Date: November 19, 2019

To: Audit and Accountability Committee:
Chairman John Courage,
Councilman Roberto Trevino,
Councilwoman Dr. Adriana Garcia,
Citizen Member Priscilla Soto, and
Citizen Member Judy Trevino

From: Colleen G. Waring, Vista Ridge Affected Landowner (Milam County), Retired Deputy City Auditor (Austin, TX)

Subject: Vista Ridge (VR) Audit

Dear Chairman Courage and Members of the Audit and Accountability Committee,

Thank you for the opportunity to speak. I am here to encourage your committee to consider endorsing the Draft Resolution proposed to the San Antonio City Council by the Vista Ridge Resolution Coalition (see attachment A). I am an affected landowner with property in Milam County, and a performance auditor by profession (attachment B provides a brief bio).

The comments below are intended to address those sections of the Resolution aimed at pursuing a management review of SAWS and Vista Ridge, with a focus on practical approaches to implement the recommended review. My comments address specifically sections 5 through 8 of the Vista Ridge Resolution.¹

Because the Resolution describes a wide variety of issue areas to be covered by any management review, several of which call for very different types of specific expertise, I recommend a multi-step approach to pursue the different lines of inquiry. While the Resolution advocates for a full audit of the Vista Ridge project, I would like to propose for your consideration a series of steps that would allow the City Council to do justice to the differing natures of the problems involved.

¹ Vista Ridge Draft Resolution, presented to City Council on March 6, 2019 at Citizens Comment Council Session by Ellen Berky, AIA, and on paper at City Council A session and electronically by email as attachment A to the White Paper “Why Pass the Vista Ridge Resolution, and Why Now?” on September 12, 2019. SECTION 5: Pursuant to Article V, Section 48 of the San Antonio City Charter, the City Council resolves to appoint an independent Inspector General and a Financial Advisor, both without any political or financial ties to SAWS or the City Council. SECTION 6: Pursuant to Article V, Section 48 of the San Antonio City Charter, the Inspector General shall, with assistance from the Financial Advisor, conduct a management review of how the Vista Ridge Project came to be and was managed from 2010 to the current date, including when and how SAWS senior staff, advisors and consultants, internal and external lobbyists, or individual Trustees may have blocked or waived opportunities to withdraw from the Project. The Inspector General shall identify legal and financial liabilities incurred by the City and SAWS customers that warrant immediate action by the City Council in order to reduce or mitigate future damage. The Inspector General and Financial Advisor will be authorized to look at documents otherwise confidential and to interview those who signed confidentiality agreements with SAWS. SECTION 7: The Inspector General shall draft a publicly available report containing the review described above and recommendations to the City Council as to necessary reforms, including, but not limited to, how the City should proceed in light of any identified legal or financial liabilities. SECTION 8: The Inspector General, with assistance from the Financial Advisor, shall be tasked to issue and present the above-described report to the City Council and the public…
First: The independent Inspector General recommended by the Resolution should begin by conducting a risk assessment of all of the issues raised in the Resolution and the White Paper. With respect to the Vista Ridge Project, risk factors to be considered should include, at the least: Environmental Impact; Legal and Financial Liability; Social Impact (on SAWS ratepayers); Contract Non-compliance Risk; and Integrity Risk (the potential impact of potential ethical or other violations of the public interest).

Second: The results of the risk assessment then provide a road map for a series of audits, prioritizing the highest-rated risk areas which the Inspector General would focus on. I did a quick risk assessment of the issues raised in the White Paper, and my results indicate the top three risk areas that should be audited as soon as possible are:

1. Potential misappropriation of $120 million Bridge Loan to Abengoa.
2. Significant liabilities created by contract amendments that have not been reviewed by City Council.
3. Risk of significant, irreversible damage to the source aquifers.

The audit questions to be asked will vary in each of these high-risk areas. Below I have suggested example audit approaches and key questions for each of the three highest-risk areas I identified:

1. **Potential misappropriation of $120 million Bridge Loan to Abengoa.**
   
   Authorize and instruct the Inspector General to commission a narrow-scope forensic audit of the $120 million “Bridge Loan” that was made to Abengoa and appears to have been absorbed by SAWS into the Vista Ridge capital obligation. (Attachment C provides a brief background on forensic auditing.) Specific questions to be answered by the audit should be:
   
   a) What was done with the "bridge loan" money (what was it spent on)?
   b) Were those expenditures consistent with the public purpose of the VR project? --if not,
   c) To what extent are the SAWS ratepayers "at risk" or liable for repayment of those funds?
   d) Is there probable cause to refer the information to the proper authorities for criminal investigation or a civil action?

2. **Significant liabilities created by contract amendments that have not been reviewed by City Council.**
   
   Authorize the Inspector General to engage an independent legal advisor and construction manager with experience in major public-works construction contracting, identify potential risks and liabilities created by contract amendments agreed since the City Council approved the Vista Ridge Project contract. Key questions are:
   
   a) What are the risks or liabilities created by each new contract amendment?
   b) To what extent have those risks and/or liabilities increased or decreased from the initial contract?
   c) What is the potential for cost or other damage to SAWS ratepayers if each risk / liability came to pass?

3. **Risk of significant, irreversible damage to the source aquifers.**
   
   Authorize the Inspector General to engage an independent hydrogeology firm to determine:
   
   a) Were the assumptions used in the prior studies that supported the viability of the Vista Ridge Project valid?
b) How would the results of these studies change, using currently available data from the State of Texas’ Groundwater Availability Models?

c) What is the probability of damage to the key source aquifers, and what is the impact of the damage in terms of source community economic viability?

Third, although performance and financial audits can provide independent facts—solid information about the nature of the risks facing San Antonio and SAWS ratepayers as a result of the Vista Ridge Project, the intersection of the facts and public policy would best be addressed outside the audit process.

To do justice to the public policy issues that are raised by the risks described in the White Paper and the Vista Ridge Resolution, the Inspector General should organize and conduct a public process that combines the results of the audits and other expert analysis with public hearings (as authorized by the SAWS founding ordinance) that would collect documentary and testimonial evidence related to the following questions:

a) What are the current "stated" water-supply goals of SAWS, and does the SA City Council endorse those goals as-is?

b) Are the goals (identified in (a) above) internally consistent or contradictory if achieved?

c) Are SAWS’ actions such as resource plans (contracted future supplies, supply infrastructure commitments), and near-term (past 3 years) spending congruent with the stated goals, or do they represent or support some "implicit" unstated goals that have not been part of the governance (oversight, policy-setting) process?

d) To what extent do inactions or reversed actions in the past 3 years (cancelled or postponed projects) undermine or weaken achievement of (as opposed to aligning performance with) stated goals?

e) What risks do the ratepayers of San Antonio face as a result of current water-supply policy (both stated and implicit)?

f) What has been done to manage or minimize the probability of those risks? What has not been done, but needs to be done?

The public policy review should be carried out through a combination of expert analysis and public testimony as the most appropriate means to bring the critical elements of technical data and engineering principles (which are best examined and reported on by experts) into the realm of public policy, where all interested parties (such as environmentalists and developers, or social activists and water ratepayers) will be able to learn, comment, and participate in the deliberations.

I hope that the Audit and Accountability Committee will consider the Draft Vista Ridge Resolution in the course of carrying out its mission of "promoting a culture of improvement, integrity, accountability, and trust in the performance of City operations and functions," and endorse it, or its intent, to the City Council. As a practical matter, I believe that the combination of approaches described above would provide the most effective means for San Antonio’s City Council to achieve and ensure accountability for the citizens and ratepayers in SAWS’ service area and the SAWS organization itself.

Attachments:

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2 Ordinance 2008-11-20-1015, Section 10, Audit Committee
Section 32 of Ordinance #75686 dated April 30, 1992 [excerpt]: Management of System. V. The City Council reserves the right, by ordinance, to abolish the Board and thereafter transfer control, maintenance, and operation of the System to a department of the City in accordance with the provisions of the laws of the State of Texas and the City's Home Rule Charter. The City Council may so abolish the Board at any regular or special meeting of the City Council upon the affirmative vote of 3/4 of the members of the City Council then holding office. Such vote must be preceded by at least two (2) public hearings conducted by the City Council at least 30 days apart. Notice of such public hearings and the subject matter to be discussed shall be published at least one (1) time prior to each such hearing in a newspaper of general circulation within the City at least 15 days prior to the hearing. Such hearings may be conducted at a regular or special meeting of the City Council or in some other location designated by the City Council, and the calling of such hearings and the authorization of the publication of such notices may be by majority vote of all Members of the City Council then holding office at any regular or special meeting of the City Council.
A DRAFT RESOLUTION

CLARIFYING THE POLICYMAKING ROLE OF SAN ANTONIO WATER SYSTEM AND ITS NEED FOR MORE OPENNESS AND TRANSPARENCY; REQUIRING AN INDEPENDENT MANAGERIAL, LEGAL, AND FINANCIAL REVIEW OF THE VISTA RIDGE PROJECT; AND PROVIDING FOR THE OPEN AND EXPEDITIOUS REPLACEMENT OF OUTGOING BOARD MEMBERS.

* * * *

WHEREAS, pursuant to Ordinance No. 75686 dated April 30, 1992 ("Ordinance"), the San Antonio City Council created San Antonio Water System, ("SAWS") and established that the System be administered by a Board of Trustees on behalf of the City Council; and

WHEREAS, SAWS, led by its Chairman of the Board, its Trustees, and its CEO, has exceeded its authority by making City water policy decisions independent of City Council direction and in direct contradiction with Section 32 of the Ordinance; and

WHEREAS, SAWS has become improperly influenced by vested interests, seeking to profit both directly and indirectly from its management and policy decisions; and

WHEREAS, SAWS’s management decisions have eroded the public trust in the utility’s commitment to prudent management of the City’s water supply portfolio; and

WHEREAS, SAWS does not conduct its business on behalf of ratepayers with the utmost openness and transparency; and

WHEREAS, the actions of the utility surrounding the Vista Ridge Project ("Project") are emblematic of the problems stated above; and

WHEREAS, in 2010 SAWS, seeking to diversify its water supply portfolio, issued a Request for Competitive Sealed Proposals for 50,000 acre-feet of water each year for 30 years at a fixed price; and

WHEREAS, in February 2014 SAWS stated that it was rejecting all responsive proposals, including a proposal by Spanish firm Abengoa, in favor of incrementally expanding its local brackish groundwater desalination program on an “as needed” basis; and

WHEREAS, weeks later, SAWS abruptly reversed its decision after receiving immense pressure from the San Antonio special interests, including a professional civil engineer who had been an advisor to SAWS in prior years and whose numerous conflicts of interest became clear when he subsequently became a beneficiary of the multi-billion dollar deal; and
WHEREAS, the SAWS Trustees subsequently approved a $3.4 billion “take and pay” contract ("Contract") with Abengoa for what became known as the Vista Ridge Project to deliver 50,000 acre-feet of water per year from wellfields located in communities 143 miles away; and

WHEREAS, due to the financial implications of the Project and the vast amount of excess water that it would deliver, the Board’s approval of the Contract was inextricably connected to the question of whether SAWS should become a regional water supplier - a major water policy decision that should have been explicitly made by City Council prior to any such action; and

WHEREAS, despite warnings from financial experts that SAWS’s private partner, Abengoa, was unstable and facing imminent bankruptcy, testimony by water law expert Amy Hardberger that 50,000 acre feet per year was far in excess of the City's needs, and information, including scientific studies, showing the detrimental impacts of the Project on the wellfield communities: the San Antonio City Council quickly passed within the same year, a resolution giving SAWS sole authority to manage and modify the Contract; and

WHEREAS, within a year of signing the Contract with SAWS, Abengoa declared the Spanish version of bankruptcy, causing SAWS to negotiate a massive contract restructuring that included hundreds of pages of amendments that awarded most of Abengoa’s interest to Garney Construction, a former subcontractor to Abengoa; and

WHEREAS, the restructured Contract increased the price of Vista Ridge water by including a 120-million-dollar bridge loan, originally intended to buy project materials that were in fact never purchased, as a debt obligation of the Project; and

WHEREAS, the Contract requires SAWS and its ratepayers to absorb an enormous amount of additional costs, including those attributable to oversized infrastructure, to purchase excess water when cheaper water is available from other sources; and

WHEREAS, SAWS has not demonstrated that it can meet its obligation to market Vista Ridge water to other cities and governmental entities in a manner that would completely or even substantially account for the additional costs that the utility and its ratepayers are obligated to assume, regardless of whether the water they receive is needed; and

WHEREAS, SAWS's lack of transparency has kept the public and elected officials in the dark about the full consequences of the Vista Ridge Project; and

WHEREAS, the City of San Antonio strives to hold all of its agencies, especially its public utilities, to the highest standards of openness and transparency; and

WHEREAS, the City Council wishes to clarify that it must explicitly authorize all water policy decisions and that all legal and lobbying activities should be consistent with its consent and direction; and
WHEREAS, the City Council recognizes the need for further evaluation of the Project's financial impact on households that struggle to afford basic necessities and seeks to better understand the fiscal impact of the Project on past, present, and future city budgets; and

WHEREAS, the City Council recognizes the need for an independent review of the Project so that any mismanagement, lack of transparency, and negative legal and financial impacts can be remedied and so the City can use any lessons learned in its evaluation of future project proposals, particularly public-private partnerships; and

WHEREAS, the City Council intends to facilitate prompt, orderly, and efficient replacement of outgoing Board members; NOW THEREFORE,

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

SECTION 1:  The City Council directs applicable staff within the next thirty days to schedule any required notices and hearings necessary to comply with this resolution.

SECTION 2:  Pursuant to Ordinance No. 75686, Section 32, the City Council shall oversee, as part of its regular order of business, the actions of SAWS related to planning for local and regional water supply and conveyance, including comprehensive planning of sanitary wastewater, fire suppression water, stormwater, and water conservation projects and systems.

SECTION 3:  Pursuant to Ordinance No. 75686, Section 32(H), the San Antonio City Attorney shall direct all legal activities conducted by SAWS staff.

SECTION 4:  Pursuant to Article V, Section 46 of the San Antonio City Charter, the City Manager, in consultation with the City Council, shall assume responsibility for oversight of all SAWS governmental relations activities including, but not limited to, review of the curriculum vitae of persons retained or assigned to perform internal or external lobbying on behalf of the utility. SAWS’s biennial state legislative agenda must be approved by its Board and by City Council.

SECTION 5:  Pursuant to Article V, Section 48 of the San Antonio City Charter, the City Council resolves to appoint an independent Inspector General and a Financial Advisor, both without any political or financial ties to SAWS or the City Council.

SECTION 6:  Pursuant to Article V, Section 48 of the San Antonio City Charter, the Inspector General shall, with assistance from the Financial Advisor, conduct a management review of how the Vista Ridge Project came to be and was managed from 2010 to the current date, including when and how SAWS senior staff, advisors and consultants, internal and external lobbyists, or individual Trustees may have blocked or waived opportunities to withdraw from the Project. The Inspector General shall identify legal and financial liabilities incurred by the City and SAWS customers that warrant immediate action by the City Council in order to reduce or mitigate future damage. The Inspector General and
Financial Advisor will be authorized to look at documents otherwise confidential and to interview those who signed confidentiality agreements with SAWS.

SECTION 7: The Inspector General shall draft a publicly available report containing the review described above and recommendations to the City Council as to necessary reforms, including, but not limited to, how the City should proceed in light of any identified legal or financial liabilities.

SECTION 8: The Inspector General, with assistance from the Financial Advisor, shall be tasked to issue and present the above-described report to the City Council and the public no later than December 31, 2019, to allow for the public to comment in at least two public hearings prior to the City Council election in May of 2021.

SECTION 9: The City Council, recognizing that all City agencies, offices, and departments should err on the side of public disclosure, directs the City Attorney to develop new City open records policies and procedures that provide the public, to the maximum extent allowed by law, with access to all legal, financial, and planning records including, but not limited to, reports, maps, memoranda, and communications.

SECTION 10: Pursuant to Ordinance No. 75686, Section 32, the City Council directs the City personnel officer to advertise on all available City communication media regarding upcoming vacancies for SAWS trustees to be selected and appointed by City Council from among qualified candidates encompassing the entire geographic area served by SAWS. Notices shall include the compensation available for performing as a SAWS trustee and fully describe trustee duties and qualification criteria which the City Council is likely to consider before making appointments.

SECTION 11: The recitations and provisions set out in the preamble of this Resolution are adopted and made a part of the body of this Resolution, as fully as if the same were set forth herein.

SECTION 12: This Resolution becomes effective immediately upon the receipt of six affirmative votes, or in the event six affirmative votes are not received, on the tenth day after passage.

[SIGNATURE BLOCKS OMITTED]
Colleen Waring, Deputy City Auditor of the City of Austin, Texas (retired), trains government managers and auditors worldwide. As a government auditor she spent 23 years conducting state and local government performance audits in the U.S. Since retiring, she taught a graduate class on nonprofit program evaluation at The University of Texas LBJ School of Public Affairs, and has consulted and testified as an expert witness on performance auditing in over 20 arbitration hearings.

Throughout her career she has volunteered with professional organizations that support the auditing profession. Most notably, Colleen was a member of the first steering committee that created The Institute of Internal Auditors’ (IIA’s) Certified Government Auditing Professional (CGAP) designation, and later served on The IIA Board of Regents, which oversaw all of The IIA’s certification programs. In addition, she received a Lifetime Membership Award from the Association of Local Government Auditors (ALGA) in recognition of her contributions to the auditing profession.

Colleen co-authored the 2016 edition of Performance Auditing: Measuring Inputs, Outputs, and Outcomes, the premier performance auditing textbook, published by the IIA Research Foundation. She has also authored and co-authored articles, a book chapter, and research papers on performance audit topics, with a focus on uses of evaluation and operations research techniques in performance audits. She holds a Bachelor of Arts degree in communication from Oklahoma City University.
Forensic audits are designed to carry out the examination in such a manner as to collect and preserve the audit evidence to be admissible in a criminal or civil court proceeding. Forensic audits examine financial and other records for a specific purpose, such as to identify potential fraud, theft, or other crimes.

Typical procedures of forensic audits include tracing funds—analyzing financial data to determine where and how funds were actually spent or transferred—and evaluating the veracity and validity of documentation of financial transactions.