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PETITION OF E REAL ESTATE, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT’S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE (TRACT 3)	§	

MARILEE SPECIAL UTILITY DISTRICT’S VERIFIED RESPONSE AND MOTION TO DISMISS FIRST AMENDED PETITION OF E REAL ESTATE, LLC TO AMEND THE DISTRICT’S CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE BURKHALTER:

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (the “District”) and files this Verified Response and Motion to Dismiss (“Response and Motion to Dismiss”) E Real Estate, LLC’s (“Petitioner”) First Amended Petition for Expedited Release Pursuant to Texas Water Code Section 13.2541 (“Petition”), filed in this docket, and in support respectfully shows as follows:

I. BACKGROUND

1. Petitioner is E Real Estate, LLC, a Texas limited-liability corporation. Petitioner asserts that it is managed by Eland Energy, Inc., a Texas corporation.¹

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

3. On September 8, 2021, Petitioner filed a 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 146.75 acres of property (the “Property”) from the water utility service area the District serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.²

¹ See First Amended Petition, at Exhibit A ¶ (Affidavit of Gregg Allen) at ¶ 2 (Dec. 13, 2021).

² 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) (Sept. 8, 2021).

4. On September 14, 2021, the Honorary Administrative Law Judge (“ALJ”) entered Order No. 1, requiring Staff for the Public Utility Commission (the “Commission”) (“Commission Staff”) to file comments on the administrative completeness of the Petition and sufficiency of notice by October 8, 2021, and for the District, as CCN holder, to file a verified response by October 15, 2021.³

5. On October 1, 2021, the District filed a Motion to Intervene, which was granted on October 12, 2021.⁴

6. On October 8, 2021, the ALJ ordered that the Petition was administratively incomplete, based on Commission Staff’s recommendation, and provided a deadline of November 5, 2021, for Petitioner to cure the deficiencies.⁵ The ALJ also rescinded the District’s deadline for filing a verified response.

7. On November 29, 2021, the ALJ ordered the Petition, which Petitioner had supplemented, to be administratively incomplete, based on Commission Staff’s recommendation, and provided a deadline of December 13, 2021, for Petitioner to cure the deficiencies.⁶

8. On December 13, 2021, Petitioner filed a First Amended Petition.⁷ The First Amended Petition alleges that the property is greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.⁸ The First Amended Petition is supported by the sworn affidavit of Gregg Allen, the President of Eland Energy, Inc., which, he admits, is the manager of Petitioner.⁹ Eland Energy, Inc. has three active District meters (Meter Nos. 361, 911,

³ Order No. 1 – Requiring Comments on Administrative Completeness, Notice, and Other Matters, and Establishing Procedural Schedule (Sept. 14, 2021).

⁴ Marilee Special Utility District’s Motion to Intervene (Oct. 1, 2021); Order No. 3 – Granting Intervention (Oct. 12, 2021).

⁵ Order No. 2 – Finding the Petition Administratively Incomplete and Providing an Opportunity to Cure (Oct. 8, 2021).

⁶ Order No. 4 – Finding the Petition Administratively Incomplete, Providing an Opportunity to Cure (Nov. 29, 2021).

⁷ First Amended Petition by E Real Estate, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Dec. 13, 2021).

⁸ *Id.* at 2.

⁹ *See id.* at Exhibit A (Affidavit of Gregg Allen) at ¶ 2 (“I am the President of Eland Energy, Inc., Manager for E Real Estate, LLC, the Petitioner in the above-captioned matter.”) (Dec. 13, 2021).

and 1117) located within and currently providing water service to the Property.¹⁰ Despite the fact that Mr. Allen has actual knowledge that his company has three active meters providing service to the Property, Mr. Allen falsely swears that the Property “is not receiving water service from Marilee SUD or any other water provider.”¹¹

9. On January 14, 2022, 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.¹² Order No. 5 established a deadline of February 3, 2022, for the District to file its Response.¹³ The District’s Response and Motion to Dismiss is timely filed.

II. RESPONSE AND MOTION TO DISMISS

10. Petitioner seeks streamlined expedited release of the Property under TWC § 13.2541 and 16 TAC § 24.245(h).¹⁴ To obtain the release of the Property, 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.¹⁵

¹⁰ See *supra* ¶¶ 19-23 (providing account details for Meter Nos. 361, 911, and 1117, as well as the waterlines the District maintains within and near to the Property boundaries).

¹¹ See First Amended Petition, at Exhibit A (Affidavit of Gregg Allen) at ¶ 3 (Dec. 13, 2021).

¹² Order No. 5 – Finding Petition, as Supplemented, Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Jan. 14, 2022).

¹³ *Id.* at 2.

¹⁴ 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. 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.

¹⁵ TWC § 13.2541(b).

11. As demonstrated by the District’s sworn affidavits, exhibits, and mapping in this Response and Motion to Dismiss, the Property is receiving water service from the District. Because the District is providing service to the Property, Petitioner cannot state a claim upon which relief may be granted under TWC § 13.2541 and 16 TAC § 24.245(h), and the First Amended Petition should be dismissed under 16 TAC § 22.181.¹⁶ The First Amended Petition should also be dismissed on the independent ground that the District is federally indebted and curtailment or limitation of its service area is prohibited by federal law.¹⁷

A. The First Amended Petition Should Be Dismissed Pursuant to 16 TAC § 22.181 Because the Property Is Receiving Service from the District Through Three Active Meters and Is Not Eligible for Release Under TWC § 13.2541.

12. Property is only eligible for streamlined expedited release under TWC § 13.2541 if it is not receiving “service” of the type that the current CCN holder is authorized to provide under the applicable CCN.¹⁸ 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.”¹⁹

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

¹⁶ 16 TAC § 22.181(d)-(e) (The Commission may dismiss the proceeding without a hearing based on: lack of jurisdiction, moot question or obsolete petition, res judicata, collateral estoppel, unnecessary duplication of proceedings, failure to prosecute, failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient, failure to state a claim for which relief can be granted, gross abuse of discovery, withdrawal of an application, or other good cause shown.).

¹⁷ 7 U.S.C. § 1926(b).

¹⁸ TWC § 13.2541(b). *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied) (“[T]he term ‘service’ as defined in chapter 13 is very broad and appears intentionally so.”)

¹⁹ TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.²⁰

14. Based on these statutory definitions, the Austin Court of Appeals, in the *Crystal Clear* decision, has explained that a property 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.²¹

15. Additionally, *Crystal Clear* held that when active water meters are present within the property and serve the property, the property is “receiving service,” as a matter of law, and streamlined expedited release may not be granted.²²

16. In this case, the District has three active meters within the Property and streamlined expedited release, therefore, may not be granted. The District’s General Manager, Donna Loiselle, and engineer of record, DBI Engineers, are familiar with the Property and the District’s facilities within and near 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.

17. The Property is served by **Meter Nos. 361, 911, and 1117** (the “Meters”), which are located within the boundaries of the Property.²³ The District’s meters were placed with the intent to serve the Property.²⁴

²⁰ TWC § 13.002(9).

²¹ *Id.*; see also *Crystal Clear*, 449 S.W.3d at 137.

²² See *Crystal Clear*, 449 S.W.3d at 140 (“Certainly an active water tap on the Decertified Property would constitute a facility or line ‘used’ to supply water to the tract on which it was located.”).

²³ See Exhibit A (Affidavit of Donna Loiselle) at ¶¶ 4-5 and accompanying exhibits (reflecting that Meter Nos. 361, 911, and 1117 were initiated in August 2015 by Eland Energy, Inc., and are still active today, having last been read in January 2022); Exhibit B (Affidavit of Eddy Daniel) at ¶ 5 and accompanying exhibit B-1 (reflecting the location of Meter Nos. 361, 911, and 1117 within the boundaries of the Property).

²⁴ Exhibit B (Affidavit of Eddy Daniel) at ¶ 5.

18. The District maintains account details for each of the Meters, which reflect that the Meters are all currently active, with a “Last Read Date” of January 19, 2022, and providing water service to Petitioner and the Property.²⁵ The Meters are all in the name of Eland Energy, Inc.²⁶ The District’s records reflect that Eland Energy, Inc. applied for Meter Nos. 361, 911, and 1117 from the District on August 15, 2015.²⁷

19. In addition to the Meters that currently provide water service to the Property, the District has multiple waterlines that do and can provide water service to the Meters and to the Property.²⁸ The District maintains the following waterlines that are located **within** the Property boundaries:

- A 1 ½” waterline that is within the western boundary of the Property and to which Meter Nos. 361 and 911 are connected;
- An 8” waterline within the western boundary of the Property;
- A 2” waterline that is within the northern and eastern boundaries of the Property.²⁹

20. In addition to these waterlines within the Property, the District also maintains the following waterlines that are **near** the boundaries of the Property that can also provide water service to the Property—all are marked on Exhibit B-1:

- A 2” waterline that is approximately within 200 feet of the eastern boundary of the Property, and to which Meter No. 1117 is connected;
- A 4” waterline that is within 100 feet of the northern and eastern boundaries of the Property;
- A 2 ½” waterline that is less than 100 feet from the northwest corner of the Property;
- A 4” waterline that is within 100 feet of the eastern boundary of the Property; and

²⁵ Exhibit A (Affidavit of Donna Loiselle) at ¶¶ 4-5 and accompanying exhibits.

²⁶ Gregg Allen, who swore that the Property is not receiving service, is the President of Eland Energy, Inc., which is the manager of Petitioner. *See* First Amended Petition, at Exhibit A at ¶ 2 (Affidavit of Gregg Allen) (Dec. 13, 2021).

²⁷ Exhibit A (Affidavit of Donna Loiselle) at ¶¶ 4-5 and accompanying exhibits.

²⁸ *See* Exhibit A (Affidavit of Donna Loiselle) at ¶ 6; Exhibit B (Affidavit of Eddy Daniel) at ¶¶ 6-9 and accompanying exhibit B-1.

²⁹ *See* Exhibit A (Affidavit of Donna Loiselle) at ¶ 6; Exhibit B (Affidavit of Eddy Daniel) at ¶¶ 6-8 and accompanying exhibit B-1.

- An 8” waterline that is within 200 feet of the eastern boundary of the Property.³⁰

21. In consideration of the District’s facilities located within and near the Property, 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.”³¹

22. The evidence provided by the affidavits and supporting exhibits herein establishes as a matter of law that the Property is receiving service and is thus ineligible for streamlined expedited release under TWC § 13.2541. The First Amended Petition should thus be dismissed under 16 TAC § 22.181 because Petitioner has failed to state a claim upon which relief may be granted.

B. The First Amended Petition Must Be Dismissed Because Petitioner Has Not Met Its Burden of Proof Under 16 TAC § 24.245(h)(3)(D).

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.³²

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*.³³ 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

³⁰ Exhibit B (Affidavit of Eddy Daniel) at ¶ 9 and accompanying Exhibit B-1 (reflecting the location of the facilities near the boundaries of the Property).

³¹ Exhibit B (Affidavit of Eddy Daniel) at ¶ 10.

³² 16 TAC § 24.245(h)(3)(D).

³³ No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App.—Austin May 11, 2018, pet. denied) (mem. op.).

provider.”³⁴ The Commission, based on this unrebutted recitation of facts, properly found that no part of the property requested to be extracted had received water service since at least 2005.³⁵

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, empty meter box on the eastern portion of the property, which Crystal Clear itself classifies as inoperative.”³⁶

26. 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.³⁷ 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 23 tracts of land in its service area, representing a total acreage of approximately 4,839,011 acres.³⁸ The petitions in

³⁴ *Id.* at **6-7.

³⁵ *Id.* at **9-10 (citing Commission’s Finding of Fact No. 24).

³⁶ *Crystal Clear*, 449 S.W.3d at 134.

³⁷ First Amended Petition, at Exhibit A (Affidavit of Gregg Allen) at ¶ 3 (Dec. 13, 2021).

³⁸ 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*

most of the 23 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 no verified “statement of facts” has been provided proving that the Property is not receiving water service from the District.

30. The District respectfully requests that the First Amended Petition be dismissed as failing to state a claim upon which relief can be granted because it presents insufficient facts to

and Necessity in Collin County by Expedited Release, Docket No. 52497 (pending); Petition of A.J. 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 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 (Mesquaokee Ranch), Docket No. 52536 (pending); Petition by Mesquaokee 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); Petition of the Hubbard Trust to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release, Docket No. 53037.

prove that it is not receiving service from the District under TWC § 13.2541, 16 TAC § 24.245(h)(3)(D), and Texas law.

C. The First Amended Petition Should Be Dismissed Because Curtailing or Limiting the District’s Service Area Is Prohibited by Federal Law.

31. 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.³⁹

32. 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*.⁴⁰ 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.⁴¹

33. 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

³⁹ 7 U.S.C § 1926(b).

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

⁴¹ *Id.* at 477.

must have “something in place to merit § 1926(b)’s protection.”⁴² 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.”⁴³

34. 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.

35. The District is now consolidated with Mustang Special Utility District (“Mustang SUD”), in accordance with TWC Chapter 65, Subchapter H.⁴⁴ Voters within the two districts passed measures consolidating the districts on November 2, 2021 and the elections have been canvassed.⁴⁵ The two districts are now in the 90-day statutory period required to settle the affairs of the districts.⁴⁶

36. 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”).⁴⁷ The District assumed Mustang SUD’s federal indebtedness when the District and Mustang SUD were consolidated.⁴⁸

⁴² *Id.* at 477 & n.36 (quoting *Lexington—S. Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996)).

⁴³ *Id.* at n.38.

⁴⁴ 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 ¶¶ 10-11 & 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). Chris Boyd’s affidavit has not yet been signed and notarized due to weather-related delay. The District will supplement this Response and Motion to Dismiss with a signed, notarized affidavit as soon as is practicable.

⁴⁵ See TWC § 65.724 (describing procedure).

⁴⁶ TWC § 65.725(b).

⁴⁷ See Exhibit C (Affidavit of Chris Boyd), at ¶¶ 5-6.

⁴⁸ See TWC § 65.726

37. On July 12, 2021, the District received approval from the United States Department of Agriculture (“USDA”) for a Water and Wastewater Guaranteed loan of \$1,553,000.⁴⁹ The District has not closed on the USDA loan, but is working diligently to do so.

38. As the District is federally indebted due to consolidation with Mustang SUD, and with the scheduled closing of the District’s USDA loan approaching, curtailing or limiting the District’s service area is prohibited by 7 U.S.C. § 1926(b), and the First Amended Petition should be dismissed for failing to state a claim upon which relief may be granted.

III. Alternatively, the District Must Be Compensated if the First Amended Petition is Granted.

39. The First Amended 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.

40. 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.⁵⁰ 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,”⁵¹ 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

⁴⁹ Exhibit A (Affidavit of Donna Loiselle), at ¶¶ 7-9 & accompanying exhibits.

⁵⁰ 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.”).

⁵¹ 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.”).

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.⁵²

41. 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 First Amended Petition.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the District respectfully requests that the ALJ enter a Proposed Order denying the First Amended Petition for three independent reasons: (1) the Property is receiving water service from the District through three active meters and is thus ineligible for streamlined expedited release under TWC § 13.2541, 16 TAC § 24.245(h), and Texas state law; (2) Petitioner has not set out the required verified statement of facts establishing that the Property is not receiving service from the District; and (3) the District's service area may not be limited or curtailed, pursuant to 7 U.S.C. § 1926(b). The District also seeks all other and further relief to which it may be justly entitled at law or in equity.

⁵² See TWC § 13.254(g) ("The utility commission shall adopt rules governing the evaluation of these factors.").

Respectfully submitted,

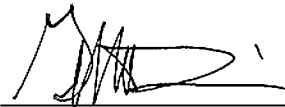
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Fax (512) 900-2855
john@carltonlawaustin.com
grayson@carltonlawaustin.com

ATTORNEYS FOR MARILEE SPECIAL
UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this 3rd day of February 2022.



Grayson E. McDaniel

EXHIBIT A

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

DOCKET NO. 52532

PETITION OF E REAL ESTATE, LLC § PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT’S CERTIFICATE § OF TEXAS
OF CONVENIENCE AND NECESSITY §
IN COLLIN COUNTY BY EXPEDITED §
RELEASE (TRACT 3) §

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

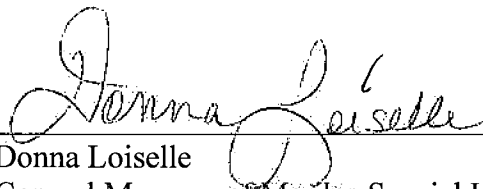
STATE OF TEXAS §
§
COUNTY OF COLLIN §

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”), the Intervenor in this matter.
3. “The District provides water service to the 146.75 acres of property (“Property”) sought to be decertified in this proceeding from the District’s water certificate of convenience and necessity (“CCN”) No. 10150 through multiple meters and waterlines.
4. Three District meters, Meter Nos. 361, 911, and 1117, are currently serving the Property and are located within the boundaries of the Property. Meter Nos. 361, 911, and 1117 are all in the name of Eland Energy, Inc. True and correct copies of account details for Meter Nos. 361, 911, and 1117 are attached hereto as **Exhibits A-1** (Meter No. 361), **A-2** (Meter No. 911), and **A-3** (Meter No. 1117). The location of Meter Nos. 361, 911, and 1117 are accurately reflected in **Exhibit B-1** to the affidavit of the District’s engineer.
5. **Exhibits A-1** (Meter No. 361), **A-2** (Meter No. 911), and **A-3** (Meter No. 1117) reflect that Eland Energy, Inc. initiated service for each meter in August 2015, that the three meters were most recently read in January 2022, and that the District’s service to the three meters is active.
6. “The above-described meters are served by the District’s waterlines, including a 1 ½” waterline that is within the western boundary of the Property and to which Meter Nos. 361 and 911 are connected; an 8” waterline within the western boundary of the Property; and a 2” waterline that is within the northern and eastern boundaries of the Property. The meters and waterlines are accurately reflected in **Exhibit B-1** to the affidavit of the District’s engineer.

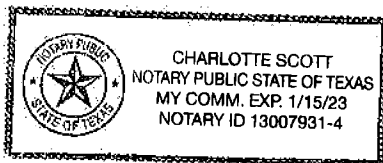
7. "On February 11, 2021, the District's Board of Directors authorized me, as the District's General Manager, to prepare and submit application documents as needed to Live Oak Banking Company ("Live Oak") in an effort to secure funding for construction of a 300,000-gallon water tank.
8. "Live Oak sent 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-4**.
9. "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-5**.
10. "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-6**.
11. "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-7**.
12. "I am authorized to make this affidavit on behalf of the District in Docket 52532 in support of its response to Petitioner E Real Estate, LLC's request to remove 146.75 acres of Property for which the District holds water certificate of convenience and necessity ("CCN") No. 10150.

FURTHER, AFFIANT SAYETH NOT.



 Donna Loiselle
 General Manager of Marilee Special Utility District

SWORN TO AND SUBSCRIBED before me by Donna Loiselle on this 2 day of February 2022.





 Notary Public in and for the State of Texas

EXHIBIT A-1

Marilee SUD

Customer Detail

Eland Energy Inc

Account Number

361

Eland Energy Inc
 16400 Dallas Pkwy
 Suite 100
 Dallas TX
 75248 (214)368-6100
 Service Address: 8496 CR# 97

Months On System 337
 Total Usage 5,345,900
 Average Usage 15,863
 Sequence Number 13700
 Meter Serial Number 17981774
 Route Number 2
 Last Read Date 1/19/2022
 12 Month Average 12,925
 Last Year Average 12,900
 Previous Year Average 13,100
 Last 'Paid On Time' Date 1/6/2022
 Last Late Charge Date 1/16/2019
 Number Of Late Months 48
 Next Due Date 2/15/2022
 Year To Date Charges \$0.00

Date Turned On
 Date Turned Off
 Meter Check Date 5/2/2019
 Rate Code 1
 Pump/Well Number 23
 Last Reading 3829
 Previous Reading 3724
 Usage 10,500
 # of Units 1

Meter 87783455 Z
 Old Account # 361
 Servicezipcode 75,009.00

Readresolution 1.00 brand&size Badger .625

Deposit Information

Deposit Amount	\$0.00	Deposit Date	Certificate Number	0		
Deposit Amount 2	\$0.00	Deposit 2 Date	Services	Current Balance		
0	Usage	Charges	Read Date	Reading	Water	\$87.35
January	11,500	95.27	1/18/2021	2288	GW Con fee	\$1.05
February	5,300	55.39	2/22/2021	2341		
March	7,600	70.19	3/18/2021	2417		
April	3,400	43.96	4/19/2021	2451		
May	14,900	122.38	5/19/2021	2600		
June	2,000	36.78	6/21/2021	2620		
July	3,200	42.93	7/19/2021	2652		
August	28,700	250.24	8/18/2021	2939		
September	17,300	142.16	9/20/2021	3112		
October	10,500	88.84	10/18/2021	3217	Tax	\$0.44
November	20,300	166.88	11/18/2021	3420	Previous Charges	\$267.84
December	30,400	267.84	12/16/2021	3724	Paid This Month	\$267.84
					Current Balance	88.84

Last Payment 1/6/2022 \$267.84 Check Number Draft
 Age 1 \$0.00 Age 2 \$0.00 Age 3 \$0.00

leah@abarnranch.com

Eland Energy Inc

Account Number
Extended Notes

361

9/1/1995

Transferred from John Toole

2/21/2000

Map page # 60

2/21/2000

Disregard above the MAP PAGE should read # 53

3/24/2008

Credit transferred from acct 394.

7/2/2010

Meter with transmitter installed 07*31*2006

Marilee Special Utility District

P.O. Box 1017
Celina, Texas 75009
972-382-3222

DISTRICT USE ONLY	
Date Approved:	_____
Service Classification:	_____
Cost:	_____
Work Order#	_____
Account#	_____
Service Inspection Date:	_____

Service Application

DATE: 8-21-15

Applicants Name: ELAND ENERGY, INC.

Co-Applicant's Name _____

CURRENT BILLING ADDRESS:

16400 Knoll Trail, Suite 100 Office Phone# 214-368-6100
Dallas, Texas 75248

ATTN: Gary Goodnight Work Phone # _____

STREET ADDRESS OF PROPERTY: 8496 CR 97, Celina, TX

LEGAL DESCRIPTION OF PROPERTY (if applicable, subdivision with lot and block number): Acct. Meter # 361

Acreage: 318 Dwelling Size: 15,000+-

Number in Family: _____ Livestock & no.: _____

Previous Owners Name: Kirk Ranch, Jesse & Milo Kirk

SPECIAL SERVICE NEEDS OF APPLICANT: Contact: VAN Nichols 214-533-7166

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

EQUAL OPPORTUNITY PROGRAM:

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

<input checked="" type="checkbox"/> White, Not of Hispanic Origin	<input type="checkbox"/> Black, Not of Hispanic Origin	<input type="checkbox"/> American Indian or Alaskan Native	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Asian or Pacific Islander	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Male <input checked="" type="checkbox"/> Female
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MARILEE SPECIAL UTILITY DISTRICT

P.O. Box 1017
Celina, Texas 75009
(972) 382-3222

SERVICE AGREEMENT

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

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

All bills shall be due and payable upon receipt and are past due beyond the date indicated on the bill; allowing approximately fifteen (15) days to pay. A one-time penalty of \$5.00 or 5.0%, whichever is larger, shall be applied to delinquent bills. A monthly bill for utility service is delinquent if full payment, including any outstanding late fees and regulatory assessments, is not received at the District by 5:00 p.m. on the due date. Payments made by mail will be considered late if postmarked after the past due date. If full payment is not timely received by the District, a final notice shall be mailed allowing ten (10) additional days for payment prior to disconnection. If Customer's service is disconnected, the District shall charge Customer a Reconnect Fee (\$35.00 during regular business hours; \$50.00 at any other time) before restoring Customer's service. The District's regular business hours are from 8:00 a.m. to 4:30 p.m., Monday to Friday.

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

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

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

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

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

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

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

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

(4) Beginning July 1, 1988, pipe and pipe fittings containing more than 8.0% lead may not be used to install or repair plumbing at any connection that provides water for human consumption.

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

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

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

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

COST OF SERVICE NOTICE
(Residential Service)

APPLICANT(S): ELAND ENERGY, INC. DATE: 8-21-15

PROPERTY: Kirk Ranch, 8476 CR97, Celina, Tx

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

Check all that apply:

<input type="checkbox"/>	Deposit	\$	200.00
<input type="checkbox"/>	Activation Fee		25.00
<input type="checkbox"/>	Connection Fee		3,200.00
<input type="checkbox"/>	Reserved Service Charges		_____
<input type="checkbox"/>	Easement Fee		_____
<input type="checkbox"/>	Street Crossing: County Road		_____
<input type="checkbox"/>	Street Crossing: State Highway		_____
<input type="checkbox"/>	(Other)		_____
	TOTAL:	\$	<u>N/A</u>

Applicant Signature: *Van D. Nichols* DL #: _____

Applicant Signature: _____ DL #: _____

NON-DISCLOSURE

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

Van D. Nichols
Applicant Signature

Applicant Signature

EXHIBIT A-2

Marilee SUD

Customer Detail

Eland Energy Inc

Account Number

911

Eland Energy Inc
 16400 Dallas Pkwy
 Suite 100
 Dallas TX
 75248 (214)368-6100
 Service Address: CR# 97 Barn

Months On System 310
 Total Usage 11,146,300
 Average Usage 35,956
 Sequence Number 13710
 Meter Serial Number 200677027
 Route Number 2
 Last Read Date 1/19/2022
 12 Month Average 33,008
 Last Year Average 33,000
 Previous Year Average 51,700
 Last "Paid On Time" Date 1/6/2022
 Last Late Charge Date 1/18/2021
 Number Of Late Months 64
 Next Due Date 2/15/2022
 Year To Date Charges \$0.00

Date Turned On 3/26/1996
 Date Turned Off
 Meter Check Date 8/31/2020
 Rate Code 1
 Pump/Well Number 23
 Last Reading 5972
 Previous Reading 5602
 Usage 37,000
 # of Units 1

Meter 120692158J
 Old Account # 911
 Servicezipcode 75,009.00

Readresolution 0.01 brand&size Badger .625

Deposit Information

Deposit Amount	\$0.00	Deposit Date	1/15/1997	Certificate Number	0
Deposit Amount 2	\$0.00	Deposit 2 Date		Services	Current Balance
0					
	Usage	Charges	Read Date	Reading	
January	34,800	336.07	1/18/2021	1989 L	Water \$330.80
February	20,400	167.70	2/23/2021	2193	GW Con fee \$3.70
March	10,200	86.91	3/18/2021	2295	
April	13,700	112.49	4/19/2021	2432	
May	13,600	111.67	5/19/2021	2568	
June	23,200	193.31	6/21/2021	2800	
July	19,600	161.11	7/19/2021	2996	
August	23,400	195.38	8/18/2021	3230	
September	65,200	693.74	9/20/2021	3882	
October	29,700	260.59	10/18/2021	4179	Tax \$1.65
November	62,100	648.25	11/18/2021	4800	Previous Charges \$913.83
December	80,200	913.83	12/16/2021	5602	Paid This Month \$913.83
					Current Balance 336.15
Last Payment	1/6/2022	\$913.83	Check Number	Draft	
Age 1	\$0.00	Age 2	\$0.00	Age 3	\$0.00

Eland Energy Inc

Account Number
Extended Notes

911

2/21/2000

Map page # 53

3/4/2020

Jennifer Beggs with Eland Energy requested this account be taken off bank draft - cs

Marilee Special Utility District

P.O. Box 1017
Celina, Texas 75009
972-382-3222

DISTRICT USE ONLY	
Date Approved:	_____
Service Classification:	_____
Cost:	_____
Work Order#:	_____
Account#:	_____
Service Inspection Date:	_____

Service Application

DATE: 8-21-15

Applicants Name: ELAND ENERGY, INC.

Co-Applicant's Name _____

CURRENT BILLING ADDRESS:

16400 Knoll Trail, Suite 100 Office Home Phone# 214-368-6100

Dallas, Texas 75248

ATTN: Gary Goodnight Work Phone #: _____

STREET ADDRESS OF PROPERTY: 8496 CR 97, Celina TX

LEGAL DESCRIPTION OF PROPERTY (if applicable, subdivision with lot and block number):
Existing Acct # 911

Acreage: 318 acres Dwelling Size: Office, Mobile Home, Equip Barn

Number in Family: _____ Livestock & no.: _____

Previous Owners Name: Kirk Ranch, Jesse & Milo Kirk

SPECIAL SERVICE NEEDS OF APPLICANT: Contact: VAN Nichols 214-533-7166

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

EQUAL OPPORTUNITY PROGRAM:

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

<input checked="" type="checkbox"/> White, Not of Hispanic Origin	<input type="checkbox"/> Black, Not of Hispanic Origin	<input type="checkbox"/> American Indian or Alaskan Native	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Asian or Pacific Islander	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Male <input checked="" type="checkbox"/> Female
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MARILEE SPECIAL UTILITY DISTRICT

P.O. Box 1017
Celina, Texas 75009
(972) 382-3222

SERVICE AGREEMENT

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

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

All bills shall be due and payable upon receipt and are past due beyond the date indicated on the bill; allowing approximately fifteen (15) days to pay. A one-time penalty of \$5.00 or 5.0%, whichever is larger, shall be applied to delinquent bills. A monthly bill for utility service is delinquent if full payment, including any outstanding late fees and regulatory assessments, is not received at the District by 5:00 p.m. on the due date. Payments made by mail will be considered late if postmarked after the past due date. If full payment is not timely received by the District, a final notice shall be mailed allowing ten (10) additional days for payment prior to disconnection. If Customer's service is disconnected, the District shall charge Customer a Reconnect Fee (\$35.00 during regular business hours; \$50.00 at any other time) before restoring Customer's service. The District's regular business hours are from 8:00 a.m. to 4:30 p.m., Monday to Friday.

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

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

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

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

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

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

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

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

(4) Beginning July 1, 1988, pipe and pipe fittings containing more than 8.0% lead may not be used to install or repair plumbing at any connection that provides water for human consumption.

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

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

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

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

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

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

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

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

NO **Customer acknowledges that the District's water system provides potable water for domestic consumption only and may not provide "fire flows" to the Service Address below as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.**

Van D. Nichols
Customer Signature

Customer Signature

Service Address: 8496 CR 97, Celina, Tx. 75009

Attach or State Legal Description: _____

ACCEPTED AND APPROVED by _____ on _____, 20__

Account No. _____

Work Order No. _____

Deposit Paid: \$ _____

By: _____

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

COST OF SERVICE NOTICE
(Residential Service)

APPLICANT(S): ELAND ENERGY, INC. DATE: 8-21-15

PROPERTY: Kirk Ranch, 8496 CR 97, Celina, TX

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

Check all that apply:

<input type="checkbox"/>	Deposit	\$ 200.00
<input type="checkbox"/>	Activation Fee	25.00
<input type="checkbox"/>	Connection Fee	3,200.00
<input type="checkbox"/>	Reserved Service Charges	_____
<input type="checkbox"/>	Easement Fee	_____
<input type="checkbox"/>	Street Crossing: County Road	_____
<input type="checkbox"/>	Street Crossing: State Highway	_____
<input type="checkbox"/>	(Other)	_____
	TOTAL:	\$ <u>N/A</u>

Applicant Signature: Van D. Nichols DL #: _____

Applicant Signature: _____ DL #: _____

NON-DISCLOSURE

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

Van D. Nichols
Applicant Signature

Applicant Signature

EXHIBIT A-3

Marilee SUD

Customer Detail

Eland Energy Inc

Account Number

1117

Eland Energy Inc
16400 Dallas Pkwy
Suite 100

Dallas TX
75248 (214)368-6100
Service Address: CR# 101-Mare Motel

Months On System 271
Total Usage 2,953,900
Average Usage 10,900
Sequence Number 12750
Meter Serial Number 33520330
Route Number 2
Last Read Date 1/19/2022
12 Month Average 16,433
Last Year Average 16,400
Previous Year Average 17,000
Last "Paid On Time" Date 1/6/2022
Last Late Charge Date 11/16/2020
Number Of Late Months 60
Next Due Date 2/15/2022
Year To Date Charges \$0.00

Date Turned On 6/4/1999
Date Turned Off
Meter Check Date 8/1/2006
Rate Code 1
Pump/Well Number 23
Last Reading 18140
Previous Reading 18093
Usage 4,700

of Units 1

Meter 71095709 Z
Old Account # 1,117
Servicezipcode 75,009.00

Readresolution 1.00 brand&size Badger .625

Deposit Information

Deposit Amount	\$0.00	Deposit Date	6/4/1999	Certificate Number	0
Deposit Amount 2	\$0.00	Deposit 2 Date		Services	Current Balance
0					
	Usage	Charges	Read Date	Reading	
January	18,800	154.52	1/18/2021	16309	Water \$50.81
February	20,400	167.70	2/22/2021	16513	GW Con fee \$0.47
March	2,100	37.29	3/18/2021	16534	
April	105,900	1,290.91	4/19/2021	17593	
May	13,300	109.20	5/21/2021	17726	
June	4,700	51.53	6/22/2021	17773	
July	300	30.63	7/19/2021	17776	
August	7,100	66.97	8/18/2021	17847	
September	9,100	79.83	9/20/2021	17938	
October	4,500	50.25	10/18/2021	17983	Tax \$0.25
November	5,900	59.25	11/18/2021	18042	Previous Charges \$54.11
December	5,100	54.11	12/16/2021	18093	Paid This Month \$54.11
					Current Balance 51.53
Last Payment	1/6/2022	\$54.11	Check Number	Draft	
Age 1	\$0.00	Age 2	\$0.00	Age 3	\$0.00

No deposit on this account for Eland Energy gary ext 2182

Eland Energy Inc

Account Number

1117

Extended Notes

2/21/2000

Map page # 53

12/22/2009

Kirk's called in, talked with Donna. Said they mailed their check for all accounts on December 11th. Donna told them if the check arrives and is postmarked December 11th, we will take off all late charges. Will call back tomorrow to see if we receive

ed.

7/2/2010

Meter with transmitter installed 07/31/2006

11/12/2019

Received check #0140 in the amount of \$251.29, this account is drafted on, talked Van Nichols he said mail him back the check, mailed check.vld

3/4/2020

Jennifer Beggs with Eland Energy called in requested for this account to be taken off bank draft - cs

1117

Marilee Special Utility District

P.O. Box 1017
Celina, Texas 75009
972-382-3222

DISTRICT USE ONLY	
Date Approved:	_____
Service Classification:	_____
Cost:	_____
Work Order#	_____
Account#	_____
Service Inspection Date:	_____

Service Application

DATE: 8-21-15

Applicants Name: ELAND ENERGY, INC.

Co-Applicant's Name _____

CURRENT BILLING ADDRESS:

16400 Knoll Trail, Suite 100 Office Home Phone# 214-368-6100

Dallas, Texas 75248

ATTN: Gary Goodnight Work Phone # _____

STREET ADDRESS OF PROPERTY: CR101, Celina, Tx.

LEGAL DESCRIPTION OF PROPERTY (if applicable, subdivision with lot and block number):
Meter # 1117

Acreage: 318 Dwelling Size: MARE Motel/BARN

Number in Family: _____ Livestock & no.: _____

Previous Owners Name: Kirk Ranch, Jesse & Milo Kirk

SPECIAL SERVICE NEEDS OF APPLICANT: Contact: VAN Nichols 214-533-7166

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

EQUAL OPPORTUNITY PROGRAM:

The following information is requested by the Federal Government in order to monitor compliance with Federal laws prohibiting discrimination against applicants seeking to participate in this program. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, we are required to note the race/national origin of individual applicants on the basis of visual observation or surname.					
<input checked="" type="checkbox"/> White, Not of Hispanic Origin	<input type="checkbox"/> Black, Not of Hispanic Origin	<input type="checkbox"/> American Indian or Alaskan Native	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Asian or Pacific Islander	<input checked="" type="checkbox"/> Male <input checked="" type="checkbox"/> Female

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

SERVICE AGREEMENT

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

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

All bills shall be due and payable upon receipt and are past due beyond the date indicated on the bill; allowing approximately fifteen (15) days to pay. A one-time penalty of \$5.00 or 5.0%, whichever is larger, shall be applied to delinquent bills. A monthly bill for utility service is delinquent if full payment, including any outstanding late fees and regulatory assessments, is not received at the District by 5:00 p.m. on the due date. Payments made by mail will be considered late if postmarked after the past due date. If full payment is not timely received by the District, a final notice shall be mailed allowing ten (10) additional days for payment prior to disconnection. If Customer's service is disconnected, the District shall charge Customer a Reconnect Fee (\$35.00 during regular business hours; \$50.00 at any other time) before restoring Customer's service. The District's regular business hours are from 8:00 a.m. to 4:30 p.m., Monday to Friday.

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

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

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

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

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

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

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

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

(4) Beginning July 1, 1988, pipe and pipe fittings containing more than 8.0% lead may not be used to install or repair plumbing at any connection that provides water for human consumption.

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

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

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

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

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

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

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

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

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

WAL
Customer Signature

Customer Signature

Service Address: CR101, MARE Model/BARN

Attach or State Legal Description: _____

ACCEPTED AND APPROVED by _____ on _____, 20__

Account No. _____

Work Order No. _____

Deposit Paid: \$ _____

By: _____

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

COST OF SERVICE NOTICE
(Residential Service)

APPLICANT(S): ELAND ENERGY, INC. DATE: 8-21-15

PROPERTY: Kirk Ranch, CR 101 (more meter/brew meter # 1117)

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

Check all that apply:

_____ Deposit	\$	200.00
_____ Activation Fee		25.00
_____ Connection Fee		3,200.00
_____ Reserved Service Charges		_____
_____ Easement Fee		_____
_____ Street Crossing: County Road		_____
_____ Street Crossing: State Highway		_____
_____ (Other)		_____
TOTAL:		\$ <u>N/A</u>

Applicant Signature: *Van D. Nichols* DL #: _____

Applicant Signature: _____ DL #: _____

NON-DISCLOSURE

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

Van D. Nichols
Applicant Signature

Applicant Signature

EXHIBIT A-4



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

©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:

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-5



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 (1, 2, or 3 from Item 5)		
7. STATE NAME Texas		8. COUNTY NAME Collin		
9. RACE CODE 1 - WHITE 2 - BLACK 3 - A/IN 1	10. EMPLOYEE RELATIONSHIP CODE (See FMI)	11. SEX CODE 1 - MALE 2 - FEMALE 3 - FAMILY UNIT 6		12. MARITAL STATUS 4 - ORGANIZATION MALE OWNED 5 - ORGANIZATION FEMALE OWNED 6 - PUBLIC BODY 7 - NONPROFIT-SECULAR 8 - NONPROFIT-FAITH BASED 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED OR DIVORCED)
13. VETERAN CODE 1 - YES 2 - NO 1	14. TYPE OF PAYMENT 3 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-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:

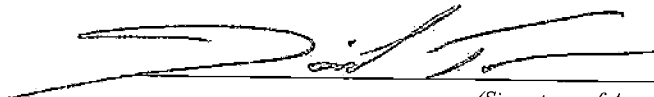
(1) (Farm Loan Programs Only) This loan guarantee is approved subject to the availability of funds. If this loan guarantee is not issued for any reason within 90 calendar days from the date of approval on this document, the approval official may request updated information concerning the lender and the 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-6

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-7

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	Provision al	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. 52532

PETITION OF E REAL ESTATE, LLC § PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE § OF TEXAS
OF CONVENIENCE AND NECESSITY §
IN COLLIN COUNTY BY EXPEDITED §
RELEASE (TRACT 3) §

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:

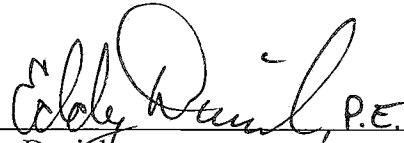
1. "My name is Eddy Daniel. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am an engineer and employee of Dunaway|DBI. The company serves as the engineer of record for Marilee Special Utility District (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 52532 in support of its response to E Real Estate, LLC's ("Petitioner") request to remove 146.75 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 three meters, Meter Nos. 361, 911, and 1117, which are all located within the boundaries of the Property. The meters were placed to serve the Property. The meters are marked on **Exhibit B-1**.
6. "The District maintains a 1 ½" waterline that is within the western boundary of the Property and to which Meter Nos. 361 and 911 are connected. This waterline is marked on **Exhibit B-1**.
7. "The District maintains an 8" waterline within the western boundary of the Property. This waterline is marked on **Exhibit B-1**.

8. "The District maintains a 2" waterline that is within the northern and eastern boundaries of the Property. This waterline is marked on **Exhibit B-1**.
9. "Additional facilities that are available to provide water service to the Property are:
- Pump station No. 2 to the north of the Property;
 - An 8" waterline, on the southeast side of the Property;
 - An 8" waterline on the northeastern corner of the Property;
 - 6" waterlines extending along the east side of the Property and running to the northwest of the Property and down to southwest of the Property.

These facilities are marked on **Exhibit B-1**.

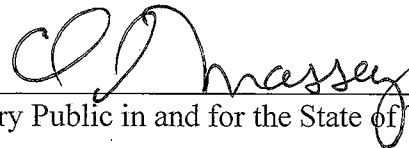
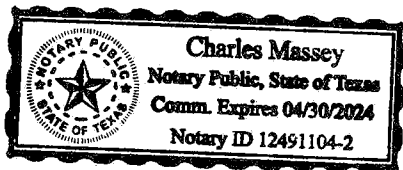
10. "In my professional opinion, the District has the ability and facilities dedicated to presently provide and continue to provide water service to the Property.

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 2 day of February 2022.



Notary Public in and for the State of Texas

EXHIBIT B-1

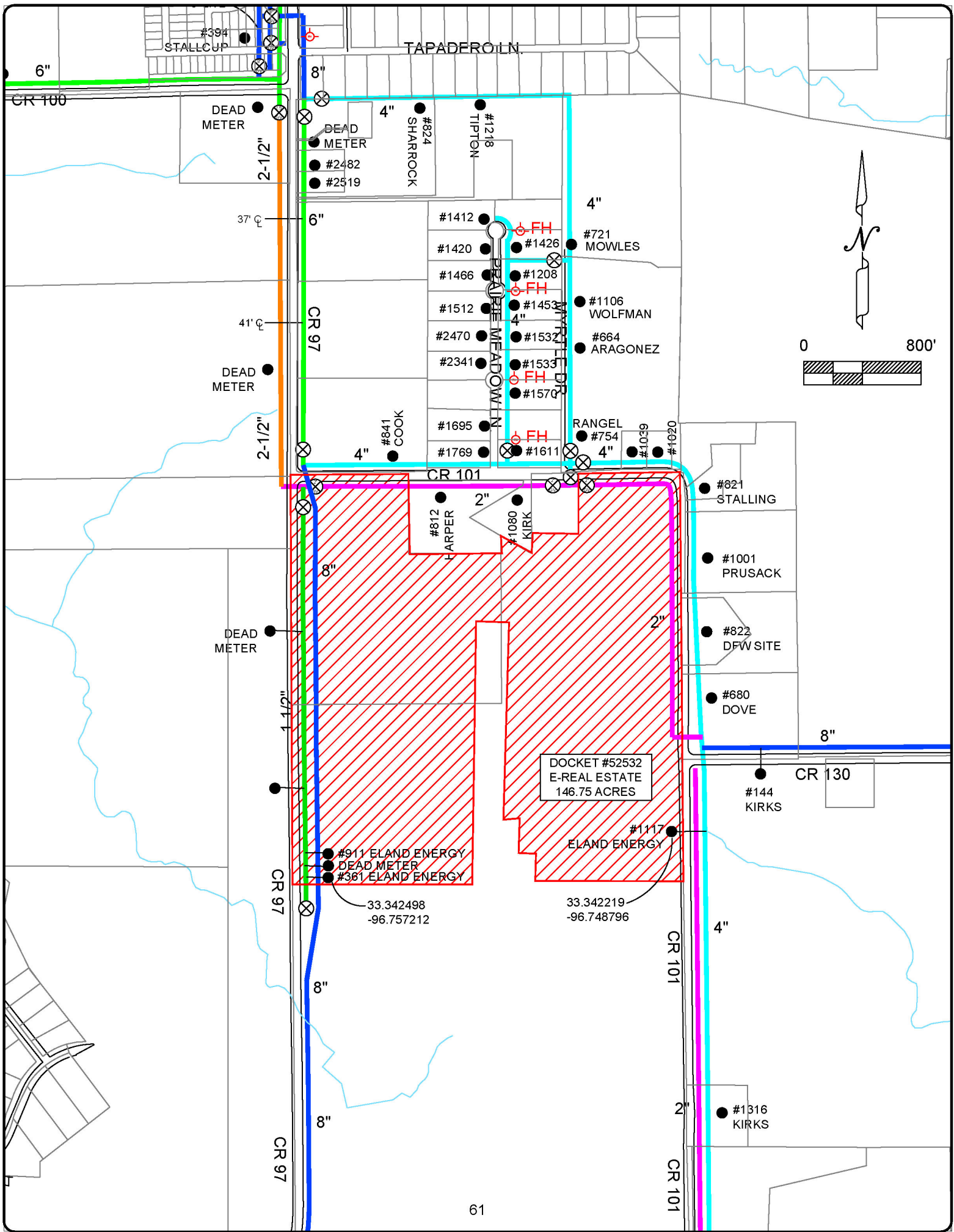


EXHIBIT C

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

[Marilee Special Utility District will supplement this Exhibit with a signed, notarized affidavit as soon as practicable.]

DOCKET NO. 52532

PETITION OF E REAL ESTATE, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT'S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE (TRACT 3)	§	

**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 19 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. “The United States of America Department of Agriculture, Rural Utilities Service, purchased bonds from Mustang in 2016, in the amount of \$2,442,000, and in 2018, in the amount of \$1,000,000 (collectively, the “Bonds”).
6. “The Consolidated District has assumed Mustang’s federal debt. The Consolidated District will continue to make payments on the 2016 bonds until 2055. The Consolidated District will continue to make payments on the 2018 bonds until 2043.
7. “I am authorized to make this affidavit on behalf of the Consolidated District in Docket 52532 in support of the Marilee’s response to E Real Estate, LLC’s (“Petitioner”) request

to remove approximately 554.5 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 ____ day of February 2022.

Notary Public in and for the State of Texas

EXHIBIT C-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 C-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 ***