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PUC DOCKET NO. 43674  
SOAH DOCKET NO. 473-15-1149.WS

PETITION OF THE CITY OF DALLAS FOR REVIEW OF A DECISION BY THE SABINE RIVER AUTHORITY TO SET WATER RATES (LAKE FORK RESERVOIR)

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BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

SABINE RIVER AUTHORITY’S RESPONSE TO  
CITY OF DALLAS’ MOTION FOR EXPEDITED COMMISSION  
ESTABLISHMENT OF INTERIM RATES

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Attachment A	Affidavit of David Montagne
Attachment B	Excerpts from City of Dallas Comprehensive Annual Financial Report for Fiscal Year Ended September 30, 2013.

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PETITION OF THE CITY OF	§	BEFORE THE
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DECISION BY THE SABINE RIVER	§	PUBLIC UTILITY COMMISSION
AUTHORITY TO SET WATER	§	
RATES (LAKE FORK RESERVOIR)	§	OF TEXAS

**SABINE RIVER AUTHORITY’S RESPONSE TO  
CITY OF DALLAS’ MOTION FOR EXPEDITED COMMISSION  
ESTABLISHMENT OF INTERIM RATES**

**TO THE HONORABLE PUBLIC UTILITY COMMISSIONERS:**

COMES NOW, the Sabine River Authority (“Authority” or “SRA”) and files this Response to the Motion for Expedited Commission Establishment of Interim Rates (“Motion”) filed by the City of Dallas (“City”) on December 5, 2014. This Response is timely filed. In support of its Response, the Authority would respectfully show the following:

**I. INTRODUCTION**

The City’s Motion should be denied because the Public Utility Commission (“PUC” or “Commission”) does not have jurisdiction over the City’s claim. The City’s Motion seeks to have the Commission construe a contract in order to resolve a contractual dispute that should properly be resolved in district court. The Texas Water Code does not give the Commission jurisdiction to adjudicate this contract dispute; neither does the Commission’s authority to set interim rates extend to this contract. However, even were the Commission to take jurisdiction over this dispute, interim rates are not warranted in this proceeding.

For over thirty years, the City has known that a new rate would be effective on November 2, 2014, if the City opted to renew the contract at issue. The fact that the City claims to have failed to budget for the impending expense is not the Authority’s fault, nor is it justification for interim rates. Furthermore, the City is requesting that the Commission require the Authority to give the City water for free by setting an interim rate of \$0.00/1,000 gallons for the

contractually-required additional renewal period compensation due to the Authority by the City. The City's request should be rejected.

## **II. BACKGROUND**

The facts leading up to this dispute are detailed in the affidavit of David Montagne, Executive Vice President and General Manager of the SRA, attached to this Response as Attachment A. In summary:

- In 1974, the SRA entered into a Water Supply Facilities Agreement with three entities (the "Corporations") for a term of forty (40) years ("1974 Agreement").
- In 1981, the SRA entered into a Water Purchase Agreement with the Corporations ("1981 Agreement").
- On October 1, 1981, the SRA, the Corporations, and the City of Dallas entered into a Water Supply Contract and Conveyance under which the City assumed the obligations of the Corporations ("1981 Water Supply Contract").
- Both the 1981 Agreement and the 1981 Water Supply Contract gave notice to the City that upon renewal of the 1981 Water Supply Contract in 2014, the City would be required to pay an additional compensation to the SRA, which was to be set "taking into account such price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period" (*i.e.*, "prevailing rates").
- Between 2008 and 2014, the SRA and the City engaged in sporadic negotiations over the additional compensation to be paid at the "prevailing rate."
- When it became apparent to the SRA that the City was unwilling to agree to a "price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period" as the Contract states, the SRA determined that it needed to act to have the compensation set by the start of the renewal period.
- On October 9, 2014, the SRA's Board of Directors unanimously approved a motion to set the amount of compensation for the renewal term at the prevailing rate determined by the SRA, based on the best information available to it.
- On October 30, 2014, the City filed its Petition for Review and Request for Interim Rates ("Petition").
- On December 2, 2014, the SRA filed its Response to the Petition.

- On December 5, 2014, the City filed its Motion for Expedited Commission Establishment of Interim Rates Under P.U.C. SUBST. R. 24.29(d) and (e), without addressing the numerous jurisdictional concerns raised in SRA's Response to the Petition.

At the outset, it should be noted that the City's argument that expeditious consideration by the Commission is necessary because of a "delay" in the commencement of the process conducted by the State Office of Administrative Hearings ("SOAH") is unfounded. The Administrative Law Judge ("ALJ") appropriately scheduled the prehearing conference in this proceeding to occur after the Commission issues a preliminary order in this case (as it has in other dockets), which is currently scheduled to be considered at the Open Meeting on December 18, 2014. There has been no "delay" in the procedural schedule of this case as alleged by the City.

### **III. THE COMMISSION DOES NOT HAVE JURISDICTION OVER THIS CONTRACT DISPUTE**

As addressed at length in SRA's Response to the Petition of the City of Dallas, the Commission does not have jurisdiction over this proceeding because: (1) the Commission has no jurisdiction to adjudicate contractual claims such as those made repeatedly in the City's Petition; (2) the Petition fails to allege necessary facts regarding the rates as required by P.U.C. SUBST. R. 24.130(b); (3) the Petition is insufficient under P.U.C. SUBST. R. 24.44; and (4) the Petition does not trigger Commission jurisdiction under Texas Water Code § 13.043(f). The City's Motion for Expedited Interim Rates ignores these roadblocks to its requested relief. Instead, the City merely continues to repeat its claim that the Commission has jurisdiction to set interim rates pursuant to P.U.C. SUBST. R. 24.29.

#### **A. The Commission has No Jurisdiction Over the City's Claims of Breach of Contract.**

In its Motion, as it did in its Petition, the City repeatedly alleges that the SRA set rates "in violation" of the 1981 Water Supply Contract, which in turn is the sole basis for the City's

argument that the rates are unreasonable. As set forth in its Response to the Petition, and repeated herein, the SRA contests this claim by enumerating the specific provisions of the 1981 Water Supply Contract that informed and guided the Authority's action. Because of the disagreement between the parties as to whether the rates were set pursuant to a written agreement, the Commission's rule *requires* that this matter be abated. There is no provision, statutory or regulatory, that would allow this matter to stay at the agency.

The Commission's rule provides as follows:

If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.<sup>1</sup>

The City's Petition has already been referred to SOAH, where the very first order of business should be to abate the proceeding, as required by P.U.C. SUBST. R. 24.131(d). In light of the clear statement by the City that its claim is for breach of contract, and because the Commission is without authority to rewrite the terms of the 1981 Water Supply Contract, the Commission has no authority to set interim rates based on an alleged breach of contract claim.

In its Petition, the City has asked the Commission to set an additional compensation renewal rate for the raw water that is based on the SRA's cost of service. Such action would entail a complete re-write of Sections 6.01 and 6.02 of the 1981 Water Supply Contract, which state as follows:

6.01. . . . this Agreement shall be renewed for additional periods of forty (40) years upon the same terms and conditions, with the exception of Section 2.03, and subject to Section 6.02, throughout the useful life of the Reservoir.

6.02. The amount of compensation that the Authority shall be entitled to receive during any renewal term (exclusive of the City's

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<sup>1</sup> P.U.C. SUBST. R. 24.131(d).

pro rata share of the Service Charge) shall be determined by mutual agreement between the City and the Authority, *taking into account such price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity, and contract period....* [Emphasis added.]

The City continues its litany of complaints regarding SRA's alleged violation of the Contract in its Motion, arguing that the Authority's action in setting the additional compensation renewal rate was "outside the specific terms of the Contract"<sup>2</sup> and was "in violation of the plain language of the Lake Fork Contract."<sup>3</sup> In fact, both the Petition and the Motion contain the same allegations that one would make in a district court original petition seeking the court to construe the contract and to find the other party in breach. These allegations clearly belong in a court, and not before the Commission.

The City also repeatedly argues that interim rates are warranted because SRA's rate is not based on a cost of service study.<sup>4</sup> However, the 1981 Water Supply Contract clearly requires the determination of the "prevailing rate" for the calculation of the additional compensation for the renewal term of the Contract, and does not mention or require a cost of service study. Yet, the City would have the Commission completely re-write one of the fundamental principles of this arms-length transaction entered into by the City and the Authority in 1981. Such an activity is well beyond the scope of the Commission's jurisdiction.

Ultimately, the City's remedy is not to be found at the Commission, because the Commission has no jurisdiction to construe contracts or to adjudicate whether they have been breached. By seeking to have the Commission set compensation based upon the SRA's cost of service, in direct contradiction to the contractual terms agreed to by the City and the SRA, the

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<sup>2</sup> City of Dallas' Motion for Expedited Commission Establishment of Interim Rates under P.U.C. SUBST. R. 24.29(d) and (e) at 2 (Dec. 5, 2014).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 3, 6-7.

City is inappropriately asking the Commission for the remedy of reformation, substituting a cost of service rate for the agreed, negotiated provision for a “prevailing rate.” This remedy is clearly beyond the jurisdiction of the Commission.

**B. Neither the Petition Nor the Motion Allege Facts Regarding the Rates as Required by P.U.C. Subst. R. 24.130(b).**

The City’s Motion cannot stand on its own, but must find its foundation in the Petition. Such a foundation crumbles, however, when it is recognized that the Petition failed to allege specific facts explaining how the compensation set by the Authority under the 1981 Water Supply Contract adversely affects the “public interest,” as required by P.U.C. SUBST. R. 24.130(b). The City’s Motion merely repeats the City’s position as stated in its Petition that the SRA adopted a rate in violation of the Agreement.

**C. The Petition is Insufficient Under P.U.C. Subst. R. 24.44.**

The Motion does not even attempt to buttress the City’s unsupported claims in its Petition that the Commission has jurisdiction to re-write the terms of the 1981 Water Supply Contract. Even if jurisdiction is found under Texas Water Code § 12.013, the Petition is insufficient under P.U.C. SUBST. R. 24.44, and therefore the Motion must fail. Rule 24.44 requires a petition seeking review of rates for sales of water under Chapters 11 or 12 to include information that the petitioner is willing to pay a just and reasonable price for the water, and that the party owning or controlling the water has not contracted to others and available for petitioner’s use. However, the City did not include any such statements in its Petition or its Motion, but instead requested that the Commission merely set interim rates at \$0 for the renewal term of the 1981 Water Supply Contract. However, such a confiscatory rate cannot be considered a just or reasonable price. Therefore, the Petition is insufficient and the Motion must fail.



#### **IV. INTERIM RATES ARE NOT AUTHORIZED IN THIS PROCEEDING.**

The City incorrectly claims that P.U.C. SUBST. R. 24.29 authorizes the Commission to set interim rates.<sup>5</sup> However, because the Commission has no jurisdiction under Texas Water Code § 13.043(a), (b), or (f), interim rate authority does not exist under P.U.C. SUBST. R. 24.29(a) or (b). Rule 24.29(a) applies only to proceedings under Texas Water Code § 13.043(a), (b), or (f), and Rule 24.29(b) only applies to the filing of a stated intent to change rates under Chapter 13 of the Texas Water Code (also known as a Statement of Intent proceeding).

##### **A. No Authority under P.U.C. SUBST. R. 24.29(a).**

Texas Water Code § 13.043(a) does not apply to this proceeding as it pertains to appeals from the decision of the governing body of a municipality. Likewise, § 13.043(b) does not apply to this proceeding as it pertains to appeals by ratepayers from rate decisions of: (1) non-profit water or sewer corporations; (2) utilities under the jurisdiction of municipalities inside the city limits; (3) municipally-owned utilities if ratepayers live outside the city limits; (4) conservation districts that provide water or sewer service to household users; and (6) certain county-owned utilities. None of these circumstances exist here.

Neither does § 13.043(f) apply to this proceeding. This subsection addresses the provision of “water or sewer service” from a retail public utility or political subdivision of the state to another retail public utility. While the SRA can agree that the Dallas Department of Water Utilities is a “retail water utility” (as defined in Texas Water Code § 13.002(20)) because it provides potable water service to the ultimate consumer for compensation, and that the SRA is a political subdivision of the state, the SRA is not providing “water service” as defined in the Texas Water Code, to the City or to any other entity.

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<sup>5</sup> Dallas’ Motion for Expedited Interim Rates at 4.

Although the Texas Water Code does not separately define “water service,” § 13.002 defines both “retail water or sewer utility service” and “wholesale water or sewer service.” Both definitions require the provision of *potable water*:

§ 13.002(20): “Retail water or sewer utility service” means *potable water service* or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

§ 13.002(25): “Wholesale water or sewer service” means *potable water* or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.<sup>6</sup>

The SRA does not provide potable water or potable water service, nor is it a retail public utility:

§ 13.002(19): “Retail public utility” means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing *potable water service* or sewer service, or both, for compensation.<sup>7</sup>

There is no other definition of “water service” that would capture the Authority’s activities under the 1981 Water Supply Contract, which involve raw water only. Therefore, because the Commission has no jurisdiction over the Authority’s rates under § 13.043(a), (b), or (f) of the Texas Water Code, the Commission also has no authority to impose interim rates under P.U.C. SUBST. R. 24.29(a).

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<sup>6</sup> Tex. Water Code Ann. §§ 13.002(20) and 13.002(25) (West 2008 & Supp. 2014) (Emphasis added).

<sup>7</sup> *Id.* at § 13.002(19) (Emphasis added).

**B. No Authority under P.U.C. SUBST. R. 24.29(b).**

Clearly, this current proceeding is not a statement of intent proceeding brought under the provisions of Texas Water Code Chapter 13, therefore Rule 24.29(b) does not apply here.<sup>8</sup>

**C. No Authority under P.U.C. SUBST. R. 24.29(d) or (e).**

Rules 24.29(d) and (e) do not stand alone, but must be read in tandem with P.U.C. SUBST. R. 24.128–24.138; these provisions do not override the specific regulatory provisions that provide the *substantive and procedural requirements* for the Commission’s review of wholesale contractual rates. Rule 24.128 specifically so provides:

**§ 24.128. Petition or Appeal Concerning Wholesale Rate.**

This subchapter sets forth substantive guidelines and procedural requirements concerning:

- (1) a petition to review rates charged for the sale of water for resale filed pursuant to TWC, Chapter 12; or
- (2) an appeal pursuant to TWC, §13.043(f)(appeal by retail public utility concerning a decision by a provider of water or sewer service).

The Commission may not change wholesale water or sewer rates without a specific finding, supported by findings of fact and conclusions of law, that the protested rate adversely affects the public interest after an evidentiary hearing on same.<sup>9</sup> Rule 24.29(d) and (e) do not override this provision that protects the parties’ fundamental right to contract as they see fit.

A finding that rates are “unjust or unreasonable” can only take place after the ALJ has issued proposed findings of fact and conclusions of law, applying the specific public interest

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<sup>8</sup> A water or sewer rate statement of intent proceeding is initiated under Texas Water Code § 13.187, and proceeds in a manner similar to a statement of intent proceeding filed by an electric utility under Texas Utility Code § 33.024.

<sup>9</sup> P.U.C. SUBST. R. 24.132(c).

criteria of P.U.C. SUBST. R. 24.133(a). Rule 24.29(d) is not an independent, free-standing authorization for interim rates in the context of a written wholesale water contract.

Texas courts have held that wholesale rates set pursuant to a written contract are not to be lightly set aside. In *Texas Water Commission v. City of Fort Worth*, the Third Court of Appeals held that before the agency could modify contract rates (an action that logically must include changing the rates, even for an interim period), the agency must “first make a finding that the rates affected by a ‘decision of the provider’ adversely affect the public interest by being unreasonably preferential, prejudicial, or discriminatory.”<sup>10</sup> Whether the public interest is adversely affected is the very topic that is to be addressed in the public interest phase of a wholesale rate review.

An appeal of wholesale water rates charged pursuant to a written contract is a two-phase process. The initial review is focused exclusively on whether the petitioner has met its burden of showing that the protested rates are adverse to the public interest. The rules list the specific factors to be considered in determining whether this burden has been met.<sup>11</sup> Unless the public interest proceeding has been held and unless the Commission has found that the petitioner has met its burden, there can be no overturning of contractually-set rates through the imposition of interim rates. Otherwise, any petitioner who becomes unhappy with a contract that it negotiated thirty years ago could argue to the Commission that *now* the rates are unjust and unreasonable and obtain immediate rate relief without any examination as to whether the contractual rates are, indeed, adverse to the public interest. Neither case law nor the Commission’s own regulations allow the Commission to change contract rates, even on an interim basis, on the simple

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<sup>10</sup> *Texas Water Commission v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).

<sup>11</sup> P.U.C. Subst. R. 24.133(a).

allegation that the petitioner now considers the rates to be unjust, or unreasonable, or not quite the deal that it thought it was getting at the onset of the contractual relationship.

Because the Commission does not have jurisdiction over this proceeding for all of the reasons stated above, the Commission is also without the authority to establish interim rates in this proceeding. As noted above, the Commission's interim rate authority found in P.U.C. SUBST. R. 24.29 and Texas Water Code § 13.043(h) does not apply. Parties are unable to confer jurisdiction on the Commission where there is none.<sup>12</sup> Outside of a proceeding under the Texas Water Code that gives the Commission authority to set interim rates, the Commission has no such authority.

#### **V. INTERIM RATES ARE NOT WARRANTED IN THIS CASE**

Even if the Commission does have jurisdiction over this proceeding and the authority to set interim rates, which the Authority does not concede, the City's arguments for interim rates still fall short. The City alleges that the SRA's rate is "excessive and unreasonable" without providing any factual basis for that claim.<sup>13</sup> The City does not provide evidence of any other prices being charged in the area at the time for like contract sales of water of similar quality, quantity, and contract period to support its argument. Rather, the City merely claims that the City will be presented with an economic hardship because of the rates set by the SRA.<sup>14</sup> The City fails to note that the very language of the 1981 Water Supply Contract gave notice to the City that there would be additional compensation due to the SRA during the renewal term of the 1981 Water Supply Contract, starting on November 2, 2014. As described by Mr. David Montagne in his affidavit attached to this Response as Attachment A, the City has also been on

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<sup>12</sup> *Morrow v. Corbin*, 62 S.W.2d 641, 649 (Tex. 1933) (Parties are unable to confer jurisdiction by agreement).

<sup>13</sup> Dallas' Motion for Expedited Interim Rates at 3.

<sup>14</sup> *Id.* at 6.

notice since at least April 2013 that the Authority expected to receive the contractually-required additional compensation based on prevailing rates when the Contract renewed. The City has had 33 years to prepare and budget for the time when the additional compensation would be in place. The City's failure to prepare for this eventuality is not the Authority's fault, nor is it grounds for setting interim rates that violate the very terms of the Contract.

**A. The SRA Negotiated in Good Faith.**

Despite the City's attempts to portray the SRA as a bad actor, the facts remain as described by Mr. Montagne in his attached affidavit. Starting in 2008 and continuing until the day before the additional compensation renewal rates were adopted in 2014, the SRA attempted in good faith to negotiate an additional compensation renewal rate with the City:

- The SRA first submitted renewal terms to the City in January 2008, but did not receive a response from the City until October 2012, almost five years later.
- In the City's response, the City proposed a renewal rate of \$0.001/1,000 gallons and among other things, proposed to remove the "prevailing rate" language from the contract.
- In July 2013, the SRA provided the City with its interpretation of the contract term "price as is prevailing" to mean current market rates for water as influenced by demand, available supply, and the cost to replace the water. At that same time, the SRA provided the City with information regarding contractual rates in the general area, with prices ranging from \$0.4857/1,000 gallons to over \$3.00/1,000 gallons.
- The City sent the SRA a letter dated October 31, 2013, indicating that the City intended to renew the 1981 Water Supply Contract.
- On November 12, 2013, the SRA received a "Contract Term Sheet" from the City that offered a graduated rate between \$0.01/1,000 and \$0.05/1,000 gallons, but deleted the "prevailing rate" language from the contract, producing an average rate of less than \$0.02/1,000 gallons.
- The SRA then provided more information to the City; however, the City did not respond for nearly five months.

- When the City did respond in March 2014, the City offered a rate of \$0.05/1,000 gallons, which was again conditioned upon the deletion of the “prevailing rate” language.
- The SRA responded with a \$0.86/1,000 gallon rate proposal that reflected the average market rates in the area and included a 20% discount.
- On October 8, 2014, the City sent the SRA a letter containing the City’s “Best and Final Offer for Compensation in the First Renewal” which amounted to approximately \$0.02/1,000 gallons.

Leading up to the 2014 contract renewal date, the SRA reviewed the existing water rates charged by other river authorities, and determined that the price of \$0.5613 per 1,000 gallons, on a take-or-pay basis, complied with Section 6.02 of the 1981 Water Supply Contract. In fact, this was the very same rate that the City set as the “prevailing rate” for its sale of Lake Fork Reservoir water to Luminant Generation Company, effective October 1, 2014.<sup>15</sup>

In addition, the SRA reviewed the water rates that the City expected to pay for projects identified in the City’s Long Range Water Supply Plan, and found these rates to also be “prevailing prices” that could be considered by the SRA in setting rates.<sup>16</sup> Although the SRA negotiated in good faith with the City, offering a rate consistent with other current contracts in the area as required by the 1981 Water Supply Contract, the City still remains unwilling to pay a reasonable rate for water—seeking to pay nothing for the water through its interim rate request.

The SRA appropriately took prevailing prices into account when it set the additional compensation renewal rate in October, after the City consistently ignored this provision in its proposals to the SRA. Instead of attempting to establish a reasonable rate for the renewal term, the City consistently hewed to the position that it would only pay for operating and maintenance costs (*i.e.*, the Service Charge), which were not open to renegotiation. During this time period,

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<sup>15</sup> See Affidavit of David Montagne, Attachment A to this Response, and Affidavit Attachments 2 and 3.

<sup>16</sup> See Sabine River Authority’s Response to City of Dallas’ Original Petition and Request for Interim Rates at 14-15. These prices ranged from \$551 to \$1,302/acre-foot, or \$1.691 to \$3.9939/1,000 gallons.

the City was well aware of the SRA's position that the rate should be set at the "prevailing" rate, but failed to account for this fact during its annual budgeting process. The SRA should not be penalized by the Commission for a litigation position taken by the City.

**B. No Economic Hardship Results From the Rates in Dispute.**

Neither the City, nor its wholesale and retail customers, will face the economic hardship alleged in its Motion.<sup>17</sup> As addressed in SRA's Response to the Petition, the public record demonstrates that the City's total operational budget dwarfs that of the SRA, and the rates adopted by the SRA amount to *less than 1%* of the City's total operating budget for Fiscal Year ("FY") 2014-2015. The total annual cost to the City under the SRA's adopted rates would be \$24,117,246 (based on the rate of \$0.5613/1,000 gallons). On an acre-foot basis, the SRA's adopted rates amount to \$183/acre-foot. The current amount of the Service Charge paid by the City (a rate that will not change under the renewal, and that is not the subject of the Petition) for FY 2015 will be \$3,022,023, which is less than \$23/acre-foot, or less than \$0.07/1,000 gallons.

On September 17, 2014, the Dallas City Council was presented with a "Long Range Water Supply Plan" for the City. In that Plan, the 4<sup>th</sup> and 5<sup>th</sup> highest-ranked future strategies for the City are the Lake Palestine pipeline project and the related Bachman WTP pipeline connection project. These two projects will cost the City significantly more, \$751/acre-foot and \$551/acre-foot, respectively, for a total of 114,337 acre-feet per year.<sup>18</sup> Dallas referred to this Long Range Water Supply Plan in its Motion, claiming that these capital improvements may have to be deferred to fund the Lake Fork water rate payments.<sup>19</sup> It is unclear how the City is

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<sup>17</sup> Dallas' Motion for Expedited Interim Rates at 7-8.

<sup>18</sup> Dallas Long Range Water Supply Plan Briefing at 28 (Sept. 17, 2014) (Attachment D to the Authority's Response to the Petition).

<sup>19</sup> Dallas' Motion for Expedited Interim Rates at 7.



harmful by deferring more costly capital projects to take water at a lower rate prevailing in the area than would be produced by the City's own capital projects.

This argument also contradicts the City's argument that the SRA's rate will require a rate increase for Dallas' customers "at some time."<sup>20</sup> Clearly, any increased expenses are borne by the City's retail and wholesale customers, yet the City has wholly failed to provide any information as to the rate impact on these customers. The City's unfounded assertion that Dallas' wholesale customers would have some right of action against the Authority for rates set by contract between Dallas and the Authority is simply incorrect as there is no privity of contract between such third party and the Authority. Another red herring tossed up by the City is the specter of appeals filed by Dallas' customers because the Authority's rates are not based on the cost of service for Lake Fork water.<sup>21</sup> However, if Dallas has contracted to pay additional compensation to the SRA for the renewal term of the 1981 Water Supply Contract, then Dallas' resulting expenses are clearly a part of Dallas' cost of service in providing both wholesale and retail water service to its customers.

According to the City's Annual Budget for FY 2014-2015, the proposed water utility's operating budget is \$615 million, representing an increase of 3.2% from the FY 2013-2014 operating budget of \$595 million.<sup>22</sup> The impact of this 3.2% increase in the City's budget on the typical residential monthly bill will be almost negligible; according to the FY 2014-2015 budget, the average bill will increase by 1.9%.<sup>23</sup> The "amount of compensation" to be paid by the City to the Authority under the 1981 Water Supply Contract renewal pales in comparison:

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 8.

<sup>22</sup> Dallas FY 2014-2015 Budget at 473 (Attachment E to the Authority's Response to the Petition).

<sup>23</sup> *Id.* at 12.

\$0.5613/1,000 gallons, or \$24,117,246 per year, is less than 4% of the Dallas Water Utility's proposed FY 2014-2015 entire operating budget.

Additionally, the City currently has two contracts for Lake Fork Reservoir water. It has a contract with North Texas Municipal Water District for a rate of \$0.4587/1,000 gallons, with an additional reservation fee that is added to the base rate, executed in May 2013.<sup>24</sup> The City also has a contract with Luminant, executed in March 2011. By City Ordinance No. 29479, the "prevailing rate" applicable to this contract is \$0.5613/1,000 gallons, effective October 1, 2014.<sup>25</sup> In this Luminant contract, the City identifies this rate to be the "prevailing rate."<sup>26</sup>

The City's allegation that the price charged by the SRA for water from Lake Fork Creek Reservoir will mean that the City can no longer provide service to its retail customers because its financial integrity and operational capabilities will be impaired, is contrary to the facts that are available on the public record. Specifically, according to the City of Dallas Comprehensive Annual Financial Report for Fiscal Year Ended September 30, 2013, which is publically available on the City's website, as of September 30, 2013, the City had unrestricted cash and cash equivalents available in the amount of \$631,820,000.<sup>27</sup> Dallas' allegations that the renewal rates will be financially ruinous to the City are unsupported, and insupportable, and the Motion must be denied.

#### **VI. THE INTERIM RATE SOUGHT BY THE CITY IS UNREASONABLE**

The City seeks to have the Commission impose as an interim rate the rate in effect prior to November 2, 2014. As noted above, the 1981 Water Supply Contract provides for two

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<sup>24</sup> See Attachment A, Affidavit of David Montagne at Attachment 1.

<sup>25</sup> *Id.* at Attachment 3, Section 9.

<sup>26</sup> *Id.* at Attachment 2, Section 5.

<sup>27</sup> Excerpts from the City of Dallas Comprehensive Annual Financial Report for Fiscal Year Ended September 30, 2013, are attached to this Response as Attachment B. The unrestricted cash amount of over \$631 million is shown on page 13 of the Report.

compensation payments by the City upon renewal of the Contract: (1) the City's pro rata share of the operations and maintenance costs via the Service Charge; and (2) additional renewal term compensation to be set taking into account the "prevailing rate." Therefore, the City's request for interim rates is actually a request that the Commission completely rewrite the 1981 Water Supply Contract and negate the agreed-upon provision that requires the City to pay additional renewal term compensation. In other words, the City does not want to pay anything additional to the Service Charge it is already paying for water it contracts for the next forty years. The City's request for an interim rate of \$0 for any portion of the renewal term is completely punitive and unreasonable, and would result in the City paying nothing for the raw water commodity. Under no interpretation of the Contract could the SRA be required to bind the water under the contract for free.

Presumably, the City's argument that the SRA will not be harmed if an interim rate of \$0 is set by the Commission<sup>28</sup> is an attempt to justify the City's outrageous request that it be given water for free. However, whether the SRA needs to collect a rate of \$0.5613/1,000 gallons for its own budgetary purposes is wholly irrelevant. The City's rate is set by contract, not by cost of service or the SRA's determination of its budget.

## **VII. AN ESCROW ACCOUNT IS UNNECESSARY**

The City argues that an escrow account is necessary because if the SRA is allowed to collect these rates, then the SRA will never be able to return any portion of the rates determined to be unjust by the Commission.<sup>29</sup> This argument squarely contradicts the City's previous argument that the SRA does not need the additional funds for its operations. If the City is correct, and the SRA does not need the funds for its operations, it is completely illogical to also

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<sup>28</sup> Dallas' Motion for Expedited Interim Rates at 9.

<sup>29</sup> *Id.*

assume that the \$24 million collected from the City will be immediately spent without the possibility of ever being returned.

The City's concerns are an unfounded attempt to make the SRA seem fiscally irresponsible in order to bolster the interim rate argument. The SRA is fiscally sound and its expenditures are based on planned improvements and Board-directed policies. As explained by Mr. Montagne, the City's suggestion that the SRA Board of Directors would squander funds received from the City under the renewal rates must be viewed as sheer speculation, and is insulting to the Governor-appointed Board of Directors and the professional staff of the SRA. The City's allegation that SRA would never be able to repay the City regardless of the outcome of the contested rate case hearing is insupportable and not based on any understanding of the finances of the SRA.

#### **VIII. CONCLUSION AND PRAYER**

The City is clearly unhappy with the deal that it made in 1981 when it entered into the 1981 Water Supply Contract with the Authority. It does not want to pay the compensation that the Contract requires, and it has been resisting all efforts by the Authority to come to an agreement on the additional compensation due to the Authority under Section 6.02 of the Contract. However unhappy it may be, the City cannot by its Petition and Motion for Interim Rates confer jurisdiction upon the Commission to rewrite the provisions of the Contract. Nor does the Commission have the authority to change the rates required by the Contract, even on an interim basis, without the required findings of a violation of public interest. The City's allegations of violation of contract require this matter to be abated. Therefore, the Authority requests that the City's Motion for Interim Rates be denied, and that this matter be dismissed or abated.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

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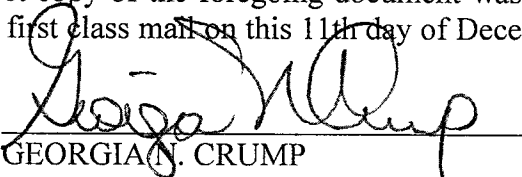
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**ATTORNEYS FOR SABINE RIVER  
AUTHORITY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 11th day of December, 2014, to the parties of record.



GEORGIAN N. CRUMP

PUC DOCKET NO. 43674  
SOAH DOCKET NO. 473-15-1149.WS

PETITION OF THE CITY OF	§	BEFORE THE
DALLAS FOR REVIEW OF A	§	
DECISION BY THE SABINE RIVER	§	PUBLIC UTILITY COMMISSION
AUTHORITY TO SET WATER	§	
RATES (LAKE FORK RESERVOIR)	§	OF TEXAS

AFFIDAVIT OF DAVID MONTAGNE

STATE OF TEXAS            )  
                                          )  
COUNTY OF ORANGE        )

BEFORE ME, the undersigned authority, on this day personally appeared David Montagne who being by me first duly sworn, on oath deposed and said the following:

- 1. My name is David Montagne. I am the Executive Vice President and General Manager of the Sabine River Authority of Texas (“SRA”).
- 2. The Sabine River Authority is governed by a nine-member Board of Directors, all of whom are appointed to their position by the Governor of the State of Texas. Through my interactions with the Board Members, I know them to be dedicated public servants who take seriously their responsibilities as stewards of the public waters of the Sabine River Basin.
- 3. In 1974, the SRA entered into a Water Supply Facilities Agreement with Dallas Power & Light Company, Texas Electric Service Company, and Texas Power & Light Company (the “Corporations”), acting by and through Texas Utilities Generating Company (“TUGCO”) (“1974 Agreement”), by which the reservoir known as Lake Fork Creek Reservoir and the water supply facilities located thereon would be constructed. The 1974 Agreement between the Corporations and the SRA was for a term of forty (40) years after the date of the delivery and payment for the first issue or series of bonds, and for any period thereafter during which any bonds are outstanding. A copy of the 1974 Agreement is included as Attachment A to SRA’s Response to the City’s Original Petition, filed on December 2, 2014.

4. In 1981, the SRA entered into a Water Purchase Agreement with the Corporations, who were again acting through TUGCO ("1981 Agreement"). Under this 1981 Agreement, the SRA agreed to sell to the Corporations 20,000 acre-feet of water per year for purposes of generating power at their generating plant on Lake Fork Creek Reservoir. The Corporations had the option to renew the 1981 Agreement, "upon such terms and conditions that are mutually agreed upon and for such price as is prevailing in the general area at that time for contract sales of water of similar quality, quantity, and contract period."<sup>1</sup> A copy of the 1981 Agreement is included as Attachment B to SRA's Response to the City's Original Petition, filed on December 2, 2014.
5. On the same day that the SRA and the Corporations entered into the 1981 Agreement (October 1, 1981), the SRA, the City of Dallas, and the Corporations entered into the Water Supply Contract and Conveyance ("1981 Water Supply Contract"). Under the provisions of this agreement, the SRA and the Corporations granted to the City the rights to the use of 74% of the dependable yield of water from the Lake Fork Reservoir, not to exceed 120,000 acre-feet per year, thereby transferring to the City all of the Corporations' rights to water under the 1974 Agreement. Under this Agreement, the City assumed the obligations of the Corporations to pay the semi-annual Facilities Charge to amortize the revenue bonds issued by the SRA, and to pay the Service Charge for operation and maintenance expenses as set forth in the 1974 Agreement. A copy of the 1981 Water Supply Contract is included as Attachment C to SRA's Response to the City's Original Petition, filed on December 2, 2014.
6. Both the 1981 Agreement and the 1981 Water Supply Contract gave notice to the City that upon any renewal of the Contract in 2014, the City would be required to pay an additional compensation to the SRA, taking into account "prevailing rates."<sup>2</sup>
7. I participated in the contract negotiations between the SRA and the City of Dallas ("City" or "Dallas") at issue in this proceeding, which essentially began in

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<sup>1</sup> Section 13.01, 1981 Agreement.

<sup>2</sup> Section 13.01, 1981 Agreement, and Section 6.02, 1981 Water Supply Contract.

January 2008, even though the City had not at that time provided notice to SRA that the City intended to renew the 1981 Water Supply Contract. I was guided in my actions during all negotiations with the City by the terms of the 1981 Water Supply Contract, specifically, Sections 6.01 and 6.02 of that Contract, which specified that during each renewal term of the Contract all of the terms and conditions of the Contract would be renewed, and that the amount of additional compensation that the SRA shall be entitled to receive, exclusive of the City's pro rata share of the Service Charge, was to be determined "by mutual agreement between the City and the Authority, taking into account such price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period."

8. SRA submitted renewal terms to the City in January 2008 for consideration, terms that were previously discussed with the SRA Board. Although these terms included some mutually beneficial provisions, SRA received no response from the City until October 2012, over four years later.
9. In October 2012, the City presented SRA an offer with an additional compensation renewal rate of \$0.001/1,000 gallons. Among other things, this proposal from the City removed the "prevailing rate" language from the Contract and changed the venue provision from Travis County to Dallas County. SRA rejected this offer and Dallas' significant re-write of the 1981 Water Supply Contract.
10. SRA and City representatives met in April 2013, at which time the additional compensation renewal rate was discussed. After that meeting, in July 2013, the SRA provided the City with its interpretation of the phrase "price as is prevailing," being current market rates for water as influenced by demand, available supply, and the cost to replace the water. The SRA also provided information to the City regarding contractual rates in the general area, estimated replacement costs for water based on planned reservoirs in the general area, and a recent proposed large water sale in Texas. These prices ranged from \$0.4857 per 1,000 gallons, to over \$3.00 per 1,000 gallons. The average market rate was calculated to be \$1.07/1,000 gallons.



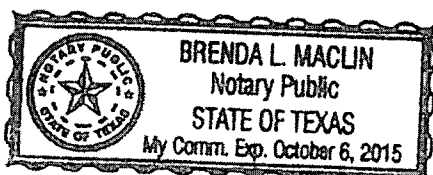
11. The next contact between SRA and Dallas was the receipt by the SRA of a letter from Dallas dated October 31, 2013, noting that the City intended to renew the 1981 Water Supply Contract.
12. On November 12, 2013, SRA received a "Contract Term Sheet" from the City, which contained a provision that Dallas would continue to pay the annual Service Charge, as currently calculated, but that compensation for the renewal term would not be defined by the term "prevailing rate." The term sheet also offered a graduated rate of between \$0.01/1,000 and \$0.05/1,000 gallons, which would have averaged a rate of less than \$0.02/1,000 gallons over the past five years. Because SRA was unwilling to revise the contractual provision related to additional compensation, SRA could not agree to these terms.
13. After receipt of that proposal from the City, in November 2013 and at the City's request, SRA provided more information to the City, including SRA's current rate schedule and another copy of the 2008 Term Sheet from SRA.
14. Not until March 6, 2014, did the City respond to the November 2013 proffer of information, this time with a second "Contract Term Sheet," which offered a rate of \$0.05/1,000 gallons, and was again conditioned upon the deletion of the language of Section 6.02 of the 1981 Water Supply Contract, which directed that rates for the renewal term be rates "prevailing in the general area at the time for like contract sales of water of similar quality, quantity, and contract period." For the same reasons that the SRA rejected the City's earlier proposal to rewrite the Contract to remove the "prevailing rate" language, the SRA also rejected this proposal.
15. SRA responded on April 4, 2014, with a proposal that noted the average market water rates for two existing system rates (for Dallas and TRWD), and two proposed new reservoirs (Lower Bois D'Arc Reservoir and Lake Ralph Hall). SRA proposed a rate of \$0.86/1,000 gallons, which included a 20% discount off the prevailing market rate in acknowledgement of the existing relationship between SRA and the City.

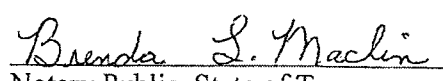
16. A meeting was held between SRA and the City on April 10, 2014, at which time Dallas requested information on a system rate calculation. This information was forwarded to Dallas on May 7, 2014.
17. Although the City representatives claimed they would brief the Dallas City Council after the Council's July summer recess, no further communication was received from Dallas until September 2014, when City representatives discussed two new, and different, scenarios for additional compensation renewal rates. Again, neither of these two new rate scenarios accounted for "prevailing rates," and it is unclear whether either of these two scenarios was approved by anyone with authority to bind the City to them.
18. SRA had no interest in rewriting the 1981 Water Supply Contract to remove the "prevailing rates" language. Dallas consistently failed to respond to all of the information we had sent them regarding the "prevailing rates" as set forth in the Contract and would not propose a rate that complied with the terms of the Contract. Therefore, in September 2014, I notified the City's representative that the SRA staff would recommend the Board establish an additional compensation renewal rate at its meeting on October 9, 2014. In response, on October 8, 2014, I received a letter from Dallas Water Utilities Director offering Dallas' "Best and Final Offer for Compensation in the First Renewal," offering to pay 100% of the Service Charge for Lake Fork Creek Reservoir, which equates to approximately \$0.02/1,000 gallons, which is not a prevailing rate. Once again, the City failed to comply with the "prevailing rate" pricing language of the Contract.
19. On October 9, 2014, the SRA Board of Directors unanimously approved a motion to set the amount of additional compensation for the next renewal term of the 1981 Water Supply Contract, effective November 2, 2014. The SRA had attempted in good faith to reach an agreement with the City on the amount of such additional compensation, but when it became apparent to the SRA that the City was unwilling to agree to a "price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period," the SRA determined that it needed to act to have the additional compensation set by the start of the renewal period.

20. Dallas currently has two contracts for Lake Fork Reservoir water. Its contract with North Texas Municipal Water District ("NTMWD") includes a rate set by Dallas in the amount of \$0.4587/1,000 gallons, and was executed in May 2013. An additional reservation fee is added to the base rate. A copy of the Interim Untreated Water Purchase and Water Transport Contract between Dallas and NTMWD is attached to this affidavit as Attachment 1. The City also has a contract with Luminant Generation Company, executed in March 2011, with a rate set by Dallas in the amount of \$0.5613/1,000 gallons, effective October 1, 2014. In this contract, the City identifies this rate to be the "prevailing rate." A copy of the Untreated Water Purchase Contract between Dallas and Luminant Generation Company and a copy of City Ordinance No. 29479 setting the rates for the Luminant contract, are attached to this affidavit as Attachments 2 and 3, respectively.
21. Since March 2008, the SRA Board of Directors has been routinely updated on the status of the contract negotiations with Dallas. It is my understanding that the Dallas City Council was not made aware of the Lake Fork contract negotiations until the week of October 6, 2014.
22. The SRA is fiscally sound and its expenditures are based on planned improvements and Board-directed policies. The City's suggestion that the SRA Board of Directors would squander funds received from the City under the additional compensation renewal rates is sheer speculation and insulting to the Governor-appointed Board of Directors and the professional staff of the SRA.

  
David Montagne

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this 10th day of December, 2014.



  
Notary Public, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

INTERIM UNTREATED WATER PURCHASE  
AND WATER TRANSPORT CONTRACT

WHEREAS, the North Texas Municipal Water District (hereinafter called "NTMWD") desires to purchase untreated water from the City of Dallas (hereinafter called "Dallas") for municipal use purposes; and

WHEREAS, NTMWD desires to purchase untreated water from Dallas' supplies in Lake Fork, Lake Tawakoni, and/or Lake Ray Hubbard(collectively referred to herein as "Untreated Water") for municipal use purposes; and

WHEREAS, the parties desire to enter into this "Interim Untreated Water Purchase and Water Transport Contract" ("Contract") allowing NTMWD to purchase Untreated Water at the rate for Untreated Water set in this Contract, and as may thereafter be changed from time to time in the manner and under the terms and conditions set forth herein below, in accordance with applicable regulations and procedures established by the Texas Commission on Environmental Quality ("TCEQ") and the Texas Water Development Board ("TWDB"); and

WHEREAS, Untreated Water would be diverted through NTMWD's diversion facility on Lake Tawakoni and, following Dallas' releases from Lake Ray Hubbard through NTMWD's diversion facilities on the East Fork Trinity River, in the amounts hereinafter specified; and

WHEREAS, pursuant to a *Memorandum of Agreement* with SRA dated July 18, 1955 for Lake Tawakoni water, as amended, Dallas is entitled to use specified amounts of water from Lake Tawakoni and Lake Fork ("Dallas Tawakoni/Fork Water") as such supplies are operated "on a joint use basis"; and

WHEREAS, pursuant to a Water Supply Contract and Conveyance with SRA dated October 1, 1981, as amended, Dallas is entitled to use specified amounts of water from Lake Fork; and

WHEREAS, pursuant to Certificate of Adjudication No. 05-4670, as amended, Dallas has existing contractual rights to use the water of Lake Tawakoni; and

WHEREAS, pursuant to Certificate of Adjudication No. 05-4669, as amended, Dallas has existing contractual rights to use the water of Lake Fork; and

WHEREAS, pursuant to Certificate of Adjudication No. 08-2462 (Lake Ray Hubbard), as amended, Dallas is entitled to appropriate water impounded in Lake Ray Hubbard ("Lake Ray Hubbard Water"); and

WHEREAS, NTMWD desires Dallas to transport as necessary and sell to NTMWD, for NTMWD's diversion at its Lake Tawakoni diversion facilities, certain amounts of the Dallas Tawakoni/Fork Water; and

WHEREAS, NTMWD also desires Dallas to transport, through Dallas' Lake Fork to Lake Tawakoni pipeline, NTMWD's water supplies in Lake Fork (hereinafter called "NTMWD Lake Fork Water") pursuant to NTMWD's *Upper Sabine River Basin Interim Water Supply Contract Lake Tawakoni/Lake Fork* with Sabine River Authority ("SRA"), effective October 13, 2005, into Lake Tawakoni for NTMWD's subsequent diversion and use for municipal purposes; and

WHEREAS, the parties agree that the Contract will allow NTMWD to pay Dallas to transport NTMWD Lake Fork Water from Lake Fork to Lake Tawakoni, for NTMWD's subsequent diversion and use, in accordance with applicable regulations and procedures established by TCEQ and TWDB; and

WHEREAS, the effectiveness of this Contract is dependent upon continued compliance with the applicable rules of the TCEQ and TWDB.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions given by each party, Dallas and NTMWD agree as follows:

1. DEFINITIONS.

A. "Effective Date" means the date any party last executes this Contract.

B. "Point of Release" means the point at which Dallas releases water from Lake Ray Hubbard for subsequent diversion and use by NTMWD under this Contract.

C. "Tawakoni Point of Diversion" means the existing authorized diversion location at which NTMWD diverts water for its use from Lake Tawakoni.

D. "East Fork Point of Delivery" means the location at NTMWD's East Fork Raw Water Project where NTMWD receives water from the Point of Release for its diversion and subsequent use under this Contract.

E. "NTMWD Service Area" means that geographic area contained within the watershed of the East Fork of the Trinity River, Texas, and in addition thereto, any area contained within the corporate limits of the member cities and customers of the NTMWD, and any other city which may hereafter legally become a part of NTMWD; and such areas as are served by member cities' and customer water systems; and any areas that may be added to the NTMWD Service Area in the future. The NTMWD Service Area, as it appears on the Effective Date of this Contract, is shown on Exhibit A, attached to and made a part of this Contract.

2. CONTRACT ADMINISTRATION.

A. This Contract shall be administered on behalf of Dallas by its Director of Water Utilities, or the Director's designated representative (hereinafter called "Director").

B. This Contract shall be administered on behalf of NTMWD by its Executive Director/General Manager or the Executive Director/General Manager's designated representative.

3. CONDITIONS OF SUPPLY.

A. Dallas and NTMWD mutually agree that the intent of this Contract is for Dallas to provide NTMWD a supply of Untreated Water and to provide for Dallas' transport of NTMWD Lake Fork Water to Lake Tawakoni for NTMWD's subsequent diversion and use.

B. This Contract grants NTMWD the right to use Untreated Water belonging or permitted to Dallas in accordance with the terms of this Contract, provided however that NTMWD's use of Untreated Water under this Contract does not give or grant NTMWD a continuing right of use beyond the term of this Contract.

C. By this Contract, Dallas also agrees to transport NTMWD Lake Fork Water from Lake Fork to Lake Tawakoni via Dallas' Lake Fork to Lake Tawakoni pipeline, for subsequent diversion and use by NTMWD. This Contract does not give or grant Dallas any right to use NTMWD Lake Fork Water.

D. The Parties agree that Dallas is fully authorized to sell Untreated Water to NTMWD as specified herein.

4. AVAILABILITY AND DIVERSION POINTS.

A. Dallas agrees to sell NTMWD Untreated Water for municipal use purposes, as specified below in Subsection 5.A. The sale of Untreated Water to NTMWD is subject to and limited by available system supply as determined by the Director in accordance with the Exhibit B. General Reservoir Operating Guidelines for Untreated Water Diversions by NTMWD. Dallas' supply of Untreated Water to NTMWD under this Contract, however, shall not be unreasonably delayed or withheld.

B. Dallas agrees to transport up to a maximum of 17.9 MGD of NTMWD Lake Fork Water from Lake Fork to Lake Tawakoni via Dallas' Lake Fork Pump Station and its Lake Fork to Lake Tawakoni pipeline, for NTMWD's subsequent diversion at its Lake Tawakoni diversion facilities, at such time in the future when the pump station and pipeline are operable. As of the Effective Date of this Contract, the pump station is out-of-service for improvements.

C. Dallas, in lieu of transporting NTMWD Lake Fork Water from Lake Fork to Lake Tawakoni, may, at its sole discretion, provide NTMWD up to a maximum of 17.9 MGD of Dallas Tawakoni/Fork Water for NTMWD's subsequent diversion at its Lake Tawakoni

diversion facilities. Any and all conditions and provisions in the Contract regarding the transport of NTMWD Lake Fork Water shall apply in the same manner to the Dallas Tawakoni/Fork Water that is transported pursuant to this Subsection 4.C. in lieu of NTMWD Lake Fork Water. No additional conditions, rates, or fees shall be assessed or imposed if Dallas provides Dallas Tawakoni/Fork Water in lieu of NTMWD Lake Fork Water, nor shall this Dallas Tawakoni/Fork Water be considered Untreated Water for purposes of this Contract.

D. Except as provided in Subsection 4.E., NTMWD shall take Dallas Tawakoni/Fork Water and NTMWD Lake Fork Water only from the Tawakoni Point of Diversion, which point of diversion is shown and described on the vicinity map in Exhibit C, attached hereto and made a part of this Contract.

E. Upon the mutual consent of Dallas and NTMWD, Dallas may authorize NTMWD to take Untreated Water from Lake Ray Hubbard. Dallas shall notify NTMWD of the availability of Lake Ray Hubbard Water thirty (30) days prior to release. In the event NTMWD agrees to take Untreated Water from Lake Ray Hubbard, NTMWD shall take Lake Ray Hubbard Water from the Point of Release at Lake Ray Hubbard to its East Fork Point of Delivery, which Points of Release and Delivery are shown and described on Exhibit C. Except as provided in this Subsection 4.E., NTMWD shall take Untreated Water sold under this Contract only from the Tawakoni Point of Diversion.

F. NTMWD shall continue to operate and maintain its diversion facilities at the Tawakoni Point of Diversion and the East Fork Point of Delivery.

#### 5. MAXIMUM PURCHASE.

A. Dallas agrees to sell and NTMWD agrees to purchase, divert, and use not more than 67,200 acre-feet ("Authorized Amount") in a calendar year (60 million gallons per day ("MGD")) of Untreated Water. NTMWD agrees to provide Dallas within thirty (30) days of the Effective Date a schedule for the reservation of all or part of the Authorized Amount ("Reservation Schedule") for the 2013 calendar year, specifying the month(s) such reservation will commence and cease. For subsequent calendar years during the term of this Contract, beginning November 1, 2013, NTMWD agrees to provide Dallas by November 1st a Reservation Schedule for the subsequent calendar year, specifying the month(s) such reservation will commence and cease and the preferred supply source. Dallas shall notify NTMWD within thirty (30) days of receipt of the Reservation Schedule as to whether the schedule is acceptable, which acceptance by Dallas shall not be unreasonably withheld. Upon Dallas' acceptance of the Reservation Schedule, Dallas agrees to reserve the quantity of the Authorized Amount in the Reservation Schedule ("Reserved Amount") for NTMWD's exclusive future use and diversion, for which NTMWD will pay a reservation fee as provided in Subsection 6.D. below.

B. Subject to NTMWD's continued maintenance of a contract with SRA for the purchase of NTMWD Lake Fork Water, Dallas agrees to transport for NTMWD up to 20,000 acre-feet in a calendar year (17.9 MGD) of NTMWD Lake Fork Water via Dallas' Lake Fork Pump Station and its Lake Fork to Lake Tawakoni pipeline, for NTMWD's diversion at the Tawakoni Point of Diversion, and NTMWD agrees to pay for Dallas' costs in transporting such

water. NTMWD agrees to provide Dallas within thirty (30) days of the Effective Date a schedule for the transport and delivery of NTMWD Lake Fork Water ("Transport Schedule") for the 2013 calendar year, specifying the month(s) such transport will commence and cease. For subsequent calendar years beginning November 1, 2013, NTMWD agrees to provide Dallas by November 1st a Transport Schedule for the subsequent calendar year, specifying the month(s) such deliveries will commence and cease. Dallas shall notify NTMWD within thirty (30) days of receipt of the Transport Schedule as to whether the schedule is acceptable, which acceptance by Dallas shall not be unreasonably withheld.

C. This Contract may be terminated by Dallas if NTMWD knowingly takes, in a calendar year, Untreated Water in excess of the Authorized Amount, or the Reserved Amount if less than the Authorized Amount; provided, however, that if NTMWD breaches this Contract by taking more than the Authorized Amount or the Reserved Amount if less than the Authorized Amount, NTMWD shall then be liable for the purchase price of the additional amounts taken at the rates as specified in Section 6, below.

#### 6. RATES.

A. Rate for sale of Reserved Amount of Untreated Water. NTMWD shall pay Dallas for the Reserved Amount of Untreated Water actually diverted under this Contract at a rate of \$0.3549 per 1,000 gallons, which may be adjusted from time to time based on a cost of service study for Untreated Water service to NTMWD, as provided for in Exhibit D, attached to and made a part of this Contract.

B. SRA fees. In addition to the rates for Untreated Water set forth in Subsection 6.A., above, NTMWD shall also be solely responsible for all costs, fees, or charges imposed on Dallas by SRA for NTMWD's purchases of Dallas Tawakoni/Fork Water.

C. Rate for transportation of NTMWD Lake Fork Water. NTMWD shall pay Dallas a rate of \$0.1038 per 1,000 gallons for the transport of NTMWD Lake Fork Water through Dallas' Lake Fork Pump Station and Lake Fork to Lake Tawakoni pipeline, for subsequent diversion by NTMWD at the Tawakoni Point of Diversion ("Water Transport Rate"), as same may be adjusted annually by Dallas based on the cost of service methodology described in Exhibit D. Should Dallas elect to provide NTMWD with Dallas Lake Fork/Lake Tawakoni Water in lieu of transporting NTMWD Lake Fork Water pursuant to Subsection 4.C. above, the cost of providing such water service to NTMWD will be the Water Transport Rate.

D. Fee for reservation of Reserved Amount. NTMWD shall pay Dallas a fee in the amount of \$0.0352 per 1,000 gallons for the Reserved Amount ("Reservation Fee"). The Reservation Fee shall be assessed annually, commencing on Dallas' acceptance of the Reservation Schedule provided by NTMWD and thereafter upon Dallas' acceptance of the Reservation Schedule submitted on November 1st of each subsequent calendar year. Payments of the Reservation Fee shall be prorated on a monthly basis. The Reservation Fee may be adjusted annually by Dallas based on the cost of service methodology described in Exhibit D. In the event that NTMWD diverts more water than identified in its annual Reservation Schedule,



NTMWD shall pay the reservation fee for the amount of water above the reserved amount, but at no time shall the amount diverted exceed the Authorized Amount.

E. Curtailment of Untreated Water and Reservation Fee. Notwithstanding any provision of this Contract to the contrary, to the extent Dallas curtails supplies of Untreated Water to NTMWD pursuant to Subsection 9.B., NTMWD's payments of the Reservation Fee shall be adjusted in accordance with the percent reduction of the Reserved Amount resulting from curtailment of such supplies.

#### 7. MEASUREMENT OF CONSUMPTION.

A. Adequate metering facilities, capable of measuring the water pumped and used by NTMWD and approved by the Director, will be maintained by NTMWD at the Tawakoni Point of Diversion and the East Fork Point of Delivery. Dallas shall maintain adequate metering facilities or utilize a reasonable method for calculating the amount of NTMWD Lake Fork Water transported through Dallas' Lake Fork to Lake Tawakoni pipeline.

B. The Director shall have the right to have NTMWD test its meter and to bill NTMWD on estimated quantities if a NTMWD's meter is found to be inaccurate. NTMWD shall have the right to have Dallas test its metering facilities at Lake Fork and to secure a refund from Dallas if the meter or method is found to have overestimated the volume of NTMWD Lake Fork Water transported. If any meter is discovered to be malfunctioning so that the amount of water delivered cannot be ascertained or computed, the amount of water that has passed through such meter during such period the meter was malfunctioning shall be estimated and agreed upon by Dallas and NTMWD upon the basis of the best data available during periods when the meter was functioning properly. NTMWD and Dallas shall maintain daily pumping logs for their respective meters to provide an alternate manner for estimating billings.

#### 8. METERING AND PUMPING FACILITIES.

A. NTMWD shall be required to provide the pumping and metering equipment and facilities at the Tawakoni Point of Diversion and East Fork Point of Delivery, as shown on Exhibit C. Dallas shall be required to provide metering equipment and facilities at Lake Fork to assist in calculating the amount of NTMWD Lake Fork Water transported from Lake Fork to Lake Tawakoni, also as shown on Exhibit C. Ownership and maintenance responsibility for the meters, pumps and facilities housing meters and pumps shall be with NTMWD with respect to the Tawakoni Point of Diversion and East Fork Point of Delivery and with Dallas with respect to the Lake Fork metering equipment and facilities.

B. NTMWD shall not divert or impound any Untreated Water unless such diversion or impoundment is authorized by this Contract.

#### 9. WATER CONSERVATION AND DROUGHT CONTINGENCY PLANS AND CURTAILMENT.

A. NTMWD shall implement practices which ensure water is used in a manner that prevents waste, conserves water resources for their most beneficial and vital uses, and protects the public health. NTMWD must implement a water conservation plan or water conservation measures using the applicable elements of TCEQ regulations in 30 Texas Administrative Code Chapter 288, as amended, and titled, "Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements." Because Dallas is deeply committed to efficiency in the use of the region's vital water resources, Dallas recently amended its water conservation provisions in Chapter 49 of the Dallas City Code to include permanent restrictions limiting outdoor irrigation to a maximum of two days per week. Dallas encourages the NTMWD and its customers and members to implement permanent twice weekly watering restrictions. Should the NTMWD and its customers and member cities who cumulatively constitute a minimum of 95% of NTMWD's total current annual demand (as that demand is reflected in Exhibit E) implement permanent twice weekly watering restrictions, Dallas shall credit NTMWD \$0.0352 per 1000 gallons of Untreated Water sold to NTMWD or NTMWD Lake Fork Water transported by Dallas on NTMWD's behalf in the calendar year in which the 95% condition was achieved. The credit is a one-time credit, and in no event may the credit exceed Seven Hundred Seventy Thousand Eight Hundred and Eighty Dollars (\$770,880), the equivalent of one-year's maximum Reservation Fee.

B. During a water shortage, NTMWD understands and acknowledges that the Untreated Water provided by Dallas under this Contract is subject to curtailment in accordance with Texas Water Code §11.039, "Distribution of Water During Shortage," Dallas' water rights, and Dallas' Drought Contingency Plan. NTMWD agrees that if water supplies or services are curtailed within Dallas, Dallas may impose a like curtailment on deliveries of Untreated Water to NTMWD. Such curtailment shall not apply to the transport and delivery of NTMWD Lake Fork Water, or Dallas Tawakoni/Fork Water transported in lieu of NTMWD Lake Fork Water. NTMWD shall cooperate by imposing conservation measures upon its sales of water to its end user customers.

C. NTMWD acknowledges that Dallas has provided a copy of its current Water Conservation Plan and Drought Contingency Plan and has advised NTMWD of where to locate copies of plan updates.

D. To the extent Dallas imposes restrictions or grants privileges of general applicability to itself and customer cities, including rules relating to the curtailment of water delivery and availability, Dallas agrees to impose such restrictions and grant such privileges equitably and in a non-discriminatory fashion including extension to NTMWD.

#### 10. PAYMENT.

A. Dallas shall submit to NTMWD, on a monthly basis, invoices showing the amount of Untreated Water actually taken by NTMWD as authorized by this Contract for the prior month. Such invoices shall also include the applicable Water Transport Rate for the prior month and the prorated yearly Reservation Fee.

B. NTMWD shall also be responsible for payment of all water taken above the Authorized Amount at the rates specified in Section 6 of this Contract. NTMWD's diversion and

use of additional quantities of water above the Authorized Amount may result in the termination of the Contract in accordance with Subsection 14.B.

11. LATE PAYMENTS.

A. NTMWD agrees that a payment is deemed late if received by Dallas more than thirty (30) days after the date of NTMWD's receipt of the monthly invoice. Late payments shall accrue interest at the interest rate provided in Section 2-1.1 of the Dallas City Code, as amended, or as authorized by Chapter 2251 of the Texas Government Code, as amended, whichever applies. NTMWD agrees to pay Dallas, in addition to all other payments provided for in this Contract, including interest, Dallas' collection expenses, including court costs and reasonable attorney's fee.

B. Dallas and NTMWD agree that any disputed charges on the monthly invoice shall be protested in accordance with Tex. Govt. Code §2251.042, as amended. NTMWD agrees that in the event it disputes any portion of the charges on the monthly invoice, NTMWD will timely pay any undisputed amount in accordance with Section 10.

12. TERM.

The term of this Contract shall commence on the Effective Date, and shall remain in effect for a term of three (3) years thereafter unless terminated earlier as provided herein.

13. INSPECTION AND METER READING.

Authorized Dallas employees shall have the right of reasonable ingress and egress on NTMWD's property and facilities during business hours to observe pumping operations, review pumping records, read meters, and to verify that Untreated Water is being used for the purposes and in the manner prescribed in this Contract. Likewise, NTMWD shall have the right of reasonable ingress and egress on Dallas' property and facilities during business hours to review records and read meters to verify that NTMWD Lake Fork Water is being transported for NTMWD's subsequent diversion and use in accordance with this Contract.

14. DEFAULT — TERMINATION.

A. Dallas, acting through the Director, shall have the right to terminate this Contract if it is found that pumping logs are not adequately maintained, that meters are being bypassed, or that any water pumped by NTMWD is being resold for use outside of the NTMWD Service Area, or used for unauthorized purposes. In addition, if the Contract is terminated under this Subsection 14.A., Dallas shall nonetheless be entitled to payment for the maximum quantity of water specified in Section 5.

B. Dallas, acting through the Director, shall have the right to terminate this Contract if NTMWD knowingly takes Untreated Water in excess of the Authorized Amount. If the Contract is terminated under this Subsection 14.B., Dallas shall be entitled to payment for the

entire Authorized Amount, PLUS payment for the diverted Untreated Water in excess of the Authorized Amount.

C. In addition to the foregoing, Dallas, acting through the Director, may terminate this Contract for noncompliance with any other contractual condition upon ten (10) days' advance written notice to NTMWD of its intent to terminate; provided, however, that if NTMWD cures the condition of contractual noncompliance within the ten-day period, Dallas, acting through the Director and at the Director's sole option, may continue this Contract.

D. The remedies set forth in this section shall not be considered exclusive, and Dallas retains all other rights and remedies available at law and in equity in the event of any breach by NTMWD of any of the terms or provisions of this Contract.

15. NO REPRESENTATIONS OR WARRANTIES; FORCE MAJEURE.

A. NTMWD AGREES TO TAKE WATER DELIVERED BY DALLAS "AS IS." DALLAS MAKES NO REPRESENTATIONS OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CHARACTER, QUALITY OR AVAILABILITY OF THE WATER TO BE TAKEN AND NTMWD AGREES TO ASSUME ALL SUCH RISKS, ACCEPTING SAID WATER, IF AVAILABLE, IN THE SAME STATE AS IT IS PUMPED OR RELEASED FROM THE DESIGNATED DIVERSION POINT(S). DALLAS ALSO DOES NOT MAKE ANY REPRESENTATION THAT THE WATER WILL BE SUITABLE FOR THE PURPOSES FOR WHICH NTMWD DESIRES TO USE IT.

B. NEITHER PARTY SHALL BE LIABLE IN ANY EVENT FOR THEIR INABILITY TO PERFORM ANY OBLIGATION UNDER THIS CONTRACT FOR REASONS BEYOND THE PARTY'S CONTROL, INCLUDING BUT NOT LIMITED TO ACTS OF GOD OR NATURAL DISASTER, WAR, DROUGHT, TERRORISM, FIRE, PUBLIC UTILITY POWER OUTAGE, OR THE RULES, REGULATIONS, OR ORDERS OF COURTS OR OF GOVERNMENTAL AGENCIES.

16. RIGHTS AND TITLE; RESALE.

A. NTMWD agrees that it shall acquire no rights or title to the use or reuse of Untreated Water owned and provided by Dallas under this Contract other than those rights explicitly set forth in this Contract.

B. NTMWD agrees to resell Untreated Water purchased from Dallas under this Contract to only those customers or members within its existing NTMWD Service Area, said existing customers and members being listed on Exhibit A, attached to and made a part of this Contract.

17. ASSIGNMENT.

NTMWD shall not sell, assign, transfer or convey its interest in this Contract, in whole or in part.

18. PROTECTION OF WATERSHED.

NTMWD agrees that raw water diverted from Lake Fork, Lake Tawakoni and/or Lake Ray Hubbard pursuant to this Contract shall not be treated or altered by chemical or other means so as to be harmful to the Dallas water supply in the event of runoff, overflow or other release. Any chemical treatment of the raw water by NTMWD prior to the treatment afforded at a NTMWD water treatment plant shall be approved in advance by Dallas, which approval shall not be unreasonably withheld. This provision shall not apply to any action associated with NTMWD's operation of wastewater treatment plants, but shall only apply to NTMWD's actual diversion of raw water from Lake Fork, Lake Tawakoni and/or Lake Ray Hubbard.

19. EASEMENTS, PERMITS AND FEES.

A. NTMWD shall obtain any easements or rights-of-way necessary for any water lines or facilities that may be required to implement the terms and conditions of this Contract. NTMWD is responsible for the acquisition of any permits or the payment of any regulatory or other fees required in connection with this Contract, including but not limited to permits, licenses, approvals or regulatory or other fees that may be required by SRA, TCEQ, or TWDB.

B. In agreeing to accept delivery of water under this Contract, NTMWD warrants and represents that NTMWD's diversion and use of water will be in compliance with all applicable laws and regulations, including but not limited to all applicable laws of the State of Texas, applicable rules, regulations and orders of TCEQ and TWDB, federal law (including but not limited to environmental and water quality laws, rules, orders, and regulations), and the Charter and ordinances of the City of Dallas, as same may hereafter be amended. This Contract's effectiveness is dependent upon Dallas and NTMWD's compliance with 30 Texas Administrative Code, Section 295.101 and 30 Texas Administrative Code, Chapter 297, Subchapter J (relating to Water Supply Contracts and Amendments), as amended.

C. In the event NTMWD is required to obtain any water right permit, amendment or other approval from the State of Texas related to its purchase of Untreated Water from Dallas, NTMWD shall include in all applications for permits or approvals a request that all permits and approvals issued contain a reference to this Contract and that NTMWD's right to impound or divert Untreated Water is contingent upon the continued effectiveness of this Contract.

D. In accordance with Subsection 19.C. above, NTMWD shall not commence construction of impoundments or diversion facilities prior to obtaining all permits and approvals required from the State of Texas. NTMWD shall divert water under this Contract only pursuant to such permit, or amendment to any existing permit that TCEQ or TWDB may issue to NTMWD relating to the diversion of water.

20. OTHER CHARGES.

In the event any sales or use taxes, assessments or charges of any similar nature are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using, or consuming the Untreated Water received by NTMWD from Dallas, the amount of the tax,

assessment, or charge shall be borne by NTMWD, in addition to all other charges, and whenever Dallas is required to pay, collect, or remit any tax, assessment, or charge on water received by NTMWD, then NTMWD shall promptly pay or reimburse Dallas for the tax, assessment or charge in the manner directed by Dallas.

21. NOTICES.

Any notice, payment, statement, or demand required to be given under this Contract shall be deemed to have been sufficiently given to either party for all purposes hereof if mailed by certified mail, postage prepaid, addressed as follows:

TO DALLAS:

Director  
Dallas Water Utilities  
Dallas City Hall  
1500 Marilla — Room 4/a/North  
Dallas, Texas 75201

TO NTMWD:

Executive Director/General Manager  
North Texas Municipal Water District  
505 E. Brown Street  
Wylie, Texas 75098

The parties may designate other addresses from time to time in writing in accordance with this notice provision.

22. NOTICE OF CONTRACT CLAIM.

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against Dallas. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract for all purposes as if written word for word in this Contract. NTMWD shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

23. CONFLICT OF INTEREST.

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED.

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation

contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."

24. GIFT TO PUBLIC SERVANT.

Dallas may terminate this Contract immediately if NTMWD has offered, or agreed to confer any benefit upon a Dallas employee or official that the Dallas employee or official is prohibited by law from accepting.

For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, Dallas may require NTMWD to remove any officer or employee of NTMWD from the administration of this Contract or any role in the performance of this Contract who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a Dallas employee or official.

25. VENUE.

The parties agree that this Contract shall be enforceable in Dallas County, Texas, and if legal action is necessary to enforce it, venue shall lie exclusively in Dallas County, Texas.

26. GOVERNING LAW.

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or any other state.

27. SEVERABILITY; LEGAL CONSTRUCTION.

A. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

B. The parties acknowledge that this Contract is an "arm's length" agreement, entered into by Dallas and NTMWD freely, without duress, coercion or any undue influence. No presumption will apply in favor of either party in the interpretation of this Contract or in the resolution of any ambiguity of any provision of this Contract.

28. COUNTERPARTS.

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

29. CAPTIONS.

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

30. APPLICABLE LAWS.

This Contract may be subject to review and approval by TCEQ or TWDB. NTMWD shall comply with all terms, conditions and provisions of any permit required to be obtained from the State of Texas, so long as same may remain in effect. In the event of any final judgment finding any violation or violations of the laws, rules, regulations, or orders described above, NTMWD shall be strictly liable for any damages caused to the property of Dallas, including but not limited to Dallas's interest in Lake Fork and Lake Tawakoni water, as a result of such violation or violations.

31. NO THIRD PARTY BENEFICIARIES.

Dallas and NTMWD enter into this Contract solely for the benefit of themselves and agree that nothing in this Contract shall be construed to confer any right, privilege or benefit on any person or entity other than Dallas and NTMWD.

32. SUCCESSORS AND ASSIGNS.

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this Contract, their assigns.

33. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS.

This Contract embodies the entire agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.



34. AUTHORIZATION TO ACT.

By their signatures below, the representatives of Dallas and NTMWD state that they are authorized to enter into this Contract. Dallas and NTMWD will each provide documentation that this Contract has been authorized by its respective governing body.

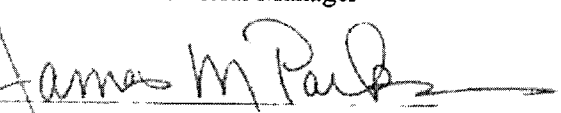
EXECUTED on the dates set out below on behalf of Dallas by its City Manager, duly authorized by Resolution No. 13- 0720, adopted on the 24th day of April, 2013, and approved as to form by its City Attorney; and on behalf of NTMWD by its duly authorized official(s).

**CITY OF DALLAS**  
MARY K. SUHM  
City Manager

**PURCHASER:**  
**NORTH TEXAS MUNICIPAL WATER**  
**DISTRICT**

JAMES M. PARKS  
Executive Director/General Manager

BY:   
Assistant City Manager


BY: 

DATE: 5 / 7 / 13

DATE: 9 May 2013

APPROVED AS TO FORM:  
THOMAS P. PERKINS, JR.  
City Attorney

ATTEST:

BY:   
Assistant City Attorney  
subscribed to City Attorney


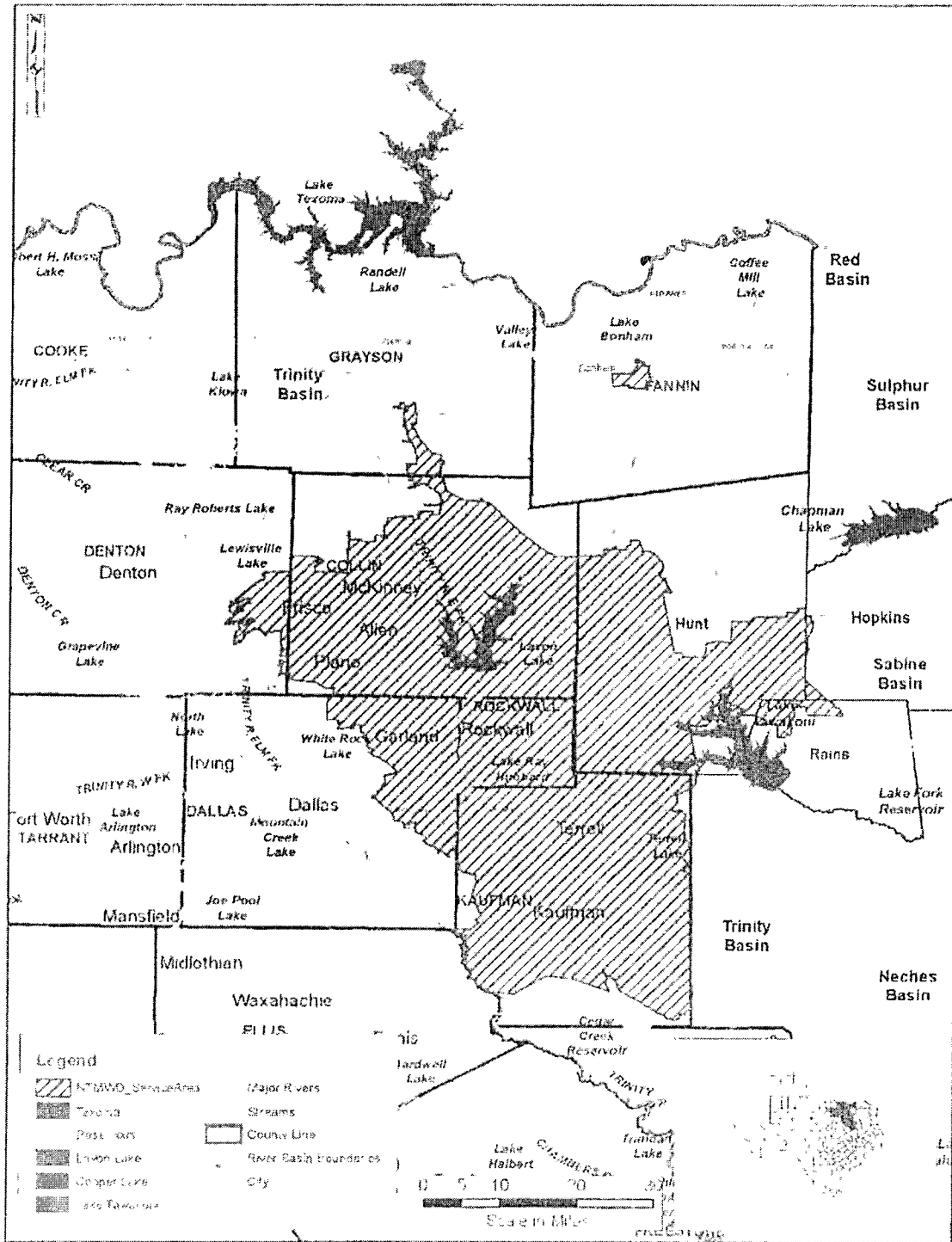
BY: 

EXHIBIT A  
NTMWD SERVICE AREA

# NTMWD SERVICE AREA



NTMWD Service Area List

**Members:**

Allen  
Farmersville  
Forney  
Frisco  
Garland  
Mesquite  
McKinney  
Plano  
Princeton  
Richardson  
Royce City  
Rockwall  
Wylie

**Customers:**

Bonham  
Caddo Basin SUD  
Cash SUD  
College Mound WSC  
Copeville SUD  
East Fork SUD  
Fairview  
Fate  
Fate No. 2  
Forney Lake WSC  
Gastonia-Scurry SUD  
Greater Texoma Utility Authority  
Josephine  
Kaufman  
Kaufman Four-One  
Lavon WSC  
Little Elm  
Lucas  
Melissa  
Milligan WSC  
Mt. Zion WSC  
Murphy  
Nevada WSC  
Nevada WSC No. 2  
North Collin WSC  
Parker  
Prosper  
Rose Hill SUD  
Rowlett  
Sachse  
Seis Lagos UD  
Sunnyvale  
Terrell  
Wylie NE SUD

EXHIBIT B  
GENERAL RESERVOIR OPERATING GUIDELINES  
FOR  
UNTREATED WATER DIVERSIONS BY NTMWD

GENERAL RESERVOIR OPERATING GUIDELINES  
FOR  
UNTREATED WATER DIVERSIONS BY NTMWD

Based on NTMWD's initial three-year schedule of average and maximum water diversions from Lake Tawakoni and Lake Ray Hubbard and the adequacy of Dallas' system to be able to provide water throughout the drought of record, lake depletion levels may occur such that Dallas would need to limit withdrawals by NTMWD from Lake Ray Hubbard and/or Lake Tawakoni. The NTMWD Initial 3 Year Schedule of Diversions is attached for reference only, NTMWD will provide an annual Reservation Schedule as per Section 5.A. of this Contract.

General guidelines for the operations of these two lakes throughout the three year period are given below, which may be modified by the mutual consent of the parties.

- I. If Dallas' composite lake storage of Lakes Lewisville, Ray Roberts, and Grapevine is above 85.0% of conservation capacity, there will be no limitations on releases from Lake Ray Hubbard or diversions from Lake Tawakoni other than the maximum diversions that NTMWD has provided.
- II. If Dallas' composite lake storage of Lakes Lewisville, Ray Roberts, and Grapevine is less than 85.0% of conservation capacity and the Lake Ray Hubbard water elevation is below 428.00 feet, NTMWD is limited to withdrawals from the Lake Tawakoni / Lake Fork system.
- III. If Lake Ray Hubbard water elevation is below 409.00 feet, invert elevation of the low flow gate, release from Lake Ray Hubbard will not be possible and NTMWD is limited to withdrawals from the Lake Tawakoni / Lake Fork system.
- IV. In the event that Dallas decides to pump water from Lake Fork, NTMWD water withdrawn from Lake Tawakoni will be considered to be Lake Fork water in matters concerning compensation for water transportation costs. Pumpage from Lake Fork by Dallas may be triggered by:
  - a. Dallas' contracted annual allocation in Lake Tawakoni is greater than 70% by September 1<sup>st</sup> of each year;
  - b. lower depletion levels in Lake Tawakoni relative to Lake Fork; or
  - c. water levels in relation to intake elevations.

Intake	Lowest Intake Elevation (feet m.s.l.)
Dallas	383.5
Cash SUD	426.5
Commerce	425.5
City of Edgewood	416.5
City of Greenville	415.0
MacBee SUD	392.0
City of Point	421.3
South Tawakoni WSC	416.5
City of West Tawakoni	432.0
City of Wills Point	416.5
Combined Consumers SUD	420.9
City of Emory	428.5
NTMWD (Terrell)	392.0

Dallas and NTMWD shall develop, review and approve an accounting plan to document daily diversion and use from each source including Lake Tawakoni, Lake Fork and Lake Ray Hubbard. Dallas and NTMWD may review the accounting plans which may be adjusted by the mutual agreement, as often as needed.

## NTMWD's Initial 3 Year Schedule of Diversions

Month	DWU Diversion (MGD)						
	Minimum	Average	Average from Tawakoni	Average from Ray Hubbard	Maximum	Maximum from Tawakoni	Maximum from Ray Hubbard
13-Jan	0	23.66	17.89	5.77	60	40.5	19.5
13-Feb	0	19.91	15.79	4.12	60	40.5	19.5
13-Mar	0	15.7	12.40	3.30	60	40.5	19.5
13-Apr	0	10.88	8.68	2.20	60	40.5	19.5
13-May	0	9.18	7.37	1.81	60	40.5	19.5
13-Jun	0	8.2	6.55	1.65	60	40.5	19.5
13-Jul	0	10.76	8.59	2.17	60	40.5	19.5
13-Aug	0	15.73	12.71	3.02	60	40.5	19.5
13-Sep	0	19.91	16.06	3.85	60	40.5	19.5
13-Oct	0	11.67	11.67	0.00	22.94	22.94	0
13-Nov	0	11.13	11.13	0.00	22.94	22.94	0
13-Dec	0	10.55	10.55	0.00	22.94	22.94	0
14-Jan	0	25.32	23.22	2.10	55.2	40.5	14.7
14-Feb	0	21.65	20.12	1.53	55.8	40.5	15.3
14-Mar	0	18.27	16.87	1.40	56.8	40.5	16.3
14-Apr	0	14.25	12.89	1.36	59.6	40.5	19.1
14-May	0	10.91	10.07	0.84	60	40.5	19.5
14-Jun	0	8.76	8.48	0.28	60	40.5	19.5
14-Jul	0	9.83	9.27	0.56	60	40.5	19.5
14-Aug	0	13.33	12.49	0.84	60	40.5	19.5
14-Sep	0	18.04	17.20	0.84	60	40.5	19.5
14-Oct	0	24.19	22.52	1.67	60	40.5	19.5
14-Nov	0	25.06	23.49	1.57	58.8	40.5	18.3
14-Dec	0	23.6	22.55	1.05	55.2	40.5	14.7
15-Jan	0	22.23	21.41	0.82	54.73	40.5	14.23
15-Feb	0	17.01	16.58	0.43	55.33	40.5	14.83
15-Mar	0	13.37	12.91	0.46	56.33	40.5	15.83
15-Apr	0	11.4	10.86	0.54	59.13	40.5	18.63
15-May	0	8.7	8.42	0.28	60	40.5	19.5
15-Jun	0	7.01	6.73	0.28	60	40.5	19.5
15-Jul	0	7.53	7.25	0.28	60	40.5	19.5
15-Aug	0	11.19	10.91	0.28	60	40.5	19.5
15-Sep	0	15.69	15.12	0.57	60	40.5	19.5
15-Oct	0	20.7	20.13	0.57	60	40.5	19.5
15-Nov	0	22.54	22.02	0.52	58.33	40.5	17.83
15-Dec	0	22.03	22.03	0.41	54.73	40.5	14.23

EXHIBIT C

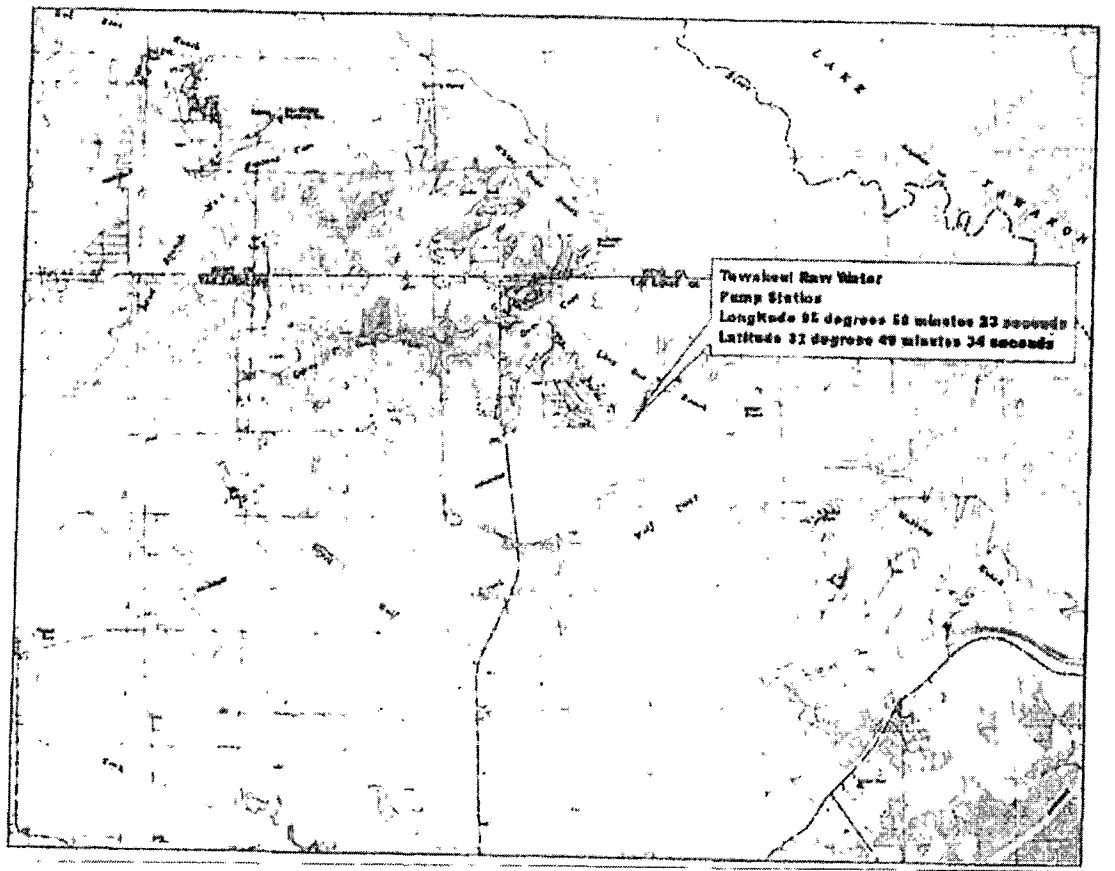
DESCRIPTION OF PUMPING AND METERING EQUIPMENT AND FACILITIES AND  
LOCATION OF POINTS OF DIVERSION, DELIVERY, AND RELEASE



Tawakoni Raw Water Pump Station

Pumping equipment consists of four 25 MGD vertical turbine pumps. Flow measurement is with a 60 inch Eastech Badger TT flowmeter.

Tawakoni Raw Water Pump Station Diversion Point



East Fork Diversion Pump Station

Pumping equipment consists of 4 vertical turbine pumps (two 48 MGD pumps and two 24 MGD pumps). Flow measurement is with an ultrasonic level over a weir.

East Fork Diversion Point

