MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

JIM MATHEWS
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P.O. Box 1568
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February 13, 2012

Ms. Bridget C. Bohac
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin TX 78711-3087

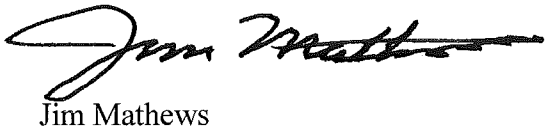
RE: Application by Upper Trinity Regional Water District for Water Use Permit No. 5821

Dear Ms. Bohac,

We represent the Town of Flower Mound (the "Town") regarding the referenced matter. Please find for filing the Town's reply to hearing request responses. We are providing copies of the Town's reply to the applicant, the Executive Director and the Office of Public Interest Counsel by US mail as required by 30 TAC 55.254(f).

Please revise your records to show me as the attorney of record for the Town and please send all future correspondence and notices in this matter to my attention on behalf of the Town. Please let me know if you have any questions.

Sincerely,



Jim Mathews

cc: Harlan Jefferson
Terry Welch
Service List

TCEQ DOCKET NO. 2012-0065-WR

APPLICATION BY	§	**BEFORE THE**
UPPER TRINITY REGIONAL	§	
WATER DISTRICT FOR	§	**TEXAS COMMISSION ON**
WATER USE PERMIT	§	
NO. 5821	§	**ENVIRONMENTAL QUALITY**

TOWN OF FLOWER MOUND'S REPLY TO HEARING REQUEST RESPONSES

The Town of Flower Mound (the "Town") submits this reply to hearing request responses regarding the referenced matter and would show as follows:

I. BACKGROUND

The Upper Trinity Regional Water District (the "District") has filed an application with the Texas Commission on Environmental Quality (the "TCEQ") for authorization to impound and divert surface water from the proposed Lake Ralph Hall reservoir, and to transfer surface water from that reservoir in the Sulphur River Basin to the Trinity River Basin (the "District's Application"). By letter dated March 21, 2006 the Town requested a contested case hearing on the District's Application. The Town also submitted oral and written testimony through two elected officials summarizing its objections to the application during the public meeting, which was referenced in the notice of the District's Application.

The Town has filed a request for a contested case hearing because it is a captive wholesale water customer of the District and if the District's Application is granted the Town will be "unconditionally obligated" to pay the District a higher rate for water than it is paying presently when the District issues bonds to pay for construction of the reservoir and pipeline used to transfer the water to the Trinity River Basin. As articulated in the Town's hearing request, the District's proposed Lake Ralph Hall reservoir costs too much and does too little. Moreover, the disproportionally high sedimentation rate in the watershed of the proposed reservoir threatens to shorten the project life, thereby increasing costs even more than estimated.

II. SUMMARY OF TOWN'S ARGUMENT

The District and OPIC have taken the position that the Town did not timely file a request for contested case hearing. The Executive Director has concluded the Town's hearing request was timely filed, but that the Town did not submit its hearing request using one of the authorized methods of service. These assertions are both factually and legally wrong. The Town timely filed its request for a contested case hearing by hand delivery of its request to TCEQ's mailroom before the application deadline as shown by certified copies of the commission's records.

The District and the Executive Director argue that the Town's hearing request should be denied because the Town is not an "affected person" under the TCEQ's rules. OPIC encouraged the Town to seek party status at the SOAH hearing based on its view that the Town's hearing request was untimely. The arguments of the District and the Executive Director are, again, both

factually and legally wrong. The Town will be uniquely affected by the cost of the project, the potential for shortened life due to sedimentation, and the price that the Town, as a captive wholesale customer, would be "unconditionally obligated" to pay for water from the proposed Lake Ralph Hall project. These are factors which the TCEQ is required by law to consider in determining whether to approve the District's Application for an interbasin transfer. Accordingly, the Town has a personal justiciable interest, separate and distinct from that of the general public, that is affected by the District's Application

III. ANALYSIS

The record clearly shows that the Town timely filed its hearing request and that the Town is an affected person having a right to a contested case hearing under the TCEQ's rules.

The Hearing Request was Timely Filed

All parties are in agreement that the deadline for filing a request for contested case hearing in this matter was March 22, 2006. The District and OPIC both assert that the Town did not file its hearing request by that deadline. The Executive Director concluded that the Town's filing was timely, but that it failed to meet the technical requirement of filing by United States mail, facsimile, or hand delivery. As clearly demonstrated by the certified copy of the FedEx airbill transmitting the Town's hearing request, the Town's request was addressed to the Chief Clerk and received by the TCEQ Mail Center via hand delivery by FedEx courier on March 22, 2006. See Exhibit 1. Therefore, the Town's request was timely filed pursuant to TCEQ's rules.[1]

The Town is an Affected Person under the Interbasin Transfer Statute

Because the District's Application involves an interbasin transfer, there are legislatively mandated factors the TCEQ must consider in addition to the factors it must consider for a water right application not involving an interbasin transfer. The District, the Executive Director and OPIC all omitted from their responses any reference to the interbasin transfer statutory provisions that support finding the Town is an affected person.[2] According to the statute, the District's application for an interbasin transfer "must include", *inter alia*, information pertaining to: (1) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and (2) the projected effect on user rates and fees for each class of ratepayers. Tex. Water Code §11.085 (b)(3) & (4). Furthermore, the TCEQ is required to "weigh the effects of the proposed transfer by considering" the information required to be submitted by the applicant, among other things. Id. at §11.085 (k)(5). The commission may grant an application only to the extent that "the detriments to the basin of origin during the proposed transfer period

[1] For documents other than documents filed using the chief clerk's designated electronic filing system, "the time of filing is upon receipt by the chief clerk as evidenced by the date stamp affixed to the document by the chief clerk, *or as evidenced by the date stamp affixed to the document or envelope by the commission mail room, whichever is earlier*." 30 TAC §1.10 (e). (emphasis added)

[2] The District attempts to dismiss the Town's hearing request by asserting that the issues raised by the Town are interests common to members of the general public. The District's assertions are particularly disingenuous in light of the its firsthand knowledge of the financial obligations imposed upon the Town as a result of its contract with the District.

are less than the benefits to the receiving basin during the proposed transfer."[3] The Town's interests are directly related to the issue of benefits to the receiving basin. The Town is an affected person because: (1) it would have to pay more for water it purchases from the District when the District issues bonds to construct the Lake Ralph Hall reservoir and associated pipeline; (2) water supplies from Lake Ralph Hall are not needed at this time; (3) less costly water supply sources are available to the District; and (4) the cost of water is one of the factors the TCEQ is required to consider when determining whether to grant the District's Application. See Exhibits 1 – 3.

The Town is an Affected Person under the TCEQ's Procedural Rules

All the parties agree that the TCEQ's procedural rules applicable to determining whether the Town is an affected person are those at 30 TAC Chapter 55, Subchapter G. Under those rules, an affected person "is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 TAC §55.256 (a). In determining whether the party requesting a contested case hearing is an affected person the TCEQ may consider all relevant factors including, but not limited to, the following:

1. whether the interest claimed is one protected by the law under which the application will be considered;
2. distance restrictions or other limitations imposed by law on the affected interest;
3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
4. likely impact of the regulated activity on the health, safety, and use of property of the person;
5. likely impact of the regulated activity on use of the impacted natural resource by the person; and
6. for governmental entities, their statutory authority over or interest in the issues relevant to the application. Id. at §55.256 (c).

An interest common to the members of the general public does not qualify as a personal justiciable interest. As discussed below, the Town has a personal justiciable interest in the District's Application that is not common to members of the general public.

The Town has entered into a water supply contract with the District. See Exhibit 4 (excerpts from the contract). Under the contract with the District:

1. The Town is contractually obligated to purchase water from the District.[4]
2. The rates charged to the Town must be sufficient to cover the District's operation and maintenance costs, and its bond debt service, among other things.[5]

[3] Tex Water Code § 11.085(l) 1.

[4] Section 4.05 of the water supply contract with the District obligates the Town to take or pay for the water supplied under the contract.

[5] Section 5.03 of the water supply contract with the District requires the Town to pay a charge sufficient to cover its portion of the Annual Requirement and the Annual Requirement covers bond service (section 1.1 (8)), among other things. Exhibit 4.

3. If the District were to issue additional bonds to finance the construction of Lake Ralph Hall, the District would be authorized to raise the Town's rates to cover its debt service costs.[6]
4. The District has agreed that it will pay for improvements to its water supply system and facilities by issuing bonds.[7]
5. The Town would be unconditionally obligated to pay the higher rate even if it does not take any water from the District.[8]
6. The Town would be unconditionally obligated to pay the higher rate for so long as the District has bond indebtedness.[9]

Unlike members of the general public, the Town is contractually obligated to purchase water from the District, and to pay for any debt incurred by the District in financing Lake Ralph Hall and the pipeline that will connect it to the District's system which serves the Town. Moreover, the Town would have to pay those higher rates even if it does not take any water from the District. Accordingly, the Town has a personal justiciable interest related to an economic interest affected by the District's application. Id. at §55.256 (a). Put differently, the Town is an affected person because it is a captive wholesale customer of the District and if the District's Application is granted the District would be authorized to raise the rates charged to the Town after issuing bonds to construct the project. See *Bosque River Coalition v. Texas Commission on Environmental Quality*, 347 S.W.3d 366, 378 (Tex. App. – Austin 2011, pet. filed) (*finding that an association was an affected person*).

The Town's interest in this matter is to ensure that it is not charged an unreasonable rate for water by the District. The Town is an affected person because its interests are protected by the law under which the District's Application will be considered. Id. at §55.256 (c)(1). As noted, provisions in section 11.085 of the Texas Water Code require the TCEQ to consider the rates to be charged for water that is transferred under the authority of an interbasin transfer permit. Because the Town's interest is to ensure that it is not charged an unreasonable rate and because the TCEQ must consider the rates to be charged, the Town's interests are protected by the law under which the District's Application will be considered. For those same reasons the Town is an affected person because it has an economic interest in the issues relevant to the application. Id. at §55.256 (c)(6).

Finally, the TCEQ may grant the District's Application only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin. Tex. Water Code 11.085 (l). The Town's evidence it intends to introduce at the hearing will show the District cannot meet that standard because the District's inflated demand projections and its underestimated cost estimates for the project indicate the District will provide little if any benefit to the receiving basin. Moreover, the Town's evidence will show that the benefits to the receiving basin do not outweigh the detriments to the basin of origin.

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[6] Section 5.06 of the water supply contract with the District authorizes the District to raise rates if it issues bonds. Exhibit 4.

[7] Section 5.01 of the water supply contract with the District states that improvements of the System and System facilities (which would include the proposed reservoir and pipeline) will be paid for by issuing bonds. Exhibit 4.

[8] Sections 4.04 and 6.11of the water supply contract with the District. Exhibit 4.

[9] Under section 7.03 of the water supply contract with the District, the contract remains in effect for as long as the District has outstanding bonds. Exhibit 4.

Accordingly, the Town's participation will be beneficial in allowing the TCEQ to make a decision on one of the crucial factors in this case.

IV. ISSUES TO BE CONSIDERED DURING CONTESTED CASE HEARING

Because the Town is an affected person, its request for contested case hearing should be granted. 30 TAC §55.255 (b)(2). Furthermore, the Town should not be restricted to introducing evidence at the hearing related only to the issues discussed in this reply that are necessary to demonstrate the Town is an affected person. Instead, the Town should be entitled to introduce all relevant evidence related to the issues identified in all applicable provisions of the Texas Water Code including, but not limited to, the following:

1. Costs of constructing Lake Ralph Hall
2. The cost of water supplied to the District from Lake Ralph Hall
3. The projected effect of Lake Ralph Hall on user rates and fees
4. Financial condition/stability of the District
5. Supply and demand projections pertaining to need to construct Lake Ralph Hall to transfer water to the Trinity River Basin
6. Sedimentation rates for Lake Ralph Hall
7. Wastewater reuse estimates
8. Availability and cost of alternative supplies for providing water to the District

All of those disputed issues are relevant under the applicable sections of the Texas Water Code and the Town should have the opportunity to introduce evidence regarding all issues relevant to the District's Application during the hearing.

V. PRAYER

The Town requests that the TCEQ find the Town's hearing request was timely filed, and that the Town is an affected person. The Town further requests that the TCEQ grant the Town's request for a contested case hearing and transfer the District's Application to SOAH for hearing. The Town also requests that the TCEQ provide a list of disputed issues to SOAH as discussed above.

Respectfully submitted,
Mathews & Freeland, L.L.P.
327 Congress Ave., Ste. 300
Austin, Texas 78701
Telephone (512) 404-7800
Facsimile (512) 703-2785

By:

Jim Mathews
TBN: 13188700
email: jmathews@mandf.com
ATTORNEYS FOR TOWN OF FLOWER MOUND

CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of February, 2012 a true and correct copy of the foregoing document was served by US mail or electronic mail on the following:

FOR THE UPPER TRINITY REGIONAL WATER DISTRICT:
Martin C. Rochelle
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave
Suite 1900
Austin, TX 78701
Fax: (512) 472-0532

FOR THE EXECUTIVE DIRECTOR:
James Aldredge
Texas Commission on Environmental Quality
P.O. Box 13087, MC 173
Austin, TX 78711

FOR THE OFFICE OF PUBLIC INTEREST COUNSEL:
Amy Swanholm
Texas Commission on Environmental Quality
P.O. Box 13087, MC 103
Austin, TX 78711

Jim Mathews

List of Exhibits

1. Flower Mound's Written Request for Contested Case Hearing and FedEx Airbill
2. Flower Mound's Comments Submitted at Public Meeting
3. Executive Director's Response to Comments
4. Excerpts from Flower Mound's Water Supply Contract With Upper Trinity Regional Water District

Exhibit 1

COUNTY OF TRAVIS
I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on
Bridget C. Bohac FEB 03 2012
Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality

Customer Seal only when using a FedEx Shi

FedEx PRIORITY OVERNIGHT WED
emp# 480151 21MAR06
Deliver By: 22MAR06 A1
TRK# 8542 6863 3377 FORM 0215
AUS
78753 -TX-US A8 MMRA

FedEx Express US Airbill
FedEx Tracking Number 8542 6863 3377
Form ID No. 0215 Recipient's Copy

RECIPIENT: PEEL HERE
NO POUCH NEEDED.
See back for peel and stick application instructions.

1 From This portion can be removed for Recipient's records.
Date 3.21.06 FedEx Tracking Number 854268633377
Sender's Name Mayor Jody Smith Phone 972 874 6070
Company TOWN OF FLOWER MOUND
Address 2121 CROSS TIMBERS RD Dept/Floor/Suite/Room
City FLOWER MOUND State TX ZIP 75028-2602

2 Your Internal Billing Reference

3 To
Recipient's Name La Donna Castañuela Office Chief Clerk Phone 512 239 3300
Company Texas Commission of Env. Quality
Recipient's Address 12100 Park 35 Circle Bldg F. Rm 1101
We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept/Floor/Suite/Room
Address
To request a package be held at a specific FedEx location, print FedEx address here.
City Austin State TX ZIP 7[illegible]
0320458363

8542 6863 3377

4a Express Package Service To add SATURDAY Delivery, see Section 6. *Packages up to 150 lbs.* *To most locations.
- [X] FedEx Priority Overnight — Next business morning.*
- [ ] FedEx Standard Overnight — Next business afternoon.*
- [ ] FedEx First Overnight — Earliest next business morning delivery to select locations.*
- [ ] FedEx 2Day — Second business day.*
- [ ] FedEx Express Saver — Third business day.*

FedEx Envelope rate not available. Minimum charge: One-pound rate.

4b Express Freight Service To add SATURDAY Delivery, see Section 6. *Packages over 150 lbs.* **To most locations.
- [ ] FedEx 1Day Freight — Next business day.**
- [ ] FedEx 2Day Freight — Second business day.**
- [ ] FedEx 3Day Freight — Third business day.**

* Call for Confirmation:

RECEIVED MAR 22 2006 TCEQ MAIL CENTER

5 Packaging * Declared value limit $500.
- [ ] FedEx Envelope*
- [X] FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak
- [ ] FedEx Box
- [ ] FedEx Tube
- [ ] Other

6 Special Handling Include FedEx address in Section 3.
- [ ] SATURDAY Delivery — Available ONLY for FedEx Priority Overnight, FedEx 2Day, FedEx 1Day Freight, and FedEx 2Day Freight to select ZIP codes.
- [ ] HOLD Weekday at FedEx Location — Not available for FedEx First Overnight.
- [ ] HOLD Saturday at FedEx Location — Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.
- [X] No
- [ ] Yes — As per attached Shipper's Declaration.
- [ ] Yes — Shipper's Declaration not required.
- [ ] Dry Ice — Dry Ice, 9, UN 1845 ____ x ____ kg
- [ ] Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment Bill to: Enter FedEx Acct. No. or Credit Card No. below. Obtain Recip. Acct. No. [ ]
- [X] Sender — Acct. No. in Section 1 will be billed.
- [ ] Recipient
- [ ] Third Party
- [ ] Credit Card
- [ ] Cash/Check

Total Packages	Total Weight	Total Charges
1	6	Credit Card Auth.

†Our liability is limited to $100 unless you declare a higher value. See the FedEx Service Guide for details.

8 *NEW* Residential Delivery Signature Options If you require a signature, check Direct or Indirect.
- [ ] No Signature Required — Package may be left without obtaining a signature for delivery.
- [ ] Direct Signature — Anyone at recipient's address may sign for delivery. *Fee applies.*
- [ ] Indirect Signature — If no one is available at recipient's address, anyone at a neighboring address may sign for delivery. *Fee applies.*

519

Rev. Date 5/05•Part #158279•©1994–2005 FedEx•PRINTED IN U.S.A.•SRF

THE STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on
Bridget C. Bohac FEB 03 2012
Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality

THE TOWN OF FLOWER MOUND TEXAS

2006 MAR 23 PM 2:24
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHIEF CLERKS OFFICE
OPA
HR
MAR 3 2006
BY

March 21, 2006

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
MC 105
P.O. Box 13087
Austin, TX 78711-3087

WR 13832

RE: Revised Notice of an Application for a Water Use Permit and Public Meetings dated February 8, 2006

Application No. 5821 submitted by the Upper Trinity Regional Water District

Dear Ms. Castañuela,

In accordance with the above referenced notice and application, The Town of Flower Mound submits the following information.

Item 1

Name:	The Town of Flower Mound
Contact Person:	Cheryl Davenport, CIP Manager
Mailing Address	2121 Cross Timbers, Flower Mound, TX 75028
Daytime Phone	972-874-6314
Fax	972-874-6472

Item 2

Applicants Name	Upper Trinity Regional Water District
Permit Number	5821

Item 3

The Town of Flower Mound requests a contested case hearing.

Item 4

A brief and specific description of how we would be affected by the application in a way not common to the general public. The Town of Flower Mound has six specific reasons for requesting the contested hearing as listed below.

1) Outdated construction cost estimates for construction of Lake Ralph Hall are understated. Recently, the UTRWD submitted a bill to the Town of Flower Mound in the amount of $4.1 million for a six month delay in construction of a Water Treatment Plant in 2004. Subsequent to that increase, construction costs have increased substantially due to recent price increases in fuel and materials and the effects of hurricanes along the Gulf Coast in 2005. Cost estimates for the construction of Lake Ralph Hall should be updated and indexed to inflation.

2) The fragile financial condition of the UTRWD indicates that they do not have the financial strength to follow through with the project. The UTRWD Comprehensive Annual Financial Report (CAFR) as of September 30, 2005 indicates that their Net assets invested in capital assets – net of related debt is a negative $15 million. In other words, the UTRWD is upside down on its assets and debt. Their current debt is $295 million and exceeds that of many of its largest member communities including Highland Village, Flower Mound, Lewisville, and Carrollton. State participation debt owed to the Texas Water Development Board is $55 million plus accrued, unpaid interest of $16 million.

3) Inflated population projections in connection with surplus reserves do not make this additional water supply necessary. Comparison of population estimates used by Region C and UTRWD to selected community build out projections indicate that the Region C/UTRWD population estimates exceed those of the communities by 41% overall. In addition, the UTRWD Surplus as shown in the 2006 Region C Water Plan is 17% - 35% of their Supply and 20% - 54% of their Demand over the 50 year period shown in the report. The other regional water suppliers show surpluses of 1% -26% of Supply and 1% - 35% of Demand. The UTRWD higher than average surplus plus inflated population estimates has exponentially overstated the need for Lake Ralph Hall.

4) Sedimentation rates are disproportionately high for the region and bear further analysis. On May 13, 2005, Kellogg Brown & Root, Inc. (KBR) issued a report titled "Preliminary Technical Review of Sedimentation Study Issues". The report identified three levels of analysis regarding Lake Ralph Hall Sedimentation. A Level 1 analysis is a qualitative assessment that relies on field observations, data collection, and engineering experience. This type of assessment is not derived from modeling or calculations and would look at questions regarding sediment transport, channel hydraulics and stability, and basin characteristics. The

primary purpose of this work was to determine if a more detailed quantitative analysis would be required. A Level 1 analysis is not sufficient to challenge the viability of the Lake Ralph Hall project. The Lake Ralph Hall Sedimentation Potential Study was issued by KBR in December 2005 and concluded that the proposed reservoir is subject to a rate of sedimentation that is disproportionately high for the region and high enough that the project life may be significantly shortened. On March 6, 2006, the Flower Mound Town Council approved a work order with KBR for a Level 2 Sedimentation Analysis. A Level 2 analysis is a quantitative but very simplified assessment of the river sediment transport. The scope of work is a quantitative study to calculate the volumetric rate of sedimentation over the anticipated reservoir lifespan. Both the Level 1 Sedimentation Study and the Level 2 Scope of Work are attached.

5) Per unit cost calculations for Lake Ralph Hall do not promote an equable comparison among proposed reservoirs because the calculations for Lake Ralph Hall include reuse estimates. The agenda item and Resolution opposing the utilization of water reuse estimates by the Region C Water Planning Group and UTRWD is attached.

6) A disproportionate amount of costs will be borne by the Town of Flower Mound. The UTRWD Fiscal Year 2006 Operating Budget indicates that the Town of Flower Mound will contribute 32% of the revenue to the District. This revenue contribution is used to pay operating expenses and debt service. If the population and demand estimates are not realized, the Town of Flower Mound will be responsible for 32% of the costs of Lake Ralph Hall.

Item 5

The location and distance of The Town of Flower Mound relative to the proposed activity is approximately 80 miles.

On March 20, 2006, The Town of Flower Mound passed a Resolution requesting a contested case hearing. The resolution is attached. Thank you for consideration of this request for a contested case hearing.

Sincerely,

Jody A. Smith
Mayor

2121 oss Timbers Road • Flower Mound, Texas 75028 • Office: 972/874-6310 • Fax: 972/874-6472 • TDD: 1-800-RELAY-TX

Exhibit 2

43832

OPA RECEIVED

MAR 28 2006

AT PUBLIC MEETING

TCEQ Lake Ralph Hall Public Hearing
Paul Stone Speech
Monday, March 28 2006

Hello…My name is Paul Stone and I serve as the Mayor Pro-Tem for the Town of Flower Mound. I am here today representing our residents and Town Council.

Please allow me to start by thanking you all for the work you do and for the time and effort you dedicate to planning for our State's water needs.

As you know, Flower Mound is located here in Denton County. We are the Upper Trinity Regional Water District's largest member and its largest customer. We purchase approximately 32% of the Upper Trinity's annual water output and contribute approximately 35% of the District's annual revenue.

Our Town Council and residents are opposed to the construction of Lake Ralph Hall based upon a number of factors, the most significant of which are the inability of the District to adequately demonstrate a need for this reservoir, the environmental concerns associated with the proposed site, and the abundance of more cost-effective water that is already available to our region from other sources.

The construction of Lake Ralph Hall is being justified based upon inflated and outdated population projections that are being utilized by both the Upper Trinity Regional Water District and Region C. More than 20 entities have requested that the projections for their communities be lowered.

Population projections for our region have fallen short for the past six years. The Upper Trinity Regional Water District's capacity and available water supply already far exceeds its demand. When the District's new Treated Water Plant system goes online this Summer, they will be utilizing only 45% of their capacity.

We question the need to construct Lake Ralph Hall, drive landowners from their property, and increase the cost of water in Denton County when population estimates are falling, there will not be enough residents to support a new lake, and there is more than enough water available to our region from current sources to sustain the population that will be here.

In addition to a lack of need, we also oppose Lake Ralph Hall based upon a variety of environmental concerns surrounding the proposed site. It's well known that the soil in that region and along the North Sulfer River is prone to erosion.

As you know, excessive sedimentation can drastically reduce the productive lifespan of a lake and create a need for costly mitigation measures in the future. A preliminary engineering report has indicated that the sedimentation rates for Lake Ralph Hall will be disproportionately high.

For us, it is a simple question of "Why build a lake on an environmentally risky site that you know will suffer from excessive erosion and reduce the lake's productivity?"

Our community has commissioned an independent engineering firm to conduct an in-depth study of the site to provide a more accurate assessment of the potential problems. We ask that you not permit Lake Ralph Hall until this assessment is done and take it into consideration prior to making a decision.

We also question the necessity to construct Lake Ralph Hall based upon its ability to truly make a difference in our water demand.

According to the Upper Trinity Regional Water District, at its productive peak, Lake Ralph Hall will only produce 30 million gallons per day. Relatively speaking, this is not a high-producing reservoir.

Dallas Water Utilities, the Upper Trinity's primary water supply, has already committed to providing the Upper Trinity with additional water at a much lower cost than is projected for Lake Ralph Hall.

If Lake Ralph Hall were not permitted, and thus excluded from the Upper Trinity's 50-year plan, the District's additional water supply strategies would be able to meet the region's projected water needs while still providing a surplus.

Again we question, why build a lake that is going to make such a minimal impact upon our region's water supply needs at such a high cost.

In closing, please allow me to request that TCEQ fully evaluate the population projections, assess the true need, consider the availability of water from other sources, and investigate the environmental issues surrounding the site prior to considering the permitting of Lake Ralph Hall.

We believe that Region C and the Texas Water Development Board were correct in 2001 when they listed this lake as an Alternative Water Supply Strategy, and nothing has changed over the past four years that would warrant permitting Lake Ralph Hall.

Thank you again for your time and consideration.

LEGISLATIVE SERVICES

Laurie Long Talking Points
TCEQ Lake Ralph Hall Public Hearing

Monday, March 27 2006

Hello. I am Laurie Long, Town Council representative for the Town of Flower Mound. I would like to begin by thanking you for the opportunity to speak today regarding the proposed Lake Ralph Hall. I greatly appreciate your time and consideration.

I am here today representing the residents and Town Council of Flower Mound. Our community is located in southwest Denton County in the service area for the Upper Trinity Regional Water District. We are opposed to the construction of Lake Ralph Hall for a variety of reasons, three of which I would like to bring to your attention today:

> #1 - It is less than an ideal site for a reservoir as it has significantly high sedimentation rates, is not spring fed, and will likely be dry during times of drought.
>
> #2 - Its financial and environmental costs are much greater than are being reported and result in a disproportionate cost-benefit ratio.
>
> #3 - There are significant financial and management concerns that must be rectified with the UTRWD before their operations unnecessarily expand and drain its membership of excessive funds.

Regarding the high sedimentation rates, a preliminary engineering report has indicated that the sedimentation rates for this region are disproportionately high. As you know, excessive sedimentation can drastically reduce the productive life of a lake, create additional environmental concerns, significantly increase the financial costs associated with the operation and maintenance issues of the reservoir, and potentially force the consideration of costly mitigation measures in the future, including check dams.

In addition to the high sedimentation rate, the lake is not spring fed, solely relies on rainfall, and has inferior water rights, which means that the lakes downstream will have to fill up first and Lake Ralph Hall would remain dry in times of a drought. The Town of Flower Mound recently authorized a more in-depth engineering study of the proposed lake site. For these reasons, we would like TCEQ to review the engineering studies and give this adequate consideration when determining the viability of permitting of Lake Ralph Hall.

In addition to the productivity concerns of the lake, serious issues exist regarding the excessive financial burden it is placing on its member entities. There are outdated and understated cost projections being utilized by Upper Trinity.

Relying on Upper Trinity's cost projections, Region C estimated that Lake Ralph Hall will cost an estimated $211 million, but an independent engineering report has estimated cost projections for Lake Ralph Hall at more than $260 million. These reports have indicated that their roadway, bridge, and construction costs are significantly low and this was reported even prior to Hurricane Katrina, which resulted in a 20% increase in construction costs by conservative estimates.

In addition, their mitigation projections estimated only $700 per acre, which by any reasonable estimate is understated for land in this area.

Prior to permitting this project, we would like to request that TCEQ require the Upper Trinity to provide updated cost estimates for the total cost of Lake Ralph Hall as well as a cost benefit analysis to determine the per unit cost of water from LRH as compared to alternative water supply sources being presented to TCEQ. This includes the tapping of existing lakes with pipelines as was discussed by some of the prior speakers. This method of accessing water is cheaper, does not displace residents, nor destroy our farms and ranch lands, which are also limited resources and should not be discounted.

The final concern regarding Lake Ralph Hall that I would like to address with you today relates to the financial instability of the Upper Trinity Regional Water District. The District has been operating at a financial loss for the past four years and currently has one of the highest debt loads of any comparable organization. If the permitting process is approved, it will elevate Upper Trinity's combined debt load to an excess of $1.15 billion (billion, with a B!), which is an unacceptable level of financial burden to place on the District's members.

There has been no demonstrated need that reflects urgency in building this new reservoir. Alternate water supply sources exist that can provide water to our residents at significantly lower financial and environmental costs, therefore they should be prioritized over Lake Ralph Hall. If water supply is truly UTRWD's primary motivation, why aren't these other alternatives being prioritized over Lake Ralph Hall?

In summary, I would like to request that TCEQ halt the permitting process for Lake Ralph Hall until the problems surrounding the location's sedimentation and productivity concerns, the underestimated and escalating price projections, the poor cost to benefit ratios, and the district's financial instability can be corrected.

In closing, from my own personal point of view, I believe the destruction of one of our natural resources (land) to merely relocate another (water), is not an acceptable reason to build a lake. This is in essence what Upper Trinity is proposing. They are not creating new water, they are just relocating it, at extreme costs to their members, our environment, and our neighbors in Fannin County.

Exhibit 3

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

APPLICATION FOR WATER USE PERMIT NO. 5821

2019 MAY 26 PM 4:08

APPLICATION OF	§	BEFORE THE CHIEF CLERKS OFFICE
UPPER TRINITY REGIONAL	§	TEXAS COMMISSION
WATER DISTRICT FOR	§	ON
WATER USE PERMIT	§	ENVIRONMENTAL
NO. 5821	§	QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO COMMENTS

The Executive Director files this Response to Comments made at the March 27 and 28, 2006 public meetings regarding the application of Upper Trinity Regional Water District (UTRWD) or Applicant) for Water Use Permit No. 5821, and the written comments received by the Texas Commission on Environmental Quality (TCEQ). The Executive Director responds to the timely submitted written and oral comments regarding this application.

BACKGROUND

UTRWD has applied for a Water Use Permit to construct and maintain a dam and reservoir (known as Lake Ralph Hall) with a maximum capacity of 180,000 acre feet of water and a surface area of 8,500 acres on the North Sulphur River, Sulphur River Basin, Fannin County, Texas for in-place recreation purposes and to divert and use not to exceed 45,000 acre-feet of water per year from Lake Ralph Hall at a maximum diversion rate of 205 cubic feet per second (cfs) (92,000 gpm) for municipal, industrial and agricultural purposes. Applicant requests to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson and Wise Counties within the Sulphur River and Trinity River Basins. Applicant also requests an interbasin transfer of water from the Sulphur River Basin to the Trinity River basin, and Applicant indicates that the reservoir may be overdrafted as part of a system operation with existing district supplies.

The application was received by TCEQ on September 2, 2003. Additional fees and information were received on May 3, 2004, July 7, 2004, July 19, 2004, and August 6, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 13, 2004. Mailed notice was issued on February 8, 2006. Published notice was provided in the Dallas Morning News, Beaumont Enterprise, Houston Chronicle, Paris News, Texarkana Gazette, and Wichita Falls Times Record News on February 13 and February 20, 2006. Public meetings were held in Ladonia and Lewisville, Texas on March 27 and 28, 2006, respectively. At the time this Response to Comments is filed, the technical review of this application has not been completed.

Comments were received from John S. Adams, Jeffrey Barnett, Eddie Belcher, Linda Belcher, Peggy Belcher, Pete Belcher, Janice Bezanson for the Texas Committee on

recommended water management strategy for City of Ladonia in the 2006 Water Plan will also be examined in the review process for this application. However, if TCEQ approves this application, the permit or order will not include a finding that the reservoir will prevent a future water crisis.

COMMENT 13: Lake Ralph Hall will go a long way to enable Denton County to satisfy its long range water requirements. It is an integral part of the regional plan, which reflects the best professional judgment of those responsible for taking prudent steps to provide water for the future. It compliments the existing water supply pipeline from Lake Chapman to northeast Denton County. (David Brune) Lake Ralph Hall is included in the Region C Water Plan as one of the recommended water management strategies for the Denton County area, and is a very important element of UTRWD's overall strategy for a dependable water supply for this region. (Kevin Mercer for Lantana, Jan Black for Greater Dallas Chamber) Diversity of water sources is absolutely critical. Lake Ralph Hall will be a smart future investment as the cities and utilities that rely on UTRWD may be assured of a safe, reliable water supply for their citizens. Communities cannot be prosperous without a clean, safe and abundant water supply. (Denton County Judge Mary Horn) The project can be completed in time to avoid water shortage. (Virginia Blevins for the City of Justin) The project can be expeditiously implemented. (David Brume). The lake can be built in time to meet the demand for additional water supply. (Dan Petty for North Texas Commission)

Region C and the Texas Water Development Board were correct in 2001 when they listed this lake as an Alternative Water Supply Strategy, and nothing has changed that would warrant permitting Lake Ralph Hall. (Paul Stone for the Town of Flower Mound) There is an abundance of more cost-effective water that is already available to our region from other sources. At a production rate of 30 million gallons per day, this will not be a high-producing reservoir. If Lake Ralph Hall is excluded from UTRWD's 50-year plan, the district's additional water supply strategies would be able to meet the region's projected water needs while still providing a surplus. (Paul Stone for Town of Flower Mound, Chris Torley for Town of Flower Mound) There has been no demonstrated need that reflects urgency in building this new reservoir. Alternate water supply sources exist that can provide water to our residents at significantly lower financial and environmental costs and should be prioritized over Lake Ralph Hall. (Laurie Long for Town of Flower Mound)

RESPONSE 13: The technical review of the application will include reviewing the 2006 Region C Water Plan. Denton County's population growth and projected water demands pertaining to UTRWD's water supply and this application will be evaluated in the review. The TCEQ will consider the factors identified in the approved water plan which address, among other things, the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer, the amount and purposes of use in the receiving basin for which water is needed; the proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures, and the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use. Based on the requirements in the Water

Code, the Executive Director is reviewing whether the appropriation will be put to beneficial use. The timing of the permit, if issued, is dependent on many factors, including time for technical review, contested case hearing, and any settlement discussions.

COMMENT 14: The north Texas area is growing in population; and a dependable water supply is needed. This project has considerable merit, and strikes a reasonable balance between impact to environment and benefits to the increased population. (Tim Fisher for the City of Denton) There seems to be no end to growth in the area, and no way to stop the demand for more water. (T. Jervis Underwood)

The need for Lake Ralph Hall is justified by UTRWD based on inflated and outdated population projections. However, population projections for the region have fallen short for the past six years, and UTRWD's capacity and available water supply already far exceeds its demand. There will not be enough residents to support a new lake, and there is more than enough water available to the region to sustain projected population. (Paul Stone for the Town of Flower Mound, Mayor Richard Cook, Town of Double Oak, Mayor Sue Tejml for Town of Copper Canyon, Mayor Jody Smith for Town of Flower Mound) Doesn't believe there is a need for this lake. (Crystal Cooper-Smith)

RESPONSE 14:. The Executive Director's staff is conducting a technical review of this application. The TCEQ will consider the factors identified in the approved Region C Water Plan which address, among other things, the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer, the amount and purposes of use in the receiving basin for which water is needed, and the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use. The projected population to be served by UTRWD and projected water demands will be evaluated in the review. With regard to the balance of water needs and protection of the environment, Texas law requires that the TCEQ perform an analysis to determine environmental impact and consider mitigation of that impact and, to the extent water is available after consideration of instream flow needs and freshwater inflow needs, the TCEQ will consider the beneficial uses established in statute and in TCEQ rules.

COMMENT 15: The City of Ladonia has sufficient water at this time, even if its population triples in size, so there is no need for additional water at this time. New reservoirs should be built only when all other existing sources have been utilized. (Shane Wallis) The county, city and water supply corporations all have sufficient sources of water. (Mike Yarbrough) In the permitting process, TCEQ should consider the need for the water for water supply. (Janice Bezanson for the Texas Committee on Natural Resources)

RESPONSE 15: The Executive Director's staff is reviewing the 2006 Region C Water Plan as part of the technical review of this application. The recommended water management strategies for City of Ladonia will be examined using the 2006 Region C Water Plan in the review. The commission must find that water requested in an application will be beneficially used.

COMMENT 29: Commenter expressed concern about building a dam across the Mexia-Talco Fault Line, and whether the dam will withstand a major earthquake. (Gary Cheatwood)

RESPONSE 29: Chapter 299 of TCEQ's rules, concerning dam safety, require applications which include a dam as part of a water rights application, to provide geotechnical, hydrologic and hydraulic reports for the site and other information regarding the site. The geotechnical report should address any faults in the vicinity of the dam. The Executive Director will review the report to ensure that all foundation issues are addressed.

Project costs

COMMENT 30: Commenter supports the site as a suitable site, and the cost will be reasonable. (Blake English) The cost is reasonable, and has the lowest cost of all alternatives. (Dan Petty for North Texas Commission) The cost analyses are inconsistent—ranging from $200 to $300 million. There is reason to doubt UTRWD will raise $300 million in the foreseeable future. Except for ten percent (10%) proposed to be raised via bonds by the town of Ladonia, there has been no public discussion about how UTRWD plans to finance the remaining ninety percent (90%). Commenter asks if the law provides delay of the project until UTRWD demonstrates a reasonable ability to raise $300 million. (Kenneth (Mike) Flesher) The City of Ladonia is not obligated as to any cost of the project. (Mayor Leon Hurse)

Construction cost estimates are significantly understated based upon the rapid increase in costs for building materials since the original estimates were prepared, especially due to recent price increases in fuel and materials and the effects of the 2005 Gulf Coast storms and flooding. Costs estimates should be updated and indexed to construction material inflation rates. The relative cost/benefit relationship should be reevaluated with regard to the higher costs and other cost effective alternatives available. (Mayor Richard Cook, Town of Double Oak)

There are significant financial and management concerns that must be rectified with the UTRWD before their operations unnecessarily expand and drain its membership of excessive funds. Request that TCEQ require UTRWD provide updated cost estimates for the total cost and a cost benefit analysis of Lake Ralph Hall. (Laurie Long for Town of Flower Mound, Sue Tejml for Town of Copper Canyon, Mayor Jody Smith for Town of Flower Mound)

RESPONSE 30: The Commission must consider the availability of feasible and practicable alternative supplies to water from an interbasin transfer, and the technical review of the application will include consideration of the factors identified in the approved Region C Water Plan which address, among other things, the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer. Issuance of a water rights permit is not contingent on the applicant's ability to demonstrate its financial ability to construct and operate the project.

COMMENT 31: In the permitting process, TCEQ should consider the costs of water from Lake Ralph Hall compared to other potential sources of water, particularly compared with increased water use efficiency (conservation), reuse of current supply (recycled water), and use of unused water from existing reservoirs whose impacts have already occurred. TCEQ should consider the prospect of other entities in the DFW area doing a joint project, with economies of scale making Lake Ralph Hall very expensive by comparison. (Janice Bezanson for the Texas Committee on Natural Resources) Dallas Water Utilities, the UTRWD's primary water supply, has already committed to providing UTRWD with additional water at a much lower cost than is projected for Lake Ralph Hall. (Paul Stone for Town of Flower Mound)

RESPONSE 31: Texas Water Code § 11.085, regarding Interbasin Transfers requires, among other things, the TCEQ to weigh the effects of the proposed transfer by considering the need for the water in the basin of origin and in the proposed receiving basin. The commission must also consider the factors identified in the applicable approved water plans which address availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer; the amount and purpose of use in the receiving basin for which water is needed; proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures; the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use; the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries. The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period; and the applicant has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

COMMENT 32: The reservoir will need a small pipeline, which is not as cost effective as a large pipeline, and there are a lot of economies of scale that will not come into place with a reservoir this small. The costs need to be looked at independently. (Janice Bezanson for Texas Committee on Natural Resources)

RESPONSE 32: Texas Water Code § 11.085, regarding Interbasin Transfers requires the TCEQ to weigh the effects of the proposed transfer by considering the need for the water in the basin of origin and in the proposed receiving basin. The commission must also consider, among other things, the factors identified in the applicable approved water plans which address availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer; proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures; the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use; the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and the projected

Exhibit 4

UPPER TRINITY REGIONAL WATER DISTRICT
REGIONAL TREATED WATER SUPPLY SERVICE
CONTRACT FOR ADDITIONAL PARTICIPATING MEMBER
WITH TOWN OF FLOWER MOUND

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

THIS REGIONAL TREATED WATER SUPPLY CONTRACT (the "Contract") made and entered into as of the 7th day of May, 19 92 (the "Contract Date"), by and between UPPER TRINITY REGIONAL WATER DISTRICT, (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas, and TOWN OF FLOWER MOUND ("Flower Mound"), a municipality of the State of Texas, which party may be referred to herein as "Additional Participating Member" (or Member).

W I T N E S S E T H:

WHEREAS, Flower Mound is a municipality, a duly incorporated political subdivision of the State of Texas operating under the Constitution and laws of the State of Texas; and

WHEREAS, Flower Mound is a governmental entity in Denton County that provides retail utility service to customers within its service area; and

WHEREAS, Flower Mound has a contract with City of Dallas under which Flower Mound receives wholesale treated water service and Flower Mound desires to continue that contract and

but not including expenses related to capital projects financed by the District; such expenses shall include the administration of the District's general office, the activities and meetings of the Board and the planning activities of the District, to the extent such programs and activities shall be for the general welfare of the District; activities and programs for the benefit of specific parties and for specific capital projects shall, unless otherwise authorized, be the responsibility of the benefitting parties.

6. "Annual Payment" means the amount of money to be paid to the District by each of the Members during each Annual Payment Period as its proportionate share of the Annual Requirement.

7. "Annual Payment Period" means the District's fiscal year, which currently begins on October 1 of each calendar year and ends on September 30 of the next following calendar year, but which may be any twelve consecutive month period fixed by the District; and the first Annual Payment Period under this Contract is estimated to be the period of October 1, 1991, through September 30, 1992.

8. "Annual Requirement" means the total amount of money required for District to pay all Operation and Maintenance Expenses of the System, and to pay the Bond Service Component of the Annual Requirement as described hereinafter including debt service on its Bonds, and any sums required to pay or restore any amounts required to be deposited in any

special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolutions.

9. "Board" means the governing body of the District.

10. "Boardmembers" means a member or members of the Board.

11. "Bond Resolution" means any resolution of the District which authorizes any Bonds.

12. "Bonds" means all bonds hereafter issued by the District, whether in one or more series or issues, and the interest thereon, to acquire, construct and complete the Project, and/or all bonds issued subsequently to improve, extend, operate or maintain the System, and any bonds issued to refund any bonds or to refund any such refunding bonds.

13. "Contract Member" means an entity that provides retail utility service or has taken and is taking definitive steps to provide retail utility service to customers within its boundaries, that contracts with the District to preserve the option to become a Participating Member prior to June 16, 1999, and that agrees to pay an annual pro rata share of the Administrative and Planning Expenses of the District.

14. "County" means Denton County, Texas.

15. "Customer" means any wholesale user of the water services provided by the District which user provides retail utility service within its boundaries.

16. "Customer Advisory Council" or "Council" means the committee to be created to consult with and advise the District

25. "Point(s) of Delivery" means the point designated in this Contract where water will be delivered to Flower Mound from the System.

26. "Project" means the "Project" as defined in the Preamble of this Contract.

27. "South Service Area" means the south and southeast portions of the County designated by the District to be provided treated water service by the District, from the Plant, or from other sources, which service area may be separate from other water service areas of the District, for purposes of determining the annual requirement and for delivery of service, and which may be modified from time to time by the District.

28. "State" means the State of Texas.

29. "System" means the Project, the Plant, the regional water system, together with all future improvements, enlargements, extensions, and additions to any of the foregoing which are deemed necessary and feasible by the District to provide treated water service to Participating Members and other Customers and all future new facilities and/or water rights, which are acquired or constructed with the proceeds from the sale of any Bonds or revenues from the System, and any water supply or treatment facilities which are deliberately and specifically, at the option of the District, made a part of the System by resolution of the Board, and all repairs to or replacements of the System. Said term does not include any District facilities which provide wastewater treatment or

disposal services, or solid waste disposal services, of any kind. Said term does not include any facilities acquired or constructed by the District with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being revenue obligations of the District which are not secured by or payable from payments made under this Contract and similar contracts with Participating Members or Customers, and which are payable solely from sources other than revenues of the System.

30. "Water Year" means the period of June 1 of each calendar year through May 31 of the next following calendar year.

ARTICLE II

Board of Directors

Section 2.01. Board Representation. The governing body of each Contract Member, each Participating Member and the County are entitled to appoint a qualified person to serve on the Board. Flower Mound is specifically included in this provision.

Section 2.02. Board Votes. Boardmembers appointed by the governing body of Participating Members shall be entitled to vote on all matters coming before the Board. Boardmembers appointed by the governing body of Contract Members shall be entitled to vote on all matters before the Board except those matters that require a weighted vote. The Board shall establish rules for the implementation of a system of weighted

Section 4.02. Water Supply Limitations. Delivery of potable water to meet the requirements of Customers, including Participating Members, is subject to and limited by available System supply and System deliverability, as determined by the District. Such delivery shall not be unreasonably withheld. The District will use its best efforts to furnish and remain in position to furnish treated water sufficient for all reasonable treated water requirements of each Member, but its obligation shall be limited to the amount of treated water available from the System; and provided that the maximum rate of delivery shall be consistent with the capacities and abilities of System facilities, and shall not exceed the amounts fixed on an equitable and uniform basis by the Board.

Section 4.03. Quantity. The District agrees to deliver treated water under this Contract to Flower Mound at its Point(s) of Delivery as described in Section 4.13 hereof, and Flower Mound agrees to take at its Point(s) of Delivery or to pay for certain minimum amounts of water to assure adequate funds to the District to fulfill its obligations under this Contract.

Section 4.04. Minimum Amounts. For the purpose of calculating the minimum amount of each Annual Requirement for which Flower Mound is unconditionally liable, without offset or counterclaim, Flower Mound, during each Annual Payment Period, shall be deemed to have taken and used the minimum Demand for System treated water (regardless of whether or not such amount

is or was actually taken or used) specified for Flower Mound in Exhibit B.

Section 4.05. Demand. Unless modified in accordance with the provisions of Exhibit B, Flower Mound will be obligated to take or pay for the Demand specified in Exhibit B. After one year of operating experience, the District may adjust the Demand for any Water Year for any Member by mutual agreement; however, District in making such adjustment shall always assure that the sum of all Demands for all Customers will be adequate to support the costs and expenses of the District. The District and all Members hereby agree that it is the intention of all parties to adopt a procedure for determination of Demand on an annual basis that takes into account actual usage for the most recent five (5) Water Years and projected needs for the next Water Year. However, the parties agree to adhere to minimum Demands specified herein until the District has sufficient data to justify a transition to a Demand calculation based on actual and projected usages. It is the intention of the District to adopt the revised method of calculating Demand as soon as prudent to promote fairness and equity among all Customers and to avoid any Member paying unnecessarily for water or Demand not needed in the near future.

Section 4.06. Demand Meters. No Demand meters shall be required during initial construction of the Project. However, Flower Mound and District agree that after an initial five (5) year period, the District may require the installation of rate-of-flow controllers at the cost and expense of the Member

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Section 4.20. Standards. Each Member agrees to protect its storage and distribution system from cross connections under the specifications required by health standards of the State of Texas. Member agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage receiving water from the System. Member agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from the System.

ARTICLE V

Fiscal Provisions

Section 5.01. Annual Requirements. Subject to the terms and provisions of this Contract, the District will provide and pay for the cost of the acquisition, construction and improvement of the System and all System facilities, by issuing its Bonds in amounts which will be sufficient to accomplish such purposes. It is acknowledged and agreed that payments to be made under this Contract and similar contracts with other Customers and Additional Participating Members, if any, will be the primary source available to the District to provide the Annual Requirement. In compliance with the District's duty to fix and from time to time to revise the rates and charges for services of the System, the Annual Requirement may change from time to time. Each such Annual Requirement shall be allocated among the Members as hereinafter provided, and the Annual Requirement for each Annual Payment Period shall be provided

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for in each Annual Budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the System; and

(b) A "Capital Component" equal to:

(1) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution, plus the fees, expenses and charges of each paying agent/registrar for paying the principal of and interest on the Bonds, and for authenticating, registering and transferring Bonds on the registration books; and

(2) the proportionate amount of any special, contingency or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

Section 5.03. Payments by Participating Members.

(a) For the treated water services to be provided to Flower Mound under this Contract, Flower Mound agrees to pay, at the time and in the manner hereinafter provided, its proportionate share (Annual Payment) of the Annual Requirement. Flower Mound shall pay its part of the Annual Requirement for each Annual Payment Period directly to the District, in monthly installments in accordance with the schedule of payments furnished by the District, as hereinafter provided.

(b) Flower Mound shall pay its Annual Payment according to the minimum amounts respectively specified in Section 4.04 and according to the actual volume of treated water taken. The District shall estimate its cost per 1,000 gallons of water and shall establish a price per 1,000 gallons of Demand and volume for purposes of determining the monthly payment to be made by each Member. Each Member shall pay a Demand charge in approximately equal monthly installments and based on the minimum quantity specified in Exhibit B or upon a different quantity subsequently established by the District in accordance with Section 4.05. Such Demand charge shall be sufficient to cover the fixed cost portion of the Annual Requirement. Each Member shall pay a volume charge based on the actual volume of treated water delivered to each Member monthly. The volume charge shall be sufficient to cover the variable cost portion of the Annual Requirement and

specifically the variable costs associated with treating, pumping, transporting and delivering the water. The District reserves the right to combine the volume and Demand charge into a unified charge for the convenience of the District and its Customers, especially for short-term sales or for sale of small quantities.

Section 5.04. Fiscal Policy.

It is provided that in estimating costs for services, the District is specifically authorized, in its discretion, to include in such estimate of costs reasonable contributions to Reserve Funds or to assume that the Annual Payment Period may be a wet year which could cause revenues to be increased if the year is actually normal or dry. This fiscal policy is expressly approved by the Participating Members and is deemed by the parties hereto to be beneficial in the fiscal management of the System, and will assure the timely availability of funds even under unexpected circumstances. Upon receipt during any Annual Payment Period of an amount sufficient to meet the then current Annual Budget of the System for the remainder of the then current Annual Payment Period, the District shall deposit subsequent revenues received into appropriate reserve or contingency accounts, unless otherwise specifically hereinafter provided in the event of unexpected or additional Annual Budget requirements. If there is a shortfall in revenues, the District may withdraw from the reserves, adjust the Annual

Requirement, revise the payment schedule or do any combination thereof.

Section 5.05. Minimum Payments. It is agreed that if, during any Annual Payment Period, the estimated and/or actual metered volume of treated water provided by the System to Flower Mound is, for any reason whatsoever, less than any minimum amount prescribed by this Contract and the District, Flower Mound shall pay its Annual Payment according to such minimum amount. However, if Flower Mound's estimated and/or actual metered amount of water is equal to or in excess of such minimum amount, its Annual Payment shall be calculated on the basis of estimated and actual volumes and Demands. All contracts with Additional Participating Members shall also provide for equitable minimum amounts. Such minimums shall be fixed in amounts at least sufficient, as determined by the District, to assure an initial annual payment by such Additional Participating Member for not less than the amount of its estimated use of treated water during the first year of service under such contract.

Section 5.06. Redetermination of Annual Requirements. Notwithstanding the foregoing, the Annual Requirement, and each Member's share thereof (Annual Payment), shall be redetermined, after consultation with each Member, at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the District, if:

(i) The District commences furnishing services of the

System to an Additional Participating Member or Customer;

(ii) Unusual, extraordinary, or unexpected expenditures for operation and maintenance expenses are required which are not provided for in the District's Annual Budget or reserves for the System;

(iii) Operation and maintenance expenses of the System are substantially less than estimated;

(iv) District issues Bonds which require an increase in the capital component of the Annual Payment; or

(v) The District receives either significantly more or significantly less revenues or other amounts than those anticipated.

If the Annual Requirement is redetermined, Member will be advised of the Adjusted Annual Payment.

Section 5.07. Other Revenues. During each Annual Payment Period, all revenue derived from sales of System water, other than sales of treated water to Participating Members, shall be credited to and be used for paying part of the Annual Requirement in the manner determined by the District, with the result that such credits shall reduce, to the extent of such credits, the amounts which otherwise would be payable by the Participating Member. The District shall estimate all such credits which it expects to make during each Annual Payment Period in calculating each Annual Payment. All Administrative

manner. To that end, the policy of the District is to encourage joint-use of facilities, including existing and future pipelines, storage tanks and pump stations owned by and under the control of Customers wherever feasible and advantageous to the delivery of water from the System. The District agrees that if it proposes the joint use of such facilities and if a Customer agrees, that the Customer whose facilities will be used is entitled to fair and reasonable compensation for the use of facilities and for the service provided by the Customer to District.

Further, it is agreed by all parties to this Contract that such compensation will be considered to be an Operation and Maintenance Expense of the System.

Section 6.11. Unconditional Obligation to Make Payments. Recognizing the fact that Flower Mound and other Participating Members urgently require the facilities and services of the Project and the System, and that such facilities and services are essential and necessary for actual use and for standby purposes, and recognizing the fact that the District will use payments received from Flower Mound and other Participating Members to pay and secure its Bonds, it is hereby agreed that Flower Mound shall be unconditionally obligated to pay, without offset or counterclaim, its proportionate share of the Annual Requirement, as provided and determined in this Contract (including the obligations for paying for "minimums" as described in Section 4.04 hereof), regardless of whether or

not the District actually acquires, constructs or completes the Project or the System or is actually delivering water from the System to Flower Mound, or whether or not Flower Mound actually receives or uses water from the System whether due to Force Majeure or any other reason whatsoever, regardless of any other provisions of this or any other contract or agreement between any of the parties hereto. This covenant by Flower Mound shall be for the benefit of and enforceable by the holders of the Bonds as well as the District.

Section 6.12. Insurance. The District agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self insurance, on the System for purposes and in amounts which, as determined by the District, ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the District's legal counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute an Operation and Maintenance Expense of the System.

cost, rates, fees or charges applicable to pumping, transportation or treatment of water by others, and charges for other services rendered by other parties at the request of the District for the benefit of the Project and System shall constitute Operation and Maintenance Expense of the System as defined herein.

Section 7.03. Term of Contract. This Contract shall be effective on and from the Contract Date, and shall continue in force and effect for thirty (30) years or for such period of time that Bonds issued by the District for the System remain outstanding, whichever is greater; provided, however, the term of the Contract and the expiration date may be extended for a period not to exceed 20 years at the option of the Participating Member, upon the mutual agreement of the Participating Member and the District as to the terms and conditions. The District's obligation to provide the contracted for services shall commence from the date that the District, in writing, deems the System operational and functional to treat and deliver treated water to any Participating Member. This Contract constitutes the sole agreement between the parties hereto with respect to the Project.

Section 7.04. Contracting Parties. This Contract shall be effective as to Flower Mound whether or not all parties who have previously executed contracts of a similar nature remain participants in the Project. The "minimums" listed in Exhibit