



Control Number: 49154



Item Number: 72

Addendum StartPage: 0

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

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PUBLIC UTILITY COMMISSION
OF TEXAS

**RATEPAYER SOUTH PADRE ISLAND GOLF COURSE'S RESPONSE TO LAGUNA
MADRE WATER DISTRICT'S OBJECTIONS TO AND MOTION TO EXCLUDE
TESTIMONY OF SOUTH PADRE ISLAND GOLF COURSE'S EXPERT**

TO THE HONORABLE JUDGE SIANO AND JUDGE SOTO:

COMES NOW, Ratepayer South Padre Island Golf Course ("**SPI**"), and files this
it's Response to Laguna Madre Water District's ("**LMWD or "the District"**") Objections
to, and Motion to Exclude the testimony of SPI's expert, Billy Bradford, CPA. In support
thereof, SPI would respectfully show the following:

I.

INTRODUCTION AND BACKGROUND

1.1. LMWD does not object to the procedural history set forth in SPI's Direct
Testimony, including the agreed procedural schedule. Consequently, SPI will not repeat it
here. SPI files this response to LMWD's objections and motion to exclude prior to the
deadline for doing so, January 24, 2020.

II.

LEGAL AUTHORITIES

2.1. SPI generally agrees with the law set forth in paragraph II of LMWD's
Objections and Motion to Exclude. Therein, LMWD cites appellate precedent on the
standards for admissibility of expert opinions (subparagraphs 2.1-2.9).

III.

RESPONSES TO LMWD'S OBJECTIONS

A. Introduction; Global Response to all Objections

In subparagraph b below, SPI responds to LMWD's objections numbered 3.1-3.16 in the same sequence lodged by LMWD. However, with the exception of objection 3.1, the remainder of LMWD's objections consist largely of attacks on foundational facts and/or the characterization of facts or calculations which SPI's expert, Billy Bradford, CPA, referenced or relied upon in expressing opinions. SPI would remind LMWD that while an expert's opinion must be based, in part, on sufficient underlying facts or data [T.R.E. 705 (c)], facts on which an expert's opinion is based do not need to be undisputed to be admissible. *Caffe Ribs, Inc. vs. State*, 487 S.W. 3d 137, 144 (Tex. 2016). Indeed, many of the facts in this case are disputed. To save time and paper, SPI incorporates this authority as an objection in response to objections 3.2 – 3.16 below. However, because LMWD has chosen to base its objections on its view of the facts, SPI has no choice to but address LMWD's factual assertions below.

b. Response to Individual Objections

3.1 Contrary to LMWD's assertion, Billy Bradford, CPA, is uniquely qualified by education, training and experience to serve as an expert in this rate appeal. The two critical issues in this rate appeal are: (1) whether the LMWD's raw water rate increases of 89% were unreasonable, unjust, and discriminatory; and (2) whether the underlying methodology and calculations upon which the rate increases were based were flawed. These issues require testimony from persons with accounting expertise as well as experience in ratemaking. First, Mr. Bradford is a licensed CPA who has been in active practice for over 35 years. One of his concentrations is forensic accounting. Even LMWD's expert, Dan Jackson, would be hard pressed to argue that ratemaking cannot be completed without a thorough analysis of LMWD's accounting records, using same to allocate costs, and employing a proper methodology to calculate

raw water rates¹. The issues on appeal cannot be resolved without a critical analysis of the district's accounting records, the independent audit of its financial statements, the application of generally accepted accounting principles, and proper ratemaking methodology. Second, and significantly, Mr. Bradford has experience in setting policy and water rates through his service as past Chairman of the Board of the Brownsville Public Utilities Commission (which supplies water to residents of the lower Rio Grande Valley), past Chairman of the Board of the Southmost Regional Water Authority, and past Chairman and presiding officer of the Texas Water Development Board. See *Bradford CV, Exhibit 1 to SPI Golf's Direct Testimony*. In his various capacities on these boards, Mr. Bradford has studied, calculated and participated in water rate policy. *Id.* One only needs to review LMWD's expert, Dan Jackson's direct testimony and LMWD meeting videos to appreciate that rates can change exponentially depending upon the perspective of the expert and the message he is given by a District's Board. The examples are too numerous to mention but here are two: Mr. Jackson admitted in his deposition that although the methodology has not changed, it was not accurately applied in his 2014/15 rate study, or the "first draft" of his 2018 rate study. Until March 14, 2018, the raw water rate was \$0.55 per unit (a rate Jackson had previously recommended for 2018 in his 2015 rate study). In three (3) short months, Jackson's raw water rate recommendation went from \$0.55 to \$0.66 to \$1.04 per unit after a certain LMWD Board member asked Jackson whether LMWD could make a profit, and instructed Jackson to go back to the drawing Board. Mr. Bradford has identified numerous accounting inconsistencies and outright manipulation of numbers to achieve the objective of the LMWD Board majority. LMWD's former Director of Finance and current Director of Operations, Robert Gomez, testified he could not understand

¹ Robert Gomez, LMWD's former Director of Finance and current Director of Operations was recently deposed. He testified that setting water rates was largely a function of accounting.

how Jackson could allocate 100% to raw water LMWD's entire fleet of 30-plus trucks, several bulldozers, forklifts, front end loaders, vacuum trucks, jetter trucks, buildings, PVC pipe and a residential distribution line. Mr. Gomez repeatedly testified that allocating 100% of the aforementioned assets to the supply and transmission of raw water would not be fair in calculating a reasonable raw water rate. In short, expert Bradford has exactly the education, training, specialized knowledge, skill and experience that would benefit the trier of fact in evaluating the accounting and rate setting issues on appeal. T.R.E. 702.

3.2 LMWD generally attacks the foundation of Bradford's testimony as unreliable, seemingly critical of not "interacting with LMWD personnel", for driving the 26-mile (underground) supply/transmission line, and for reading the materials provided by LMWD. This is a litigated matter. Neither Bradford nor undersigned counsel for SPI were notified they had liberty to interact directly with LMWD personnel outside of depositions. Consequently, SPI deposed, and provided to Mr. Bradford, transcripts of the depositions of LMWD's General Manager, Director of Finance, Director of Engineering and Operations Director. Mr. Bradford was also provided with copies of publically available records, LMWD's discovery responses, Jackson's direct testimony and supplemental document production upon which he attempted to justify his rate increase recommendation. He was also provided with information from SPI. In short, Bradford reviewed deposition testimony, written discovery responses and document production in a litigated matter. This is exactly the type of factual material experts like Bradford review and rely upon as a foundation for formulating opinions. T.R.E 702.

3.3 SPI acknowledges a typographical error on page 8, lines 11-12. Bradford's comments concerning rate of return were intended to reference the "Utility Basis"

methodology rather than the Cash Basis methodology. SPI apologizes for this error, and will amend Bradford's testimony to correct the error.

3.4 SPI disagrees with LMWD's objection to Bradford's testimony on page 12, lines 16-18. LMWD's expert, Jackson, "calculated" that it cost \$540,000 to deliver raw water to LMWD's treatment plants (i.e., Transmission/Supply). Jackson arrived at that figure by adding 25% of the costs associated with two (2) treatment plants and 25% of the cost of distribution of treated water. However, LMWD's accounting does not segregate costs between treated water and raw water. Consequently, Jackson's allocation to raw water of 25% of Account 01 (Water Plant) and 25% of Account 03 (Distribution) has no rational basis. Jackson references his 2018 item-by-item examination of each cost within LMWD's schedule of fixed assets. This is a complete distortion, as evidenced by the deposition testimony of LMWD's Former Director of Finance and current Director of Operations. With respect to raw water, Jackson uses two allocations - zero or 25%. See attachment. LMWD's General Manager and its Directors of Finance, Engineering and Operations all testified they did not know how or where Jackson came up with a 25% allocation, because it did not come from them. The expert's opinion is based on sufficient underlying facts or data, which do not need to be undisputed to be admissible. *T.R.E. 705(c); Caffè Ribs, Supra, at 144.*

3.5 & 3.6. SPI combines its response to LMWD's objections 3.5 and 3.6 because the facts and issues are interrelated. LMWD specifically objects to page 13, lines 16-18, and page 30, line 19 through page 31, line 10, on the basis that Bradford "claims" that most of the water plant people are administration-related and that Bradford "implies" that none of the costs recorded by LMWD as distribution are applicable to the raw water line. Again, this is a dispute over the analysis of accounting records – and whether LMWD's expert's allocations bear any semblance to reality. Contrary to the facts

asserted by LMWD, Robert Gomez, LMWD's own Operations Director, testified that maintenance of the transmission line consists of the following: Once a week, one (1) truck with two (2) employees drive the 26-mile underground concrete line and visit the three pump houses. Their job is simply to see if there are any "wet spots" on the ground. The round-trip drive takes 3-4 hours. Then, once a month for seven (7) days (during water intake), two employees drive to the river pump station. That is a maximum of 56 man-hours per month for the two employees to drive the line in one (1) truck. Even then, there really is no maintenance to the underground concrete line. LMWD's Operations Director, Robert Gomez, testified he could only recall one possible leak during his eight years at LMWD, but that was an issue at the Rio Grande River intake.

In response to the Commission Staff's Second request for Information concerning the overhead and maintenance costs of the raw water line, LMWD, rather than providing a cost accounting, supplied its expert's global allocation percentage. Jackson's attempt to justify a blanket allocation of 25% of 64 line items within the 01-Water Plant and 03-Distribution accounts defies logic and generally accepted accounting principles. This is why:

First, Jackson testified that his 25% allocation factor was "based on the primarily on the professional expertise of District's staff". He then referenced General Manager, Carlos Galvan, who has been with the LMWD since the completion of the line. General Manager Galvan, District Engineer Ortiz, Finance Director Salazar and Operations Director Gomez all testified that they never spoke to Jackson or provided him with any information concerning raw water costs and did not know the source of his information. Astonishingly, Jackson asserts that the equivalent of 25% of the 32 employees work full-time attending to raw water. This is absurd.

Second, Jackson attempts to apportion overhead and maintenance cost with the value of an asset. This is not in accordance with generally accepted accounting principles. A \$50,000 pump may require less maintenance than one \$1,000 pump (let alone 50 pumps costing \$1000 each).

Third, Jackson attempts to allocate O&M costs by "inch mile" of pipeline. He suggests that a mile of 42 inch concrete pipe costs the same to operate and maintain as 10.5 miles of 4 inch distribution pipeline, or 14 miles of 3 inch, or 21 miles of 2 inch pipeline (without regard for the composition of the pipe). This reasoning defies logic.

Fourth, Jackson attempts to allocate O&M with electrical usage. One large spotlight requires less O&M cost than a thousand small ones. The same is true of pumps.

Finally, General Manager Galvan testified that LMWD's workers visit the pump house a couple of times a month to confirm water usage with TCEQ staff. However, Jackson's assertion of 8 Full Time Equivalent employees (64 hours per day) was not supported by Galvan. In short, Bradford's direct testimony is consistent with real life at LMWD, and is therefore much more reliable than the facts LMWD's expert made up. The expert's opinion is based on sufficient underlying facts or data, which do not need to be undisputed to be admissible. *T.R.E. 705(c); Caffé Ribs, Supra, at 144.*

3.7. LMWD objects to Bradford's testimony on page 32, lines 3-4 as "false and misleading". Once again this objection is nothing more than a dispute between experts over facts or the characterization of facts, which is not the subject of exclusion. *Id.* It is clear from Jackson's return on investment factor ("ROI") and his direct testimony that SPI is being subjected to a sur-charge for costs of the transmission line which were amortized prior to the golf course and residential community being constructed. If Jackson's ROI is to be used, then, according to that logic, LMWD should sur-charge the

cost of existing infrastructure to each new hotel and condominium complex on South Padre Island. No similar charge is imposed by LMWD on any other rate payer.

3.8. LMWD objects to Bradford's testimony on page 11, line 17 through page 12, line 7 for an estimate of raw water overhead and maintenance expenses. Once again, the accounting records and the deposition testimony of LMWD's General Manager and key department heads support Bradford's estimates, and proves LMWD's expert wrong. Jackson asserts that 8 LMWD employees spend their full time monitoring the underground line and 3 un-manned pump stations. Robert Gomez, LMWD's Operations Director, testified that maintenance of the transmission line consists of the following: Once a week, one pick-up truck with two (2) employees drives the 26-mile underground concrete line looking for leaks. The round-trip drive takes 3-4 hours. Then, once a month for seven (7) days (during water intake), two employees drive to the river pump station. That is a maximum of 56 man-hours per month for the two employees to drive the line. Even then, there really is no maintenance to the underground concrete line. LMWD's Operations Director, Robert Gomez, testified he can only recall one possible leak during his eight years at LMWD, but that was an issue at the Rio Grande River intake. *T.R.E. 705(c); Caffè Ribs, Supra, at 144*

3.9, 3.10 & 3.11 SPI combines its response to LMWD's objections 3.9, 3.10 and 3.11 because the issues are interrelated.

In his August 9, 2000 calculation of the raw water rate, Jackson determined that overhead and maintenance ("O&M") costs were \$67,000. He now determines these costs to be \$545,000. This is an 800% increase created by Jackson's massive allocations. Total operating costs have only increased 168% during that 18-year period. For its year ended April 30, 2000, total expenditures from LMWD's General Fund were

\$4,164,081. *Page 20, 2000 independent audit report.* For year 2018, Total Expenditures were \$6,987,273. *Page 68, of the 2018 audit report.*

Determining operating and maintenance costs are with the province of accounting. What costs were actually incurred by LMWD in 2018 to operate the transmission line? These cost are carried within the 32 line items of account 01 (Water Plant) and, according to Jackson, within the 34 line items of account 03 (Distribution). Rather than accepting an “across the board allocation” used by Jackson, Bradford suggests one read and analyze each item before accepting Jackson’s \$545,000 number. LMWD needs to present operating and maintenance costs using generally accepted accounting principles (“GAAP”).

3.12. LMWD’s objection 3.12 mistakenly references Bradford’s comments about water rights to page 33 line, line 12 through page 34, line 15. That testimony discusses Depreciation. On page 33, line 1, Bradford states that Jackson created an artificial value for Water Rights which Jackson uses in his Rate of Return (“ROI”) calculation. Jackson’s ROI calculation is only inflicted on one customer: SPI.

Invoking the rule of optional completeness, Bradford makes two further points in his testimony. First, if a ROI calculation is used (which should not be the case), the carrying cost of water rights is zero. Second, even the independent audit of 2018 financial statements prepared by LMWD’s accountants, Carr, Riggs, LLP, does not reflect a value to water rights. Jackson’s value of \$2,644,000 was created by Jackson. The expert’s opinion is based on sufficient underlying facts or data, which do not need to be undisputed to be admissible. *T.R.E. 705(c); Caffé Ribs, Supra, at 144.*

SPI asserts that water rights have an infinite value, and that the Texas Public Utilities Commission was in part created to protect taxpayers from being charged an infinite price. Charging only SPI for Water Rights is discriminatory *per se*.

3.13. LMWD's objects to the testimony at page 13, lines 18-19, that Bradford did not do any "real analysis" of the District's costs and operations. This is not an objection; it is no more than a general comment which is disingenuous to say the least. LMWD's expert, Mr. Jackson, testified that his August 9, 2000 letter to SPI's predecessor-in-interest constituted SPI Golf's "agreement" to use the Utility Basis for rate making. LMWD now wants to back-pedal from the methodology and allocations Jackson used at that time (despite his testimony that the methodology has not changed). At that time, Jackson used a 10% Allocation of Water Plant costs after deducting all chemicals (chemicals for treated water). Now, for the first time, he uses 25% of Water Plant costs, plus 25% of all Distribution costs (again, treated water). He also now adds 25% of the cost of LMWD's entire Administration. All of these costs were without explanation, comment or justification until the Commission Staff issued its Second Request for Information. It is simply mind boggling that out of the 6,800 ratepayers within the District, the only real raw water customer, from whom LMWD generates less than one percent (1%) of its total water sales, gets stuck with 25% of the District's costs.

LMWD criticizes Bradford for not having access to LMWD books and records. This is ironic after taking 11 days of the scheduled procedural timetable to deliver a simple list of accounts, and only after he was questioned under oath what information he was using to allocate costs.

After his deposition, Mr. Jackson provided several hundred pages of a line-by-line listing of the items included in LMWD accounts: 01 Water Plant; 03 Distribution and 07 Administration. A 25% allocation of these costs to raw water could never be made in good faith. Even LMWD's Director of Operations (and former Director of Finance), who was presented with the schedule of assets Mr. Jackson produced, could not understand

how LMWD assets not related to the transmission and supply of water could be used in setting raw water rates. Astonishingly, however, Jackson allocates all water costs to his five functions in 25% increments.

Jackson defends his current 25% allocation of 001 Water Plant and 25% of account 003 Distribution as follows:

- a. The 10% allocation was based on a “cursory review”. He then states that “LMWD’s detailed analysis of its operating costs for raw water resulted in exactly what the document predicted - a higher cost of operating the raw water line...” This statement is in direct conflict with the testimony of LMWD’s Finance Director, Mr. Salazar and LMWD’s General Manager, Mr. Galvan. They testified that LMWD does not allocate cost between treated water and raw water. Management of LMWD does not separate the cost of operating the line and has not (during General Manager Galvan’s almost 30-year tenure) ever calculated the same. Jackson’s “detailed analysis” is a total fiction.

Jackson does, however allocate 001 Water Plant costs for what he describes as “Test Year 2018”. All 32 cost items within 001 Water Plant are allocated exactly 25% to Supply/Transmission (i.e., raw water). Chemical (none of which are applicable to raw water) are charged at \$97,500. Minor repairs are charged at \$18,000.

Jackson also allocates 003 Distribution cost for “Test Year 2018”. All 34 cost items within 03 Distribution are allocated exactly 25% to Supply/Transmission. Minor repairs are reflected at \$5,000 with \$1,250 allocated to Supply transmission. These numbers are cited merely to suggest that the reader reflect on the lack of reality in an 800% increase in operation and maintenance cost of a “new pipeline” (compared to the ages of bridges and other U.S.A. infrastructure). The pipeline carries river water which, if not diverted, would flow into the Gulf of Mexico.

On August 9, 2000, Jackson calculated the O&M costs to operate the raw water line to be \$67,436. Today he claims they are \$545,000. All four (4) senior management employees of LMWD have now been deposed. All of them testified that they did not provide to Jackson – directly or indirectly - any information to allocate such costs.

- b. In defending his increase from a 10% to a 25% allocation, Jackson testified that LMWD acquired a new accounting system in 2007. Oddly enough, from 2000 to 2015, raw water rates only increased from \$0.43 to \$0.48. In 2014/2015 Jackson recommended a raw water rate of \$0.54 cents. Apparently the new, 2007 accounting system was not used to distort costs until after May 23, 2018 – when

certain Board members did not like Mr. Jackson's original, 66-cent recommendation. The evidence indicates that since 2014/2015, nothing has changed. There has been no new investment in (or affecting) raw water. The independent audit of LMWD's financial statements for 2018, conducted Carr Riggs, LLP, clearly document that LMWD's total costs (water and sewer) have increased by less than 1% per year since 2014. On the other hand, the operating profit or surplus of LMWD has during the same period has grown from 10% of sales to 27% of sales.

Jackson fails to mention that he now segregated all line items for water (and sewer) in 25% increments:

- c. Jackson cites growth in the district since 2000 as a justification for his increase from a 10% allocation to a 25% allocation. He failed to disclose when his allocation changed. Jackson's 2014/15 Study and his 2018 Study reflect ZERO population growth since 2012. In fact, the district had a decline in population of 16 residents from 2012 to 2018. He also failed to report that the line only operates at approximately 55% of capacity - per Jackson's own numbers!

On page 260 of his testimony, Jackson projects an average annual growth rate for Water Accounts for LMWD of 0.74%, decreasing to 0.70% in ten years. That is 50 new accounts per year building from a base of 6,045 accounts.

The District's total costs are increasing at less than 1% per year. The District is growing at less than 1% per year. Virtually all of the growth is at the SPI Golf Community. That growth has been triggered by Petitioner's and its associates' investment rebuilding SPI Golf Course. The Petitioner and its Developer have invested in excess of \$10,000,000 at SPI Golf Community. Despite his extensive efforts, LMWD Board Member Herb Houston was unsuccessful becoming the new developer of this beautiful 1,000+ home community. Director Houston has openly threatened to cut off petitioner from raw water it and its predecessor have received for 23 years.

For test Year 2018, Jackson allocated account 005 Maintenance zero percent (00.00%) to Supply /Transmission. Jackson, however, asserts that the 30 year old line requires "significantly more ongoing maintenance and monitoring". He testified that he does not know the material from which the pipeline is constructed. However, he allocates exactly 25% of minor repairs (less than \$20,000) to the line. His comments are not supported. He is concerned about a 30 year old line. Is he aware that the water infrastructure of Austin dates to the 1930s? The water infrastructure of Boston, Chicago and New York approach or exceed 100 years. The Alaska pipeline which experiences several freeze-thaw cycles is 43 years old. The above shows the absurdity of using blanket allocations rather than perform simple accounting to determine a cost.

In Jackson's January 3, 2020 response to the Commission Staff's Second Request for Information, Jackson stated that he relied upon the

“professional expertise of District Staff who have operated and managed the water line since 1988” for his 25% allocations. He repeatedly referenced the District’s General Manager’s experience and expertise. However, LMWD and Jackson failed to disclose that the General Manager testified under oath that he did not provide any critical information to Jackson concerning raw water and the allocation of costs thereto.

Also in Jackson’s response to the Commission Staff’s Second Request, Jackson repeatedly references the “Pipeline from Hell”. Jackson cited it as a significant factor to justify his alleged \$540,000 of O&M costs for raw water. An allocation of 25% of the FTEs (full time employees) of Water Plant and Distribution is equates to 64 man hours per day, 320 hours per week to control “at least 15 leaks” in the past 29 or 30 years. LMWD’s Director of Operations – and its former Finance Manager – testified he had never heard the term “Pipeline from Hell” during his employment at the District. In fact, in all of his years at LMWD, Mr. Gomez testified there was only one leak of the concrete transmission line, but that was at the intake at the Rio Grande River. Indeed, when asked about Jackson’s comment about “the pipeline from hell”, LMWD’s Operations Director, Mr. Gomez, said he had never heard that term in all his years at the District.

The average cost to LMWD of each of its 77 employees is about \$60,000. Eight employees monitoring 3 un-manned pump-houses and the line for a leak occurring every two years is \$960,000 per leak. Of course, this is non-sense.

- d. LMWD claims that Bradford does not utilize the opinions of experienced professionals with decades of operating experience. Jackson fails to reference the testimony of LMWD General Manager Galvan, Director of Finance Salazar, Chief Engineer Ortiz, and Director of Operations Salazar. They all testified that only Jackson knows the source of his information. Clearly they are not concerned about raw water income which generates less than one percent (1%) of LMWD’s total water sales.
- e. LMWD alleges that Bradford fails to explain why certain of Jackson’s 2000 numbers should be relied upon and other disregarded. Bradford is not suggesting that any of Jackson’s numbers are credible but only that Jackson’s numbers lack

consistency. Jackson's selective memory is, however consistent with respect to his testimony concerning the presentation of the "first draft" of 2018 Study to the Directors of LMWD at a Workshop held May 23, 2018.

Jackson was deposed on November 21, 2019. He apparently did not know SPI Golf had access to the video of his May 23, 2018 presentation of what he now calls the "first draft" of his 2018 rate study. Jackson testified under oath that his first draft recommended a raw water rate of either \$0.80 or \$0.85. The video of May 23, 2018 proves something very different: He recommended a raw water rate of \$0.66. In response to one of the LMWD Board Member's questions about trying to make a profit, Jackson defended \$0.66 on the basis that a utility provider is a non-profit entity. The Board majority then instructed Jackson to go back to the drawing board.

Between the May 23, 2018 presentation and his June 13, 2018, final report recommendation, Jackson found another \$0.38 of costs (i.e. 57.5% additional costs). Again, none of the LMWD senior management staff who were deposed know how on earth Jackson found all those costs. How can LMWD argue that this rate history is not unreasonable, unjust, extreme and discriminatory?

Bradford's opinion is based on sufficient underlying facts or data, which do not need to be undisputed to be admissible. *T.R.E. 705(c); Caffé Ribs, Supra, at 144*

3.14. LMWD objects to Bradford's testimony on page 32, line 17 through page 33, that Mr. Bradford is "inconsistent" by agreeing with Mr. Jackson's 10% allocation to Overhead and Maintenance (O&M") costs but not the 4.96% Return on Investment ("ROI") charge in a 20 year-old document (which Mr. Jackson prepared). There is a genuine disagreement between competing experts which is not the subject of exclusion. T.R.E. 702. Bradford's testimony is clear: The 4.96% ROI number was calculated on a separate table - prepared by Jackson - to determine LMWD's weight cost of capital. Since 2000, interest rates have decreased. The District's current weight cost of capital is 2.75%. *See page 255 of Jackson's testimony.*

Using generally accepted accounting principles (GAAP), the cost of raw water is the operation and maintenance cost of the supply/transmission line, plus depreciation. Using Jackson's revised 2018 rate study, these costs are \$545,000 plus \$280,000. The sum is \$825,000. Divide by the 1,650,000 units provided by Jackson and the cost per

1,000 gallons is \$0.50. ROI is a measure of profit. With a profit of 27% on sales that LMWD (a non-profit entity), is now earning, the rate would be \$0.50 divided by 0.73, resulting in a rate of \$0.69.

Using a more reasonable, 10% allocation of water plant costs (and after deducting the cost of chemicals used for treated water), the O&M costs are \$105,000. By adding depreciation of \$280,000, the costs are \$385,000. Dividing by 1,650,000 results in a cost of \$0.23. By adding a profit of 27% on sales, the rate would be \$0.32. The scenarios provided by Mr. Bradford are based upon numbers LMWD's expert, Mr. Jackson, set forth in his revised 2018 rate study. It is certainly fair game for an expert, such as Mr. Bradford, to use GAAP against another expert's basis and apply prevailing rates to opine on other, reasonable scenarios. T.R.E. 401, 402, 702, 705(c).

3.15 LMWD objects to Bradford's testimony on page 15, lines 2-13. LMWD is critical of Bradford's reference to an SPI employee visiting the raw water line's pump houses. LMWD has mischaracterized Bradford's testimony. The (multiple) line drives and pump house visits were an investigatory tool to determine time and activity – independent of LMWD's expert's allocations of personnel. The remainder of LMWD's objection are unverified statements that: 3 Full Time Equivalent employees of the Water Plant "are devoted entirely to the raw water line" and "2-3 employees walk and drive the line several times a week, and spend between 7 and 20 days a month at the various pump stations...". After LMWD lodged its objection, LMWD's Director of Operations, Mr. Gomez, was deposed. We now know that the facts recited in LMWD's objection 3.15 are just flat wrong (see summary of Director Gomez' testimony in paragraph 3.8). Accordingly, to the extent LMWD's objection is even an objection, the information cited by Mr. Bradford is entirely relevant and the foundation reliable based upon LMWD's General Manager's testimony. T.R.E. 402, 403, 702, 703 & 802.

Moreover, the expert's opinion is based on sufficient underlying facts or data, which do not need to be undisputed to be admissible. T.R.E. 705(c); *Caffe Ribs, Supra, at 144*

3.16 LMWD objects to Bradford's testimony on page 27, lines 2-17, arguing that Bradford provides no proof he has independently verified any of the rate comparisons he cites. SPI Golf contacted the ratepayers and/or water districts identified on comparison table to obtain their respective raw water rates and attest to their accuracy in 2019. It is ironic, however, that LMWD's expert chose not to report a comparison of raw water rates in the Rio Grande Valley, while he did report comparisons for treated water. Incredibly – despite citing comparisons for treated water in his rate study – LMWD's expert testified that comparisons really don't matter. In any event, this is an issue that goes to relevancy, the credibility of the witness and the factual data he reviewed. It is not the subject of exclusion. T.R.E. 402, 403, 702, 703 & 802. Moreover, the expert's opinion is based on sufficient underlying facts or data, which do not need to be undisputed to be admissible. T.R.E. 705(c); *Caffe Ribs, Supra, at 144*

WHEREFORE, PREMISES CONSIDERED, South Padre Island Golf Course prays that Laguna Water District's objections, and Motion to Exclude the testimony of South Padre Island Golf Course's expert, be denied and overruled.

Respectfully submitted,

ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P

By: **//s//James H. Hunter, Jr.**

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Certificate of Service

I hereby certify, that a true and correct copy of the above and foregoing document was served via facsimile, certified mail/regular U.S. first class mail, and/or e-mail upon the following counsel of record on this the 23rd day of January 2020.

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