



## Filing Receipt

**Received - 2022-03-10 02:38:34 PM**

**Control Number - 52533**

**ItemNumber - 13**

**DOCKET NO. 52533**

<b>PETITION OF E REAL ESTATE, LLC</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TO AMEND MARILEE SPECIAL</b>	<b>§</b>	
<b>UTILITY DISTRICT’S CERTIFICATE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>IN COLLIN COUNTY BY EXPEDITED</b>	<b>§</b>	
<b>RELEASE (TRACT 2)</b>	<b>§</b>	

**MARILEE SPECIAL UTILITY DISTRICT’S VERIFIED RESPONSE TO PETITION OF E REAL ESTATE, LLC’S TO AMEND 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 (“Response”) to 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 respectfully shows as follows:

**I. BACKGROUND**

1. 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 154.08 acres (the “Tract of Land”) from the water utility service area the District serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.<sup>1</sup> The Petition alleged that the Tract of Land is greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.<sup>2</sup>

2. On September 9, 2021, the Honorable Administrative Law Judge (“ALJ”) Burkhalter entered Order No. 1, requiring Staff for the Public Utility Commission (the

---

<sup>1</sup> Petition by E Real Estate, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Sept. 8, 2021).

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

“Commission”) to file comments regarding the administrative completeness of the Petition and notice by October 8, 2021.<sup>3</sup>

3. On October 1, 2021, the District filed a Motion to Intervene, which was granted on October 11, 2021.<sup>4</sup>

4. On October 8, 2021, the ALJ held that the Petition was administratively incomplete and gave Petitioner a deadline of November 8, 2021, to cure deficiencies.<sup>5</sup>

5. On October 8 and November 11, 2021, Petitioner filed additional maps.

6. On December 9, the ALJ held that the Petition was administratively incomplete and gave Petitioner a deadline of January 7, 2022, to cure deficiencies.<sup>6</sup>

7. On December 13, 2021, Petitioner filed the First Amended Petition, noting that the Tract of Land is part of a larger 535.315 acres of land that is owned by Petitioner.<sup>7</sup> The Petition is supported by the affidavit of Gregg Allen, who is the President of Eland Energy, Inc., which, Mr. Allen asserts, is the manager for Petitioner.<sup>8</sup>

8. On February 18, 2022, the ALJ held that the Petition was administratively complete and established a deadline of March 10, 2022, for the District to file its Verified Response to the Petition.<sup>9</sup> The District’s Response is timely filed.

---

<sup>3</sup> Order No. 1 – Requiring Comments on Administrative Completeness, Notice, and Other Matters, and Establishing Procedural Schedule (Sept. 9, 2021).

<sup>4</sup> Marilee Special Utility District’s Motion to Intervene (Oct. 1, 2021); Order No. 2 – Finding Petition Administratively Incomplete, Providing an Opportunity to Cure, and Granting Intervention (Oct. 11, 2021).

<sup>5</sup> Order No. 2 – Finding Petition Administratively Incomplete, Providing an Opportunity to Cure, and Granting Intervention (Oct. 11, 2021).

<sup>6</sup> Order No. 3 – Finding Petition Administratively Incomplete, and Providing Opportunity to Cure (Dec. 9, 2021).

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

<sup>8</sup> *Id.* at Ex. A (Affidavit of Gregg Allen), at ¶ 2.

<sup>9</sup> Order No. 4 – Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Feb. 18, 2022).

## II. RESPONSE

9. The District is a retail public utility and political subdivision of the State of Texas and the holder of CCN No. 10150. On November 2, 2022, the District was consolidated with Mustang Special Utility District.<sup>10</sup> The District, now that it has been consolidated, currently provides retail water service to approximately 29,500 customers.

10. Petitioner is E Real Estate, LLC, a Texas limited liability corporation.

11. Petitioner has requested that the Commission decertify the Tract of Land from the District's CCN 10150 through streamlined expedited release, the statutory mechanism found in TWC § 13.2541 and 16 TAC § 24.245(h). Streamlined expedited release was created in 2019 to be a simplified offshoot of expedited release that better codified the way CCN holders should be compensated for property decertified from their CCN service area.<sup>11</sup> The statutory mechanism allows landowners who meet those criteria to decertify their property from the service area of the CCN holder, depriving the CCN holder of the opportunity to serve that landowner's property.

12. To obtain the release of property under TWC § 13.2541, Petitioner must demonstrate with affirmative evidence in a verified petition that the Petitioner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving "service" of the type that the current CCN holder is authorized to provide under the applicable CCN.<sup>12</sup>

### **A. The Petition Must Be Denied Because the District Is Providing Water Service to the Tract of Land.**

13. In the "Definitions" section, 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

---

<sup>10</sup> See *infra* n.31 & accompanying text (describing the districts' consolidation pursuant to TWC § 65.723).

<sup>11</sup> See, e.g., Acts 2019, 86<sup>th</sup> Leg., R.S., Ch. 688, General and Special Laws of Texas (enrolled bill to be codified at TWC § 13.2541). The policies considered by the legislature regarding the substance of both TWC §§ 13.254 and 13.2541 are best reflected by the legislative history for TWC § 13.254, which was enacted in 2005 in House Bill 2876.

<sup>12</sup> TWC § 13.2541(b).

interchange of facilities between two or more retail public utilities.”<sup>13</sup>

14. Based on the statutory definition of “service,” whether or not a tract is receiving “service” is not dependent on whether water or sewer is being used or has been requested on the tract. Instead, a tract is “receiving” water or sewer service if either of the following are met:

- Any facilities or lines are committed or used in the performance of the CCN holder’s duties as a retail public utility providing service to the property; or
- Any lines are committed or used in the performance of the CCN holder’s duties as a retail public utility.<sup>14</sup>

15. 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 the TWC, “Facilities” include:

all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.<sup>15</sup>

16. The TWC’s definitions of “service” and “facilities” have been analyzed by Texas courts in proceedings brought pursuant to TWC § 13.2541 and 16 TAC § 16.245(h). The Austin Court of Appeals has held, for example, that when water lines are present within a tract and “committed” to the property, the tract is “receiving service,” and a petition for streamlined expedited release under TWC § 13.2541 may not be granted.<sup>16</sup>

17. As described in the previous section, the TWC and Texas cases, like *Crystal Clear*, define “water service” broadly. The District’s Assistant General Manager, Michael Garrison, and engineer of record, DBI Engineers, are familiar with the Tract of Land, and the District’s service to the Tract of Land. Mr. Garrison has provided an affidavit, attached hereto as “**Exhibit A**” to provide details about the service being provided to the Tract of Land. Eddy Daniel, engineer for

---

<sup>13</sup> TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

<sup>14</sup> *See id.*; *see also Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 137 (Tex. App.—Austin 2014, pet. denied).

<sup>15</sup> TWC § 13.002(9).

<sup>16</sup> *Crystal Clear*, 449 S.W.3d at 140.

DBI Engineers, has provided an affidavit, attached hereto as “**Exhibit B**” to map the Tract of Land and the meters and waterlines on it, surrounding it, and dedicated to serving the Tract of Land.

18. The District maintains the following facilities that currently provide water service to the Tract of Land:

- Meter No. 144, which is in the name of Petitioner’s President, Eland Energy, Inc., just outside northern boundary of the Tract of Land;
- A 2” waterline, inside the western boundary of the Tract of Land;
- A 4” waterline, inside the western boundary of the Tract of Land;
- An 8” waterline just outside the northern boundary of the Tract of Land, and to which Meter No. 144 is connected; and
- A 2” waterline, outside the eastern boundary of the Tract of Land.<sup>17</sup>

19. Meter No. 144, which is located on the Tract of Land, is a District meter in the name of Eland Energy, Inc.<sup>18</sup> Eland Energy, Inc. is Petitioner’s manager.<sup>19</sup> The meter is currently active. The District Service Application, Service Agreement and Cost of Service Notice for the meter provides that the “Customer” of the District is “Eland Energy, Inc.,” and the meter was transferred to Eland Energy Inc. by Jesse and Milo Kirk in August 2015.<sup>20</sup>

20. Based on the District’s service to the Tract of Land, and meters, waterlines, and other facilities the District maintains within or near the Tract of Land, the District’s engineer has stated that in his “professional opinion, the District provides water service to the Tract of Land through its existing meters and waterlines, and has the ability and facilities dedicated to continue to provide water service to the Tract of Land.”<sup>21</sup>

---

<sup>17</sup> See Exhibit A (Affidavit of Michael Garrison) at ¶¶ 3-4; Exhibit B (Affidavit of Eddy Daniel) at ¶¶ 4-6; Ex. B-1 (detailed map showing meters and waterlines inside and near the boundaries of the Tract of Land).

<sup>18</sup> See Exhibit A (Affidavit Michael Garrison) at ¶ 3(a) and accompanying exhibits.

<sup>19</sup> See First Amended Petition by E Real Estate, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541, at Ex. A (Affidavit of Gregg Allen) at ¶ 2 (stating, “I am the *President of Eland Energy, Inc., Manager for E Real Estate, LLC, the Petitioner in the above-captioned matter.*”) (emphasis added).

<sup>20</sup> *Id.*

<sup>21</sup> Exhibit B (Affidavit of Eddy Daniel) at ¶ 6.

21. Upon the verified facts set forth in the affidavits of Michael Garrison and Eddy Daniel and the supporting exhibits, the District provides water service to the Tract of Land through Meter No. 144 and District water lines. Due to these facts, the Tract of Land is receiving water service from the District under TWC § 13.2541, 16 TAC § 24.45(h), and *Crystal Clear*. The Tract of Land is thus not eligible for streamlined expedited release, and the Petition must be denied.

**B. Petitioner Has Not Met Petitioner’s Burden of Proof Under TWC § 13.2541 and 16 TAC § 24.245(h).**

22. Petitioner, not the District, bears the burden to prove that the Tract of Land is not receiving service.<sup>22</sup> The Commission’s substantive rules, specifically 16 TAC § 24.245(h)(3)(D), provide that Petitioner must provide a “statement of facts that demonstrate that the property is not currently receiving service” as a required part of the verified petition.<sup>23</sup>

23. The verified “statement of facts” that Petitioner must show to meet its burden under 16 TAC § 24.245(h) is reflected in *Johnson County Special Utility District v. Public Utility Comm’n of Texas*.<sup>24</sup> There, a land broker filed an affidavit swearing that he searched the property for several hours and found no district water meters or facilities, only “two shuttered ground well heads” and a “small, elevated water storage tank . . . implying that any dwelling on the [p]roperty required that water pressure be generated locally and not from a retail water utility service provider.”<sup>25</sup> The Commission, based on this un rebutted recitation of facts, properly found that no part of the property requested to be extracted had received water service since at least 2005.<sup>26</sup>

24. 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

---

<sup>22</sup> The fact that Petitioner must satisfy its burden of proof is important to note because, as streamlined-expedited-release cases are not “contested cases” and the District thus has no right to discovery or to an evidentiary hearing as to whether the District has “facilities” that provide or are capable of providing “service” to the Tract of Land in question. See 16 TAC § 24.245(h)(7) (“The commission will base its decision on the information filed by the landowner, the current CCN holder, and commission staff. No hearing will be held.”).

<sup>23</sup> 16 TAC § 24.245(h)(3)(D).

<sup>24</sup> No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App.—Austin May 11, 2018, pet. denied) (mem. op.).

<sup>25</sup> *Id.* at \*\*6-7.

<sup>26</sup> *Id.* at \*\*9-10 (citing Commission’s Finding of Fact No. 24).

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.”<sup>27</sup>

25. In this case, Petitioner has not set out facts similar to that in *Johnson County* case or *Crystal Clear*.<sup>28</sup> Petitioner has offered no statement of facts, but only a conclusory one-page affidavit claiming, without support, that the Tract of Land does not receive “service” from the District,<sup>29</sup> which, as demonstrated by the District’s meters, waterlines, and account details for the Tract of Land, is false. Petitioner has not provided any information regarding an investigation of the Tract of Land. Accordingly, Petitioner has not set out a “statement of facts” to establish that the Tract of Land is not receiving water service, as defined by the TWC, and thus has not satisfied its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D). As described in the previous section, had Petitioner provided a statement of facts regarding service, the Tract of Land would not be eligible for decertification because the District is providing water service to the Tract of Land through Meter No. 144, which is in the name of Eland Energy, Inc., which is Petitioner’s Manager.

26. The District is currently defending against the decertification of 23 tracts of land in its service area, representing a total acreage of approximately 4,839,280 acres.<sup>30</sup> The petitions in

---

<sup>27</sup> *Crystal Clear*, 449 S.W.3d at 134.

<sup>28</sup> The same argument applies to the Petition or the First Amended Petition, neither of which are supported by a verified “statement of facts,” but the nearly identical one-page affidavit.

<sup>29</sup> See Petition by E Real Estate, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541, at Exhibit A-1 (Affidavit of Gregg Allen) at ¶ 3 (“The Property is not receiving water or sewer service from Marilee SUD or any other water or sewer service provider. The Property has not requested water or sewer service from Marilee SUD or paid any fees or charges to initiate or maintain water or sewer service, and there are no billing records or other documents indicating an existing account for the Property.”); First Amended Petition at Exhibit A-1 (Affidavit of Gregg Allen) at ¶ 3 (identical).

<sup>30</sup> In addition to this case, the District is the CCN holder in 22 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.



most of the 23 dockets are supported by conclusory, barebones affidavits like that provided in this case. 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 Tract of Land in this case, is receiving or is capable of readily receiving water service from the District. Rather, 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.

27. Petitioner has not met its burden of proof to decertify the Tract of Land under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D) because Petitioner has not provided the required verified “statement of facts.” Accordingly, the District respectfully requests that the Petition be denied

---

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 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 HC Celina 414, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52497 (pending); *Petition of East Tioga 581 LP to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Grayson County by Expedited Release*, Docket No. 52529 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 5)*, Docket No. 52530 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 4)*, Docket No. 52531 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 3)*, Docket No. 52532 (pending); *Petition of 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 (Mesquoakee Ranch)*, Docket No. 52536 (pending); *Petition by Mesquoakee 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 Streamlined 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 Streamlined Expedited Release*, Docket No. 52739 (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 Moses and Mary Jane Hubbard Trust to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release*, Docket No. 53037 (pending); *Petition of the Moses and Mary Jane Hubbard Trust to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release*, Docket No. 53037 (pending).

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

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

28. Pursuant to the Consolidated Farm and Rural Development Act of 1961 and 7 U.S. Code § 1926, the United States Department of Agriculture (“USDA”) may make or insure loans to associations and public and quasi-public agencies. 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.<sup>31</sup>

29. To be eligible for protection under § 1926(b), the District must show, in addition to federal indebtedness, that it satisfies the “physical abilities” test, as adopted by the U.S. Court of Appeals for the Fifth Circuit, sitting en banc in *Green Valley Special Utility District v. City of Schertz*.<sup>32</sup> Judge Smith, writing for the majority, characterized the “physical abilities” test broadly:

To make the test easy to apply to both water and sewer service, we hold that a utility must show that it has (1) adequate facilities to provide service to the area within a reasonable time after a request for service is made and (2) the legal right to provide service. A utility cannot satisfy that test if it has no nearby infrastructure. But ‘pipes in the ground’ is a colloquial shorthand, not a strict requirement.<sup>33</sup>

30. 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

---

<sup>31</sup> 7 U.S.C § 1926(b).

<sup>32</sup> 969 F.3d 460 (5th Cir. 2020) (en banc).

<sup>33</sup> *Green Valley*, 969 F.3d at 477.

must have “something in place to merit § 1926(b)’s protection.”<sup>34</sup> The Court further explained the broad interpretation, “[s]ervice may be ‘available’ even if it cannot be immediately used. No water or sewer utility can make service immediately available to rural, undeveloped land; providing such service involves building or installing facilities, which necessarily takes time to accomplish.”<sup>35</sup> Based on the District’s meters and waterlines located inside the boundaries of the Tract of Land, as reflected in Exhibit B-1, the District is unquestionably providing actual service to the Tract of Land and, accordingly, more than satisfies the “physical abilities” test.

31. 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.<sup>36</sup>

32. The District is now consolidated with Mustang Special Utility District (“Mustang SUD”) (together with the District, the “Consolidated District”), in accordance with TWC Chapter 65, Subchapter H.<sup>37</sup> Voters within the two districts passed measures consolidating the districts on November 2, 2021 and the elections have been canvassed.<sup>38</sup>

33. 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 \$14,142,000 and 2018, in the amount of \$1,000,000 (collectively, the “Bonds”).<sup>39</sup> The District assumed Mustang SUD’s federal

---

<sup>34</sup> *Id.* at 477 & n.36 (quoting *Lexington—S. Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996)).

<sup>35</sup> *Id.* at n.38.

<sup>36</sup> *See id.* at 475 (“Because . . . Green Valley has satisfied *Young*’s requirements, its suit for injunctive relief against the PUC Officials may go forward.”) (citing *Ex parte Young*, 209 U.S. 123 (1908)).

<sup>37</sup> *See* TWC § 65.723 (“Two or more districts governed by this chapter may consolidate into one district as provided by this subchapter.”); *see also* Exhibit A (Affidavit of Michael Garrison) at ¶¶ 8-9 & 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).

<sup>38</sup> *See* TWC § 65.724 (describing procedure).

<sup>39</sup> *See* Exhibit C (Affidavit of Chris Boyd), at ¶ 5.

indebtedness when the District and Mustang SUD were consolidated.<sup>40</sup> The District will be required to make payments on the Bonds until 2055 (2016 Bonds) and 2058 (2018 Bonds).<sup>41</sup>

34. On July 12, 2021, the District received approval from the USDA for a Water and Wastewater Guaranteed loan of \$1,553,000.<sup>42</sup> The District has not closed on the USDA loan but is working diligently to do so.

35. As the Consolidated District is federally indebted, and with the scheduled closing of the USDA loan approaching, the District has a federal equitable cause of action against the Commissioners should the Commissioners take action to limit or curtail of its service area.

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

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

37. The TWC prohibits a retail public utility from "in any way render[ing] retail water or sewer service directly or indirectly to the public in an area that has been decertified ... unless just and adequate compensation ... has been paid to the decertified retail public utility," in this case, the District.<sup>43</sup> Under the TWC and the Commission's implementing regulations, "the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain,"<sup>44</sup> and the value of personal property shall be determined according to the factors in that subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include:

The amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail

---

<sup>40</sup> See TWC § 65.726

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

<sup>42</sup> Exhibit A (Affidavit of Michael Garrison), at ¶¶ 5-7 & accompanying exhibits.

<sup>43</sup> TWC § 13.254(d); see also TWC § 13.2541(a) (providing that "Sections 13.254(a-7), (c), (d), and (h) apply to a proceeding under this section.").

<sup>44</sup> TWC § 13.254(g); see also TWC § 13.2541(h) (providing that "Section 13.254(g) applies to a determination of the monetary amount of compensation under this section.").

public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.<sup>45</sup>

38. If the Tract of Land is removed from the District's CCN No. 10150, the District is entitled to compensation under several of these factors including, but not limited to, the amount of its debt allocable for service to the area; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the costs of obtaining permits, planning, design, and construction of facilities, and the necessary and reasonable legal expenses and professional fees that are incurred as a result of the Petition.

### III. PRAYER

WHEREFORE, PREMISES CONSIDERED, the District respectfully requests that the ALJ enter a Proposed Order denying the Petition because the District is actively providing water service to the Tract of Land through Meter No. 144 and waterlines located within the boundaries of the Tract of Land; Petitioner has failed to satisfy its burden of proof under TWC § 13.2541, 16 TAC § 24.245(h), and Texas state law; and because the federally indebted District is protected from limitation or curtailment of its service area under 7 U.S.C. § 1926(b). Alternatively, if the ALJ proposes that the Petition be granted, the District seeks just and adequate compensation for the reduction of its CCN No. 10150. The District also seeks all other and further relief to which it may be justly entitled at law or in equity.

---

<sup>45</sup> See TWC § 13.254(g) ("The utility commission shall adopt rules governing the evaluation of these factors.").

Respectfully submitted,

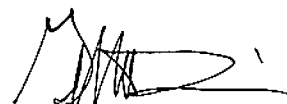
By:   
\_\_\_\_\_

John J. Carlton  
State Bar No. 03817600  
Grayson E. McDaniel  
State Bar No. 24078966  
The Carlton Law Firm P.L.L.C.  
4301 Westbank Drive, Suite B-130  
Austin, Texas 78746  
(512) 614-0901  
Fax (512) 900-2855  
[john@carltonlawaustin.com](mailto:john@carltonlawaustin.com)  
[grayson@carltonlawaustin.com](mailto: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 10<sup>th</sup> day of March 2022.

  
\_\_\_\_\_

Grayson E. McDaniel

**EXHIBIT A**

**AFFIDAVIT OF MICHAEL GARRISON,  
SPECIAL PROJECT INSPECTOR FOR MUSTANG SPECIAL UTILITY DISTRICT**

**DOCKET NO. 52533**

**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 2) §**

**SUPPORTING AFFIDAVIT OF MICHAEL GARRISON,**  
**SPECIAL PROJECT INSPECTOR FOR MUSTANG SPECIAL UTILITY DISTRICT**

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

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

1. “My name is Michael Garrison. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
  
2. “Marilee Special Utility District was consolidated with Mustang Special Utility District in November 2021. Since the consolidation, I have served as the Special Project Inspector for the consolidated district, which is called Mustang Special Utility District (the “Consolidated District” or the “District”). Prior to the consolidation of the two districts, I served the duly appointed Assistant Manager of the District from 2008-2021.
  
3. “The District maintains active meters within the boundaries of the 154.08 acres of land (“Tract of Land”) sought to be decertified in this proceeding from the District’s water certificate of convenience and necessity (“CCN”) No. 10150. The District’s meters on the Tract of Land are accurately reflected in Exhibit B-1 to the affidavit of the District’s engineer.
  - a. Meter No. 144, which has been deliberately “carved out” of the Tract of Land, nevertheless provides service to Eland Energy, Inc. on the Tract of Land. Meter No. 144 is a District meter in the name of Eland Energy Inc. The meter is currently active, with a “last read” date reflected in Exhibit A-1 (report generated on February 25, 2022) as January 19, 2022. The District Service Application for the meter reflects that it was transferred to Eland Energy, Inc., in August 2015 by the former owners, Jesse and Milo Kirk. The exhibit attached to this affidavit as Exhibit A-1 reflect true and correct copies of District records regarding Meter No. 144.
  
  - b. Meter No. 1316 is just outside the western boundary of the Tract of Land and has been “carved out” of the Tract of Land.



4. "The District maintains active waterlines within the boundaries of the Tract of Land. The District's waterlines on the Tract of Land and near its boundaries are accurately reflected in Exhibit B-1 to the affidavit of the District's engineer.
5. "On February 11, 2021, the District's Board of Directors authorized Donna Loiselle, 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.
6. "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 United States Department of Agriculture ("USDA") Water and Environmental Guaranteed Loan Program. A true and correct copy of that letter is attached to this affidavit as Exhibit A-2.
7. "The USDA sent correspondence to Ms. Loiselle, dated July 19, 2021, stating that USDA Rural Development approved the Loan on July 12, 2021. A true and correct copy of that letter is attached to this affidavit as Exhibit A-3.
8. "On November 2, 2021, an election was held in Collin County on a proposition to authorize the District 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 the District. A true and correct copy of the District's proposition as it appeared on the Collin County ballot is attached hereto as Exhibit A-4. A true and correct copy of Mustang's proposition as it appeared on the ballot is attached as Exhibit C-1 to the affidavit of Chris Boyd, Mustang's manager.
9. "The elections resulted in the Mustang's and the District's voters approving consolidation of Mustang with the District, authorizing the consolidated district to 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 District's election results in Collin County is attached hereto as Exhibit A-5. A true and correct copy of Mustang's election results is attached as Exhibit C-2 to the affidavit of Chris Boyd, Mustang's manager.
10. "I am authorized to make this affidavit on behalf of the District in Docket 52533 in support of its response to E Real Estate, LLC's ("Petitioner") request to remove 154.08 acres of land (the "Tract of Land") from areas for which the District holds water certificate of convenience and necessity ("CCN") No. 10150.

FURTHER, AFFIANT SAYETH NOT.

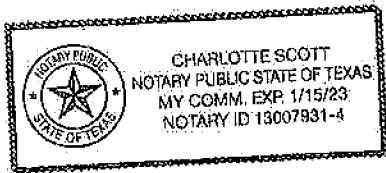
*Michael Harrison*

Michael Garrison  
Special Project Inspector for Mustang Special  
Utility District

SWORN TO AND SUBSCRIBED before me by Michael Garrison on this 8 day of March 2022.

*Charlotte Scott*

Notary Public in and for the State of Texas



# **EXHIBIT A-1**

Mustang SUD

### Customer Detail

**Eland Energy Inc**

**Account Number**

**144**

Eland Energy Inc  
 16400 Dallas Pkwy  
 Suite 100  
 Dallas TX  
 75248 (214)368-6100  
 Service Address: 9139 CR# 130

Months On System 338  
 Total Usage 5,611,300  
 Average Usage 16,601  
 Sequence Number 12430  
 Meter Serial Number 180310331  
 Route Number 2  
 Last Read Date 2/17/2022  
 12 Month Average 2,050  
 Last Year Average 1,900  
 Previous Year Average 3,300  
 Last "Paid On Time" Date 2/7/2022  
 Last Late Charge Date 1/16/2019  
 Number Of Late Months 83  
 Next Due Date 3/15/2022  
 Year To Date Charges \$40.88

Date Turned On  
 Date Turned Off  
 Meter Check Date 3/27/2020  
 Rate Code 1  
 Pump/Well Number 23  
 Last Reading 396  
 Previous Reading 358  
 Usage 3,800  
 # of Units 1

Meter 87783852 Z  
 Old Account # 144  
 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	
January	2,800	40.88	1/19/2022	358	
February	8,100	73.40	2/22/2021	193	
March	900	32.80	3/18/2021	202	
April	1,600	35.34	4/19/2021	218	
May	1,600	35.34	5/19/2021	234	
June	1,500	34.97	6/21/2021	249	
July	1,200	33.89	7/19/2021	261	
August	1,300	34.25	8/18/2021	274	
September	1,400	34.61	9/20/2021	288	
October	1,200	33.89	10/18/2021	300	
November	1,600	35.34	11/18/2021	316	
December	1,400	34.61	12/16/2021	330	
Last Payment	2/7/2022	\$40.88	Check Number	Draft	
Age 1	\$0.00	Age 2	\$0.00	Age 3	\$0.00
			Water	\$39.84	
			GW Con fee	\$0.38	
			Tax	\$0.20	
			Previous Charges	\$40.88	
			Paid This Month	\$40.88	
			<b>Current Balance</b>	<b>40.42</b>	

Extended Notes

6/24/1998

Monica Smith moved out on 3-27-98, her final bill is \$35.67. Mr. Carlock said place sold back in March to Jesse Kirk. Mr. Kirk owes for April & May billings \$36.16

2/21/2000

Map page #53

11/20/2002

Did a meter change out on 11-04-02, work order completed by David & Jason.

12/22/2009

Kirk's called and talked with Donna. Said they mailed check on dec 11th. Donna told them if the check arrives and is postmarked 12/11, we will take off all late charges

6/25/2010

Meter with transmitter installed 07/27/2006

144

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: 9139 CR130, CELINA, TX

LEGAL DESCRIPTION OF PROPERTY (if applicable, subdivision with lot and block number):  
Acct. / Meter # 144

Acreage: 318 Dwelling Size: Mobile Home

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.

White, Not of Hispanic Origin     
  Black, Not of Hispanic Origin     
  American Indian or Alaskan Native     
  Hispanic     
  Asian or Pacific Islander     
  Other     
 Male     
 Female

MARILEE SPECIAL UTILITY DISTRICT

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

**SERVICE AGREEMENT**

This agreement is made by FLAND 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)

*JA* 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.

*Jan D. Nichol* \_\_\_\_\_  
Customer Signature Customer Signature

Service Address: 9139 CR 130, Colona, TX.

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, 9139 CR130, 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) .....	_____
	<b>TOTAL:</b>	<b>\$ <u>N/A</u></b>

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**



## LOAN COMMITMENT LETTER

April 13, 2021

Board of Directors  
Marilee Special Utility District  
230 W. Pecan Street  
Celina, TX 75009

Dear Board of Directors:

Live Oak Banking Company dba Live Oak Bank ("Live Oak") is pleased to commit to provide Marilee Special Utility District (Borrower), a credit facility (Loan) in the principal amount of \$1,553,000 through the USDA Water and Environmental Guaranteed Loan Program. The following credit facility described is subject to all the terms and conditions contained herein, provided there has been no material adverse change in Borrower's financial condition as determined by the Bank.

**Borrower:** Marilee Special Utility District

**Borrowing Amount:** \$1,553,000; funded under USDA Water and Environmental Program Guaranteed term loan

**Purpose:** To provide funds to finance a new 300,000-gallon elevated storage tank; related soft costs and closing costs.

### Construction Phase

**Interest Rate:** The loan will have an interest rate that is adjusted quarterly during the construction phase based on Wall Street Journal Prime plus 2.00% at the time of closing. If the loan were to close today, the fully indexed rate would be 5.25%. The interest rate will continue to adjust quarterly at the then current index plus applicable spread until the loan is converted to the permanent phase.

**Floor Rate:** 5.00%

**Repayment:** Interest only during the construction phase up to a maximum of 12 months.

**Prepayment Penalty:** A 10% penalty will be applied on any amount prepaid prior to conversion to the permanent phase.

**DEDICATED  
TO THE  
DOERS™**

1741 Tiburon Dr  
Wilmington, NC 28403  
[liveoakbank.com](http://liveoakbank.com)

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



**Construction Origination Fee:** 1% of the total loan amount

**Permanent Phase**

**Interest Rate:** The loan will have an interest rate that fixed for fifteen years based on the Fifteen-Year LIBOR (or similar index if that index becomes unavailable) plus 3.75%, adjusting at the end of the initial fixed rate period based on the then current index (or index equivalent) plus the original spread. If the loan were to close today, the fully indexed rate would be 5.71%.

**Repayment:** 348 regular monthly payments (29 years) of principal and interest payments. If the loan were to fund today, the monthly payments of principal and interest would be \$9,225.

**Prepayment Penalty:** There will be a sliding prepayment allowed over the life of the proposed loan request (10% in year one, 9% in year two, 8% in year three, 7% in year four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, 2% in year nine, 1% in year 10). The ten-year prepayment timeline begins once the loan is fully disbursed.

**Maturity Date:** 360 months from the date the loan closes.

**USDA Fee:** 1.00% of the guaranteed portion of the loan

**Origination Fee:** 1% of the total loan amount

**USDA Annual Renewal Fee:** N/A – The USDA does not charge an annual renewal fee on WEP Guaranteed Loans per Fiscal Year 2021 Annual Notice.

**Source and Use of Proceeds:**

<b>Use of Proceeds:</b>	<b>Total</b>
Construction – Elevated Tank	\$ 1,057,500
Contingency	\$ 106,317
Engineering, Testing, Inspection	\$ 171,525
Interest Reserve	\$ 92,644
USDA Guaranty Fee	\$ 12,424
LOB Origination Fee	\$ 31,060
Closing Costs & Other Misc.	\$ 81,530
<b>Total</b>	<b>\$ 1,553,000</b>

**Borrower acknowledges that they must notify Live Oak Bank before proceeding with any changes as it relates to the use of funds as referenced above. All loan funds are to be used to cover cost**



**associated with the expansion of the facility and cannot be used for any capital expenditures that have not been approved. (Initial)**

CO

**Collateral:** The loan will be evidenced by a water and sewer revenue bond issued by the District. The bond will be payable from and secured by a pledge of net revenues of the District's water and sewer system, on parity with the Districts outstanding Water and Sewer Revenue Bonds; UCC-1 financing statement on all business assets in best available position.

**Insurance:** Business Personal Property Insurance  
Borrower to provide Business Personal Property Insurance (Business Contents) in the amount of the replacement cost of the business assets collateral listed above with a Mortgagee Clause, or a Lender's Loss Payable Endorsement in favor of Live Oak Banking Company, ISAOA (satisfactory to the bank) prior to final disbursement of the loan. A Loss Payable Endorsement equivalent to a Lender's Loss Payable may be permissible if a copy of the endorsement on the policy is received and approved by the Bank.

Worker's Compensation Insurance  
Worker's Compensation Insurance in an amount meeting the state law requirement and with an insurance company satisfactory to Live Oak Bank.

General Liability Insurance  
General Liability Insurance policy in an amount meeting typical requirements for a manufacturing facility of similar size and an amount that is deemed acceptable by the USDA.

**Disbursements:** The loan will be disbursed over 12 months following closing. All disbursements from the control account will be made in accordance with the USDA authorization and as defined in the Loan Agreement.

**Financial Reporting:**

Quarterly:

- Internally prepared financial statements in accordance with GAAP within 45 days of quarter end for the borrowing entity and consolidated.

Annually:

- Audited financial statements prepared in accordance with GAAP within 120 days after fiscal year end for the borrowing entity and consolidated.
- Officer Compliance Certificate
- Annual approved operating budget



**Covenants:**

- Minimum DSCR  $\geq 1.10x$  (tested annually based on audited financial statements)
- Borrower must obtain approval to from Live Oak Bank prior to any purchases over \$5,000,000 related to fixed assets

**Power of Attorney  
For UCC Filings:**

Borrower appoints Live Oak its true attorney in fact to prepare, execute, file, record, or deliver financing statements, continuation statements, termination statements, statements of assignment, applications for registration, or like papers to perfect, preserve, or release Live Oak's interests in the Collateral; cause any Collateral to be transferred to Live Oak's name or the name of Live Oak's nominee; and execute all documents in the name of Borrower or otherwise as Live Oak deems necessary, proper, or convenient in order to preserve, perfect, or enforce its rights in the Collateral.

**Material Adverse  
Change:**

Live Oak's obligations and Commitments under this letter are subject to the accuracy of all information, representations, and materials submitted with or in support of the Borrower's request for the Loan and any material and inaccuracy, omission or change therein, shall, in the Live Oak's discretion, operate to terminate this offer and the Live Oak's Commitment hereunder. This Commitment letter may also be terminated by Live Oak upon the occurrence of any material adverse change in the financial condition, business, prospects, properties, or management of the Borrower or the occurrence of any other event as a result of which Live Oak believes that the prospect of the Borrower repaying its liabilities to Live Oak as contemplated herein may be impaired. Without limiting the generality of the foregoing, the Commitment hereunder shall immediately terminate in the event the Borrower becomes the subject of any proceeding under the United States Bankruptcy Code or any other insolvency, reorganization, liquidation, or moratorium of law.

**Expenses:**

The Loan shall be made and administered without cost to the Live Oak. The Borrower's and any guarantor acceptance of this Commitment shall constitute the unconditional agreement, jointly and severally, whether or not the Loan closes, to pay all reasonable fees, expenses, taxes, costs and charges incurred in connection with the Loan, or in any way incident to the making of or the ongoing administration of the Loan, including, but not limited to, reasonable attorneys' fees and expenses (including fees and expenses of the Live Oak's counsel), appraisal fees, title searching fees, title or other insurance premiums, fees and costs for environmental tests and studies, engineer's and architect's fees, inspector's fees, surveyor's fees, recording costs, and recordation and transfer taxes. The Live Oak shall not pay any brokerage fees or commissions arising from the Loan, and the borrower and all guarantors agree, jointly and severally, to defend, indemnify, and hold the Live Oak harmless against any and all expenses,



liabilities and losses (including attorneys' fees) arising from any such claims. The Borrower and each of the guarantors, jointly and severally, promise to pay to the Live Oak on demand all costs and expenses incurred by the Live Oak in connection with the enforcement of this Commitment or any of the Live Oak's rights hereunder or any defense of the Live Oak against any claim made in connection with or arising out of this Commitment, including, without limitation, all of the Live Oak's reasonable attorneys' fees and expenses and court costs, whether or not proceedings are brought.

#### **LIBOR**

##### **Replacement:**

Notwithstanding any provision to the contrary set forth in this letter, the applicable interest rate for this loan shall be subject to LIBOR replacement rate language, stating that, in the event the Lender determines that reasonable means do not exist for ascertaining the applicable LIBOR rate and the Lender determines that the syndicated loan market has broadly accepted a replacement standard for the LIBOR rate, then the Lender may, without the consent of the borrower, apply such new broadly accepted market standard and make such other changes as shall be necessary or appropriate in the good faith determination of the Lender in order to implement such new market standard.

**Commitment Fee:** A \$10,000 commitment fee is required upon execution of the commitment letter and due within fourteen days from the date of this letter; otherwise, this commitment will have expired. The commitment fee will be applied to engage legal counsel and any other third-party costs incurred. The deposit held by Live Oak will be applied to any expenses incurred by Live Oak in connection with the Loan, including without limitation, lien and judgement searches, title searching fees, appraisals, business valuations, surveys, environmental tests and studies, and reasonable attorneys' fees and expenses, should the Loans not close. At the time the Loan closes, any unused portion of the deposit, if any, shall be returned to the borrower.

This Commitment letter is addressed solely to you, it is solely for your benefit, and may not be relied upon or used by any other person or entity and may not be disclosed by you without LOB's prior written consent to any person other than your attorneys and other advisors. This Commitment letter and the Commitment evidenced herein may not be assigned by you to any other person or entity.

This Commitment letter shall be governed by the laws of the state of North Carolina.

Live Oak's obligations and/or Commitments as contained in this letter are also subject to approval by the United States Department of Agriculture and the issuance of a written loan authorization by the USDA setting forth the terms and conditions of such Loan. In the event that there is any discrepancy between the terms of the Commitment as contained herein and the loan authorization as issued and approved by the USDA for this Loan, then the terms of the USDA loan authorization shall control. In the event that the USDA should fail or refuse to issue a Loan Note Guarantee as to this Loan, then this





Commitment shall terminate, and Live Oak shall have no further obligations or responsibilities hereunder. Furthermore, Live Oak's obligations hereunder are contingent upon the Borrower and/or Guarantor(s) being in compliance with all terms and conditions of any USDA Conditional Commitment which may be issued as to this Loan, and failure to comply with such will likewise terminate the terms and conditions of the Commitment letter and Live Oak shall have no further obligations hereunder in such event.

This credit accommodation is made available subject to the terms, conditions, and provisions of comprehensive loan documents to be executed within 180 days from Live Oak's Credit approval dated **April 12, 2021**. Should the loan not close within 180 days of same approval, updated financials and re-approval will be required.

If the terms outlined in this commitment letter are acceptable to you, please execute and return a copy to Live Oak Bank.

Sincerely,

Anna West  
Loan Officer  
Live Oak Bank

Accepted By:

**Name:** Donna Loiselle  
**Title:** General Manager  
**Date:**

**Other Conditions:**

Please note that a detailed checklist will be prepared for use during the closing process by your closing specialist.

# **EXHIBIT A-3**



JUL 19 2021

Ms. Donna Loiselle  
Marilee Special Utility District (SUD)  
P. O. Box 1017  
Celina, TX 75009

Dear Ms. Loiselle:

Congratulations on being selected to receive a \$1,553,000 Water and Waste Guaranteed Loan for Marilee SUD.

We have enclosed a copy of USDA-RD Form RD 1940-3, "Request for Obligation of Funds Guaranteed Loan." This form indicates that on July 12, 2021, USDA Rural Development approved loan of \$1,553,000 for Marilee SUD.

USDA Rural Development works to support the sustainable development of rural communities and to improve the quality of life in rural areas.

Sincerely,

DANIEL TORRES  
Acting State Director

Enclosure

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT  
FARM SERVICE AGENCY

**REQUEST FOR OBLIGATION OF FUNDS  
GUARANTEED LOANS**

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

**CERTIFICATION APPROVAL**

**APPROVAL CONDITIONS:**

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

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

**37. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL**

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

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

  
*(Signature of Approval Official)*

Typed or Printed Name: Daniel Torres

Date Approved JUL 12 2021

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-4**

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-5**



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

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

**Marilee Special Utilities District - Proposition A**

Vote For 1

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

**EXHIBIT B**

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

**DOCKET NO. 52533**

**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 2) §**

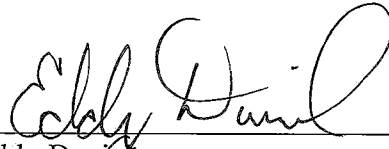
**SUPPORTING AFFIDAVIT OF EDDY DANIEL,  
PROFESSIONAL ENGINEER FOR MARILEE SPECIAL UTILITY DISTRICT**

**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 his oath deposed and testified as follows:

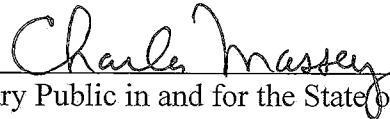
1. "My name is Eddy Daniel. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am an engineer and employee of Dunaway|DBI Engineers. The company serves as the engineer of record for Marilee Special Utility District (the "District"), the Intervenor in this matter, and I am a project engineer for the utility.
3. "I am authorized to make this affidavit on behalf of the District in Docket 52533 in support of its response to E Real Estate LLC's ("Petitioner") request to remove 154.08 acres of land ("Tract of Land") 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 Tract of Land attached to this affidavit as Exhibit B-1.
5. "The District maintains active meters and waterlines within the boundaries of the Tract of Land. The District's meters and waterlines are marked on Exhibit B-1.
6. "In my professional opinion, the District provides water service to the Tract of Land through its existing meters and waterlines, and has the ability and facilities dedicated to continue to provide water service to the Tract of Land.

FURTHER, AFFIANT SAYETH NOT.

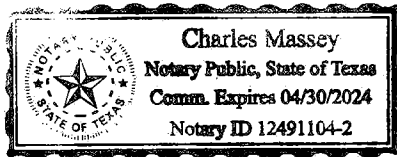


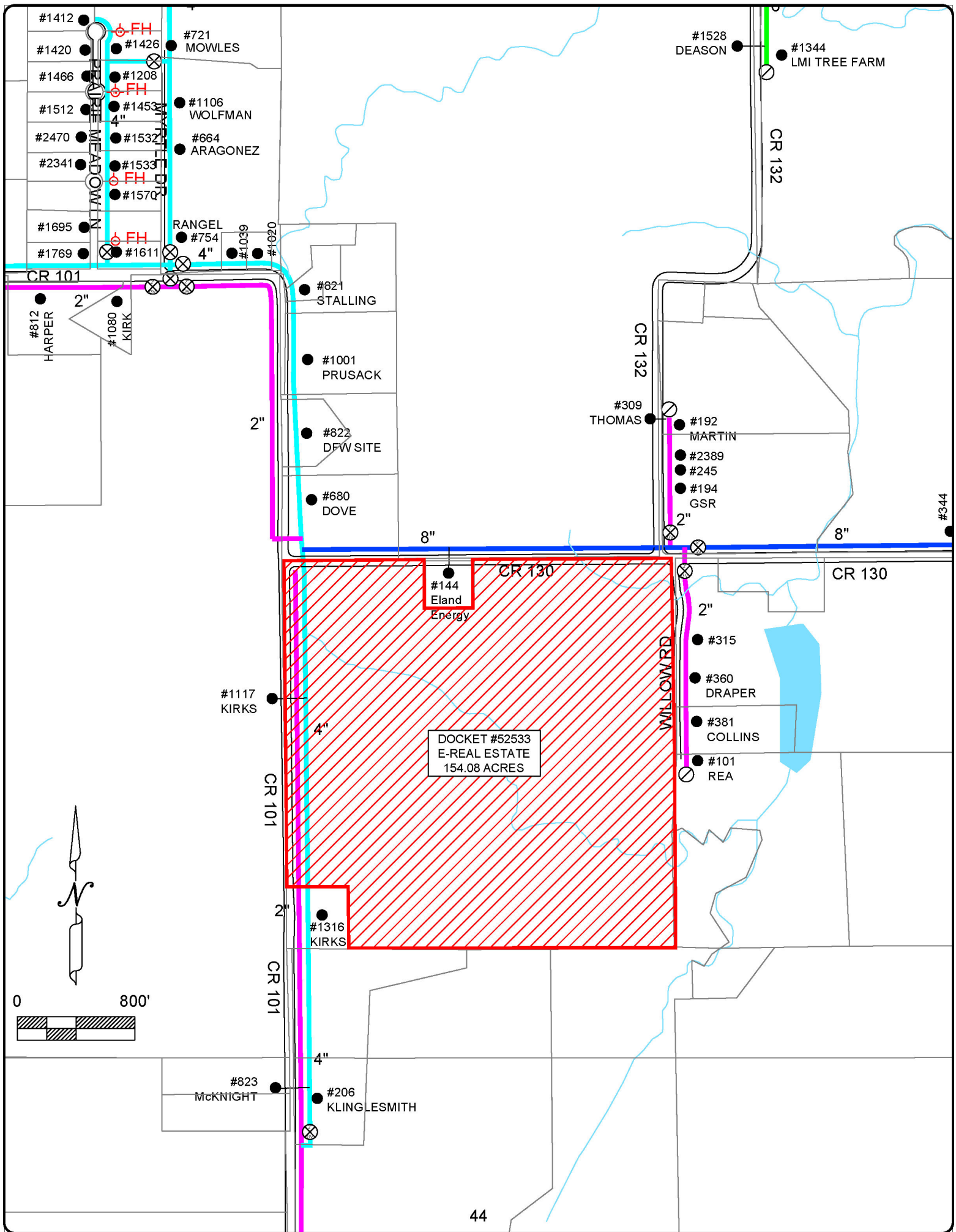
\_\_\_\_\_  
Eddy Daniel  
Engineer of Record for Marilee Special Utility  
District

SWORN TO AND SUBSCRIBED before me by Eddy Daniel on this 8 day of March 2022.



\_\_\_\_\_  
Notary Public in and for the State of Texas





**EXHIBIT C**

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

**DOCKET NO. 52533**

**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 2) §**

**SUPPORTING AFFIDAVIT OF CHRIS BOYD,  
GENERAL MANAGER FOR MUSTANG SPECIAL UTILITY DISTRICT**

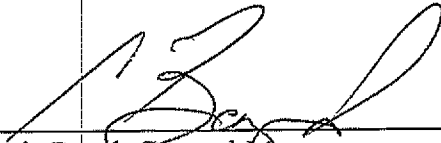
**STATE OF TEXAS §  
§  
COUNTY OF COLLIN §**

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:

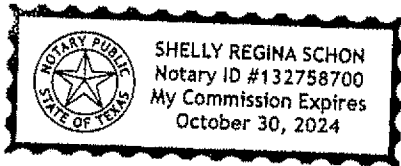
1. "My name is Chris Boyd. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am the General Manager for Mustang Special Utility District ("Mustang"). I have been in that position for 19 years.
3. "On 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. "Mustang has federal indebtedness that has been assumed by the Consolidated District. The United States of America Department of Agriculture, Rural Utilities Service, purchased bonds from Mustang in 2016, in the amount of \$14,142,000, and in 2018, in the amount of \$1,000,000 (collectively, the "Bonds"). The Consolidated District will be required to make payments on the 2016 bonds until 2055. The Consolidated District will be required to make payments on the 2018 bonds until 2058.
6. "I am authorized to make this affidavit on behalf of the Consolidated District in Docket 52533 in support of Marilee's response to E Real Estate, LLC's ("Petitioner") request to remove approximately 154.08 acres of land (the "Tract of Land") from areas for which the

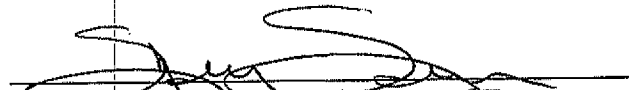
Consolidated District holds water certificate of convenience and necessity ("CCN") No. 10150.

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 10 day of March 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 \*\*\*