



## **Filing Receipt**

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**Item Number - 59**

**DOCKET NO. 52700**

<b>APPLICATION OF CSWR-TEXAS</b>	<b>§</b>	
<b>UTILITY OPERATING COMPANY,</b>	<b>§</b>	
<b>LLC AND RJR WATER COMPANY, INC.</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>FOR SALE, TRANSFER, OR MERGER</b>	<b>§</b>	
<b>OF FACILITIES AND CERTIFICATE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RIGHTS IN HARRIS COUNTY</b>	<b>§</b>	

**CSWR-TEXAS UTILITY OPERATING COMPANY LLC’S  
RESPONSE TO ORDER NO. 11**

CSWR-Texas Utility Operating Company, LLC (“CSWR-Texas” or the “Company”) files this Response to Order No. 11. Order No. 11 directed CSWR-Texas to supplement its application and to move to admit additional information into the record no later than July 7, 2023. Therefore, this response is timely filed.

**I. CAPITAL IMPROVEMENT PLAN AND, IF NECESSARY, REQUEST  
FOR GOOD CAUSE EXCEPTION**

CSWR-Texas has provided a line-item budget for anticipated repairs and improvements on the water system it is purchasing. This budget is included at page 7 in Confidential Attachment J to its application. At the time it entered into a purchase agreement, CSWR-Texas was only able to perform a limited preliminary analysis of any potential necessary improvements because it is not the owner of the property and has only limited access to the subject facilities. Subsequent to its execution of the purchase agreement, CSWR-Texas engaged third-party engineers who, as part of the due diligence process, reviewed the visible infrastructure, such as tanks, pumps, buildings, and above ground pipes, but the engineer is typically not able to see the extent of any damage to this equipment until a more thorough review can take place subsequent to closing. Those engineers are also unable to review underground facilities or any damage to those facilities. Subject to those caveats, CSWR-Texas estimates that once it begins operating the facility, it will take 12 months to fully evaluate the repairs and improvements needed. Following the evaluation, CSWR-Texas estimates it will begin construction within 24 months and that construction will be completed within 36 months after commencing.

Confidential Attachment J itemizes each component of the system where the third-party engineer was able to determine whether repairs were needed and the estimated cost to repair the system. The budget is broken down by the items that the engineer was able to determine need

repairs, such as booster pumps and well rehabilitation. However, until it seeks bids for repairs, the Company cannot know with any additional certainty what the final cost for repairs will be. A total estimated cost of repairs and capital investments is included in the Company's Confidential Attachment J, page 7. In addition to the estimated budget, Confidential Attachment J includes a map of the general vicinity, photographs of facilities in need of repair, and an engineering schematic that shows the design of the facilities. Taken together, CSWR-Texas has provided ample information that constitutes a capital improvement plan. There are no additional construction locations to include on the map based on the recommended repairs.

To the extent necessary, CSWR-Texas requests a good cause exception to the requirements under 16 Texas Administrative Code ("TAC") § 24.2(b) for the reasons stated before.

**II. REQUEST FOR GOOD CAUSE EXCEPTION TO REQUIREMENT TO PROVIDE LOAN DOCUMENTATION**

Order No. 11 directs CSWR-Texas either to provide loan documentation for an amount it will need to make capital improvements on the system or to seek a good cause exception to any requirement that it must provide loan documentation in any STM proceeding where it is estimated that capital improvements will exceed \$100,000, pursuant to 16 TAC § 24.11(e)(5)(A).

First, this provision should not apply to CSWR-Texas because providing loan documentation is not reasonable, necessary or even possible. CSWR-Texas is already required to maintain a sufficient cash balance to purchase this system and bring it into compliance. CSWR-Texas does not obtain loans for purchasing or repairing systems because this type of capital is not available to small operators like CSWR-Texas at reasonable rates. Thus, CSWR-Texas cannot provide loan documentation. For this reason, and to the extent necessary, CSWR-Texas seeks a good cause exception to this requirement.

Moreover, a good cause exception should not be necessary because CSWR-Texas does not need to provide additional "financial assurance" in this proceeding because it has already demonstrated "adequate financial capability." 16 TAC § 24.239(f) states that "[i]f the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water or sewer utility service is provided . . . ." Financial assurance is not required under 16 TAC § 24.239, absent a threshold finding that the utility cannot demonstrate "adequate financial capability." Further, 16 TAC

§ 24.11(b) only applies “to new and existing owners or operators of retail public utilities that are required to provide financial assurance under this chapter.” It does not speak to financial capability. Likewise, 16 TAC § 24.11(e) explains that an owner or operator may demonstrate financial assurance, and it also does not speak to financial capability. Accordingly, 16 TAC § 24.11 does not apply here because the purchasing utility has already demonstrated “adequate financial capability.” Order No. 11 directs CSWR-Texas to provide “financial assurance” under 16 TAC § 24.11 without making the threshold determination that CSWR-Texas was not already financially capable based on its existing facilities and operations in Texas. Although 16 TAC § 24.239(f) does not include a specific test for determining “adequate financial capability,” requiring “financial assurance” clearly cannot be the primary measure of adequate financial capability. Otherwise, the Commission is effectively requiring every water and wastewater utility—including Class A and Class B utilities, regardless of their demonstrated financial capability—to provide financial assurance in every STM proceeding.

As addressed in Docket No. 53721, Staff has discretion under 16 TAC § 24.239 to recommend whether CSWR-Texas should be required to provide additional financial assurance.<sup>1</sup> Staff has already directed CSWR-Texas to provide evidence of financial capability through (1) its audited financial statements; (2) bank statements showing sufficient funds are available; and (3) affidavit support from its parent company committing those funds to purchase, repair, and operate each system it has requested to acquire. CSWR-Texas should not be required to commit to additional cumbersome (and expensive) financial assurance tests and requirements, like escrowing funds or obtaining loan approval documents or lines or letters of credit, if no party argues for or recommends such treatment. In general, a Class A or Class B utility that demonstrates it already has a significant presence in Texas, owns millions of dollars of facilities in Texas, serves thousands of customers in Texas, has invested millions of dollars in infrastructure in Texas, and regularly acquires distressed systems in Texas should be considered financially capable to operate in Texas absent extenuating or unique circumstance that mandates other treatment.

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<sup>1</sup> *Application of CSWR-Texas Utility Operating Company, LLC and Patterson Water Supply, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Dallas, Denton, Parker, Tarrant, and Wise Counties*, Docket No. 53721, Commission Staff’s Comments in Support of Joint Motion to Admit Evidence and Proposed Order Approving the Sale and Transfer to Proceed and Request for Expedited Relief (Feb. 27, 2023); Docket No. 53721, SOAH Order No. 12 Approving Sale and Transfer to Proceed (Mar. 2, 2023).

Even in its STM proceedings that involve more than \$100,000 in potential capital improvements, like the present case, Staff and the Commission have found that utilities may demonstrate adequate financial capability through audited financial statements and available cash, without requiring “loan approval documents” or other support. For example, in Docket No. 52391, the Commission ruled that the applicant had already satisfied the financial capability requirement through provision of audited financial statements and available cash balances without needing to provide loan approval documents or other additional financial assurance. The Commission ruled similarly on these exact issues in Docket No. 53721 based on Staff’s recommendation.<sup>2</sup>

Finally, as a practical matter, it would also make little sense for the Commission to require a utility with sufficient cash on hand to obtain a loan it does not need (and would have to repay with interest) instead of purchasing the system outright. Accordingly, if the ALJ finds that 16 TAC § 24.11 is applicable in this proceeding, it should clarify that CSWR-Texas has already satisfied the requirements of 16 TAC § 24.11 and that the transaction should be approved to proceed. Otherwise, the Company requests a good cause exception to any requirement that it must provide loan documentation related to its capital improvements.

### **III. SUPPLEMENTAL NOTICE**

Attached as Exhibit A to this pleading is an affidavit showing that notice was provided to owners of tracts of land of 25 acres or more who are wholly or partially included in the area proposed to be certified. Exhibit B is a redacted sample notice evidencing the notice that has been sent to the 25 acre or more landowners. Highly Sensitive Exhibit C is a list of customers who own tracts of land 25 acres or more that have been sent notice. Additionally, Highly Sensitive Exhibit D shows a detailed location of the tracts of land over 25 acres that are partially included in the CCN area with identifying landowner information.

### **IV. NEED FOR SERVICE AND MAPPING CLARIFICATION**

CSWR-Texas does not seek to amend its CCN to include customers currently served by RJR Water Company, Inc. through its public water system not currently located within the certificated service area of RJR Water Company, Inc.’s CCN number 12139.

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<sup>2</sup> Docket No. 53721, SOAH Order No. 12 Approving Sale and Transfer to Proceed.

## **V. SUPPLEMENTAL MOTION TO ADMIT EVIDENCE**

CSWR-Texas respectfully moves for admission of the following documents and information:

- This pleading, including the estimated timeline for completion of capital improvements;
- Supplemental notice affidavit;
- Redacted notice;
- Highly Sensitive list of customers who own tracts of land of 25 acres or more; and
- Highly Sensitive maps showing exact location of customers with tracts of 25 acres or more.

## **VI. STATEMENT OF CONFIDENTIALITY**

The undersigned attorney has reviewed the confidential exhibits attached to this pleading and confirms that the attachments contain customer-specific information including names and addresses. This information is specifically protected by Tex. Util. Code § 182.052 and is expressly protected under Paragraph 6 of the Commission's standard protective order. Accordingly, the information contained in confidential attachments C and D is exempt from public disclosure under Tex. Gov't Code § 552.101 and Tex. Util. Code § 182.052 and merits the confidential designation given to the attachments.

## **VII. CONCLUSION**

CSWR-Texas respectfully requests that the ALJ admit additional evidence, grant the requested good cause exceptions if necessary, and issue an order allowing this transaction to proceed. CSWR-Texas also requests all further relief to which it is entitled.

Respectfully submitted,

**ATTORNEYS FOR CSWR-TEXAS  
UTILITY OPERATING COMPANY, LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of July 2023, a true and correct copy of the foregoing document was served on all parties of record via electronic mail in accordance with the Second Order Suspending Rules filed in Project No. 50664.



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Sidne E. Finke

**SUPPLEMENTAL AFFIDAVIT OF NOTICE**

**STATE OF MISSOURI**           §  
  §  
**COUNTY OF ST. LOUIS**     §

Before me, the undersigned authority, Aaron Silas, being first duly sworn, deposes and states as follows:

1. My name is Aaron Silas. I am over 21 years of age, of sound mind, and capable of making this Affidavit. I have personal knowledge of the facts contained herein, and they are true and correct.
2. I am the Director of Regulatory Operations of CSWR-Texas Utility Operating Company, LLC (“CSWR-Texas”). I am qualified and authorized to file and verify such form and am personally familiar with notices given with this application.
3. I hereby certify that each owner of a tract of land that is at least 25 acres and is wholly or partly located in the requested area received individual notice of the Application of CSWR-Texas Utility Operating Company, LLC and RJR Water Company, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker and Palo Pinto counties, Docket No. 52700, filed on October 12, 2021. Attachment 1 to this affidavit is the list of landowners that received notice.

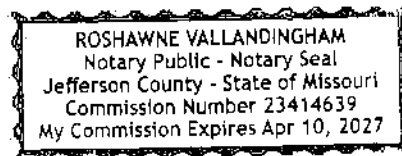


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Aaron Silas  
Director of Regulatory Operations  
CSWR-Texas Utility Operating Company, LLC

SWORN TO AND SUBSCRIBED before me on this 6 day of July, 2023.



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Notary Public, State of Missouri





**Docket No. 52700**

**Notice to Current Customers, Neighboring Systems, and Cities**  
CSWR-TEXAS UTILITY OPERATING COMPANY, LLC, CERTIFICATE OF  
CONVENIENCE AND NECESSITY (CCN) NO. 13290, NOTICE OF INTENT TO  
PURCHASE WATER FACILITIES AND TO TRANSFER WATER SERVICE AREA UNDER  
CCN NO. 12139 FROM RJR WATER COMPANY, INC. IN PARKER AND PALO PINTO  
COUNTIES, TEXAS

To: [REDACTED] Date Notice Mailed: 6/30/2023  
(Name of Customer, Neighboring System, or City)  
[REDACTED]  
(Address)  
[REDACTED] [REDACTED] [REDACTED]  
(City) State Zip

<u>CSWR-Texas Utility Operating Company, LLC</u> (Purchaser's Name)	<u>1650 Des Peres Rd, Suite 303</u> (Address)
<u>St. Louis, MO</u> (City), (State)	<u>63131</u> (Zip Code)

has submitted an application with the Public Utility Commission of Texas (Commission) to purchase all of the water facilities and to transfer water certificated service area under CCN No. 12139, in Parker and Palo Pinto Counties, TX from:

<u>RJR Water Company, Inc.</u> (Seller's Name)	<u>P.O. Box 616</u> (Address)	<u>Millsap, TX</u> (City), (State)	<u>76066</u> (Zip Code)
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The sale is scheduled to take place if approved by the Commission (Texas Water Code § 13.301). The transaction and the transfer of the CCN includes the following subdivision:  
Mountain River Estates and Mountain Valley Estates.

The requested area includes 136 customer connections, is located approximately 4 miles southwest of downtown Millsap, Texas, and is generally bounded on the north by Union Pacific Railroad Company and Brazos River; on the east by Mountain River Road and Soda Springs Road; on the south by Soda Springs Road; and on the west by Union Pacific Railroad Company and Brazos River.

The requested area includes approximately 346 acres of transferred area from RJR Water Company, Inc., CCN No. 12139 to CSWR-Texas Utility Operating Company, LLC, CCN No. 13290.

**See enclosed map showing the requested area.**

This transaction will not have an effect on the current customer's rates and services.

*Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The*

*deadline for intervention in the proceeding is (30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). You must send a letter requesting intervention to the commission which is received by that date. The letter must include the person's name, address, email address and fax number if applicable.*

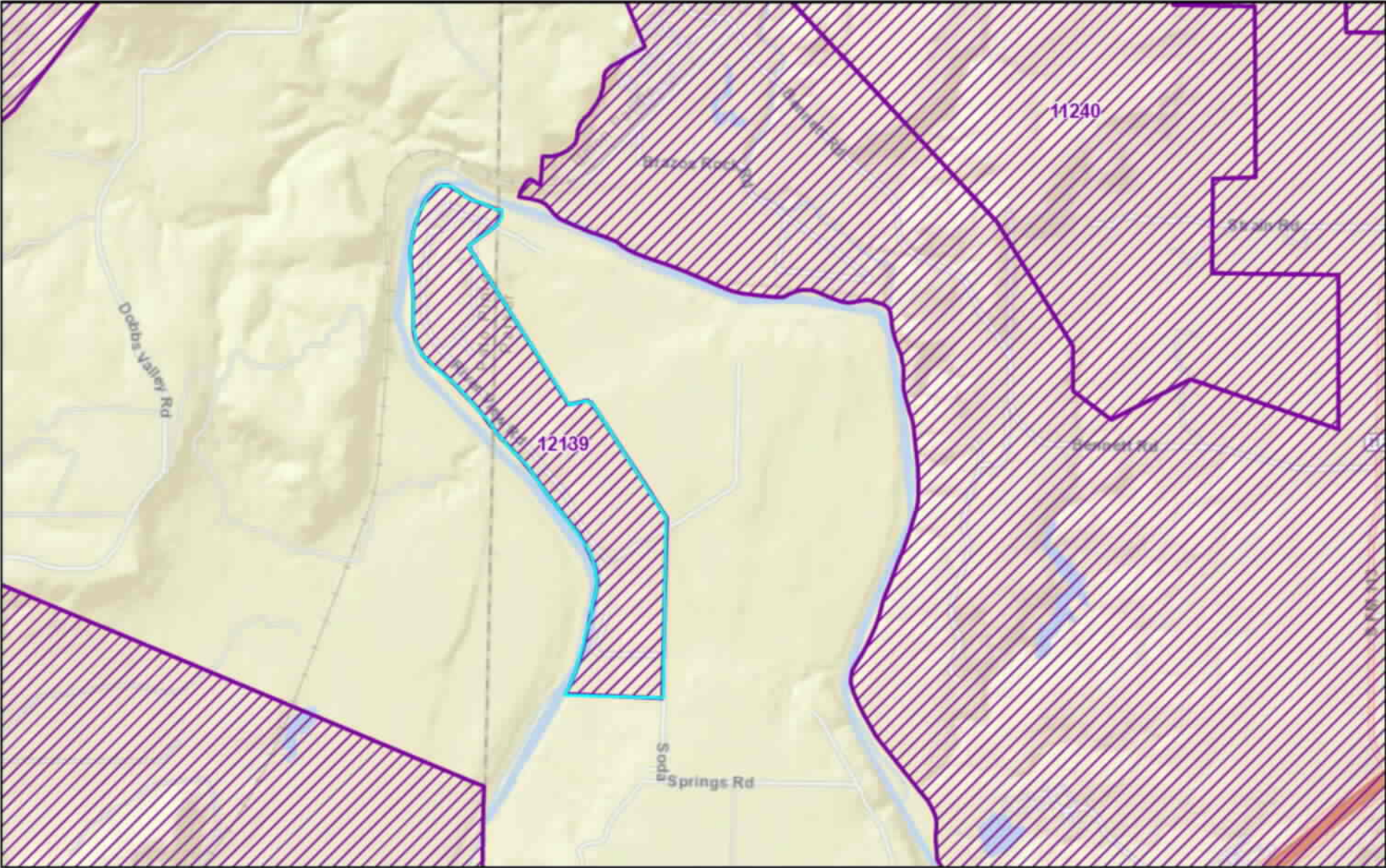
If a valid public hearing is requested, the Commission will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, SOAH will submit a recommendation to the Commission for final decision. An evidentiary hearing is a legal proceeding similar to a civil trial in state district court.

Si desea información en español, puede llamar al 1-888-782-8477.

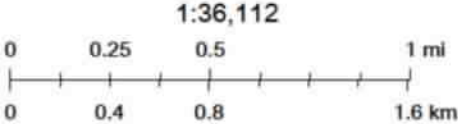
Aaron Silas  
Utility Representative

CSWR-Texas Utility Operating Company  
Utility Name

# CCN No. 12139 - Small Scale Map

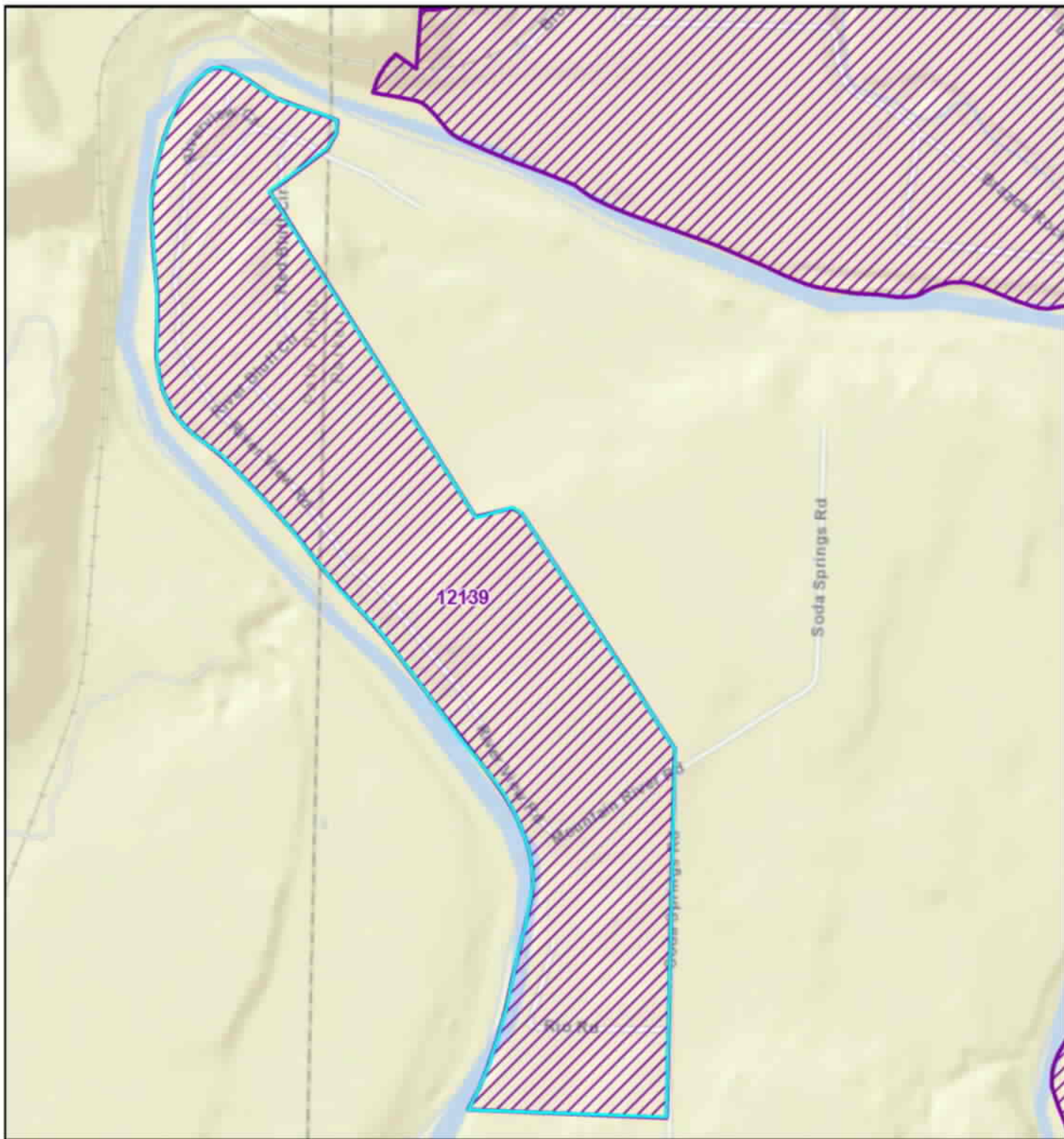


September 24, 2021

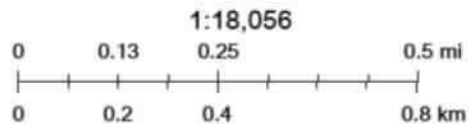


Esri, HERE, Garmin, INCREMENT P, NGA, USGS

# CCN No. 12139 - Large Scale Map



September 24, 2021



**Exhibit C to the  
Response to Order No. 11  
is Highly Sensitive and will be provided  
pursuant to the Protective Order**

**Exhibit D to the  
Response to Order No. 11  
is Highly Sensitive and will be provided  
pursuant to the Protective Order**