

Control Number: 43572



Item Number: 105

Addendum StartPage: 0

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August 29, 2005

Docket Clerk State Office of Administrative Hearings 300 W. 15<sup>th</sup> Street

Austin, Texas 78701

Marilyn J. Gentry

(512) 499-3862

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Docket Clerk Office of the Chief Clerk TCEQ First Floor, 12100 Park 35 Circle Austin, Texas 78753

Via Courier

Via Courier

RE:

**Agency**: Texas Commission on Environmental Quality (TCEQ)

Style/Case: In the Application of Bexar Metropolitan Water District to Amend

Water CCN No. 10675 in Bexar County **SOAH Docket No.**: 582-03-3725

TCEQ Docket No.: 2003-0664-UCR

Dear Docket Clerks:

Enclosed for TCEQ is an thirteen copies and for SOAH an original and one copy of:

BSR Water Company's Pre-Filed Direct Testimony of Seagal V. Wheatley.

Please file-stamp one copy and return with the Courier. Please call with any questions. Thank you.

Very truly yours,

ecretary to Janessa. M. Glenn

/mjg



Docket Clerk
State Office of Administrative Hearings
Docket Clerk, Office of the Chief Clerk
TCEQ
August 29, 2005
Page 2

cc: Pursuant to the Service List attached to this letter

### **SERVICE LIST**

## STATE OFFICE OF ADMINISTRATIVE HEARINGS

William P. Clements Building, 300 West Fifteenth Street Austin, TX 78701 Telephone: 512-475-4993

Fax: 512-475-4994

AGENCY:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

STYLE/CASE:

IN THE APPLICATION OF BEXAR METROPOLITAN WATER DISTRICT

TO AMEND WATER CCN NO. 10675 IN BEXAR COUNTY

SOAH DOCKET NO.: TCEQ DOCKET NO.:

582-03-3725 2003-0664-UCR

FOR FILING.

FOR FILING:	
STATE OFFICE OF ADMINISTRATIVE HEARINGS Via Courier	Docket Clerk State Office of Administrative Hearings 300 W. 15 <sup>th</sup> Street Austin, Texas 78701
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  Via Courier	Docket Clerk, Office of the Chief Clerk TCEQ First Floor, 12100 Park 35 Circle Austin, Texas 78753 Fax: 512-239-3311

### **ADMINISTRATIVE COURT**

STATE OFFICE OF ADMINISTRATIVE	Cassandra J. Church
HEARINGS	Presiding Administrative Law Judge
Via Courier	300 W. 15 <sup>th</sup> Street
	Austin, TX 78701

PARTIES REPRESENTATIVE/ADDRESS

TEXAS COMMISSION ON ENVIRONMENTAL	Blas Coy, Jr.
QUALITY	Office of the Public Interest Counsel
Via Courier	Texas Commission on Environmental Quality
	Building F, Room 309, 12100 Park 35 Circle
	Austin, Texas 78753
	Telephone: 512-239-3578
	Fax: 512-239-0606
	Todd Galliga
	Attorney
	Texas Commission on Environmental Quality
	Building A, 3 <sup>rd</sup> Floor, 12100 Park 35 Circle
	Austin, Texas 78753
	Telephone: 512-239-3578
	Fax: 512-239-0606

BEXAR METROPOLITAN WATER DISTRICT WATER SERVICES, INC.

Via Facsimile(without exhibits) and Federal Express (complete document)

Louis T. Rosenberg Robert L. Wilson, III

Law Offices of Louis T. Rosenberg

De Mazieres Building 322 Martinez Street

San Antonio, Texas 78205 Telephone: 210-225-5454

Fax: 210-225-5450

Adolfo Ruiz

Bexar Metropolitan Water District

247 W. Malone

San Antonio, Texas 78225 Telephone: 210-354-6502

Fax: 210-922-5152

### COURTESY COPY TO THE FOLLOWING PARTY:

CITY OF BULVERDE Via Courier

Bruce Wasinger

Attorney

Bicerstaff, Heath, Smiley, Pollen, Kever &

McDaniel

816 Congress, Suite 1700 Austin, Texas 78701-2443 Telephone: 512-472-8021

Fax: 512-320-5638

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of BSR Water Company's Pre-filed Direct Testimony of Seagal V. Wheatley, was forwarded to the counsel of record listed on the foregoing Service List, in conformance with the procedural rules of the State Office of Administrative Hearings and the Texas Rules of Civil Procedure on this the 29th day of August, 2005:

GREGG RURONENBERGER for January Allera

# SOAH DOCKET NO. 582-03-3725 TCEQ DOCKET NO. 2003-0664-UCR

IN RE:	§	BEFORE THE STATE OFFICE
APPLICATION OF BEXAR METROPOLITAN WATER DISTRICT	§ §	OF
TO AMEND WATER CCN NO. 10675 IN BEXAR COUNTY	§ §	ADMINISTRATIVE HEARINGS

BSR WATER COMPANY'S
PRE-FILED DIRECT TESTIMONY OF
SEAGAL V. WHEATLEY

ı	Page 1 of 9
Dir	ect Pre-Filed Testimony of Seagal V. Wheatley, Esq.
Q	Please state your name and address.  Please state your name and address.  Results Wheatley, 112 E. Pecan Street, Suite 900, San Antonio, Texas 78205.
A Q	Seagal V. Wheatrey.  Are you an attorney for Protestant, BSR Water Company, Inc. ("BSR")?
A	state the name of your law firm and attach a copy of your resume as
Q	to the deposition.  I am a shareholder with the law firm of Jenkens & Gilchrist, P.C. I will attach as
	Exhibit "1" a copy of my resume.  Do you represent BSR in a lawsuit pending in District Court in San Antonio, Texas against San Antonio Water System? And if so, please attach a true and correct copy of
1	your current Petition.  A Yes. I will attach as <i>Exhibit "2"</i> a true and correct copy of BSR's current Petition in
2 13 14	this lawsuit against San Antonio Water System.  What are one of the claims in that lawsuit that relate to San Antonio Water System
15	("SAWS") and Bexar Metropolitan Water District ("Bexar Met )?  ("SAWS") and Bexar Metropolitan Water District ("Bexar Met )?
16 17	A One of the claims in the suit against with BSR Water Company in February 2000 that SAWS would continue to pursue it then-pending application for an amended CCN, that would permit SAWS to provide the pending application for an amended CCN, that would permit SAWS to provide the pending application for an amended CCN, that would permit SAWS to provide the pending application for an amended CCN, that would permit SAWS to provide the pending application for an amended CCN.
18 19	ing to gustomers west of US Highway 281, Hollin of Highway
20	San Antonio, Bexar County, Texas. SAWS further promised SAWS would be san Antonio, Bexar County, Texas. SAWS further promised SAWS would be said to seek transfer of a portion of SAWS' amended CCN to BS
21 22	to normit BSR Water Company to provide Ician Wasse
23	Water Company to permit Box of the Water Company to permit Box of the Comp

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880 acres referred to as the "Expansion Area". SAWS not only failed to honor its obligation to faithfully pursue its amended CCN to cover this geographical area, but to the contrary, seven months later, entered into a certain InterLocal Agreement with Bexar Met removing all land west of US Highway 281 from SAWS' pending application and ceding to Bexar Met the right for Bexar Met to apply for a CCN for such property, and all property west of 281, thus effectively removing the 880 acres from SAWS' pending application, and thus forever removing from its contract with BSR SAWS' obligation to apply for a CCN for such land and to also fully support the transfer of that portion of its CCN to BSR, resulting in substantial damages to BSR.

- What is the impact of SAWS' wrongful conduct on BSR's ability to obtain a CCN for
- Bexar Met is aware of SAWS' prior written agreement with BSR and is, therefore, aware of SAWS' blatant breach of its written contract with BSR, and has refused to take any action to correct the situation or to cease interfering with SAWS' prior
- Why do you wish to bring that matter to the State's attention?
- While we believe that only a District Court and not TCEQ has jurisdiction to hear or determine BSR's claims against SAWS in the above referenced lawsuit, TCEQ needs to be aware in reviewing Bexar Met's application that Bexar Met has not fully disclosed the circumstances to the State of how it acquired the basis for its current pending CCN application, or the fact that it is currently using the State agency to perpetuate its own known wrongful conduct, in addition to other apparent fraudulent acts that have been committed by Bexar Met but not disclosed to the State agency.

Secondly, on April 22, 2002, Bexar Met wrote a letter to Doug Holcomb at Texas Natural Resources Conservation Commission ("TNRCC") advising the State agency

as Exhibit "3".)

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that Bexar Met was amending its pending application to include a dual certification with the San Antonio Water System for the 814 acres indicated on the enclosed map. This letter from Bexar Met to the State agency, which I assume is part of the administrative record having been received by TNRCC on April 26, 2002, is in our opinion a fraudulent letter.

We are not aware of any effort by Bexar Met on its current application to include a dual certification with SAWS for the Expansion Area land under the SAWS/BSR prior water contract.

You will note that Bexar Met sent a copy of the April 23, 2002 letter to General Eugene Habiger at SAWS. It is clear that SAWS, having realized it had seriously breached its prior agreement with BSR, was attempting to use Bexar Met in a fraudulent matter to attempt to cure its clear breach of SAWS' prior contract with BSR and to belatedly attempt to get a dual certification with Bexar Met for the Expansion Area in an attempt to mitigate SAWS' breach of its BSR agreement. As stated above, we have no information to indicate this letter was written in good faith or that Bexar Met has requested that they obtain dual certification with SAWS for the Expansion Area. BSR has received no notice of any amendment being filed by Bexar Met to seek a dual certification with SAWS, and in fact Bexar Met in opposing SAWS' then pending application told the State that Bexar Met was opposed to dual certification (Bexar Met's letter of April 23, 2002 is attached hereto as *Exhibit "4"*).

Thirdly, on May 21, 2002 Bexar Met wrote a letter to Mike Howell at TNRCC fraudulently representing to the State that Bexar Met had met with BSR Water Company and "preliminarily agreed to a process that will eliminate the current overlap

	Direct	Pre-Filed Testimony of Seagal V. Wheatley, Esq Page 5 of 10
1		of CCN applications". Bexar Met has never had any agreement, preliminary or
2		otherwise, with BSR to resolve BSR's long-standing protest of Bexar Met's actions.
3		This letter was written by Bexar Met to mislead the State agency into thinking that the
4		issues had been resolved, when in fact they were not and are still an on-going basis for
5		BSR's protest.
6	Q	Well, why do you bring these matters to the attention of the State at this point?
7	A	It is incredible to me to believe that the State would tolerate such conduct and grant
8		Bexar Met's current pending CCN application when Bexar Met has been guilty of
9		such fraudulent conduct in attempting to mislead the State on these important issues.
10	Q	Has BSR conducted any investigation of Bexar Met's managerial or technical ability
11		to service its CCN application if granted?
12	A	Yes.
13	Q	What has BSR done in this regard?
14	A	BSR has taken the oral deposition of Thomas C. Moreno, on June 25, 2005. Mr.
15		Moreno has been the General Manager at Bexar Met since 1985 and was recently
16		terminated by Bexar Met. Mr. Moreno was employed by Bexar Met as recently as the
17		latter part of February 2005. Mr. Moreno testified as follows (p. 84 ln 9-25 and p. 85
18		In 1-6 of his deposition):
19		Q Okay. How many acre-feet would it take to service the 5,543 acres on
20		full development?
21		A I have no idea sir. Again, you can do the math to –
22		Q Well, did you do it when you filed the application?
23		A No.

	Direct Pre-Filed Test	timony of Seagal V. Wheatley, Esq Page 6 of 10
1	Q	Do you know how many EDUs are projected in the 5,543 acres?
2	A	No, sir.
3	Q	And where - when you left, where was Bexar Met going to get the
4		money to construct whatever water facilities were needed in that area?
5		Mr. Lane: Objection, form.
6	A	I don't think that was decided sir. It could have come from developers
7		in the area. It could have come from a combination of the District's
8		own finances and developers and ratepayers in the area.
9	Q	(BY MR. WHEATLEY) Well, did Bexar Met at the time you left in
10		February have the – the funds of its own to do that?
11	A	No, not at the time – not at the time that I left.
12	Further, in sp	eaking of the managerial and technical inability of Bexar Met to service
13	the CCN, Mr	. Moreno testified as follows (p. 85 ln 9-25 and p. 86 ln 14-20 of his
14	deposition):	
15	Q	Who is managing Bexar Met today?
16	A	The – The Manager – The General Manager –
17	Q	Yes, sir.
18	A	that's in place? Gil Olivares. Gilbert Olivares.
19	Q	And do you know Mr. Olivares?
20	A	Yes, I do.
21	Q	What experience does he have in serving as General Manager of Bexar
22		Met?

	Direct Pre-Filed Tes	stimony of Seagal V. Wheatley, Esq	Page 7 of 10
1	A	I don't know other than I hired him to be a -	a CFO and – and house
2		counsel.	
3	Q	When?	
4	A	I believe he came on board in 2003, end	of the year of 2003.
5		November – I believe it was October-November	r, somewhere in there.
6	* * *	* * *	
7	Q	(BY MR. WHEATLEY) Who at Bexar Met	Well, let me ask it
8		another way: Does Gil Olivares, the man	you hired, have any
9		experience with the technical capability n	eeded to be General
10		Manager?	
11		MR. HARKINS: Objection, form.	
12		MR. LANE: Yeah. Objection, form.	·
13	A	Not to my knowledge, sir, no.	
14	Mr. Moreno o	continued (at p. 86 ln 21-25 and p. 87 ln 1-9 of his	deposition):
15	Q	(BY MR. WHEATLEY) Who is the most technology	nically qualified person
16		that you're awaer of that's still over at Bexar M	Met that would have the
17		capability to provide the technical expertise nee	ded and the managerial
18		expertise needed?	
19	***	· * *	
20		MR. LANE: Objection, form.	
21	Q	(BY MR. WHEATLEY) Is there anybody there to	that you know of?
22		MR. HARKINS: Objection -	
23		MR. LANE: Same objection –	
I			

Direct Pre-Filed Testimony of Seagal V. Wheatley, Esq. . Page 8 of 10 MR. HARKINS: -- form. MR. LANE: -- form. (BY MR. WHEATLEY) You may answer. 0 I don't know of anyone, sir. Α Accordingly, it is clear from Mr. Moreno's testimony that by the time he left Bexar Met, as recently as February 2005, that Bexar Met neither had the funds to service the 5,543 acres applied for, nor was Mr. Moreno aware of anyone at Bexar Met who had the technical capability or the managerial expertise needed to service the demands of the CCN area applied for. (The relevant portions of Mr. Moreno's deposition of June 24, 2005 are attached hereto as Exhibit "5".) Were you aware of any other evidence indicating that Bexar Met does not currently Q meets the statutory requirements to be granted a CCN? Yes. I am aware of numerous instances which reflect that Bexar Met is and has been Α for some time in a state of chaos, not only related to its inability to handle its budget, significant and material losses, entirely dysfunctional leadership, as found by Castro & Associates, dumfounded mismanagement, multiple resignations of Board members, lack of quorums to conduct business, and replacement of Board members with no experience. These circumstances are evidenced in reported instances in the media (attached hereto as Exhibit "6"). Why did BSR withdraw its own application for a CCN in the Expansion Area? Q The reasons are set forth in BSR's letter forwarded to TCEQ by cover letter of July 16, Α 2003 and is part of the administrative file of the State (letter attached hereto as Exhibit "7"). It is true that BSR is a small water company, but its size should not diminish its

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legal rights. Once SAWS breached its agreement to pursue its own application and to support the transfer of a portion of that application to Bexar Met for the Expansion Area, BSR realized that it would then be required not only to continue to pursue its lawsuit against SAWS in State District Court, but also to expend additional funds to make formal protest of Bexar Met's application. Once SAWS clearly breached its contract with BSR, it was clear to BSR that TCEQ did not have jurisdiction to determine BSR's claims for breach of contract and fraud against SAWS and resulting damages, and that only a State District Court had such jurisdiction. BSR's only hope 8 was to bring matters it was aware of to the TCEQ to show Bexar Met's utter bad faith and inability to serve this 5,543 acre property. TCEQ should deny Bexar Met's 10 application to clear the way for a qualified applicant to come forward in this most 11 important geographical area. 12 What information has Bexar Met provided in its response to BSR's document Q 13

- requests, written interrogatories, and requests for admission, that provide any detail on Gil Olivares' technical or managerial capability?
- Bexar Met responded that Bexar Met "...is unable to ascertain the information or Α records being sought".
- What information did Bexar Met provide in response to such discovery requests Q reflecting any water contracts currently held by Bexar Met in the Trinity Aquifer?
- Bexar Met responded it "is unable to ascertain the information or records being Α sought".
- What response did Bexar Met give when BSR inquired about the fraudulent BSR Q "dual certification" request with SAWS sent to TCEQ?

Page 10 of 10 Direct Pre-Filed Testimony of Seagal V. Wheatley, Esq. . Bexar Met responded that it had no such documents to be found. Α SANANTONIO 442862v1 55155-00001

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# Litigation



Seagal V. Wheatley
Shareholder, Litigation

Jenkens & Gilchrist, A Professional Corporation Weston Centre, 112 E. Pecan Street, Suite 900 San Antonio, Texas 78205-1533 (210) 246-5635 (210) 246-5999 fax swheatley@jenkens.com

## Practice Concentration & Experience

Mr. Wheatley specializes in litigation in both state and federal courts. His practice focuses on all forms of corporate litigation and he has represented a number of major national, regional, and local corporate clients in both public and privately held corporations. His extensive civil practice has focused on complex corporate litigation including multi-million dollar class actions, securities fraud, and all forms of business litigation.

Mr Wheatley is a former United States

Attorney for the Western District of Texas that includes practice in the federal courts in San

Antonio, Austin and Waco. In addition to the

Western District of Texas, he has substantial practice in federal courts throughout the country, including California and Washington, D.C.

Mr. Wheatley is the immediate past-President of the three-state 5000-member Bar Association of the Fifth Federal Circuit. He has served as Adjunct Professor of Law at The University of Texas School of Law in advanced civil litigation and has been listed in "Best Lawyers in America" for the past 10 years.

A selected list of his corporate clients include

Ernst & Young, LLP, Valero Energy Corporation,

W. S. Marriott, Jr., Marriott International, Inc.,

McLane Company, Inc. and its owner, Drayton

McLane, Oracle Corporation, Loews Hotels,

Metropolitan Life Insurance Company, United

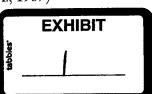
Services Automobile Association, SBC

Communications, Inc., the Apostolic Delegate to
the Holy See, the astronauts on Apollo 8, and a
former Mayor of San Antonio.

Mr. Wheatley's selected list of representative cases is included.

#### Education

University of Texas School of Law (J.D., 1960) North Texas State University (B.A., 1957)



### Professional Affiliations

State Bar of Texas (Environmental Law Section); Fellow, Texas Bar Foundation (Corporation, Banking, and Litigation Sections); Member, San Antonio Bar Association (Former Director and Secretary-Treasurer); Member, Federal Bar Association; Member, Association of Trial Lawyers of America; Board of Governors, Bar Association of Fifth Federal Circuit (1987 -Present); Member, International Society of Barristers; Executive Board Member, Alamo Area Council Boy Scouts of America; Chairman of Host Committee, Fifth Circuit Judicial Conference (1982, 1990, and 1994); Chairman, Urban Affairs Council Chamber of Commerce (1981); Chairman, Historical Society Committee for Western District of Texas (1987-1988); Chairman, Judge John H. Wood United States Courthouse Dedication Committee (1981); Chairman, U.S. Magistrate Selection Committee (1984); Republican Party Chairman, Bexar County (1966-1968); Member, Board of Trustees - St. Mary's Hall (1983-1987).

#### Publications & Presentations

"Environmental Law Changes." St. Mary's Law Journal (1979).

"Preserving and Protecting Privileges and Immunities Under the Federal Rule." Southern Methodist University Federal Practice Seminar. 1995.

Contributor ABA publication "Business and Commercial Litigation in Federal Courts."

Various speeches at Fifth Circuit legal writing seminars.

### Case History

Warren v. Reserve Fund, 728 F.2d 741 (5<sup>th</sup> Cir. 1984).

Winning result in a leading case on requirement of "scienter" on Rule 10b-5 security fraud cases.

2. Ghidoni v. Stone Oak, Inc., 966 S.W.2d 573 (Tex. App. – San Antonio 1998), rev. over'd.

Winning result in a leading case on attorney disqualification, modification of written agreements and water rights.

3. <u>Sierra Club v. Lynn</u>, 502 F.2d 43 (5<sup>th</sup> Cir. 1974), *reh. denied*, 504 F.2d 760.

Winning result in a leading environmental case involving water rights and adequacy of environmental impact statements.

4. <u>University National Bank v. Ernst & Young,</u> 773 S.W.2d 707 (Tex. App – San Antonio 1989), reh. denied.

Winning result for major accounting firm in malpractice case in auditing a bank.

5. <u>League of United Latin American Citizens v.</u> <u>Clements</u>, 999 F.2d 831 (5<sup>th</sup> Cir. 1993).

Winning result representing six state district judges in Voting Rights Act case involving election of judges.

Madylyn O'Hair v. National Aeronautics & Space Administration, 312 F. Supp. 434 (Tex. 1969).

Winning result representing astronauts and NASA on Apollo 8 in moon flight to prevent funding of space program.

Kaepa v. Achilles Corporation, 76 F.3d 624 (5th Cir. 1996); 83 F.3d 421 (5th Cir. 1996), reh. denied; 519 U.S. 821, 117 S.Ct. 77), writ denied; 216 F.3d 1080 (5th Cir. 2000), affd.

Winning result in representing United States Corporation in preventing Japanese corporation from filing similar suit in Tokyo, Japan.

- 8. Approximately 250 civil and criminal appeals under his supervision as United States Attorney.
- 9 Friedrich Refrigerators v. General Electric.

Winning jury verdict and judgment for patent infringement on ambient thermostat in air conditioning units.

### 10. Lyda Corporation.

Successful defense of contractor in patent suit on lift slab construction method.

- 11. Representation of Marriott International in 1,400 member class action securities fraud claim.
- 12 Representation of Little Ceasar's Enterprises in 350 member class action claim by franchisees.

CAUSE NO. 2004-CI-02288

FILED DISTRICT CLERK BEXAR CO. TEXAS

BSR WATER COMPANY, A Texas Corporation; SNECKNER PARTNERS, LTD, A Texas Limited Partnership; and	8 8	IN THE DISTRICT COURT  2005 JUL 25 P 3: 39
DEBRA SNECKNER KENNEDY, SHERRI MARTINEAU SNECKNER, WILLIAM	8 §	DEPUTY
KENDRICK SNECKNER, and LOVA CATHERINE SNECKNER BUCKNER, Plaintiffs VS.	\$ \$ \$ \$ \$ \$ \$	225TH JUDICIAL DISTRICT
THE CITY OF SAN ANTONIO, As Owner of SAN ANTONIO WATER SYSTEM Defendants	§ §	BEXAR COUNTY, TEXAS

# PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

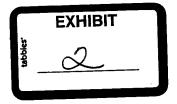
TO THE HONORABLE JUDGE OF SAID COURT:

Now come BSR WATER COMPANY, a Texas corporation, SNECKNER PARTNERS, LTD, a Texas Limited Partnership, and DEBRA SNECKNER KENNEDY, SHERRI MARTINEAU SNECKNER, WILLIAM KENDRICK SNECKNER, and LOVA CATHERINE SNECKNER BUCKNER, as Plaintiffs, and file this their First Amended Original Petition against the Defendants, and would respectfully show the following:

I.

# **DISCOVERY PLAN**

Plaintiffs allege that discovery is intended to be conducted under Level 2 pursuant to Rule 190(a).



### THE PARTIES

A. The Plaintiffs, consisting of members of the family of William Kendrick Sneckner and his wife, who have been and are owners of approximately 442 acres of real property located in Bexar County, Texas that is in the fast-growing portion of the County on U. S. Highway 281 North, near Bulverde Road.

The Sneckner family individually or through the Plaintiffs' entities has owned the property involved in this suit for almost forty (40) years.

The legal description of the real property is described in Exhibit "1" attached hereto.

B. Defendant City of San Antonio ("The City"), owns the San Antonio Water System, which supplies and sells water to various users in and around Bexar County, Texas, and through such ownership, the City is liable for the acts of SAWS sued upon herein.

### III.

### JURISDICTION AND VENUE

All Parties are residents of Bexar County, Texas.

The Defendant, The City of San Antonio and its wholly-owned water utility, SAWS, may be served by serving its attorney of record, Daniel McNeel Lane, Jr., of Akin, Gump, Strauss, Hauer & Feld, 300 Convent Street, Suite 1500, San Antonio, Texas 78205.

# A. The First SAWS Contract with BSR Water Company

# The Sneckner and San Antonio Water System (SAWS) February 2000 Contract

This case tells the story of the blatant arrogance of the City's wholly owned water utility, San Antonio Water System ("SAWS"), and its grossly unfair, abusive and fraudulent treatment of the Sneckners, a long-time San Antonio family and citizens of San Antonio.

As a result of the wrongful actions of SAWS, the Sneckner family has been substantially damaged and, in effect, squeezed out of any viable opportunity to benefit from its agreement with SAWS.

For some time, SAWS has been engaged in a near frenetic activity to secure rights to purchase as much water as possible from citizens who owned property where water wells could be drilled to produce water.

Nowhere has such activity been more prevalent than on the north side of San Antonio and in particular, along either side of U.S. Highway 281 North of Highway 1604 near the Sneckner property.

In 1998 and 1999, SAWS filed approximately 14 separate applications with the State of Texas seeking State approval to certify SAWS as the sole retail water purveyor from the Trinity Aquifer in the rapidly developing areas east and west of U.S. Highway 281, and north of FM 1604. SAWS sought a total "land grab" of approximately 12,000 acres for certification to sell water to retail customers in the Trinity Aquifer region.

Plaintiff BSR Water Company promptly filed a formal protest with the State of Texas to SAWS' "land grab". BSR Water Company, a small company when compared to either SAWS or Bexar Met, protested to protect a right previously granted by the State to BSR to provide

Trinity Aquifer retail water sales in the area and to protect BSR's right to apply to expand its service in the future.

The 442 acre Sneckner property is located on and near the Trinity aquifer and represents a viable source of ground water from wells located in the Trinity Aquifer.

At all relevant times, the Sneckners held a valid state certificate to drill water wells on its own property located just West of U.S. Highway 281 near the Bulverde Road area, as identified as the green outlined area on *Exhibit "2"*. However, SAWS lusted to surround Sneckner's property and sought more expansive state certificates to purchase and distribute water from land surrounding and near to the Sneckner's property, all to the Sneckner's substantial detriment.

In order to protect the water under its own property and its clear right to expand its service area, the Sneckners filed protests with the State opposing SAWS water grab, because such expansion of SAWS' area would damage the Sneckners' rights to expand in the same area.

Therefore, in an effort to amicably resolve these competing interests, on February 15, 2000, SAWS, the Sneckners, and their small family water company, BSR Water Company, after months of negotiations, agreed to resolve their differences and signed a written contract to evidence their agreement (the contract is entitled "Water Supply Contract and Service Area Settlement Agreement of February 15, 2000" and its March 27, 2001 Amendment are attached as Exhibits "3" and "3A").

The BSR/SAWS contract stated in relevant parts:

WHEREAS, SAWS has applied for an expansion of its CCN to cover an area that would surround the land contained within the CCN held by BSR, and BSR has filed a protest and has requested a contested case hearing with the Texas Natural Resources Conservation Commission ("TNRCC") in opposition to such expansion; and

WHEREAS, the Parties have agreed on acceptable terms under which BSR would withdraw its protest and request for contested case hearing against SAWS and would support SAWS' application for CCN expansion in return for SAWS' agreement to certain mutually beneficial conditions with respect to future expansion of the BSR CCN and BSR selling water to SAWS and for other enumerated consideration; and...

Section 1.02 <u>Mutual Reliance</u>. It is expressly understood by SAWS that BSR would not agree to the Obligations imposed by this Agreement absent the consideration to be provided by SAWS to BSR in the form of an agreement regarding the potential expansion of the BSR CCN, and other consideration as expressly set forth within the terms of this Agreement.

Section 1.03 <u>Breach of Consideration</u>. Both parties mutually agree that in the event either party fails to comply with any of the specific Obligations imposed on the respective party by this Agreement, such failure shall constitute a breach of the Agreement and shall entitle the party that has been harmed to seek enforcement of this Agreement as well as remedies for the breach hereof as allowed for in Article VI, as set forth below.

Section 4.02 Support of Expansion of BSR CCN. SAWS agrees that it shall not oppose, and shall support any attempt or action by BSR to expand the area of the BSR CCN provided that such expansion is within the limits of the "Expansion Areas" identified in Exhibit "A" which is attached hereto and made a part of this Agreement for all purposes. Further, BSR agrees that any property that is added to the area covered by the BSR CCN as a result of such expansion shall be subject to the Right of First Refusal held by SAWS pursuant to this Agreement. SAWS and BSR agree that the applicable terms of this Agreement shall be applied to any property that is added to the BSR CCN after the date of this Agreement and to any Groundwater produced by or sold to SAWS from such added property. As part of the consideration for the benefits received by SAWS under this Agreement, SAWS hereby agrees not to oppose and to support the transfer to BSR of any portion of SAWS' CCN that is located within the "Expansion Area" for BSR's CCN expansion as identified on Exhibit "A". Such support by SAWS to an expansion or transfer under this section shall be provided by SAWS pursuant to this Agreement and SAWS shall take all necessary and reasonable actions and make any necessary and reasonable filings with any state agency in order to effectuate said expansion or transfer upon written request by BSR. The right to apply for a transfer of CCN from SAWS to BSR to expand the BSR CCN in the "Expansion Area", as identified, shall be valid until this agreement is terminated as allowed for herein, but shall expire in the event the BSR CCN is assigned or transferred to a third party without the consent of SAWS.

Section 7.02 <u>Further Assurances</u>. The Parties hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments, and documents, as any other party or parties hereto may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

The map attached as Exhibit A to the February 15, 2000 agreement depicts the agreed 888± acres in the Expansion Area in yellow where SAWS would transfer to BSR a portion of its new certificate so that BSR could sell valuable retail water in the Expansion Area.

The February 15, 2000 contract was intended clearly by SAWS and the Sneckners to settle all water issues between SAWS and to provide the Sneckners with a very valuable right to expand its state certificate or, equally valuable, to require SAWS to transfer a portion of any state certificate it received to BSR. Therefore, the SAWS agreement protected the Sneckners because the State of Texas could either approve Sneckners' own expansion rights or, in the event the State of Texas approved SAWS' expansion rights, Sneckner would nevertheless be protected because SAWS was obligated to transfer such right to Sneckner, who would end up as the lawful owner of a certificate that would permit them to drill for and sell water to customers in the expanded land area, or to sell the water to SAWS or other purchasers at a profit.

The SAWS agreement further provided that:

- 1. SAWS would support the Sneckners' expansion of its current state certificate into areas near the Sneckners' own property; or SAWS agreed to transfer to Sneckner any certificate SAWS would obtain in the new expanded area;
- 2. SAWS agreed to reduce the area of SAWS' requested new certificate to accommodate the Sneckners' new and valuable expansion; and
- 3. SAWS agreed to pay the Sneckners for water purchased by SAWS from the Sneckners' new expanded area.

This contract was extremely valuable to the Sneckner family and as a result of the contract, the Sneckner family agreed to and did, withdraw their earlier opposition to SAWS' attempt to expand its area as such opposition was no longer necessary in light of SAWS' agreement. The withdrawal letter from BSR to the State of Texas dated March 7, 2000 is attached as *Exhibit "4"*.

The Sneckner family believed they had reached a firm resolution of their issues and the Sneckner family looked forward to a good and profitable working relationship with SAWS.

### B. The Second SAWS Contract with Bexar Met

# The Bexar Met and SAWS Contract (SAWS' Breach of Its Promise to Sneckner)

However, prior to the February 15, 2000 contract SAWS made with BSR, SAWS set out on a devious plan to scuttle the Sneckner family and the agreement it had just made with BSR. SAWS began to discuss with Bexar Met, its main competitor, and Sneckners' competitor, a plan undisclosed and hidden from Sneckner, the result of which would deny to the Sneckner family any expansion rights and the valuable right to receive payments of several million dollars from SAWS or other water purchasers for water to be purchased in Sneckner's new agreed expanded area.

SAWS, having reviewed both BSR and Bexar Met's protests, set upon a plan to attempt to resolve both of these protests, but, nevertheless, a devious plan that resulted in great financial harm to BSR. The SAWS plan, in SAWS' jaundiced view, was very simple: SAWS would negotiate with BSR and Bexar Met at the same time and make identical promises to both, knowing it could not possibly perform the same promise to these two different parties, and hoping that if its fraud was discovered that BSR, as the much smaller company, would be least able to economically fight to protect itself.

The plan in SAWS' fraudulent mind was simple: We will promise BSR that we will pursue our applications with the State and we will then transfer to BSR the right to operate in 888 acres of the 12,000 acres applied for so that BSR can expand its water sales as it desires. BSR will then be asked to write a letter of support to the State supporting SAWS' application.

At the same time, SAWS was negotiating with Bexar Met to resolve Bexar Met's protest. SAWS similarly promised Bexar Met that SAWS would relinquish to Bexar Met the right to operate on 5,500 acres of the same 12,000 acres of land from SAWS' application so that Bexar Met could have the right to sell retail water in the 5,500 acres.

On or about September 22, 2000, only seven (7) months after having made the Sneckner agreement, SAWS and Bexar Met entered into an agreement (not disclosed to Sneckners) whereby SAWS agreed to give to Bexar Met expansion rights on 5,500 acres that contained the 888 acres SAWS had agreed to provide to Sneckners in Sneckners' new expanded area. SAWS agreed with Bexar Met that SAWS would relinquish all rights it had to expand to all property west of U.S. Highway 281 where the Sneckners' property and expanded area were located, and further agreed that Bexar Met could operate exclusively in that area to Sneckners' obvious substantial detriment and damage. Of course, the evil of the SAWS/Bexar Met agreement was that the territory SAWS relinquished to Bexar Met contained the very same 888 acres of property SAWS had agreed to transfer to Sneckner.

(A copy of the agreement between SAWS and Bexar Met of September 22, 2000 is attached as *Exhibit* "5" hereto, paragraph 5).

Paragraph 5 of the SAWS and Bexar Met Agreement expressly provided that:

5. Application No. 32248-C (area along U.S. 281 N). SAWS agrees to amend its existing application to exclude the currently uncertificated areas west of U.S. 281. SAWS further agrees to rescind its Application No. 32249-C. SAWS further agrees to decertify that portion of its existing certificated service area that is bounded by the western property line of the Mountain Lodge subdivision and south of Wilderness Oaks Drive (Map 2). Bexar Met will then be free to file an application with TNRCC to include those properties in its CCN. In return, Bexar Met will rescind its protest pending at TNRCC for SAWS Application No. 32248-C, as amended, and to Application Numbers 32251-C, 32295-C, 32250-C, 32252-C, 32253-C. (Emphasis added.)

Thus, by virtue of the SAWS and Bexar Met September 22, 2000 Agreement, SAWS agreed to amend its existing application to "exclude" the currently uncertificated areas west of U.S. 281 (the same property SAWS agreed to transfer to BSR) and further then that "Bexar Met will then be free to file an application with TNRCC to include these properties in its CCN" (Certificate of Convenience and Necessity).

Thus, SAWS' double-dealing with the Sneckner family was now complete. SAWS had clearly breached its recently undertaken written obligations to the Sneckner family and made a totally opposite agreement with its competitor, Bexar Met, all to the substantial damage of the Sneckner family.

In fact, SAWS, with full knowledge that on September 22, 2000 it had given away an opportunity for BSR to expand, due to its agreement of that date with Bexar Met, nevertheless on March 27, 2001 again fraudulently induced BSR to enter into an amendment to the original SAWS/BSR agreement. On March 27, 2001, SAWS, not having even fully complied with its original contract with BSR to drill water wells on BSR's existing property, then requested permission from BSR for additional time to drill and construct the required water wells on BSR's existing property, yet SAWS never disclosed to BSR that SAWS had entered into the September

22, 2000 agreement with Bexar Met, otherwise BSR would have never agreed to the March 2001 Amendment.

Thus, SAWS had become a traitor to the Sneckner family who was caught blind-sided by SAWS' flagrant breaches of its clear obligation to the Sneckner family and the resultant substantial monetary damages for the promised water payments from SAWS for water that would now be produced instead by Bexar Met who has no contract with Sneckner for such payments.

The SAWS/Bexar Met agreement has destroyed any chance of Sneckner expanding its certificate or to rely on SAWS' agreement to promise and transfer its certificate to Sneckner because SAWS has clearly abandoned such support by ceding the Sneckners' agreed expansion area to Bexar Met.

As a result, the Sneckner family has incurred substantial monetary damages because of SAWS' flagrant breach of its contract with the Sneckners and is liable for such damages which will be in the range of several millions of dollars.

Any attempts now by the Sneckner family to attempt to expand its water area in view of the SAWS/Bexar Met agreement would be fruitless, and any reasonable opportunity to now seek expansion of the area has been forever lost because BSR simply does not have the ability to compete with a huge utility like Bexar Met for a certificate to serve the same area. Whereas BSR, under the SAWS agreement, had the weight of SAWS on their side with the state water agency, which could have greatly enhanced the granting of the new certificate to SAWS. Thus, the Sneckners' only recourse is to bring this suit for substantial monetary damages against SAWS to recover the benefits it would have had under its now ill-fated agreement and broken agreement with SAWS.

SAWS now had clear sailing as a result of its fraud and breaches of contract. It had effectively gotten BSR out of its way, and could deal with Bexar Met in the same land area to both SAWS and Bexar Met's mutually beneficial financial good by squeezing out the little man in its contractual shell game.

It was not until months after SAWS made its agreement with Bexar Met that BSR learned that SAWS had cheated BSR and breached its prior contract with BSR and, in fact, SAWS initially denied it had even made such an agreement with Bexar Met.

The recent discovery in this pending suit against SAWS clearly demonstrates that SAWS has admitted Bexar Met knew of the previous BSR contract and Bexar Met documents reflect that Bexar Met intended to keep its later agreement from public scrutiny until it was signed by SAWS.

As a direct result of SAWS and Bexar Met's acts, and their conspiracy to cheat BSR, Bexar Met then applied to the State for a permit to sell retail water in the same area that SAWS promised to BSR, to BSR's substantial detriment and damage. To date, Bexar Met has refused to withdraw or modify its pending 5,500± acre application so that BSR can proceed with its right to provide retail water sales in the smaller 888 acres promised it by SAWS; and which is included in Bexar Met's 5,500± acres application.

There are available customers who could purchase substantial amounts of water from BSR if BSR had not been cheated by SAWS and Bexar Met, all to BSR's substantial damages.

As only one example of recent Bexar Met documents produced, attached is a September 19, 2000 fax between two Bexar Met attorneys relating to the proposed agreement between SAWS and Bexar Met in which one attorney states "Bexar Met wants to get something signed as soon as possible before somebody (i.e., a SAWS Board member, SAWS staffer, City

Councilman, influential developer, etc.) says they don't like some aspect of the agreement"." (September 19, 2000 Bexar Met letter, attached hereto as *Exhibit* "6".)

Furthermore, recent discovery in this suit has also revealed that Bexar Met intentionally lied to the State. Attached is a May 21, 2002 letter from Bexar Met to the State in which Bexar Met falsely represents: "Representatives of the Bexar Metropolitan Water District and the BSR Water Company have met and have preliminarily agreed to a process that will eliminate the current overlap in CCN applications." (May 21, 2002 letter, attached hereto as *Exhibit* "7".) Of course, no such agreement was ever reached between Bexar Met and BSR, or else this lawsuit would not have resulted.

### As a result of SAWS' wrongful acts:

- 1. SAWS is also guilty of making material misrepresentations in the February 15, 2000 Agreement with BSR by misrepresenting that SAWS then-currently filed CCN application that included the 880± acres would remain in SAWS' application, which was a representation material to BSR even entering into the contract in the first place and without which representation BSR would not have made any agreement at all with SAWS.
- 2. SAWS is also guilty of making material misrepresentations in the February 15, 2000 Agreement with BSR by misrepresenting that SAWS would take all necessary action to effectuate a transfer of its new CCN to BSR to cover the 880± acres in the defined "Expansion Area".
- 3. In addition, SAWS misrepresented that SAWS "shall" do and perform, or cause all further documents to be executed to carry out the intent and purposes of the BSR Agreement.
- 4. In addition, SAWS misrepresented that BSR's "right" to apply for a transfer of a part of SAWS' new inclusive CCN from SAWS "shall be valid" until "this agreement is terminated...".
- 5. In addition, SAWS misrepresented that if BSR would withdraw its protest to SAWS' new CCN application and support SAWS new CCN application, that SAWS would pursue the new CCN that included the 880± acres, otherwise there was no reason for BSR to enter into the contract with SAWS at all.
- 6. In addition, SAWS misrepresented that SAWS would optimize water production from the Trinity Aquifer under the Sneckner Ranch.

SAWS is liable for fraud, fraudulent inducement, breach of contract, conversion and conspiracy.

### C. SAWS Other Wrongful Act

# SAWS' Additional Broken Promises on BSR's Own Property

As noted above, SAWS had dual obligations to BSR pursuant to its agreed February 15, 2000 written contract with BSR, and its March 27, 2001 amendment (*Exhibits "3" and "3A"*).

One obligation of SAWS was, as seen, to obtain and transfer its new CCN to Sneckner in the Expansion Area. That promise was broken.

However, SAWS' other dual obligation was to assist the Sneckner family to realize the economic value of water under Sneckner's own property where Sneckner already owned an existing valuable permit from the State of Texas to drill, produce and commercially sell water.

SAWS, therefore, also agreed to drill up to eight (8) wells on Sneckner's existing property to produce water and purchase such water from Sneckner.

SAWS agreed that it would promptly construct such wells to maximize water production in order to assure Sneckner that SAWS would allow Sneckner to achieve the highest possible economic use of the water for sale to SAWS. However, to this date SAWS has flagrantly breached its agreement and has never fully operated even four (4) wells on Sneckner's property, and SAWS has been almost three (3) years late in operating the first two wells.

Due to SAWS' inexcusable breaches of contract, many millions of gallons of water have flowed under Sneckner's property during the period that such wells were to be completed, and such water has been produced by other landowners down-grade from Sneckner's property, thus permitting other landowners to sell the water to SAWS at very profitable rates and denying such

monetary benefits to the Sneckner family. Furthermore, due to SAWS' clear breaches, the Sneckners will continue for the foreseeable future to continue to suffer very substantial damages.

In addition, SAWS agreed in its contract to operate the wells on Sneckner's property to "optimize production" of water. SAWS, in breach of its contract, has not only failed to "optimize production" from the two wells that SAWS has been working on, but has purchased water from other down-grade landowners to such an extent that SAWS now claims it will not even produce the minimum amount of water that it promised to produce and purchase from the Sneckner family.

In addition, SAWS has directly caused the Sneckner family to lose extremely valuable rights to sell its own water to other land developers who could use the water for current and planned development.

All of the above acts constitute clear fraud on the part of SAWS and, alternatively, have made numerous flagrant breaches of its contract with the Sneckner family.

As a result, the Sneckner family has suffered substantial damages in the amount of several million dollars, all of which should also result in punitive damages to be awarded against SAWS.

As a result, Sneckner has been damaged by SAWS' breaches of its dual obligations to produce water in such quantities as the well logs indicate is possible for substantial monetary losses caused by the failure to sell the water at profitable rates.

# D. <u>SAWS Wrongful Conversion</u>

SAWS has continuously and wrongfully converted groundwater flowing under the BSR Ranch, water to which BSR has an absolute right to capture as personal property belonging to BSR.

SAWS has converted BSR's property to SAWS' own wrongful possession by willfully and intentionally not producing the water as it flows under the BSR property, but instead taking BSR's water into SAWS' distribution system at the Oliver Ranch wells, thus converting BSR's water to SAWS' water and never paying BSR for the water that BSR, had it not been for SAWS' conversion, has every right to capture and sell.

SAWS' acts have been and continue today to be wrongful conversion of BSR's water for which BSR has suffered substantial damages.

### VI.

## **ATTORNEYS FEES**

Plaintiffs have been required to engage the services of the undersigned attorneys to prosecute these claims. Pursuant to section 38.001 et seq. of the Texas Civil Practice & Remedies Code, Plaintiffs seeks to recover from SAWS all reasonable attorneys fees and costs of court, in addition to damages in this matter.

#### VII.

### PERFORMANCE OF CONDITIONS PRECEDENT

All conditions precedent to Plaintiffs' recovery generally and to the recovery of attorneys fees specifically have been performed or have occurred other than those excused by the conduct of the Defendant.

#### VIII.

### JURY DEMAND

Plaintiffs hereby demand a trial by jury of all causes in this action. The jury fee of \$30.00 is tendered herewith.

Wherefore, Plaintiffs pray that the City of San Antonio be cited to appear and answer herein, and upon final trial hereof, that Plaintiffs be awarded a judgment against Defendant in the amount of actual damages, plus prejudgment and post judgment interest, attorneys fees, costs of court and such other relief to which Plaintiffs may be entitled.

Respectfully submitted,

JENKENS & GILCHRIST A Professional Corporation Weston Centre, Suite 900 112 East Pecan Street San Antonio, Texas 78205 (210) 246-5000 (Telephone) (210) 246-5999 (Facsimile)

SEAGAL V. WHEATLEY

State Bar No. 21252000

ATTORNEYS FOR PLAINTIFFS

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to the following counsel, by hand delivery or facsimile, this 25<sup>th</sup> day of \_\_\_\_\_\_\_\_, 2005.

Daniel McNeel Lane, Jr.
Monica J. Rodriguez
Akin, Gump, Strauss, Hauer & Feld, LLP
300 Convent Street, Suite 1500
San Antonio, TX 78205

on Seagal) V. Wheatley

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## KNOW ALL MEN BY THESE PRESENTS:

"HAT, the undersigned whether named herein or not, of the Counties according to their acknowledgments respectively, herematter called "Mortgagors" including:

W.R. SNECKNER, JR. AND WIFE, LOVA K. SNECKNER.

whether there be one or more parties executing this instrument, for and in consideration of the sum of Ten Dollars in hand pand by Herbert H. Decker. Trustee, of Houston, Harris County, Texas, the receipt whereof is hereby, acknowledged, and the further consideration, uses, purposes and trust herein selforth and declared, have granted, sold and conveyed, and by these presents do grant, self- and convey unto the said Trustee herein named, and to his successors and substitutes in the trust hereby created, all of the

of the town of San Antonio, Texas, containing 1412.445 heres, more or less, and consisting of the following surveys and parts of surveys, to wit:

442.445 acres of land being the James F. Ashley Tract out of the Guadalupe College Survey No. 21 County Block 4852; the F. H. Uecker Survey No. 2 County Block 4851 the Edward Penshorn Survey No. 367 County Block 4850; the T. J. Robinson Survey No. 486, County Block 4862 the Henry Penshorn Survey No. 417-4/8, County Block 4863, and the F. H. Uecker Survey No. 417-4/8, County Block 4865, being more particularly described as follows: BEGINNING at an iron pin set by a corner post, said point being in the east line of original survey No. 2, in the name of F. H. Uecker, and said point being 1520 feet more or less south of the northeast corner of said original Survey No. 2 in the name of F. H. Uecker;
THENCE with line of fence along the North boundary of

this James Ashley 442.445 acre tract as follows:
South 88° 27' 06" East 384.16 feet:
South 88° 35' 44" East 1173.88 feet:
South 88° 30' 08" East 304.17 feet:
South 88° 40' 08" East 422.76 feet to an iron pin set by a corner post in the West line of the Bulverde Road for the Northeast corner of this 442.445 acre tract;

THENCE along the west line of the Bulverde Road and with line of fence as follows: 52' 03" East 230.49 feet; South 11° 30' 02" East 99.02 feet; South 02° South 05° 291 06" West 97.19 feet; South 23° 59" West 279.86 feet; 461 46" West 107.01 feet; 50" West 64.58 feet; South 33° 031 South 40° 131 South 30° West 173.44 feet; West 157.95 feet; 25" 551 South 12° 29<sup>11</sup> East 187.19 feet; East 443.58 feet; South 02°  $OT_{II}$ 49" South 30° 26 I East 562.60 1 cot;  $54^{\prime\prime}$ 431 1/1/11 361 South 14° 481 29" East 64.52 feet; South 00° 32" East, 662,63 feet; 351 East 764.06 feet; East 371.08 feet; 25" South 00° 301 South 00° 0611 East 341 East 81.18 feet; 24"  $\mathsf{TR}_{\mathbf{L}}$ south 19 07" South 03° South 03° 30' 07" East 185.49 feet: to an Iron pin set 301 by a corner post for the southeast corner or this

442,445 acre tract;

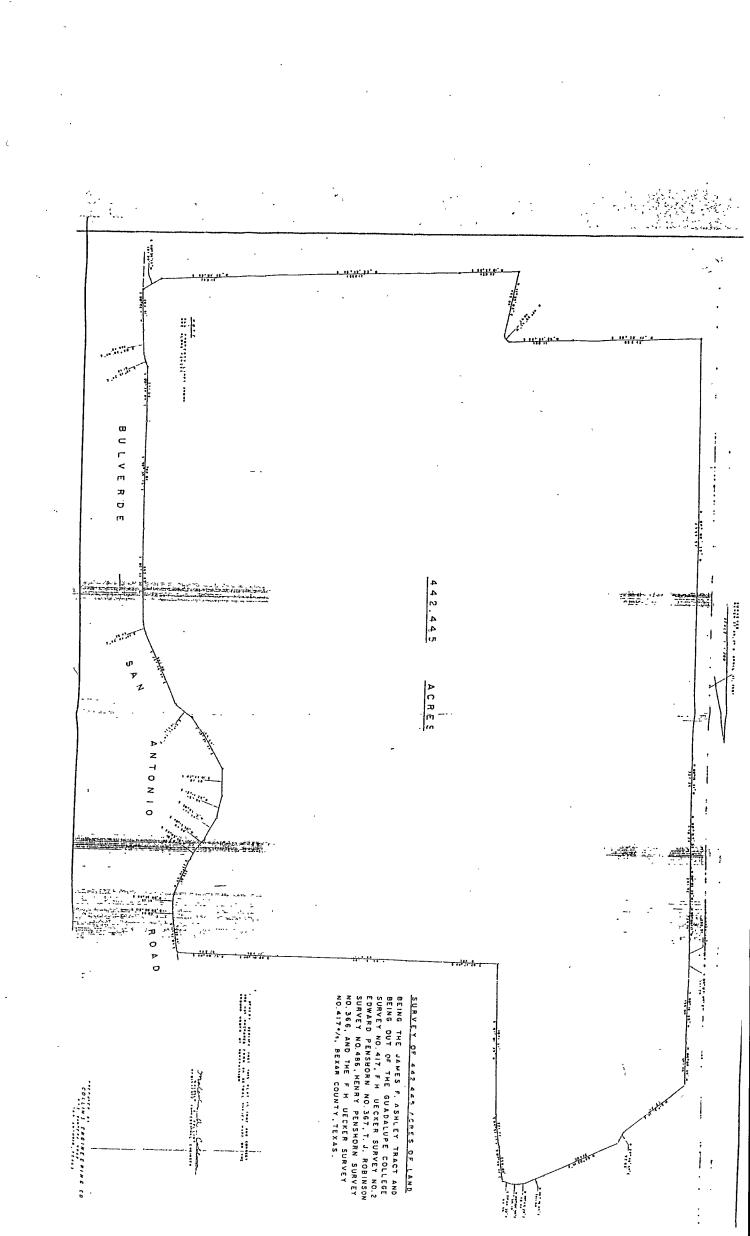
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THENCE with line of fence and along the south boundary of this James Ashley
                THENCE with line of fence and along the south boundary of this James Ashley 442.445 acre tract as follows:
South 80° 01' 35" West 763.13 feet;
South 88° 13' 53" West 1386.17 feet;
South 88° 27' 01" West 420.82 feet;
North 11° 53' 03" East 469.86 feet;
North 47° 59' 43" West 40.93 feet;
South 88° 34' 26" West 460.11 feet;
South 88° 28' 47" West 868.42 feet to an iron pin set by a corner post for the southwest corner of this James.
Ashley 442 445 acre tract:
                 Ashley 442.445 acre tract;
            Ashley 442.445 acre tract;

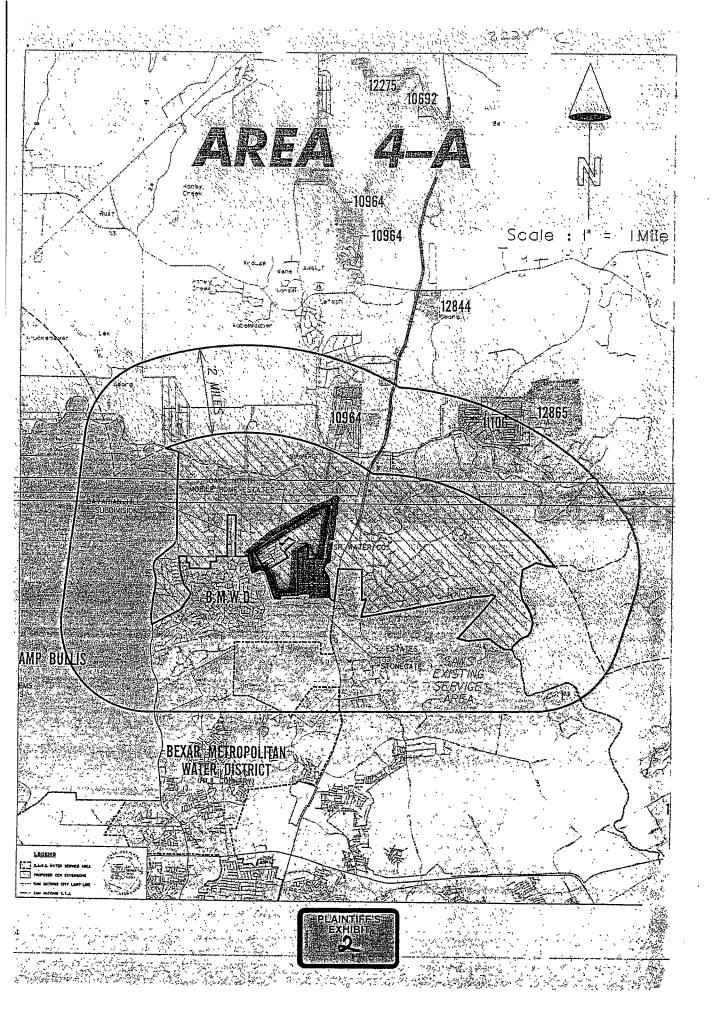
THENCE with line of fence and along the west boundary of this 442.445 acre tract as follows:
North 00° 00' 35" West 2959.57 feet;
North 00° 18' 21" West 337.26 feet;
North 00° 07' 59" West 430.28 feet;
North 00° 03' 39" West 281.92 feet;
North 00° 09' 17" West 229.74 feet;
North 00° 09' 17" West 159.35 feet;
North 00° 07' 47" East 141.26 feet;
North 00° 18' 55" West 456.08 feet;
North 00° 18' 55" West 456.08 feet;
North 00° 08' 49" West 307.86 feet to an iron pin set by a corner post for the northwest corner of this 442.445 acre tract;

THENCE with line of fence and along the north boundary of this James Ashley 442.445 acre tract as follows;
North 51° 31' 16" East 532.09 feet;
North 527° 49' 37" East 92.63 feet;
North 66° 03' 16" East 564.05 feet;
North 66° 39' 45" East 140.68 feet;
North 78° 46' 28" East 48.44 feet;
North 89° 09' 59" East 50.18 feet;
South 71° 46' 32" East 64.59 feet to an iron pin for a corner;
              corner;
             THENCE:
          South 07° 40' 44" East 238.06 feet;
South 06° 52' 33" East 221.77 feet;
South 01° 01' 39" West 1071.31 feet to the Place of
             Beginning.
             SUBJECT TO Easement to City of San Antonio for electric transmission and distribution line, recorded in Volume
             3301, Page 155, Deed Records of Bexar County, Texas
July 7, 1969
Signed for Identification:
                              Anon Kiss.
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## WATER SUPPLY CONTRACT AND SERVICE AREA SETTLEMENT AGREEMENT

STATE OF TEXAS

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COUNTY OF BEXAR

This Water Supply Contract and Service Area Settlement Agreement (this "Agreement") is made and entered into this day of fabruard. 2000, by and between BSR Water Company, a Texas Corporation which is the holder of a Certificate of Convenience and Necessity ("CCN") issued by the State of Texas for the operation of a potable water system in Bexar County, Texas, it successors or assigns ("BSR"), and the City of San Antonio, acting by and through the San Antonio Water System, a wholly owned independently managed municipal water, waste-water, and water recycling utility ("SAWS"), together "the Parties", for an initial term of five (5) years, subject to renewal as provided for herein, as follows:

WHEREAS, SAWS has applied for an expansion of its CCN to cover an area that would surround the land contained within the CCN held by BSR, and BSR has filed a protest and has requested a contested case hearing with the Texas Natural Resources Conservation Commission ("TNRCC") in opposition to such expansion; and

WHEREAS, the Parties have agreed on acceptable terms under which BSR would withdraw its protest and request for contested case hearing against SAWS and would support SAWS' application for CCN expansion in return for SAWS' agreement to certain mutually beneficial conditions with respect to future expansion of the BSR CCN and BSR selling water to SAWS and for other enumerated consideration; and





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WHEREAS, SAWS and BSR have approved the terms of this agreement subject only to the verification of the availability of the Groundwater supply during an inspection period as defined in Article VIII of the Agreement; and

WHEREAS, the Parties desire to memorialize their agreement for the purpose of setting forth the obligations and rights of the Parties and to obtain formal approval of such agreement by SAWS Board and BSR.

## NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

## ARTICLE I. ACKNOWLEDGMENT OF CONSIDERATION

Section 1.01 Adequate Consideration Received. SAWS and BSR hereby mutually agree that each of the parties are entering into this Agreement based on the agreements of the other party and the consideration that is identified under the Rights and Obligations of each party as set forth below. Both BSR and SAWS hereby agree that they have independently received sufficient and adequate consideration from the other for the purpose of binding themselves to the Rights and Obligations identified in this Agreement.

Section 1.02 Mutual Reliance. It is expressly understood by SAWS that BSR would not agree to the Obligations imposed by this Agreement absent the consideration to be provided by SAWS to BSR in the form of an agreement regarding the potential expansion of the BSR CCN, and other consideration as expressly set forth within the terms of this Agreement. Likewise, BSR hereby acknowledges that SAWS is agreeing to the Obligations imposed on it by this Agreement in return for the rights and benefits that SAWS is to receive pursuant to the terms of this Agreement from BSR, and absent those benefits SAWS would not commit itself to the Obligation to provide various enumerated benefits to BSR pursuant to the terms of this agreement. In the event one party fails to comply with this Agreement, the other non-defaulting

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party will, by agreement of the parties herein made, be retu to reliance on this Agreement and to the breach of the defaulting party.

Section 1.03 <u>Breach of Consideration</u>. Both p either party fails to comply with any of the specific Obliga by this Agreement, such failure shall constitute a breach o party that has been harmed to seek enforcement of this Agreeach hereof as allowed for in Article VI, as set forth below

ARTICLE II. OBLIGATIONS

SAWS as outlined in this document, BSR hereby agrees to described and set forth in this Article for the benefit of SAWS

Section 2.02 Withdrawal of Protest. BSR shall, with the first annual payment required by Section 5.02 of this Ag two (72) hours prior to the docketed date and time of any TNRCC, execute a letter mutually acceptable to BSR and SA Contested Case Hearing and Protest that has previously b opposition to SAWS' CCN expansion application No. 3224 withdrawing the Protest and Request For Contested Case Hear by SAWS for expansion of their CCN executed by appropriate direct control or authority and that are a signatory to the origin For Contested Case Hearing submitted to the TNRCC oppose CCN.

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