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July 23, 2015

Bridget C. Bohac
Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE

2015 JUL 23 PM 4:03

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

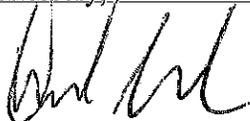
**Re: Corix Utilities (Texas), Inc. Motion to Overturn
Regional Water/Wastewater System Certification**

Dear Ms. Bohac:

Please find attached Corix Utilities (Texas), Inc.'s Motion to Overturn in the above referenced matter. I am filing an original and seven (7) copies.

Thank you for your consideration.

Sincerely,



Derek Seal

Enclosure: Motion to Overturn

cc: Service List

CORIX UTILITIES (TEXAS) INC.'S
MOTION TO OVERTURN THE
DECISION OF THE EXECUTIVE
DIRECTOR REGARDING CORIX'S
APPLICATION TO CERTIFY ITS
WATER AND WASTEWATER
SYSTEMS AS REGIONAL
SYSTEMS PURSUANT TO TEXAS
TAX CODE § 151.355(5)

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CORIX'S MOTION TO OVERTURN

OR ALTERNATIVELY, TO REMAND TO THE EXECUTIVE DIRECTOR

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

COMES NOW, Corix Utilities (Texas), Inc. ("*Corix*") and files this Motion to Overturn the decision by the Executive Director of the Texas Commission on Environmental Quality (the "*TCEQ*") to deny Corix's application (the "*Application*") for certification that the water and wastewater systems owned and operated by Corix are regional systems ("*Regional Systems*").¹ As explained in detail below, Texas law provides that certain equipment, services or supplies used to construct or operate a Regional System certified as such by TCEQ are exempted from sales, excise and use taxes. Although Corix's water and wastewater systems qualify for Regional System certification, the Executive Director determined that Corix must be a political subdivision to obtain such certification. However, Texas law does not limit certification to *political subdivisions*.

Based on prior consultation with counsel for the Executive Director, Corix understands that the Executive Director does not oppose Corix's Motion to Overturn.

¹ The Executive Director's decision that is the subject of Corix's Motion to Overturn states that "the Executive Director cannot approve Corix's certification request" which has the same effect as a denial.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERK OFFICE

If the Commission does not grant Corix's Motion to Overturn and directly grant Corix's Application, Corix requests that in the alternative, the Commission remand Corix's Application to the Executive Director with instructions that Corix's Application must be issued if it meets the requirements of the Texas Tax Code, and that it may not be denied on the basis that Corix is not a *political subdivision*.

I. BACKGROUND

By letter dated April 16, 2015, Corix submitted its Application to the TCEQ Executive Director for certification that the water and wastewater systems owned and operated by Corix are Regional Systems.² **Exhibit A**, which is attached hereto, is Corix's Application. Corix's Application explains that Corix has acquired 18 small water and wastewater utility systems from the Lower Colorado River Authority, each of which is an isolated system that provides service to one or more communities or subdivisions. As explained in further detail below, Corix's water and wastewater utility systems are Regional Systems which entitles Corix to the exemption from sales, excise and use taxes.

TCEQ staff notified Corix via e-mail dated July 3, 2015 that the Executive Director cannot approve Corix's certification request.³ **Exhibit B**, which is attached hereto, is the July 3, 2015 e-mail. The Executive Director's July 3 e-mail states that the Executive Director cannot approve Corix's Application because Corix is not a *political subdivision*. The legal basis for the Executive Director's decision is a May 13, 2002 Commission resolution ("**2002 Commission Resolution**")⁴ that only authorizes certification as a Regional System if a *political subdivision* is providing regional water or wastewater service. **Exhibit C**, which is attached hereto, is the May 13, 2002 Commission Resolution.

² Letter from Darrin Barker, General Manager, Corix Utilities (Texas), Inc. to TCEQ Utilities & District's Section, Re: *Application for Regional Service Provider Certification* (April 16, 2015).

³ E-mail from Jason Taack to Darrin Barker, Re: *Regional Provider Certification* (July 3, 2015).

⁴ TCEQ Docket No. 2002-0510-RES, *Delegating to the Executive Director the Authority to Certify Certain Political Subdivisions as Providing Regional Water and/or Wastewater Service* (May 13, 2002).

II. LEGAL AUTHORITY AND ARGUMENT

For the reasons stated below, the 18 small water and wastewater utility systems owned and operated by Corix meet the definition of a Regional System, which supports Corix's Application.

A. Regionalization

Although the Texas Tax Code provisions exempting Regional Systems from sales, excise and use taxes do not expressly define what a Regional System is, the 2002 Commission Resolution recognizes that "regionalization" is defined by Texas Water Code, § 15.001(13) as:

[D]evelopment of a water supply or wastewater collection and treatment system that incorporates multiple service areas into an areawide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state."⁵

Exhibit D, which is attached hereto, is a copy of Texas Water Code, § 15.001.

The 2002 Commission Resolution also provides that political subdivisions meet the definition of "Regional Provider" set forth in Texas Water Code, § 15.001(13) if certain stand-alone criteria are met.⁶ The stand-alone criteria described in the 2002 Commission Resolution are the same criteria as the criteria described in TCEQ's Regionalization Policy.⁷ **Exhibit E**, which is attached hereto, is the TCEQ's Regionalization Policy. One of the stand-alone criterion is if there is "one owner and several isolated systems [that] each provide

⁵ TEX. WATER CODE § 15.001(13); Exhibit C, TCEQ Docket No. 2002-0510-RES (May 13, 2002). After the adoption of the 2002 Commission Resolution, the definition of "regionalization" was moved from TEX. WATER CODE § 15.001(12) to TEX. WATER CODE § 15.001(13).

⁶ Id.

⁷ *The Feasibility of Regionalizing Water and Wastewater Utilities, A TCEQ Policy Statement*, RG-357, at 5 under the heading *What Will "Regionalization" Look Like?* (January 2003). The TCEQ Regionalization Policy includes one criterion that the 2002 Commission Resolution does not that is not applicable to this matter.

service to one or more communities or subdivisions”. As indicated in Corix’s Application, Corix meets this stand-alone criterion since Corix is the sole owner of 18 systems, each of which serves one or more communities or subdivisions.

Moreover, the TCEQ’s Regionalization Policy does not state or imply that only water or wastewater systems owned by political subdivisions can be Regional Systems, or that only a political subdivision can qualify as Regional Provider. In fact, TCEQ’s Regionalization Policy expressly states that:

We do not presume that any particular ownership structure of a [Public Water System (“*PWS*”)] is more appropriate to serve as a regional provider. Any retail public utility could serve as the regional provider if it can meet the necessary requirements under 30 TAC Chapters 290 and 291.⁸

Neither TCEQ’s applicable rules nor TCEQ’s policies applicable to regionalization make any distinction between political subdivisions and investor owned utilities such as Corix. For example, TCEQ’s PWS rules point directly to legislative policy that supports regionalization, without any mention of whether the owner/operator of a PWS must be a political subdivision.⁹

⁸ Id. Although certain statutory jurisdiction over water and wastewater utilities that is governed by 30 TEX. ADMIN. CODE Chapter 291 has been transferred to the Texas Public Utility Commission, TCEQ’s Regionalization Policy continues to fully apply to PWS’ over which TCEQ has jurisdiction, which are governed by 30 TEX. ADMIN. CODE Chapter 290. TCEQ’s current webpage relating to *Rules and Guidance for Public Water Systems* includes a web link to TCEQ’s Regionalization Policy, which is available at the following web link: https://www.tceq.texas.gov/drinkingwater/pdw_rulesGuide.html. Although the TCEQ Regionalization Policy would not expressly apply to wastewater systems, it remains instructive with regard to whether only political subdivisions can be considered as a Regional Provider or can own Regional Systems.

⁹ See 30 Tex. Admin. Code, § 290.39(a) which states that Tex. Health & Safety Code, Chapter 341, Subchapter C requires TCEQ to promote the use of regional and area-wide drinking water systems, and 30 Tex. Admin. Code, § 290.39(b) which states that 30 Tex. Admin. Code, Chapter 290, Subchapter A “has been “adopted to ensure [that] regionalization and area-wide options are fully considered.”

B. Any Regional System is Entitled to the Sales, Excise and Use Tax Exemption, Regardless of Whether a Regional System is Owned/Operated by a Political Subdivision

The Texas Tax Code, guidance from the Texas Comptroller of Public Accounts, and legislative history do not expressly or even impliedly limit certification of Regional Systems exclusively for the benefit of political subdivisions.

1. The Texas Tax Code and Guidance from the Texas Comptroller of Public Accounts

The Texas Limited Sales, Excise, and Use Tax Act (the “*Act*”) enacted in Texas Tax Code, Chapter 151 imposes a 6¼ percent state sales tax on certain taxable items, which includes tangible personal property and certain services.¹⁰ However, Texas Tax Code, § 151.355(5) upon which Corix’s Application is based, exempts from taxes imposed by the Act:

[E]quipment, services, or supplies used solely to construct or operate a water or wastewater system certified by [TCEQ] as a *regional system*.¹¹ **Exhibit F**, which is attached hereto, is a copy of Texas Tax Code, § 151.355.

There is no exception in the statute that only entitles a *political subdivision* to the exemption. Neither is there such an exception stated in guidance from the Texas Comptroller of Public Accounts (“*Comptroller’s 2008 Guidance*”), which states that:

Tax Code Section 151.355 [(5) and (6)] provides exemptions related to the construction of two types of water or wastewater systems: regional systems certified by [TCEQ] and water or wastewater systems constructed or operated as a public-private partnership. Tax Code Section 151.309 addresses exemptions that may be claimed by governmental entities, such as cities,

¹⁰ TEX. TAX CODE, CHAPTER 151; TEX. TAX CODE, § 151.010; TEX. TAX CODE, § 151.051.

¹¹ TEX. TAX CODE, § 151.355(5). (emphasis added)

counties, and water districts that build or operate water systems.¹² **Exhibit G**, which is attached hereto, is a copy of the Comptroller's 2008 Guidance.

As explained in the Comptroller's 2008 Guidance, certain political subdivisions are exempted from sales, excise and use taxes under provisions of the Texas Tax Code that are unrelated to whether the political subdivision owns/operates a Regional System. Thus, certification of Regional Systems for political subdivisions appears to be superfluous.

2. Legislative History

Texas Tax Code, § 151.355 that entitles Corix to certification that its water and wastewater systems are Regional Systems was enacted by the Texas Legislature in 2001 by both Senate Bill 2 and by Senate Bill 312.¹³ **Exhibit H** and **Exhibit I**, which are attached hereto, are copies of relevant excerpts from Senate Bill 2 and Senate Bill 312 that enacted Texas Tax Code, § 151.355, respectively. However, the version of Texas Tax Code, § 151.355(5) enacted by Senate Bill 312 – which is the only version that survives – *does not limit certification of Regional Systems to political subdivisions*. The 2002 Commission Resolution appears to be based only on the version of Texas Tax Code, § 151.355(5) enacted by Senate Bill 2 that would have limited such certification to political subdivisions.

Further, when the Texas Legislature enacted House Bill 2424 in 2003 to amend Texas Tax Code, § 151.355(5), the Texas Legislature only recognized the version of the statute enacted by Senate Bill 312 that *does not limit certification as a Regional System to only political subdivisions*.¹⁴ In fact, the Bill Analysis for both the House and Senate Committee Reports for House Bill 2424 explain that “regional water and wastewater systems” qualify for the tax exemption, but neither Bill Analysis suggests that there is a limitation to only

¹² *Sales and Use Tax Bulletin, Water and Wastewater Systems*, Susan Combs, Texas Comptroller of Public Accounts, Pub. 94-123 (February 2008).

¹³ Acts 2001, 77TH TEX. LEG., ch. 966 (S.B. 2), § 4.25, effective September 1, 2001; Acts 2001, 77TH TEX. LEG., ch. 1234 (S.B. 312), § 39, effective September 1, 2001.

¹⁴ Acts 2003, 78TH TEX. LEG., ch. 209 (H.B. 2424), § 24, effective October 1, 2003.

political subdivisions, which is consistent with the plain language of the statute.¹⁵ Thus, the legislative history indicates that sales, excise and use tax exemption is meant to apply to an investor owned utility such as Corix.

C. TCEQ Jurisdiction to Certify Water and Wastewater Systems as Regional Systems

Although the Texas Legislature recently transferred jurisdiction from TCEQ to the Texas Public Utility Commission (the “PUC”) over the economic regulation of water and sewer utilities, Texas Tax Code, § 151.355(5) expressly gives TCEQ the exclusive jurisdiction to certify Regional Systems.¹⁶ The PUC has expressly recognized that the PUC does not have jurisdiction to certify Regional Systems by dismissing several recent applications for such certification, and by posting on the PUC’s website information that the PUC does not have such jurisdiction.¹⁷ Thus, Corix’s application can only be considered by TCEQ.

III. THE EXECUTIVE DIRECTOR’S DECISION TO DENY CORIX’S APPLICATION IS SUBJECT TO A MOTION TO OVERTURN; REGARDLESS, THE COMMISSION HAS AUTHORITY TO ACT DIRECTLY UNDER THE STATUTE

Applications for certification for a Regional System such as Corix’s Application are not expressly listed in TCEQ’s rules as a type of Application that is either excluded or subject to Motion to Overturn.¹⁸ However, the 2002 Commission Resolution expressly states that “a political subdivision may appeal the Executive Director’s action by a motion to

¹⁵ Bill Analysis, House Ways & Means Committee Report, C.S.H.B. 2424, 78(R); Bill Analysis, Senate Finance Committee Report, C.S.H.B. 2424, Senate Research Center 78R17169 CBH-F 05/23/2003).

¹⁶ Acts 2013, 83rd TEX. LBG., ch. 171 (S.B. 567), § 13, effective September 1, 2013.

¹⁷ PUC Docket No. 43798, *Regional Service Provider Certification by Pure Water Supply Corporation*, Order No. 1 Dismissing Proceeding (May 14, 2015); PUC Docket No. 43799, *Regional Service Provider Certification by Chalk Bluff WSC*, Order No. 1 Dismissing Proceeding (May 14, 2015); <https://www.puc.texas.gov/industry/water/watersystems/regionalcert.aspx>.

¹⁸ 30 Tex. Admin. Code § 50.131.

overturn.”¹⁹ Although Corix is not a political subdivision, the 2002 Commission Resolution was the basis for the Executive Director’s decision to deny Corix’s Application. Thus, a Motion to Overturn is proper in this case since the Executive Director relied on the 2002 Commission Resolution to make the decision.

The Executive Director’s decision was made on July 3, 2015.²⁰ Corix’s Motion to Overturn is being filed within 23 days after the date the agency mailed notice of the Executive Director’s action, thus is timely.²¹

Even if Corix’s Application was not subject to a Motion to Overturn, The Commission has legal authority to act directly under Texas Tax Code, § 151.355(5), which expressly gives Commission the authority to do so.

IV. CONCLUSION AND PRAYER

Exempting capital and other expenditures from sales, excise and use taxes would benefit Corix’s ratepayers through lower rates that would otherwise be in place since Corix’s cost of service would be lower. As explained herein, Corix is entitled to the exemption since Corix is a Regional Provider.

For the reasons stated herein, Corix prays that the Commission grant Corix’s Motion to Overturn and grant Corix’s Application. In the alternative, Corix prays that the Commission remand Corix’s Application to the Executive Director with instructions that Corix’s Application must be issued if it meets the requirements of the Texas Tax Code, and that it may not be denied on the basis that Corix is not a political subdivision.

¹⁹ Exhibit C, TCEQ Docket No. 2002-0510-RES (May 13, 2002).

²⁰ Exhibit B, E-mail from Jason Taack to Darrin Barker, Re: *Regional Provider Certification* (July 3, 2015).

²¹ 30 Tex. Admin. Code § 50.139(b). The Executive Director’s decision in this case was not mailed to Corix, but was provided via e-mail. In any event, the Motion to Overturn is being filed well within the 23 day deadline.

Dated: July 23, 2015

RESPECTFULLY SUBMITTED,

By: _____


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Winstead P.C.
401 Congress, Suite 2100
Austin, TX 78701
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Facsimile: (512) 370-2850
dseal@winstead.com

CERTIFICATE OF SERVICE

I certify that I have served true and correct copies of Corix's foregoing Motion to Overturn on the following, on this the 23rd day of July, 2015.



Derek Seal

Robert Martinez (electronically and regular mail)
TCEQ Office of Legal Services, MC-173
12100 Park 35 Circle, Building A
Austin, Texas 78753
Telephone: 512.239.0681
Facsimile: 512.239.0606
(robert.martinez@tceq.texas.gov)

Vic McWherter (electronically and regular mail)
TCEQ Office of Public Interest Counsel, MC-103
12100 Park 35 Circle, Building F
Austin, Texas 78753
Telephone: 512.239.6363
Facsimile: 512.239.6377
(vic.mcwherter@tceq.texas.gov)

Exhibit A
Corix's Application



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Austin Texas
USA 78754

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F 512 306 4009
www.corix.com

APPLICATION FOR REGIONAL SERVICE PROVIDER CERTIFICATION

April 16, 2015

Utilities & Districts Section, MC-153
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Dear Sirs:

RE: Regional Service Provider Certification application by Corix Utilities (Texas) Inc.
Pursuant to Texas Water Code Section §15.001(13) and Texas Tax Code §151.355(5).

This application is a result of the acquisition by Corix Utilities (Texas) Inc. ("Corix") of 18 small water and wastewater utility systems from the Lower Colorado River Authority by way of a Utilities Purchase and Sale Agreement dated effective March 30, 2012 and closed on July 31, 2014.

Corix hereby applies to the Texas Commission on Environmental Quality (TCEQ) for Tax-Exempt status in accordance with Section §15.001(13) of the Texas Water Code and Section §151.355(5) of the Texas Tax Code.

Corix meets the following TCEQ requirement for a regional service provider:

- One owner and several isolated systems each providing service to one or more communities or subdivisions.

Corix is the sole owner of the regulated systems listed below, each of which serves one or more communities or subdivisions. As of April 1, 2015 there are 2,651 active water connections and 816 wastewater connections served by these systems.

The systems:

1. Lake Buchanan Water
2. Sandy Harbor Water
3. Smithwick Mills Water
4. Lometa Water
5. Lometa Wastewater
6. Paradise Point Water
7. Matagorda Dunes Water
8. Matagorda Dunes Wastewater
9. Alleyton Wastewater
10. Alleyton Water
11. Ridge Harbor Wastewater
12. Ridge Harbor Water



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13. Spicewood Beach Water (includes service for Lakeside Beach)
14. Quail Creek Water
15. Camp Swift Wastewater
16. McKinney Roughs Wastewater
17. Windmill Ranch Wastewater

The signature below attests that the information provided above is true and complete.

We also understand that the TCEQ may disapprove this request and revoke subsequent certification at any time if it is determined by the TCEQ that the information provided in this request is false or misleading.

Sincerely,

Corix Utilities (Texas) Inc. By:

A handwritten signature in cursive script, appearing to read "R. Darrin Barker", written over a horizontal line.

R. Darrin Barker
General Manager
Corix Utilities (Texas) Inc.

Exhibit B
TCEQ Executive Director's July 3, 2015 E-mail/Decision

Seal, Derek

From: Justin Taack <justin.taack@tceq.texas.gov>
Sent: Friday, July 03, 2015 11:04 AM
To: Darrin Barker
Cc: Justin Taack; Seyed Miri; Tom Glab
Subject: Regional Provider Certification
Attachments: Corix Request Letter.pdf; 2002-0510-RES.pdf

Good morning,

Corix Utilities (Corix) has requested Texas Commission on Environmental Quality (TCEQ) certification as a regional provider of water and wastewater service. The original request is attached to this email for reference. In accordance with the attached TCEQ order dated May 13, 2002 (the "Order"), the Executive Director has been delegated the authority to review, issue, approve, and act on written requests for regional service provider certification. The Order states that the Texas Tax Code, Section 151.355, authorizes the TCEQ to certify certain political subdivisions, as defined by the Texas Water Code, Section 15.001, as providing regional water or wastewater services. The Order also defines a political subdivision as, "...any city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code..."

After a review of Corix's request, it does not appear that Corix meets the definition of a political subdivision as defined in the Order. As a result, the Executive Director cannot approve Corix's certification request. If you believe that Corix meets the definition of a political subdivision, please provide documentation which demonstrates how Corix meets this definition. Please let me know if you have any questions.

Thank you.

Justin

Exhibit C
May 13, 2002 Commission Resolution

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



A RESOLUTION

Delegating to the Executive Director the Authority to Certify Certain Political Subdivisions as Providing Regional Water and/or Wastewater Service.
Docket No. 2002-0510-RES

WHEREAS, Subchapter H, Chapter 151, of the Texas Tax Code exempts from taxes contained therein equipment, services or supplies used to construct or operate a water or wastewater system or component of a system sponsored by a political subdivision, as defined by the Texas Water Code, Section 15.001, which is certified by the Texas Natural Resource Conservation Commission ("Commission") as providing regional water or wastewater service; and

WHEREAS, political subdivision is defined by the Texas Water Code, Section 15.001 as any city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code; and

WHEREAS, the Texas Tax Code, Section 151.355(5) authorizes the Commission to certify certain political subdivisions, as defined by the Texas Water Code, Section 15.001, as providing regional water or wastewater service; and

WHEREAS, the Texas Water Code, Section 5.102 provides the Commission the powers to perform any acts whether specifically authorized or implied by the Texas Water Code or any other law, necessary and convenient to the exercise of its jurisdiction and powers as provided by the Legislature of the State of Texas, including the determination of findings of fact; and

WHEREAS, the Texas Water Code, Section 15.001(12) defines regionalization as the development of a water supply or wastewater collection and treatment system that incorporates multiple service areas into an area wide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state. The Commission will use the following criteria to determine whether or not the political subdivision meets the definition in Texas Water Code, Section 15.001(12) in order to be called a regional provider:

1. one owner and one large system serves several different communities or subdivisions or,
2. one owner and several isolated systems each provide service to one or more communities or subdivisions or,
3. several owners, each with individual systems operated through a centrally coordinated operating system or,
4. several owners, each with an isolated system, all served by a central wholesale provider; and

WHEREAS, the Texas Water Code, Section 5.122 provides the Commission the power to delegate to the Executive Director the Commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration, or other authorization or approval if the conditions contained within the section are satisfied; and

WHEREAS, a substantial number of political subdivisions may seek certification as providing regional water and/or wastewater service; and

WHEREAS, in order to streamline the certification of political subdivisions as providing regional water and/or wastewater service, the Commission has elected to delegate its authority to review, issue, approve and act on such certification requests as authorized by Texas Tax Code, Section 151.355(5) to the Executive Director in accordance with Tex. Water Code, Section 5.122;

NOW, THEREFORE, BE IT RESOLVED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION that

the Executive Director is delegated the Commission's authority to review, issue, approve and act on such certification requests as authorized by Texas Tax Code, Section 151.355(5);

the Executive Director must act on such request within ninety days of receipt of the request, effective upon the issuance of this resolution; and

a political subdivision may appeal the Executive Director's action by a motion to overturn according to the procedures set out in Texas Administrative Code, Chapter 30, Section 50.139.

ISSUED: MAY 13 2002

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION

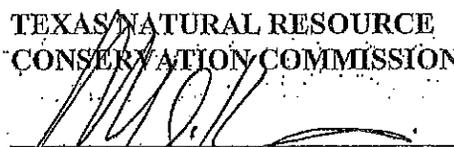

Robert J. Huston, Chairman

Exhibit D
Texas Water Code, § 15.001

Tex. Water Code § 15.001

This document is current through the 2015 regular session, 84th Legislature, S.B. 45, S.B. 293 (ch. 2), S.B. 415(ch. 15), S.B. 459, S.B. 529 (ch. 37), S.B. 835 (ch. 6), S.B. 901 (ch. 54), S.B. 903 (ch. 3), S.B. 1749 (ch. 29), and S.B. 1985 (ch. 4).

Texas Statutes and Codes > WATER CODE > TITLE 2. WATER ADMINISTRATION > SUBTITLE C. WATER DEVELOPMENT > CHAPTER 15. TEXAS WATER ASSISTANCE PROGRAM > SUBCHAPTER A. GENERAL PROVISIONS

§ 15.001. Definitions

In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (3) "Executive administrator" means the executive administrator of the Texas Water Development Board.
- (4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.
- (5) "Political subdivision" means a city, county, district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Chapter 67.
- (6) "Project" means:
 - (A) any undertaking or work, including planning activities and work to obtain regulatory authority at the local, state, and federal level, to conserve, convey, and develop water resources in the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide nonstructural and structural flood control, drainage, subsidence control, recharge, chloride control, brush control, precipitation enhancement, and desalinization, to provide for the acquisition of water rights and the repair of unsafe dams, and to carry out other purposes defined by board rules;
 - (B) any undertaking or work outside the state to provide for the maintenance and enhancement of the quality of water by eliminating saline inflow through well pumping and deep well injection of brine; or
 - (C) any undertaking or work by Texas political subdivisions or institutions of higher education to conserve, convey, and develop water resources in areas outside Texas or to provide for the maintenance and enhancement of the quality of the water in areas adjoining Texas, if such undertaking or work will result in water being available for use in or for the benefit of Texas or will maintain and enhance the quality of water in Texas.
- (7) "Fund" means the water assistance fund.
- (8) "Loan fund" means the water loan assistance fund.

- (9) "Conservation" means:
- (A) the development of water resources; and
 - (B) those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
- (10) "Federal agency" means any federal agency, including the United States Secretary of State, that may act or that is acting through the American Commissioner on the International Boundary and Water Commission, United States and Mexico.
- (11) "Economically distressed area" means:
- (A) an area in which water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; or
 - (B) for purposes of any federal funds for colonias deposited in the water assistance fund, an area that meets the federal criteria for use of such funds.
- (12) "Nonborder colonia" means a residential community:
- (A) located in an unincorporated area of a county all parts of which are at least 150 miles from the international border of this state;
 - (B) in which water or wastewater services are inadequate to meet minimal needs of residential users as defined by board rules;
 - (C) in which the average household income is less than the average household income for the county in which the community is located; and
 - (D) that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.
- (13) "Regionalization" means development of a water supply or wastewater collection and treatment system that incorporates multiple service areas into an areawide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state.

History

Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 12 (H.B. 8), § 1, effective November 10, 1981; am. Acts 1985, 69th Leg., ch. 133 (H.B. 2), § 1.06, effective November 5, 1985; am. Acts 1985, 69th Leg., ch. 133 (H.B. 2), § 2.01, effective November 5, 1985; am. Acts 1985, 69th Leg., ch. 795 (S.B. 249), § 1.038, effective September 1, 1985; am. Acts 1985, 69th Leg., ch. 821 (S.B. 863), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 977 (S.B. 947), § 8, effective June 19, 1987; am. Acts 1989, 71st Leg., ch. 624 (S.B. 2), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., 1st C.S., ch. 3 (S.B. 2), § 1.059, effective August 12, 1991; am. Acts 1993, 73rd Leg., ch. 844 (H.B. 997), § 2, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 1010 (S.B. 1), § 4.07, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 18.54,

Tex. Water Code § 15.001

effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 966 (S.B. 2), § 4.04, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1367 (S.B. 322), § 11.01, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(141), effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 341 (S.B. 99), § 14, effective June 15, 2007.

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Exhibit E
TCEQ Regionalization Policy



January 2003
RG-357

The Feasibility of Regionalizing Water and Wastewater Utilities:

A TCEQ Policy Statement

printed on
recycled paper

Water Supply Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

The Feasibility of Regionalizing Water and Wastewater Utilities:

A TCEQ Policy Statement

Prepared by
Water Supply Division

RG-357
January 2003



Robert J. Huston, *Chairman*
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Introduction

Building and operating a successful water or wastewater system is not easy. To comply with the state and federal requirements that ensure that drinking water is safe and wastewater is treated adequately, you must have—or have access to—these and other resources:

- ! for drinking water systems, an adequate and reliable source of water that either is or can be made safe for human consumption;
- ! the financial resources and technical ability to design and build a system that can provide service effectively and reliably;
- ! the financial resources and technical ability to operate and maintain the system so it operates safely for your workers, your customers, and, in the case of wastewater systems, the environment;
- ! the ability to read and understand the many, highly technical state and federal regulations associated with water and wastewater systems;
- ! the management skill to successfully operate a business that is critical to public welfare.

Recognizing the critical role these resources play in the success of a water system, Congress amended the Safe Drinking Water Act in 1996. Under these amendments, states must determine whether new community water systems are likely to be able to comply with regulatory requirements.

In 1997, the 75th Texas Legislature made similar amendments to Chapter 341 of the Texas Health and Safety Code and Chapter 13 of the Texas Water Code.

Along with other recent legislative changes—and wastewater regulations that were already on the books—these amendments establish a clear message: All new public water systems and any wastewater systems owned and operated by entities required to obtain a CCN must be capable of operating efficiently and effectively for the long term. In Texas, the Texas Commission on Environmental Quality (TCEQ, “we”) is responsible for reviewing and approving the design and operating plans of proposed water systems, and the Texas Water Development Board (TWDB) can assist growing areas with water resource planning.

This document states the TCEQ’s policy for evaluating applications for new systems to determine whether regionalization—the consolidation of the operations, physical systems, or both of two or more existing or proposed water or domestic wastewater systems—is a viable option for the

proposed new system. The goal of this policy is to achieve the best service to the consumer at rates that will ensure that the system is maintained for the long term.

In this policy, we also address the issue of when existing systems that are struggling to remain in compliance with state and federal regulations should consider the option of regionalization.

See Appendix B for details on the statutory authority for this policy.

A Few Important Terms

Before discussing this policy further, we need to define some important terms. These simplified definitions are intended to help you understand these terms as we use them in this policy statement. However, the official definitions are as stated in the relevant statute or rule.

Types of Systems

system—a physical plant plus the lines that connect it to the customer.

public water system (PWS)—any drinking water system that has the potential to serve at least 15 connections or that does serve at least 25 people for at least 60 days out of one year. For example, mobile home parks, truck stops, and restaurants that have their own water supply usually meet the minimum standard of being a PWS. For a PWS, the system comprises the source of the water, the water treatment plant, and the water lines that distribute water to the consumer.

wastewater system—For a wastewater system, the system comprises the sewer lines that collect the wastewater from the customer and carry it to the wastewater treatment facility as well as the treatment facility itself.

Types of Service Providers

retail public utility—any city, county, district, utility (as defined below), or water supply corporation that charges a fee to directly provide water or sewer service to consumers. (*Note:* “Utility” might seem to be the broader term, but, as defined in the law, “retail public utility” actually includes “utility”: All “utilities” are “retail public utilities,” and not all “retail public utilities” meet the law’s narrower definition of “utility.”)

utility—a person, partnership, corporation, or “affected county” that charges a fee to directly provide water or sewer service to consumers. Also called “investor-owned utility,” “water” or “sewer utility,” or “public utility.” (See “Other Terms” below for a definition of “affected county.”)

water supply corporation—a nonprofit corporation organized under state law (Texas Water Code Chapter 67) to provide water or sewer service.

Other Terms

affected county—a county within 50 miles of the international border.

certificate of convenience and necessity (CCN)—a TCEQ document that defines your water or sewer service area. Your system might not extend to the limits of this service area, but other utility service providers generally may not encroach upon your service area. If anyone in this area applies for service, you generally must serve them. You may use one or more systems to serve this area. An affected county, investor-owned utility, or water supply corporation must obtain a CCN, but a city, district, or other county does not need one. If your water system or systems cannot serve more than 15 connections, you may ask to be exempted from this requirement. See Title 30 Texas Administrative Code (30 TAC) Chapter 291 for more details about CCNs.

What Is the Regionalization Policy?

Our policy is that regionalization is feasible unless one of these three exceptions applies:

- (1) No other systems are reasonably close to your planned system.
- (2) You have requested service from neighboring systems, and your request has been denied.
- (3) You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

If you apply for a new certificate of convenience and necessity (CCN), then you must demonstrate that one of these three exceptions applies to your system. You must give our staff related information in sufficient detail for them to determine whether an exception applies. If you wish to construct or operate a new PWS, even if you are not required to obtain a CCN to operate, then you must still demonstrate that one of these three exceptions applies to your system and give our staff related information in sufficient detail for them to determine whether an exception applies.

Why This Policy?

By encouraging the regionalization of water and wastewater systems, we hope to protect the health, safety, and welfare of Texans by ensuring a

long-term supply of safe water at affordable rates and by maintaining the quality of water in the state.

The ultimate goal of regionalization is to provide timely and cost-effective solutions for achieving quality service. Drinking water and wastewater systems are facing an ever-increasing demand on their resources to stay in compliance with provisions of the federal Safe Drinking Water Act and federal Clean Water Act. The costs associated with compliance are higher per person as the system size decreases.

In applying this policy, we are ensuring a steady decrease in the number of Texans who are being served by systems that are unable to sustain the financial, managerial, and technical capabilities necessary to provide continuous and adequate service. And we are ensuring that fewer new systems will encounter the same financial, managerial, and technical problems being faced by existing weak systems.

Whenever the formation of a regional system is the least expensive long-term solution for providing quality service, we will require proponents of new systems to form a regional system instead. Only a system with adequate financial, managerial, and technical capacity can reliably provide good quality drinking water in sufficient quantities and basic sanitation service that meets regulatory standards.

To Whom Does This Policy Apply?

This policy applies to the following entities regulated by the TCEQ:

- ! owners and operators of new PWSs;
- ! applicants requesting approval for a new water or sewer CCN for a proposed facility, or for an existing facility if a CCN was required to be obtained before the system was constructed.

This guidance document will not change our administrative rule requirements and procedures relating to rate-making, CCNs, and PWSs. Rather, this guidance document is advising all CCN applicants and owners or operators of proposed PWSs to take proactive measures to either form sound regional systems or demonstrate the ability to operate a viable, stand-alone utility system.

As a CCN applicant or an owner or operator of a proposed PWS, you must evaluate the availability of a regional system before you submit the actual CCN application, plans and specifications, and, if required, business plan. As part of determining whether regionalization is feasible, our staff will evaluate these materials.

This guidance document will not apply to wastewater systems that are not required to hold a CCN and do not apply for a CCN.

Must Existing Systems Regionalize?

Although the purpose of this regulatory guidance document is to provide guidance to new systems, a similar regionalization review will apply to the owners and operators of any existing PWS that:

- ! was constructed without the necessary approval,
- ! has a history of noncompliance, or
- ! is subject to a TCEQ enforcement action.

What Will "Regionalization" Look Like?

The structure and operation of any particular regional system will depend on the individual circumstances. Under this policy, regionalization can take any one of these forms:

- ! one owner and one large system serving several different communities or subdivisions;
- ! one owner and several isolated systems, each providing service to one or more communities or subdivisions;
- ! several owners, each with individual systems operated through a centrally coordinated operating system;
- ! several owners, each with an isolated system, all served by a central wholesale provider; or
- ! the existence of permanent emergency interconnections.

We do not presume that any particular ownership structure of a PWS is more appropriate to serve as a regional provider. Any retail public utility could serve as the regional provider if it can meet the necessary requirements under 30 TAC Chapters 290 and 291.

How Does This Policy Outline Responsibilities?

Based on state law and our rules, this policy calls for us, any person proposing a new system, and existing providers to fulfill specific responsibilities.

What the TCEQ Must Do

Through our programs in the Water Supply Division, we must ensure that PWSs supply safe drinking water in adequate amounts and are financially stable and technically sound. We must also promote the use of regional and areawide drinking water systems.

In meeting these responsibilities, we must review the engineering plans and specifications of all proposed PWSs. For any proposed PWS that is to

be privately owned, we must also review the system's business plan. For any water or wastewater system that must have a new CCN, we must review the application, review the system CCN maps, and consider the financial, managerial, and technical capabilities of the applicant.

What You Must Do

If you wish to build a new PWS or apply for a new CCN, then you must comply with our rules for these systems (30 TAC Chapters 290 and 291) and follow the guidance set out in this document.

Among other requirements, our rules state that you must obtain our approval of your engineering plans and specifications before you begin building your proposed PWS. For a privately owned PWS, you must also have our approval of your business plan before construction may begin.

What Existing Providers Must Do

Existing providers that hold CCNs must provide prompt responses to requests for service, treat all applicants equitably, charge application fees that are reasonable, and charge cost-based fees for providing service to the specific development receiving that service.

Where Do I Begin?

The first step in determining whether regionalization is feasible is to identify all the water or wastewater systems within the specified distance that state law considers to be "reasonably close"—that is, half a mile for a new PWS and 2 miles for new CCNs. The second step is to read our policy and see how it applies to you.

Locate Nearby Systems

First, you must identify and locate all neighboring systems. From our records, we can provide you with some information about nearby systems, ***but it is your responsibility to make sure that this information is complete, accurate, and current.*** You might have to do local research—perhaps even some fieldwork—to complete this task. Here are a few tips that can make your research more productive:

- ! First, contact us as described under "Finding Nearby Water Systems" below and "Finding Nearby Wastewater Systems" on page 7 to get the most recent information we have.
- ! Drive the area. Systems must have identification at all plant sites.
- ! Look in the Yellow Pages under "Water Companies-Utility."

- 1 Talk to the operators of any systems you discover to find out where they serve or who operates the nearest systems.
- 1 Review our maps for CCN service areas and contact each system's owner or operator to find out the limit of its service area. Don't assume that the limit of the physical system is the same as the limit of the service area.
- 1 Contact county offices to find out about subdivision plats on file. Each city should also have this information for areas inside that city's extraterritorial jurisdiction, or "ETJ."

Finding Nearby Water Systems

You can obtain our most recent information on public water systems or utilities in one or more counties from the online Water Utilities Database (WUD). WUD contains data on public water systems, water and sewer utilities, and water districts.

You can use this database to search for an individual public water system, utility, or district. You can also do an "advanced search" to filter a list of entities from the database. To find WUD, go to the TCEQ Web site (www.tceq.state.tx.us) and enter "WUD" in the "Search" box at the upper right of the home page. Online training is available for WUD. There are also some electronic maps showing CCN areas available on WUD and on the TCEQ's GIS Web page (from the home page, enter "GIS" in the "Search" box at upper right).

As an alternative to using WUD, you can contact our Information Resources Division as shown in Table 1 on page 9. The Information Resources Division can provide information such as public water system or utility name, contact person, and address. There may be a charge for obtaining a list of systems from the Information Resources Division.

After you have focused your search on the systems in one particular area, and if a map is not available on our Web site, contact our Utilities and Districts program (512/239-4691). Using our most recent maps, staff in this program can help you identify service areas and the service providers who operate in those areas.

For further information about water service providers, you should also review the regional water plan for your regional water planning area. Contact the Texas Water Development Board at 512/463-7847 or through its Web site (www.twdb.state.tx.us) for a map of regional water planning areas and contact names for each of the regional water planning groups.

Finding Nearby Wastewater Systems

Finding nearby wastewater systems is similar to finding nearby water systems, with one exception: You can narrow your search by contacting our Water Quality Assessment program first, as shown in Table 1 on page 9. (If you would like to get a list of *all* systems in one or more counties, go straight to Information Resources instead.)

With the name of the county in which you are proposing to build your system and a map of the area you plan to serve, our Water Quality Assessment program can locate the wastewater outfalls of nearby systems. (An outfall is the point where the system's treated wastewater is discharged into state waters.)

The advantage of locating outfalls is that you may be able to find a wastewater treatment plant that is accessible to your proposed development even if the system served by that plant is not nearby. If the plant has excess capacity, the service provider might allow you to connect your system to that plant or to an interceptor line feeding the plant.

However, once you have this information, keep these points in mind:

- ! The rules require you to contact systems whose *service areas* are within 2 miles of your proposed service area.
- ! Our Water Quality Assessment staff can tell you the position of the *outfall*, but they do not know the boundaries of the service area.
- ! Outfalls generally are located downstream of the systems themselves.

Our Water Quality Assessment staff can also tell you the water quality permit numbers for each plant. Once you know these permit numbers, our Information Resources Division can give you the mailing address of each permit holder. If you need more help, contact our Utilities and Districts program.

Information Sources

As stated previously, you can obtain our most recent information on public water systems or utilities in one or more counties from the online Water Utilities Database (WUD). WUD contains data on public water systems, water and sewer utilities, and water districts, and can be accessed from the TCEQ Web site (www.tceq.state.tx.us). If you prefer to make a written request for this information, see Table 1 on the facing page for contact information and the information you must include with your request.

For further information about water supply sources, you should also review the regional water plan for your regional water planning area. Contact the Texas Water Development Board at 512/463-7847 or through

Table 1. How to Get Information about Existing Systems from the TCEQ

For public water systems ...

To get this information:	Include this information in your request:	And send your request to:
A list of all water service providers in one or more counties (do this <i>first</i>)	The name of each county for which you want this information (<i>be sure to indicate that you want a list of public water systems</i>)	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
Water service area boundaries of systems that have CCNs (<i>after</i> you have focused on a specific area or provider)	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Utilities and Districts, MC 153 PO Box 13087 Austin TX 78711-3087 fax: 512/239-6972 phone: 512/239-4691

For wastewater systems ...

To get this information:	Include this information in your request:	And send your request to:
Locations of wastewater outfalls (and the permit number for each outfall) in a specific area	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Water Quality Assessment, MC 150 PO Box 13087 Austin TX 78711-3087 fax: 512/239-4420 phone: 512/239-4671
The mailing address of a permit holder	The permit number for the corresponding outfall	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
A list of all wastewater service providers in one or more counties	The name of each county for which you want this information (<i>be sure to indicate that you want a list of wastewater systems</i>)	TCEQ Information Resources, MC 197 PO Box 13087 Austin TX 78711-3087 fax: 512/239-0888 phone: 512/239-DATA (3282)
Sewer service area boundaries of systems that have CCNs (<i>after</i> you have focused on a specific area or provider)	An accurate area map showing the location and approximate boundaries of your proposed development	TCEQ Utilities and Districts, MC 153 PO Box 13087 Austin TX 78711-3087 fax: 512/239-6972 phone: 512/239-4691

its Web site (www.twdb.state.tx.us) for a map of regional water planning areas and contact names for each of the regional water planning groups.

Start Reading This Policy

If you plan to build a new PWS, start your reading with “New Public Water Systems” on the next page. If you also need a new CCN and the information in “New Public Water Systems” indicates that your water system qualifies for an exception to this regionalization policy, then you must continue your reading with “New Water and Wastewater CCNs” on page 15.

If you are applying for a new CCN to build a stand-alone sewer system only, start your reading with “New Water and Wastewater CCNs” on page 15.

New Public Water Systems

If you plan to build a new PWS, you must evaluate the feasibility of regionalization before you submit your plans, specifications, and, if required, business plan to us. Our policy is that regionalization is feasible unless one of these three exceptions applies:

Do You Need a CCN, Too?

If your proposed PWS will be owned privately or by a water supply corporation *and* you plan to charge your customers a fee for service, then you must also obtain a CCN.

If you need to obtain a CCN, see "New Water and Wastewater CCNs" on page 15 *after* you have read this chapter.

- (1) There are no PWSs within one-half mile.
- (2) You have requested service, and your request has been denied.
- (3) You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

To develop a new stand-alone system, you must consider these three exceptions in this order and then demonstrate that one of these exceptions applies to your system. To receive an exception from this policy, you must provide us the information identified in this chapter.

See Flowchart 1 on page 12 for an overview of this process.

Exception 1: No public water systems within 0.5 mile

If there are existing PWSs within one-half mile of your service area, go to Exception 2 below.

If no PWSs exist within one-half mile of your service area, and you do not need a new CCN (see the box above and to the left), you may proceed to submit your plans, specifications, and, if required, business plan for a stand-alone system.

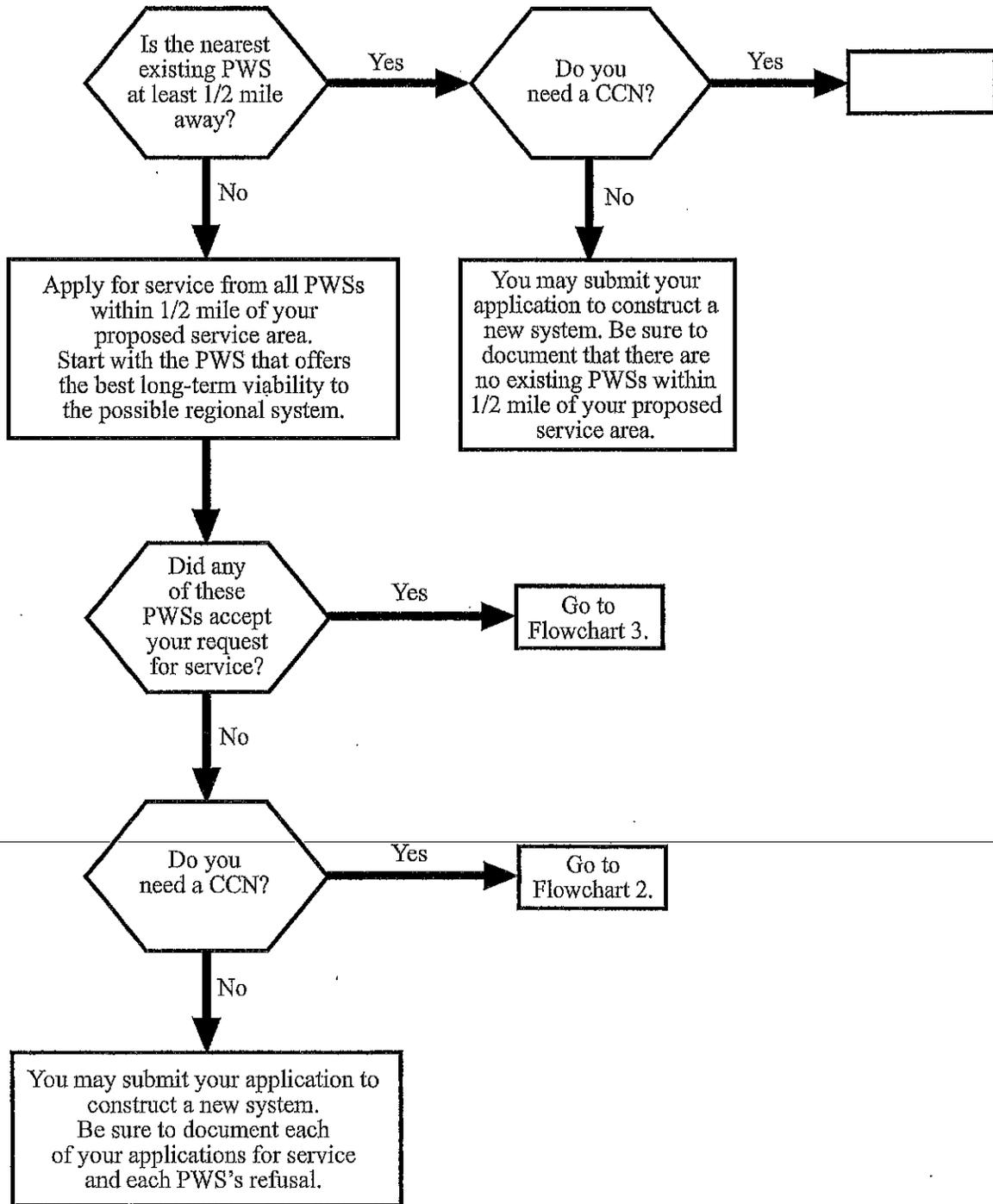
Note: If more than one existing system is within 0.5 mile of your proposed service area, we recommend that you consider establishing regional service with the existing system that will provide the best long-term viability.

Exception 2: Your request for service has been denied

Have you formally applied for service from these systems?

You must apply for service from the existing systems by submitting a formal "request for service" application and by paying any associated fees.

Flowchart 1. Is forming a regional PWS feasible?



If there is more than one existing system, we recommend that you consider establishing regional service with the existing system that will provide the best long-term viability.

You must document that you have made every reasonable attempt to request service from all the nearby systems and the appropriate department of each system. If you do not receive a response within a reasonable amount of time, you are responsible for following up.

Was your request for service approved?

If your request was approved, you must work with that system to form a regional system unless you can demonstrate that regionalization is not feasible through Exception 3 below.

If your request was not approved and you do not need a new CCN (see box, page 11, upper left), you may submit your plans, specifications, and, if required, business plan for a stand-alone system. However, you must provide us a copy of the application requesting service and all correspondence from all the existing systems when you submit these materials.

Exception 3: Costs, affordability, and capabilities

Can you successfully demonstrate that an exception should be granted based on costs, affordability, and the capabilities of the existing system?

To analyze the feasibility of regionalization, you must consider the interplay of these interrelated factors:

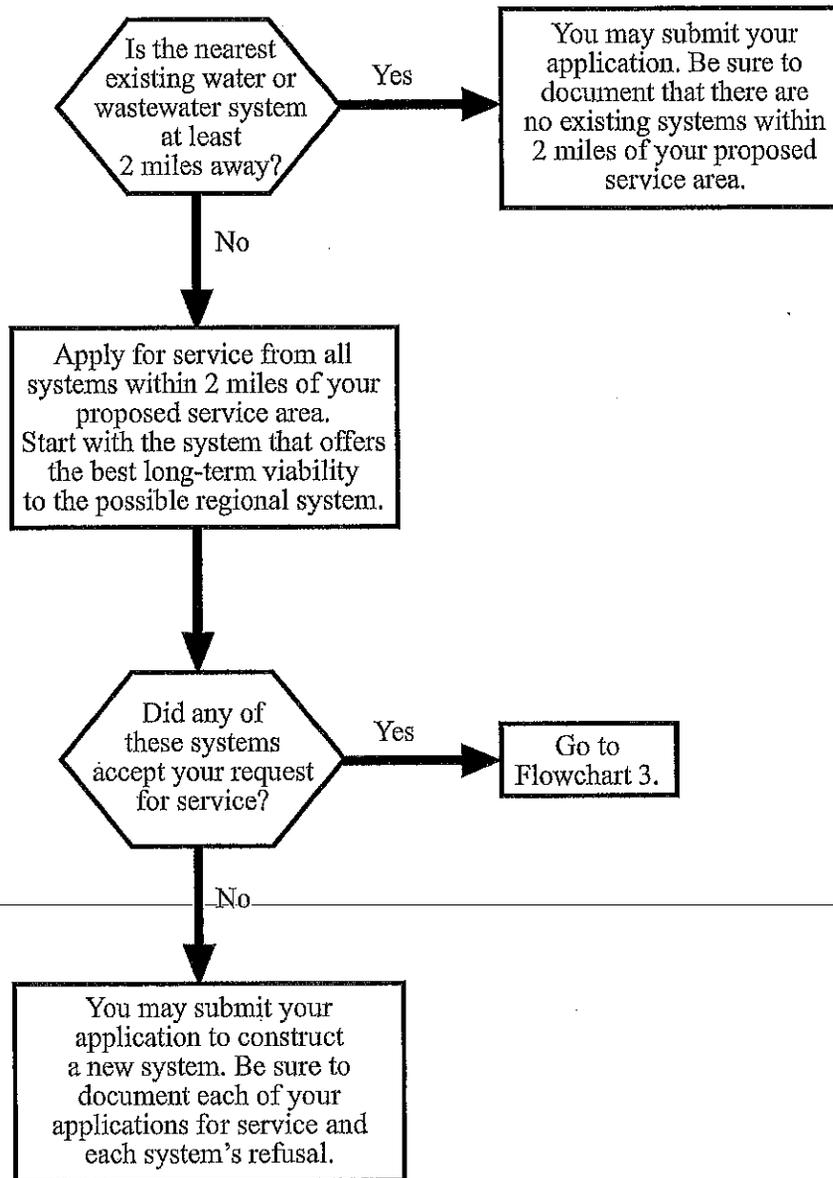
- ! ratio of the costs of regionalization compared to the projected value of the development at buildout;
- ! affordability of the rates; and
- ! financial, managerial, and technical capabilities of the existing system.

These factors are used as a screening process. You qualify for this exception even if you meet only one of these factors.

If you qualify for this exception, you may submit your plans, specifications, and, if required, business plan for a stand-alone system. However, you must also give us the supporting documentation. Before you submit these materials, see the box at the upper left of page 11 to find out whether you also need a CCN.

For a more detailed explanation of how to analyze these factors, see “Appendix A: Analyzing Costs, Affordability, and Capabilities of the Existing System” on page 17.

Flowchart 2. Is forming a regional system feasible when you need a CCN?



New Water and Wastewater CCNs

If you are applying for a new CCN, you must evaluate the feasibility of regionalization before you submit your CCN application and accompanying documents to us.

Our regionalization policy for these new CCNs is just like our policy for new PWSs except for these two points:

- ! You must expand your search for nearby water or wastewater systems to 2 miles from the boundary of your proposed service area.
- ! You do not have to consider the exceptions in order. In other words, you do not have to apply for service from a nearby system if you can demonstrate that costs, affordability, and the capabilities of that system would make regionalization infeasible anyway.

Flowchart 2 on the facing page gives an overview of this process.

Exception 1: No systems within 2 miles

Is an existing PWS or wastewater treatment system within 2 miles of your proposed CCN boundary?

If the nearest system is within 2 miles of your proposed boundary, see whether *either* Exception 2 below or Exception 3 on page 16 applies to you.

If the nearest system is more than 2 miles away, you may submit your CCN application and related materials to us. You are not *required* to consider regionalization. However, we *recommend*

that you consider the feasibility of establishing regional service with another system, even if you must look more than 2 miles away.

Note: If more than one existing system is within 2 miles of your proposed boundary, we recommend that you consider establishing regional service with the existing system that will provide the best long-term viability.

Exception 2: Your request for service has been denied

Have you requested service from all of these systems?

If you have requested service, see “Was your request approved?” below.

If you have not requested service from a nearby system, then you must either request service from that system or demonstrate that regionalization is not feasible through Exception 3 on page 16.

Was your request approved?

If the nearby system approved your request for service, see Exception 3 below.

If the nearby system rejected your request for service, you may proceed to submit your plans, specifications, business plan, and CCN application. However, you must provide us a copy of the application requesting service and all correspondence from the existing system when you submit these materials.

Exception 3: Costs, affordability, and capabilities

Can you successfully demonstrate that an exception should be granted based on costs, affordability, and the capabilities of the existing system?

As with a new PWS, to analyze the feasibility of regionalization, you must consider the interplay of these interrelated factors:

- ! ratio of the costs of regionalization compared to the projected value of the development at buildout;
- ! affordability of the rates; and
- ! financial, managerial, and technical capabilities of the existing system.

These factors are used as a screening process. You qualify for this exception even if you meet only one of these factors.

If you qualify for this exception, you may submit your plans, specifications, and, if required, business plan for a stand-alone system. However, you must also give us the supporting documentation.

For a more detailed explanation of how to analyze these factors, see "Appendix A: Analyzing Costs, Affordability, and Capabilities of the Existing System" on page 17.

If You Qualify for None of These Exceptions

If you do not qualify for any one of these exceptions, you should seriously consider regionalization.

However, if you decide to pursue your CCN application, you will have an opportunity to try to demonstrate to the staff that your CCN application should be approved. If your application is protested and an evidentiary hearing is held, you will have an opportunity to demonstrate to the administrative law judge (and ultimately the TCEQ commissioners) that your CCN application should be approved.

Appendix A

Analyzing Costs, Affordability, and Capabilities of the Existing System

Use this information along with Flowchart 3 on page 18 to determine whether an exception should be granted based on costs, affordability of rates, or the capabilities of the existing system.

This appendix discusses whether an exception based on the following interrelated factors should be granted:

- Factor 1:** Ratio of the costs of regionalization compared to the projected value of the development at buildout
- Factor 2:** Affordability of rates
- Factor 3:** Financial, managerial, and technical capabilities of the existing system

These factors are used as a screening process. You qualify for this exception even if you meet only one of these factors.

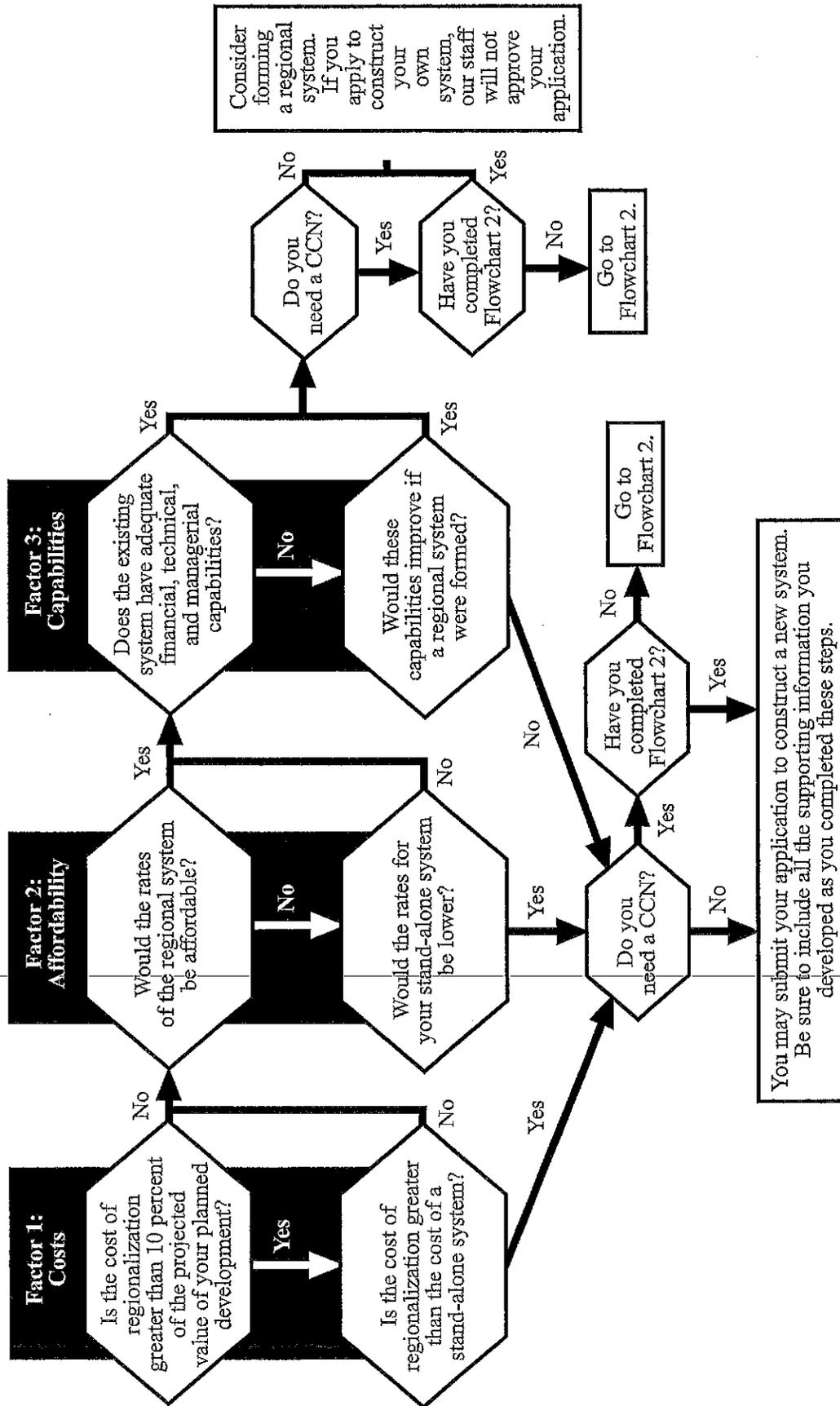
In the following discussion, we do not intend to limit the factors that you may want to raise to support an exception. If you bring to our attention factors not mentioned in this appendix, we will also consider those factors, as appropriate.

Factor 1: Compare Costs to Your Development's Projected Value

The ratio of the costs of regionalization compared to the projected value of the development refers to the comparison of the costs of regionalization to obtain service from an existing system versus the estimated value of the project at full buildout.

The cost of regionalization includes the up-front costs associated with obtaining service from an existing system and the incremental construction costs associated with any delays in construction.

Flowchart 3. Should we grant an exception?



The projected value of the development includes the estimated value of all lots, homes, commercial and industrial improvements, developed reserves, and undeveloped land at buildout, assuming the installation of a stand-alone system.

To propose an exception based on the high costs of regionalization, you must meet both of these criteria:

Criterion 1: The costs of regionalization are greater than 10 percent of the projected value of the development.

Criterion 2: The costs of regionalization are greater than the cost of a stand-alone system.

Determining Costs of Regionalization

Up-Front Costs Associated with Obtaining Service

When an existing water or sewer utility extends new service, this utility service provider can charge connection fees to the person requesting the service, regardless of whether the person is a residential customer or a developer who needs multiple services for a proposed new subdivision.

Examples of these connection fees include:

tap fees—the costs of tapping the main line and installing the tap, service line, meter, and meter box to provide utility service to the customer's property line.

deposit—a bond-type arrangement that can be applied to unpaid charges. This sometimes takes the form of a membership fee that a new customer may be required to pay the utility service provider.

system development charges (also commonly referred to as *impact fees*, *system capacity charges*, *system buy-in charges*, and *system investment fee front-end charges*)—any fee that is charged by the utility service provider to provide funds to finance capital improvements necessary to serve a new customer. System development charges are designed to generate contributions from customers for financing major system construction. The theory is that these charges allow growth to pay for itself. The magnitude of the charges may range from several hundred to many thousands of dollars. There are two primary methods used to determine the amount of these charges: the system buy-in method and the incremental-cost pricing method.

system buy-in method—the fee is related to the equity embedded in existing or new systems required to serve new customers and is based on the premise that new customers are entitled to water at the same prices charged to existing customers.

incremental-cost pricing method—the fee is related to the change in total cost resulting from a change in capacity of existing or future systems required to serve the new customer (including related operating costs) and is based on calculating the addition to total cost resulting from the incremental cost of capacity (= increase in capacity divided by increase in output, for a specific time period).

extension fees—the costs of the line extensions or capacity in existing lines that will be used to transport utility service to the new customer. The costs of extension fees may include any related engineering fees and the cost of financing the extension as applicable.

Table 2 provides information concerning the different types of utility service providers in the state and the jurisdiction we have over their connection fees in case a dispute or question arises with another utility service provider.

Table 2. Does the TCEQ Have Jurisdiction over Your Connection Fees?

Type of Utility	Tap Fee?	Deposit?	System Development Charge?	Extension Fee?
Investor-owned utility	yes	yes	yes	yes
Water supply corporation	no	no	in some cases ¹	in some cases ¹
Water district	no	no	no ²	no
City or county	no	no	no	no

¹ Developers or new customers can appeal the costs for a new connection from a nonprofit water supply corporation.

² The TCEQ sets impact fees for water districts only if the impact fee is more than three times the district's tap fee.

We set cost-based connection fees for utilities over which we have the related jurisdiction. System development charges and extension fees have the most impact on new development. In the past, many service providers have taken on debt to fund infrastructure for growth; however, in the last twenty years or so there has been a large increase in the number of water and sewer service providers that charge system development charges and extension fees to cover new infrastructure needs. Water and sewer service providers now tend to require developers to pay for the infrastructure instead of taking on additional debt that would increase customer rates or taxes.

These connection fees are start-up costs that should be covered in the lot sales. You may find that these fees are greater than the short-term cost to install a small system that would serve only the new proposed subdivision. However, you should also consider the long-term costs and obligations associated with operating the system when you make your decision.

Depending on the service provider's extension policy, you may be able to recover some, if not all, of these costs through the following methods. You must factor any money you can recover through these methods into your cost calculations.

- ! **Line extension refund contract**—allows reimbursement to the developer of the full cost of the main extension from user charge revenues generated from customers which are served from the main extension (time limited).
- ! **Contribution of the cost** of the size of the main required to serve the developer's subdivision, with the service provider paying the costs for any up-sizing of the main extension which may be required to serve anticipated future customer growth in the area beyond that in the developer's current needs.
- ! **Up-sizing costs refunded to the developer** by establishing a "benefit area." As additional customers or subdivisions in this benefit area connect to the main extension, the original developer can be reimbursed for the prorated share of the up-sizing costs attributable to the additional connections.

Time Frame for Receiving Service

A neighboring service provider may be willing to provide service to your development, but may not be able to do so immediately. You may consider the economic impact of such a delay in providing service.

For example, the existing service provider may have to increase system capacity to be able to meet the demands of your new system, may need to obtain necessary financing, or may already have a prioritized schedule for construction or providing service to other applicants.

Delays in obtaining service may result in delays in certain phases of your construction, depending on the projected construction schedule. To the extent that there are delays in construction, there is likely to be an increase in the overall cost of your project. If such a delay affects your development, you must demonstrate how the delays in construction will result in

additional project costs. These costs would then be compared to the estimated projected value of the project at full buildout.

Impact on Sales

As the cost of regionalization increases, it is necessary to look at the impact on the development in an area. These costs may be passed on to existing customers and property owners through increases in lot prices, water and wastewater rates, ad valorem taxes, or all three.

Determining Projected Value of Development

The projected value of the development includes the estimated value at buildout of all lots, homes, commercial and industrial improvements, developed reserves, and undeveloped land, assuming the installation of a stand-alone system.

Use present-day unit values to determine the current value of all existing property and the value that will be added by future improvements to the property. The development should include all property to be served by the proposed new system.

Factor 2: Consider Affordability of Rates

The issue of rate affordability considers the consumers' ability to pay. Even if your rates are reasonable according to your costs, your customers won't be able to support the cost of the water if those cost-based rates are unaffordable. To propose an exception to regionalization due to unaffordable rates from the existing provider, you must meet *both* Criterion 1 and Criterion 2 discussed below. However, our staff may review additional factors in determining rate affordability.

Criterion 1: Rates resulting from regionalization are not affordable

To determine whether rates are unaffordable, we must calculate a "household cost factor" as set forth in a TWDB rule [31 TAC §371.24(b)]. If regionalization results in rates with a household cost factor greater than 1 percent for water service or a combined household cost factor greater than 2 percent for water and sewer service, then the rates resulting from regionalization may not be affordable.

The consumption level used in the rate calculation is based on per capita indoor water use.

The household cost factor (for areas charged for water service only) and the combined household cost factor (for areas charged for both water and sewer services) are calculated as follows:

Household cost factor (if charging for water services *only*)

If you are charging for water services only, follow these five steps to calculate the household cost factor:

1. Calculate the average monthly household usage:

$$\text{average number of persons per household} \times 2,325 \text{ gallons} = \text{average monthly household usage}$$

2. Calculate a monthly bill based on this usage and your rate structure.

3. Multiply this monthly bill by 12 to get the average yearly water bill.

4. Multiply the adjusted median household income (AMHI) for your area for 2000 by the Texas consumer price index (CPI) for last year. Divide this value by the Texas CPI for 2000 to get a current value for the AMHI:

$$\frac{(\text{AMHI for 2000}) \times (\text{last year's Texas CPI})}{\text{Texas CPI for 2000}} = \text{current AMHI}$$

5. Add the average yearly water bill to the average cost of any taxes, surcharges, or other fees you plan to use to subsidize your system. Divide this value by the current AMHI to get the household cost factor:

$$\frac{\text{average yearly water bill} + \text{average other fees}}{\text{current AMHI}} = \text{household cost factor}$$

**Combined household cost factor
(if charging for *both* water and sewer service)**

If you are charging for both water and sewer service, follow these steps to calculate the household cost factor:

1. Calculate the average yearly water bill and the AMHI as shown under "Household cost factor" above.

2. Calculate the average monthly household usage:

$$\text{average number of persons per household} \times 1,279 \text{ gallons} = \text{average monthly household usage}$$

3. Calculate a monthly bill based on this usage and your rate structure.

4. Multiply this monthly bill by 12 to get the average yearly sewer bill.

5. Add the average yearly water bill to the average yearly sewer bill and any taxes, surcharges, and other fees you plan to use to subsidize your system. Divide this total by the AMHI of the area to be served:

$$\frac{\text{avg. yearly water bill} + \text{avg. yearly sewer bill} + \text{other fees}}{\text{current AMHI}} = \text{household cost factor}$$

Criterion 2: Rates of a stand-alone system would be lower than the (unaffordable) rates of a regionalized system

Under this criterion, you must calculate the rates that will be necessary to fully recover the costs of the proposed new water or sewer system. If the rates of the proposed system are higher than the current rates of the existing provider, we will presume that the rates of the existing provider are affordable. Under these circumstances, we will not consider your case to be an exception to this policy (even if the household cost factor shows the rates of the existing provider are unaffordable).

To demonstrate that this exception exists, you must show that the rates of the proposed new system are affordable *and* that the rates of the regionalized system are not affordable (see Criterion 1 on page 22).

Factor 3: Consider Capabilities of Existing System

An analysis of financial, managerial, and technical capabilities refers to whether the existing system has the financial resources to fund improvements that provide the service over the long term, the managerial resources to support operations and plan for emergencies, and the technical expertise to provide consistent service in compliance with our rules.

Here we list factors to consider in determining financial, managerial, and technical capabilities of the existing system. We will also consider other factors as appropriate.

Features That Can Indicate Financial Capability

- ! Rates are reviewed on a regular basis.
- ! Rate structure is appropriate to customer base.
- ! Debt coverage ratio is adequate.
- ! System is current on debt payments.
- ! All fees to regulatory agencies and laboratories paid on a timely basis.
- ! System has appropriate insurance coverage.
- ! Annual audit is conducted (if system is a public entity or water supply corporation).
- ! System has operating reserve accounts or access to funds as needed.

- ! System has adequate working capital ratio.
- ! System has a high rate of collection of customer accounts.
- ! System has written policies for collection and termination of service.
- ! Collection policies are enforced.
- ! System has low number of disconnects due to failure to pay bill.

Features That Can Indicate Managerial Capability

- ! System is aware of type of organization it is and has legal authority to operate.
- ! System has an operating budget.
- ! System has written operating policies.
- ! Customers have access to water system personnel at all times in case of emergency.
- ! Records are maintained and updated on a regular basis.
- ! Budget is used to determine rates.
- ! System has adequate water supply.
- ! System has written emergency plans.
- ! System has conveyable title to water-producing assets.
- ! Governing board is able to conduct meetings and make decisions (that is, a quorum is usually present, and there is a majority vote for most major operating decisions).
- ! Every connection is metered.
- ! Customers are billed on consistent billing cycles based on meter readings.
- ! System owners or board has current CCN (if required).
- ! System has an approved drought contingency plan.
- ! System has an employee handbook or policies.

Features That Can Indicate Technical Capability

- ! Licensed operator is on site or available to operate the system.
- ! All operators are licensed.
- ! Operators have the appropriate certifications for the size of the system.
- ! System staff can identify oldest piece of equipment and the most vulnerable part of the system.
- ! Process control and preventive maintenance are performed and documented.
- ! System calculates unaccounted-for water and does not have excessive amounts.
- ! System does not have a history of noncompliance with regulatory requirements.

Appendix B

Statutory and Regulatory Authority

This policy implements portions of Senate Bill 1 (1997) and is intended to assist our Utilities and Districts program staff and the regulated community with the implementation of the regionalization requirements in Title 30 Texas Administrative Code (30 TAC) Chapters 290 and 291. Regionalization was one of the key goals of Senate Bill 1 (1997) in order to optimize the use of existing financial, managerial, and technical resources. In addition, this policy is based on the following statutory provisions.

General Statutory Authority

The Texas Health and Safety Code, Chapter 341, Subchapter C, requires that public drinking water be free from deleterious matter and comply with the standards established by the TCEQ or the United States Environmental Protection Agency. The TCEQ may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

The Texas Water Code Chapter 13 establishes a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to ensure that rates, operations, and services are just and reasonable to the consumers and to the retail public utilities.

Specific Authority

Public Water Systems

Section 341.0315(a)–(d) of the Texas Health and Safety Code, relating to public drinking water supply system requirements, requires that:

- (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:
 - (1) supply safe drinking water in adequate quantities;
 - (2) are financially stable; and
 - (3) are technically sound.
- (b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.
- (c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.

- (d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

Texas Health and Safety Code § 341.035 requires that before constructing a new system a person submit plans and specifications and, with certain exceptions, a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The TCEQ may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

Title 30 TAC § 290.39 ensures that regionalization and area-wide options are fully considered; ensures the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations or changes; establishes minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices; and requires that minimum acceptable financial, managerial, technical and operating practices are specified to ensure that systems are properly operated to produce and distribute safe, potable water.

Water and Sewer CCNs

Texas Water Code § 13.241 requires that an applicant for a CCN demonstrate that it possesses the financial, managerial, and technical capability to provide continuous and adequate service and also requires that an applicant for a new CCN for a physically separate water or sewer system demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Texas Water Code § 13.246 specifies the factors to be considered by the commission concerning CCN notice and hearing and CCN issuance or refusal.

Texas Water Code § 13.253 requires that a CCN holder located in an affected county that has not been able to provide continuous and adequate service obtain service from another consenting utility service provider. Title 30 TAC §291.102(a) provides that the TCEQ must ensure that an applicant possesses financial, managerial, and technical capability to provide continuous and adequate service.

Title 30 TAC § 291.102(b) requires that where a new CCN is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Title 30 TAC § 291.102(c) requires that the TCEQ consider the following in considering whether to grant a CCN:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area;
- (3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity; and
- (8) the probable improvement in service or lowering of cost to consumers in that area.

Exhibit F
Texas Tax Code, § 151.355

Tex. Tax Code § 151.355

This document is current through the 2015 regular session, 84th Legislature, S.B. 45, S.B. 293 (ch. 2), S.B. 415(ch. 15), S.B. 459, S.B. 529 (ch. 37), S.B. 835 (ch. 6), S.B. 901 (ch. 54), S.B. 903 (ch. 3), S.B. 1749 (ch. 29), and S.B. 1985 (ch. 4).

Texas Statutes and Codes > TAX CODE > TITLE 2. STATE TAXATION > SUBTITLE E. SALES, EXCISE, AND USE TAXES > CHAPTER 151. LIMITED SALES, EXCISE, AND USE TAXES > SUBCHAPTER H. EXEMPTIONS

§ 151.355. Water-Related Exemptions

The following are exempted from taxes imposed by this chapter:

- (1) rainwater harvesting equipment or supplies, water recycling and reuse equipment or supplies, or other equipment, services, or supplies used solely to reduce or eliminate water use;
- (2) equipment, services, or supplies used solely for desalination of surface water or groundwater;
- (3) equipment, services, or supplies used solely for brush control designed to enhance the availability of water;
- (4) equipment, services, or supplies used solely for precipitation enhancement;
- (5) equipment, services, or supplies used solely to construct or operate a water or wastewater system certified by the Texas Commission on Environmental Quality as a regional system;
- (6) equipment, services, or supplies used solely to construct or operate a water supply or wastewater system by a private entity as a public-private partnership as certified by the political subdivision that is a party to the project; and
- (7) tangible personal property specifically used to process, reuse, or recycle wastewater that will be used in fracturing work performed at an oil or gas well.

History

Enacted by Acts 2001, 77th Leg., ch. 966 (S.B. 2), § 4.25, effective September 1, 2001; enacted by Acts 2001, 77th Leg., ch. 1234 (S.B. 312), § 39, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 209 (H.B. 2424), § 24, effective October 1, 2003; am. Acts 2007, 80th Leg., ch. 1352 (H.B. 4), § 14, effective June 15, 2007.

Annotations

Notes

Applicability. --

Acts 2007, 80th Leg., ch. 1352 (H.B. 4), § 15 provides: "The change in law made by this Act to Section 151.355, Tax Code, does not affect taxes imposed before the effective date of this Act [June 15, 2007],

and the law in effect before the effective date of this Act is continued in effect for purposes of the liability for and collection of those taxes.”

2007 amendment,

added (7); and made related changes.

Case Notes

LexisNexis (R) Notes

Tax Law: State & Local Taxes: Sales Tax: Exemptions

1. Essence of the transaction at issue was the sale or rental of tangible personal property, not the attendant services; the contractor's provision of erosion control devices was not subject to the exemption for environmental services required by law. *Austin Eng'g Co. v. Combs, 2011 Tex. App. LEXIS 6122 (Tex. App. Austin Aug. 5 2011).*

Research References & Practice Aids

LexisNexis (R) Notes

LAW REVIEWS

1. *55 SMU L. Rev. 1219*, ARTICLE: Oil, Gas and Mineral Law, Summer, 2002.
2. *55 SMU L. Rev. 1315*, ARTICLE: Taxation, Summer, 2002.

LexisNexis ® Texas Annotated Statutes

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Exhibit G
Comptroller's 2008 Guidance



BULLETIN

Susan Combs, Texas Comptroller of Public Accounts

Water and Wastewater Systems

Persons who construct or operate water or wastewater systems that supply or treat water for Texans may be entitled to claim sales tax exemptions, depending on the type of system or the exempt status of the entity that owns and operates the system.

Tax Code Section 151.355 provides exemptions related to the construction of two types of water or wastewater systems: regional systems certified by the Texas Commission on Environmental Quality (TCEQ) and water or wastewater systems constructed or operated as a public-private partnership. Tax Code Section 151.309 addresses exemptions that may be claimed by governmental entities, such as cities, counties and water districts that build or operate water systems.

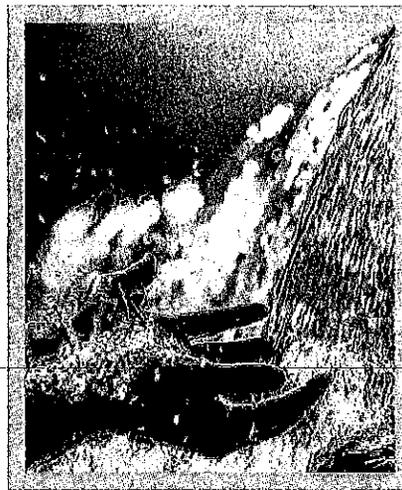
Nonprofit water supply corporations are not exempt from sales tax. Some of the goods and services purchased by a nonprofit water supply corporation may qualify for sales tax exemptions, however.

Certified Regional Water Systems

Sales of equipment, services or supplies used solely to construct or operate a water or wastewater system certified as a regional system by the Texas Commission on Environmental Quality (TCEQ) are exempt from sales tax. For a list of certified regional systems, see the section titled "Regional Certification for Water and Sewer Utilities" on TCEQ's Web Site.

TCEQ does not identify a facility as a regional water or wastewater facility until the facility is certified. Once TCEQ certifies a regional water or wastewater system, the facility and contractors can claim an exemption on qualifying purchases.

Qualifying exempt purchases include all purchased or leased equipment, services and supplies used solely on that particular project under either lump-sum or separated contracts. The exemption includes utilities to operate the equipment as well as dedicated office trailers or other facilities at the job site. The exemption also includes all equipment within the office, but only if the equipment is used solely at the regional system site. See Rule 3.318(e) for information about tax responsibility if exempt items are diverted for use in a taxable manner. A contractor should not claim an exemption for any equipment or supplies that will be used on both qualifying and non-qualifying jobs. A contractor that buys equipment for sole use on qualifying jobs that is later used in a taxable manner should refer to Comptroller Rule 3.318(e) concerning taxable divergent use.



Contractors should note that regional water systems are not entitled to the sales and use tax exemptions provided under Tax Code Section 151.309 for Governmental Entities or under Tax Code Section 151.310 for other types of exempt entities. Therefore, a construction company should not assume that purchases made for a regional water system contract are automatically



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Water and Wastewater Systems

exempt from sales and use tax. Once a construction company has received an exemption certificate, it should check the TCEQ's Web site for certification confirmation.

Public-Private Partnerships

Tax Code Section 151.355(6) provides an exemption for equipment, services and supplies used solely to construct or operate a water supply or wastewater system by a private entity that is a member of a public-private partnership. The partnership must be certified by the political subdivision that is a party to the project. For example, a private contractor and a city may have a partnership, which the city certifies, to construct a water and wastewater system to serve new areas within the city.

The scope of this exemption is the same as that for certified regional water systems as described in the previous section. The operator of the public-private partnership should provide the construction company with a valid exemption certificate. A construction company should not assume that purchases are tax-free because a public entity is involved. These partnerships are not entitled to the sales and use tax exemptions under Tax Code Section 151.309 for governmental entities or Section 151.310 for other types of exempt entities. Once the construction company has received the appropriate exemption certificate (if applicable) from the operator, it will in turn issue its own exemption certificates to suppliers and cite the appropriate statutory reference as the basis for the exemption.

Governmental Entities

Under Tax Code Section 151.309, purchases by a Texas governmental entity or political subdivision, such as a city, county or water district, are not subject to sales and use tax.

Exemption certificate or voucher

The exempt entity may provide the contractor with an exemption certificate or with the entity's purchase voucher. The contractor for the exempt entity then gives subcontractors an exemption certificate stating that the exempt organization purchases materials tax-free. Subcontractors then may purchase the materials tax-free using the exemption certificate.

Exempt items

Tax Code Section 151.311 addresses the taxability of items used for improving the real estate of an exempt entity.

Comptroller Rule 3.291(c) addresses the tax responsibilities of contractors who perform lump-sum and separated contracts for exempt organizations. Rule 3.291 states that the following items are exempt from sales and use tax when purchased for use in the performance of an exempt entity contract:

- tangible personal property that is incorporated into the realty;
- consumable items that are necessary and essential to the contract and are completely consumed at the job site; and
- taxable services that are performed at the job site and are expressly required by the exempt contract to be provided or purchased by the contractor or integral to the performance of the exempt contract.

Contracts to repair or remodel an exempt organization's property follow the same new construction requirements above. Comptroller Rule 3.357(b) addresses the repair, remodeling or restoration of nonresidential real property. Again, consumable items must be necessary for the performance of the contract and the items must be completely consumed at the job site.

Dedicated Water or Wastewater Systems

A private developer or builder may dedicate a water or wastewater system to a municipality or other type of political subdivision of the state. Before the work begins, the private developer or builder must provide the contractor with a letter of intent or other document from the governmental entity that states its intent to accept the property. Taxable items purchased and used by the contractor prior to the date of tentative acceptance by the political subdivision do not qualify for exemption. If so dedicated, items purchased for the project are exempt to the same extent as if the work was done for the exempt governmental entity as discussed in the previous section on Governmental Entities. See Rule 3.291(c)(2)(B) for more information on the requirements for this exemption.

Nonprofit Water Supply Corporations

A nonprofit water supply or sewer service corporation is organized on behalf of a city or town under Water Code Chapter 67. A nonprofit water supply corporation is not automatically exempt from sales and use tax but is exempt from franchise tax.

As explained below, some of the goods and services purchased by a nonprofit water supply corporation may qualify for sales tax exemptions. A nonprofit water supply corporation also may fall under the requirements of



SALES AND USE TAX BULLETIN

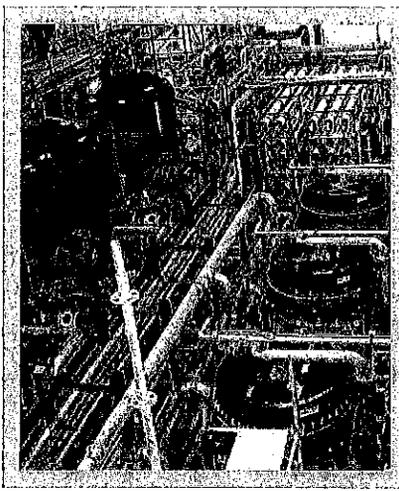
Water and Wastewater Systems

a regional water system or private-public partnership, or the nonprofit corporation may receive special state funding that provides for a sales tax exemption.

Special Funding May Affect Taxability of Items

A nonprofit water supply or sewer service corporation may receive special state funding from the Rural Water Assistance Fund. Water Code Section 15.994(f) provides that a nonprofit corporation is exempt from paying sales tax on the purchase, lease or rental of tangible personal property and on the purchase of taxable services for projects that the Rural Water Assistance Fund finances. The nonprofit corporation must keep records that clearly show which taxable items were purchased for projects that the Rural Water Assistance Fund financed.

A nonprofit water supply or sewer service corporation also is exempt from paying sales tax on the purchase, lease or rental of tangible personal property and on the purchase of taxable services for projects that receive funding from the Economically Distressed Areas Program (EDAP) for an economically distressed area as defined in Water Code Section 17.921(1). The nonprofit corporation must keep records that clearly show which taxable items were purchased for projects the EDAP financed.



Taxable uses. Electricity used to transport water after treatment is taxable. Examples include moving the water to a storage facility or transporting it to the customer.

Tax is due on electricity used to heat, cool and light the company office and to run office machines.

Predominant use test. When a single meter measures all electricity for both exempt and taxable uses, the total bill will be taxable or exempt depending on the predominant use of the electricity. If more than 50 percent of the electricity measured by a meter is for an exempt use, the total electric bill is exempt from sales tax. For more information on determining the predominant use of electricity and claiming an exemption, see Comptroller Rule 3.295.

Chemicals, materials and supplies

Sales tax is not due on the cost of chemicals that enter into and become a part of water processed for sale. Materials used to test the quality of the water after processing, however, are taxable.

Sales tax is not due on the cost of materials necessary or essential to operate processing machinery or equipment. For example, sales tax is not due on the cost of lubricants consumed for operating chlorination equipment.

Exempt versus Taxable Items

The following identifies some of the goods and services purchased by a nonprofit water supply corporation that may qualify for sales and use tax exemptions.

Electricity

Exempt uses. Sales tax is not due on the cost of electricity used to operate equipment that removes water from a river, lake or well.

Sales tax is not due on the cost of electricity used to operate equipment that transports water from its source to a storage tank or holding facility before the water is treated or to transport water to treatment.

Sales tax is not due on the cost of electricity used to operate water-treating equipment.

Machinery and equipment

Exempt. Sales tax is not due on the cost of water processing equipment, repair or replacement parts.

Taxable. Sales tax is due on items that are merely useful or incidental to the water processing operation. For example, rented or leased equipment, hand tools, office equipment, office supplies, cleaning equipment, intraplant transportation equipment and any other support equipment are taxable.

Sales tax is also due on storage tanks, pumps and pipe used to remove water from its source, transport it to a storage tank or processing point and deliver it to a consumer.



Equipment repairs and maintenance

If tangible personal property such as machinery or equipment is exempt from sales and use tax, charges to repair, maintain, restore or remodel these items are also exempt from tax.

New construction labor and materials

New construction labor is not taxable. Sales tax is due on incorporated materials when real property is constructed or built, unless an exemption applies. Examples of improvements to real property include buildings, water towers, water lines and dams.

The type of contract used by a contractor will determine who is responsible for paying sales tax on the incorporated materials. When the contract sets out a lump-sum amount that does not separate the charges for materials from charges for labor, the contractor should not collect sales tax from the water supply corporation. The contractor should pay sales tax to suppliers at the time materials are bought. When the contract for new construction contains separate charges for labor from materials, the contractor should collect sales tax from the water supply corporation on the charge for the incorporated materials. The contractor is reselling the incorporated materials.

Repair or remodeling real property

Repairing, remodeling and restoring nonresidential real property are taxable services. Whether the bill for nonresidential repair or remodeling contains a single charge or separates the charge for materials from the charge for labor, the total amount is taxable.

Tangible personal property versus real property determination

Sometimes equipment will be installed in a building and become incorporated into realty. The basic and long-established test for determining whether tangible personal property becomes a real property fixture depends on the intent of the parties and the answer to the following three questions. If the answers are yes, the tangible personal property likely has become an

improvement to realty; if no, it likely will remain tangible personal property.

- Is there a real or constructive annexation of the personal property to the real property?
- Is there a fitness or adaptation of the personal property to the realty?
- Does the party making the annexation intend for the personal property to become a permanent part of the real property?

Monthly connection fees

Monthly charges to customers who connect their water lines to a water facility are not taxable.

Other taxable services

Nonprofit water supply corporations owe sales tax on their purchases of taxable services, such as debt collection, pest control, security services, data processing services, waste removal and landscaping.

Use tax may be due

A nonprofit water supply corporation should check invoices when purchasing taxable goods or services. If a supplier fails to charge tax on a taxable item or service and the corporation has not issued an exemption certificate, the corporation should tell the supplier that sales tax is due and include it in the payment.

If a supplier is an out-of-state firm and does not collect Texas tax, then the nonprofit water supply corporation is responsible for sending use tax to the Comptroller.

How to claim an exemption

To claim an exemption from sales tax, the nonprofit water supply corporation or qualifying contractor must give the supplier or repairperson an exemption certificate. The certificate must state the specific reason for claiming the exemption.

Have Questions?

Call the Comptroller's office toll free at (800) 252-5555 or write to us at tax.help@cpa.state.tx.us.

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Exhibit H

Senate Bill 2 Excerpts Enacting Texas Tax Code, § 151.355

(d) [(f)] Any contract election may be held at the same time as and in conjunction with an election to issue bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

SECTION 20.03, Subchapter D, Chapter 366, Health and Safety Code, is amended by adding Section 366.0512 to read as follows:

Sec. 366.0512. MULTIPLE TREATMENT SYSTEMS. A multiple system of treatment devices and disposal facilities may be permitted as an on-site disposal system under this chapter if the system:

- (1) *is located on a tract of land of at least 100 acres in size;*
- (2) *produces not more than 5,000 gallons a day on an annual average basis;*
- (3) *is used only on a seasonal or intermittent basis; and*
- (4) *is used only for disposal of sewage produced on the tract of land on which any part of the system is located.*

Passed by the House on April 20, 2001, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2912 on May 17, 2001, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2912 on May 27, 2001; Yeas 100, Nays 42, 2 present, not voting; and that the House adopted H.C.R. No. 331 authorizing certain corrections in H.B. No. 2912 on May 28, 2001, by a non-record vote; passed by the Senate, with amendments, on May 14, 2001, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2912 on May 27, 2001, by a viva-voce vote; and that the Senate adopted H.C.R. No. 331 authorizing certain corrections in H.B. No. 2912 on May 28, 2001, by a viva-voce vote.

Approved June 14, 2001.

Effective September 1, 2001, unless otherwise provided.

CHAPTER 966

S.B. No. 2

AN ACT

relating to the development and management of the water resources of the state, including the ratification of the creation of certain groundwater conservation districts; providing penalties.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. TEXAS WATER ADVISORY COUNCIL

SECTION 1.01. Subtitle A, Title 2, Water Code, is amended by adding Chapter 9 to read as follows:

CHAPTER 9. TEXAS WATER ADVISORY COUNCIL

Sec. 9.001. DEFINITIONS. In this chapter:

- (1) *"Authority" means an entity listed in Section 9.010(b).*
- (2) *"Board" means the governing body of an authority.*
- (3) *"Commission" means the Texas Natural Resource Conservation Commission.*

SECTION 4.21. Subchapter J, Chapter 17, Water Code, is amended by adding Section 17.8955 to read as follows:

Sec. 17.8955. CONSERVATION LOANS FOR BRUSH CONTROL AND PRECIPITATION ENHANCEMENT. (a) The board or a lender district may make a conservation loan for capital equipment or materials, labor, preparation costs, and installation costs for:

(1) preparing and maintaining land to be used for brush control activities, including activities conducted under Chapter 203, Agriculture Code; or

(2) implementing precipitation enhancement activities in areas of the state where those activities would be, in the board's judgment, most effective.

(b) A conservation loan for a purpose listed in Subsection (a) may be made by a lender district to an individual borrower for use on private property or by the board to a borrower district.

SECTION 4.22. Subchapter L, Chapter 17, Water Code, is amended by adding Section 17.9615 to read as follows:

Sec. 17.9615. TRANSFERS TO RURAL WATER ASSISTANCE FUND. (a) The board may direct the comptroller to transfer amounts from the financial assistance account to the rural water assistance fund to provide financial assistance under this subchapter for the purposes provided in Section 15.954.

(b) The board shall use the rural water assistance fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the rural water assistance fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

SECTION 4.23. Subchapter L, Chapter 17, Water Code, is amended by adding Section 17.9616 to read as follows:

Sec. 17.9616. TRANSFER TO WATER INFRASTRUCTURE FUND. (a) The board may direct the comptroller to transfer amounts from the financial assistance account to the water infrastructure fund to provide financial assistance under this subchapter for the purposes provided in Section 15.904.

(b) The board shall use the water infrastructure fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are to be deposited into the water infrastructure fund and to be used to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

SECTION 4.24. Section 11.32, Tax Code, is amended to read as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives, *desalination projects; or brush control initiatives* have been implemented. For purposes of this section, approved water conservation, *desalination, and brush control* initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

SECTION 4.25. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.355 to read as follows:

Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are exempted from taxes imposed by this chapter:

(1) rainwater harvesting equipment or supplies, water recycling and reuse equipment or supplies, or other equipment, services, or supplies used to reduce or eliminate water use;

(2) equipment, services, or supplies used for desalination of surface water or groundwater;

(3) equipment, services, or supplies used for brush control designed to enhance the availability of water;

(4) equipment, services, or supplies used for precipitation enhancement;

(5) equipment, services, or supplies used to construct or operate a water or wastewater system or component of a system sponsored by a political subdivision, as defined by Section 15.001, Water Code, which is certified by the Texas Natural Resource Conservation Commission as providing regional water or wastewater service; and

(6) equipment, services, or supplies used to construct or operate a water supply or wastewater system by a private entity as a public-private partnership, as certified by the political subdivision, as defined by Section 15.001, Water Code, that is a party to the project.

ARTICLE 5. JOINT COMMITTEE ON WATER RESOURCES

SECTION 5.01. In this article, "committee" means the joint committee on water resources.

SECTION 5.02. The committee shall conduct an interim study and make recommendations regarding:

- (1) increasing the efficient use of existing water resources;
- (2) developing sufficient long-term water financing strategies;
- (3) improving existing water conveyance systems;
- (4) water marketing;
- (5) determining the appropriate role of environmental and wildlife concerns in water permitting and water development; and
- (6) protection of the natural condition of beds and banks of the state-owned watercourses.

SECTION 5.03. The committee is composed of six members as follows:

- (1) the chair of the Senate Committee on Natural Resources and the chair of the House Committee on Natural Resources;
- (2) two members of the senate appointed by the lieutenant governor; and
- (3) two members of the house of representatives appointed by the speaker of the house of representatives.

SECTION 5.04. The committee shall:

- (1) meet at least annually with the Texas Natural Resource Conservation Commission and the Texas Water Development Board; and
- (2) receive information relating to:
 - (A) encouraging the effective development of water marketing and water movement;
 - (B) prioritizing the use of state funds for financing the development and conservation of water resources; and
 - (C) identifying reasonable mechanisms, including measures for encouraging donation of water rights, for protecting instream uses.

SECTION 5.05. Not later than November 1, 2002, the committee shall make a final report to the lieutenant governor, the speaker of the house of representatives, and the 78th Legislature evaluating the issues described in Section 5.02 of this article.

SECTION 5.06. The committee has the authority necessary to perform its duties and, in connection with those duties, may call and hold hearings.

SECTION 5.07. The committee may request the assistance of state agencies, departments, or offices to carry out its duties.

SECTION 5.08. The Senate Committee on Natural Resources and the House Committee on Natural Resources shall provide staff to the committee.

Exhibit I
Senate Bill 312 Excerpts Enacting Texas Tax Code, § 151.355

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(e) This Act prevails over any conflicting or inconsistent provision of H.B. No. 1317, 77th Legislature, Regular Session, 2001, if that bill is enacted and becomes law.

(f) As soon as practicable on or after the effective date of this Act, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members to the Oil-Field Cleanup Fund Advisory Committee as provided by Section 91.1135, Natural Resources Code, as added by this Act.

(g) Subchapter L, Chapter 113, Natural Resources Code, as added by this Act, applies beginning with the 2002-2003 school year, and each school district that uses liquefied petroleum gas shall perform pressure tests as required by that subchapter.

(h) Section 102.006, Utilities Code, as added by this Act, and Section 2003.0491, Government Code, as added by this Act, apply only to a contested case filed at the Railroad Commission of Texas on or after the effective date of this Act. A contested case filed at the commission before that date is governed by the law in effect at the time the case is filed, and the former law is continued in effect for that purpose.

Passed the Senate on April 17, 2001, by a viva-voce vote; May 18, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 21, 2001, House granted request of the Senate; May 27, 2001, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 16, 2001, by a non-record vote; May 21, 2001, House granted request of the Senate for appointment of Conference Committee; May 27, 2001, House adopted Conference Committee Report by the following vote: Yeas 145, Nays 0, one present not voting.

Approved June 15, 2001.

Effective September 1, 2001, except as provided in §§ 10, 11, 18, 20, 22, 24, 27, and 29.

CHAPTER 1234

S.B. No. 312

AN ACT

relating to the review and functions of the Texas Water Development Board and the improvement of certain water delivery infrastructure.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The legislature finds that:

(1) economically distressed subdivisions commonly called colonias are found throughout those counties located within 50 miles of the international border of this state;

(2) a substantial number of homes in the economically distressed subdivisions lack an adequate potable water supply and sewer services, creating a serious and unacceptable health hazard from contagious and other serious illnesses and posing a clear and substantial threat not only to the environment of the border region but also to the environment of the entire state;

(3) although significant improvement has been made by this state and the political subdivisions of the border area in addressing the public health hazard created in those economically distressed subdivisions, many of those economically distressed subdivisions are located in isolated rural areas far from water or wastewater providers or are otherwise situated so as to make the provision of water or wastewater services by political subdivisions to those areas difficult or impossible using conventional capital improvement strategies;

(7) one public member.

(b) Each committee member, except the public member, must reside within 150 miles of the Texas-Mexico border.

(c) The secretary of state is an ex officio member of the committee.

(d) The committee shall:

(1) review the progress of colonia water and wastewater infrastructure projects managed by the Texas Water Development Board and the state agency responsible for administering the portion of the federal community development block grant nonentitlement program that addresses the infrastructure needs of colonias;

(2) present an update and make recommendations to the board and the Texas Water Development Board annually at the joint meeting required by Section 6.060(d), Water Code, regarding:

(A) efforts to ensure that colonia residents are connected to the infrastructure funded by state agencies;

(B) the financial, managerial, and technical capabilities of project owners and operators;

(C) the agencies' management of their colonia programs and the effectiveness of their policies regarding underperforming projects; and

(D) any other issues related to the effect of state-managed infrastructure programs on colonia residents;

(3) review public comments regarding the colonia needs assessment incorporated into the state low income housing plan under Section 2306.0721; and

(4) based on the public comments reviewed under Subdivision (3), recommend to the board new colonia programs or improvements to existing colonia programs.

SECTION 38. Section 11.32, Tax Code, is amended to read as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives, *desalination projects*, or *brush control initiatives* have been implemented. For purposes of this section, approved water conservation, *desalination*, and *brush control* initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

SECTION 39. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.355 to read as follows:

Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are exempted from taxes imposed by this chapter:

(1) rainwater harvesting equipment or supplies; water recycling and reuse equipment or supplies, or other equipment, services, or supplies used to reduce or eliminate water use;

(2) equipment, services, or supplies used for desalination of surface water or groundwater;

(3) ~~equipment, services, or supplies used for brush control designed to enhance the availability of water;~~

(4) equipment, services, or supplies used for precipitation enhancement;

(5) equipment, services, or supplies used to construct or operate a water or wastewater system certified by the Texas Natural Resource Conservation Commission as a regional system; and

(6) equipment, services, or supplies used to construct or operate a water supply or wastewater system by a private entity as a public-private partnership as certified by the political subdivision that is a party to the project.

SECTION 40. (a) The Texas Water Development Board shall adopt, not later than March 1, 2002, necessary rules to administer the pilot program for water and wastewater loans for rural communities created by Subchapter O, Chapter 15, Water Code, as added by this Act.

(b) The Texas Water Development Board shall begin, not later than September 1, 2002, to provide loans under Subchapter O, Chapter 15, Water Code, as added by this Act.

SECTION 41. The Texas Water Development Board is required to implement the colonia self-help program under Subchapter P, Chapter 15, Water Code, as added by this Act, only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Texas Water Development Board may, but is not required to, implement the colonia self-help program using other appropriations available for that purpose.

SECTION 42. The changes in law made by this Act in the prohibitions and qualifications applying to members of the Texas Water Development Board do not affect the entitlement of a member serving on the board immediately before September 1, 2001, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 2001.

SECTION 43. If Senate Bill No. 322, 77th Legislature, Regular Session, 2001, becomes law and if that bill provides for the creation of a Colonia Resident Advisory Committee, a Colonia Initiatives Advisory Committee, or a committee having another name that has functions similar to those of the Colonia Resident Advisory Committee or the Colonia Initiatives Advisory Committee created by this Act, it is the intent of the legislature that this Act govern all matters relating to the committees and that the provisions of Senate Bill No. 322 relating to the committees have no effect.

SECTION 44. This Act takes effect September 1, 2001.

Passed the Senate on April 30, 2001, by a viva-voce vote; May 22, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 24, 2001, House granted request of the Senate; May 27, 2001, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 21, 2001, by a non-record vote; May 24, 2001, House granted request of the Senate for appointment of Conference Committee; May 27, 2001, House adopted Conference Committee Report by a non-record vote.

Approved June 15, 2001.

Effective September 1, 2001.

CHAPTER 1235

S.B. No. 317

AN ACT

relating to continuation and functions of the Office of Consumer Credit Commissioner and the regulation of certain financial businesses; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 14.056, Finance Code, is amended to read as follows:

Sec. 14.056. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing