

RESOLUTION 2022-09-29-0038R

**CONSENTING TO THE APPLICATION OF SJWTX, INC. FOR
WATER AND SEWER CERTIFICATES OF CONVENIENCE AND
NECESSITY WITH THE PUBLIC UTILITIES COMMISSION OF
TEXAS CONSISTENT WITH THE AGREEMENT TO TRANSFER
RETAIL WATER AND SEWER SERVICE AREAS ENTERED INTO BY
SJWTX, INC. AND THE SAN ANTONIO WATER SYSTEM (SAWS)**

* * * * *

WHEREAS, San Antonio Water System's (SAWS) water and sewer Certificates of Convenience and Necessity (CCNs) currently extend into Kendall County and are also within the City of San Antonio's Extra Territorial Jurisdiction (ETJ); and

WHEREAS, the CCNs in Kendall County consists of 520 acres of water and 317 acres of sewer; and

WHEREAS, SAWS does not currently have existing customers in the CCN areas in Kendall County, Texas; and

WHEREAS, the SAWS Board of Trustees approved an Agreement Between the San Antonio Water System and SJWTX, Inc. to Transfer Retail Water and Sewer Service Areas in Kendall County (Transfer Agreement) to transfer SAWS' water and sewer service areas in Kendall County to SJWTX; and

WHEREAS, Section 13.245 of the Texas Water Code requires consent from a city with a population of 500,000 or more prior to the Public Utility Commission of Texas (PUCT) granting a certificate of convenience and necessity within the ETJ of the city; and

WHEREAS, SJWTX has requested the City's consent to its application to the PUCT for water and sewer CCNs in Kendall County, Texas that lie within the City's ETJ; and

WHEREAS, SAWS has recommended the City consent to SJWTX's application consistent with the Transfer Agreement; **NOW THEREFORE:**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:


SECTION 1. The City of San Antonio consents to the request by SJWTX, Inc. to obtain certificates of convenience and necessity from the Public Utility Commission of Texas to provide water and sewer service in those portions of Kendall County, Texas that lie within the City of San Antonio's extraterritorial jurisdiction as contemplated in the Agreement Between the San Antonio Water System and SJWTX, Inc. to Transfer Retail Water and Sewer Service Areas in Kendall County (Transfer Agreement), attached as **Exhibit A** and incorporated by reference hereto as if set out in the Resolution word for word.

SECTION 2. Consistent with Section 13.245 of the Texas Water Code, the City's consent is conditioned on compliance with Transfer Agreement.

SECTION 3. The City's consent is limited to retail water and sewer utility service provided by SJWTX, Inc., and any subsidiaries, including Canyon Lake Water Service Company. The City must consent to any future transfer of the CCNs from SJWTX to another retail public utility prior to filing an application with the Public Utility Commission of Texas.

SECTION 4. This Resolution shall become effective immediately upon the passage by eight (8) votes of the City Council and if passed upon fewer than eight (8) votes after the tenth (10th) day after passage.

PASSED AND APPROVED this 29th day of September, 2022.



M A Y O R
Ron Nirenberg

ATTEST:



Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:

Scott
Zimmerer

Digitally signed by Scott
Zimmerer
Date: 2022.09.28 10:08:30
-05'00'

Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting September 29, 2022

47.

2022-09-29-0038R

Resolution consenting to the application by SJWTX, Inc. for Water and Sewer Certificates of Convenience and Necessity within the City's Extra Territorial Jurisdiction. [Ben Gorzell Jr., Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer]

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Courage seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKeeRodriguez, Viagran, Rocha Garcia, Cabello Havrda, Sandoval, Pelaez, Courage, Perry

Absent: Castillo

SZ
09/29/22
Item No. 47

EXHIBIT A

(Transfer Agreement)

**AGREEMENT BETWEEN THE SAN ANTONIO WATER SYSTEM AND
SJWTX, INC. TO TRANSFER RETAIL WATER AND SEWER SERVICE AREAS
IN KENDALL COUNTY**

This Agreement to Transfer Retail Water and Sewer Service Areas (**Agreement**) is made and entered into by and between the San Antonio Water System, (**SAWS**) and SJWTX, Inc., (**SJWTX**) each of which may also be referenced as Party, or together as Parties.

RECITALS

WHEREAS, SAWS is a municipally owned retail water and service utility that holds both a retail public water utility Certificate of Convenience and Necessity (**CCN**) No. 10640 and a retail public sewer utility CCN No. 20285 in Bexar, Kendall, and other Counties of Texas; and

WHEREAS, the SAWS Board of Trustees authorized this Agreement on July 12, 2022, pursuant to Resolution No. 2022-150; and

WHEREAS, SJWTX, Inc., dba Canyon Lake Water Service Company, is a Texas Corporation and an investor-owned retail water and sewer service utility that is a wholly owned Texas subsidiary of SJW Group, and provides services pursuant to both a retail public water utility CCN No. 10692 and a retail public sewer utility CCN No. 20877 in Kendall, Comal, Blanco, and other Counties of Texas; and

WHEREAS, SAWS currently holds approximately 520 acres of water CCN and 317 acres of sewer CCN within Kendall County, north of and adjacent to Bexar County, described and depicted in more detail on Exhibits A-1 and A-2, (together the "**Transfer Areas**"); and

WHEREAS, SAWS desires to transfer the Transfer Areas to SJWTX; and

WHEREAS, SAWS does not have any existing customers or any water or sewer infrastructure within the Transfer Areas, and SJWTX desires to obtain these CCN areas to ultimately construct the necessary water and sewer infrastructure to provide retail water and sewer services in these CCN areas; and

WHEREAS, pursuant to Texas Water Code §13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission (PUC), are valid and enforceable and are incorporated into the appropriate CCNs; and,

WHEREAS, SAWS and SJWTX agree pursuant to Texas Water Code §13.248 that SJWTX will extend retail water and sewer utility service to the Transfer Areas; and

WHEREAS, conditioned upon PUC approval of this transaction, SAWS and SJWTX mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which they will designate areas to be served and to request the PUC to incorporate such designations into the CCNs held by SAWS and SJWTX.

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SAWS and SJWTX hereby contract and agree as follows:

ARTICLE I
GENERAL TERMS

1. **Recitals.** The recitals set forth above, which the Parties agree are true and correct, are incorporated herein for all purposes.
2. **Term.** This Agreement shall remain valid and enforceable until superseded by subsequent written agreement.
3. **Property Subject to the Agreement.** The property subject to this Agreement is the property identified as the Transfer Areas as shown on Exhibits A-1 and A-2. The general location of the Transfer Areas is shown on Exhibits B-1 and B-2.
4. **Transfer of Water Utility Service Area.** SAWS consents and agrees to the transfer of the water CCN service territory identified as the "**Water Transfer Area**," as depicted on Exhibit A-1, to SJWTX so that SJWTX may be the exclusive retail water utility service provider to the land within the Water Transfer Area and for which SJWTX will be authorized to charge its retail water rates as set forth in SJWTX's water utility tariff. SJWTX consents and agrees to accept the Water Transfer Area from SAWS.
5. **Transfer of Sewer Utility Service Area.** SAWS consents and agrees to the transfer of the sewer CCN service territory identified as the "**Sewer Transfer Area**," as depicted on Exhibit A-2, to SJWTX so that SJWTX may be the exclusive sewer utility service provider to the land within the Sewer Transfer Area and for which SJWTX will be authorized to charge its retail sewer rates as set forth in SJWTX's sewer utility tariff. SJWTX consents and agrees to accept the Sewer Transfer Area from SAWS.
6. **Retail Service.** SAWS hereby consents to SJWTX providing retail water and sewer services to the Transfer Areas upon final approval by the PUC and the fulfillment of all conditions agreed to by the Parties. SJWTX shall separately agree to terms with service applicants for the provision of retail water and sewer utility service within the Transfer Areas in response to any such service request to SJWTX or to any such service request to SAWS that is forwarded by SAWS to SJWTX.
7. **CCN Proceedings.**
 - a. **PUC Approval.** As soon as practical, but in no event later than one hundred and fifty (150) days after the Effective Date, the Parties agree to jointly submit this Agreement to the PUC pursuant to Texas Water Code § 13.248, a written petition as required by 16 Texas Administrative Code § 24.253 ("**13.248 Application**"), and such other documents that may be required in order to request approval of the

transfers of certificated service territories contemplated under Sections 4 and 5 above. In the event the PUC does not authorize the transfer of certificated service territories so contemplated, or requires additional evidence, documentation, maps, or action from the Parties, the Parties shall promptly and jointly prepare and submit such cures or additional applications as may be necessary to attain PUC approval; however, in the event the PUC continues to deny the 13.248 Application after the Parties' best efforts to cure and/or address the same, all further obligations of the Parties under this Agreement from that point forward shall be terminated; in that event, the Parties shall work in good faith to determine if any of those obligations should be renewed under a new agreement or if any other and further administrative approvals are necessary for SJWTX to serve the Transfer Areas.

- b. Within 30 days after the Effective Date of this Agreement, SJWTX will seek consent from the City of San Antonio (City), pursuant to Texas Water Code §13.245(b), to add the Transfer Areas to its CCN located inside the City's extraterritorial jurisdiction.
- c. Within 30 days after the Effective Date of the City's consent, SAWS and SJWTX will file an application pursuant to Texas Water Code §13.248.
- d. The application for approval will request that SJWTX's CCN be granted with the condition that all facilities providing service to the Water and Sewer Transfer Areas will be designed and constructed in accordance with SAWS Utility Service Regulations and Construction Specifications and the requirements of Articles II and III of this Agreement.

ARTICLE II

RETAIL WATER INFRASTRUCTURE AND SERVICES

As consideration for SAWS' agreement to the transfer of the CCN in the Water Transfer Area, SJWTX agrees as follows:

- 1. For service within the Water Transfer Area, SJWTX shall, at a minimum, construct its water system in compliance with SAWS' Utility Service Regulations and Construction Specifications. SJWTX shall have an engineer certify its compliance with these requirements. SJWTX may request a variance pursuant to SAWS' Utility Service Regulations, which may be approved by SAWS' President/CEO.
- 2. SJWTX will initially provide retail water services to the Water Transfer Area by connecting to its existing potable water system in Kendall County, Texas.
- 3. Unless otherwise mutually agreed upon, the initial water connection to serve the Water Transfer Area shall be made at the Ranger Creek facility located at 111 Deer Trail, Boerne Texas. This facility is for the delivery for water that is provided by GBRA's Western Canyon water project to SJWTX and is located approximately 1 mile north of the nearest projected connection in the Water Transfer Area.

4. SJWTX will utilize an elevated storage tank at this facility to enhance resiliency and intends to construct additional storage in the future at this location in excess of TCEQ's minimum standards.
5. SJWTX will update SAWS on developments to its plans for retail water service to the Water Transfer Area as said plans become available after the Effective Date of this Agreement.
6. SJWTX's water conservation and drought contingency plans shall apply in the Water Transfer Area. Customers in Water Transfer Area shall be eligible for outreach and conservations programs being developed by SJWTX.

ARTICLE III

RETAIL SEWER INFRASTRUCTURE AND SERVICES

As consideration for SAWS' agreement to the transfer of the CCN in the Sewer Transfer Area, SJWTX agrees as follows:

1. For service within the Sewer Transfer Area, SJWTX shall, at a minimum, construct its sewer system in compliance with SAWS' Utility Service Regulations and Construction Specifications. SJWTX shall have an engineer certify its compliance with these requirements. SJWTX may request a variance pursuant to SAWS' Utility Service Regulations, which may be approved by SAWS' President/CEO.
2. SJWTX will inspect and clean the sewer lines every 5 years and smoke test every 2 years in accordance with 30 TAC §213.5.
3. SJWTX shall encase all sewer mains that cross Balcones Creek to at least 10 feet beyond the bank on either side of the creek. SJWTX shall develop and implement a special inspection or leak detection program capable of detecting leaks in the sewer mains that cross Balcones Creek. Options may include regular manual inspections or, to the extent possible, the use of technologies such as leak detection sensors inside the casing. SJWTX shall submit its plans for encasement and special inspection or leak detection program to SAWS for review prior to construction.
4. In the event that SJWTX discovers any failures in its collection system within the Sewer Transfer Area or the mains that cross Balcones Creek, it shall use its best efforts to promptly resolve those issues, and shall provide SAWS with notice within 24 hours of discovery.

ARTICLE IV
COMPENSATION

SJWTX shall pay SAWS the sum of fifty thousand dollars (\$50,000.00) in consideration for the transfer of the Transfer Areas from SAWS to SJWTX. SJWTX shall work in good faith with SAWS towards the successful completion of the transfer at the PUC. This payment shall be due within 30 days after the final approval of this Agreement and the transfer by the PUC.

ARTICLE V
OTHER TERMS

1. The Parties agree to negotiate a wholesale sewer service contract in which SAWS will accept sewer flows from up to 1500 equivalent dwelling units (EDUs) located within the Sewer Transfer Area. EDUs shall be calculated based on the definitions of a sewer EDU contained in SAWS' impact fee program. SAWS shall not be required to accept sewer flows in excess of the 1500 EDU limit or any from connections located outside of the the Sewer Transfer Area. SJWTX shall be required to pay all wholesale sewer rates and impact fees authorized by the City Council of the City of San Antonio, which may be amended. SAWS shall retain the right to the treated wastewater effluent. SJWTX acknowledges that certain downstream sewer infrastructure must be constructed prior to SJWTX connecting to SAWS' sewer system.
2. The wholesale sewer service contract shall be conditioned upon the subsequent approval of the SAWS Board of Trustees. In the event that the SAWS Board of Trustees does not approve a wholesale sewer service contract, then it shall be SJWTX's sole responsibility to find an alternative method for providing sewer collection and treatment services for the Sewer Transfer Area.

ARTICLE VI
TERMINATION, DEFAULT, CURE AND REMEDIES

1. **Default.** "Event of Default" shall mean the failure of a Party to comply with an obligation of the Party stated in this Agreement. If an Event of Default occurs under this Agreement, the Defaulting Party must be given notice of the default and 30 days from the date of the notice is delivered in which to cure the default before the Non-Defaulting Party may execute any of the remedies set forth in this Section.
2. If an Event of Default is not remedied within the cure period, then each Non-Defaulting Party, whose rights under this Agreement are directly affected by the default, shall have the following rights and remedies:
 - a. to seek specific performance or injunctive relief, without the necessity of having to prove the inadequacy of legal remedies or irreparable harm;

- b. to terminate its obligations under this Agreement with respect to the Defaulting Party and its respective Property; and/or
- c. to pursue any and all rights and remedies available at law or at equity against the Defaulting Party, including, but not limited to, the right to pursue claims before PUC, TCEQ or any successor agency with jurisdiction.

ARTICLE VII

NOTICES

1. **Written Notice.** All notices required to be given must be in writing. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address set forth below, with a copy sent concurrently by facsimile, or on the date hand delivered by a national courier service, as evidenced by written acknowledgment of receipt for such hand-delivery. Notice given in any other manner will be deemed delivered only if and when actually received. Notice may not be given exclusively by e-mail. Any address for notice may be changed by written notice delivered as provided herein.
2. **Addresses for Notice.**

To SAWS:
San Antonio Water System
Attn: Andrea L.H. Beymer, P.E., Vice President of Engineering and Construction
2800 U. S. Hwy 281 North
San Antonio, TX 78212

To SJWTX:

SJWTX
Attn: Thomas Hodge, P.E. President
P.O. Box 1742
Canyon Lake, TX 78133

ARTICLE VIII

MISCELLANEOUS

1. **Governing Laws.** This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.
2. **Venue.** Except for matters within the jurisdiction of the PUC, TCEQ or another state or federal agency, the Parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Bexar County, Texas.

3. **Third Party Beneficiaries.** The Parties agree that there are no third-party beneficiaries to this Agreement.
4. **Attorneys' Fees.** SJWTX agrees to reimburse SAWS for its outside attorneys' fees and costs related to the drafting, negotiating, filing and otherwise pursuing the approval of this Agreement at the PUC. Otherwise, each Party shall bear its own attorneys' fees and costs related to this Agreement or the enforcement of this Agreement.
5. **No Admission.** The Parties agree that nothing in this Agreement shall be used as an admission of any sort in any litigation or other contested matter, except to enforce the terms of this Agreement.
6. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter of the Agreement. No agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party that is not contained in this Agreement shall be valid, binding, or of any force or effect.
7. **Amendment.** Any amendments to this Agreement must be in writing and signed by all the Party or Parties to be charged.
8. **Successors and Assigns.** This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns. Notwithstanding the foregoing, no Party to this Agreement may assign their rights or obligations under this Agreement without the written consent of the other Parties and such consent will not be unreasonably withheld.
9. **Construction.** This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply. When required by context, the gender of words in this Agreement includes the masculine, feminine, and neuter genders and the singular includes the plural (and vice-versa). The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
10. **Severability.** Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.
11. **Authority.** The respective signatories to this Agreement represent that they are authorized to sign this Agreement on behalf of their respective Party, and that such signatory has received the necessary approval of its governing body to execute this Agreement on the Party's behalf.
12. **Execution.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which counterparts, when taken together, shall constitute one and the same Agreement. The Parties agree that delivery of a signed counterpart, or the signed Agreement or amendment by facsimile or electronic mail, shall be deemed the same as the delivery of an original document.


13. **Effective Date.** Agreement shall be effective on the date of execution below, the latter of which shall be the Effective Date.

14. **Authorship.** No Party will be penalized for alleged authorship of a particular provision on judicial construction of this Agreement.

15. **Enforceability.** No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties reserve only their right to enforce the terms of this Agreement to the extent they are not fully performed by any other Party.

EXECUTED AND AGREED TO by the Parties hereto:

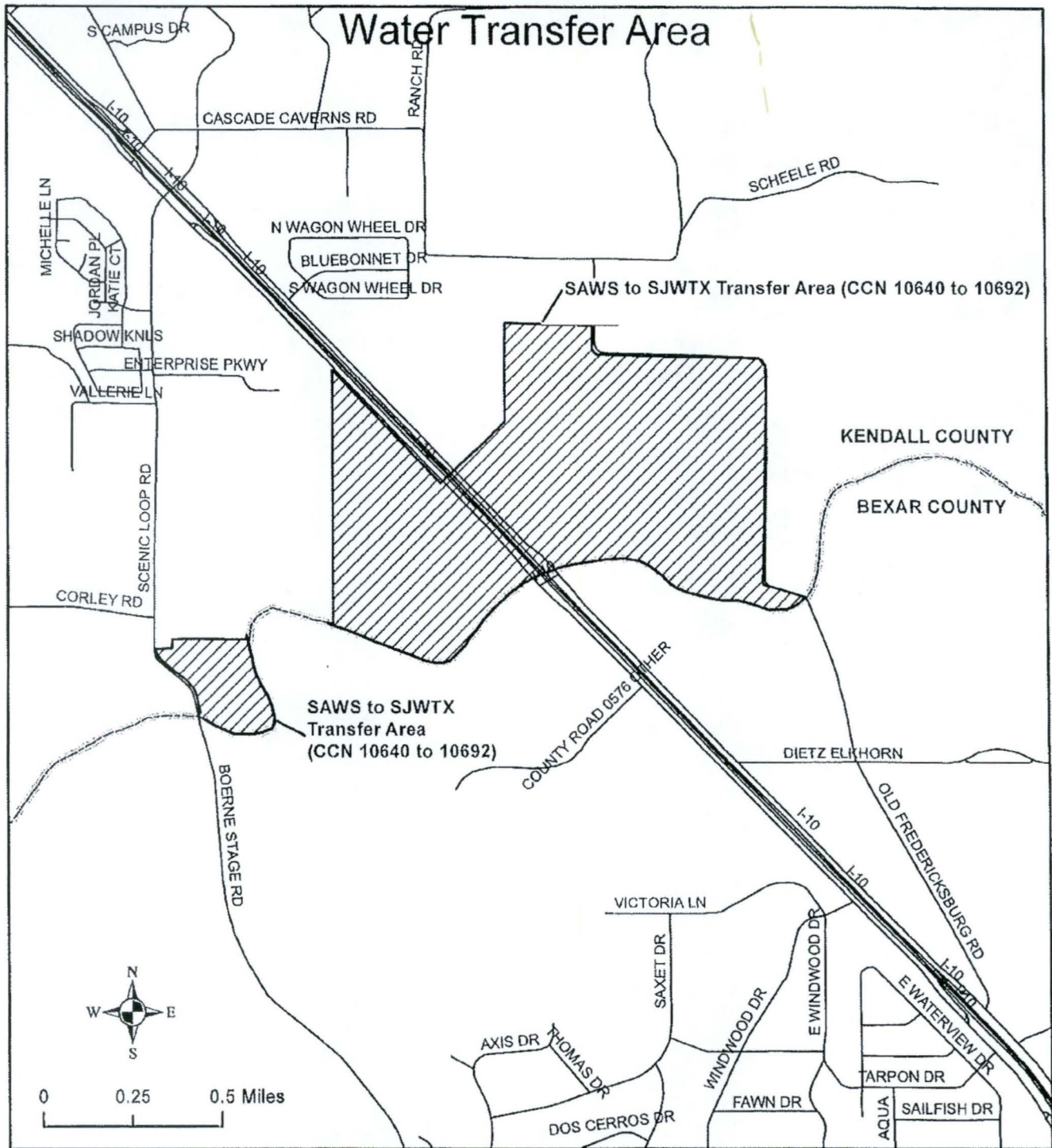
San Antonio Water System

By: 
Printed Name: Robert R. Puente
Title: President/CEO
Date: 7-25-22

SJWTX

By: Thomas Hodge
Printed Name: Thomas A. Hodge
Title: President
Date: 07/27/2022

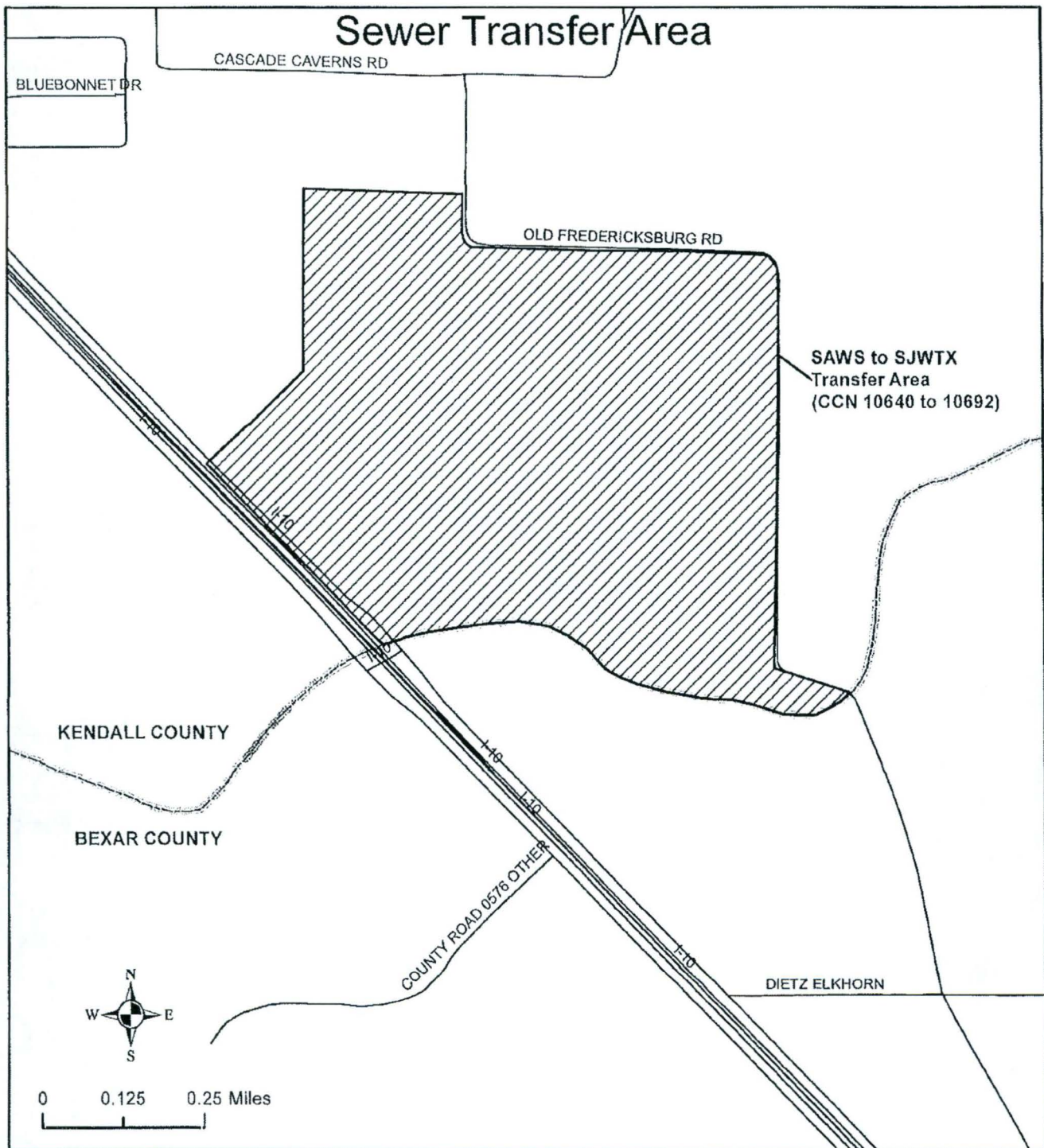
EXHIBIT A-1



Water CCN Service Area to be Transferred from San Antonio Water System (SAWS) to SJWTX, Inc. (SJWTX)

 Water CCN Service Area

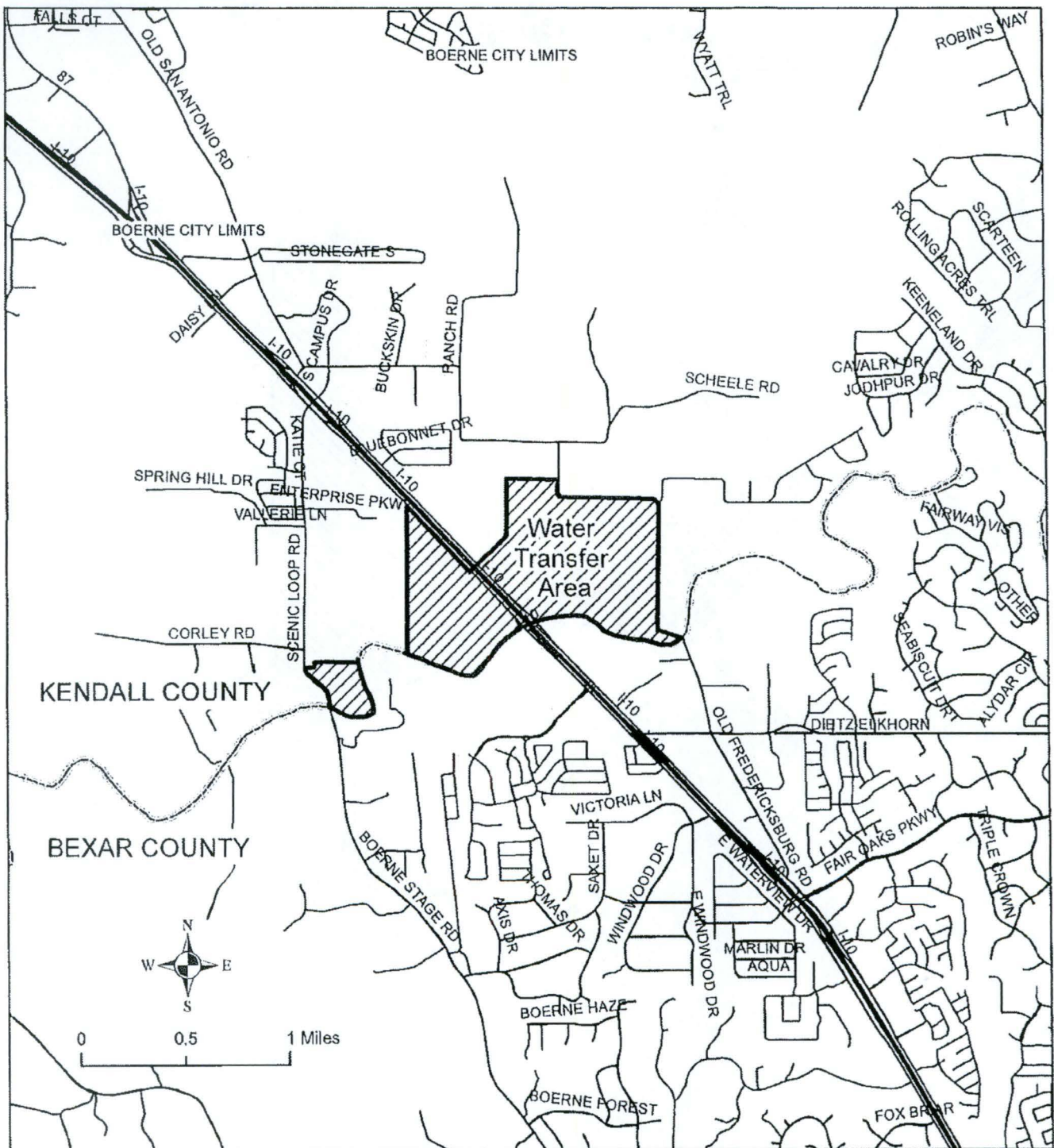
EXHIBIT A-2



**Sewer CCN Service Area to be Transferred from
San Antonio Water System (SAWS) to SJWTX, Inc. (SJWTX)**

 Sewer CCN Service Area

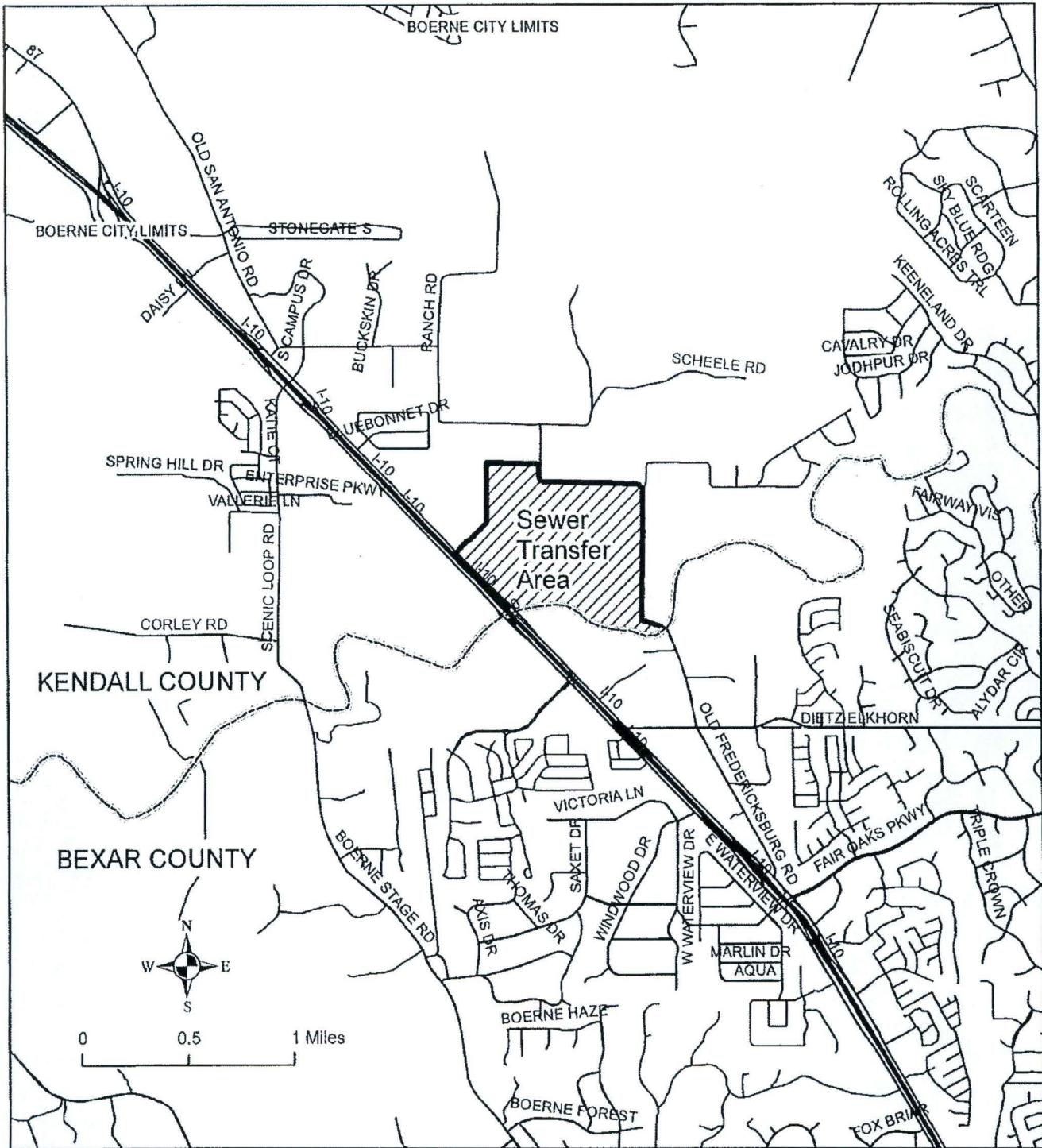
EXHIBIT B-1



**Water CCN Service Area to be Transferred from
San Antonio Water System (SAWS) to SJWTX, Inc. (SJWTX)**

 Water CCN Service Area

EXHIBIT B-2



Sewer CCN Service Area to be Transferred from San Antonio Water System (SAWS) to SJWTX, Inc. (SJWTX)

 Sewer CCN Service Area