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SIERRA CLUB

LONE STAR CHAPTER

Chairman Lake

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Commissioner Glotfelty

Complaint of Certain Members of Rio Ancho Homeowners Association Against Aqua Texas Inc. SOAH Docket No. 473-21-0246, PUC Docket No. 51091

April 18th, 2021

The Lone Star Chapter of the Sierra Club is the state chapter of the Sierra Club, a 501-C-4 non-profit organization dedicated to the enjoyment, exploration and protection of our planet. In Texas, we have nearly 30,000 members throughout the state. As an organization, we have been focused on conservation of our water, land and energy resources, and believe it is always prudent policy to use resources wisely. Given the variability of weather in Texas, and the changing climate with more extreme droughts and floods expected, it makes sense to promote policies that help protect all residents and businesses to assure adequate supplies – ground and surface water - for basic needs, before authorizing their use for other wants or needs.

As such, we file this letter in support of the proposal for decision (PFD) and proposed order issued by the presiding Honorable Administrative Law Judge (ALJ) in the proceeding related to Docket 51091 and request that the Commission adopt the PFD in full. We are also in support of the comments filed both by the TWCA and the County of Burnet.

Adopting the PFD in full would be consistent with the policies adopted by the legislature and state agency rules. While individual water rights over groundwater and the

designated use of individuals using surface water remain a key component of Texas law, they are still subject to limits and management. Indeed, the Legislature has prioritized water conservation and drought management plans, and placed individual water use under this context. As such, the Legislature has delegated important decisions over the proper management of water within designated groundwater districts, municipal utilities, private water utilities, and the TCEQ, while implementing a well developed planning process involving multiple stakeholders through the State Water Plan, as overseen by the Texas Water Development Board. In addition, the state has granted some limited authority to county government through Chapters 232 and 233 of the Local Government Code over land development and future water use. While platting for Rio Ancho began before a local groundwater district was fully permitting and enforcing rules, and before the County adopted more modern subdivision rules, it would be counterproductive for the Commission to reject the PFD, and somehow grant Rio Ancho expansive rights over water use policy. Indeed, the Central Texas Groundwater Conservation District was created in 2006 and officially began permitting and enforcement on September 1, 2009, shortly after Rio Ancho was created. According to Burnet County officials, the district has been an invaluable resource for information regarding groundwater and aquifers and the impact growth has on our groundwater supply. In 2019, Burnet County adopted 232.0032 of the Texas Local Government Code requiring the use of a groundwater availability study to determine density for proposed subdivisions utilizing groundwater. While this does not impact Rio Ancho itself directly, it points to future development within Burnet which recognizes the inherent limits in growth.

This case involves essentially whether Aqua is required to supply water capacity to meet high water demand as requested by the homeowner association, largely attributed to outdoor residential irrigation; and whether water use restrictions and schedules in a utility's drought contingency plan may be used to alleviate some of that demand even if implemented outside of a declared drought. The Sierra Club agrees with the ALJ's analysis of these issues and the resulting PDF.

Water utilities in Texas, particularly in relatively arid areas of the state such as the Hill Country, should not be required to design systems to meet high levels of consumer demand that are not reasonable. Indeed, to do so, would counteract decades of state water policy. The Legislature has clearly made water conservation a core feature of our water supply policy, with required water conservation plans, drought contingency plans, a requirement that all regional water plans include conservation and drought management as a key component, and specific funding to help groundwater districts, water utilities, cities, agricultural and industrial stakeholders reduce water use. While a utility may choose to accommodate high demands if local characteristics lead to such use, they do not require utilities to meet all requests. Texas law recognizes that water

utilities are constrained by local characteristics in their design and construction of water systems. 16 TAC §24.205 requires that water providers provide *reasonable* quantities of water for *reasonable* uses to meet *reasonable* local demand characteristics. The record in this case shows Aqua presented evidence attempting to define those limits while other parties did not. Further, the record shows the TCEQ did not require Aqua to install additional capacity even though Aqua in fact added capacity well above minimum requirements for certain system components. Thus, Aqua is meeting the capacity requirement for water service as defined by TCEQ rules and practice.

Drought Contingency Plans are Important Tool

As noted, most utilities under Texas law are required to develop drought contingency plans (DCPs). Water utilities must not be constrained in their ability to lawfully implement drought contingency plans (DCPs) in order to promote water conservation and ensure a safe and adequate water supply. Indeed, Texas law requires water utilities to develop and implement DCPs every five years and submit that to the TCEQ precisely because water utilities are seen as the appropriate entity to develop the plans (with state oversight). This is clearly a priority of the Texas Legislature. DCPs are an essential tool in a utility's tool kit to react to both declared droughts and other emergency conditions that require temporary water use restrictions. Emergency conditions can include customer overuse such as excessive irrigation use.

Some of the issues raised in this case may be better addressed at the TCEQ. Indeed, when utilities begin to approach their capacity of what their system can provide, they are required to study potential upgrades. TCEQ has rules that address minimum public water system standards, authorize the TCEQ to direct a public water system to add capacity, and specify what is required or allowed as part of a DCP. TCEQ also has staff trained to implement those rules.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to make brief comments in this important case. We hope the Aqua and Rio Ancho can collaborate in the future on reasonable limits on water irrigation and pool use that preserve and maintain quality of life while recognizing the limits of water in a state subject to frequent droughts and a booming population. We would note that there is a wealth of technical assistance, education and financial resources available to help communities implement water conservation and landscaping best practices that can significantly lower water use while maintaining aesthetically pleasing groundcover. Leaks and older appliances are another area of frequent high water use. We would be happy to assist parties with such information if desired.

Sincerely,

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