



Control Number: 44185



Item Number: 2

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



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44185

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 15, 2009

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
CHIEF CLERKS OFFICE
2009 APR 15 PM 1:26

Re: TCEQ Docket No. 2008-1377-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Penitas (City) and the Agua Special Utility District (SUD), formerly known as La Joya Water Supply Corporation.

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the following items to be filed as backup materials for the May 6, 2009 agenda on a request for an order approving a contract designating water service areas between the City of Penitas and Agua Special Utility District:

1. Agenda Executive Summary;
2. Caption;
3. Staff memo detailing financial, managerial, and technical capabilities of the City to provide continuous and adequate service in the affected area;
4. Request for Commission order approving a Texas Water Code section 13.248 agreement filed by the City on December 12, 2007;
5. Texas Water Code section 13.248 agreement between the SUD and the City executed on November 27, 2007;
6. Consent Forms
7. Proposed Order;
8. Proposed map of the service area subject to the section 13.248 agreement; and
9. Certificate of Convenience and Necessity (CCN) Nos. 20794 and 20785.

Please do not hesitate to contact me at 239-0635 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

Trey Jackson
Staff Attorney
Environmental Law Division

Enclosure

CC: Mailing List

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

NOV 15 PM 1:26
CHIEF CLERKS OFFICE

TO: Texas Commission on Environmental Quality **DATE:** 11/13/2008

THRU: LaDonna Castañuela, Chief Clerk

FROM: Trey Jackson, Staff Attorney, Environmental Law Division

SUBJECT: **TCEQ Docket No. 2008-1377-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between City of Penitas and the Agua Special Utility District, formerly known as La Joya Water Supply Corporation.

DESCRIPTION OF APPLICATION

Applicant: Agua Special Utility District, formerly La Joya Water Supply Corporation and the City of Penitas.

Regulated Activity: Retail sewer utility service

Type of Application: Request for a Commission Order approving a contract

Commission Action: Hearing regarding approval of the contract

Authority: Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117

FACTUAL BACKGROUND

The City of Penitas ("City"), sewer certificate of convenience and necessity (CCN) No. 20794, and Agua Special Utility District ("Agua SUD"), formerly known as La Joya Water Supply Corporation ("La Joya WSC), sewer CCN No. 20785, provide retail sewer service in Hidalgo County, Texas. On November 27, 2007, the City of Penitas and Agua SUD entered into an agreement regarding their respective sewer service areas pursuant to section 13.248 of the Texas Water Code.

Under the agreement, Agua SUD will decertify and transfer its entire dually certificated area that includes approximately 4,098 acres of its sewer CCN area to the City of Penitas. There are no customers or facilities in the area being transferred. Both parties have reviewed the CCN map to be issued with the commission's Order and have approved it.

LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the public without first obtaining a CCN.¹ Conversely, a municipality is not required to obtain a CCN to provide retail water service.² However, a municipality may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.³

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.⁴ A transfer of a water or sewer system that also includes the transfer of customers and/or facilities may, in some cases, also require separate Commission approval for the transfer of customers and/or facilities.⁵

The request to approve a 13.248 agreement is not subject to the notice provisions of section 291.106, Title 30 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to section 13.248 of the Texas Water Code with the appropriate notice under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Request for a Commission order approving the 13.248 agreement filed by Agua SUD on December 12, 2007 (application no. 35926-C);

¹ TEX. WATER CODE ANN. § 13.242(a) (Vernon 2006).

² A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

³ *Id.* § 13.242(b).

⁴ *Id.* § 13.248; 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Env'tl. Quality, Contracts Valid and Enforceable). Section 13.248 states "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

⁵ TEX. WATER CODE § 13.301. The section requires that some applicants also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

2. Agreement between the City and the Agua SUD, executed on November 27, 2007;
3. Map of the service area subject to the 13.248 agreement submitted by the City and Agua SUD.
4. Financial, Managerial, and Technical analysis of the City to operate in the affected area.

STAFF RECOMMENDATION

Based on the facts stated in the application and the supporting documentation submitted by Agua SUD and the City, Staff supports the request for a Commission order approving a contract designating service areas between the City and Agua SUD. Staff has confirmed that both parties are retail public utilities with active sewer CCNs and that the area the parties are seeking to transfer is either dually certificated to both parties or abuts the CCN of the entity receiving the CCN.

Further, staff is satisfied that the City possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred. As of October 2008, the City has informed staff that USDA/RD has committed loan/grant funds to the City in the amounts of \$1,364,000 and \$2,996,000, respectively, to construct sewer collection and treatment facilities. Both parties have received copies of the maps which will become part of the order and each has signed its approval for the proposed maps.

STAFF CONTACTS

Trey Jackson, Environmental Law Division (239-0635)
Lisa Fuentes, Water Supply Division (239-6117)

CAPTION
CITY OF PENITAS/AGUA SUD
Application No. 35926-C

TCEQ Docket No. 2008-1377-UCR. Consideration of a request for a Commission order approving a contract designating service areas between the Agua Special Utility District ("Agua SUD"), sewer certificate of convenience and necessity ("CCN") No. 20785, and the City of Penitas ("City"), sewer CCN No. 20794, in Hidalgo County, Texas pursuant to section 13.248 of the Texas Water Code. Currently, Agua SUD holds sewer CCN No. 20785 that includes the area in question. Under the Agreement, Agua SUD will transfer approximately 4,098 acres of its dually certificated sewer CCN area to the City. No customers or facilities are proposed to be transferred. (Trey Jackson, Lisa Fuentes).

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Environmental Law Division **Date:** October 16, 2008
Thru: Lisa Fuentes/Tammy Benter
From: Dan Smith
Subject: Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from City of Penitas (Penitas), Certificate of Convenience and Necessity (CCN) No. 20794, to Transfer a Portion of CCN No. 20785 from La Joya Water Supply Corporation, now known as Agua Special Utility District, (Agua) in Hidalgo County; Application No. 35926-C

CN: 600740971; RN: 101420412 (transferee)
CN: 601495468; RN: 102946589 (transferor)

In my opinion, the City of Penitas has demonstrated adequate financial and managerial capability to provide wastewater service on its own, due to imminent loan/grant funds from United States Department of Agriculture's Rural Development office (USDA/RD). Agua can be allowed to decertify its area from the dually-certified area with Penitas.

Signed: Dan Smith Date: October 16, 2008

Penitas and Agua have dual certification in Penitas' sewer CCN. Penitas and Agua have entered an agreement described in the agreement, and in this application as a transfer, but in effect, it is an action for La Joya to decertify its sewer CCN in the 4,098 acres in which it is dually-certified with Penitas sewer CCN. For information, approximately 1,539 of those acres would be outside the statutory ½ mile extraterritorial jurisdiction (etj) of a city less than 5,000 population. Penitas has a population of 1,167 according to the 2000 census. There is no known sewer service being provided in the dually-certified area, by either party.

(continued)

The City of Penitas and La Joya Water Supply Corporation
Financial and Managerial Capability Analysis of Contract Service Agreement
October 16, 2008
Page 2

Agua provides water service to about 13,000 connections in Hidalgo and Starr Counties, including in Penitas. The number of sewer connections is not known. This 4,000-acre area would not likely be considered material to La Joya's sewer operations.

We have been informed as of the date of this memorandum that USDA/RD has committed loan/grant funds to Penitas in the amounts of \$1,364,000 and \$2,996,000, respectively, to construct sewer collection and treatment facilities. The large grant component is likely a result of the determination of some amount of disadvantaged area.

I have reviewed an audit for Penitas for the fiscal year ended September 30, 2007. It is performed by Mr. Oscar R. Gonzalez, CPA in Pharr, and contains an unqualified opinion. There is only a "General" fund accounting under "Governmental Fund Types," apparently indicating there presently are no business-type, proprietary or utility-type operations. Penitas has had their CCN since 1994. Water service is provided by Agua.

The statement of net assets (balance sheet) showed total city assets of \$2,377,518, with no long-term debt. Net assets (equity) was \$2,135,399 on that date, and since there is no term debt, there is no debt-to-equity ratio.

The statement of activities (income and expense statement) shows taxes apparently adequate for minimal services that are provided, but cash flow has had to be supported by occasional local borrowings at relatively high interest rates, compared, for example, with the rate they will pay on the USDA/RD loan.

In summary, the large grant component acts as instant equity, which, with the loan, provides a debt-to-equity ratio of just 0.45:1, without considering the existing equity of Penitas with no term debt.

Bickerstaff Heath Delgado Acosta LLP

816 Congress Avenue

Suite 1700

Austin, Texas 78701

(512) 472-8021

Fax (512) 320-5638

www.bickerstaff.com

December 12, 2007

Via Messenger

Tammy Benter
Utilities & Districts Section
Water Permits & Resource Management Division
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, Room 31050
Austin, Texas 78711-3087

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DEC 13 2007
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

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TOEQ
WATER SUPPLY DIV.
2007 DEC 12 PM 3 56

RE: Texas Water Code, § 13.248 Agreement between the La Joya Water Supply Corporation (Sewer CCN No. 20785) and the City of Penitas (Sewer CCN No. 20794).

Dear Ms. Benter:

Please find enclosed four copies of the November 27, 2007 Transfer Retail Water and Sewer Utility Service Area Agreement ("November 2007 Agreement") between La Joya Water Supply Corporation (La Joya WSC) and the City of Penitas (Penitas) concerning sewer service territory in Hidalgo County, Texas. Also, please find four copies of the map identifying the areas to be transferred and four CDs with the electronic data that is used to create the map.

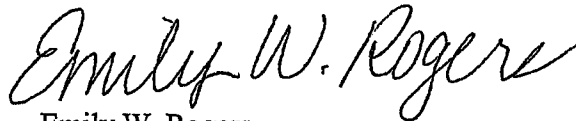
The Agreement designates territory between Penitas, which holds Sewer Certificate of Convenience and Necessity (CCN) No. 20794, and La Joya WSC, which holds Sewer CCN No. 20785. The November 27, 2007 Agreement provides for the transfer of territory identified on the attached map. Enlarged color copies of the map attached to the Agreement are also included.

In accordance with 30 TEX. ADMIN. CODE § 291.117, La Joya WSC and Penitas respectfully request that the November 2007 Agreement between them be noticed for and set on Texas Commission on Environmental Quality agenda so that the November 2007 Agreement may be considered and incorporated into the appropriate areas of public convenience and necessity, as set forth in Texas Water Code § 13.248.

Tammy Benter
December 12, 2007
Page 2

As required by Texas Water Code § 5.701, please find enclosed a \$100 filing fee. If you have any questions or comments, please do not hesitate to call me at 512-472-8021. Thank you for your attention to this matter.

Sincerely,



Emily W. Rogers
Attorney for the Receiver of
La Joya Water Supply Corporation

EWR/mmr
Enclosures

cc. Pablo Vela, Receiver for La Joya WSC
Frank Flores, General Manager for La Joya WSC
City Administrator of the City of Penitas

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TCEQ
WATER SUPPLY DIV.

2007 DEC 12 PM 3:05

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DEC 13 2007
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREEMENT DESIGNATING RETAIL SEWER SERVICE TERRITORY

STATE OF TEXAS

§

COUNTY OF HIDALGO

§

§

THIS AGREEMENT Designating Retail Sewer Service Territory is made and executed by and between the La Joya Water Supply Corporation (hereinafter "La Joya WSC"), and the City of Peñitas, Texas (hereinafter "Peñitas"). La Joya WSC and Peñitas may be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, La Joya WSC is a Texas non-profit water supply corporation which holds sewer Certificate of Convenience and Necessity ("CCN") Nos. 20785 (hereinafter referred to collectively as "La Joya WSC's CCN");

WHEREAS, Peñitas is a Texas municipal corporation which holds sewer CCN No. 20794;

WHEREAS, Mr. Pablo Vela, Jr. was appointed Temporary Receiver of the assets and business of La Joya WSC by order of the District Court of Hidalgo County, Texas on August 31, 2005 in *State of Texas v. La Joya Water Supply Corporation*, Cause No. C-848-05-1; and

WHEREAS, La Joya WSC and Peñitas are dually certificated for sewer service to an area in and around the City of Peñitas as shown on Exhibit A attached hereto and incorporated herein; and

WHEREAS, Peñitas desires to be singly certificated to its city limits and extraterritorial jurisdiction (ETJ) so that it may provide sewer service to the area; and

WHEREAS, La Joya WSC desires to be singly certificated to the area outside the city limits and extraterritorial jurisdiction of Peñitas; and

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, La Joya WSC and Peñitas agree as follows:

TERMS OF AGREEMENT

IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, La Joya WSC and Peñitas agree as follows:

(1) Single Certification of Dually Certificated Area. La Joya WSC hereby agrees to decertify the dually certificated area identified on Exhibit A so that the City of Peñitas may be singly certificated to the area.

DRAFT - 07-23-07

(2) Customers and Facilities in the Areas to be Singly Certificated. As of the Effective Date of this Agreement, there are no La Joya WSC customers or facilities, collection lines, or related equipment in the area to be singly certificated to Peñitas. No facilities or customers will be transferred from La Joya WSC to the City of Peñitas under this Agreement.

(3) Amendment of CCNs. As soon as possible after the Effective Date of this Agreement, but no later than December 31, 2007, La Joya WSC and Peñitas shall jointly file this Agreement with the Texas Commission on Environmental Quality ("TCEQ") to effectuate the decertification to which the Parties have agreed, and to request that this Agreement be incorporated into the respective CCNs of Peñitas and La Joya WSC pursuant to Texas Water Code § 13.248. La Joya WSC and Peñitas shall endeavor to obtain TCEQ approval of the CCN amendments contemplated herein in an expeditious manner and will support and cooperate with each other and the TCEQ to accomplish this goal.

(5) Effective Dates. This Agreement is effective and enforceable as between La Joya WSC and Peñitas following execution by both parties.

(6) Section 13.248. This Agreement shall be construed and interpreted in accordance with Section 13.248 of the Texas Water Code.

MISCELLANEOUS

(1) Applicable Texas Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

(2) Performance. The obligations and undertakings of each of the parties to this Agreement shall be performed in Hidalgo County, Texas. Except for matters within the jurisdiction of the TCEQ (or its successor), the parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Hidalgo County, Texas.

(3) Entire Agreement. This Agreement contains the entire agreement of La Joya WSC and Peñitas with respect to the subject matter of the Agreement. No Agreement, statement, or promise made by any party or to any employee, agent, or officer of any party, that is not contained in this Agreement regarding decertification of the dually certificated area shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the party or parties to be charged.

(4) Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors, heirs, representatives, and assigns.

(5) Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

(6) Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

DRAFT - 07-23-07

(7) Attorney's Fees. In the event of any suit or other adjudication between the Parties to enforce any claim arising out of this Agreement, or to interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing Party, general or special, at law or in equity, to which the prevailing Party may show itself justly entitled as provided by Texas Local Government Code § 271.159.

(8) Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective party.

IN WITNESS WHEREOF, EXECUTED by the Receiver of La Joya WSC and the City of Peñitas under the authority of their respective governing bodies in Duplicate Originals on the dates indicated below.

LA JOYA WSC

BY: Pablo Vela, Jr.
Date: NOVEMBER 27, 2007

ATTEST:

General Manager of La Joya WSC

CITY OF PEÑITAS

BY: Servando Ramirez, Mayor

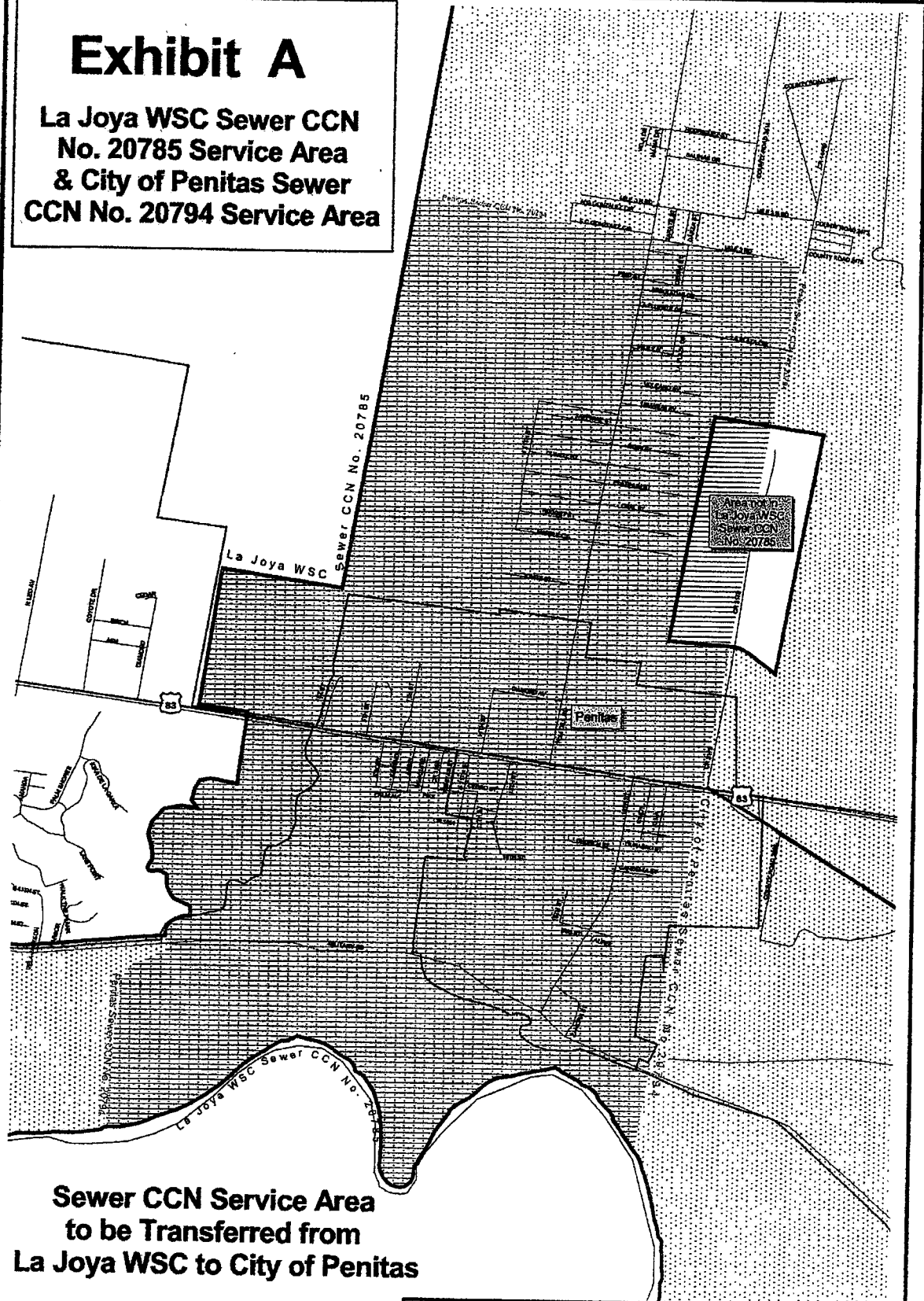
Date: 10/24/07

ATTEST:

Dina Garcia
City Secretary of the City of Peñitas

Exhibit A

**La Joya WSC Sewer CCN
No. 20785 Service Area
& City of Penitas Sewer
CCN No. 20794 Service Area**



**Sewer CCN Service Area
to be Transferred from
La Joya WSC to City of Penitas**

Prepared By: Bickelstaff Heath Delgado Acosta LLP
Data Sources: CCN Boundaries obtained from TCEQ Mapping;
City Limit Boundaries obtained from Hidalgo County Appraisal District.
Roads obtained from Lower Rio Grande Valley Council of Governments.
Updated November 2007

2009 0 2000 Feet

Legend

Highways and Roads

Hidalgo County



Sewer CCN No. 20794 - City of
Penitas Existing Sewer
CCN Service Area

Sewer CCN Area to Transfer
From La Joya WSC to City of Penitas

20785 - La Joya Water Supply
Corporation Sewer CCN Service Area

MAP CONSENT FORM

Applicant=s Name: City of Penitas /La Joya Water Supply Corporation 13.248
Agreement
Application No.: 35926-C

☒ I concur with the map created 7/3/2008 as a result of the above mentioned application.

☐ I do not concur with the map created 7/3/2008 and intend to respond by letter dated _____.

I am authorized by the La Joya Water Supply Corporation to sign this form.

Signature: Francisco Flores

Printed Name: Francisco Flores

Relationship to Applicant: General Manager

Date signed: 7/10/2008

Mail to or fax to:
Lisa V. Fuentes
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972

2008 JUL 24 PM 4:16

RECEIVED
TCEQ WATER SUPPLY

MAP CONSENT FORM

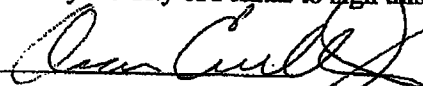
Applicant=s Name: City of Penitas/La Joya Water Supply Corporation 13.248 Agreement

Application No.: 35926-C

☒ I concur with the map created 7/3/2008 as a result of the above mentioned application.

☐ I do not concur with the map created 7/3/2008 and intend to respond by letter dated _____.

I am authorized by the City of Penitas to sign this form.

Signature: 

Printed Name: Oscar Cuellar Jr.

Relationship to Applicant: City Administrator

Date signed: 11/4/08

Mail to or fax to:
Lisa V. Fuentes
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax (512) 239-6972

AN ORDER Approving an agreement designating sewer service areas between the City of Peñitas and Agua Special Utility District pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2008-1377-UCR.

A request for a Commission order approving a contract designating service areas between the City of Peñitas ("City"), sewer Certificate of Convenience and Necessity (CCN) No. 20794, and Agua Special Utility District ("Mustang SUD"), sewer Certificate of Convenience and Necessity (CCN) No. 20785, in Hidalgo County, Texas, was presented to the Texas Commission on Environmental Quality ("TCEQ" or "Commission") for approval pursuant to Section 13.248 of the Texas Water Code and Title 30, Section 291.117 of the Texas Administrative Code.

On November 27, 2007, the City and Agua SUD entered into an agreement ("Agreement") regarding their respective sewer service areas pursuant to Section 13.248 of the Texas Water Code. Under the Agreement, Agua SUD will transfer the rights to sewer service for approximately 4,098 acres of its dually certificated CCN area to the City and the City will be the sole retail sewer service provider in that service area. There are no customers in the area and there will be no transfer of facilities under the Agreement. The Agreement is attached to this Order.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE, §13.248.

The Commission held a hearing on the request at the _____ agenda and found the request had merit.

The City is capable of rendering continuous and adequate sewer service to every customer in the area, as described by the Agreement. The CCN transfer, which results in the City being the sole sewer service provider in that area, is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Agreement transferring approximately 4,098 acres of the dually certificated area of Agua SUD sewer CCN No. 20785 to the City, CCN No. 20794, and designating that the City is the sole retail sewer service provider in that area, is hereby approved.

2. CCN No. 20785 in Hidalgo County, held by Agua SUD, is hereby amended in accordance with the Agreement.

3. CCN No. 20794 in Hidalgo County, held by the City of Peñitas, is hereby amended in accordance with the Agreement.

4. The Executive Director is directed to redraw the maps of the respective sewer CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Denton County, Texas.

5. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

**La Joya WSC Sewer CCN
No. 20785 Service Area
& City of Penitas Sewer
CCN No. 20794 Service Area**



**Sewer CCN Service Area
to be Transferred from
La Joya WSC to City of Penitas**

Prepared By: Bickerstaff Heath Delgado Acosta LLP
Data Sources: CCN Boundaries obtained from TCEQ Mapping;
City Limit Boundaries obtained from Hidalgo County Appraisal District.
Roads obtained from Lower Rio Grande Valley Council of Governments
Updated November 2007



Legend

- Highways and Roads
- Hidalgo County
- Sewer CCN No. 20794 -City of
Penitas Existing Sewer
CCN Service Area
- Sewer CCN Area to Transfer
From La Joya WSC to City of Penitas
- 20785 - La Joya Water Supply
Corporation Sewer CCN Service Area



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

City of Penitas

having duly applied for certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20794

to provide continuous and adequate sewer utility service to that service area or those service areas in Hidalgo County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35926-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of City of Penitas to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

La Joya Water Supply Corporation

having duly applied for certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20785

to provide continuous and adequate water utility service to that service area or those service areas in Hidalgo and Starr Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35926-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of La Joya Water Supply Corporation to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2009

PUBLIC UTILITY COMMISSION
FILING CLERK

CHIEF CLERKS OFFICE

2009 MAY - 1 AM 11:08

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2008-1377-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Peñitas (City) and the Agua Special Utility District (SUD), formerly known as La Joya Water Supply Corporation.

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the following items to be filed as a supplement to backup materials filed on April 15, 2009 for the May 6, 2009 agenda on a request for an order approving a contract designating water service areas between the City of Peñitas and Agua Special Utility District:

1. Map of the proposed service area to be transferred subject to the section 13.248 agreement, generated by TCEQ on July 3, 2008 and referenced in the Map Consent Forms signed by representatives of the City and Agua SUD, and filed as part of the original agenda backup;
2. Enabling legislation for Agua SUD; and
3. CCN for Agua SUD.

Also included are several additional copies of the map described in item 1. Please do not hesitate to contact me at 239-2496 if you have any questions regarding this material. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James Aldredge".

James Aldredge
Staff Attorney
Environmental Law Division

Enclosure

CC: Emily Rogers, representative of Agua SUD
Juan Ortiz, City Administrator for City of Peñitas

City of Penitas / La Joya Water Supply Corporation
13.248 Contract Service Agreement
Sewer Service Areas

Application No. 35926-C (Agreement to Decertify a Portion of La Joya WSC, CCN 20785)
Hidalgo County



4000 0 4000 Feet

1 inch = 4,000 feet



Map by S. Jaster 7/3/2008
Data path: c:\gis\projects\shpsforapplications\35926-c.shp
Project path: c:\gis\projects\applications\35926-c.apr



Sewer CCN Service Areas
20794 - CITY OF PENITAS
20785 - LA JOYA WSC
Area Decertified

SPECIAL DISTRICT LOCAL LAWS CODE
SPECIAL TITLE C. SPECIAL UTILITY DISTRICTS
CHAPTER 7201. AGUA SPECIAL UTILITY DISTRICT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7201.001. DEFINITIONS. Unless the context otherwise requires, in this chapter:

- (1) "Board" means the board of directors of the district.
- (2) "Corporation" means the La Joya Water Supply Corporation.
- (3) "Director" means a member of the board.
- (4) "District" means the Agua Special Utility District.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.02, eff. June 16, 2007.

Sec. 7201.002. NATURE OF CORPORATION AND DISTRICT. (a) The corporation is a water supply corporation in Hidalgo and Starr Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, and operating in accordance with Chapter 67, Water Code.

(b) The district is:

(1) a special utility district in Hidalgo and Starr Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, and operating in accordance with Chapters 49 and 65, Water Code;

(2) a retail public utility as defined by Section 13.002, Water Code; and

(3) the successor in interest to the corporation.

(c) The corporation shall be dissolved and succeeded without interruption by the district as provided by Subchapter A1.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.03, eff. June 16, 2007.

Sec. 7201.003. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this chapter, Chapters 49 and 65, Water Code, including Sections 49.211(a) and 65.201(a), Water Code, apply to the district.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.004. REGULATORY CONFLICTS. (a) If a municipality asserts regulatory authority over any geographic area in the district and a municipal regulation applicable to that geographic area conflicts with a rule of the district, the regulation of the municipality prevails.

(b) This section does not apply to:

(1) rules or regulations concerning potable water quality standards; or

(2) conflicts relating to service areas or certificates issued to the corporation or district by the Texas Commission on Environmental Quality.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.005. INITIAL DISTRICT TERRITORY. (a) The district is composed of the territory described by Section 9.12 of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this subsection.

(b) The boundaries and field notes contained in Section 9.12 of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this subsection form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to issue bonds; or

(3) the legality or operation of the district.

(c) District boundaries may be modified in accordance with Chapters 13 and 49, Water Code, except that the boundaries must include all territory in any area included under a certificate of convenience and necessity issued by the Texas Commission on Environmental Quality to the district.

(d) The territory of the district does not include and the district does not have jurisdiction over land that has never been in the service area of the corporation regardless of any erroneous inclusion of that land in the boundaries and field notes in Section 9.12 of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this section. Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.04, eff. June 16, 2007.

SUBCHAPTER A1. TEMPORARY PROVISIONS

Sec. 7201.021. TRANSFER OF ASSETS; DISSOLUTION.

(a) Except as provided by this subsection, after the appointment of initial directors under Section 7201.051, the receiver for the corporation shall transfer the assets, debts, and contractual rights and obligations of the corporation, including all legal claims against the corporation in effect on the date of the transfer, to the district and provide notices and make recordings of the transfer required by the Water Code and general law. If the transfer of any debt requires the permission of the lender, the receiver shall initiate proceedings to obtain that permission.

(b) In accordance with the orders of the receivership court and not later than the 30th day after the date of the transfer under Subsection (a), the receiver for the corporation shall commence dissolution proceedings of the corporation.

(c) On dissolution of the corporation, Certificates of Convenience and Necessity Nos. 10559 and 20785 are considered to be held by the district.

(d) The receiver for the corporation shall notify the Texas Commission on Environmental Quality of the dissolution of the corporation and its succession in interest by the district in order to effect the transfer of Certificates of Convenience and Necessity Nos. 10559 and 20785 to the district.

(e) On receipt of notice under Subsection (d), the Texas Commission on Environmental Quality shall note in its records that Certificates of Convenience and Necessity Nos. 10559 and 20785 are held by the district. The Texas Commission on Environmental Quality shall, as a ministerial act, transfer the certificates to the district without further application, notice, or hearing. A person, party, or entity does not have any right of protest, objection, or administrative review of the transfer prescribed by this section.

(f) After the Texas Commission on Environmental Quality takes the action required by Subsection (e), the court shall terminate the receivership.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.05, eff. June 16, 2007.

Sec. 7201.022. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.06, eff. June 16, 2007.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 7201.051. APPOINTMENT OF INITIAL DIRECTORS. (a) As soon as practicable after the effective date of the Act enacted by the 80th Legislature, Regular Session, 2007, amending this section, seven initial directors shall be appointed as provided by this section.

(b) To be eligible to be appointed as an initial director, an individual must meet the same requirements as a candidate for an elected position as director under Section 7201.052. The initial directors shall be appointed as follows:

(1) one director to represent the residents of the district in the City of Mission appointed by the governing body of that city;

(2) one director to represent the residents of the district in the City of Palmview appointed by the governing body of that city;

(3) one director to represent the residents of the

district in the City of Penitas appointed by the governing body of that city;

(4) one director to represent the residents of the district in the City of Sullivan City appointed by the governing body of that city; and

(5) three directors to represent the residents of the district outside the municipalities listed in Subdivisions (1)-(4) appointed by the Hidalgo County Commissioners Court.

(c) An initial director serves a term that expires on June 1 of the year in which the director's successor is elected under Section 7201.052.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.07, eff. June 16, 2007.

Sec. 7201.0512. INITIAL BOARD TRAINING. (a) Not later than the 60th day after the first date on which all of the initial directors have been appointed, each initial director shall complete at least 12 hours of training on district management and compliance with laws applicable to the district as determined by the receiver for the corporation.

(b) The district shall reimburse an initial director for the reasonable expenses incurred by the director in attending the training.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.08, eff. June 16, 2007.

Sec. 7201.0513. EDUCATION PROGRAM. (a) Before the first election of directors under Section 7201.052, the initial board shall establish a program of education for directors that includes information on:

(1) the history of the district;

(2) the district's enabling legislation;

(3) Chapters 49 and 65, Water Code, and other laws that apply to the district, including the requirements of the:

(A) open meetings law, Chapter 551, Government Code; and

(B) public information law, Chapter 552, Government Code;

(4) relevant legal developments related to water district governance;

(5) the duties and responsibilities of the board;

(6) the requirements of conflict of interest laws and other laws relating to public officials; and

(7) any applicable ethics policies adopted by the Texas Commission on Environmental Quality or the Texas Ethics Commission.

(b) The district shall pay any costs associated with the development of the education program from district revenue.

(c) The education program may include training provided by an organization offering courses that have been approved by the Texas Commission on Environmental Quality.

(d) The board may adopt bylaws modifying the education program as necessary to meet district needs.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.08, eff. June 16, 2007.

Sec. 7201.052. BOARD OF DIRECTORS. (a) Except as provided by Subsection (1), the district shall be governed by a board of seven directors, elected as follows:

(1) one director elected by the voters of the part of the City of Mission inside the district to represent that part of the city;

(2) one director elected by the voters of the City of Palmview to represent that city;

(3) one director elected by the voters of the City of Penitas to represent that city;

(4) one director elected by the voters of the City of Sullivan City to represent that city; and

(5) three directors elected at-large to numbered positions on the board by the district voters who do not reside in any of the municipalities listed in Subdivisions (1)-(4) to represent the part of the district that is not included in those municipalities, unless the number of at-large directors is increased under Subsection (1).

(b) A candidate for one of the numbered director positions:

(1) must reside in the part of the service area of the district that is not included in any of the municipalities listed in Subsections (a)(1)-(4); and

(2) must be eligible to hold office under Section 141.001, Election Code.

(c) A candidate for one of the director positions representing a municipality listed in Subsection (a)(1), (2), (3), or (4):

(1) must reside in the municipality the candidate seeks to represent; and

(2) must be eligible to hold office under Section 141.001, Election Code.

(d) It is the policy of the district that the directors shall represent and reside in as broad a cross-section of the geographic area of the district as possible.

(e) The district shall fill a vacancy on the board in accordance with Section 49.105, Water Code.

(f) Except for the initial directors appointed under Section 7201.051 or elected at the first election under Subsection (g), directors serve staggered terms of four years.

(g) On the uniform election date in May 2008, or in May 2010, if the election is postponed under Subsection (h), the district shall hold an election to elect seven directors. On the uniform election date in May of each even-numbered year after that date, the district shall hold an election to elect the appropriate number of directors.

(h) The initial board by order may postpone until the uniform election date in May 2010 the first election for directors under Subsection (g) if the initial board determines that there is not sufficient time to comply with the requirements of law and to order the election of directors to be held on the first uniform election date specified by that subsection.

(i) The directors elected at the first election under Subsection (g) shall cast lots to determine which three directors shall serve terms expiring June 1 of the first even-numbered year after the year in which the directors are elected and which four directors shall serve terms expiring June 1 of the second even-numbered year after the year in which the directors are elected.

(j) A director may not serve consecutive terms.

(k) A person who has served as a member of the board of directors of the corporation is not eligible to serve as a district director.

(l) If, before the expiration of the term of a director elected to represent a municipality under Subsection (a)(1), (2), (3), or (4), the district determines that all of the incorporated territory of the municipality is outside the boundaries of the district, the position immediately becomes an at-large numbered position to be filled at the next general election of the district in accordance with Subsections (a)(5) and (b).

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.09, eff. June 16, 2007.

Sec. 7201.053. DISTRICT TREASURER. (a) The board shall elect from among its members one director to serve as district treasurer.

(b) The district treasurer shall comply with the training requirements provided by Section 49.1571, Water Code, for an investment officer of a district.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.10, eff. June 16, 2007.

Sec. 7201.054. EDUCATION FOR DIRECTORS. (a) Except for an initial director whose term expires in 2008, each director shall complete the education program established under Section 7201.0513 before the first anniversary of the date on which the director was appointed or elected.

(b) The district shall reimburse a director for the reasonable expenses incurred by the director in attending the education program.

(c) A director who is elected to serve a subsequent term shall fulfill the education requirements specified by district bylaws.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.10, eff. June

16, 2007.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 7201.101. GENERAL POWERS AND DUTIES. Except as otherwise provided by this chapter, the district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 65, Water Code, applicable to districts created under Section 59, Article XVI, Texas Constitution.
Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.102. PROVISION OF SERVICE. The district shall at all times operate and construct necessary improvements within the certificated areas established by the commission to provide uninterrupted, continuous, and adequate service to existing and future customers for water, sewer, and contract services.
Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.103. INTERLOCAL CONTRACTS. In accordance with Chapter 791, Government Code, the district and the Rio Grande Regional Water Authority may enter into a contract under which the Rio Grande Regional Water Authority may provide administrative or any other contract activities for or with the district. The district may enter into interlocal cooperation contracts with any public or private entity, request any necessary regulatory approval required, and charge fees and rates adequate to generate revenue sufficient to cover all expenses of the district based on cost-of-service principles. For purposes of Chapter 791, Government Code, performance under a contract is a governmental function or service.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

SUBCHAPTER D. OPERATING PROVISIONS

Sec. 7201.201. AUDIT OF DISTRICT. (a) Subchapter G, Chapter 49, Water Code, applies to the district.

(b) An individual licensed by the state as a certified public accountant with not less than five years of government accounting experience shall perform the audit required by Section 49.191, Water Code.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.202. RECORDS OF DISTRICT. The district shall comply with all rules and regulations pertaining to records preservation, retention, and destruction promulgated by the Texas State Library and Archives Commission under Chapter 441, Government Code, as made applicable to water districts and utilities.
Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.203. MAINTAINING NECESSARY RECORDS. The district shall maintain necessary records and follow cost-of-service principles with respect to provision of retail public water or sewer service or any other service authorized by Chapter 49 or 65, Water Code, or an interlocal contract entered into in accordance with Chapter 791, Government Code.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.204. NEWSLETTER, WEBSITE, AND ANNUAL FINANCIAL INFORMATION. The district shall maintain an Internet website with current information concerning agendas, minutes, policies, monthly financial information concerning revenues and expenses, and quarterly summaries. The district shall provide information, including summary financial information based on the preceding year's annual audit, to district customers at an annual meeting.
Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.205. DISCONNECTION OF SERVICE AND CUSTOMER FEES.

(a) The district may not disconnect service of a customer for late payment before the 31st day after the date the district notifies the customer of the overdue payment.

(b) After a disconnection caused by the customer's late payment, the district may not charge a customer a fee for restoring or reinstalling service that exceeds \$25 or twice the amount of the late payment owed, whichever is less.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Sec. 7201.206. RATES AND FEES FOR SERVICES. (a) The

district, in connection with water or sewer retail public utility services, shall establish lifeline, senior citizen, or minimum consumption level rates for services. The rate impact of such services shall be allocated on the basis of costs of services to achieve conservation principles, while securing necessary reserves for the payment of operating expenses, sinking funds, principal, interest, and debt coverage factors, and any other objective established by the district's annual budget.

(b) Chapter 395, Local Government Code, does not apply to any fee, charge, or assessment that, before the corporation's dissolution and conversion to a district, is adopted by the receiver for the purpose of generating revenue to fund or recoup the costs of capital improvements or facility expansions necessitated by and attributable to new developments.

(c) Notwithstanding Subsection (b), beginning on December 31, 2009, the district may not impose any fee, charge, or assessment that, before the corporation's dissolution and conversion to a district, is adopted by the receiver for the purpose of generating revenue to fund or recoup the costs of capital improvements or facility expansions necessitated by and attributable to new developments unless the district readopts the fee, charge, or assessment or adopts a new fee, charge, or assessment in accordance with Chapter 395, Local Government Code. This subsection does not apply to a retail water or sewer rate adopted by the receiver or the district.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 9.11, eff. June 16, 2007.

Sec. 7201.207. SERVICE CONTRACT ALLOCATION OF COST AND IMMUNITY FROM CLAIMS. (a) In connection with intergovernmental, interlocal, or wholesale service contracts, including cooperative billing for any contract-based service, the district shall allocate costs of service ratably for the service, and the district shall secure indemnity from the contracting party to the extent allowed by law.

(b) The district is a governmental unit, as that term is defined by Section 101.001(3), Civil Practice and Remedies Code, and, to the fullest extent provided by law, enjoys immunity from suit and liability, consistent with general law, the Texas Tort Claims Act, Chapter 101, Civil Practice and Remedies Code, and Chapter 49, Water Code, including Section 49.066 of that code.

Added by Acts 2005, 79th Leg., Ch. 1057, Sec. 2.01, eff. September 1, 2005.



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

Agua Special Utility District

having duly applied for certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20785

to provide continuous and adequate water utility service to that service area or those service areas in Hidalgo and Starr Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35926-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Agua Special Utility District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission