



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

June 27, 2023

Mr. Thomas J. Gleeson  
Executive Director  
Public Utility Commission of Texas  
Post Office Box 13326  
Austin, Texas 78711

**Opinion No. JS-0004**

Re: Whether the Public Utility Commission has authority under Water Code section 12.013 to hear an appeal by a municipal utility of rates set by a water control and improvement district, or whether the Texas Commission on Environmental Quality has exclusive authority over such an appeal under Water Code subsection 51.305(d) (RQ-0478-KP)

Dear Mr. Gleeson:

You ask about the respective authority of the Public Utility Commission (“PUC”) and the Texas Commission on Environmental Quality (“TCEQ”) to hear an appeal by a municipally owned utility of a water control and improvement district’s rates.<sup>1</sup> You explain that in October of 2021, the City of McAllen (“City”) filed a petition with the PUC under Water Code section 12.013 to appeal water delivery rates set for its utility by the Hidalgo County Water Improvement District No. 3 (the “District”). Request Letter at 1. You tell us the PUC referred the petition to the State Office of Administrative Hearings (“SOAH”) for a contested-case hearing and that an appeal of the SOAH interim order was brought to the PUC. *Id.* at 2. Before the PUC could act on the appeal it received a letter from two state legislators asserting that subsection 51.305(d) of the Water Code conferred on TCEQ the “exclusive authority to determine whether the delivery charge or price for water levied by [the water district] against McAllen is ‘reasonable and just or is discriminatory.’” *Id.*; Legislators’ Letter at 2. You ask whether subsection 51.305(d) in fact “vests exclusive authority in the TCEQ” to hear this particular appeal.<sup>2</sup> Request Letter at 2.

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<sup>1</sup>See Letter from Thomas J. Gleeson, Exec. Dir., Pub. Util. Comm’n of Tex., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Sept. 6, 2022), and Attached Letter from Honorable Juan “Chuy” Hinojosa, State Senator, Dist. 20, and Honorable Terry Canales, State Representative, Dist. 40, to Pub. Util. Comm’n of Tex. (Aug. 23, 2022), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2022/RQ0478KP.pdf> (hereinafter “Request Letter” and “Legislators’ Letter”).

<sup>2</sup>You state that the PUC “expects that additional appeals of rates set by water control and improvement districts will be filed” in the future and ask whether the PUC must dismiss them. Request Letter at 3.

### **Water Code Section 12.013**

Subsection 12.013(a) provides that the PUC “shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12” of the Water Code. TEX. WATER CODE § 12.013(a); *see generally id.* §§ 11.001–.561 (governing water rights), 12.001–.114 (containing provisions generally applicable to water rights). Thus, the PUC has broad, general authority to fix water rates for any purpose in chapter 11 or 12. *See id.* § 12.013(a); *see also Tex. Water Comm’n v. Boyt Realty Co.*, 10 S.W.3d 334, 337–38 (Tex. App.—Austin 1993, no pet.) (describing chapters 11 and 12 as “provisions . . . dealing with ‘raw’ water”). Under this authority, you tell us the PUC has assumed “authority over rate appeals challenging the rates set by a water control and improvement district[.]” Request Letter at 3.

### **Water Code Subsection 51.305(d)**

Water Code chapter 51 governs water control and improvement districts (“districts”). *See* TEX. WATER CODE §§ 51.001–.875. Subchapter G of chapter 51 relates specifically to water charges and assessments. *See id.* §§ 51.301–.321. Relevant here, section 51.304 requires a district’s board to “estimate the expenses of maintaining and operating [its] water delivery system for the next 12 months.” *Id.* § 51.304. Subsections 51.305(a) through (c) govern the distribution of assessments and other forms of payment to cover these expenses, based on the status of the land, the purpose of the water, and other factors. *See, e.g., id.* § 51.305(a) (providing that “a portion of the estimated maintenance and operating expenses . . . shall be paid by assessment” against all irrigable land pursuant to a board order), 51.305(c) (providing that “[t]he remainder of the estimated expenses shall be paid by assessments, charges, fees, rentals, or deposits required” of certain water users and applicants). Then, subsection 51.305(d), about which you ask, provides that

[a] landowner of irrigable land in the district or a user of water delivered by the district for any purpose other than irrigation who disputes *all or a part of a board order that determines the amount of an assessment, charge, fee, rental, or deposit* may file a petition under Section 11.041. That petition filed with the commission<sup>3</sup> is the sole remedy available to a landowner or user of water described by this subsection.

*Id.* § 51.305(d) (emphasis and footnote added).

Our goal is to determine the Legislature’s intent. *Hegar v. Health Care Serv. Corp.*, 652 S.W.3d 39, 43 (Tex. 2022) (stating that a court’s objective in construing statutes is to “ascertain and give effect to the Legislature’s intent”). “A statute’s plain language is the most reliable guide”

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<sup>3</sup>For purposes of chapter 51, the term “commission” refers to the TCEQ as the successor agency of the Texas Natural Resource Conservation Commission. *See* TEX. WATER CODE § 51.001(5) (defining “commission” to mean the Texas Natural Resource Conservation Commission); *see also* Act of May 28, 2001, 77th Leg., R.S., ch. 965, § 18.01(a), (b), 2001 Tex. Gen. Laws 1933, 1985 (changing the name of the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality and providing that a reference to the Texas Natural Resource Conservation Commission in law is a reference to the Texas Commission on Environmental Quality).

to that intent. *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019). Like the courts, we examine statutes “as a cohesive, contextual whole” to effectuate that intent. *Ex parte R.P.G.P.*, 623 S.W.3d 313, 317 (Tex. 2021). When read in the context of the other provisions of subchapter G, it is evident that the italicized language of subsection 51.305(d) refers to only particular assessments, charges, fees, rentals, or deposits—those that are allocated to pay for maintenance and operating expenses of a district’s water delivery system as estimated under section 51.304. *See* TEX. WATER CODE § 51.304. The plain language of the statute does not refer to the delivery price for water itself. Instead, subsection 51.305(d) provides certain landowners or users of water a method to dispute a specific class of assessments, charges, fees, rentals, or deposits. *See id.* § 51.305(d).

### **Harmonizing Water Code Subsection 51.305(d) and Section 12.013**

In ascertaining the Legislature’s intent, courts construe statutory language to harmonize all relevant laws, and not to create conflict. *See Fort Worth Transp. Auth. v. Rodriquez*, 547 S.W.3d 830, 838–39 (Tex. 2018). When two “provisions are irreconcilable, the general rule is that the terms of the later-enacted statute should control.” *In re Mem’l Hermann Hosp. Sys.*, 464 S.W.3d 686, 716 (Tex. 2015); *see also* TEX. GOV’T CODE § 311.025(a). Further, “conflicts between general and specific provisions favor the specific, and when the literal terms of the two provisions cannot both be true, the terms of the specific provision ordinarily will prevail” unless there is “manifest intent . . . that the general provision will prevail and the general provision is also the later-enacted statute.” *In re Mem’l Hermann Hosp. Sys.*, 464 S.W.3d at 716; *see also* TEX. GOV’T CODE § 311.026(b).

To the extent the PUC’s authority to fix water rates under section 12.013 encompasses authority to hear a matter concerning an amount allocated under section 51.305, its authority overlaps with that of the TCEQ. However, in using the term “sole,” which commonly means “one and only,” the Legislature evidenced its intent that the petition with the TCEQ for disputes under subsection 51.305(d) is the one and only remedy. *NEW OXFORD AMERICAN DICTIONARY* 1661 (3d ed. 2010); *see also Powell v. City of Houston*, 628 S.W.3d 838, 844 (Tex. 2021) (acknowledging that to determine the meaning of an undefined term in a statute, courts typically look first to dictionary definitions). But the two provisions can be harmonized if subsection 51.305(d) is construed as an exception to section 12.013. Absent a conflict between the two provisions, we need not consider which is the later-enacted. Nor do we need to address which is specific and which is general. Accordingly, in the limited circumstance of an owner of irrigable land or a user of non-irrigation water disputing all or part of a district’s board order, where the board order concerns the determination of the amount of an assessment, charge, fee, rental, or deposit imposed pursuant to section 51.305, the Legislature has expressly provided that the dispute must be heard by only the TCEQ pursuant to a section 11.041 petition.<sup>4</sup> *See* TEX. WATER CODE § 11.041.

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<sup>4</sup>In turn, section 11.041 allows persons entitled to “receive or use water” from specified sources or “from any conserved or stored supply” to present the TCEQ a written petition. TEX. WATER CODE § 11.041(a).

### **Dispute Between the City of McAllen’s Public Utility and the Hidalgo County Water Improvement District No. 3**

Briefing from the various parties appear to characterize the dispute between the City’s Public Utility and the District as an appeal of water delivery rates.<sup>5</sup> Yet, as this office does not resolve factual questions in an Attorney General opinion, we cannot determine whether this dispute involves an assessment, charge, fee, rental, or deposit allocated pursuant to section 51.305 to cover water delivery system maintenance and operation expenses estimated under section 51.304. *See* Request Letter at 1; Tex. Att’y Gen. Op. No. KP-0240 (2019) at 1 (stating that “[t]he attorney general opinion process does not resolve disputed fact questions or settle private disputes”). Thus, we cannot address your ultimate question regarding whether the PUC or the TCEQ has jurisdiction over this particular matter. At most we can advise you that if the dispute involves an allocation by the District to cover the maintenance and operating expenses of its water delivery system pursuant to section 51.305, the matter is properly before the TCEQ. Otherwise, the matter must be heard by the PUC. As did the Legislators in their letter to the PUC, “[w]e encourage both agencies to continue their excellent history of cooperation . . . .” Legislators’ Letter at 2.

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<sup>5</sup>*See* Letter from James Aldredge, Lloyd Gosslink, to Off. of the Att’y Gen., Op. Comm. at 1 (Oct. 10, 2022) (on file with the Op. Comm.) (acknowledging that the “issue as stated in the PUC’s opinion request fairly and accurately captures the nature of the proceeding that [McAllen Public Utility] initiated”); Letter from Taylor Holcomb, Jackson Walker LLP, to Charlotte Harper, Deputy Chair, Op. Comm. at 1–2 (Oct. 6, 2022) (stating the Water Improvement District increased McAllen Public Utility’s rate and that the Utility appealed the increase to the PUC).

**S U M M A R Y**

Water Code subsection 12.013(a) authorizes the Public Utility Commission to fix reasonable rates for the furnishing of raw or treated water for any purpose under Water Code chapter 11 or 12. Water Code section 51.305 pertains to specific expenses a water control and improvement district may allocate to certain users. The two provisions do not conflict. Under the plain terms of subsection 51.305(d), when an authorized party disputes a water control and improvement district's allocation assessments and other payments necessary to cover the maintenance and operating expenses of its water delivery system, a petition filed with the Texas Commission on Environmental Quality is the sole remedy. Otherwise, the matter is before the Public Utility Commission.

As this office does not resolve factual questions in attorney general opinions, we cannot determine the nature of the underlying dispute and thus cannot answer your question about which entity may have exclusive jurisdiction to hear it.

Very truly yours,

A handwritten signature in black ink, appearing to read "JOHN SCOTT", written over a horizontal line.

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