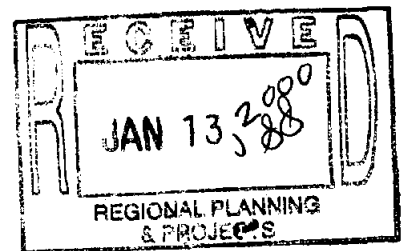


Texas Water Development Board

Water and Wastewater Service Options for Economically Distressed Areas (EDAs) in the Following EDAP Eligible Counties:

Bee, Duval, Newton, Sabine, Uvalde and Val Verde



**December 29, 1999
Final Report**

Prepared By:



Navigant™
CONSULTING, INC.

Booth, Ahrens & Werkenthin, P.C.



December 29, 1999

Mr. Ignacio Madera
Director - Border Project Management Division
Texas Water Development Board
1700 North Congress Avenue
P.O. Box 13231
Austin, TX 78711-3231

Dear Mr. Madera:

Navigant Consulting, Inc. (formerly Reed-Stowe & Co., Inc.) and Booth, Ahrens & Werkenthin, P.C. are pleased to present the final report regarding **Water And Wastewater Service Options for Economically Distressed Areas (EDAs) in the Following EDAP Eligible Counties: Bee, Duval, Newton, Sabine, Uvalde and Val Verde.**

We express our appreciation for the opportunity to perform this engagement and would like to acknowledge the valuable input and cooperation of TWDB management and staff during the development of this report.

Upon your review, if you have any questions or comments please contact either Dave Yanke or Gerald Bodle of Navigant at 450-0991.

Sincerely,

A handwritten signature in cursive script that reads "Navigant Consulting, Inc." is written over the typed name.

Navigant Consulting, Inc.

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Acronyms List

CCN	Certificate of Convenience and Necessity
CPLP	Colonia Plumbing Loan Program
CTAP	Colonia Treatment Assistance Program
EDA	Economically Distressed Area
EDAP	Economically Distressed Area Program
ETJ	Extraterritorial Jurisdiction
GIS	Geographical Information System
IOU	Investor Owned Utility
MUD	Municipal Utility District
NCI	Navigant Consulting, Inc.
RWPG	Regional Water Planning Group
SUD	Special Utility District
TNRCC	Texas Natural Resource Conservation Commission
TWDB	Texas Water Development Board
WCID	Water Control and Improvement District
WCRD	Water Conservation Reclamation District
WSC	Water Supply Corporation

Section I

I. Executive Summary

Background

Approximately 392,000 people live in Economically Distressed Areas (EDAs) in Texas. However, eight years after the state began a \$479 million program to provide water and wastewater services to the residents of EDAs, only 13%, about 50,000 people, are now receiving water and wastewater service. Reasons for the delays included the need to coordinate activities between various state and federal agencies, disputes between water and wastewater service providers over who should provide service in certain service areas, and the required complexity of overseeing projects covering a large geographical area. While many of the impediments just mentioned have been either eliminated or minimized, the Texas Water Development Board (TWDB) still faces the formidable task of connecting EDA residents expeditiously to water and/or wastewater service.

Purpose

The purpose of this study was to develop a series of options that could be used to assist in providing water and/or wastewater service to rural areas within 44 counties currently eligible for Economically Distressed Area Program (EDAP) funding. The six EDAP eligible counties studied within this report are: Bee, Duval, Newton, Sabine, Uvalde and Val Verde.

Scope of Work Summary

The project team completed a series of detailed tasks in order to develop the service option results, findings and recommendations as stated within this report. Tasks completed include but have not been limited to:

- a review of facility planning studies for the six EDAP eligible counties;
- a review of the "Colonia Needs Survey" (database and updates);
- interviews at state, regional and local levels;

- identification of EDAs within the six counties that lack water and wastewater service providers;
- meetings with TWDB staff on a regular basis to discuss status and findings;
- identification of key issues which must be addressed in order to promote approval from local officials;
- identification of types of utilities or “created” authorities that could be service options for the EDAs;
- research logistics of “creating” a regional authority;
- development of a detailed listing of the requirements associated with the creation of each type of service provider identified; and,
- research and identification of potential statutory amendments to promote regionalization.

Potential EDAs Within the Six Counties

A comprehensive listing of potential Economically Distressed Areas for the six counties has been developed from various collected data and interview sources as detailed within Section III of the report. The list of identified potential EDAs studied within this report has been provided as Appendix A Schedule 1. The project team would stress that it makes no claim as to each EDA’s qualification for financial assistance for these areas, rather we have used the best resources available to produce options for potential EDAs within qualifying counties. Although the majority of the areas toured contained destitute living arrangements, the project team witnessed areas that probably will not qualify or may be populated by a mix of both qualifying and non-qualifying residents.

Regionalization

In response to the Safe Drinking Water Act and the passage of Senate Bill 1 in the 75th Texas Legislative Session, the Texas Natural Resource Conservation Commission (TNRCC) has developed draft rules which address regionalization. Regionalization of water and wastewater utility systems is encouraged by the TNRCC in order to protect the health, safety and welfare of the citizens of Texas. The project team found that a large number of the EDAs could be potentially served by neighboring cities or water supply corporations, thereby promoting the

concept of regionalization. There were also several EDAs identified that should be considered as potential candidates, subject to a cost benefit analysis, for the creation of a regional utility authority to provide water and/or wastewater service. In some cases, it may make sense to consider the county as the best option with regard to the development of a “regional” service provider.

Service Option Methodology

In order to identify options for the EDAs listed per Appendix A Schedule 1, the project team has developed a methodology in which each area could be evaluated independently to determine viable service options.¹ This methodology has been transcribed into flow chart form and is attached as Appendix A Schedule 2. The flowchart is a tool that has been developed to assist in identifying service options for all EDAs in the State of Texas. The flow chart was used to determine service options for the EDAs examined in this study.

Summary of Service Options/Results

As mentioned in the preceding paragraph, a methodology was developed to assist in prioritizing the service options available to the EDAs identified in the six counties of Bee, Duval, Newton, Sabine, Uvalde and Val Verde. Schedules 3 and 4 in Appendix A provide a listing of the EDAs and the proposed service options which the TWDB may wish to consider in providing water and/or wastewater service to these areas.

Findings/Recommendations

The primary purpose for this study was to identify ways in which water and wastewater service could be provided to Economically Distressed Areas within the 44 EDAP eligible counties, as

¹ Service options for EDAP eligible areas are ready to be implemented pending the outcome a cost benefit analysis of each respective option as well as further review for EDA qualification.

cost effectively as possible. During the course of this study the project team developed a methodology for identifying water and wastewater service options for EDAs, and then prioritizing these options. As a result of this analysis the project team has developed a series of recommendations that will hopefully assist the TWDB in managing the Economically Distressed Areas Program. The recommendations listed in Section VII of this report are as follows:

1. Adopt the methodology described in Section V of this report to identify and prioritize EDAs;
2. Inventory all EDAs in the 44 EDAP eligible counties;
3. Determine the eligibility of all EDAs to receive EDAP funds;
4. Use the methodology described in Section V to take a “first-cut” at identifying and prioritizing all service options for all EDAs;
5. Conduct a cost benefit analysis to determine the most cost effective service option (service provided by the county, city, water supply corporation, a newly created regional utility, etc.).
6. Conduct a pilot study to assist in creating a regional utility. Summarize the findings in a case study to be distributed to county governments interested in creating a regional utility.
7. Monitor the progress made with regard to providing water and wastewater service to all EDAs in the State of Texas.

Section II

II. Defining an Economically Distressed Area and Funding Eligibility

Since the maquiladora² program in 1962, areas known as “colonias” have become abundant along the Texas-Mexico border. Currently the only statutory definition of “colonia” is a geographic area in an “affected county” that has some portion located within 150 miles of the Texas-Mexico border and meets the following criteria:

- a majority of the population is classified as low income and very low-income as determined by the Federal Office of Management and Budget;
- it qualifies as an economically distressed area³; and
- it has the “physical and economic characteristics of a colonia” as determined by the Texas Water Development Board.⁴

To qualify for state and/or federal monies, these “colonias” must be within “affected” or EDAP eligible counties. “Affected counties” are determined by using a series of quantitative hurdles as stated within Water Code 16.341. For an entire county to qualify as affected, the county must:

- have an average per capita income at least 25% below the state average for the last three years;
- have an average unemployment rate at least 25% above the state average for the last three years; and
- meet other statutory criteria; or
- be a county adjacent to an international border.

The word “colonia”, which means “neighborhood” in Spanish, has been used by Texans to generally describe low-income communities in unincorporated subdivisions that lack paved roads and basic utility services. Although, a large percentage of these areas are dominated by a

² established by the Mexican government to bring manufacturing jobs to Mexico’s northern frontier.

³ Water Code Sec. 15.001(11) defines an economically distressed area as “an area in which water supply or sewer services are inadequate to meet minimal needs of residential users as defined by (TWDB) rules and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs. To qualify the area must also have been an established residential subdivision on June 1, 1989, as determined by the TWDB.”

⁴ Government Code, sec 2306.581(1)

Hispanic population, various folks proud of their diverse origins populate these areas within EDAP eligible counties across the state. In addition, the program continues to grow and more counties continue to be added as “EDAP eligible” in central and northern regions of Texas. For the purposes of this report and the evolution of the EDAP program, herein we will refer to all of these “colonias” simply as Economically Distressed Areas (EDAs).

Once an area is defined as EDAP eligible or an EDA, many sources of funds are made available for water and wastewater service improvements. The major programs, all administered by the TWDB, providing sources of funds addressed in this report are the Economically Distressed Areas Program (EDAP), Colonia Treatment Assistance Program (CTAP) and the Colonia Plumbing Loan Program (CPLP). Since 1989 the EDAP has received nearly \$600 million in state and federal funds to assist only with the installation of water and wastewater systems. CTAP funds, which are 100% federal, may only be used for EDAs within 63 miles of the Texas-Mexico border. \$300 million in CTAP funds have been allocated to EDAP projects since 1993. Historically, CTAP funds only assisted with wastewater systems, but starting in fiscal year 2000, the funds may be used for installation of both water and wastewater systems as well as to hook up individual homes. For the six counties studied, only select areas within Duval, Uvalde and Val Verde counties would qualify for CTAP funds. Finally the CPLP is a program that was funded by a one time \$15 million appropriation from the U.S. EPA. These monies are loaned strictly for water and wastewater hook ups and home plumbing.

Section III

III. Identifying Potential Economically Distressed Areas

Developing a complete list of potential EDAs for each county was a very time intensive process. The project team developed a process in which a list would be compiled of potential EDAs to be studied for recommended service options. Regardless of EDAP qualification, we have provided service options for all areas that were products of this process. Further evaluation of these counties to identify additional potential areas as well as further verification of the potential EDAs listed in this report is recommended. The process used to identify potential EDAP eligible areas within the 6 counties in this report is five-fold, and is listed below.

- Data Collection
- Interviews
- Evaluation by TWDB
- Evaluation by County Tax Appraisal District
- Field Work

First, all relevant documentation was collected for the six counties. Documents collected include but were not limited to: facility studies, needs surveys (report and database), newspaper articles, internet research, maps, etc. The research provided documented impoverished areas that have been or have the potential to be recognized as EDAP eligible.

Second, interviews were conducted with state, regional and local officials⁵. The folks at the state level were contacted primarily to obtain additional contacts at the regional and local levels as well as to address high level qualifying issues. Regional and local officials helped address regional water supply issues and wastewater needs as well as identify the history and location of the potential EDAs.

⁵ Many interviews were conducted throughout the course of this study. Major accredited contacts are included per Appendix D Workpaper 3.

At this point, many different data sources were producing many of the same EDA candidates; however, several still remained exclusive to a specific data source. For example, the Facility Engineering Plan submitted by The Hogan Corporation dated February 1998 identifies the following EDAs within Newton County: Alpine Fly-In, Bronson, El Camino Bay, Indian Mounds, Lakeview, Low's Creek, Mid Lake Village, Playcation, Rice, River Bend, Shamrock Shores, Six Mile, Timberlane, Timberlane Estates, Toledo Hills, Toledo Village II and Woodland Estates. While the needs survey database reflects only: Bronson, Brookeland, Delta Heights, Highway 96 and Toledo Bend.

In an attempt to unify the lists pulled from collected data, the project team submitted all the sourced lists to two discriminating venues for additional review. The first venue was the TWDB, where project engineers evaluated the lists for qualifying areas. After the list was edited and returned by TWDB engineers, the list was forwarded with an attached cover letter to the respective county tax appraisal district⁶.

Finally, all counties were toured by the project team to further assess the area's needs, location and to obtain other local knowledge. During the conduct of the fieldwork, the project team discovered that a number of these EDAs were already receiving water and/or wastewater service. In other cases, it was believed that particular EDAs were receiving utility services from a regional service provider, but it was unclear as to the number of customers served within an EDA. Therefore, the project team would recommend that for each EDA listed (Appendix A – Schedule 1) in this report, the TWDB determine the extent to which water and wastewater service is currently being provided within the EDA. As mentioned previously in the Executive Summary,

⁶ Example letter provided per Appendix D Workpaper 5

the listing of EDAs for these six counties was gathered from numerous documents, as well as interviews with individuals considered the most knowledgeable with regard to EDAs in the counties being studied by the project team. However, given that the primary purpose for this study was to identify options available for providing regional water and wastewater service within EDAP eligible counties, and not to conduct an exhaustive inventory of EDAs within the six counties, the TWDB may wish to conduct further EDA inventory analysis within these six counties.

As a result of our field study, the project team has provided a brief summary of the descriptive “high points” associated with each county below.

Bee County (refer to Appendix B – Map 1)

Eight potential EDAs have been identified within Bee County. They are as follows:

- **Beeville (Adjacent Areas)**
- **Normana**
- **Pawnee**
- **Pettus**
- **Skidmore**
- **Tuleta**
- **Tulsita**
- **Tynan**

Half of the identified potential EDAs (**Tulsita, Pettus, Tuleta and Normana**) within Bee County are located north of Beeville along a ten mile stretch of Highway 181. These four areas constitute a population of approximately 1,500 people who appear to live in very low income environments. The homes in these areas are all mobile type homes or small low quality dwellings built with local materials. **Pawnee** lies somewhat isolated in the extreme northeast corner of Bee County and appears to have more of a complete community atmosphere that has experienced some growth in recent years. A relatively large school is located in the heart of an area containing approximately 500 to 800 people. The majority of housing is low income two bedroom homes in

the \$20K to \$30K range on ¼ acre tracts. **Tynan** is located on the extreme southeast side of Bee County. According to local officials, a new treatment facility has just come “on line” and the area no longer has service needs. **Skidmore** lies isolated at the southern side of the county with modest living arrangements very much like Tulsita, Pettus, Tuleta and Normana. Areas located by the project team as potential EDAs adjacent to **Beeville** include: Harrison Heights, Murray’s Mobile Home Park, and Blueberry Hill. All three subdivisions are essentially connected along highway 59 on the west side of the City.

Duval County (refer to Appendix B – Map 2)

Seventeen EDAs have been identified within Duval County. They are as follows:

- Benavides
- Cadena
- Concepcion
- Coronado Perez Addition
- County Road 111
- East Pearson Street
- Four A’s Subdivision
- George W Ward Addition
- Highway 16 South
- La Masa Road
- Magnolia Road
- Maria Olga
- Mi Tierra Roud
- Realitos
- School Heights Addition
- Solis Subdivision
- Williamson Addition

The majority of the potential EDAs lie within or at the outskirts of the only three cities (Freer, San Diego and Benavides) within Duval County. Each City has a very low population and appears to be very low income or distressed with the exception of the recreational hunting lodges located within each community. The City of Freer contains seven (**Highway 16 South, Magnolia Road, Williamson Addition, East Pearson Street, Coronado Perez Addition and George Ward Addition**) of the seventeen potential EDAs. Five potential EDAs (**Cadena La**

Masa Road, Solis Subdivision, County Road 111 and Mi Tierra Road) are located within or in close proximity to San Diego. The entire area of **Benevides** is recognized as a potential EDA as well as **Maria Olga** subdivision that lies adjacent to Benavides. The three remaining potential EDA's (**Four A's subdivision, Realitos and Conception**) exist in more isolated very distressed areas within the county. Four A's, Realitos and Conception have populations of approximately 100, 450, and 250 people, respectively, with lots ranging from ¼ to ¾ acres.

Newton County (refer to Appendix B – Map 3)

Eleven EDAs have been identified within Newton County. They are as follows:

- Bleakwood
- Bon Weir
- Deweyville
- Old Salem
- Toledo Village
- Trout Creek
- Indian Lake
- River Oaks
- Kirkendall
- Sunset Acres
- River Road

Newton County, located in East Texas, has a different geographic makeup than the Texas-Mexico border communities as previously discussed. Fresh water and pine trees are abundant across the County. **Toledo Village**, on the extreme North west side of the County, has it's own private water management company serving the community of approximately 1,500 people. The dwellings in this area appear to serve more of a recreational population. Toledo Village has a very well kept environment with small but custom built homes in the \$40,000 to \$100,000 range. Based on a "windshield" survey the community may not qualify for EDAP funding. Six of the eleven potential EDA's (**Sunset Acres, River Road, Kirkendall, Deweyville, Indian Lake and River Oaks**) are all within close proximity and lie within South Newton WSC's service area.

Old Salem was a subdivision that appeared to have extremely meager surroundings. Lack of wastewater in this community would appear to promote potential health issues.

Sabine County (refer to Appendix B – Map 4)

Six EDAs have been identified within Sabine County. They are as follows:

- **Bronson**
- **Brookeland**
- **Delta Heights**
- **Highway 96**
- **Toledo Bend**
- **Indian Mounds**

Sabine County has many water supply options with surface water surrounding most of the county, much like Duval. Possible EDAs within Sabine County also share similar East Texas characteristics. **Toledo Bend** basically represents several thousand homes with the majority located in six to eight concentrated areas along the Toledo Bend Reservoir. These areas were difficult to survey because of the wide range of dwellings. Homes in these areas range from destitute to luxurious. The residents of these areas appear to contain a mix of qualifying and non-qualifying individuals. The project team would recommend strict individual analysis prior to allocating funds to this area. **Indian Mounds** is a very low, very sparsely populated area within the Sabine National Forrest recreation area. Many of these homes are hidden from view but appear to be vacation type dwellings. **Highway 96** basically includes one hundred or so homes in clusters of three or four scattered for tens of miles in the southeastern portion of the county.

Uvalde County (refer to Appendix B – Map 5)

Nine EDAs have been identified within Uvalde County. They are as follows:

- **Brice Lane**
- **Fort Clark Road**
- **Gonzales**
- **Knippa**

- **North Uvalde**
- **South Grove St.**
- **Utopia**
- **Uvalde Estates**
- **Vanessa Street**

Uvalde County's population is concentrated in and around the City of Uvalde. Seven of the nine potential EDA's are located in or within close proximity to the City of Uvalde. These areas are **Gonzales, Uvalde Estates, North Uvalde, Vanessa Street, Brice Lane, South Grove Street and Fort Clark Road**. Utopia and Knippa have concentrated populations of approximately 600 in each isolated area northeast of the City of Uvalde. All of these areas appear to be qualifying areas with varying levels of service needs.

Val Verde County (refer to Appendix B – Map 6)

Thirteen EDAs have been identified within Val Verde County. They are as follows:

- **Amistad Acres**
- **Box Canyon Estates**
- **Cienegas Terrace**
- **Comstock**
- **Lake Ridge Estates (includes Lake View Addition)**
- **Langtry**
- **Los Campos**
- **Owens**
- **Payment**
- **Rio Bravo**
- **Rough Canyon**
- **Val Verde Park**
- **Pain Village**

Seven of the EDAs (**Cienegas Terrace, Los Campos, Val Verde Park Estates, Rio Bravo, Owens, Payment, Pain Village**) are located either in, or near the City of Del Rio. The remaining six are located in other sections of Val Verde County. Two of the thirteen possible EDAs were identified as the communities of **Comstock and Langtry**. In addition to reviewing the Facility Plan for Val Verde County and the TWDB Needs Survey, the project team met with staff from

the Val Verde County Tax Appraisal District office, as well as physically toured each of the thirteen potential EDAs. During the conduct of the “windshield survey” of the county, it was noted that a number of the possible EDA sites would most likely not meet the TWDB’s criteria with regard to being considered for EDAP funding. Given Val Verde County’s proximity to the Amistad Reservoir, on the Rio Grande River, a number of communities have developed that consist primarily of residences that appear to be occupied by either retirees or individuals that use the homes for weekend fishing and hunting trips. While many of the homes are extremely modest in physical appearance, these sites would most likely not qualify as EDAs. These sites would possibly include the following locations:

- Amistad Acres
- Box Canyon Estates
- Lake Ridge Estates (in some source documents it is referred to as Lake View Estates)
- Rough Canyon

Section IV

IV. Regionalization

A. Benefits, Challenges and Opportunities

This section of the report will provide an overview with regard to the trends toward regionalization of water and wastewater utility services. In addition, it will describe the benefits, as well as the challenges associated with moving toward regional water and wastewater service providers. This section will also describe the opportunities with regard to regionalization of utility services in the six counties reviewed by the project team. Finally, this section will mention some approaches which may be used to obtain political support and buy-in for regionalization.

1. Regionalization Defined

Regionalization is a term which is being increasingly heard in the water and wastewater industry. In response to the Safe Drinking Water Act and the passage of Senate Bill 1 in the 75th Texas Legislative Session, the Texas Natural Resource Conservation Commission has developed draft rules which address regionalization.⁷ The TNRCC's definition of regionalization is based upon current industry terminology as well as the TNRCC's experience in dealing with the issue. The Texas Natural Resource Conservation Commission defines regionalization as follows:

Regionalization is the consolidation of operations and/or physical systems of two or more existing or proposed water or domestic wastewater systems to achieve the best service at rates, which will ensure that the system is maintained for the long-term. Regionalization can take the following different forms depending on the individual circumstances:

- One owner and one large system serving several different communities or subdivisions;
- One owner and several isolated systems each providing service to one or more communities or subdivisions;
- Several owners, each with individual systems operated through a centrally coordinated operating system;
- Existence of permanent emergency interconnections.⁸

⁷ See Appendix E, Legal Document 2 for a copy of the draft rules.

⁸ The Feasibility of Regionalization Water Utilities Program, TNRCC, Final Draft, August 3, 1999.

2. Trend Toward Regionalization

As mentioned in the previous section, the increased requirements associated with complying with the Safe Drinking Water Act and the passage of Senate Bill 1 resulted in an increased focus on the regionalization of water and wastewater services in Texas. An increase in the acquisition and consolidation of water and wastewater utilities is borne out by the fact that AquaSource Inc., a subsidiary of DQE Inc., a Pittsburgh electric utility, has signed agreements to either buy or operate over 50 water systems in Texas during the past two years.⁹ Other companies that are actively pursuing water providers include Philip Utilities Management Corp., a unit of Hamilton, Ontario based Philip Services Corp.; and Tecon Corp., a real estate development company based in Dallas. In general, the consolidation of the utilities is encouraged by state agencies, assuming that the acquiring companies are financially solvent and have the expertise to operate the water and/or wastewater utilities. As quoted by the former chairman of the TNRCC, Barry McBee:

“On balance, this trend, even though it concerns some Texans, is a positive step... I’m confident there is (enough) oversight to make sure there are not abuses.”¹⁰

3. Benefits Associated with Regionalization

At present there are over 7,000 water systems in the State of Texas, ranging from small privately owned utilities to large publicly owned systems such as the City of Houston. In recent years a number of smaller systems have had difficulty in covering the costs associated with new environmental regulations, as well as funding system expansion. During the first ten months of 1998 three utilities went into bankruptcy, while another ten were in receivership as of October 1998. By consolidating some of these utilities certain economies of scale can be realized with regard to billing functions, managerial duties,

⁹ “Liquid Gold – Consolidation Sweeps Texas’ Small-Town Water Utilities,” Texas Town & City, October 1998, p. 20.

¹⁰ Ibid.

line repair crews, etc. Regionalization of water and wastewater utility systems is encouraged by the TNRCC in order to protect the health, safety and welfare of the citizens of Texas. The ultimate goal of regionalization, as identified by the TNRCC, is to provide timely and cost effective solutions for achieving a quality service.

4. Challenges Associated with Regionalization

There are a number of challenges with regard to the regionalization of utility services. The major challenges are typically associated with overcoming existing ratepayer concerns and the resistance from some people in moving from their individual systems to a regional system.

Probably the biggest concern from the ratepayer's view is the fear that rates will increase if the water and/or wastewater utility is privatized. For instance, AquaSource has encountered a great deal of local resistance and suspicion that rates will be increased and the quality of service will decrease. To the extent that regionalization of utility services is undertaken by a non-profit entity (county, city, water supply corporation, etc.) it is possible that this fear may be relieved.

Resistance may also be encountered if it is proposed that citizens be required to cease using their individual septic systems and hook-up to a regional wastewater collection facility. While the project team interviewed people that wanted to hook-up to a regional wastewater system, the project team also found communities where individuals liked the independence of having their own well and septic system and did not want to relinquish operation of the system, and hook-up to a regional system.

The project team also found communities, during the course of the site tours, where the community had no desire to consolidate their community's utility system with another utility system, even when it made sound, economic sense.¹¹

5. Regionalization Opportunities in the Six Counties

The definition of regionalization, as mentioned earlier in this section of the report, refers to the consolidation of two or more **existing or proposed systems**. Ultimately, the goal of the Economically Distressed Areas Program is to get as many EDAs in EDAP eligible counties connected to a regional system as possible. This would include serving EDAs with existing city systems, water supply corporations, investor owned utilities, etc. Service to EDAs could also be provided by newly created regional water and/or wastewater utilities. Counties should be strongly considered as a viable service provider option when discussing the creation of a regional utility. Only where it is cost prohibitive to regionalize services would the TNRCC and TWDB encourage the use of individual wells and septic systems.

Schedules 3 and 4 in Appendix A identify the options, prioritized by the project team, for all potential EDAs identified during the course of this study. A large number of EDAs can be potentially served by neighboring cities, and to a lesser extent water supply corporations. For purposes of this section, the project team has listed below those EDAs, by county, which could potentially be best served by a newly created regional utility. Again, it is important to remember that a "newly created regional utility" may consist of the county entering the utility service business. Listed below are the EDAs that should be further evaluated from a cost benefit analysis perspective to determine whether a regional utility would be less expensive to operate, on a per connection basis, than if the EDAs

¹¹ A project team member interviewed individuals from two communities that operated two separate water

were served with individual septic systems and/or individual wells. All EDAs listed below are potential candidates for receipt of water and wastewater service by a newly created regional utility. In some cases it may make sense for the county to provide water and wastewater service to all EDA's identified within the county.

Bee County

Normana
Pettus
Skidmore
Tuleta
Tulsita

Duval County

Concepcion
Realitos

Newton County

Bleakwood
Old Salem

Sabine County

None

Uvalde County

None

Val Verde County

Amistad Acres
Box Canyon Estates

As mentioned earlier, these are potential EDAs and would need to be further evaluated to ensure that they are eligible for EDAP funding prior to conducting a cost benefit analysis to determine the most cost effective manner in which to provide water and wastewater service.

6. Obtaining Buy-In/Approval Toward Regionalization

In order to obtain the necessary "buy-in" and "approval" from a region that is considering some type of regionalization it is important that the promoters of regionalization (whether it be a

systems that were across the road from each other, but yet both groups of people did not want the systems consolidated.

governmental entity or an investor owned utility), successfully accomplish several key tasks.

They are as follows:

- educate the public;
- sell the positive aspects associated with regionalization;
- obtain support from key officials/individuals in the region.

It is critical that the entity attempting to promote regionalization of water and/or wastewater utility services be sure to keep the general public informed with regard to the plan for regionalization. Information should be provided through mailers, as well as public meetings. These types of activities are essential in “getting the word out” with regard to regionalization and why it is a benefit for the local community. If a promoter of regionalization fails to educate the public, the public may feel that they are not being kept informed and may turn into vocal opponents of regionalization.

It is important that the entity promoting regionalization explain the positive aspects with regard to regionalization. Positive aspects associated with regionalization may include the following:

- lower utility rates;
- safer, cleaner and more reliable service;
- service to more individuals that currently do not have service, or have service of a “lower” quality; and,
- creation of a more financially stable water and wastewater utility.

Each regional system has certain attributes, which makes it unique from other utility systems. Therefore, the promoters of the regional utility needs to determine what the specific positive aspects are for their regional utility. Most likely, the positive attributes will include most, if not all of the items listed above.

Another way in which to gather political support for the regional utility is to obtain the support of a well-respected political official(s) within the community. However, it does not necessarily need to be an elected official, it may be an individual, or organization that is well respected within the region. For instance, if Valley Interfaith were to support a regionalization project anywhere along the Texas/Mexico border, their endorsement of the project would be very beneficial in moving the project forward.¹²

¹² Valley Interfaith is very active along the Texas/Mexico border in promoting the development of water and wastewater services for those individuals living in economically distressed areas.

B. Legal Issues

1. Types of Water and Wastewater Service Providers

Water and wastewater service are provided primarily by cities, counties, limited-purpose districts, nonprofit corporations, and investor-owned utilities. The basic characteristics of these entities are described below, with no presumption made that any particular entity is more appropriate to serve as a regional provider. The reader also is advised that the laws and rules cited in this report are subject to change.

a. Service by Cities

A city may purchase, construct, or operate a water or sewer service utility inside or outside its municipal boundaries and may regulate the system in a manner that protects the interests of the municipality. In addition to this statutory authority in the Local Government Code,¹³ a home-rule city's municipal charter may address provision of utility services. When a city does supply service beyond municipal boundaries, it must be with uniformity and without discrimination.¹⁴

b. Service by Counties

Local Government Code § 412.014 gives counties the authority to obtain, transport, and deliver surface water supplies and to contract with another political subdivision for management, operation, and beneficial use of the water. For many years, however, counties were hindered in their ability to provide retail water and sewer service. An exception was created in 1995 for "affected counties," which then could own, operate, and maintain water and sewer utilities in the same manner as a municipality.¹⁵ Senate Bill 821, in the 1999 legislative session, extended the

¹³ References in this report to the Local Government Code are to Tex. LOC. GOV'T CODE ANN. (Vernon 1999).

¹⁴ See, e.g., Local Government Code § 402.001; *Wiggins v. City of Texarkana*, 239 S.W.2d 212 (Tex. Civ. App.—Texarkana 1951), *aff'd*, 246 S.W.2d 622 (Tex. 1952).

¹⁵ Local Government Code § 412.015. An affected county is defined as a county that has a per capita income that averaged 25 percent below the state average for the most recent three years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; or that is adjacent to an international border. Water Code § 16.341.

authority to all counties provided that service was not within the corporate limits of a city. The Bill also authorized a funding mechanism.

Any county now may acquire, own, operate, or contract for the operation of a water or sewer utility system to serve an unincorporated area of the county.¹⁶ Implied in this grant of authority is a limitation to serve only within the county's boundaries. Counties providing service must comply with all provisions of the Water Code¹⁷ that apply to service by municipalities, including with regard to rates and quality of service. To finance a water or sewer system, counties may issue revenue bonds but not general obligation bonds payable from ad valorem taxes. Counties also may acquire any interest in property necessary to operate a water or sewer service system, including through eminent domain if the property is not within a municipality.¹⁸

c. Service by Limited-Purpose Districts and Authorities

Governmental entities may be created for limited purposes that include providing water and sewer utility services. General-law districts are created pursuant to legislation that is applicable statewide. Special-law districts are creatures of legislation particular to a locality within the State and have express powers and responsibilities. Both types of districts can be created only within constitutional parameters. For water and sewer service, the creation of limited-purpose districts is authorized under Texas Constitution, Article XVI, § 59, commonly known as the Conservation Amendment. Both types of districts are referred to generically as water conservation and reclamation districts. Both types of districts are also subject to a continuing right of supervision vested in the Texas Natural Resource Conservation Commission.

¹⁶ Act of May 11, 1999, S.B. 821, § 1, 76th Leg., R.S. (to be codified at Local Government Code § 412.016(a)-(c)).

¹⁷ References in this report to the Water Code are to TEX. WATER CODE ANN. (Vernon 1988 & Supp. 1999).

¹⁸ Senate Bill 821, cited above, made special exceptions for counties with populations that exceed 2.8 million and any county adjoining such a county. These counties may serve inside a city with the city's consent; issue general obligation bonds to finance facilities with voter approval; and condemn property within a city.

i. General-Law Districts and Authorities. The provisions for formation of limited-purpose governmental entities for water and sewer utility service under the general laws of the State appear in various chapters of the Water Code. With a few but notable exceptions, these general laws require creation of the district by order of the TNRCC followed by a local confirmation election. Most general-law districts derive their powers and duties under both the particular Water Code chapter that provides their method of creation and under Chapters 49 and 50 of that Code, which embody general provisions applicable to almost all districts.¹⁹ Other laws may give additional authority to general-law districts of any type.

Referencing relevant chapters of the Water Code, the general-law districts most amenable to providing regional municipal water and sewer service, either alone or in combination with other providers, are listed below.

- (1) Water Control and Improvement Districts (Water Code Chapter 51);
- (2) Municipal Utility Districts (Water Code Chapter 54);
- (3) Regional Districts (Water Code Chapter 59);
- (4) Special Utility Districts (Water Code Chapter 65); and
- (5) Groundwater Conservation Districts (Water Code Chapter 36).

Although groundwater districts, to date, have not been actively involved in water supply, the general interest in groundwater district creation has been growing rapidly in the State. General-law provisions exist also for creation of water improvement districts, fresh water supply districts, and the Ogallala Water Import Authority, among other entities, but will not be discussed further in this report because of their currently narrow applicability or desirability for regional retail service in disadvantaged areas.

ii. Special-Law Districts. Special-law districts are legislatively created and governed by their enabling acts and supplemental legislation, as well as those provisions of the Water Code that do not conflict with the district's enabling acts. Many special-law districts adopt some or all of the powers of a

¹⁹ Water Code § 36.052 excludes groundwater districts from the general provisions of Water Code Chapters 49 and 50.

general-law district by reference to the Water Code. Powers may be expressly added so long as they are permitted under the constitution. Enabling legislation also may expressly withhold or limit powers otherwise exercised by similar general-law districts. The territorial reach of a district is expressed in the law creating it. River authorities are special-law districts, the jurisdictions of which may extend to entire river basins and include multiple counties. River authorities, as a general rule, however, may not provide service outside their territorial boundaries.

d. Service by Non-Profit Water Supply and Sewer Service Corporations

A nonprofit corporation may be organized to provide water supply and/or sewer service. The two types of corporations have similar characteristics and often are referred to collectively as “WSCs.” One of the distinguishing characteristics of WSCs is that they are customer-owned or “member-owned” utilities.

Although WSCs essentially are private corporations with powers and duties specified in articles and bylaws, WSCs also are given particular authority in Chapter 67 of the Water Code with regard to water and sewer service. A WSC may enter contracts for the acquisition, construction, or maintenance of a project or improvement; obtain money from any political subdivision of Texas, federal agency, or other entity to finance the acquisition or construction of a project or improvement; and encumber the project or improvement along with any income, fees, rents, and other charges derived from the operation of the project or improvement. A WSC may issue bonds, notes, or warrants to secure payment of funds received. In a county with a population of less than two million, a WSC may own, hold, lease, or otherwise acquire water wells, springs, or other sources of water supply; build, operate, and maintain pipelines to transport water or wastewater; build and operate plants and equipment necessary to distribute water or to treat and dispose of wastewater; and sell water or provide wastewater services to a political subdivision, a

private corporation, or an individual.²⁰ Significantly, Texas statute gives WSCs the power of eminent domain in counties with population less than two million.

In addition to a nonprofit status for federal income tax purposes, WSCs are exempt from paying ad valorem taxes and sales taxes. However, because they are not local governmental entities under federal tax law, the interest on WSC debt is not tax-exempt. WSCs do enjoy significant access to federally-sponsored and state-sponsored financing programs. WSCs may qualify for interest rates on borrowed money that are as attractive as the rates available to governmental entities.

Before it may provide services, a WSC must obtain a certificate from the TNRCC that the public convenience and necessity will be furthered by that service. The implications of receiving this certificate of convenience and necessity (“CCN”) are discussed further below.

e. Service by Investor-Owned Utilities and Private Companies

The term “investor-owned utility” or “IOU” generally could describe any utility that is privately owned and operated for profit. Investor-owned utilities, nevertheless, are affected with a significant public interest. IOUs are distinguished from the majority of commercial businesses in that they are free from direct competition; the rates they charge for service must be reasonable and not unjustly discriminatory; and they must provide adequate service on demand.²¹ Like all utilities, IOUs are subject to the jurisdiction of the TNRCC in performance of their duties. To the extent that an IOU operates within a municipality, for example, because the area that it serves has been annexed, the municipality also will have jurisdiction over rates, operations, and services.

²⁰ See Water Code §§ 64.010, 67.011.

²¹ See R. HAHNE ET AL., ACCOUNTING FOR PUBLIC UTILITIES § 1:01 (1991).

For-profit service providers are not exempt from taxes and do not enjoy the same financing advantages of governmental entities and non-profit corporations.

With increasing frequency in Texas, governmental owners contract with private companies that will operate government service facilities for profit. The decision to privatize may be based on the belief that service by the private company will result in an overall cost-savings to the government and to consumers. Often times in smaller communities, privatization may be attractive because the private company can provide more experienced utility management and can better afford to hire and train qualified operators.

Privatization contracts may be structured to leave the governmental entity in the position of utility provider. This is the case when the private company is under a service agreement only to the city. The relationship may be more complex when a private company essentially leases the governmental facilities or bills customers in its own name. For privatization of utility services by a municipality where water and sewer systems are operated by a board of utility trustees pursuant to provisions of a home-rule charter, express arrangement is made for determining who is the "utility." Water Code § 13.511 defines privatization as:

Any contract, agreement, or letter of intent or group of the same by which any eligible city contracts with a service provider to provide for the financing, acquisition, improvement, or construction of sewage treatment and disposal facilities pursuant to which such service provider or its assignee or subcontractor will own, operate, and maintain such facilities and provide sewage treatment and disposal services to the eligible city or any contract pursuant to which such service provider agrees to operate and maintain, or have its subcontractor operate and maintain all or any part of the eligible city's sewage treatment and disposal facilities.

The service provider in such instances constitutes neither a public utility nor a retail public utility if the city so elects by ordinance. Water Code utility service regulations still would apply to the city itself. See Water Code § 13.511 for the definition of "eligible city."

2. Creation or Designation of “Regional” Service Providers

State policy favors water and sewer service by regional or consolidated entities. This policy is expressed, for example, in Water Code § 13.241, stating that an applicant for a separate CCN must demonstrate that regionalization or consolidation is not economically feasible. The development and use of integrated area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the State are particularly encouraged.²² Where service from a single existing governmental or non-governmental entity is impossible or economically infeasible, service can be provided by a consortium of entities or by a new entity.

a. Service by Agreement

Numerous statutory authorizations facilitate the provision of water and sewer service by agreement. Provisions, such as Local Government Code §§ 402.012 and 402.014, give specific contracting authority. The Interlocal Cooperation Act, for example, provides that municipalities, districts, and river authorities may contract with one another to obtain or provide water supply or wastewater treatment facilities or for the lease or operation of such facilities. Counties may contract with each other and with other local governments to provide those governmental functions or services that each party to the contract is authorized to perform individually. New authority to counties under Senate Bill 821 to provide retail utility services indirectly should extend county authority to provide service through interlocal contracts.²³

The Texas Legislature expressly provided for regional sewage treatment and disposal by agreement in Water Code Chapter 30, which explains that its purpose is “to authorize public agencies to cooperate for the safe and economical collection, transportation, treatment, and

²² See Water Code § 49.230.

²³ See Government Code §§ 791.011 (county authority to contract), 791.026 (Interlocal Cooperation Act). All references in this report to the Government Code are to TEX. GOV'T CODE ANN. (Vernon 1994 & Supp.).

disposal of waste in order to prevent and control pollution of water in the state.” Water Code Chapter 30 expressly grants wastewater disposal authority to water districts that might not otherwise have that authority.²⁴

b. Creating a New Service Provider

Where an independent service provider is the preferred solution, a new provider may be created. It also is possible that an entity of one type can convert to an organization of another type. This is the case, for example, when a non-profit water supply corporation converts to organize as a special utility district. Of the governmental entities listed above, formation of a new county is an unrealistic option for creating a new service provider and is not discussed further in this report.²⁵

i. Municipal Incorporation. Cities are created for the private advantage of their citizens. Therefore, even when cities provide utility service beyond their boundaries, that service is incident to a primary duty to their citizens. Nevertheless, cities may be integral participants in regional projects. “Incorporation” is used to describe the process whereby a city is brought into existence by either special legislative act, proceedings, and organization under general laws, or by adopting a home-rule charter under Article XI, § 5, of the Texas Constitution. Creation of a municipality by special law is no longer permitted. Cities and towns having a population of 5,000 or less usually may be chartered only by general law. The type of general law municipality formed, *A*, *B*, or *C*, is limited by the number of “inhabitants” and various territorial requirements. Type *C* municipalities must adopt the commission form of government. Particular types of municipalities also may have specific utility service authority. Incorporation of a general-law city is commenced by a petition signed by the required number of inhabitants and filed with the

²⁴ See Water Code § 30.002. New powers granted to counties during the 1999 legislation also should qualify them to participate in regional waste disposal agreements by this reference to “public agency.” A public agency eligible for Chapter 30 powers is any “political subdivision or agency of the state which has the power to own and operate waste collection, transportation, treatment, or disposal facilities or systems” Water Code § 30.003.

²⁵ Article IX, § 1, of the Texas Constitution states that to create a new county from an existing county or county, neither the newly created county nor any reduced county shall be less than 700 square miles. To create a new county in this manner also requires approval by a vote of two-thirds of each house of the legislature and by a majority of the voters in the affected counties.

county judge, followed by a creation election. A city having a population of 5,000 or more may adopt its own charter as a "home-rule" city by a majority vote. Election is called by the governing body of the city, in that circumstance.

A city is composed of the territory in its corporate limits and the inhabitants of the territory. Two or more adjoining or contiguous cities may consolidate when the smaller of the cities adopts the charter, ordinances, and name of the largest city. Land may be annexed into an existing general-law city by consent or into a home-rule city in accordance with its charter. Territory also may be disannexed from a city. This is an option, for example, when a city has failed to provide services under an annexation service plan.²⁶

ii. Formation of Water Districts Under General Law. For each type of general-law district that may provide water and sewer utility service, the Water Code provides specific creation requirements. Most authorize creation by the TNRCC. In limited instances, a single-county district may be created by a county commissioners court.

For creation of a district by the TNRCC, generally each of the following steps must be followed:

- (1) filing a petition signed by the required number of landholders or other specified parties;
- (2) public notice;
- (3) a recommendation from the TNRCC staff in favor of or against creation;
- (4) opportunity for affected persons to request a hearing, including to protest formation of the district;
- (5) public hearing, if requested or deemed necessary by the TNRCC; and
- (6) a finding by the TNRCC that creation of the district is feasible, practicable, necessary, and of benefit to the land to be included in the district.

Local confirmation elections are required for some districts and are required for all districts that would levy a tax or issue tax-supported bonds.²⁷

²⁶ See generally Local Government Code chs. 41, 42, 43, 212; TEX. CONST. art. XI, § 5 (home-rule amendment).

²⁷ TEX. CONST. art. XVI, § 59; Water Code § 49.102.

General creation provisions are found in Water Code Chapter 49 and in § 293 of the TNRCC Rules.²⁸ These rules detail the information required to accompany applications to create districts, and notice and hearing requirements, for example. Provisions of Water Code Chapter 49 that also apply to most districts include administrative provisions, election provisions, fiscal provisions, issuance of bonds, audits, general powers and duties, contracting, annexation of land, exclusion of land before a bond election, dissolution, and various other matters. Many other statutory provisions also apply to district creation and operation unless specified otherwise; for example, the Texas Election Code, Open Meetings Act, Open Records Act, and various procurement and ethics laws. The most prominent forms of general-law districts are discussed below, with specific provisions of interest related to their creation.

iii. Water Control and Improvement Districts. A water control and improvement district (“WCID”) may be created to provide for the control and distribution of its water for all useful purposes under Water Code Chapter 51 and the specific procedures of TNRCC Rules § 293.11(c). Their powers related to sewer service are found in Water Code § 51.121(b)(6) wherein WCIDs are authorized to protect, preserve, and restore “the purity and sanitary condition of water within the state;” in § 51.331 with specific regard to waste disposal; and also in Chapter 30 for regional waste disposal.

WCIDs may include all or part of one or more counties, including any town, village, or municipal corporation, and may include any other political subdivision of the State or any defined district. The land within a WCID need not be contiguous. Any city may organize into a WCID; however, no city, town, or municipal corporation may be included within any WCID unless the proposition is adopted by a majority of electors in the town. Similarly, the votes of each county included in a multi-county WCID are considered separately.

²⁸ References in this report to the TNRCC Rules are to 30 TEX. ADMIN. CODE (West 1999 and TNRCC web site at www.tnrcc.texas.gov).

For proposed WCIDs with boundaries wholly within one county, a county's commissioners court must consider the petition, but petitions for proposed districts whose boundaries include land in two or more counties must be considered by the TNRCC. If the commissioners court or the TNRCC finds that any of the land sought to be included in the WCID will not be benefited by inclusion in the WCID, it may exclude that land.

A. Special Considerations for Creation by a County Commissioners Court

Where the county commissioners court would create a single-county WCID, the county judge sets the date of hearing and must endorse the order on the petition. The petition is considered at a regular or special session of the court. Any person whose land would be affected by the district may appear and contest the creation. The petition should be granted if:

- (1) organization of the district is feasible and practical;
- (2) the land to be included and the residents will be benefited;
- (3) there is a public necessity and need for the district; and
- (3) creation of the district would further the public welfare.

The order of a commissioners court for creating a district are final unless appealed.

B. Service Within a "Defined Area"

A "defined area" is a specific area within a WCID that may be provided enhanced facilities related to development that are not provided throughout the entire district. The provisions for defined area service are found in Water Code Chapter 51, Subchapter L. Landowners may form a defined area voluntarily and impose a tax. Landowners outside the defined area would not pay the increased tax since they would continue to rely on other facilities; for example, septic tanks or water wells. Land may be added to a defined area if the land is in the district and is subject to a water quality plan approved by the TNRCC. The area added need not be contiguous.

C. Service Through a Master District

Water Code § 51.047, and the provisions that follow it, authorize creation of a “master district” to include the area of one or more Chapter 51 WCIDs with the area of a freshwater supply district, a water improvement district, a drainage district, a levee improvement district, or a navigation district. The master entity enables the constituent districts to pool their resources to, among other things, operate works for their common benefit. Creation requires an election that considers each district a separate voting unit.

iv. Municipal Utility Districts. A municipal utility district (“MUD”) may be created under Water Code Chapter 54 according to the procedural requirements of TNRCC Rules § 293.11(d). Among other things, a MUD may purchase, construct, acquire, own, operate, maintain, repair, improve, or extend, inside and outside its boundaries, any and all works helpful or necessary to supply water and to collect, process, and dispose of waste. MUDs also may adopt and enforce reasonable rules to secure and maintain safe, sanitary, and adequate plumbing installations, connections, and appurtenances as subsidiary parts of its sanitary sewer system.

A MUD may include the area in all or part of any county or counties, including, upon request and consent, all or part of any cities and other public agencies, and may consist of separate bodies of land separated by land that is not in the district. Generally, no land within the corporate limits of a city, or its extra-territorial jurisdiction (“ETJ”) may be included in the MUD without the city’s consent. If a city refuses consent, then landowners in the ETJ can petition the city to make available the water or sanitary sewer service contemplated to be provided by the MUD. Failing an agreement to that effect, the TNRCC may allow creation or inclusion of the land in a MUD upon a finding that the city either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner.

If all or part of a proposed MUD is to be located outside the ETJ of a city, the commissioners court of the county in which the MUD is to be located may review the MUD's petition for creation. In the event of a review, the commissioners court will submit to the TNRCC a written opinion stating whether or not the county would recommend the creation of the proposed MUD. In determining that creation of a MUD is feasible, practicable, necessary, and of benefit to the land to be included in the district, the TNRCC is to consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on a series of things that include water quality and total tax assessments on all land located within a district.

By resolution of its board of directors, and after notice and opportunity for a hearing, any water improvement district, WCID, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution may be converted into a MUD.

v. Regional District. Chapter 59 of the Water Code authorizes the creation and operation of regional districts for water, sanitary sewer, drainage, and municipal solid waste disposal in counties with a population of at least 2.2 million, or bordering a county with a population of at least 2.2 million. Petition to the TNRCC in this instance is made by the boards of at least 20% of the total number of Chapter 51, 53, and 54 districts to be included in the proposed district; the owner or owners of 2,000 or more contiguous acres; the commissioners courts of one or more counties; or the governing body of any city if the district is to include any territory within the city or its ETJ. Land in the corporate limits or ETJ of a city may not be included without consent of the city, and the avenues for landowners to petition the city for service are similar to those in Chapter 54. A MUD also may be excluded from the district under

special provisions that provide for separate vote tallies within the boundaries of each district. Before a regional district is created, a confirmation election must be held.

vi. Special Utility District. A special utility district (“SUD”) may be created under the provisions of Water Code Chapter 65 and TNRCC Rules § 293.11(h) which include special provisions for conversion to a SUD by a non-profit water supply or sewer service corporation. A district may include the area in all or part of any one or more counties, including all or part of any cities, but not in other public agencies. A SUD may purchase, own, hold, lease, and otherwise acquire sources of water supply; build, operate, and maintain facilities for the transportation of water; and sell water to towns, cities, and other political subdivisions, private business entities, and individuals. A SUD may also be created for the protection, preservation, and restoration of the purity and sanitary condition of water within the district.

Legislation was passed in 1985 and amended to allow an entity providing the services of a water supply corporation under a CCN to convert to a special utility district. Initially, conversion would have exempted the provider from ad valorem and sales taxes, and provided an alternative source of state funding for utility service projects. Since that time, WSCs have gained independent tax exemptions. State funding eligibility also has been added for assistance to WSCs in serving economically distressed areas, for example.²⁹ Significantly, conversion to a SUD cannot provide taxing authority, and a SUD must operate only on revenues and fees. As of the 1999 legislative session, relatively few of the many WSCs in Texas had converted to SUDs.

Conversion to a SUD may be proposed by resolution of the water supply corporation and filed with the TNRCC. The TNRCC will give notice of the resolution as provided by Water Code Chapter 49 and may conduct a hearing as provided by that same chapter. In determining whether

²⁹ See Water Code ch. 17, subch. K (defining water supply corporations as political subdivisions).

conversion is feasible, practicable, necessary, and of benefit to the land proposed to be included in the district, the TNRCC will consider:

- (1) the availability of comparable service from other systems, including water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, if any, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on general issues that include water quality. Confirmation election is required.

vii. Groundwater Districts. Although groundwater districts typically are considered to be regulatory entities, they do have certain water supply powers. Specifically, with regard to provision of water service, Water Code § 36.104 states that a groundwater district “may purchase, sell, transport, and distribute surface water or groundwater for any purpose.” The authority to build facilities does not extend to those providing sewer service. Prior to the 1999 legislative session, there were more than 30 groundwater districts created in the State of Texas, although most were created by special act of the legislature. The 1999 session saw thirteen “interim” groundwater districts created under Senate Bill 1911, with limited powers and automatic dissolution if the districts are not recreated in the following session.

Provisions for creation and governance of general-law groundwater districts appear in Water Code Chapters 35 and 36, and TNRCC Rules § 293.11(b). Groundwater districts are not governed by Water Code Chapters 49 and 50; however, as with other general-law districts, this type of district is usually created based upon a petition signed by landowners within the proposed district’s boundaries, public notice, and the opportunity for hearing on whether or not to create the district. If, either after a hearing or, if no hearing is conducted, then on its own, the TNRCC finds that the proposed district is feasible and practicable, and will benefit the land and the public, then the TNRCC can grant the petition. Creation must be confirmed through local election. Land may be added to an existing district after resolution of the directors of the annexing district and

election in the territory to be included. With certain exceptions, the land added must be contiguous. Districts also may be consolidated with one another.

In an area designated by the TNRCC as experiencing critical groundwater problems, the TNRCC may initiate either creation of a new district or the addition of affected territory into an existing district. Authorization for TNRCC-initiated creation is in Water Code Chapter 35, but the confirmation election procedures of Chapter 36 still must be followed.

c. Creation of Special-Law Districts and River Authorities

Special-law districts, including river authorities, are creatures of the legislative process, with powers expressly granted by specific enabling legislation.³⁰ When a locality seeks district legislation, it makes choices that include:

- (1) the extent of regulatory powers;
- (2) the form of governance;
- (3) the territory to be included;
- (4) any special provisions for adding new territory after creation; and
- (5) the methods of funding.

A creation statute may adopt general-law powers by reference to the Water Code or go into detail about specific characteristics, as was discussed above. All powers not expressly granted, by reference or otherwise, are withheld from a special-law district. Governance may involve election or appointment. Boundaries for a legislatively created district answer generally to political realities. The decision should be driven also by what is best for reasonable management of the natural resource to be managed and the service to be provided. Land may be annexed into a legislatively created district, and language regarding the procedures for annexation, or exclusion, may be included in the act. Certain funding options should be specified in the creation statute, and taxing authority, if any, must be specified.

³⁰ Although the term “special law” most often is used to describe district creation legislation, the term “local law” is more precise. “Local” applies specifically to laws affecting a limited area, and “special” applies to laws affecting a single class or person.

District creation is commenced by the filing of a bill that gives the entity form and purpose. Special notice requirements also must be satisfied that include published notice of the filing of proposed legislation. Aside from these procedural provisions, creation requirements are those for passage and signing into law of any legislation and will not be repeated here. Many district bills call for a local confirmation election to follow passage of the enabling act for reasons that include taxation authority. If the district will assess taxes, the tax must be approved by the voters to comply with Article XVI, § 59(c), of the Texas Constitution.

d. Non-Profit Corporations and Investor-Owned Utilities

Non-profit WSCs and for-profit IOUs owe their initial existence to the general laws applicable to doing business in Texas. These general provisions, including regarding how to form a corporation, are relatively straightforward and not within the scope of this report. However, there are a few special provisions of Texas law that are specific to the provision of water and sewer service by such entities.

i. Special Provisions with Regard to Authority to Serve. A non-governmental entity, classified as a “utility” or as a water or sewer service corporation, generally must obtain a CCN from the TNRCC before the entity commences retail water or sewer service.³¹

The requirements for obtaining a CCN are quoted below from Water Code § 13.241:

§ 13.241 Granting Certificates

- (a) In determining whether to grant a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.
- (b) For water utility service, the commission shall ensure that the applicant:

³¹ A retail public utility is not required to secure a certificate of public convenience and necessity for: (1) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one-quarter mile of the boundary of the certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or (2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity. Water Code § 13.243.

- (1) is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and requirements of this code; and
- (2) has access to an adequate supply of water.
- (c) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants and the requirements of this code.
- (d) Before the commission grants a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Applications for certification may be protested by any individual or entity who could be affected by granting the application.

Three standards associated with granting a certificate also are of note from Water Code § 13.246.

§ 13.246 Notice and Hearing; Issuance or Refusal; Factors Considered.

- (c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of service currently provided to the requested area, the need for additional service in the requested area, the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area, the ability of the applicant to provide adequate service, the feasibility of obtaining service from an adjacent retail public utility, the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio, environmental integrity, and the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.
- (d) The commission may require an applicant utility to provide a bond or other financial assurance in a form and amount specified by the commission to ensure that continuous and adequate utility service is provided.
- (e) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant.

Administrative provisions regarding applying for and granting a CCN are found in TNRCC Rules Chapter 291.

ii. Special Provisions with Regard to Water Supply Corporations and Sewer Service Corporations. Water Code Chapter 67 provides organizational requirements in addition to those found in general corporation provisions and non-profit corporation provisions. When a customer pays a membership fee for WSC service, he or she becomes a voting member of the corporation and can participate in the election of board members. Ownership and exercise of stock is conditioned upon meeting the corporation's rates, charges, and conditions of service. It also may be conditioned upon owning the real estate designated to receive service. WSC stocks are not freely transferable.

3. **Special Issues with Regard to Creating Regional Service Providers**

Various challenges exist with regard to providing regional service. These range from the subjective, such as political obstacles, to the practical, such as securing supplies for water service. Specific difficulties in creating new entities for service are discussed below to include certification to serve, ensuring actual service, overcoming prohibitions on service, the importance of local support, governance, and regulatory issues and criteria for "regionalization."

a. Certification to Serve

The provision of utility service itself exists as a monopoly under state law, protected under the provisions of Water Code Chapter 13. This position generally is considered warranted because of the large financing requirements of water and sewer facilities, high fixed costs of operation, and regulated or limited "profit." Monopolistic protection is most obviously involved in the granting of CCNs by the State. Although governmental service providers are not required in most circumstances to obtain CCNs, some seek certificates in order to enjoy clear delineation of their service area, particularly in the circumstance where a governmental entity is providing service outside of its boundaries.



Complications in this system arise where the area sought to be served is included within the certificate or actual service area of another entity. Conflicts among potential regional service providers can delay the time that it takes to get actual service to consumers. Provisions exist in the Water Code for decertifying all or part of a certified area, voluntarily or involuntarily, when the certificate holder has never provided or is no longer providing adequate service. Special provisions are made for decertification in an affected county when the cost of providing service by a certificate holder is so prohibitively expensive as to constitute denial of service. Decertification, however, may have economic consequences.

Certified areas may be considered to have an economic value, separate and apart from whether or not there are actual facilities in existence. Water Code § 13.255, for example, provides for TNRCC-ordered compensation when single certification is granted to a municipality after the municipality annexes new territory within another utility's CCN. The factors for ensuring that compensation to a retail public utility is just and adequate, including for loss of business, are detailed in Water Code § 13.255(g). Federal law additionally protects a WSC from decertification when its certified area serves as security for a federal loan. An exception to this general rule may exist if decertification is warranted by a failure to provide adequate service.

b. Existence of a Regional Service Provider Does Not Ensure Actual Service

The actual provision of water and sewer service to the retail customer depends on funding at a level that compensates a utility for the cost of extending lines and making residential connections. For example, Water Code § 13.250(a) provides that any retail public utility which possesses or is required to possess a CCN shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas until, or unless, the TNRCC revokes or amends the CCN. When the TNRCC issues a certificate, in effect, it orders the certificate holder to provide service under terms specified in the certificate and associated documents. A refusal to

provide service in violation of that order or an abandonment of operations both are subject to enforcement and penalties.

The clear standard of Water Code § 13.250's requirement of service is tempered by an interpretation of what constitutes service within an area. The provider's duty is satisfied when service is offered at a reasonable cost. One of the keys to the regulations lies in who is a qualified service applicant. A qualified service applicant is one who has met all of the retail public utility's requirements contained in its tariff or service policies and regulations for extension of service.

Obviously, demanding too high a price may be tantamount to a denial of service. A certified utility is required to respond to a request for service with an explanation of the terms and connection fees. Acceptable fees may include all costs associated with extending service, including new pipe and new facilities, as well as system development charges or "impact fees." The reasonableness of those costs is determined on a case-by-case basis. Applicants for service may complain to the TNRCC that the certified utility's terms for service are unfair or unreasonable. In such circumstances, the agency may persuade the parties to negotiate or seek financing and may issue an order regarding the reasonableness of the terms demanded. The TNRCC may not, however, force the utility to bear reasonable costs otherwise chargeable to the applicant for service. Various avenues exist for securing funding for the purpose of residential connections, including through the Colonia Wastewater Treatment Assistance Program and Community Development Block Grants. However, specific legislation proposed in 1999 to authorize the Texas Water Development Board to make loan money available for household hookups did not progress.

c. Service May Be Prohibited in Non-Compliant Areas

Subdivision regulations found in Local Government Code §§ 212 and 232 prohibit some retail public utilities from providing service to an area unless the entity has a certificate from the appropriate municipal or county authority that a plat for the area has been approved or that no plat approval is required.³² Perhaps ironically, these restrictions that were intended to prevent unscrupulous development actually would prevent the residents of the colonia from receiving services. Senate Bill 1421, passed during the 1999 legislative session, was designed to allow variances to the restrictions. For example, a service entity now may get the necessary certificate from a county commissioner's court if the land is in a county in which any part is located within 50 miles of an international border and was not subdivided after September 1, 1995, and:

§ 232.029 Connection of Utilities. . . .

- (A) water service is available within 750 feet of the subdivided land; or
- (B) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.³³

These variance provisions appear to contemplate a situation in which a service provider desires to extend service but otherwise is prohibited. Nevertheless, if an applicant in a non-compliant area was trying to force service, an unwilling provider might raise the economic feasibility of service as a reason for not seeking a variance.

d. Regional Service Requires Local Support

The success of regional utility service, both practically and politically, requires broad local support. This particularly is true when creation of a new service provider must be followed by a

³² See also Water Code § 13.2502 (authorizing WSCs to deny service to an area that was not developed in accordance with its rules and regulations).

³³ Act of May 25, 1999, S.B. 1421, §§ 2, 9, 76th Leg., R.S. (amending Local Government Code §§ 212.012(c) and 232.029(c)).

confirmation election. As explained above, most general-law districts and many special-law districts must be ratified by popular vote. Ad valorem taxation requires voter approval. Public support also is implicated for passage of tax-supported bonds.

e. Governance and Regulatory Issues

Creation of a new service entity may add a layer of governance and management to the actual provision of service to consumers. Governance requires volunteers willing to serve as board members and officers. In many cases, directors must stand for election. Particularly in the rural areas that currently go without adequate service, it may be difficult to find or attract experienced utility managers and certified operators. A governmental entity may have to fulfill statutory obligations for reporting and for procurement laws, for example, and also provisions of Texas' open meetings and open records laws. A new entity must provide for budgeting, meetings, adopting rules, and setting rates for service. These administrative responsibilities, and the expense of meeting them, should not be underestimated.

f. Criteria for "Regionalization"

Where state law requires consideration of regionalized utility service,³⁴ criteria for regionalization must be developed. Draft regulatory guidance document dated August 3, 1999 prepared by the TNRCC reflects the TNRCC's policy as being that regionalization is feasible unless one of three exceptions to the policy applies. The three exceptions are:

- (1) there are no public water systems within one-half mile or in the case of a CCN, no public water system or wastewater treatment system within 2 miles;
- (2) service has been requested from these neighboring systems but denied; or
- (3) an exception is warranted based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system.

The legislature has provided criteria for the circumstance when two or more retail public utilities or WSCs apply for a CCN to serve the same uncertified territory in an economically distressed area. The TNRCC is to grant the CCN to whichever is more "capable financially, managerially,

and technically of providing continuous and adequate service.” The TNRCC is directed to develop a standardized method for making this determination. Such a method would tend to eliminate local choice with regard to service providers and focus, instead, on stability of service.³⁵

4. **Potential Statutory Amendments to Promote Regionalization**

a. Clarify County Authority for Interlocal Contracts

Although new statutory provisions have broadened county authority to provide and fund retail water and sewer service, county authority to enter into interlocal agreements for that service has been denied or left to implication. This is particularly true with regard to the Interlocal Cooperation Act found in Texas Government Code § 791.026. The Act provides that municipalities, districts, and river authorities may contract with one another to obtain or provide water supply or wastewater treatment facilities or for the lease or operation of water supply or wastewater treatment facilities. County authority for interlocal contracting is found only generally in Government Code § 791.011. The county’s authority should be reflected as a uniform footing with other governmental utility providers.

b. Broaden Groundwater District Authority for Sewer Service

A general-law groundwater district’s powers are specified in Water Code Chapter 36, Subchapter D, to include rulemaking to protect groundwater quality. Leaking septic tanks can be a threat to that quality. However, a groundwater district’s powers to build or acquire facilities does not extend to providing regional sewer service to replace septic systems. Groundwater districts also are denied participation in regional waste disposal authority under Water Code Chapter 30 by definition there of a public agency. A “public agency” for purposes of that chapter is any district, city, or other political subdivision or agency of the State which has the power to own and operate waste collection, transportation, treatment, or disposal facilities or systems. Areas of the State

³⁴ See, e.g., Water Code § 13.241; TNRCC Rules ch. 291 (regarding issuance of CCNs).

with the least surface water resources are the most unlikely to have existing surface water districts that have been authorized to extend sewer service. To take advantage of an existing groundwater district's organizational structure for this purpose would require enhancing Chapter 36 authority. The provision of sewer service by a groundwater district should be an optional power.

c. Service Disputes

Conflicts among potential regional service providers can delay the time when residents will receive actual service. Legislative changes related to criteria for selection between two competing applicants for a CCN addresses this problem for areas currently not within any certified area. Where the conflict arises between providers not required to have CCNs, the issue may be more difficult to resolve. The implications of such conflict also may include that residents are denied access to the best available rates for utility service. Provision should be made for taking the best interest of utility customers in disadvantaged areas into account in service area disputes.

d. SUD Authority

SUDs currently are denied the authority to levy taxes, even though a confirmation election is required for their creation. In many instances, taxing authority might be a disincentive to voter approval. However, in some instances, taxing authority could be important to the district's viability.

e. "Senate Bill 1" Regional Planning

The 1997 Omnibus Water Bill ("Senate Bill 1") put into motion a statewide effort at regional water supply planning. Special efforts should be made to ensure that areas with substandard service are not left behind in that effort. For example, the characterization of who will be

³⁵ Act of May 25, 1999, S.B. 1421, § 30, 76th Leg., R.S. (adding Water Code § 13.241(e)).

supplied and who will be a supplier must be flexible to accommodate pockets of development that warrant inclusion.

C. Information Needs Associated with Creating a Utility

Creating a Regional Utility

The creation of a utility can be undertaken from two different approaches. The first approach assumes that the regional utility is created from two or more existing utility systems. The second approach assumes that the regional utility is newly created with no predecessor entities. This section of the report will describe the information needs with regard to establishing a regional utility using either of these two approaches. This section of the report will be divided into two sections. The first section will describe the general overview with regard to creating a utility from two or more existing systems. The second section will describe the information needs required for creating a new utility, with no predecessor entities³⁶.

Approach One: Creating a Regional Utility from Two or More Existing Utility Systems

There are three major steps associated with the creation of a regional utility from two or more existing utility systems. Listed below is a description of the three steps.

Step 1. Analysis of Existing Information

During this step the individuals responsible for creating the regional utility need to determine what data is available to them and how to use it in establishing the new regional entity. Key data to be reviewed during this step and how the data will be used is listed below:

- **Financial data.** This data will include operating budgets, capital budgets, asset listings, billing data, etc. This information will assist in valuing the system,³⁷ establishing utility rates, and inventorying the existing water production and distribution systems and/or wastewater collection and treatment systems.

³⁶ For instance, if a county were to create a regional water and wastewater utility.

³⁷ Valuing the system may be necessary if equalization payments are made between the two or more entities being consolidated. Equalization payments might be made if one entity is contributing significantly more to the system (wells, water rights, transmission lines, treatment facilities, etc.) than the other entity.

- **Legal documents.** This data will include all permits, for withdrawing water from lakes and rivers, as well as for the discharging of treated effluent from a licensed wastewater treatment facility. The staff will need to also review the existing CCN's (if applicable) to ensure that they are current. If CCN's need to be modified, they should be updated as soon as possible, to avoid any potential service area disputes. Additional legal documents to be reviewed will include any tariffs, articles of incorporation, interlocal agreements, wholesale service agreements, water purchase contracts, wastewater treatment contracts, tax exempt certification, etc.
- **Organizational data.** One of the primary benefits associated with creating a regional utility is the potential savings in the reduction of duplicative tasks, such as customer billing, line maintenance crews, reduction in operating wells, etc. The staff of the new regional utility will need to review the organizational structure of each entity being consolidated into the regional utility to determine what personnel and equipment will be required to operate the new regional utility.
- **Operating data.** It is critical that the new management of the regional utility understand the operating capacities (and constraints) of each of the predecessor entities. By identifying potential limitations (such as pumping capacities on a system) those capacity constraints can hopefully be offset with excess capacity at one of the other entities being consolidated into the regional utility.
- **Mapping data.** The staff for the new utility should also examine the existing maps for the entities being consolidated into the regional utility. To the extent these maps are already GIS compatible, that will aid in determining how the utility systems should be interconnected (if they are going to be interconnected), etc. This is also a good time to review the existing systems (size of water lines, lift station capacity,

etc.) to determine whether the regional system has any “short term” and/or “long term” bottlenecks.³⁸

- **Other data/contacts.** Staff for the regional utility should also review all relevant correspondence, engineering reports, master plans, etc. that will provide the management of the new utility with a better understanding as to how the utility operates. The project team would also recommend that if there are any additional questions, etc. concerning the creation of the regional utility that the management of the utility visit with staff from the TWDB, TNRCC, and appropriate water and wastewater associations of which the regional authority should be a member. Associations which may be appropriate for the entity (depending on whether the regional utility is a city, county, water supply corporation, etc.) are as follows:

- American Water Works Association
- Association of Metropolitan Sewerage Associations
- Association of Metropolitan Water Agencies
- Association of Water Board Directors
- Texas Association of Counties
- Texas Municipal League
- Texas Municipal Utilities Association
- Texas Rural Water Association
- Texas Water Conservation Association
- Texas Water Utility Association
- Water Environment Federation

Step 2. Begin Formulation of the New Entity

Once the staff for the regional utility has reviewed the data described in Step 1, the next step is to begin planning for how to establish this regional utility so that it is equitable to all member

³⁸ “Short term” bottlenecks are defined as system constraints, which currently exist, or are perceived to occur during the next five years, due to system expansion. “Long term” bottlenecks are typically defined as greater than five years and forecasted out as far as 50 years. For instance, if it is determined that the regional utility will have insufficient water rights in 10 years, due to rapid customer growth, that is an issue that the regional utility must begin to address.

systems that join the regional utility. The staff must also begin to think beyond just serving the existing customers of the systems which are joining the regional utility, and think of the “bigger picture” as to what the regional utility’s responsibility is to the region with regard to the provision of water and/or wastewater service. Listed below are the key tasks that need to be addressed during this step.

- **Identify consolidation issues and establish milestones.** During this task the staff will need to identify key consolidation issues and establish deadlines to ensure that they are met in a timely manner. Based on when these key dates are identified, the staff for the regional utility can determine when the regional utility will actually begin to “operate” as a regional utility. Key consolidation issues include the valuation of the assets contributed by each system, the equalization payment to be made, or received, by the different systems, timing with regard to any regulatory approval issues, etc.
- **Conduct financial analysis.** During this task the staff will conduct a valuation of the assets being contributed by the different individual systems which are joining the regional utility. It is at this time that an equalization payment will be determined, if any.³⁹
- **Determine the regional utility’s goals and responsibilities.** It is important that the staff think beyond what the regional utility’s current needs will be to serve its existing customers. The staff must also consider what the needs of the entire “service region” for the regional utility will be. This is where a CCN will be helpful in

³⁹ The equalization payment is determined based upon the appraised value of the assets for each system, the share of capacity to be used by each individual system (average load and peak) and location of the individual systems with regard to the regional utility. Based on this analysis, individual systems may make an equalization payment to the regional utility, or receive an equalization payment from the utility. Note: this payment reflects only the costs associated with the contribution of the fixed assets, it does not incorporate the operating costs associated with operating the utility. Operating costs will be established during the rate design task, to be discussed in Step 3.

planning and clearly delineating what the regional utility's service area is. This task should be addressed during this step. This task will have a direct impact upon the future cost projections for operating the utility and ultimately the rates charged to the customers.

- **Develop a consolidation and communications program.** The final task during Step 2 is to develop a consolidation plan that will detail the deadlines for accomplishing the tasks within Step 2. In addition, it is essential that a communications program be established so that all employees of the individual systems clearly understand their roles in the new regional utility. There will be some uncertainty and concern as the regional utility is created, so it is critical that the management of the regional utility be as forward as possible with regard to providing information concerning the creation of the new regional utility.

Step 3. Implementation

The third and final step is to begin the conversion from individual utility systems to the creation of a regional utility. This step will utilize the analysis completed by the staff during Step 2 when staff identified consolidation issues and established milestones for accomplishing the creation of the regional utility. During this step the following tasks need to be accomplished.

- **Complete the regulatory approval processes.** During this task the staff of the regional utility will be completing all regulatory paperwork. This task would address the modification to wastewater discharge permits, consolidation of water rights, conversion to a regional utility (Section IV. B. Legal Issues), etc. Depending on the utility services offered and the number of systems being combined into a regional utility, this could be a fairly straightforward task, or it could be a somewhat more time consuming endeavor.

- **Complete assessment of organizational/operational needs.** During Step 1 it was mentioned that the review of organizational data would be key to realizing any cost savings associated with the development of a regional utility (if any). During Step 3 the staff should be completing its assessment of the organizational and operational needs for the regional utility. Upon completing this assessment the utility should begin implementing the changes needed to maximize the efficiencies of the regional utility. Such changes may include a reduction of redundant line repair crews, the placing of an “extra” well in reserve, etc.
- **Complete rate design.** In Step 3 the staff should now have a clear understanding as to the utility’s projected operating and capital costs, as well as the projected water and/or wastewater billing units. Using this information, the regional utility should complete a cost of service and rate design study that establishes the rate structure for the regional utility.
- **Complete conversion to a regional utility.** At this point the regional utility should be ready to provide service to its customers. All legal issues should have been resolved. The utility’s water and/or wastewater systems should be fully operational and rates should be in place to recover the costs of operating the utility.

Approach Two: Creating a Regional Utility with no Predecessor Entities

Assuming that a regional utility is to be newly created with no predecessor entities the staff for the new regional utility will probably need to retain financial and engineering experts to assist in designing a system that will satisfy the needs of the projected customer base. These experts will need to be used to assist in designing and constructing the utility, as well as establishing rates, based on projected usage, that will generate sufficient revenues to maintain the financial integrity of the utility.

Ultimately, once the utility is designed and is operational, it should begin to compile the types of data described in Step 1 of “Approach One: Creating a Regional Utility from Two or More Existing Utility Systems.” By developing a database of financial and operational data, the regional utility will then be able to plan for future expansion in a controlled and organized manner.

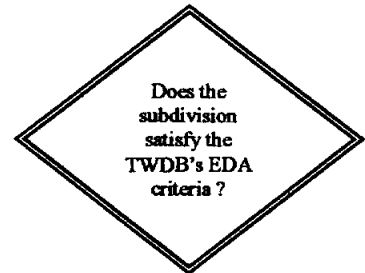
Section V

V. Water and Wastewater Service Option Methodology (Flow Chart)

The project team has developed a methodology in which EDAs across the six counties, as well as across the state, can be evaluated to produce viable water and/or wastewater service options. This methodology has been transcribed into flow chart form and is explained below⁴⁰. The project team would recommend following the process with the flow chart provided as Appendix A Schedule 2.

First, data on potential EDA's in need of water and/or wastewater service within EDAP eligible counties must be collected from all available sources. Sources from which data was collected for the six counties within this report include but are not limited to: facility studies, needs surveys (report and database), newspaper articles, internet research and maps.

Once a comprehensive list of all potential EDA's within an affected county has been developed. The area within the county must be further evaluated to meet economic and other various subjective criteria to qualify for state and/or federal assistance. In addition to statutory definitions, as explained within Section II, the TWDB has recently developed an evaluation survey⁴¹ to



⁴⁰ Four basic symbols were used to develop the flow chart. The red capsule shaped text boxes represent termination points. The yellow diamond shaped text boxes represent decision points. The green rectangular text boxes represent process steps. The black circular text box represents a flow chart connection point.

⁴¹ Appendix F, Attachment 1

help quantify EDA qualification for assistance as well as measure service needs.

If the area fails to qualify for assistance after statutory and TWDB evaluation, then the area is removed from the potential EDA list and deemed ineligible to receive program funds.

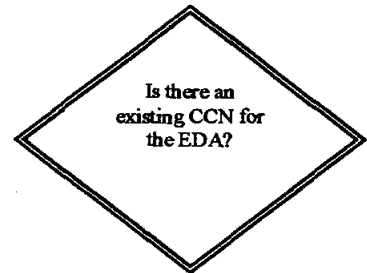
If the area does meet at least the minimum criteria after complete TWDB evaluation, then the EDA may be eligible for both state and/or federal financial assistance.

The first level of analysis to determine potential service options assuming the EDA is eligible for grant/loan assistance is to verify if there is an existing CCN. The project team compiled county maps, as displayed within Appendix B, containing all CCN lines and EDA locations to determine the CCN holder for each area.

Assuming the EDA is within a CCN, two steps, as noted within the green process step box are recommended. First, make initial contact with the CCN holder and inform them the residents within the EDA would like to receive service. Also, obtain a copy of the utility's adopted rules in order to ensure the potential EDA is in compliance. The TNRCC can also assist with the



EDA may be eligible for both state and federal financial assistance.



The EDA should:
1. Contact the utility to notify of service need and verify compliance with utility's adopted rules.
2. Contact the TNRCC to assist in obtaining service.

process if there is a potential “unreasonable denial of service”.

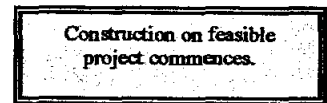
In the event of a dispute, there are a number of legal issues that will need to be addressed⁴². In summary, A retail public utility that possesses a certificate of convenience and necessity may not legally refuse service to an area within its certificated boundaries unless the service applicant is not in compliance with the utility's lawfully adopted rules or policies, or the utility is prohibited from providing that service, for example, because the area was developed in violation of subdivision requirements. However, a utility has satisfied its service obligation if it has offered service under reasonable terms that comply with various statutory provisions. Generally, those terms may include that the applicant for service pay, in advance, the reasonable costs of extension; pay impact fees; or pay contributions in aid of construction. Depending on the type of retail public utility involved, the Texas Natural Resource Conservation Commission can provide some relief when the terms of service, nevertheless, are tantamount to an unreasonable denial of service.

⁴² A complete legal discussion is included as Appendix E Legal Document 1.

A feasibility analysis must be completed in order to determine whether all parties, the lender and potential service provider, deem the use of state and/or federal funds for system improvements to be reasonable and appropriate.



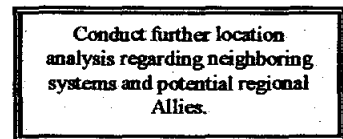
Assuming the CCN holder agrees to provide service, improvements needed to extend the system to EDA residents commence.



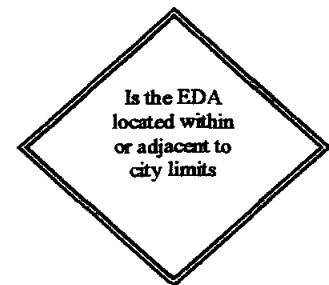
Service is provided by the CCN holder.



If there is no CCN for the EDA or the CCN holder successfully refuses to improve its current system in order to provide service, then further analysis must be conducted to geographically locate other nearby potential service providers.



A city has the option of providing water and wastewater service to its residents within city limits or in adjacent areas provided there is no CCN. The project team recommends looking to the city at this point in the process.



If the EDA is located within or adjacent to city limits, but does not lie within a CCN, then we recommend attempting to market the potential benefits of the city providing service to the EDA. Marketing the benefits of providing service could be presented in one or all of three ways. First, the city may want to consider annexing the EDA in order to provide an increased tax base. Second, by providing paved roads and adequate water and sewer service, the city can monitor future growth. Finally, financial incentives through TWDB grants/loans could entice the city to make necessary improvements in order to provide service.

Market the city's potential benefits of providing service to the EDA

The TWDB, the city and residents of the EDA should weigh their options upon the quantitative and qualitative results of economic feasibility analysis.

Conduct economic feasibility analysis to determine whether the city would provide service if granted TWDB financial assistance.

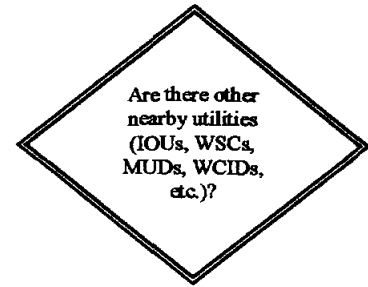
Ultimately, the city has the option of providing service. Once all incentives have been presented to the city council and evaluated, they will decide if providing service to the EDA is in their best interest.

Will the city provide service to the EDA?

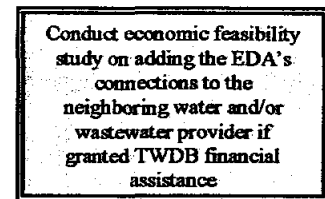
Service is provided by the City.



Assuming the city refuses to provide service or the EDA simply does not lie even within reasonable proximity to a city, further evaluation should be done to determine which, if any, other water and/or wastewater systems are nearby. Many EDAs, at least within the six counties studied, are within reasonably close proximity to other water and/or wastewater service providers.



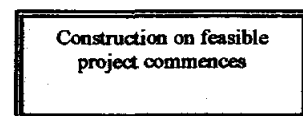
IOUs, WSCs, MUDs, WCIDs and other providers will be interested primarily in the financial aspects associated with providing service. Connecting to a utility provider other than a city or respective CCN holder basically becomes strictly a business decision.



Based on the relative size of the grant/loan made available to the utility, strict cost benefit analysis will result in a "go" or "no go" decision.



Construction on the utility system will commence upon a "go" from the utility after financial assistance is approved.



Service provided by utility (IOU, WSC, MUD, WCID, etc.).

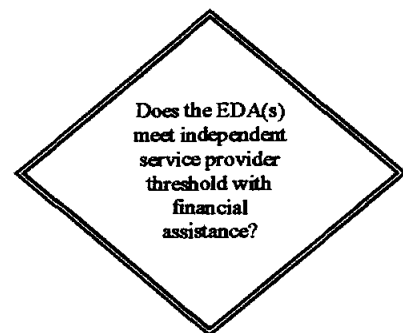
In certain circumstances, EDAs develop in very rural isolated areas with no real system connection options. By calculating the critical mass or the population and density of an area, engineers could determine if the EDA could benefit from a water and or wastewater system organized by a regional authority. Areas will have to be reviewed on a case by case basis to determine if a community system makes sense. A very “rough” hurdle was provided by TWDB engineers during the study that establishes certain minimum standards. Subdivisions with lots of ½ acre and smaller should be identified for further evaluation based on density alone.

The critical mass analysis coupled with financial assistance from the TWDB will provide an opportunity to potentially create a regional utility/authority. The threshold must be established on a case by case basis utilizing the expertise of financial and engineering specialists⁴³.

Assuming the EDA(s) meet the independent service provider



Conduct EDA critical mass analysis



Creation of a regional
utility/authority

⁴³ Based on this analysis it may make sense for a county to provide regional water and wastewater services.

threshold. Creation of the regional utility as well as construction of the project commences.

Service provided by regional authority.

If none of the aforementioned opportunities have proved to be feasible, then assisting in the maintenance of the status quo or providing quality individual well and septic systems is paramount. Quality testing is recommended for those who will remain on individual wells or septic systems and financial assistance should be employed individually when needs arise.

Septic systems if not properly maintained can promote health risks wherever used. Most of the areas reviewed in these counties currently rely on septic. It may make sense for some of these EDAs to continue to rely on septic; however, for these areas the TWDB should evaluate individuals and provide financial assistance to those in need of approved septic systems.

After attending Senate Bill 1 Regional Water Planning Group meetings and interviewing current voting and non-voting members, it has been determined that the current status of water planning is still in rudimentary stages. The best plan of action

Construction on feasible project commences



Verify quality of existing water and wastewater system(s)

Wastewater: TWDB to provide financial assistance for improved septic systems where needed

Water: Contact local Senate Bill 1 Regional Water Planning Group. Request to be included in the "rural/other" category. Regional water service will be planned and eventually provided with TWDB financial assistance.

for an EDA to take at this point is to make the rural area known to the RWPG so they can prioritize and include the EDAs on the agenda for future meetings.

Service provided through individual wells and/ or septic systems



Section VI

VI. Summary of Service Options/Results

Section V of the report described the flow chart developed by the project team that is proposed to be used as a template in identifying, evaluating, and prioritizing the Texas Water Development Board's options with regard to providing service to the EDAs currently being identified in the 44 counties within the State of Texas that are "EDAP eligible." (A diagram of the flow chart is shown in Appendix A – Schedule 2.) This section of the report will describe how the flow chart was used by the project team to prioritize the service options available for providing water and/or wastewater service to the EDAs identified in the six counties studied by the project team.

Schedules 3 and 4 (in Appendix A) provide a listing of the identified EDAs, by county, and the proposed service options which the TWDB may wish to consider in providing water and/or wastewater service to these areas. Schedule 3 provides a prioritization of options concerning the provision of water service, while Schedule 4 provides a priority listing of options available with regard to providing wastewater service to the EDAs. Each schedule identifies the "physical location of the EDA," as well as provides a "ranking of the service provider options" available for providing service to each EDA.

Physical Location of the EDA

In developing these schedules the project team identified (or attempted to identify) where the EDA was physically located. In identifying the physical location of each EDA three questions were asked. They were as follows:

1. Was the EDA within a Certificate of Convenience and Necessity?
2. Was the EDA in or near a city?
3. Was the EDA near an IOU, WSC, MUD, WCID, etc.?

Depending on the physical location of the EDA, one, two or all three of these boxes could have a “x” on Schedule 3, signifying that there are several potential providers of water service to the EDA. For instance, in reviewing the EDA identified as Gonzales, in Uvalde County, it was determined that it was within the CCN of Highway 117 Water Supply Corporation and located in or near the City of Uvalde. In addition, it is near another water provider, Windmill Water Supply Corporation. If the EDA did not lie near an existing system, an “x” marked the fourth column means the area is isolated from existing service options.

Ranking of the Service Provider Options

Once it was identified where an EDA was physically located, the next step was to develop a ranking of options available with regard to providing water and/or wastewater service. It is important to emphasize that these rankings were developed using the information available to the project team. These rankings are only a “first cut” at determining the best way to provide service to EDAs. In order to determine the most effective method for providing service, the TWDB will need to conduct a cost benefit analysis to determine the most cost effective manner in which to serve each EDA.

Based on the review of existing information concerning the EDAs, the project team identified the following service options, which may be available to EDAs.⁴⁴ Available options are as follows; they are not listed in order of preference:

1. Provision of service by an existing CCN holder;
2. Provision of service by a city;
3. Provision of service by a neighboring water or wastewater system;
4. Provision of service by a newly created regional utility or authority; or

5. Provision of service from individual wells or septic systems.

For instance, in reviewing Gonzales, in Uvalde County, it was determined that the provision of water service by the existing CCN holder Highway 117 WSC was probably the best option to pursue. However, if that option is not politically or economically viable, the neighboring City of Uvalde should be contacted, to see if it would consider providing service to Gonzales. The third option would be to contact the neighboring system of Windmill WSC, while the fourth option would be to consider the creation of a regional utility to provide service, and the fifth option would be to serve this EDA with individual wells. Once further cost benefit analysis has been conducted by the TWDB, it could then be determined as to what is the most cost effective option with regard to the provision of water service to this EDA.

Assumptions Used in Designing the Service Options Result Matrix (Appendix A, Schedules 3 and 4)

Due to some limitations with regard to available data, assumptions needed to be made with regard to the identification of service options. In addition, the project team made assumptions with regard to the types of service providers that would be the most effective in providing water and or wastewater service to EDAs. These assumptions are as follows:

1. Schedules 3 and 4 list all of the EDAs as identified by the project team during the course of this study. As mentioned earlier, some of these EDAs may not be eligible for financial assistance through the EDAP funding mechanism. All potential EDAs identified by the project team are listed in this report. The TWDB will need to conduct further analysis to determine whether each EDA is eligible for financial assistance.

⁴⁴ Not all of these options may be available to each EDA. For instance, provision of service by a city may not be an option if the nearest city is 10 miles.

2. Based on the maps obtained from the TNRCC and the TWDB it was not always clear where city limits and/or CCN's began, overlapped, etc. Even when the project team toured the subject areas, and individuals in the communities were questioned, it was oftentimes not clear whether an EDA was in a CCN or in the city limits of a city bordering the EDA. Therefore it may be that certain EDAs are documented as being located within a CCN or city limits, when in reality it is 200 to 400 yards outside the CCN or city limits. Significant time was spent attempting to locate the EDAs in as an accurate a manner as possible on the maps located in Appendix B of this report. However, the purpose of this study was not to map the EDAs located within the six counties, but rather to develop regional solutions with regard to the provision of water and wastewater service.
3. In prioritizing water and wastewater service for the EDAs it was determined that the first choice of service would be from the holder of a CCN for the service in question. For instance, if water service was needed for an EDA, and it was located within a water CCN, that was the preferred service provider. The second option was to typically consider a city if the EDA was in or near a city limits. While not all cities provide water and wastewater services, it was determined that the city should nevertheless be contacted to see if that was a viable option. If there was a neighboring utility system that could possibly provide service that was the third option considered. For instance, if a water supply corporation was providing water service to an EDA that also needed wastewater service, the WSC would be contacted to see if it would consider providing wastewater service. If none of these options were viable, the project team proposed that the TWDB consider the economic viability of creating a regional utility. Finally, individual wells and septic systems should be considered.

As mentioned earlier, the Service Options Result Matrix provides a "first cut" at who the preferred service provider would be. However, in order to determine the most economically feasible option, a cost benefit analysis should be conducted for each EDA to determine the

cheapest manner in which to provide utility services to these EDAs. In that way, the TWDB's EDAP funds can be used to provide service to as many EDAs as possible, in as cost-effective manner as possible.

In examining the EDAs it was found that a number of them are already receiving water and/or wastewater service. We incorporated that information into our Service Options Result Matrix in prioritizing what entity should provide service. For instance, in Duval County it was found that water service was provided by Duval County Conservation and Reclamation District. Therefore, it was recommended that the Reclamation District (i.e. an existing water system) provide water service.

Section VII

VII. Findings and Recommendations

The primary purpose for this study was to identify ways in which water and wastewater service could be provided to Economically Distressed Areas within the 44 EDAP eligible counties. In particular, the emphasis of this study was to focus on the provision of these utility services in the rural portions of these EDAP eligible counties. During the course of this study the project team developed a methodology for identifying water and wastewater service options for EDAs, and then prioritizing these options. In addition, the project team utilized the methodology in prioritizing service options for the EDAs identified in the six EDAP eligible counties studied by the project team. As a result of this analysis the project team has developed a series of recommendations that should assist the TWDB in managing its Economically Distressed Areas Program. The recommendations are as follows:

1. The project team would propose that the Texas Water Development Board consider adopting the methodology described in Section V of this report to identify and prioritize service options for EDAs in the 44 EDAP eligible counties in Texas.
2. During the course of this study the project team found that some of the facility plans, needs survey, and other documentation were out-dated, and not necessarily the most current information. As a result, the project team would recommend the TWDB inventory the EDAs within the 44 EDAP eligible counties in the State of Texas. In addition to identifying the EDAs, current water and wastewater services should be identified, as well as the provider of these services, if any.
3. The project team discovered during its “windshield survey” of the six counties that there are a number of communities and regions that are listed as EDAs, which would probably not meet the TWDB’s EDA eligibility criteria. The project team would propose that once the EDAs in the 44 counties are inventoried (Recommendation 2), that the TWDB establish a

methodology for reviewing these EDAs to determine whether they are eligible for EDAP funding. Eligibility for all EDA's should then be determined.

4. Once the EDAs in the 44 counties have been identified (Recommendation 2) and the EDAs have been determined to be either eligible or ineligible for EDAP funding (Recommendation 3) the TWDB should utilize the service provider option methodology (Described in Recommendation 1) to take a "first-cut" at identifying water and wastewater service options for the eligible EDAs.
5. The project team would recommend upon completion of Recommendation 4 that the TWDB then conduct further cost benefit analyses to determine the most cost effective method for providing water and wastewater service to the EDAs in Texas.
6. Upon completion of a cost benefit analysis that determines the most viable option is to serve an EDA(s) through the creation of a regional water and/or wastewater utility, the TWDB should conduct a pilot study to assist in creating a regional utility. **Given recent legislation, the project team would recommend that the county government be a strong candidate for creating, operating and managing the regional utility.** This case study could then be written and distributed to other counties and/or other local governments describing how a regional utility is created.
7. Finally, the project team would recommend that someone within the TWDB be responsible for monitoring the overall number of EDAs within Texas, and the progress being made with regard to implementing the recommendations listed in this report. A report should then be provided to the TWDB's board members on an annual basis. A report could be provided to the Texas Legislature every two years.

Appendix A: Schedules

Texas Water Development Board
Water and Wastewater Service Options for Economically Distressed Areas
Comprehensive Listing of Potential EDAs

Bee County

Beeville (Adjacent Areas)
Normana
Pawnee
Pettus
Skidmore
Tuleta
Tulsita
Tynan

Newton County

Bleakwood
Bon Weir
Deweyville
Old Salem
Toledo Village
Trout Creek
Indian Lake
River Oaks
Kirkendall
Sunset Acres
River Road

Uvalde County

Brice Lane
Fort Clark Road
Gonzales
Knippa
North Uvalde
South Grove St
Utopia
Uvalde Estates
Vanessa Street

Duval County

Benavides
Cadena
Concepcion
Coronado Perez Addition
County Road 111
East Pearson Street
Four A's Subdivision
George W Ward Addition
Highway 16 South
La Masa Road
Magnolia Road
Maria Olga
Mi Tierra Road
Realitos
School Heights Addition
Solis Subdivision
Williamson Addition

Sabine County

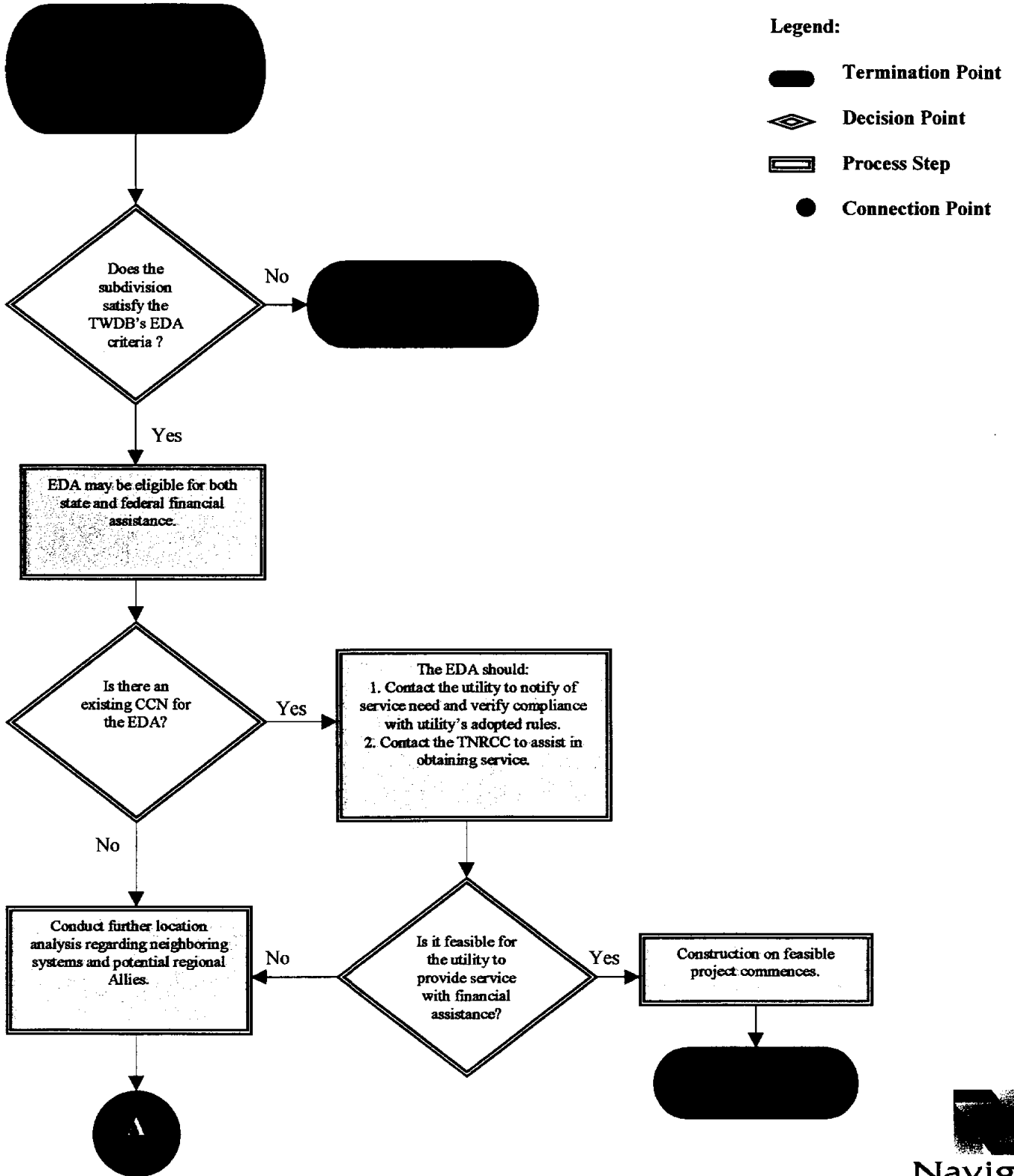
Bronson
Brookeland
Delta Heights
Highway 96
Toldeo Bend
Indian Mounds

Val Verde County

Amistad Acres
Box Canyon Estates
Cienegas Terrace
Comstock
Lake Ridge Estates
(Including Lake View)
Langtry
Los Campos
Owens
Payment
Pain Village
Rio Bravo
Rough Canyon
Val Verde Park

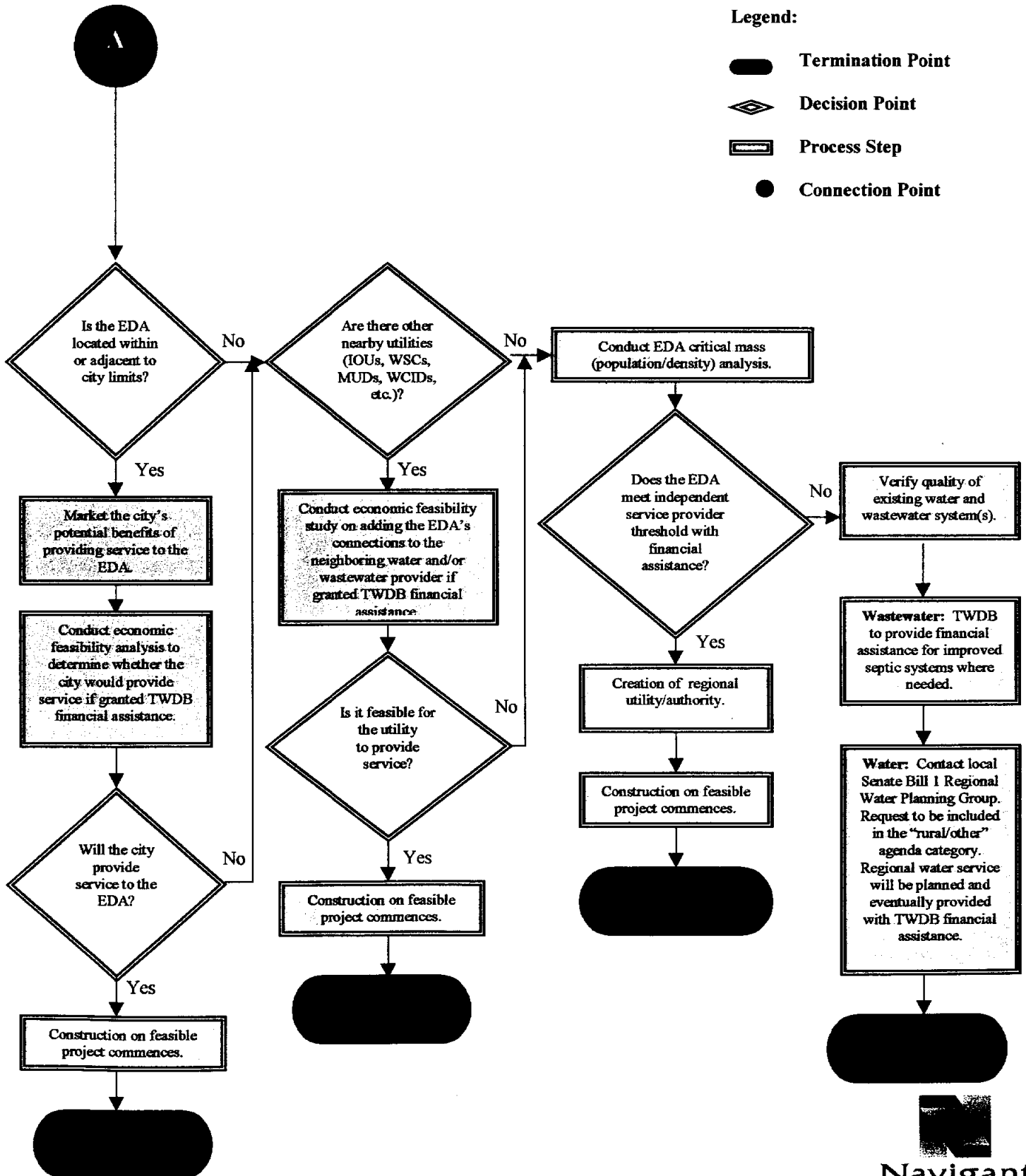
Texas Water Development Board Water and Wastewater Service Options for Economically Distressed Areas

Flow Chart - Water and Wastewater Service Option Methodology



Texas Water Development Board Water and Wastewater Service Options for Economically Distressed Areas

Flow Chart - Water and Wastewater Service Option Methodology



Texas Water Development Board Water and Wastewater Service Options for Economically Distressed Areas

Service Options Result Matrix (Water Only)

	Physical Location of EDA			
	EDA Within CCN	EDA Within/Adjacent to City Limits	EDA near IOU's, WSC's, MUD's, WCID's etc.	Isolated from Existing Systems
Bee County				
Beeville (Adjacent Areas)	X	X	X	
Normana				X
Pawnee	X			
Pettus				X
Skidmore				X
Tuleta				X
Tulsita				X
Tynan	X		X	

CCN Holder	City	Ranking of Service Provider Options		
		Existing IOU's, WSC's, MUD's, WCID's etc.	Created Regional Utility/Authority(1)	Wells
1	2	3	4	5
			1	2
1			1	2
			1	2
			1	2
			1	2
1		2	3	

Duval County				
Benavides		X	X	
Cadena		X	X	
Concepcion				X
Coronado Perez Addition		X	X	
County Road 111		X	X	
East Pearson Street		X	X	
Four A's Subdivision		X	X	
George W Ward Addition		X	X	
Highway 16 South		X	X	
La Maaa Road		X	X	
Magnolia Road		X	X	
Maria Olga		X	X	
Mi Tierra Road		X	X	
Realitos				X
School Heights Addition		X	X	
Solis Subdivision		X	X	
Williamson Addition		X	X	

	2	1	3	4
	2	1	3	4
			1	2
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4

Texas Water Development Board Water and Wastewater Service Options for Economically Distressed Areas

Service Options Result Matrix (Water Only)

	Physical Location of EDA			
	EDA Within CCN	EDA Within/Adjacent to City Limits	EDA near IOU's, WSC's, MUD's, WCID's etc.	Isolated from Existing Systems
Newton County				
Bleakwood				X
Bon Weir	X			
Deweyville	X	X		
Old Salem				X
Toledo Village	X		X	
Trout Creek	X			
Indian Lake	X	X		
River Oaks	X	X		
Kirkendall	X	X		
Sunset Acres	X	X		
River Road	X	X		

Ranking of Service Provider Options				
CCN Holder	City	Existing IOU's, WSC's, MUD's, WCID's etc.	Created Regional Utility/Authority(1)	Wells
			1	2
1			2	3
1			2	3
			1	2
1		2	3	4
1			2	3
1			2	3
1			2	3
1			2	3
1			2	3

Sabine County				
Bronson		X		
Brookeland	X			
Delta Heights		X	X	
Highway 96				X
Toledo Bend	X		X	X
Indian Mounds				X

	2	1	3	4
1			2	3
	1	2	3	4
				1
1		2	3	4
				1

Uvalde County				
Brice Lane	X	X	X	
Fort Clark Road	X	X	X	
Gonzales	X	X	X	
Knippa	X			
North Uvalde	X	X	X	
South Grove St.	X	X	X	
Utopia	X			
Uvalde Estates	X	X	X	
Vanessa Street	X	X	X	

1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2		3	4
1	2	3	4	5
1	2	3	4	5
1	2	3	3	4
1	2	3	4	5
1	2	3	4	5

Texas Water Development Board
Water and Wastewater Service Options for Economically Distressed Areas
 Service Options Result Matrix (Water Only)

Physical Location of EDA			
EDA Within CCN	EDA Within/Adjacent to City Limits	EDA near IOU's, WSC's, MUD's, WCID's etc.	Isolated from Existing Systems

Ranking of Service Provider Options				
CCN Holder	City	Existing IOU's, WSC's, MUD's, WCID's etc.	Created Regional Utility/Authority(1)	Wells

Val Verde County				
Amistad Acres				X
Box Canyon Estates				X
Cienegas Terrace	X	X	X	
Comstock		X		
Lake Ridge Estates (including Lake View)	X			
Langtry		X		
Los Campos	X	X	X	
Owens	X	X	X	
Payment	X	X	X	
Rio Bravo	X	X	X	
Rough Canyon	X			
Val Verde Park	X	X	X	
Pain Village	X	X		

			1	2
			1	2
1	2	3	4	5
	2	1	3	4
1		2	3	4
				1
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1			2	3
1	2	3	4	5
1	2		3	4

Notes:

(1) This option would include either the creation of a "new" utility (municipal utility district etc.), or the county "entering" the utility service business.

Texas Water Development Board Water and Wastewater Service Options for Economically Distressed Areas

Service Options Result Matrix (Wastewater Only)

Physical Location of EDA			
EDA Within CCN	EDA Within/Adjacent to City Limits	EDA near IOU's, WSC's, MUD's, WCID's etc.	Isolated from Existing Systems

Ranking of Service Provider Options				
CCN Holder	City	Existing IOU's, WSC's, MUD's, WCID's etc.	Created Regional Utility/Authority(1)	Septic

Bee County

Beeville (Adjacent Areas)	X	X		
Normana				X
Pawnee			X	X
Pettus				X
Skidmore				X
Tuleta				X
Tulsita				X
Tynan			X	

	1		2	3
			1	2
		1	2	3
			1	2
			1	2
			1	2
		1	2	3

Duval County

Benavides		X	X	
Cadena		X	X	
Concepcion				X
Coronado Perez Addition		X	X	
County Road 111		X	X	
East Pearson Street		X	X	
Four A's Subdivision		X	X	
George W Ward Addition		X	X	
Highway 16 South		X	X	
La Masa Road		X	X	
Magnolia Road		X	X	
Maria Olga		X	X	
Mi Tierra Road		X	X	
Realitos				X
School Heights Addition		X	X	
Solis Subdivision		X	X	
Williamson Addition		X	X	

	2	1	3	4
	2	1	3	4
			1	2
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4
	2	1	3	4

Texas Water Development Board Water and Wastewater Service Options for Economically Distressed Areas

Service Options Result Matrix (Wastewater Only)

	Physical Location of EDA			
	EDA Within CCN	EDA Within/Adjacent to City Limits	EDA near IOU's, WSC's, MUD's, WCID's etc.	Isolated from Existing Systems
Newton County				
Bleakwood				X
Bon Weir			X	
Deweyville	X			
Old Salem				X
Toledo Village			X	
Trout Creek			X	
Indian Lake	X			
River Oaks	X			
Kirkendall	X			
Sunset Acres	X			
River Road	X			

Ranking of Service Provider Options				
CCN Holder	City	Existing IOU's, WSC's, MUD's, WCID's etc.	Created Regional Utility/Authority(1)	Septic
			1	2
		1	2	3
		1	2	3
			1	2
		1	2	3
		1	2	3
		1	2	3
		1	2	3
		1	2	3
		1	2	3

Sabine County				
Bronson			X	
Brookeland			X	
Delta Heights		X	X	
Highway 96				X
Toledo Bend			X	X
Indian Mounds				X

	2	1	3	4
		1	2	3
	1	2	3	4
				1
		1	2	3
				1

Uvalde County				
Brice Lane	X	X	X	
Fort Clark Road	X	X	X	
Gonzales	X	X	X	
Knippa		X	X	
North Uvalde	X	X	X	
South Grove St.	X	X	X	
Utopia		X	X	
Uvalde Estates		X	X	
Vanessa Street	X	X	X	

1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
	2	1	3	4
1	2	3	4	5
1	2	3	4	5
	2	1	3	4
	1	2	3	4
1	2	3	4	5

Texas Water Development Board Water and Wastewater Service Options for Economically Distressed Areas

Service Options Result Matrix (Wastewater Only)

Physical Location of EDA			
EDA Within CCN	EDA Within/Adjacent to City Limits	EDA near IOU's, WSC's, MUD's, WCID's etc.	Isolated from Existing Systems

Ranking of Service Provider Options				
CCN Holder	City	Existing IOU's, WSC's, MUD's, WCID's etc.	Created Regional Utility/Authority(1)	Septic

Val Verde County

Amistad Acres			X
Box Canyon Estates			X
Cienegas Terrace	X	X	X
Comstock		X	
Lake Ridge Estates (including Lake View)		X	
Langtry		X	
Los Campos	X	X	X
Owens	X	X	X
Pain Village		X	
Payment	X	X	X
Rio Bravo	X	X	X
Rough Canyon		X	
Val Verde Park	X	X	X

			1	2
			1	2
1	2	3	4	5
1		2	3	4
		1	2	3
				1
1	2	3	4	5
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1	2	3	4	5
1	2	3	4	5
1	2	3	4	5

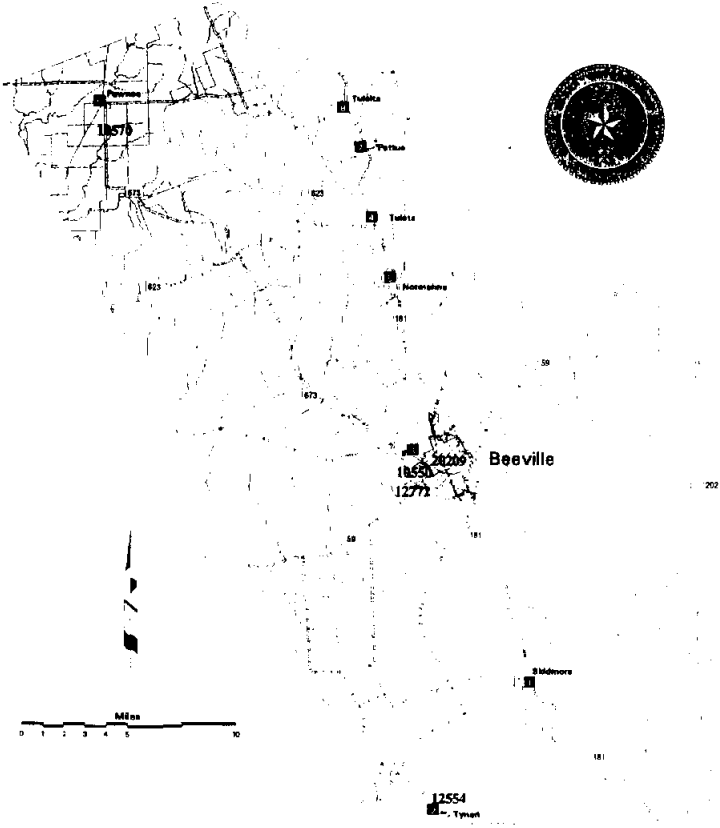
Notes:

(1) This option would include either the creation of a "new" utility (municipal utility district etc.), or the county "entering" the utility service business.

Appendix B: Maps

APPENDIX B - MAP 1

*Certificate of Convenience and Necessity
and Economically Distressed Area (EDA)
Locations for Bee County*



WW CCN Utility Name

20209 CITY OF BEEVILLE

W CCN Utility Name

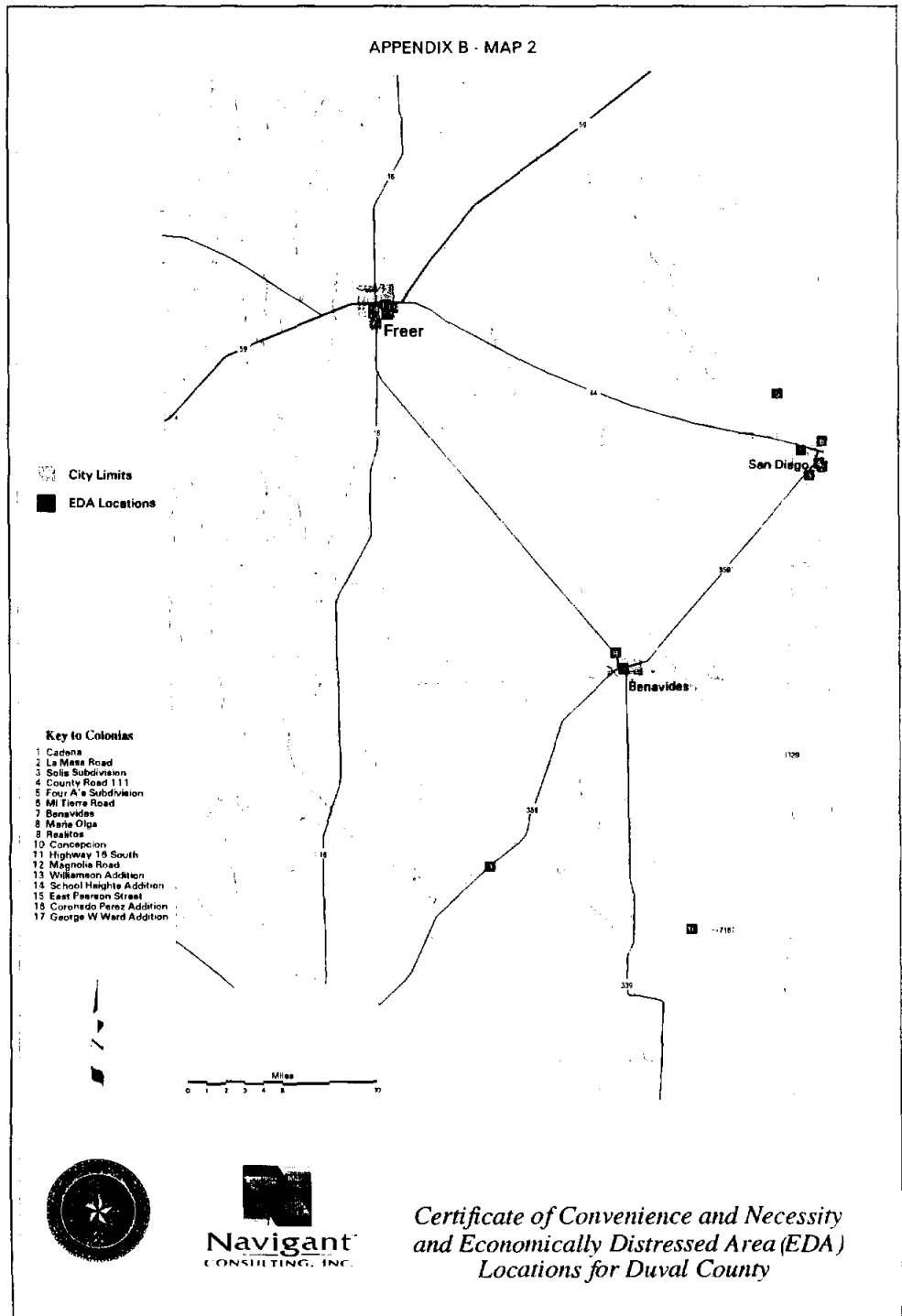
10550 CITY OF BEEVILLE
10570 EI OSO WSC
12554 TYNAN WSC
12772 ROSA LEE ESSLER

- CCN - Wastewater
- CCN - Water
- City Limits
- EDA Locations

Key to Colonias

- 1 Skidmore
- 2 Tynan
- 3 Beeville (Adjacent Areas)
- 4 Tuleta
- 5 Normanna
- 6 Pawnee
- 7 Pettus
- 8 Tulsita

APPENDIX B - MAP 2



*Certificate of Convenience and Necessity
and Economically Distressed Area (EDA)
Locations for Duval County*

APPENDIX B - MAP 3

*Certificate of Convenience and Necessity
and Economically Distressed Area (EDA)
Locations for Newton County*



Navigant
CONSULTING, INC.

- CCN - Wastewater
- CCN - Water
- City Limits
- EDA Locations

Key to Colonias

- 1 Sunset Acres
- 2 River Road
- 3 Kirkendall
- 4 Deweyville
- 5 Indian Lake
- 6 River Oaks
- 7 Toledo Village *
- 8 Bleakwood
- 9 Trout Creek
- 10 Old Salem
- 11 Bon Weir

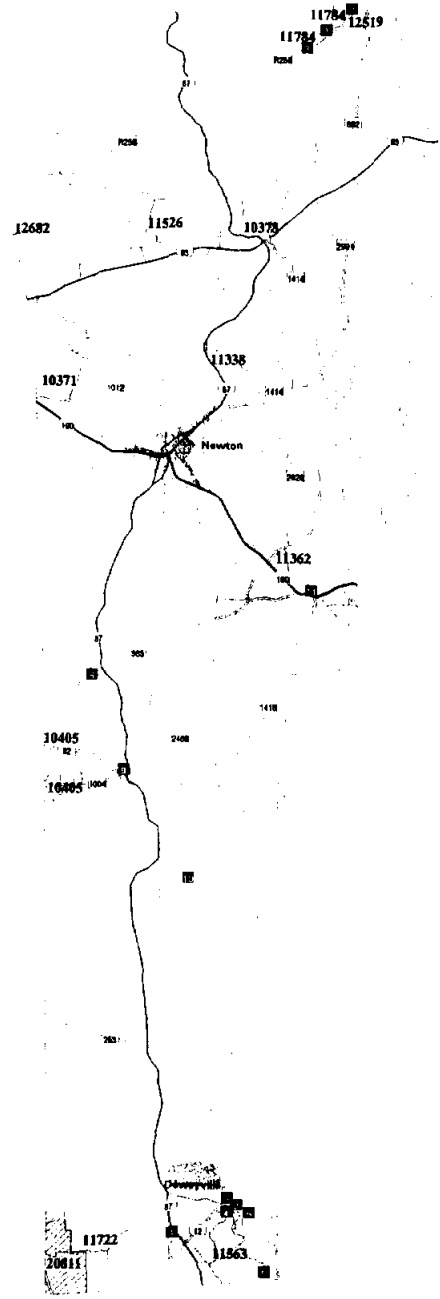
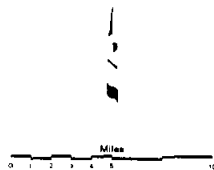
* Residential clusters within a single EDA.

WW CCN Utility Name

20811 MAURICEVILLE SUD

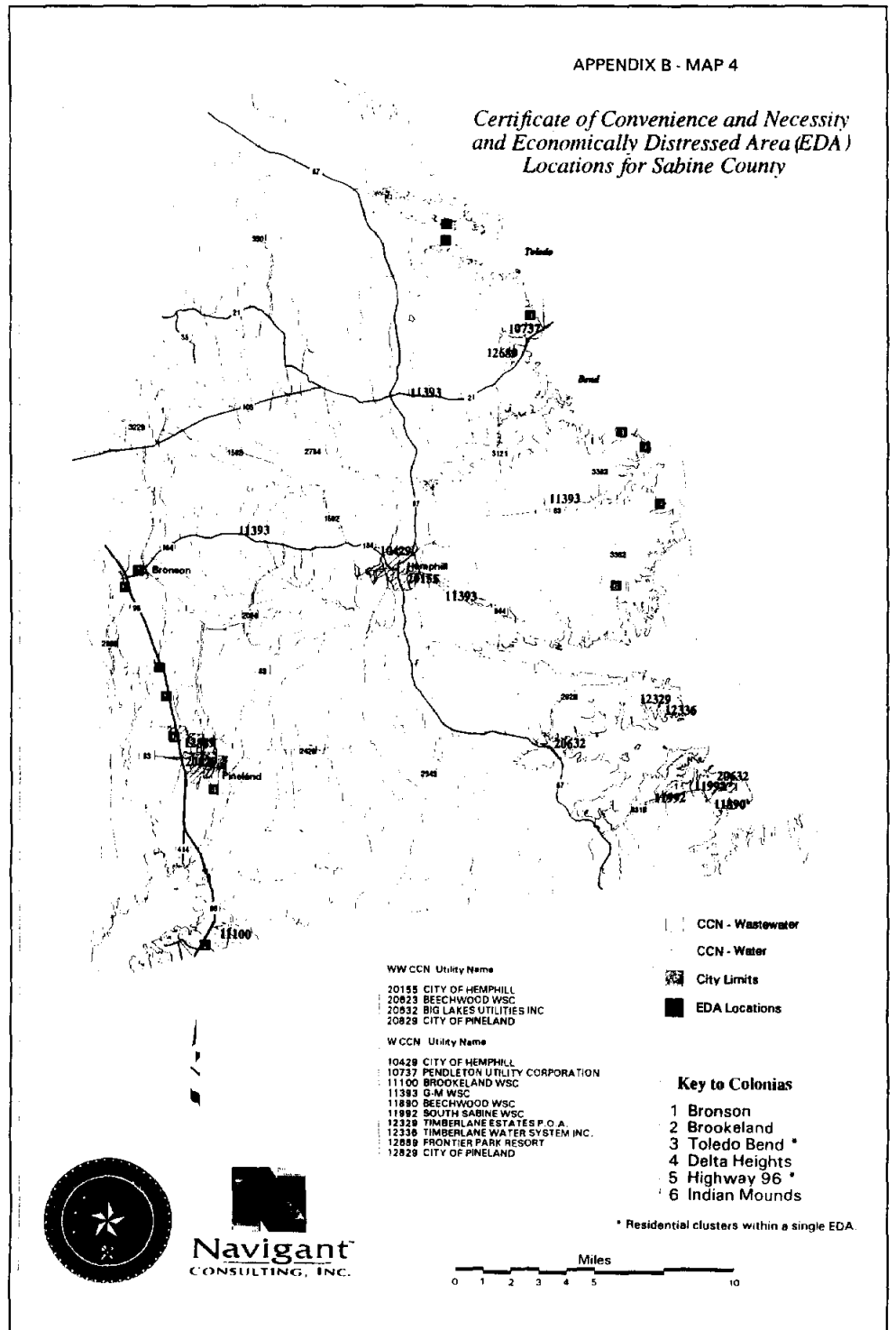
W CCN Utility Name

- 10371 HOLLY-HUFF WSC
- 10378 BURKEVILLE WSC
- 10405 SOUTH KIRBYVILLE RURAL WSC
- 11338 EAST NEWTON WSC
- 11362 BON WIER WSC
- 11526 JAMESTOWN WSC
- 11583 SOUTH NEWTON WSC
- 11722 MAURICEVILLE WSC
- 11784 TEXAS UTILITY MANAGEMENT
- 12519 TALL TIMBERS WSC
- 11892 SOUTH SABINE WSC
- 12682 HARRISBURG WSC

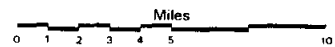


APPENDIX B - MAP 4

*Certificate of Convenience and Necessity
and Economically Distressed Area (EDA)
Locations for Sabine County*



Navigant
CONSULTING, INC.



APPENDIX B - MAP 5

*Certificate of Convenience and Necessity
and Economically Distressed Area (EDA)
Locations for Uvalde County*

WW CCN Utility Name
20455 CITY OF UVALDE

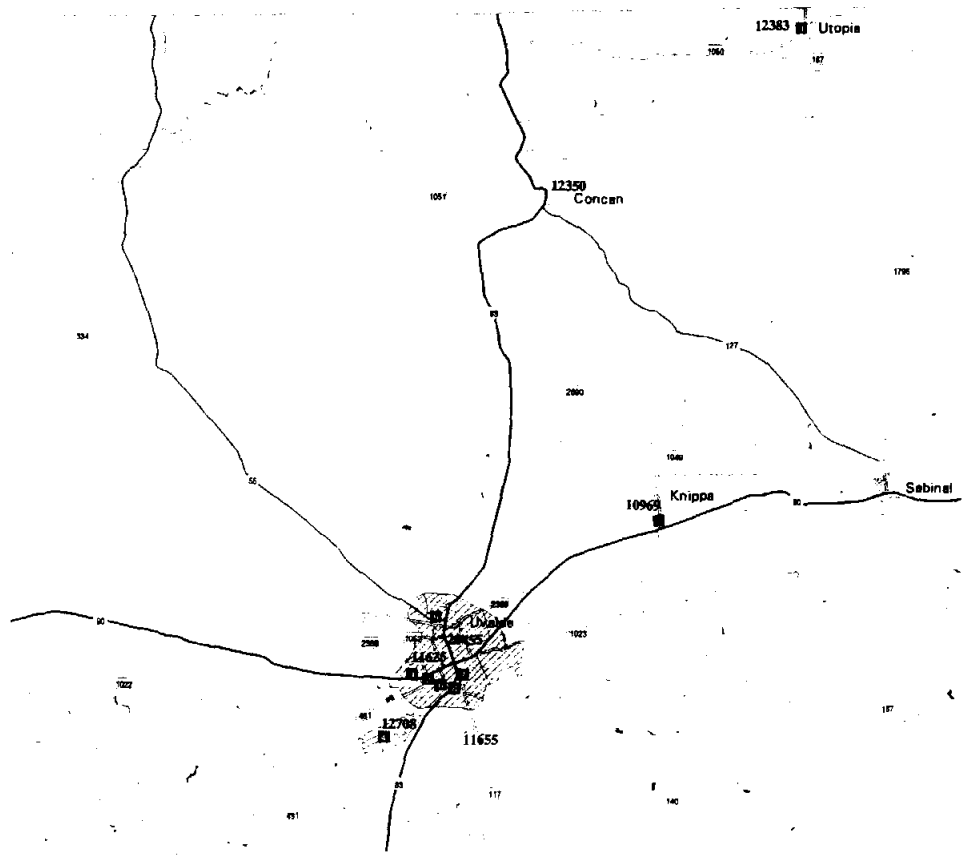
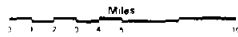
W CCN Utility Name
12383 UTOPIA WSC
11655 CITY OF UVALDE
11625 HIGHWAY 117 WSC
12708 WINDMILL WSC
10969 KNIPPA WSC
12350 CONCAN WSC

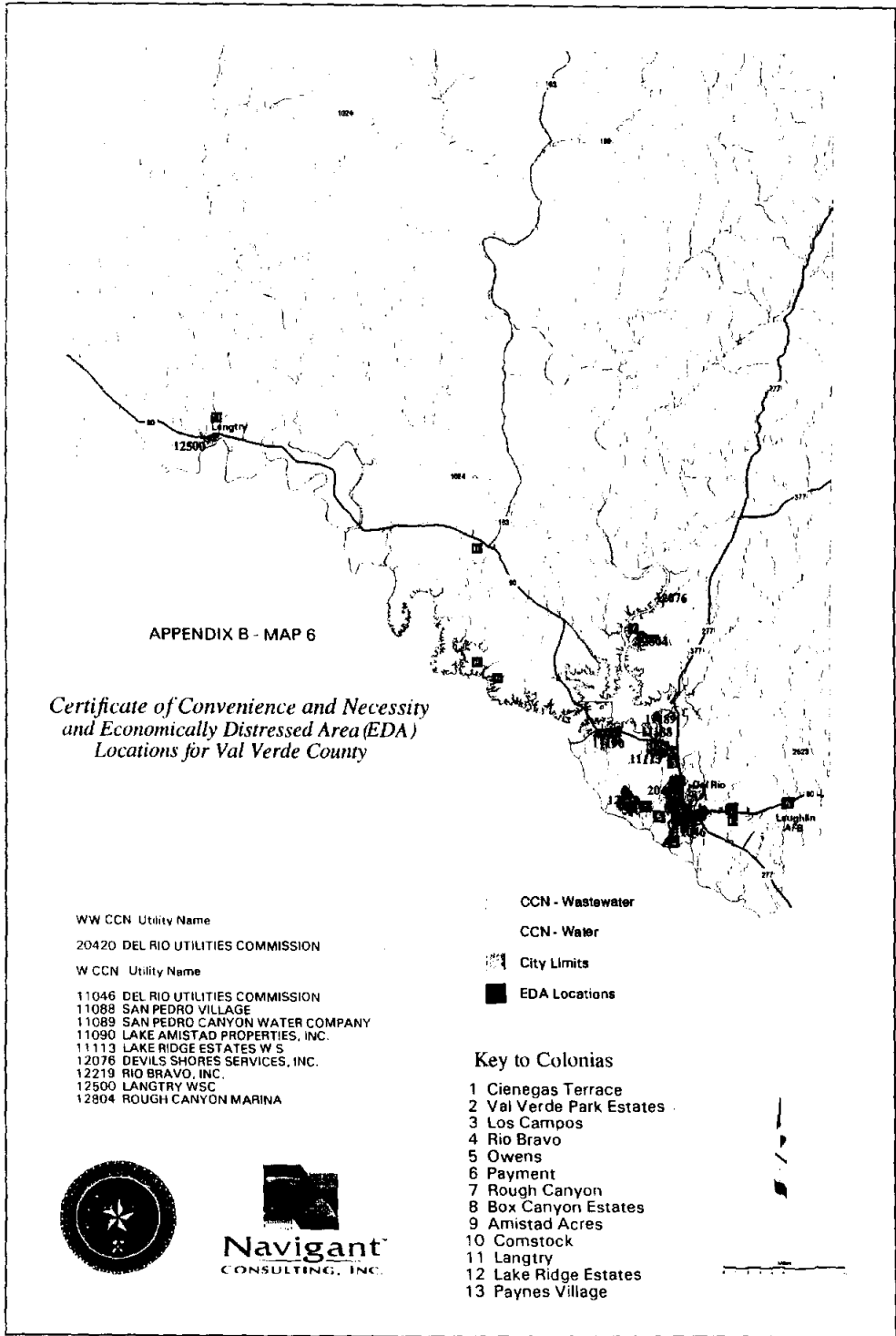
Key to Colonias

- 1 Knippa
- 2 Gonzales
- 3 Utopia
- 4 Uvalde Estates
- 5 North Uvalde
- 6 Vanessa Street
- 7 Brice Lane
- 8 South Grove St.
- 9 Fort Clark Road



- CCN - Wastewater
- CCN - Water
- City Limits
- EDA Locations





Appendix C: Photos

BEE COUNTY

Photo 1 – Blueberry Hill: Water Storage



Photo 2 – Normana: Residential (Water Tower)



DUVAL COUNTY

Photo 3 – Cadena: Residential



Photo 4 – Realitos: Outhouse



NEWTON COUNTY

Photo 5 – Toledo Village: Independent Water Utility



Photo 6 – Toledo Village: Retiree and Vacation Homes



SABINE COUNTY

Photo 7 – Bronson: Water Storage Tank



Photo 8 – Bronson: Residential



UVALDE COUNTY

Photo 9 – Knippa



Photo 10 – Utopia



Photo 11 – Knippa



VAL VERDE COUNTY

Photo 12 – Box Canyon: Residential



Photo 13 – Val Verde Estates: Residential

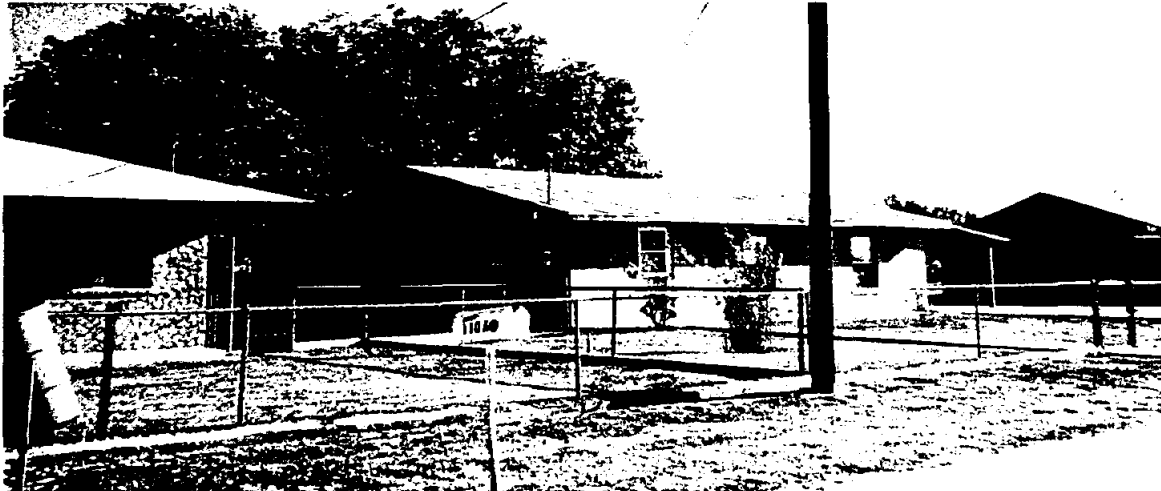
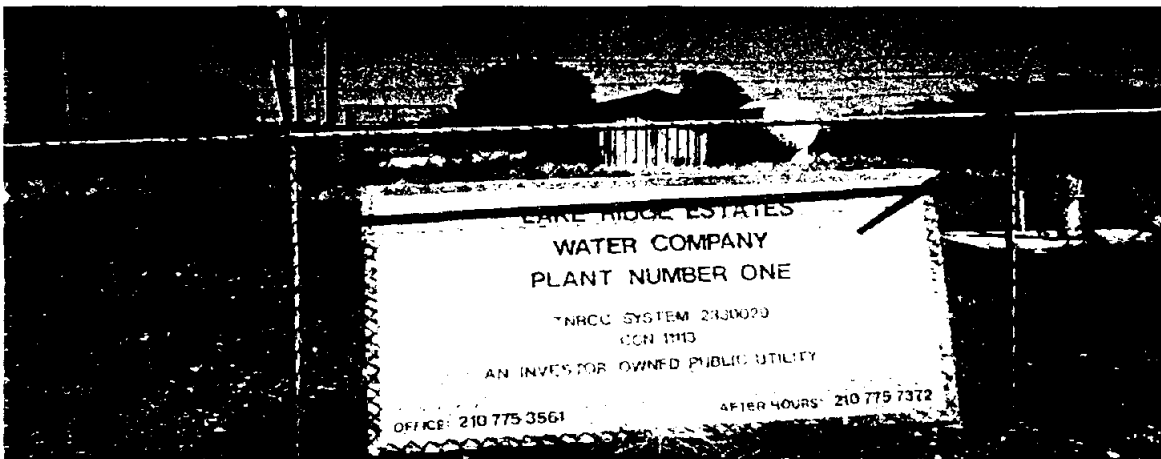


Photo 14 – Lake Ridge Estates: Water Company Plant



Appendix D: Workpapers

Texas Water Development Board
Water and Wastewater Service Options for Economically Distressed Areas

EDA Population Statistics(1)

Bee County										
EDA Name	Included in 1992(2)	Class(3)	Population(4)	Dwellings(4)	Occupied Lots(4)	Total Lots(4)	Percent Occupied	Average Size Household	Total Buildout Population	Area (Acres)(5)
Beeville (Adjacent Areas)		Proximity To Existing System	1,988	695	695	695	100%	2.86	1,988	
Normana		Independent Location (Small)	295	103	103	103	100%	2.86	295	
Pawnee		Independent Location (Small)	250	87	87	87	100%	2.87	250	
Pettus		Independent Location (Small)	680	238	238	238	100%	2.86	680	
Skidmore		Independent Location (Large)	652	228	228	228	100%	2.86	652	
Tuleta		Independent Location (Small)	383	134	134	134	100%	2.86	383	
Tulsita		Independent Location (Small)	254	89	89	89	100%	2.85	254	
Tynan		Independent Location (Large)	715	252	252	252	100%	2.84	715	
Total			5,217	1,826	1,826	1,826	100%	2.86	5,217	

Duval County										
EDA Name	Included in 1992(2)	Class(3)	Population(4)	Dwellings(4)	Occupied Lots(4)	Total Lots(4)	Percent Occupied	Average Size Household	Total Buildout Population	Area (Acres)(5)
Benavides			2,110	603	603	603	100%	3.50	2,110	
Cadena	x	Proximity To Existing System	105	30	30	70	43%	3.50	245	13
Concepcion			231	66	66	66	100%	3.50	231	
Coronado Perez Addition			18	5	5	5	100%	3.60	18	
County Road 111			35	10	10	10	100%	3.50	35	
East Pearson Street			11	3	3	3	100%	3.67	11	
Four A's Subdivision			108	31	31	31	100%	3.48	108	
George W Ward Addition			32	9	9	9	100%	3.56	32	
Highway 16 South			154	44	44	44	100%	3.50	154	
La Masa Road			91	26	26	26	100%	3.50	91	
Magnolia Road			91	26	26	26	100%	3.50	91	
Maria Olga			70	20	20	20	100%	3.50	70	
Mi Tierra Road			87	25	25	25	100%	3.48	87	
Realitos			465	133	133	133	100%	3.50	465	
School Heights Addition			81	23	23	23	100%	3.52	81	
Solis Subdivision			133	38	38	38	100%	3.50	133	
Williamson Addition			112	32	32	32	100%	3.50	112	
Total			3,934	1,124	1,124	1,164	97%	3.50	4,074	

Texas Water Development Board
Water and Wastewater Service Options for Economically Distressed Areas

EDA Population Statistics(1)

Newton County

EDA Name	Included in 1992(2)	Class(3)	Population(4)	Dwellings(4)	Occupied Lots(4)	Total Lots(4)	Percent Occupied	Average Size Household	Total Buildout Population	Area (Acres)(5)
Bleakwood			427	180	180	180	100%	2.37	427	
Bon Weir			408	172	172	172	100%	2.37	408	
Deweyville	x	Proximity To Existing System	2,539	1,072	1,072	1,072	100%	2.37	2,539	80
Old Salem			164	69	69	69	100%	2.38	164	
Toledo Village			1,510	637	637	637	100%	2.37	1,510	
Trout Creek			348	147	147	147	100%	2.37	348	
Total			5,396	2,277	2,277	2,277	100%	2.37	5,396	

Sabine County

EDA Name	Included in 1992(2)	Class(3)	Population(4)	Dwellings(4)	Occupied Lots(4)	Total Lots(4)	Percent Occupied	Average Size Household	Total Buildout Population	Area (Acres)(5)
Bronson			327	162	162	162	100%	2.02	327	
Brookeland			242	120	120	120	100%	2.02	242	
Delta Heights		Proximity To Existing System	62	21	21	21	100%	2.95	62	
Highway 96		Proximity To Existing System	104	22	22	22	100%	4.73	104	
Toldeo Bend			6,499	3,116	3,116	3,116	100%	2.09	6,499	
Total			7,234	3,441	3,441	3,441	100%	2.10	7,234	

Uvalde County

EDA Name	Included in 1992(2)	Class(3)	Population(4)	Dwellings(4)	Occupied Lots(4)	Total Lots(4)	Percent Occupied	Average Size Household	Total Buildout Population	Area (Acres)(5)
Brice Lane	x	Proximity To Existing System	61	20	20	24	83%	3.05	73	4
Fort Clark Road	x	Proximity To Existing System	34	11	10	50	20%	3.09	155	10
Gonzales			110	24	24	24	100%	4.58	110	
Knippa			605	199	199	300	66%	3.04	912	
North Uvalde	x	Proximity To Existing System	334	110	110	110	100%	3.04	334	30
South Grove St	x	Proximity To Existing System	46	15	15	20	75%	3.07	61	10
Utopia			544	179	179	179	100%	3.04	544	
Uvalde Estates	x	Independent Location (Small)	1,264	269	269	423	64%	4.70	1,988	1,212
Vanessa Street	x	Proximity To Existing System	113	35	35	35	100%	3.23	113	10
Total			3,111	862	861	1,165	74%	3.61	4,290	

Texas Water Development Board
Water and Wastewater Service Options for Economically Distressed Areas

EDA Population Statistics(1)

Val Verde County

EDA Name	Included in 1992(2)	Class(3)	Population(4)	Dwellings(4)	Occupied Lots(4)	Total Lots(4)	Percent Occupied	Average Size Household	Total Buildout Population	Area (Acres)(5)
Amistad Acres			401	125	125	125	100%	3.21	401	
Box Canyon Estates			324	101	101	267	38%	3.21	857	
Cienegas Terrace	x	Proximity To Existing System	1,412	282	282	777	36%	5.01	3,891	317
Comstock			510	159	159	159	100%	3.21	510	
Lake View Estates			508	200	200	246	81%	2.54	625	
Langtry			61	19	19	32	59%	3.21	103	
Los Campos	x	Proximity To Existing System	123	38	38	155	25%	3.24	502	531
Owens	x	Proximity To Existing System	90	20	20	38	53%	4.50	171	7
Payment	x	Proximity To Existing System	25	5	5	30	17%	5.00	150	7
Rio Bravo	x	Proximity To Existing System	310	69	69	69	100%	4.49	310	15
Rough Canyon			257	80	80	80	100%	3.21	257	
Val Verde Park	x	Proximity To Existing System	2,025	420	420	1,242	34%	4.82	5,988	675
Total			6,046	1,518	1,518	3,220	47%	3.98	13,764	

Notes:

- (1) Data per TWDB staff: needs survey database updated April 1996.
- (2) "x" is the EDA was included in the original TWDB Needs Survey 1992.
- (3) Classification System relating primarily to prospects for water service.
- (4) Estimated
- (5) Estimated (where some information is available).

Texas Water Development Board

Water and Wastewater Service Options for Economically Distressed Areas

EDA Water Supply/Wastewater Service Statistics(1)

Bee County	Included in 1992(2)	Water Supply(3)	Water Supply Code(4)	Wastewater Supply(3)	Wastewater Code(4)
EDA Name					
Beeville (Adjacent Areas)		Beeville	Existing	Beeville	Projected By TWDB
Normana		Individual Wells	Existing		
Pawnee		El Oso WSC	Existing		
Pettus		Pettus MUD	Existing	Pettus MUD	Existing
Skidmore		Community Water System	Projected By TWDB	Skidmore WSC	Funded For Construction
Tuleta		Community Water System	Projected By TWDB	On-site	Projected By TWDB
Tulsita		Individual Wells	Existing		
Tynan		Bee County Co-op	Existing	New Treatment Facility	Projected By TWDB

Duval County	Included in 1992(2)	Water Supply(3)	Water Supply Code(4)	Wastewater Supply(3)	Wastewater Code(4)
EDA Name					
Benavides		Duval Co CRD	Existing	Duval Co CRD	Existing
Cadena	x	Duval Co CRD	Existing	San Diego	Projected By TWDB
Concepcion		Duval Co CRD	Existing	New Treatment Facility	Facilities Planned
Coronado Perez Addition		Freer WCID	Existing	Freer WCID	Facilities Planned
County Road 111		Duval Co CRD	Existing	San Diego	Facilities Planned
East Pearson Street		Freer WCID	Existing	Freer WCID	Facilities Planned
Four A's Subdivision		Wells	Existing	San Diego	Facilities Planned
George W Ward Addition		Freer WCID	Existing	Freer WCID	Facilities Planned
Highway 16 South		Freer WCID	Existing	Freer WCID	Facilities Planned
La Masa Road		Duval Co CRD	Existing	San Diego	Facilities Planned
Magnolia Road		Freer WCID	Existing	Freer WCID	Facilities Planned
Maria Olga		Wells	Existing	Duval Co CRD	Facilities Planned
Mi Tierra Road		Wells	Existing	San Diego	Facilities Planned
Realitos		Duval Co CRD	Existing	New Treatment Facility	Facilities Planned
School Heights Addition		Freer WCID	Existing	Freer WCID	Facilities Planned
Solis Subdivision		Duval Co CRD	Existing	San Diego	Facilities Planned
Williamson Addition		Freer WCID	Existing	Freer WCID	Facilities Planned

Texas Water Development Board
Water and Wastewater Service Options for Economically Distressed Areas
EDA Water Supply/Wastewater Service Statistics(1)

Newton County

EDA Name	Included in 1992(2)	Water Supply(3)	Water Code(4)	Wastewater Supply(3)	Wastewater Code(4)
Bleakwood		Community Wells	Projected By TWDB	New Treatment Facility	Projected By TWDB
Bon Weir		Bon Weir WSC	Existing	New Treatment Facility	Projected By TWDB
Deweyville	x	South Newton WSC	Existing	New Treatment Facility	Feasibility Studied
Old Salem		Community Wells	Projected By TWDB	New Treatment Facility	Projected By TWDB
Toledo Village		Texas Utility Management	Existing	New Treatment Facility	Projected By TWDB
Trout Creek		Community Wells	Projected By TWDB	New Treatment Facility	Projected By TWDB

Sabine County

EDA Name	Included in 1992(2)	Water Supply(3)	Water Code(4)	Wastewater Supply(3)	Wastewater Code(4)
Bronson		G-M WSC	Existing	New Treatment Facility	Projected By TWDB
Brookeland		Community System	Existing	New Treatment Facility	Projected By TWDB
Delta Heights		G-M WSC/Pineland	Existing	Pineland	Funded For Construction
Highway 96		G-M WSC/Pineland	Existing	Pineland	Funded For Construction
Toldeo Bend		G-M WSC/Others	Existing	New Treatment Facility	Projected By TWDB

Uvalde County

EDA Name	Included in 1992(2)	Water Supply(3)	Water Code(4)	Wastewater Supply(3)	Wastewater Code(4)
Brice Lane	x	Uvalde	Existing	Uvalde	Funded For Construction
Fort Clark Road	x	Uvalde	Existing	Uvalde	Feasibility Studied
Gonzales		Uvalde	Existing	Uvalde	Existing
Knippa		Knippa WSC	Existing	New Treatment Facility	Projected By TWDB
North Uvalde	x	Uvalde	Existing	Uvalde	Facilities Planned
South Grove St	x	Uvalde	Existing	Uvalde	Feasibility Studied
Utopia		Utopia Water Supply Corp	Existing	Septic	Existing
Uvalde Estates	x	Uvalde WS/Windmill WSC	Existing	On-site	Projected By TWDB
Vanessa Street	x	Uvalde	Existing	Uvalde	Feasibility Studied

Texas Water Development Board
Water and Wastewater Service Options for Economically Distressed Areas
EDA Water Supply/Wastewater Service Statistics(1)

Val Verde County					
EDA Name	Included in 1992(2)	Water Supply(3)	Water Code(4)	Wastewater Supply(3)	Wastewater Code(4)
Amistad Acres		Community Wells	Projected By TWDB	New Treatment Facility	Projected By TWDB
Box Canyon Estates		Community Wells	Facilities Planned	New Treatment Facility	Facilities Planned
Cienegas Terrace	x	Del Rio	Existing	Del Rio	Existing
Comstock		Val Verde Co WCID	Existing	New Treatment Facility	Facilities Planned
Lake View Estates		Community Wells	Facilities Planned	New Treatment Facility	Facilities Planned
Langtry		Langtry WSC	Existing	Cluster system	Projected By TWDB
Los Campos	x	Del Rio	Facilities Planned	Del Rio	Facilities Planned
Owens	x	Del Rio	Existing	Del Rio	Feasibility Studied
Payment	x	Del Rio	Projected By TWDB	Del Rio	Projected By TWDB
Rio Bravo	x	Del Rio	Existing	Del Rio	Feasibility Studied
Rough Canyon		Private	Existing	New Treatment Facility	Facilities Planned
Val Verde Park	x	Del Rio	Existing	Del Rio	Funded For Construction

Notes:

- (1) Data per TWDB staff: needs survey database updated April 1996.
- (2) "x" is the EDA was included in the original TWDB Needs Survey 1992.
- (3) The name of the current, projected, or prospective service provider or source. A slash indicates a difference between current and future.
- (4) A code to describe current supply or service status.

Verify needs and promotion status for regional development.

Texas Water Development Board

Regional Water and Wastewater Authorities in Economically Distressed Areas

Contact Sheet

Plateau Region Val Verde County

Name	Title/Position	Phone Number	Email
Petrosian Rima	TWDB/RWPG	512-936-2420	rpetross@twdb.state.tx.us
Debra Reyes	TWDB/RWPG	512-936-2343	dreyes@twdb.state.tx.us
Jerry Simpton	Del Rio National Bank	830-774-6822	drnb@delrio.com
Gerald Prather	Retired Major General	830-774-4483	prather@delrio.com
Dan Burr	New Vice Chair RWPG	830-775-6575	dsburr@delrio.com
Otila Gonzalas	City Council, Util Commission, County Administrator	830-774-8558	distclk@delrio.com
Jack Richardson	Retired Border Patrol	830-775-1268	
Buster Vernon	Val Verde Tax Appraiser	830-774-4602	

Coastal Bend Region

Bee County

Duval County

Name	Title/Position	Phone Number	Email
Robert Flores	TWDB/RWPG	512-463-8061	rflores@twdb.state.tx.us
James Dodson	Head of Planning Nueces River Authority	361-980-3193	jdodson@falcon.tamucc.edu
Ben Figueroa		361-889-5300	
Josephine Miller	San Patricio County Judge	361-364-6120	jmiller_8@excite.com
Carola Serrato		692-0337 ex 12	
Blaine Luthringer	Bee County Tax Appraiser	409-358-0193	
Renee Serrato	Duval County Tax Appraiser	512-279-3322	

East Texas Region

Newton County

Sabine County

Name	Title/Position	Phone Number	Email
JD Befford	RWPG TWDB Rep		
Van Bush	Deep East Texas COG		vbush@detcog
Truman Dougherty	Newton County Judge	409-379-5691	
Jack Leath	Sabine County Judge	409-7873543	
Nick Carter	Region I Vice Chair	409-385-1400	ncarter@southamptonrefining.com
George P. Campbell	vice chair	409-569-6772	nacmis@sat.net
Gary Graham	P.E. Schaumburg & Polk	409-866-0341	ggraham@spi-eng.com
Lonel Larson		409-384-9561	
Melvin Swoboden		409-886-6664	
Walter Diggles	Deep East Texas COG - Director		
Ken Awtrey	Director of Pinewoods RC&P	409-568-0414	ken.awtrey@tx.usda.gov
Jim Nethery	Sabine County Tax Appraiser	409-787-2777	
Margie Herrin	Newton County Tax Appraiser	409-379-3710	newtonad@jas.net

South Central Texas Region

Uvalde County

Name	Title/Position	Phone Number	Email
Jorge Arroyo	RWPG TWDB Rep	512-475-3003	jarroyo@twdb.state.tx.us
Con Mims	General Manager of Nueces River Authority		cmims3@aol.com
Evelyn Bonavita	RWPG Chair		bonavita@swbell.net
Bill Mitchell	Uvalde County Judge	830-278-3216	wrmcj@admin.hiltonett.com
Joe Cardenes?	City of Uvalde Assistant City Manager		
Maggie Del Toro	Uvalde County Tax Appraiser	830-278-3225	

Wednesday, February 24, 1999

UTL-X-CO

Page 3

County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Bastrop	10420	POLONIA WSC	W	
Bastrop	10946	SMITHVILLE CITY OF	C	
Bastrop	10990	BASTROP CO WCID 2	D	
Bastrop	11029	CREEDMOOR-MAHA WSC	W	
Bastrop	11198	BASTROP CITY OF	C	
Bastrop	11836	K & K WATER COMPANY	I	A
Bastrop	12050	BASTROP WEST WATER SYSTEMS	I	
Bastrop	20120	ELGIN CITY OF	C	D
Bastrop	20377	SMITHVILLE CITY OF	C	
Bastrop	20466	BASTROP CITY OF	C	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Baylor	10611	SEYMOUR CITY OF	C	
Baylor	11605	BAYLOR WSC	W	
Baylor	20245	SEYMOUR CITY OF	C	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Bee				
Bee	10550	BEEVILLE CITY OF	C	
Bee	10570	EL OSO WSC	W	
Bee	12654	TYNAN WSC	W	
Bee	12772	ROSA LEE EISSLER	I	A
Bee	20209	BEEVILLE CITY OF	C	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Bell				
Bell	00000	TEMPLE PARK ESTATES ASSN	I	
Bell	00000	BELL CO WCID 3	D	
Bell	00000	BELL CO WCID 5	D	
Bell	10001	439 WSC	W	
Bell	10002	JARRELL SCHWERTNER WSC	W	
Bell	10003	PENDLETON WSC	W	
Bell	10004	TROY CITY OF	C	
Bell	10005	HOLLAND CITY OF	C	
Bell	10031	ELM CREEK WATER SUPPLY CORPORA	W	
Bell	10041	KILLEEN CITY OF	C	
Bell	10043	EAST BELL WSC	W	
Bell	10045	WEST BELL COUNTY WSC	W	
Bell	10048	DOG RIDGE WSC	W	
Bell	10049	ARMSTRONG WATER SUPPLY CORPOF	W	
Bell	10050	LITTLE ELM VALLEY WSC	W	
Bell	10051	BELL-MILAM-FALLS WSC	W	
Bell	10052	OENAVILE & BELFALLS WSC	W	
Bell	10053	BELL CO WCID 2	D	
Bell	10450	GROVE WSC	W	A
Bell	10456	KEMPNER WSC	W	
Bell	10879	SALADO WSC	W	
Bell	11133	BELTON CITY OF	C	
Bell	11166	MOFFAT WSC	W	
Bell	11232	BARTLETT CITY OF	C	
Bell	11309	MORGANS POINT RESORT CITY OF	C	
Bell	11435	TEMPLE CITY OF	C	
Bell	11513	SPARTA OAKS WATER CORP	I	
Bell	11590	CHISHOLM TRAIL SUD	D	
Bell	12765	PLAZA WATER	I	
Bell	20001	TROY CITY OF	C	
Bell	20002	HOLLAND CITY OF	C	
Bell	20011	KILLEEN CITY OF	C	
Bell	20013	BELL CO WCID 2	D	D
Bell	20444	BELTON CITY OF	C	D
Bell	20539	TEMPLE CITY OF	C	
Bell	20799	PLAZA WATER	I	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Bexar				
Bexar	00000	FT BEND CO MUD 113	D	

Wednesday, February 24, 1999

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County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
De Witt	20496	NORDHEIM CITY OF	C	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Dickens	10594	WHITE RIVER MWD	D	A
Dickens	12460	MCADOO WSC	W	
Dickens	12569	VALLEY WSC	W	A
Dickens	20732	MCADOO WSC	W	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Dimmit	11138	AZTEC MGMT & INV	I	A
Dimmit	12191	S & K WSC	W	
Dimmit	12814	CATARINA WSC	W	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Donley	10202	RED RIVER AUTHORITY OF TEXAS	D	
Donley	10587	GREENBELT MUN & IND WA	D	D
Donley	10602	CLARENDON CITY OF	C	
Donley	20239	CLARENDON CITY OF	C	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Duval	00000	FREER WCID	D	
Duval	00000	DUVAL CO CONS & RECL DISTRICT	D	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Eastland	10446	UPPER LEON RIVER MWD	D	
Eastland	10469	OLDEN WATER SUPPLY CORPORATION	W	
Eastland	10470	EASTLAND CITY OF	C	
Eastland	10471	MORTON VALLEY WSC	W	
Eastland	10535	CISCO CITY OF	C	
Eastland	11155	STAFF WSC	W	
Eastland	11456	STEPHENS COUNTY RURAL WSC	W	
Eastland	11831	WESTBOUND WATER SUPPLY CORP.	W	
Eastland	12707	COMANCHE COUNTY WSC	W	
Eastland	20166	EASTLAND CITY OF	C	D
Eastland	20167	CISCO CITY OF	C	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Ector	00000	ECTOR CO UD	D	
Ector	10236	GOLDSMITH CITY OF	C	
Ector	11617	BARNETT WATER SUPPLY	I	A
Ector	12247	ODESSA CITY OF	C	
Ector	12248	ORCHARD WATER SYSTEMS	I	A
Ector	20093	GOLDSMITH CITY OF	C	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Edwards	10209	BARKSDALE WSC	W	
Edwards	10210	ROCKSPRINGS CITY OF	C	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Ellis	10058	SARDIS-LONE ELM WSC	W	
Ellis	10081	JOHNSON COUNTY RURAL WSC	W	
Ellis	10091	COMMUNITY WATER SERVICE INC	I	
Ellis	10099	ROCKETT SUD	D	
Ellis	10534	COMMUNITY WATER COMPANY	I	
Ellis	10808	RICE WTR SUPPLY & SWR SVC CORP	W	
Ellis	10885	ITALY CITY OF	C	
Ellis	10886	FERRIS CITY OF	C	
Ellis	10897	EAST GARRETT WATER SUPPLY CORP	W	
Ellis	10898	BUENA VISTA - BETHEL	W	
Ellis	10902	FILES VALLEY WSC	W	
Ellis	10908	MOUNTAIN PEAK WSC	W	
Ellis	10913	AVALON WTR & SWR SVC CORP	W	
Ellis	10915	WAXAHACHIE CITY OF	C	
Ellis	11059	GLENN HEIGHTS CITY OF	C	

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County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Navarro	10779	NAVARRO MILLS WSC	W	
Navarro	10808	RICE WTR SUPPLY & SWR SVC CORP	W	
Navarro	10996	KERENS CITY OF	C	
Navarro	11086	CHATFIELD WSC	W	
Navarro	11171	ANGUS WATER SUPPLY CORPORATION	W	
Navarro	11184	SOUTH ELLIS COUNTY WATER SUPPL	W	
Navarro	11235	FROST CITY OF	C	
Navarro	11317	B & B WATER SUPPLY CORP	W	A
Navarro	11704	NORTHTOWN ACRES WATER	I	A
Navarro	12222	NORTHCREST WATER SYSTEM	I	A
Navarro	12278	CORBET WSC	W	
Navarro	12335	SUNSET ACRES WATER SERVICE	I	
Navarro	12344	SOUTHERN OAKS WATER SUPPLY	I	
Navarro	12578	BEATON LAKE ESTATES WTR SYSTEM	I	A
Navarro	20318	CORSICANA CITY OF	C	D
Navarro	20324	RICE WATER SUPPLY CORPORATION	W	D
Navarro	20493	FROST CITY OF	C	D
Navarro	20554	KERENS CITY OF	C	
Navarro	99171	GOODLOW WATER SUPPLY CORPORAT	W	A
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Newton	10371	HOLLY-HUFF WATER SUPPLY CORP	W	
Newton	10378	BURKEVILLE WATER SUPPLY CORP	W	
Newton	10405	SOUTH KIRBYVILLE RURAL WSC	W	
Newton	11338	EAST NEWTON WATER SUPPLY CORP	W	
Newton	11362	BON WIER WATER SUPPLY CORPORAT	W	
Newton	11526	JAMESTOWN WATER SUPPLY CORPOR	W	
Newton	11563	SOUTH NEWTON WSC	W	A
Newton	11722	MAURICEVILLE WATER SUPPLY CORP	W	
Newton	11784	TEXAS UTILITY MANAGEMENT	I	
Newton	11992	SOUTH SABINE WSC	W	
Newton	12519	TALL TIMBERS WSC	W	
Newton	12682	HARRISBURG WSC	W	
Newton	20811	MAURICEVILLE SUD	D	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Noian	10228	SWEETWATER CITY OF	C	
Noian	11149	BITTER CREEK WATER SUPPLY CORP	W	
Noian	11532	BLAIR WATER SUPPLY CORPORATION	W	
Noian	20088	SWEETWATER CITY OF	C	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Nueces	10544	AGUA DULCE CITY OF	C	
Nueces	10554	CORPUS CHRISTI CITY OF	C	
Nueces	10556	NUECES CO WCID 3	D	
Nueces	10561	BISHOP CITY OF	C	
Nueces	10571	NUECES CO WCID 4	D	
Nueces	10920	VIOLET WATER SUPPLY CORPORATIO	W	
Nueces	11084	RIVER ACRES WSC	W	
Nueces	11181	ARANSAS PASS CITY OF	C	
Nueces	11503	GOLDEN ACRES WATER COMPANY	I	
Nueces	11948	NUECES WSC	W	
Nueces	12100	CYNDIE PARK II WSC	W	A
Nueces	12107	CYNDIE PARK UNIT I WATER COOP	I	A
Nueces	20203	BISHOP CITY OF	C	D
Nueces	20205	NUECES CO WCID 4	D	D
Nueces	20207	CORPUS CHRISTI CITY OF	C	D
Nueces	20214	AGUA DULCE CITY OF	C	D
Nueces	20220	ROBSTOWN CITY OF	C	
Nueces	20456	ARANSAS PASS CITY OF	C	D
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Ochiltree	10637	PERRYTON MUNICIPAL WATER SYSTE	C	
Ochiltree	12360	WAKA WSC	W	
Ochiltree	12424	FARNSWORTH WSC	W	A
Ochiltree	20236	PERRYTON MUNICIPAL WATER SYSTE	C	

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County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Rusk	10410	ELDERVILLE WSC	W	
Rusk	10411	KILGORE CITY OF	C	
Rusk	10418	MT ENTERPRISE WSC	W	
Rusk	10762	SOUTHERN UTILITIES CO	I	
Rusk	10773	REKLAW WATER SUPPLY CORPORATIO	W	
Rusk	10774	WRIGHT CITY WATER SUPPLY CORP	W	
Rusk	10994	HENDERSON CITY OF	C	
Rusk	11091	LANEVILLE WSC	W	
Rusk	11176	CHURCH HILL WATER SUPPLY CORP	W	
Rusk	11225	SACUL WATER SUPPLY CORPORATION	W	A
Rusk	11249	PLEASANT HILL WATER SUPPLY COR	W	
Rusk	11250	GASTON WATER SUPPLY CORPORATIO	W	
Rusk	11330	SOUTH RUSK CO WSC	W	
Rusk	11333	NEW SALEM WSC	W	A
Rusk	11336	ARLAM-CONCORD WATER SUPPLY CO	W	
Rusk	11374	CRYSTAL FARMS WSC	W	
Rusk	11469	CROSS ROADS WSC	W	
Rusk	11646	LEVERETTS CHAPEL WSC	W	
Rusk	11746	CHALK HILL SUD	W	
Rusk	12162	STAFFORD COUNTRY ESTATES	I	
Rusk	12280	PINE HILL - CHAPMAN WSC	W	
Rusk	12382	PRICE WSC	W	A
Rusk	12445	DIRGIN WSC	W	A
Rusk	12471	MINDEN-BRACHFIELD WSC	W	
Rusk	12536	JACOBS WSC	W	
Rusk	12611	SHAN-D WATER WORKS	I	
Rusk	12641	A & P WATER COMPANY	I	A
Rusk	12725	KENNEDY ROAD WSC	W	
Rusk	20147	TATUM CITY OF	C	
Rusk	20397	HENDERSON CITY OF	C	
Rusk	20532	KILGORE CITY OF	C	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Sabine				
Sabine	10136	M-TEX WATER UTILITIES	I	
Sabine	10372	LAKELAN WATER SUPPLY CO	I	
Sabine	10388	RIVER ROAD ENTERPRISE WS	I	
Sabine	10429	HEMPHILL CITY OF	C	
Sabine	10737	PENDLETON UTIL CORP-PENDLETON	I	
Sabine	10956	PLAYCATION "TOO"	I	D
Sabine	11100	BROOKELAND WATER SUPPLY CORP	W	
Sabine	11143	PLAYCATION MARINA	I	A
Sabine	11148	PLAYCATION EST	I	A
Sabine	11393	G-M WSC	W	
Sabine	11641	EL CAMINO BAY POA	I	A
Sabine	11890	BEECHWOOD WSC	W	
Sabine	11992	SOUTH SABINE WSC	W	
Sabine	12329	TIMBERLANE ESTATES P.O.A.	I	
Sabine	12336	TIMBERLANE WATER SYSTEM INC	I	
Sabine	12689	FRONTIER PARK RESORT	I	
Sabine	12829	PINELAND CITY OF	C	
Sabine	20155	HEMPHILL CITY OF	C	
Sabine	20623	BEECHWOOD WSC	W	D
Sabine	20829	PINELAND, CITY OF	C	
County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
San Augustine				
San Augustine	10389	SAN AUGUSTINE RURAL WSC	W	
San Augustine	10390	DENNING WATER SUPPLY CORPORATI	W	
San Augustine	10391	BROADDUS CITY OF	C	
San Augustine	10392	BLAND LAKE RURAL WSC	W	
San Augustine	10431	SAN AUGUSTINE CITY OF	C	
San Augustine	11393	G-M WSC	W	
San Augustine	11707	SAM RAYBURN WATER INC	I	
San Augustine	12206	EL PINON ESTATES WATER SYSTEM	I	
San Augustine	20152	SAN AUGUSTINE CITY OF	C	

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County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Tyler	10426	CYPRESS CREEK WATER SUPPLY COR	W	
Tyler	10949	WOODVILLE CITY OF	C	
Tyler	11383	WOODS CREEK WATER SUPPLY CORP	W	A
Tyler	11528	TYLER COUNTY WATER SUPPLY CORP	W	
Tyler	12001	DOUCETTE WATER SYSTEM	I	
Tyler	12072	STEVENS WATER COMPANY	I	
Tyler	12522	TIMBERLEA ESTATES WATER FUND	I	
Tyler	12766	LAKESIDE WATER SUPPLY	I	A
Tyler	20044	WILDWOOD P O A	I	D
Tyler	20379	WOODVILLE, CITY OF	C	

County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Upshur	00000	EAST MOUNTAIN CITY OF	C	
Upshur	00000	FENLAW WATER SYSTEM	I	
Upshur	10424	ORE CITY CITY OF	C	
Upshur	10476	SHARON WSC	W	
Upshur	10477	GLADEWATER CITY OF	C	
Upshur	10478	PRITCHETT WSC	W	
Upshur	10488	FOUKE WSC	W	
Upshur	10490	BI-COUNTY WSC	W	
Upshur	10514	UNION GROVE WSC	W	
Upshur	10515	GLENWOOD WSC	W	
Upshur	11048	CLARKSVILLE CITY, CITY OF	C	
Upshur	11264	GILMER CITY OF	C	
Upshur	12418	RAINTREE LAKES WATER CO	I	
Upshur	12455	PHILLIPS, B L	I	A
Upshur	12473	TEXAS WATER SYSTEMS INC	I	
Upshur	20154	ORE CITY CITY OF	C	
Upshur	20191	GLADEWATER CITY OF	C	D
Upshur	20422	CLARKSVILLE CITY, CITY OF	C	D
Upshur	20508	GILMER CITY OF	C	D

County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Uvalde				
Uvalde	10969	KNIPPA WSC	W	
Uvalde	11165	UVALDE, CITY OF	C	
Uvalde	11625	HIGHWAY 117 WATER SUPPLY CORP	W	
Uvalde	12350	CONCAN WSC	W	
Uvalde	12383	UTOPIA WSC	W	
Uvalde	12708	WINDMILL WSC	W	
Uvalde	20455	UVALDE	C	

County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Val Verde	11046	DEL RIO UTILITIES COMMISSION	C	
Val Verde	11088	SAN PEDRO VILLAGE	I	
Val Verde	11089	SAN PEDRO CANYON WATER COMPAN	I	A
Val Verde	11090	LAKE AMISTAD PROPERTIES, INC.	I	A
Val Verde	11113	LAKE RIDGE ESTATES W S	I	A
Val Verde	12076	DEVILS SHORES SERVICES, INC.	I	A
Val Verde	12500	LANGTRY WSC	W	
Val Verde	12804	ROUGH CANYON MARINA	I	
Val Verde	20420	DEL RIO UTILITIES COMMISSION	C	D

County Name	CCN	UTILITY_NAME	OWNERSHIP	UTILITY_FLAG
Van Zandt	10265	ASSOCIATES UTIL	I	
Van Zandt	10491	GOLDEN WSC	W	
Van Zandt	10746	PRUITT SANDFLAT WSC	W	
Van Zandt	10747	EDOM WATER SUPPLY CORPORATION	W	
Van Zandt	10749	BEN WHEELER WSC	W	
Van Zandt	10765	CARROLL WATER SUPPLY CORP-NO 1	W	
Van Zandt	10768	VAN CITY OF	C	
Van Zandt	10769	CORINTH WATER SUPPLY CORPORATI	W	
Van Zandt	10778	PINE RIDGE WATER SUPPLY CORP	W	
Van Zandt	10787	R P M WSC	W	
Van Zandt	10805	SOUTH TAWAKONI WSC	W	
Van Zandt	10806	FRUITVALE WATER SUPPLY CORPORA	W	

Appendix E: Legal Documents

MEMORANDUM

TO: Gerald Bodle

FROM: Carolyn Ahrens

DATE: September 20, 1999

RE: Water Service to Colonia within Service Area of CCN

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1. Background

As part of a study for the Texas Water Development Board, we are considering avenues under state law to provide water and sewer service to "colonias."¹ Various types of entities are authorized in Texas to provide such service and under various conditions. In order to analyze the extent to which a provider can refuse to extend services, you asked us to consider the example of a retail public utility² to which a certificate of convenience and necessity has been issued by the state.

Excepted from this review is any discussion of discontinuing, reducing or impairing service to an area that already receives some level of service. Also, the discussion does not address provisions for emergency service and when a utility's failure to act may present an imminent threat to human health or safety.

¹ For the difficulties in determining a precise definition of colonia, see the House Research Organization's Focus Report No. 76-10, "_____" April 1999. For purposes of the Government Code's colonia initiatives, legislation passed subsequent to the date of this report added a definition of colonia as follows: (2) "Colonia" means a geographic area that: (A) is an economically distressed area as defined by § 17.921, Water Code; and (B) is located in a county any part of which is within 50 miles of an international border. TEX. GOV'T CODE. ANN. § 775.001 (Vernon _____), as amended by Act of May 20, 1999, S.B. 1421, § 44 76th Leg., R.S. TEX. WATER CODE § 17.921 (Vernon Supp. 1999) defines "economically distressed areas" as areas in a way that combines inadequate services, limited financial resources, and various percentage occupancies.

² "Retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling facilities for providing potable water service or sewer service, or both, for compensation. TEX. WATER CODE. ANN. § 13.002(19) (Vernon 1988 & Supp. 1999).

2. Question Presented

Can a retail public utility that has a certificate of convenience and necessity for retail water service refuse, for economic reasons, to extend service to a colonia that is within its certified area?

3. Short Answer

A retail public utility that possesses a certificate of convenience and necessity may not legally refuse service to an area within its certificate boundaries unless the service applicant is not in compliance with the utility's lawfully adopted rules or policies, or the utility is prohibited from providing that service, for example, because the area was developed in violation of subdivision requirements. However, a utility has satisfied its service obligation if it has offered service under reasonable terms that comply with various statutory provisions. Generally, those terms may include that the applicant for service pay, in advance, the reasonable costs of extension; pay impact fees; or pay contributions in aid of construction. Depending on the type of retail public utility involved, the Texas Natural Resource Conservation Commission can provide some relief when the terms of service, nevertheless, are tantamount to an unreasonable denial of service.

With specific regard to service in an affected county, the TNRCC may order a certificate holder that has not provided any service under its certificate to follow acceptable practices or order a utility that has given financial assurances to make specified improvements to its system.

4. Discussion

The extent of a retail public utility's obligation to extend service to a colonia within its certified area lies both in the general laws applicable to all certificate holders and in specific provisions applicable to retail public utilities with certified service boundaries that include economically distressed areas.

4.1 The General Duty to Provide Service

According to the Texas Water Code,³ any retail public utility that possesses or is required to possess a Certificate of Convenience and Necessity ("CCN") shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas until, or unless, the Texas Natural Resource Conservation Commission ("TNRCC") revokes or amends the CCN. Water Code § 13.250(a); *see also, Hidden Oaks Ltd. v. City of Austin*, 138 F.3d 1036 (5th Cir. 1998, reh. denied) (where federal court applying Texas Law held that Water Code § 13.250 demonstrates entitlement to continuous and adequate utility service). When the TNRCC issues a certificate, in effect, it orders the certificate holder to provide service under terms specified in the certificate and associated documents. A refusal to provide service in violation of that order or an abandonment of operations both are subject to enforcement and penalties as provided in Texas Water Code Chapter 13, Subchapter K. In this regard it should be noted that the TNRCC's jurisdiction does not

³ References in this memorandum to the Texas Water Code are to TEX. WATER CODE ANN. (Vernon 1988 & Supp. 1999).

reach all retail public utilities equally. The TNRCC's enforcement rules can be found at § 291.141 of the Texas Administrative Code.⁴

The clear standard of Water Code § 13.250's requirement of service is tempered by the TNRCC's interpretation of what constitutes service within an area. The provider's duty is satisfied when service is offered at a reasonable cost. One of the keys to the regulations lies in who is a qualified service applicant. A qualified service applicant is one who has met all of the retail public utility's requirements contained in its tariff or service policies and regulations for extension of service. TNRCC Rules § 291.84(a). Again, not all retail public utilities are subject to the same rules. A "utility" is required to file its extension policy as part of its tariff. TNRCC Rules § 291.86(c). See *a/so* Texas Water Code § 11.037 (Every person supplying water for any purpose authorized by Chapter 11 must publish reasonable rules and regulations regarding, among other things, the procedure for applying for the water and for paying for it).

Where a tariff is filed, the fee charged for extending residential service to an applicant's premises must be as stated on the approved tariff. TNRCC Rules § 291.86(i). Also, a utility may require a "contribution in aid of construction" as provided in the approved extension policy, such as where an individual service applicant places unique, non-standard service demands upon the system. TNRCC Rules § 291.86(c)(i). If, however, the service applicant is not in compliance with the "rules and regulations" of the utility, then the utility may "decline" to serve the applicant. TNRCC Rules § 291.83(a).

Obviously, demanding too high a price may be tantamount to a denial of service.

⁴ References in this memorandum to the TNRCC Rules are to 30 TEX. ADMIN. CODE (West 1999).

A certified utility is required to respond to a request for service with an explanation of the terms and costs. According to the TNRCC Water Utilities Division, acceptable costs may include all costs associated with extending service, including new pipe and new facilities. The reasonableness of those costs is determined on a case-by-case basis. Applicants for service may complain to the TNRCC that the certified utility's terms for service are unfair or unreasonable. In such circumstances, the agency may pressure the parties to negotiate or to seek financing and may issue an order regarding the reasonableness of the terms demanded. The TNRCC should not, however, force the utility to bear reasonable costs otherwise chargeable to the applicant for service.

4.2 Exceptions to the Duty to Serve

A number of statutory exceptions to the duty to serve exist. Among those exceptions are the following:

- A certificate holder is excused from service to the extent it is "decertified" by the TNRCC. Texas Water Code § 13.254. However, the TNRCC will not necessarily grant a decertification because it is the certificate holder's wish. Persons affected by a proposed decertification may protest and request a hearing. TNRCC Rules § 291.107.
- A certificate holder is required to refuse service to a customer if such service is contrary to Local Government Code provisions related to special subdivision requirements and designed to discourage colonia development.⁵ See Texas Water Code § 13.2501. A water supply or

⁵ References in this Memorandum to the Texas Local Government Code are to TEX. LOC. GOV'T CODE ANN. (Vernon 1999).

sewer service corporation or a special utility district is not required to extend service to an applicant in a subdivision when the subdivider violated published service extension policies. See Texas Water Code § 13.2502.

Specific provisions for violation of subdivision requirements.

4.3 Provisions Specifically Applicable to Colonias

Various legislation passed since 1987 has been directed at providing better water and wastewater service to economically distressed areas in which the residents might not otherwise be able to afford services. Some of this legislation affects the duty of a utility to serve.

4.3.1 Texas Water Code Provisions

Water Code § 13.253(a) allows the TNRCC to order any retail public utility that possesses a CCN and is located in an affected county to:

- a. . . .
 1. . . .
 - B. develop, implement, and follow financial, managerial, and technical practices that are acceptable to the Commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas . . .

Texas Water Code § 13.253(a)(1)(A) additionally authorizes the TNRCC to order "specified improvements" in areas where service in an area is "inadequate or is substantially inferior to service in a comparable area" and it is reasonable to do so. However, we interpret that section to apply where service, although inadequate, nevertheless exists.

The TNRCC also may:

order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider.

Texas Water Code § 13.253(a)(3). This provision appears to apply to water rights and treatment capacity rather than to retail line extensions.⁶

Under the particular circumstances where a retail public utility has provided "financial assurances" under Health and Safety Code § 341.0355, or under the provisions of Water Code Chapter 13, the TNRCC has additional authority. The financial assurances that trigger this authority may include, for example, assurances by an owner or operator who has a history of non-compliance. See HEALTH AND SAFETY CODE ANN. § 341.0355(a) (Vernon 1992 and Supp. 1999). Texas Water Code § 13.253(b) provides that in such circumstances, the Commission may order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the financial assurance. "Specified improvements" is not a defined term. Currently,

⁶ A "public utility" subject to this provision is any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, that owns or operates a water or wastewater system for compensation. § 13.002(23).

there are no proposed rules publicly available to further inform the implementation of these provisions.

4.3.2 Violations of Texas Local Government Code Subdivision Requirements

A utility provider may have an additional defense for refusing service if the area requesting service was developed in violation of subdivision regulations adopted to discourage new colonias. See Texas Code § 13.2501. These subdivision regulations are found in Local Government Code § 212.01 *et. seq.* (municipal regulatory authorities) and Local Government Code § 232, subchapters B and C (county regulatory authority). These provisions prohibit some retail public utilities from providing service to an area unless the entity has a certificate from the appropriate municipal or county authority that a plat for the area has been approved or that no plat approval is required.

Perhaps ironically, these restrictions that were intended to prevent unscrupulous development actually would prevent the residents of the colonia from receiving services. Senate Bill 1421, passed during the 1999 Legislative Session, was designed to allow variances to the restrictions. For example, a service entity now may get the necessary certificate from a county commissioner's court if the land is in a county any part of which is located within 50 miles of an international border and was not subdivided after September 1, 1995, and:

- (i) water service is available within 750 feet of the subdivided land; or

- (ii) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

Local Government Code § 232.029(c)(2); *see also id.* § 212.012(c)(4)(B). These variance provisions appear to contemplate a situation in which a service provider desires to extend service, but otherwise is prohibited. Nevertheless, if an applicant in a non-compliant area was trying to force service, an unwilling provider might raise the economic feasibility of service as a reason for not seeking a variance.

4.4 Other Provisions of Note

4.4.1 Decertification in an Affected County

The discussion of the general authority for decertification above focused on a utility's ability to voluntarily amend its certificate to exclude a particular area. The TNRCC may also decertify an area without the consent of the certificate holder under standards specified in Texas Water Code 13.254. For parts of an affected county, the TNRCC may order involuntary decertification when the cost of providing service by the certificate holder is to commercial or residential developments started before September 1, 1997, so prohibitively expensive as to constitute denial of service. Texas Water Code § 13.254(a)(2).

4.4.2 Discriminatory Practices

Another issue related to the question presented is that a certificate holder must be wary that it provides services without discrimination. *See, e.g. Inverness Forest Improvement Dist. v. Hardy Street Investors*, 541 S.W.2d 454 (Tex. Civ. App.-Houston

[1st Dist.] 1976, writ ref'd n.r.e.) (district was obliged to supply services to all landowners within the district without discrimination). However, another, much older, case suggests that although a corporation undertaking to supply water for domestic purposes must do so without discrimination, and treat all similarly situated within its territory alike with reference to service and rates, it is not required to furnish water at unreasonable distances which would cause loss. *Allen v. Park Place Water, Light & Power Co.*, 266 S.W.2d 219, 222 (Tex. Civ. App.-Galveston 1924, writ ref'd) (public service water company is not under obligation to furnish water on demand to inhabitant residing at such distance from its mains as to make such demand unreasonable, in that to furnish such water would entail a loss). One should not, however, construe *Allen* as controlling since it has been superseded by a specific statute. See Texas Water Code § 13.250.

4.4.3 Compelled Water Service

Apart from the issue of certification to serve a specified area, the state has retained authority over its surface waters to compel service under circumstances detailed in Texas Water Code § 11.041. This provision for compelled service applies to treated water service as well as to raw water service. It does not, however, provide any relief for denial of sewer service. To avail itself of § 11.041, an entity or individual seeking service would have to show that he is willing and able to pay a just and reasonable price for the water. *Id.* Although most commonly used in disputes over wholesale service, Texas Water Code § 11.041 is not so limited by its terms.

5. Summary

Although Texas Water Code provisions applicable to retail public utilities that

possess certificates of convenience and necessity require the provision of continuous and adequate service to all customers within a certified area, in practice, retail public utilities need only to offer service under reasonable conditions. Those conditions specified in the utility's service extension policies and tariff, or in published rules and regulations, may assess substantial costs of service extension to the service applicant. If the service applicant is not in compliance with the utility's rules, including its requirements for payment, the utility can refuse to extend service to that person.

Specifically, with regard to service in affected counties, the TNRCC may order a certificate holder that has not provided any service in an affected county to follow acceptable practices or order a utility that has given financial assurances to make specified improvements to its system. Statutory provisions that provide variances to service prohibitions to areas developed in violation of subdivision requirements conceivably could be used defensively to avoid service that would be economically infeasible.

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THE FEASIBILITY OF REGIONALIZATION WATER UTILITIES PROGRAM

Chapter 1 Introduction

Statutory Authority

The Texas Health and Safety Code, Section § 341.0315(a) - (d) requires that the Texas Natural Resource Conservation Commission (TNRCC) ensure public drinking water supply systems supply safe drinking water in adequate quantities, are financially stable, and are technically sound. The TNRCC must also encourage and promote the development and use of regional and areawide drinking water supply systems.

The Texas Health and Safety Code § 341.035 requires that before constructing a new system a person submit plans and specifications and, with certain exceptions, a business plan that demonstrate that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules.

The Texas Water Code § 13.241 requires that an applicant for a new or amended certificate of convenience and necessity (CCN) demonstrate that it possesses the financial, managerial, and technical capability to provide continuous and adequate service. Section 13.241 of the Texas Water Code further requires that an applicant for a new CCN which requires the construction of a physically separate system demonstrate that regionalization or consolidation is not economically feasible. Refer to the Appendix for more information on the statutory authority.

Purpose

Regionalization of water and wastewater systems is encouraged by the TNRCC to protect the health, safety and welfare of Texans, to provide a long-term supply of safe water at affordable rates, to prevent pollution, and to maintain the quality of water in the state. The ultimate goal of regionalization is to provide timely and cost effective solutions for achieving quality service.

In this regulatory guidance document, it is the TNRCC's policy that regionalization is feasible unless one of three exceptions to the policy applies. The three exceptions are: (1) there are no public water systems within one-half mile or in the case of a CCN, no public water system or wastewater treatment system within 2 miles; (2) you have requested service from these neighboring systems and have been denied; or (3) you can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted. An owner/operator of a new public water system or an applicant who is applying for a new CCN or is amending a CCN for a stand alone system must demonstrate that one of the three exceptions is applicable to their system. The public water system owner/operator or CCN applicant must provide information in sufficient detail for TNRCC staff to determine whether an exception applies.

This regulatory guidance document implements Senate Bill 1 (1997) and is intended to assist water utilities program staff of the TNRCC and the regulated community with the implementation of the regionalization requirements in Title 30 of the Texas Administrative Code (TAC) Chapters 290/291 adopted on January 13, 1999 and effective February 4, 1999. Regionalization was one of the key goals of Senate Bill 1 (1997) in order to optimize the use of existing financial, managerial, and technical resources.

Drinking water and wastewater systems are facing an ever increasing demand on their resources to stay in compliance with provisions of the federal Safe Drinking Water Act and federal Clean Water Act. The costs associated with compliance are higher per person as the system size decreases. There is a great concern that an increasing number of Texans are being served by systems that are unable to sustain the financial, managerial, and technical capabilities necessary to provide continuous and adequate service. Texas is facing a steady increase in new small systems which will likely present the same financial, managerial, and technical problems being faced by existing small systems. In many cases, regionalization may be the least expensive, long-term solution for providing quality service.

Applicability

This chapter is applicable to the following entities regulated by the TNRCC:

- owners/operators of new public water systems;
- applicants requesting approval for a new water or sewer CCN; and
- applicants requesting approval for an amendment to a water or sewer CCN that requires construction of a physically separate water or sewer system.

This guidance document will not change the TNRCC's administrative rule requirements and procedures relating to ratemaking, CCNs, and public water systems. Rather, this guidance document is advising all CCN applicants and owners/operators of proposed public water systems to take proactive measures to regionalize. CCN applicants and owners/operators of proposed public water systems must evaluate their ability to regionalize prior to submitting the actual CCN application, plans and specifications and, if required, business plans. If TNRCC staff determine that an exception applies and regionalization is not feasible, the CCN application, plans and specifications and, if required, business plans would then be evaluated accordingly.

While the purpose of this regulatory guidance document is to provide guidance to new systems, a similar regionalization review will apply to owners/operators of a public water system that was constructed without the necessary approval, that has a history of noncompliance, or that is subject to a commission enforcement action.

This guidance document will not apply to wastewater systems that are not required to hold a CCN and do not apply for a CCN. A similar guidance document for all other wastewater systems is under development.

Definition of Regionalization

The TNRCC has developed a definition of regionalization using current industry terminology and

field practices. Regionalization is the consolidation of operations and/or physical systems of two or more existing or proposed water or domestic wastewater systems to achieve the best service at rates which will ensure that the system is maintained for the long-term. Regionalization can take the following different forms depending on the individual circumstances:

- one owner and one large system serving several different communities or subdivisions;
- one owner and several isolated systems each providing service to one or more communities or subdivisions;
- several owners, each with individual systems operated through a centrally coordinated operating system;
- several owners, each with an isolated system, all served by a central wholesale provider; or
- existence of permanent emergency interconnections.

There is no presumption that any particular ownership structure of a public water system is more appropriate to serve as a regional provider. A water district, city, investor owned utility, water supply corporation, or any other type of public water system can all serve as the regional provider if they meet the necessary requirements under 30 TAC Chapters 290 and 291.

Definition of System

When determining the distance between a neighboring system and the proposed system, a system is defined as the distribution system of a public water system or wastewater treatment collection system. For a public water system distribution system, the system is comprised of the water lines that distribute water to the consumer. For a wastewater treatment collection system, the system is comprised of the sewer lines that collect the wastewater from the consumer to the wastewater treatment facility.

Responsibilities of Persons Proposing New System and Existing Regional Providers

Owners/operators of a new public water system or applicants for a new CCN or CCN amendment are responsible for complying with the TNRCC's rules and regulations set out in 30 TAC Chapters 290 and 291, and following the guidance set out in this document.

Existing regional providers are responsible for providing prompt responses to requests for service, equitable treatment of all applicants, charging application fees which are reasonable, and charging cost-based fees for providing service to the specific development.

Chapter 2 Overview of the Water Utilities Program

It is the responsibility of TNRCC's water utilities program to ensure that public water systems supply safe drinking water in adequate amounts and are financially stable and technically sound, and to promote the use of regional and area wide drinking water systems. All proposed public water systems are required to submit engineering plans and specifications for TNRCC's review. Privately owned proposed public water systems are also required to include a business plan as part of the engineering plans and specifications submittal. The engineering plans and specifications must be approved by the TNRCC before construction of the public water system. More information on the water utilities program is provided below.

Public Drinking Water

The TNRCC administers the requirements of the federal Safe Drinking Water Act (SDWA) to assure that the approximately 6,700 public water systems in Texas provide safe water to their customers. This program is accomplished through the review and approval of plans and specifications for construction, continuous monitoring for compliance with drinking water standards, implementation of the Source Water Assessment and Protection Program, and technical assistance to utilities. The water utilities program coordinates with the Field Operations Division in oversight of sanitary surveys conducted to assure that public water supply systems are operated and maintained in accordance with TNRCC rules.

Utility Rates and Services

The TNRCC monitors the financial activities and customer service policies of approximately 700 water districts that are utilities, 800 water supply corporations (WSCs), and 900 investor-owned utilities (IOUs) to assure that rates, operations and services are just and reasonable to the customers and to the utilities. This is accomplished through the approval of CCNs to establish service areas, setting rates for IOUs and reviewing the rates of WSCs, districts and certain cities upon appeal. The TNRCC is also responsible for providing general technical assistance and managing the Capacity Development Program required by the SDWA.

District Administration

The TNRCC is responsible for the review of the issuance and use of bond proceeds by water districts in the state of Texas. The TNRCC also reviews applications for the creation of water districts; reviews annual audit and other financial reports of districts; responds to complaints and customer inquiries; maintains a database on each of the over 1,300 water districts registered with the state; and provides educational assistance through a newsletter.

Chapter 3 How to Use This Guidance

All owners/operators of new public water systems should refer to Chapter 4 and Flowchart 1 to determine the feasibility of regionalization. Flowchart 2 may also be necessary for those new public water systems that need a new CCN or CCN amendment.

All applicants for a new water or sewer CCN or a CCN amendment for construction of a physically separate system should refer to Chapter 5 and Flowchart 2 to determine the feasibility of regionalization. Any of these applicants which is also a public water system must first start with Chapter 5 and then proceed to Chapter 6.

The first step in determining if regionalization is feasible is to identify all the water or wastewater systems within the specified distance. To get information regarding the location of existing water and wastewater systems, a written request for data can be submitted to the following address:

Information Resources Division, MC 197
PO Box 13087
Austin TX 78711-3087

or faxed to (512) 239-0888. The data request should specifically state the need for a listing of all public water systems and/or wastewater permit holders, by county.

For information on how to get started with the search on the location of existing public water systems, contact the TNRCC's water utilities program at (512) 239-6960.

For further information of water supply sources, you should also review the regional water plan for your regional water planning area. Refer to the Texas Water Development Board at (512) 463-7847 or Internet site at <http://www.twdb.state.tx.us/> for a map of regional water planning areas and contact names for each of the regional water planning groups.

Chapter 4 Feasibility of Regionalization for New Public Water Systems

All owners/operators of new public water systems are required to evaluate the feasibility of regionalization before submitting plans and specifications and, if required, business plans to the TNRCC. It is the TNRCC's policy that regionalization is feasible unless one of three exceptions to the policy applies. The three exceptions are: (1) there are no public water systems within one-half mile; (2) you have requested service and have been denied; or (3) you can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted. In order to develop a new stand alone system, public water system owner/operators must demonstrate that one of the three exceptions is applicable to their system. The public water system owner/operator must provide the information identified below to receive an exception from the policy. If you are a public water system see steps below and Flowchart 1: Feasibility of Regionalization for New Public Water Systems.

Exception 1: There are no public water systems within one-half mile.

Are there existing public water systems within one-half mile of the proposed service area?

If the answer is "yes", proceed to exception 2 below.

If the answer is "no", do you also need a new CCN? Refer to 30 TAC Chapter 291 to determine if you need a CCN.

If you need a new CCN or CCN amendment, proceed to Flowchart 2 and Chapter 6.

If you do not need a new CCN, you can proceed to submit your plans and specifications and, if required, business plan for a stand alone system.

Exception 2: You have requested service and have been denied.

Have you formally applied for service from these systems?

You must apply for service from the existing systems by submitting a formal request for service application and by paying any associated fees. If there is more than one existing system, the TNRCC recommends that you consider regionalizing with the existing system that will provide the best long-term viability.

You must document that you have made every reasonable attempt to request service from the system and the appropriate department of that system. If you do not receive a response within a reasonable amount of time, you are responsible for following up.

Was service approved?

If the answer was "yes", you must regionalize unless you can demonstrate that regionalization is not feasible through exception 3.

If the answer is "no", do you also need a new CCN? Refer to 30 TAC Chapter 291 to determine if you need a CCN.

If you need a new CCN or CCN amendment, proceed to Flowchart 2 and Chapter

6.

If you do not need a new CCN, you can proceed to submit your plans and specifications and, if required, business plan for a stand alone system. However, you must provide a copy of the application requesting service and all correspondence from the existing system with your plans and specifications and, if required, business plan.

Exception 3: You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

Refer to Chapter 6 and Flowchart 3 in demonstrating that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted. Chapter 6 and Flowchart 3 discuss the interplay of the following interrelated factors:

- ratio of the costs of regionalization compared to the projected value of the development;
- affordable rates; and
- financial, managerial, and technical capabilities of the existing system.

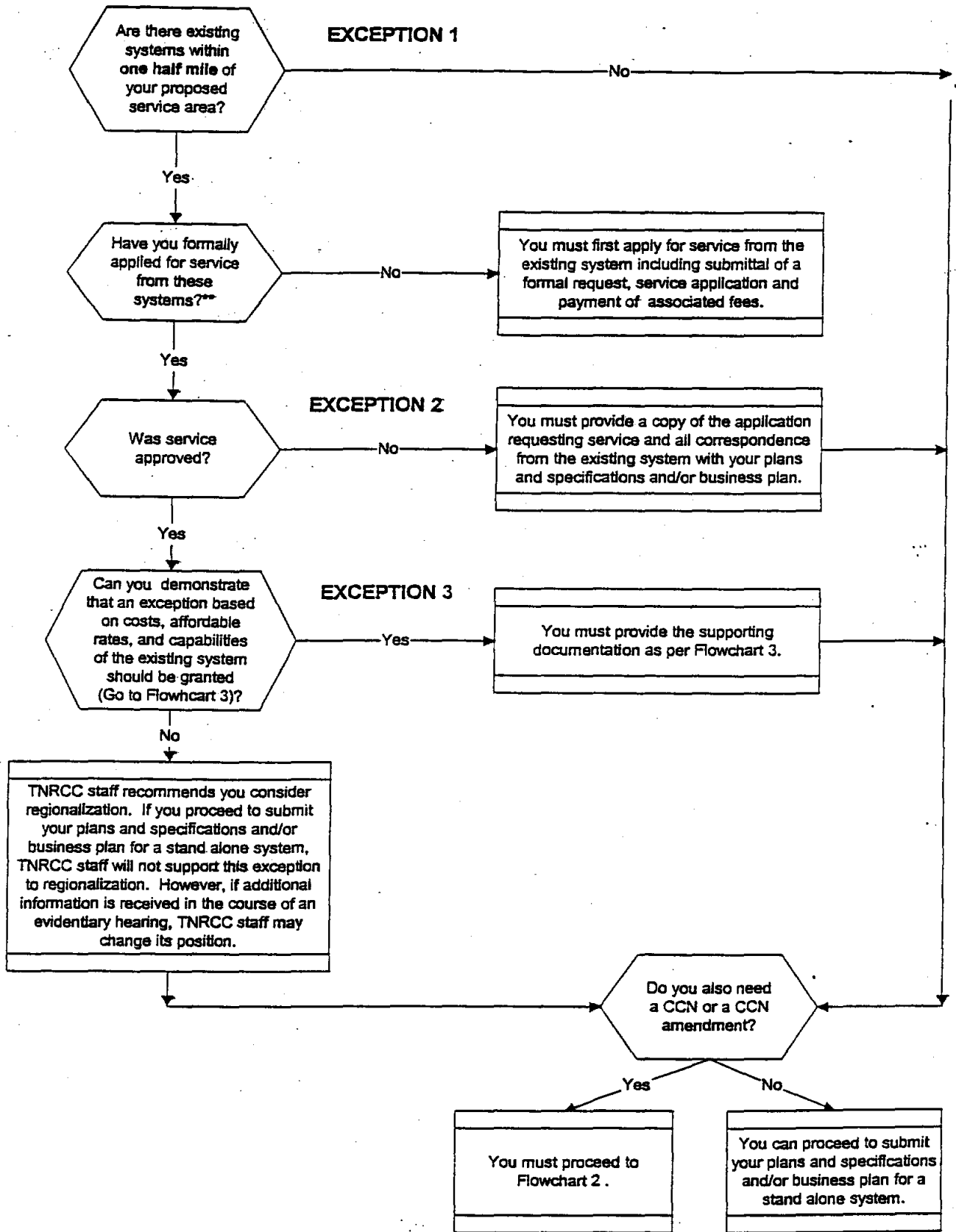
These factors are used as a screening process. Only one screen must be met in order to qualify for this exception.

If the answer to this question is "yes", you can proceed to submit your plans and specifications and, if required, business plan for a stand alone system. However, you must provide the supporting documentation.

If the answer to this question is "no", you should consider regionalization. If you proceed to submit your plans and specifications and, if required, business plan for a stand alone system, TNRCC staff will not support this exception to regionalization. However, if additional information is received in the course of an evidentiary hearing, TNRCC staff may change its position.

Do you also need a new CCN?

Flowchart 1: Feasibility of Regionalization for New Public Water Systems



** If there is more than one existing system, the TNRCC recommends you consider regionalizing with the existing system that will provide the best long-term viability.

Refer to 30 TAC Chapter 291 to determine if you need a CCN.

If the answer is "yes", proceed to Flowchart 2 and Chapter 65

If the answer is "no", you can proceed to submit your plans and specifications and, if required, business plans for a stand-alone system.

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Flowchart 1

Chapter 5 Feasibility of Regionalization for New CCNs and CCN Amendments for Construction of a Physically Separate System

All applicants for new water and sewer CCNs or CCN amendments for construction of a physically separate system are required to evaluate the feasibility of regionalization before submitting plans and specifications, business plans, or CCN applications to the TNRCC. All CCN applicants that are also a new public water system, must first follow the instructions in Chapter 4 before proceeding to Chapter 5.

It is the TNRCC's policy that regionalization is feasible unless one of three exceptions to the policy applies. The three exceptions are: (1) there are no public water systems or wastewater treatment systems within 2 miles; (2) you have requested service and have been denied; or (3) you can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted. In order to develop a stand alone system, the CCN applicant must demonstrate that one of the three exceptions is applicable to their system. The CCN applicant must provide the information identified below to receive an exception from the policy.

If you are a CCN applicant, see steps below and to Flowchart 2: Feasibility of Regionalization for New CCNs or CCN Amendments for Construction of a Physically Separate System.

Exception 1: There are no public water systems or wastewater treatment systems within two miles.

Are there existing public water systems or wastewater treatment systems within two miles of your proposed CCN boundary?

If the answer to this question is "yes", proceed to exception 2 below.

If the answer to this question is "no", you may proceed to submit your plans and specifications, business plan, or CCN application for a stand-alone system.

Exception 2: You have requested service and have been denied.

Have you requested service from these systems?

If there is more than one existing system, we recommend that you consider regionalizing with the existing system that will provide the best long-term viability.

If the answer to this question is yes, go to next question.

If the answer to this question is "no", you must either request service from that system or

demonstrate that regionalization is not feasible through exception 3.

Was service approved?

If the answer is "yes", proceed to exception 3 below.

If the answer is "no", you may proceed to submit your plans and specifications, business plan, or CCN application. However, you must provide a copy of the application requesting service and all correspondence from the existing system with your plans and specifications and, if required, business plan.

Exception 3: You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.

Refer to Chapter 6 and Flowchart 3 in demonstrating that an exception based on costs, affordable rates, and financial, managerial, and technical capability should be granted. Chapter 6 and Flowchart 3 discuss the interplay of the following interrelated factors:

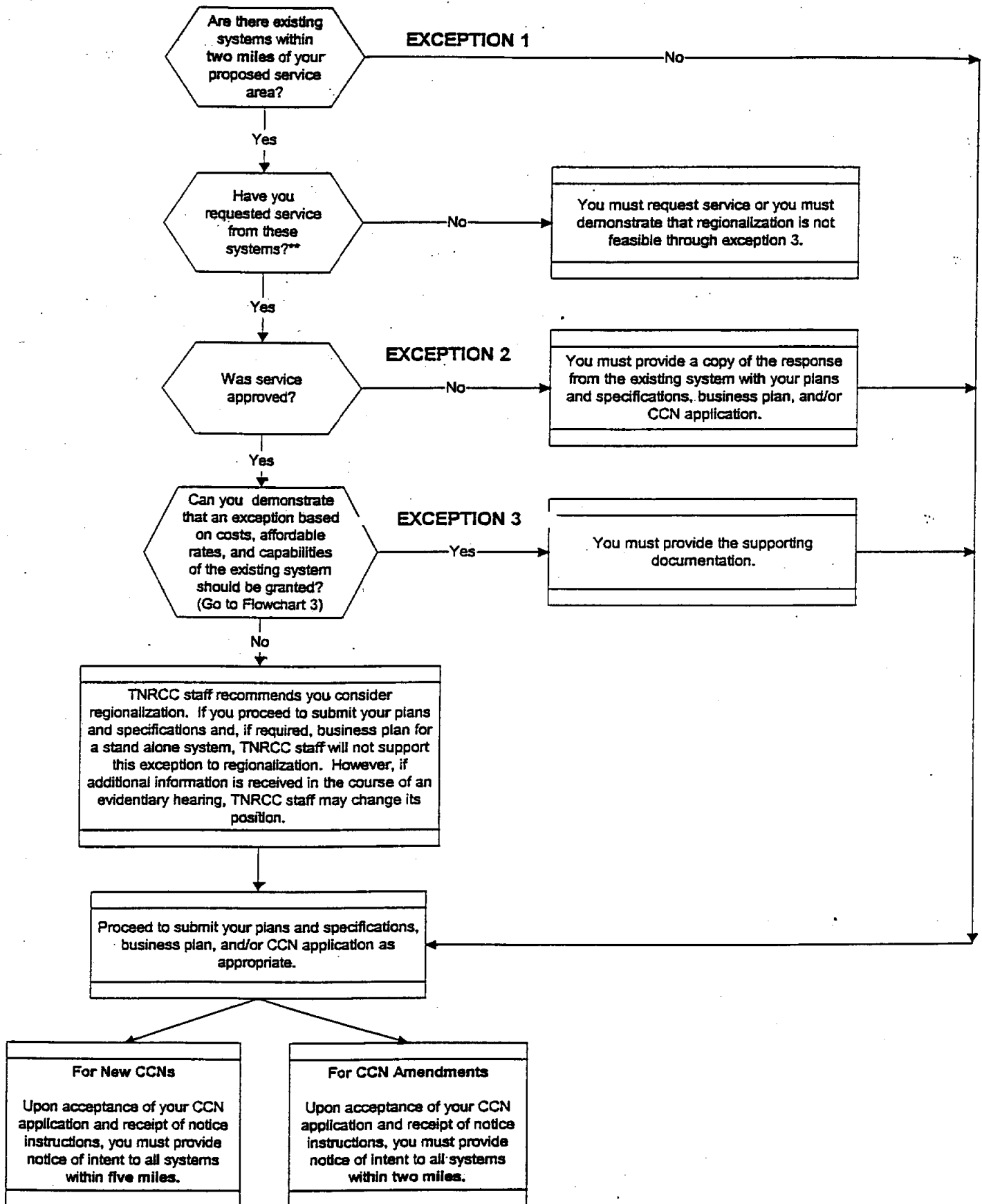
- ratio of the costs of regionalization compared to the projected value of the development;
- affordable rates; and
- financial, managerial, and technical capabilities of the existing system.

These factors are used as a screening process. Only one screen must be met in order to qualify for this exception.

If the answer to this question is "yes", you can proceed to submit your plans and specifications, business plan, or CCN application for a stand alone system. However, you must provide the supporting documentation.

If the answer to this question is "no", you should consider regionalization. If you proceed to submit your plans and specifications and, if required, business plan for a stand alone system, TNRCC staff will not support this exception to regionalization. However, if additional information is received in the course of an evidentiary hearing, TNRCC staff may change its position.

Flowchart 2: Feasibility of Regionalization for All New CCNs and CCN Amendments That Require Construction of a Physically Separate System



** If there is more than one existing system, the TNRCC recommends you consider regionalizing with the existing system that will provide the best long-term viability.

Chapter 6 Exception 3 - Should an Exception Based on Costs, Affordable Rates, and Financial, Managerial, and Technical Capabilities of the Existing System Be Granted?

This chapter should be used in conjunction with Flowchart 3 to determine whether an exception based on costs, affordable rates, or financial, managerial, and technical capabilities of the existing system should be granted. This chapter discusses whether an exception based on the following interrelated factors should be granted:

- Screen 1: ratio of the costs of regionalization compared to the projected value of the development;
- Screen 2: affordable rates; and
- Screen 3: financial, managerial, and technical capabilities of the existing system.

These factors are used as a screening process. Only one screen must be met in order to qualify for this exception. Below you will find a description of these screens. While this guidance document lists factors to be considered, it is not intended to limit the factors that you may want to raise to support an exception. Other factors will be considered as appropriate.

Screen 1: Costs of Regionalization Compared to the Projected Value of the Development

The ratio of the costs of regionalization compared to the projected value of the development refers to the comparison of the costs of regionalization to obtain service from an existing system versus the estimated value of the project at full build out. The cost of regionalization includes the up front costs associated with obtaining service from an existing system and the incremental construction costs associated with any delays in construction. The costs should be reduced by any potential future refunds or rebates. The projected value of the development includes the estimated value of all lots, homes, commercial and industrial improvements, developed reserves and undeveloped land at buildout assuming the installation of a stand-alone system. To propose an exception based on the high costs of regionalization, both of the following criteria must be met.

Criterion 1: The costs of regionalization are greater than 10% of the projected value of the development. See below for more information on factors associated with the cost of regionalization and the projected value of the development.

Criterion 2: The costs of regionalization are greater than the cost of a stand alone system.

Cost of Regionalization

Up Front Costs Associated With Obtaining Service

When new service is provided by an existing water or sewer utility, the utility can charge connection fees to the person requesting the service, whether the person is a residential customer or a developer who needs multiple services for a proposed new subdivision.

Examples of these connection fees include:

- Tap Fees: these are costs of tapping the main line and installing the tap, service line, meter and meter box to provide utility service to the customer's property line.
- Deposit: this is a bond type arrangement that can be applied to unpaid charges. This sometimes takes the form of a membership fee that a new customer may be required to pay the utility.
- System Development Charges: system development charges are also commonly referred to as impact fees, system capacity charges, system buy-in charges, and system investment fee front-end charges. A system development charge is any fee that is charged by the utility to provide funds to finance capital improvements necessary to serve a new customer. System development charges are designed to generate contributions from customers for financing major systems construction. These charges are typically found in high growth areas. The theory is that these charges allow growth to pay for itself. The magnitude of the charges may range from several hundred to many thousands of dollars. There are two methods used to determine the amount of these charges:
 - system buy-in method: the fee is related to the equity embedded in existing or new systems required to serve new customers and is based on the premise that new customers are entitled to water at the same prices charged to existing customers.
 - incremental-cost pricing method: the fee is related to the change in total cost resulting from a change in capacity of existing or future systems required to serve the new customer (including related operating costs) and is based on calculating the addition to total cost resulting from the incremental cost of capacity (= increase in capacity/increase in output, for a specific time period).
- Extension Fees: these are costs of the line extensions or capacity in existing lines that will be used by the utility to transport utility service to the new customer. The costs of extension fees may include any related engineering fees and the cost of financing the extension as applicable.

The table below which provides information concerning the different types of utilities in the state and the jurisdiction TNRCC has over their connection fee. The TNRCC jurisdiction over these fees in case a dispute or question arises with another utility over its fees.

TNRCC Connection Fee Jurisdiction

	Tap Fee	Deposit	System Development Charge	Extension Fee
Investor owned utilities (IOU)	Y	Y	Y	Y
Water supply corporations (WSC)	N	N	N ¹	N ¹
Water Districts	N	N	N ²	N
Cities and Counties	N	N	N	N

¹ New customers can appeal the costs for a new connection from a nonprofit water supply corporation

² TNRCC sets impact fees for water districts only if the impact fee is more than three times the district's tap fee

The TNRCC sets cost-based connection fees for those utilities over which it has connection fee jurisdiction. Impact fees and extension costs have the most impact on new development. In the past most utilities took on debt to fund infrastructure for growth, however in the last twenty years or so there has been a large increase in the number of water and sewer utilities that charge impact and extension fees to cover new infrastructure needs. Water and sewer utilities are requiring developers to pay for the infrastructure instead of taking on additional debt that would impact customer rates or taxes.

The connection fees the developer pays the utility are start-up costs that should be covered in the lot sales. However, the utility's developer connection fees may be more than the short term cost to some developers to install a small system that would serve only the new proposed subdivision. Consideration of long term costs and obligations associated with operating the utility system should impact the developer's decision.

Depending on the utility's extension policy, the developer can recover some, if not all, of these costs through the following mechanisms. Any recovery available should be factored into the costs.

- Line extension refund contract allows reimbursement to the developer of the full cost of the main extension from user charge revenues generated from customers which are served from the main extension (time limited).
- Contribution of the cost of the size of the main required to serve the developer's subdivision, with the utility paying the costs for any up-sizing of the main extension which may be required to serve anticipated future customer growth in the area beyond that in the developer's current needs.
- Up-sizing costs refunded to the developer by establishing a benefit area, whereby as additional customers or subdivisions in the established benefit area connect to the main extension, the original developer can be reimbursed for the prorated share of the up-sizing costs attributable to the additional customer connections.

Time Frame for Receiving Service

The impact of a delay in providing service may be considered. For example, a neighboring system may be willing to provide service to the developer but may not be able to do so immediately. For example, the existing system:

- may have to increase capacity to be able to meet the demands of the new system.
- may need to obtain necessary financing.
- may already have a prioritized schedule for construction or providing service to other applicants.

Delays in obtaining service may result in delays in certain phases of construction depending on the projected construction schedule. To the extent that there are delays in construction, there is likely to be an increase in the overall cost of the project. The applicant must demonstrate how the delays in construction will result in additional project costs. Those costs would then be compared to the estimated projected value of the project at full build out.

Impact on Sales

As the cost of regionalization increases, it is necessary to look at the impact on the development in an area. These costs may be passed on to existing customers and property owners through higher lot prices, water and wastewater rates, ad valorem taxes or all three.

For water districts issuing bonds, 30 TAC §293.59 defines the threshold to determine when the taxes exceed feasible limits. Districts will often issue bonds during a period of construction to serve new development. In doing so, they will base the feasibility of the project on projected growth to support an anticipated tax rate. The intent of this rule is to assure that the tax rates will be high enough to meet debt service requirements over the long-term and low enough to not discourage new development or cause existing homeowners and businesses to walk away from their property.

Projected Value of Development

The projected value of the development includes the estimated value at build out of all lots, homes, commercial and industrial improvements, and developed reserves and undeveloped land assuming the installation of a stand alone system. Use present-day unit values to determine the value of the property which exists and the value which will be added by future improvements to the property. The development should include all property to be served by the proposed new system.

Screen 2: Affordable Rates

Rate affordability considers the consumers' ability to pay. Unaffordable rates may be reasonable and cost-based, but consumers are still unable to support the cost of the water. To propose an exception to regionalization due to unaffordable rates of the existing provider, both of the following criteria must be met. TNRCC staff may review additional factors in determining rate affordability.

Criterion 1: The rates resulting from regionalization are not affordable. Regionalization results in rates with a household cost factor greater than 1% for water service or a combined household cost factor greater than 2% for water and sewer service. The calculation of the household cost factors are set forth in the Texas Water Development Board's TAC 31 Rule §371.24(b). The TNRCC is using these rules to determine the rates considered affordable based on median household income and family size. The consumption level used in the rate calculation is based on per capita indoor water use. The household cost factor and the combined household cost factor are calculated as follows:

If the service area is not charged for sewer services:

The household cost factor is calculated as the average yearly water bill divided by adjusted median household income of the area to be served.

The average yearly water bill is calculated as the average number of persons per occupied household multiplied by 2,325 gallons per person per month multiplied by the proposed monthly water rate multiplied by 12.

The adjusted median household income is calculated as the 1990 annual median household income multiplied by the Texas Consumer Price Index for the preceding year divided by the 1990 Texas Consumer Price Index.

If the service area is charged for water and sewer services:

The combined household cost factor is calculated as the average yearly water bill plus the average yearly sewer bill divided by the adjusted median household income of the area to be served.

The average yearly sewer bill is calculated as the average number of persons per occupied household multiplied by 1,279 gallons per person per month multiplied by the monthly sewer rate multiplied by 12.

The adjusted median household income is calculated as the 1990 annual median household income multiplied by the Texas Consumer Price Index for the preceding year divided by the 1990 Texas Consumer Price Index.

If taxes, surcharges or other fees are used to subsidize the water and/or sewer system, the average annual amount per household should be included in calculating the household cost factor or the combined household cost factor.

- Criterion 2: Rates of a stand-alone system would be lower than the rates of a regionalized system. This criterion calculates the rates which will be necessary to fully recover the costs of the proposed new water system and/or sewer system. If the rates of the proposed new system are higher than the current rates of the existing provider, there is a presumption that the rates of the existing provider are affordable, and an exception to regionalization will not be considered. The exception will be considered only if the applicant can demonstrate that the rates of the proposed new system are affordable while the rates of the regionalize system are not affordable.

Screen 3: Financial, Managerial, and Technical Capabilities of Existing System

An analysis of financial, managerial, and technical capabilities refers to whether the existing system has the financial resources to provide the service over the long-term, the managerial resources to support operations and plan for emergencies, and the technical expertise to provide consistent service in compliance with the TNRCC's rules. See below for a listing of factors to consider in determining financial, managerial, and technical capabilities of the existing system.

Financial Capabilities

- Rates are reviewed on a regular basis
- Rate structure is appropriate to customer base
- Debt Coverage Ratio is adequate
- System is current on debt payments
- All fees to regulatory agencies and laboratories are paid on a timely basis
- The system has appropriate insurance coverage
- An annual audit is conducted if system is a public entity or water supply corporation
- System has operating reserve accounts or access to funds as needed
- System has adequate working capital ratio
- The system has a high rate of collection of customer accounts
- The system has written policies for collection and termination of service.
- Collection policies are enforced and system has low number of disconnects due to failure to pay bill.

Managerial Capabilities

- System is aware of type of organization it is and legal authority to operate
- System has an operating budget
- System has written operating policies

- Customers have access to water system personnel at all time in cases of emergencies
- Records are maintained and updated on a regular basis
- Budget is used to determine rates
- System has adequate water supply
- System has written emergency plans
- System has conveyable title to water-producing assets
- Governing board is able to conduct meetings and make decisions (quorum is usually present and there is a majority vote for most major operating decisions)
- Every connection is metered
- Customers are billed on consistent billing cycles based on meter readings
- System owners or board have current Certificate of Convenience and Necessity if required.

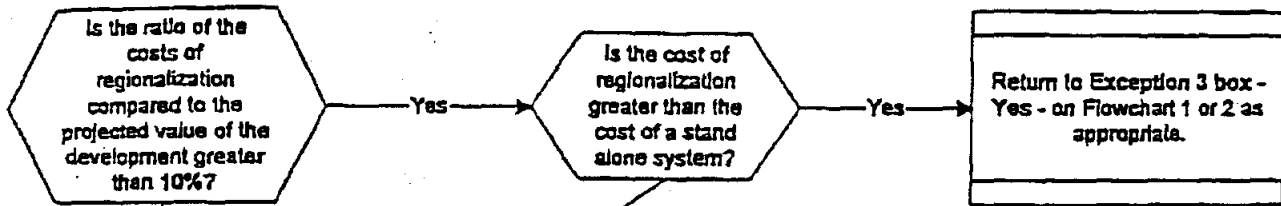
Technical Capabilities

- Certified operator is on-site or available to operate the system
- Operators have the appropriate certifications for the size of the system
- System staff can identify oldest piece of equipment and the most vulnerable part of the system
- Preventive maintenance is performed and documented
- System calculates unaccounted-for water and does not have excessive amounts

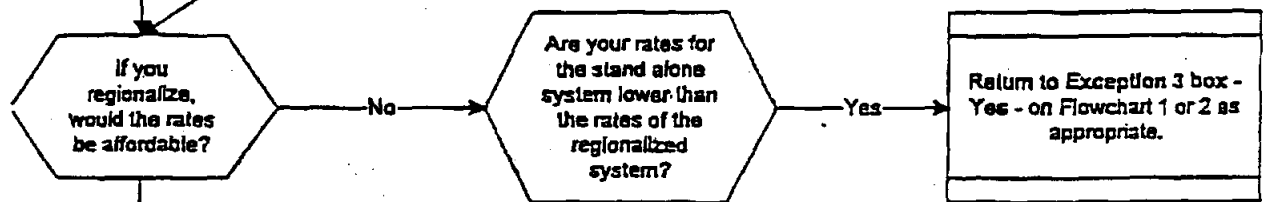
Flowchart 3: Should an Exception Based on Costs, Affordable Rates, and Financial, Managerial, and Technical Capabilities of the Existing System Be Granted?

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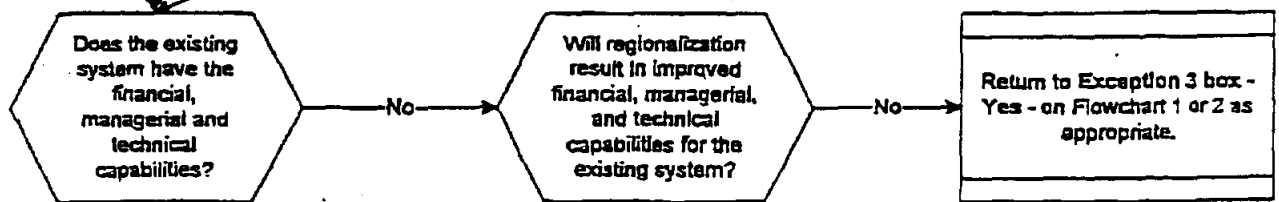
Screen 1



Screen 2



Screen 3



Return to Exception 3 box -
No - on Flowchart 1 or 2 as appropriate.

APPENDIX: Statutory and Regulatory Authority

General Statutory Authority

The Texas Health and Safety Code, Chapter 341, Subchapter C requires that public drinking water be free from deleterious matter and comply with the standards established by the TNRCC or the United States Environmental Protection Agency. The TNRCC may adopt and enforce rules to implement the federal SDWA (42 U.S.C. Section 300f et seq.).

The Texas Water Code Chapter 13 establishes a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities. Chapter 13 also allows the executive director, subject to approval by the commission, to employ any engineering, accounting, and administrative personnel necessary to carry out this chapter. See below for specific statutory and regulatory authority related to public water systems and CCNs.

Statutory and Regulatory Authority for Regionalization of Public Water Systems

Section 341.0315(a) - (d) of the Texas Health and Safety Code, relating to Public Drinking Water Supply System Requirements, requires that:

- "(a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:
 - (1) supply safe drinking water in adequate quantities;
 - (2) are financially stable; and
 - (3) are technically sound.
- (b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.
- (c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.
- (d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system."

Texas Health & Safety Code § 341.035 requires that before constructing a new system a person submit plans and specifications and, with certain exceptions, a business plan that demonstrate that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The TNRCC may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director

finds that the business plan demonstrates adequate financial capability.

Title 30 TAC § 290.39 ensures regionalization and area-wide options are fully considered; ensures the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations or changes; establishes minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices; and requires that minimum acceptable financial, managerial, technical and operating practices are specified to ensure that systems are properly operated to produce and distribute a safe, potable water.

Statutory and Regulatory Authority for Regionalization of Water and Sewer CCNs

Texas Water Code § 13.241 requires that an applicant for a CCN demonstrate that it possesses the financial, managerial, and technical capability to provide continuous and adequate service. Section 13.241 also requires that the applicant demonstrate that regionalization or consolidation is not economically feasible.

Texas Water Code § 13.246 specifies the factors to be considered by the commission concerning CCN notice and hearing and CCN issuance or refusal.

Texas Water Code § 13.253 requires that a CCN holder located in an affected county that has not been able to provide continuous and adequate service obtain service from another consenting utility service provider.

Title 30 TAC § 291.102(a)(3) requires that where a new CCN is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

Title 30 TAC § 291.102(c) requires that the TNRCC consider the following in considering whether to grant or amend a CCN:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area;
- (3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity; and
- (8) the probable improvement in service or lowering of cost to consumers in that area.

Appendix F: TWDB

**Texas Water Development Board
Economically Distressed Areas Program
July 1999**

Methodology to Analyze Results

Analytical Methodology

Questions #1 and #10 are interrelated questions. The statistician has to know the answer to both questions to be able to calculate the estimated mean per capita income for the sample group. Since the employment of the range methodology can only produce an estimated mean per capita income, the statistician will have to employ hypothesis testing to affirm the results. The attachment provides a walk through of the process.

Step One:

Calculate the estimated mean per capita income by dividing column "c" by the aggregate in column "a". Since this is an estimated mean, the statistician should calculate the median and mode to determine if the sample is positively or negatively skewed (see attachment).

Step Two:

Calculate the variance and standard deviation for the sample (see attachment).

Step Three:

Calculate the z score and accept or reject the null hypothesis (see attachment).

Step Four:

Calculate the p value to validate the acceptance or rejection of the null hypothesis (see attachment).

**Texas Water Development Board
Economically Distressed Areas Program
Survey Instrument**

Applicant Organization: _____

Community/Area Survey: _____

Dwelling Address (Location) _____

1) Including yourself, how many people usually reside at this address? _____

2) Do you get water from:

- _____ a public system or private company?
- _____ an individually drilled well?
- _____ an individually dug well?
- _____ some other source (spring, creek, hauled-in, etc.)

3) Is this house connected to a sewer system?

- _____ Yes
- _____ No, use septic system
- _____ No, use other source

4) Do you have complete plumbing facilities in your home, that is, hot and cold piped water, flush toilet and a bathtub or shower?

- _____ Yes
- _____ No, have some, plumbing facilities.
- _____ No plumbing facilities.

5) If you answered "No, have some, plumbing facilities" to question 4, which do you lack?

- _____ Piped Water
- _____ Flush Toilet
- _____ Bathtub or _____ Shower
- _____ Kitchen Sink

6) Would you support the construction of a water system to serve your area and residence?

- _____ Yes _____ No

7) Would you support the construction of a wastewater system to serve your area and residence?

- _____ Yes _____ No

8) Would you connect to a water system if it required a reasonable and mandatory monthly service charge?

- _____ Yes _____ No

9) Would you connect to a wastewater system if it required a reasonable and mandatory monthly service charge?

- _____ Yes _____ No

Please consider the following sources of income before answering question #10.

(Wages, Tips, Rental Income, Business Income, Interest Income, Dividend Income, Pension Income, Social Security Income and Welfare Income)

10) Please indicate the combined annual household income for all persons in your household. \$ _____

- _____ \$0 up to \$10,000
- _____ \$10,000 up to \$20,000
- _____ \$20,000 up to \$30,000
- _____ \$30,000 up to \$40,000
- _____ \$40,000 up to \$50,000
- _____ \$50,000 up to \$60,000
- _____ \$60,000 up to \$70,000
- _____ \$70,000 up to \$80,000
- _____ \$80,000 up to \$90,000
- _____ \$90,000 up to \$100,000
- _____ \$100,000 up to \$110,000
- _____ \$110,000 up to \$120,000
- _____ \$120,000 up to \$130,000
- _____ \$130,000 up to \$140,000
- _____ \$140,000 up to \$150,000
- _____ \$150,000 up to \$160,000
- _____ \$160,000 up to \$170,000
- _____ \$170,000 up to \$180,000
- _____ \$180,000 up to \$190,000
- _____ \$190,000 up to \$200,000

If annual income is more than \$200,000, please estimate to the nearest \$100,000.\$

Interviewer: _____
Date: _____