

AGENDA

MEETING OF THE BOARD OF DIRECTORS' EXECUTIVE COMMITTEE AND/OR OF THE BOARD OF DIRECTORS



SAN ANTONIO RIVER AUTHORITY

May 11, 2011, 1:00 p.m.

**Estimated Presentation Time: 2 Hours*

GENERAL AND CEREMONIAL ITEMS:

Estimated Presentation Time: 5 minutes

1. **CALL TO ORDER BY THE CHAIRMAN, MR. GAYLON J. OEHLKE**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL BY THE SECRETARY, MR. ROBERTO G. RODRÍGUEZ**
 - Terry E. Baiamonte
 - Sally Buchanan
 - A.D. Kollodziej, Jr.
 - Hector R. Morales
 - Gaylon J. Oehlke
 - Roberto G. Rodríguez
4. **CERTIFICATION OF A QUORUM BY THE SECRETARY**
5. **INTRODUCTION OF VISITORS**
6. **CITIZENS TO BE HEARD**

**Represents the time staff anticipate that it will take to make presentations or give briefings; does not include an estimate of the time required for discussions generated by Board members.*

7. **APPROVAL OF THE MINUTES OF THE BOARD OF DIRECTORS' EXECUTIVE COMMITTEE MEETING HELD ON APRIL 13, 2011**
8. **PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE DEVELOPMENT, APPLICATION, BASE LINING, AND REPORTING OF THE RIVER HEALTH INDEX**
9. **PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING A RESOLUTION TO AMEND THE BOARD OF DIRECTOR BYLAWS, ARTICLE XVIII, SECTION 5, DIRECTORS FEES**
10. **PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE AND THE 112TH CONGRESS**
11. **EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071 FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 2:10-CV-00075 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS**
12. **PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 2:10-CV-00075 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS**
13. **BRIEFING REGARDING THE SURFACE WATER RIGHT LEASE WITH OIL AND GAS COMPANIES**
14. **GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:**
 - **UPCOMING EVENTS CALENDAR,**
 - **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
 - **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**
15. **ITEMS FOR FUTURE CONSIDERATION**
16. **NEXT MEETING DATE**
17. **ADJOURN**

Estimated Presentation Time: 2 Hours

SAN ANTONIO RIVER AUTHORITY
General Statements

This meeting is wheelchair accessible. Accessible parking is located at 100 E. Guenther Street. Requests for an interpreter for the hearing impaired must be received at least 48 hours prior to the meeting, or, to arrange for special assistance to attend this meeting, please call the Operator at 210-227-1373.

The Board of Directors' Executive Committee of the San Antonio River Authority may discuss and/or take action on any item listed in this agenda while convened in open session. The Board of Directors of the San Antonio River Authority may also meet in Executive Session, pursuant to Section 551.071 of the Texas Government Code, to receive advice from legal counsel on any item listed in this agenda.

Executive Committee

Date: 05/11/2011

Approval of the Minutes

Submitted For: Suzanne B. Scott

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

APPROVAL OF THE MINUTES OF THE BOARD OF DIRECTORS' EXECUTIVE COMMITTEE MEETING HELD ON APRIL 13, 2011

Presenter

Mr. Oehlke, Committee Chairman

Estimated Presentation Time: 5 minutes

Recommendation

Motion that the minutes of the Executive Committee meeting held on April 13, 2011, be passed and approved, as presented.

Discussion

Vote

Attachments

April 13, 2011, Executive Committee Meeting Minutes

MINUTES

**MEETING OF THE BOARD OF DIRECTORS'
EXECUTIVE COMMITTEE**



SAN ANTONIO RIVER AUTHORITY

April 13, 2011, 1:00 p.m.

GENERAL AND CEREMONIAL ITEMS:

1. **CALL TO ORDER WAS MADE BY THE CHAIRMAN, MR. GAYLON J. OEHLKE, AT 1:49 P.M.**
2. **PLEDGE OF ALLEGIANCE WAS RECITED**
3. **THE COMMITTEE SECRETARY, MR. ROBERTO G. RODRÍGUEZ, CALLED THE ROLL AND REPORTED THE FOLLOWING COMMITTEE MEMBERS PRESENT:**
 - Terry E. Baiamonte (absent)
 - Sally Buchanan
 - A.D. Kollodziej, Jr. (absent)
 - Hector R. Morales
 - Gaylon J. Oehlke
 - Roberto G. Rodríguez
4. **CERTIFICATION OF A QUORUM WAS ANNOUNCED BY THE SECRETARY, MR. RODRÍGUEZ**
5. **INTRODUCTION OF VISITORS**

Ms. Sanchez reported that there were none.
6. **CITIZENS TO BE HEARD**

Ms. Sanchez announced that there were no citizens signed up to speak.
7. **APPROVAL OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING HELD ON MARCH 9, 2011**

Staff recommended a motion that the minutes of the Executive Committee meeting held on March 9, 2011, be passed and approved, as presented.

Motion made by Hector R. Morales

Seconded by Roberto G. Rodríguez

Vote: 4 - 0 Passed

Other: Terry E. Baiamonte (Absent)

A.D. Kollodziej, Jr. (Absent)

8. PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING PROPOSED LEGISLATION RELATING TO A SALES AND USE TAX FOR IMPLEMENTING SPECIES PROTECTION PROGRAMS FOR THE EDWARDS AQUIFER, THE GUADALUPE AND SAN ANTONIO RIVER BASINS AND THE SAN ANTONIO BAY AND ESTUARY SYSTEM

There being no action taken on this item, Mr. Oehlke called for Agenda Item 9.

Mr. Oehlke took a moment to welcome visitors from Northwest Vista College who had just arrived.

9. PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING SAN ANTONIO RIVER AUTHORITY BOARD APPOINTMENTS TO THE SAN ANTONIO RIVER FOUNDATION BOARD

After the Committee directed staff to verify with the Foundation that the following slate was appropriate, Ms. Buchanan moved for a motion indicating Operations Committee support for the re-appointment of Sonny Collins, H.B. "Trip" Ruckman, Adair Sutherland, and the new appointment of Michael Lackey to the San Antonio River Foundation Board; that Michael Lackey be considered for a three year term; that straws be drawn between Mr. Collins, Mr. Ruckman, and Ms. Sutherland for two or three year terms; and for Ms. Buchanan to complete the last two years of her current term.

Seconded by Roberto G. Rodríguez

Vote: 4 - 0 Passed

Other: A.D. Kollodziej, Jr. (Absent)

Terry E. Baiamonte (Absent)

10. DISCUSSION AND APPROPRIATE ACTION REGARDING THE BOARD OF DIRECTOR BYLAWS, ARTICLE XVIII, SECTION 5, DIRECTORS FEES

There being no action taken on this item, Mr. Oehlke called for Agenda Item 11.

11. PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE AND THE 112TH CONGRESS

There being no action taken on this item, Mr. Oehlke called for Agenda Item 12.

After appropriate disclosure in accordance with Chapter 551 of the Texas Government Code, the Open Meetings Act, Section 551.071, Mr. Oehlke then recessed to meet in Executive Session at 3:08 p.m. for consultation with attorney regarding Agenda Item 12.

12. EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071 FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 2:10-CV-00075 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

The Executive Session having concluded, the Executive Committee Meeting resumed into Open Session at 3:19 p.m.

13. PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 2:10-CV-00075 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

There being no action taken on this item, Mr. Oehlke called for Agenda Item 14.

14. GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:

- **UPCOMING EVENTS CALENDAR,**
- **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
- **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**

There being no action taken on this item, Mr. Oehlke called for Agenda Item 15.

15. ITEMS FOR FUTURE CONSIDERATION

Mr. Oehlke stated that the Board would review the amended version of the Bylaws in May based on discussion during item 10.

Ms. Scott informed the Committee that the River Health Index would be discussed in May and that the Strategic Plan would be discussed in June. It was also announced that SAWS would be attending the May Regular Meeting of the full Board to present on the sewer

pipelines in response to Mr. Rodríguez' concerns.

Ms. Scott also announced that Mr. Oehlke's request for an update on the Oil and Gas Water Use issue would be addressed at the May Executive Committee meeting.

16. NEXT MEETING DATE

Mr. Oehlke announced that the next Executive Committee meeting will be Wednesday, May 11, 2011, at 1:00 p.m.

17. ADJOURN

There being nothing further to report, Mr. Oehlke called the Executive Committee meeting adjourned at 3:28 p.m.

PREPARED AND RECOMMENDED FOR COMMITTEE APPROVAL BY THE MANAGER.

SUZANNE B. SCOTT, General Manager

APPROVED BY THE BOARD OF DIRECTORS' EXECUTIVE COMMITTEE AT THE MEETING HELD ON MAY 11, 2011.

GAYLON J. OEHLKE, Board Chairman

ATTEST:

ROBERTO G. RODRÍGUEZ, Board Secretary

Executive Committee

Date: 05/11/2011

River Health Index

Submitted For: Steve Graham

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE DEVELOPMENT, APPLICATION, BASE LINING, AND REPORTING OF THE RIVER HEALTH INDEX

Presenter

Steve Graham

Estimated Presentation Time: 20 minutes

In November 2010, the purpose and development of the River Health Index (RHI) was discussed with the Executive Committee. The RHI is a Key Performance Indicator (KPI) that we propose to use to see whether SARA's programs and efforts are making a difference, and by how much? The RHI that was developed is a composite score derived by a summation of measured values in the areas of public safety, environmental protection, public awareness, and public access to the San Antonio River and its tributaries. Ten years targets were established for these measured values along with the projections we hope to follow between now and 2020 to achieve our targets. The RHI for 2010 was base lined this year in the January-February time-frame. The results on that base line work and the projections will be shown and discussed.

Recommendation

Motion to be crafted, if necessary, after Committee discussion.

Discussion

Vote

Executive Committee

Date: 05/11/2011

Bylaws, Directors Fees

Submitted For: Gaylon Oehlke, Committee Chair **Submitted By:** Karen Bishop

Division: Executive Offices

CAPTION

PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING A RESOLUTION TO AMEND THE BOARD OF DIRECTOR BYLAWS, ARTICLE XVIII, SECTION 5, DIRECTORS FEES

Presenter

Karen Bishop and David Ross

Estimated Presentation Time: 10 minutes

During the April 13, 2011, meeting of the Executive Committee, the Committee requested that staff and legal counsel develop new language for Article XVIII, Section 5, Directors Fees, of the San Antonio River Authority's Bylaws, to make more clear the types of activities that are to be considered meetings eligible for director fee payment.

Below is legal counsel's and staff's recommended amendment:

5. Directors Fees: Directors may receive a director fee for attendance at eligible District Directors meetings.

a. Eligible Directors Meetings: The following lists the types of meeting/activities eligible for Director fee claim:

i. Regular Board Meeting

ii. Special Board Meeting

iii. Budget Workshop

iv. Directors Planning Workshop

v. Committee Meetings (Executive, Fiscal, Communications, Operations, Special, etc.)

vi. Activity attended at a public meeting **of another entity which has an agenda and with an agenda** where the ~~Board member~~ **Director** is the District's **appointed delegate**. ~~delegated member~~

vii. Other ~~A~~ activity ~~A~~ attended **at the direction of the Board by official action** ~~at the Request of the Board Chair or General Manager~~.

To the extent possible, Committee meetings or other eligible activities will be scheduled on the day of a regular or other Board meeting. If two or more of the eligible activities occur on

one day, a Director will be eligible to claim only one day of service.

b. Payment Amount: The per diem eligible payment amount is \$150.

Recommendation

Motion of Executive Committee support for presentation to the Board of Directors of a resolution recommending adoption of the amended language, as presented, under Bylaws Article XVIII, Section 5, Directors Fees, subsections a(vi) and a(vii).

Discussion

Vote

Executive Committee

Date: 05/11/2011

State and Federal Legislative Activities Update

Submitted For: Brian Mast

Submitted By: Lupe Sanchez

Division: Intergovernmental and Comm Relations **Department:** Intergovernmental Relations

CAPTION

PRESENTATION, DISCUSSION AND APPROPRIATE ACTION REGARDING ACTIVITIES ASSOCIATED WITH THE 82ND SESSION OF THE STATE LEGISLATURE AND THE 112TH CONGRESS

Presenter

Brian Mast

Estimated Presentation Time: 20 minutes

82nd State Legislature Update:

Over the past month, the Intergovernmental Relations team has been working on the following bills with our legislative consultants and senior staff.

Senate Bill 18: The omnibus eminent domain bill has been agreed to in conference committee so it will now be going to the full House and Senate for a vote. Eminent domain reform was one of the Governor's emergency issues so it remains likely this bill will be signed into law. Below are the major issues from the conference committee report:

1. Board of Directors
 - a. Before we initiate a condemnation proceeding, SARA must authorize the initiation in a public meeting by a record vote
 - b. Include in the public meeting notice the consideration of the use of the eminent domain to condemn property as an agenda item
 - c. Motions authorizing initiation of condemnation proceedings must be similar to the following: "I move that the (SARA) authorize the use of the power of eminent domain to acquire (describe the property) for (describe the public use)."
2. By December 31, 2012, SARA must send the Comptroller a letter stating we are authorized by the state to exercise eminent domain and identify each provision of law that grants us that authority. (SARA has specific authority in our enabling statute, and staff is researching whether we also have general authority in the water code).
3. Initial Offers: By certified mail, return receipt requested disclose to owner at time an offer is made
 - a. Any and all appraisal reports produced or acquired by us relating specifically to owner's property that have been prepared in the 10 years preceding the date of the offer
 - b. We MAY NOT include a confidentiality provision.
4. SARA shall provide a relocation advisory service that is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, and we shall pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of property
5. Attorney's Fees: A court shall order that a condemnor who did NOT make a bona fide offer pay reasonable attorney's fees and other professional fees incurred by owner (this provision previously

was tied to whether the special commissioners awarded the owner 110% of a bona fide offer; now the fees can only be awarded if a condemnor is found not to have made a bona fide offer).

House Bill 2694: The Texas Commission on Environmental Quality (TCEQ) sunset bill was heard in Senate Natural Resources on Tuesday, May 3. The committee adopted a committee substitute and voted the substitute favorably out of the committee. This likely means the bill will end up in a conference committee to iron out the differences between the Senate and House versions of the bill. Of particular note to SARA, a dam safety amendment will likely be offered on the Senate floor. The Senate amendment will exempt dams from the TCEQ Dam Safety program that impound 500 acre feet or less, are classified as low or significant hazard dams that are located in counties with populations of 200,000 or less.

House Bill 2853: The omnibus Tax Increment Reinvestment Zone (TIRZ) bill was unanimously voted out of the House on Wednesday, May 4, and sent to the Senate. The bill has not yet been referred to a Senate Committee.

Recommendation

Motion to be crafted, if necessary, after Board discussion.

Discussion

Vote

Executive Committee

Date: 05/11/2011

Executive Session: Whooping Crane Lawsuit

Submitted For: Karen Bishop

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

**EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.071
FOR CONSULTATION WITH ATTORNEY REGARDING THE ARANSAS PROJECT V.
SHAW, ET. AL., CASE NO. 2:10-CV-00075 IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS**

Presenter

Steve Raabe and David Ross

Estimated Presentation Time: 10 minutes

Discussion

Executive Committee

Date: 05/11/2011

Whooping Crane Lawsuit Briefing

Submitted For: Karen Bishop

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

PRESENTATION, DISCUSSION, AND APPROPRIATE ACTION REGARDING THE ARANSAS PROJECT V. SHAW, ET. AL., CASE NO. 2:10-CV-00075 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

Presenter

Steve Raabe and David Ross

Estimated Presentation Time: 10 minutes

Recommendation

Motion to be crafted, if necessary, after Board discussion.

Discussion

Vote

Executive Committee

Date: 05/11/2011

Surface Water Lease

Submitted By: Melissa Bryant

Division: Operations

Department: Water Resources & Community Dvlpmnt

CAPTION

BRIEFING REGARDING THE SURFACE WATER RIGHT LEASE WITH OIL AND GAS COMPANIES

Presenter

Melissa Bryant

Estimated Presentation Time: 10 minutes

The San Antonio River Authority (River Authority) has been approached by oil and gas companies regarding the use of surface water for beneficial purposes in connection with efforts to explore, develop, and produce oil and gas in Wilson, Karnes, and Goliad counties. These companies are seeking alternative water supplies to groundwater, including surface water and reuse water, to support their efforts.

The River Authority's surface water right permits will be amended to add Environmental Flows, Industrial, and Mining as possible uses. Use of the surface water will add historical usage to the permits and will be beneficial for future use as environmental flows. Also, having historical water use could assist the River Authority in avoiding cancellation of the water rights in the future for non usage.

The proposed agreements with the oil and gas companies authorize the companies to temporarily use the surface water rights for their benefit in exploration over the next 3 to 5 years. The agreements state that companies will abide by flow restrictions set forth by the Texas Commission on Environmental Quality (TCEQ) during drought condition periods. The River Authority is also requiring the companies to abide by the recommendations made in the Environmental Flow Studies, currently underway.

Any costs incurred to amend the permit will be paid for by the oil and gas companies along with any other fees incurred including legal. A preliminary agreement draft is attached for your review.

At its January 19, 2011, meeting, the Board of Directors supported moving forward with negotiating a contract.

Discussion

Attachments

Agreement

TEMPORARY WATER SUPPLY AGREEMENT
AUTHORIZING THE USE OF EXISTING SARA WATER RIGHTS
(CERTIFICATE OF ADJUDICATION NO. 19-2198)

BETWEEN

SAN ANTONIO RIVER AUTHORITY

&

TX WATER RESOURCES, LLC

Effective May __, 2011

TEMPORARY WATER SUPPLY AGREEMENT

Table of Contents

	Page
Recitals.....	1
Article I Definitions	5
Section 1.1 Defined Terms.	5
Article II Term	7
Section 2.1 Primary Term and Renewal.	7
Article III Termination.....	7
Section 3.1 Early Termination.	7
Section 3.2 Rights After Termination.	8
Article IV Annual Price, Quantity & Meters	8
Section 4.1 Annual Price, Purchase Price per Acre-Foot & Other Charges.	8
Section 4.2 Quantity.....	10
Section 4.3 Transportation Loss/Regulatory Loss.	10
Section 4.4 Buyer’s Meters.....	11
Section 4.5 Purpose & Place of Use.	11
Article V Default & Remedy	11
Section 5.1 Events of Default.	11
Section 5.2 SARA’s Remedies.	12
Article VI Certificates, Authorizations, Storage, Easements & Right-of-Way	12
Section 6.1 Buyer’s Responsibilities.	12
Section 6.2 Amendments to SARA’s Certificate No. 19-2198.	13
Section 6.3 Easements & Right-of-Way.....	14
Section 6.4 Buyer’s Storage & Delivery System.....	14
Section 6.5 Other Water Sources.....	14
Article VII “As Is” Quality, Quantity & Title	14
Section 7.1 Quality.....	14
Section 7.2 Quantity.....	15
Section 7.3 Title.....	15

Article VIII Taxes, Fees and Assessments	15
Section 8.1 Taxes, Fees and Assessments.	15
Article IX Assignment and Transfer.....	16
Section 9.1 Assignability.	16
Section 9.2 Binding Effect.....	16
Article X Miscellaneous	16
Section 10.1 Governing Law.	16
Section 10.2 Venue.	17
Section 10.3 Severability and Savings Clause.....	17
Section 10.4 Force Majeure.	17
Section 10.5 Agreement Modification.....	17
Section 10.6 No-Third-Party Beneficiary.....	17
Section 10.7 Waiver.....	17
Section 10.8 Captions and Headings.	17
Section 10.9 Gender/Words in the Singular.	18
Section 10.10 Notices.	18
Section 10.11 Sole Agreement.....	18
Section 10.12 Counterparts & Duplicate Originals.	18
Section 10.13 Sovereign Immunity.....	19
Section 10.14 Indemnification.....	19
Section 10.15 Attorneys’ Fees.	19
Section 10.16 Further Assurances.....	19
Section 10.17 Certificate.....	19
Section 10.18 Cooperation.....	19
Section 10.19 Amendments.	20
Section 10.20 Timing.....	20
Section 10.21 Exhibits.	20

EXHIBITS:

EXHIBIT “A” Certificate of Adjudication No. 19-2198

EXHIBIT “B” Topographic Map Depicting Reach of Buyer’s Point of Diversion

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**TEMPORARY WATER SUPPLY AGREEMENT
AUTHORIZING THE USE OF EXISTING SARA WATER RIGHTS
(CERTIFICATE OF ADJUDICATION NO. 19-2198)**

This Temporary Water Supply Agreement Authorizing the Use of Existing SARA Water Rights (Certificate of Adjudication No. 19-2198) (the “ Agreement”) is made and entered into as of the ____ day of May, 2011, (the “Effective Date”), by and between TX Water Resources, LLC (hereinafter “Buyer”) and the San Antonio River Authority, a water conservation and reclamation district created in accordance with Article XVI, Section 59 of the Texas Constitution, by special act of the Texas Legislature formerly codified as Article 8280-119, TEX. REV. CIV. STAT. ANN. (“SARA”). Buyer and SARA may be referred to collectively herein as the “Parties,” or individually as the “Party.”

RECITALS

WHEREAS, SARA holds Certificate of Adjudication No. 19-2198 (the “Certificate”) issued by the Texas Commission on Environmental Quality authorizing the diversion of three hundred thirty-three (333) acre-feet per annum for irrigation use from a diversion point located in Goliad County, Texas; and

WHEREAS, Buyer desires to acquire temporarily the right to use up to three hundred thirty-three (333) acre-feet per year of the water rights authorized by the Certificate for beneficial purposes in connection with Buyer’s efforts to supply water for the exploration, development and production of oil, gas and other related substances in Wilson, Karnes and Goliad Counties, Texas; and

WHEREAS, SARA desires to grant Buyer the right to use up to three hundred thirty-three (333) acre-feet per year of the water rights authorized by the Certificate for Buyer’s intended purposes in Wilson, Karnes and Goliad Counties, Texas; and

WHEREAS, SARA and Buyer desire to enter into this Agreement to memorialize the terms and conditions of their respective rights and obligations;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, Ten and no/100ths Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, SARA and Buyer agree as follows.

Article I **Definitions**

Section 1.1 Defined Terms.

The following terms and expressions used in this Agreement, unless otherwise defined herein, or where the context clearly requires otherwise, shall, for purposes of this Agreement, have the following meanings:

“**Acre-foot**” means that volume defined by an area of one acre, covered in water one foot deep, or 325,851 gallons (U.S.), which is the equivalent of 7,758 Barrels of Water as that term is defined in this Agreement.

“**Acre-foot Price**” means the per acre-foot charge to be paid by Buyer to SARA on a “take or pay” basis for the number of acre-feet of water rights out of SARA’s Certificate dedicated to the Buyer’s use pursuant to this Agreement, unless changed pursuant to this Agreement. From the Effective Date through the termination of this Agreement, the Acre-foot Price shall be Seven Hundred Seventy-Five and 00/ths Dollars (\$775.00) per acre-foot per annum (\$775.00/ac-ft/year).

“**Annual Price**” means the “take-or-pay” amount due and payable to SARA by Buyer each and every Full Contract Year calculated by multiplying the total number of acre-feet of water contracted to Buyer by SARA pursuant to this Agreement during the applicable Full Contract Year by the Acre-foot Price.

“**Assessments**” means any tax, fee or other assessment, including Water Master Fees levied, charged and or assessed upon SARA’s water right by a governmental body during the First Contract Year and any Full Contract Year as contemplated by Section 8.1 of this Agreement.

“**Barrel of Water**” means forty-two (42) gallons (U.S.) of water.

“**Buyer’s Diversion Point(s)**” means the location(s) TCEQ approves for diversion of water authorized for appropriation pursuant to the Certificate pursuant to an application filed by Buyer. Buyer’s intended diversion point(s) is/are anywhere between and including the GPS points depicted on Exhibit “B” attached hereto.

“**Buyer’s Meter(s)**” means the TCEQ approved meter(s) owned and operated by Buyer located at Buyer’s Diversion Point(s).

“**Certificate**” means SARA’s Certificate of Adjudication No. 19-2198 issued by TCEQ pursuant to Chapter 11, Texas Water Code and any amendment(s) thereto.

“**Chapter 11**” means Chapter 11 of the Texas Water Code, as the same may be amended from time to time.

“**Effective Date**” means the date first written above, *i.e.*, May __, 2011.

“First Contract Year” means the period commencing on the Effective Date and ending on December 31st of the same calendar year.

“Initial Year Price” means the “take-or-pay” amount due and payable to SARA by Buyer during the initial Contract Year in which an amendment to the Certificate, or a separate permit, is obtained that authorizes Buyer’s intended uses, places of use and Buyer’s Diversion Point(s) during the First Contract Year. The Initial Year Price shall be calculated by multiplying (i) the total number of acre-feet out of the three hundred thirty-three (333) acre-feet authorized by the Certificate that Buyer declares in writing that it will acquire the right to use from SARA pursuant to this Agreement during said First Contract Year by (ii) the Acre-foot Price. Buyer shall make such declaration by the 15th day after the date that Buyer receives written notice that an amendment to the Certificate, or a separate permit, was obtained authorizing Buyer’s intended uses, places of use and Buyer’s Diversion Point(s). If Buyer does not make a timely declaration, Buyer shall be deemed to have declared three hundred and thirty-three (333) acre-feet, unless Buyer and SARA subsequently agree otherwise in writing.

“Force Majeure” means: any act of God including but not limited to storms, floods, washouts, landslides, and lightning; acts of a public enemy, wars, blockades, insurrections, or riots; strikes and lockouts; epidemics or quarantine regulations; laws, acts, or orders of federal, state, municipal, or other governmental authority under color of authority; freight embargos or failures; and exhaustion or unavailability or delays in delivery of any product, labor, service or material.

“Full Contract Year” means each full calendar year during the term of this Agreement, except the First Contract Year.

“Notices” means any notice, communication, or payment contemplated by Section 10.10 of this Agreement.

“Other Customer” means any customer other than Buyer with whom SARA contracts to use a portion of the water rights authorized by the Certificate not contracted to Buyer, regardless of when SARA and the Buyer entered into this Agreement.

“Regulatory Loss” means the volume of water, if any, that may result from the TCEQ’s determination to limit the volume of water available for diversion by Buyer at Buyer’s Diversion Point below the volume of water contracted to be acquired from SARA and paid for by Buyer on a take or pay basis.

“SARA Diversion Point” means the Diversion Point authorized in the Certificate.

“T.A.C.” means the Texas Administrative Code.

“TCEQ” or **“Commission”** means the Texas Commission on Environmental Quality and any predecessor or successor agency.

“Transportation Loss” means the volume of the water, if any, that will be lost due to such factors as evaporation, seepage, evapotranspiration, and/or other causes between the

Buyer's Diversion Point and Buyer's point(s) of use.

Article II **Term**

Section 2.1 Primary Term and Renewal.

(a) The term of this Agreement shall be for five (5) years commencing with the Effective Date and ending at 11:59 p.m., Central Standard Time, on December 31, 2015 (the "Term"). Except as provided otherwise by the express terms of this Agreement, the termination of this Agreement shall be the date provided in this Section 2.1.

(b) This Agreement shall not automatically be renewed, but may only be extended upon separate written agreement signed by both Parties.

Article III **Termination**

Section 3.1 Early Termination.

Notwithstanding the provisions of Section 2.1 of this Agreement:

(a) Buyer may terminate this Agreement for any or no reason upon ninety (90) days written notice to SARA. Termination for any reason, other than SARA's breach of this Agreement, however, shall not relieve Buyer of its obligation to make all payments to SARA accrued or accruing through the date of termination.

(b) Notwithstanding any other provision of this Agreement, either Party may, at its election, terminate this Agreement upon thirty (30) days written notice (i) in the event SARA's Certificate is cancelled, revoked or forfeited, (ii) in the event Buyer's right to divert water pursuant to the Certificate has been suspended indefinitely, or (iii) in the event SARA's or Buyer's right to divert water pursuant to the Certificate is suspended for a period of sixty (60) days or more due to low flow conditions beyond the control of either Party.

(c) In addition to all other termination rights granted to SARA pursuant to this Agreement, SARA shall be entitled to terminate this Agreement pursuant to Section 5.1 of this Agreement upon the occurrence of an "Event of Default" by Buyer.

(d) Notwithstanding anything in this Agreement to the contrary, except where expressly provided in this Agreement, the Parties agree that any Event of Default shall not result in termination of this Agreement until thirty (30) days after the date that defaulting Party receives written notice from the non-defaulting Party specifying the default and the requirements to cure the same and the defaulting Party thereafter fails to cure or remedy the default in a timely manner.

(e) In the event this Agreement is terminated early for any reason where the effective date of the termination occurs prior to the end of the entire Contract Year then in effect and Buyer has not paid the Annual Price for the entire Contract Year then in effect, Buyer shall be

liable to SARA for payment of the greater of (i) the full amount of the Acre-foot Price multiplied by the number of acre-feet of water (or any portion of an acre-foot of water) diverted by Buyer during the Full Contract Year then in effect prior to the effective date of the termination or (ii) the Annual Price prorated for the number of calendar months that have expired, including any partial month to be counted as a full month, starting with the first month of the Full Contract Year through the termination date. In the event this Agreement is terminated early for any reason where the effective date of the termination occurs prior to the end of the Full Contract Year then in effect and Buyer has paid the Annual Price for the Full Contract Year then in effect, SARA shall refund to Buyer the difference between the Annual Price paid based upon three hundred thirty-three (333) acre-feet and the Acre-foot Price multiplied by the number of acre-feet of water actually used by Buyer prior to the effective date of the termination (the "Termination Refund"). SARA shall be entitled to withhold from the Termination Refund an amount equal to the amount of any assessments either paid or payable by SARA during the Contract Year in which the termination occurs based upon the prorated amount of the number of acre-feet out of the three hundred thirty-three acre (333) feet of water authorized by the Certificate that buyer diverted prior to the effective date of termination. SARA shall calculate and refund the Termination Refund within forty-five (45) days of the effective date of the termination.

Section 3.2 Rights After Termination.

(a) Except as specifically provided otherwise in this Agreement, including Subsection (b) below, all of the prospective rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement.

(b) The following obligations of the Parties shall survive the termination of this Agreement: (1) Buyer's obligation to pay SARA for all amounts due under this Agreement; provided, however, that under no circumstance shall Buyer's obligation to make future payment of the Annual Price that would have been due subsequent to the calendar year in which termination occurs survive termination of this Agreement; (2) any obligation of SARA to refund any amounts to Buyer pursuant to Section 3.1(e) above; (3) SARA's obligation to provide Buyer the right to use the Certificate in support of Buyer's objectives pursuant to this Agreement prior to the termination date; and (4) any other obligation or liability incurred pursuant to the Agreement that accrues and arises prior to the effective date of the termination of this Agreement.

Article IV

Annual Price, Quantity & Meters

Section 4.1 Annual Price, Purchase Price per Acre-Foot & Other Charges.

(a) On the Effective Date and through the termination of this Agreement, unless changed pursuant to this Agreement, the Acre-foot Price shall be Seven Hundred Seventy-Five and 00/100 Dollars (\$775.00) per acre-foot per annum (\$775.00/ac-ft/year).

(b) Subject to the provisions of this Agreement, during each Full Contract Year, Buyer agrees to pay SARA the Annual Price as calculated by multiplying the three hundred

thirty-three acre-feet of water contracted to Buyer by SARA pursuant to this Agreement during the applicable Full Contract Year by the Acre-Foot Price.

(c) The Initial Year Price (as defined and calculated in Section 1.1) shall be payable to SARA on a “take-or-pay” basis on the 15th day after the date that Buyer receives written notice that an amendment to the Certificate, or a separate permit, was obtained during the First Contract Year that authorizes Buyer’s intended uses, places of use and Buyer’s Diversion Point(s) regardless of whether Buyer diverts and uses any of the water rights available pursuant to the Certificate during the First Contract Year.

(d) The Annual Price shall be payable to SARA on a “take-or-pay” basis by January 20th of each Full Contract Year regardless of whether Buyer diverts and uses any of the water rights available pursuant to the Certificate during the same Full Contract Year. The Annual Price may be subject to a partial refund in the event the Agreement is terminated pursuant to Section 3.1 of this Agreement.

(e) In the event Buyer fails to pay timely the First Year Price, any Annual Price and/or any Late Charge within the cure period presented by Section 5.1 of this Agreement after receipt of written Notice from SARA, SARA shall be entitled to terminate this Agreement and exercise such other remedies as may be available pursuant to this Agreement, and at law or in equity.

(f) In the event any Assessment is lawfully assessed, charged or levied on the Certificate, or any amendment to the Certificate, and/or any permit secured by Buyer pursuant to the rights granted pursuant to this Agreement, or is otherwise imposed on the diversion, production, storage, delivery, impoundment, take, sale, use, and/or consumption of the water by Buyer pursuant to the rights granted and authorized by the Certificate and/or this Agreement, including any Watermaster Fees, the same shall be passed through to Buyer in addition to the First Year Price and Annual Price charged to Buyer pursuant to this Agreement.

(g) In addition to other remedies available to SARA for Buyer’s failure to pay timely any amount due and owing pursuant to this Agreement in full by the applicable due date, together with any and all applicable penalties, Late Charges and other charges, then in such event, beginning on the 1st calendar day of the next calendar month of the applicable First Contract Year or Full Contract Year, SARA shall be entitled to terminate the delivery of water to Buyer until such time as Buyer has paid current all such amounts then due and owing to SARA pursuant to this Agreement. This remedy is cumulative of all other remedies available to SARA and may be exercised without giving any prior written notice to Buyer and without application of the cure period prescribed by Section 5.1 of this Agreement.

(h) In addition to other payments contemplated by this Agreement, Buyer agrees to pay SARA a one time “Application Fee” in the amount of _____ and 00/100 Dollars (\$____.00) at the time SARA executes the Agreement to cover SARA’s costs to review the Agreement and Buyer’s applications to the TCEQ and plans and specifications for diversion works: (i) SARA reserves the right to change the Acre-foot Price, provided, however, that any increase in the Acre-foot Price adopted by SARA shall become effective in the Contract following the Contract Year in which the increase is adopted and written notice is provided to the

Buyer. Provided further, that SARA shall (i) not increase the Acre-foot Price more frequently than once every two years, and (ii) not increase the Acre-foot Price more than ___ percent (___%) above the Acre-foot Price then in effect.

Section 4.2 Quantity.

Subject to the terms of this Agreement, during the First Contract Year and each Full Contract Year, Buyer shall have the right to acquire the right to use three hundred thirty-three (333) acre-feet of the 333 acre-feet of water authorized by the Certificate.

Section 4.3 Transportation Loss/Regulatory Loss.

(a) The Parties acknowledge and agree that the amount of water Buyer may be able to divert and put to beneficial use may be less than the amount of water available pursuant to SARA’s Certificate and contracted for pursuant to the terms of this Agreement due to Transportation Losses and/or Regulatory Losses.

(b) Notwithstanding the Transportation Losses and/or Regulatory Losses anticipated by the Parties, Buyer expressly acknowledges, confirms and agrees that Buyer’s obligation to pay the First Year Price and Annual Price shall be calculated based upon the amount of water contemplated by Section 4.2 of this Agreement.

In addition to any special conditions imposed by TECQ on Buyer’s use of the water, Buyer agrees not to divert water pursuant to this Agreement unless the average monthly flow in the San Antonio River meets the following instantaneous minimum flows, as measured in cubic feet per second (“cfs”), at the flow gauges installed and maintained by **USGS** at Falls City Texas (Gauge No. 08183500) and Goliad (Gauge No. 08188500):

Falls City, Texas

<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sept</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
<u>119</u>	<u>124</u>	<u>119</u>	<u>117</u>	<u>115</u>	<u>95</u>	<u>89</u>	<u>89</u>	<u>90</u>	<u>89</u>	<u>102</u>	<u>112</u>

Goliad, Texas

<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sept</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
148	146	156	151	141	111	100	100	120	120	133	154

Section 4.4 Buyer's Meters.

Buyer shall be responsible to purchase, install, operate and maintain any meter(s) required by TCEQ to measure the water diverted by Buyer at Buyer's Diversion Point(s) pursuant to this Agreement. The Parties agree that the amount due and payable to SARA shall be based upon the calculation of the First Year Price and Annual Price as calculated herein irrespective of the volume measured by the Meter(s).

Section 4.5 Purpose & Place of Use.

(a) All water acquired by Buyer pursuant to this Agreement shall be used solely for beneficial purposes associated with Buyer's exploration, development and production of oil, gas and other related substances without waste as authorized by a permit or an amendment to the Certificate issued by the TCEQ and as authorized by this Agreement. This Agreement's effectiveness is dependent upon Buyer's and/or, as required, SARA's compliance with TCEQ Rules, Chapter 295, §295.101 and Chapter 297 Subchapter J.

(b) All water acquired by Buyer pursuant to this Agreement shall be used solely in Wilson, Karnes and Goliad Counties, Texas as authorized by a permit by TCEQ or an amendment to the Certificate issued by TCEQ, and the terms of this Agreement.

Article V
Default & Remedy

Section 5.1 Events of Default.

Each of the following acts, omissions or occurrences shall constitute an "Event of Default" and a material breach of this Agreement by Buyer:

(a) Failure by Buyer to pay any portion of the First Year Price, Annual Price or the Assessments, and any applicable Late Charge required to be paid prior to the expiration of thirty (30) days after SARA's delivery of written notice to Buyer of such failure.

(b) Failure by Buyer to either perform or observe any other covenant, condition, or provision of this Agreement, and/or the terms of any permit or authorization granted by TCEQ to be performed or observed by Buyer in the diversion of water pursuant to this Agreement prior to the expiration of thirty (30) days after SARA's delivery of written notice to Buyer of such failure.

(c) Notwithstanding the provisions of subsection (b) of this Section 5.1, in the event Buyer is unable to cure any such default within said thirty (30) days, no such default shall be deemed to exist so long as Buyer is using reasonable due diligence to cure such default and continues to do so until the matter is cured.

(d) Final adjudication either by an administrative agency with regulatory jurisdiction of an enforcement order or a court of competent jurisdiction over Buyer that one or more of Buyer's activities involving the use of water or the water rights granted to Buyer pursuant to this Agreement violates a federal, state, or local environmental statute, law, ordinance, rule or regulation.

Section 5.2 SARA's Remedies.

(a) Upon the occurrence of any Event of Default which, after proper notice Buyer fails to cure, SARA may, at its option, in addition to any and all other rights, remedies or recourses available to it either pursuant to the terms of this Agreement, or at law or in equity, immediately terminate this Agreement by the giving of written notice to Buyer. Buyer shall immediately cease diversion of the water upon receipt of any such notice from SARA.

(b) In the event SARA elects to terminate the Agreement by reason of the occurrence of an Event of Default and failure to cure, then notwithstanding any such termination, Buyer shall be liable for and shall pay to SARA the sum of the entire outstanding balance of the First Year Price, any applicable Annual Price and any Assessments together with all applicable penalties and Late Charges.

Article VI
Certificates, Authorizations, Storage, Easements & Right-of-Way

Section 6.1 Buyer's Responsibilities.

(a) SARA's Certificate does not currently expressly authorize any use for oil and gas or mining purposes such as Buyer's intended use of water for the exploration, development and production of oil, gas and other related substances as contemplated and authorized by this Agreement. Buyer proposes and SARA agrees to allow Buyer to obtain an amendment to the Certificate or a separate contract permit pursuant to Chapter 11, Texas Water Code and Chapters 295 and 297 (30 T.A.C.) to authorize Buyer's intended use of SARA's three hundred thirty-three (333) acre-feet of water per year from the San Antonio River currently authorized by the Certificate at Buyer's Diversion Point(s) identified on the USGS Topo Map attached hereto as Exhibit "B" and incorporated herein by reference for all purposes. Accordingly, subject to the terms of this Section 6.1, Buyer, at its sole cost and expense, shall be responsible to obtain the water rights authorization necessary for Buyer to enjoy and implement the rights associated with the Certificate granted pursuant to this Agreement together with any and all other authorizations, approvals, permits and/or licenses. Buyer reserves the right to change or add additional Diversion Points. SARA agrees to cooperate with Buyer in securing the necessary authorizations or amendments of the Certificate and designations of diversion points, provided that there is no out-of-pocket cost to SARA, or Buyer agrees to reimburse SARA for any actual out-of-pocket costs incurred. Any amendment to the Certificate shall be subject to SARA's approval reasonably necessary to protect SARA's rights under the Certificate.

(b) In the event that SARA determines to exercise its right to terminate the Agreement pursuant to one or more of the provisions of this Agreement, then in such event SARA shall provide written notice of such termination to Buyer.

(c) In addition to its other obligations under this Agreement, Buyer shall be responsible for compliance with all federal, state and local statutes, ordinances, rules, regulations and/or administrative orders applicable to the diversion, storage and/or use of the water diverted at Buyer's Diversion Point(s) pursuant to this Agreement.

Section 6.2 Amendments to SARA's Certificate No. 19-2198.

(a) Subject to subsection 6.1(a) above, and Subsection 6.2(b) below, SARA shall be responsible at its sole expense for the maintenance in good standing of the Certificate and any amendments thereto secured by SARA or Buyer during the term of this Agreement, including payment of all annual fees or assessments owing or to be owed to the TCEQ in order to maintain the Certificate and any amendments thereto in good standing; provided, however, that any such annual fees and/or assessments shall be reimbursable to SARA by Buyer upon receipt of written notice from SARA and shall be due and payable to SARA by Buyer within thirty (30) days of receipt by Buyer. In the event SARA defaults on its obligations in this Subsection (a), Buyer shall be entitled, at its sole option and without notice, to immediately remedy such default(s) and, in such circumstance, credit any and all expenses incurred in remedying such default(s) against any amounts owing or to be owed to SARA hereunder.

(b) Notwithstanding the provisions of Subsection (a) above, in the event SARA is required to secure any amendment(s) to the Certificate in order to perform under the terms of this Agreement, then the costs associated with securing such amendment(s), including by way of example only, SARA's legal, engineering and/or construction costs, shall be borne by Buyer. Upon determination that SARA requires any amendment(s) contemplated by this Subsection (b), SARA promptly shall provide Buyer with written notice of the need for such amendment(s) together with a good faith written estimate of the costs SARA expects to incur to secure the amendment(s). Buyer shall have thirty (30) business days from the date of said notice to either agree to reimburse SARA in the amount of the estimated costs, or give SARA written notice of its intent to terminate the Agreement pursuant to Section 3.1.

(c) In the event Buyer authorizes SARA to pursue the amendment(s) contemplated by Subsection (b) above, Buyer shall pay in full the estimated costs to SARA. Buyer's failure to pay the full amount of estimated costs timely shall relieve SARA of any obligation to pursue the amendment(s) and, in its sole discretion, SARA shall have the option, but not the obligation, to terminate the Agreement.

(d) In the event that the estimated cost to secure the amendment(s) is too low, SARA shall give Buyer written notice of the amount of any additional costs, which amount Buyer shall be obligated to pay SARA within thirty (30) days. Buyer's failure to pay the additional costs timely shall constitute an Event of Default under the Agreement.

(e) In the event that the estimated cost to secure the amendment(s) is too high, SARA shall either apply it as a credit to amounts then due and owing to SARA by Buyer, or refund the excess amount to Buyer within thirty (30) days.

Section 6.3 Easements & Right-of-Way.

In addition to any governmental Certificates, licenses, and permits, or other authorizations and/or approvals required, and/or otherwise necessary, to the implementation of this Agreement by Buyer, Buyer shall be solely responsible for securing any and all easements, rights-of-way and/or access, at Buyer's cost. Buyer's failure, and/or inability, for whatever reason, to secure any easement, right-of-way and/or access necessary for Buyer to beneficially use the rights acquired pursuant to this Agreement shall not relieve, nor postpone, Buyer's "take-or-pay" obligation to pay the First Year Price or the Annual Price to SARA.

Section 6.4 Buyer's Storage & Delivery System.

Buyer shall be responsible for all facilities beyond Buyer's Diversion Point(s) necessary for Buyer's beneficial use of the rights acquired pursuant to this Agreement, including by way of example only, and without limiting the generality of the foregoing, the design, Certificating, acquisition, construction, installation, operation, and maintenance of those facilities necessary for the storage and delivery of water, including any additional treatment, if necessary, to meet Buyer's requirements, and for the acquisition of all land and interests in land on which those facilities are located necessary for Buyer's beneficial use of the rights acquired pursuant to this Agreement in accordance with all local, state, and federal regulations, laws and ordinances and in accordance with this Agreement.

Section 6.5 Other Water Sources.

(a) Notwithstanding anything in this Agreement to the contrary, Buyer may develop supplemental supplies of water for use in addition to the water available pursuant to this Agreement; provided, however, that Buyer's exercise of the same shall never relieve Buyer of its obligation to pay SARA the First Year Price or Annual Price on a "take-or-pay basis" pursuant to this Agreement.

Article VII
"As Is" Quality, Quantity & Title

Section 7.1 Quality.

(a) Buyer acknowledges that the water available under this Agreement is sold "AS IS" and that SARA has made no representations or warranties, and in fact, expressly disclaims any and all representations and warranties, both express and implied, regarding the (i) quality of the water that will be diverted through Buyer's Meter(s) at the Diversion Point(s) pursuant to this Agreement, (ii) its merchantability, (iii) its fitness for Buyer's intended use(s), and/or (iv) whether Buyer will be required to perform or provide any additional level(s) of treatment prior to using the water for Buyer's intended purposes.

(b) Buyer agrees to indemnify and hold harmless SARA from any and all claims and liability arising due to any deficiency in the quality of water available pursuant to this Agreement to meet Buyer's needs, demands and/or purposes and uses.

Section 7.2 Quantity.

(a) Buyer acknowledges that SARA has no control over the availability of water. Buyer further acknowledges that SARA cannot, and will not, be responsible for insuring or otherwise guaranteeing the availability of water at Buyer's Diversion Point(s) to meet Buyer's desired delivery schedule and/or needs and uses. Accordingly, while SARA anticipates that water will be available in sufficient quantities on an annual basis to meet Buyer's needs pursuant to this Agreement, Buyer acknowledges that SARA has made no representation or warranty that water will be available at Buyer's Diversion Point(s) at the time Buyer desires the same, and SARA hereby expressly disclaims any and all representations and/or warranties, both express and implied, regarding the availability of water at Buyer's Diversion Point(s) in quantities needed and/or desired by Buyer at any given time. Furthermore, Buyer acknowledges that SARA has advised them to develop and maintain storage facilities adequate in Buyer's sole determination to facilitate Buyer's diversion and use of water when it is available pursuant to this Agreement.

(b) Buyer agrees to indemnify and hold harmless SARA from any and all claims and liability arising due to any insufficiency in the quantity of water available pursuant to this Agreement to meet Buyer's needs, demands and/or purposes and uses.

Section 7.3 Title.

(a) All title to the water available pursuant to this Agreement shall pass from SARA to Buyer upon Buyer's diversion of the water and transfer beyond Buyer's Meter(s).

(b) Nothing in this Agreement shall convey or transfer, nor shall it be construed as conveying or transferring to Buyer any of SARA's title to the water rights authorized for appropriation by the Certificate, or to the Certificate itself. SARA expressly retains title to the Certificate and all rights granted therein.

**Article VIII
Taxes, Fees and Assessments**

Section 8.1 Taxes, Fees and Assessments.

(a) Other than the fees and/or assessments that SARA is responsible to timely pay pursuant to Section 6.2(a) above, Buyer shall be responsible for the payment of any lawful assessment, tax or other fee or charge levied, or assessed against Buyer's right to use and/or use of the water subject to this Agreement during the term hereof. SARA agrees to provide Buyer with notice of any such assessments, taxes, fees or charges within twenty (20) business days of the date SARA receives notice of any such charges. Buyer's obligations extend to and include the obligation to pay all South Texas Water Master Fees associated with any portion of the Certificate subject to this Agreement.

(b) In the event that Buyer fails to pay any such lawfully imposed assessment, tax or other fee, SARA shall have the right, but not the obligation, to pay such assessment, tax or fee. Buyer shall be obligated to reimburse SARA within ten (10) business days of the date of receipt

of a written invoice for any such assessment, fee or tax paid by SARA pursuant to this Section 8.1.

(c) Buyer's failure to reimburse SARA for any such expenses within thirty (30) days of the date of receipt of the written invoice contemplated by Subsection (b) above from SARA shall constitute an Event of Default pursuant to Section 5.1 of this Agreement and give rise to SARA's various remedies available at law, or in equity, pursuant to Section 5.2 and other provisions of the Agreement.

Article IX **Assignment and Transfer**

Section 9.1 Assignability.

(a) Except as otherwise authorized by this Section 9.1, neither Party may sell, assign, transfer, or otherwise dispose of their interests or obligations in this Agreement to a third-party without the written approval of the other Party, which approval will not be unreasonably withheld or delayed.

(b) Subject to the requirements of Subsection (c) below, notwithstanding the provisions of Subsection (a) above, SARA shall be entitled to assign its obligations pursuant to this Agreement to any qualified governmental entity or political subdivision authorized to undertake the obligations of SARA set forth in this Agreement.

(c) No assignment of this Agreement shall be effective until the Non-Assigning Party receives a copy of the written assignment executed by the assignee, affirmatively and unequivocally assuming the obligation to fully, diligently, and timely perform all of the obligations of the Assigning Party.

(d) Assignment of this Agreement shall relieve the Assigning Party of its prospective obligations and/or liability pursuant to this Agreement; provided, however, that the Assigning Party shall remain liable for any and all obligations accruing prior to the Effective Date of the assignment.

Section 9.2 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Article X **Miscellaneous**

Section 10.1 Governing Law.

This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

Section 10.2 Venue.

The obligations and undertakings of each of the Parties to this Agreement shall be performed, or deemed to be performed, in Bexar County, Texas. Accordingly, the Parties agree that any lawsuit involving this Agreement, brought by either Party, shall be brought in Bexar County, Texas.

Section 10.3 Severability and Savings Clause.

In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal and/or otherwise unenforceable in any respect, such invalidity, illegality and/or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal and/or unenforceable provision had never been contained herein.

Section 10.4 Force Majeure.

If for any reason of Force Majeure, either SARA or Buyer shall be rendered unable, wholly or in part, to carry out their respective obligations under this Agreement, then if the Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. Notwithstanding the suspension of either Party's obligations to perform for the duration of the event of force majeure pursuant to this Section 10.4, Buyer shall not be relieved of its obligation to timely pay SARA for any and all water diverted by buyer for its use and sale based upon the Acre-foot Price.

Section 10.5 Agreement Modification.

This Agreement may be modified only by an instrument signed by the duly authorized representatives of each of the Parties.

Section 10.6 No-Third-Party Beneficiary.

The Parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties hereto and their assigns.

Section 10.7 Waiver.

No waiver by SARA of any breach or default by Buyer of any term, covenant, condition or liability hereunder, or the exercise by SARA of any right or privilege hereunder, shall be deemed or construed to be a waiver by SARA of subsequent breaches or defaults by Buyer of any kind, under any circumstances, or of the subsequent exercise by SARA of rights or privileges of any kind, under any circumstances.

Section 10.8 Captions and Headings.

The captions and headings appearing in this Agreement are for convenience only and inserted merely to facilitate reference and shall not affect, enlarge or limit the scope, meaning or interpretation of any of the provisions of this Agreement.

Section 10.9 Gender/Words in the Singular.

Unless the context clearly requires otherwise, (i) words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa and (ii) words in the singular number shall be held to include the plural.

Section 10.10 Notices.

(a) All notices, payments and communication (“Notices”) required or allowed by this Agreement shall be in writing and be given by depositing the Notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the Party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) calendar days after the Notice is deposited in the mail. For purposes of this Section 10.10, the addresses of and the designated representative for receipt of Notice for each of the Parties shall be as follows:

To Buyer:

TX Water Resources, LLC
1000 Central Parkway N., Ste. 270
San Antonio, Texas 78232
Attn: Justin Duke
Tel: (210) 491-1824
Fax: (210) 402-1281

To SARA:

San Antonio River Authority
Attention: General Manager
P.O. Box 839980
100 East Guenther Street
San Antonio, Texas 78283-9980
Tel: (210) 227-1373
Fax: (210) 227-4323

(b) Either Party may change its address by giving written notice of the change to the other Party at least fourteen (14) calendar days before the change becomes effective.

Section 10.11 Sole Agreement.

(a) This Agreement, including the Exhibits hereto, constitutes the sole and only agreement between SARA and Buyer related to the Buyer’s right to use up to three hundred thirty-three (333) acre-feet per annum of the water rights authorized by this Agreement.

(b) The Parties stipulate and agree that this Agreement supersedes any and all prior understandings, and/or oral or written agreement(s), between Buyer and SARA respecting any and all aspects of the subject matter of this Agreement.

(c) This Agreement cannot be altered or varied by any contemporaneous or subsequent oral agreement, stipulation, representation, or understanding.

Section 10.12 Counterparts & Duplicate Originals.

(a) This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) SARA and Buyer, acting under authority of their respective governing bodies, have authorized the execution of this Agreement in multiple counterparts, each of which shall constitute an original.

Section 10.13 Sovereign Immunity.

Unless expressly provided otherwise in this Agreement, nothing in this Agreement is intended to constitute, nor shall it be construed as constituting, a waiver of SARA's sovereign immunity.

Section 10.14 Indemnification.

To the greatest extent allowed by law, Buyer shall defend, indemnify, and hold harmless SARA, and its officers, directors, agents, representatives, employees, attorneys, affiliates, beneficiaries, subsidiaries, successors, and assigns from and against any and all liabilities and obligations arising from any and all claims arising from Buyer's exercise of the rights and privileges and/or performance of Buyer's obligations pursuant to this Agreement, except where such liabilities and obligations are caused by the intentional acts or omissions of SARA, or its officers, directors, agents, representatives, employees, attorneys, affiliates, beneficiaries, subsidiaries, successors, or assigns.

Section 10.15 Attorneys' Fees.

If any amount due and owing by Buyer is placed with an attorney for collection by SARA, then Buyer shall pay SARA, in addition to all other payments provided for by this Agreement, including interest, SARA's collection expenses and any related court costs and reasonable attorney's fees.

Section 10.16 Further Assurances.

Each of the Parties shall take all further actions and shall execute and deliver to the other Party any other document or instrument which is determined to be necessary or useful to fully carry out the transactions evidenced by this Agreement.

Section 10.17 Certificate.

This Agreement is subject to the terms and conditions of SARA's rights under its Certificate, as the same may be amended from time-to-time, and to such laws, rules and regulations as may be applicable to similar agreements in the State of Texas.

Section 10.18 Cooperation.

SARA and Buyer will cooperate with each other to obtain any amendments, permits, approvals or other authorizations as may be required to implement this Agreement; provided,

however, that SARA's cooperation shall not be at any out-of-pocket expense to SARA.

Section 10.19 Amendments.

This Agreement may be amended from time-to-time by the Parties through the execution of such written amendment(s) as the Parties shall mutually deem agreeable and reasonable.

Section 10.20 Timing.

In the event that a deadline or the date of performance under this Agreement falls on a Saturday, Sunday, legal holiday or a date on which U.S. Banks are closed, such deadline or date of performance shall be extended to the next day that is not a Saturday, Sunday, Legal Holiday, or a date on which U.S. Banks are closed.

Section 10.21 Exhibits.

The Parties agree that the only "Exhibits" to this Agreement are as follows:

A — Certificate of Adjudication No. 19-2198

B — USGS Topo Map depicting the San Antonio River Reach of Buyer's Point of Diversion

IN WITNESS WHEREOF, the Parties below have executed this Agreement in duplicate originals on the dates shown below to be effective as of the Effective Date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SAN ANTONIO RIVER AUTHORITY

TX WATER RESOURCES, LLC

By: _____
Suzanne B. Scott, General Manager

By: Select Energy Services, LLC, as its
Managing Member

By: _____
Name: Patrick Love
Title: Vice President

Date: _____, 2011

Date: _____, 2011

ATTEST:

BY: _____

Secretary, San Antonio River Authority

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE me on this ____ day of _____, 2011, personally appeared Patrick Love, acting in his capacity as Vice President of Select Energy Services, LLC, the Managing Member of TX Water Resources, LLC, who proved to me to be the person whose name is subscribed to the foregoing instrument and, who being by me first duly sworn executed the same in his capacity as Vice President of Select Energy Services, LLC for the purposes and consideration therein expressed.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE me on this ___ day of _____, 2011, personally appeared SUZANNE B. SCOTT, General Manager of the SAN ANTONIO RIVER AUTHORITY, a conservation and reclamation district and political subdivision of the State of Texas, who proved to me to be the person whose name is subscribed to the foregoing instrument and, who being by me first duly sworn executed the same in her capacity as General Manager of the River Authority for the purposes and consideration therein expressed.

Notary Public, State of Texas

EXHIBIT "A"

Certificate of Adjudication No. 19-2198

EXHIBIT "B"

Topographic Map depicting the San Antonio River Reach of Buyer's Point of Diversion

Executive Committee

Individual Items 14. - 16.

Date: 04/13/2011

GM's Report / Items for Future Consideration / Next Meeting Date

Submitted For: Suzanne B. Scott

Submitted By: Lupe Sanchez

Division: Executive Offices

14.

CAPTION

GENERAL MANAGER'S REPORT CONCERNING THE FOLLOWING:

- **UPCOMING EVENTS CALENDAR,**
- **FUTURE BOARD AND/OR COMMITTEE MEETINGS, AND**
- **MEETINGS INVOLVING THE ATTENDANCE OF ONE OR MORE BOARD MEMBERS**

Presenter

Suzanne B. Scott

Estimated Presentation Time: 10 minutes

Discussion

15.

CAPTION

ITEMS FOR FUTURE CONSIDERATION

Presenter

Mr. Oehlke, Committee Chair

Estimated Presentation Time: 5 minutes

Discussion

16.

CAPTION

NEXT MEETING DATE

Presenter

Mr. Oehlke, Committee Chair

Estimated Presentation Time: 5 minutes

Unless otherwise decided by the Committee, the next Executive Committee meeting will be Wednesday, June 8, 2011, at 1:00 p.m.

Discussion

Executive Committee

Item #: 17.

Date: 05/11/2011

Adjourn

Submitted By: Lupe Sanchez

Division: Executive Offices

CAPTION

ADJOURN

Presenter

Mr. Oehlke, Committee Chairman
