

License Fees for WATER IQ
Marks

Item A.4

Board Policy No. 2013-004

Texas Water Development Board

P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

TO: Board Members

THROUGH: Kenneth L. Petersen, General Counsel

FROM: Jim Bateman, Staff Attorney
Robert Mace, Deputy Executive Administrator

DATE: January 25, 2012

SUBJECT: License fees for WATER IQ Service Marks

ACTION REQUESTED

Approve: (a) amending existing Texas Water Development Board (TWDB or Board) policy regarding the WATER IQ service marks in order to allow the Executive Administrator to waive license fees with respect to for-profit entities; and (b) authorizing the Executive Administrator to waive a license fee for Tuerff-Davis EnviroMedia, Inc.

BACKGROUND

Texas Water Code §6.197 grants specific authority for the Executive Administrator to license the TWDB's service marks and to charge or waive fees for such licenses, all with the approval of the Board members.

At its August 2007 meeting, the Board authorized the Executive Administrator to license the WATER IQ marks for water conservation public awareness purposes. At its April 2009 meeting, the Board approved a policy that, for public and non-profit entities, the Executive Administrator may waive compensation, but, with respect to for-profit entities, the Executive Administrator should charge an annual license fee and a royalty for the sale of licensed goods in a reasonable amount commensurate with the proposed uses of the TWDB's marks.

KEY ISSUES

The Executive Administrator recommends that the Board allow the Executive Administrator to waive compensation if, in the Executive Administrator's judgment, a for-profit entity's use of the WATER IQ marks will benefit the state and further the TWDB's mission to raise public awareness of the need for water conservation. Thus far, WATER IQ has not been used by any for-profit entities other than Tuerff-Davis EnviroMedia, Inc. (EnviroMedia). However, it is possible that investor-owned water utilities and other businesses could use the WATER IQ marks on water conservation materials in mailings (such as customer billing statements) or on their websites in a manner that benefits the state's interest in promoting water conservation. In order to allow for waiver of fees in this type of situation, the Executive Administrator requests

Our Mission	:	Board Members		
To provide leadership, planning, financial assistance, information, and education for the conservation and responsible development of water for Texas	:	Edward G. Vaughan, Chairman	Thomas Weir Labatt III, Member	Billy R. Bradford Jr., Member
	:	Joe M. Crutcher, Vice Chairman	Lewis H. McMahan, Member	Monte Cluck, Member
	:	Melanie Callahan, Executive Administrator		

that the Board change its policy to authorize the Executive Administrator to waive fees for a for-profit entity's use of the WATER IQ marks when the Executive Administrator determines the waiver will promote water conservation and benefit the state.

EnviroMedia

Pursuant to the Board members' consent provided at its May 2007 and August 2007 meetings, the Executive Administrator entered into a license agreement with EnviroMedia to use the WATER IQ service marks for water conservation public awareness programs. EnviroMedia has provided marketing services to a number of public entities that have hired EnviroMedia to produce water conservation public awareness ads and materials. Since licensing WATER IQ to EnviroMedia, the Executive Administrator has licensed the service marks to a number of governmental entities for water conservation public awareness programs, including all of the entities that were EnviroMedia's customers at one time or another.

On November 18, 2011, EnviroMedia submitted a letter requesting termination of the license agreement and waiver of the \$3,000 annual fee that was due on September 1, 2011, but had not been paid. EnviroMedia began discussions about terminating its license agreement as early as June 2011 but did not submit a formal request to terminate until November. EnviroMedia's reason for termination is that the TWDB has licensed WATER IQ to all of EnviroMedia's customers, so EnviroMedia should not be required to maintain a license if it is only producing materials for a licensed user. The Executive Administrator agrees, provided that any WATER IQ materials that EnviroMedia produces for a licensed user are produced pursuant to that user's license and that the WATER IQ marks may only be used by that licensed user. Thus, the Executive Administrator has not pursued payment of the \$3,000 fee, pending resolution of the matter.

Section 18.4 of the TWDB license agreement with EnviroMedia provides that the license may not be amended, modified, or rescinded except by written agreement of the parties, so this license agreement is currently in effect, pending the Board's approval of the waiver of the past-due \$3,000 license fee. The Executive Administrator intends to terminate the license agreement with the requirement that EnviroMedia may no longer make any independent use of the WATER IQ marks and that EnviroMedia must remove the marks from its website, where it is used as a link to the TWDB's WATER IQ website and as examples of EnviroMedia's work product.

RECOMMENDATION

Staff recommends that the Board amend the TWDB policy regarding the WATER IQ service marks in order to authorize the Executive Administrator to waive compensation for for-profit entities in a manner consistent with this Memorandum; and that the Board authorize the Executive Administrator to waive the \$3,000.00 currently due from EnviroMedia.

Attachment(s):

1. November 18, 2011 letter from Kevin Tuerff, EnviroMedia



November 11, 2011

Dr. Robert Mace
Texas Water Development Board
1700 N. Congress Ave
Austin, Tx 78711-3231

Dear Dr. Mace:

Per our discussion, we are writing to terminate the September 1, 2007, license agreement between Tuerff-Davis Enviromedia and the Texas Water Development Board.

When we met with you on July 7, 2011, we informed you that we don't market the Water IQ: Know Your Water® campaign outside of the State of Texas, and we don't sell Water IQ merchandise. Since TWDB executes separate license agreements for Water IQ with Texas water providers, there is no longer a need for this agreement, or for our firm to pay a \$3,000 annual fee. Our current clients using the brand have already signed a license agreement, or have one pending. Please confirm the termination of this agreement, and the cancellation of the FY12 invoice.

We remain advocates for this brand, and hope the State of Texas will one day fund a Water IQ statewide behavior change campaign, especially during this prolonged, terrible drought. Please contact us if we can help.

Sincerely,

Kevin Tuerff
President and Principal

Valerie Davis
CEO and Principal

Cc: Jim Bateman, TWDB General Counsel, via Certified Mail
Comer Tuck, TWDB