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

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 STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

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SABINE RIVER AUTHORITY'S MOTION  
TO DENY INTERIM RATES

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Exhibit 1 – Affidavit of David Montagne

Exhibit 2 – Affidavit of Jack E. Stowe, Jr.

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<b>PETITION OF THE CITY OF DALLAS FOR REVIEW OF A DECISION BY THE SABINE RIVER AUTHORITY TO SET WATER RATES (LAKE FORK RESERVOIR)</b>	<b>§ § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**SABINE RIVER AUTHORITY'S MOTION  
TO DENY INTERIM RATES**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Sabine River Authority of Texas ("Authority" or "SRA") and files this Motion to Deny Interim Rates. Pursuant to SOAH Order No. 9, this Motion is timely filed.

**I. INTRODUCTION**

The Administrative Law Judge ("ALJ") appropriately abated this case under the provisions of P.U.C. SUBST. R. 24.131(d).<sup>1</sup> The ALJ also appropriately declined to establish interim rates prior to abatement. In ruling on the appeal by the City of Dallas ("City" or "Dallas") of the order of abatement, the Public Utility Commission ("PUC" or "Commission") did not instruct the ALJ to order interim rates, but instead to consider whether interim rates should be established.<sup>2</sup> For the reasons provided herein, the Authority urges the ALJ to deny Dallas' request for interim rates. In the alternative, if the ALJ determines that interim rates should be established, the Authority requests that interim rates be set at the level of current rates, to-wit: \$0.5613/1,000 gallons, on a take-or-pay basis.

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<sup>1</sup> SOAH Order No. 5 (Jan. 22, 2015).

<sup>2</sup> Commission Order on Appeal of Order No. 5 (Mar. 26, 2015) ("Commission Order").

## II. CONTRACTUAL RATES SHOULD NOT BE MODIFIED

In the Commission Order, the Commission reviewed the Water Code, the Commission's interim-rate rule,<sup>3</sup> and the Commission's abatement rule.<sup>4</sup> Because it was of the opinion that none of these provisions spoke to the issue of whether interim rates can be established after a motion to abate has been filed, the Commission decided to remand the case to the ALJ to allow him the opportunity to consider whether interim rates should be established.<sup>5</sup>

The ALJ appropriately abated the case without establishing interim rates, guided by the Commission's rules. The rules contemplate that the Commission should only modify contractual rates after the Commission has found, after an evidentiary hearing, that the protested rates adversely impact the public interest.<sup>6</sup> Otherwise, the procedural protections put in place to comply with the provisions of the Texas Constitution that prohibit the impairment of contracts will have been circumvented. The appropriate time to consider interim rates would be after, and only if, the existing rates are found to be adverse to the public interest.

### A. The Proceeding has been Appropriately Abated and is Before the Courts.

Order No. 5 by the ALJ appropriately abated the proceeding pursuant to P.U.C. SUBST. R. 24.131(d). As the ALJ correctly noted, the rule required him to do so. Order No. 5 was signed by the ALJ on January 21, 2015. On January 30, 2015, the City filed an Original Petition for Declaratory Judgment and Supplemental Relief and Request for Disclosure ("City Petition") in the Travis County District Court. (The City has also filed a separate petition in Orange County, Texas.) Thus, the City has already taken advantage of the abatement of the case, and is seeking relief in the courts.

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<sup>3</sup> 16 Tex. Admin. Code 24.29(d) (P.U.C. SUBST. R. 24.29(d)).

<sup>4</sup> 16 Tex. Admin. Code 24.131(d) (P.U.C. SUBST. R. 24.131(d)).

<sup>5</sup> Commission Order at 5.

<sup>6</sup> 16 Tex. Admin. Code 24.133 (P.U.C. SUBST. R. 24.133).

**B. Interim Rates are not Available in this Proceeding Under the Commission's Interim Rate Rule.**

P.U.C. SUBST. R. 24.29 is not appropriately applied to this proceeding. The Commission, through the ALJ, has not taken jurisdiction of the City's Petition under Chapter 13 of the Texas Water Code.<sup>7</sup> As discussed in greater detail below, Texas case law requires that wholesale rates set pursuant to a written contract are not to be lightly modified or set aside. Therefore, because the Commission has not exercised jurisdiction under Texas Water Code §§ 13.043(a), (b), or (f), interim rate authority is not available 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).

**1. P.U.C. SUBST. R. 24.29(a) is not applicable.**

Section 24.29(a) authorizes the Commission, on a motion by the Commission Staff or by an appellant under Texas Water Code §§ 13.043(a), (b), or (f), to establish interim rates. This rule cannot apply to this proceeding because: (1) Texas Water Code § 13.043(a) pertains to appeals from the decision of the governing body of a municipality (which is not the case here); and (2) § 13.043(b) pertains to appeals by ratepayers from rate decisions of non-profit water or sewer corporations, utilities under the jurisdiction of municipalities inside the city limits, municipally-owned utilities if ratepayers live outside the city limits, conservation districts that provide water or sewer service to household users, and certain county-owned utilities. None of these circumstances exist here.

Likewise, Texas Water Code § 13.043(f) does not apply to this proceeding. This subsection addresses the provision of "water or sewer service" from a retail public utility or

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<sup>7</sup> See SOAH Order No. 4, in which the ALJ declined to rule on the applicability of Chapter 13 to these proceedings.

political subdivision of the state to another retail public utility. The SRA is not providing “water service,” as defined in the Texas Water Code, to the City or to any other entity. 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>8</sup>

The Authority 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>9</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, P.U.C. SUBST. R. 24.29(a) is likewise inapplicable.

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<sup>8</sup> Tex. Water Code Ann. §§ 13.002(20) and 13.002(25) (West 2008 & Supp. 2014) (emphasis added).

<sup>9</sup> *Id.* at § 13.002(19) (emphasis added).

2. **P.U.C. SUBST. R. 24.29(b) is not applicable.**

This provision of the rule applies after the filing of a statement of intent to change rates under Chapter 13 of the Texas Water Code. Clearly, this current proceeding is not a statement of intent proceeding; therefore, Rule 24.29(b) does not apply here.<sup>10</sup>

3. **P.U.C. SUBST. R. 24.29(d) and (e) are not applicable.**

Commission Rule 24.29, Interim Rates, does not apply to the Authority or the petition filed by the City against the Authority's rate, because none of the terms used in that rule, terms that are specifically defined in both the Water Code and the Commission's rules, apply to the Authority or the Authority's adopted rate. Definitions in the Commission's rules pertaining to the economic regulation of water and sewer utilities are very important; it is these definitions that guide the agency and the regulated community and instruct both parties on their obligations and responsibilities. In particular, the definitional differences between "utility" and "retail public utility" have been maintained for many years, and are not interchangeable.

(a) **The Authority is not a "utility."**

Now defined at P.U.C. SUBST. R. 24.3(53), a "utility" is further defined as a water or sewer utility under paragraph (54), as follows:

- (54) **Water and sewer utility** -- Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, *other than* a municipal corporation, water supply or sewer service corporation, or *a political subdivision of the state*, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or *provision of potable water to the public* or for *the resale of potable water to the public* for any use or for the collection, transportation, treatment,

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<sup>10</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 Utilities Code § 33.024.

or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others. (Emphasis added.)

The Authority is not a utility under this definition; it is a political subdivision, and it does not provide potable water to the public.

**(b) The Authority is not a “retail public utility.”**

The Authority is also not a “retail public utility” because it does not provide potable water service and thus does not meet the definition of a retail public utility:

- (41) **Retail public utility** – 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. (Emphasis added.)

**(c) The rate set by the Authority is not a “rate” under P.U.C. SUBST. R. 24.29(d).**

Rule 24.29(d) addresses a “proposed rate” by a “utility.” The word “rate” is defined in both the Water Code and the Commission’s rule:

- (38) “Rate” – includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected whether directly or indirectly, by any *retail public utility* or any water or sewer service supplier, for any service, product, or commodity described in TWC, § 13.002(23), and any rules, regulations, practices, or contracts affecting any such



compensation, tariff, charge, fare, toll, rental, or classification.<sup>11</sup> (Emphasis added.)

Because the Authority is not a retail public utility, and does not provide potable water service (the only water commodity described in Tex. Water Code § 13.002(23)), the rate charged by the Authority to the City does not fall within the purview of P.U.C. SUBST. R. 24.29(d).

**(d) The protested rate is not a “proposed rate.”**

In addition to not being the type of “rate” contemplated by P.U.C. SUBST. R. 24.29(d), the Authority’s rate protested by the City is not a “proposed rate”; the rate went into effect on November 2, 2014, by order of the Authority’s Board of Directors.

**4. P.U.C. SUBST. R. 24.29 Must be Read and Applied in Tandem with P.U.C. SUBST. R. 24.128-.138.**

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).

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<sup>11</sup> P.U.C. SUBST. R. 24.3(38), tracking Tex. Water Code § 13.002(17). The reference within this paragraph to “TWC, § 13.002(23)” is a reference to the definition of “water and sewer utility,” “public utility,” or “utility.” The statutory definition of “water and sewer utility,” “public utility,” or “utility” in Tex. Water Code § 13.002(23) is mirrored in P.U.C. SUBST. R. 24.3(54), quoted above. All of the definitions require the provision of *potable* water service.

The Commission's rules provide that 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>12</sup> Rules 24.29(d) and (e) do not override this provision. 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 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 modified or 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>13</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. 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.

Because the Commission has appropriately not taken jurisdiction under Chapter 13 of the Texas Water Code, the interim rate rules applicable to proceedings under Chapter 13 are inapplicable, and do not provide any 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

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<sup>12</sup> P.U.C. SUBST. R. 24.132(c).

<sup>13</sup> *Texas Water Commission v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).

Water Code § 13.043(h) does not apply. Parties are unable to confer jurisdiction on the Commission where there is none.<sup>14</sup> Outside of the described proceedings under the Texas Water Code and under the Commission's rules that give the Commission authority to set interim rates, the Commission has no such authority.

**C. Section 12.013, Texas Water Code, does not Override the Procedural Requirements of Chapter 24, Subchapter I of the Commission's Rules.**

The Commission cited § 12.013 of the Texas Water Code as authority to "set interim rates and compel continuing service during the pendency of the rate proceeding."<sup>15</sup> However, as noted above, the entirety of Subchapter I, **Wholesale Water or Sewer Service**, is applicable to petitions to review rates charged for the sale of water for resale filed under Chapter 12 of the Texas Water Code, and provides the *substantive guidelines and procedural requirements* concerning such petitions.<sup>16</sup>

Section 12.013 of the Texas Water Code was originally enacted in 1911,<sup>17</sup> and before the economic regulation of water and sewer utilities was transferred to the Commission in 2014, the last prior amendment to this statute was in 1977.<sup>18</sup> The requirement that the Commission hold a bifurcated review of wholesale contract rates did not take effect until 1994. Prior to 1994, it may well have been the practice of the Commission's predecessors to fix wholesale rates and establish interim rates while the rate case was proceeding, but certainly such has not been the practice after the Texas courts instructed the Commission as to how contractual rates must be modified. In accordance with that instruction, the Commission's predecessor in 1994 adopted

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<sup>14</sup> *Morrow v. Corbin*, 62 S.W.2d 641, 649 (Tex. 1933) (Parties are unable to confer jurisdiction by agreement).

<sup>15</sup> Tex. Water Code § 12.013(e) (West Supp. 2014).

<sup>16</sup> 16 Tex. Admin. Code § 24.128 (P.U.C. SUBST. R. 24.128).

<sup>17</sup> Rev. Civ. St. 1911, art. 5002hh.

<sup>18</sup> Acts 1977, 65<sup>th</sup> Leg., p. 2207, ch. 897, § 1, eff. Sept. 1, 1977.

the rules that have remained fundamentally unchanged since that time. These rules now reside in Chapter 24, Subchapter I of the Commission's Substantive Rules, and instruct the Commission that the substantive guidelines and procedural requirements for petitions brought under § 12.013 of the Texas Water Code require that abatement must take place, and that rates are not to be modified without completion of phase one of a two-phase proceeding.

As additional evidence that Texas Water Code § 12.013 does not provide independent authority for interim rates, but must be read in conjunction with the Commission's wholesale rate rules, there are no standards or criteria included in § 12.013 that would provide any guidance for how such interim rates would be set. The statement that "the Commission may establish interim rates and compel continuing service during the pendency of any rate proceeding"<sup>19</sup> is not self-enacting. The reference to Texas Water Code Chapter 12 in P.U.C. SUBST. R. 24.128(1) is not happenstance, but is a clear indication that the process for setting interim rates contemplated under Chapter 12 (including § 12.013) must be in accord with P.U.C. SUBST. R. 24.128, *et seq.* Texas Water Code § 12.013 cannot act alone. Therefore, interim rates should not be established in this case prior to abatement.

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

The City has requested as an interim rate the rate in effect prior to November 2, 2014. As noted above, the 1981 Water Supply Contract provides for two 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 negotiated provision that requires the City to pay additional renewal term

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<sup>19</sup> Tex. Water Code Ann. § 12.013(e) (West 2008 & Supp. 2014).

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>20</sup> is an attempt to justify the City's outrageous request that it be given water for free. As Mr. Montagne states in his affidavit, the use of the Lake Fork water by the City outside of the Sabine River Basin has significant consequences for the basin and the existing and future customers of the Authority.<sup>21</sup> He additionally notes that in 2060, the Sabine River Basin water resources in Region D are projected to be deficient by nearly 50,000 acre-feet, and in Region C, the regional plan projects a need of more than 108,000 acre-feet per year from SRA.<sup>22</sup> 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.

#### **IV. EXISTING RATE DOES NOT CREATE AN ECONOMIC HARDSHIP**

Even if the ALJ determines to establish interim rates,<sup>23</sup> the City's arguments attempting to justify the need for interim rates at any level other than the existing rate still fall short. The only standard cited by the Commission is found in P.U.C. SUBST. R. 24.29(d), to-wit: when the *proposed increase* in rates could result in an unreasonable economic hardship on the *utility's*

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<sup>20</sup> Dallas' Motion for Expedited Interim Rates at 9.

<sup>21</sup> See Affidavit of David Montagne, Exhibit 1 to this Motion.

<sup>22</sup> *Id.*

<sup>23</sup> The Authority does not concede that interim rates are authorized, as set forth in detail above.

customers, unjust or unreasonable rates, or failure to set rates could result in an unreasonable economic hardship on the utility.<sup>24</sup>

In various pleadings, the City has alleged that the SRA's rate is "excessive and unreasonable" without providing any factual basis for that claim. As of the time of this filing, the City has not provided 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 has merely claimed that the City will be presented with an unspecified economic hardship because of the rates set by the SRA.

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

Despite the City's attempts to portray the Authority as a bad actor, the facts remain as described by Mr. Montagne in his affidavit attached hereto as Exhibit 2. Discussions on the additional compensation rate for the renewal term actually started as early as 1991. Continuing until the day before the additional compensation renewal rates were adopted in 2014, the Authority attempted in good faith to negotiate an additional compensation renewal rate with the City:

- As early as 1991 the City and the Authority starting discussing the rate for the renewal term of the 1981 Contract.
- The Authority 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 Authority 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

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<sup>24</sup> P.U.C. SUBST. R. 24.29(d) (emphasis added).

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>25</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>26</sup> Although the SRA negotiated in good faith with the City, offering a rate consistent with other current contracts in

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<sup>25</sup> See Affidavit of David Montagne, Exhibit 1 to this Motion.

<sup>26</sup> See Sabine River Authority’s Response to City of Dallas’ Original Petition and Request for Interim Rates at 14-15 (Dec. 2, 2014). These prices ranged from \$551 to \$1,302/acre-foot, or \$1.691 to \$3.9939/1,000 gallons.

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. As illustrated by the survey of wholesale rates undertaken by Mr. Jack Stowe and set forth in his affidavit attached hereto as Exhibit 2, the rate set by the Authority is well within the range of comparable rates set by other wholesale providers.<sup>27</sup>

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

Neither the City, nor its wholesale and retail customers, will face the economic hardship that has been alleged. 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 increase in annual costs to the City under the SRA's adopted rates would be \$24,117,216 (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

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<sup>27</sup> See Affidavit of Jack E. Stowe, Exhibit 2 to this Motion.



\$551/acre-foot, respectively, for a total of 114,337 acre-feet per year.<sup>28</sup> Dallas has referred to this Long Range Water Supply Plan, claiming that these capital improvements may have to be deferred to fund the Lake Fork water rate payments.<sup>29</sup> It is unclear how the City is harmed 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 assertion that the SRA's rate will require a rate increase for Dallas' customers "at some time."<sup>30</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>31</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>32</sup> The impact of this 3.2% increase in the City's budget on the

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

<sup>29</sup> Dallas' Motion for Expedited Interim Rates at 7.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 8.

<sup>32</sup> Dallas FY 2014-2015 Budget at 473 (Attachment E to the Authority's Response to the Petition).

typical residential monthly bill will be almost negligible; according to the FY 2014-2015 budget, the average bill will increase by 1.9%.<sup>33</sup> The “amount of compensation” to be paid by the City to the Authority under the 1981 Water Supply Contract renewal pales in comparison: \$0.5613/1,000 gallons, or \$24,117,216 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>34</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>35</sup> In this Luminant contract, the City identifies this rate to be the “prevailing rate.”<sup>36</sup>

The City’s allegation that the price charged by the SRA for water from Lake Fork 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 Official Statements of the City’s 2013 and 2014 bond issues, which are publically available on the City’s website, the 2012 Financial Statement of the City indicates that Dallas Water Utility had in excess of \$134,000,000 in unrestricted assets.<sup>37</sup>

Likewise there are no potential hardships to the City’s ratepayers as a result of the Authority’s rate. As set forth in Mr. Stowe’s affidavit, because of the large amount of water

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<sup>33</sup> *Id.* at 12.

<sup>34</sup> *See* Exhibit 1, Affidavit of David Montagne.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *See*, Affidavit of Jack E. Stowe, Exhibit 2 to this Motion, and Attachments D, E, and F thereto.

delivered by the Dallas Water Utility to its customers (over 119 billion gallons per year), the increase for the Lake Fork water, when applied on a gallon basis, is only \$0.202 per 1,000 gallons.<sup>38</sup> Assuming that the average residential customer uses 10,000 per month, the rate increase would result in a monthly increase to the average residential connection of \$2.20.<sup>39</sup> Even with that amount of increase, the retail rates for the City would remain lower than every other city in the State of Texas within the population group of more than 500,000.<sup>40</sup> And, as Mr. Stowe describes, if the City would take measures to reduce its lost and unaccounted for water, it would experience an annual savings that would defray most of the cost of the Lake Fork water.<sup>41</sup>

Dallas' allegations that the renewal rates will be financially ruinous to the City or its customers are unsupported, and insupportable, and interim rates should be denied.

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

The City has argued 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>42</sup> This argument squarely contradicts the City's other 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 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

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<sup>38</sup> See Affidavit of Jack E. Stowe, Exhibit 2 to this Motion.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

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.

## **VI. CONCLUSION AND PRAYER**

The ALJ should decline to establish interim rates in this proceeding. Implementing any modification of the contractual rates without providing the constitutional protection of a public interest inquiry violates the Authority's right to have its contract preserved, and exceeds the Commission's authority as set forth herein. In the alternative, if the ALJ determines to establish an interim rate, the Authority asserts that the City has failed to establish that the existing rate works an unreasonable economic hardship on itself or its customers, and the interim rate set by the Commission should be no less than the existing rate: \$0.5613 / 1,000 gallons, on a take-or-pay basis, adjusted annually by the Consumer Price Index.<sup>43</sup>

Respectfully submitted,

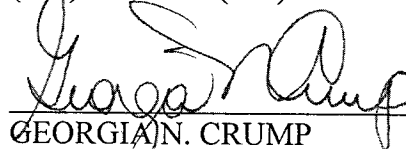
**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

Austin, Texas 78701

(512) 322-5800

(512) 472-0532 (Fax)



GEORGIA N. CRUMP

State Bar No. 05185500

gcrump@lglawfirm.com

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<sup>43</sup> See Exhibit 1, Affidavit of David Montagne.

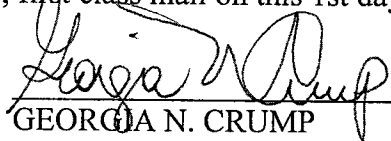
MARTIN C. ROCHELLE  
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mlong@lglawfirm.com

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 1st day of April, 2015, to the parties of record.

  
\_\_\_\_\_  
GEORGIA N. CRUMP

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

PETITION OF THE CITY OF DALLAS FOR REVIEW OF A DECISION BY THE SABINE RIVER AUTHORITY TO SET WATER RATES (LAKE FORK RESERVOIR)	§ § § § §	BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS
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**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 over the age of eighteen years, am of sound mind, have never been convicted of a felony or a crime of moral turpitude, am competent in all respects to make this affidavit, and have personal knowledge of the facts herein set forth and they are all true and correct. I am currently employed as the Executive Vice President and General Manager of the Sabine River Authority of Texas ("SRA"). I have been employed by the SRA since 1986.
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 (also known simply as "Lake Fork") and the water supply facilities located thereon would be constructed. The water from

Lake Fork was to be used in the Sabine River Basin. 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. SRA and the Corporations took the initial risk in building the reservoir and SRA issued the revenue bonds based on the 1974 Agreement. Construction of the Lake Fork Reservoir began in 1975 and final closure of the dam occurred in 1980. 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. In no way does this

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

agreement give Dallas any equity position in the Lake Fork Reservoir. In fact Section 3.07 of the Agreement specifically acknowledges that point. Additionally, the water rights for Lake Fork Reservoir have always been solely owned by SRA. 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 have reviewed correspondence in the official records of the SRA referencing meetings held as early as February 28, 1991, where SRA and the City of Dallas ("City" or "Dallas") met specifically to discuss proposed changes to Section 6.02 of the 1981 Water Supply Contract in regards to the "prevailing rates" language. These changes would allow for additional water to be available to SRA customers as well as some clarification to the rate for Lake Fork water to be paid by Dallas in the year 2014. Correspondence re meeting on February 28, 1991 and a letter dated August 22, 1995 are included as Attachment A. I also reviewed a Memorandum to the File from Tom Gooch with Freese and Nichols dated November 15, 1995, that notes that Dallas would start determining a method to set a fair price for Lake Fork water as of 2014. This Memorandum is included as Attachment B. Correspondence from Dallas in February of 1999 declines to give SRA a price for any additional water until two activities were resolved: (1) assurance that the sale of the water will be useful, (2) determination of Dallas' cost for Lake Fork water after the current contract expires in 2014. This correspondence is included as Attachment C.
8. I participated in the contract negotiations between the SRA and the City of Dallas ("City" or "Dallas") at issue in this proceeding, beginning in 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,

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<sup>2</sup> Section 13.01, 1981 Agreement, and Section 6.02, 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."

9. 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.
10. 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 both this offer and Dallas' significant re-write of the 1981 Water Supply Contract.
11. 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.
12. 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.

13. 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.
14. 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.
15. 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.
16. SRA responded on April 4, 2014, with a proposal that noted the average market water rates for two existing system rates (for Dallas and Tarrant Regional Water District), 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.
17. 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.
18. 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.

19. 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. In no way does this agreement give Dallas any equity position in the Lake Fork Reservoir. Additionally, the water rights for Lake Fork Reservoir have always been solely owned by SRA. 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.
20. 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. The Board set a rate of \$0.5613/1000 gallons per year, which is the rate Dallas charges its own customers for raw water from

Lake Fork. This rate is based on 131,860<sup>3</sup> acre feet of water available on a take or pay basis to be adjusted annually going forward based on the Consumer Price Index. When accounting for inflation, this rate is approximately the same rate Dallas paid in 1987 for Lake Fork water. The amount of compensation received from the sale of Lake Fork water to Dallas will allow SRA to replace the water that has been sold to Dallas in order to provide water supplies for its existing and future customers in the Upper Sabine River Basin and provide for the future economic growth in the Sabine River Basin.

21. SRA maintains a request list for the Upper Sabine Basin (Lake Tawakoni and Lake Fork) that reveals a need for additional firm water of nearly 80,000 acre-feet. SRA has also received additional, verbal inquiries for available long-term water in the Lake Tawakoni-Lake Fork area that it has had to turn down. This request list is supported by regional plans although it appears the regions' water needs may be developing sooner than projected. The Upper Sabine Basin is part of two Regional Water Planning areas: Region D and Region C. The 2010 North East Texas Regional Water Plan (Region D)<sup>4</sup>, projects water needs for the Sabine River Basin in its Region as nearly 50,000 acre-feet by 2060. The 2011 Region C Water Plan<sup>5</sup> projects a need of more than 108,000 acre-feet per year from SRA.
22. SRA has significant quantities of firm water available in Toledo Bend Reservoir, an existing reservoir it owns jointly with the Sabine River Authority of Louisiana. Supplying the Upper Sabine Basin water supply demands from Toledo Bend Reservoir requires construction of a significant amount of infrastructure to move the water from the lower Basin to the Upper Sabine Basin. To estimate costs of the pipeline and pump station to move water from Toledo Bend Reservoir to the Upper Sabine Basin, Freese & Nichols, Inc. recently prepared budget numbers for the cost of a 72" pipeline with estimates for land or ROW acquisition, surveying,

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<sup>3</sup> The First Supplement to the Water Supply Contract and Conveyance, July 30, 1986, divided 23,720 acre-feet of additional Lake Fork yield evenly between SRA and Dallas, increasing Dallas' total Lake Fork contracted amount to 131,860 acre-feet per year.

<sup>4</sup> Region D - North East Texas Regional Water Plan, September 1, 2010, Table 4.18 and Table 4.19, p. 4-11. *See* Attachment D.

<sup>5</sup> 2011 Region C Water Plan, October 2010, Table 4A.4, p. 4A-8. *See* Attachment E.

environmental, etc. Also, included are pump station cost numbers and flow capacities for the 72" line.

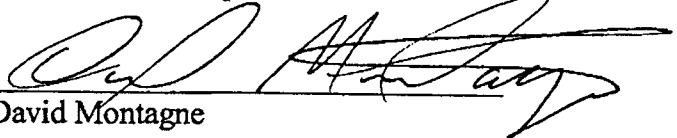
Pipeline: \$4.5 million/ mile x 132 miles (Toledo Bend to Lake Tawakoni)	\$594,000,000
Pump Station	<u>\$100,000,000</u>
<b>Total Estimated Costs</b>	<b>\$694,000,000</b>

This solution, which would take care of a major portion of the water supply needs in the Upper Basin, would cost existing and future SRA customers approximately \$2.00/1,000 gallons. Dallas has 76% of the total contracted water in the Upper Basin. Without any additional compensation from the Lake Fork contract renewal, Dallas would contribute nothing to the future water needs of the Sabine River Basin in mitigation for tying up 76 % of the Upper Basin's existing water supply.

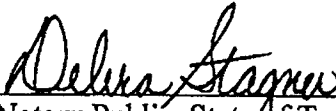
23. Dallas currently has two contracts for Lake Fork Reservoir water. Its contract with North Texas Municipal Water District ("NTMWD") includes a rate set by Dallas in the amount of \$0.4587/1,000 gallons, and was executed in May 2013. An additional reservation fee is added to the base rate. A copy of the Interim Untreated Water Purchase and Water Transport Contract between Dallas and NTMWD is included as part of Attachment A to the Sabine River Authority's Response to City of Dallas' Motion for Expedited Commission Establishment of Interim Rates dated December 11, 2014. 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 included as part of Attachment A to the Sabine River Authority's Response to City of Dallas' Motion for Expedited Commission Establishment of Interim Rates dated December 11, 2014
24. 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

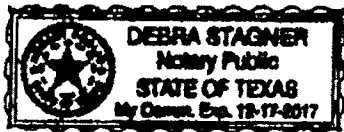
Dallas City Council was not made aware of the Lake Fork contract negotiations until the week of October 6, 2014.

25. 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 31st day of March 2015.

  
Notary Public, State of Texas



SABINE RIVER AUTHORITY OF TEXAS  
INTER OFFICE MEMORANDUM

Authority General \_\_\_\_\_ OFFICE \_\_\_\_\_ DATE March 1, 1991  
SUBJECT Amendment to the Water Supply Contract and  
Conveyance Agreement - SRA/City of Dallas/  
Texas Utilities Electric Company  
TO: Mr. Sam F. Collins  
FROM: Albert J. Gray

Negotiations are currently underway between the above mentioned parties to amend the Lake Fork Water Supply Contract and Conveyance Agreement generally along the attached outline. These proposed changes would allow for additional water to be available to SRA customers as well as some clarification to the rate for Lake Fork water to be paid by the City of Dallas in the year 2014.

I recommend that Board approval be requested to execute an amendment to the Water Supply Contract and Conveyance as generally contained in the attached outline.

Albert J. Gray  
Albert J. Gray  
Development Manager

APPROVED:

Sam F. Collins  
Sam F. Collins  
Executive Vice President  
and General Manager

SABINE RIVER AUTHORITY OF TEXAS  
INTER OFFICE MEMORANDUM

Authority General office DATE March 1, 1991  
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I recommend that Board approval be requested to execute an amendment to the Water Supply Contract and Conveyance as generally contained in the attached outline.

*Albert J. Gray*  
Albert J. Gray  
Development Manager

APPROVED: "

Sam F. Collins  
Executive Vice President  
and General Manager

OUTLINE OF PROPOSED CHANGES  
TO THE  
WATER SUPPLY CONTRACT AND CONVEYANCE

- I. FIRST SUPPLEMENT  
SECTION 3.03
- PROPOSED CHANGES
- "The City hereby advises the Authority that it wishes to sell its additional yield in Lake Fork..."
- Sections 7.01(c) and (f) do not apply to such sales of the additional yield. Instead, other conditions are substituted in the proposed Section 3.03 as shown below.
- II. WATER SUPPLY CONTRACT AND CONVEYANCE  
SECTION 6.02
- PROPOSED CHANGE
- Compensation to SRA from Dallas for any renewal term of the Contract takes into account prevailing prices for similar sales
- III. OTHER CONDITIONS CONCERNING SALE OF CITY'S  
ADDITIONAL YIELD IN LAKE FORK
- EXISTING CONDITION
- From Section 7.01 (c)
- Sales subject to prior approval of City
- Sales would be until November 1, 2014
- From Section 7.01(f)
- SRA fee is 5t
- Dallas' 95t goes to Debt Service Fund as long as Bonds are outstanding.
- PROPOSED CONDITION
- From Proposed Section 3.03
- Sales not subject to prior approval of City but must be at the then prevailing rate.
- Sales would be for terms as specified by SRA
- From Proposed Section 3.03
- SRA fee is 50t
- Dallas' 50t can be used as determined by the City and is paid by SRA to City by October 1 of each year.

IV. GENERAL CONDITION RELATED  
TO LAKE TAWAKONI

- Dallas agrees not to oppose efforts of the Authority to obtain increased quantities of water from Lake Tawakoni. This agreement is contingent on the following:
- So long as the permitted yield of Lake Tawakoni is at least 238,100 acre-feet/year, Dallas' share of Lake Tawakoni (190,480 acre-feet/year) will remain the same.
  - Proportion of Maintenance and Operations costs for Lake Tawakoni will be determined each year based on the quantity of water available to each party (Dallas and the Authority) as compared to the total quantity of water available from Lake Tawakoni.



Item 1

AG



August 22, 1995

Mr. Albert Gray  
Sabine River Authority of Texas  
P. O. Box 579  
Orange, Texas 77630

Dear Albert:

As you discussed recently with Larry Brown of our staff, there are several issues which we would like to discuss in regard to Lake Tawakoni and Lake Fork. I appreciate your willingness to meet with us and discuss these issues. As you suggested, we have outlined below the items which we hope to discuss with you, and also the items which you mentioned.

1. overdrafting of Lake Tawakoni - DWU can reduce its cost of operations if we can take less than our annual limit during the first few years of a drought, and more than our annual limit during the latter years. We would appreciate the opportunity to work with you to show you how this could work without any detriment to SRA or its customers.
2. joint use - SRA's joint use permit might provide an avenue for SRA to allow DWU to exceed its annual limit during the latter years of a drought without amending its permits.
3. SRA return flow permit - DWU has agreed not to oppose SRA's application - Memorandum of Agreement of May 2, 1991.
4. water accounting of Lake Fork water stored in Lake Tawakoni - referenced in Lake Fork Contract that DWU will absorb evaporation and transportation losses on stored water.
5. Dallas water which must remain in Sabine Basin - 11,860 ac-ft/yr - DWU desires to use this water to the maximum advantage possible to either (a) reduce the cost of Lake Fork to Dallas, or (b) increase the amount of water available to Dallas customers in the future. Some considerations are:
  - (a) the option for TUGCO to purchase from Dallas - could this affect Dallas' transbasin diversion?

Page 2  
August 22, 1995

- (b) Texas Fish & Wildlife Dept. - When DWU applies for permit changes on its Trinity River Permits, the Texas Fish & Wildlife Dept. becomes a player in the application process. Water anywhere in Texas might give Dallas bargaining position.
  - (c) any possibility of some relief from the Lake Fork payments?
  - (d) revenue from in-basin water sales - impact on price of Lake Fork water in year 2014.
6. Price of water for the renewal period beginning in year 2014 - DWU welcomes the opportunity to initiate discussions on this critical issue.

Thank you again for your interest in discussing these issues. We look forward to hearing from you and meeting with you in the future.

Sincerely,



Vicki Reed  
Manager, Planning Division

## MEMORANDUM TO FILE

From: Tom Gooch

Subject: Meeting with Dallas Water Utilities at SRA Lake Fork Office

Date: November 15, 1995

Present: Dallas Water Utilities      SRA      Freese and Nichols  
Vicki Reed      Albert Gray      Tom Gooch  
Robert McCarthy      Maynard Nelson  
Larry Brown      David Parsons  
Tom Pegues

Copies to: RML, JLR, HCM, RSG, JRN, LBF, ADG, TAR

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1. Albert Gray gave Dallas Water Utilities a copy of the draft application to allow flexible use of water from Lake Fork Reservoir for municipal, industrial, and irrigation. SRA's letter to Dallas seeking their okay on the application is Attachment 5.
2. Larry Brown handed out Attachment 1, an informal agenda for the meeting. Attachment 2 is a comparison of operation of firm yield versus underdrafting early in a drought for Dallas' Lake Tawakoni water. Dallas wants to use more than the firm yield late in a drought.
3. Vicki Reed indicated that Dallas WU is trying to decide which reservoir to bring into the system and when. The ability to overdraft Tawakoni may influence that.
4. Despite conservation efforts, Dallas is still seeing increased per capita water use.
5. Larry Brown suggested that Dallas could offer to keep Tawakoni at or above the elevation it would have with firm yield operation at all times, monitoring by model studies.
6. Larry and Albert discussed whether the underdrafting operation could be done under current permits— they think it could be because of the joint use permit.
7. Tom Gooch suggested that the overdraft/underdraft could be monitored more easily by requiring that Dallas' average use since the reservoir last spilled always remain less than or equal to the firm yield. There would be some possibility of changes in

Meeting with DWU

November 15, 1995

Page 2

evaporation losses but that should be negligible for Lake Tawakoni due to low evaporation rates.

8. Albert said that SRA would provide Dallas a copy of its application for additional use from Lake Tawakoni based on Greenville's return flows after it is reviewed with TNRCC staff.
9. Attachments 3 and 4 are potential spreadsheets to account for the storage of Lake Fork water in Lake Tawakoni. Dallas would be responsible for additional evaporative losses. Any Lake Fork water stored in Tawakoni would spill first if Tawakoni spills.
10. Larry Brown said that Dallas would love to begin talking about the renewal price for Lake Fork water. Dallas owns 11,860 ac-ft/yr of Lake Fork water which must remain in the Sabine Basin. Albert pointed out that SRA's amendment allowing multiple use would make it easier to market that water. Albert also said that SRA would not want Dallas to talk to TPWD about using that water to mitigate environmental impacts. (Dallas Water Utilities had suggested that possibility in a letter to SRA.) Albert suggested that Dallas Water Utilities needs to set a price on that water so SRA can market it.
11. Albert suggested that discussions on a procedure to develop Lake Fork raw water cost in 2014 should begin.
12. Albert handed out Attachment 6 showing SRA's current commitments in the upper basin. SRA currently has only about 32 ac-ft/yr available in the upper basin.
13. Larry Brown asked for standard prices for SRA water. Albert said that there is no standard for Tawakoni— prices vary from 2¢ to 8¢ per thousand gallons. Albert described the SRA conservation rate structure. The base option rate is 10¢/1000 gallons for all water reserved, with additional cost depending on the amount used. (An additional 2¢/1000 gallons used if use is 0-20% of total, 4¢ if 20%-40%, etc.) The rates are subject to increases based on cost of living, to be made by SRA. SRA has made no adjustments yet.
14. Dallas' rate for raw water customers is 38¢/1000 gallons for firm water.
15. Vicki Reed indicated that Dallas Water Utilities has not considered how to charge for Lake Fork water. Tom Gooch suggested that the utility method might be

Meeting with DWU  
November 15, 1995  
Page 3

appropriate. He also said that Bob Gooch has some representative water costs for east Texas.

16. Dallas Water Utilities has almost all of the property needed for the Lake Fork line.
17. Vicki Reed said that there had been significant damage to the Iron Bridge pump station by a lightning strike last week. Repairs and capacity improvements could cost up to \$12 million.
18. Vicki Reed said that Dallas had a record year in fiscal year '95— 123.9 billion gallons of water sold.
19. We agreed on the following actions:
  - Dallas will prepare an agreement for review by SRA on underdrafting/overdrafting Lake Tawakoni.
  - SRA will review the joint use permit to see if allows underdrafting/overdrafting.
  - SRA will send the draft permit on wastewater reuse for Lake Tawakoni to Larry Brown after meeting with TNRCC.
  - Larry Brown will talk to Tom Gooch on an accounting procedure for Lake Fork water in Lake Tawakoni.
  - Dallas will establish a price for sale of its 11,860 ac-ft/yr of Lake Fork water in the Sabine Basin.
  - Dallas will look at the proposed letter on allowing change in use of Lake Fork water.
  - Vicki Reed will start the process of determining a method to set a fair price for water in Lake Fork as of 2014.
20. Terrace Stewart is DWU's director, and he has an engineering background. He has been with DWU 10 to 15 years, and was appointed director in June. Mike Marcotte is now head of economic development for Dallas.

Item 6



City of Dallas

February 2, 1999

Mr. Albert Gray  
Development Manager  
Sabine River Authority  
P.O. Box 579  
Orange, Texas 77630

RECEIVED

FEB 11 1999

SABINE RIVER AUTHORITY  
OF TEXAS

AG

Dear Mr. Gray:

Thank you for the information that you provided regarding the Sabine River Authority's prevailing rates and standard water supply contract. The rates and contract certainly appear reasonable and worthy of consideration.

This letter is in response to the Sabine River Authority's request for Dallas to establish a price for its 11,680 acre-feet/year in Lake Fork that can be sold by the Sabine River Authority for use in the Sabine Basin. We welcome the opportunity to work with you for the sale of this water. However, two significant activities must be resolved before Dallas Water Utilities can be assured that the sale of this water will be useful to the Authority, its customers and Dallas. These activities are described as follows:

1. Dallas' Long Range Water Supply Plan Update must be completed. This is expected around the end of this current fiscal year.
2. Dallas' cost for Lake Fork water after the current contract with the Authority expires in 2014 must be determined so that facility and operational plans for the use of the water can be finalized.

We are prepared to proceed with the discussions necessary to resolve Dallas' cost for water after 2014. Please contact me or Larry Patterson, Assistant Director of Water Operations at 214-670-3146 so that we can make the arrangements.

Sincerely,

Terrace W. Stewart, P.E.  
Director

c: Larry N. Patterson, P.E., Assistant Director-Water Operations  
Phil Boyd, Planning  
Robert McCarthy, Planning

## Water Utilities Department

City Hall • 1500 Marilla, 4AN • Dallas, Texas 75201 • 214/670-3146  
A city utility providing regional water and wastewater services vital to public health and safety.

# **Regional Water Plan**

**Prepared For**

**Region D – North East Texas  
Regional Water Planning Group**

**September 1, 2010**

**Prepared By**

**Bucher Willis & Ratliff  
Corporation**

**In Association With:**

**Hayter Engineering, Inc.  
Hayes Engineering Company  
Bob Bowman Associates  
LBG/Guyton Associates**

**Volume I - Final Report, Appendix A & B**

September 2010

North East Texas Regional Water Plan

Table 4.16 Actual Water Shortages – Sulphur River Basin

Actual Shortages	Water Shortages in ac-ft/yr					
Year	2010	2020	2030	2040	2050	2060
Campbell WSC	6	28	60	113	243	457
City of Wolfe City			20	34	66	114
Ben Franklin WSC			33	36	36	36
Hickory Creek SUD				136	529	1151
Miller Grove WSC			24	30	17	6
Petty WSC	1	2	20	21	20	20
Red River Redevelopment Authority				21	567	1114
West Delta WSC	19	27	36	48	48	48

#### 4.2.3 Cypress River Basin

The Cypress River Basin includes portions of Cass, Franklin, Gregg, Harrison, Hopkins, Morris, Titus, Upshur, and Wood Counties, as well as all of Camp and Marion Counties. Supply shortages in the Cypress River Basin occur primarily among entities that utilize groundwater from the Carrizo-Wilcox Aquifer. Steam electric will have a shortage in the Cypress River Basin starting year 2030. Table 4.17 detail the shortages in the basin.

Table 4.17 Actual Water Shortages – Cypress River Basin

Actual Shortages	Water Shortages in ac-ft/yr					
Year	2010	2020	2030	2040	2050	2060
Bi-County WSC		128	299	434	539	653
Steam Electric				1613	14816	28987
Woodland Harbor	61	60	60	60	60	60
City of Linden	92	98	101	106	104	104
City of Scottsville						7
City of Waskom		28	55	76	100	135
Caddo Lake WSC	10	6	19	27	37	52
Leigh WSC						1
Pritchett WSC				3	9	18
Talley WSC	11	15	17	20	22	26
Waskom Rural WSC #1						5

#### 4.2.4 Sabine River Basin

The Sabine Basin includes portions of Gregg, Harrison, Hunt, Smith, Upshur, Van Zandt, and Wood Counties as well as all of Rains County. The Sabine Basin has both contractual and actual shortages, and most of the shortages are due to deficits in groundwater supply. Steam electric makes up a significant amount of the shortage in the Sabine Basin. Table 4.18 and 4.19 detail the shortages in the basin.



September 2010

## North East Texas Regional Water Plan

Table 4.18 Water Shortages due to Expiration and Insufficient Contract Amounts – Sabine River Basin

Insufficient Contract	Water Shortages in ac-ft/yr					
Year	2010	2020	2030	2040	2050	2060
Able Springs WSC					47	143
Cash SUD					1486	4922
Combined Consumers SUD					832	2617
Jacobia WSC					84	328
Poetry WSC	6	14	25	40	71	126
Shady Grove WSC						280
South Rains WSC	160	239	284	295	287	277
City of Winona						5

Table 4.19 Actual Water Shortages – Sabine River Basin

Actual Shortages	Water Shortages in ac-ft/yr					
Year	2010	2020	2030	2040	2050	2060
Campbell WSC	3	18	41	88	181	305
City of Celeste						63
Hickory Creek SUD		6	27	62	141	267
City of Canton			29	57	104	161
City of Grand Saline		39	73	99	137	185
City of Clarksville City	120	134	148	164	186	217
City of Lindale					101	374
City of Mineola	203	318	374	367	360	360
City of Winona						5
Blocker-Crossroads WSC	78	91	100	107	116	128
Crystal Systems Inc.				45	209	425
Liberty-Danville FWSD 2				1	17	40
Liberty City WSC				53	177	353
Lindale Rural WSC					77	189
Star Mountain WSC				1	36	83
Starrville-Friendship WSC				19	54	101
Steam Electric	8639	12366	14457	18858	26591	36816
Talley WSC	48	66	80	89	22	116
West Gregg SUD			56	119	208	333

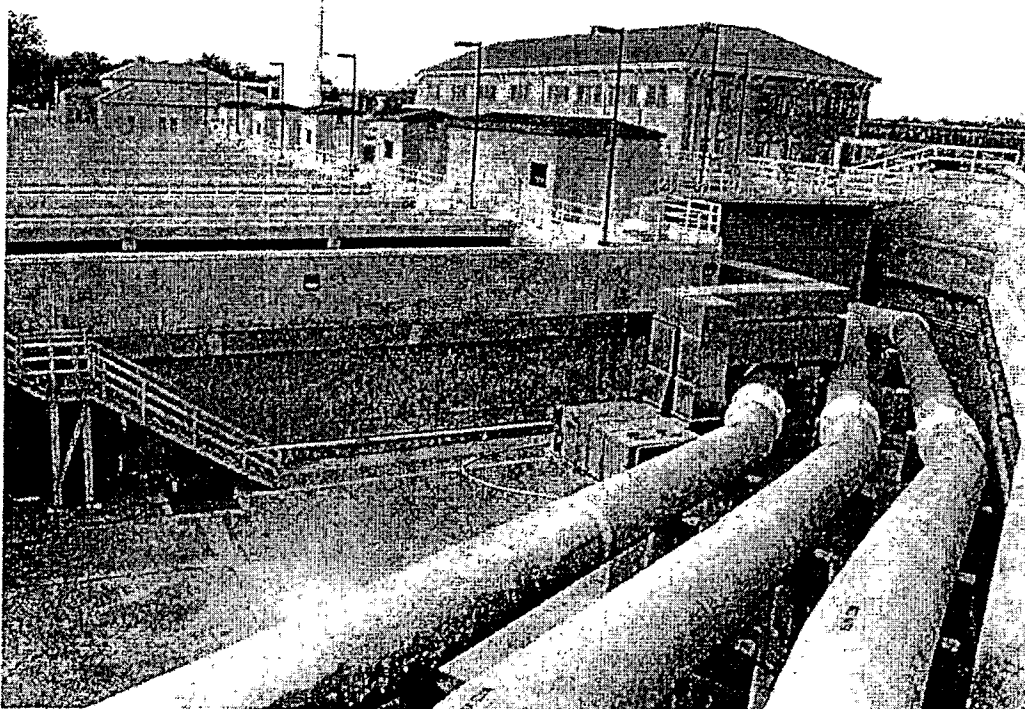
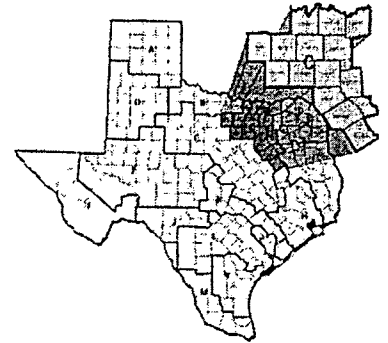
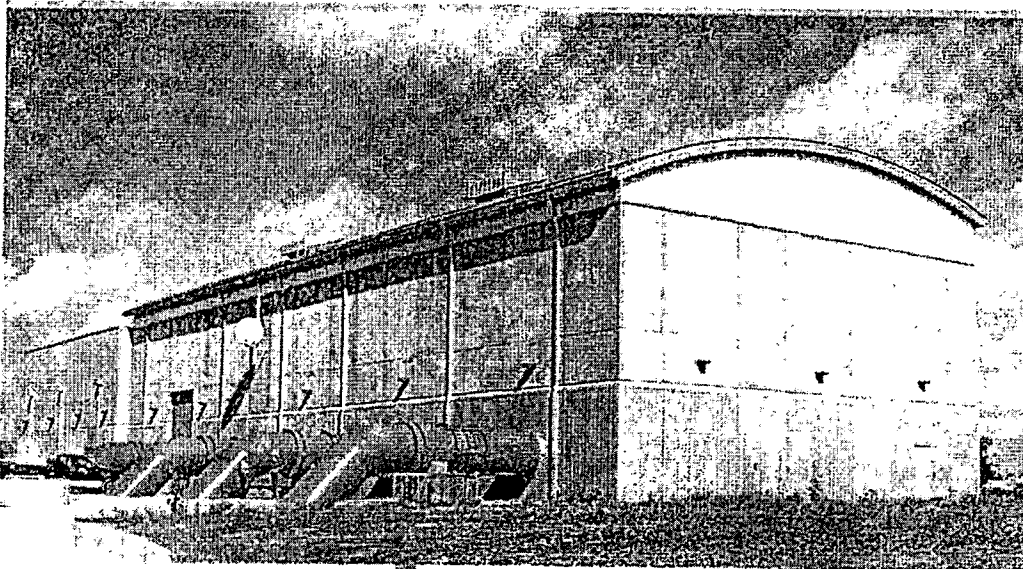
## 4.3 SUMMARY OF NEEDS – WHOLESALE WATER PROVIDERS

The following section presents the supply/demand analysis for the 17 wholesale water providers in the North East Texas Region that sell more than 1000 acre-feet in any one year. Tables present the total water supply for each major water provider assuming that current contracts, permits, and water rights are held constant. Demands are comprised of current contract amounts unless an entity's projected demand exceeds the contract amount sometime in the future. Where projected demand exceeds the contract amount, a notation has been made, and the estimated demand has been entered. While this method does not take into account that entities may use alternate water sources rather than increase contracts, it gives major water providers a good idea

# 2011 Region C Water Plan

Volume 1 of 3  
Main Report

October 24, 2010



Prepared by: **Stantec**  
Allen Plummer Associates, Inc.  
2010

Figure 4A.3  
Comparison of Connected and Unconnected Supply and Demand for Region C

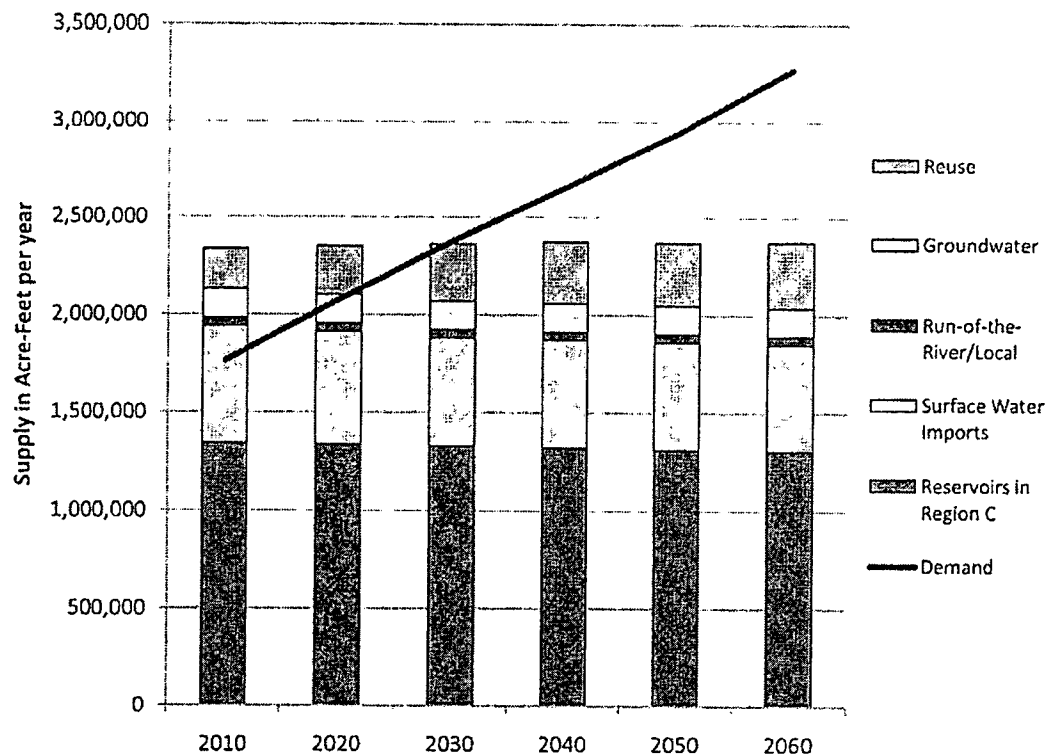


Table 4A.4  
Reserve or (Need) by Wholesale Water Provider Using Only Connected Supplies  
- Values in Acre-Feet per Year -

Wholesale Water Provider	Projected Needs for Current and Future Customers					
	2010	2020	2030	2040	2050	2060
Dallas Water Utilities	(48,797)	(171,460)	(207,076)	(257,089)	(326,980)	(445,790)
Tarrant Regional Water District	0	(49,680)	(147,533)	(244,544)	(351,389)	(477,251)
North Texas Municipal Water District	0	(91,679)	(170,209)	(243,628)	(313,320)	(368,061)
City of Fort Worth	(7,856)	(36,230)	(98,727)	(166,043)	(244,828)	(340,031)
Trinity River Authority	0	0	(16,750)	(31,912)	(51,767)	(76,052)
Upper Trinity Regional Water District	(1,744)	(756)	(22,211)	(48,242)	(77,525)	(100,520)
Greater Texoma Utility Authority	0	(10,574)	(23,123)	(32,739)	(43,849)	(56,756)
Dallas County Park Cities Municipal Utility District	0	0	0	0	0	0

Table 4A.4, Continued

Wholesale Water Provider	Projected Needs for Current and Future Customers					
	2010	2020	2030	2040	2050	2060
City of Corsicana	0	(6,932)	(13,241)	(14,152)	(15,298)	(16,760)
Sabine River Authority	(94,103)	(97,032)	(99,960)	(102,888)	(105,817)	(108,745)
Sulphur River Water District	0	0	0	0	0	0
Upper Neches River Municipal Water Authority	(2,677)	(4,708)	(6,740)	(8,773)	(10,808)	(12,843)
Argyle Water Supply Corporation	0	(2,069)	(3,436)	(4,070)	(4,731)	(5,316)
City of Arlington	(2,330)	(7,541)	(20,225)	(30,982)	(39,035)	(46,678)
Athens Municipal Water Authority	0	(3,090)	(3,722)	(4,439)	(5,374)	(6,527)
Bartonville Water Supply Corporation	(43)	(1,271)	(1,639)	(1,834)	(2,004)	(2,136)
Bolivar Water Supply Corporation	0	(1,006)	(3,095)	(6,588)	(10,629)	(14,321)
Dallas County WCID #6	(211)	(680)	(793)	(932)	(1,111)	(1,374)
City of Denton	0	(2,396)	(12,834)	(25,014)	(38,030)	(64,009)
East Cedar Creek Freshwater Supply District	(72)	(235)	(732)	(1,179)	(1,633)	(2,138)
City of Ennis	0	(93)	(569)	(1,632)	(4,154)	(6,399)
City of Forney	(38)	(1,358)	(2,673)	(3,926)	(5,287)	(6,649)
City of Gainesville	(130)	(1,332)	(2,047)	(2,794)	(3,891)	(4,897)
City of Garland	(758)	(8,608)	(13,989)	(17,470)	(20,531)	(22,685)
City of Grand Prairie	(1,972)	(22,616)	(24,775)	(27,405)	(30,785)	(33,211)
Lake Cities Municipal Utility Authority	0	(1,625)	(2,224)	(2,579)	(2,690)	(2,750)
City of Mansfield	(531)	(12,498)	(21,354)	(26,291)	(29,979)	(33,663)
City of Midlothian	(234)	(12,270)	(15,003)	(17,422)	(20,069)	(22,735)
Mustang Special Utility District	(27)	(2,023)	(3,251)	(5,101)	(7,079)	(9,041)
City of North Richland Hills	(139)	(1,448)	(4,073)	(6,186)	(7,957)	(9,612)
City of Princeton	(30)	(746)	(1,611)	(3,041)	(5,507)	(8,688)
Rockett Special Utility District	0	(1,749)	(4,105)	(5,372)	(6,088)	(6,289)
City of Rockwall	(109)	(3,332)	(6,420)	(9,292)	(11,123)	(12,184)
City of Seagoville	(228)	(976)	(1,376)	(1,911)	(2,626)	(3,666)
City of Sherman	0	(2,526)	(5,523)	(8,696)	(12,334)	(17,358)
City of Terrell	(46)	(2,304)	(4,996)	(7,892)	(10,454)	(13,021)
Walnut Creek Special Utility District	(88)	(1,380)	(4,384)	(6,645)	(8,040)	(9,384)
City of Waxahachie	0	(220)	(1,065)	(4,739)	(11,022)	(16,694)
City of Weatherford	(226)	(410)	(1,451)	(2,767)	(4,075)	(5,559)
West Cedar Creek Municipal Utility District	(603)	(1,564)	(2,375)	(3,124)	(4,086)	(5,299)
Wise County Water Supply District	(25)	(390)	(1,143)	(1,947)	(3,003)	(3,824)

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

PETITION OF THE CITY OF	§	BEFORE THE STATE OFFICE
DALLAS FOR REVIEW OF A	§	
DECISION BY THE SABINE RIVER	§	OF
AUTHORITY TO SET WATER	§	
RATES (LAKE FORK RESERVOIR)	§	ADMINISTRATIVE HEARINGS

AFFIDAVIT OF JACK E. STOWE, JR.

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

Before me, the undersigned authority, on this day personal appeared Jack E. Stowe, Jr. who being by me first duly sworn, on oath deposed and said the following:

1. My name is Jack E. Stowe, Jr. I am over the age of eighteen years, am of sound mind, have never been convicted of a felony or a crime of moral turpitude, am competent in all respects to make this affidavit, and have personal knowledge of the facts herein set forth and they are all true and correct.
2. I am a graduate of North Texas State University (now the University of North Texas) with a degree in Accounting. From 1975 until May 1984, I was a member of the National Regulatory Consulting Group of Touche Ross & Co. (now Deloitte Touche). From May 1984 through July 1985, I served as the Chief Financial Officer/Treasurer of International Investment Advisors, Inc. ("IIA") and its subsidiaries and affiliates. IIA was primarily engaged in real estate investment and development. In July 1985, I founded the consulting firm of Aries Resource Management ("Aries"). Aries was contracted by the international consulting firm of Pannel Kerr Forester ("PKF") to establish a municipal consulting practice

within their Dallas, Texas office. Upon the expiration of the professional service contract with PKF, Aries entered into a Partnership Agreement with Reed Municipal Services, Inc. to form Reed Stowe & Co. in September 1986. In 1993, the partnership was dissolved to form Reed, Stowe & Co., Inc. In December 1997, Reed, Stowe & Co. Inc. was acquired by the consulting firm of Metzler & Associates (now Navigant Consulting, Inc. ("NCI")) which is publicly traded on the NYSE. While at NCI, I served as a Director in the firm's national Energy and Water Consulting Division. In October 2000, I was successful in reacquiring my consulting practice from NCI with the formation of Reed, Stowe & Yanke, LLC. In March 2003, Reed Stowe & Yanke LLC was acquired by R.W. Beck, Inc. I served as a Principal and Senior Director of R.W. Beck, Inc. until my resignation in April 2008.

3. Upon my resignation from R.W. Beck, Inc., I founded J. Stowe & Co. where I served as President. In September 2012, J. Stowe & Co. reorganized as NewGen Strategies and Solutions, LLC. A copy of my professional resume is included herein as Attachment A.
4. I have been involved in the water industry, and specifically the Texas water industry, in excess of forty years. The majority of this experience is in the water ratemaking arena, including revenue requirement determination, cost functionalization, customer class determination and cost allocations, and rate design.
5. I have performed several economic assessment studies on behalf of the Texas Water Development Board and have provided expert testimony before the Texas

Commission on Environmental Quality ("TCEQ") and its predecessors addressing wholesale cost of service and rates, projected rate impacts in support of reservoir permits, and of course the Public Interest Rule.<sup>1</sup>

6. Specially in my representation of utilities and utility customers, I have performed analyses and reviews of issues related to:

- test year revenue requirements;
- determination of reasonable and necessary expenses;
- determination of normal and recurring expenses;
- determination of test year customer class demands;
- determination of investor supplied capital also known as rate base;
- determination of appropriate capital structure and cost of capital including debt and equity;
- evaluation of management prudence;
- revenue requirement functionalization;
- customer class cost allocation; and
- rate design.

In total, I have conducted approximately 200 to 250 utility cost-of-service and rate design studies during my career.

### **Rate Comparison**

7. Based on my many years of experience dealing with various utilities, including raw water contracts, I am qualified to compare raw water rates and determine whether they are comparable, based upon similar quality, quantity, and contract period.
8. Over the past 10 to 12 years, I have conducted numerous surveys of raw water rates across the State of Texas. The purpose of these surveys was to gauge the prices of raw water from various areas of Texas. I performed the surveys by performing internet searches as well as phone interviews with the raw water

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<sup>1</sup> P.U.C. SUBST. R. 24.128-138.

service provider or based upon my personal knowledge gained by working with specific raw water providers.

9. My most recent survey, which would have been conducted in 2013, revealed that rates for raw water (for various uses) ranged from \$0.1410 per 1,000 gallons for a raw water lease for agricultural purposes from the Brazos River Authority to \$1.0645 per 1,000 gallons for out-of-district raw water from the Tarrant Regional Water District. Specifically, my survey found as follows:

- a. The Tarrant Regional Water District:  
\$1.0449/1,000 gallons (\$340.48/acre-foot) for in-district raw water  
\$1.0645/1,000 gallons (\$346.87/acre-foot) for out-of-district raw water
- b. The City of Waco:  
\$0.5274/1,000 gallons (\$171.87/acre-foot) for firm raw water service
- c. The Lower Colorado River Authority:  
\$0.4636/1,000 gallons (\$151.00/acre-foot) for firm raw water  
\$0.2317/1,000 gallons (\$75.50/acre-foot) for reservations  
\$0.9268/1,000 gallons (\$302.00/acre-foot) for excess of maximum
- d. The Brazos River Authority:  
\$0.2015/1,000 gallons (\$65.65/acre-foot) for firm raw water service  
\$0.1410/1,000 gallons (\$45.95/acre-foot) for agricultural water service
- e. The City of Corpus Christi:  
\$0.9280/1,000 gallons (\$302.00/acre-foot) for raw water
- f. The Guadalupe-Blanco River Authority:  
\$0.3836/1,000 gallons (\$125.00/acre-foot) for in-district raw water  
\$0.4907/1,000 gallons (\$159.88/acre-foot) for out-of-district raw water
- g. The San Jacinto River Authority:  
\$0.3400/1,000 gallons (\$110.79/acre-foot) for firm raw water services  
\$0.0850/1,000 gallons (\$27.70/acre-foot) for reservation
- h. Dallas Water Utilities (2015):  
\$0.5613/1,000 gallons (\$182.90/acre-foot) for uninterruptible service  
\$0.2451/1,000 gallons (\$79.85/acre-foot) for interruptible service



Based upon my recent experience, projected rates for two proposed reservoirs that are currently in the permitting stages are as follows:

North Texas Municipal Water District (proposed for Lower Bois D'Arc reservoir):

\$1.33/1,000 gallons (\$433.00/acre-foot)

Upper Trinity Regional Water District (proposed for Lake Ralph Hall):

\$1.45/1,000 gallons (\$472/acre-foot)

10. The Sabine River Authority ("SRA" or "Authority") set a rate of \$0.5613/1,000 gallons (\$182.90/acre-foot). This is also the rate that Dallas currently receives for Lake Fork water that it resells to Luminant for electricity generation use. Based on my survey and many years of experience, it is my opinion that the rate set by the SRA is well within the range of comparable rates set by other river authorities, water districts, and municipalities.

#### **No Financial Hardship on Dallas Ratepayers**

11. The impact on ratepayers of the City of Dallas as a result of the rate increase by the SRA is de minimus. I have reviewed the Dallas Water Utility ("DWU") TCEQ form 10218 filing with the Texas Commission on Environmental Quality for 2013. According to this document, in 2013 DWU delivered 119,279,499,000 (over 119 billion) gallons of treated water, both retail and wholesale. (See Attachment B to my affidavit, page 5 of 11, where the total number of delivered gallons is calculated by summing the amounts for various customer classes for 2013.) SRA staff has calculated the annual increase at the rate of \$0.5613 per 1,000 gallons to be \$24,117,216. When one divides the increase by the number of gallons of treated water sales, the result is an increase in the amount of \$0.202 per 1,000 gallons:

$$\$24,117,216 \div 119,279,499,000 = \$0.202/1,000 \text{ gallons.}$$

Assuming that the average residential connection uses 10,000 gallons per month, this rate increase would result in a monthly increase to the average residential connection of \$2.02.

12. I have reviewed the most recent survey of water rates conducted annually by the Texas Municipal League ("TML"). (See Attachment C to my affidavit.) The TML receives information from its member cities and publishes the results, which are commonly used by ratemaking entities and consultants when setting rates and determining the relative reasonableness of municipal utility rates. I have relied on the annual publications of this survey for many years.
13. A review of the 2014 data shows the following water rates for Dallas and similarly-sized cities:

<u>City</u>	<u>Water Bill at 10,000 Gallons (Residential)</u>
Houston	\$48.94
San Antonio	\$39.62
Dallas	\$36.27
Austin	\$57.10
Fort Worth	\$39.80

14. When the Authority's rate increase is added to the bill of a residential Dallas customer using 10,000 gallons per month (\$36.27), the increase of \$2.02 results in an adjusted monthly bill of \$38.47. Therefore, after recognizing the retail rate impact of the SRA-established prevailing rate for Lake Fork water, Dallas' retail water rates will continue to be the lowest among the above-named comparable cities.
15. The above information supports my opinion that the water rates set by the Authority will not cause any financial hardship to customers of the City of Dallas.