

**ARMBRUST & BROWN, L.L.P.**

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May 28, 2010

**VIA HAND DELIVERY**

Executive Director  
c/o Russ Kimble  
Office of Legal Services  
General Law Division – MC-205  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg. A, Room 166  
Austin, Texas 78753

Re: Petition for Rule Making by Paloma Lake MUD No. 1, Paloma Lake MUD No. 2, Parkside at Mayfield Ranch MUD, Greenhawe WCID No. 2, Lakeside MUD No. 3, Travis County MUD No. 7, Travis County MUD No. 9, Williamson County WSIDD No. 3, Moore's Crossing MUD, West Williamson County MUD No. 1 and Travis County MUD No. 4 to Amend Portions of 30 TEX. ADMIN. CODE §293.44 Related to the Issuance of District Bonds

Dear Mr. Kimble:

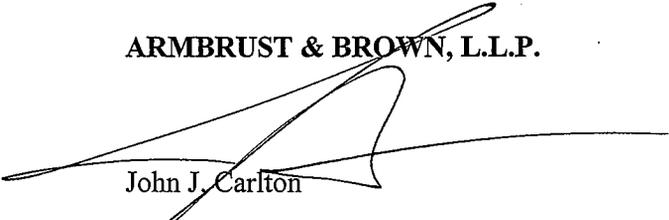
Enclosed for filing is an original and one copy of the above referenced petition.

I have also enclosed an additional copy for you to file mark and return to the courier delivering same.

If you have any questions or comments, please contact me at your earliest convenience.

Sincerely,

**ARMBRUST & BROWN, L.L.P.**

  
John J. Carlton

Enclosure

cc: Sue Littlefield, Firm

RECEIVED

MAY 28 2010

OFFICE OF LEGAL SERVICES

**PETITION FOR RULEMAKING**  
 §  
 §  
**BY: PALOMA LAKE MUNICIPAL**  
 §  
**UTILITY DISTRICT NO. 1; PALOMA**  
 §  
**LAKE MUNICIPAL UTILITY DISTRICT**  
 §  
**NO. 2; PARKSIDE AT MAYFIELD**  
 §  
**RANCH MUNICIPAL UTILITY**  
 §  
**DISTRICT; GREENHAWE WATER**  
 §  
**CONTROL AND IMPROVEMENT**  
 §  
**DISTRICT NO. 2; LAKESIDE**  
 §  
**MUNICIPAL UTILITY DISTRICT NO. 3;**  
 §  
**TRAVIS COUNTY MUNICIPAL UTILITY**  
 §  
**DISTRICT NO. 7; TRAVIS COUNTY**  
 §  
**MUNICIPAL UTILITY DISTRICT NO. 9;**  
 §  
**WILLIAMSON COUNTY WATER,**  
 §  
**SEWER, IRRIGATION AND DRAINAGE**  
 §  
**DISTRICT NO. 3; MOORE’S CROSSING**  
 §  
**MUNICIPAL UTILITY DISTRICT; WEST**  
 §  
**WILLIAMSON COUNTY MUNICIPAL**  
 §  
**UTILITY DISTRICT NO. 1; TRAVIS**  
 §  
**COUNTY MUNICIPAL UTILITY**  
 §  
**DISTRICT NO. 4**  
 §  
 §  
**TO AMEND PORTIONS OF**  
 §  
**30 TEX. ADMIN. CODE**  
 §  
**§293.44 RELATED TO THE**  
 §  
**ISSUANCE OF DISTRICT BONDS**  
 §

**BEFORE THE TEXAS COMMISSION**  
**ON ENVIRONMENTAL QUALITY**

**ORIGINAL PETITION FOR RULEMAKING**

**TO THE HONORABLE COMMISSIONERS:**

Now comes Paloma Lake Municipal Utility District No. 1; Paloma Lake Municipal Utility District No. 2; Parkside at Mayfield Ranch Municipal Utility District; Greenhawe Water Control and Improvement District No. 2; Lakeside Municipal Utility District No. 3; Travis County Municipal Utility District No. 7; Travis County Municipal Utility District No. 9; Williamson County Water, Sewer, Irrigation and Drainage District No. 3; Moore’s Crossing Municipal Utility District; West Williamson County Municipal Utility District No. 1; Travis County Municipal Utility District No. 4 (collectively, “*Petitioners*”), all of which are political subdivisions of the State of Texas, created and operating under Chapters 49 and 51 or 54 of the Texas Water Code, which, pursuant to the provisions of 30 Texas Administrative Code (“*TAC*”), Chapter 20, present this Petition for Rulemaking (the “*Petition*”) to the Texas Commission on Environmental Quality (“*the Commission*”), seeking the amendment of 30 TAC

§293.44(a)(8) (the "Rule"). Petitioners respectfully request that the Commission consider this Petition and the proposed amendment to the Rule set out herein (the "Amendment") and initiate proceedings necessary to adopt the Amendment. Pursuant to the provisions of 30 TAC §20.15, the Petitioners would respectfully show the following:

### **I. Public Policy Benefits**

This Petition is submitted in the interest of promoting a cooperative approach to regional water, wastewater and drainage planning that avoids the construction of smaller facilities that would ultimately have to be duplicated or replaced to extend service to a regional area. Where a district can work cooperatively with a municipality or regional water and/or wastewater provider to share the costs of regional water, wastewater or drainage facilities rather than constructing a stand-alone facility, the district should be able to bond its full cost of participation in the regional facility, even if the cost is more than a pro-rata share, so long as the cost of the district's participation does not exceed the cost which would have been incurred by the district to construct the stand-alone facility. Regional planning and cooperation, and district participation in regional projects, particularly projects that result in cost savings, should be encouraged, and disallowing a portion of a district's actual cost of participation in a regional project is not consistent with sound public policy.

### **II. Petitioner's Names and Addresses**

The Petitioners' names and addresses are set forth below.

Paloma Lake Municipal Utility District No. 1  
c/o Sue Brooks Littlefield  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Paloma Lake Municipal Utility District No. 2  
c/o Sue Brooks Littlefield  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Parkside at Mayfield Ranch Municipal Utility District  
c/o Sue Brooks Littlefield  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Greenhawe Water Control and Improvement District No. 2  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Lakeside Municipal Utility District No. 3  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Travis County Municipal Utility District No. 7  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Travis County Municipal Utility District No. 9  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Williamson County Water, Sewer, Irrigation and Drainage District No. 3  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Moore's Crossing Municipal Utility District  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

West Williamson County Municipal Utility District No. 1  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

Travis County Municipal Utility District No. 4  
c/o Sharlene Collins  
Armbrust & Brown, L.L.P.  
100 Congress Ave., Ste. 1300  
Austin, Texas 78701

For purposes of the Petition, contact with the Petitioners can be made by directing all  
correspondence to the following:

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c/o John J. Carlton, Attorney  
378721-9 05/26/2010

**Armbrust & Brown, L.L.P.**  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701  
(512) 435-2300 (o)  
(512) 35-2360 (f)  
[jcarlton@abaustin.com](mailto:jcarlton@abaustin.com)

### **III. Brief Explanation of Amendment**

The Petitioners propose the Amendment in an effort to facilitate regionalization and cooperative planning among utility districts and other local government entities, such as cities and regional water and/or wastewater providers of water, wastewater and drainage infrastructure, by providing clear authorization in the Commission's rules for a determination of a district's allowable cost participation based on a cost-benefit analysis. Current Commission rules, which have been applied to require that a district's cost participation be limited to a prorata share, have the effect of discouraging districts from jointly planning and sharing the cost of regional facilities, even when the cost-participation would result in a savings over a stand-alone facility. The Amendment would further the Commission's current policy of promoting regionalization and provide a mechanism for allowing the cost incurred by a district to construct or acquire capacity in regional water, wastewater and drainage facilities to be bonded or reimbursed, so long as that cost does not exceed the cost the district would have incurred to construct the facilities required to provide the same service on its own. With respect to a district's cost-participation in regional wastewater infrastructure, the Amendment would further be consistent with the State's policy, as set forth in Section 49.230, Texas Water Code, to "encourage the development and use of integrated area-wide wastewater collection, treatment and disposal systems to serve the wastewater disposal needs of the citizens of the state whenever it is economically feasible and competitive to do so...."

### **IV. Text of the Amendment**

The text of the Amendment is attached as Attachment 1.

### **V. Statement of Legal Authority for the Amendment**

The Amendment is proposed to be adopted pursuant to the Commission's authority and responsibility under statute to create and supervise certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with the Texas Water Code, Chapters 12 and 49-67.

## **VI. Injury or Inequity Resulting From Failure to Adopt the Amendment**

The Amendment is important to the Petitioners and others because it will clarify the ability of a district to issue bonds for its share of costs incurred in cooperatively planning and constructing regional water, wastewater and drainage facilities where the costs of participation in those regional facilities results in an overall cost savings as compared to the cost to construct the facilities that would be necessary to serve the district on a stand-alone basis.

## **VII. Prayer**

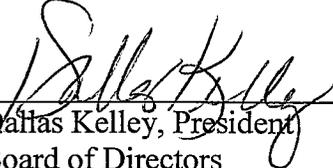
WHEREFORE, premises considered, the Petitioners respectfully request that the Commission consider this Petition, and the Amendment as proposed herein, and initiate proceedings necessary to adopt the Amendment. The Petitioners further pray for any and all other relief to which they may be entitled.

*The remainder of this has page been intentionally left blank, and the signature pages follow.*

PETITION FOR RULEMAKING TO AMEND 30TAC §293.44(a)(8)

Respectfully submitted,

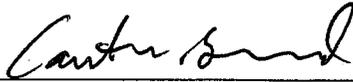
PALOMA LAKE MUNICIPAL UTILITY  
DISTRICT NO. 1

By:   
Dallas Kelley, President  
Board of Directors

PETITION FOR RULEMAKING TO AMEND 30TAC §293.44(a)(8)

Respectfully submitted,

PALOMA LAKE MUNICIPAL UTILITY  
DISTRICT NO. 2

By:   
Carter Breed, President  
Board of Directors

PETITION FOR RULEMAKING TO AMEND 30TAC §293.44(a)(8)

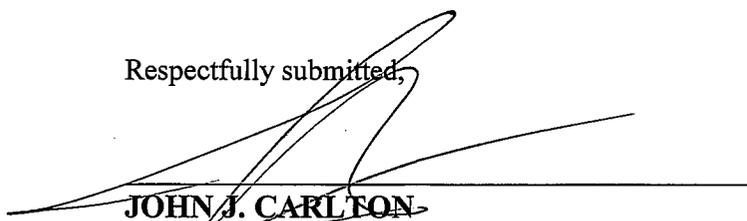
Respectfully submitted,

PARKSIDE AT MAYFIELD RANCH  
MUNICIPAL UTILITY DISTRICT

By:   
Philip L. Bible, III, President  
Board of Directors

PETITION FOR RULEMAKING TO AMEND 30TAC §293.44(a)(8)

Respectfully submitted,



**JOHN J. CARLTON**

State Bar No. 03817600

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Austin, Texas 78701-2744

(512) 435-2300 – Telephone

(512) 436-2360 – Telecopy

**ATTORNEY FOR GREENHAWE WATER  
CONTROL AND IMPROVEMENT DISTRICT  
NO. 2, LAKESIDE MUNICIPAL UTILITY  
DISTRICT NO. 3, TRAVIS COUNTY  
MUNICIPAL UTILITY DISTRICT NO. 7,  
TRAVIS COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 9, WILLIAMSON COUNTY  
WATER, SEWER, IRRIGATION AND  
DRAINAGE DISTRICT NO. 3, MOORE'S  
CROSSING MUNICIPAL UTILITY DISTRICT,  
WEST WILLIAMSON COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 1, TRAVIS COUNTY  
MUNICIPAL UTILITY DISTRICT NO. 4**

ATTACHMENT 1

<b>TITLE 30</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>PART 1</b>	<b>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>
<b>CHAPTER 293</b>	<b>WATER DISTRICTS</b>
<b>SUBCHAPTER E</b>	<b>ISSUANCE OF BONDS</b>
<b>RULE §293.44</b>	<b>Special Considerations</b>

(a)

...

(8) A district shall not finance the pro rata share of oversized water, sewer, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; [ø]

(C) the district has entered into an agreement with the party to be served or benefited in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights[-]; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost effective than alternative facilities to serve the district only. For purposes of this section, regional water or wastewater provider means a provider that serves land in more than one county. In evaluating whether such oversizing is more cost effective, the Executive Director may require the applicant to provide (1) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed or (2) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made, or both.