

Control Number: 43081



Item Number: 1

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TCEQ DOCKET NO. 43081

RECEIVED

SECOND PETITION OF TRAVIS COUNTY §  
MUNICIPAL UTILITY DISTRICT NO. 12 §  
APPEALING CHANGE OF WHOLESALE §  
WATER RATES IMPLEMENTED BY WEST §  
TRAVIS COUNTY PUBLIC UTILITY §  
AGENCY, CITY OF BEE CAVE, TEXAS §  
HAYS COUNTY, TEXAS AND WEST §  
TRAVIS COUNTY MUNICIPAL UTILITY §  
DISTRICT NO. 5 §

BEFORE THE 2014 SEP 10 PM 2:12

PUBLIC UTILITY COMMISSION  
FILING CLERK  
TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

**SECOND PETITION OF TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12  
APPEALING CHANGE OF WHOLESALE WATER RATES IMPLEMENTED BY WEST  
TRAVIS COUNTY PUBLIC UTILITY AGENCY, CITY OF BEE CAVE, TEXAS, HAYS  
COUNTY, TEXAS AND WEST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 5;  
REQUEST FOR INTERIM RATES; AND REQUEST FOR EXPEDITED CONSOLIDATION  
WITH TCEQ DOCKET NO. 2014-0439-UCR, SOAH DOCKET NO. 582-14-3382**

COMES NOW Travis County Municipal Utility District No. 12 ("TCMUD 12 or District"), Petitioner, on behalf of itself and Travis County Municipal Utility Districts Nos. 11 and 13 and files this Second Petition to Appeal the Change of Wholesale Water Rates Implemented by West Travis County Public Utility Agency ("PUA"), the City of Bee Cave, Texas ("Bee Cave" or "the City"), Hays County, Texas ("County") and West Travis County Municipal Utility District No. 5 ("MUD 5"), individually and as the Public Entities (or "PUA Participants") for whom the PUA serves as an agent, Request for Interim Rates, and Request for Expedited Consolidation with TCEQ Docket No. 2014-0439-UCR, SOAH Docket No. 582-14-3382 and in support thereof would show as follows:

**I.**  
**OVERVIEW**

On March 6, 2014, TCMUD 12 filed a Petition Appealing rates set by the PUA, as the agent for the PUA Participants, effective January 1, 2014.<sup>1</sup> That Appeal was assigned TCEQ Docket No. 2014-0439-UCR and referred to SOAH, which assigned it Docket No. 582-14-3382. On June 11, 2014, a preliminary hearing was held in that rate appeal, and jurisdiction was established under Texas Water Code § 13.043(f). On May 28, 2014, TCMUD 12 received the attached "West Travis County Public Utility Agency - Public Notice to All Retail and Wholesale Customers - Drought Surcharge

<sup>1</sup> Hereinafter "First Petition."

Implemented Effective July 2014”.<sup>2</sup> TCMUD 12’s Second Petition appeals the rate change represented by the Drought Surcharge and pleads in the alternative as follows: TCMUD 12 requests that this Second Petition concerning the Drought Surcharge be transferred to SOAH for a hearing on the rate because it is not a rate charged pursuant to a contract. In the alternative, if the PUA alleges a specific contractual provision under which it claims the Drought Surcharge arises, then TCMUD 12 will acquiesce in the Second Petition being heard during a Public Interest proceeding.

Whichever process the Second Petition is heard under, TCMUD 12 seeks an Interim Rate Order to (1) establish as interim rates those rates for the Monthly Minimum Charge and the Volumetric Rate at the levels set by the PUA in its December 17, 2013 “Notice of Adjustment of Wholesale Rates,” effective January 1, 2014, and (2) prohibit the PUA from charging TCMUD 12 the additional rate in the form of a “drought surcharge” during the pendency of this appeal. Specifically, the Petitioner requests that the Monthly Minimum Charge of \$8,140.89, and the Volumetric Rate of \$2.11 per 1,000 gallons be declared interim rates to remain in effect until a final decision is made on the requested rate appeals or until another interim rate is established.

TCMUD also requests *expedited consolidation* of this Appeal with TCMUD 12’s First Petition filed on March 6, 2014, appealing the rates set by the PUA and the PUA Participants, which has been assigned TCEQ Docket No. 2014-0439-UCR, SOAH Docket No. 582-14-3382. The parties in that docket are identical to the parties in this docket. The procedural schedule in TCEQ Docket No. 2014-0439-UCR, SOAH Docket No. 582-14-3382 has been established and requires the filing of TCMUD 12’s Direct Case on October 31, 2014, with a hearing scheduled for April 20 – 24, 2015. Prompt consolidation of this Second Petition with the First Petition would be administratively efficient, including allowing the existing procedural schedule to remain in effect.

In the following sections, the parties are identified, the jurisdictional basis, background and chronology of events leading up to this Appeal and statement of facts that support this Petition are explained, and the relief requested is identified.

## **II.**

### **IDENTIFICATION OF PARTIES**

TCMUD 12 is a conservation and reclamation district created and functioning under Article 16, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code. TCMUD 12 is a retail public utility under TEX. WATER CODE § 13.002(19). TCMUD 12 acts on behalf of TCMUD

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<sup>2</sup> Attachment A, hereinafter Drought Surcharge Notice.

Nos. 11 and 13 (collectively, TCMUD Nos. 11, 12 and 13 are the “three Districts”).

The City is a Type A general law municipality of the State, and one of the three PUA Participants that created the PUA.

County is a political subdivision of the State of Texas, and one of the three PUA Participants that created the PUA.

MUD 5 is a municipal utility district and political subdivision of the State, and one of the three PUA Participants that created the PUA.

On December 21, 2011, the City, County and MUD 5 (collectively, the “PUA Participants”) created the *West Travis County Public Utility Agency* (the “PUA”) by Concurrent Ordinance or Resolution pursuant to Chapter 572, Texas Local Government Code, as amended (the “PUA Act”). The PUA serves as the PUA Participants’ “constituted authority, instrumentality and agent to plan, finance, acquire, construct, own, operate, or maintain facilities necessary for the collection, transportation, treatment, and disposal of sewage and the conservation, storage, transportation, treatment, and distribution of water for the Participants.”<sup>3</sup> The PUA is a retail public utility under TEX. WATER CODE § 13.002(19) and holds CCN No. 13207 (the West Travis County System, transferred to the PUA from Lower Colorado River Authority (“LCRA”)).

At the time of its formation, the PUA Participants expected “to pursue legislative changes to the PUA Act for the purpose of enabling the PUA to serve end users directly, with the goal of creating a combined utility system owned and operated by the PUA and providing water supply and wastewater treatment services from the PUA directly to the current customers of the Participants.”<sup>4</sup> H.B. 890 (Workman) and its companion, S.B. 508 (Watson), introduced during the 83<sup>rd</sup> Regular Legislative Session (2013), would have amended the Special District Local Laws Code to convert the PUA into a conservation and reclamation district, change its name to the Hill Country Regional Water Authority and grant the resulting Water Authority the authority to, among other things, supply water for municipal and other uses, and extend service to new customers located inside or outside the Authority’s boundaries. This legislation, however, failed to pass.

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<sup>3</sup> First Petition, Attachment C, Acquisition, Water Supply, Wastewater Treatment and Conditional Purchase Agreement entered into by PUA, Bee Cave, Hays County and MUD 5. (Mar. 19, 2012) (“*Participant Agreement*”).

<sup>4</sup> First Petition, Attachment C, Participant Agreement, third Recital.

### **III.** **JURISDICTION**

TCMUD 12 brings this Second Petition pursuant to TEX. WATER CODE §§ 11.036, 11.041, 12.013 and 13.043(f) and TEX. LOCAL GOV'T CODE § 572.061(d).<sup>5</sup> The facts necessary for jurisdiction to attach under these provisions are satisfied by this Petition, including:

- TCMUD 12 is entitled to receive potable water from the West Travis County System pursuant to the Wholesale Water Services Agreement executed by LCRA and TCMUD 12, as described below.
- TCMUD 12 consented to the transfer of the operations of the West Travis County Water System from LCRA to the PUA, and to the delegation from LCRA to the PUA of the authority to collect the "Connection Fees" and to set and collect the monthly charge and volumetric charge in strict accordance with the terms and conditions of the Wholesale Water Services Agreement, as more fully explained in the First Petition.
- Effective with the bill issued July 1, 2014, the PUA has charged and demanded a Drought Surcharge from TCMUD 12 which is a rate that is not authorized by the Wholesale Water Services Agreement transferred to the PUA and is not reasonable and just or is unreasonably preferential, prejudicial, or discriminatory under TEX. WATER CODE §§11.036, 11.041, 12.013, and 13.042(j).
- Pursuant to TEX. LOCAL GOV'T CODE § 572.052(c)(2), a public utility agency is a "political subdivision of the state." Accordingly, the PUA is a retail public utility under TEX. WATER CODE §§ 13.002(19) and 13.042(f).
- TCMUD 12 is a retail public utility under TEX. WATER CODE §§ 13.002(19) and 13.042(f).
- TCMUD 12 receives wholesale water service from the PUA, and timely files this appeal of the PUA's decision affecting rates within 90 days after the date of notice<sup>6</sup> of that decision was received from the PUA, pursuant to TEX. WATER CODE §13.043(f).
- If the PUA does not identify any contractual provision which authorizes the PUA to demand from TCMUD 12 the Drought Surcharge, and assuming the requested Interim Rate Order is issued, then a hearing on the rate where the PUA will have the burden of proof, can await the outcome of the public interest hearing on TCMUD 12's First Petition.

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<sup>5</sup> Under the PUA Act, the state reserves its power to regulate and control the rates and charges by a public utility agency.

<sup>6</sup> See Attachment A.

- Alternatively, the evidence to be presented by TCMUD 12 if this Second Petition appealing the Drought Surcharge is heard under the Public Interest rule, will demonstrate the protested rate adversely affects the public interest based upon one or more of the public interest criteria listed in 30 TEX. ADMIN. CODE ("TAC") § 291.133.
- This Petition is accompanied by a deposit of \$25 as required by TEX. WATER CODE §11.041(b) and 30 TAC § 291.130(a) and a \$100 filing fee.
- This Petition is being served on the party(ies) against whom TCMUD 12 seeks relief and other appropriate parties as required by 30 TAC § 291.130(a).

#### IV.

#### **BACKGROUND AND CHRONOLOGY OF EVENTS**

##### **A. Incorporation by Reference of Chronology of Events**

TCMUD 12 hereby incorporates by reference the Background and Chronology of Events as set out in Section IV. of TCMUD 12's First Petition, TCEQ Docket No. 2014-0439-UCR, SOAH Docket No. 582-14-3382.

##### **B. Facts Related to Drought Surcharge**

On May 28, 2014, TCMUD 12 received from the PUA the attached "Notice" regarding the Stage 2 Drought Surcharge that was "effective July 2014." Although it could not be ascertained from the Notice if the drought surcharge was to be applied to consumption occurring on or after July 1, 2014 or to bills based on meter reads on and after July 1, 2014, TCMUD 12 has now received a bill from the PUA for water consumed by TCMUD 12 between May 13, 2014 and June 10, 2014, bearing the billing date of July 1, 2014, that includes a "drought surcharge." According to the Notice, the Drought Surcharge was to increase all retail and wholesale customer classes' gallonage [rates] by 20-percent. Based on the first invoice from the PUA that includes the Drought Surcharge, it appears that the PUA decision was implemented by charging TCMUD 12 a separate rate of \$0.23 per 1,000 gallons, in addition to the \$2.11 volumetric rate for the water consumption, resulting in a total rate of \$2.34 charged per 1,000 gallons. In the WTCPUA Drought Surcharge Notice, the PUA cites reduced consumption of water by its customers, and related loss of revenues, as the reason for imposing the Drought Surcharge.

**V.**  
**ARGUMENT**

TCMUD 12 files this Second Petition to appeal this additional rate change implemented by the PUA effective with the July 1, 2014 invoice, requests an Interim Rate Order be issued, and requests expedited consolidation of this Second Petition with TCMUD 12's First Petition, TCEQ Docket No. 2014-0439-UCR, SOAH Docket No. 582-14-3382.

**A. Drought Surcharge – Not Charged Pursuant to a Contract**

The imposition of the Drought Surcharge is an unauthorized charge under the Wholesale Water Services Agreement<sup>7</sup> and the Transfer Agreement<sup>8</sup> and TCMUD 12's appeal of this rate change should be heard as part of a cost of service rate case in which the PUA would carry the burden the proof. 30 TAC §§ 291.131(c), 291.135, and 291.136. In the alternative, evidence to be adduced if a public interest hearing is deemed necessary, will demonstrate that the drought surcharge is adverse to the public interest and represents a change in rate methodology which evidences an abuse of monopoly power.

Effective July 1, 2014, the PUA began charging and demanding a drought surcharge from TCMUD 12 that is not reasonable and just or is unreasonably preferential, prejudicial, or discriminatory under TEX. WATER CODE §§11.036, 11.041, 12.013, and 13.042(j). The PUA claimed that the Drought Surcharge is necessary due to a decline in water consumption by its customers and the corresponding decline in the PUA's revenues. In other words, the Drought Surcharge is being charged to increase revenues because of a decline in the PUA's sale of water. Since the PUA has argued that it does not sell water to TCMUD 12 under the Wholesale Water Services Agreement, it cannot now be heard to claim that the Drought Surcharge which is caused by decline in water sales is being charged to TCMUD 12 "pursuant to a contract." If however, the PUA presents a reasonable answer to this Second Petition, which makes even a colorable claim that the Drought Surcharge is charged pursuant to a contract, then TCMUD 12 will present evidence in a Public Interest hearing that will demonstrate the new Drought Surcharge adversely affects the public interest based upon one or more of the public interest criteria listed in 30 TAC § 291.133.

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<sup>7</sup> Attachment B, also TCMUD 12 Original Petition Attachment F. In addition, nothing in WTCPUA's Water Conservation & Drought Contingency Plan ("PUA's Drought Plan") gives WTCPUA authority to impose a drought surcharge on TCMUD 12.

<sup>8</sup> Attachment C, also TCMUD 12 Original Petition Attachment H.

## **B. Interim Rate Request**

In the WTCPUA Drought Surcharge Notice, the PUA cites reduced consumption of water by its customers, and related loss of revenues, as the reason for imposing the Drought Surcharge. In the PUA's Response to TCMUD 12's Original Petition, however, the PUA argued that it is not selling its water to TCMUD 12.<sup>9</sup> The PUA's assertion that it is not selling water to TCMUD 12 cannot be reconciled with the imposition of the Drought Surcharge, the justification for which is the failure to sell enough water.

TCMUD 12 had two contracts with LCRA related to water – the first, the Wholesale Water Services Agreement, was transferred to the PUA; the second, the Firm Water Contract was not transferred to the PUA, and remains in effect with LCRA. As described herein, the contractual relationship between the PUA and TCMUD 12 is governed by the Wholesale Water Services Agreement and the Agreement to Transfer that contract, which do not authorize the imposition of a Drought Surcharge. By contrast, TCMUD 12's Firm Water Contract with LCRA does authorize the imposition of various drought-related terms, including Drought Rates.

Under Section 3.03(f) of the Wholesale Water Services Agreement,<sup>10</sup> TCMUD 12 is subject to the LCRA Water Conservation and Drought Plan.<sup>11</sup> However, nowhere does the LCRA Drought Plan authorize the imposition of a drought surcharge to LCRA's wholesale customers served pursuant to Wholesale Water Utility Service Agreements, including TCMUD 12. In addition, assuming *arguendo* that WTCPUA's Water Conservation & Drought Contingency Plan ("PUA's Drought Plan")<sup>12</sup> is legally applicable to TCMUD 12, nothing therein gives WTCPUA authority to impose a drought surcharge on TCMUD 12. The PUA's Drought Plan, by its express terms, "applies only to treated water utility systems, both wholesale and retail, *owned and operated by WTCPUA*."<sup>13</sup> WTCPUA does not own or operate TCMUD 12's water utility system, and therefore the PUA's Drought Plan is not applicable to TCMUD 12. Although Section 5.4.6 of the PUA's Drought Plan references a Drought Surcharge as authorized in WTCPUA's Tariff, that Tariff also has limited applicability: it applies by

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<sup>9</sup> WTCPUA Response to TCMUD 12's First Petition, TCEQ Docket No. 2014-0439-UCR, SOAH Docket No. 582-14-3382 at 4.

<sup>10</sup> Attachment B. Subject to the Transfer Agreement, Attachment C.

<sup>11</sup> Attached here to as Attachment D.

<sup>12</sup> Attachment E.

<sup>13</sup> Attachment E at p. 2, § 1.3 Application.



its express terms only to “*retail* treated water and wastewater service within the WTCPUA service area.”<sup>14</sup> WTCPUA does not provide retail treated water service to TCMUD 12 and TCMUD 12 is not within WTCPUA’s retail service area,<sup>15</sup> and therefore TCMUD 12 is not subject to WTCPUA’s Tariff.

On the other hand, the LCRA, from whom TCMUD 12 purchases raw water pursuant to a Firm Water Contract (the “Raw Water Contract”),<sup>16</sup> does have authority to impose Drought Rates. Under Section IV.Q. of the LCRA Raw Water Contract, TCMUD 12 is subject to LCRA’s Water Contract Rules,<sup>17</sup> which includes as Appendix B, LCRA’s Drought Contingency Plan Rules for Water Sale Contracts. LCRA’s Firm Water Contract and the Rules incorporated therein, establish a pervasive agreement concerning raw water, including the quantity to be sold, and all the terms, specifically including the rates to be charged therefore, and drought contingencies. For example, the Rules provide for *pro rata* curtailment plans if LCRA declares a drought worse than the Drought of Record or other water emergency that drastically reduces the available firm supply. Under LCRA’s *pro rata* curtailment plan, TCMUD 12 could be subjected to rate surcharges of two-, four- or ten-times the base firm water rate if it exceeds its Annual Allotment,<sup>18</sup> and if TCMUD 12 is found to be noncompliant with LCRA’s Curtailment Plan, LCRA may increase rates and/or assess surcharges.<sup>19</sup> Under Section II.(B)(3) of the Firm Water Contract, LCRA’s Board of Directors may change the rates under the contract from time to time, as it did in implementing Drought Rates on June 18, 2014. The LCRA Board of Directors adopted 2015 Drought Rates for firm water customers,<sup>20</sup> which includes TCMUD 12, increasing the rates as follows:

<b>Category</b>	<b>Current Firm Rate</b>	<b>2015 Drought Rate</b>
Diversion Rate	\$151.00/acre-foot	\$175.00/acre-foot
Reservation Rate	\$ 75.50/acre-foot	\$87.50/acre-foot
Inverted Block Rate	\$ 302.00/acre-foot	\$350.00/acre-foot
Curtailment Surcharge	As specified by LCRA water contract rules	

<sup>14</sup> WTCPUA Schedule for Rates, Fees, Charges and Terms and Conditions of Retail Treated Water and Wastewater Services, as amended through 5-15-14, attached hereto as Attachment F.

<sup>15</sup> See, Attachment J, PUA CCN Map from TCEQ.

<sup>16</sup> Attachment G, also filed with TCMUD 12’s First Petition Attachment E thereto.

<sup>17</sup> Attachment H.

<sup>18</sup> Attachment H, at p. 29 (Art. 11.9(i)).

<sup>19</sup> Attachment H, at p. 30 (Art. 11.12).

TCMUD 12 is not protesting or appealing LCRA's Drought Rates.

In sum, WTCPUA's Drought Surcharge is purportedly justified by the decline in the sale of water to its customers, but that justification for surcharging TCMUD 12 for drought related water sale losses cannot be reconciled with WTCPUA's Response to TCMUD 12's First Petition, in which the PUA avers that it does not sell water to TCMUD 12. Nothing in TCMUD 12's contractual relationship with WTCPUA allows the PUA to impose a drought surcharge on TCMUD 12. However, under TCMUD 12's Raw Water Contract with LCRA, TCMUD 12 is subject to higher rates and/or surcharges from the LCRA attributable to certain drought conditions, which the LCRA Board has now voted to charge. Being charged the PUA's Drought Surcharge, in addition to LCRA's Drought Rates, results in an unreasonable economic hardship to TCMUD 12 and its customers, and evidences that the PUA Drought Surcharge is an unjust and unreasonable rate. Accordingly, TCMUD 12 requests that the presiding officer establish as interim rates to be charged to TCMUD 12, those rates for the Monthly Minimum Charge and the Volumetric Rate at the levels set by the PUA in its December 17, 2013 "Notice of Adjustment of Wholesale Rates," effective January 1, 2014, and that no additional rate, *i.e.*, the PUA Drought Surcharge, be charged to TCMUD 12 during the pendency of this rate appeal.

## **VI. RELIEF REQUESTED**

Pursuant to 30 TAC § 291.131, TCMUD 12 respectfully urges the Executive Director to determine within ten days of filing that this Petition meets the requirements of 30 TAC § 291.130 and forward the Petition to the State Office of Administrative Hearings ("SOAH") for consolidation of this Petition with TCMUD 12's Petition assigned TCEQ Docket No. 2014-0439-UCR, SOAH Docket No. 582-14-3382, and to conduct an evidentiary hearing on the rate, or in the alternative, on the public interest.

TCMUD 12 requests that the Executive Director forward this Petition to SOAH to conduct an evidentiary hearing on the rate pursuant to 30 TAC § 291.131(c), and that SOAH establish a procedure leading to a hearing on the rate if the PUA does not dispute that the Drought Surcharge it is charging TCMUD 12 is not charged pursuant to the Wholesale Water Services Agreement. In the alternative, if the PUA makes a *prima facie* case that the Drought Surcharge is charged pursuant to a contract, then TCMUD 12 requests this Second Petition be heard on the Public Interest.

Upon conclusion of the evidentiary hearing(s), TCMUD 12 seeks a Commission Order setting

Continued . . .  
<sup>20</sup> Attachment I, LCRA Firm Water Drought Rate.

the rates the PUA may charge TCMUD 12 consistent with the ratemaking mandates of Texas Water Code, Chapters 11, 12 and 13. 30 TAC § 291.134(e).

In the alternative, TCMUD 12 seeks a Commission Order (1) finding that the Drought Surcharge charged by the PUA -- if charged pursuant to a contract -- including the rate methodology utilized to implement the new rates effective July 1, 2014, adversely affect the public interest under 30 TAC § 291.133 and (2) setting the rates the PUA may charge TCMUD 12 consistent with the ratemaking mandates of Texas Water Code, Chapters 11, 12 and 13. 30 TAC § 291.134(e).

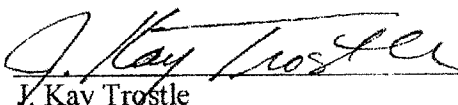
Upon conclusion of the rate proceeding, TCMUD 12 requests that the Commission order a refund from the date of this Petition of the difference between the rate charged by the PUA and the rate fixed by the Commission, plus interest at the statutory rate. TEX. WATER CODE § 12.013(f).

## **VII.** **CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, TCMUD 12 respectfully requests that the Executive Director determine that this Petition meets the requirements of 30 TAC § 291.130, refer this Petition to SOAH for consolidation with and an evidentiary hearing on both this Petition and TCMUD 12's First Petition and for such further relief to which it may be entitled.

Respectfully Submitted,

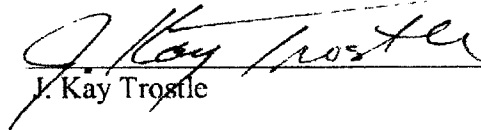
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ATTORNEYS FOR TRAVIS COUNTY  
MUNICIPAL UTILITY DISTRICT NO. 12

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been sent as indicated below to the following persons on this 31<sup>st</sup> day of July, 2014.

  
J. Kay Trostle

***Via Hand Delivery***

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