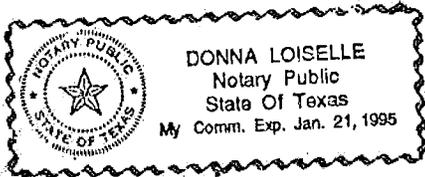
A FEE OF \$25.00 IS CHARGED ON ALL TRANSFERS; AND MUST ACCOMPANY THIS FORM.

Transferor may request a refund of the Membership Fee (\$100.00) and Transferee understands that he/she must place on deposit a refundable Membership Fee with the Corporation. (Check appropriate space if refund is requested by Transferor.) (Refund will be made once Transferee has placed on deposit Membership Fee (\$100.00).)

ACKNOWLEDGMENT

THE STATE OF TEXAS  
COUNTY OF Collin

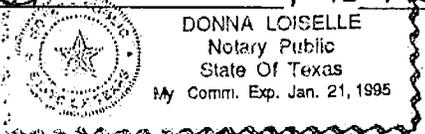
This instrument was acknowledged before me on the 10<sup>th</sup> day of August, 19 92 by J R Bussey



Donna Loiselle  
Notary Public, State of Texas  
Commission expires: \_\_\_\_\_

THE STATE OF TEXAS  
COUNTY OF Collin

This instrument was acknowledged before me on the 14<sup>th</sup> day of August, 19 92 by Joseph A Miller



25 Donna Loiselle  
Notary Public, State of Texas

**EXHIBIT A-5**

**LIVE OAK COMMITMENT LETTER**



## 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](http://liveoakbank.com)

©2020 Live Oak Banking Company. All rights reserved. Member FDIC. Equal Housing Lender.



**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:**

<b>Use of Proceeds:</b>	<b>Total</b>
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
<b>Total</b>	<b>\$ 1,553,000</b>

**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-6**

**UNITED STATES DEPARTMENT OF AGRICULTURE  
CORRESPONDANCE**



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

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT  
FARM SERVICE AGENCY

**REQUEST FOR OBLIGATION OF FUNDS  
GUARANTEED LOANS**

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

## CERTIFICATION APPROVAL

### APPROVAL CONDITIONS:

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

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

### 37. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL

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

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

  
*(Signature of Approval Official)*

Typed or Printed Name: Daniel Torres

**JUL 12 2021**

Date Approved \_\_\_\_\_

Title: Acting State Director

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-7**  
**PROPOSITION A**

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-8**  
**ELECTION RESULTS**

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 EDDY DANIEL,  
REPRESENTATIVE OF MARILEE SPECIAL UTILITY DISTRICT'S  
ENGINEER OF RECORD**

**DOCKET NO. 52517**

**PETITION OF A.J. MALONE TO § PUBLIC UTILITY COMMISSION**  
**AMEND MARILEE SPECIAL §**  
**UTILITY DISTRICT'S CERTIFICATE § OF TEXAS**  
**OF CONVENIENCE AND NECESSITY §**  
**IN COLLIN COUNTY BY EXPEDITED §**  
**RELEASE §**

**SUPPORTING AFFIDAVIT OF EDDY DANIEL,**  
**PROFESSIONAL ENGINEER FOR MARILEE SPECIAL UTILITY DISTRICT**

**STATE OF TEXAS §**  
**§**  
**COUNTY OF COLLIN §**

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

1. "My name is Eddy Daniel. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am an engineer and employee of DBI Engineers. The company serves as the engineer of record for Marilee Special Utility District (the "District"), the Intervenor in this matter, and I am a project engineer for the utility.
3. "I am authorized to make this affidavit on behalf of the District in Docket 52517 in support of its response to A.J. Malone's ("Petitioner") request to remove 62.671 acres of Property ("Property") from areas for which the District holds water certificate of convenience and necessity ("CCN") No. 10150.
4. "I supervised the preparation of the map of the Property attached to this affidavit as Exhibit B-1.
5. "The District provides water service to the Property through Nos. 44 and 817. Both meters are marked on Exhibit B-1.
6. "The meters were placed with the intent to serve the Property and the tract where the Property is located.
7. "Meter Nos. 44 and 817 receive water service from the District through a 4" waterline that serves the Property, which waterline is extended from the 6" waterline and the 8" waterline at the intersection of County Road 90 and County Road 92. The 4" waterline is inside the Property from the northeast and running to the southwest corner of the Property. All of

these waterlines are marked on Exhibit B-1.

8. "Additional facilities that are available to provide water service to the Property are:
- An 8" waterlines, on the east side of the Property; and
  - A 6" waterline, extending from the northeast side of the Property and running to the northwest of the Property.

These facilities are marked on Exhibit B-1.

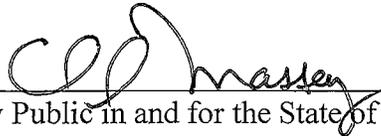
9. "In my professional opinion, Marilee provides and has the ability and facilities dedicated to continue to provide water service to the Property.

FURTHER, AFFIANT SAYETH NOT.

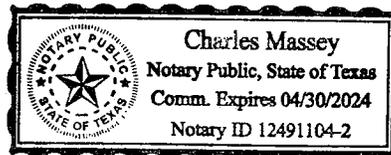


Eddy Daniel  
Engineer of Record for Marilee Special Utility  
District

SWORN TO AND SUBSCRIBED before me by Eddy Daniel on this 22 day of December 2021.

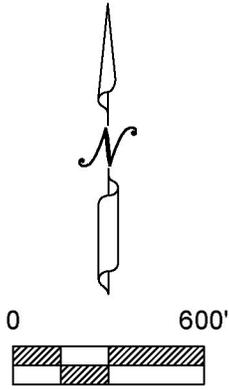


Notary Public in and for the State of Texas



**EXHIBIT B-1**

**MAP OF THE PROPERTY**



CR 91

4"

6"

- #1268
- #949
- #1110
- #1141
- #963
- #1018
- #1026
- #1196
- #1290
- #1244
- #919
- #1179
- #924
- #984
- #1209
- #411
- #1391
- #1456

#310  
McINTIRE

#294  
McINTIRE

OAK HILL  
FH

2-1/2"

#118  
MOTES

6"

#314  
WILSON &  
KIRKMAN

1 1/2"

DEAD  
METER

#785  
WEST

#774  
OWENS

#562  
VEST

#169  
OWENS

#443  
FOWLER

#815  
BURNS

#389

#2474

#168  
SKAGGS

#1784  
SKAGGS

#428  
LONG

#5  
JACKSON

#817  
FOX

CR 90

8"

CR 92

DOCKET #52517  
AJ MALONE  
62.671 ACRES

#871  
COOK

#44  
MILLER

CR 90

CR 90

4"

#60  
YOUNG

4"

#17  
BEASLEY

CR 87

**EXHIBIT C**

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

**PUC DOCKET NO. 52517**

<b>PETITION OF A.J. MALONE TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMEND MARILEE SPECIAL UTILITY</b>	<b>§</b>	
<b>DISTRICT'S CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</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 CHRIS BOYD,  
GENERAL MANAGER FOR MUSTANG SPECIAL UTILITY DISTRICT**

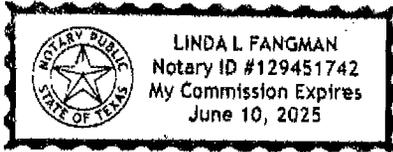
<b>STATE OF TEXAS</b>	<b>§</b>
	<b>§</b>
<b>COUNTY OF COLLIN</b>	<b>§</b>

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 C-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 C-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 52517 in support of Marilee's response to A.J. Malone's ("Petitioner") request to remove approximately 62.671 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 Chris Boyd, General Manager of Mustang Special Utility District \_\_\_\_\_ on this 28 day of December 2021.

  
Notary Public in and for the State of Texas

**EXHIBIT C-1**

**MUSTANG'S PROPOSITION**

Active Contests Options List  
Denton County - Mustang Special Utilities District Special Election - November 02, 2021

Page 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:  
Options: **2**

**1**

**EXHIBIT C-2**

**ELECTION RESULTS IN DENTON COUNTY**

**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 \*\*\*