



Filing Receipt

Received - 2021-12-13 02:55:17 PM
Control Number - 52852
ItemNumber - 18

DOCKET NO. 52852

APPLICATION OF TERRA	§	
SOUTHWEST, INC. AND UNDINE	§	PUBLIC UTILITY COMMISSION
DEVELOPMENT, LLC FOR SALE,	§	
TRANSFER, OR MERGER OF	§	OF TEXAS
FACILITIES AND CERTIFICATE	§	
RIGHTS IN DENTON COUNTY	§	

**CENTRAL STATES WATER RESOURCES, INC.’S MOTION FOR
RECONSIDERATION OR, ALTERNATIVELY, APPEAL OF ORDER NO. 2**

Central States Water Resources, Inc. (“Central States”) requests that the presiding officer reconsider its decision in Order No. 2, pursuant to 16 Tex. Admin. Code (“TAC”) §§ 22.103, 22.104 and 22.123(a)-(b). Alternatively, if this Motion for Reconsideration is denied, the Company respectfully appeals Order No. 2 to the Public Utility Commission of Texas (“PUCT” or “Commission”) under Tex. Admin. Code § 22.123(a). The presiding officer issued Order No. 2 denying Central States’ motion to intervene on December 7, 2021. Accordingly, pursuant to 16 TAC § 22.123, this motion is timely filed.

I. BACKGROUND

As explained in its Motion to Intervene, on June 15, 2020, Central States entered into a binding purchase agreement to acquire Terra Southwest, Inc. (“Terra”). A copy of this agreement was attached as Exhibit A (Highly Sensitive) to that motion. On December 16, 2020, Undine Development, LLC (“Undine”) and Terra (collectively, the “Applicants”) filed a sale-transfer-merger (“STM”) proceeding seeking authority for Undine to acquire Terra based solely on a letter of intent between those parties.¹ On April 8, 2021, CSWR-Texas Utility Operating Company, LLC (“CSWR Texas”) and Terra submitted a notice of intent to determine fair market value for

¹ *Application of Terra Southwest, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*, Docket No. 51632, Application (Dec. 16, 2020).

this system in anticipation of filing an STM shortly thereafter.² In order to protect its binding purchase agreement with Terra, CSWR Texas requested to intervene in Docket No. 51632 and was granted intervention status.³ Shortly after, Commission Staff requested to abate Docket No. 51632 because of uncertainty as to which party—CSWR Texas or Undine—has the right to acquire Terra. Staff also delayed appointing an appraiser in Docket No. 49859 in response to CSWR Texas’ request to determine fair market value. The Applicants ultimately withdrew the STM filing in Docket No. 51632, but Commission Staff has still not requested an appraiser for this system.

On November 16, 2021, the Applicants filed this second STM proceeding in which Undine again seeks to acquire Terra based solely on a letter of intent between those parties. This proceeding appears to involve the exact same assets and the same facts and circumstances that were at issue in Docket No. 51632. However, contrary to the Applicants’ Response to Central States’ Motion to Intervene, their most recent application does *not* address or resolve the threshold issue as to which party between Undine and Central States has a legal right to acquire Terra because the most recent application continues to be unclear as to whether Undine has a binding purchase agreement with Terra. Accordingly, Central States filed a motion to intervene in this proceeding based on the exact same arguments that supported its intervention in Docket No. 51632. However, although the Administrative Law Judge in Docket No. 51632 recognized that CSWR Texas had presented a justiciable interest in the outcome of that proceeding and granted intervention, the presiding officer here raised concerns that Central States’ interests are not within the purview of this Commission, and he denied the Company’s request.

The Applicants’ decision to withdraw Docket No. 51632 and replace it with this essentially identical application is a transparent attempt to preclude Central States’ participation. For the same

² *Notice of Intent to Determine Fair Market Value*, Docket No. 49859, CSWR and Terra Southwest Notice of Intent to Determine Fair Market Value (Apr. 8, 2021). CSWR Texas is an affiliate of Central States.

³ Docket No. 51632, Order No. 7 (May 3, 2021).

reasons that CSWR Texas was granted intervention status in Docket No. 51632, Central States has a justiciable interest in this case that may be adversely affected by the outcome of the proceeding: it has a binding purchase agreement to acquire Terra, which prevents Undine from closing on its proposed acquisition of Terra without forcing Terra to breach its agreement with Central States.

Central States also has a separate justiciable interest because its affiliate CSWR Texas has a purchase agreement to acquire a neighboring water utility, Patterson Water Supply LLC (water CCN number 13248) (“Patterson Water Supply”), which is located within two miles of Terra’s “Hilltown Addition” service area. CSWR Texas filed a notice of intent to determine fair market valuation for Patterson Water Supply in April 2021⁴ and will file an STM shortly. By virtue of CSWR Texas’ and Central States’ pending acquisition of this neighboring utility, Central States is entitled to intervene in this proceeding to protect its interests in Patterson Water Supply and its service and service area, which could be impacted by this proceeding.

Finally, on December 10, 2021, Central States filed a lawsuit in the District Court of the 16th Judicial Court in Denton County, Texas, to enforce its purchase agreement with Terra and enjoin Terra and Undine from continuing to pursue their transaction with Undine and their application for regulatory approval in this proceeding. A copy of this petition and the filing receipt are attached as Exhibit A. Issues addressed and decisions made by the Commission in this proceeding could affect that pending litigation, which also gives Central States a justiciable interest in the outcome of this proceeding.

II. CENTRAL STATES HAS STANDING TO INTERVENE IN THIS PROCEEDING BY VIRTUE OF ITS AGREEMENT WITH TERRA.

Central States has a justiciable interest that is directly affected by this proceeding and is a necessary party to adjudicate whether Undine can legally acquire Terra. The Commission cannot

⁴ Docket No. 49859, CSWR and Patterson Water Supply Notice of Intent to Determine Fair Market Value (Apr. 8, 2021).

review the proposed transaction in a vacuum without considering whether the letter of intent the Applicants submitted with their application is sufficient to authorize Terra and Undine to close their proposed transaction. It cannot make a fully informed decision regarding that issue without information related to Central States' binding purchase agreement and how that agreement affects Undine's ability to close a transaction based solely on its letter of intent with Terra. Central States should be granted intervention because it has an interest in this threshold issue within the context of this Commission's review of the proposed transaction between Undine and Terra.

A. Denial of Central States' motion to intervene defies this Commission's policy and practice of liberally interpreting the standing requirement for intervention in agency proceedings.⁵

As a general rule, the right to appear before an agency proceeding has been broadly interpreted in order to apprise the agency of diverse viewpoints so that the Commission may determine where the public interest lies and how it may be furthered.⁶ Contrary to this liberal standard, the Applicants argue for a narrow interpretation of standing by improperly focusing on the fact that Central States justiciable interest is based in part on a contract dispute. As explained below, the mere existence of a contract dispute does preclude Central States' standing to intervene. As such, this interpretation of the standing requirements improperly limits the Commission's authority and prevents the Commission from considering complex questions that could influence

⁵ *Application of Cross Texas Transmission, LLC to Amend its Certificate of Convenience and Necessity for the Proposed Salt Fork to Gray 345-KV Transmission Line in Gray and Donley Counties*, Docket No. 43731, Order on Appeal of Order No. 4 at 2, Final Order (May 22, 2015) (citing *Railroad Comm'n of Tex., et. al v. Ennis Transportation Co., Inc., et al.* 695 S.W.2d 706, 710 (Tex. App.—Austin 1985, writ ref'd n.r.e.)); *Emergency Complaint of Henry A. Miller et al. Against American Electric Power Company and Request for an Emergency Cease and Desist Order*, Docket No. 25778, Order (Mar. 7, 2003); *Fort Bend County v. Texas Parks & Wildlife Comm'n*, 818 S.W.2d 898, 899 (Tex. App.—Austin 1991, no writ); *Ennis Transportation*, 695 S.W. 2d at 710 (Tex. App.—Austin 1985, writ ref'd n.r.e.).

⁶ *Id.*; *Application of Logix Communications to Modify Exchange Boundaries between Verizon Southwest and AT&T Texas Pursuant to PURA § 54.008*, Docket No. 32268, Order on Certified Issues at 2 (May 1, 2006); *Application of Cap Rock Electric Cooperative for Authority to Change Rates*, Docket No. 12535, 19 P.U.C. Bull. 2131 (Mar. 21, 1994); *Application of Southwestern Bell Telephone Company to Approve Deletion of the Carrier Common Line and Interexchange Carrier Access Charge*, Docket No. 10463, 17 P.U.C. Bull. 3050 (Dec. 3, 1991).

whether it determines the application is in the public interest. Central States' motion to intervene should be granted, consistent with this Commission's policy and practice.

B. Threshold questions exist as to the validity and adequacy of Undine's letter of intent with Terra, both of which must be resolved as part of this proceeding.

A threshold concern in any STM proceeding is that the parties to a transaction to transfer a water utility must have a valid agreement in place to effect the acquisition. Under the Commission's STM rules, a buyer-applicant must submit documentation confirming its legal authority to acquire the assets that are the subject of the proceeding.⁷ Before approving the transfer of the certificate of convenience and necessity ("CCN") to the buyer, Commission Staff and the presiding officer must determine that a valid agreement exists between the buyer and seller and that, upon regulatory approval, the sale has in fact closed.⁸

Contrary to the Applicants' assertions, there is a question as to the validity of Undine's letter of intent with Terra, whether it is binding for purposes of this proceeding, and whether the parties can ultimately close that transaction based on that letter of intent, particularly given that civil litigation is now pending against both the buyer and seller. Resolving these questions will require factual evidence as to the nature, scope, and validity of Undine's letter of intent and any competing agreements that may invalidate Undine's letter of intent. Moreover, if the buyer and seller do not have a binding agreement that supports the closing of an acquisition transaction, or if another potential buyer has a superior right to acquire the system that invalidates the letter of intent and prevents closing, the transaction cannot proceed. Having Commission Staff and the presiding officer commit months to the process of reviewing a transaction that cannot close would be a waste of Commission time and resources.

⁷ 16 TAC § 24.239(l).

⁸ *Id.* § 24.239(m) specifically requires that the Commission's approval expires 180 days following the date of the Commission order allowing the transaction to proceed, and, if the sale has not been completed within that 180-day time period, the approval is void.

In Docket No. 51632, the presiding officer abated that proceeding because of concerns related to these questions.⁹ Central States has raised the same legitimate questions here, and they merit granting its intervention request.

C. Central States has a justiciable interest in protecting its purchase agreement with Terra that is directly affected by this proceeding.

As stated in its Motion to Intervene, Central States has a binding purchase agreement between it and Terra that is being directly called into question in this proceeding and is directly affected by the Commission's decision in this proceeding. Central States has already filed a notice of intent to determine fair market value for Terra's assets,¹⁰ and Commission Staff has delayed that valuation process pending resolution of the contract dispute at issue here. Accordingly, this proceeding is directly interfering with Central States' ability to complete its fair market valuation, to file its own STM, and to acquire this system. Each and every one of those encumbrances creates in Central States a justiciable interest that is directly affected by the outcome of this proceeding.

Furthermore, as noted before, Central States filed a lawsuit in Denton County on December 10, 2021 to enforce its purchase agreement with Terra. A copy of this petition and the filing receipt are attached as Exhibit A. Issues raised in this proceeding regarding the validity and content of Undine's letter of intent—and any implicit or explicit Commission ruling on the validity of the agreement that allows the parties to execute their transaction—could influence that pending litigation. Commission decisions authorizing the sale to proceed could also trigger jurisdictional questions as to whether this agency or the civil court has the authority to address a dispute that involves this agency's certification authority and whether Central States has exhausted its administrative remedies as to issues that fall within this Commission's jurisdiction over certification issues. Central States must have the opportunity to introduce evidence and address

⁹ Docket No. 51632, Order No. 6 (Apr. 20, 2021).

¹⁰ Docket No. 49859, CSWR and Terra Southwest Notice of Intent to Determine Fair Market Value (Apr. 8, 2021).

questions in this proceeding that impact the integrity of its agreement with Terra and its pending litigation against Terra and Undine. Accordingly, it urges the presiding officer to reconsider Order No. 2 and grant Central States' motion to intervene.

D. Central States is not asking the presiding officer to adjudicate a contract dispute or require the seller to sell the system to Central States.

Contrary to statements in the Applicants' Response, Central States is not asking the Commission to adjudicate a contract dispute or force Terra to sell its assets to Central States. It is simply asking for the opportunity to participate in this proceeding to the extent issues arise that could impact its agreement with Terra. Whether Terra will ultimately comply with its agreement by participating in an STM application with Central States and whether that STM is approved are *not* issues presently before this Commission. Those issues also are not dispositive of Central States' standing and interest in protecting its purchase agreement. Issues decided here regarding the letter of intent between Terra and Undine could affect whether and when CSWR Texas completes its fair market valuation of Terra, files its own STM to acquire the system, and moves forward with its acquisition. For these reasons, Order No. 2 should be reconsidered and Central States' motion to intervene should be granted.

E. Commission precedent supports granting intervention.

The Applicants argue that Central States lacks standing to intervene because any dispute over its binding contract or Undine's letter of intent with Terra is beyond the purview of this Commission.¹¹ But the existence of a contract dispute does not preclude granting intervention to parties to contracts that could be affected by the outcome of a Commission proceeding. For example, in Docket No. 32242, the Applicant argued against granting a movant's motion to intervene because, it claimed, it would require the Commission to address breach of contract

¹¹ Applicants' Response to Motion to Intervene at 4 (Dec. 3, 2021).

claims raised by the movant.¹² The Commission acknowledged that the issues raised in the motion to intervene may be related to a breach of contract claim but, nevertheless, granted intervention.¹³

Moreover, the Texas Supreme Court has held that the Commission has authority to consider disputes involving contracts when the issues are within the Commission's regulatory authority.¹⁴ Here, the Texas Water Code grants the Commission authority over sales, transfers, or mergers of retail water utilities such as Undine's proposed purchase of Terra and Central States' competing purchase agreement. Accordingly, it is possible that issues raised in this proceeding could fall within the Commission's purview and ultimately affect the outstanding contract dispute between Central States and Terra. By intervening, Central States is preserving its ability to address those issues should they arise and, ultimately protect its agreement to purchase Terra. Order No. 2 should be reconsidered and Central States' motion to intervene should be granted.

III. CENTRAL STATES HAS STANDING AS THE BUYER OF A NEIGHBORING WATER AND WASTEWATER UTILITY.

Central States and Patterson Water Supply have a binding purchase agreement in place, and CSWR Texas has filed a notice of intent to determine fair market value for certain assets held under water CCN number 13248.¹⁵ Patterson Water Supply is located approximately one mile south of the southern border of Terra's "Hilltown Addition" service area located on eastern boundary of Lewisville Lake,¹⁶ which is part of the service area that is the subject of this proceeding. Accordingly, Patterson Water Supply is entitled to notice and an opportunity to

¹² *Application of Ampro Energy to Surrender its Retail Electric Provider Certificate*, Docket No. 32242, Response to AmPro Energy LP to Motion to Intervene by North Richland Hills Baptist Church at 1-2 (Feb. 1, 2006).

¹³ *Id.*, Order No. 2 at 2 (Feb. 7, 2006).

¹⁴ *Oncor Electric Delivery Co., LLC v. Chaparral Energy, LLC*, 524 S.W.3d 133, 145 (Tex. 2018).

¹⁵ Docket No. 49859, CSWR and Patterson Water Supply Notice of Intent to Determine Fair Market Value (Apr. 8, 2021).

¹⁶ See Public Utility Commission of Texas CCN Viewer, available at <https://www.puc.texas.gov/industry/water/utilities/map.aspx> (compare service territory boundaries for CCN numbers 13248 and 11608).

intervene under the sale-transfer-merger rules¹⁷ because its service and service area could be impacted by the proposed transaction as a result of this proceeding. As the pending buyer of Patterson Water Supply, Central States shares Patterson Water Supply's justiciable interest in this proceeding so that it can protect against any impacts to the Patterson Water Supply service area that result from this proceeding.

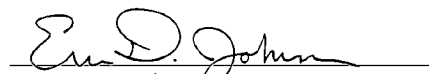
IV. CONCLUSION

For the above stated reasons, Central States respectfully requests that the presiding officer reconsider its Order No. 2 and grant Central States' Motion to Intervene in this proceeding. Alternatively, if this Motion for Reconsideration is denied, the Company respectfully appeals Order No. 2 to the Commission under Tex. Admin. Code § 22.123(a). It also requests that it be granted any other such relief to which it has shown itself entitled.

Respectfully submitted,

L. Russell Mitten
General Counsel
Central States Water Resources, Inc.
1650 Des Peres Rd., Suite 303
St. Louis, MO 63131
(314) 380-8595
(314) 763-4743 (Fax)

¹⁷ 16 TAC § 24.239(c)(2).



Evan D. Johnson

State Bar No. 24065498

Kate Norman

State Bar No. 24051121

C. Glenn Adkins

State Bar No. 24103097

Coffin Renner LLP

1011 W. 31st Street

Austin, Texas 78705

(512) 879-0900

(512) 879-0912 (fax)

evan.johnson@crtxlaw.com

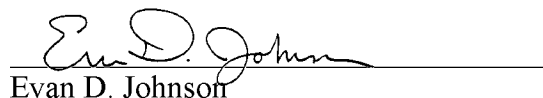
kate.norman@crtxlaw.com

glenn.adkins@crtxlaw.com

**ATTORNEYS FOR CENTRAL STATES
WATER RESOURCES, INC. AND CSWR-
TEXAS UTILITY OPERATING COMPANY,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December 2021, notice of the filing of this document was provided to all parties of record via electronic mail in accordance with the Order Suspending Rules, issued in Project No. 50664.



Evan D. Johnson

CAUSE NO. _____

CENTRAL STATES WATER	§	IN THE DISTRICT COURT
RESOURCES, INC.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	____ JUDICIAL DISTRICT
	§	
TERRA SOUTHWEST, INC., UNDINE	§	
DEVELOPMENT, LLC, and UNDINE	§	
TEXAS, LLC,	§	
	§	
<i>Defendants.</i>	§	DENTON COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION, REQUEST FOR DECLARATORY JUDGMENT,
AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff CENTRAL STATES WATER RESOURCES, INC. (“Central States”), by and through the undersigned counsel, and files this its Original Petition, Request for Declaratory Judgment, and Application for Temporary and Permanent Injunction against Defendants TERRA SOUTHWEST, INC. (“Terra”), UNDINE DEVELOPMENT, LLC (“Undine Development”), and UNDINE TEXAS, LLC (“Undine Texas”), and would respectfully show unto the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rules of Civil Procedure 190.4 and affirmatively pleads that this suit does not fall under the expedited actions process of Texas Rule of Civil Procedure 169.

MONETARY CATEGORY

2. Plaintiff seeks monetary relief in addition to, and/or alternatively, to its request for specific performance and declaratory relief over \$1,000,000.00 and a judgment for all other relief to which Plaintiff deems itself entitled pursuant to Texas Rule of Civil Procedure 47(c)(5).

PARTIES

3. Plaintiff Central States is a Missouri corporation authorized to conduct business in the State of Texas with its principal place of business in St. Louis, Missouri.

4. Defendant Terra is a Texas corporation with its principal place of business in Denton County, Texas, where it operates a public water utility system which is the subject of this litigation (“Water Utility”). Terra may be served with process by serving its registered agent for service of process, Jim Presley, at 1125 G. University Dr., Denton, Texas 76201.

5. Defendant Undine Development is a Texas limited liability company with its principal place of business in Cypress, Texas. Undine Development may be served with process by serving its registered agent for service of process, Corporation Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

6. Defendant Undine Texas is a Texas limited liability company with its principal place of business in Cypress, Texas. Undine Texas may be served with process by serving its registered agent for service of process, Corporation Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

7. Defendants Undine Development and Undine Texas are hereinafter collectively referred to as “Undine”.

8. Defendants Undine Development, Undine Texas, and Terra are hereinafter collectively referred to as “Defendants”.

JURISDICTION

9. The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

10. The Court has personal jurisdiction over Defendants because each maintain a principal office, work, or reside in Texas, as set forth above.

11. In particular, Central States and Terra entered into a Purchase and Sale Agreement on June 15, 2020, ("Agreement") in which Central States agreed to purchase, and Terra agreed to sell, the Water Utility for an amount in excess of \$75,000. A true and correct copy of the Agreement – with necessary redactions to maintain the confidentiality of said document - is attached hereto as **Exhibit 1**, and incorporated by reference for all purposes as if the same were fully set forth herein.

12. Terra has failed and refused, and continues to fail and refuse, to perform under the Agreement, refuses to consummate the sale of the Water Utility to Central States, and has filed jointly with Undine Development an Application for Sale, Transfer, or Merger of a Retail Public Utility with the Public Utility Commission of Texas (the "Commission") dated November 16, 2021, ("November '21 Application") evidencing an intention to sell the Water Utility to Undine Development.

13. The November '21 Application is the second of two applications to the Commission by Terra to sell, transfer or merge the Water Utility after executing the Agreement, the first of which was filed by Terra and Undine Texas on December 16, 2020, ("December '20 Application").

VENUE

14. Pursuant to Section 15.002(1) of the Texas Civil Practice & Remedies Code, venue is proper in Denton County, Texas because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Denton County, Texas.

15. Furthermore, pursuant to Section 15.002(3) of the Texas Civil Practice & Remedies Code, venue is proper in Denton County because Terra's principal place of business is in Denton County, Texas and the Water Utility is likewise located in Denton County, Texas.

FACTUAL BACKGROUND

Terra and Central States Executed the Agreement in June 2020

16. On June 15, 2020, Jim Presley ("Presley"), the President of Terra, executed the Agreement and faxed page 1, page 11, and his signature page of the Agreement to Central States in St. Louis, Missouri.

17. Central States' President countersigned the Agreement and e-mailed the fully executed Agreement to Presley, Terra and East Texas Title Company ("Title Company") on June 19, 2020.

18. In compliance with the Agreement, Central States deposited the full amount of the agreed upon earnest money (the "Earnest Money") with the Title Company on June 29, 2020.

Terra's Breach of the Agreement

19. During negotiations with Central States and prior to executing the Agreement, Presley specifically stated to Shawn Nichols (Central States' Director of Business Development & Strategic Planning; hereinafter "Nichols") that he had not entered into any binding agreements with anyone else related to the Water Utility and was free to sell the Water Utility to Central States.

20. After Presley executed the Agreement, Undine, LLC sent a letter on behalf of Undine Texas to Central States dated July 3, 2020, indicating that Undine Texas entered into a Letter of Intent concerning a “proposed acquisition” of the Water Utility on November 11, 2019, with Terra and Presley (“Letter of Intent”). A true and correct copy of the July 3, 2020, letter from Undine, LLC is attached hereto as **Exhibit 2** and incorporated by reference for all purposes as if the same were fully set forth herein.

21. Central States subsequently requested a copy of the Letter of Intent and Undine Texas’ outside counsel complied on or about July 22, 2020. A true and correct copy of the 11/22/20 cover email and Letter of Intent are collectively attached hereto as **Exhibit 3** and incorporated by reference for all purposes as if the same were fully set forth herein.

22. Daniel Cohen, attorney for Undine Texas, stated in his e-mail that “... *Undine intends to enforce its rights under the LOI to the fullest extent possible. As Undine has advised Mr. Presley, it remains very interested in pursuing the possible acquisition of the East Ponder Estates and Hilltown Addition Systems.*”¹ (emphasis added).

23. Examination of the Letter of Intent further confirms that the Letter of Intent was non-binding with respect to the purchase of the Water Utility.

24. The Letter of Intent states as follows with respect to the purchase of the Water Utility:

The preceding terms are only preliminary in nature and are therefore not binding upon either the Buyer or the Seller. It is understood by the parties hereto that Part One of this letter merely constitutes a statement of the mutual intentions of the parties with respect to the Possible Acquisition and does not contain all matters upon which agreement must be reached in order for the Possible Acquisition to be consummated. The matters set forth in Part One of this letter are contingent on (i) the negotiation, execution and delivery of the Definitive Agreement A binding commitment with respect to the Possible Acquisition

¹ See Exhibit 3 (emphasis added).

will result only from execution and delivery of the Definitive Agreement.²
(emphasis added).

25. The Letter of Intent also states that neither Terra nor Presley would “shop” the Water Utility or sell it to another buyer prior to the expiration of one hundred eighty (180) days from the signing date of the Letter of Intent.

26. Upon information and belief, the “no shop” clause terminated prior to the execution of the Agreement, which occurred two hundred seventeen (217) days after the November 11, 2019, Letter of Intent.

27. As mentioned above, Presley affirmatively represented and warranted when he signed the Agreement that there were no claims such as the one now asserted by Undine Texas pursuant to the Letter of Intent.

28. Since entering into the Agreement, however, Presley has refused to cooperate with Central States in order to allow Central States to perform the Feasibility Study referenced *infra* in paragraph 14 and/or to apply for the necessary regulatory approval to complete the purchase of the Property (as defined in the Agreement).

29. On July 23, 2020, Presley informed Nichols that he did not believe the Agreement was enforceable, that he had changed his mind, and decided not to sell the Water Utility. Presley also informed Nichols on equal date that someone on behalf of Central States had asked him to sign something that would reduce the purchase price, and that he would send those documents to Nichols after lunch. Presley never sent the non-existent documents to Nichols as no one from Central States ever presented Presley with documents purporting to adjust the purchase price.

30. On July 28, 2020, Nichols followed up with Presley, asking him to give him a call. Nichols thereafter spoke with Presley on August 3, 2020, at which time Presley seemed more

² Letter of Intent, at 2.

relaxed about finding a solution and indicated he would retain counsel. However, nothing happened until Nichols spoke with Presley again on September 25, 2020, at which time Presley informed Nichols that he had decided not to sell the utility and was going to hang on to it.

31. Thus, on October 19, 2020, counsel for Central States sent Presley and Terra a letter indicating that Terra had an obligation to close on the sale of the Water Utility under the Agreement, and that Terra did not have a right to terminate the Agreement at that time.

32. Thereafter, Nichols (and on one occasion Josiah Cox, President of Central States; hereinafter “Cox”) attempted to meet with Presley on several occasions in December 2020, March 2021, April 2021, and May 2021. Presley refused to respond to many of the overtures. However, on a few occasions, Presley would agree to set up a meeting but ask that Nichols contact him a day or two before the meeting to confirm. Presley would then not answer those calls and the meetings did not occur.

Pertinent Terms of The Agreement Concerning the Aforementioned Terra Breaches

33. The Agreement provided that Central States would purchase all of the assets of the Water Utility from Terra.³

34. Per the Agreement, Central States had a 180-day feasibility period (“Feasibility Period”) that commenced on the Effective Date of the Agreement (June 29, 2020).⁴ In pertinent part, the Agreement provides for the following with respect to the Feasibility Period:

- a. Seller [Terra] shall allow Buyer [Central States] and its agents, employees, contractors, and consultants access to the Property [Water Utility] to conduct soil and engineering tests, inspections of equipment, personal property, lines and other components of the System and to conduct any other tests Buyer deems necessary or appropriate in its sole and absolute discretion to determine the feasibility of the Property for Buyer’s intended use (the “Feasibility Study”), for a period of one hundred eighty (180) days after the Effective Date (the “Feasibility Period”). Buyer shall bear all costs and expenses of its

³ Exhibit 1, at 1 (section 1.01 and 1.02).

⁴ Id. at 2 (sections 2.04(a) & 7.01).

investigation and restore the Property to its condition prior to such investigation, ordinary wear and tear excepted.

- b. If Buyer finds the Property unacceptable for any reason or no reason, then Buyer, in its sole and absolute discretion, may terminate this Agreement by written notice to Seller on or before the expiration of the Feasibility Period. If Buyer so terminates this Agreement, the Title Company shall, upon demand by Buyer, promptly return the Earnest Money to Buyer and thereafter neither Party shall have any further rights, duties or obligations to the other hereunder.

35. Terra was to deliver to Buyer certain information related to the title of the assets of the Water Utility as well as other documentation allowing Central States to specifically identify the assets of the Water Utility and populate the exhibits of the Agreement.⁵

36. Terra's sole remedy in the case of Central States' default was receipt of the Earnest Money as liquidated or stipulated damages, but Terra did not have a right to terminate the Agreement if Central States elected not to conduct the Feasibility Study during the Feasibility Period.⁶

37. Central States had certain termination rights in the Agreement, but it did not at any time terminate the Agreement.

38. If Central States terminated the Agreement after the conclusion of the Feasibility Period (which it did not), except in limited circumstances, the Title Company was to release the Earnest Money to Terra.⁷ Notably, the Title Company continues to retain the Earnest Money and Terra has never demanded its release.

39. The Agreement also provides for the following with respect to other obligations or claims against the Water Utility:

- a. Neither the execution, delivery and performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval or registration

⁵ Id. at 2 (section 2.04(c)).

⁶ Id. at 2 (section 2.04) and 9 (section 5.01(b)).

⁷ Id. at 3 (section 2.06).

under any law, statute, rule, regulation, judgment, order, writ, injunction or decree which is binding upon Seller, other than any regulatory approvals disclosed in writing to Buyer.⁸

- b. **There is no action, suit, proceeding or claim affecting Seller, the Property and/or the System, relating to or arising out of any lease, option or contract affecting the Property or the System**, or the ownership, operation, use or occupancy of the Property or the System, pending or being prosecuted in any court or by or before any agency or other governmental instrumentality **nor, to the best of Seller's Knowledge, has any such action, suit, proceeding or claim been threatened or asserted**. There is no proceeding pending or presently being prosecuted in connection with the assessed valuation or taxes of other impositions payable in respect of any portion of the Property.⁹ (emphasis added).
- c. To the best of Seller's Knowledge, no representation or warranty made by Seller in this Agreement, in any Exhibit attached hereto, or in any letter or certificate furnished to Buyer pursuant to the terms hereof, each of which is incorporated herein by reference and made a part hereof, contains any untrue statement of a fact or omits to state a fact necessary to make the statements contained herein or therein not misleading.¹⁰
- d. Seller agrees that from the Effective Date until either the termination of this Agreement or until after the Closing that Seller will not file any notices, requests, compliance documents, pleadings, or any other documents with any governmental or quasi-governmental authority that has jurisdiction over Seller in the operation, regulation or oversight of the System or any other endeavors of Seller (whether related to the System or not) without first providing at least ten (10) days prior notice to the Buyer for review and comment on such filing.¹¹

40. Further, Terra is obligated to indemnify Central States against any "Losses" (as defined in the Agreement) resulting from:

(i) any inaccuracy in or breach of any representation, warranty and/or covenant made by Seller in this Agreement; (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; (iii) any actual or alleged liability of Seller and/or Seller's Representatives, or any actual or alleged liability of Buyer that derives from any such liability of Seller and/or Seller's Representatives, whether such liability arises before or after the Closing; and (d) any claim by a third party based upon, resulting from or arising out of (A) the business, operations,

⁸ Id. at 3 (section 3.01(b)).

⁹ Id. at 4 (section 3.01(i)).

¹⁰ Id. at 4 (section 3.01(p)).

¹¹ Id. at 6 (section 3.02(d)).

properties, assets or obligations of Seller conducted, existing or arising on or prior to the Closing; (B) any inaccuracy in or breach of any representation or warranty made by Seller in this Agreement, or any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; (C) any negligent or more culpable act or omission of Seller or its Representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement; or (D) any failure by Seller or its Representatives to comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.¹²

41. Closing on the purchase and sale of the assets of the Water Utility (“Closing”) was to occur as follows:

Subject to the terms and conditions of this Agreement, the Closing of the purchase and sale of the Property pursuant to this Agreement (the “Closing”) shall take place at the Title Company forty-five (45) days after the later of the expiration of the Feasibility Period and the approval by any regulatory bodies in a form satisfactory to Buyer as set forth in more detail in Section 2.05(a), or (i) such earlier date as is elected by Buyer by giving not less than three (3) days prior notice to Seller, or (ii) such later date as agreed in writing by Seller and Buyer (the “Closing Date”).¹³

42. Section 5.02(a) provides that Terra is in default of the Agreement on the occurrence of one or more of the following:

- a. Any breach of a representation or warranty made by Seller in this Agreement or failure of any such representation or warranty to be true, accurate and complete; or
- b. Any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement.

43. Section 5.02(b) of the Agreement states that in the event of Terra’s default (whether before or after the Closing or before or after Termination), Central States shall be entitled to the following remedies:

¹² Id. at 7-8 (section 3.04)).

¹³ Id. at 8 (section 4.01).

- a. If such default is identified prior to Closing, terminate this Agreement by written notice to Seller and Title Company, in which event the Title Company shall promptly refund the Earnest Money to Buyer;
- b. Enforce specific performance of this Agreement against Seller; and/or
- c. Pursue each other remedies as may be available at law or in equity, including a suit for damages and the right to recover attorneys' fees and costs.¹⁴

44. In addition, the Agreement provides for the award of a prevailing party's attorneys' fees and costs.¹⁵

Section 5.03 Attorneys' Fees. If either party defaults under this Agreement, and the non-defaulting party employs an attorney to enforce the terms hereof, such non defaulting party shall be entitled to reasonable attorneys' fees and costs from the defaulting party.

Central States Learns of Terra's Cooperation with Undine Texas' December '20 Application to the Commission for Approval of the Sale of the Water Utility to Undine Texas

45. Notwithstanding Terra's obligations under the Agreement and Undine Texas' knowledge of the Agreement, Terra and Undine Texas filed the December '20 Application with the Commission. Despite its contractual obligation to notify Central States of its regulatory filing, it wholly failed to do so.

46. As a result, on April 16, 2021, CSWR-Texas Utility Operating Company, LLC ("CSWR-Texas") filed a motion to intervene in the December '20 Application, which was granted by the Administrative Law Judge on May 3, 2021. CSWR-Texas is a subsidiary entity of Central States to which Central States will assign the Agreement at prior to the Closing on the purchase of the Water Utility.

47. On April 19, 2021 the Commission Staff filed a motion to abate the proceeding due to conflicting claims as to the Water Utility, which was granted on April 20, 2021.

¹⁴ Id. at 10.

¹⁵ Id. at 10 (section 5.03).

48. Proceedings related to the December '20 Application remained abated until November 18, 2021.

CSWR-Texas Files A Joint Notice of Intent To Determine Fair Market Value With The Commission

49. On April 8, 2021, CSWR-Texas filed its Notice of Intent to Determine Fair Market Value ("Notice of Intent") with respect to the Water Utility.

50. CSWR-Texas specifically indicated in the Notice of Intent that it intended to close the transaction with Terra as soon as it received regulatory approval from the Commission to do so.

Terra Claims the Agreement is Not Enforceable, Undine Texas and Terra Withdraw the December '20 Application, and Undine Development and Terra File the November '21 Application

51. In addition to verbal requests, Central States made multiple demands upon Terra to perform under the Agreement by way of Central States counsel's October 19, 2020 and July 2, 2021, demand letters.

52. Terra has failed and refused, and continues to fail and refuse, to perform under the Agreement and has materially breached the same.

53. Specifically, Terra refused to provide Central States access to the Water Utility and its records during the Feasibility Period and is refusing to cooperate with Central States in seeking regulatory approval for the Agreement.

54. Instead, Terra has breached and is actively breaching its Agreement with Central States by cooperating with Undine Texas in the December '20 Application and with Undine Development in the November '21 Application.

55. By letter dated July 16, 2021, Terra's attorney, Roger Key ("Key"), for the first time reached out to Central States' counsel to indicate that his client, Presley, allegedly did not

recall signing the Agreement, and that Central States had failed to take any action to conduct due diligence or close on the Agreement.

56. Key went on to insinuate that Nichols, on behalf of Central States, had fraudulently acquired Presley's signature on the Agreement. Key further claimed that Central States did not make the required escrow deposit or acquire a title commitment after the Agreement was executed, when in fact Central States had done both. He falsely alleged Central States had taken no action to obtain regulatory approval for the transfer of the Water Utility, despite Central States' filing of the Notice of Fair Market Value. He incorrectly alleged that Central States had an obligation to close the purchase of the Water Utility within 45 days after the Feasibility Period, despite the fact that the Agreement conditioned closing on regulatory approval, which to date has not happened and could not happen given Terra's breach of its obligations under the Agreement. Lastly, he mistakenly claimed that Central States had abandoned, repudiated, breached or was otherwise no longer in a position to enforce the Agreement. A true and correct copy of Mr. Key's 7/16/21 correspondence reflecting the aforementioned is attached hereto as **Exhibit 4** and incorporated by reference for all purposes as if the same were fully set forth herein.

57. Central States' counsel responded to this July 16, 2021, letter on August 26, 2021, providing Key with a point-by-point rebuttal of his allegations, and providing him with copies of documents demonstrating that Terra was obligated to perform under the Agreement, that Terra had failed to perform, and that Central States was in full compliance with its obligations under the Agreement.

58. Key responded by letter on September 8, 2021, admitting that he had not seen many of the documents that Central States' counsel provided, such as the faxed pages of the Agreement

set forth in paragraph 10 herein that clearly demonstrate that Presley was not tricked into executing the Agreement.

59. At that time, Key indicated that his client was inclined to conclude the sale of Terra to Central States. However, Key then attempted to renegotiate the Agreement by changing material terms to which Presley had previously agreed.

60. Central States' counsel responded to Key on October 12, 2021, in a good faith attempt to negotiate with Terra, without waiving its position that the Agreement was and is enforceable, and stated that Central States was willing to consider modifications to certain of the terms but holding firm to other terms.

61. On November 4, 2021, Mr. Key responded by stating that his client would not sell the Water Utility to Central States.

62. Thereafter, on November 17, 2021, Terra announced to Central States through counsel that it does not believe the Agreement is enforceable and has further threatened to file counterclaims against Central States for tortious interference if a lawsuit was pursued to enforce the Agreement. A true and correct copy of Key's 11/17/21 letter is attached hereto as **Exhibit 5** and incorporated herein by reference for all purposes as if the same were fully set forth herein.

63. Terra's counsel further informed Central States by letter on November 17, 2021, that Undine Development and Terra filed the November '21 Application on November 16, 2021, two days before withdrawing the December '20 Application on November 18, 2021.

64. Central States filed a motion to intervene in the December '20 Application on November 23, 2021, asserting that the Agreement is valid and enforceable and that the sale must be consummated with Central States. A true and correct copy of the motion to intervene in the

December '20 Application is attached hereto as **Exhibit 6** and incorporated herein by reference for all purposes as if the same were fully set forth herein.

65. In Undine Development and Terra's December 3, 2021, Response to the Motion to Intervene, they took the position that the Commission "*lacks authority to consider third party legal disputes in considering STM applications. The Commission does not have, nor should it desire to have, the authority to involve itself in such disputes.*" A true and correct copy of Applicants' Response to Motion to Intervene, is attached hereto as **Exhibit 7** and incorporated herein by reference for all purposes as if the same were fully set forth herein.

66. Apparently, Terra (and specifically Presley) has filed an affidavit indicating it does not have a binding agreement with Central States and that it now has no intention of selling the assets to Central States.¹⁶

67. Terra and Undine Development further state that "*If a party believes itself to be the proper recipient of the assets that are the subject of an STM application, that party's recourse is properly in the courts and not before the Commission. The Commission has no authority to engage that dispute, and it would be creating an untenable precedent in doing so.*"¹⁷

68. On December 7, 2021, Administrative Law Judge Isaac Ta of the Commission denied Central States' Motion to Intervene, stating that Central States' "...interest is limited to the effect the proceeding may have on its agreement to acquire Terra, which is outside the purview of the Commission in the context of evaluating whether Undine Development is able to demonstrate adequate financial, managerial, and technical capability as set forth above." A true and correct copy of the 12/7/21 Order denying Central States' Motion to Intervene is attached hereto as

¹⁶ Id., at 3, fn. 8.

¹⁷ Id. at 5.

Exhibit 8 and incorporated herein by reference for all purposes as if the same were fully set forth herein.

69. Central States relied on Terra's representations inducing the execution of the Agreement and those contained within the Agreement itself in tendering the Earnest Money, in foregoing other investment opportunities, and in expending substantial time, money and effort in seeking to enforce the material terms of the Agreement to which Terra is bound. Defendants' knowing and intentional course of action and/or inaction, has caused and will continue to cause Central States substantial injury, both monetary and otherwise. Further, as a result of Defendants' conduct, Central States has been forced to retain the legal services of the undersigned to file this lawsuit and seek injunctive relief.

COUNT I – BREACH OF CONTRACT
(Terra)

70. Central States hereby incorporates all other paragraphs hereinabove and the attachments hereto as if the same were fully set forth herein.

71. Central States and Terra entered into the Agreement pursuant to which Terra agreed to sell, and Central States agreed to purchase, the assets of the Water Utility. The Agreement contains the essential terms that are expressed with certainty, such that it may be understood without recourse to parole evidence. Said Agreement is a valid and enforceable contract.

72. Central States is a proper party to bring suit for breach of the Agreement as it is a party to the same.

73. Central States has fully performed, tendered performance, or was excused from performing its contractual obligations as it deposited the Earnest Money with the Title Company and has attempted to conduct the Feasibility Study, but Terra has refused to cooperate as required

by the Agreement. Central States stands ready, willing and able to perform its part of the Agreement according to its terms.

74. Terra has materially breached the Agreement by denying with Central States the required documents and access necessary to conduct its Feasibility Study, by failing to consummate the sale of the Water Utility assets to Central States, by jointly filing the December '20 and November '21 Applications with the Commission, and by engaging in ongoing efforts to improperly sell or otherwise transfer the assets of the Water Utility to Undine and/or Undine Texas. Terra has not only failed and refused to perform its contractual obligations under the Agreement, it has repudiated the Agreement by unilaterally, and without a basis in law or fact, declaring the Agreement unenforceable. However, Central States seeks specific performance of the Agreement – in addition to its other remedies – as specifically agreed upon by Terra and Central States in the Agreement. If the plaintiff ignores the repudiation, it keeps the contract alive for the benefit of both parties and remains subject to all of its own obligations.¹⁸

75. As a result of Terra's various material breaches of the Agreement, Terra has inflicted substantial injuries on Central States, both monetary and otherwise. Central States respectfully requests, (i) specific performance of Terra's obligation to cooperate with Central States in its Feasibility Study and in consummate the sale of the Water Utility assets, (ii) actual damages, (iii) economic damages (for lost profits), (iv) pre- and post-judgment interest, (v) court costs, and (vi) reasonable and necessary attorney's fees in an amount to be determined at a trial on the merits.

¹⁸ *Pollack v. Pollack*, 39 S.W.2d 853, 857 (Tex. Comm'n App. 1931, holding approved).

76. Further, due to the unique nature of the Water Utility, monetary damages will not be sufficient to compensate Central States for Terra's breaches. As a result, Central States has no adequate remedy at law and injunctive relief (as more specifically plead below) is proper.

COUNT II – DECLARATORY JUDGMENT
(All Parties)

77. Central States hereby incorporates all other paragraphs hereinabove and the attachments hereto as if the same were fully set forth herein.

78. On July 3, 2020, Undine Texas sent a cease-and-desist letter to Central States alleging that it had entered into the Letter of Intent with Presley and Terra. Undine Texas stated specifically that the Letter of Intent contained an alleged "no shop" agreement, and that it intended to enforce its rights under the Letter of Intent to the "fullest extent possible."

79. Undine Texas and Terra filed the December '20 Application claiming rights to purchase the Water Utility based on the Letter of Intent. Undine Development and Terra similarly filed the November '21 Application, upon information and belief, claiming rights to purchase the Water Utility based on the Letter of Intent.

80. The Letter of Intent does not contain any binding terms related to the purchase by Undine Development or Undine Texas of the Water Utility. Further, the Letter of Intent fails for lack of consideration and therefore neither Undine Development nor Undine Texas have any alleged rights to purchase the Water Utility assets based on the no-shop provision (which expired prior Central States and Terra's execution of the Agreement).

81. On November 17, 2021, Terra informed Central States that it had filed the November '21 Application and intended to sell the Water Utility to Undine Development despite the existence of the Agreement.

82. This Court has an independent basis for jurisdiction over the parties – namely, the breach of contract claim against Terra and the request for injunctive relief against Terra, both of which necessitate the joinder of Undine Texas and Undine Development as necessary and indispensable parties.

83. This pleading alleges multiple actual controversies amongst and between the parties – namely whether Central States is entitled to purchase the Water Utility assets pursuant to the Agreement or if Undine Texas/Undine Development are entitled to purchase the Water Utility assets pursuant to the Letter of Intent. Uncertainty and insecurity exists with respect to the rights, status and other legal relations amongst and between Central States, Terra, Undine Development, and Undine Texas as they pertain to the Agreement, Letter of Intent, and the Water Utility assets.

84. The controversy amongst the parties is substantial, immediate and real, and the parties have adverse legal interests. Undine Development and Terra have both asserted that there is no relief that Central States can obtain from the Commission in order to secure its right to purchase the Water Utility under the Agreement and obtain a declaration that the Letter of Intent does not provide Undine Texas or Undine Development any right to purchase the Water Utility.

85. The need for declaratory relief is heightened by the fact that an Administrative Law Judge denied Central States' Motion to Intervene in the November '21 Application, stating that the Commission will not adjudicate the effect of the November '21 Application on Central States' right to purchase the assets of the Water Utility from Terra.

86. Should the Court determine that the Letter of Intent creates no binding obligation on the part of Terra to sell the Water Utility to Undine Texas or Undine Development, in conjunction with an adjudication on the merits of Central States' breach of contract claim against

Terra, it would settle the controversy amongst the parties establishing that Central States has the sole and superior right to purchase the Water Utility assets.

87. Central States respectfully petitions this Court, pursuant to the Uniform Declaratory Judgments Act, Chapter 37 of the Texas Civil Practices and Remedies Code, for construction of the Agreement and Letter of Intent and the entrance of a declaratory judgment as follows:

- a. Central States' right to purchase the assets of the Water Utility under the Agreement is superior to any rights that Undine Development or Undine Texas allegedly have based on the Letter of Intent;
- b. The Letter of Intent is non-binding with respect to Terra's obligation to transfer or sell the Water Utility to Undine Texas or Undine Development;
- c. The Letter of Intent does not provide Undine Texas or Undine Development a contractual right to obtain regulatory approval to purchase the Water Utility that is superior to Central States' rights in the Agreement;
- d. The Letter of Intent, to the extent it is allegedly binding with respect to the "no shop" clause, fails for lack of consideration and is unenforceable;
- e. The Agreement is a valid and enforceable Agreement amongst and between Central States and Terra whereby Terra agreed to sell, and Central States agreed to purchase, the Water Utility assets made subject of this lawsuit;
- f. The Agreement is prior in time to any alleged binding agreement that has been reached between Terra and Undine Development or Undine Texas with respect to the sale or transfer of the assets of the Water Utility;
- g. Central States is the proper recipient of the assets of the Water Utility assets based on the Agreement;
- h. Undine Development has no standing or right to file the November '21 Application with the Commission and the same should be withdrawn inasmuch as Central States has the right to purchase the assets of the Water Utility based on the Agreement;

88. Central States has retained the law firm of Jones, Allen & Fuquay, L.L.P., to represent its interests in this action and has agreed to pay the firm reasonable and necessary attorney's fees. Pursuant to Chapter 37.009 of the Texas Civil Practice and Remedies Code,

Central States respectfully requests the award of reasonable and necessary attorneys' fees and costs in conjunction with this claim for declaratory relief.

COUNT III – APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION
(All Defendants)

89. Central States hereby incorporates all other paragraphs hereinabove and the attachments hereto as if the same were fully set forth herein.

90. Central States requests that the Court issue and enter a temporary and permanent injunction to prevent Terra from proceeding with its November '21 Application with the Commission and its attempt to retain or sell the Water Utility assets to any individual or entity other than Central States.

91. As set forth in detail above and substantiated by the exhibits attached hereto, there is a substantial likelihood that Central States will prevail on the merits of its breach of contract and declaratory judgment claims as: (i) Central States has a valid and enforceable Agreement with Terra for the purchase/sale of the Water Utility, (ii) Central States has performed its obligations under the Agreement up until Terra's refusal to cooperate, repudiation and/or breaches, (iii) the Letter of Intent is non-binding and creates no contractual right for Undine Development or Undine Texas to purchase the Water Utility, and (iv) Central States and Terra entered into the Agreement after the expiration of the purported "no shop" clause.

92. Unless enjoined from proceeding with the November '21 Application with the Commission and selling the Water Utility assets to any individual or entity other than Central States by way of a temporary and permanent injunction, Defendants will cause and continue to cause irreparable harm to Central States for which there is no adequate remedy at law. Absent temporary and permanent injunctions, Defendants will proceed with the purchase and sale of the unique Water Utility asset and cause Central States to incur imminent and irreparable loss.

93. In light of the Commission's denial of Central States' Motion to Intervene, its refusal to adjudicate Central States' superior right to purchase the Water Utility assets, and its refusal to abate or stay the November '21 Application, injunctive relief is necessary to avoid irreparable injury to Central States and maintain the status quo until such time as the parties' respective rights with regard to the Water Utility can be determined.

94. Money damages alone cannot adequately compensate Central States for its existing and future injury. Despite the wrongful nature of Defendants' attempts to obtain regulatory approval to sell/transfer the Water Utility to Undine Development, Undine Development and Terra are proceeding with their November '21 Application and STM proceeding with the Commission. Unless restrained, Defendants will proceed with the sale of the unique Water Utility to an Undine entity. There is no remedy at law that is clear and adequate to protect Central States' property interests. Such action will deprive Central States (and its customers) of the use and enjoyment of the Water Utility and the right to own, rehabilitate, improve, operate, and potentially sell the Water Utility at some future date. Further, Plaintiffs will suffer irreparable harm and the issues and rights sought to be adjudicated will become moot unless such action by Defendants is restrained and enjoined.¹⁹

95. By granting a temporary and permanent injunction, Terra will be required maintain the status quo until such time as it complies with the terms of the Agreement.

96. Central States and CSWR-Texas have substantial experience in the operations of public utilities and the public interest supports the enforcement of binding contracts. Balancing the equities and other factors, the significant potential for irreparable harm to Central States without injunctive relief and the absence of harm due to the entry of temporary and permanent injunctions

¹⁹ See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198.

demonstrates that the relief requested will not disserve the public interest. Further, the threatened injury if the injunction is denied far outweighs any harm to Terra or Undine Development inasmuch as Central States has a binding Agreement that is enforceable through specific performance.

97. This petition and application have not been brought for delay, but so that justice may be done.

98. Therefore, Central States respectfully requests that upon evidentiary hearings, the Court enter temporary and permanent injunctions and orders that Defendants, and anyone acting in concert with them, are immediately enjoined and must refrain from:

- a. Further pursuing Terra and Undine Development's November '21 Application – or any other Sale, Transfer or Merger of a Public Utility concerning the Water Utility – with the Commission;
- b. Entering into any additional agreements concerning the transfer or sale of any Water Utility asset to any individual or entity other than Central States;
- c. Pledging, transferring, selling, or otherwise encumbering all or a portion of the Water Utility assets (save and except Central States' right to purchase the Water Utility assets per the Agreement);
- d. Implementing measures to damage, destroy, or otherwise diminish the current value of the Water Utility assets made subject of the Agreement.

99. Central States is willing to post bond and further requests that a hearing be set on its application for temporary injunction.

CONDITIONS PRECEDENT

100. Any and all conditions precedent to the recovery requested by way of this Petition have been performed, have been excused, or have previously occurred

ATTORNEY'S FEES

101. Central States hereby incorporates all other paragraphs hereinabove and the attachments hereto as if the same were fully set forth herein.

102. As a result of Terra's breaches of the Agreement and all Defendants' attempts to utilize a non-binding Letter of Intent to obtain regulatory approval to purchase the Water Utility from Terra in contravention of Central States' rights, and related conduct described hereinabove, Central States has been forced to retain the attorneys whose names are subscribed to this pleading. Pursuant to Chapter 37 and 38 of the Texas Civil Practice and Remedies Code, Central States is therefore entitled to, and hereby requests judgment for, its reasonable and necessary attorneys' fees from Defendants, jointly and severally, in this action and any appeal therefrom.

TRCP 194 REQUIRED DISCLOSURES

103. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Central States requests that Defendants disclose the information and materials enumerated in Rule 194.2, 194.3, and 194.4 within fifty (50) days after service of this petition. Further, Defendants are advised that they are under a duty to supplement such responses and production in compliance with Rule 193.5 of the Texas Rules of Civil Procedure.

NOTICE OF USE OF PRODUCED DOCUMENTS

104. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendants are hereby notified that any and all documents and tangible things produced and/or delivered to the parties in this matter will be used by Central States in all pre-trial, trial and post-trial matters regarding this litigation.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Central States Water Resources, Inc. prays that upon final hearing of this matter that the Court grant Central States a judgment for the following relief:

1. Ordering Terra to specifically perform the terms of the Agreement, including but not limited to, ordering Terra to cooperate with Central States in conducting its Feasibility Study, to provide all documents and things required to be provided to Central States by the Agreement, to cooperate fully in the obtaining of any and all regulatory approval from the Commission necessary to transfer the Water Utility to Central States, and to close on the sale of the Water Utility within forty-five (45) days of the date of regulatory approval from the Commission;
2. In the alternative to specific performance, awarding Central States its actual economic damages in excess of \$1,000,000.00, against Terra, with the specific amount to be determined at trial due to Terra's breach of the Agreement;
3. For declaratory relief in accordance with the declarations set forth above in Paragraphs 87(a)-(h);
4. Issuance of a temporary and permanent injunction barring those acts set forth in Paragraphs 98(a)-(d);
5. That Central States recover economic and other damages plead for hereinabove against Terra; and
6. That Central States recover attorneys' fees, costs, pre- and post-judgment interest, and such other and further relief, both general and special, at law and in equity, to which it may be justly entitled from Defendants, jointly and severally,

Respectfully submitted,

JONES, ALLEN & FUQUAY, L.L.P.
8828 Greenville Avenue
Dallas, Texas 75243-7143
(214) 343-7400 (Telephone)
(214) 343-7455 (Facsimile)

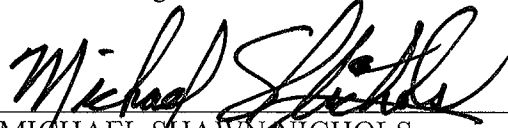
By: /s/ Lindy D. Jones
Lindy D. Jones
State Bar No. 10925500
Email: ljones@jonesallen.com
Ty J. Jones
State Bar No. 24057932
Email: tjones@jonesallen.com

Attorneys for Plaintiff CENTRAL STATES
WATER RESOURCES, INC

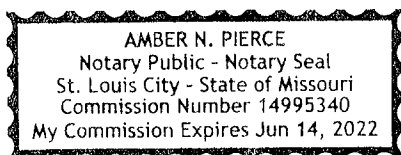
VERIFICATION

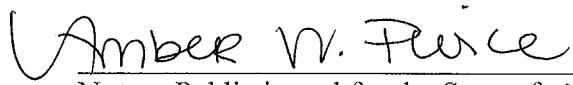
STATE OF Missouri §
COUNTY OF ST. LOUIS §

BEFORE ME, the undersigned authority, on this day personally appeared MICHAEL SHAWN NICHOLS, who being by me duly sworn on his oath deposed and said that he has read the preceding PLAINTIFF'S ORIGINAL PETITION, REQUEST FOR DECLARATORY JUDGMENT, AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION, and every factual statement made is within his personal knowledge and is true and correct.


MICHAEL SHAWN NICHOLS

SUBSCRIBED AND SWORN TO before me on this 9th day of December, 2021, to certify which witness my hand and official seal.




Notary Public in and for the State of Missouri

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made as of the 15th day of June, 2020 by and between CENTRAL STATES WATER RESOURCES, INC., a Missouri corporation, or its assigns ("**Buyer**"), and TERRA SOUTHWEST, INC., a Texas corporation, qualified and registered to transact business in the State of Texas ("**Seller**").

ARTICLE I **ACQUISITION OF THE PROPERTY**

Section 1.01 **The Property.** Subject to the terms and provisions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of the following described property (the "**Property**");

(a) All immovable property, including all right, title and interest therein, described in EXHIBIT A, to be attached hereto prior to the conclusion of the Feasibility Period (as hereafter defined) and made a part hereof, including but not limited to any mineral and other subsurface rights, together with all buildings and improvements located thereon, and all appurtenant rights relating thereto, including, but not limited to, warranties and guaranties, access easements and other easements and rights relating thereto, access to utilities, rights of way and similar rights located on or within or relating to any of the foregoing (collectively, the "**Immovable Property**");

(b) All movable property and intangible property used in connection with the ownership and/or operation of the Immovable Property, including, but not limited to, all such property described in EXHIBIT B, to be attached hereto prior to the conclusion of the Feasibility Period (as hereafter defined) and made a part hereof (collectively, the "**Movable Property**");

(c) All of Seller's right, title, and interest in and to the area that the System (as defined below) services (the "**Service Area**"), as determined by Buyer and set forth in EXHIBIT C, to be attached hereto prior to the Closing (as hereinafter defined) and made a part hereof, including but not limited to, all real property interests such as easements, rights of way, permits and leases related to the System, and including any and all water facilities, equipment, lines, plants, pipes, manholes, meters, lift or pump stations and appurtenances; and

(d) All property or rights of whatever nature and kind that Seller owns which in any way is used or is useful in the operation of a water utility system located in Denton County, Texas (the "**System**").

Section 1.02 **Purchase Price.**

(a) The purchase price (the "**Purchase Price**") for the Property shall be [REDACTED]. The reasonable allocation of the Purchase Price between the categories of the Property in Section 1.01 shall be set forth in EXHIBIT D prior to the Closing.

(b) The Purchase Price less any Earnest Money shall be payable in cash at Closing by wired funds and shall be paid by Buyer to Seller (to the account notified by Seller to Buyer prior to the Closing Date) on the Closing Date as defined in Section 4.01.

Section 1.03 **Earnest Money.** Within fifteen (15) days after the Effective Date (as defined in Section 7.01 below), Buyer shall deposit with a title company of its choice (the "**Title Company**") the sum of [REDACTED] as the earnest money under this Agreement (the "**Earnest Money**"). The Earnest Money shall be returned to Buyer or paid to Seller in accordance with the terms and conditions of this Agreement.

ARTICLE II **SURVEY AND TITLE REVIEW**

Section 2.01 **Survey.** Buyer shall have the right, for its own benefit, to procure one or more ALTA surveys of the Immovable Property, subject to Section 2.03 (the "**Survey**"). The Survey shall be current, staked, and

shall be made on-the-ground and signed, sealed, and certified in favor of Buyer by a duly licensed surveyor selected or approved by Buyer and receipt of the Survey by Buyer prior to Closing, subject to Section 2.03, is a condition to Closing. The cost of the Survey shall be borne by the Buyer.

Section 2.02 Title Insurance. The Buyer shall, within fifteen (15) days after the Effective Date, order and must receive prior to the Closing, subject to Section 2.03, as a condition to Closing, a commitment for title insurance and complete, legible copies of all exception documents (the "*Title Commitment*") issued by the Title Company covering the Immovable Property, binding the Title Company to issue to Buyer at Closing an owner's policy of title insurance paid for by Buyer (the "*Title Policy*") on the standard form of policy in the amount specified by Buyer insuring good, merchantable, and insurable fee simple title to the Immovable Property in Buyer, free and clear of all restrictions, easements, encumbrances, mortgages, liens, claims and other matters except any Permitted Exceptions as defined in Section 2.03.

Section 2.03 Buyer's Review. Buyer shall have until the expiration of the Feasibility Period to examine the Title Commitment and the Survey, and to deliver to Seller in writing Buyer's objections to any items contained or set forth in the Title Commitment or the Survey (the "*Unacceptable Exceptions*"). If Seller is unable or unwilling to eliminate and remove all of the Unacceptable Exceptions, then within fifteen (15) days after receipt of Buyer's written notice, Seller shall notify Buyer in writing of its inability or unwillingness to remove the Unacceptable Exceptions (and such notice shall set forth which Unacceptable Exceptions that Seller is unable or unwilling to remove) and Buyer may terminate this Agreement by giving written notice of such election delivered to Seller. If Buyer so terminates this Agreement, the Earnest Money shall be promptly returned to Buyer, after which neither Party shall have any further rights, duties or obligations hereunder, except as expressly provided in this Agreement to the contrary. If Buyer does not so terminate this Agreement after receiving Seller's written notice, then the Unacceptable Exceptions together with other exceptions not objected to by Buyer shall become Permitted Exceptions (the "*Permitted Exceptions*").

Section 2.04 Feasibility Period.

(a) Seller shall allow Buyer and its agents, employees, contractors, and consultants access to the Property to conduct soil and engineering tests, inspections of equipment, personal property, lines and other components of the System and to conduct any other tests Buyer deems necessary or appropriate in its sole and absolute discretion to determine the feasibility of the Property for Buyer's intended use (the "*Feasibility Study*"), for a period of **one hundred eighty (180) days** after the Effective Date (the "*Feasibility Period*"). Buyer shall bear all costs and expenses of its investigation and restore the Property to its condition prior to such investigation, ordinary wear and tear excepted.

(b) If Buyer finds the Property unacceptable for any reason or no reason, then Buyer, in its sole and absolute discretion, may terminate this Agreement by written notice to Seller on or before the expiration of the Feasibility Period. If Buyer so terminates this Agreement, the Title Company shall, upon demand by Buyer, promptly return the Earnest Money to Buyer and thereafter neither Party shall have any further rights, duties or obligations to the other hereunder.

(c) Seller shall deliver to Buyer within ten (10) business days after the Effective Date of this Agreement, the most recent title commitments, title policies, surveys, environmental site assessments, preliminary plats and site plans, any cross access and easement documents in connection with the Property, any development agreements affecting the Property, lease agreements affecting the Property, any customer lists for the System and any other documents Buyer may reasonably request related to the Property and/or the System.

Section 2.05 Other Termination Rights. In addition to any other rights and remedies set out herein (including but not limited to the termination rights in Sections 2.03, 2.04, 3.02(b) and 5.02), the Buyer shall have the right to terminate this Agreement as set out below:

(a) At any time up to and including the Closing Date if the regulatory bodies required to approve the sale of the System and the Property to the Buyer have not fully and unconditionally approved the sale upon the terms set out herein. In Buyer's sole and absolute discretion, Buyer may terminate this Agreement if the necessary regulatory approvals are not fully and unconditionally granted to Buyer in a form satisfactory to Buyer (as determined in Buyer's

sole and absolute discretion) prior to the Closing by giving written notification of such termination to Seller, and upon such termination the Buyer shall receive a prompt return of the Earnest Money.

(b) In the event that, prior to the Closing, all or any portion of the Property is taken, condemned, expropriated, or made the subject of any eminent domain proceedings, or any of the foregoing is threatened (interchangeably, a "Taking"), Buyer may elect to either move to Closing and receive any Taking proceeds, plus an assignment of Seller's right, title, and interest thereto and claim therefor, as full satisfaction for the Taking, or Buyer may terminate this Agreement. Buyer shall notify Seller as to which option it elects within five (5) days prior to the Closing. If Buyer does not receive written notice of a Taking more than five (5) days prior to the Closing, the Closing Date shall be postponed to a date that is not less than five (5) days after Buyer's receipt of written notice of a Taking.

Section 2.06. Effect of Termination. Subject to Article V, upon the termination of this Agreement, the Title Company shall pay the Earnest Money to the appropriate party in accordance with the terms and conditions of this Agreement, and upon such payment being made the parties shall have no further liability hereunder (except with respect to liabilities of Seller accruing prior to such termination and those obligations hereunder which survive the termination of this Agreement).

ARTICLE III **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 3.01 Representations, Warranties and Covenants of Seller. Seller hereby represents and warrants to Buyer that the facts recited below are true, complete and accurate as of the date hereof and will continue to be true, complete and accurate at Closing:

(a) Seller is a corporation, duly formed and in good standing under the laws of the State of Texas, is qualified to conduct business in the State of Texas and has the requisite power and authority to enter into and to perform the terms of this Agreement and the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by all requisite action of Seller. This Agreement constitutes, and each document and instrument contemplated hereby to be created and delivered by Seller, when executed and delivered, shall constitute the legal, valid, and binding obligation by Seller, enforceable against Seller in accordance with its respective terms (subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors' rights generally).

(b) Neither the execution, delivery and performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval or registration under any law, statute, rule, regulation, judgment, order, writ, injunction or decree which is binding upon Seller, other than any regulatory approvals disclosed in writing to Buyer.

(c) Seller has and will have at Closing good, merchantable, and insurable title, in fee simple, to the Property, free and clear of all mortgages, liens, claims, or other encumbrances (except those required by the Title Company in the Title Commitment to be fully satisfied with the Purchase Price at the Closing).

(d) To the best of Seller's Knowledge there are no pending or threatened condemnation, liens, claims, other encumbrances, special assessments, or similar proceedings or charges affecting the Property or Seller by any governmental authority.

(e) Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate, or non-resident alien for purposes of US income taxation, pursuant to Section 1445 of the Internal Revenue Code.

(f) Seller has not: (i) filed any voluntary or had involuntarily filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (ii) had a receiver, conservator or liquidating agent or similar person appointed for all or a substantial portion of its assets; (iii) suffered the attachment or other judicial seizure of all, or substantially all of its assets; (iv) given notice to

any person or governmental body of insolvency; or (v) made an assignment for the benefit of its creditors or taken any other similar action for the protection or benefit of its creditors. Seller is not insolvent and will not be rendered insolvent by the performance of its obligations under this Agreement.

(g) There are no leases affecting any portion of the Property except such leases disclosed to Buyer in writing by Seller and there are no options, rights of first refusal or contracts granting any rights to acquire any right, title or interest in any portion of the Property, except as listed in the Title Commitment, if any.

(h) Seller has not received any notice of any violation of any ordinance, regulation, law or statute of any government agency or instrumentality pertaining to the Property and/or the System or any portion thereof which has not been complied with in all respects.

(i) There is no action, suit, proceeding or claim affecting Seller, the Property and/or the System, relating to or arising out of any lease, option or contract affecting the Property or the System, or the ownership, operation, use or occupancy of the Property or the System, pending or being prosecuted in any court or by or before any agency or other governmental instrumentality nor, to the best of Seller's Knowledge, has any such action, suit, proceeding or claim been threatened or asserted. There is no proceeding pending or presently being prosecuted in connection with the assessed valuation or taxes of other impositions payable in respect of any portion of the Property.

(j) No work has been performed or is in progress at, and no materials have been furnished to, the Property which might give rise to mechanic's, materialman's or other liens against the Property.

(k) The Property currently has or will have at Seller's sole cost and expense prior to the Closing cross access and easements rights and benefits providing pedestrian and vehicular access to and from the Property and all components within the System necessary to operate the same.

(l) The buildings and improvements, if any, that constitute part of the Immovable Property are structurally sound and there are no defects known to Seller that have not been disclosed to the Buyer in writing by Seller.

(m) To the best of Seller's Knowledge, there are no pending or contemplated zoning changes, variances, special zoning exceptions, conditions or agreements affecting, or potentially affecting the Property or any part thereof.

(n) Except as has been disclosed to Seller in writing by Buyer, the Property complies with all applicable laws of all governmental or quasi-governmental authorities having jurisdiction over, against or affecting the Property. Seller has not received written notice of any, and there are no violations of any laws, similar rules and regulations relating and/or applicable to the ownership, use and operation of the Property as it is now operated, and/or other licenses or permits, which remain uncured. All governmental or quasi-governmental occupancy and use permits, licenses, consents, approvals, permits, authorizations, certificates, and other requirements of the authorities necessary or required for the continued use and operation of the System and/or the Property for the purposes for which the same are intended (collectively, "*Approvals*"), if any, have been unconditionally and finally issued and paid for and are in full force and effect in accordance with the respective terms thereof. All work or conditions required to be performed or fulfilled pursuant to the Approvals (on or off-site) have been fully performed in accordance with the requirements thereof and the Property fully complies with the Approvals.

(o) To the best of Seller's Knowledge, there is no fact or condition which materially and adversely affects the business, operations, affairs, properties or condition of Seller or the Property, which has not been set forth in this Agreement or in the other documents, certificates or written statements furnished to Buyer in connection with the transactions contemplated hereby.

(p) To the best of Seller's Knowledge, no representation or warranty made by Seller in this Agreement, in any Exhibit attached hereto, or in any letter or certificate furnished to Buyer pursuant to the terms hereof, each of which is incorporated herein by reference and made a part hereof, contains any untrue statement of a fact or omits to state a fact necessary to make the statements contained herein or therein not misleading.

(q) Environmental Matters.

(i) Except as disclosed on the attached EXHIBIT E, to be attached hereto at least thirty (30) days prior to the conclusion of the Feasibility Period and made a part hereof, to the best of Seller's Knowledge, the Property is currently and has been in compliance with all Environmental Laws (as defined below) and Seller has not received any: (i) Environmental Notice (as defined below) or Environmental Claim (as defined below); or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing.

(ii) Except as disclosed on the attached EXHIBIT F, to be attached hereto at least thirty (30) days prior to the conclusion of the Feasibility Period and made a part hereof, to the best of Seller's Knowledge, Seller has obtained and is in material compliance with all Environmental Permits (as defined below) (each of which is disclosed on EXHIBIT F) necessary for operating the System or use of the Property and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Seller through the Closing in accordance with Environmental Law, and Seller is not aware of any condition, event or circumstance that might prevent or impede, after the Closing, the operation of the System as currently conducted or the ownership, lease, operation or use of the Property. With respect to any such Environmental Permits, Seller has undertaken, or will undertake prior to the Closing, all measures necessary to facilitate transferability of the same, and Seller is not aware of any condition, event or circumstance that might prevent or impede the transferability of the same and has not received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(iii) None of the Property is listed on, or to the best of Seller's Knowledge, has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA (as defined below), or any similar state list.

(iv) To the best of Seller's Knowledge, there has been no Release of Hazardous Materials (as defined below) in contravention of Environmental Law with respect to the Property or any real property currently or formerly owned, leased or operated by Seller in connection with the System, and Seller has not received an Environmental Notice that any of the Property or real property currently or formerly owned, leased or operated by Seller in connection with the System (including soils, groundwater, surface water, buildings and other structure located thereon) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Seller.

(v) To the best of Seller's Knowledge, no underground storage tanks are located on the Immovable Property and no construction debris has been buried on or under the Immovable Property.

(vi) EXHIBIT G, to be attached hereto at least thirty (30) days prior to the conclusion of the Feasibility Period and made a part hereof, contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller and, to the best of Seller's Knowledge, any predecessors in connection with the System or the Property as to which Seller may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and Seller has not received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Seller.

(vii) Seller has not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(viii) Seller has provided or otherwise made available to Buyer, within thirty (30) days of the Effective Date, and listed in EXHIBIT H, to be attached hereto within thirty (30) days of the Effective Date and made a part hereof: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the Property or any real property currently or formerly owned, leased or operated by Seller in connection with the System which are in the possession or control of Seller related to compliance with Environmental Laws, Environmental Claims

or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(ix) Seller is not aware of nor reasonably anticipates, as of the Closing, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the System and Property as currently carried out.

Section 3.02 Covenants of Seller.

(a) Seller will own, operate, use and manage the System and the Property only in the ordinary course of business consistent with past practice and in any event will ensure that, any provisions of this Agreement to the contrary notwithstanding, (i) the physical and environmental condition of the Property is the same at the time of the Closing as it is as of the Effective Date, only ordinary wear and tear as to the physical condition excepted, and (ii) Seller's title to the Immovable Property and the survey condition of the Immovable Property is the same at the time of the Closing as it is as of the Effective Date, only improvements to the title condition or survey condition performed or undertaken by Seller to address Unacceptable Exceptions excepted.

(b) Seller shall maintain current hazard insurance in force on the Property until the Closing Date. The risk of loss to the Property shall not pass to Buyer unless and until delivery of possession of the Property is delivered to Buyer. If an event of casualty occurs to the Property prior to Closing, the Buyer may elect to either move to Closing and accept any insurance proceeds and deductible, plus an assignment of all of Seller's right, title, and interest in and to any and all insurance claims, as full satisfaction for the damage to the Property or the Buyer may terminate this Agreement. Buyer shall notify Seller as to which option it elects within five (5) days prior to the Closing, but if Buyer does not receive written notice of such casualty more than five (5) days prior to the Closing, the Closing Date shall be postponed to a date that is not less than five (5) days after Buyer's receipt of written notice of such casualty.

(c) Seller agrees to execute any documents required by the controlling governing authority to replat or rezone the Property.

(d) Seller agrees that from the Effective Date until either the termination of this Agreement or until after the Closing that Seller will not file any notices, requests, compliance documents, pleadings, or any other documents with any governmental or quasi-governmental authority that has jurisdiction over Seller in the operation, regulation or oversight of the System or any other endeavors of Seller (whether related to the System or not) without first providing at least ten (10) days prior notice to the Buyer for review and comment on such filing.

Section 3.03. Certain Definitions.

The following definitions apply in this Agreement:

(a) "*CERCLA*" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

(b) "*Environmental Claim*" means any action, governmental order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release (as defined below) of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

(c) “*Environmental Laws*” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit. The term “Environmental Laws” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

(d) “*Environmental Notice*” means any applicable law, and any governmental order or binding agreement with any governmental authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

(e) “*Environmental Permits*” means any permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

(f) “*Hazardous Materials*” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

(g) “*Knowledge*” or “*Seller's Knowledge*” means the actual knowledge of Seller and each of Seller's Representatives; in each case, after due inquiry.

(h) “*Release*” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

(i) “*Representatives*” in relation to a person means such person's managers, shareholders, members, officers, directors, employees, agents, advisors, affiliates, successors, and permitted assigns and for the avoidance of doubt the Representatives of Seller.

Section 3.04 Indemnification. From and after the Closing, Seller shall defend, hold harmless and indemnify the Buyer and/or Buyer's Representatives (as defined below) (collectively, “*Indemnified Party*”) from and against any and all losses, damages, diminutions in value, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of any kind, including professional fees and attorneys' fees, that are suffered or incurred by the Indemnified Party or to which the Indemnified Party may otherwise become subject to at any time (collectively, “*Losses*”) arising out of or as a result of: (i) any inaccuracy in or breach of any representation, warranty and/or covenant made by Seller in this Agreement; (ii) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; (iii) any actual or alleged liability of Seller and/or Seller's Representatives, or any actual or alleged liability of Buyer that derives from any such liability of Seller and/or Seller's Representatives, whether such liability arises before or after the Closing; and (d) any claim by a third party based upon, resulting from or arising out of (A) the business, operations, properties, assets or obligations of Seller conducted, existing or arising on or prior to the Closing; (B) any inaccuracy in or breach of any representation or warranty made by Seller in this Agreement, or any breach or non-fulfillment of any covenant,

agreement or obligation to be performed by Seller pursuant to this Agreement; (C) any negligent or more culpable act or omission of Seller or its Representatives (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement; or (D) any failure by Seller or its Representatives to comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, Seller is not obligated to indemnify, hold harmless, or defend Indemnified Party against any claim (whether direct or indirect) if such claim or corresponding Losses arise out of or result from Indemnified Party's gross negligence or more culpable act or omission (including recklessness or willful misconduct).

ARTICLE IV **CLOSING**

Section 4.01 Closing.

(a) Subject to the terms and conditions of this Agreement, the Closing of the purchase and sale of the Property pursuant to this Agreement (the "*Closing*") shall take place at the Title Company forty-five (45) days after the later of the expiration of the Feasibility Period and the approval by any regulatory bodies in a form satisfactory to Buyer as set forth in more detail in Section 2.05(a), or (i) such earlier date as is elected by Buyer by giving not less than three (3) days prior notice to Seller, or (ii) such later date as agreed in writing by Seller and Buyer (the "*Closing Date*").

(b) At the Closing, Seller shall deliver to Buyer the following:

(i) A certificate of good standing for Seller plus the requisite duly executed corporate approvals for the sale;

(ii) A general warranty deed in executed form, conveying good, merchantable, and insurable title in fee simple to all of the Immovable Property, free and clear of any and all mortgages, liens, encumbrances, claims, conditions, easements, assessments, and restrictions, except for the Permitted Exceptions, if any;

(iii) A duly executed bill of sale, conveying all of the Movable Property described in EXHIBIT B, free and clear of any and all mortgages, liens, claims, restrictions, and encumbrances;

(iv) A duly executed termination of lease, terminating any existing lease agreements encumbering or relating to the Property;

(v) A duly executed assignment of any interest in any other Property used and/or useful in the operation of the System that is owned by Seller;

(vi) Such other instruments and documents that are customarily executed by a seller of immovable property in the county in which the Property is located, including, but not limited to, resolutions or unanimous written consents of the Board of Directors of Seller, and if required the shareholders of Seller, to authorize the sale of the Property to Buyer pursuant to this Agreement;

(vii) Tax statements for the calendar year of Closing;

(viii) Possession of the Property;

(ix) If requested by Buyer, and to the extent assignable, duly executed, conveyances and assignments to Buyer of any and all consents, authorizations, variances, waivers, licenses, permits, and approvals from any federal, state, county, municipal, or other governmental or quasi-governmental agency, department, board, commission, bureau, or other entity or instrumentality relating to the Property, including, without limitation, those relating to environmental, foundation, use, utilities, building, fire, traffic, and zoning heretofore or hereafter held by or granted to Seller (collectively, the "*Approvals*"). No additional

consideration shall be due by Buyer for the Approvals, it being understood and agreed by Seller that the Purchase Price covers the Property, the Approvals, and the Claims (as hereinafter defined); and

(x) If requested by Buyer, duly executed assignments to Buyer, with full substitution and subrogation, of any and all claims, actions, rights, causes of action, rights of action, and warranties, whether arising in contract, tort, or otherwise, including, but not limited to, environmental claims, actions, rights, causes of action, rights of action, and warranties, that Seller has or may have against any and all persons and entities as a result of any apparent or non-apparent damage to, destruction of, or diminution in value of the Property, or any part thereof, occurring prior to the Closing (collectively, the "Claims"). No additional consideration shall be due by Buyer for the Claims, it being understood and agreed by Seller that the Purchase Price covers the Property, the Approvals, and the Claims.

(c) At the Closing, Buyer shall deliver to Seller the following:

(i) The Purchase Price; and

(ii) Such other instruments and documents that are customarily executed by a buyer of immovable property in the county in which the Property is located.

Section 4.02 Closing Costs and Prorations. Buyer and Seller hereby covenant and agree that:

(a) Seller shall pay the costs of any roll back taxes, one-half (1/2) of the escrow fee charged by the Title Company, and Seller's attorneys' fees and expenses. Seller shall also pay all fees, costs, and expenses for title curative work and any other work that Seller agrees to perform or undertake in order to address any Unacceptable Exceptions and/or to otherwise enable Seller to sell and deliver to Buyer good, merchantable, and insurable fee simple title to the Property as required by this Agreement.

(b) Buyer shall pay all remaining title fees charged by the Title Company, recording fees, and Buyer's attorneys' fees.

(c) All ad valorem real estate taxes and assessments levied or assessed against the Property shall be prorated according to the calendar year as of the Closing Date, based on the most recent tax bill and assessments levied for the same.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.01 Buyer's Default and Seller's Remedies.

(a) Buyer's Default. Buyer shall be in default under this Agreement if and only if any and all conditions to be satisfied under the terms of this Agreement prior to Closing have been satisfied (or duly waived) and Buyer fails or refuses to perform Buyer's obligations at Closing for any reason other than a default by Seller. For the avoidance of doubt, a termination under Section 2.04 will not constitute an event of default by Buyer.

(b) Seller's Remedies. If Buyer is in default under this Agreement, the sole and exclusive remedy of Seller, shall be receipt of the Earnest Money. Buyer and Seller agree that in such case the Earnest Money shall be liquidated or stipulated damages under Texas law for a breach or default by Buyer under this Agreement and/or any other actions or claims that could arise out of or are related to this Agreement because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages for such default. Therefore, in no event shall Buyer be liable for or Seller be entitled to any actual damages or any other type of damages or remedy under any action or claim that could arise out of or that could any way relate to this Agreement other than the right to receive the stipulated amount of the Earnest Money as full satisfaction of Seller's claims.

Section 5.02 Seller's Defaults and Buyer's Remedies.

(a) Seller's Defaults. Seller shall be in default under this Agreement on the occurrence of any of one or more of the following events:

- (i) Any breach of a representation or warranty made by Seller in this Agreement or failure of any such representation or warranty to be true, accurate and complete; or
- (ii) Any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement.

(b) Buyer's Remedies. If Seller defaults under this Agreement (whether before or after the Closing or before termination or after termination in relation to provision that survive termination) Buyer may:

- (i) If such default is identified prior to Closing, terminate this Agreement by written notice to Seller and Title Company, in which event the Title Company shall promptly refund the Earnest Money to Buyer;
- (ii) Enforce specific performance of this Agreement against Seller; and/or
- (iii) Pursue such other remedies as may be available at law or in equity, including a suit for any damages and the right to recover attorneys' fees and costs.

Section 5.03 Attorneys' Fees. If either party defaults under this Agreement, and the non-defaulting party employs an attorney to enforce the terms hereof, such non-defaulting party shall be entitled to reasonable attorneys' fees and costs from the defaulting party.

Section 5.04 Survival. The provisions of this Section 5 and of Article III, Article VI, Article VII shall survive the termination of this Agreement. The provisions of Article III shall survive the Closing for a period of five (5) years, except that the representations and warranties in Sections 3.01(a), (b), and (c), and Section 3.04 shall survive indefinitely. All other provisions of this Agreement shall survive Closing unless otherwise expressly stated.

ARTICLE VI
COMMISSIONS

Section 6.01 Commission. No commissions are due and/or owing for the procurement of this Agreement to any third parties. Seller shall defend, indemnify, and hold harmless Buyer from and against any and all claims by any person or entity for brokerage fees, brokerage commissions, finder's or other fees, which shall include, but shall not be limited to, any and all court costs, attorneys' fees and other costs and expenses relating thereto, alleged to be due to any broker and/or agent with whom Seller has dealt in connection with this Agreement or the sale of the Property to Buyer, and Buyer shall defend, indemnify, and hold harmless Seller from and against any and all claims by any person or entity for brokerage fees, brokerage commissions, finder's or other fees, which shall include, but shall not be limited to, any and all court costs, attorneys' fees and other costs and expenses relating thereto, alleged to be due to any broker and/or agent with whom Buyer has dealt in connection with this Agreement or the purchase of the Property by Buyer.

ARTICLE VII
MISCELLANEOUS PROVISIONS

Section 7.01 Effective Date of Agreement. The term "Effective Date" as used herein shall mean the date this Agreement has been fully executed by Seller and Buyer, as indicated by their signatures below, and a signed copy thereof is delivered to and acknowledged by the Title Company.

Section 7.02 Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when sent to the address or telecopy number of the party to receive such

notice set forth below if effected by telecopy, e-mail or other electronic transmission, hand delivery, by Federal Express or other reputable courier service, or when deposited in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Buyer:

Josiah M. Cox
Central States Water Resources, Inc.
1650 Des Peres Road, Suite 303
St. Louis, MO 63131

with a copy to:

James A. Beckemeier
The Beckemeier Law Firm, LC
13421 Manchester Rd., Ste. 103
St. Louis, MO 63131
Phone: 314-965-2277
Facsimile: 314-965-0127
E-Mail: jim@beckemeierlaw.com

If to Seller:

Jim Presley, President
Terra Southwest, Inc.
3052 Houston Street
Levelland, TX 79336
Phone: (940) 391-2826
Facsimile: _____
E-Mail: terrasouthwest@gmail.com

with a copy to:

Attention: _____
Phone: _____
Facsimile: _____
E-Mail: _____

Section 7.03 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL PROCEEDINGS OR OBLIGATIONS HEREUNDER SHALL BE MADE AND ARE PERFORMABLE IN DENTON COUNTY, TEXAS.

Section 7.04 Successors and Assigns. This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their respective heirs, administrators, successors and assigns. Buyer shall have the right to assign this Agreement to another entity or affiliate by providing written notice to Seller of such assignment. However, Seller shall not have the right to assign this Agreement without the written consent of the Buyer.

Section 7.05 Counterparts and Amendments. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. This Agreement may only be amended by a written document signed by each of the parties hereto, which document shall make specific reference to this Agreement.

Section 7.06 Time. Time is of the essence in the performance of each term, condition, and covenant contained in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act. If any date for performance of any term, condition

or provision hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day.

Section 7.07 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by law.

Section 7.08 Entire Agreement. Buyer and Seller each acknowledges and agrees that at all times each have intended that none of the preliminary negotiations concerning this Agreement would be binding on any party. This Agreement and the Exhibits attached hereto prior to the Closing Date contain all the covenants, conditions, agreements and understandings between the parties and shall supersede all prior covenants, conditions, agreements, letters of intent, term sheets, and understandings between Seller and Buyer with respect to the purchase and sale of the Property and all other matters contained in this Agreement.

Section 7.09 Final Exhibits. The legal description of the Immovable Property contained in the Survey shall be substituted for the legal description of the Immovable Property used in EXHIBIT A as of the date hereof without the necessity of the parties executing any additional amendments to this Agreement. EXHIBIT C shall be included as part of this Agreement when, and in the form, notified to Seller by Buyer in writing. EXHIBIT D shall be included as part of this Agreement if and when it is in the form, agreed by Seller and Buyer in writing prior to Closing. With regard to EXHIBITS E, F, and G, in the event Seller fails to provide a list of all relevant information for the respective Exhibit at least thirty (30) days prior to the end of the Feasibility Period, Buyer will assume there is no such relevant information and the respective Exhibit will be marked "None."

Section 7.10 Buyer Exchange. Seller and Buyer agree to cooperate should the other elect to purchase the Property or other real property as part of a like-kind exchange under IRC section 1031. Any contemplated exchange shall not impose upon the cooperating party any additional liability or financial obligation, and Buyer or Seller, as appropriate agrees to hold the other harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon either party's ability to acquire a suitable exchange property or effectuate an exchange. In the event any exchange contemplated by Buyer or Seller should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.

Section 7.11 Rollback Taxes, Standby Fees and Special Assessments. If this sale results in the assessment after Closing of additional taxes, standby fees or special assessments for periods of Seller's ownership (including taxes assessed as a result of a change in ownership or usage), the additional taxes, fees or assessments plus any penalties and interest shall be paid by Seller to Buyer within fifteen (15) days of receipt by Buyer of a statement for such taxes, fees or assessments.

Section 7.12 Ambiguities Not to Be Construed against Party Who Drafted Agreement. The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

Section 7.13 No Special Relationship. The parties' relationship is an ordinary commercial relationship of seller and buyer, and they do not intend to create and have not created the relationship of principal and agent, partnership, joint venture, or any other special relationship.

Section 7.14 Confidentiality. The parties will keep confidential this Agreement, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

Section 7.15 Business Day. As used in this Agreement, the term "business day" means Monday through Friday of each week, except for days on which banks in Denton County, Texas are closed for business. If the final date of any period which is set out any section of this Agreement falls upon a day which is not a business day, then, and in such event, the time of such period will be extended to the next business day.

Section 7.16 Further Assurances. From the date hereof, Seller and Buyer each agrees to do such things, perform such acts and make, execute, acknowledge and deliver such documents as may be reasonably necessary and customary to complete the transactions contemplated by this Agreement. In particular, Seller and Buyer each agrees to do such things as may be reasonably necessary with respect to the transfer of the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under proper authority and effective and binding as of the date first set above.

BUYER:

CENTRAL STATES WATER RESOURCES, INC.,
a Missouri corporation

By: _____

Josiah M. Cox, President

SELLER:

TERRA SOUTHWEST, INC.,
a Texas corporation

By: _____

Jim Presley, President

RECEIPT OF EARNEST MONEY

The undersigned Title Company hereby acknowledges its receipt of an executed copy of this Agreement and, the Earnest Money provided herein and, further, agrees to comply with and be bound by the terms and provisions of this Agreement, without demand, including, without limitation, those terms relating to the disposition of the Earnest Money.

EAST TITLE CO.
Name of Title Company
By: Kathryn Canile
Name: Kathryn Canile
Title: Receptionist
Date: 06/29/2020

EXHIBIT A

Description of the Immovable Property

(The legal description(s) of the Land, Improvements thereon, Easements, & Rights of Way shall be determined by survey and title commitments, which shall be inserted prior to the Closing).

[TO BE INSERTED PRIOR TO CONCLUSION OF THE FEASIBILITY PERIOD]

EXHIBIT B

Description of the Movable Property

(tools, devices, equipment, furniture, fixtures, machinery, supplies, and other tangible items)

[TO BE PROVIDED BY SELLER PRIOR TO CONCLUSION OF THE FEASIBILITY PERIOD]

EXHIBIT C

Service Area Map

(area in which the System service lines, plant, pipes, manholes, meters, lift or pump stations and appurtenances, utility facilities, etc. are located)

[SERVICE AREA MAP & LEGAL DESCRIPTION TO BE INSERTED PRIOR TO CLOSING]

EXHIBIT D
[Purchase Price Allocation]

[TO BE INSERTED PRIOR TO CLOSING]

EXHIBIT E

[Environmental Non-Compliance]

[TO BE PROVIDED BY SELLER THIRTY (30) DAYS PRIOR TO CONCLUSION OF THE FEASIBILITY
PERIOD]

EXHIBIT F

[List of Permits and Non-Compliance with Permits]

[TO BE PROVIDED BY SELLER THIRTY (30) DAYS PRIOR TO CONCLUSION OF THE FEASIBILITY
PERIOD]

EXHIBIT G

[Off-site Hazardous Materials Locations]

[TO BE PROVIDED BY SELLER THIRTY (30) DAYS PRIOR TO CONCLUSION OF THE FEASIBILITY
PERIOD]

EXHIBIT H

[Reports, Studies, Audits, Records, Data, Site Assessment, Economic Models, etc.]

[TO BE PROVIDED BY SELLER WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE]

July 3, 2020

Central States Water Resources, Inc.
1650 Des Peres Road, Suite 303
St. Louis, MO 63131

Re: Terra Southwest, Inc.

Dear Sirs:

Undine Texas, LLC ("Undine") entered into a Letter of Intent dated November 11, 2019 with Terra Southwest, Inc. and its owner, Jim Presley (the "LOI"), relating to the proposed acquisition of the water systems servicing East Ponder Estates and Hilltown Addition (the "Systems"). Under the terms of the LOI, Terra Southwest and Mr. Presley agreed to a binding no shop arrangement whereby they agreed not to solicit or entertain offers from, negotiate with or in any matter encourage, discuss, accept or consider any proposal of any person relating to the sale of the Systems. They also agreed to notify Undine in writing regarding any significant contact they had with any other person regarding such a transaction. This arrangement remains in effect.

We are writing you this letter because it has come to our attention that your company may have recently entered into discussions with Mr. Presley and Terra Southwest regarding a transaction involving the Systems. We wanted to advise you that we have reminded Terra Southwest and Mr. Presley of their continuing obligations under the LOI and that we expect them to adhere to those obligations. Undine intends to enforce its rights under the LOI to the fullest extent possible.

We thought it important to advise you of our understanding with Terra Southwest and Mr. Presley. If you have any questions concerning the foregoing, please do not hesitate to contact the undersigned.

Very truly yours,



Ed Wallace
President and CEO
Undine

cc: Ms. Carey A. Thomas - Undine



EXHIBIT 2

From: dcohen@foley.com <dcohen@foley.com>
Sent: Wednesday, July 22, 2020 4:48 PM
To: Russ Mitten <rmitten@cswrgroup.com>
Subject: Terra South West- Undine

Mr. Mitten, this firm is outside corporate counsel to Undine Texas, LLC (“Undine”). Mr. Wallace asked that I respond to your letter to him dated July 7, 2020.

Pursuant to your request, attached is a copy of November 11, 2019 LOI that Undine entered into with Terra South West, Inc. and Jim Presley.

To simply reiterate what Mr. Wallace said in his letter to Central States, Undine intends to enforce its rights under the LOI to the fullest extent possible. As Undine has advised Mr. Presley, it remains very interested in pursuing the possible acquisition of the East Ponder Estates and Hilltown Addition Systems.

If you have any questions with respect to the foregoing, please do not hesitate to contact me.

Thanks.

Daniel Cohen
Partner

Foley & Lardner LLP
1000 Louisiana Street, Suite 2000, Houston, TX 77002-2099
Phone 713.276.5860
[View My Bio](#) | [Visit Foley.com](#) | dcohen@foley.com

EXHIBIT 3



The information contained in this message, including but not limited to any attachments, may be confidential or protected by the attorney-client or work-product privileges. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message and any attachments or copies. Any disclosure, copying, distribution or reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party. Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.

November 11, 2019

Jim Presley
Terra Southwest, Inc.
3052 Houston St.
Levelland, Texas 79336

Dear Mr. Presley:

This letter summarizes the principal terms of a proposal being made by Undine Texas, LLC or its designee (the "Buyer") regarding the acquisition of certain water assets (the "Assets") serving the systems East Ponder Estates and Hilltown Addition, (the "Target Systems") owned by Terra Southwest, Inc. (the "Seller"). In this letter, the Buyer's potential acquisition of the Target Systems is sometimes referred to as the "Possible Acquisition." The undersigned controlling members of the Seller are referred to herein as the "Controlling Shareholders."

PART ONE

Following the Seller's acceptance of this proposal and provided that all required evaluation materials are received, the Buyer's management ("Management") shall review the Possible Acquisition. If Management approves proceeding with the Possible Acquisition, the parties shall commence negotiation of a definitive written acquisition agreement (a "Definitive Agreement"), and the Buyer will continue its due diligence efforts. To facilitate the negotiation of a Definitive Agreement, the Buyer will provide the Seller with an initial draft that incorporates the terms and conditions outlined in this letter. The Definitive Agreement will be subject to the Buyer's satisfactory completion of its due diligence investigation of the Assets and final approval by its Management and members.

Based on certain preliminary discussions and the information made available to the Buyer by the Seller, it is proposed that the Definitive Agreement include the following terms. The Seller will sell the Assets to the Buyer for [REDACTED] (the "Purchase Price") payable in cash, net of any related debt, at closing and subject to any mutually agreed adjustments, including but not limited to, amounts necessary to bring the system into existing regulatory compliance. In arriving at the Purchase Price, the Buyer considered information provided by the Seller, including a connection count of [REDACTED] customers. Additionally, the Purchase Price will be supplemented via a growth note, whereby for each new connection added post closing, Buyer will remit to Seller [REDACTED] (or the equivalent per connection cost based on actual Purchase Price and connections as of close) less the cost of providing service. The growth note will have a term of three years and payments to Seller shall be issued annually from date of closing. At closing, the Buyer



will retain a reasonable holdback from the Purchase Price amount for a period of 18 months against which the Buyer may offset to satisfy any obligations of the Seller arising with respect to any purchase price adjustment provisions or for any costs, losses or damages suffered by the Buyer as a result of the Seller's breach of representations, warranties or covenants made by the Sellers in the Definitive Agreement. The closing would occur as soon as reasonably possible after the receipt of all applicable approvals and upon either waiver or satisfaction of any and all agreed conditions set forth in the Definitive Agreement. Any debt attributable to, or creating a lien on, the Assets, or any portion of them, shall be paid from the purchase price proceeds or otherwise discharged at the time of closing.

The Seller and its Controlling Shareholders shall be required to execute two-year non-compete agreements, as to owning water and wastewater assets, in favor of the Buyer covering the general region where the Assets are located. Such non-compete will not include the development of raw land into residential or commercial interests by Seller. The Seller and the Controlling Shareholders shall also provide representations, warranties, and indemnifications regarding the Assets that are fairly typical of asset transactions of this type, with the intended effect of protecting the Buyer from liabilities of the Seller other than those that the Buyer explicitly agrees to assume.

The preceding terms are only preliminary in nature and are therefore not binding upon either the Buyer or the Seller. It is understood by the parties hereto that Part One of this letter merely constitutes a statement of the mutual intentions of the parties with respect to the Possible Acquisition and does not contain all matters upon which agreement must be reached in order for the Possible Acquisition to be consummated. The matters set forth in Part One of this letter are contingent on (i) the negotiation, execution and delivery of the Definitive Agreement by and between Buyer, Seller and the Controlling Shareholders setting forth in detail the terms, provisions and conditions of the Possible Acquisition and (ii) satisfaction of the conditions set forth in the Definitive Agreement. A binding commitment with respect to the Possible Acquisition will result only from execution and delivery of the Definitive Agreement.

PART TWO

The following terms and conditions of this letter (the "Binding Provisions") constitute a legally binding and enforceable agreement between the Buyer and the Seller.

During the period from the date this letter is signed by the Seller (the "Signing Date") until the date on which either Party provides the other with written notice that negotiations toward a Definitive Agreement are terminated (such intervening period, the "Effective Period") or at any point where no exchange of documents occurs within 180 days, the Seller will afford the Buyer and its representatives full and free access to the Assets and all related personnel, properties,

contracts, books and records, and all other documents and data so that the Buyer may complete its due diligence. Additionally, during the Effective Period, the Buyer may also contact and/or meet with the respective regulatory agency(ies) regarding the Assets and system operations based on data and findings accumulated as part of its due diligence.

During the Effective Period and, in any event, for a period of not less than 180 days after the Signing Date regardless of the earlier termination of the Effective Period by either party, the Seller and the Controlling Shareholders will not, directly or indirectly, through any representative or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept, or consider any proposal of any person relating to (i) the sale of the Assets, or any portion of them, to a party other than the Buyer, (ii) the sale of any of the stock of the Seller or (iii) any merger or consolidation of Seller. Further, the Seller agrees to notify the Buyer, in writing, regarding any significant verbal or written contact between the Seller and any other person regarding any such offer or proposal or any related inquiry.

During the Effective Period, the Seller shall operate and maintain the Assets in the ordinary course of business and will refrain from any extraordinary transactions involving or relating to any of the Assets.

The Buyer and the Seller will each be responsible for and bear their own costs and expenses (including any broker's or finder's fees and the expenses of its representatives) incurred in connection with pursuing or consummating the Possible Acquisition. The Seller will fully cooperate with and assist the Buyer in connection with the preparation and filing of any federal, state or local regulatory notifications or requests for approval that may be required in connection with the Possible Acquisition.

The Binding Provisions constitute the entire agreement between the parties and supersede all prior oral or written agreements or understandings that may have arisen out of any course of conduct or dealings between the parties. The Binding Provisions may be amended, modified, rescinded or terminated in writing and executed by both parties.

The Binding Provisions will be governed by and construed under the laws of the State of Texas without regard to conflicts of law principles. The parties further agree that the provisions of Part One of this letter do not constitute and will not give rise to, any legally binding obligation on the part of either party to this agreement.

If the Seller is in agreement with the foregoing, please sign and return the original executed Letter of Intent to 17681 Telge Road, Cypress, Texas 77429 which will constitute the agreement between the Buyer and the Seller with respect to its subject matter. Any questions or comments regarding this letter may be directed to Carey Thomas, the Buyer's representative in connection with the possible acquisition, at (713) 574-7760 (office) or (713) 805-7015 (cell).

If an executed counterpart of this letter is not received by the Buyer within 30 days of date of this letter, then the proposals set forth herein shall be deemed null and void.

Sincerely,

Undine, LLC

By: Carey A. Thomas
Carey A. Thomas
Senior Vice President and Secretary

Agreed and accepted as of the _____ day of _____, 2019

Terra Southwest, Inc.

By: Jim Presley
Name: Jim Presley
Title: OWNER

OWNERS:

Name: Jim Presley

Name: _____

Name: _____

CONFIDENTIALITY NOTICE: This information transmitted (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521, and is intended only for the person(s) or entity(ies) to which it is addressed and may contain privileged or confidential information. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by person or entities other than the intended recipient(s) is prohibited. If you have received this e-mail in error or if you are not the intended recipient of this message, you are hereby notified that any unauthorized use, dissemination or copying of this message and its attachments, if any, may cause irreparable harm and is strictly prohibited. If you receive this e-mail transmission in error, please reply to the sender and thereafter delete. The Missouri Bar Chief Disciplinary Counsel requires all Missouri lawyers to notify all recipients of email that (1) email communication is not a secure method of communication; (2) any email that is sent to you or by you may be copied and held by various computers it passes through as it goes from me to you or vice versa; and (3) persons not participating in our communication may intercept our communications by improperly accessing your computer or my computer or even some computer unconnected to either of us which the email passed through. This communication is being sent to you via email because you have consented to receive communications via this medium. If you change your mind and want future communications sent in a different fashion, please let me know at once.

EXHIBIT 4

From: Norma Molinar <nmolinar@keyandterrell.com>
Date: Friday, July 16, 2021 at 11:51 AM
To: Jim Beckemeier <jim@bl-stl.com>, Jim Beckemeier <jim@bl-stl.com>
Cc: "terrasouthwest@gmail.com" <terrasouthwest@gmail.com>
Subject: Terra Southwest Inc.

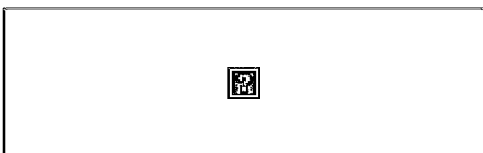
Dear Mr. Beckemeier,

Please see the attached letter from Roger Key, attorney for Terra Southwest Inc.

Sincerely,

Roger Key

Norma Molinar
Legal Assistant to Roger A. Key
Key Terrell & Seger LLP
P.O. Box 64968
Lubbock, TX 79464-4968
(806) 792-1944
(806) 792-2135 (Fax)
nmolinar@keyandterrell.com



Physical Address:
4825-A 50th Street
Lubbock, TX 79414

CONFIDENTIALITY NOTICE: This message is confidential and intended only for the use of the individual or entity to whom it is addressed. It may contain confidential attorney/privileged information which is legally protected by law from disclosure. You are notified that if you are not the intended recipient, then reading or disclosing this communication is prohibited. If you have received this communication in error, please immediately notify us by return e-mail and destroy all copies of this message. This paragraph does not apply to pleadings or other documents intended for filing public records, or for filing with any department or agency whose records are open to the general public for inspection.

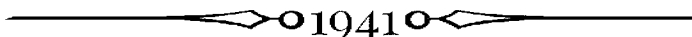
Although this email and any attachments are believed to be free of any virus or other defects that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Key Terrell & Seger LLP for any loss or damage arising in any way from its use.

NOT INTENDED AS A SUBSTITUTE FOR A WRITING. Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance or effect, absent an express statement to the contrary hereinabove, this email message, its contents, and any attachments hereto are not intended to represent an offer or acceptance to enter into a

contract and are not otherwise intended to bind the sender, Key Terrell & Seger, LLP, any of its clients, or any other person or entity.

Circular 230 Disclosure: In compliance with requirements imposed by the IRS pursuant to IRS Circular 230, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein

KEY TERRELL & SEGER LLP



ATTORNEYS AT LAW

MARION T. KEY
(1917 -2004)

ROGER A. KEY
E-Mail: rkey@keyandterrell.com

GARY R. TERRELL,*
Of Counsel

ANDREW R. SEGER†
E-Mail: aseger@thesegefirm.com

4825-A 50TH ST., LUBBOCK TEXAS 79414
P.O. BOX 64968, LUBBOCK, TEXAS 79464
TELEPHONE: (806) 792-1944 / (806) 793-1906
FACSIMILE: (806) 792-2135

* Gary R. Terrell, P.C.
†The Seger Firm P.C.

July 16, 2021

Via Certified Return Receive Requested 7019 2280 0002 0491 0490 and

Via Email: jim@beckemeierlaw.com

Mr. James Beckemeier
Beckemeier LeMoine Law
13421 Manchester Road, Ste. 103
St. Louis, Missouri 63131

Re: Terra Southwest Inc.

Dear Beckemeier:

We represent Terra Southwest Inc. and its officers Jim Presley, President and Rovana Presley, Vice-President (“Terra”) in connection with a purported purchase and Sale Agreement (“PSA”) between our client and Central State Water Resources Inc. (“CSWR”) who we understand you represent based upon your letter to our client dated October 19, 2020. This letter is in response to your letter to our clients of October 19, 2020 as well as your letter of July 2nd of 2021.

As you are aware the purchase in Sale Agreement between our clients provides in section 7.01 that notices are to be sent to Joshua M. Cox with CSWR with address in St. Louis as well to you. Would you verify that you receive this letter on behalf of CSWR and waive notice directly to CSWR. If I do not receive a waiver within five days of this letter, we will assume you not waive notice and we will notify your client of the contents of this letter directly.

Jim Presley does not recall signing the Purchase and Sale Agreement dated June 15, 2020. He and his wife Rovana, and a representative of CSWR by the name of Shawn, met at a restaurant in the summer of 2020 and discussed the sale of the assets of Terra. Rovana states that Jim Presley did not signed the Purchase and Sale Agreement at that time. Jim Presley states that Shawn representing to him the only document his was signing was to authorize representatives of CSWR to enter Terra’s property and inspect the same. Furthermore, we are advised that Shawn never explained that the document which the client was being asked to sign was a Purchase of Sale Agreement, if in fact that is what our client signed. Although your client was allowed access on to our client’s property to inspect the plant, your client took no further actions after the initial inspection to fulfill its obligations under the PSA. The time period for due diligence and closing, under any construction of the contract, has long since expired.

We understand that CSWR never made the escrow for deposit called for in Section 1.03 of the PSA; has not, to the best of our client's knowledge, ever acquired the commitment for title insurance that provided for in Section 2.02 of the PSA; has not undertaken any due diligence within the feasibility period other than visiting the client plant on one occasion; has undertaken no action to obtain regulatory approval as from the Texas Public Utility Commission, other than Notice of Intent to determine fair market value of our client's utility; and has not otherwise undertaken any further action under the contract during (180) days feasibility period as provided under Section 2.04 of the PSA.

Furthermore, it does not appear as though your client has undertaken any action to close this transaction within (45) days after the expiration of the feasibility period required by section 4.01 (a) other than the limited actions mention in this letter. For the above and foregoing reasons it is our opinion that your client has abandoned, repudiated, breached, or otherwise is no longer position to enforce the PSA, and our client should be relieved of any further obligations to perform under that agreement. Please confirm that our client is released of any further obligation under the PSA.

If you client fails to acknowledge that our client no longer obligated to perform under the PSA, such action will only increase the damages our client will sustain by its inability to move forward with other offers to purchase to purchase its assets.

In the event your client elects to pursue litigation, we can assure you that it will be met with the counter claim including claims for declaratory judgment to the effect to the PSA is not effective or enforceable, will see to recover attorney's fees under the Texas Declaratory Judgment Act and will additionally seek damages for misrepresentation. If the PSA is held to be unenforceable it would appear your client would not have a claim for attorney's fees under the PSA.

Please let us know of your client's position within ten (10) days of this letter.

Sincerely yours,

Key Terrell & Seger LLP

A handwritten signature in black ink, appearing to read "Roger A. Key". The signature is fluid and cursive, with the first name "Roger" and last name "Key" being the most prominent parts.

Roger A. Key

RAK/nm
c.c. Terra Southwest Inc. Attn. Jim and Rovana Presley

#

ROGER A. KEY
E-Mail: rkey@kevandterrell.com

GARY R. TERRELL*
of Counsel

ANDREW R. SEGER†
E-Mail: aseger@thesegerfirm.com

#

KEY TERRELL & SEGER LLP

1941

ATTORNEYS AT LAW

4825-A 50TH ST., LUBBOCK TEXAS 79414
P.O. BOX 64968, LUBBOCK, TEXAS 79464
TELEPHONE: (806) 792-1944/(806) 793-1906
FACSIMILE: (806) 792-2135

#

MARION T. KEY
(1917 -2004)

* Gary R. Terrell, P.C.
† The Seger Firm, P.C.

November 17, 2021

*Via Email: jim@beckemeierlaw.com
and Certified Mail/Return Receipt Requested*

Mr. James Beckemeier
Beckemeier LeMoine Law
13421 Manchester Road, Ste. 103
St. Louis, Missouri 63131

Re: Terra Southwest, Inc.

Dear Jim:

In response to your email of November 8th, I wanted to advise you that our client, Terra Southwest, Inc. and Undine Texas, LLC have filed an Application for approval of the Sale, Transfer, or Merger Application ("STM") with the Public Utilities Commission of Texas yesterday. For the multitude of reasons that we have set forth in prior correspondence, we are of the opinion that your client, Central State Water Resources ("CSWR") has breached the purchase and sale agreement of June 2020 or otherwise does not have an enforceable agreement. If necessary, we stand ready to defend our client if your client decides to pursue legal action. In the event your client resorts to litigation, we can assure you that a counter-claim will be filed and if our client loses its ability to sell its assets or hampered in doing so as a result of your client's litigation, we will seek damages for tortious interference with a contractual relations and contractual rights, which could be significant.

In addition to the time and expense such litigation will entail, perhaps your client has not considered the negative impact filing a suit against potential seller in a private utility district will have on its ability to acquire similar private utility districts in the future, given the fact that you client failed to fulfill its obligations under the purchase and sale agreement with our client.

EXHIBIT 5

Mr. Jim Beckemeier
November 17, 2021
Page 2

Sincerely yours,

Key Terrell & Seger LLP

Roger A. Key

RAK/rrr
cc: Terra Southwest (via email)
ATTN: Jim and Rovana Presley
cc: Geoff Kirshbaum (via email)
Terrill & Waldrop Law Firm

DOCKET NO. 52852

APPLICATION OF TERRA	§	
SOUTHWEST, INC. AND UNDINE	§	PUBLIC UTILITY COMMISSION
DEVELOPMENT, LLC FOR SALE,	§	
TRANSFER, OR MERGER OF	§	OF TEXAS
FACILITIES AND CERTIFICATE	§	
RIGHTS IN DENTON COUNTY	§	

CENTRAL STATES WATER RESOURCES, INC.'S MOTION TO INTERVENE

Central States Water Resources, Inc. (“Central States”) files this Motion to Intervene, pursuant to 16 Tex. Admin. Code §§ 22.103 and 22.104, and respectfully shows as follows:

Central States is a Missouri corporation and an affiliate of CSWR, LLC, an established Missouri-based investor-owned water and wastewater utility that provides safe and reliable water and wastewater services in under-served communities throughout Texas. Central States is also an upstream affiliate of CSWR-Texas Utility Operating Company, LLC (“CSWR Texas”), which operates its water and wastewater systems and operations in Texas under CCN numbers 13290 and 21120.

On June 15, 2020, Central States entered into a binding purchase agreement to acquire Terra Southwest, Inc. (“Terra Southwest”). A copy of this agreement is attached as Exhibit A (Highly Sensitive) to this motion. On April 8, 2021, CSWR Texas submitted a notice of intent to determine fair market value. On November 16, 2021, Terra Southwest and Undine Development, LLC (“Undine”) filed this proceeding in which it seeks to acquire Terra Southwest. The filing appears to include a letter of intent to purchase Terra Southwest but does not appear to include a signed purchase agreement between Terra Southwest and Undine. Accordingly, Undine is not acquiring Terra Southwest and Terra Southwest is not being purchased by Undine. Furthermore, Central States’ agreement with Terra Southwest is directly impacted by Undine’s request for authority to acquire Terra Southwest, and questions as to Central States’ and Undine’s agreements

EXHIBIT 6

must be addressed in order for the Commission to approve Undine's application. Notably, CSWR Texas sought to intervene in a proceeding involving the same agreement between Undine and Terra Southwest in Docket No. 51632 and was granted intervention. Accordingly, Central States has a justiciable interest in this proceeding.

For these reasons, Central States requests that the presiding officer grant its motion to intervene and all further relief to which it may be justly entitled.

Respectfully submitted,

L. Russell Mitten
General Counsel
Central States Water Resources, Inc.
1650 Des Peres Rd., Suite 303
St. Louis, MO 63131
(314) 380-8595
(314) 763-4743 (Fax)

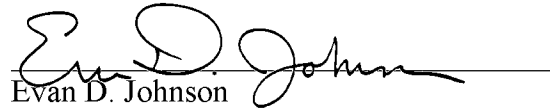


Evan D. Johnson
State Bar No. 24065498
Kate Norman
State Bar No. 24051121
C. Glenn Adkins
State Bar No. 24103097
Coffin Renner LLP
1011 W. 31st Street
Austin, Texas 78705
(512) 879-0900
(512) 879-0912 (fax)
evan.johnson@crtxlaw.com
kate.norman@crtxlaw.com
glenn.adkins@crtxlaw.com

**ATTORNEYS FOR CENTRAL STATES
WATER RESOURCES, INC. AND CSWR-
TEXAS UTILITY OPERATING COMPANY,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November 2021, notice of the filing of this document was provided to all parties of record via electronic mail in accordance with the Order Suspending Rules, issued in Project No. 50664.


Evan D. Johnson

**Exhibit A is Highly Sensitive and
will be provided pursuant to the
Protective Order**

DOCKET NO. 52852

APPLICATION OF TERRA	§	PUBLIC UTILITY COMMISSION
SOUTHWEST, INC. AND UNDINE	§	
DEVELOPMENT, LLC FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN DENTON COUNTY	§	

**APPLICANTS' RESPONSE TO
MOTION TO INTERVENE**

COME NOW Undine Development, LLC (“Undine”) and Terra Southwest, Inc. (“Terra,” and collectively with Undine, the “Applicants”) and file this Response to Central States Water Resources, Inc.’s (“CSWR”) Motion to Intervene. For the reasons set forth below, the Applicants urge that CSWR’s motion should be denied.

Background

Applicants initially filed a sale, transfer, or merger (“STM”) application for the subject assets on December 16, 2020, in Docket No. 51632. On April 19, 2021, Public Utility Commission of Texas (“Commission”) Staff (“Staff”) requested an abatement to the STM proceeding “due to what appear to be conflicting claims as to the utility that will [be] purchasing Terra Southwest,” while noting that the applicants had “provided information supporting the transaction contemplated in the present docket.”¹ Commission Staff’s request to abate noted that CSWR had filed a Notice of Intent to Determine Fair Market Value relating to the subject assets.² Importantly, Terra never agreed to participate in that Fair Market Value matter alongside CSWR.

¹ *Application of Terra Southwest, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*, Docket No. 51632, Commission Staff’s Motion to Abate at 1 (Apr. 19, 2021) (Interchange Item No. 28).

² *Id.*; see also *Notice of Intent to Determine Fair Market Value*, Project No. 49859, CSWR and Terra Southwest Notice of Intent to Determine Fair Market Value (Apr. 8, 2021).

On November 16, 2021, the Applicants filed the subject STM application and then withdrew their STM application in Docket No. 51632.³ Thus, the Applicants' previously filed STM application was replaced with this current STM application. The current STM application includes the affidavit of Jim Presley, the president of Terra.⁴ Mr. Presley testifies in his affidavit that: (i) there is no binding agreement between CSWR and Terra relating to the subject assets; (ii) Terra has no intention to sell the assets to CSWR; and (iii) Undine is the only legitimate purchaser of the assets. The new STM application also includes a statement of position from counsel for Terra to counsel for CSWR documenting Terra's position that CSWR has no valid rights to the assets.⁵

CSWR filed the subject motion to intervene on November 23, 2021. Accordingly, this response is timely filed.⁶

Argument

In support of its assertion that it has a right to intervene in the docket, CSWR states simply that "[CSWR's] agreement with [Terra] is directly impacted by Undine's request for authority to acquire [Terra], and questions as to Central States' and Undine's agreements must be addressed in order for the Commission to approve Undine's application."⁷

As a preliminary matter, there is no question as to the "agreements." The subject STM application makes clear, through the supporting affidavit and statement of legal position, that there is

³ Application (Nov. 16, 2021) (Interchange Item No. 1); *Application of Terra Southwest, Inc. and Undine Texas, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*, Docket No. 51632, Undine Texas, LLC's Motion to Withdraw Application (Nov. 18, 2021) (Interchange Item No. 44) and Order No. 10 Granting Withdrawal, Dismissing Application, and Closing Docket (Nov. 19, 2021) (Interchange Item No. 45).

⁴ Application, at Attachment "B" (filed confidentially)

⁵ *Id.*

⁶ 16 TAC § 22.78(a) (stating that responsive pleadings are due "within five working days after receipt of the pleading to which the response is made"). The Commission was closed on November 24-26, 2021. Those days are not considered "working days" under Commission rules. *See* 16 TAC § 22.2(48) (defining "working day"). Therefore, the deadline for this response is December 3, 2021.

⁷ CSWR also seems to assert that there is no signed purchase agreement between Terra and Undine, and therefor "Undine is not acquiring [Terra] and [Terra] is not being purchased by Undine." Motion to Intervene at p. 1. That issue is not relevant to whether CSWR has a right to intervene in the matter. And, Applicants note that the documentation of the transaction provided in the subject application is the same documentation approved by Commission Staff in the previous STM application (and numerous other STM applications initiated by Undine and approved by the Commission).

one party to which Terra will be selling its assets--Undine. There is one STM application for the sale and transfer of the Terra assets, and that is the subject STM application between Terra and Undine. Importantly, there is no competing STM application for these assets. In fact, there cannot be a competing STM application for the assets, because that would require the participation of Terra in that competing STM application, which, as reflected in the affidavit, Terra has committed it will not participate in.⁸

More relevant, however, is that contrary to CSWR's assertion, questions as to the agreements need not be addressed and, indeed, cannot be addressed by the Commission pursuant to an STM application. Because that is the sole basis for CSWR's assertion of a right to intervene in the docket, CSWR's motion should be denied.

A. STM Review

The STM process is governed by Texas Water Code ("TWC") §§ 13.251 and 13.301. TWC § 13.251 states:

Except as provided by Section 13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the utility commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

Similarly, TWC § 13.301 speaks to Commission review of the "public interest" in STM applications. That section allows a hearing if the Commission has concerns about the "financial, managerial, and technical capability" of the acquiring person or "after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity."⁹ Thus, the applicable statutes direct that the utility commission make an evaluation about the

⁸ Application, at Attachment "B" (filed confidentially) ("nor does Terra have any intention of selling the assets to CSWR").

⁹ TWC § 13.301(e).

prospective purchaser and the impact of the transaction on the service area. Nowhere in TWC §§ 13.251, 13.301, or the referenced 13.246(c)¹⁰ is there any suggestion by the legislature that the PUC should endeavor to undertake an examination of potential third-party legal disputes.

Similarly, the PUC regulations implementing TWC § 13.301, at 16 Tex. Admin. Code (“TAC”) § 24.239(e), specify the parameters of the evaluation:

A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee’s certificated service area as required by § 24.227(a) of this title, relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity. (*emphasis added*).

16 TAC § 24.239(h) implements TWC § 13.301(e) similarly.¹¹ As with the statute, nothing in the implementing regulations provides for the Commission to evaluate potential third-party legal disputes as part of its evaluation of an STM application.

The Commission properly lacks authority to consider third party legal disputes in considering STM applications. The Commission does not have, nor should it desire to have, the authority to involve itself in such disputes. Such action would create overlapping and conflicting actions between

¹⁰ TWC § 13.246(c) states:

Certificates of public convenience and necessity and amendments to certificates shall be granted by the utility commission on a nondiscriminatory basis after consideration by the utility commission of:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.

¹¹ 16 TAC § 24.239(h).

the Commission and the judicial system. In this instance, CSWR seeks by its intervention to require the Commission to determine the proper purchaser of Terra's assets in the absence of any conflicting STM application. It seeks the extreme recourse of requiring the Commission to impose upon Terra the sale of its assets to a party (*i.e.*, CSWR) that Terra has already rejected as a purchaser of the assets. Certainly, the legislature has not granted to the Commission the authority to impose such a decision on a voluntary seller. If a party believes itself to be the proper recipient of the assets that are the subject of an STM application, that party's recourse is properly in the courts and not before the Commission. The Commission has no authority to engage that dispute, and it would be creating an untenable precedent in doing so. The Commission is necessarily stepping into an evaluation and determination of that dispute if the Commission grants the intervention. There is no other basis for the intervention.

B. Standing

16 TAC § 22.103 provides that a person has a right to intervene in an STM application if that person:

- (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or
- (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.

CSWR can nowhere point to a "statute, Commission rule or order or other law" to establish standing pursuant to § 22.103(b)(1). Nor does CSWR have a justiciable interest in the outcome of the proceedings as required by § 22.103(b)(2). As set out in its motion to intervene, CSWR's sole interest in the application is as it relates to a private claim to the assets at issue in the application. That is not an interest that is contemplated or implicated by this STM proceeding.

As set out in the statute and the implementing regulations, the consideration in an STM application is whether “the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area” and whether it can “demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service.” CSWR’s interest in raising a dispute about its rights to separately acquire the assets is not within the purview of the STM process. It is not an injury that is “fairly traceable” to the approval of the pending STM application, as required under *City of Waco v. Texas Comm’n on Environmental Quality*.¹² CSWR is not a party sought to be protected by the STM process. Accordingly, CSWR has no standing to intervene in the proceeding.

Conclusion

CSWR seeks to intervene in this STM application on the sole basis that it purports to have an interest in the assets that are the subject of the application.¹³ The interest CSWR seeks to protect by its request to intervene is not an interest that confers standing on CSWR in an STM application. By its request to intervene, CSWR is necessarily seeking to have the Commission adjudicate an alleged private party dispute.¹⁴ It seeks to have the Commission adjudicate that dispute when there is no conflicting STM application before the Commission. The Commission would be creating an untenable precedent in stepping into and evaluating such disputes as part of an STM application, and it would be acting outside of its authority in doing so. Accordingly, the Applicants urge that CSWR’s motion in intervene be denied.

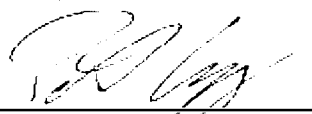
¹² *City of Waco v. Texas Comm’n on Environmental Quality*, 346 S.W.3d 781, 802 (Tex. App. – Austin, 2011), *rev’d on other grounds*, 413 S.W. 3d 409 (Tex. 2013) (the injury must be “fairly traceable” to the issuance of the authorization as proposed, as opposed to the independent actions of third parties or other alternative causes unrelated to the authorization).

¹³ See Motion to Intervene, p. 1 (“[CSWR’s] agreement with [Terra] is directly impacted by Undine’s request for authority to acquire [Terra], and questions as to Central States’ and Undine’s agreements must be addressed in order for the Commission to approve Undine’s application.”)

¹⁴ As discussed, the application and supporting affidavit and statement of legal position, in fact, establish that there is no dispute.

Respectfully submitted,

DUBOIS, BRYANT & CAMPBELL, LLP

By: 
Peter T. Gregg
State Bar No. 00784174
303 Colorado, Suite 2300
Austin, Texas 78701
pgregg@dbcllp.com
(512) 457-8000
(512) 457-8008 (fax)

ATTORNEYS FOR UNDINE DEVELOPMENT, LLC

TERRILL & WALDROP

By: /s/ Geoffrey P. Kirshbaum
Geoffrey P. Kirshbaum
State Bar No. 24029665
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrillwaldrop.com

ATTORNEY FOR TERRA SOUTHWEST, INC.

CERTIFICATE OF SERVICE

I certify by my signature above that on this the 3rd day of December 2021, notice of this document was provided to all parties of record via electronic mail in accordance with the Order Suspending Rules, issued in Project No. 50664.

John Harrison
Public Utility Commission of Texas
Legal Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
john.harrison@puc.texas.gov

Evan D. Johnson
Kate Norman
C. Glenn Adkins
Coffin Renner LLP
1011 W. 31st Street
Austin, Texas 78705
evan.johnson@crtx.law.com
kate.norman@crtxlaw.com
glenn.adkins@crtxlaw.com

DOCKET NO. 52852

APPLICATION OF TERRA	§	PUBLIC UTILITY COMMISSION
SOUTHWEST, INC. AND UNDINE	§	
DEVELOPMENT, LLC FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN DENTON COUNTY	§	

**ORDER NO. 2
DENYING MOTION TO INTERVENE**

This Order addresses the November 23, 2021 motion to intervene filed by Central States Water Resources, Inc. Central States Water Resources asserts that it has entered into a binding agreement to acquire Terra Southwest, Inc. and asserts that its agreement with Terra Southwest is directly impacted by the application at issue in this proceeding and, therefore, Central States Water Resources has a justiciable interest in this proceeding.

On December 3, 2021, Undine Development, LLC and Terra Southwest filed a response to the motion to intervene. In their response, Undine Development and Terra Southwest argue that Central States Water Resources does not have a justiciable interest in the outcome of the proceedings because Central States Water Resources' sole interest in the application relates to a private claim to the assets at issue in the application, which is not an interest that is contemplated or implicated by a proceeding involving the sale, transfer, or merger of facilities and certificate rights.

Under 16 Texas Administrative Code (TAC) § 22.103, a person has standing to intervene if that person: (1) has a right to participate which is expressly conferred by statute, Commission rule or order, or other law; or (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding. In its motion to intervene, Central States Water Resources asserts that it has a justiciable interest in this proceeding. However, the administrative law judge (ALJ) does not believe that Central States Water Resources has presented a justiciable interest that may be adversely affected by the outcome in this proceeding. A justiciable interest is an interest that is within the purview of the Commission given the context of the proceeding. The application at issue in this proceeding concerns whether the transferee is able

EXHIBIT 8

to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the area subject to the application and any area already it already serves.¹ However, Central States Water Resources' interest is limited to the effect the proceeding may have on its agreement to acquire Terra Southwest, which is outside the purview of the Commission in the context of evaluating whether Undine Development is able to demonstrate adequate financial, managerial, and technical capability as set forth above. Accordingly, the ALJ denies Central States Water Resources' motion to intervene.

Signed at Austin, Texas the 7th day of December 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'Isaac TA', is written over a horizontal line.

ISAAC TA
ADMINISTRATIVE LAW JUDGE

\\PUC4-AAV-FS\shared\CADM\Docket Management\Water\STM\52XXX\52852-2 deny intervene.docx

¹ See Texas Water Code § 13.301 and 16 TAC § 24. 239 (listing the criteria used to evaluate a transferee's financial, managerial, and technical capability for providing continuous and adequate service).

Evan Johnson

Subject: FW: Filing Submitted for Case: 59912713; ; Envelope Number: 59912713

From: no-reply@efilingmail.tylertech.cloud <no-reply@efilingmail.tylertech.cloud>

Sent: Friday, December 10, 2021 12:34 PM

To: Becky Rucker <brucker@jonesallen.com>

Subject: Filing Submitted for Case: 59912713; ; Envelope Number: 59912713



Filing Submitted

Envelope Number: 59912713

Case Number: 59912713

Case Style:

The filing below has been submitted to the clerk's office for review. Please allow 24 - 48 hours for clerk office processing.

Filing Details	
Court	Denton County
Date/Time Submitted	12/10/2021 12:31 PM CST
Filing Type	Petition
Filing Description	Plaintiff's Original Petition
Type of Filing	EFile
Filed By	Becky Rucker
Filing Attorney	Lindy Jones

Fee Details	
Your account is never charged until your filing is accepted. If you see any pending charges on your account prior to acceptance, this is an authorization hold to ensure the funds are available so your filing can be accepted without delay.	
If the filing is canceled or rejected these funds will be released and will return to your account according to your financial institution's policies (typically 3-10 business days).	
This envelope is pending review and fees may change.	
Case Fee Information	\$285.70
Case Fees	\$277.00
Payment Service Fees	\$8.70
Petition	\$24.00
• Optional Services	Fee Per Quantity

• Issue Citation	\$8.00	3	\$24.00
Total: \$309.70 (The envelope still has pending filings and the fees are subject to change)			

Document Details	
Lead Document	Plaintiff's Original Petition.pdf
Lead Document Page Count	75
File Copy	Download Document
This link is active for 30 days.	

For technical assistance, contact your service provider



Need Help? [Start Here](#) No Lawyer? Visit: <https://efiletexas.gov/contacts.htm> Email: support@eFileTexas.gov

Please do not reply to this email. It was automatically generated.