

Effective Enforcement of District Service Policies

TRWA Districts Conference
October 2020



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Effective Enforcement of District Service Policies

- Laws Governing Districts
- Providing Service
- Service Policies
 - Disconnection of Service
- Protecting Your System
 - Meter Tampering/Theft of Service
 - Plumbing Restrictions
- Service Agreements
- Enforcement and Fines
- Resources



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LAWS GOVERNING DISTRICT WATER SYSTEM OPERATIONS



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Constitution Article XVI, Section 59

- The conservation and development of all of the natural resources of this State... including
 - **the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes,**
 - the reclamation and irrigation of its arid, semiarid and other lands needing irrigation,
 - the reclamation and drainage of its overflowed lands, and other lands needing drainage,
 - the conservation and development of its forests, water and hydro-electric power,
 - the navigation of its inland and coastal waters, and
 - the preservation and conservation of all such natural resources of the State
- are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.



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The Statutes

- Health & Safety Code Chapter 34I, Subchapter C
 - Sanitary Standards of Drinking Water
- Water Code Chapter 13
 - State Regulation of Water Utilities
- Penal Code Chapter 28
 - Criminal Penalties for Damaging Utility Property, etc.
- Water Code Chapter 49
 - General Statute
- Water Code Chapter 65
 - Special Utility Districts
- Water Code Chapters 51-67
 - Other types of special districts related to water



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PROVIDING SERVICE



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Providing Service

- All retail public utilities must comply with PUCT rules
 - Texas Water Code Chapter 13
 - 16 TAC Chapter 24
- Failure to do so may result in enforcement and fines
- Districts are retail public utilities (So are WSCs)



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Water Code, Chapter 13

- **STANDARDS OF SERVICE**
- Every retail public utility that possesses or is required to possess a CCN and every district ... that furnishes retail water or sewer utility service, shall furnish the service, instrumentalities, and facilities as are safe, adequate, efficient, and reasonable.
 - 13.139(a)



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Service Area

- Districts NOT required to have CCN
 - May consider obtaining CCN to proactively secure/defend service area
- A CCN obligates the District to serve an area
 - 16 TAC Chapter 24
- A CCN also protects the District's service area from encroachment
 - Recommend Federal Debt to strengthen this protection



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Water Code, Chapter 13

- Any retail public utility that 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.
 - 13.250(a)



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Water Code, Chapter 13

- **PUCT Authority to Compel Service**
- **PUCT may** issue emergency orders, with or without a hearing:
 - to **compel a retail public utility** that has obtained or is required to obtain a certificate of public convenience and necessity **to provide continuous and adequate water service, sewer service, or both**, if the discontinuance of the service is imminent or has occurred because of the retail public utility's actions or failure to act; ...
 - 13.041(d)



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Water Code, Chapter 13

- **TCEQ Authority to Compel Service**
- **TCEQ may** issue emergency orders, with or without a hearing:
 - to **compel a retail public utility** that has obtained a certificate of public convenience and necessity **to provide water or sewer service, or both, that complies with all statutory and regulatory requirements** of the commission if necessary to ensure safe drinking water or environmental protection; ...
 - 13.041(h)



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Water Code Chapter 13

- **COLONIAS**
- Sec. 13.2501. CONDITIONS REQUIRING REFUSAL OF SERVICE. The holder of a certificate of public convenience and necessity **shall refuse** to serve a customer within its certified area if the holder of the certificate is prohibited from providing the service under Section 212.012 or 232.0047, Local Government Code.



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Water Code Chapter 13

- **SUBDIVISION DEVELOPMENTS**
- SERVICE EXTENSIONS BY [WSC or SUD] . A [WSC or SUD] is **not required to extend retail water or sewer utility service** within the certificated area of the [WSC or SUD] to a service applicant in a subdivision if the [WSC or SUD] documents that: ...
 - 13.2502.



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Water Code Chapter 13

- **SUBDIVISION DEVELOPMENTS (cont)**

- the developer of the subdivision has failed to comply with the subdivision service extension policy of the [WSC or SUD] as set forth in the tariff of the [WSC] or the policies of the [SUD]; AND
- the service applicant purchased the property **after the [WSC or SUD] gave notice as provided by this section** of the rules of [WSC or SUD] applicable to service to subdivisions from the corporation or special utility district.



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Water Code Chapter 13

- **SUBDIVISION DEVELOPMENTS (cont)**

- As an alternative to publication of notice, a [WSC or SUD] may demonstrate by any reasonable means that a developer has been notified for purposes of this section, including:
 - an agreement executed by the developer;
 - correspondence with the developer that sets forth the subdivision service extension policy; or
 - any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.



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Water Code Chapter 13

- **SUBDIVISION DEVELOPMENTS (cont)**

- "Developer" means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.
- "Service applicant" means a person, other than a developer, who applies for retail water or sewer utility service.



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If you only remember one thing from this presentation ---

**ADOPT AND IMPLEMENT
DISTRICT SERVICE POLICIES**



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TRWA Sample District Service Policies

- Available at TRWA.org
 - <https://www.trwa.org/store/ViewProduct.aspx?id=2854266>
 - Fee publication – but worth every penny
 - Complies with law and PUCT guidance
 - BUT have your legal counsel review
- READ THEM
- KEEP THEM CURRENT
- ENFORCE COMPLIANCE



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TRWA Sample District Service Policies

- District Service Rules
- Developer, Subdivision And Nonstandard Service Requirements
- Rate And Service Fee Order
- Drought Contingency And Emergency Water Demand Management Plan



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TRWA Sample District Service Policies

DISTRICT SERVICE RULES

- Activation of Nonstandard Service.
- Activation of Standard Service.
- Applicant's Recourse.
- Application Procedures and Requirements.
- Back Billing.
- Bill Adjustment Due to Meter Error.
- Billing Cycle Changes.
- Changes in Service Classification
- Charge Distribution and Payment Application
- Connection of Sewer Service
- Connection of Water Service
- Customer's Responsibility
- Deferred Payment Agreement
- Denial of Service



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TRWA Sample District Service Policies

DISTRICT SERVICE RULES

- Disputed Bills
- Due Dates, Delinquent Bills, and Service Disconnection Date
- Excluded Flow and Waste
- Inoperative Meters
- Insufficient Grounds for Refusal of Service
- Line Extension Reimbursement
- Meter Tampering and Damage To Property
- Ownership of Equipment
- Prohibited Plumbing Practices
- Prohibition of Multiple Connections to a Single Tap
- Rules for Disconnection of Service
- Service Entitlement
- Service Facility Relocation
- Standards for Sewer Service Lines
- Standards for Water Service Lines



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District Service Policies

- **BE CONSISTENT**
- Standard Service is service that **complies with EVERY** aspect of your service policy.
 - Standard Service Agreement form should reflect this (discussed later) for future disputes
- Non-standard Service is either larger scale development or **DOES NOT COMPLY with EVERY** aspect of your service policy.
 - Non-standard service agreements used to document this for future disputes



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DISCONNECTION OF SERVICE



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Water Code, Chapter 13

- Whether it has a CCN or not, a utility may not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:
 - (1) **nonpayment of charges** for services provided by the certificate holder or a person who possesses facilities used to provide utility service;
 - (2) (related to billing agreements with other utilities)...
 - (3) **nonuse**; or
 - (4) **other similar reasons in the usual course of business.**
- Water Code, Section 13.250



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Water Code, Chapter 13

- Any discontinuance, reduction, or impairment of service, must comply with the conditions, restrictions, and limitations that the PUCT prescribes.



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Disconnection of Service

- PUCT Rules
 - 16 TAC Chapter 22, Subchapter F
 - Do not apply to SUDs (or WSCs)
- TRWA advises systems to voluntarily comply with PUCT Rules and think of them as an example of the PUCT's accepted best practices when it comes to customer service.



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Disconnection of Service

- TRWA Resource:
 - <https://www.trwa.org/page/Legal-ServiceRequestandDisconnections>
 - FAQs on Service Requests and Disconnections
 - See TRWA Disconnection Notice Form in Sample Service Policies



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Disconnection of Service Best Practices

- PUCT Rules
- Utility service may be disconnected **after proper notice** for any of the following reasons:
 - failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.
 - Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.
 - Payment at a utility's office or authorized payment agency is considered payment to the utility.
 - The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;
 - violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;



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Disconnection of Service Best Practices

- Utility service may be disconnected **after proper notice** for any of the following reasons:
 - operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;
 - failure to comply with deposit or guarantee arrangements where required by §24.159 of this title (relating to Service Applicant and Customer Deposit);
 - failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section; and
 - failure to pay solid waste disposal fees collected under contract with a county or other public agency.



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Disconnection Notice Best Practices

- Proper notice is a separate written statement mailed or hand delivered to a customer before service is disconnected.
- English and Spanish if necessary to adequately inform the customer



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Disconnection Notice Best Practices

Notice Contents (16 TAC 22.167(a)(1))

- the words “termination notice” or similar language that stands out from other information on the notice;
- the action required to avoid disconnection
- the date by which the required action must be completed (at least ten days from the date the notice)
- the intended date of disconnection;
- the office hours, telephone number, and address of the utility’s local office;
- the total past due charges;
- all reconnect fees that will be required to restore service



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Disconnection of Service Best Practices

- Utility service may be disconnected **without prior notice** for the following reasons:
 - where a known and dangerous condition related to the type of service provided exists.
 - where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;
 - where service is connected without authority by a person who has not made application for service;



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Disconnection of Service Best Practices

- Utility service may be disconnected **without prior notice** for the following reasons:
 - where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;
 - or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §24.169 of this title (relating to Meters).



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Disconnection of Service

- Customers may appeal disconnection to PUCT
 - Informal Process First (letters and emails)
 - Then Formal Process (pleading, evidence and judge)
- Service Agreements and District Records are critical to responding to a complaint



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PROTECTING YOUR SYSTEM



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Operation of System

- All public water systems (PWS) must comply with TCEQ rules
 - Texas Health & Safety Code Chapter 341
 - 30 TAC Chapter 290
- Failure to do so may result in enforcement and fines



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Texas Health & Safety Code

- Public drinking water must be free from deleterious matter and must comply with the standards established by the TCEQ or EPA
- **In a public place or an establishment catering to the public, a common drinking cup may not be used.**
- 341.031



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Texas Health & Safety Code

- Public drinking water supply systems shall:
 - supply safe drinking water in adequate quantities;
 - be financially stable; and
 - be **technically sound**.
- Each public drinking water supply system shall provide an adequate and safe drinking water supply.
- 341.0315



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Protecting Your System

- Meter Tampering, etc.
- Plumbing Restrictions
- Cross Connections
- Customer Service Inspections



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METER TAMPERING AND THEFT OF SERVICE



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Meter Tampering

- A person commits an offense if, without the effective consent of the owner:
 - (1) he intentionally or knowingly damages or destroys the tangible property of the owner;
 - (2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person;
or
 - (3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.
- Penal Code Sec. 28.03(a)



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Meter Tampering/Theft

- An offense under this section is: ...
 - a Class A misdemeanor if: ...
 - the actor causes in whole or in part **impairment or interruption of any public water supply, or causes to be diverted** in whole, in part, or in any manner, including installation or removal of any device for any such purpose, **any public water supply**, regardless of the amount of the pecuniary loss;
- Penal Code 28.03(b)



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Meter Tampering/Theft

- Criminal Complaint
 - CALL YOUR LOCAL LAW ENFORCEMENT OFFICE
- Class A Misdemeanor
 - a fine not to exceed \$4,000;
 - confinement in jail for a term not to exceed one year; or
 - both such fine and confinement.
- Enforceable by Law Enforcement/District Attorney in
 - County Court, or
 - District Court



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Meter Tampering/Theft

- Presumed that a person who is receiving the economic benefit of ... public water ... supply, has knowingly tampered with the tangible property of the owner if the ... supply has been:
 - **diverted** from passing through a metering device; or
 - **prevented** from being correctly registered by a metering device; or
 - **activated** by any device installed to obtain ... public water, ... supply **without a metering device.**
- Sec. 28.03 (c)



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PLUMBING RESTRICTIONS



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Plumbing Restrictions

- Ensure that neither cross-connections nor other unacceptable plumbing practices are permitted
- Prohibit use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead
 - may be waived for lead joints that are necessary for repairs to cast iron pipe.
- 290.46



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Cross-Connection Law

- The distribution system of a PWS may not be physically connected to any other water supply unless the other water is of a safe and sanitary quality and the commission approves the connection.
- A PWS may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage
- 341.0315 and 30 TAC 290.46(k)



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Cross-Connection Control

- Cross-connection control (CCC) programs
 - identify locations where the risk of cross connection is high
 - ensure that the proper measures are taken to minimize that risk
 - high-grade backflow prevention assemblies and have them tested by a certified tester annually:
 - Mortuaries, minor surgery centers, hospitals, chemical plants, etc.



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Cross-Connection Control

- Customer service inspection (CSI)
 - Required for:
 - All new construction.
 - Existing customers that have had substantial plumbing modifications.
 - Existing customers whenever there is a reason to suspect that a hazard or a source of contamination may be present.
- Notify customers that a CSI is required
 - May have licensed staff who perform the CSIs and then bill the customer
 - May require the customer to hire a licensed person to conduct the CSI



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Customer Service Inspection

- Limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials.
 - Before providing service to new construction
 - On any existing service where there is reason to believe that cross-connections or other potential contaminant hazards exist, or
 - After any material improvement, correction, or addition to private water distribution facilities.



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Bring it all together in your

SERVICE AGREEMENTS



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Service Agreement

- TCEQ Rules Sec. 290.47(b) Appendix B.
Sample Retail Service Agreement.
 - <https://texreg.sos.state.tx.us/fids/201502634-2.html>
- TRWA Sample District Service Application and Agreement Form
 - From TRWA Sample District Service Policies:
 - Section I: Sample Application Packet



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Service Agreement

- Agreement with EVERY customer
- Compliance with District Service Policies
- Conditions for Disconnection
- Prohibited Activities
 - Plumbing Fixtures
 - Cross Connections
- Access to District facilities
 - Customer Service Inspections
- Notice of Potential Rationing



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Service Agreement

- **BE CONSISTENT**
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ENFORCEMENT AND FINES



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Water Code Chapter 65

- **A district 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;**
 - **preserve the purity and the sanitary condition of all water controlled by the district;**
 - **prevent waste or the unauthorized use of water controlled by the district;**

- 65.205



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Water Code Chapter 65

- **A district may adopt and enforce reasonable rules to:**
 - **regulate privileges on any land or easement owned or controlled by the district;**
 - **provide and regulate a safe and adequate freshwater distribution system; and**
 - **ensure adequate safeguards in the performance of the district's fire-fighting activities.**

- 65.205



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Water Code Chapter 65

- After the **required publication**, rules adopted by the district under Section 65.205 of this code shall be **recognized by the courts as if they were penal ordinances of a city**.
 - Sec 65.206
- Penalty for violation of a rule is **not effective and enforceable until five days after the last publication of the notice**. Five days after the last publication, the published rule takes effect and ignorance of the rule is not a defense to a prosecution for the enforcement of the penalty.
- 65.208



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Water Code Chapter 65

- **Publish a substantive statement of each rule and the penalty** for its violation once a week for two consecutive weeks in one or more newspapers with general circulation in the area in which the district is located.
- Substantive statement shall be condensed as far as possible to intelligently explain the purpose to be accomplished or the act forbidden by each rule.
- 65.207



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Water Code Chapter 65

- Notice must advise that breach of a rule will subject the violator to a penalty and that the full text of each rule is on file in the principal office of the district at which it may be read by any interested person.
- Any number of rules may be included in one notice.
- 65.207



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Water Code Chapter 49

- May set **reasonable civil penalties** for the breach of any rule of the district that shall not [more than \$20,000, exclusive of interest].
- A penalty under this section is in addition to any other penalty provided by the law of this state and **may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.**
- If the district prevails ... it **may ... recover reasonable fees for attorneys, expert witnesses, and other costs** incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.
- 49.004.



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City Penal Ordinance

- MAY provide guidance on reasonableness of penalty.
- A fine or penalty for the violation of a municipal rule, ordinance, or police regulation may not exceed \$500 except that:
 - **a fine or penalty** for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or **public health and sanitation**, other than the dumping of refuse, **may not exceed \$2,000**; and
 - Local Government Code, 54.001



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Texas Courts

- Justice of the Peace Courts
 - Exclusive jurisdiction over civil matters where the amount in controversy \$200 or less
 - Jurisdiction by statute over matters up to \$20,000, exclusive of interest
- County Court (Constitutional)
 - One per County
 - Jurisdiction by statute over civil matters exceeding \$200 and up to \$20,000, exclusive of interest
 - Exclusive original jurisdiction of misdemeanors ... and cases in which the highest fine that may be imposed is \$500 or less.
 - Jurisdiction over appeals from Justice of the Peace Court for judgements exceeding \$250, exclusive of costs
- County Courts at Law
 - Jurisdiction by statute and particular to each court
 - Established in more populous counties to handle case loads
- District Court
 - Jurisdiction over any action not exclusive to another court



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REGULATORY RESOURCES



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Organizations/Agencies for Assistance

- Texas Commission on Environmental Quality (Utility Operations)
 - Enforcement Process
- Public Utility Commission of Texas (Utility Rates and Service Obligations)
 - Complaint Process



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Helpful Websites

- TX Rural Water Association
 - www.trwa.org
- TCEQ
 - www.tceq.texas.gov
- PUCT
 - www.puc.texas.gov
- Texas Attorney General
 - www.oag.state.tx.us
- Texas Comptroller of Public Accounts
 - www.window.state.tx.us
- Texas Secretary of State
 - www.sos.state.tx.us



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TRWA Sample District Service Policies

- Available at TRWA.org
 - <https://www.trwa.org/store/ViewProduct.aspx?id=2854266>
 - Fee publication – but worth every penny
 - Complies with law and PUCT guidance
 - BUT have your legal counsel review
- READ THEM
- KEEP THEM CURRENT
- ENFORCE COMPLIANCE



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Questions?

Effective Enforcement of District Service Policies



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Thank you!

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