



# Drafting Wholesale Water Supply Contracts

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## Topics of Discussion

- Background
- Anatomy of a Water Supply Contract
- Regulatory Requirements
- Dealing with a Problematic Contract
- Summary / Questions



## Types of Water Supply Contracts

- Raw Water Contracts
- Treated Water Contracts
- Emergency Interconnection Agreements
- Water Treatment Contracts
- Water System Contracts

# Anatomy of a Water Supply Contract

## Essential Provisions

- Quantity (Take or Pay)
- Price/Rate Changes
- Start Date/End Date
- Billing/Payment Process
- Points of Entry/Exit
- Metering
- Termination/Extensions
- Boilerplate contract terms

# Anatomy of a Water Supply Contract

## Secondary Provisions

- Water Pressure
- Ownership
- Purpose of Use
- Place of Use
- Resale of Water
- Pledge of Revenue
- Infrastructure
- Shortages

## **Statutory/Regulatory Requirements Regarding Water Supply Contracts**

- **Texas Water Code Chapter 13 - Water Rates and Services**
- **Texas Water Code Chapter 11 - Water Rights**
- **Title 30 Texas Administrative Code Chapters 295 and 297 – Water Rights**
- **Title 30 Texas Administrative Code Chapters 290 – Public Water Systems**

## **Statutory/Regulatory Requirements** **Regarding Water Supply Contracts**

### **Texas Water Code § 13.144. Notice of Wholesale Water Supply Contract.**

A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract.

The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

# **Statutory/Regulatory Requirements** **Regarding Water Supply Contracts**

## **Title 30 Texas Administrative Code** **Chapters 295 and 297**

### 30 TAC § 295.101. Documents to be Filed

- (b) A water supply contract to be submitted to the executive director in accordance with §297.101 of this title shall be accompanied by a vicinity maps showing the diversion point and place of use, and the contractual terms shall include the following:
- (1) cost of water;
  - (2) the effective date and termination date of the contract;
  - (3) quantity of water being furnished;
  - (4) the location of the purchaser's diversion point; and
  - (5) a statement regarding effectiveness of contract

# **Statutory/Regulatory Requirements** **Regarding Water Supply Contracts**

## **Title 30 Texas Administrative Code** **Chapters 295 and 297 (continued)**

### 30 TAC Chapter § 297, Subchapter J. Water Supply Contracts and Amendments

- Water supply contracts shall be filed with TCEQ before deliveries or diversions
- Exceptions:
  - (1) sales of untreated water that conveyed through a canal, pipeline, or aqueduct
  - (2) sales of treated water supplied through a public or private municipal distribution system or through a rural water supply system;
  - (3) deliveries of treated sewage effluent;
  - (4) short term (three years or less) sales of untreated water from the perimeter of a reservoir for any purpose authorized in the water right in amounts not exceeding 10 acre-feet per annum; or
  - (5) sales of untreated water from the Lower and Middle Rio Grande.

## **Statutory/Regulatory Requirements** **Regarding Water Supply Contracts**

### **Texas Water Code § 11.036. Conserved or Stored Water: Supply Contract**

- (b) The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If the contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.
- (c) The terms of a contract may expressly provide that the person using the stored or conserved water is required to develop alternative or replacement supplies prior to the expiration of the contract and may further provide for enforcement of such terms by court order.
- (d) If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

# **Statutory/Regulatory Requirements** **Regarding Water Supply Contracts**

## **Title 30 Texas Administrative Code Chapter 290**

30 TAC § 290.45. Minimum Water System Capacity Requirements

## **Dealing with a Problematic Water Supply Contract**

- Disagreements regarding calculation of the amount of water delivered
- Place of Use Limitation
- Water Rate Increases Unfair
- Termination of Contract

## Post-Termination Issues

- The contract has terminated....or has it?

## Summary and Assessment

- There are a number of critical provisions that need to be included in a water supply contract in some form
- Need to determine what aspects of these provisions are best for your client
- Be sure to meet all statutory/regulatory requirements
- Be aware of the limitations of the underlying water right
- Plan and place procedures in the contract to address when the contract terminates

# Questions?



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