

# TCEQ Interoffice Memorandum

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**To:** Laurie Gharis, Chief Clerk

**Thru:** Erin E. Chancellor, Director, Office of Legal Services *EC*

Tammy Mitchell, Special Counsel, Office of Legal Services *TM*

*CB* Charmaine Backens, Deputy Director, Environmental Law Division

*TG* Todd Galiga, Senior Attorney, Environmental Law Division

**From:** *AP* Aubrey Pawelka, Staff Attorney, Environmental Law Division

**Date:** February 20, 2024

**Subject: Complaint by McAllen Public Utility for Denial of Water by Hidalgo County Water Improvement District No. 3 Under Texas Water Code §§ 11.041 and 51.305(d); Executive Director's Request for Referral to the State Office of Administrative Hearings; TCEQ Docket No. 2024-0243-WR**

On February 8, 2024, McAllen Public Utility (MPU or McCallen) filed a petition under Tex. Water Code §§ 11.041 and 51.305(d), alleging that Hidalgo County Water Improvement District No. 3 (HCWID 3) has refused to sell water to MPU at a reasonable price and that MPU is entitled to the water. This petition and its attachments are attached to this memorandum.

In its petition, MPU alleged that Certificate of Adjudication No. 23-848, as amended through Certificate No. 23-848D, (COA 848) expressly authorizes HCWID 3 to divert up to 8,980 acre-feet of water per year for McAllen's exclusive municipal use. COA 848 further authorizes HCWID 3 to divert an additional 5,000 acre-feet of water per year for municipal purposes in HCWID 3's service area. MPU claims it is entitled to the 13,980 acre-feet of state water that McAllen cannot legally access without paying HCWID 3 to divert and supply it. MPU purchased water from HCWID 3 for many years up until 2022, and MPU desires to continue purchasing water from HCWID 3 at a reasonable rate.

MPU requested that the executive director (ED) determine that probable grounds exist for the complaint that the price or rental demanded for the available water is not reasonable and just, and is discriminatory, and set a hearing at the State Office of Administrative Hearings (SOAH). MPU requested that, upon completion of the hearing on the complaint, the commission render a written decision finding that HCWID 3's price for water to which MPU is entitled is not just or reasonable and is discriminatory.

Tex. Water Code § 51.305(d) provides that a user of water delivered by the district who disputes all or part of a board order that determines the amount of an assessment, charge, fee, rental, or deposit may file a petition under Section 11.041. The statute states that the petition filed with the commission is the sole remedy available.

Tex. Water Code § 11.041 provides a petition process for relief if an entity can show that it is entitled to receive or use the water, that it is willing to pay a just and reasonable price for the water, that the party controlling the water supply has not contracted the water to others and the water is available for the petitioner's use, and

that the party controlling the water supply refuses to supply the available water to the petitioner at a reasonable and just and nondiscriminatory price.

Under 30 Tex. Admin. Code § 291.131, the ED performs a limited review of the petition to determine if the petition meets the requirements of 30 Tex. Admin. Code § 291.129. If the ED determines that the petition meets the requirements of section 291.129, the ED shall forward the petition to SOAH for an evidentiary hearing under Tex. Water Code §§11.036 - 11.041, as applicable. An evidentiary hearing shall be held; and at the completion of the hearing, the commission shall render a written decision.

MPU asserts that it has shown that it is entitled to use the water for municipal purposes and is willing and able to pay a just and reasonable price for the water. MPU alleges that the new rate for the water is not reasonable and just or is discriminatory.

The ED finds that MPU's petition meets the requirements of 30 Tex. Admin. Code § 291.129. The ED requests that this petition be referred to SOAH for a hearing on the issues addressed by Tex. Water Code § 11.041.

#### Attachments

cc: Kim Nygren, Deputy Director, Water Availability Division,  
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Water Availability Division

TCEQ DOCKET NO. 2024-\_\_\_\_\_-WR

COMPLAINT BY MCALLEN PUBLIC  
UTILITY FOR DENIAL OF WATER  
BY HIDALGO COUNTY WATER  
IMPROVEMENT DISTRICT NO. 3  
UNDER TEXAS WATER CODE  
§§ 11.041 AND 51.305(d)

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BEFORE THE TEXAS COMMISSION

ON

ENVIRONMENTAL QUALITY

**ORIGINAL PETITION**

McAllen Public Utility ("MPU"), acting in its capacity as the municipally owned utility for the City of McAllen, Texas ("McAllen"), files with the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") this Original Petition complaining of the denial of water by Hidalgo County Water Improvement District No. 3 ("HCWID 3") and refusal of HCWID 3's Board of Directors to supply available water at a reasonable, just, and non-discriminatory price (the "Petition").

**I. EXECUTIVE SUMMARY**

MPU is entitled to 13,980 acre-feet of water per year water appropriated by HCWID 3 pursuant to Certificate of Adjudication No. 23-848, as amended through Certificate No. 23-848D (COA 848). COA 848 expressly authorizes HCWID 3 to divert up to 8,980 acre-feet of water per year for McAllen's exclusive municipal use. COA 848 further authorizes HCWID 3 to divert an additional 5,000 acre-feet of water per year for municipal purposes in HCWID 3's service area. This is state water to which McAllen is entitled that McAllen cannot legally access without paying HCWID 3 to divert and supply it.

The price demanded by HCWID 3 for the available municipal priority water is unreasonable, unjust, and discriminatory. HCWID 3's refusal to charge a reasonable, just, and non-discriminatory price for the water effectively constitutes a denial of service. In June of 2022, MPU ceased ordering water from HCWID 3 and sought alternative sources of supply. Following

a preliminary investigation by the Executive Director, the Commission should hold a hearing on the Petition and render a written decision finding the price demanded by HCWID 3 to be unreasonable, unjust, and discriminatory and reassign McAllen's municipal priority water rights from COA 848 to McAllen's Certificate of Adjudication No. 23-353 so that McAllen may directly divert and use the municipal class water to which it is legally entitled. In the alternative, TCEQ should exercise its authority to establish and order a just, reasonable, and non-discriminatory price for the 13,980 acre-feet of water to which McAllen is entitled.

## **II. LEGAL AUTHORITY AND JURISDICTION**

### **1. Statutory Authority**

MPU files this Petition in accordance with Texas Water Code Sections 11.041 and 51.305(d). Chapter 51, Water Code, governs water control and improvement districts.<sup>1</sup> HCWID 3 operates as a Water Control and Improvement District ("WCID") in accordance with Chapters 49 and 51, Water Code.<sup>2</sup> Section 51.305(d) provides, in its entirety, the following:

A landowner of irrigable land in the district or a user of water delivered by the district for any purpose other than irrigation who disputes all or a part of a board order that determines the amount of an assessment, charge, fee, rental, or deposit may file a petition under Section 11.041. That petition filed with the [TCEQ] is the sole remedy available to a landowner or user of water described by this subsection.

Subsection 51.305(d) was originally enacted by the Legislature in 2013.<sup>3</sup> While much of the rest of Section 51.305 governs assessments levied by a WCID against irrigable land in the WCID, the statute makes a distinction between such assessments and other "charges, fees, rentals,

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<sup>1</sup> Tex. Water Code §§ 51.001, .011.

<sup>2</sup> Tex. Spec. Dist. Code § 9054.0002.

<sup>3</sup> Act of May 2, 2013, 62nd Leg., R.S., ch. 90, § 42, 2013 Tex. Gen. Laws 164, 165, 172 (codified at Tex. Water Code § 51.305(d)).



or deposits required of persons in the district who use or make application to use water.”<sup>4</sup> Subsection 51.305(d) authorizes “a user of water delivered by the district for any purpose other than irrigation who disputes all or part of a board order that determines the amount of an assessment, *charge*, fee, rental, or deposit” to file the dispute as a petition under Section 11.041.<sup>5</sup> The board of a WCID may determine a charge to a city.<sup>6</sup> A petition under Section 11.041 “is the sole remedy available to a user of water described by [Subsection 51.305(d)].”<sup>7</sup>

MPU is “a user of water delivered by the district for any purpose other than irrigation”<sup>8</sup> and by this Petition disputes all orders by HCWID 3’s Board of Directors that have determined prices charged to McAllen or MPU that are unreasonable, unjust, and discriminatory. Pursuant to Section 51.305(d), this Petition filed under Section 11.041 is the sole remedy available to MPU. Consequently, TCEQ the proper venue<sup>9</sup> for this dispute and complaint—not only for determination that the price demanded by HCWID 3 is unreasonable, unjust, and discriminatory, but also to order the terms under which MPU and McAllen may access the state water they are entitled to in the

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<sup>4</sup> Tex. Water Code § 51.305(c).

<sup>5</sup> *Id.* § 51.305(d) (emphasis added).

<sup>6</sup> *Id.* § 51.319.

<sup>7</sup> *Id.* § 51.305(d).

<sup>8</sup> *See id.*

<sup>9</sup> As explained in this Petition, the Public Utility Commission of Texas (“PUC”) has previously requested an opinion from the Office of the Attorney General to determine whether the PUC or the TCEQ has jurisdiction to determine a dispute against a WCID. The Attorney General observed that the two agencies have at least overlapping jurisdiction and suggested that, if the dispute involves an allocation by HCWID 3 to cover the maintenance and operating expenses of its water delivery system pursuant to Section 51.305, the matter is properly before the TCEQ. Tex. Att’y Gen. Op. No. JS-0004 at 3-4 [hereinafter *AG Opinion*] (available at <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2023/js-0004.pdf>). An appeal before the PUC is currently abated at the State Office of Administrative Hearings. MPU anticipates that the question of whether—and to what extent—the PUC has jurisdiction over MPU’s complaint likely will be addressed at hearing.

form of water rights amendments or by establishing a just, reasonable, and non-discriminatory price.<sup>10</sup>

Under Section 11.041, any person entitled to receive or use water from a canal, lateral, reservoir or other conserved or stored supply may present to the Commission a written petition showing the following:

- (1) that he is entitled to receive or use the water;
- (2) that he is willing and able to pay a just and reasonable price for the water;
- (3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
- (4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

As explained in more detail below, McAllen is entitled by COA 848 to receive up to 13,980 acre-feet of municipal priority water annually from HCWID 3. The water authorized for McAllen's use under COA 848 is conserved and stored in the Lake Falcon reservoir for HCWID 3's diversion and is supplied to McAllen by HCWID 3 through a system of canals and laterals. MPU and McAllen are willing to pay a just and reasonable price for the water. HCWID 3 has not—and legally cannot—contract to sell the 13,980 acre-feet of water to others because such water is available for McAllen's exclusive municipal use and must be used within HCWID 3's service area, which almost entirely comprises McAllen's corporate limits. The price demanded by HCWID 3 for the available water is neither reasonable nor just and is discriminatory. A check for the \$25 deposit required under Section 11.041(b) accompanies this Petition.

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<sup>10</sup> Under Section 11.041, the PUC may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. Tex. Water Code § 11.041(f).

## 2. Procedure and Remedies

The Commission has not promulgated rules prescribing a specific procedure for Water Code Section 11.041 petitions. In a prior complaint under Section 11.041 filed by BASF Corporation (“BASF”) against Dow Chemical Company (“Dow”) in TCEQ Docket No. 2018-0852-WR, an administrative law judge (“ALJ”) held that, at a minimum, the TCEQ must decide the four enumerated issues in Section 11.041(a) listed above.<sup>11</sup>

The Commission has also not promulgated any rules that prescribe, provide for, or limit the scope of remedies available to a petitioner under Section 11.041. However, TCEQ

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<sup>11</sup> State Office of Admin. Services, Docket No. 582-18-5014, *In the Matter of Complaint by BASF Corp. under Tex. Water Code § 11.041 for Denial of Water under Tex. Water Code §§ 11.033 [sic] & 11.041*, Order No. 5 Determining Scope of Proceedings at 3 (available at [https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc\\_id=227565122018298](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=227565122018298)) [hereinafter *BASF Order*]. In the BASF Order, the ALJ notes in dictum that “BASF has acknowledged in its complaint that, after the TCEQ makes a decision under section 11.041 as to whether the rate demanded is reasonable and just or discriminatory, BASF will have to go to the PUC to ask that agency to set a reasonable rate [under Section 12.013].” Section 11.041, however, includes no limitation on the scope of the “written decision” the TCEQ must make under Section 11.041(f). MPU believes the stated position is incorrect or inapplicable to this Petition.

Even if the ALJ’s comment—which the Commission never adopted—was correct in the context of the BASF complaint, MPU’s complaint is distinguishable from the BASF complaint for at least three significant reasons: (1) unlike BASF, whose claimed entitlement to state water arose only from a contract between the parties, McAllen’s entitlement is imbedded within COA 848 itself (a copy of COA 848 is included with this Petition as Appendix A); (2) the water at issue in this complaint is subject to statutes and rules governing water rights in the Lower Rio Grande Basin, which are administered under a unique priority and accounting system managed by the TCEQ’s Rio Grande Watermaster Program (Tex. Comm’n on Envtl. Quality, Rio Grande Watermaster Program (available at [https://www.tceq.texas.gov/permitting/water\\_rights/wmaster/rgwr](https://www.tceq.texas.gov/permitting/water_rights/wmaster/rgwr)); see 30 Tex. Admin. Code §§ 303.1-.55); and (3) the Legislature has required that MPU’s petition under Section 11.041 is the sole remedy available to MPU and McAllen as users of water for nonirrigation uses. (Tex. Water Code § 51.305(c)-(d); see *id.* § 51.319). Section 11.041 provides simply that, on completion of the hearing, the Commission shall render a written decision without limiting the scope of that decision. While the BASF Order does not establish binding, mandatory, or controlling precedent, MPU nevertheless urges the Commission to decline to follow the ALJ’s comment. No legal authority prohibits TCEQ from rendering a written decision under Section 11.041(f) that implements remedies if it finds that the demanded price is unreasonable, unjust, or discriminatory.

Likewise, Water Code Section 12.013 does not govern this complaint for two similar reasons. First, as explained, under Water Code Section 51.305(d) this complaint is the sole remedy available to MPU and McAllen. That statutory requirement necessarily renders any other remedies unavailable, including the PUC’s authority to “fix reasonable rates” under Section 12.013. If TCEQ’s jurisdiction is limited only to declaring the existing price unreasonable, unjust, or discriminatory, such a ruling would risk putting the parties in limbo with no legal means of determining a replacement price. Second, because McAllen is entitled to water as a matter of law under the terms of COA 848 itself, MPU’s complaint does not concern “rates” as that term is used in Section 12.013. This is not a rate case. This is a water rights case, and TCEQ has authority as the administrator of surface water rights permits to order any necessary terms to guarantee that state-owned natural resources are available to those legally entitled to use them at just, reasonable, and non-discriminatory prices.



unquestionably has authority to administer surface water rights,<sup>12</sup> and Section 11.041 indicates that the TCEQ has at least some authority to make determinations about the price demanded for the supply of water from canals or storage.<sup>13</sup>

### **III. BACKGROUND AND FACTUAL ALLEGATIONS**

#### **1. McAllen Public Utility**

MPU is a municipally owned utility created in 1945 to supply retail water and wastewater utility service to the citizens of McAllen and portions of its surrounding area.<sup>14</sup> Historically, nearly all raw water needed for municipal purposes by McAllen has been supplied by four districts: Hidalgo County Irrigation District No. 1 (“HCID 1”), Hidalgo County Irrigation District No. 2 (“HCID 2”), HCWID 3, and United Irrigation District (“United”).<sup>15</sup> Each of those four districts diverts raw water for delivery to MPU pursuant to water rights administered through TCEQ’s Rio Grande Watermaster Program. McAllen also owns Certificate of Adjudication No. 23-353, as amended through Amendment 23-353C (“COA 353”), which authorizes McAllen to divert and use up to 678.84 acre-feet of municipal priority water per year at four diversion points, including the same point as HCWID 3’s primary diversion point under COA 848, on the Rio Grande.<sup>16</sup> Aside from watermaster fees and operational expenses, MPU effectively incurs no cost to divert water under COA 353. MPU’s cost to divert water directly under its own water right is effectively zero compared to what HCWID 3 charges for water diverted from the same source.

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<sup>12</sup> *E.g.* Tex. Water Code § 5.013(a)(1); *id.* §§ 11.087, .121-.122, .134-.135.

<sup>13</sup> *Id.* § 11.041(a)(4), (f).

<sup>14</sup> McAllen Public Utility, 2020 Consumer Confidence Report, 2 (2020), <http://mcallenpublicutility.com/wp-content/uploads/2021/06/2020-Water-Quality-Report-Booklet.pdf>.

<sup>15</sup> MPU sources a small percentage of its municipal supply from a privately owned groundwater well and has recently entered discussions with other water suppliers to identify additional sources.

<sup>16</sup> A copy of COA 353 is attached as Appendix B.



## **2. Hidalgo County Water Improvement District No. 3**

HCWID 3 is a water control and improvement district operating under Water Code Chapters 49 and 51 as well as Texas Special District Local Laws Code Chapter 9054. Over 90 percent of HCWID 3's bounded area is within McAllen's corporate limits. While HCWID 3 was originally created to serve both as the supplier of water to McAllen for municipal purposes and as a raw water supplier to irrigation users, the region it serves has urbanized significantly since its formation. Until June of 2022, MPU and McAllen were HCWID 3's largest customer by far. HCWID 3 charges a rate of \$15.40 per acre-foot for water delivered to its regular irrigation customers.

The full scope of service MPU requires from HCWID 3 is, essentially, to pump raw water that McAllen is already legally entitled to receive from the Rio Grande under COA 848 into a canal and pipeline system, whereby the water flows by gravity to MPU's metered delivery points. HCWID 3 does not treat water, and it does not own any treatment works sufficient to supply potable water. There is no material difference between the raw water diverted and delivered to HCWID 3's irrigation customers and the municipal priority water to which MPU is entitled. HCWID 3 uses the same diversion pump station and canal/pipeline system to deliver the water to all customers.

In addition to the 8,980 acre-feet of municipal priority water dedicated to McAllen's use, TCEQ has amended COA 848 to convert irrigation priority water to an additional total of 5,000 acre-feet of municipal priority water. While not specifically restricted to McAllen's use, under COA 848, the additional 5,000 acre-feet of municipal priority water must be used in HCWID 3's service area. As noted, the vast majority of HCWID 3's service area comprises McAllen's

corporate limits. For all practical purposes, McAllen is the only municipal user who can use the additional 5,000 acre-feet of municipal priority water under COA 848.

### **3. Lower Rio Grande Adjudication and Water Administration**

In 1969, the Corpus Christi Court of Appeals resolved a 14-year dispute concerning adjudication of water rights in the Lower Rio Grande River Basin.<sup>17</sup> As part of the resolution, the Court approved a stipulation agreement entered into by and among the State of Texas, various cities in the Lower Rio Grande Valley, and some of the irrigation and water control districts who deliver water to those cities.<sup>18</sup> Water set aside through the approved stipulations for municipal priority supersedes the priority system for irrigation water.<sup>19</sup>

Following the Court of Appeals' approval of the stipulations, and the Legislature's enactment of the Water Rights Adjudication Act of 1967, the Texas Water Commission issued the Final Determination of All Claims of Water Rights in the Texas Tributaries of the Lower Rio Grande Segment in 1985.<sup>20</sup> The 1985 Final Determination acknowledged the stipulated municipal water rights.<sup>21</sup> While not directly ordered to do so by the courts, the Texas Water Commission decided to imbed McAllen's municipal priority water in HCWID 3's COA 848 rather than issue McAllen's a stand-alone certificate.

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<sup>17</sup> *State v. Hidalgo Co. Water Cont. and Imp. Dist. No. 18*, 443 S.W.2d 728, 730 (Tex. Civ. App.—Corpus Christi 1969, writ ref'd n.r.e.); see 8 Tex. Tech L. Rev. 577, 578, 619 (1977).

<sup>18</sup> *Hidalgo Co.*, 443 S.W.2d at 737; Tex. Water Comm'n, In the Matter of the Adjudication of the Tex. Tributaries of the Lower Rio Grande Segment of the Rio Grande Basin, Final Determination, Table I page I-1 [hereinafter *Final Determination*] (available at [https://gisweb.tceq.texas.gov/WRRetrieveFinals/?SPATIAL\\_ID=LOWER\\_RIO\\_GRANDE](https://gisweb.tceq.texas.gov/WRRetrieveFinals/?SPATIAL_ID=LOWER_RIO_GRANDE)).

<sup>19</sup> See 30 Tex. Admin. Code § 302.21(b), .22(a); see also Texas Comm'n on Env'tl. Quality, Rio Grande Watermaster Program ("The municipal priority is guaranteed by the monthly reestablishment of a municipal reserve in the system of 225,000 acre-feet, which is equivalent to one year of average diversions for all municipal demands below Amistad for Texas users.") (available at [https://www.tceq.texas.gov/permitting/water\\_rights/wmaster/rgwr](https://www.tceq.texas.gov/permitting/water_rights/wmaster/rgwr)).

<sup>20</sup> *Final Determination*, *supra* note 17, at 1.

<sup>21</sup> *Id.* Table I page I-1.

#### 4. 1944 Treaty and Rio Grande River Basin Drought

On November 1, 1945, the United States ratified a treaty (“1944 Treaty”) with Mexico that, among other things, established the International Boundary and Water Commission (“IBWC”) and obligated each country to deliver minimum volumes of water to the other in certain streams under certain conditions, including Mexico’s obligation to deliver annual minimum volumes from tributaries of the Rio Grande that feed into Lakes Amistad and Falcon.<sup>22</sup> For years, Mexico has failed to deliver water to the Rio Grande as required under the 1944 Treaty.<sup>23</sup> The Commission has actively engaged the IBWC to take steps to bring Mexico into compliance with the 1944 Treaty.<sup>24</sup> On July 27, 2022, Commissioner Janecka initiated discussions with the Commissioner of the U.S. Section of the IBWC to engage in a binational effort to force Mexico into compliance and increase artificially scarce supply in the Lower Rio Grande Valley.<sup>25</sup>

The man-made scarcity has been regularly exacerbated by persistent and recurrent drought in the Rio Grande Basin since at least 2003.<sup>26</sup> In 2011, the Rio Grande Basin potentially

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<sup>22</sup> Utilization of Waters of the Colo. and Tjuana Rivers and of the Rio Grande, Mex.-U.S., Nov. 27, 1945, T.S. No. 994 at 8-11 (*available at* <https://www.ibwc.gov/wp-content/uploads/2022/11/1944Treaty.pdf>).

<sup>23</sup> Letter, Cari-Michel La Caille, Director, Tex. Comm’n on Env’l Quality Office of Water, Deficient Water Treaty Deliveries (Jan. 31, 2023), <https://www.tceq.texas.gov/downloads/border/1944-water-treaty/ibwc-letter-macias-1-31-2023-1.pdf>.

<sup>24</sup> Letter, Bobby Janecka, Commissioner, Tex. Comm’n on Env’l. Quality, 1944 Water Treaty Deliveries (Jul. 27, 2022), <https://www.tceq.texas.gov/downloads/border/1944-water-treaty/tceq-letter-to-ibwc-07272022.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; see Nat. Oceanic and Atmospheric Admin., Drought on the Rio Grande (2012), <https://www.climate.gov/news-features/features/drought-rio-grande>; Vianey Rueda & Drew Gronewold, *The Rio Grande isn’t just a border – it’s a river in crisis* (Oct. 24, 2023, 8:23 AM), <https://theconversation.com/the-rio-grande-isnt-just-a-border-its-a-river-in-crisis-213302>.



experienced its worst drought in history.<sup>27</sup> Disaster conditions due to persistent drought continue to occur in Hidalgo County today.<sup>28</sup>

### 5. History of HCWID 3 Rate Increases

Since 2012, HCWID 3's Board of Directors ("Board") has raised MPU's delivery charge 70.6 percent—from \$66.80 per acre-foot in 2012 to \$113.96 in 2021. In 2012, HCWID 3 raised MPU's rate 33 percent from \$66.80 to \$88.79. In 2014, HCWID 3 raised MPU's rate an additional 10 percent from \$88.79 to \$97.67. On July 29, 2021, the Board held a special meeting to consider, among other things, adjusting charges for the sale and/or delivery of water, including charges to McAllen.<sup>29</sup> The Board approved increasing the delivery charge from \$97.67 per acre-foot to \$113.96 per acre-foot effective September 1, 2021 through August 21, 2022, and HCWID 3 has not adjusted that price to date.

On June 29, 2021, HCWID 3's President informed MPU that the Board had voted to approve an additional increase to \$113.96. The \$113.96 delivery charge remains in place today. For comparison, the rates charged by the four districts to MPU per acre-foot of water are as follows:

<u>District</u>	<u>2012 Rate</u>	<u>2024 Rate</u>
HCID 1	N/A <sup>30</sup>	\$60.25
HCID 2	\$51.26	\$58.00
HCWID 3	\$66.80	\$113.96
United	\$53.44	\$65.17

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<sup>27</sup> Tex. Water Dev. Bd., Water for Texas, 2022 State Water Plan, Ch. 3 at 36. (available at <https://www.twdb.texas.gov/waterplanning/swp/2022/docs/03-SWP22-Drought.pdf>).

<sup>28</sup> Proclamation by the Governor of the State of Texas (Jan. 18, 2024), [https://gov.texas.gov/uploads/files/press/DISASTER\\_drought\\_disaster\\_and\\_renewal\\_proc\\_IMAGE\\_01-18-24.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_drought_disaster_and_renewal_proc_IMAGE_01-18-24.pdf).

<sup>29</sup> Minutes of the July 29, 2021 special meeting are included with this Petition as Appendix C.

<sup>30</sup> Because of the lack of useful delivery point, MPU did not purchase water from HCID 1 in 2012 and has no records of HCID 1's rates in 2012.



Following implementation by HCWID 3's Board of the unjust and unreasonable delivery charge, MPU ceased ordering water HCWID 3 in June of 2022. Consequently, MPU has been forced to rely more heavily not only on water supply from the other districts named here, but also from newly negotiated water supply arrangements with other suppliers. In 2023, MPU leased additional water rights from Hidalgo County Irrigation District No. 6 and East Rio Hondo Water Supply Corporation. Even those hastily negotiated agreements provide for significantly lower rates than HCWID 3's at \$80.00 and \$45.00 per acre-foot, respectively.<sup>31</sup> HCWID 3's delivery charge is 42 to 153 percent higher than prices charged by similar entities in the region for essentially identical service. HCWID 3's delivery charge is also 7.4 times the price charged by HCWID 3 to its irrigation customers—again for essentially the same service: delivery of raw water.

## **6. Procedural History**

MPU originally appealed HCWID 3's implementation of the \$113.96 delivery charge to the PUC on October 27, 2021.<sup>32</sup> During the discovery period in that matter, MPU took the position that HCWID 3's Board established the \$113.96 delivery charge in a manner inconsistent with the terms of the Permanent Water Supply and Delivery Contract between MPU and HCWID 3, which established a requirement that HCWID 3 could not adjust the delivery charge in an amount disproportionate from adjustments to amounts charged by HCWID 3 to other water users. HCWID 3 disagreed with MPU's position. Consequently, the ALJs in that matter abated the

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<sup>31</sup> MPU desires for those agreements to be temporary and to resume using the state water it is entitled to under COA 848 after TCEQ transfers that water to McAllen's water rights permit.

<sup>32</sup> PUC Docket No. 52758, Petition of McAllen Public Utility Appealing Wholesale Water Rates Charged by Hidalgo County Water Improvement District No. 3 in Hidalgo County, Texas, Original Petition (*available at* [https://interchange.puc.texas.gov/Documents/52758\\_1\\_1162494.PDF](https://interchange.puc.texas.gov/Documents/52758_1_1162494.PDF)).

proceedings under the PUC's rules so that a court of proper jurisdiction resolved the contract dispute.<sup>33</sup>

On May 2, 2022, MPU filed an Original Petition in Hidalgo County District Court seeking relief to resolve the contract dispute. The trial court granted HCWID 3's plea to the jurisdiction on January 9, 2023. MPU perfected its appeal of that ruling to the 13th District Court of Appeals, and final briefings were filed on July 17, 2023. The appellate court has not yet ruled on the appeal.

While the judicial case was pending, HCWID 3 appealed the ALJs' abatement of the PUC proceeding to the PUC commissioners. During the PUC commissioners' consideration of HCWID 3's appeal, legislators representing McAllen and HCWID 3 filed a letter with the PUC observing that TCEQ has exclusive jurisdiction over MPU's original complaint about the \$113.96 delivery charge under Section 51.305(d). In response, the PUC commissioners requested an opinion on the jurisdictional issue from the Office of the Attorney General. On June 27, 2023, the Attorney General issued Opinion No. JS-0004, which ultimately determined that the Attorney General could not determine the jurisdictional question.<sup>34</sup>

Following the Attorney General's opinion, the PUC commissioners issued a Supplemental Preliminary Order directing the ALJs in the abated proceeding to address the jurisdictional question and issue a proposal for decision to determine whether the PUC, TCEQ, or both had jurisdiction to hear MPU's complaint. On January 10, 2024, the ALJs convened a prehearing conference during which the parties and the ALJs deliberated the jurisdictional question. One ALJ expressed hesitation at making a determination that TCEQ had jurisdiction over the ongoing

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<sup>33</sup> PUC Docket No. 52758, Petition of McAllen Public Utility Appealing Wholesale Water Rates Charged by Hidalgo County Water Improvement District No. 3 in Hidalgo County, Texas, SOAH Order No. 4 Denying McAllen's Motion for Remand and Request for Certified Issue; Abating Case; Requiring Status Update; and Addressing Hidalgo Co. WID No. 3's Motion to Compel at 3 (May 2, 2022).

<sup>34</sup> *AG Opinion*, *supra* note 9, at 4.

proceeding without the TCEQ's participation. The ALJs ordered MPU to file a statement of position on jurisdiction no later than February 9, 2024 and for the parties to file a procedural schedule for determination of jurisdiction no later than February 21, 2024.

McAllen believes that invoking TCEQ's jurisdiction under Water Code Sections 11.041 and 51.305(d) is necessary and unavoidable. The question of whether TCEQ's water rights jurisdiction under Chapters 11 and 51 is exclusive likely will be raised and addressed during the hearing on this Petition. Consolidation of the two proceedings at the State Office of Administrative Hearings may be necessary to resolve the jurisdictional issues despite the fact that the abatement order in the PUC proceeding has not been lifted.

#### IV. GROUNDS FOR MPU'S COMPLAINT

Under Chapter 11 of the Texas Water Code, all surface water in Texas—including the ordinary flow and the storm, flood, and rainwater of every river—is property of the state and is held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.<sup>35</sup> Water Code Section 11.041 governs complaints related to denial of water by a party controlling the water supply to a person entitled to receive it. Among the factors the TCEQ must decide when presented with a petition under Section 11.041 is whether “the price or rental demanded for the available water is not reasonable and just or is discriminatory.”<sup>36</sup>

Though not expressly stated in the governing statute, the context of the complaint process strongly implies that an unreasonable, unjust, or discriminatory price for state water constitutes an effective denial of water supply by the party controlling the water and that the state has authority to issue orders correcting the price. Under Water Code Sections 11.036 and 11.041, a political

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<sup>35</sup> Tex. Water Code §§ 11.021(a), .0235(a).

<sup>36</sup> *Id.* § 11.041(a); *BASF Order*, *supra* note 11, at 3.



subdivision that controls water owned by the state that sets an unreasonable, unjust, or discriminatory price for the state-owned natural resource does so in violation of statutory law. The TCEQ, as the state's administrator of all surface water rights, is the delegated adjudicative body to resolve complaints about the price of that water.

Municipal priority water in the Lower Rio Grande system is a higher priority—and therefore more valuable—resource than irrigation water. So while it is typical for water suppliers to charge more for municipal priority water than irrigation priority water, HCWID 3's charges to MPU far exceed the typical charges in the region and far exceed HCWID 3's irrigation charges. As noted, MPU is willing to pay a reasonable price for the municipal priority water dedicated to McAllen under COA 848, but MPU believes the \$113.96 per acre-foot delivery charge is plainly unreasonable and unjust when compared against prices charged by similar districts for municipal priority water and is discriminatory when compared against the \$15.40 per acre-foot price charged by HCWID 3 for water delivered from the same system.

Scarcity of water supply in the Lower Rio Grande Valley caused by Mexico's consistent failure to deliver volumes of water required under the 1944 Treaty is exacerbated by the persistent drought conditions in the Rio Grande basin that have existed since 2003. HCWID 3 has taken advantage of the scarcity and natural disaster to unreasonably and unjustly gouge McAllen's citizens for water to which they are legally entitled to receive under COA 848. MPU believes that it is no coincidence that HCWID 3's severe price increases began during the worst drought in recorded history.<sup>37</sup> Just as public policy militates against price gouging for necessities like gasoline, food, and medicine in the aftermath of a hurricane, so too should TCEQ's regulation of

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<sup>37</sup> Tex. Water Dev. Bd., Water for Texas, 2022 State Water Plan, Ch. 3 at 36. (*available at* <https://www.twdb.texas.gov/waterplanning/swp/2022/docs/03-SWP22-Drought.pdf>).



water rights pricing during the severe shortage currently caused by the natural disaster in the Rio Grande Basin.

Requiring HCWID 3 to deliver the municipal priority water to MPU serves no practical public benefit. That McAllen's municipal priority water rights are imbedded in COA 848 creates, in MPU's view, the arbitrary and unnecessary function of a WCID to "deliver" water simply by pumping it over a levee and releasing it into a gravity-fed canal. HCWID 3 is no better suited to own and operate pumping and water delivery facilities than MPU. Indeed, numerous cities throughout Texas successfully own, operate, and maintain water rights, diversion works, and storage facilities. The surest way for TCEQ to guarantee that MPU will be able to access the water dedicated to McAllen's municipal use at reasonable, just, and non-discriminatory prices is to memorialize McAllen's water rights in McAllen's certificate of adjudication. As the state's delegated administrator of water rights, and as successor to the Texas Water Commission's original issuance of COA 353 and COA 848, the Commission has jurisdiction to reassign McAllen's water rights to COA 353. Doing so will also allow HCWID 3 to focus on its important function of supplying Rio Grande water to its irrigation customers in the Lower Rio Grande Valley.

## **V. CONCLUSION & PRAYER**

MPU respectfully requests that the Executive Director make a preliminary investigation of the complaint made in this Petition and determine that there are probable grounds for the complaint that the price or rental demanded for the available water is not reasonable and just and is discriminatory. On completion of the resulting hearing on the complaint, MPU respectfully requests that the Commission render a written decision finding that HCWID 3's price for water to which MPU is entitled is not just or reasonable and is discriminatory.

Finally, MPU respectfully requests that, in the interest of guaranteeing that McAllen can access and use the state water it is entitled to at a just, reasonable, and non-discriminatory price,

the Commission cancel the municipal priority portion of COA 848 and transfer the 13,980 acre-feet of municipal priority water to McAllen's COA 353 as Amendment 23-353D. In the alternative, MPU respectfully requests the Commission determine a reasonable, just, and non-discriminatory price and order HCWID 3 to charge a price no higher than the price determined by the Commission to be just, reasonable, and non-discriminatory. MPU further prays for all legal and equitable relief to which it is entitled.

Respectfully submitted,

**WINSTEAD P.C.**

401 Congress Ave., Suite 2100

Austin, Texas 78701

Telephone: (512) 370-2800

Facsimile: (512) 370-2850

/s/ James Aldredge

JAMES ALDREDGE

State Bar No. 24058514

JAMES RUIZ

State Bar No. 17385860

ISAAC TAWIL

State Bar No. 24013605

AUSTIN STEVENSON

State Bar No. 24085961

**MCALLEN PUBLIC UTILITY**

**CITY ATTORNEY**

P.O. Box 220

1300 Houston Ave

McAllen, Texas 78501

Telephone: (956) 681-1090

**ATTORNEYS FOR**

**MCALLEN PUBLIC UTILITY**

**Appendix A**

Certificate of Adjudication No. 23-848, as amended through 23-848D

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A  
CERTIFICATE OF ADJUDICATION

CERTIFICATE No. 23-848D TYPE: §§ 11.122, 11.085 PRIORITY: Class A, Municipal

Owner:	Hidalgo County Water Improvement District No. 3	Address:	1325 Pecan Blvd McAllen, Texas 78501
Filed:	December 18, 2014	Granted:	August 21, 2015
Purpose:	Municipal, Mining & Agricultural	County:	Hidalgo, Val Verde, Kinney, Maverick, Dimmit, Webb, Zapata, Starr, Cameron, and Willacy
Watercourse:	Rio Grande	Watershed:	Rio Grande Basin

WHEREAS, a portion of Certificate of Adjudication No. 23-848 authorizes Hidalgo County Water Improvement District No. 3 (Owner/Applicant) to divert and use from the Rio Grande, Rio Grande Basin, not to exceed 8,980 acre-feet of Municipal Priority water per year for municipal purposes in the City of McAllen; 5,000 acre-feet of Municipal Priority water per year for municipal purposes in the Owner's service area; 8,552.60 acre-feet of Class A water per year for agricultural purposes to irrigate 3,901.04 acres in the Owner's service area; and 100 acre-feet of Class A water per year for mining purposes in Hidalgo County, Texas; and

WHEREAS, Owner seeks to amend its portion of Certificate of Adjudication No. 23-848 to add mining use to the 8,552.60 acre-feet of Class A water for agricultural purposes and to add agricultural use to the 100.00 acre-feet of Class A water for mining purposes; and

WHEREAS, Owner seeks to change the place of use for mining purposes to Val Verde, Kinney, Maverick, Dimmit, Webb, Zapata, Starr, Hidalgo, Cameron, and Willacy Counties; and

WHEREAS, Owner seeks to authorize an exempt interbasin transfer to those portions of Kinney, Maverick, Dimmit, and Webb Counties within the Nueces River Basin, and to those portions of Hidalgo, Cameron, Starr, and Willacy Counties within the Nueces-Rio Grande Coastal Basin; and

WHEREAS, Owner further seeks to add a diversion segment for mining purposes



being anywhere along the east bank of the Rio Grande between Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron Counties in the Rio Grande; and

WHEREAS, the upstream boundary of the diversion segment is located at Latitude 29.431503° N, Longitude 101.044572° W, in Val Verde County; and

WHEREAS, the downstream boundary of the diversion segment is located at Latitude 25.955256°N, Longitude 97.146311° W, in Cameron County, Texas.

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, this amendment, if granted, is subject to requirements and orders of the Rio Grande Watermaster; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, no requests for a contested case hearing were received for this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment; and

WHEREAS, the Texas Commission on Environmental Quality is of the opinion and so finds the proposed changes will not impair the rights of any person entitled to the use of a portion of the American share of the waters of the Rio Grande;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 23-848, designated Certificate of Adjudication No. 23-848D, is issued to Hidalgo County Water Improvement District No. 3, subject to the following terms and conditions:

1. USE

A. In lieu of the previous authorizations, the Owner is authorized to divert and use, from the Rio Grande, Rio Grande Basin, not to exceed;

1. 8,980 acre-feet of Municipal Priority water per year for municipal purposes in the City of McAllen, Hidalgo County, Texas.
2. 5,000 acre-feet of Municipal Priority water per year for municipal purposes in the Owner's service area, Hidalgo County, Texas.
3. 100 acre-feet of Class A water for mining and agricultural purposes in the Owner's service area, Hidalgo County, Texas.
4. 8,552.60 acre-feet of Class A water per year for agricultural purposes to

irrigate 3,901.04 acres in the Owner's service area and mining purposes in Val Verde, Kinney, Maverick, Dimmit, Webb, Zapata, Starr, Hidalgo, Cameron, and Willacy Counties, Texas.

- B. Owner is also authorized an exempt interbasin transfer to those portions of portions of Kinney, Maverick, Dimmit, and Webb Counties within the Nueces River Basin, and to those portions of Hidalgo, Cameron, Starr, and Willacy Counties within the Nueces-Rio Grande Coastal Basin for mining purposes.

## 2. DIVERSION

In addition to the previous authorizations, Owner is authorized to divert water for mining purposes anywhere within a diversion segment along the east bank of the Rio Grande in Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron Counties between the following two points:

- 1. Upstream boundary of the diversion segment is located at Latitude 29.431503° N, Longitude 101.044572° W, in Val Verde County, Texas.
- 2. Downstream boundary of the diversion segment is located at Latitude 25.955256°N, Longitude 97.146311° W, in Cameron County, Texas.

## 3. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

## 4. SPECIAL CONDITIONS

- A. Within 90 days prior to the diversion of water for mining use, Owner or contract customer must submit to the TCEQ a water conservation plan to comply with Title 30 TAC Chapter 288.3.
- B. Owner shall install a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the Rio Grande. Owner shall allow representatives of the Texas Commission on Environmental Quality Rio Grande Watermaster reasonable access to the property to inspect the measuring device.
- C. Owner shall contact the Rio Grande Watermaster prior to diversion of water



authorized by this amendment.

- D. The use of water authorized in USE Paragraph 1 is intended for use by the Owner. All contracts for the sale of all or part of this water by the Owner shall be filed with the Executive Director and found sufficient in accordance with (TAC) §§ 303.51-53 prior to the diversion of water. If the buyer is not currently a water right holder of record in the Middle or Lower Rio Grande, the buyer shall also apply for and be granted a water rights permit authorization which may include a Temporary Water Use Permit, Contractual Permit, or an amendment to this Certificate of Adjudication.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 23-848, as amended, except as specifically amended herein.

This amendment is issued subject to all superior water rights in the Rio Grande Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.



For the Commission

Date Issued: **August 21, 2015**

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a  
Texas Commission on Environmental Quality document  
which is filed in the permanent records of the Commission.  
Given under my hand and the seal of the Commission.

AMENDMENT TO  
CERTIFICATE OF ADJUDICATION

*Bridget C. Bohac* JAN 03 2013  
Bridget C. Bohac, Chief Clerk  
Texas Commission on Environmental Quality

CERTIFICATE NO. 23-848C

TYPE: 11.122

PRIORITY: Municipal

Owner: City of McAllen

Address: P.O. Box 220  
1300 Houston Avenue  
McAllen, Texas 78505

Filed: January 11, 2012

Granted: December 18, 2012

Purpose: Municipal

County: Hidalgo

Watercourse: Rio Grande

Watershed: Rio Grande Basin

WHEREAS, City of McAllen (Applicant or City) acquired a portion of Certificate of Adjudication No. 23-848 which authorizes the diversion and use of not to exceed 1,100 acre-feet of Class A water per year from the Rio Grande, Rio Grande Basin for agricultural purposes to irrigate land in Hidalgo County, Texas; and

WHEREAS, the City only acquired the 1,100 acre-feet of water and not the land to which it was appurtenant; and

WHEREAS, Applicant seeks to amend its 1,100-acre-foot portion of Certificate of Adjudication No. 23-848 to change the purpose of use from agricultural to municipal; and change the place of use to the City's water service area in Hidalgo County; and

WHEREAS, the City is not seeking to change the diversion point and indicates Hidalgo Water Improvement District No. 3 will divert and deliver the water for the City's use; and

WHEREAS, pursuant to 30 Texas Administrative Code (TAC) §303.43, the conversion factor of 0.5 is used when converting from Class A to Municipal priority water, resulting in 550 acre-feet of Municipal Priority water for municipal purposes; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, this amendment, if granted, is subject to requirements and orders of the Rio Grande Watermaster; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and



WHEREAS, no requests for a contested case hearing were received for this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment; and

WHEREAS, the Texas Commission on Environmental Quality is of the opinion and so finds the proposed changes will not impair the rights of any person entitled to the use of a portion of the American share of the waters of the Rio Grande;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 23-848, designated Certificate of Adjudication No. 23-848C, is issued to City of McAllen, subject to the following terms and conditions:

1. USE

In lieu of the authorization to divert and use not to exceed 1,100 acre-feet of Class A water per year from the Rio Grande, Rio Grande Basin for agricultural purposes, Hidalgo Water Improvement District No. 3 is now authorized to divert for Owner's use not to exceed 550 acre-feet of Municipal Priority water per year from the Rio Grande, Rio Grande Basin for municipal purposes in, Owner's water service area, as it presently exists or as it may exist in the future in Hidalgo County, Texas

2. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

3. SPECIAL CONDITIONS

- A. Hidalgo County Water Improvement District No. 3 shall maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the Rio Grande for Owner's use, and shall allow representatives of the TCEQ Rio Grande Watermaster reasonable access to the property to inspect the measuring device.

- B. Owner or Hidalgo County Water Improvement District No. 3 shall contact the Rio Grande Watermaster prior to diversion of water authorized by this amendment.
- C. The use of water authorized in USE Paragraph 1 is intended for use by the Owner and diversion by Hidalgo County Water Improvement District No. 3. All contracts for the sale of all or part of this water by the Owner shall be filed with the Executive Director and found sufficient in accordance with Title 30 Texas Administrative Code 303.51-53 prior to the diversion of water. If the buyer is not currently a water right holder of record in the Middle or Lower Rio Grande, the buyer shall also apply for and be granted a water rights permit authorization which may include a Temporary Water Use Permit, Contractual Permit, or an amendment to this Certificate of Adjudication.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 23-848, as amended, except as specifically amended herein.

This amendment is issued subject to all superior water right holders below Amistad Reservoir in the Rio Grande Basin.

Owner and Hidalgo County Water Improvement District No. 3 agree to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

  
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For the Commission

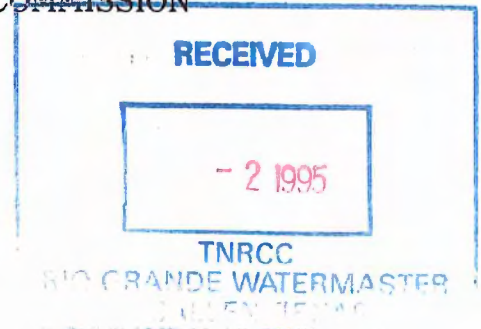
Date Issued: **December 18, 2012**



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AMENDMENT TO  
CERTIFICATE OF ADJUDICATION



CERTIFICATE NO. 23-848B

PRIORITY : Municipal and Class "A"

Name : Hidalgo County Water  
Improvement District  
No. 3

Address : 1325 Pecan  
McAllen, Texas 78501

Filed : June 30, 1995

Granted : **SEP 08 1995**

Purposes : Municipal, Irrigation  
and Mining

County : Hidalgo

Watercourse : Rio Grande

Watershed : Rio Grande Basin

WHEREAS, Certificate of Adjudication No. 23-848 was issued to Hidalgo County Water Improvement District No. 3 on October 18, 1971 and authorized diversion and use of not to exceed 8,980 acre-feet of water per annum from the Rio Grande with municipal priority for use by the City of McAllen, and not to exceed 19,852.60 acre-feet of water per annum with Class "A" priority from the Rio Grande to irrigate 7,941.04 acres in TWC Tract No. H-261 (Court No. 532), Hidalgo County, Texas.

WHEREAS, Certificate No. 23-848 was amended on October 10, 1978 wherein 2400 acres (6000 acre-feet) of the Class A irrigation water rights were changed to municipal use, resulting in an additional 3000 acre-feet of municipal water after conversion from irrigation use and reducing the Class A irrigation water to 13,852.60 acre-feet per annum.

WHEREAS, the applicant seeks to amend Certificate No. 23-848, as amended, to authorize a change in the purpose of use of 100 acre-feet out of the aforesaid 13,852.60 acre-feet of Class "A" irrigation water rights to mining use in applicant's service area in Hidalgo County, Texas and to change the purpose of use of 4000 acre-feet of Class "A" irrigation water rights to municipal use resulting in an additional 2000 acre-feet of municipal water after conversion; and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established;

WHEREAS, no person protested the granting of this application;

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment; and

WHEREAS, the Commission is of the opinion and so finds:

- (a) The proposed changes will not impair the rights of any person entitled to the use of a portion of the American share of the waters of the Rio Grande;
- (b) The proposed changes will not violate the terms of the permanent injunction and restraining order made final in the Lower Rio Grande Valley Water Suit.

NOW, THEREFORE, this amendment to Certificate No. 23-848, as amended, is issued to Hidalgo County Water Improvement District No. 3, subject to the following terms and conditions:

1. USE

In lieu of previous authorizations:

- a. With municipal priority, to divert and use not to exceed 8,980 acre-feet of water per annum from the Rio Grande for use by the City of McAllen.
- b. With municipal priority, to divert and use not to exceed 5000 acre-feet of water per annum from the Rio Grande for use in the service area of the certificate owner.
- c. With Class "A" priority, to divert and use not to exceed 9,752.60 acre-feet of water per annum to irrigate 3,901.04 acres of land in Hidalgo County, Texas.
- d. Certificate owner may divert and use 100 acre-feet from the Rio Grande for mining purposes for use in the service area of the certificate owner.

2. WATER CONSERVATION

The certificate owner shall implement a water conservation plan that provides for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plan shall include a requirement that



in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 23-848, as amended, except as specifically amended herein.

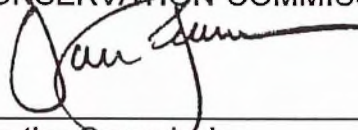
This amendment is issued subject to all superior and senior water rights in the Rio Grande Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION



For the Commission

DATE ISSUED: **SEP 08 1995**

ATTEST:

*Mamie M. Black*  
for Gloria A. Vasquez, Chief Clerk

AMENDMENT TO  
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 23-848A

CLASS "A"

Name	: Hidalgo County Water Improvement District No. 3	Address	: 1325 Pecan Blvd. McAllen, Texas
Filed	: July 24, 1978	Granted	: September 25, 1978
Purpose	: Municipal	County	: Hidalgo
Watercourse	: Rio Grande	Watershed	: Rio Grande Basin

WHEREAS, the 13th Court of Civil Appeals entered its Final Judgment in Cause No. 261, styled State v. Hidalgo County Water Control and Improvement District No. Eighteen, 443 S.W. 2d 728 (Tex. Civ. App. - Corpus Christi 1969, writ ref'd n.r.e.), known as the Lower Rio Grande Valley Water Suit, adjudicating the rights to use a portion of the public waters of the State of Texas, and pursuant to the terms of the Judgment, the Texas Water Rights Commission duly issued Certificate of Adjudication No. 23-848 to Hidalgo County Water Improvement District No. 3, which authorized the holder to divert and use a maximum of not to exceed 8980 acre-feet of water per annum from the Rio Grande, with municipal priority, for municipal use by the City of McAllen; and to divert and use a maximum of not to exceed 19,852.6 acre-feet of water per annum measured at the point of diversion from the Rio Grande to irrigate 7941.04 acres of land in TWC Tract No. H-261 (Court No. 532), Hidalgo County, Texas, and caused the Certificate to be recorded in Volume 1, pages 627-628, of the Certificate of Adjudication Records of Hidalgo County, Texas; and

WHEREAS, Hidalgo County Water Improvement District No. 3 has withdrawn the irrigation service rights from 2400 acres of the 7941.04 acres within its boundaries (TWC H-261) which have become impractical to irrigate due to urbanization and transferred and awarded same to municipal use, which is a higher order of preference; and

WHEREAS, the Texas Water Commission finds that jurisdiction of the application is established; and

WHEREAS, at a public hearing on September 1, 1978, the Texas Water Commission considered an application by Hidalgo County Water Improvement District No. 3 wherein applicant sought to amend Certificate of Adjudication No. 23-848 in order to change the purpose of use of 2400 acres of Class "A" water rights from irrigation to municipal; the Texas Water Commission is of the opinion and so finds:

- (a) The proposed changes will not impair the rights of any person entitled to the use of a portion of the American share of the waters of the Rio Grande;
- (b) The proposed changes will not violate the terms of the permanent injunction and restraining order made final in the Lower Rio Grande Valley Water Suit; and

WHEREAS, at the public hearing Hidalgo County Water Improvement District No. 3 was named as a party; and

WHEREAS, by law the Executive Director and Public Interest Advocate of the Texas Department of Water Resources were named as parties; and

WHEREAS, no person appeared to protest the granting of this application; and

WHEREAS, the issuance of this permit granting this application is not adverse to any party; and

WHEREAS, the Commission has assessed the effects of issuance of this permit on the bays and estuaries of Texas; and

WHEREAS, when converted to municipal purposes Commission Rules require that each acre of Class "A" irrigation water right shall be allocated 1.25 acre-feet of water per annum and the priority of municipal use shall be applicable thereto.

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 23-848 is issued to Hidalgo County Water Improvement District No. 3 subject to the following provisions:

1. USE

Certificate holder is authorized to divert and use not to exceed 3000 acre-feet of water per annum measured at the diversion point, from the American share of the Rio Grande for municipal purposes in its service area.

In lieu of certificate holder's irrigation authorization in Certificate of Adjudication No. 23-848, with Class "A" priority, certificate holder is authorized to divert and use a maximum of not to exceed 13,852.6 acre-feet of water per annum measured at the diversion point from the Rio Grande to irrigate 5541.04 acres in TWC Tract No. H-261 (Court No. 532), Hidalgo County, Texas.

2. SPECIAL CONDITION

This amendment is issued subject to all terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules and Regulations of the Texas Water Commission and to its right of continual supervision.

TEXAS WATER COMMISSION

/s/ Dorsey B. Hardeman

Dorsey B. Hardeman, Acting Chairman

Date Issued:

October 10, 1978

/s/ Joe R. Carroll

Joe R. Carroll, Commissioner

(SEAL)

Attest:

/s/ Mary Ann Hefner

Mary Ann Hefner, Chief Clerk



CERTIFICATE OF ADJUDICATION

ADJUDICATION NO: 23-848

PRIORITY: Class A and Municipal

OWNER: Hidalgo County Water Improve-  
ment District No. 3

ADDRESS: 1801 1/2 Highway  
McAllen, Texas 78501

PURPOSE: Irrigation, municipal

COUNTY: Hidalgo

WATERCOURSE: Rio Grande

WATERSHED: Rio Grande

The 13th Court of Civil Appeals of Texas entered its final judgment in Cause No. 261, styled The State of Texas, et al. v. Hidalgo County WC&ID No. 18, et al., 443 S.W.2d 728, (Error ref. n.r.e.), adjudicating the rights to use a portion of public waters of the State of Texas. This "Certificate of Adjudication" is issued subject to the following conditions and to the Rules and Regulations of the Texas Water Rights Commission.

1. USE:

- ✓ (a) With municipal priority, holder is authorized to divert a maximum of not to exceed 8,980 acre-feet of water per annum measured at the point of diversion from the Rio Grande for municipal use by the City of McAllen.
- ✓ (b) With Class A priority, holder is authorized to divert and use a maximum of not to exceed 19,852.60 acre-feet of water per annum measured at the point of diversion from the Rio Grande to irrigate 7,941.04 acres in TWC Tract No. H-261, (Court No. 532), Hidalgo County, Texas. The use of water is limited to the irrigation of the described lands.

2. SPECIAL CONDITIONS:

(a) Waters diverted hereunder shall be allocated in accordance with the Rules, Regulations and Modes of Procedure and Orders of the Texas Water Rights Commission.

(b) All requests for water shall be made to the Watermaster and all uses of water shall be reported in accordance with the Rules, Regulations and Modes of Procedure and Orders of the Texas Water Rights Commission.

This certificate is issued subject to the rules and regulations of the Texas Water Rights Commission and to its right of continual supervision.

TEXAS WATER RIGHTS COMMISSION

O. F. Dent, Chairman

DATE ISSUED:

October 18, 1971

TEST:

rey Strandtman, Secretary



**Appendix B**

Certificate of Adjudication No. 23-353, as amended through 23-353C

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## AMENDMENT TO CERTIFICATE OF ADJUDICATION

8/28/13  
TE

CERTIFICATE NO.	23-353C	TYPE:	11.122	PRIORITY:	Municipal
Owner:	City of McAllen	Address:	P.O. Box 5489 McAllen, Texas 78502		
Filed:	June 5, 2013	Granted:	August 19, 2013		
Purpose:	Municipal	Counties:	Hidalgo		
Watercourse:	Rio Grande	Watershed:	Rio Grande Basin		

WHEREAS, the City of McAllen (Owner) owns a portion of Certificate of Adjudication No. 23-353 which authorizes the diversion and use of not to exceed 678.84 acre-feet of Municipal Priority water per year for municipal purposes from three points on the Rio Grande, Rio Grande Basin in Hidalgo County; and

WHEREAS, the City of McAllen seeks to amend Certificate of Adjudication No. 23-353 to add a diversion point for its 678.84 acre-foot portion of authorized water per year; and

WHEREAS, the additional diversion point will be on the Rio Grande at Latitude 26.116348°N, Longitude 98.272574°W, bearing S 8°46' 08" W, 13,156 feet from the northeast corner of Lot 4, Block 5, Rio Bravo Plantation Company Subdivision in Hidalgo County Texas; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, this amendment, if granted, is subject to requirements and orders of the Rio Grande Watermaster; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, no requests for a contested case hearing were received for this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment; and

WHEREAS, the Texas Commission on Environmental Quality is of the opinion and so finds the proposed changes will not impair the rights of any person entitled to the use of a portion of the American share of the waters of the Rio Grande;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 23-353, designated Certificate of Adjudication No. 23-353C, is issued to the City of McAllen, subject to the following terms and conditions:

1. DIVERSION

In addition to the previous diversion points, Owner is also authorized to divert its authorized water from a point located on the Rio Grande at Latitude 26.116348° N, Longitude 98.272574° W, bearing S 8° 46' 08" W, 13,156 feet from the northeast corner of Lot 4, Block 5, Rio Bravo Plantation Company Subdivision in Hidalgo County, Texas.

2. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

3. SPECIAL CONDITIONS

- A. Owner shall install a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the Rio Grande. Owner shall allow representatives of the TCEQ Rio Grande Watermaster reasonable access to the property to inspect the measuring device.
- B. Owner shall contact the Rio Grande Watermaster prior to diversion of water authorized by this amendment.

This amendment is issued subject to all terms, conditions, and provisions contained in Certificate of Adjudication No. 23-353, as amended, except as specifically amended herein.

This amendment is issued subject to all superior water rights in the Rio Grande Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

  
\_\_\_\_\_  
For the Commission

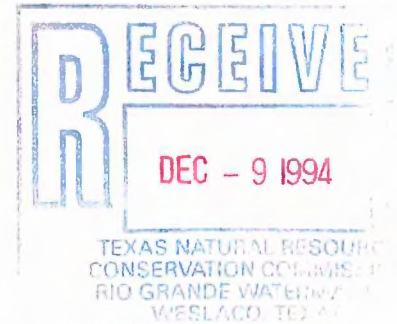
Date Issued: **August 19, 2013**



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AMENDMENT TO  
CERTIFICATE OF ADJUDICATION



CERTIFICATE NO. 23-353B

PRIORITY : MUNICIPAL

Owner : The City of McAllen

Address : P. O. Box 220  
McAllen, Texas 78505

Filed : October 27, 1994

Granted : November 18, 1994

Purpose : Municipal

County : Hidalgo

Watercourse : Rio Grande

Watershed : Rio Grande Basin

WHEREAS, an application was received from the City of McAllen to combine the 832.50 acre-feet of Class "B" irrigation rights it owns pursuant to Certificate of Adjudication No. 23-746, as amended, with the rights authorized by Certificate No. 23-353, as amended, and to amend Certificate No. 23-353, as amended and combined, by changing the place of use, purpose of use (from irrigation to municipal use) and the diversion point of the 832.50 acre-feet of water rights; and

WHEREAS, a water conservation plan dated July, 1994 was submitted with the application; and

WHEREAS, as indicated in 31 TAC §303.43, the conversion of the 832.50 acre-feet of Class "B" irrigation rights to municipal rights will result in an authorization to use 333 acre-feet of water per annum for municipal use; and

WHEREAS, Certificate No. 23-353, as amended, currently authorizes the City of McAllen to divert and use not to exceed 345.84 acre-feet of water per annum for municipal purposes; and

WHEREAS, by Commission order approved on November 18, 1994, the water rights authorized by Certificate No. 23-746, as amended, were combined with the water rights authorized by Certificate No. 23-353, as amended, under Certificate No. 23-353, as amended, to be designated by this amendment; and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate No. 23-353, as amended and combined, is issued to the City of McAllen, subject to the following terms and conditions:

1. USE

In lieu of the authorization to divert and use 345.84 acre-feet of water per annum for municipal purposes, under Certificate No. 23-353, as amended, owner is authorized to divert and use not to exceed 678.84 acre-feet of water per annum from the Rio Grande for municipal use within the City's service area in Hidalgo County, Texas.

2. DIVERSION

Owner is authorized to divert the additional 333 acre-feet of water per annum authorized by this amendment from the diversion points currently authorized in Certificate No. 23-353, as amended.

3. SPECIAL CONDITIONS

- a. Owner shall implement the referenced water conservation which provides for the utilizing of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future use or alternative uses. In addition, every wholesale water supply contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement water conservation measures. If the customer intends to resell the water, then the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.
- b. Owner shall submit an annual water conservation progress report to the Commission until such time as the conservation goals included in the conservation plan have been met.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 23-353, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Rio Grande Basin. Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION

William R. Campbell  
For the Commission

Date Issued: November 18, 1994

ATTEST:

Gloria A. Vasquez  
Gloria A. Vasquez, Chief Clerk



TEXAS WATER COMMISSION



AMENDMENT TO  
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 23-353A

PRIORITY : Municipal

Name : City of McAllen

Address : P. O. Box 5489  
McAllen, Texas  
78502

Filed : September 8, 1992

Granted : December 16, 1992

Purpose : Municipal

County : Hidalgo

Watercourse : Rio Grande

Watershed : Rio Grande Basin

WHEREAS, Certificate of Adjudication No. 23-353 was issued to L. M. Berry on September 13, 1971, and authorized the owner to divert and use not to exceed 435 acre-feet of Class "B" water per annum from the Rio Grande to irrigate a maximum of 174 acres of land in TWC Tract No. H-50 (Court No. 96), Hidalgo County, Texas and Commission records currently show The City of McAllen as the owner of a 244.3 acre-foot portion of the water right to irrigate 97.72 acres of land;

WHEREAS, Certificate of Adjudication No. 23-400 was issued to Dixie Mortgage Loan Company on September 17, 1971, and authorized the owner to divert and use not to exceed 1207.675 acre-feet of Class "B" water per annum from the Rio Grande to irrigate a maximum of 483.07 acres of land in TWC Tract No. H-126 (Court No. 256), Hidalgo County, Texas and Commission records currently show The City of McAllen as the owner of a 287.20 acre-foot portion of the water right to irrigate 114.88 acres of land;

WHEREAS, Certificate of Adjudication No. 23-512 was issued to E. I. Fosmire on September 23, 1971, and authorized the owner to divert and use not to exceed 405 acre-feet of Class "B" water per annum from the Rio Grande to irrigate a maximum of 162 acres of land in TWC Tract No. H-183 (Court No. 333), Hidalgo County, Texas and Commission records currently show The City of McAllen as the owner of a 110 acre-foot portion of the water right to irrigate 44 acres of land;

WHEREAS, Certificate of Adjudication No. 23-557 was issued to Rufino Sotelo, et ux on September 27, 1971, and authorized the owner to divert and use not to exceed 97.5 acre-feet of Class "B" water per annum from the Rio Grande to irrigate a maximum of 39 acres of land in TWC Tract No. H-513 (Court No. 1003), Hidalgo County, Texas and Commission records currently show The City of McAllen as the sole owner of the water right;

WHEREAS, Certificate of Adjudication No. 23-597 was issued to David H. Keir on September 28, 1971, and authorized the owner to divert and use not to exceed 119.35 acre-feet of Class "B" water per annum from the Rio Grande to irrigate a maximum of 47.74 acres of land in TWC Tract No. H-301a (Court No. 598a), Hidalgo County, Texas and Commission records currently show The City of McAllen as the sole owner the water right;

WHEREAS, Certificate of Adjudication No. 23-818 was issued to The City of McAllen on October 14, 1971, and authorized the owner to divert and use not to exceed 5 acre-feet of Class "A" water per annum from the Rio Grande to irrigate a maximum of 2 acres of land in TWC Tract No. H-339 (Court No. 677), Hidalgo County, Texas and Commission records currently show The City of McAllen as the sole owner the water right;

WHEREAS, The City of McAllen has requested that their portions of the certificates listed above be combined under Certificate No. 23-353, and to amend Certificate No. 23-353, as combined, as follows:

1. Change the purpose of use of the aforesaid water rights to municipal use. The conversion of the water rights will be made in accordance with Commission rule 303.43 and will equate to 345.84 acre-feet of water per annum for municipal priority.
2. Change the places of use of the aforesaid water rights to the city's service area in Hidalgo County, Texas.
3. Specify the three diversion points to be utilized by the city;

WHEREAS, by Commission order approved on December 16, 1992, all of the water rights owned by The City of McAllen under the aforementioned certificates were combined under 23-353, to be designated by this amendment;

WHEREAS, the Texas Water Commission finds that jurisdiction over the application is established;

WHEREAS, no person protested the granting of this application;



WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Water Commission in issuing this amendment; and

WHEREAS, the Texas Water Commission is of the opinion and so finds:

- (a) The proposed changes will not impair the rights of any person entitled to the use of a portion of the American share of the waters of the Rio Grande;
- (b) The proposed changes will not violate the terms of the permanent injunction and restraining order made final in the Lower Rio Grande Valley Water Suit;

WHEREAS, when converted to municipal purposes Texas Water Commission Rules require that each acre-foot of Class "A" irrigation water right shall be allocated 0.5 acre-feet of water per annum with municipal priority and each acre-foot of Class "B" irrigation water right shall be allocated 0.4 acre-feet of water per annum with municipal priority.

NOW, THEREFORE, this amendment to Certificate No. 23-353, as combined, is issued to The City of McAllen, subject to the following terms and conditions:

1. USE

Certificate owner is authorized to divert not to exceed 345.84 acre-feet of water per annum from the Rio Grande with municipal priority for use within the City's service area in Hidalgo County, Texas.

2. DIVERSION

- A. On the left, or north, bank of the Rio Grande at Latitude 26.078° N, Longitude 98.252° W, also bearing S 64° E, 1900 feet from the southeast corner of the Juan Antonio Villareal Survey No. 64, Abstract No. 44, approximately 17 miles southwest of Edinburg, Hidalgo County, Texas, which is operated by Hidalgo County Irrigation District No. 2.
- B. On the left, or north, bank of the Rio Grande at Latitude 26.117° N, Longitude 98.265° W, also bearing S 47° 15' E, 2000 feet from the southwest corner of the Antonio Gutierrez Survey No. 63, Abstract No. 34, approximately 15 miles southwest of Edinburg, Hidalgo County, Texas, which is operated by Hidalgo County Irrigation District No. 3.



- C. On the left, or north, bank of the Rio Grande at Latitude 26.182° N, Longitude 98.405° W, also bearing S 81° E, 900 feet from the southwest corner of the Nicolas Zamora Survey No. 48, Abstract No. 76, approximately 5½ miles southwest of Mission, Hidalgo County, Texas, which is operated by United Irrigation District.

3. SPECIAL CONDITION

The City of McAllen shall provide a response to the Commission staff review dated October 9, 1992, of the Water Conservation Plan contained in the application for this amendment within 120 days of the issuance of this amendment.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 23-353, as combined, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Rio Grande Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

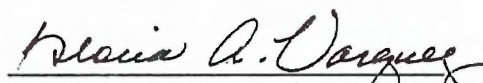
This amendment is issued subject to the Rules of the Texas Water Commission and to the right of continuing supervision of State water resources exercised by the Commission.

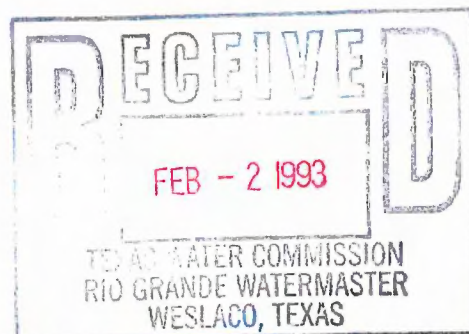
TEXAS WATER COMMISSION

  
John Hall, Chairman

DATE ISSUED: JAN 11 1993

ATTEST:

  
Gloria A. Vasquez, Chief Clerk



CERTIFICATE OF ADJUDICATION

ADJUDICATION NO: 23- 353

CLASS: B

OWNER: L. M. Berry

ADDRESS: Route 1, Box 481  
Mission, Texas 78572

PURPOSE: Irrigation

COUNTY: Hidalgo

WATERCOURSE: Rio Grande

WATERSHED: Rio Grande

The 13th Court of Civil Appeals of Texas entered its final judgment in Cause No. 261, styled The State of Texas, et al. v. Hidalgo County WC&ID No. 18, et al., 443 S.W.2d 728, (Error ref. n.r.e.), adjudicating the rights to use a portion of public waters of the State of Texas. This "Certificate of Adjudication" is issued subject to the following conditions and to the Rules and Regulations of the Texas Water Rights Commission.

1. USE:

Holder is authorized to divert and use a maximum of not to exceed 435.00 acre-feet of water per annum measured at the point of diversion from the Rio Grande to irrigate 174.00 acres in TWC Tract No. H-50, (Court No. 96), Hidalgo County, Texas. The use of water is limited to the irrigation of the described lands.

2. SPECIAL CONDITIONS:

(a) Waters diverted hereunder shall be allocated in accordance with the Rules, Regulations and Modes of Procedure and Orders of the Texas Water Rights Commission.

(b) All requests for water shall be made to the Watermaster and all uses of water shall be reported in accordance with the Rules, Regulations and Modes of Procedure and Orders of the Texas Water Rights Commission.

This certificate is issued subject to the rules and regulations of the Texas Water Rights Commission and to its right of continual supervision.

TEXAS WATER RIGHTS COMMISSION

DATE ISSUED:

O. F. Dent, Chairman

September 13, 1971

ATTEST:

Audrey Strandtman, Secretary

**Appendix C**

Minutes of the July 29, 2021 Special Meeting of the Board of Directors of  
Hidalgo County Water Improvement District No. 3



**HIDALGO COUNTY WATER IMP. DISTRICT NO. 3**

**1325 Pecan Blvd  
McAllen, Texas 78501  
(956) 686-8303  
Fax (956) 686-1022**

Othal Brand Jr.-President  
Chris Burns-Vice President  
Mark Freeland, Secretary

W.D. Moschel-Member  
Lance Neuhaus-Member

**BOARD OF DIRECTORS' SPECIAL MEETING**

**\*\*\*\*\*AMENDED AGENDA \*\*\*\*\***

**TAKE NOTICE THAT A SPECIAL BOARD MEETING OF THE BOARD OF DIRECTORS OF HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3 WILL BE HELD AT TROPHY TOWERS, 4800 N. 23rd STREET, MCALLEN, TEXAS 78504, AT 12:00 P.M. on THURSDAY, JULY 29, 2021. The agenda is posted in accordance with the accessibility requirements of Section 551.043 of the Texas Government Code. IF DURING THE COURSE OF THE MEETING, THE BOARD OF DIRECTORS SHOULD DETERMINE THAT A CLOSED SESSION OR MEETING IS AUTHORIZED BY SECTIONS 551.071, AND 551.072 OF THE GOVERNMENT CODE, VERNON'S TEXAS CODE, ANNOTATED, NOTICE OF CLOSED OR EXECUTIVE SESSION WILL BE GIVEN AFTER THE COMMENCEMENT OF THE MEETING COVERED BY THE NOTICE PURSUANT TO SECTION 551.101 OF THE TEXAS GOVERNMENT CODE.**

**Call to Order:**

- Pledge of Allegiance
- Prayer

- (1). Consideration and possible action regarding the Budget for the year 2021-2022.
- (2). Consideration and possible action regarding the renewal of the District's contract with Ron Lewis and Associates.
- (3). Consideration and possible action to adjust District charges for sale and/or delivery of water including but not limited to adjustment of Water delivery charges under that certain *Permanent Water Supply and Delivery Contract* between District and City of McAllen, dated in May 1999, as amended.
- (4). Adjourn.

**Hidalgo County Water Improvement District Number Three  
Board of Directors' Special Meeting  
July 29, 2021**

**Call to Order:**

President Othal Brand, Jr. called a Special Board Meeting to order at Trophy Towers located at 4800 N. 23<sup>rd</sup> Street, McAllen, Texas, 78504. The meeting began by reciting the pledge of allegiance. President Othal Brand, Jr. gave the prayer invocation.

**Board Members Present:**

Othal Brand, Jr.	President
Mark Freeland	Secretary
W.D. Moschel	Director
Lance Neuhaus	Director

**Absent:**

Chris Burns	Vice-President
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**Others Attending:**

Tomas De Leon  
Jose De Leon  
Raquel Espinoza

**Visitors:**

None

**Consideration and possible action regarding the Budget for the Year 2021-2022.**

A Motion was made by Lance Neuhaus and seconded by W.D Moschel to approve the Budget for the Year 2021-2022 in the amount of \$1,692,568.00. The budget reflects an increase of employee payroll to compensate Tomas De Leon and Jose De Leon as new Co-Managers of the District, for a \$8,000 increase each from their current compensation, and a 6 percent increase for employees Carmen De Leon and Raquel Espinoza. All other maintenance workers will receive a \$0.50 cents per hour increase. The Payroll increase will take effect on September 1, 2021.

Motion Carried.

**Consideration and possible action regarding the renewal of the District's contract with Ron Lewis and Associates.**

A Motion was made by Lance Neuhaus and seconded by W.D. Moschel to approve the renewal of the District's contract with Ron Lewis and Associates, but will attempt to bring the contract amount down, if possible.

Motion Carried.

Thursday, July 29, 2021 at 12:00 p.m.

Water Improvement District\_000032  
00047

**Consideration and possible action to adjust District charges for sale and/or delivery of water including but not limited to adjustment of Water delivery charges under that certain Permanent Water Supply and Delivery Contract between District and City of McAllen, dated in May 1999, as amended.**

A Motion was made by Lance Neuhaus and seconded by W.D. Moschel to approve the rate increase for water irrigation from \$11.55 per acre to \$13.40 per acre for In-District irrigation. All other irrigation rates will increase 17% percent. The Flat Rate Assessment and out of District rate stays the same. The rate to the City of McAllen under Adjudication Numbers, 0848-000, and 0848-00, 0353-002 will increase by \$0.05 cents which is a water delivery rate at \$0.34975 cents per 1,000 gallons translated the charge to \$113.96 effective September 1, 2021. The water delivery rates are as follows:

In District Irrigation -----	\$13.40/per acre
Floodway Irrigation-----	\$16.60/per acre
Yard Water ( <i>less than 1.00 ac</i> ) -----	\$29.10
Out of District-----	* \$18.29/per acre
City of McAllen-----	\$113.96/per acre-foot
City of McAllen ( <i>only 550 ac. ft.</i> )-----	\$39.43/per acre-foot
City of McAllen (transferred water) -----	\$35.84/per acre-foot

Flat Rate Assessment ----- \$14.50/per acre

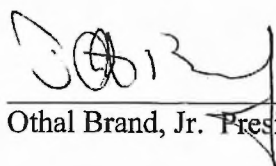
**\*\*RATE PER ACRE FOOT = 2 X RATE PER ACRE**

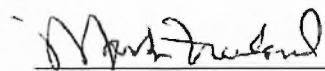
Motion Carried.

**Adjourn**

Due to no further discussion a Motion was made by Mark Freeland and seconded by by W.D. Moschel to adjourn the Board Meeting at 2:00 p.m.

Motion Carried.

  
Othal Brand, Jr. President

  
Mark Freeland, Secretary



**Appendix C**

Minutes of the July 29, 2021 Special Meeting of the Board of Directors of  
Hidalgo County Water Improvement District No. 3

**HIDALGO COUNTY WATER IMP. DISTRICT NO. 3**

**1325 Pecan Blvd  
McAllen, Texas 78501  
(956) 686-8303  
Fax (956) 686-1022**

Othal Brand Jr.-President  
Chris Burns-Vice President  
Mark Freeland, Secretary

W.D. Moschel-Member  
Lance Neuhaus-Member

**BOARD OF DIRECTORS' SPECIAL MEETING**

**\*\*\*\*\*AMENDED AGENDA \*\*\*\*\***

**TAKE NOTICE THAT A SPECIAL BOARD MEETING OF THE BOARD OF DIRECTORS OF HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3 WILL BE HELD AT TROPHY TOWERS, 4800 N. 23rd STREET, MCALLEN, TEXAS 78504, AT 12:00 P.M. on THURSDAY, JULY 29, 2021. The agenda is posted in accordance with the accessibility requirements of Section 551.043 of the Texas Government Code. IF DURING THE COURSE OF THE MEETING, THE BOARD OF DIRECTORS SHOULD DETERMINE THAT A CLOSED SESSION OR MEETING IS AUTHORIZED BY SECTIONS 551.071, AND 551.072 OF THE GOVERNMENT CODE, VERNON'S TEXAS CODE, ANNOTATED, NOTICE OF CLOSED OR EXECUTIVE SESSION WILL BE GIVEN AFTER THE COMMENCEMENT OF THE MEETING COVERED BY THE NOTICE PURSUANT TO SECTION 551.101 OF THE TEXAS GOVERNMENT CODE.**

**Call to Order:**

- Pledge of Allegiance
- Prayer

- (1). Consideration and possible action regarding the Budget for the year 2021-2022.
- (2). Consideration and possible action regarding the renewal of the District's contract with Ron Lewis and Associates.
- (3). Consideration and possible action to adjust District charges for sale and/or delivery of water including but not limited to adjustment of Water delivery charges under that certain *Permanent Water Supply and Delivery Contract* between District and City of McAllen, dated in May 1999, as amended.
- (4). Adjourn.

**Hidalgo County Water Improvement District Number Three  
Board of Directors' Special Meeting  
July 29, 2021**

**Call to Order:**

President Othal Brand, Jr. called a Special Board Meeting to order at Trophy Towers located at 4800 N. 23<sup>rd</sup> Street, McAllen, Texas, 78504. The meeting began by reciting the pledge of allegiance. President Othal Brand, Jr. gave the prayer invocation.

**Board Members Present:**

Othal Brand, Jr.	President
Mark Freeland	Secretary
W.D. Moschel	Director
Lance Neuhaus	Director

**Absent:**

Chris Burns	Vice-President
-------------	----------------

**Others Attending:**

Tomas De Leon  
Jose De Leon  
Raquel Espinoza

**Visitors:**

None

**Consideration and possible action regarding the Budget for the Year 2021-2022.**

A Motion was made by Lance Neuhaus and seconded by W.D Moschel to approve the Budget for the Year 2021-2022 in the amount of \$1,692,568.00. The budget reflects an increase of employee payroll to compensate Tomas De Leon and Jose De Leon as new Co-Managers of the District, for a \$8,000 increase each from their current compensation, and a 6 percent increase for employees Carmen De Leon and Raquel Espinoza. All other maintenance workers will receive a \$0.50 cents per hour increase. The Payroll increase will take effect on September 1, 2021.

Motion Carried.

**Consideration and possible action regarding the renewal of the District's contract with Ron Lewis and Associates.**

A Motion was made by Lance Neuhaus and seconded by W.D. Moschel to approve the renewal of the District's contract with Ron Lewis and Associates, but will attempt to bring the contract amount down, if possible.

Motion Carried.

Thursday, July 29, 2021 at 12:00 p.m.

Water Improvement District\_000032  
00051



**Consideration and possible action to adjust District charges for sale and/or delivery of water including but not limited to adjustment of Water delivery charges under that certain Permanent Water Supply and Delivery Contract between District and City of McAllen, dated in May 1999, as amended.**

A Motion was made by Lance Neuhaus and seconded by W.D. Moschel to approve the rate increase for water irrigation from \$11.55 per acre to \$13.40 per acre for In-District irrigation. All other irrigation rates will increase 17% percent. The Flat Rate Assessment and out of District rate stays the same. The rate to the City of McAllen under Adjudication Numbers, 0848-000, and 0848-00, 0353-002 will increase by \$0.05 cents which is a water delivery rate at \$0.34975 cents per 1,000 gallons translated the charge to \$113.96 effective September 1, 2021. The water delivery rates are as follows:

In District Irrigation -----	\$13.40/per acre
Floodway Irrigation-----	\$16.60/per acre
Yard Water ( <i>less than 1.00 ac</i> ) -----	\$29.10
Out of District-----	* \$18.29/per acre
City of McAllen-----	\$113.96/per acre-foot
City of McAllen ( <i>only 550 ac. ft.</i> )-----	\$39.43/per acre-foot
City of McAllen (transferred water) -----	\$35.84/per acre-foot

Flat Rate Assessment ----- \$14.50/per acre

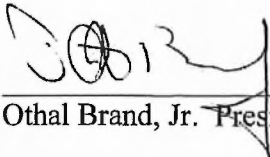
**\*\*RATE PER ACRE FOOT = 2 X RATE PER ACRE**

Motion Carried.

**Adjourn**

Due to no further discussion a Motion was made by Mark Freeland and seconded by by W.D. Moschel to adjourn the Board Meeting at 2:00 p.m.

Motion Carried.

  
Othal Brand, Jr. President

  
Mark Freeland, Secretary

## **Appendix D**

STATE OF TEXAS           §  
                                  §       AMENDMENT TO PERMANENT WATER SUPPLY  
COUNTY OF HIDALGO   §       AND DELIVERY CONTRACT

WHEREAS, HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3, a water control and improvement district operating under the laws of the State of Texas and a political subdivision of the State of Texas, hereinafter referred to as "DISTRICT" and the CITY OF MCALLEN, a municipality of the State of Texas, by and through the McALLEN PUBLIC UTILITIES BOARD, an agency of the City of McAllen, hereinafter jointly referred to as "CITY" entered into a PERMANENT WATER SUPPLY AND DELIVERY CONTRACT in May 1999 effective September 1, 1998, a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes (the "Contract"); and

WHEREAS, the CITY desires to establish an additional diversion point on the DISTRICT's First Lift Main Irrigation Canal for diversion by CITY for the purpose of the delivery of water covered by the Contract from said point to a reservoir of the CITY located in Lots 5, Section 5 of the Hidalgo Canal Company Subdivision.

NOW, THEREFORE, the DISTRICT and the CITY agree to amend the Contract as follows:

1. Substitute the following Paragraph 5 in lieu of existing Paragraph 5 in the Contract to read as follows:

*Delivery Points*

5. *DISTRICT will deliver to CITY said waters from its First Lift Main Irrigation Canal for diversion by CITY at a point located at the corner of 18<sup>th</sup> Street and Expressway 83 in CITY, and/or DISTRICT agrees to deliver to CITY said waters from its First Lift Main Irrigation Canal for diversion by CITY and delivery through a pipeline to the CITY's reservoir described above at an additional diversion point located on the said Canal near a point on its said Canal approximately 125 feet north of the southwest corner of Lot 5, Section 5 of the Hidalgo Canal Company Subdivision, Volume Q, Pages 175-177, Deed Records of Hidalgo County, Texas.*



2. Substitute the following Paragraph 6 in lieu of existing Paragraph 6 of the Contract to read as follows:

***Measurement of Water***

6. *The amount of water delivered by DISTRICT hereunder shall be determined as follows: (a) water delivered to CITY shall be measured by meters or measuring devices located at the delivery points, and (b) that amount shall be multiplied by a factor of 1.10 so as to take into account transportation losses occurring prior to delivery of water at the delivery points. CITY agrees to install and maintain such meters or measuring devices at its expense, subject to DISTRICT's approval as to the type of meter and construction and maintenance methods utilized. DISTRICT shall read the meters monthly on the fourth Friday of each month and promptly certify in writing to CITY the amount of water measured at the meter(s) point and the date the meter was read each month. Access to the meter(s) for reading and examination shall be free to all parties hereto.*
3. It is agreed that all other terms and conditions of the Contract shall remain in full force and effect and applicable to waters covered by the Contract delivered by the DISTRICT to CITY whether delivered at the new additional delivery point or at the existing diversion point at the corner of 18<sup>th</sup> Street and Expressway 83.

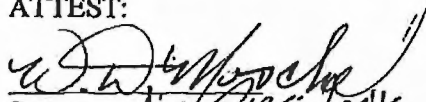
This Amendment is executed by the parties through their authorized representatives on the dates indicated below.

HIDALGO COUNTY WATER  
IMPROVEMENT DISTRICT NO. 3

Date: May 16, 2011

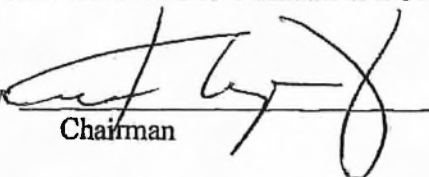
By:   
President, Board of Directors

ATTEST:

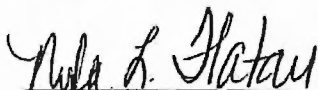
  
Secretary Vice President

MCALLEN PUBLIC UTILITIES BOARD

Date: 4/19/11

By:   
Chairman

ATTEST:

  
Secretary

STATE OF TEXAS

§

COUNTY OF HIDALGO

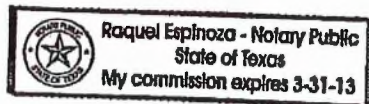
§

This instrument was acknowledged before me on this the 16<sup>th</sup> day of May, 2011 by Ofthal E. Brand, Jr., President of HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3, a water district operating under the laws of the State of Texas, on behalf of said District.

Raquel Espinoza  
Notary Public in and for The State of Texas

Notary's Printed Name:

Raquel Espinoza



STATE OF TEXAS

§

COUNTY OF HIDALGO

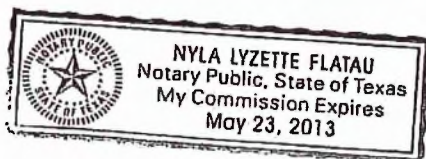
§

This instrument was acknowledged before me on this the 19<sup>th</sup> day of April, 2011, by Tony Aquino Jr., Chairman of McALLEN PUBLIC UTILITIES BOARD, an agency of the City of McAllen, State of Texas, on behalf of said agency.

Nyla L. Flatau  
Notary Public in and for The State of Texas

Notary's Printed Name:

Nyla L. Flatau



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## Exhibit "A"

STATE OF TEXAS

§

### PERMANENT WATER SUPPLY AND DELIVERY CONTRACT

---

COUNTY OF HIDALGO

§

THIS AGREEMENT is entered into by and between **HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3**, a water control and improvement district operating under the laws of the State of Texas and a political subdivision of the State of Texas, hereinafter referred to as "**DISTRICT**," and the **CITY OF McALLEN**, a municipality of the State of Texas, through the **McALLEN PUBLIC UTILITIES BOARD**, an agency of the City of McAllen, hereinafter jointly referred to as "**CITY**," terminating a prior Permanent Water Delivery Contract entered into between the parties which was effective September 1, 1983, and substituting in lieu thereof this Contract, wherein **DISTRICT** agrees to divert, furnish and deliver water to **CITY**, and **CITY** agrees to receive such waters from **DISTRICT** under the following terms and conditions:

#### *Water Allocation*

1. (a) The waters to be diverted, furnished and delivered by **DISTRICT** to **CITY** hereunder are those waters of the Rio Grande which **CITY** is entitled to receive from **DISTRICT** and use for municipal purposes, as allocated by the Texas Natural Resource Conservation Commission, Rio Grande Watermaster, or its successors ("**Commission**"), more particularly 8,980 acre feet per annum measured at the Rio Grande as reflected by Certificate of Adjudication No. 23-848, initially issued by the Commission's predecessor, Texas Water Rights Commission, of record in Volume 1, pages 627-628 of the Certificate of Adjudication Records of Hidalgo County, Texas, to which reference is hereby made; up to the amount of 3,000 acre feet per annum of Rio Grande water measured at the Rio Grande as allocated to **DISTRICT** by the Commission, being that water which **DISTRICT** is authorized to divert for municipal use under Amended Certificate of Adjudication No. 23-848A issued by the Commission on October 10, 1978, of record in Volume 2, pages 201-204 of the

Certificate of Adjudication Records of Hidalgo County, Texas, to which reference is hereby made for the purposes of this Contract; and an additional amount of water of up to a maximum of 2,000 acre feet per annum of Rio Grande water measured at the Rio Grande which District is authorized to divert under amendment to Certificate of Adjudication No. 23-848B issued by the Commission on September 8, 1995 and of record as Document No. 476966 in the Official Records of Hidalgo County, Texas.

(b) DISTRICT further agrees to deliver hereunder any amount of Rio Grande water, which CITY acquires and becomes entitled to divert from the Rio Grande when CITY provides necessary authorization to DISTRICT authorizing it to divert such waters from the Rio Grande and the DISTRICT is able to divert and deliver such water as needed by CITY without undue interference in DISTRICT'S then existing delivery commitments to CITY and others.

2. Water will be delivered as needed by CITY subject to DISTRICT's delivery system capability and taking into account water delivery commitments of DISTRICT to others entitled to water service from DISTRICT.

3. DISTRICT further agrees to divert and deliver hereunder any amounts of Rio Grande water whose purpose of use is designated as municipal or industrial, measured at the Rio Grande, which CITY acquires and becomes entitled to from other than DISTRICT, provided CITY provides necessary authorization to DISTRICT authorizing it to divert such municipal or industrial use waters from the Rio Grande, and provided further that DISTRICT is able to divert and deliver such waters without undue interference with DISTRICT's then-existing delivery commitments to landowners in DISTRICT, CITY and others.

#### ***Water Delivery Charge***

4. CITY shall pay to DISTRICT monthly, at its office in McAllen, Texas, 9.5¢ cents (\$0.095) for each one thousand (1,000) gallons of water, or portion thereof, for all water diverted and delivered

by DISTRICT described in Paragraph 1(a) above, and for all water diverted and delivered by DISTRICT under paragraph 1(b), 7¢ cents (\$0.07), all measured as provided in paragraph 6 below, beginning on September 1, 1998 through August 31, 1999, and thereafter on an annual basis until such rates are adjusted as provided for in paragraph 10 below. CITY agrees to pay DISTRICT, on or before the fifteenth (15th) day of the month following the date of DISTRICT's monthly statement to CITY, the amount of water delivery charges due for the prior month's services.

#### ***Delivery Point***

5. DISTRICT will deliver to CITY said waters from its First Lift Main Irrigation Canal for diversion by CITY at CITY's Boeye Reservoir located at the corner of 18th Street and Expressway 83 in CITY.

#### ***Measurement of Water***

6. The amount of water delivered by DISTRICT hereunder shall be determined as follows: (a) water delivered to CITY shall be measured by CITY's meter located at CITY's intake diversion structure on DISTRICT's Main Canal at CITY's Boeye Reservoir, and (b) that amount shall be multiplied by a factor of 1.10 so as to take into account transportation losses occurring prior to delivery to CITY's Reservoir. CITY agrees to install and maintain such meter at its expense, subject to DISTRICT's approval as to the type of meter and construction and maintenance methods utilized. CITY shall read the meter monthly on the fourth Friday of each month and promptly certify in writing to DISTRICT the amount of water measured at the meter point and the date the meter was read each month. Access to the meter for reading and examination shall be free to all parties hereto.

#### ***Water Diversion Reports and Amounts***

7. DISTRICT will make the necessary Rio Grande water diversion reports to the Commission, or its successors, of the amount of water diverted from the Rio Grande for CITY based upon the amount of water delivered and measured as provided in paragraph 6 above. DISTRICT will pay



assessments established by the Commission, or successors, relating to the administration of water rights of the Lower Rio Grande as such pertains to the 5,000 acre feet under Amended Certificates of Adjudication No. 23-848. CITY agrees to pay such assessment with respect to the 8,980 acre feet under Certificate of Adjudication No. 23-848.

#### *Annual Use and Allocation*

8. CITY agrees that amounts of raw water delivered to it by DISTRICT from the Rio Grande for municipal use during any calendar year during the term hereof shall be reported and considered as water used under this Contract and charged against the water allocation or allotment provided for in Paragraph 1 of this Contract before any of such water deliveries are considered used and charged against the allocation or allotment of Rio Grande water to which CITY is otherwise entitled.

9. The CITY agrees that it will order from and take delivery of all of the water to which CITY is entitled from the DISTRICT under Paragraph 1 of this Contract. In the event CITY fails to order and take delivery of such amount during the twelve (12) months' period ending December 31 of each year, then the CITY agrees to pay to the DISTRICT the then-existing delivery charge on the amount of water representing the difference in the amount actually received by the CITY from the DISTRICT and the amount of the CITY's entitlement under Paragraph 1 of this Contract.

#### *Adjustments to Delivery Charges*

10. The water delivery charges under this Contract is effective during the twelve (12) months period from September 1 through August 31 of the following year. The water delivery charges hereunder shall be annually reviewed by the Board of Directors of DISTRICT. In the event DISTRICT determines that an adjustment in said charges is necessary for the ensuing year, it shall give CITY written notice of such adjustment at least thirty (30) days prior to August 31. The new water delivery charges shall become effective the following September 1.

It is agreed that adjustments in the water delivery charges of CITY hereunder will be on the equivalent percentage basis as adjustments made in charges required of others receiving water service from DISTRICT.

In the event CITY is dissatisfied with the adjustment in the water delivery rate established by DISTRICT, it may exercise any appeal rights that it may have under law.

#### ***Failure of Delivery***

11. DISTRICT shall not be liable to CITY for failure of delivery in the event of mechanical failure, strikes, acts of God, or other occurrences beyond DISTRICT's control, nor shall DISTRICT be liable to CITY in any event so long as DISTRICT is taking reasonable steps to continue and maintain service to CITY. In the event drought conditions result in a limited amount of water available for allocation by the Commission or other applicable governing agency and there is implemented by said regulatory agency a proration of the available water supply, then in such event, the amount of water covered by this Contract will be prorated so that CITY will be treated on the same basis as other similar users upon the Lower Rio Grande.

#### ***Transfer of Contract***

12. This Contract shall not be transferred by CITY without the express written approval of DISTRICT.

#### ***Term of Contract***

13. This Contract shall be deemed effective on September 1, 1998, and shall remain effective, unless terminated by mutual agreement of the parties. In the event CITY fails to comply with any of the provisions hereof, DISTRICT, after giving CITY thirty (30) days advance written notice of the provisions so violated, may terminate the operation of this Contract pending the curing by CITY of its said default. Amendments to the water delivery charge rate shall be evidenced by DISTRICT's

notice of rate adjustment to CITY as provided in paragraph 10 hereof. All other amendments hereto shall be in writing and mutually agreed upon by both parties.

#### ***Enforcement***

14. It is understood and agreed that either party hereto may demand specific performance of this Contract.

#### ***Laws and Regulations***

15. This Contract shall be subject to the Rules and Regulations of the Commission, or its successors, as they presently exist or as they are hereafter amended, to the extent such Rules and Regulations pertain to the operations of the parties hereunder. This Contract shall be subject to all valid applicable state, federal and local laws, rules and regulations; provided, however, either party hereto shall be entitled to abide by this Contract and regard all laws, rules and regulations issued by any federal or state regulatory body as not in conflict herewith and may act in accordance herewith until such time as any provision hereof is held invalid or in conflict with such laws, rules and regulations by final judgment in a court of competent jurisdiction after all appeals have been exhausted.

#### ***Non-Waiver***

16. The waiver by either party of any provision of this Contract shall not be construed as a precedent or waiver of such provision thereafter, unless this Contract is amended in writing reflecting such waiver.

#### ***Authorization***

17. Those representatives of the parties executing this Contract below represent one to the other that they are authorized by action of the governing bodies of each party to execute this Contract.



*Prior Contract Terminated*

18. The parties entered into a Permanent Water Delivery Contract effective September 1, 1983, containing similar terms to this Contract. This Contract amends and terminates said prior 1983 Contract upon its effective date, and upon and after the effective date hereof of September 1, 1995, the said 1983 Permanent Water Delivery Contract shall be deemed void and of no further force and effect.

EXECUTED by the parties, through their authorized representatives on the dates indicated below.

HIDALGO COUNTY WATER  
IMPROVEMENT DISTRICT NO. 3

Date: 5-12-99

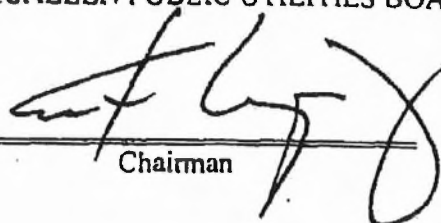
By:   
President, Board of Directors

ATTEST:

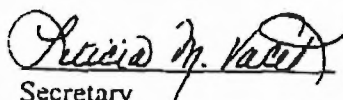
  
Secretary

MCALLEN PUBLIC UTILITIES BOARD

Date: 5-5-99

By:   
Chairman

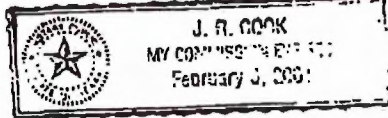
ATTEST:

  
Secretary

STATE OF TEXAS §

COUNTY OF HIDALGO §

This instrument was acknowledged before me on this the 12<sup>th</sup> day of May, 19 99, by Glasscoe Dayle, President of HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3, a water district operating under the laws of the State of Texas, on behalf of said District.



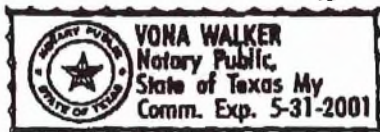
My Commission Expires:

J.R. Cook  
Notary Public in and for The State of Texas  
J.R. Cook  
Notary's Printed Name:

STATE OF TEXAS §

COUNTY OF HIDALGO §

This instrument was acknowledged before me on this the 5<sup>th</sup> day of May, 19 99, by Tony Aguirre, Chairman of McALLEN PUBLIC UTILITIES BOARD, an agency of the City of McAllen, State of Texas, on behalf of said agency.



My Commission Expires:

Vona Walker  
Notary Public in and for The State of Texas

Notary's Printed Name:

file: hawaii\work\pmu\tr-00020