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

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STATE OFFICE OF

ADMINISTRATIVE HEARINGS

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PUBLIC UTILITY COMMISSION  
FRANCIS SERK

**RESPONDENT LAGUNA MADRE WATER DISTRICT'S  
BRIEF REGARDING THE APPLICABILITY OF TEXAS WATER CODE  
SECTION 49.2122 AS REQUIRED BY SOAH ORDER NO. 8**

TO THE HONORABLE JUDGE SIANO AND JUDGE SOTO:

COMES NOW, Laguna Madre Water District ("LMWD") and files this brief in response to SOAH Order No. 8, addressing the applicability of Tex. Water Code § 49.2122 to this proceeding, and shows the following:

**1. Section 49.2122 is Applicable to this Proceeding**

As noted in the Order, LMWD was originally created under Article VXI, Section 59, of the Texas Constitution. Chapter 49 of the Water Code applies to LMWD as it "applies to all general and special law districts to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code or any Act creating or affecting a special law district." Tex. Water code § 49.002.

The term "district" is defined to "...mean[s] any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created." Tex. Water Code § 49.001. LMWD was created under this authority. While LMWD was later converted to a municipal utility district, the applicability of Chapter 49 to LMWD remains, because "A municipal utility district may be created under and subject to the

authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution.” Tex. Water Code § 54.011.

As such, LMWD is subject to the authority of Chapter 49, and Section 49.2122 is applicable to this proceeding.

## **2. The Standard of Proof**

The standard of proof is established in Section 49.2122(b). “A district is presumed to have weighed and considered appropriate factors and to have properly established charges, fees, rentals, and deposits absent a showing that the district acted **arbitrarily and capriciously**.” Tex. Water Code § 49.2122(b) (*emphasis added*). As such, the standard of proof needed to overturn LMWD’s raw water rate is the “arbitrary and capricious standard.”

Arbitrary is defined as “not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; capriciously, tyrannical...Ordinarily, “arbitrary” is synonymous with bad faith...” *Black’s Law Dictionary* 96 (5<sup>th</sup> Addition).

## **3. The Burden of Proof**

In accordance with Section 49.2122, the burden of proof is on the appellant, South Padre Island Golf Course, to show that LMWD acted arbitrarily and capriciously in establishing its raw water rate.

## **4. Adjustments to the Procedural Schedule**

While the procedural schedule puts LMWD in the position of the party with the burden of proof, at this stage LMWD does not request a change in the schedule and looks forward to providing rebuttal testimony. LMWD does request the parties be properly aligned for the purposes of the final hearing as set forth in 16 TAC 22.203(b).



Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Brian J. Hansen', is written over a horizontal line.

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## CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 23, 2020, in accordance with 16 TAC § 22.74 as follows:

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