



Control Number: 49154



Item Number: 4

Addendum StartPage: 0

DOCKET NO. 49154 RECEIVED

RATEPAYERS' APPEAL OF THE
DECISION BY LAGUNA MADRE
WATER DISTRICT TO CHANGE
RATES

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FEB 28 AM 10:29
PUBLIC UTILITY COMMISSION
CLERK
OF TEXAS

**LAGUNA MADRE WATER DISTRICT'S RESPONSE
TO RATEPAYER'S PETITION TO APPEAL**

TO THE HONORABLE HUNTER BURKHALTER:

COMES NOW, Laguna Madre Water District and files this Response to South Padre Island Golf Course via SPI Golf Homeowners JV, Inc. ("*Ratepayers*") Petition Appealing Raw Water Rate and Motion for Summary Dismissal, and in support thereof would show as follows:

1. Laguna Madre Water District ("*District*") files this response pursuant to Order No. 1 Requiring Responses and Addressing other Procedural Matters.
2. The Petition filed by Ratepayers must be denied because it was filed under the wrong chapter of the Texas Water Code. Additionally, even had the Petition been filed under the proper chapter, there are deficiencies in the Petition which require dismissal. Finally, even if this Petition were to proceed to the merits of the challenge, District has arguments on the merits supported by a rate study and expert testimony to support its raw water rate.

I. Dismissal Under 16 TAC 22.181

3. The District moves for summary dismissal of the Petition with prejudice for lack of jurisdiction pursuant to 16 TAC 22.181(b)(e) and 16 TAC 22.181(d)(1). The Commission lacks jurisdiction under Texas Water Code §§ 13.043 and 13.186, as this is an appeal of the raw water rate, and not the water, drainage, or sewer rate.

4. Section 13.043(b) states that ratepayers may appeal a decision affecting their "water, drainage, or sewer rates" to the utility commission. "Rate" is defined under chapter 13

as compensation paid to a retail public utility “for any service, product, or commodity described in Subdivision (23) of this section...” Tex. Water Code 13.002(17). The commodity described by Subdivision 23 is “...potable water to the public or for the resale of potable water to the public for any use...” as well as sewage services. Tex. Water Code 13.002(23). Chapter 13 does not address raw water. As such, the Commission must dismiss the Petition for lack of jurisdiction.

5. As this motion is based on the pleadings there are no affidavits supporting any factual arguments attached. District requests the Commission rule without a hearing pursuant to 16 TAC 22.182(d)&(e).

II. Dismissal Under 16 TAC 13.043

6. Even if the Commission finds the Ratepayers can proceed under Chapter 13, the Petition is deficient for two reasons. First, Ratepayers failed to attach any signatures of affected ratepayers to its Petition. Second, the Petition was filed more than 90 days after the dates of final notice by the District.

7. Tex. Water Code 13.043(c) states that “The petition must be signed by the lessor of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal...” The Petition does not include an attachment of signatures from any ratepayer affirming their rates have been affected. As such, the Petition must be dismissed.

8. Ratepayers incorrectly direct the Commission to the November 2018 rate of \$1.04 as the date of the rate change. However, Ratepayer’s Petition also includes Exhibit “B,” which purports to show the Raw Water Bills paid by Ratepayers. Exhibit “B” demonstrates Ratepayers paid \$1.06 from 9/10/2018 through 10/10/2018, which was an increase from \$.082

they paid the previous month. As such, the rate change did not occur in November when the rate was \$1.04, but two months earlier, in September of 2018 when the rate was increased to \$1.06.

9. Ratepayers Petition was received by the PUC on January 29, 2019 which was 90 days subsequent to October 31, 2018. The Petition was not filed within 90 days of the final notice of the decision by the governing board. Notice of the rate change was sent to all ratepayers by District on the first week of October 2018. The notice is attached as **Exhibit “A.”** See the attached affidavit of the Director of Finance for the District, Eduardo Salazar. **Exhibit “B.”** It has also been posted for the public on the Laguna Madre website <https://www.lmwd.org/services>. As such, even if considered under Chapter 13, the Petition must be dismissed. As such, notice was sent and received by the ratepayers prior to October 31, 2018, and the petition must be dismissed even if considered under Chapter 13.

III. Arguments on the Merits

10. In the event this matter reaches a contested hearing, District will present arguments on the merits pursuant to its 2018 rate study. The District will provide sworn testimony to accompany the rate study.

IV. Procedural Schedule

11. District requests the Commission set a schedule for summary proceedings as follows:

Event	Date
Deadline for Ratepayers to file Response to Motion for Summary Dismissal	April 1, 2019
Deadline for District to file Reply to Response to Motion for Summary Dismissal	April 15, 2019

12. In the event the Commission does not dismiss the Petition without a hearing as requested above, District requests the Commission set a procedural schedule. District is amendable to a Discovery schedule set at the Commission's discretion and convenience and will make itself available for a contested hearing at a date set by the Commission.

V. Conclusion & Prayer

WHEREFORE, PREMISES CONSIDERED, District prays this Commission will dismiss the Petition for lack of jurisdiction. The Petition was filed under the wrong chapter of the Water Code, and it fails to meet the threshold requirements for the chapter under which it was improperly filed. The Petition was filed more than 90 days after the date notice was provided to the ratepayers of the rate change by the District, and it lacks the requisite number of signatures of affected ratepayers as required. District prays this Commission will dismiss the Petition for lack of jurisdiction.

Respectfully Submitted,

FRYER & HANSEN, PLLC
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By: 

Brian J. Hansen
State Bar No. 24072139
Richard W. Fryer
State Bar No. 24085316

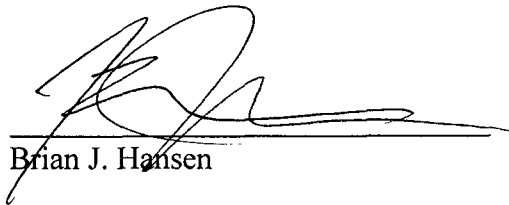
**ATTORNEYS FOR LAGUNA MADRE
WATER DISTRICT**

CERTIFICATE OF SERVICE

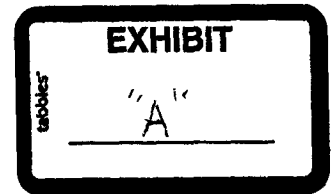
I hereby certify that a true and correct copy of the above and foregoing **Laguna Madre Water District's Response to Ratepayer's Petition to Appeal** has been served on the 27th day of February, 2019 to the following in the manner indicated:

Via U. S. Postal Service

Liliana Elizondo
Royston, Rayzor, Vickery & Williams, LLP
55 Cove Circle
Brownsville, Texas 78521
Counsel for South Padre Island Golf Course



Brian J. Hansen



On September 26, 2018 Board of Directors adopted new water, wastewater and raw water rates. The adopted rates will be reflected in the November 2018 utility bill.

Working with a water rate consultant, the Laguna Madre Water District has updated its rates guided by these objectives, to: cover the cost of service, support the capital plan, and incentivize water conservation. The study concluded that the District needed rate increases to meet the stated objectives, particularly the recovery of wastewater costs and investment in related capital projects.

Public input was sought and received, with the proposal first presented in May 2018, the second in June 2018, followed by a public hearing and adoption in September 2018. A five-year financial plan was adopted to allow for a series of smaller annual rate increases rather than a larger single increase.

	Current		Effective 18-Nov		Effective 19-Oct		Effective 20-Oct		Effective 21-Oct		Effective 22-Oct	
	Water	Sewer	Water	Sewer	Water	Sewer	Water	Sewer	Water	Sewer	Water	Sewer
5/8" Meter												
Monthly Charge	\$ 12.26	\$ 13.46	\$ 13.12	\$ 16.15	\$ 13.38	\$ 19.06	\$ 13.65	\$ 20.58	\$ 13.65	\$ 21.61	\$ 13.92	\$ 22.48
Usage Charge - Per 1,000 Gal												
4,001 10,000	2.47	2.73	2.64	3.28	2.70	3.87	2.75	4.17	2.75	4.38	2.80	4.56
10,001 20,000	3.89	4.23	4.16	5.08	4.25	5.99	4.33	6.47	4.33	6.79	4.42	7.06
20,001 Above	5.55	6.00	5.94	7.20	6.06	8.50	6.18	9.18	6.18	9.63	6.30	10.02
1" Meter												
Monthly Charge	23.07	21.83	24.68	26.20	25.18	30.91	25.68	33.38	25.68	35.05	26.20	36.46
Usage Charge - Per 1,000 Gal												
4,001 20,000	2.52	2.73	2.70	3.28	2.75	3.87	2.81	4.17	2.81	4.38	2.86	4.56
20,001 40,000	3.78	4.10	4.04	4.92	4.13	5.81	4.21	6.27	4.21	6.58	4.29	6.85
40,001 Above	5.32	6.12	5.69	7.34	5.81	8.67	5.92	9.36	5.92	9.83	6.04	10.22
2" Meter												
Monthly Charge	111.06	148.46	118.83	178.15	121.21	210.22	123.64	227.04	123.64	238.39	126.11	247.92
Usage Charge - Per 1,000 Gal												
15,001 100,000	2.63	2.97	2.81	3.56	2.87	4.21	2.93	4.54	2.93	4.77	2.99	4.96
100,001 200,000	3.95	4.46	4.23	5.35	4.31	6.32	4.40	6.82	4.40	7.16	4.49	7.45
200,001 Above	5.90	6.18	6.31	7.42	6.44	8.75	6.57	9.45	6.57	9.92	6.70	10.32
4" Meter												
Monthly Charge	418.64	340.56	447.94	408.67	456.90	482.23	466.04	520.81	466.04	546.85	475.36	568.73
Usage Charge - Per 1,000 Gal												
50,001 500,000	2.76	3.09	2.95	3.71	3.01	4.38	3.07	4.73	3.07	4.96	3.13	5.16
500,001 1,000,000	4.14	4.63	4.43	5.56	4.52	6.56	4.61	7.08	4.61	7.43	4.70	7.73
1,000,001 Above	5.69	6.30	6.09	7.56	6.21	8.92	6.33	9.63	6.33	10.12	6.46	10.52
6" Meter												
Monthly Charge	784.00	560.00	838.88	672.00	855.66	792.96	872.77	856.40	872.77	899.22	890.23	935.19
Usage Charge - Per 1,000 Gal												
50,001 500,000	2.60	2.70	2.78	3.24	2.84	3.82	2.89	4.13	2.89	4.34	2.95	4.51
500,001 1,000,000	3.90	4.05	4.17	4.86	4.26	5.73	4.34	6.19	4.34	6.50	4.43	6.76
1,000,001 Above	5.25	5.40	5.62	6.48	5.73	7.65	5.84	8.26	5.84	8.67	5.96	9.02
8" Meter												
Monthly Charge	840.00	896.00	898.80	1,075.20	916.78	1,268.74	935.11	1,370.23	935.11	1,438.75	953.81	1,496.30
Usage Charge - Per 1,000 Gal												
50,001 500,000	2.84	2.93	3.04	3.52	3.10	4.15	3.16	4.48	3.16	4.70	3.22	4.89
500,001 1,000,000	4.20	4.42	4.49	5.30	4.58	6.26	4.68	6.76	4.68	7.10	4.77	7.38
1,000,001 Above	5.69	5.89	6.09	7.07	6.21	8.34	6.33	9.01	6.33	9.46	6.46	9.84
Raw Water Rate												
Charge per 1,000 gallons	0.80		1.04		1.04		1.04		1.04		1.05	



El 26 de septiembre de 2018, la Junta Directiva adoptó nuevas tarifas de agua, aguas residuales y agua sin tratar. Las tarifas adoptadas se reflejarán en la factura de servicios públicos de noviembre de 2018.

Al trabajar con un asesor de tarifas de agua, el Distrito de Agua Laguna Madre actualizó sus tarifas guiadas por estos objetivos: cubrir el costo del servicio, respaldar el plan de capital e incentivar la conservación del agua. El estudio concluyó que el Distrito necesitaba aumentos en las tarifas para poder cumplir con los objetivos establecidos, particularmente la recuperación de los costos de las aguas residuales y la inversión en proyectos de capital relacionados con estos.

Se solicitaron y recibieron comentarios del público, con la propuesta presentada por primera vez en mayo de 2018, la segunda en junio de 2018, seguida de una audiencia pública y adopción en septiembre de 2018. Se adoptó un plan de cinco años para aplicar una serie de aumentos anuales pequeños en lugar de un solo aumento considerable.

	Actual		Efectivo Noviembre 2018		Efectivo Octubre 2019		Efectivo Octubre 2020		Efectivo Octubre 2021		Efectivo Octubre 2022	
	Agua	Alcantarilla	Agua	Alcantarilla	Agua	Alcantarilla	Agua	Alcantarilla	Agua	Alcantarilla	Agua	Alcantarilla
Medidor de 5/8"												
Cobro Mensual	\$12.26	\$13.46	\$13.12	\$16.15	\$13.38	\$19.06	\$13.65	\$20.58	\$13.65	\$21.61	\$13.92	\$22.48
Cobro Por Uso - Por 1,000 gal												
4,001 10,000	2.47	2.73	2.64	3.28	2.70	3.87	2.75	4.17	2.75	4.38	2.80	4.56
10,001 20,000	3.89	4.23	4.16	5.08	4.25	5.99	4.33	6.47	4.33	6.79	4.42	7.06
20,001 y mas	5.55	6.00	5.94	7.20	6.06	8.50	6.18	9.18	6.18	9.63	6.30	10.02
Medidor de 1"												
Cobro Mensual	23.07	21.83	24.68	26.20	25.18	30.91	25.68	33.38	25.68	35.05	26.20	36.46
Cobro Por Uso - Por 1,000 gal												
4,001 20,000	2.52	2.73	2.70	3.28	2.75	3.87	2.81	4.17	2.81	4.38	2.86	4.56
20,001 40,000	3.78	4.10	4.04	4.92	4.13	5.81	4.21	6.27	4.21	6.58	4.29	6.85
40,001 y mas	5.32	6.12	5.69	7.34	5.81	8.67	5.92	9.36	5.92	9.83	6.04	10.22
Medidor de 2"												
Cobro Mensual	111.06	148.46	118.83	178.15	121.21	210.22	123.64	227.04	123.64	238.39	126.11	247.92
Cobro Por Uso - Por 1,000 gal												
15,001 100,000	2.63	2.97	2.81	3.56	2.87	4.21	2.93	4.54	2.93	4.77	2.99	4.96
100,001 200,000	3.95	4.46	4.23	5.35	4.31	6.32	4.40	6.82	4.40	7.16	4.49	7.45
200,001 y mas	5.90	6.18	6.31	7.42	6.44	8.75	6.57	9.45	6.57	9.92	6.70	10.32
Medidor de 4"												
Cobro Mensual	418.64	340.56	447.94	408.67	456.90	482.23	466.04	520.81	466.04	546.85	475.36	568.73
Cobro Por Uso - Por 1,000 gal												
50,001 500,000	2.76	3.09	2.95	3.71	3.01	4.38	3.07	4.73	3.07	4.96	3.13	5.16
500,001 1,000,000	4.14	4.63	4.43	5.56	4.52	6.56	4.61	7.08	4.61	7.43	4.70	7.73
1,000,001 y mas	5.69	6.30	6.09	7.56	6.21	8.92	6.33	9.63	6.33	10.12	6.46	10.52
Medidor de 6"												
Cobro Mensual	784.00	560.00	838.88	672.00	855.66	792.96	872.77	856.40	872.77	899.22	890.23	935.19
Cobro Por Uso - Por 1,000 gal												
50,001 500,000	2.60	2.70	2.78	3.24	2.84	3.82	2.89	4.13	2.89	4.34	2.95	4.51
500,001 1,000,000	3.90	4.05	4.17	4.86	4.26	5.73	4.34	6.19	4.34	6.50	4.43	6.76
1,000,001 y mas	5.25	5.40	5.62	6.48	5.73	7.65	5.84	8.26	5.84	8.67	5.96	9.02
Medidor 8"												
Cobro Mensual	840.00	896.00	898.80	1,075.20	916.78	1,268.74	935.11	1,370.23	935.11	1,438.75	953.81	1,496.30
Cobro Por Uso - Por 1,000 gal												
50,001 500,000	2.84	2.93	3.04	3.52	3.10	4.15	3.16	4.48	3.16	4.70	3.22	4.89
500,001 1,000,000	4.20	4.42	4.49	5.30	4.58	6.26	4.68	6.76	4.68	7.10	4.77	7.38
1,000,001 y mas	5.69	5.89	6.09	7.07	6.21	8.34	6.33	9.01	6.33	9.46	6.46	9.84
Tarifa de Agua Sin Tratar												
Cobro por 1,000 galones	0.80		1.04		1.04		1.04		1.04		1.05	

DOCKET NO. 49154

RATEPAYERS' APPEAL OF THE § PUBLIC UTILITIES COMMISSION
DECISION BY LAGUNA MADRE §
WATER DISTRICT TO CHANGE § OF TEXAS
RATES §

AFFIDAVIT OF EDUARDO SALAZAR

STATE OF TEXAS §
 §
COUNTY OF CAMERON §

BEFORE ME, the undersigned authority, on this day personally appeared Eduardo Salazar, who by me being duly sworn on oath, deposes and says:

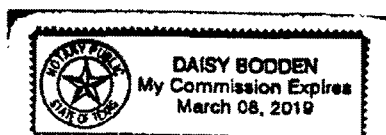
1. "My name is Eduardo Salazar, I am currently the Director of Finance for the Laguna Madre Water District ("LMWD") and have been employed in this position since April 17, 2018. I am over the age of 21 and of sound mind. I have never been convicted of a crime involving moral turpitude, and am competent to make this affidavit and to attest to the facts contained herein.

2. The attached rate sheet reflects the raw water rate charged by LMWD. It was sent to all customers in the first week of fiscal year ending 2019 by LMWD and has been posted on the LMWD website."

FURTHER, AFFIANT SAITH NOT.


Eduardo Salazar, Affiant

SWORN AND SUBSCRIBED to before me on this 26th day of February 2019, to certify which witness my hand and official seal.




Notary Public, State of Texas

