



Control Number: 42850



Item Number: 21

Addendum StartPage: 0

PUC Docket No. 42850
SOAH Docket No. 473-15-0072

*In re: Petition of Gonzales County Water
Supply Corporation (WSC), Certificate of
Convenience and Necessity (CCN) No.
10704, Requesting a Cease and Desist
Order Against CCN No. 11210 held by the
City of Gonzales in Gonzales, Caldwell and
DeWitt counties; Application No. 37767-D* §
§
§
§
§
§

2015 JAN 23 AM 9:23
Before the
State Office of Administrative Hearings /
Public Utility Commission

MOTION TO DISMISS PETITION FOR CEASE AND DESIST ORDER

To the Honorable Administrative Law Judge, Presiding:

Comes now, Petitioner, Gonzales County Water Supply Corporation ("GCWSC") to advise the Court that the Parties have reached an agreement effective October 24, 2014, and pursuant thereto approved the Release of Claims and Wholesale Water Purchase Agreement to which the Parties contractually agreed and is integral to their settlement. Therefore, GCWSC requests that this matter be dismissed from the State Office of Administrative Hearings' (SOAH) docket and remanded to the Public Utility Commission pursuant to SOAH Order No 3 dated November 19, 2014.

Respectfully submitted,

LAW OFFICES OF LOUIS T. ROSENBERG, P.C.

De Mazieres Building
322 Martinez Street
San Antonio, Texas 78205
Telephone: 210-225-5454
Facsimile: 210-225-5450
Email: firm@ltrlaw.com

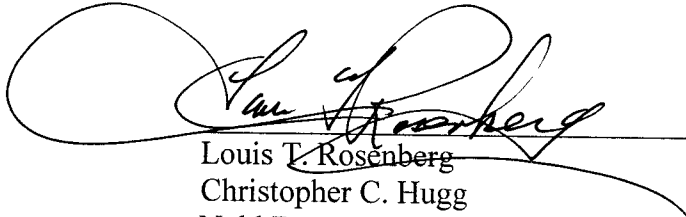
By: 

Louis T. Rosenberg
Texas State Bar No. 17271300
Christopher C. Hugg
Texas State Bar No. 24074450
Nohl Bryant
Texas Bar No. 24050346

- Attachments:**
- Exhibit 1 – October 24, 2014 Settlement Agreement between the Gonzales County Water Supply Corporation and the City of Gonzales, Texas; and**
- Exhibit 2 - Wholesale Water Purchase Contract between Gonzales County Water Supply Corporation and the City of Gonzales, Texas, effective December 3, 2014.**

CERTIFICATE OF SERVICE

I certify that on 22/Jan/2015, 2015, a true and correct copy of the foregoing instrument has been sent to the parties listed below and/or their authorized representative in the manner described adjacent to their respective names, all in accordance with Rule 155.103(b) of the SOAH Rules of Procedure.


Louis T. Rosenberg
Christopher C. Hugg
Nohl Bryant

Jason Haas, Esq.
Public Utility Commission
1701 Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326

(Via Email Only at Jason.haas@puc.texas.gov)

Jackie Williamson, Esq.
508 St. Louis, Suite 205
P.O. Drawer P
Gonzales, Texas 78629
Tel: (830) 672-2411
Fax: (830) 672-2477
Email: jlynn572003@yahoo.com

(Via Email Only)

Exhibit 1

RUC Docket No 42850

NO SOAH Docket 473-15-0072

GONZALES COUNTY WATER
SUPPLY CORPORATION, ET AL

VS.

CITY OF GONZALES, TEXAS, ET AL

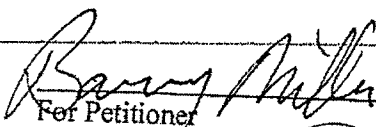
§
§
§
§
§
§

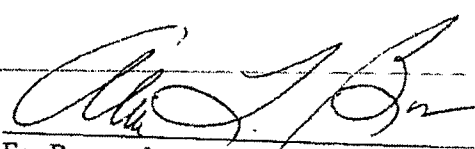
Public Utility Commission
of TEXAS

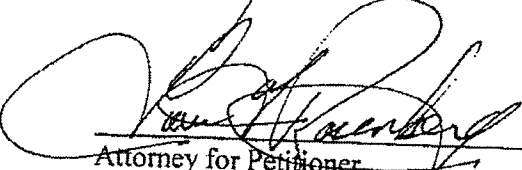
SETTLEMENT AGREEMENT

1. As per Exhibit "A-1", "A-2", "B-1" and "B-2". Each party to pay their own attorney's fees and court cost.
2. Claims released: Any and all claims and counter-claims.
3. Parties release: Petitioner and Respondent and their respective affiliates and successors.
4. Parties granting release: Petitioner and Respondent and their respective affiliates and successors.
5. All closing papers shall be delivered by Petitioner within 14 days of the date of final approval by those referenced in Exhibit "A-2".
6. This agreement shall be enforceable as Rule 11 Agreement.
7. This agreement shall be binding on all parties and enforceable pursuant to the ADR Provisions of the Texas Civil Practice and Remedies Code.

SIGNED and AGREED to 24th day of October, 2014.


For Petitioner


For Respondent


Attorney for Petitioner

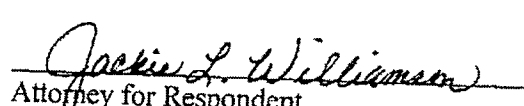

Attorney for Respondent

EXHIBIT "A-1"

MEMORANDUM OF TERMS

Factors / Issues for Wholesale Water Contract:

1. Volume

Monthly 1,000,000 (One Million Gallons/Month)

not to exceed more than 50,000 gallons/day [Daily Limit]

2. Volume Payment Required:

- a. Take or Pay on 500,000 gallons per month (the guaranteed amount of revenue base).
- b. Not an amount above 500,000 (no guaranteed amount of use or payment)

3. Price:

- a. Maximum Rate of \$2.20 per 1,000 gallons on 1,000,000 gallons/month (see last Tier of current Tariff, attached).
- b. Highest Industrial Published Rates, effective from November 1, 2011, per In-City Industrial Tier at 1,000,000 or more LESS \$0.30 effective for one year; thereafter the effective rate shall be the lowest price per 1,000 gallon units within the In-City Industrial Rate Class in effect at that time.

4. Point of Delivery:

- a. U.S. 97 - 6" existing City meter
- b. U.S. 183 - 4" (Northern crest for deliveries)
with existing City meter
- c. U.S. 90A East [Emergency Only]

5. Term of Contract:

- a. Initial 7 year contract term which shall be renewed automatically for 3 additional 7 year terms unless notice of termination is provided 6 months prior to the end of any termination. Said notice shall be by courier, fax or electronic notice.
- b. Pay on or before 10th business day of each month following receipt of invoice.

EXHIBIT "A-2"

6. **City Meter Calibration:** Annual calibration may be requested by either party.
7. Attorney Rosenberg to prepare Public Utility Commission Agreement/filings, CCN Transfer, and papers necessary for final disposition including Water Purchase Agreement.

This Mediation Settlement Agreement pursuant to PUC Docket No. 42850/SOAH Docket No. 473-15-0072 is subject to approval of the Gonzales County WSC Board of Directors and the City of Gonzales City Council, along with the Water Purchase Agreement, which Agreement forms the consideration for GCWSC's transfer of the disputed 138.62 acres to the City of Gonzales.

The Parties acknowledge that approval by the PUC is required for the Agreed CCN transfer of the disputed 138.62 acres, J.B. Wells Park, City of Gonzales, from the Gonzales County Water Supply Corporation to the City of Gonzales, Texas, per the Parties' Mediated Settlement.

Attachment: **Marked** copy of the City of Gonzales' Ordinance No. 2011-24
[Bates-marked pages 0000177-0000179] for top tier volumetric
reference.

Exhibit B-1

ORDINANCE NO. 2011-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS, AMENDING SECTION 13.301 AND 13.302 OF THE CITY OF GONZALES CODE OF ORDINANCES, ADOPTING RATES AND CHARGES FOR WATER FURNISHED TO THE ULTIMATE CONSUMER OF THE WATERWORKS SYSTEM OF THE CITY OF GONZALES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS, THAT ALL ORDINANCES AND AMENDMENTS THERETO, ESTABLISHING WATER RATES BE AND THE SAME ARE HEREBY REPEALED AND REPLACED BY THIS ORDINANCE AS A SEPARATE ORDINANCE.

SECTION 1

WATER RATES

Industrial is defined as any account with a meter 2" or greater.

SECTION 2

BASE RATES

Meter	City Residential/Commercial/Industry Base Rates	
	City Base Rate	Rural Base Rate
¾	\$13.26	\$14.85
1	\$21.06	\$23.59
1.5	\$27.30	\$30.58
2	\$40.56	\$45.43
3	\$62.40	\$69.89
4	\$93.60	\$104.83
6	\$195.00	\$218.40

Usage Tier	Tier Rates Non-Industrial	
	City Rate	Rural Rate
1 to 5000	\$2.69	\$3.01
5001 to 10,000	\$3.00	\$3.36
10,001 to 25,000	\$3.31	\$3.71
25,001 to 50,000	\$3.63	\$4.07
Over 50,000	\$3.88	\$4.35

Usage Tier	Tier Rate Industrial	
	City Rate	Rural Rate
1 to 5000	\$2.69	\$3.01
5001 to 10,000	\$3.00	\$3.36
10,001 to 100,000	\$3.31	\$3.71

Exhibit B-2

100,001 to 1,000,000	\$2.69	\$3.01
Over 1,000,000	\$2.50	\$2.80

(Top Tier)

Bulk Water Rates

The rate for bulk water shall be \$12.00 per thousand gallons.

SECTION 3

The charges stipulated in this ordinance shall become effective on November 1, 2011.

SECTION 4

DELAYED PAYMENT/RECONNECT FEES WATER

Delayed payment or late payment will be ten percent (10%) of the bill if not paid on or before the 10th of the month in which bill is rendered.

Reconnect Fee: If service is discontinued because of non-payment, a \$50.00 per meter charge will be made for reconnection during regular working hours. For reconnection after regular working hours, the charge will be \$75.00.

In the event any part, provision or section of this ordinance shall for any reason be held to be unconstitutional or void, such invalidity shall not affect the remaining portions of this ordinance, but all parts of this ordinance not expressly held to be void shall be deemed to be valid and binding.

APPROVED AND ADOPTED, this _____ day of _____, 2011.

Bobby O'Neal, Mayor

ATTEST:

Candice L. Witzkoske, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Jackie L. Williamson, City Attorney

Exhibit 2

WHOLESALE WATER PURCHASE CONTRACT
BETWEEN
GONZALES COUNTY WATER SUPPLY CORPORATION
AND
CITY OF GONZALES, TEXAS

TABLE OF CONTENTS

I.	Recitals.....	3
II.	Contract Terms and Conditions	4
	2.01 Quality and Quantity of Water.....	4
	2.02 Point(s) of Delivery.....	5
	2.03 Water Delivery Pressure	5
	2.04 Sources of Water.....	5
	2.05 Purpose of Use	5
	2.06 Metering Obligations by the City	6
	2.07 Billing Procedure	6
	2.08 Rates and Payment.....	7
	2.09 Term of Contract.....	7
	2.10 Failure to Deliver and Default Remedies.....	7
III.	Additional General Provisions.....	8
	3.01 Ordinary Meaning of Words.....	8
	3.02 Preliminary Approval of Terms and Conditions.....	8
	3.03 Entire Agreement	8
	3.04 Modification of Contract.....	9
	3.05 Regulatory Agencies.....	9
	3.06 Applicable Law	9
	3.07 Venue	9
	3.08 Attorney's Fees	9
	3.09 Third Party Beneficiaries	9
	3.10 Remedies.....	10
	3.11 Notices	10
	3.12 Duty of Timely Notice	10
	3.13 Assignment	10
	3.14 Severability	11
	3.15 Mutual Indemnification	11
IV.	Multiple Originals and Exhibit A	12
	4.01 Executed in Multiple Originals.....	12
	4.02 Approval by GCWSC	12
	4.04 Approval by City of Gonzales	12
	Gonzales County Water Supply Corporation Signature	12
	City of Gonzales Signature	13
	Acknowledgments.....	13

**WHOLESALE WATER PURCHASE CONTRACT
BETWEEN
GONZALES COUNTY WATER SUPPLY CORPORATION
AND
CITY OF GONZALES, TEXAS**

This new Wholesale Water Purchase Contract (the "Contract") is for the sale and purchase of water and is entered into as of the date reflected on the signature page, by and between **GONZALES COUNTY WATER SUPPLY CORPORATION**, hereinafter referred to as "*GCWSC and/or Purchaser*," and **CITY OF GONZALES, GONZALES COUNTY, TEXAS**, hereinafter referred to as "*City and/or Seller*," collectively herein referred to as "*Parties*."

**I.
RECITALS**

WHEREAS, *GCWSC* is a Texas Non-Profit Water Supply Corporation, operating as a member-owned, ad valorem tax-exempt, IRS Section 501(c)(3) designated entity, pursuant to the Texas Utility and Water Code with specific authority conferred by Chapter 67 of the Texas Water Code.

WHEREAS, *GCWSC* is a retail public utility within the meaning of the Texas Water Code, Section 13.002(19) as currently defined by law, and pursuant to its Certificate of Convenience and Necessity ("CCN") No. 10704 is certificated and thereby authorized to provide retail water services within its four (4) county service area (Gonzales, Caldwell, DeWitt, and Guadalupe Counties).

WHEREAS, *City* is a municipal corporation and home-rule municipality situated in Gonzales County, Texas, organized and operating under the Constitution and laws of the State of Texas, and, municipal Charter.

WHEREAS, both Parties are authorized and empowered by applicable law, including Chapter 791 Interlocal Cooperation Contracts of the Texas Governmental Code to enter into this Contract as a mutually beneficial and binding legal obligation of the Parties.

WHEREAS, both *GCWSC* and *City* entered into a Water Purchase Contract, which subsequently expired.

WHEREAS, pursuant to the September 24, 2014 Mediation Agreement, both *GCWSC* and *City* initiate this new 2014 Contract.

NOW THEREFORE, for and in consideration of the mutual promises of the parties and in reliance on the representations, covenants, and conditions contained in this Contract, and for other good and valuable consideration, the sufficiency of which is acknowledged, the *GCWSC* and the *City* agree as follows:

II. **CONTRACT TERMS AND CONDITIONS**

2.01 Quality and Quantity of Water. Seller *City* agrees to furnish Purchaser *GCWSC* at the point or points of delivery (as described below), during the term of the Contract or any renewal thereof, a supply of potable treated water meeting applicable standards for drinking water established under state and federal law, to include Texas regulatory provisions of the Texas Commission on Environmental Quality ("TCEQ"), as such standards may be modified from time to time, and in such quantity as is required by

Purchaser **GCWSC** as provided herein, subject to the minimum take or pay provisions of Section 2.08 of the Contract and not to exceed 1,000,0000 gallons per month and/or 50,000 gallons per day.

2.02 Point(s) of Delivery. All treated potable water supplied by the **City** under this Contract shall be delivered to **GCWSC** at the points of delivery/**City** meters currently existing (the "Point or Points of Delivery"), as listed below:

- a. U.S. 97 – 6" existing City meter;
- b. U.S. 183 – 4" (Northern crest for deliveries) with existing City meter.
- c. U.S. 90A East [*For Emergency Use Only*]

City will further interconnect for delivery of treated potable water as may be subsequently agreed upon by the Parties from time to time.

2.03 Water Delivery Pressure. Seller **City** agrees that water will be furnished at each Point or Points of Delivery at a reasonably constant pressure at a minimum **35 PSI**.

2.04 Sources of Water. The water delivered by **City** to **GCWSC** at the Point or Points of Delivery shall be wholesale treated water meeting required standards sourced from one or more of the City's combination of sources currently available, or that may become available, to **City**, including, without limitation, surface water from GBRA and groundwater from the **City's** well facilities.

2.05 Purpose of Use. All treated wholesale water supplied by the **City** to **GCWSC** under this Contract may be used for any lawful purpose, subject to constraints of water conservation imposed by the Texas Water Development Board ("TWDB"), the TCEQ or the Gonzales County Underground Water Conservation District ("GCUWCD") or other lawful authority.

2.06 Metering Obligations by the *City*.

- a. Seller *City* agrees to furnish, install, operate, and maintain at its own expense at Point or Points of Delivery, the necessary metering equipment, including a metering house or pit, and required devices of standard type for properly measuring the quantity of water delivered to Purchaser *GCWSC*. Either party may request an annual calibration of such metering equipment. Expenss for such calibration shall be borne by the requestor.
- b. A meter reading shall be within two percent (2%) of accuracy for the purpose of this Contract. The previous readings of any meter disclosed by test to be inaccurate shall be corrected within thirty (30) days. The Parties shall make appropriate billing adjustments for any irregularities existent following previous meter testing. The metering equipment shall be read on the *1st day of the month*.
- c. A designated representative of Purchaser *GCWSC* at all reasonable times shall have access to the meter for the purpose of verifying its readings. All readings of meters will be entered upon proper books of record maintained by the Seller *City*. Purchaser *GCWSC* shall have access to said record relating to *GCWSC* only upon reasonable written request.

2.07 Billing Procedure. Seller *City* agrees to furnish to Purchaser *GCWSC* at the address listed in Section 3.11 below, not later than the 10th day of each month, with an itemized statement of the amount of wholesale treated potable water furnished to Purchaser *GCWSC* at each Point or Points of Delivery during the preceding month. *GCWSC* agrees to pay the City the amount of such monthly invoices within ten (10) business days of receipt of each invoice.

2.08 Rates.

- a. The rate per 1,000 gallons for the first year of the initial term shall be calculated per Ordinance 2011-24 at the Tier Rate Industrial, City Rate, volumetric amounts applicable for amounts over 1,000,000 gallons classification minus \$0.30 per 1,000 gallon units.
- b. Minimum invoice: The first 500,000 gallons per month shall be invoiced by City to GCWSC on a take or pay basis at the rate described in Section 2.08(a) of the Agreement.
- c. For the remainder of the Contract term and any subsequent terms, the rate per 1,000 gallons shall be set at the lowest rate category found under Tier Rate Industrial, City rate minus \$0.30 per 1,000.

2.09 Term of Contract.

- a. This Contract shall extend from the date of the last signatory of this Contract for an initial term of seven (7) years.
- b. This Contract shall automatically renew for additional seven (7) year terms unless notice of termination is provided by either party not later than six (6) months prior to the end of any single term.
- c. The automatic renewal set forth in Section 2.09(b) shall be limited to three (3) such terms unless otherwise agreed to by both parties in writing.

2.10 Failure to Deliver and Default Remedies. Seller *City* agrees that it will, at all times, operate and maintain its water facility system in an efficient manner and will take such action as may be deemed necessary to furnish Purchaser *GCWSC* with the stated wholesale quantities of water required by Purchaser *GCWSC*. Temporary or partial failures by Seller *City* to deliver water shall be remedied with all possible dispatch. In the event either Party shall become aware of a line break, electrical failure, pump or other equipment failure, the other Party shall be immediately be notified by

telephone. Corrective steps shall be implemented immediately to remedy failure of delivery as required by this Contract to assure that Purchaser *GCWSC* may provide continuous and adequate service to its retail public customers. Interruption of wholesale service is provided by law to be a public calamity for which immediate and concerted efforts at repair are necessary to restore the public utility service, impaired or interrupted.

III. ADDITIONAL GENERAL PROVISIONS

3.01 Ordinary Meaning of Words. The Parties agree that words within this Contract shall have their ordinary meaning unless defined more specifically by regulation, statute, or industry usage in such terminology or by context within this Contract.

3.02 Preliminary Approval of Terms and Conditions. The Gonzales *City* Council approved the terms of the Mediated Settlement Agreement on November 3, 2014 and this document followed. The *GCWSC* Board of Directors approved the terms of the Mediated Settlement Agreement on November 18, 2014 and this document followed. This Contract follows those two approvals as the Parties' formal agreement.

3.03 Entire Agreement. This Contract constitutes the entire agreement between the Parties as stipulated herein and supersedes any prior oral/verbal discussions and is approved pursuant to the Mediation Agreement as provided therein as consideration for the *GCWSC's* relinquishment and release of its claim pursuant to §13.255, Texas Water Code respecting the J.B. Wells Park area.

3.04 Modification of Contract.

- a. Both Parties agree that the provisions of this Contract pertaining to the schedule of rates (see above) to be paid by Purchaser **GCWSC** for the delivery of treated potable water are subject to written modification in accordance with Section 2.08 of this Contract and formal City ordinance amending the In-City Industrial rate classifications set forth therein.
- b. Any other provisions of this Contract may only be modified or altered by a written Amendment duly authorized and signed by both Parties upon mutual agreement.

3.05 Regulatory Agencies. Both Parties agree that this Contract is subject to any and all rules, regulations, or laws as may be applicable to similar agreements in the State of Texas and, both Parties agree to collaborate in obtaining any required permits, certificates, or the like, as may be required to comply therewith.

3.06 Applicable Law. This Contract shall be construed and governed by the laws of the State of Texas.

3.07 Venue. In the event that any legal proceeding is brought to enforce this Contract or any provision thereof, the same may be brought in Gonzales County, Texas.

3.08 Attorney's Fees. Any prevailing Party requiring adjudication to secure relief under this Agreement or the Declaratory Judgment Act shall be entitled to attorney's fees in accord with existing Texas law.

3.09 Third Party Beneficiaries. This Contract is not intended to, and shall not create any rights in or confer any benefits upon any other person other than the parties hereto.

3.10 Remedies. Unless a particular remedy procedure is set forth herein for any default under the Contract, the Parties shall have available to them all remedies at law or in equity.

3.11 Notices. Any notice provided for herein to either *City* or *GCWSC* shall be by courier, email or facsimile addressed to that Party at the addresses set out below:

To GCWSC:

General Manager
Gonzales County Water Supply Corporation
P.O. Drawer 749
Gonzales, Texas 78629

Or at:

1903 Sarah DeWitt Drive
Gonzales, TX 78629
Fax: (830) 672-7959

To the City:

City Manager
City of Gonzales
City Hall
P.O. Drawer 567
Gonzales, Texas 78629
Or at:
820 St. Joseph
Gonzales, Texas 78629
Fax: (830) 672-2813

3.12 Duty of Timely Notice. Each Party shall have the duty to notify each other of any change of address or any event that affects delivery of potable water provided by the terms of this Contract.

3.13 Assignment. *City* and *GCWSC* shall not assign this Contract without the written approval of the other Party, which written approval shall not be unreasonably withheld.

3.14 Severability. The provisions of this Contract are severable. If any provision or part of this Contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of such provision or part of this Contract to other persons or circumstances shall not be affected thereby so long as the essential purpose of delivering wholesale volumes of treated potable water pursuant to the terms of this Contract are not foreclosed by such interpretation.

3.15 Mutual Indemnification. To the extent allowed by law, *City* and *GCWSC* each agree to defend, indemnify and hold harmless the other Party and their respective directors, officers, employees, agents and consultants against and from any and all claims, demands, causes of action, indemnifications, suits or litigation (including all costs, expenses, and attorneys' fees incurred with respect to any such matters) of every kind and character; brought or asserted for injuries or death of any person, or for damaged property, or for any other damage, fine or penalty whatsoever, arising out of, resulting from, or in connection with the actions of the respective Party in the fulfillment of their duties and obligations contained in this Contract. The Covenant to defend, indemnify and hold harmless contained in this Section, includes, without limitation, any injury, death, damage, fine or penalty, which in any part arises out of results from, or occurs in connection with the negligence or fault of the respective Party or their respective directors, officers, employees, agents or consultants.

IV.
MULTIPLE ORIGINALS

4.01 **EXECUTED IN MULTIPLE ORIGINALS** Numbered 1 through 3 and
EFFECTIVE THIS 3 day of December, 2014. Each numbered copy shall be
considered an original without the necessity of accounting for the other copies.

4.02 **APPROVAL BY GCWSC:** Upon motion by Wain Fairchild
Stewart Frazier, Jr.
seconded by _____, with agenda duly noticed, the **GCWSC** Board voted
7 in favor, 0 opposed, 0 abstaining, and 0 absent, the motion thereby
PASSED on this 18th day of November, 2014.

4.03 **APPROVAL BY THE CITY:** Upon motion by Councilman, Gary
Schroeder, seconded by Councilman, Tommy Schurig with agenda duly noticed, the **City**
Council unanimously voted in favor of the motion and the motion thereby PASSED on
this 3rd day of November, 2014.

**GONZALES COUNTY WATER
SUPPLY CORPORATION,
A Texas Non-Profit Water Supply Corporation**

By: Craig Hines
Craig Hines, its ~~President~~ Vice-President
Board of Directors

ATTEST:

George Bozka
George Bozka, Secretary
Board of Directors

CITY OF GONZALES, TEXAS

By: [Signature]
City Manager

ATTEST;

[Signature]
Kristina Vega, City Secretary

STATE OF TEXAS

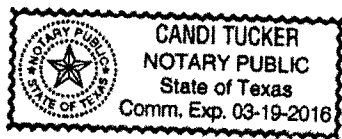
§

§

COUNTY OF GONZALES

§

This instrument was acknowledged before me on December 3, 2014, by
Craig Hines Vice-President of Gonzales County Water Supply Corporation,
on behalf of said Corporation.



[Signature]
Notary Public, State of Texas
My Commission Expires 3-19-16

STATE OF TEXAS

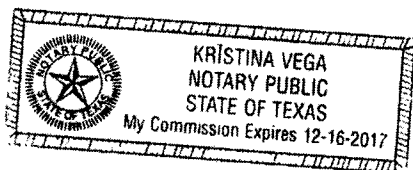
§

§

COUNTY OF GONZALES

§

This instrument was acknowledged before me on December 2, 2014, by
Allen L Barnes, Mayor of the City of Gonzales, Texas, on behalf of said City.
City Manager



[Signature]
Notary Public, State of Texas
My Commission Expires 12-16-2017