

No. \_\_\_\_\_

*EX PARTE*  
SAN JACINTO  
RIVER AUTHORITY

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IN THE DISTRICT COURT OF  
  
TRAVIS COUNTY, TEXAS  
  
\_\_\_\_TH JUDICIAL DISTRICT

**ORIGINAL PETITION FOR EXPEDITED DECLARATORY JUDGMENT**

The San Jacinto River Authority (“SJRA”) files this original petition seeking an expedited declaratory judgment pursuant to Chapter 1205 of the Texas Government Code (the “Expedited Declaratory Judgment Act”).

**Introduction**

1. The SJRA brings this action to establish the legality and validity of the fees, rates, and charges it has adopted and seeks to collect from participants in a surface water treatment project vital to protecting groundwater supplies in Montgomery County.

2. Montgomery County’s rapid growth in recent decades has caused significant declines in the County’s groundwater aquifer levels. To address this issue and the problems it presents, and to preserve the County’s groundwater resources for future generations, the Texas Legislature created the Lone Star Groundwater Conservation District (“District”) in 2001. That same year, Montgomery County voters confirmed the creation of the District with nearly 75% of the vote. In 2003, the District adopted a Management Plan that established a goal of managing groundwater in a sustainable manner and estimated the sustainable yield of the Gulf Coast Aquifer within Montgomery County. The Texas Water Development Board approved the Management Plan, both as initially adopted and as subsequently re-adopted by the District in 2008. In 2006, after expert analysis and community input, the District adopted Phase I of its

groundwater regulations to protect and preserve the County's groundwater resources. In 2008 and 2009, Phase II(A) and (B) regulations were adopted, mandating a 30% reduction in groundwater usage by 2016, to ensure that groundwater pumpage does not exceed the sustainable yield from the Gulf Coast Aquifer, as established in the Management Plan.

3. The SJRA—a state agency created by the Texas Legislature in 1937—has been critical in helping the City of Conroe and other significant public and private water users in the County comply with the District's groundwater regulations. Beginning in 2008, the SJRA, Conroe, and dozens of other water users joined together to develop a plan for reducing their groundwater use. In 2010, Conroe and other water users executed contracts with the SJRA, agreeing to achieve compliance with the District's regulations by having the SJRA finance, construct, and operate a water treatment plant on Lake Conroe. The purpose of the project was to provide affordable, treated surface water supplies to replace a portion of the water supply previously sourced from pumping groundwater.

4. There are currently 151 water systems in the SJRA's Groundwater Reduction Plan ("GRP"). Those systems are represented by more than 80 separate entities, including Conroe and the SJRA in its capacity as a water user (collectively, the "Participants"). The Participants share the cost of the \$554 million water treatment plant and related pipelines and facilities in the County. The SJRA financed the project by issuing bonds secured by the SJRA's contracts with all Participants, including Conroe (collectively, the "GRP Contracts"). The Texas Water Development Board holds \$439,230,000 in principal amount of the bonds that remain outstanding. The GRP Contracts authorize the SJRA to charge Participants for water, with the revenues used to service the project's bonded indebtedness, fund operations, and maintain and replenish debt and operating reserves, among other purposes. Conroe executed its GRP Contract

with the SJRA in 2010, which (along with two supplemental agreements) the City Council approved and the Mayor signed. Conroe's contributions account for nearly 17% of the project's revenues.

5. The SJRA sets its rate according to a rate-making policy adopted with the approval of a committee of Participant representatives established per the GRP Contracts (the "GRP Review Committee"), including Conroe's own representative on that committee. In accordance with that policy, and after more than a year of discussion and study, including multiple notices to all Participants, the GRP Review Committee voted on June 20, 2016, to approve a fiscal year 2017 rate increase, effective September 1, 2016. The GRP Review Committee determined an increase was necessary to service the project's debt and fund operations and reserves, particularly because unusually wet weather since 2015 had decreased local demand for water and program revenues as a result. Based on the GRP Review Committee's recommendation, the SJRA's Board approved the fiscal year 2017 rate on June 23, 2016. A copy of the SJRA's Rate Order is attached as **Exhibit C**.

6. Throughout the rate-setting process, Conroe has been a full participant, with an appointed member on the GRP Review Committee, who never objected to the rate increase. Nevertheless, on August 16, 2016, with the new rate set to go into effect in less than two weeks, the Mayor and City Council of Conroe approved a resolution (i) directing City staff not to pay the SJRA's new rate and (ii) requesting that the SJRA indefinitely suspend implementation of the rate. In the Resolution, attached as **Exhibit D**, the City Council challenged the legality and validity of the rate and GRP Contracts, which secure the SJRA's bonded indebtedness and ensure the project's continued operation and viability. Conroe's directive not to pay the rate is contrary to the express terms of its contract with the SJRA and casts a cloud of doubt over the

project, the GRP Contracts, and the revenues essential to paying the costs of the \$554 million project debt, the vast majority of which is held by the State.

7. As authorized by Section 1205.21 of the Expedited Declaratory Judgment Act, the SJRA seeks declaratory relief that will confirm the legality and validity of the rate and the GRP Contracts with the Participants, including Conroe. The SJRA seeks a declaration that (i) it has authority to set rates according to the procedures set forth in the GRP Contracts, (ii) that the new rate and Rate Order are fully in accordance with those procedures, (iii) that the new rate, Rate Order, and GRP Contracts, including the Contract with Conroe, are legal and valid, and (iv) that Conroe's refusal to pay the new rate is illegal and invalid, and that its failure to pay the rate is a breach of its GRP Contract with the SJRA.

#### **Parties and Procedure**

8. **The SJRA.** The SJRA is a conservation and reclamation district, body politic, and corporate and governmental agency of the State of Texas created under the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as now or hereafter amended, enacted pursuant to the provisions of Section 59 of Article XVI of the Texas Constitution. The SJRA's address is 1577 Dam Site Road, Conroe, Texas 77304.

9. **The City of Conroe.** The City of Conroe, Texas is a municipal corporation and home-rule city, principally located in Montgomery County, Texas. The City is an Interested Party as defined below. The City of Conroe may be served with process by serving the Mayor of Conroe, Toby Powell, at 300 West Davis Street, Conroe, Texas 77301.

10. **The Attorney General of Texas.** In accordance with Section 1205.042 of the Expedited Declaratory Judgment Act, the Attorney General of Texas must be served with a copy of this petition and the accompanying order at least twenty days before the trial date. The

Attorney General of Texas may be served with citation at the following address: Attorney General of Texas, Price Daniel Sr. Building, Post Office Box 12548, Austin, Texas 78711-2548.

11. **Nature of the Proceeding.** This is an *in rem* proceeding. As provided in the Expedited Declaratory Judgment Act, any judgment in this action is binding on all persons who reside in the territory of the SJRA, own property located within the boundaries of the SJRA, or have or claim a right, title, or interest in any property or money to be affected by the public security authorization or the issuance of the bonds (the “Interested Parties”). *See* TEX. GOV’T CODE § 1205.023.

12. **Interested Parties.** Subject to the notice requirements imposed by the Expedited Declaratory Judgment Act and as described below, all Interested Parties are parties to this action, and the Court’s jurisdiction extends to each of them as though they were individually named and personally served in this action. *See id.* § 1205.044. Any Interested Party may become a named party to this action by filing an answer to this petition on or before the time set for hearing and trial, or thereafter by intervention with leave of court. *See id.* § 1205.062.

13. **The Required Immediate Order.** Section 1205.041 of the Expedited Declaratory Judgment Act requires the Court, upon receipt of this petition, to “immediately issue” an order, in the form of a notice, directed to all Interested Parties, of their right to appear for trial at 10 o’clock, a.m., on the first Monday after the 20th day after the date of the Court’s order and to show cause why the prayers of this petition should not be granted and why the public securities and the public security authorizations should not be validated and confirmed. A copy of the proposed order is attached as **Exhibit A** and has been presented separately to the Court. A copy of the Expedited Declaratory Judgment Act is attached as **Exhibit B**.

14. **Notice to Interested Parties.** Pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act, the Clerk of the Court is required to publish a “substantial copy of the order” in a “newspaper of general circulation” in Travis County and in the seven counties in the SJRA’s territory, which includes Fort Bend, Grimes, Liberty, Montgomery, San Jacinto, Walker, and Waller counties. Such notice shall be published “once in each of two consecutive calendar weeks, with the date of the first publication before the 14th day before the trial date.”

15. **Jurisdiction and Venue.** This Court has jurisdiction over the subject matter of this action, over all Interested Parties, and over the Attorney General of Texas pursuant to the Expedited Declaratory Judgment Act. Venue is proper in Travis County pursuant to Section 1205.022 of the Expedited Declaratory Judgment Act.

16. **Governmental Immunity.** To the extent there exists an issue of governmental immunity in this case, it has been waived.

#### **Facts Giving Rise to this Action**

**A. The Lone Star Groundwater Conservation District adopts important groundwater conservation regulations.**

17. Montgomery County, including Conroe, consumes over 83,000 acre-feet of water per year, and the Texas Water Development Board expects that figure to triple by 2060. Historically, the Gulf Coast Aquifer System has been the only source of water in Montgomery County. In recent decades, the County’s rapid development and population growth have surpassed the sustainable yield of the County’s aquifers.

18. In 2001, to address the County’s water crisis, the 77th Texas Legislature created the Lone Star Groundwater Conservation District (“District”). Montgomery County voters overwhelmingly confirmed the creation of the District later that year. The District exists to study and manage Montgomery County’s underground aquifers and provide solutions to the problems

associated with declining groundwater levels by regulating groundwater use. In 2003, the District first adopted a Management Plan that established a goal of sustainable groundwater resource management and estimated the sustainable yield of the Gulf Coast Aquifer within Montgomery County at 64,000 acre-feet per year. The Texas Water Development Board approved the Management Plan, both as initially adopted and subsequently re-adopted by the District in 2008. In 2006, recognizing significant and sustained declines in groundwater levels in the County, particularly in Conroe and The Woodlands, the District adopted its Phase I countywide regulations on groundwater use. The regulations were based on a decade of input from stakeholders, established state law, and fact-driven science, and required utilities throughout Montgomery County to convert from groundwater to alternative water supplies in order to reduce groundwater production to sustainable levels. The regulations ensure that Montgomery County citizens will have continuous supplies of groundwater for generations to come.

19. The District's Phase II(A) regulations, adopted in 2008, required groundwater users to document the progress they were making toward compliance by submitting a report to the District. Then, in November 2009, the District adopted its Phase II(B) regulations, mandating a 30% reduction in groundwater usage by 2016 to ensure that groundwater pumpage does not exceed the sustainable yield from the Gulf Coast Aquifer, as established in the Management Plan. Each progressive phase of the District's regulations were adopted unanimously by the District's board of directors, including the member appointed by Conroe.

**B. The SJRA develops a Groundwater Reduction Plan and surface water treatment project to help Montgomery County comply with the District's regulations.**

20. The District's mandate required the County to reduce groundwater consumption by 30% by January 1, 2016. To meet the requirements, the SJRA—an agency devoted to developing, conserving, and protecting the water resources of the San Jacinto River basin—took

on the task of developing and proposing the most cost-effective and reliable solution for decreasing Montgomery County's groundwater withdrawals. Created in 1937 by the Texas Legislature, the SJRA is a major river authority in Texas with boundaries that cover all or part of seven counties and the entire San Jacinto River watershed, excluding Harris County. As a governmental entity, the SJRA does not operate for profit and is governed by a seven-member Board of Directors appointed by the Governor.

21. In response to the District's groundwater use regulations, the SJRA developed a Groundwater Reduction Plan (or "GRP") to be implemented on a countywide basis, inviting participation from all public and private water users, including municipalities like Conroe, and the SJRA in its capacity as a water user (collectively, "Participants"). The GRP is a group-based project to share in the costs and benefits of a surface water treatment plant at the Lake Conroe dam, along with transmission pipelines, communications and control facilities, and metering and delivery facilities. Under the GRP, the SJRA would design, construct, and operate the treatment plant and related systems, and finance it by issuing over \$554 million in bonds. The "GRP Contracts" with Participants in the project would secure the bonds. Under those contracts, the Participants' payments to the SJRA for water would be used to pay down the project debt and operate the system, among other uses. By joining together, Participants would greatly reduce the costs of compliance with the District's regulations, while obtaining much better financing terms than would otherwise be available. Surface water provided to certain Participants would replace water previously sourced from the Gulf Coast Aquifer, ensuring compliance by all Participants with the District's regulations. The GRP is a countywide, collaborative solution to the groundwater problem. As former Conroe Mayor Webb K. Melder said in 2009, "This is a

countywide problem. This is not a Woodlands problem, Lake Conroe problem or City of Conroe problem. We're all rowing in the same boat. To solve it we must work together."

22. To finance the GRP project, the SJRA issued its Special Project Revenue Bonds (GRP Project), Series 2009, in the original aggregate principal amount of \$21,500,000; its Special Project Revenue Bonds (GRP Project), Series 2011, in the original aggregate principal amount of \$83,155,000; its Special Project Revenue Bonds (GRP Project), Series 2011A, in the original aggregate principal amount of \$67,470,000; its Special Project Revenue Bonds (GRP Project), Series 2012, in the original aggregate principal amount of \$175,000,000; Series 2012A, in the original aggregate principal amount of \$165,000,000; its Special Project Revenue Bonds (GRP Project), Series 2013, in the original aggregate principal amount of \$39,850,000; and its Special Project Revenue Bonds (GRP Project), Series 2016, in the original aggregate principal amount of \$2,305,000. Today, there remains outstanding \$520,560,000 in aggregate principal amount of the bonds, of which \$439,230,000 are held by the Texas Water Development Board.

23. Construction of the new surface water treatment plant and related facilities began in August 2012, and the system began operating and delivering water to participants in September 2015.

**C. Conroe approves and signs the Contract with the SJRA to participate in the Groundwater Reduction Plan.**

24. In 2008, the District required all significant water users to prepare a plan for complying with regulations reducing groundwater use. Most of those water users, including Conroe, chose to join the SJRA's Groundwater Reduction Plan. Today, there are 151 water systems in the SJRA's Groundwater Reduction Plan, represented by over 80 separate entities.

Participants' contracts with the SJRA (collectively, the "GRP Contracts") are based on a form GRP contract.<sup>1</sup>

25. Conroe, represented by its attorneys, negotiated its GRP contract with the SJRA over a period of six months.<sup>2</sup> Conroe's attorneys approved and recommended the Contract to the Conroe City Council. The Council approved the Contract, and Conroe Mayor Melder signed the Contract for Groundwater Reduction Planning, Alternative Water Supply, and Related Goods and Services ("Contract"), attached hereto as **Exhibit E**, on April 22, 2010, with an effective date of May 1, 2010.

26. The SJRA submitted the GRP Contracts, including the Contract with Conroe, and similar agreements with its municipal utility district customers in The Woodlands to the Attorney General of Texas for approval in connection with each issue of bonds to finance the GRP project. After reviewing the transcript of proceedings and the GRP Contracts submitted for each issue of the bonds, the Attorney General certified that the bonds were valid and binding obligations of the SJRA, secured by the contract revenues, and conformed to all requirements of law. See **Exhibit F** for a summary of contract documents submitted to the Attorney General for approval, and **Exhibit G** for the Attorney General's approving opinions. Accordingly, under Section 49.184 of the Texas Water Code, the bonds and the GRP Contracts—including the Contract with Conroe—are "incontestable" by any parties who seek to invalidate or challenge them.

27. In the Contract, the parties recognized the creation of the District by the Texas Legislature and the regulations reducing groundwater consumption by Conroe and other water

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<sup>1</sup> A copy of the form GRP contract is available online at <http://www.sjra.net/wp-content/uploads/2015/01/GRP-Contract-04192010.pdf>, which the SJRA can provide to the Court upon request.

<sup>2</sup> A copy of the draft GRP contract with Conroe, showing its redline proposed changes, is available online at <http://www.sjra.net/wp-content/uploads/2015/01/Conroe-Comments-to-Contract-Redline-031010.pdf>.

users in Montgomery County. The parties agreed that it was necessary and appropriate to form a group to achieve compliance with the District's regulations by (1) developing and administering a GRP, (2) financing, constructing, and operating a surface water treatment plant and related facilities, (3) selling and delivering treated surface water to certain participants, and (4) establishing, collecting, and enforcing fees, rates, and charges for treated surface water delivered to participants, "in order to timely and adequately fund the costs associated with the Project" and "achieve and maintain compliance with the GRP . . . ." *Id.* at 3. The Contract provides that the SJRA will implement the GRP so that the SJRA, Conroe, and other entities that contract to join the GRP will achieve compliance with the groundwater reduction regulations imposed by the District. *Id.* at 8. The parties expressly recognized the SJRA's and Conroe's authority to enter into the Contract under the Texas Water Code and Conroe's City Charter. *Id.* at 3.

28. Accordingly, the parties agreed that the SJRA, among other things, would develop and administer the GRP and finance, design, construct, and operate the surface water treatment facilities. In exchange, Conroe agreed "to pay [the SJRA] certain fees, rates, and charges pursuant to the terms and provisions of this Contract . . . ." *Id.* § 1.04. The GRP Contract requires that the rates shall be "at all times the lowest which are . . . (1) consistent with good management practices by the [SJRA]," "(2) necessary and proper," "(3) consistent with the [SJRA's] statutory and constitutional duties and responsibilities," and "(4) just, reasonable, and nondiscriminatory." *Id.* § 6.04(a). In particular, the rate must be sufficient to achieve compliance with, develop, implement, and enforce the GRP; meet operational and other expenses relating to the project and the GRP; pay the principal and interest on bonds issued in connection with the project and GRP; and establish, accumulate, and replenish operating and debt service reserves, among other purposes. *Id.* § 6.04(d). The Contract also specifically authorizes the SJRA to pledge revenues

from the Participant's payments to the payment of the bonds used to finance the project and the GRP. *Id.* § 8.02. Of the project's outstanding bonded indebtedness, over \$439 million is held by the Texas Water Development Board.

29. The Contract also includes important governance mechanisms that allow Participant input into project and rate decision-making. It establishes a six-member GRP Review Committee of Participant representatives, including a representative appointed by the Conroe City Council. Ex. A § 2.06. The members "shall be entitled to vote on all matters before the Review Committee." *Id.* § 2.06(b). The GRP Review Committee is authorized to make recommendations to the GRP administrator for all important decisions, including decisions relating to fees, rates, and charges. *Id.* § 2.10(a)(8). Before the SJRA takes any action on rates, it must present all such decisions to the GRP Review Committee for its consideration. *Id.* § 2.11(b). If the GRP Review Committee rejects a recommendation by the GRP administrator, no decision can be taken on the issue until the matter is presented to the SJRA's Board of Directors. *Id.* § 2.11(e). If the Board approves the GRP administrator's recommendation despite the GRP Review Committee's rejection, the Board must prepare and deliver to the GRP Review Committee and all Participants a written explanation for the decision. *Id.* In addition, if requested by a majority vote of the GRP Review Committee, the SJRA must engage a third-party review of fees, rates, and charges. *Id.* § 2.12. In any case, the SJRA agreed to engage an independent rate review at least every five years, to evaluate the rates charged based on anticipated water demand. *Id.* § 6.04(f).

30. Because the GRP is a group effort, with continued cooperation by all Participants required to pay the project's bonded indebtedness and ensure the operation of the system, the Contract contains strong protections against breaches by individual Participants. To enforce

Participants' compliance with the GRP and the GRP Contracts, the Contract gives the SJRA the right "to recover from Participant by any lawful means . . . for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fees and court costs incurred by [the SJRA] . . . resulting from . . . Participant's breach or violation of this Contract, the GRP, the Rules, or any laws, rules or regulatory requirements relating to the Participant's System." *Id.* § 4.11.

31. In addition, the Contract provides only a limited right for Participants like Conroe to terminate the Contract. The Contract "may not be terminated as a result of a default by either Party." *Id.* § 12.01(c). Further, the Contract "may only be terminated prior to the expiration of the Contract Term by mutual, written agreement of the Parties." *Id.* § 12.02(d). The SJRA "may enter into an agreement with Participant for the termination of this Contract prior to the expiration of the Contract Term, but only upon (i) Participant's agreement therein to pay its pro-rata share of the Bond or other obligations of [the SJRA] issued or incurred in connection with the Project . . . and (ii) the reasonable determination by the GRP Administrator that such termination will not adversely affect the GRP or the other Participants." *Id.* § 12.02(d).

32. These provisions are fundamental to the success of the GRP and compliance with the District's conservation regulations. First, limited termination rights are available because of the way the project has been funded. Because the SJRA pledged revenues from the GRP Contracts with Participants as the source of repayment of bonds issued for the project, the payments of all Participants are necessary to meet the project's debt obligations to the State of Texas and others. If a Participant terminates without paying its share of project costs or refuses to pay the SJRA's established rates for water, the SJRA must raise rates on the remaining Participants, which may not be able to absorb the increase. Second, limited termination rights

were critical to the SJRA obtaining the lowest financing costs available, by ensuring a reliable source of revenue to pay down the debt and lowering its perceived risk of default. That is, limited termination rights ensured that all Participants—including Conroe—obtained the lowest-cost services available. Third, limited termination rights were necessary to attract the largest number of Participants possible, each of which depended on strength in numbers to deal with the District’s groundwater regulations in a cost-effective manner.

33. Conroe’s pro-rata share of the project costs include approximately \$36 million relating to the surface water treatment plant and \$60 million relating to water distribution pipelines. Further, \$14 million has been spent for improvements to Conroe’s water distribution system, paid for by the SJRA and shared, ultimately, by all Participants. Conroe’s required payments to the SJRA under the Contract account for nearly 17% of the SJRA’s gross revenues from all Participants in the GRP.

**D. After over a year of study and required approvals, the SJRA approves a new GRP rate.**

34. The SJRA sets its GRP rate based on a comprehensive, independent rate model that ensures that the GRP operates as close to a zero-based or non-profit budget as reasonably possible, including through establishing modest reserve funds to stabilize rates charged to Participants despite variations and swings in annual rainfall. Wet years reduce Participants’ demand for water, lowering the SJRA’s GRP revenue and ability to pay project debt, fund operations, and maintain and replenish reserves. By establishing reserve funds, the SJRA is able to keep the rate constant for extended periods, by tapping into its reserves when water usage drops.

35. All budgets, including the amount of required reserves, are presented to the GRP Review Committee for review and approval, so that GRP Participants fully understand the

project's funding needs. GRP rates are only raised as a last resort, after thoroughly evaluating the budget and considering reductions in expenses and delays in studies and projects. As a result of the SJRA's careful projections of water demand and funding needs, GRP rates matched projections for six of the last seven years.

36. Nevertheless, in 2015, the SJRA faced a critical funding shortfall resulting from over two years of significantly below-average water demand in Montgomery County caused in large part by unexpectedly high rainfall amounts, which reduced water demand and GRP revenues. 2015 was the wettest year on record in Texas.<sup>3</sup> To avoid any impacts on the existing GRP rate, the SJRA worked closely with the GRP Review Committee to review, reduce, or delay expenses and projects, while using the existing reserves to make up the shortfall. However, with the SJRA's reserves dwindling, the GRP Review Committee recognized unanimously the necessity of a rate increase. No members of the GRP Review Committee—including Conroe's chosen representative—registered any opposition to the proposed increase. Notice of the proposed amendment to the GRP rates was sent to all GRP Participants in April 2016, and the GRP Review Committee unanimously approved the new rate on June 20, 2016.

37. Under the terms of the SJRA's amended rate order, *see Exhibit C*, the GRP rate will increase from an average rate of \$2.42 per 1,000 gallons to \$2.60.<sup>4</sup> More than 60% of revenues from these charges are used to fund debt service, with the remainder used to fund operations and contribute to modest project reserves. Even with the new rate, the GRP will only have a three-month average reserve for fiscal year 2017 to cushion against fluctuations in

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<sup>3</sup> See Dylan Baddour, *2015 Was Texas' Wettest Year on Record*, HOUSTON CHRONICLE, Dec. 29, 2015, available at <http://www.chron.com/news/houston-texas/texas/article/2015-was-Texas-wettest-year-on-record-6725937.php>.

<sup>4</sup> The \$2.60 fiscal year 2017 rate is an average of the groundwater rate of \$2.50 per 1,000 gallons and the surface water rate of \$2.69 per 1,000 gallons.

demand, well below the six-month target set by the SJRA and approved by the GRP Review Committee. A three-month reserve is not unusual among governmental entities. For example, the City of Conroe itself operates with a *minimum* three-month reserve, and has proposed a five-month reserve for its water and sewer utility in its proposed budget for fiscal year 2017.

**E. Conroe’s City Council votes to improperly and unilaterally refuse to pay the new rate.**

38. Despite Conroe’s clear obligations under the Contract and participation in the entire, 18-month process of approving the new rate, it has decided to breach the Contract and refuse to pay the rate, while calling into question the legality and validity of the rate and the GRP Contracts.

39. On August 16, 2016, the Conroe City Council unanimously approved Resolution No. 4297-16. *See Exhibit D.* In the Resolution, the Council falsely accused the District and the SJRA of “work[ing] in combination to promote a false narrative based on bad science to create an alleged ‘crisis’ in groundwater supply.” *Id.* at 2. It accused the SJRA of having a “monopoly” on surface water in Montgomery County, and using the GRP “to ‘solve’ the alleged ‘crisis’ by conscripting large volume groundwater users to subsidize the SJRA’s otherwise unviable plan to construct a surface water plant on Lake Conroe.” *Id.* The Council claimed that Conroe and other large groundwater users were “driven” by the District’s regulations and a “false ‘crisis’ narrative” to join the GRP and enter into GRP contracts. *Id.* It claimed that the new GRP rate collects “substantially more revenue than necessary for operation of the GRP” and “is intended to allow the SJRA to accumulate a cash reserve far in excess of reasonable and customary standards.” *Id.*

40. The City Council’s statements were and are false. Further, the Council ignores its approval of the Contract, which the Mayor signed along with two later supplemental agreements.

The Council ignores Conroe's participation in and representation on the GRP Review Committee, its representative's approval of the SJRA's reserve policies, and its representative's recognition of the budgetary constraints requiring amendment to the rate. It ignores the GRP Review Committee's history in approving the new rate, and ignores that during the entire process leading up to approval of the rate, Conroe did not once object or seek the GRP Review Committee's or the SJRA Board's reconsideration of the proposed rate. It ignores the fact that the fiscal year 2017 rate was set in accordance with the same procedures that resulted in the fiscal year 2016 rate, to which Conroe also never objected and does not challenge. Finally, Conroe's statements and actions mislead its own taxpayers by representing to them that the new rate will increase their water bills. Whereas the SJRA's new average rate is \$2.60, Conroe charges its citizens \$2.95, while incorrectly representing to its citizens in their water bills that this amount is the amount that the SJRA charges to the City. In fact, if Conroe simply reduced what it charges its citizens to reflect the actual costs of the project's services to the City, Conroe taxpayers would see no increase, and potentially even a significant decrease, in their water bills.

41. Despite Conroe's contractual obligations and the facts, the City Council resolved to "refuse payment of the increase in fees, rates or charges" and demanded that "the SJRA indefinitely suspend the implementation of the increase in GRP rates and charges." *Id.* at 3.

#### **The SJRA's Expedited Declaratory Judgment Claim**

42. As noted above, the Expedited Declaratory Judgment Act provides public agencies with an efficient method of adjudicating the validity of public securities, public security authorizations, and related matters. The SJRA has brought this action under the Expedited Declaratory Judgment Act in order to obtain a declaratory judgment:

- (i) that the SJRA is authorized to set rates for Participants pursuant to the procedures set forth in the GRP Contracts;

- (ii) that the SJRA issued its fiscal year 2017 Rate Order, including the setting of its fiscal year 2017 rate, in accordance with the procedures set forth in the GRP Contracts;
- (iii) that the SJRA's fiscal year 2017 rate, Rate Order, and the GRP Contracts, including the Contract with Conroe, are legal and valid, *see* TEX. GOV'T CODE § 1205.021(2); and
- (iv) that Conroe's refusal to pay the fiscal year 2017 rate is illegal and invalid, and its failure to pay is a breach of the GRP Contract.

#### **Orders Required by the Expedited Declaratory Judgment Act**

43. The SJRA respectfully prays that this Court follow the procedures set forth in the Expedited Declaratory Judgment Act and further prays:

- (i) that the Court, upon presentation of this petition, immediately enter and issue the Order in the form and having the terms attached hereto as **Exhibit A**, in accordance with Sections 1205.041 and 1205.042 of the Expedited Declaratory Judgment Act, directed to all Interested Parties and the Attorney General of Texas;
- (ii) that prior to the date set for hearing and trial, the Clerk of this Court provide the required notice of this proceeding pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act, by publishing a substantial copy of the Order in a newspaper of general circulation in Travis, Fort Bend, Grimes, Liberty, Montgomery, San Jacinto, Walker, and Waller counties, said notice to be so published once in each of two consecutive calendar weeks, with the date of the first publication to be not less than 14 days prior to the date set for the hearing and trial; and
- (iii) that, pursuant to Section 1205.065 of the Expedited Declaratory Judgment Act, the Court "with the least possible delay" hear and determine each factual and legal question raised by this petition and render judgment.

#### **Prayer**

44. For the reasons set forth above, the SJRA respectfully prays that this Court, upon trial and final hearing, enter a declaratory judgment as set forth above. The SJRA further prays that the Court, upon trial and final hearing, award the SJRA the following additional relief:

- (i) a decree, pursuant to Section 1205.151 of the Expedited Declaratory Judgment Act, that the declaratory judgment herein prayed for shall, as to all matters adjudicated, be forever binding and conclusive with respect to the SJRA, the Attorney General of Texas, the Comptroller, the City of Conroe, and all Interested

Parties, irrespective of whether such parties filed an answer or otherwise appeared herein;

- (ii) an order requiring all costs of the SJRA in this case to be taxed against the City of Conroe; and
- (iii) such other and further relief and orders to which the SJRA may show itself justly entitled at law or in equity.

Dated: August 31, 2016

Respectfully submitted,

YETTER COLEMAN LLP

By: /s/ Charles R. Parker

Charles R. Parker

State Bar No. 15479500

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