

Control Number: 52126

Item Number: 1

Addendum StartPage: 0

# MATHEWS & FREELAND, L.Z.P.13 PM 2:11

JIM MATHEWS
JOE FREELAND

Westpark II, Suite 260 8140 North Mopac Expressway Austin, Texas 78759

(512) 404-7800 FAX: (512) 703-2785

May 13, 2021

Via Electronic Submission

Public Utility Commission of Texas Central Records Division 1701 N. Congress Avenue, Room 8-100 Austin, Texas 78701

Re: Application of the San Antonio Water System and Yancey Water Supply Corporation for Approval of a Service Area Agreement Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Medina County

To the Public Utility Commission of Texas:

On behalf of the San Antonio Water System ("SAWS") please accept this application under Texas Water Code §13.248 and 16 Tex. Admin. Code §24.253 for approval of a service area agreement and to transfer a portion of SAWS CCN No. 10640 in Medina County, Texas to the Yancey Water Supply Corporation ("Yancey") CCN No. 11463 and to transfer of portion of Yancey's service area in Medina County to SAWS. SAWS and Yancey have both agreed to the transfer. A copy of the agreement is attached as Exhibit A.

The agreement was presented to and approved by Yancy's Board of Directors. The agenda and minutes from Yancey's March 9, 2021, Board meeting during which the agreement was discussed, along with an affidavit attesting to the date of the meeting are attached as Exhibit B. Exhibit C is an affidavit from SAWS attesting to the fact that agreement was not discussed at a meeting of the SAWS Board of Directors because the authority to sign agreements of this type had previously been delegated to the SAWS CEO/President.

The amount of territory is approximately 46 acres from SAWS to Yancey and approximately 31 acres from Yancey to SAWS, and there are no existing customers residing in any of the tracts. Small and large-scale maps of the areas to be transferred are attached as Exhibit D. The digital data supporting the maps will be uploaded along with this document. SAWS consulted with Yancey regarding these maps.

Please let me know if you need any additional information to allow the Commission to incorporate this agreement into the respective CCNs of SAWS and Yancey.

Sincerely,

Joe Freeland

Attorney for San Antonio Water System

cc: Cole Ruiz, Attorney for Yancey Water Supply Corporation

## Exhibit A

TWC §13.248 Agreement between SAWS and Yancey

#### SERVICE AREA AGREEMENT

This Service Area Agreement (the "Agreement") is by and between the San Antonio Water System, ("SAWS") and Yancey Water Supply Corporation ("Yancey")(all the above are also sometimes referred to herein collectively as the "Parties" or individually as a "Party").

#### RECITALS

WHEREAS, SAWS operates retail public water utility that holds water Certificate of Convenience and Necessity ("CCN") No. 10640 in Bexar, Medina, and other Counties of Texas; and

WHEREAS, Yancey operates a retail public water utility that holds water CCN No. 11463 in Medina and Frio Counties of Texas; and

WHEREAS, SAWS and Yancey have discovered that part of the shared water CCN boundary between the two retail public utilities, as shown on the maps of the Public Utility Commission of Texas ("PUC"), does not conform to property boundaries in the area and does not conform to the Parties understanding of the CCN boundary; and,

WHEREAS, pursuant to Texas Water Code §13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission ("PUC"), are valid and enforceable and are incorporated into the appropriate CCNs; and,

WHEREAS, SAWS and Yancey mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which they will designate areas to be served and to request the PUC to incorporate such designations into the CCNs held by SAWS and Yancey;

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SAWS and Yancey hereby contract and agree as follows:

#### ARTICLE I TERMS

- 1.1 Recitals. The recitals set forth above are incorporated herein, and shall compose together with the terms agreed upon herein, the Agreement.
- 1.2 Term. This Agreement shall remain valid and enforceable until superseded by subsequent written agreement.
- 1.3 <u>Property Subject to the Agreement.</u> The property subject to this Agreement is the property identified as the "SAWS Transfer Area" and the "Yancey Transfer Area" as shown on Exhibit A.
- 1.4 <u>Transfer of Water Utility Service Area</u>. SAWS consents and agrees to the transfer of the water CCN service territory identified as the SAWS Transfer Area to Yancey, and Yancey consents

and agrees to the transfer of the water CCN service area identified as the Yancey Transfer Area" to SAWS.

- 1.5 <u>Retail Service</u>. SAWS hereby consents to Yancey providing retail water service to the SAWS Transfer Area, and Yancey hereby consents to SAWS providing retail water service to the Yancey Transfer Area during the pendency of the 13.248 Application.
- 1.6 <u>PUC Approval</u>. As soon as practical, but in no event later than ninety (90) days after the Effective Date, the parties agree to jointly submit this Agreement to the PUC pursuant to Texas Water Code § 13.248, a written petition as required by 16 Texas Administrative Code § 24.253, and such other documents that may be required in order to request approval of the transfers of certificated service territories contemplated under Section 1.4 of this Agreement. In the event the PUC does not authorize the transfer of certificated service territories so contemplated, or requires additional evidence, documentation, maps, or action from the Parties, the Parties shall promptly and jointly prepare and submit such cures or additional applications as may be necessary to attain PUC Approval.

#### ARTICLE II MISCELLANEOUS

- 2.1 No agreements other than this Agreement now exist between SAWS and Yancey concerning the subject matter of this Agreement.
- 2.3 This Agreement shall be binding on SAWS and Yancey, and shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.
- 2.4 This Agreement is the entire agreement between the Parties hereto with respect to the subject matter hereof. No modifications of this Agreement shall be of any force or effect, whatsoever, except as by subsequent modification in writing signed by the Parties.
- 2.5 The provisions of this Agreement shall be governed by and construed and entered in accordance with the substantive laws of the State of Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Bexar County, Texas.
- 2.6 The individuals executing this Agreement on behalf of the respective parties below represent that all necessary and appropriate action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing, and that each individual affixing his or her signature is authorized to do so, and such authorization is valid and effective on the date hereof. If the authority of the individual executing this Agreement is subsequently challenged, the party for which the individual was acting shall take all steps necessary to ratify the authority of the individual.
- 2.7 This Agreement may be executed in multiple originals, either copy of which shall be considered an original.

- 2.8 This Agreement shall be effective on the date of execution below, the latter of which shall be the Effective Date.
- 2.9 No Party will be penalized for alleged authorship of a particular provision on judicial construction of this Agreement.
- 2.10 No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties reserve only their right to enforce the terms of this Agreement to the extent they are not fully performed by any other Party.

EXECUTED AND AGREED TO by the Parties hereto:

By: Althal Printed Namo: Robert R. Puente

Title: President | CEO

Date: April 21, 2021

Yancey Water Supply Corporation

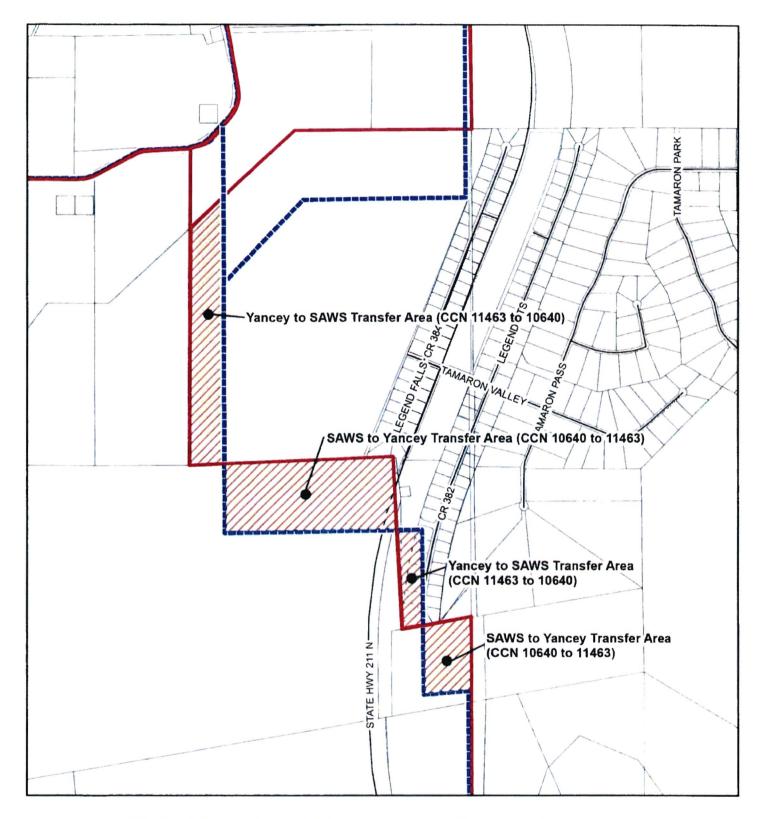
San Antonio Water System

By. Scooler Mangold

Printed Name: Scooler Mangold

Title: General Manager

Date: 3/22/21



## **Exhibit A Detailed Map - Swap Areas**



### **Exhibit B**

Yancey Board Meeting March 9, 2021 Agenda, Minutes, and Affidavit

#### YANCEY WATER SUPPLY CORPORATION P.O. BOX 127 YANCEY, TEXAS 78886

#### NOTICE OF MONTHLY BOARD OF DIRECTORS MEETING BY TELECONFERENCE March 9, 2021 5:30 PM

In accordance with Governor Abbott's executive orders, declaration of the COVID-19 public health threat, and action to temporarily suspend certain provisions of the Texas Open Meetings Act, a quorum of the District's Board of Directors will hold its regular Board meeting by telephonic conference call. The public may call in to this meeting by calling888-204-5987 and entering the following code: _1156126			
Members of the public wishing to make public comment during the meeting must register by emailing yanceywater@yahoo.com prior to 3:30 p.m. on March 5, 2021. A copy of the agenda packet will be available on Yancey Water Supply Corporation's website at the time of the meeting.			
Mission  The purpose of the Yancey Water Supply Corporation is to provide its members with safe and dependable water that consistently meets or exceeds water quality regulations. Our system will provide water to all members at a fair and reasonable price that reflects the full cost of buying, withdrawing, pumping, treating, storing, and distributing this precious resource  Vision:  To be the preferred and most trusted source for water that enhances home and family life by always providing innovative, top quality water service to our area			
	AGENDA		
Call to	Order and Record of Attendance:		
Membe	r/Public Comment:  ITEM NUMBERS 1-11 ARE BOARD ACTION ITEMS		
1.	Consider Approval of Minutes from February 9, 2021	(Tab A)	
2.	Consider Cash Flow and Directors Reports –February 2021	(Tab B)	
3.	Consider/Review Payments of February Bills	(Tab C)	
4.	Consider Cancellation of Membership	(Tab D)	
5.	Review/Approve Area Swap with SAWS	(Tab E)	
6.	Resolution Declaring Unopposed Candidates of Yancey Water Supply Position 7, Rio Medina, Position 9, Devine Area and Position 3, Yancey Area	(Tab F)	
7.	Finalize 2021 Annual Meeting Agenda	(Tab G)	
8.	Consider/Approve Generator for Plant #3	(Tab H)	
9.	Consider/Approve New Plant FM 462 & CR 1670	(Tab I)	
10.	Review/Accept Settlement Agreement between LCR Water Development, L.P. and San Antonio Water System (SAWS)	(Tab J)	
11.	Consider Approval of the Manager's Report	(Tab K)	
12.	Consider any other business that may come properly before the Board of Directors		

The Board may conduct a closed meeting to receive legal advice and discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific Board employees, including the Executive Administrator and General Counsel, as permitted by Sections 551.071 and 551.074, the Texas Open Meetings Act, codified as Chapter 551 of the Texas Government Code. The Board may also meet in open meeting to take action on legal or personnel matters considered in the closed meeting as required by Section 551.102 of the Open Meetings Act, Chapter 551 of the Government Code.

13. Adjournment

#### AFFIDAVIT OF SCOOTER MANGOLD ADDRESSING NOTICE REQUIREMENTS OF PUBLIC UTILITY COMMISSION OF TEXAS RULE 24.253(c)(3)

STATE OF TEXAS §

COUNTY OF BEXAR §

Before me, the undersigned authority, personally appeared Scooter Mangold, who, being personally known to me was sworn under oath and testified as follows:

- 1. "My name is Scooter Mangold. I am over 21 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated in this affidavit and they are true and correct to the best of my knowledge.
- 2. I am employed a General Manager for the Yancey Water Supply Corporation (Yancey), and have oversight over the posting of notice of the Yancey Board of Directors agendas in accordance with the Texas Open Meetings Act.
- 3. I have prepared this affidavit to comply with Public Utility Commission Rule 24.253(b)(4) and 24.253(c)(3). I have read 24.253(c)(3), which requires that '[i]f notice was provided in accordance with paragraph (1) or (2) of this subsection, both parties to the contract under this section shall ensure that the following are filed with the commission: an affidavit attesting to the date that notice was provided and copies of the notice that was sent.' Yancey WSC complied with paragraph (2) of Rule 24.253(c). By this affidavit, I am attesting to the date that notice was provided and am providing a copy of the meeting agenda and minutes during which Yancey's agreement with the San Antonio Water System was discussed.
- 4. Pursuant to the Texas Open Meetings Act, notice of Yancey's monthly Board Meeting held on March 9, 2021, beginning at 5:30 pm, was timely posted on March 5th, 2021. I am personally aware that this notice was timely posted.
- 5. Attachment A is a true and correct copy of excerpts from the agenda for the Yancey monthly Board Meeting held on March 9, 2021, the minutes for that meeting, which evidence the Yancey Board of Directors approving the agreement between Yancey and the San Antonio Water System.

#### FURTHER AFFIANT SAYETH NAUGHT.

Scooter Mangold
Scooter Mangold

General Manager

SWORN TO AND SUBSCRIBED before me on this day of April, 2021.

ELIZABETH M LEAL Notary Public, State of Texas Notary ID # 13143183-2 My Commission Expires February 1, 2022

Notary Public, State of Texas

## Minutes YANCEY WATER SUPPLY CORPORATION BOARD OF DIRECTORS MEETING March 9, 2021 5:30 PM

Time and Place:

The Regular Board of Directors meeting was held by Teleconference, March 9, at 5:30 p.m. at the Yancey Water Supply Corporation's office in Yancey Texas.

Directors Present:

Frankie Kauffmann, President Kevin Marmor, Vice President Randy Faseler, Sccretary Ronny Heiligman, Director Jim Been, Treasurer Nelson Boehme, Director

**Directors Present by Phone:** 

Seth Crain, Director Albert Tovar, Director

**Directors Absent:** 

Seth Ralph, Director

Others Present:

Mr. Scooter Mangold, General Manager, Mrs. Lucinda Stephens, Accounts Payable/Receivable.

Call to Order and Quorum determination:

Mr. Frankie Kauffmann called the meeting of the Yancey Water Supply Corporation Board of Directors to order at 5:30 p.m. He stated for the record that the Board of Directors has 9 members with 6 present, 2 by phone and 1 absent.

#### Public/Member Comment:

There was none.

 Consider Approval of Minutes from February 9, 2021 The minutes from February 9, 2021.

#### **MOTION**

Mr. Kevin Marmor made a motion to approve the minutes. Mr. Ronny Heiligman seconded the motion.

#### **VOTE**

The motion carried unanimously.

 Consider Cash Flow and Directors Reports February, 2021 Questions asked by the Board of Directors were answered to their satisfaction.

#### **MOTION**

Mr. Randy Faseler made a motion to accept the Cash flow and Director's Reports for February, 2021 and Mr. Jim Been seconded the motion.

#### VOTE

The motion carried unanimously.

3. Consider/ Review Payments of February Bills

Directors reviewed payments made for the month of February.

#### **MOTION**

Mr. Jim Been made a motion to accept the payments of the February bills. Mr. Nelson Boehme seconded the motion.

#### VOTE

The motion carried unanimously.

4. Consider Cancellation of Membership

There were none.

5. Review/Approve Area Swap with SAWS

Board of Directors reviewed area to be swapped with SAWS

#### **MOTION**

Mr. Jim Been made a motion to approve the swap of areas. Mr. Ronny Heiligman seconded the motion.

#### **VOTE**

The motion carried unanimously.

 Consider/Approve New Plant FM 462 & CR 1670 Directors discussed the addition Plant site on FM 462 & CR 1670. This item will be tabled for two months and a Committee was appointed to review and research new Plant site.

Committee Members: Kevin Marmor Ronny Heiligman Randy Faseler Seth Crain

10. Review/Accept Settlement Agreement between LCR Water Development, L.P. and San AntonioWater System (SAWS)

Directors reviewed Settlement Agreement between LCR Water Development, L.P. and San Antonio Water System (SAWS)

#### **MOTION**

Mr. Jim Been made a motion to approve the Settlement Agreement. Mr. Seth Ralph seconded the motion.

#### VOTE

The motion carried unanimously.

General Manager updated Board of Directors on current activities.

#### **MOTION**

Mr. Seth Crain made a motion to approve the Managers Report. Mr. Ronny Heiligman seconded the motion.

#### **VOTE**

The motion carried unanimously.

There was none.

12. Consider any other business that may come properly before the Board of Directors

11. Consider approval of the Manager's Report

13. Adjournment

There being no further business to come before the Board Mr. Frankie Kauffmann called for a motion to adjourn the meeting.

#### **MOTION**

Mr. Seth Crain made a motion to adjourn and Mr. Ronny Heiligman seconded the motion.

#### VOTE

The motion carried unanimously and the meeting was adjourned at 6:40 p.m.

Attachments:

- 1.) Posted Agenda
- 2.) Director's Report
- 3.) Managers Report

Respectfully Submitted by,

Randy Faseler Secretary

Date

Frankie Kauffmann, Prosident

Date



## **Exhibit C**

**Affidavit from SAWS** 

#### AFFIDAVIT OF KEITH MARTIN ADDRESSING NOTICE REQUIREMENTS OF PUBLIC UTILITY COMMISSION OF TEXAS RULE 24.253(c)(3)

STATE OF TEXAS	8
COUNTY OF BEXAR	8

Before me, the undersigned authority, personally appeared Keith Martin, who, being personally known to me was sworn under oath and testified as follows:

- 1. "My name is Keith Martin. I am over 21 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated in this affidavit and they are true and correct to the best of my knowledge.
- 2. I am employed as Senior Corporate Counsel for the San Antonio Water System (SAWS), and I am familiar with SAWS' policies regarding the delegation of signatory authority from the SAWS Board to the SAWS President and CEO.
- 3. I have prepared this affidavit in accordance with Public Utility Commission Rule 24.253(c)(2). I have read 24.253(c)(2), which requires that '[i]f the decision to enter into a contract was discussed at a meeting of a city council . . . or other regulatory authority, a copy of the meeting agenda and minutes for the meeting during which the item was discussed may be considered sufficient notice.').
- 4. On April 21, 2021, Robert Puente, SAWS' President and CEO, signed a Service Area Agreement between SAWS and the Yancey Water Supply Corporation (Yancey) that clarifies the location of the respective boundaries of Water Certificate of Convenience and Necessity (CCN) No. 10640, held by SAWS, and Water CCN No. 11463, held by Yancey, in the area shown in the agreement. The CCN boundaries, as altered by the agreement, correspond with SAWS' and Yancey's understanding of the boundaries.
- 5. By this affidavit, I am attesting to the fact that pursuant to SAWS' policies regarding delegation of signatory authority, the President and CEO of SAWS has been delegated the authority to sign agreements that make minor changes to the boundaries of SAWS' utility service areas to conform to the historical understanding of the boundaries. Therefore, SAWS' decision to enter into the Service Area Agreement with Yancey Water Supply Corporation was not discussed at a meeting of SAWS' Board of Directors.

#### FURTHER AFFIANT SAYETH NAUGHT.

Keith Martin

Senior Corporate Counsel

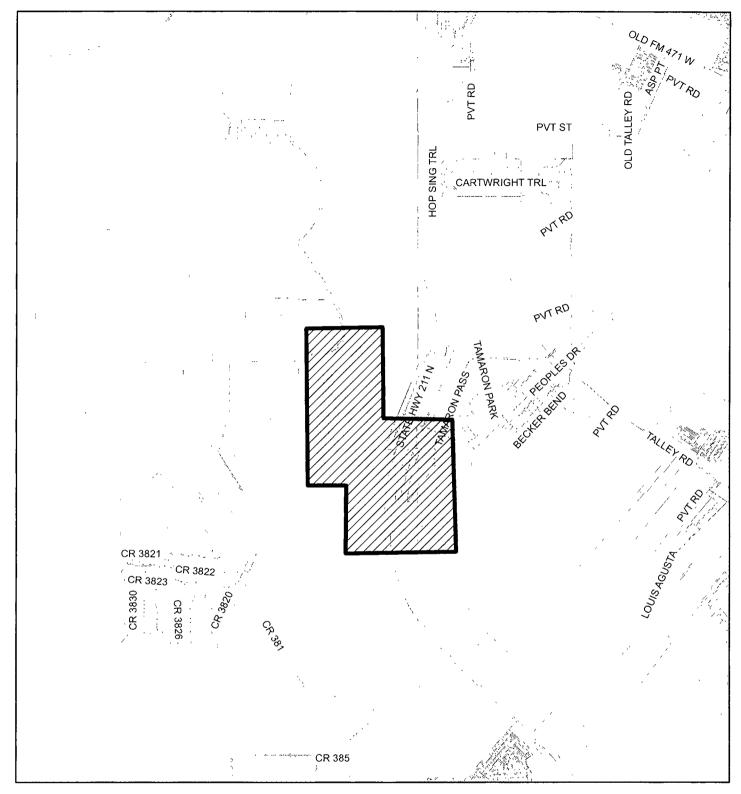
SWORN TO AND SUBSCRIBED before me on this 22 day of April, 2021.

ALBESA ELIAS CALLES
Notary Public, State of Texas
Comm. Expires 12-17-2024
Notary ID 130651506

Notary Public, State of Texas

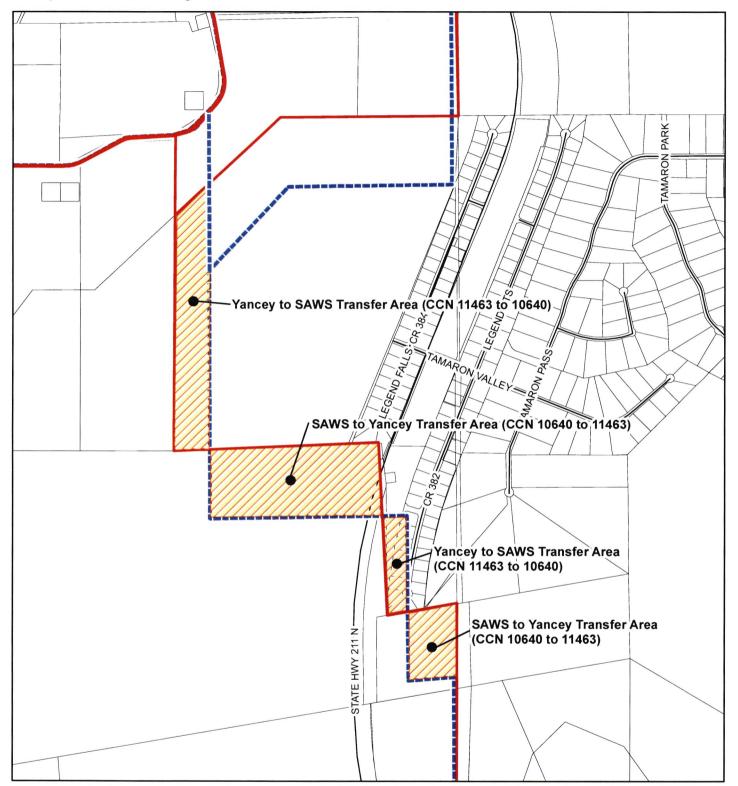
## **Exhibit D**

**Small and Large Scale Maps** 



**Exhibit D General Location Map** 

Requested Water CCN Transfer Area



**Exhibit D Detailed Map - Swap Areas** 

SAWS CCN Updated Water Boundary
SAWS CCN Water Boundary