



August 13, 2001

To All Bond Counsel:

Re: Water District Matters: Annexation and Division, Waste Control and Drainage Powers, Requirements for Approval of District Bonds not receiving approval of the Texas Natural Resource Conservation Commission ("TNRCC")

1. Annexation and Division of Territory by Fresh Water Supply Districts. Pursuant to sections 49.301 and 49.302 of the Water Code, a district may annex contiguous or non-contiguous territory if, among other things, it is feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district. In the case of a fresh water supply district with the power to divide, pursuant to section 53.029 of the Water Code, the division of the district such that territory previously annexed is divided off to become a new district would indicate that the required conditions for annexation had not been met, in which case, subject to any applicable validation statute, the purported new district would not have been validly created.

2. Waste Control and Drainage Powers for Fresh Water Supply Districts Converted to Water Control and Improvement Districts. A Fresh Water Supply District ("FWSD") converted to a Water Control and Improvement District ("WC&ID") must, in order to have waste disposal and storm water control powers, adopt those powers in the manner set out for the adoption of those powers by a WC&ID. Section 51.043 of the Water Code provides that an FWSD that converts into a WC&ID shall "have and may exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter [as a WC&ID]." However, since a WC&ID must, pursuant to section 51.333 obtain TNRCC approval to exercise the additional powers of section 51.331, we believe a converted FWSD must also obtain TNRCC approval to exercise those powers. See also section 51.044(c). If a converted district has, without TNRCC approval, taken actions to exercise waste disposal and storm water control powers prior to the effective date (June 17, 2001) of section 42 of Senate Bill 1444 enacted this past session, those actions may have been validated by that act of the legislature. However, it would appear that those powers would not otherwise be within the scope of the validation provisions of Senate Bill 1444.

3. Additional Water District Approval Requirements. For bonds or other obligations ("bonds") of FWSDs, WC&IDs and similar utility districts that have not been approved by the TNRCC, we are implementing an additional requirement to help ensure that the district has a sufficient tax base for the payment of the bonds. In that regard, transcripts submitted

subsequent to the date of this letter must show that the combined no-growth tax rate does not exceed \$2.50 (per \$100 taxable value). That is, the most recent combined tax rate of all overlapping districts levying taxes for water, wastewater, or roads ("ODTR"), plus any maintenance tax currently levied by the district ("MT") plus the maximum tax rate required for the district to pay debt service on the proposed and outstanding bonds, must not exceed \$2.50. Thus, MDS must not exceed TAV times the remainder of \$2.50 minus ODTR and MT, where MDS is the maximum annual debt service payment on all outstanding bonds of the district over the life of the proposed bonds and TAV is the district's current taxable valuation. Or, to state it as a formula:

$$\text{MDS} \leq \text{TAV} \times (\$2.50 - \text{ODTR} - \text{MT})/100$$

Please contact us if you have questions regarding this new requirement.

Yours truly,



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