

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 21, 2010

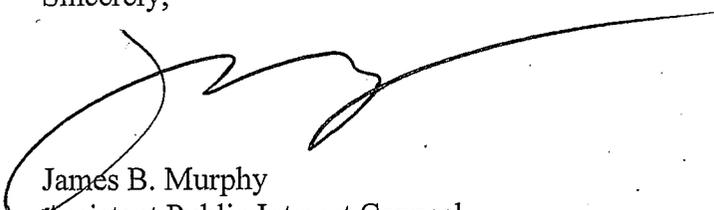
LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

Re: **DEER CREEK RANCH WATER CO., LLC**
SOAH DOCKET NO. 582-09-5328
TCEQ DOCKET NO. 2009-0929-UCR

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Exception to the Proposal for Decision in the above-entitled matter.

Sincerely,



James B. Murphy
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. BOX 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

P.O. Box 13087

Austin, Texas 78711-3087

512-239-1000

Internet address: www.tceq.state.tx.us

**SOAH DOCKET NO. 582-09-5328
TCEQ DOCKET NO. 2009-0929-UCR**

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION OF	§	
DEER CREEK RANCH WATER	§	
CO., LLC, TO CHANGE ITS	§	
WATER RATES AND TARIFF	§	STATE OFFICE OF
UNDER CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY	§	
NO. 11241 IN TRAVIS AND HAYS	§	
COUNTIES	§	ADMINISTRATIVE HEARINGS

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S EXCEPTION TO THE
PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE WILLIAM G. NEWCHURCH:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) submits this Exception to the Proposal for Decision (PFD) for the evidentiary hearing held on March 22 and 23, 2010, in Austin. In the PFD, the Administrative Law Judge (ALJ) recommended a refund or credit to customers of all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest. The ALJ requested the Parties address two issues related to the refund or credit: the appropriate interest rate and the term over which the refunds should occur. OPIC agrees with the PFD, and files this Exception only to address the issues requested by the ALJ.

On the issue of the appropriate refund term, the Commission has expressed a preference for refunds or credits to be repaid over a term no longer than the period of payment. In the most recent case to directly consider the issue of refunds, the Commission ordered the utility to "refund its ratepayers the amount it collected as a result of the increased rates over a period of time equal to that when the collections occurred," despite the utility's claim that refunds would financially cripple the utility and its request for a longer repayment period. Order Granting the

Ratepayers' Appeal of the Retail Water Rates of North San Saba Water Supply Corporation (North San Saba Order), SOAH Docket No. 582-09-0660, TCEQ Docket No. 2008-1481-UCR (June 7, 2010), at 4 ¶ 3. The Commission chose this repayment period based on a concern about equity to the ratepayers. *See* Webcast of Commissioners' June 2, 2010 Agenda, Item 1 at 22:10–23:30, *available at* http://www.texasadmin.com/agenda.php?confid=TCEQ_OM060210&dir=tnrcc.¹

The Commission ordered the refund as a credit to customers on future bills rather than as a direct refund. *See* North San Saba Order, at 4 ¶ 4. A direct refund, however, is appropriate for customers who no longer receive service from the utility. *See, e.g.*, Amended PFD in the Application of HHJ, Inc. d/b/a Decker Utilities to Change its Water and Sewer Tariff in Montgomery County, Texas (Decker Utilities Amended PFD), SOAH Docket No. 582-08-1719, TCEQ Docket No. 2008-0164-UCR, at 47.

In this case, the proposed rate went into effect on May 1, 2009, and appears to be currently in effect. Thus, the repayment period should be equal to or less than the time period from May 1, 2009 until the utility ceases charging the proposed rate.

On the issue of the appropriate interest rate, the Texas Water Code and Commission rules do not provide guidance on the interest rate for refunds, and the Commission has not expressed a clear policy for interest rate determinations. *See, e.g.*, Decker Utilities Amended PFD, at 47 n.172 (basing interest rate on historical rates used for overbillings and underbillings by the Public Utility Commission of Texas); Second Interim Order Concerning the ALJ's PFD and Proposed Order [for the] Application of HHJ, Inc. d/b/a Decker Utilities to Change Water and

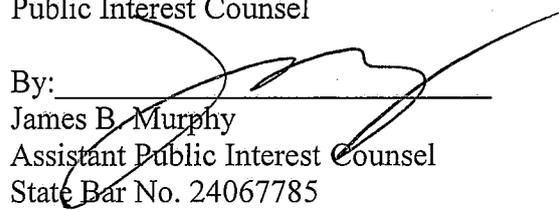
¹ Although *North San Saba* is an appeal of rates for a water supply corporation under a different provision of the Texas Water Code and the statutory language for refunds in appeals and original jurisdiction matters differs, the equity concerns expressed by the Commission would apply to refunds in both types of proceedings. *Compare* TEX. WATER CODE (TWC) § 13.043(e), *with* TWC § 13.087(i).

Sewer Rates, TCEQ Docket No. 2008-0164-UCR; SOAH Docket No. 582-08-1719 (June 30, 2010), at 2 (ordering an interest rate half of that proposed by the ALJ). *See also* Webcast of Commissioners' June 16, 2010 Agenda, Item 2 (ordering an interest rate half of that proposed by the ALJ without explanation), *available at* http://www.texasadmin.com/agenda.php?confid=TCEQ_OM061610&dir=tnrcc.

OPIC does not have technical staff in this matter to assist in calculating an appropriate interest rate. Accordingly, OPIC defers to the technical expertise and recommendation of the Executive Director on this issue.

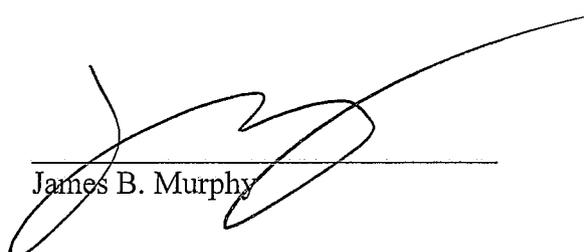
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: 
James B. Murphy
Assistant Public Interest Counsel
State Bar No. 24067785
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-4014 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2010, a true and complete copy of the Office of Public Interest Counsel's Exception to the Proposal for Decision was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


James B. Murphy

MAILING LIST
DEER CREEK RANCH WATER CO., LLC
SOAH DOCKET NO. 582-09-5328
TCEQ DOCKET NO. 2009-0929-UCR

The Honorable William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
Tel. 512/475-4993 Fax: 512/475-4994

Randall B. Wilburn
Attorney at Law/Professional Engineer
Wilburn Consulting, LLC
3000 South IH 35, Suite 150
Austin, Texas 78704
512/326-3200 FAX: 512/326-8228
Representing: Deer Creek Ranch Water Co.

David M. Gottfried, P.C.
1505 West Sixth Street
Austin, Texas 78703
512/949-1481 FAX: 512/472-4013
Representing: AGX, Inc. and Anne Hawken

Jennifer Jones
740 Green Oaks Dr.
Dripping Springs, Texas 78620
512/291-7446 FAX: 512/291-7446

Cristina Chavez
601 Panorama Dr.
Dripping Springs, Texas 78620
512/680-9540

Royce H. Henderson
108 Twin Creek Circle
Dripping Springs, Texas 78620
512/864-1056

Chris Elder
1020 Tanaqua Lane
Austin, Texas 78739
512/791-7862 FAX: 512/304-8007

Jonathan McCabe
10006 Thomas Lane
Dripping Springs, Texas 78620
512/924-6665

Bradley and Stephanie Weaver
17202 Panorama Dr.
Dripping Springs, Texas 78620
512/389-7416 FAX: 512/369-6219

Brian MacLeod, Staff Attorney
TCEQ Environmental Law Division MC 173
P.O. Box 13087
Austin, TX 78711-3087
512/239-0750 FAX 512/239-0606

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, TX 78711-3087
512/239-3300 FAX 512/239-3311

