

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners

Date: August 22, 2008

Thru: La Donna Castañuela, Chief Clerk

From:  Brent Wade, Director, North Central and West Texas Area

Subject: Agenda Executive Summary for Approval of Fiscal Year (FY) 2009 Proposed Assessment for Annual Costs for Watermaster Operations in the Rio Grande Water Division Set for September 10, 2008 Uncontested Agenda

Summary of Request:

The Rio Grande Watermaster Program seeks approval of its Fiscal Year (FY) 2009 proposed assessment for annual costs of operations based on its operating budget which consists of a \$50.00 base fee applicable to each assessment account. A penalty of 5.0% of any delinquent fee due shall be imposed on a person who fails to pay the required fee when due and if the person fails to pay the fee within 30 days after the day the fee is due, an additional 5.0% penalty shall be imposed. Delinquent fees will accrue interest beginning on the 61st day after the due date. The yearly interest rate on all delinquent fees required under this title is the prime rate plus one percent, as published in the *Wall Street Journal* on the first day of each calendar year that is not a Saturday, Sunday, or a legal holiday. Penalties and/or interest fees may be waived by the Executive Director for good cause. The Executive Director estimates the proposed assessment of Seven Hundred Two Thousand, Seven Hundred Three Dollars (\$702,703) will generate revenue of Six Hundred Eighty One Thousand, Six Hundred Twenty One Dollars (\$681,621) for FY'09.

Authority: TWC § 11.329
TAC § 12.1; 12.3; 12.5

Staff Recommendation:

Approval of the Rio Grande Watermaster Program FY'09 Assessment for Annual Cost of Operations

Contact: Erasmio Yarrito: (956) 430-6010

CHIEF CLERKS OFFICE

2008 AUG 22 AM 10: 58

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST**

AGENDA REQUESTED: September 10, 2008

DATE OF REQUEST: July 11, 2008

NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Erasmo Yarrito, 956-430-6019; Tracy Miller 239-4127

CONSIDERATION OF FISCAL YEAR 2009 ASSESSMENT OF ANNUAL COSTS FOR WATERMASTER OPERATIONS IN THE RIO GRANDE WATER DIVISION. Pursuant to TWC Section 11.329; and TAC Sections 12.1; 12.3; 12.5 and 303.71 of the Commission Rules, the Executive Director requests that the Commission consider Watermaster assessment of annual costs for the fiscal year beginning September 1, 2008, and ending August 31, 2009, for appropriators in the Rio Grande Water Division which extends from Fort Quitman, Texas to the mouth of the Rio Grande River, excluding the watersheds of the Pecos and Devils Rivers; and includes that portion of the Nueces-Rio Grande Coastal Basin lying in Hidalgo, Cameron, Willacy and Starr counties and approve \$702,703.00 as the amount to be assessed for annual costs.

Chief Clerk Must Send Notice of the Application/Hearing: No

Type of Matter: Budget

County: The 16 Counties Within the Rio Grande Watermaster's Jurisdiction (Brewster, Cameron, Dimmit, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, Willacy, Zapata)

Uncontested: X **Contested:**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing the Annual Cost of Watermaster Operation for the Rio Grande Water Division and Associated Basins for the fiscal year beginning September 1, 2008, and ending August 31, 2009: Docket No. 2008-1065-BGT Rio Grande Watermaster

On September 10, 2008, after proper notice and public hearing as provided in Texas Water Code §11.329, came to be considered by the Texas Commission on Environmental Quality ("Commission") the matter of cost for the Watermaster operations in the said Division for the fiscal year beginning September 1, 2008, and ending August 31, 2009. After reviewing the supporting documentation, the Commission finds as follows:

- (1) The area subject to the order and referred to as the "Rio Grande" herein extends from Fort Quitman, Texas to the mouth of the Rio Grande River, excluding the watersheds of the Pecos and Devils River; and includes that portion of the Nueces-Rio Grande Coastal Basin lying in Hidalgo, Cameron, Willacy and Starr Counties;
- (2) Pursuant to Texas Water Code §11.329, the holders of water rights which are to be administered by the Watermaster may be assessed the compensation and necessary expenses of a Watermaster, assistant Watermasters and other necessary employees;
- (3) 30 Texas Administrative Code (TAC), §§303.71-303.73 set forth formulas and procedures for the assessment of costs of the Watermaster operations in the Rio Grande;
- (4) The procedures set out in Texas Water Code §11.329 and 30 TAC §303.71 were followed for this assessment;
- (5) The compensation and necessary expenses of a Watermaster, assistant Watermasters, and other necessary employees for the fiscal year beginning September 1, 2008, and ending August 31, 2009, will require the amount to be assessed in the sum of SEVEN HUNDRED TWO THOUSAND, SEVEN HUNDRED THREE AND NO/100 DOLLARS (\$702,703.00).
- (6) The charges, fees, formulas for assessment rates, and method for assessing and levying costs approved below constitute an equitable apportionment of costs, as required by Texas Water Code §11.329;
- (7) All requirements of Texas Water Code §11.329, and 30 TAC §§303.71-303.73 have been met.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

- (1) That the amount of SEVEN HUNDRED TWO THOUSAND, SEVEN HUNDRED THREE AND NO/100 DOLLARS (\$702,703.00) is approved as the total amount to be assessed for annual costs of the Rio Grande Watermaster operations during the fiscal year beginning September 1, 2008, and ending August 31, 2009, and that such amount is assessed against the water rights holders in the Rio Grande Water Division and associated basins in the manner described in this order and pursuant to 30 TAC §§303.71-303.73;
- (2) That the following charges, rates, fees, formulas for assessment rates and method for assessing and levying cost are approved and shall be implemented by the Executive Director:
 - (a) Except as provided for "no charge" water and excess flow permits below, a base charge for each assessment account of FIFTY AND NO/100 DOLLARS (\$50.00);
 - (b) No base charge for "no charge" water diverted pursuant to Texas Water Code §11.0871;
 - (c) No base charge for excess flow water rights authorized under 30 TAC §303.61;
 - (d) Assessment rates for each assessment account to be calculated by the Executive Director in accordance with the procedures set forth in 30 TAC §303.72;
 - (e) Assessment of costs and levy of assessments for each account in accordance with the procedures set forth in 30 TAC §303.73;
 - (f) A penalty of 5.0% of the fee due shall be imposed when the assessment is not paid on time. If the assessment is not paid within 30 days after the day on which the fee is due, an additional 5.0% penalty shall be imposed pursuant to 30 TAC Chapter 12;
 - (g) Delinquent fees accrue interest beginning on the 61st day after their due date;
 - (h) Penalties and/or interest under this section may be waived by the Executive Director for good cause;
- (3) That the Executive Director shall specify dates by which payments assessed pursuant to this order shall be paid or postmarked.

ISSUED THIS DATE: _____

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners, TCEQ

Date: August 22, 2008

Thru: *JAS*
John Sadlier, Deputy Director
Office of Compliance and Enforcement

JAS
8-20
Jennifer A. Sidnell, Director
Field Operations Support Division

BW
8-20
Brent Wade, Director
North Central and West Texas Area

From: *JM*
JAS
8-20
Erasmio Yarrito, Jr., Rio Grande Watermaster Program

Subject: Fiscal Year (FY) 2009 Proposed Assessment of Annual Costs of Operations for the Rio Grande Watermaster Program

The Rio Grande Watermaster fund is required by Texas Water Code (Code) §11.329 to pay compensation and expenses of the Watermaster and to pay expenditures for equipment, facilities, and capital expenditures necessary for Watermaster operations when recommended by the Watermaster Advisory Committee (WAC) and the Executive Director and approved by the Commission.

The attached document, "Rio Grande Watermaster Operations", was presented to the Rio Grande WAC during a public meeting on June 18, 2008, in Harlingen, Texas. The third column, "FY '09 Operating Budget Needs" indicates the projected program needs within the FY'09 appropriation, and the "FY'08 Anticipated Expenditures" (column 2) shows projected program expenditures for the current fiscal year. Also, attached to this memo is a copy of the public meeting notice for the June, 2008 Rio Grande WAC meeting that provided thirty (30) day notice of the budget hearing as required by the Code. An additional public meeting notice was mailed on August 8, 2008 to all affected water right holders regarding this budget item scheduled for the September 10, 2008 commission agenda. A copy of that notice and the mailing affidavit from the Chief Clerk's office are also attached.

During their meeting, the WAC acknowledged the "FY'08 Anticipated Expenditures" in the amount of \$663,624, as presented. The WAC also agreed with staff's recommendation for the proposed "FY'09 Operating Budget Needs" in the amount of \$681,622. A copy of the WAC meeting agenda is attached for your information.

Staff recommends the "FY'09 Operating Budget Needs" in the amount of \$681,622. Using this budget amount, the program calculates its assessment based on a 97% collection rate; therefore, the total assessment amount is \$702,703 with a municipal rate of \$0.3087. This staff proposal represents an increase of \$0.028 from the previous year's municipal rate of \$ 0.2807. The calculated rate for FY'09 is expected to generate revenue in excess of the Comptroller's Biennial Revenue Estimate (BRE) when combined with the revenue estimates for the Concho River Watermaster Program and the South Texas Watermaster Program. This combined excess revenue collection will provide access to the contingency Watermaster appropriations as authorized in Rider 33 of the FY'08-'09 General Appropriations Act.

FY'09 RGWM budget

August 22, 2008

Page 2

The total estimated amount of revenue in excess of the BRE for FY'09 is \$152,452. This additional revenue is necessary for the Watermaster programs to be self-sufficient and not rely on funding subsidization from TCEQ.

This memorandum requests Commission approval of the Rio Grande Watermaster Program operating budget and assessment for FY'09. If I can be of further assistance or should you have any questions regarding this matter, please contact me at 1-956-430-6010 or Tracy Miller, Watermaster Liaison, at 238-4127.

Rio Grande Watermaster Operations

Annual Appropriation Information

| | FY07 | FY08 | FY09 |
|---|---------------------|---------------------|---------------------|
| Legislative Appropriation Amount | 517,019.00 | 541,992.00 | 541,992.00 |
| Anticipated Rider Funding | | 33,106.06 | 63,457.92 |
| Estimated Fringe and SWCAP (not in Appropriation) | 49,680.00 | 57,383.68 | 76,172.00 |
| Estimated Total Fund Obligation | \$566,699.00 | \$632,481.74 | \$681,621.92 |

FY08 Budget/Anticipated Expenditures Compared to FY09 Operating Budget Needs

| Budget Categories | | FY08 Adjusted Budget | FY08 Anticipated Expenditures | FY09 Operating Budget Needs | Difference from FY08 to FY09 Budget |
|-------------------------------|------|----------------------|-------------------------------|-----------------------------|-------------------------------------|
| Salaries | | 416,603.35 | 416,603.35 | 464,742.00 | 48,138.65 |
| Longevity | | 12,321.00 | 12,321.00 | 12,321.00 | 0.00 |
| Salary Enhancements | (1) | 9,406.37 | 9,406.37 | 11,850.92 | 2,444.55 |
| Fringe | (2) | 110,922.29 | 110,922.29 | 74,292.00 | (36,630.29) |
| SORM | (3) | 1,473.00 | 1,473.00 | 940.00 | (533.00) |
| SWCAP | (4) | 2,162.92 | 2,162.92 | 1,880.00 | (282.92) |
| LAR Capital | (5) | 0.00 | 0.00 | 0.00 | 0.00 |
| Professional/Temp Services | (6) | 0.00 | 0.00 | 0.00 | 0.00 |
| Travel In-State | (7) | 15,000.37 | 15,000.00 | 15,000.00 | (0.37) |
| Travel Out-of-State | | 2,100.00 | 2,100.00 | 2,500.00 | 400.00 |
| Training | | 1,000.00 | 1,000.00 | 0.00 | (1,000.00) |
| Rent - Building | (8) | 45,558.11 | 45,558.11 | 45,637.00 | 78.89 |
| Postage | | 5,045.94 | 5,020.00 | 7,050.00 | 2,004.06 |
| Phone/Utilities | | 9,939.79 | 9,292.77 | 10,322.00 | 382.21 |
| Supplies - Consumables | | 25.44 | 25.44 | 100.00 | 74.56 |
| Other Operating Expenses | (9) | 1,170.95 | 1,157.40 | 1,146.00 | (24.95) |
| Fuels/Lubricants | | 15,955.17 | 15,771.18 | 17,500.00 | 1,544.83 |
| Rent - Machine & Other | | 6,160.20 | 6,160.80 | 5,341.00 | (819.20) |
| Facilities, Furniture & Equip | (10) | 9,649.95 | 9,649.95 | 11,000.00 | 1,350.05 |
| Capital Equipment - Non LAR | (11) | 0.00 | 0.00 | 0.00 | 0.00 |
| TOTAL | | \$664,494.85 | \$663,624.58 | \$681,621.92 | \$17,127.07 |

Notes:

- (1) Salary Enhancements are calculated based on 3.4% of 75% of total Salaries; these are projections only; actual expenditures will vary based on salary actions approved by management
- (2) Fringe includes employee benefits such as health insurance, social security insurance, and retirement
- (3) State Office of Risk Management (SORM) is a fee that is charged annually to the TCEQ; amount is estimated during budget development; actual expenditure may vary
- (4) Statewide Cost Allocation Plan (SWCAP) is a fee that is charged annually to the TCEQ for central services; amount is estimated during budget development; actual expenditure may vary
- (5) Legislative Appropriation Request (LAR) Capital includes all items exceeding \$25,000 in total agency cost (ex: vehicles, computers, monitoring equipment); must have legislative approval
- (6) Professional/Temp Services includes but is not limited to software development costs, summer interns, temporary employees
- (7) Travel In-State is capped at an agency level; an increase in WM travel funding cannot be accommodated without a corresponding decrease in travel funding in another agency program
- (8) A proportionate share of the annual TCEQ Regional Office building rent is charged to the Watermaster Program
- (9) Other Operating Expenses includes items designated by Comptrollers Office that do not fall into any remaining budget category (ex: annual vehicle inspection fees, vehicle decals, etc)
- (10) Facilities, Furniture & Equipment (FFE) includes but is not limited to non-LAR equipment less than \$5,000 in cost, non-consumable supplies, vehicle maintenance and repairs, etc
- (11) Capital Equipment - Non LAR includes capital items with a cost between \$5,000 and \$24,999

FY09 Proposed Assessment Calculation

| | |
|--|---------------------|
| FY09 Operating Budget Needs | \$681,621.92 |
| Assessment Necessary Based on 97% Collection Rate | \$702,703.00 |

Historical Assessment Comparison

| | FY07 | FY08 | FY09 |
|-------------------------|--------------|--------------|--------------|
| Total Assessment | \$630,000.00 | \$645,390.00 | \$702,703.00 |
| Municipal Rate | 0.2749 | 0.2807 | 0.3087 |

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

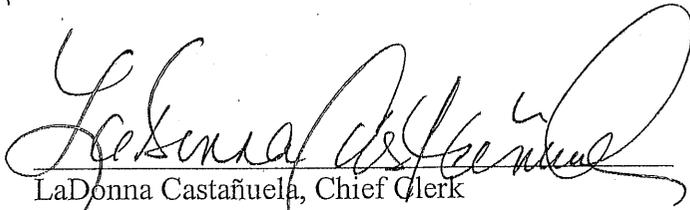


STATE OF TEXAS §

COUNTY OF TRAVIS §

I, LaDonna Castañuela, Chief Clerk of the Texas Commission on Environmental Quality, do hereby certify that the Notice of Consideration of the Proposed Assessment of Annual Costs for the Rio Grande Watermaster Program was mailed on the 8th day of August, 2008, to the persons on the attached mailing list.

Given under my hand and the seal of the Texas Commission on Environmental Quality, this 11th day of Aug., 2008.


LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality

(SEAL)

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

NOTICE OF CONSIDERATION OF PROPOSED ASSESSMENT OF ANNUAL COSTS FOR THE RIO GRANDE WATERMASTER PROGRAM

The Commissioners of the Texas Commission on Environmental Quality will consider the Rio Grande Watermaster Operation's budget and proposed assessment for costs for September 1, 2008 through August 31, 2009 (TCEQ Fiscal Year 2009), during a public meeting at:

**9:30 A.M. in Building E, Room 201S
located at 12100 Park 35 Circle
in Austin, Texas on
September 10, 2008**

This item is Docket No. 2008-1065-BGT, Consideration of an Order assessing costs of Watermaster operations in the Rio Grande Water District and associated basins which extends from Fort Quitman, Texas to the mouth of the Rio Grande River, excluding the watersheds of the Pecos and Devils Rivers; and includes that portion of the Nueces-Rio Grande Costal Basin lying in Hidalgo, Cameron, Willacy and Starr Counties.

The compensation and necessary expenses of the Rio Grande Watermaster Operations for the fiscal year is Six Hundred Eighty One Thousand Six Hundred Twenty One Dollars (**\$681,621.00**). Of this amount, Five Hundred Sixty Three Thousand Two Hundred Five Dollars (**\$563,205.00**) are needed for program staff base salaries and benefits (including longevity, salary enhancements, and fringe) and the remaining One Hundred Eighteen Thousand Four Hundred Sixteen Dollars (**\$118,416.00**) are needed for program operating costs. Based on a 97% collection rate, these necessary expenses require a total assessment of Seven Hundred Two Thousand Seven Hundred Three Dollars (**\$702,703.00**) with a municipal rate of **\$0.3087**.

This notice is provided to all holders of water rights as required by the Texas Water Code Section 11.329. You may attend this meeting and provide comments to the Commission concerning this item. Persons with disabilities who have special communication or other accommodation needs who are planning to attend this meeting should contact the Office of Administrative Services Facilities Liaison at (512) 239-0080. Requests should be made as far in advance as possible.

The Rio Grande Watermaster Advisory Committee (WAC) discussed and approved the proposed assessment and budget during a public meeting in Harlingen, Texas, on June 18, 2008. The public was invited to attend this WAC meeting via notice dated May 13, 2008.

If you have any questions or would like a copy of the proposed budget, please contact the Rio Grande Watermaster's Office at 956-430-6056 or (800) 609-1219, via fax at (956) 430-6052, or email at crubinst@tceq.state.tx.us.

May 2, 2008

To Watermaster Advisory Committee Members:

In order to comply with Texas Water Code §11.3261 and §11.329 requirements (as promulgated by Senate Bill 1406 in 1997), attached for your information is a **preliminary** Watermaster Program Proposed Budget for Fiscal Year 2009 (FY09). A detailed proposed budget will be presented to the committee on **June 18, 2008**. All water right holders will be notified of the Watermaster Advisory Committee meeting and public comments will be allowed.

Time line for Budget Approval

| Month | Action | Status |
|---------------------------|---|---|
| May, 2008 | Submit preliminary budget to WAC for 15 day comment period. | Completed via this notice |
| May, 2008 | Set date for WAC public meeting on the budget in June and send out notices to each water right holder at least 30 days prior to the public hearing. | Meeting set for June 18, 2008 . Public notice to be sent by 5/18/07. |
| June 18, 2008 | WAC public hearing on the proposed budget. | Pending |
| 2 weeks after WAC meeting | Submit detailed budget to TCEQ for management review and Commission consideration. | Pending |
| August, 2008 | Send out notices to each water right holder at least 30 days prior to Commission agenda | Pending |
| September, 2008 | Commission action on order establishing annual assessment rate. | Pending |
| Sept. – Oct., 2008 | Send out assessment invoices to water right holders. | Pending |

Preliminary calculations indicate that the total amount to be assessed will be **\$57,313.00 higher** than the \$645,390.00 assessed in FY08. This increase is the end result of several increases in the proposed operating budget for FY09 from the FY08 proposal discussed in June 2007. These changes from FY08 to FY09 include an increase in total salaries due to salary enhancements that took effect in FY08 and additional salary enhancements anticipated for FY09. There is also an increase in the cost for Postage, Fuels/Lubricants, and Facilities, Furniture and Equipment over last year's budget. **Please note that the budget does not include the 10% administrative fee as a line item and the proposed assessment provides funding needed to support the Watermaster Program without additional TCEQ subsidy.**

If you have any questions or comments, please do not hesitate to call me at (956)425-6010.

Sincerely,

Carlos Rubinstein
Rio Grande Watermaster

PUBLIC MEETING NOTICE

RIO GRANDE WATERMASTER ADVISORY COMMITTEE

DATE: Wednesday, June 18, 2008

LOCATION: Texas Commission on Environmental Quality
Harlingen Regional Office
1804 West Jefferson Avenue

TIME: 9:30 am

**PURPOSE: DISCUSS THE RIO GRANDE WATERMASTER PROGRAM
PROPOSED BUDGET FOR FISCAL YEAR 2009. PUBLIC IS
INVITED TO ATTEND, COMMENT AND PARTICIPATE.**

Note: Pursuant to Texas Water Code §11.329(b) the Rio Grande Watermaster is required to provide notice to water right holders, at least 30 days prior to holding a public hearing to discuss the proposed budget for the Rio Grande Watermaster operations. The Rio Grande Watermaster Advisory Committee will hold a public meeting to discuss the proposed Rio Grande Watermaster budget for fiscal year 2009 on June 18, 2008 at 09:30 am, said meeting to be held at TCEQ Harlingen Regional Office.

Notice Date: May 13, 2008

**Carlos Rubinstein
Rio Grande Watermaster**

For questions or for a copy of the Rio Grande Watermaster budget for fiscal year 2009, please feel free to call (956) 430-6056 or (800) 609-1219.

Special Notice

The Rio Grande Watermaster Advisory Committee, established in accordance with Texas Water Code §11.3261, serves the following purpose:

- (1) provide recommendations to the executive director regarding activities of benefit to the holders of water rights in the administration and distribution of water to holders of water rights;
- (2) review and comment to the executive director on the annual budget of the watermaster operations; and
- (3) other duties as may be requested by the executive director with regard to the watermaster operations or as requested by holders of water rights in a water division which the committee deems of benefit to the administration of water rights in water division.

The TCEQ appreciates and values input provided by the Rio Grande Watermaster Committee and is actively seeking interested participants to serve on the committee as vacancies become available. If you are interested in serving, or would like to nominate someone for appointment consideration, please contact the Rio Grande Watermaster's office at (956) 430-6056 or (800) 609-1219, via fax at (956) 430-6052, or email at crubinst@tceq.state.tx.us.

June 18, 2008
Rio Grande Watermaster Office
1804 W Jefferson Avenue
Harlingen, Texas
9:30 am

Agenda

- Call to order / Determination of a quorum.....Wayne Halbert
- Introductions.....Carlos Rubinstein
- Minutes from previous meeting.....Sonny Hinojosa
- Discuss the proposed budget for fiscal year 2009..... Carlos Rubinstein
- Update and discussion on Treaty compliance issues.....Carlos Rubinstein
- Discussion on nominees for WAC membership.....Wayne Halbert
- Watermaster reports.....Carlos Rubinstein
- IBWC water accounting ie..Brandes Report update.....Carlos Rubinstein
- Update and discussion on legislative session.....Wayne Halbert
- Public Comments and Concerns
- Future Meetings.
- Adjourn.

Wayne Halbert, Chairman