

CAUSE NO. [REDACTED]

WAS- [REDACTED]

MATTERHORN EXPRESS PIPELINE, LLC

Plaintiff,

v.

Defendants.

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IN THE DISTRICT COURT OF

WASHINGTON COUNTY, TEXAS

335th JUDICIAL DISTRICT

**PLAINTIFF'S VERIFIED ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF**

Plaintiff, Matterhorn Express Pipeline, LLC ("Plaintiff") complains of Defendants, [REDACTED]

[REDACTED] ("Defendant", whether one or more), and for cause of action shows as follows:

I.

DISCOVERY CONTROL PLAN

1.1. Discovery in this case is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

II.

PARTIES

2.1. Plaintiff, Matterhorn Express Pipeline, LLC is a Delaware limited liability company, and is authorized to transact business in the State of Texas.

2.2. Defendants, [REDACTED], own the real property at issue in this matter, which is located in Washington County. Defendant may be served as follows:

- a) [REDACTED] is an individual who may be served at [REDACTED]
[REDACTED], or wherever else he may be found; and
- b) [REDACTED] is an individual who may be served at [REDACTED]
[REDACTED], or wherever else he may be found.

Filed 4/18/2022 5:31 PM
Tammy Brauner, District Clerk
Washington County, TX
By: Heather Marx, Deputy

III.

JURISDICTION AND VENUE

3.1. This Court has jurisdiction because it has subject matter jurisdiction over the injunctive relief sought and because the parties are Texas residents and/or doing business in the State of Texas. This is a suit to enforce the right to go upon land for a preliminary survey prior to the acquisition of easement rights. *See Lewis v. Tex. Power & Light Co.*, 276 S.W.2d 950, 954-55 (Tex. Civ. App.—Dallas 1955, writ ref'd n.r.e.). This Court has jurisdiction over applications for writs of injunction pursuant to Section 65.021 of the Texas Civil Practice & Remedies Code. Tex. Civ. Prac. & Rem. Code Ann. § 65.021 (West Supp. 2021). Additionally, because Plaintiff has the right and power to enter upon and to condemn property for easement and right-of-way purposes, and the right to conduct preliminary surveys is ancillary to that right, jurisdiction is proper pursuant to Section 21.001 of the Texas Property Code. *See* Tex. Prop. Code Ann. § 21.001 (West Supp. 2021).

3.2. Venue is proper in Washington County, Texas, pursuant to Sections 15.002(a)(1) and 15.011 of the Texas Civil Practice and Remedies Code because Washington County is the county in which a substantial part of the events or omissions giving rise to this claim occurs and because the real property at issue is located in Washington County. Tex. Civ. Prac. & Rem. Code Ann. §§ 15.002(a)(1), 15.011 (West Supp. 2019).

IV.

RULE 47 DISCLOSURE

4.1. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiff seeks only non-monetary relief.

V.
FACTUAL BACKGROUND

5.1. Plaintiff is a gas corporation and gas utility with the right and power to enter on, condemn, and appropriate the land, right-of-way, easement, or other property of any person or corporation, as set out in Sections 181.001 and 181.004 of the Texas Utilities Code. *See* Tex. Util. Code Ann. §§ 181.001, 181.004 (West Supp. 2019). In addition, Plaintiff has the power to own, hold, or use land, a right-of-way, or an easement as necessary for the purpose of the corporation. Tex. Util. Code Ann. § 181.007. Plaintiff is in the process of designing, engineering, planning, constructing and installing a new approximately 385-mile intrastate gas utility pipeline from a compressor station near Rankin, Texas, across Upton, Reagan, Irion, Tom Green, Concho, McCulloch, San Saba, Lampasas, Burnet, Williamson, Lee, Washington, and Austin Counties, Texas to the Sealy Junction (the “MPX Mainline”), an approximately 15.8-mile pipeline lateral across Austin and Waller Counties, Texas (the “Katy Lateral”), and an approximately 18.5-mile pipeline lateral across Austin and Fort Bend Counties, Texas (the “East Bernard Lateral”) (the MPX Mainline, Katy Lateral, and East Bernard Lateral are collectively referred to herein as the “Pipeline”), along with appurtenant facilities for the transportation of hydrocarbon natural gas or synthetic natural gas (the “Substances”).

5.2. The Pipeline will be regulated by the Railroad Commission of Texas (the “RRC”) as gas utility pipeline. The Pipeline will operate as gas utility under RRC (Form T4) Permit to Operate Pipeline No. 10355, a copy of which is attached as Exhibit “A”. Shippers will pay a local RRC rate to be reflected in a tariff on file with the RRC to transport gas products utilizing the Pipeline.

5.3. Defendant is the record owner of land in this county, more particularly described in that certain Special Warranty Deed (the “Property”). A true and correct copy of which is attached hereto as Exhibit “B” and is incorporated herein by reference.

5.4. Although Plaintiff has generally determined that the route for the Pipeline will cross the Property, Plaintiff must determine the exact location of the Pipeline and the rights-of-way or easements which the Pipeline will occupy on each property to be crossed, and Plaintiff must define the right-of-way with particularity and specificity as required by law. As such, Plaintiff must conduct lineal and cultural/environmental surveys. In particular, Plaintiff must conduct a boundary survey for easement acquisition and construction purposes, a topographic survey to identify obstructions, and a survey of wildlife, waters of the United States, and vegetation sites (“Preliminary Surveys”). Further, time-of-year restrictions exist that require specific environmental surveys be performed within certain months of the year. As the Pipeline traverses the habitats of two protected species, Plaintiff has a short window of opportunity in which to complete the required environmental surveys.

5.5. The only means by which Plaintiff can conduct the Preliminary Surveys to determine the exact location of the Pipeline, to be able to (a) design the Pipeline accurately, (b) determine the location of improvements, fences, structures, terrain and environmental features located along the proposed route on the Property, and (c) be able to describe the right-of-way or easement by field notes for public-recording purposes (as well as comply with the statutory requirements in describing the property interest to be obtained), is to conduct an on-the-ground survey and visual inspections of the proposed route and the Property. An environmental survey, as described in paragraph 5.4 above, may be accomplished at the same time by conducting a visual inspection of the Property.

5.6. Although Plaintiff has attempted to obtain permission from Defendant to conduct the Preliminary Surveys on the Property, Defendant has refused Plaintiff permission to enter upon the Property for that purpose. Plaintiff seeks injunctive relief from this Court to secure access to the interior of the Property to survey and inspect the area within the proposed anticipated route of the Pipeline, as well as other interior portions of the Property that may be impacted by Plaintiff's project.

5.7. Defendant has denied access to the Property. Specifically, a right-of-way agent working on behalf of Plaintiff contacted Defendant to explain the project and request access to complete the survey-related activities. To resolve the denial of access issue, Plaintiff's counsel sent a letter to Defendant setting forth the legal authority for Plaintiff's entry to conduct the survey and related activities and reiterating Plaintiff's request to coordinate entry onto the Property. Plaintiff's efforts have not been successful to secure Defendant's agreement that Plaintiff can conduct the survey-related activities without interference.

5.8. Plaintiff cannot conduct the Preliminary Surveys necessary for it to comply with the Texas Property Code except by entering onto the Property. Unless Plaintiff is permitted to enter the Property to conduct the Preliminary Surveys and inspections identified above, Plaintiff will be unable to (a) determine the exact location for the Pipeline, (b) describe the right-of-way or easement needed for the Pipeline across the Property, (c) design the Pipeline accurately, (d) determine the locations of terrain features, fences, improvements, and structures, (e) minimize the impact on the Property, (f) avoid any problems related to waters of the United States and vegetation, and (g) verify the presence or absence of wildlife. In short, without access to the Property, Plaintiff will be unable to construct the Pipeline. The inability to survey prevents the foregoing, all of which will substantially delay the construction and operation of the Pipeline,

causing Plaintiff to suffer financial losses from anticipated pipeline transport fees, increased project expenses, increased cost of capital, and other financial losses that are not readily ascertainable with any degree of reasonable certainty, as well as adversely impacting the receipt of needed volumes of substances to be transported in the Pipeline and Plaintiff's relationship with existing and future customers.

5.9. Further, without the Preliminary Surveys, Plaintiff cannot initiate eminent domain proceedings against Defendant, if necessary, because Plaintiff will not be able to adequately describe the easements sought as required by Section 21.012(b)(1) of the Texas Property Code.

5.10. To date, Plaintiff has not been able to commence the necessary survey-activities for construction of the Pipeline. Survey work has already occurred on properties along the project. At present, crews are assembled and awaiting announcement that the survey-related activities described above can begin on Defendant's Property. If the survey crews are not allowed to enter the Defendant's Property, Plaintiff at a minimum will have to pay a move-around fee and/or re-mobilization fee to the survey and environmental crews to come back. Moreover, as mentioned above, due to the habitats of endangered species along the route of the pipeline, Plaintiff has a limited time period in which to perform the required survey activities. If Defendant is allowed to continue to violate Plaintiff's rights as a gas utility under Texas statutory and common law, the project will be compromised.

5.11. Defendant's actions impede Plaintiff's rights as a gas corporation under Texas law, and threaten to delay the Pipeline for an indefinite amount of time, which delay has monetary consequences that are incalculable at this time. Moreover, if Defendant is allowed to continue to obstruct Plaintiff's lawful rights, the status quo would be disturbed because Plaintiff's statutory

rights will continue to be violated and the timing and construction of the natural gas utility project will be jeopardized.

VI.
APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION, AND PERMANENT INJUNCTION

6.1. The foregoing paragraphs are hereby incorporated by reference, as if set forth fully herein.

6.2. Plaintiff is entitled to a temporary restraining order, temporary injunction, and permanent injunction restraining Defendant from interfering with Plaintiff entering on the Property to conduct Preliminary Surveys on the Property. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 65.011(1), (3) and (5). The elements for injunctive relief include: (a) a request for permanent relief; (b) a probable right to recovery; (c) a probable injury if the relief is not granted; and (d) no adequate remedy at law. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Additionally, section 65.011(1) of the Texas Civil Practice and Remedies Code allows for injunctive relief for a plaintiff who: (1) is entitled to the relief demanded; and (2) shows that all or part of that relief requires the restraint of some act prejudicial to the applicant. Tex. Civ. Prac. & Rem. Code Ann. § 65.011(1); *see Coastal Marine Serv. of Texas, Inc. v. City of Port Neches*, 11 S.W.3d 509, 515 (Tex. App.—Beaumont 2000, no pet.) (holding that city with implied statutory authority to conduct an environmental assessment before condemning property was entitled to a temporary injunction against interfering landowner under § 65.011(1)).

6.3. It is essential that the Court immediately and temporarily restrain Defendant, their agents, servants, employees, and all those acting in concert with them, from prohibiting Plaintiff from entering the Property to: (1) conduct lineal, topographic, environmental, and construction surveys to determine the route of the proposed gas pipeline, boundaries of the proposed easement and right-of-way across the Property, as well as improvements, structures, and terrain features, and

(2) visually inspect the Property for wildlife, waters of the United States, and vegetation sites. It is essential that the Court act immediately, prior to notice to Defendant and a hearing on this matter, because immediate and irreparable injury, loss, or damage will result to Plaintiff before notice can be served and a hearing held thereon.

A. Plaintiff's Probable Right to Recovery

6.4. Plaintiff has a substantial likelihood of success on the merits of this action. Plaintiff is a gas corporation under Chapter 181 of the Texas Utilities Code, and, as such, Plaintiff has the right and power to “enter on, condemn, and appropriate the land, right-of-way, easement, or other property of any person or corporation,” as set out in Sections 181.001 and 181.004 of the Texas Utilities Code. *See* Tex. Util. Code Ann. §§ 181.001, 181.004 (West Supp. 2019).

6.5. Numerous Texas Courts have determined that the right to “enter on” the property includes the right to access property in order to conduct preliminary surveys and initial studies. *See Lewis v. Tex. Power & Light Co.*, 276 S.W.2d 950, 954 (Tex. App.—Dallas 1955, writ ref’d n.r.e.) (holding that the term “enter on” as used in section 181.004 of the Texas Utilities Code recognized the necessity of preliminary surveys and was intended to grant authority to conduct the same); *I.P. Farms v. Exxon Pipeline Co.*, 646 S.W.2d 544, 545 (Tex. App.—Houston [1st Dist.] 1982, no writ) (ancillary to eminent domain power is the authority to enter upon the land to make a preliminary survey); *Puryear v. Red River Auth.*, 383 S.W.2d 818, 820-21 (Tex. Civ. App.—Amarillo 1964, writ ref’d n.r.e.); *Hicks v. Tex. Mun. Power Agency*, 548 S.W.2d 949, 955 (Tex. App.—Houston [14th Dist.] 1977, writ ref’d n.r.e.) (“[g]enerally, courts have upheld the right of a governing body vested with condemnation power to enter into lands for the purpose of a preliminary survey either by express statutory grant or by implication”); *In re Energy Transfer Fuel, L.P.*, 298 S.W.3d 357, 358 (Tex. App.—Tyler 2009, no writ) (acknowledging that a gas

corporation with the power of eminent domain had the right to enter upon property to make preliminary surveys of proposed routes).

6.6. In *Lewis v. Texas Power & Light Co.*, a trial court issued a temporary injunction to allow the public utility company's engineers and surveyors to go on the property to create field notes for an easement right-of-way to be condemned at a later time. 276 S.W.2d 950, 952 (Tex. Civ. App.—Dallas 1955, writ ref'd n.r.e). The court of appeals affirmed, holding that if the condemnor was denied the right to survey, it would be impossible to prepare a deed containing a sufficient survey or to prepare an adequate petition if it is necessary to condemn the property. *Id.* at 955. The court also recognized that where a condemning authority has the right to enter the property to make a preliminary survey, "the status quo is one of action, not of rest." *Id.* The court wrote:

[T]he trial court no doubt weighed the relative convenience and inconvenience and the comparative injuries to the parties and to the public which would arise from the granting or refusal of this temporary injunction, and found the equities to lie with appellee [utility company]. There can be little if any doubt that appellee under the facts shown in this record is entitled to acquire easement rights over the appellant's land, either by voluntary conveyance or by condemnation. That being so, **the injuries suffered by appellant from the survey will be small compared with the injuries suffered by the appellee and the public if appellee were denied the right to proceed with its preliminary survey....**

Id. at 955-56 (emphasis added) (citations omitted).

6.7. Other court opinions have followed *Lewis* and upheld injunctions allowing entry onto land for preliminary lineal surveys. *See, e.g., Hailey v. Texas-New Mexico Power Co.*, 757 S.W.2d 833, 836 (Tex. App.—Waco 1988, writ dism. w.o.j.) (upholding electric power company's right to lineal survey but not extending survey rights to subsurface soil testing, core drilling, and soil boring); *Hicks v. Texas Mun. Power Auth.*, 548 S.W.2d 949, 955-56 (Tex. Civ. App.—Houston

[14th Dist.] 1977, writ ref'd n.r.e.) (upholding temporary injunction allowing electric power company building power plant-related spur railroad tract to conduct lineal surveys).

6.8. In *I.P. Farms v. Exxon Pipeline Co.*, the trial court granted a temporary restraining order in favor of Exxon—who was in the process of surveying a new pipeline—enjoining the defendants from interfering with the preliminary survey. 646 S.W.2d at 545. The trial court then granted summary judgment in favor of Exxon, denying the defendants' relief on a cross-action for damages based on the alleged wrongful issuance of the temporary restraining order. *Id.* On appeal, the Houston First Court of Appeals affirmed the summary judgment and held that the defendants had not been wrongfully enjoined through the trial court's issuance of a temporary restraining order. *Id.* at 545-46. The appellate court wrote: "Exxon had the power of eminent domain to construct, maintain and operate a common carrier pipeline.... Ancillary to such power was the authority to enter upon the land and make a preliminary survey." *Id.* at 545.

6.9. Similarly, in *Puryear v. Red River Authority of Texas*, the court held that the River Authority was authorized to enter on lands and conduct operations, including environmental assessments, necessary to locate a feasible location for a dam site on a creek. 383 S.W.2d at 820. The court said that these operations were an "essential step" in locating the proposed dams and that the term "survey" necessarily implied that the River Authority could engage in these preliminary operations, which included core drilling and sampling. *Id.* at 820-21. The court recognized that "[s]urveying, without the right to test the underground stratum would be of little value" to the River Authority's determination of the location for the proposed taking. *Id.* at 821.

6.10. Moreover, the right to survey has been deemed to include environmental assessments. In *Coastal Marine Service of Texas, Inc. v. City of Port Neches*, the court held that a condemning authority has the right to seek a temporary injunction for access to a private

landowner's tract for surveying and environmental assessment purposes. 11 S.W.3d 509, 514 (Tex. App.—Beaumont 2000, no. pet.). In that case, the landowner, Coastal Marine, permitted access for a linear survey but resisted corresponding environmental assessments. *Id.* at 511. The Court held that along with authority to survey, the City, having the power of eminent domain, also had the implied authority to conduct environmental site assessments. *Id.* at 514. Based on established precedent, it is clear that Plaintiff is entitled to the relief sought herein, as a matter of law, because it is a gas corporation with the power of eminent domain.

B. Imminent Harm and Irreparable Injury

6.11. Plaintiff will suffer imminent harm and irreparable injury if the requested temporary restraining order and injunction is not issued. An injunction is proper when the harm sought to be prevented is imminent or immediate. *Crawford Energy, Inc. v. Tex. Indus., Inc.*, 541 S.W.2d 463, 467 (Tex. Civ. App.—Dallas 1976, no writ). As stated in Section 6.6 above, Texas courts have held that the right to survey is “one of action, not of rest.” In denying Plaintiff’s ability to exercise its active right to survey, Defendant is causing current and actual harm to Plaintiff. Absent injunctive relief, Defendant will continue to deny Plaintiff access to the Property. Without access to the Property, Plaintiff will be unable to design and construct the Pipeline, which will negatively affect the commencement and timing of construction for the Pipeline.

6.12. Because of the time constraints imposed on Plaintiff for completing the construction of the Pipeline, Plaintiff must have immediate access to the Property. Plaintiff presently has survey crews working in the vicinity of the Property. Additionally, due to the habitats of endangered species along the route of the pipeline, Plaintiff has a limited time period in which to perform the Preliminary Surveys. Injunctive relief (including a temporary restraining order) is a proper remedy for denial of access to survey. *See I.P. Farms*, 646 S.W.2d at 545 (holding that a temporary restraining order is a proper remedy for denial of access to property for survey

purposes); *Coastal Marine*, 11 S.W.3d at 514; *Puryear*, 383 S.W.2d at 820; *Lewis*, 276 S.W.2d at 955; *see also Occidental Chem. Corp. v. ETC NGL Transp., LLC*, 425 S.W.3d 354, 365 (Tex. App.—Houston [1st Dist.] 2011, pet. denied) (holding that the issuance of a temporary injunction for survey access preserves the status quo by recognizing the pipeline company’s right to access and survey)).

6.13. Defendant has interfered with Plaintiff’s access to the Property to perform Preliminary Surveys. An immediate need exists to perform the survey, environmental assessments, and survey-related activities in order to determine if the anticipated route of the Pipeline on the Property is suitable. The inability of Plaintiff to make these determinations and to properly construct its facilities and complete the Pipeline project by reason of Defendant’s denial of entry for survey will result in Plaintiff’s inability to meet its obligations to complete the project in a timely fashion; an immediate harm for which Plaintiff has no adequate legal remedy.

6.14. Further, without the on-the-ground surveys, Plaintiff cannot initiate eminent domain proceedings against Defendant (if ultimately necessary) because Plaintiff will not be able to make Defendant a bona fide offer to acquire the additional easements over the Property which are necessary to complete the Pipeline. *See* Tex. Prop. Code Ann. § 21.0113.

6.15. Further, the public interest is heavily weighted in favor of allowing Plaintiff access to perform the survey, environmental assessments, and survey-related activities because there is essentially no harm to the Defendant in doing so and, in any event, the need to the public and to Plaintiff significantly outweighs the remote likelihood of any such minimal harm. *See, e.g., Lewis*, 276 S.W.2d at 955-56 (recognizing greater harm to the public and to utility company than the minimal harm that landowner might experience). Therefore, this Court should enter an immediate injunction restraining the Defendant, Defendant’s agents, servants, employees, affiliates, or those

in active concert with Defendant, or with actual knowledge of the Order from taking any action to interfere with Plaintiff, its agents, servants, employees, engineers, surveyors, and those persons hired or retained by them to perform those services entering on the Property to conduct surveys, including locating any survey monuments on the Property needed to determine the existing boundaries of the Property and staking the potential easements, and conducting the preliminary environmental assessments on the Property as set forth above.

C. No Adequate Remedy at Law

6.16. Plaintiff has no adequate remedy at law for Defendant's refusal to allow Plaintiff to enter the Property to conduct the survey-related activities. There is no adequate legal remedy if monetary damages cannot be calculated for the harm complained of or if the defendant will be unable to pay monetary damages resulting from such harm. *Tex. Indus. Gas v. Phoenix Metallurgical Corp.*, 828 S.W.2d 529, 533 (Tex. App.—Houston [1st Dist.] 1992, no writ). Unless the Defendant is enjoined from interfering with Plaintiff's rights to enter the Property to conduct the Preliminary Surveys, Plaintiff will be unable to build its Pipeline. Plaintiff's damages cannot be accurately measured as it would be impossible to measure the impact to Plaintiff resulting from Defendant's interference with Plaintiff's rights and the resulting failure to build the Pipeline. Plaintiff has no adequate remedy other than to secure an immediate injunction to obtain the information that the survey, environmental assessments, and survey-related activities would provide. For these reasons, Plaintiff will be irreparably harmed if Defendant continues to interfere with its right to enter the Property to survey, conduct environmental assessments, and survey-related activities for the pipeline route.

6.17. Further, due to the continuing nature of the irreparable harm described above, including the need to complete the Preliminary Surveys immediately, there is no time to serve Defendant and conduct a hearing on Plaintiff's Application for Temporary Restraining Order.

Therefore, Plaintiff hereby requests that an ex parte hearing on Plaintiff's Application for Temporary Restraining Order be set immediately, or as soon as possible thereafter.

6.18. Plaintiff is willing to post a bond to be approved by the Court.

6.19. All conditions precedent have been performed and/or have occurred.

6.20. In support of this Plaintiff's Verified Original Petition and Application for Temporary Restraining Order and Injunctive Relief, Plaintiff attaches hereto as Exhibit "C" the Affidavit of Glenn Kellison, representing Plaintiff, supporting the facts asserted herein and demonstrating the necessity of injunctive relief against Defendant.

6.21. Accordingly, Plaintiff requests that Defendant, their agents, servants, and employees, and all those acting in concert with them, be temporarily restrained immediately, without hearing, and after notice and hearing, that Defendant be temporarily enjoined, pending further Order of this Court, from (a) directly or indirectly preventing and/or prohibiting Plaintiff from entering the Property to conduct the Preliminary Surveys to determine the location of Plaintiff's proposed Pipeline; identify and locate any improvements, structures, and terrain features; conduct a visual inspection of wildlife, waters of the United States, and vegetation sites; and (b) removing or in any way tampering with the stakes and markers placed on the Property by Plaintiff.

VII.

DECLARATORY JUDGMENT

7.1. The foregoing paragraphs are hereby incorporated by reference, as if set forth fully herein.

7.2. Plaintiff is entitled to exercise the authority granted it by law to enter the Property to conduct the Preliminary Surveys needed to determine the feasibility and location of improvements associated with its planned Pipeline project. *See* Tex. Util. Code Ann. § 181.004;

Lewis, 276 S.W.2d at 954 (holding that the term “enter on” as used in section 181.004 of the Texas Utilities Code recognized the necessity of preliminary surveys and was intended to grant authority to conduct the same); *I.P. Farms*, 646 S.W.2d at 545 (ancillary to eminent domain power is the authority to enter upon the land to make a preliminary survey).

7.3. This clear authority, as provided by Texas law, is being challenged and obstructed by Defendant. Plaintiff is, therefore, entitled to have this Court determine the construction of those statutes and obtain a declaration of Plaintiff’s rights and status and the parties’ legal relations under the Uniform Declaratory Judgments Act, Chapter 37, Texas Civil Practice and Remedies Code.

7.4. Accordingly, Plaintiff requests that the Court declare that Plaintiff is authorized to exercise the rights granted it under applicable law to enter the Property for the purpose of conducting surveys, environmental assessments, including archeological and cultural reviews, and survey-related activities in order to determine the feasibility of and possible location of the Pipeline across the Property.

7.5. All conditions precedent have been performed and/or have occurred.

VIII.

PRAAYER FOR RELIEF

For these reasons, Plaintiff requests that:

- a. A Temporary Restraining Order be issued without notice to Defendant, restraining Defendant, their agents, servants, and/or employees, and all those acting in concert with them from directly or indirectly (a) denying and prohibiting Plaintiff, its agents, employees, contractors and representatives, from entering the Property to conduct the Preliminary Surveys, and (b) removing or in any way tampering with the stakes and markers placed on said Property by Plaintiff until further Order of this Court.
- b. The Court set Plaintiff’s Application for Temporary Injunction for hearing before an answer is due in this cause, Defendant be cited to appear for a hearing on Plaintiff’s Application for Temporary Injunction, and, upon hearing, that a temporary injunction be issued, if necessary, after notice to the Defendant and an evidentiary hearing, restraining Defendant, their agents, servants, and/or employees, and all those acting in concert with them from directly or indirectly (a)

denying and prohibiting Plaintiff, its agents, employees, contractors and representatives, from entering the Property to conduct the Preliminary Surveys, and (b) removing or in any way tampering with the stakes and markers placed on said Property by Plaintiff until further Order of this Court.

- c. On final trial, a permanent injunction be issued on final trial of this case, restraining Defendant, their agents, servants, and/or employees, and all those acting in concert with them from directly or indirectly (a) denying and prohibiting Plaintiff, its agents, employees, contractors and representatives, from entering the Property to conduct the Preliminary Surveys, and (b) removing or in any way tampering with the stakes and markers placed on said Property by Plaintiff.
- d. The Court enter a declaratory judgment against Defendant that Plaintiff is entitled to access the Property without interference by Defendant in order to conduct the Preliminary Surveys on the Property in connection with Plaintiff's proposed location and construction of the Pipeline.
- e. Plaintiff have and recover all Court costs.
- f. The Court award Plaintiff all post-judgment interest as provided by law.
- g. Plaintiff have and recover such other and further relief, at law or in equity, to which it is entitled.

Respectfully submitted,

Ross Molina Oliveros, P.C.

/s/ Ramon A. Molina

A.A. Jack Ross, IV, Attorney-In-Charge

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San Antonio, Texas 78231

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**ATTORNEYS FOR PLAINTIFF,
MATTERHORN EXPRESS PIPELINE,
LLC**



EXHIBIT "A"

RAILROAD COMMISSION OF TEXAS

OVERSIGHT AND SAFETY DIVISION - PIPELINE SAFETY

PIPELINE PERMITTING AND MAPPING SECTION

PERMIT TO OPERATE A PIPELINE IN TEXAS

03/28/2022

Permit Number: 10355

Commodity transported: Gas

Classification: Gas Utility

Payment Trace Number: 455RM007CNA2ZFB

WWM OPERATING, LLC

Attn: Caleb Ryan

100 Congress Ave.

Ste 2200

Austin, TX 78701

This is to certify that WWM OPERATING, LLC has complied with Railroad Commission rule 16 Tex. Admin. Code §3.70 governing pipelines in accordance with Texas Natural Resources Code, §81.051, and is granted this permit by the Commission to operate the following pipeline or pipelines located in the following county or counties:

AUSTIN, BURNET, CONCHO, FORT BEND, IRION, LAMPASAS, LEE, MCCULLOCH, REAGAN, SAN SABA, TOM GREEN, UPTON, WALLER, WASHINGTON, WILLIAMSON

Amendment Code	System Type	Texas Regulated	Miles
NP	T	Y	410.79

Total Permitted Miles: 410.79

Regulated Miles: 410.79

Unregulated Miles: 0.00

Pipeline Operator:
WWM OPERATING, LLC

Economic Operator:
MATTERHORN EXPRESS
PIPELINE LLC

Pipeline Owner:
Matterhorn Express Pipeline LLC

This permit is valid until 07/31/2023

If additional information is needed, please contact the Pipeline Permitting Section by phone at 512-463-7058, or by email at pops@rrc.texas.gov.

EXHIBIT "B"

0577

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: Effective as of the date acknowledged.

Grantor: Ranelle Krejci and Raymond D. Krejci, a married couple

Grantor's Mailing Address:

Ranelle Krejci and Raymond D. Krejci
P.O. Box 1311
Richmond, Texas 77406-1311

Grantee: Randall J. Combs a/k/a Randall James Combs and wife, Patricia W. Combs
a/k/a Patricia Webb Combs

Grantee's Mailing Address:

Randall J. Combs and wife, Patricia W. Combs
159 Comanche Trail,
Elgin, Texas 78621-5747

Consideration:

One Hundred Fifty-Nine Thousand Six Hundred Twenty Dollars (\$159,620.00) in cash and a note executed by Grantee and payable to the order of Capital Farm Credit, FLCA in the principal amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00). The note is secured by a first and superior vendor's lien and superior title retained in this deed in favor of Capital Farm Credit, FLCA and by a first-lien deed of trust from Grantee to Ben R. Novosad, Trustee.

Property (including any improvements):

Being the same property described in Deed Dated April 13, 2015, executed by Lisa R. Mann, Independent Executrix of the Estate of Rachel O. Kliem, Deceased to Ranelle Krejci, recorded in Volume 1502, Page 374, Official Records of Washington County, Texas and being more fully described by metes and bounds in the attached Exhibit A which is incorporated by reference.

Reservations from Conveyance:

WA-17-346

There is reserved unto Grantor, and Grantor's heirs, successors, or assigns forever, all of Grantor's undivided interest in the oil, gas and other minerals in and under and that may be produced from the lands herein described. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits therefrom.

Exceptions to Conveyance and Warranty:

Liens described as part of the Consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Property; and taxes for 2018, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

The vendor's lien against and superior title to the Property are retained until each note described is fully paid according to its terms, at which time this deed will become absolute.

GRANTEE IS TAKING THE PROPERTY IN AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE CONSIDERATION WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT FOR THOSE CONTAINED IN THE PURCHASE CONTRACT, THIS DEED, AND THE OTHER CLOSING DOCUMENTS. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S INSPECTION AND THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THE PURCHASE CONTRACT, THIS DEED, AND THE OTHER CLOSING DOCUMENTS.

Capital Farm Credit, FLCA, at Grantee's request, has paid in cash to Grantor that portion of the purchase price of the Property that is evidenced by the note. The first and superior vendor's lien against and superior title to the Property are retained for the benefit of Capital Farm Credit, FLCA and are transferred to Capital Farm Credit, FLCA without recourse against Grantor.

When the context requires, singular nouns and pronouns include the plural.

This instrument was prepared based on information furnished by the parties, and no independent title search has been made.

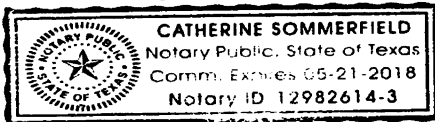
Ranelle Krejci
Ranelle Krejci

Raymond D. Krejci
Raymond D. Krejci

STATE OF TEXAS)

COUNTY OF WASHINGTON)

This instrument was acknowledged before me on January 30, 2018, by Ranelle Krejci.

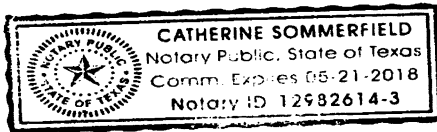


Catherine Sommerfield
Notary Public, State of Texas
My commission expires: May 21, 2018

STATE OF TEXAS)

COUNTY OF WASHINGTON)

This instrument was acknowledged before me on January 30, 2018, by Raymond D. Krejci.



Catherine Sommerfield
Notary Public, State of Texas
My commission expires: May 21, 2018

PREPARED IN THE OFFICE OF:

Kasey A. Doggett
201 South Eleventh Street
Richmond, Texas 77469
Tel: (281) 342-3321
Fax: (281) 341-8458
kasey@doggett-law.com
Attorney for Ranelle Krejci

AFTER RECORDING RETURN TO:

Randall and Patricia Combs
159 Comanche Trail,
Elgin, Texas 78621-5747



O'Malley Strand Associates, Inc.

2015 Shuman Drive, Suite 200
 Houston, Texas 77057
 Phone: 281.466.7000
 Fax: 281.466.7000

EXHIBIT "A"

STATE OF TEXAS)
 COUNTY OF WASHINGTON)

ALL THAT CERTAIN 31.819 acre tract or parcel of land lying and being situated in the William Speak Survey, Abstract 181, Washington County, Texas, being all of that certain parcel said to contain 31.76 acres conveyed to Ranelle Krejci by deed recorded in Volume 1502, Page 374, et seq., of the Official Records of Washington County (O.R.W.C.). Said 31.819 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 3/8 inch iron rod found for the southwest corner of a tract said to contain 19.141 acres conveyed to Brad Prickett, et al by deed recorded in Volume 1131, Page 220, et seq. O.R.W.C., the northwest corner of a tract said to contain 95.433 acres conveyed to David G. Feigleson, et ux by deed recorded in Volume 1096, Page 652, et seq. O.R.W.C., the northeast corner of a tract said to contain 25.000 acres conveyed to David G. Feigleson, et ux by deed recorded in Volume 1137, Page 54, et seq. O.R.W.C., the south corner of a tract said to contain 29.998 acres conveyed to Randall J. Combs, et ux by deed recorded in Volume 1535, Page 219, et seq. O.R.W.C. and the southeast corner of the herein described tract;

THENCE with the north line of said called 25.000 acre Feigleson tract and the south line of the herein described tract, North 86°50'45" West, at 815.85 feet pass the northwest corner of said called 25.000 acre Feigleson tract, from which a 1/2 inch iron rod found with a cap marked "RPLS 1815" bears North 56°55' West, a distance of 0.60' feet, continuing with the south line of the herein described tract and the north line of the residue of a tract said to contain 50.184 acres conveyed to Melody O. Pigg by deed recorded in Volume 1337, Page 119, et seq. O.R.W.C. for a total distance of 2218.87 feet to a 1/2 inch iron rod found in the northeast margin of Bascome Lane for the northwest corner of said Pigg tract and the southwest corner of the herein described tract;

THENCE with the northeast margin of Bascome Lane, North 30°19'48" West, a distance of 690.81 feet to a 1/2 inch iron rod found for an angle point in said road margin;

THENCE with the east margin of Bascome Lane, North 07°06'34" East, a distance of 43.93 feet to a 1/2 inch iron rod found for the southwest corner of a tract said to contain 30.00 acres conveyed to Stephen Wade Schultz by deed recorded in Volume 1502, Page 370, et seq. O.R.W.C.;

THENCE with the southeast line of said Schultz tract and the northwest line of the herein described tract, North 74°44'31" East, a distance of 420.78 feet to a 1/2 inch iron rod found for a reentrant corner of said Schultz tract and an exterior corner of the herein described tract;

THENCE with the common line between said Schultz tract and the herein described tract, South 02°09'00" West, a distance of 165.63 feet to a 1/2 inch iron rod found for an exterior corner of said Schultz tract and a reentrant corner of the herein described tract;

THENCE with the south line of said Schultz tract and the north line of the herein described tract, South 86°47'58" East, a distance of 731.22 feet to a 3/4 inch iron pipe found for the southeast corner of said Schultz tract and a reentrant corner of the herein described tract;

THENCE with the east line of said Schultz tract and a west line of the herein described tract, North 03°35'12" East, a distance of 74.77 feet to a 3/4 inch iron pipe found for the southwest corner of said Combs tract and an exterior corner of the herein described tract;

THENCE with the south line of said Combs tract and the upper north line of the herein described tract, South 86°47'54" East, a distance of 922.62 feet to a 1/2 inch iron rod found for a reentrant corner of said Combs tract and the northeast corner of the herein described tract;

EXHIBIT "A"

THENCE with the southwest line of said Combs tract and the northeast line of the herein described tract, South 36°07'40" East, a distance of 853.56 feet to the Place of Beginning and containing 31.819 acres of land.

Notes:

1. Bearings are based on the Texas State Plane Coordinate System, Central Zone, NAD83 as determined from GPS observations.
2. This survey is valid only if it bears the seal and original signature of the surveyor.
3. This description is accompanied by a plat of even date herewith.

January 10, 2018.

Robert C. Schmidt

Robert C. Schmidt, TX RPLS No. 4705



STATE OF TEXAS
COUNTY OF WASHINGTON

I hereby certify that this instrument was FILED on the date and at the time affixed hereon by me and was duly RECORDED in the volume and page of the OFFICIAL RECORDS of Washington County, Texas, as stamped hereon by me on



FEB - 1 2018
Beth A. Rothermel
Beth Rothermel, County Clerk
Washington County, Texas

FILED FOR RECORD
WASHINGTON COUNTY TEXAS
2018 JAN 31 P 12:37
Beth A. Rothermel
WASHINGTON COUNTY CLERK

Page 2 of 2

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AFFIDAVIT OF GLENN KELLISON

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary, on this day personally appeared Glenn Kellison, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

1. My name is Glenn Kellison. I am over the age of eighteen (18) years, am of sound mind and am fully competent to make this affidavit. I have personal knowledge of all facts herein stated and said facts are true and correct.
2. As Senior Vice President of Engineering, I am a duly authorized representative of Matterhorn Express Pipeline LLC ("Matterhorn") with responsibilities relating to Matterhorn's new pipeline project (the "Pipeline").
3. Matterhorn plans to construct, install, and own the Pipeline as a gas utility pipeline traversing Austin, Burnet, Concho, Fort Bend, Glasscock, Irion, Lampasas, Lee, McCulloch, Midland, Reagan, San Saba, Tom Green, Waller, Washington, Wharton, and Williamson Counties, Texas.
4. Matterhorn needs immediate access of the lands across which the Pipeline is planned to be routed for the purpose of making surveys including: the placement of stakes, line of sight clearing, geotechnical soil borings, environmental/archaeological and appraisal studies related to the routing of the Pipeline.
5. If Matterhorn does not have immediate access to the lands where the Pipeline is planned to be routed, Matterhorn will not be able to survey the lands, secure necessary permits, establish a final route for the Pipeline, and obtain a legal description and plat for the acquisition of the easement rights.
6. An accurate legal description and plat are necessary for several reasons including: that during Matterhorn's negotiations with landowners for easement rights, they provide accurate descriptions of easement boundaries; they are to be attached as an exhibit to any documents recorded in the real property records; they allow Matterhorn to obtain an appraisal report to determine the value of the landowner's property and of the easements Matterhorn seeks; and if in the event negotiations fail with one or more landowner, an accurate legal description and plat are necessary for Matterhorn to send offer letters to the landowner(s) and to allow Matterhorn to institute an eminent domain proceeding, if necessary.
7. The inability to survey prevents the foregoing, all of which will substantially delay the construction and operation of the Pipeline, causing Matterhorn to suffer financial losses from anticipated pipeline transport fees, increased project expenses, increased cost of capital, and other financial losses that are not readily ascertainable with any degree of

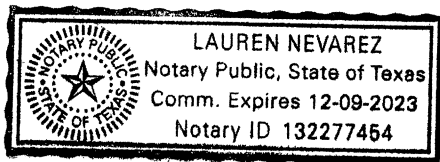
EXHIBIT "C"

reasonable certainty, as well as adversely impacting the receipt of needed volumes of substances to be transported in the Pipeline and Matterhorn's relationships with existing and future customers.

8. Further Affiant sayeth naught.

Glenn Kellison

SUBSCRIBED AND SWORN before me by Glenn Kellison on this 29th
day of March 2022.



By: [Signature]
Notary Public in and for the
State of Texas

VERIFICATION

STATE OF TEXAS

§
§
§

COUNTY OF Ector

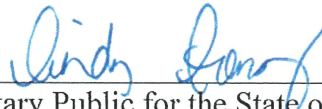
Before me, a notary public, on this day personally appeared Cheyne Winslow, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared upon his oath as follows:

"My name is Cheyne Winslow. I am a Right-of-Way agent representing Matterhorn Express Pipeline, LLC. I have read the foregoing Plaintiff's Verified Original Petition and Application for Temporary Restraining Order and Injunctive Relief (the "Petition"). I verify that each and every factual statement contained in paragraphs 5.1 through 5.10, and 6.11 through 6.14 of the Petition is either within my personal knowledge or is based upon information obtained from other persons and/or a review of information available to me and others at Matterhorn Express Pipeline, LLC. Based upon the foregoing, I verify that each and every factual statement contained in the paragraphs referenced immediately above are true and correct."



Right-of-Way Agent
Matterhorn Express Pipeline, LLC

Sworn to and subscribed before me on this 18th day of April, 2022, to certify which, witness my hand and seal of office.



Notary Public for the State of Texas

My Commission Expires: 08/23/2023

