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May 3, 2022

The Honorable Commissioners  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711-3326

RE:    PUC Docket No. 51091 – Complaint of Certain Members of Rio Ancho  
Homeowners Association Against Aqua Texas, Inc.

Dear Commissioners:

The Texas Rural Water Association (“TRWA”) is a statewide educational and trade association that represents approximately 770 retail public utilities, and an additional 150 associate members in the water and wastewater industry. TRWA has followed the above-referenced matter pending before the Public Utility Commission of Texas (“PUCT”), and respectfully submits this letter to you in support of the Proposal for Decision (“PFD”) issued by the Administrative Law Judge (“ALJ”). TRWA believes the following points are integral for consideration in this matter:

I.        Water System Design and Operation Rules

The standard that the Complainants in this matter ask the PUCT to create would conflict with Texas Commission on Environmental Quality (“TCEQ”) and PUCT rules. With regard to TCEQ rules, 30 Tex. Admin. Code § 290.45 requires utilities to provide water to their customers based on the 0.6 gallons per minute (“gpm”) connection standard. PUCT rule 16 Tex. Admin. Code § 24.205(l) expands on the TCEQ 0.6 gpm standard by stating that “[a]dditional capacity shall be provided to meet the reasonable local demand characteristics of the service area.” Complainants and PUCT staff misapply the “additional capacity” language in PUCT rule 24.205(1) to support the position that a utility must be able to meet virtually unlimited demand as asserted by the Complainants’ expert in this case. This misapplication of PUCT rule 24.205(1) would negatively affect all utility customers as further explained in this letter.

A ruling in this matter that allows some customers to set post-hoc system demand standards could result in a domino effect that requires utilities to oversize system facilities to the detriment of other customers. All customers would be stuck paying for oversized facilities that are unnecessary for most of the customers of a system. While PUCT heard from customers that represent a high-usage group (the Complainants), there are other utility customers that do not require unlimited demand and would not want to pay rates that are based on a design and operation standard that supports this extremely high demand perspective.

A utility must also obtain water sources to meet the system's design. Aqua Texas, Inc. ("Aqua") demonstrated that it followed all state laws and regulations with regard to design and obtaining water sources for the Rio Ancho system. A complaint that is based on obtaining additional sources of water to meet exceptionally high demand assumes that an additional source of water is available *and* that the permitting jurisdiction<sup>1</sup> would approve a permit or permit amendment that is based on demand that is well beyond that considered average for the area.

## II. Homeowners Association Restrictive Covenants Do Not Control Over State Law

The Rio Ancho Homeowners Association's ("HOA's") restrictive covenants were weighed heavily by PUCT staff in favor of requiring Aqua to meet the demand presented by Complainants. A restrictive covenant aimed at creating standards that exceed state laws and regulations for water systems is invalid. Furthermore, the laws regulating HOAs were actually amended in 2013 to promote water conservation and prohibit an HOA from limiting a property owner's attempt to conserve water.<sup>2</sup> The Rio Ancho HOA's restrictive covenants should not be used as the primary reasoning behind a recommendation that a utility be required to upgrade the water system to allow for unfettered water use. The PFD provides the proper considerations for determining whether water use is reasonable for an area, including comparisons to other neighborhoods, source water availability from an environmental and regulatory perspective, and costs.

## III. State Water Planning

The 2022 State Water Plan provides that water planning in Texas is based on "local involvement focused at the regional level."<sup>3</sup> This "bottom-up" approach to planning utilizes each system's design and operation criteria. Requiring water systems to adhere to the extraordinary demands of customers would wreak havoc on the state and regional water planning process. The water planning process is based on demand projections that include a consideration of the 0.6 gpm rule as applied to each individual system in the regional water group's population projections.

In addition, conservation is identified as one of the primary strategies necessary to meet demand. If all utilities are required to meet any demand placed on them by customers, how would the state be able to meet the conservation strategies identified in the State Water Plan? The ALJ's PFD recognizes the slippery slope that is allowing customers to set unreasonable demands on a system instead of using conservation strategies that begin at the individual customer level.

## IV. Drought Contingency Plans

Chapter 11 of the Texas Water Code and TCEQ rules, in 30 Tex. Admin. Code § 288.20 require utilities to adopt and enforce drought contingency plans ("DCPs") that provide targets for water use. The importance of the DCP in this matter is that the TCEQ rule specifies that the DCP is also used in the event of water shortages and not necessarily only based on weather conditions. A utility's DCP would be pointless if customer demands are allowed to dictate all aspects of usage.

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<sup>1</sup> The local groundwater conservation district, if applicable, for groundwater, and TCEQ for surface water.

<sup>2</sup> TEX. PROP. CODE § 202.007(a)-(b); *See also*, Bill Analysis to Senate Bill 198 (2013 Regular Session).

<sup>3</sup> 2022 State Water Plan Page, Page 4.

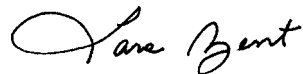
If a system that is designed according to the requisite standard cannot meet excessive customer demand, then the DCP is intended by state regulation to be implemented to address those shortages. The record shows that Aqua did not use its DCP in lieu of providing adequate facilities, but rather as a mechanism to mitigate the unreasonable demand placed on the system.

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In conclusion, Complainants are asking for significantly more water than is considered customary for similarly situated properties in the region. Rather than use water at a different time of the day or week as requested by Aqua to meet the elevated demand, the Complainants and PUCT staff propose that the customers be allowed to dictate the terms of consumption and that the utility retrofit the system to accommodate those terms. This is not an expectation that is supported by state law or regulations and runs counter to the conservation goals of our state. TRWA therefore urges the Commission to adopt the PFD. A decision to the contrary will create negative consequences for utilities and their customers across the state.

Thank you for your consideration of this letter, and please let me know if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lara Zent". The signature is fluid and cursive, with the first name "Lara" written in a larger, more prominent script than the last name "Zent".

Lara Zent  
Executive Director and General Counsel