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DOCKET NO. 53559

PETITION OF VPTM CROSS CREEK	§	PUBLIC UTILITY COMMISSION
LB, LLC TO AMEND MARILEE	§	
SPECIAL UTILITY DISTRICT'S	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN COLLIN	§	
COUNTY BY EXPEDITED RELEASE	§	

**MARILEE SPECIAL UTILITY DISTRICT'S VERIFIED RESPONSE TO
PETITION OF VPTM CROSS CREEK LB, LLC TO AMEND CERTIFICATE OF
CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARX:

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (the "District") and files this Verified Response ("Response") to VPTM Cross Creek LB, LLC's ("Petitioner") Petition for Expedited Release Pursuant to Texas Water Code Section 13.2541 ("Petition"), filed in this docket, and respectfully shows as follows:

I. BACKGROUND

1. On May 4, 2022, Petitioner filed its Petition for streamlined expedited release seeking to use the streamlined expedited release process found in Texas Water Code ("TWC") § 13.2541 and 16 Texas Administrative Code ("TAC") § 24.245(h) to extract approximately 111.844 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.¹ The Petition alleges that the Tract of Land is greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.²

¹ Petition of VPTM Cross Creek LB, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (May 4, 2022).

² *Id.* at 2.

2. On May 9, 2022, the Honorable Administrative Law Judge (“ALJ”) Marx entered Order No. 1, requiring Staff for the Public Utility Commission (the “Commission”) to file comments regarding the administrative completeness of the Petition and notice by June 3, 2022.³

3. On June 7, 2022, the ALJ ordered that the Petition was administratively complete, based on Commission Staff’s recommendation, and established a deadline of June 27, 2022, for the District to file its Response to the Petition.⁴

4. On June 7, 2022, the District filed a Motion to Intervene, which was granted on June 22, 2022.⁵

5. As Order No. 2 established June 27, 2022, as the deadline for the District to file its Response, this Response is timely filed.

II. RESPONSE

6. 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.⁶ The District, now that it has been consolidated, currently provides retail water service to approximately 29,500 customers.

7. Petitioner is VPTM Cross Creek LB, LLC, a Delaware limited liability company doing business in Texas.

8. 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

³ Order No. 1 – Requiring Comments on Administrative Completeness, Notice, and Other Matters, and Establishing Procedural Schedule (May 9, 2022).

⁴ Order No. 2 – Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (June 7, 2022).

⁵ Marilee Special Utility District’s Motion to Intervene (June 7, 2022); Order No. 3 – Granting Motion to Intervene (June 22, 2022).

⁶ *See infra* n.35 & accompanying text (describing the districts’ consolidation pursuant to TWC § 65.723).

compensated for property decertified from their CCN service area.⁷ 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.

9. 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.⁸

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

10. 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 interchange of facilities between two or more retail public utilities."⁹

11. 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 conditions are met:

- Any facilities or lines are committed or used in the performance of the CCN holder's duties as a retail public utility providing service to the property; or

⁷ See, e.g., Acts 2019, 86th Leg., R.S., Ch. 688, General and Special Laws of Texas (enrolled bill to be codified at TWC § 13.2541). The policies considered by the legislature regarding the substance of both TWC §§ 13.254 and 13.2541 are best reflected by the legislative history for TWC § 13.254, which was enacted in 2005 in House Bill 2876.

⁸ TWC § 13.2541(b).

⁹ TWC § 13.002(21); see also 16 TAC § 24.3(33) (same definition).

- Any lines are committed or used in the performance of the CCN holder's duties as a retail public utility.¹⁰

12. 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.¹¹

13. 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.¹²

14. 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 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.

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

¹⁰ 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).

¹¹ TWC § 13.002(9).

¹² *Crystal Clear*, 449 S.W.3d at 140.

- Meter Nos. 60, 17, and 1560, which are just outside the western boundary of the Tract of Land;
- Temporary Meter No. 1125, which is southwest of the Tract of Land;
- A 4” waterline that runs along the western and northern boundaries of the Tract of Land;
- An 8” waterline to the north of the Tract of Land; and
- A 6” waterline to the north and west of the Tract of Land.¹³

16. 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 has the ability and facilities dedicated to provide water service to the Tract of Land promptly, if requested.”¹⁴

17. Based on these verified 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 District respectfully requests that the ALJ enter a Proposed Order denying the Petition.

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

18. Petitioner, not the District, bears the burden to prove that the Tract of Land is not receiving service.¹⁵ 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.¹⁶

¹³ See Exhibit A (Affidavit of Michael Garrison) at ¶¶ 4-5; Exhibit B (Affidavit of Eddy Daniel) at ¶¶ 5-6; Ex. B-1 (detailed map showing meters and waterlines both inside and carved outside of the boundaries of the Tract of Land).

¹⁴ Exhibit B (Affidavit of Eddy Daniel) at ¶ 6.

¹⁵ 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.”).

¹⁶ 16 TAC § 24.245(h)(3)(D).

19. 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*.¹⁷ 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.”¹⁸ 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 2005.¹⁹

20. The “statement of facts” that Petitioner must show in its verified petition to meet its burden under 16 TAC § 24.245(h) is also reflected in *Crystal Clear*. Petitioner in that case, the Texas General Land Office, supported the contention that the area requested to be decertified was not receiving water service by explaining that there were “no active water meters or water connections on and no facilities providing current service” and that there was “one abandoned, empty meter box on the eastern portion of the property, which Crystal Clear itself classifies as inoperative.”²⁰

21. In this case, Petitioner has not set out facts similar to that in *Johnson County* case or *Crystal Clear*. Petitioner has offered no statement of facts, but only a conclusory one-page affidavit claiming, without support, that the Tract of Land does not receive “service” from the District,²¹ 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

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

¹⁸ *Id.* at **6-7.

¹⁹ *Id.* at **9-10 (citing Commission’s Finding of Fact No. 24).

²⁰ *Crystal Clear*, 449 S.W.3d at 134.

²¹ See Petition at Exhibit A-1 (Affidavit of Brendan Boseman) 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.”).

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 several active meters on and carved outside of the Tract of Land.

22. The District is currently defending against the decertification of 19 tracts of land in its service area, representing a total acreage of approximately 4,581,285 acres.²² The petitions in most of the 19 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

²² In addition to this case, the District is the CCN holder in 18 other streamlined decertification cases currently before the Commission. See *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 50404 (pending); *Petition of CCD-North Sky, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52101 (pending); *Petition of Celina Partners, L.P. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52434 (pending); *Petition of Legacy Equestrian Center LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52435 (pending); *Petition of Huffines Ranch, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52490 (pending); *Petition of 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 E Real Estate, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 5)*, Docket No. 52530 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 4)*, Docket No. 52531 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 3)*, Docket No. 52532 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 2)*, Docket No. 52533 (pending); *Petition of Central Frisco, Ltd. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52534 (pending); *Petition of E Real Estate, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Mesquaukee Ranch)*, Docket No. 52536 (pending); *Petition by Mesquaukee Ranch, LLC for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County*, Docket No. 52542 (pending); *Petition of Eland Energy, Inc. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Streamlined Expedited Release*, Docket No. 52653 (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 by Sater, L.P. for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County*, Docket No. 53415 (pending); *Petition by VPTM Cross Creek LB, LLC for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County*, Docket No. 53450 (pending).

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.

23. 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 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.

24. 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.²³

25. Under *Green Valley Special Utility District v. City of Schertz*, 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.²⁴)). In a recent order entered in the United States District Court for the Western District of Texas, Judge Yeakel

²³ 7 U.S.C § 1926(b).

²⁴ See 969 F.3d 460, 475 (5th Cir. 2020) (en banc) (“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)).

followed *Green Valley* in applying 7 U.S.C. § 1926(b) in a case brought under TWC § 13.2541, and affirmed that the statute applies to protect a federally indebted utility in a TWC § 134.2541 case. Similarly, in a recent report and recommendation by Magistrate Judge Lane in a similar case, which was adopted in full by Judge Pitman, recommended that each defendants' Rule 12(b)(6) motion to dismiss be denied, and upheld plaintiff's right to protection under 7 U.S.C. § 1926(b).²⁵ The Magistrate Judge's analysis of these issues included the following:

- "Because . . . [Plaintiff] has satisfied *Young*'s requirements, its suit for injunctive relief against the PUC Officials may go forward. . . . [Plaintiff] has sufficiently pleaded a claim against the PUC Defendants challenging the decertification process in light of § 1926(b)."²⁶
- "As *Green Valley* makes clear, the court can enjoin enforcement of [the Commission's] orders or entry of future orders or enjoin the certification of the land to another provider."²⁷
- "*Green Valley* provided a different standard from the PUC's determination for courts to use to analyze whether an entity was entitled to § 1926(b) protections. . . . [I]f [Plaintiff] is victorious on its claims, then the PUC's Decertification Order is not entitled to enforcement."²⁸

26. 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*.²⁹ 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.³⁰ Judge Smith, writing for the majority, characterized the "physical abilities" test broadly:

²⁵ See *Rockett Special Utility District v. McAdams*, Case No. A-20-CV-1207-RP (W.D. Tex. Jul. 30, 2021) (Report and Recommendation of the United States Magistrate Judge); *Rockett Special Utility District v. McAdams*, Case No. A-20-CV-1207-RP, at 2 (W.D. Tex. Sept. 30, 2021) (ordering that "the report and recommendation of Magistrate Judge Mark Lane, (Dkt. 45), is adopted").

²⁶ *Id.* at 8.

²⁷ *Id.* at 14.

²⁸ *Id.* at 17.

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

³⁰ 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)).

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.³¹

27. The en banc court in *Green Valley* cited with approval precedent from the U.S. Court of Appeals for the Sixth Circuit stating that, to satisfy the “physical abilities” test, the utility must have “something in place to merit § 1926(b)’s protection.”³² 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.”³³ Additionally, upon remand of the case to the U.S. District Court for the Western District of Texas, Judge Yeakel, in granting *Green Valley*’s motion for a new trial, held that “a request for service is a prerequisite for obtaining decertification rather than for resisting decertification.”³⁴

28. Based on the District’s meters and waterlines located in close proximity to 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. Moreover, Petitioner cannot show that it has ever requested service from the District, which the *Marquez* order indicates is necessary for Petitioner to show that the District does not satisfy the “physical abilities” test.

29. The District is now consolidated with Mustang Special Utility District (“Mustang SUD”) (together with the District, the “Consolidated District”), in accordance with TWC Chapter

³¹ *Green Valley*, 969 F.3d at 477.

³² *Id.* at 477 & n.36 (quoting *Lexington—S. Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996)).

³³ *Id.* at n.38.

³⁴ *Green Valley Special Utility District v. Marquez*, Cause No. 1:17-CV-819-LY (W.D. Tex. Mar. 25, 2022) (order remanding for new trial).

65, Subchapter H.³⁵ Voters within the two districts passed measures consolidating the districts on November 2, 2021 and the elections have been canvassed.³⁶

30. 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”).³⁷ The District assumed Mustang SUD’s federal indebtedness when the District and Mustang SUD were consolidated.³⁸ The District will be required to make payments on the Bonds until 2055 (2016 Bonds) and 2058 (2018 Bonds).³⁹

31. On July 12, 2021, the District received approval from the USDA for a Water and Wastewater Guaranteed loan of \$1,553,000.⁴⁰ The District has not closed on the USDA loan but is working diligently to do so.

32. 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.

33. 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.

³⁵ 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 ¶¶ 9-10 & 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). Mr. Boyd’s affidavit was previously filed with the District’s first Verified Response. Because the Petitioner’s Second Amended Petition solely revised the boundaries of the Tract of Land to carve out several of the District’s meters, the District is filing the same affidavit with this Second Verified Response.

³⁶ See TWC § 65.724 (describing procedure).

³⁷ See Exhibit C (Affidavit of Chris Boyd), at ¶ 5.

³⁸ See TWC § 65.726

³⁹ Exhibit C (Affidavit of Chris Boyd), at ¶ 5.

⁴⁰ Exhibit A (Affidavit of Michael Garrison), at ¶¶ 6-8 & accompanying exhibits.

34. 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.⁴¹ 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,”⁴² and the value of personal property shall be determined according to the factors in that subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include:

The amount of the retail public utility’s debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility’s contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.⁴³

35. 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.

⁴¹ 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.”).

⁴² 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.”).

⁴³ *See* TWC § 13.254(g) (“The utility commission shall adopt rules governing the evaluation of these factors.”).

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 multiple meters and waterlines located within and carved outside of 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 Consolidated District is protected from limitation or curtailment of its service area under 7 U.S.C. § 1926(b). Alternatively, if the ALJ proposes that the Petition be granted, the District seeks just and adequate compensation for the reduction of its CCN No. 10150. The District also seeks all other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

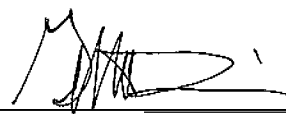
By: 

John J. Carlton
 State Bar No. 03817600
 Grayson E. McDaniel
 State Bar No. 24078966
 Kelsey Daugherty
 State Bar No. 24125054
 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
grayson@carltonlawaustin.com
kelsey@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 27th day of June 2022.

A handwritten signature in black ink, appearing to read 'Grayson E. McDaniel', is written over a horizontal line.

Grayson E. McDaniel

EXHIBIT A

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

DOCKET NO. 53559

PETITION BY VPTM CROSS CREEK LB, LLC FOR EXPEDITED RELEASE FROM WATER CCN NO. 10150 HELD BY MARILEE SPECIAL UTILITY DISTRICT IN COLLIN COUNTY	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**SUPPORTING AFFIDAVIT OF MICHAEL GARRISON,
SPECIAL PROJECT INSPECTOR FOR MUSTANG SPECIAL UTILITY DISTRICT**

STATE OF TEXAS	§
	§
COUNTY OF COLLIN	§

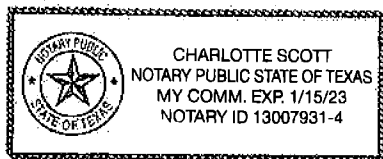
BEFORE ME, the undersigned authority, on this date personally appeared Michael Garrison, who being by me first duly sworn, on his oath deposed and testified as follows:

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 as the Assistant Manager of Marilee Special Utility District from 2008-2021.
3. "I am authorized to make this affidavit on behalf of the District in Docket 53514 in support of its response to VPTM Cross Creek LB, LLC's ("Petitioner") Petition to remove 111.844 acres of land (the "Tract of Land") from areas for which the District holds water certificate of convenience and necessity ("CCN") No. 10150.
4. "The District maintains active waterlines within or in direct proximity to the boundaries of the Tract of Land, as follows:
 - a. The District maintains a 4" waterline that runs along the western and northern boundaries of the Tract of Land;
 - b. The District maintains an 8" waterline to the north of the Tract of Land; and
 - c. The District maintains a 6" waterline to the north and west of the Tract of Land.

The District's waterlines are accurately reflected in **Exhibit B-1** to the affidavit of the District's engineer.

5. Multiple District meters are located in close proximity to the Tract of Land, as are accurately reflected in **Exhibit B-1** to the affidavit of the District's engineer.
6. "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.
7. "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-1**.
8. "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-2**.
9. "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-3**. 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.
10. "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-4**. A true and correct copy of Mustang's election results is attached as **Exhibit C-2** to the affidavit of Chris Boyd, General Manager of the Consolidated District.

FURTHER, AFFIANT SAYETH NOT.



Michael Garrison
Michael Garrison
Special Project Inspector for Mustang Special
Utility District

SWORN TO AND SUBSCRIBED before me by Michael Garrison on this 24 day of June 2022.

Charlotte Scott
Notary Public in and for the State of Texas

EXHIBIT A-1



LOAN COMMITMENT LETTER

April 13, 2021

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

Dear Board of Directors:

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

Borrower: Marilee Special Utility District

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

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

Construction Phase

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

Floor Rate: 5.00%

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

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

**DEDICATED
TO THE
DOERS™**

1741 Tiburon Dr
Wilmington, NC 28403
liveoakbank.com

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



Construction Origination Fee: 1% of the total loan amount

Permanent Phase

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

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

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

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

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

Origination Fee: 1% of the total loan amount

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

Source and Use of Proceeds:

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

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



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

CA

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 from Live Oak Bank prior to any purchases over \$5,000,000 related to fixed assets

**Power of Attorney
For UCC Filings:**

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

**Material Adverse
Change:**

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

Expenses:

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



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

LIBOR

Replacement:

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

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

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

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

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



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

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

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

Sincerely,

Anna West
Loan Officer
Live Oak Bank

Accepted By:

Name: Donna Loiselle
Title: General Manager
Date:

Other Conditions:

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

EXHIBIT A-2



JUL 19 2021

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

Dear Ms. Loiselle:

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Torres", written over a horizontal line.

DANIEL TORRES
Acting State Director

Enclosure

Rural Development • Texas State Office
101 South Main Street, Suite 102, Temple, Texas 76501
Voice 254.742-9789 • Fax 844.767.7087

USDA is an equal opportunity provider, employer, and lender.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
FARM SERVICE AGENCY

**REQUEST FOR OBLIGATION OF FUNDS
GUARANTEED LOANS**

INSTRUCTIONS: Complete Items 1 through 25 and applicable Items 26 through 35. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 49-093-*****8804		2. LOAN NUMBER 40	3. FISCAL YEAR 21
4. SOURCE OF FUNDS 1 (See FMI)			
5. BORROWER NAME Marilee Special Utility District			
		6. NUMBER NAME FIELDS (1, 2, or 3 from Item 5)	
7. STATE NAME Texas		8. COUNTY NAME Collin	
9. RACE CODE 1 - WHITE 4 - HISPANIC 2 - BLACK 5 - A/PI 3 - AI/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 1	
16. TYPE OF ASSISTANCE 061 (See FMI)	17. PURPOSE CODE 1	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 3	27. ADJUSTED FAMILY INCOME	
28. TYPE OF UNIT 1 - FARM TRACT 2 - NON-FARM TRACT 1	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 1	
31. PERCENT OF INTEREST ASSISTANCE %	32. HIGH COST AREA Y = YES N = NO Y	33. BORROWER HISTORY CODE (See FMI)	
34. AMOUNT AGENCY DIRECT DEBT REFINANCE		35. OBLIGATION DATE (Finance Office use only) MO DA YR JUL 12 2021	
36. BEGINNING FARMER/RANCHER (See FMI)			

ORIGINAL - Borrower's Case Folder

COPY 1 - Applicant

COPY 2 - Lender

COPY 3 - State Office

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-3

November 2, 2021
(2 de noviembre, 2021)

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

PROPOSITION A

FOR ()	<p>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?</p> <p>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".</p>
AGAINST ()	

PROPOSICIÓN A

A FAVOR ()	<p><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></p> <p><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></p>
EN CONTRA ()	

EXHIBIT A-4

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

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

Marilee Special Utilities District - Proposition A

Vote For 1

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

EXHIBIT B

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

DOCKET NO. 53559

PETITION BY SATER L.P. FOR	§	PUBLIC UTILITY COMMISSION
EXPEDITED RELEASE FROM	§	
WATER CCN NO. 10150 HELD BY	§	
MARILEE SPECIAL UTILITY	§	
DISTRICT IN COLLIN COUNTY	§	OF TEXAS
	§	

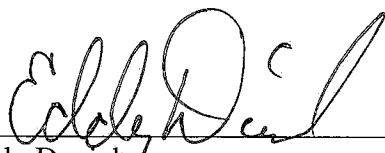
**SUPPORTING AFFIDAVIT OF EDDY DANIEL,
PROFESSIONAL ENGINEER FOR MARILEE SPECIAL UTILITY DISTRICT**

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:

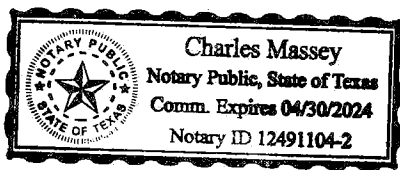
1. "My name is Eddy Daniel. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am an engineer and employee of Dunaway|DBI Engineers. The company serves as the engineer of record for Marilee Special Utility District (the "District"), the Intervenor in this matter, and I am a project engineer for the District.
3. "I am authorized to make this affidavit on behalf of the District in Docket 53559 in support of its response to VPTM Cross Creek LB, LLC's ("Petitioner") request to remove 111.844 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 and around 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 has the ability and facilities dedicated to provide water service to the Tract of Land promptly, if requested.


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 27 day of June 2022.





Notary Public in and for the State of Texas

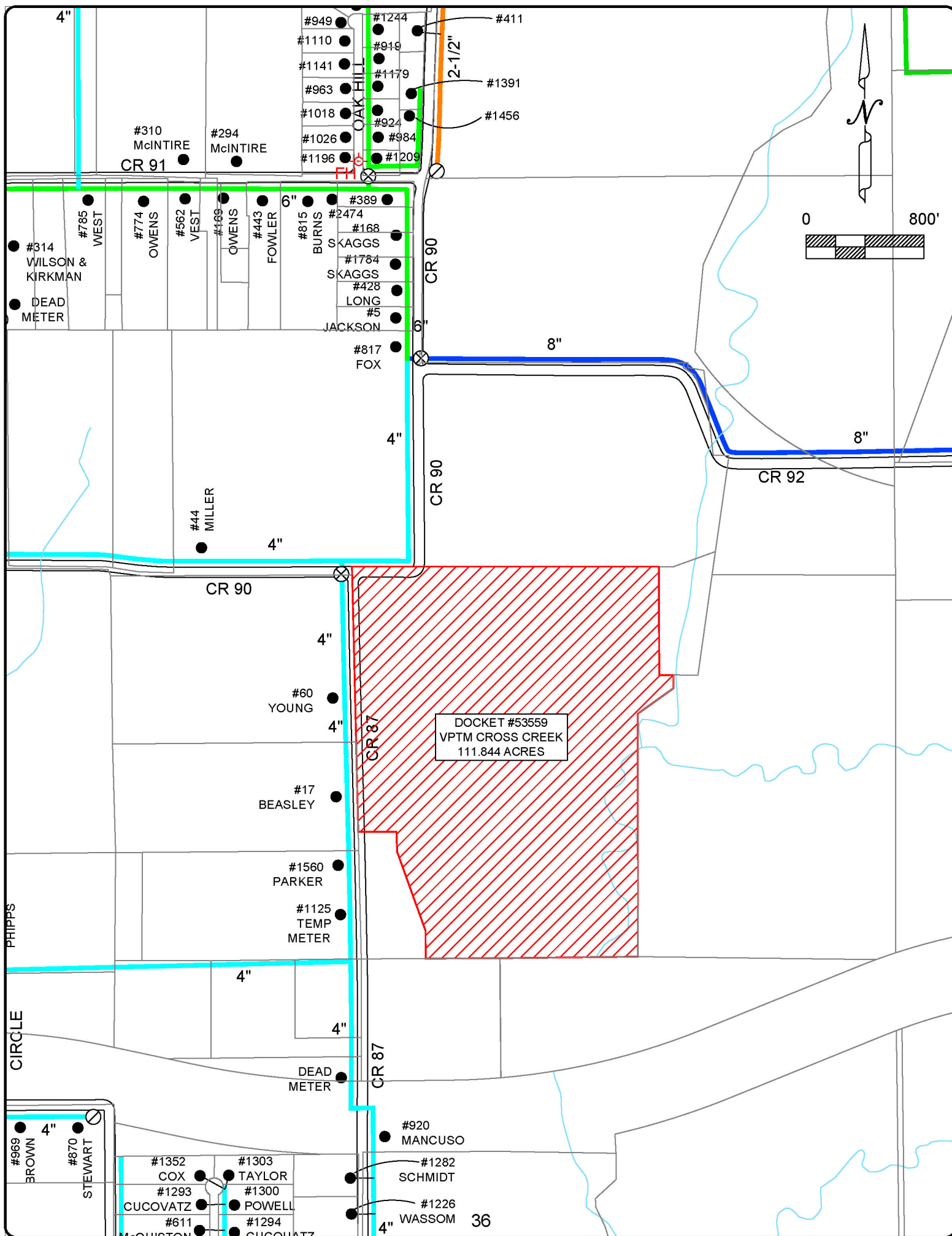


EXHIBIT C

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

DOCKET NO. 53559

PETITION BY VPTM CROSS CREEK	§	PUBLIC UTILITY COMMISSION
LB, LLC FOR EXPEDITED RELEASE	§	
FROM WATER CCN NO. 10150 HELD	§	
BY MARILEE SPECIAL UTILITY	§	
DISTRICT IN COLLIN COUNTY	§	OF TEXAS
	§	

**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:

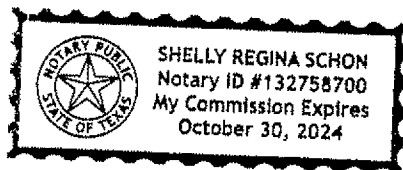
1. "My name is Chris Boyd. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.
2. "I am the General Manager for Mustang Special Utility District ("Mustang"). I have been in that position for 19 years.
3. "On 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 53559 in support of Marilee's response to VPTM Cross Creek LB, LLC's Petition to

remove approximately 111.844 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 21 day of June 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 ***