



Control Number: 43572



Item Number: 106

Addendum StartPage: 0

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Janessa M. Glenn
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May 17, 2005

Via Courier

Attn: Docket Clerk
State Office of Administrative Hearings
300 W. 15th Street
Austin, Texas 78701

Via Courier

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

RE: SOAH Docket No. 582-03-³⁷²⁵~~3275~~, TCEQ Docket No. 2003-0664-UCR, *In Re: The Application of Bexar Metropolitan Water District to Amend Water CCN No. 10675 in Bexar County*, Before the State Office of Administrative Hearings

Dear Sir or Madam:

Enclosed, for each of you, please find an original and two (2) copies of the following document and exhibits for filing in your respective offices in connection with the above referenced cause:

- BSR Water Company's Reply in Opposition to Bexar Metropolitan Water District's Motion to Set Aside Order No. 7, to Lift Abatement, and to Enter Scheduling Order Setting Hearing on the Merits (85 pages total, with 73 pages of Exhibits #1-21)

Copies of the above listed document are concurrently being served on all counsel listed on the Service List for SOAH Docket Number 582-03-3725/TCEQ Docket No. 2003-0664-UCR.

43572

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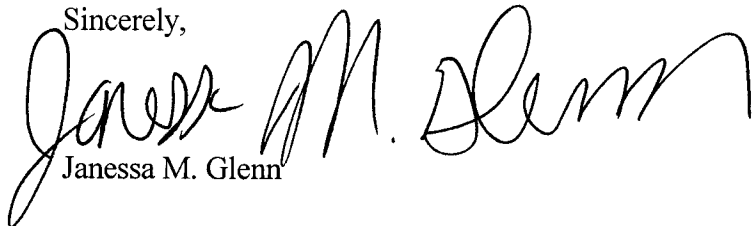
State Office of Administrative Hearings
Attn: Docket Clerk

Texas Commission on Environmental Quality
Attn: Office of the Chief Clerk

May 17, 2005
Page 2

Please file-mark the extra copy and return same with the courier.

Sincerely,



Janessa M. Glenn

JMG:vjd
Enclosures (as stated above)
cc: Per Service List

17 MAY 05 15:01 19

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

**BSR WATER COMPANY’S REPLY IN OPPOSITION TO BEXAR
METROPOLITAN WATER DISTRICT’S MOTION TO SET ASIDE ORDER NO.
7, TO LIFT ABATEMENT, AND TO ENTER SCHEDULING ORDER SETTING
HEARING ON THE MERITS**

Now comes BSR Water Company (“BSR”), and files this its opposition in reply to the above motions filed by Bexar Metropolitan Water District (“Bexar Met”) on or about May 11, 2005, and in support of said reply respectfully shows as follows:

I. BSR Relief Requested

Bexar Met’s motion is totally in bad faith, frivolous, and without good cause. The motion is a flagrant effort to deny BSR its pre-trial discovery in a pending State Court action, and to also circumvent such State Court jurisdiction by making TCEQ an unwitting party to support Bexar Met’s fraudulent conduct.

The Honorable ALJ has appropriately entered the correct Order No. 7 extending abatement in this cause until September 1, 2005. Bexar Met improperly seeks to shorten all such time limits in its effort to obtain a CCN before the District Court in Bexar County can try the pending State Court action.

Accordingly, BSR respectfully moves the Honorable ALJ to deny Bexar Met’s motion.

**II. No New Material Development Has Been
Demonstrated by Bexar Met to Affect the Current Status**

On January 31, 2005, BSR's counsel appropriately requested abatement of the contested case hearing on Bexar Met's CCN application due to the currently pending State Court action. (*Exhibit "1"*)

On February 16, 2005, the Honorable ALJ, Cassandra J. Church, appropriately consulted with the Executive Director of TCEQ and the Office of Public Interest Counsel of TCEQ, neither of whom opposed BSR's request. (*Exhibit "2"*)

The ALJ correctly found that the State Court action had issues "related to contested case issues".

These reasons constituted good cause to grant the abatement and these reasons still constitute good cause to keep Order No. 7 in place.

III. Brief Background

1. On February 15, 2000, San Antonio Water System ("SAWS") entered into a written contract with BSR which, in part, expressly provided that if BSR would withdraw its pending protest to SAWS' pending application for a CCN to 12,000± acres in Northern Bexar County, and write a letter in support of SAWS' CCN application, that in return SAWS agreed SAWS would pursue its pending application and would "support the transfer to BSR" of approximately 880± acres of SAWS' new CCN area, such 880± acres defined as the Expansion Area. SAWS further agreed it "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 of BSR.”
(See February 15, 2000 agreement attached as **Exhibit “3”** hereto, Section 4.02 thereof¹.)

2. In flagrant violation of the February 15, 2000 agreement with BSR, and while said agreement was still in effect, on September 22, 2000, seven months later, SAWS made a directly contradictory agreement with Bexar Met and “ceded” to Bexar Met all land in SAWS’ pending application West of U.S. Highway 281 in Bexar County, Texas, consisting of approximately 5,543 acres, which 5,543 acres contained the same 880± acres that SAWS had agreed to pursue on SAWS’ CCN application and support a transfer to BSR. As a result of SAWS fraudulent acts, SAWS never pursued that portion of its then pending 12,000± acres application and as a result of the illicit Bexar Met agreement made it impossible for BSR to enjoy its contractual benefits, even though BSR had previously and faithfully withdrawn its protest to SAWS’ application and even wrote a letter in support to TCEQ. (Copy of the September 22, 2000 SAWS/Bexar Met agreement attached hereto as **Exhibit “4”**. See ¶ 5.)

3. On February 13, 2004, BSR sued SAWS for fraud, breach of contract, and conversion in Cause No. 2004-CI-02288, filed in the 225th District Court of Bexar County. In pursuit of pre-trial discovery, BSR recently discovered on November 15, 2004 that, at the time Bexar Met signed the illicit contract with SAWS, Bexar Met was aware of the pre-existing and contrary agreement between SAWS and BSR. (See sworn testimony of SAWS’ employee Chris Powers, p. 72 lines 24-25, p. 73 lines 1-3, attached hereto as **Exhibit “5”**.) As a consequence, BSR became aware that Bexar Met may have serious liability to BSR for tortuous interference with BSR’s existing contract with

¹ Inclusive of its related Exhibits A-C and the First Amendment to the Water Supply Contract and Service Area Settlement Agreement

SAWS and also for tortuous interference with BSR's future relations with potential customers.

4. On March 14, 2005, BSR wrote a demand letter to Bexar Met to attempt to peaceably settle BSR's claim against Bexar Met, but on April 28, 2005 Bexar Met refused to recognize any claim by BSR. Accordingly, BSR issued a deposition notice for Bexar Met's former general manager, Tom Moreno. Bexar Met, in an attempt to prevent BSR's right to pre-trial discovery, has filed a motion in District Court attempting wrongfully to deny BSR's right to pursue its suit and discover evidence, even though Bexar Met is not even a party to the suit. The motion is totally without merit from a non-party but represents Bexar Met's continuing effort to run rough shod over BSR.

5. TCEQ would, if it restarted this contested case hearing of Bexar Met's void application, be interfering with the District Court's jurisdiction to first determine all of the facts relevant to Bexar Met's conduct and whether Bexar Met's pursuit of its current CCN is based on fraud. Further, judicial economy would strongly support the correctness of the ALJ's current Order.

6. Thus, it should be clear that Bexar Met, now on notice that it may be sued for its wrongful acts, is attempting to wrongfully use TCEQ to hurry up the administrative process and hopefully grant Bexar Met a CCN before the state court action can be tried and, in the process, to wrongfully attempt to prevent BSR from even deposing its fired former general manager for telling what happened. Surely such less-than-subtle attempts by Bexar Met will not be honored by the State and TCEQ will let the Court determine the respective rights and liabilities.

**IV. Order No. 7 Was Proper to Enter,
And Should Not be Set Aside**

Bexar Met cites cases related to the exclusive jurisdiction of certain state agencies. None of the cases hold, nor are we aware of any case that holds, TCEQ has primary jurisdiction to decide if an applicant, such as Bexar Met, is fraudulently pursuing an application for a CCN based on a wrongfully obtained contract from another pending applicant. Furthermore, since the February 16, 2005 abatement Order No. 7 was issued, Bexar Met has made absolutely no effort to complain about the abatement until Bexar Met recently became aware of a serious potential claim against it, and now seeks to improperly expedite the process to deny the District Court the jurisdiction to hear whether Bexar Met properly holds any contract from SAWS to proceed.

**V. Bexar Met is in Financial Difficulties and
a State of Extreme Disarray**

Bexar Met's move to expedite the administrative process for a CCN flies in the face of irrefutable evidence that Bexar Met, as an apparent responsible public water utility, is actually in a state of serious instability and is in no present position to even be qualified for a CCN for 5,543 acres of additional proposed service area. Only a sampling of news articles from the San Antonio Express-News proves the point:

1. June 13, 2004

- Bexar Met's "unprecedented rate increases" and "cut-off fees" create serious "financial hardship" to its customers.
- Ratepayers are "angry". (*Exhibit "6"*)

2. August 8, 2004

- Bexar Met violates Federal Voting Rights Act of 1965 by disenfranchising 27,000 voters.
- Bexar Met violated state law each time it raised water rates in the past six years. (*Exhibit "7"*)

3. September 5, 2004

- Legislature limits Bexar Met boundaries to current boundaries to develop, transport, deliver, distribute, store, and treat water only within existing district lines.
- Bexar Met continues illegal purchase of water systems outside its jurisdiction.
- Bexar Met has no long term, firm water supply to properly service areas outside its boundaries.
- Bulverde and GBRA sue Bexar Met in Comal County to stop illegal practices. (*Exhibit "8"*)

4. September 15, 2004

- Bexar Met spent \$8.2 million more than it budgeted last year.
- Audit shows 24% over budget.
- Bexar Met revenues had 83% jump in customer penalties and fees collected.
- No physical inventory of capital assets in last five years.
- Property purchased without appraisals.
- Profit is 80% below projections.

- Debt of \$213 million. (*Exhibit “9”*)
5. September 23, 2004
- Bexar Met “gone from bad to dreadful or dreadful to horrid or horrid to unspeakably rotten” and “the abuse of ratepayers goes on”. (*Exhibit “10”*)
6. October 6, 2004
- Bexar Met’s “misguided” attempts to draw new voting districts for the second time in less than a year has backfired.
 - Federal court rejects plan. (*Exhibit “11”*)
7. December 19, 2004
- Bexar Met “plagued by turmoil”
 - General manager, Tom Moreno, returns after 30 day suspension.
 - “Poor management at every level.” (*Exhibit “12”*)
8. December 28, 2004
- Bexar Met has “staggering chaos” “hampering the agency”.
 - Bexar Met’s HR department “entirely dysfunctional” says expert.
 - Bexar Met “has created a culture of fear and intimidation within the organization”. (*Exhibit “13”*)
9. January 9, 2005
- Bexar Met “soaring to new heights of chaos”.
 - Bexar Met extends Tom Moreno’s contract for one year after having suspended him.

- Moreno's contract extension "follows a thoroughly disastrous year for Bexar Met".
 - Bexar Met "like a train out of control". (*Exhibit "14"*)
10. January 9, 2005
- Bexar Met audit reveals "dumbfounding mismanagement and staggering financial prodigality". (*Exhibit "15"*)
11. February 18, 2005
- Bexar Met suspends 20 year general manager for unpaid 60 day leave.
 - Audit found \$155,000 in questionable spending. (*Exhibit "16"*)
12. April 9, 2005
- Bexar Met fires current lobbyists – hires new ones. (*Exhibit "17"*)
13. April 19, 2005
- Bexar Met fires General Manager, Tom Moreno. (*Exhibit "18"*)
14. April 22, 2005
- Bill introduced to relegate Bexar Met to Special Utility District with limited powers.
 - Bexar Met has continuing problems delivering "water at a reasonable rate and in a quality condition". (*Exhibit "19"*)
15. April 29, 2005
- Board member walks out and resigns out of conscience. (*Exhibit "20"*)

16. May 7, 2005

- Second Bexar Met board member resigns.
- Bexar Met target of three bills in Austin to limit activities, HB 3565, HB 2445, HB 2046. (*Exhibit "21"*)

And, finally, Bexar Met fired its long-time attorney North O. West and on information BSR believes Bexar Met also fired its other attorney Mark Zeppa.

The picture is clear, Bexar Met is in chaos, its power may be severely limited by the State, and it is in a financial crisis.

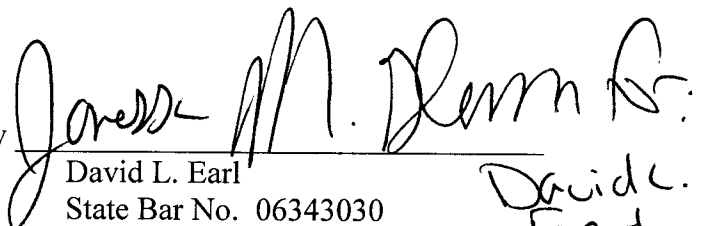
For TCEQ to expedite anything for Bexar Met except its immediate demise, would be irresponsible and without any factual basis warranting such action. To be sure, Bexar Met has a crisis, but it is not of BSR's making.

Prayer

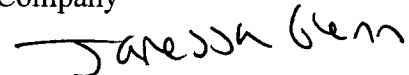
Bexar Met's motion should promptly be denied.

Respectfully submitted,

Earl & Associates, P.C.
River View Towers, Suite 1111
111 Soledad Street
San Antonio, TX 78205
Telephone: 210-222-1500
Fax: 210-222-9100

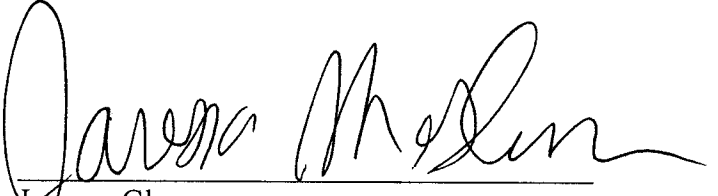
By 
David L. Earl
State Bar No. 06343030

Attorney for BSR Water Company


TSB # 50511631

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing instrument has been served on this 17th day of May, 2005, in accordance with the rules of SOAH, to the attached Service List for SOAH Docket Number 582-03-3725/TCEQ Docket No. 2003-0664-UCR.



Janessa Glenn

STATE OFFICE OF ADMINISTRATIVE HEARINGS
William P. Clements Building
300 West Fifteenth Street
Austin, TX 78701
Telephone: 512-475-4993
Fax: 512-475-4994

SERVICE LIST

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

ADMINISTRATIVE COURT

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

PARTIES	REPRESENTATIVE/ADDRESS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY <i>Via Courier</i>	Todd Burkey Attorney Texas Commission on Environmental Quality Building F, 4 th Floor, Room 4303 12100 Park 35 Circle Austin, Texas 78753 Telephone: 512-239-0500 Fax: 512-239-3434, 512-239-0606
OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY <i>Via Courier</i>	Blas Coy, Jr. Office of the Public Interest Counsel Texas Commission on Environmental Quality Building F, Room 309 12100 Park 35 Circle Austin, Texas 78753 Telephone: 512-239-6353 Fax: 512-239-6377
BEXAR METROPOLITAN WATER DISTRICT WATER SERVICES, INC. <i>Via Facsimile and US First-Class Mail</i>	Mark H. Zeppa Attorney 4833 Spicewood Springs Road #202 Austin, Texas 78759-8436 Telephone: 512-346-4011 Fax: 512-346-6847

BEXAR METROPOLITAN WATER DISTRICT
Via Facsimile and US First-Class Mail

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Law Offices of Louis T. Rosenberg
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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 COPIES MAILED OR FAXED
TO THE FOLLOWING PARTY:**

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Via Courier

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Attorney
Bicerstaff, Heath, Smiley, Pollen, Kever &
McDaniel
816 Congress, Suite 1700
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XC:

Via Courier

Docket Clerk
State Office of Administrative Hearings
300 W. 15th Street
Austin, Texas 78701

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First Floor, 12100 Park 35 Circle
Austin, Texas 78753
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SOAH DOCKET NO. 582-03-3725
TCEQ DOCKET NO. 2003-0664-UCR

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

**BSR WATER COMPANY'S ("SNECKNER") REPORT
AND REQUEST FOR CONTINUED ABATEMENT**

Pursuant to Order No. 6 in this proceeding, the parties were to file a status report, a proposed schedule leading to the hearing on the merits, or other appropriate motion by January 31, 2005. BSR Water Company has filed a lawsuit against San Antonio Water Systems in state district court that impacts several of the issues to be addressed in this proceeding. The state court case is proceeding through the discovery phase and was continued from its previous setting of December 6, 2004, to its current setting on the court's jury docket for August 15, 2005. Consequently, BSR Water Company would respectfully request that this proceeding be abated until such time as the state court case is adjudicated. The undersigned has contacted counsel for the Texas Commission on Environmental Quality and the Office of Public Interest Counsel of the Texas Commission on Environmental Quality and they have no objection to the filing of this request for continued abatement. I have been unable to reach counsel for Bexar Metropolitan Water District Water Services, Inc.

SIGNED this 31st day of January 2005.

Respectfully submitted,

EARL & ASSOCIATES, P.C.
111 Soledad, Suite 1111
San Antonio, TX 78205
Telephone (210) 222-1500
Facsimile (210) 222-9100

By: 

David L. Earl
State Bar No. 06343030

*ATTORNEY FOR SNECKNER
PARTNERS, LTD. (BSR WATER
COMPANY)*

CERTIFICATE OF SERVICE

I, David L. Earl, certify that the foregoing pleading was served on all parties of record, the presiding SOAH Judge and the TCEQ Docket Clerk by facsimile transmission and First Class USPS mail on the 5/2 day of January 2005.

Judge Cassandra Church
State Office of Administrative Hearings
P.O. Box 13025
Austin, TX 78711-3025
Facsimile (512) 475-4994

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Jenkins & Gilchrist, P.C.
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Todd Galiga, Attorney
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TCEQ Docket Clerk
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Mark H. Zeppa
Law Office of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
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Facsimile (512) 346-6847



DAVID L. EARL

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

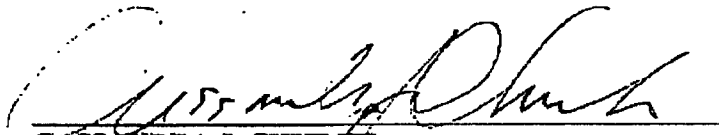
IN RE: THE APPLICATION OF BEXAR § BEFORE THE STATE OFFICE
METROPOLITAN WATER DISTRICT §
TO AMEND WATER CCN NO. 10675 IN § OF
BEXAR COUNTY § ADMINISTRATIVE HEARINGS

ORDER NO. 7
FURTHER EXTENDING ABATEMENT AND
REQUIRING STATUS REPORT

On January 31, 2005, BSR Water Company (Sneckner) filed a motion to extend the abatement of the pending case due to a lawsuit on issues related to contested case issues. The lawsuit has been reset for August 15, 2005. The Executive Director of Texas Commission on Environmental Quality (TCEQ) and the Office of Public Interest Counsel (OPIC) of TCEQ did not oppose the motion. Bexar Metropolitan Water District Water Services, Inc., did not object to the motion within the period of time for responses to motion. 1 TEX. ADMIN. CODE § 155.29(d).

For good cause shown, the motion is *granted*. The case is hereby abated until *September 1, 2005*. On or before that date the parties should file a status report, a proposed schedule leading to a hearing on the merits, or other appropriate motion.

SIGNED February 16, 2005.


CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

WATER SUPPLY CONTRACT
AND SERVICE AREA SETTLEMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This Water Supply Contract and Service Area Settlement Agreement (this "Agreement") is made and entered into this ^{15th} ~~8th~~ day of February, 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; its 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

EXHIBIT "3"

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

party will, by agreement of the parties herein made, be returned to the position they were in prior to reliance on this Agreement and to the breach of the defaulting party, at the cost of said defaulting party.

Section 1.03 Breach of Consideration. 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.

ARTICLE II. OBLIGATIONS OF BSR

Section 2.01 General. In return for the rights and benefits to be conveyed to BSR by SAWS as outlined in this document, BSR hereby agrees to perform each of the Obligations as described and set forth in this Article for the benefit of SAWS.

Section 2.02 Withdrawal of Protest. BSR shall, within ten (10) days from the receipt of the first annual payment required by Section 5.02 of this Agreement, but no later than seventy-two (72) hours prior to the docketed date and time of any hearing on BSR's protest by the TNRCC, execute a letter mutually acceptable to BSR and SAWS withdrawing its Request For a Contested Case Hearing and Protest that has previously been submitted to the TNRCC in opposition to SAWS' CCN expansion application No. 32248-C. BSR shall have the letter withdrawing the Protest and Request For Contested Case Hearing with respect to the application by SAWS for expansion of their CCN executed by appropriate parties over which BSR exercises direct control or authority and that are a signatory to the original Letter of Protest and Request For Contested Case Hearing submitted to the TNRCC opposing SAWS' efforts to expand its CCN.

Section 2.03 Letters of Support by BSR. Within ten (10) days from the receipt of annual payment required by Section 5.02 of this Agreement, but no later than seventy hours prior to the docketed date and time of any hearing on BSR's protest by the TNF shall submit an original executed letter supporting SAWS' application for expansion of its CCN in those areas identified in Exhibit "B" generally described as the areas surrounding the CCN. The letter of support may be used by SAWS in any proceeding before the State TNRCC, or any judicial, quasi-judicial, or administrative proceeding or hearing relating to SAWS' application for expansion of its CCN into the areas surrounding the CCN contained within the limits of the CCN that has been issued to BSR; however, the letter may not be used in any manner directly adverse to BSR.

Section 2.04 Dedication of Easements. BSR shall dedicate to SAWS all easements existing within the boundaries of the BSR CCN reasonably necessary for the construction of water supply pipeline(s) to produce and transport water produced from wells located within the BSR CCN pursuant to this agreement to a delivery point located at the limits of the BSR CCN. The easement(s) shall be sixteen feet (16') in width, and shall include a twenty foot (20') temporary construction easement(s) that shall be in existence from the time the easement is dedicated until the facilities to be built within the easement(s) have been constructed. The easement(s) shall be sixteen foot (16') easement(s) and temporary twenty foot (20') construction easement(s). The easements shall be non-exclusive easements benefiting SAWS for the purpose of transporting water from wells within the BSR CCN to the point of delivery. The cost for all engineering and construction associated with the placement of the easements shall be borne by SAWS. The easements shall be located within the property lines or boundaries of the BSR CCN in locations that are mutually

agreeable to SAWS and BSR. In no event shall BSR be required to dedicate more than a total of five (5) acres of real property contained in easements within the limits of the BSR CCN as a result of this Agreement. The location and placement of all easements shall be made expressly subject to approval by BSR and an engineer licensed by the State of Texas chosen by BSR for the purpose of reviewing and confirming the locations of said easements, the agreement by BSR with respect to location hereof shall not be unreasonably withheld. In the event SAWS ceases to purchase water from BSR pursuant to this Agreement, all easements provided by BSR to SAWS hereunder shall be deemed released by SAWS and shall revert to the Grantor thereof without any future action being required as evidenced by a Memorandum of Reversion being recorded in the Deed Records of Bexar County. Language providing for the right of said reversion shall be made a part of any such easements.

Section 2.05 Compliance With SAWS Specifications. Any water infrastructure to be constructed within the boundaries of the BSR CCN shall be designed and constructed according to the published specifications for design and construction of water improvements that are relied on by SAWS in reviewing or inspecting such improvements. BSR further agrees to require every lot platted and served within the boundaries of the BSR CCN to utilize a water meter that is of equal or better specifications than those used or required by SAWS to connect to the water supply system.

ARTICLE III. BSR AGREEMENT TO GIVE RIGHT OF

FIRST REFUSAL TO SAWS

Section 3.01. Right of First Refusal. In the event that BSR has received an offer acceptable to BSR to sell its CCN and distribution system (with or without liabilities) to a third party, SAWS shall have the Right of First Refusal to purchase the said CCN and distribution

system to be sold for the same price and under the same terms as the price and terms offered by the respective third party purchaser. BSR is required to provide SAWS with copies of any such acceptable sales agreement that provides for the sale of the CCN or of the distribution system within five (5) days from the date such agreement(s) are finalized. However, if SAWS does not exercise its Right of First Refusal by notifying BSR in writing of SAWS' intent to purchase under the right within thirty (30) days from receipt of the third party's sales agreement, and/or SAWS does not deposit the funds in escrow required for the purchase within one hundred twenty (120) days from receipt of such agreement from BSR, then SAWS shall have forfeited its Right of First Refusal and the consent of SAWS shall not be required for BSR to go forward with the sale of its CCN or facilities to the aforementioned third party purchaser, without recourse by SAWS. The Right of First Refusal provided to SAWS pursuant to this Section shall be valid until this agreement is terminated in whole or in part as allowed for herein.

ARTICLE IV. OBLIGATIONS OF SAWS

Section 4.01. General. In return for the rights and benefits to be conveyed to SAWS by BSR as outlined in this Agreement, SAWS hereby agrees to perform each of the Obligations as described and set forth in this Article for the benefit of BSR.

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 a 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 cosent of SAWS.

ARTICLE V. PROVISION OF NON-EDWARDS WATER

Section 5.01 Provision of Non-Edwards Water. Subject to the provisions of Article I hereof and subject to availability, BSR agrees to provide SAWS, on an Intra-Utility Wholesale basis, the right to produce an amount of non-Edwards water (equal to or exceeding one thousand five hundred (1,500) acre feet per year) to be produced from property within the BSR CCN for treatment and ultimate use as potable drinking water by SAWS (referred to herein as the "Groundwater"). All wells and facilities used for the production of this Groundwater shall comply with all applicable federal, state and local standards for potable or drinking water supply wells.

Section 5.02 Rate for Groundwater. In return for the right to produce and purchase the Groundwater from within the BSR CCN and the other rights received by SAWS hereunder

during the term of this Agreement, SAWS shall pay BSR an initial payment of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) being due and payable on or before the sixtieth (60th) day following the execution of this agreement by SAWS (the "Initial Payment"), and shall pay subsequent annual payments of ONE HUNDRED THOUSAND AND No/100 Dollars (\$100,000.00) being due and payable on or before the 28th day of February of each subsequent year (the "Annual Payment"). The Initial Payment, and the Annual Payment shall be non-refundable and the annual payments shall be credited toward the payment of any Quarterly Payments, as defined herein, required to be made by SAWS, for the respective year. In the event there is a balance of the Annual Payment that is not applied toward the Quarterly Payments payable in the same year, the amount of the Annual Payment not used as a credit against the Quarterly Payments shall be maintained by BSR and shall not be carried forward to the next year, or in any other way diminish the requirement of SAWS to make any subsequent Annual Payments. In return for the said Annual Payment, BSR agrees to provide SAWS with the right to produce up to 1,500 acre feet of Groundwater per year from the Trinity Aquifer Formation within the existing boundaries of the BSR CCN at rate of ONE HUNDRED FIFTY and no/100 (\$150.00) per acre foot. SAWS shall be required to pay a rate of TWO HUNDRED AND no/100 (\$200) per acre foot for any water in excess of 1500 acre feet received from within the boundaries of the BSR CCN by SAWS during any calendar year. The rate paid by SAWS for an acre foot of water sold to or received by SAWS from within the applicable boundaries of the BSR CCN pursuant to this agreement (\$150.00 per acre foot or \$200.00 per acre foot, as applicable) will be hereafter referred to as the "Base Rate".

Section 5.03 Calculation of Payments for Water Received. The amount to be paid by SAWS to BSR for the production or purchase of Groundwater pursuant to this agreement shall

be based on the number of acre feet of water produced from the well(s) on the property located within the applicable BSR CCN, as metered at the point of delivery. For the purpose of this section, the Point of Delivery shall mean the point at which the water pipeline transporting the Groundwater produced from said wells leaves the applicable boundaries of the BSR CCN through the installed flow meter(s). SAWS, at it's cost, shall install and maintain a tamper resistant flow meter(s) at the Point(s) of Delivery for the purpose of measuring the total number of gallons of water produced or received by SAWS pursuant to this agreement. Payment for water produced or received by SAWS shall be due and payable on a quarterly basis. SAWS shall report the meter readings to BSR on the last day of each quarter in each calender year in a quarterly report due with any applicable quarterly payments. SAWS shall be responsible for payment to BSR of a sum equal to the applicable Base Rate, times the number of acre feet of Groundwater received by SAWS at the Delivery Point during the applicable quarter (the "Quarterly Payment"). The Quarterly Payment, less the applicable credit for the annual payment pursuant to Section 5.02, shall be payable to BSR within thirty days following the last day of the applicable quarter in which Groundwater is received. Quarterly Payments shall be delivered by SAWS to BSR using the United States Postal Service (first class mail) or by hand delivery on or before the date they are due to the following address:

BSR Water Company
C/o Sneckner Partners, LTD
12255 West Avenue, Suite 5
San Antonio, Texas 78216

BSR shall be entitled to charge SAWS interest at a rate of 10 percent per annum for any Quarterly Payments that are not received by BSR by the 30th day following the last day of the respective quarter in which Groundwater was received.

Section 5.04 Adjustments in Base Rate. The Base Rate, as defined herein, for Groundwater received by SAWS pursuant to this Agreement, shall be reviewed and adjusted on an annual basis during the term of this Agreement. Within ninety (90) days from the date of execution of this Agreement, SAWS shall provide BSR with the average price paid by the Regional Water Resources Development Group (hereafter "Development Group") for the lease and for the purchase of water rights during the twelve (12) months preceding the execution of this Agreement. The average price paid by the Development Group for the purchase of ^{EDWARDS} water rights during the preceding twelve (12) month period shall be referred to as the "Initial Purchase Rate", and the average rate paid for the lease of water during the preceding twelve (12) month period by the Development Group shall be hereafter referred to as the "Initial Lease Rate". On an annual basis during the term of this Agreement, SAWS shall provide BSR with an accurate and sworn statement indicating the average rate paid for the purchase of ^{EDWARDS} water rights, and the average rate paid for the lease of water rights, (on an acre-foot basis) by the Development Group, or any member thereof, acting on behalf of the Development Group, during the preceding twelve (12) month period. The average amount paid for the purchase of ^{EDWARDS} water rights during the preceding twelve (12) month period shall be hereafter referred to as the "Purchase Comparison Rate", and the average price paid during the preceding twelve (12) month period for the lease of ^{EDWARDS} water rights shall be hereafter referred to as the "Lease Comparison Rate". The Base Rate shall be adjusted effective as of January 1st of each year during the term of this Agreement by a percentage equal to the greater of:

- (a) the percentage difference between the Initial Purchase Rate and the Purchase Comparison Rate for the respective year; or

(b) the percentage difference between the Initial Lease Rate and the Lease Comparison Rate for the respective year; or

(c) the percentage increase in the Producer Price Index ("PPI") from the 1999 base, as published in the applicable year; or

~~(d) the percentage increase in the Consumer Price Index (CPI-U, U.S. City Average, all items, index base period 1999) from the 1999 base, as published in the applicable year.~~

For the purpose of clarification and by way of example, in the event the Initial Purchase Rate for water during the twelve (12) month period prior to the execution of this Agreement was \$700.00 per acre-foot, and the average rate paid for the purchase of an acre-foot of water during the twelve (12) month period preceding the date of annual adjustment, or the comparison purchase price, was ~~\$1,000.00~~ ^{\$910.00}, then the Base Rate would be increased by thirty percent (30%), reflecting the percentage difference between the Initial Purchase Rate and the Comparison Purchase Rate pursuant to this section. This example assumes that the percentage difference between the Initial Purchase Rate and the Purchase Comparison Rate was a higher percentage than the difference between the Initial Lease Rate and the Lease Comparison Rate, the PPI, and the CPI-U, as defined above. Unless the alternative pricing option is exercised by BSR during the term of this Agreement as provided for below, the term "Base Rate" as utilized anywhere in this Agreement in a given year, shall mean the Base Rate as identified in Section 5.03 above, as increased by each of the cumulative Annual Adjustments authorized by this section. Each Annual Adjustment shall be cumulative of all previous adjustments in the said Base Rate.

Section 5.05 Alternative Pricing Option. SAWS reserves the right to terminate this Agreement if the Alternative Pricing Option is elected by BSR for Groundwater produced and sold to SAWS from wells constructed by SAWS within the existing BSR CCN within ~~five (5)~~ ^{SEVEN (7)} years.

years from the execution of this Agreement. BSR may elect, at BSR's sole discretion, at any time during the term of this Agreement to provide Groundwater to SAWS under an Alternative Pricing Option as described in this section, by providing SAWS with written notification of their election. The Alternative Pricing Option would become effective ninety (90) days after the receipt by SAWS of written notification from BSR of its election to exercise its option to implement the Alternative Pricing Option for the sale of Groundwater. Within thirty (30) days from delivery to SAWS of the written notice that BSR has exercised its option to implement the Alternative Pricing Option, SAWS must provide BSR with the dollar amount required to reimburse SAWS for any unamortized cost that SAWS has expended for the drilling of any wells within the BSR CCN and the construction of any water supply pipelines or other related infrastructure within the limits of the BSR CCN pursuant to this Agreement. BSR shall be required to pay such unamortized costs to SAWS on or before the sixtieth (60th) day from the date of delivery of written notice of election to implement the Alternative Pricing Option. Subsequent to implementation of the Alternative Pricing Option, notwithstanding any other provisions of this Agreement to the contrary, the Base Rate shall be changed from the ordinary amount to a new Base Rate of \$300 per acre-foot, subject to annual adjustment. The implementation of the Alternative Pricing Option by BSR, if implemented, shall in no way modify the review and adjustment of Base Rate on an annual basis as required by Section 5.04 of this Agreement. In the event the Alternative Pricing Option is implemented and elected by BSR, BSR or its agents shall be responsible for the construction and maintenance of any and all wells, pipelines, and infrastructure, located on the production side of the delivery point(s) within the BSR CCN from the effective date of the implementation of the Alternative Pricing Option until the date of termination of this Agreement.

Section 5.06 Well Construction. Within one hundred eighty (180) days from the execution of this Agreement, SAWS shall drill, complete, and construct test well(s) according to the minimum specifications on Exhibit "C", perform a flow test on said test well, and provided adequate flow exists, convert the said test well into a production well. In the event the initial test well fails to provide adequate flow results when tested, SAWS shall be required to drill and complete a second test well at a location within the BSR CCN that is mutually acceptable to BSR and SAWS. SAWS shall, likewise, be required to conduct a flow test on such second test well, if required, and convert said second test well to a production well contingent upon adequate flow indicating that the well field contemplated by this agreement ^{(UP TO EIGHT (8) wells)} ~~(eight (8) or more wells)~~ will maintain ~~total~~ sustainable production of 1500 acre feet per year. SAWS shall use its best efforts to drill and construct said test wells in a manner to optimize production, including but not limited to the completion of the said wells into the Lower Trinity and Cow Creek Aquifer and the use of acid to enhance production. 9/15/11
R/S

If the required test well(s) demonstrate the ability to produce adequate quantities, as described above, of Groundwater on a sustainable basis, SAWS shall drill, construct, and produce Groundwater from at least three (3) production wells located within the BSR CCN pursuant to this Agreement within twelve (12) months from the date the first successful test well is completed. SAWS shall supply BSR with copies of specifications and bids for all wells constructed under this Agreement in a timely manner.

Section 5.07 Infrastructure Construction and Maintenance. SAWS shall construct, at its sole cost, any and all pipelines that are necessary for delivery of water under this Agreement constructed pursuant to this Agreement within or upon the property dedicated through an

easement or conveyance by BSR to SAWS within a reasonable time (not to exceed ninety (90) days) after the supply wells are operational.

Section 5.08 Operation and Maintenance of Wells. SAWS agrees to operate and maintain all wells, pipelines, and facilities necessary for delivery of water under this Agreement located within the BSR CCN pursuant to this Agreement. BSR shall have the right to receive water from any segment of the pipeline(s) or from the wells constructed by SAWS provided that the water is used within the boundary of the BSR CCN, and the point of receipt of such water is on the production side of the Delivery Point (as defined). BSR shall be required to pay SAWS a fee for each acre-foot of water received by BSR under that section that is equal to one hundred fifty percent (150%) of the average cost for electricity paid by SAWS to produce an acre-foot of water from the wells operated by SAWS within the BSR CCN pursuant to this Agreement. SAWS shall have priority to the first 1300 acre feet produced annually during the term of this Agreement.

ARTICLE VI. REMEDIES IN EVENT OF BREACH

Section 6.01 Remedies. If either party fails to consummate the obligations or recognize the rights of the other party contemplated herein for any reason, the Party harmed by such default may, in addition to any other rights that it may have, either: (i) enforce specific performance of this Agreement through a court, if required for enforcement purposes, or (ii) take any other legal action necessary for the recovery of damages, if applicable, or for any other legal or equitable relief. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained shall not be deemed to be a waiver of any

other condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 6.02 Attorney's Fees. Should any party employ an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment agrees to pay the other party or parties all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred in connection therewith.

SECTION VII. MISCELLANEOUS

Section 7.01 Survival of Representations and Warranties. The representations and warranties contained herein or in any instrument or document delivered or to be delivered pursuant to this Agreement, shall survive the Closing regardless of any investigation made by or on behalf of any party hereto.

Section 7.02 Further Assurances. 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.

Section 7.03 Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon receipt thereof if delivered personally or transmitted by telex or facsimile transmission or sent by certified or registered mail, return receipt requested, postage prepaid, to the Parties hereto

at the following addresses or to such other address as any party hereto shall hereafter specify by notice to the other party hereto:

IF TO BSR TO:

BSR Water Company
c/o Sneckner Partners, Ltd.
12255 West Avenue, Suite 5
San Antonio, Texas 78216

IF TO SAWS TO:

San Antonio Water System
1001 E. Market Street
San Antonio, Texas 78205
Attention: Michael F. Thuss P.E.
President and Chief Executive Officer

Section 7.04 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, understandings, and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof.

Section 7.05 Binding Effect - Benefits. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.

Section 7.06 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

Section 7.07 Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

Section 7.08 Execution in Counterparts. This Agreement may be executed in any number of counterparts; each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 7.09 Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas.

Section 7.10 Expenses. Each party hereto shall pay its own cost and expenses (including attorneys' fees) incidental to the negotiation, preparation and consummation of this Agreement.

Section 7.11 Exhibit. The Exhibit annexed hereto is made a part of this Agreement as if set forth in full herein.

Section 7.12 Severability. If any term or provision of this Agreement is hereinafter held to be invalid or unenforceable for any reason, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent not prohibited by law.

Section 7.13 Force Majeure. If, after a good faith effort, either party should be prevented from complying with any express or implied covenant of this Agreement or from producing any marketable water pursuant to Article VI. herein, by reason of scarcity of water or inability to obtain or to use equipment or material, or by operation of force majeure, including war, rebellion, riots, strikes, acts of God, or any other valid Federal or State rule or regulation, then while so prevented, that party's obligation to comply with such covenant shall be suspended, and that party shall not be liable for damages for failure to comply with therewith. Additionally, the effective period in Agreement shall be extended so long as that party is prevented from complying with any such affected covenant, by any such cause; and the time

while that party is so prevented shall not be counted against that party, anything in this Agreement to the contrary notwithstanding.

Section 7.14 Extension of Term of Agreement. This Agreement may be extended for up to three (3) additional consecutive terms of five (5) years each, unless SAWS informs BSR of the desire not to automatically extend in writing at least six (6) months prior to the expiration of this Agreement, or of a consecutive five (5) year extension thereof.

Section 7.15 Termination. In the event unfavorable conditions develop that are directly related to the provision of Groundwater from BSR to SAWS pursuant to this Agreement, and such unfavorable conditions are outside of the reasonable control of SAWS, SAWS may terminate those portions of this Agreement obligating SAWS to produce and SAWS to purchase Groundwater provided that the requirements of this section are fully complied with and SAWS provides BSR with six (6) months advanced notice of such termination. In the event SAWS elects to terminate the provisions of this Agreement pertaining to the sale by BSR and purchase by SAWS of Groundwater, SAWS shall provide written notice of intent to terminate to BSR by certified mail, return receipt requested, six (6) months prior to the proposed date of termination. The written notice must indicate clearly that SAWS intends to terminate the provision of water by BSR to SAWS pursuant to this Agreement and, specifically, pursuant to the terms of this section, and shall with specificity indicate each reason that SAWS is making the basis for the termination that represent unfavorable conditions beyond SAWS' reasonable control. Upon receipt of the said notice for termination, BSR shall, at SAWS' expense, have an appraisal performed of the: (i) amortized value of all wells and related equipment and infrastructure installed by SAWS within the BSR CCN as a result of this Agreement; and (ii) of the value of the remaining unexpired term of this Agreement to BSR given ordinary market conditions and

considering all conditions then existing affecting production of groundwater. The difference between the remaining amortized value of the improvements owned and installed by SAWS within the BSR CCN, and the sum of the remaining value to BSR of the unexpired term of this Agreement as of the date of notice of termination shall equal the amount required to be paid by SAWS to BSR in order to effectuate termination of the provisions of this Agreement pertaining to the sale by BSR and purchase by SAWS of Groundwater (the "Termination Cost"). The obligation of SAWS to purchase Groundwater from BSR, and of BSR to provide Groundwater to SAWS, shall effectively terminate upon receipt by BSR of the uncontested Termination Cost of this Agreement as described above. In the event the value to be paid by SAWS to BSR in order to terminate the applicable sections of this Agreement is contested by BSR, the Termination Cost shall be determined by an unbiased panel of appraisers. In the event arbitration is necessary, both SAWS and BSR shall have the right to choose one appraiser and the two (2) appraisers shall agree on the third to form the panel for preparing the appraisal. The final appraisal of the panel establishing the Termination Payment according to the formula provided for above shall be final and binding on both parties. The right to terminate under this section may not be exercised before the expiration of two (2) years from the effective date of this Agreement or any subsequent extension or renewal hereof.

Section 7.16 Assignment. This Agreement shall be binding on the parties hereto and their respective heirs, representatives and successors. Neither party may assign its interest in this Agreement without the written consent of the other party, which consent may not be unreasonably withheld or delayed. As a condition to its consent, either party may require the other party's assignee to assume in writing all of the assignor's obligations under this

Agreement. Except as otherwise provided herein, any attempted transfer or assignment without the written consent of the other party shall be void and confer no rights upon any third parties.

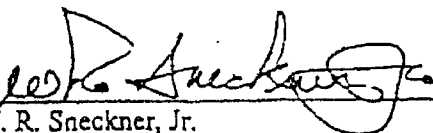
SECTION VIII. INSPECTION AND OPTION PERIOD

Section 8.01 Inspection and Option Period. Any provision above to the contrary notwithstanding, in return for the payment by SAWS to BSR of an option payment in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) to be paid within ten (10) days after the execution of this Agreement, the "Option Payment", BSR agrees that SAWS shall have 180 days from February ¹⁵~~7~~, 2000 to drill the test wells and conduct the flow tests required by Section 5.06 of this Agreement. If during the said 180 day period none of the test wells required to be drilled and tested hereunder provide "adequate flow" as required by Section 5.06 above, then this Agreement shall terminate provided that before the expiration of the option period SAWS informs BSR in writing that none of the said test wells were capable of producing adequate flows pursuant to Section 5.06 of the Agreement. In the event this Agreement is terminated during the option period, then the Option Payment shall be considered by the parties to be the Initial Payment made in satisfaction of Section 5.02 of this Agreement, but will not be credited to the purchase of Groundwater. In the event this Agreement is terminated during the Option Period, all wells and infrastructure installed by or on behalf of SAWS shall be considered the property of BSR as additional consideration for the granting of the said Option Period to SAWS. If this Agreement is not terminated pursuant to this section, the Agreement will be considered in full force and in effect as provided for in Section 1.01 through 7.16, above.

The effective Date of this Agreement shall be the ^{15th}~~7th~~ day of February, 2000.

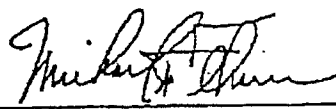
Executed in multiple original counterparts as of the date and year written below the
respective signatures of the Parties.

BSR WATER COMPANY

By: 
W. R. Sneckner, Jr.
Title: President

Date: 2-8-2000

SAN ANTONIO WATER SYSTEM

By: 
MICHAEL F. THUSS, P.E.
Title: President and Chief Executive Officer

Date: _____

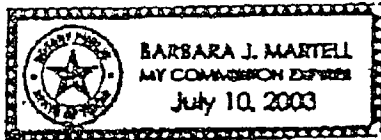
ACKNOWLEDGMENTS

STATE OF TEXAS §

COUNTY OF BEXAR §

BEFORE ME, The undersigned a Notary Public, on this day personally appeared W. R. SNECKNER, JR., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said person W. R. SNECKNER, JR., and that he has executed the same as President of the BSR WATER COMPANY, for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 8th day of February, 2000.



Barbara Martell
Notary Public - State of Texas

STATE OF TEXAS §

COUNTY OF BEXAR §

BEFORE ME, the undersigned a Notary Public, on this day personally appeared MICHAEL F. THUSS, P.E., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said person MICHAEL F. THUSS, P.E., and that he has executed the same as President and Chief Executive Officer of the San Antonio Water System, for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2000.

Notary Public - State of Texas

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EXHIBIT

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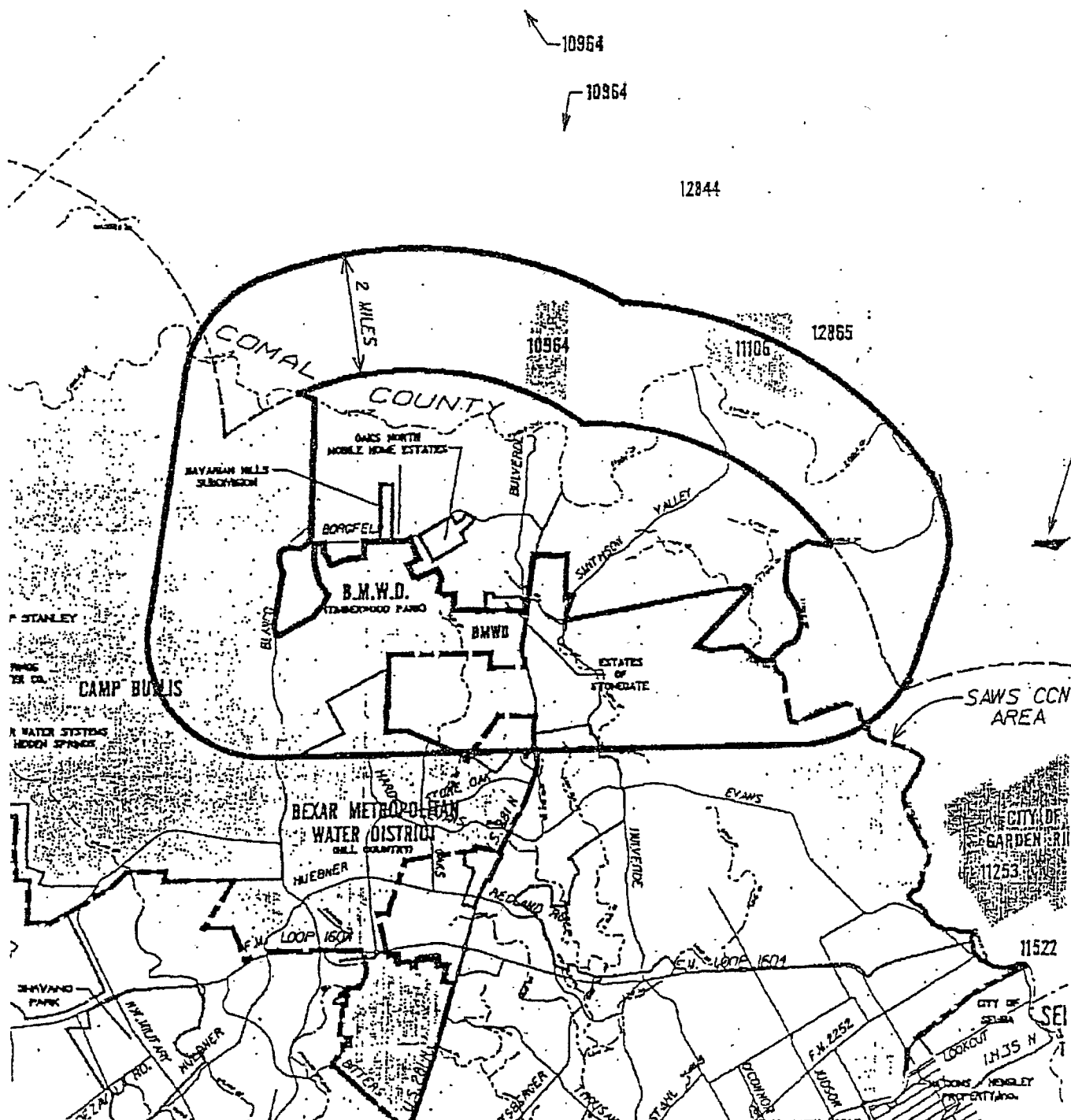


EXHIBIT "C"

MINIMUM SPECIFICATIONS FOR TEST WELLS

Each test well shall have a casing of at least twelve inches (12") in diameter and a liner of no less than eight inches (8"). The wells shall be drilled to a depth of at least 900 feet (900'). If the well(s) do not appear to have adequate flow, at the time of drilling the maximum allowable quantity of acid will be utilized to maximize the production of water from the wells. Flow tests shall be conducted using the most efficient pump apparatus capable of being placed in or on top of the well structure, and having a minimum strength of at least 25 hp or other greater strength as may be required to meet flow requirements.

SAWS and/or its agent shall use their best efforts to cause all water produced during the flow test of the test well(s) to be conserved, and not to be wasted, by causing said water to be flowed or diverted into the existing stock tanks located within the existing boundaries of the BSR CCN. BSR represents that it has obtained, and SAWS hereby is given the right to enter onto the property located within the existing boundaries of the CCN for the purpose of drilling such test wells, conducting such flow tests, and taking other reasonable actions necessary for performing said activities.

BSR

FIRST AMENDMENT
TO THE WATER SUPPLY CONTRACT
AND SERVICE AREA SETTLEMENT AGREEMENT

The First Amendment to the Water Supply Contract and Service Area Settlement Agreement (the "Amendment") is made and entered into to be effective as of the 27th day of March, 2001 by and between the San Antonio Water System, an agency of the City of San Antonio, a Texas municipal corporation ("SAWS") and BSR Water Company, a Texas corporation ("BSR").

Recitals

Whereas, SAWS and BSR entered into that certain Water Supply Contract and Service Area Settlement Agreement, dated February 15, 2000 (the "Agreement") for the purchase of water by SAWS from BSR and the settlement of certain service area issues between SAWS and BSR; and

Whereas, SAWS and BSR now desire to amend the Agreement to allow SAWS additional time to drill and construct the required wells and to modify the Agreement as set forth below.

Agreement

NOW, THEREFORE, for and in consideration of the Agreement of BSR to extend the time for construction of wells, SAWS and BSR agree to the following amendments to the Agreement:

1. All capitalized terms used in this Amendment, to the extent not otherwise expressly defined herein, shall have the same meanings ascribed to such terms in the Agreement.
2. Section 5.07 of the Agreement is hereby amended and restated in its entirety as follows:
 - a. SAWS shall construct, at its sole cost, any and all pipelines that are necessary for delivery of water under this Agreement within or upon the property dedicated through easement or conveyance by BSR to SAWS within a reasonable time (not to exceed ninety (90) days) after the supply wells are operational.
 - b. SAWS, at its sole expense, shall extend a water line to the new residence being built within the BSR CCN. This water line will provide water to the new residence but the water will not be chlorinated. Chlorination is solely at the option and expense of BSR. Water will also be supplied to the two stock tanks located on

the property as shown in Exhibit "D", attached hereto and incorporated herein for all purposes. SAWS will determine the most economic method and line sizing to provide these services at adequate pressure and flows for the intended purposes and will install flow meters to determine the amount of water that is used for these purposes. Water flow meters shall be installed at the deviation point from any SAWS well installation or SAWS installed distribution line. BSR may install additional services and meters on the service line provided they are on the outlet side of the flow meter to be installed by SAWS. BSR explicitly understand and agrees that such provision of service to the residence does not infringe upon the "rights and privileges" of the BSR CCN. Additionally, BSR will pay SAWS for the water received by BSR for the new residence and two (2) stock tanks through the SAWS flow meters pursuant to the terms of Section 5.08 of the Agreement. BSR shall not pay SAWS for water received by BSR from the existing well(s) described in Subsection C below.

- c. On a temporary basis, until the water supply line to the new residence required in Subsection B, above can be constructed, SAWS will install a 2" diameter water line from the existing well(s) to the new residence on the BSR property. SAWS will verify that sufficient water production is available to supply both residences within the BSR CCN. SAWS, at its cost, will perform the actions required to provide temporary water to the residences. These temporary improvements will be used and maintained by SAWS until the facilities in Subsection B above are completed, after which the temporary improvements will be left in place and become the property and responsibility of BSR.
3. Section 5.06 of the Agreement is hereby amended and restated in its entirety as follows:
 - a. SAWS shall apply to the Texas Natural Resource Conservation Commission (the "TNRCC") for a permit to drill the additional wells, as public drinking water supply wells, within sixty (60) days from the execution of this Agreement, however, SAWS will make all reasonable efforts to apply for such permits within thirty (30) days. SAWS shall have the additional wells under construction on or before August 24, 2001. SAWS shall drill, complete and construct test well(s) according to the minimum specifications on Exhibit "C", perform a flow test on the test well, and provided adequate flow exists, convert the test well into a production well. In the event the initial test well fails to provide adequate flow results when tested, SAWS shall be required to drill and complete a second test well at a location within the BSR CCN that is mutually acceptable to BSR

and SAWS. SAWS shall, likewise, be required to conduct a flow test on the second test well, if required, and convert the second test well to a production well contingent upon adequate flow indicating that the test well field contemplated by the Agreement (up to eight (8) wells) will maintain sustainable production of 1500 acre feet per year. SAWS shall use its best efforts to drill and construct the test wells in a manner to optimize production including, but not limited to, the completion of these wells into the Lower Trinity and Cow Creek Aquifers and the use of acid to enhance production.

- b. If the required test well(s) demonstrate the ability to produce adequate quantities, as described above, of Groundwater on a sustainable basis, SAWS shall drill, construct, and produce Groundwater from at least three (3) production wells located within the BSR CCN pursuant to this Agreement within twelve (12) months from the date the first successful test well is completed. SAWS shall supply BSR with copies of specifications and bids for all wells constructed under this Agreement in a timely manner.
 - c. In the event one or more of the water wells to be drilled on the property on behalf of SAWS do not provide adequate flow results to justify conversion into production wells, these wells shall be left in a usable condition and shall not be plugged or sealed. If BSR opts to have any such wells left open, BSR shall assume the responsibility for appropriately plugging or valving any such wells as well as any liability associated with these wells. If BSR opts to not leave the wells open, SAWS shall promptly plug the wells at SAWS expense.
 - d. SAWS shall drill the wells constructed by SAWS within the BSR CCN to at least a depth through the Cow Creek formation. SAWS shall use appropriate techniques to insure that sufficient efforts have been made to locate adequate supplies of groundwater from the Lower Glen Rose and Cow Creek Aquifers as part of the BSR well drilling project.
- 4. The Exhibit "D" which is referenced in Section 5.07b. above is attached to the Amendment since it is a new exhibit.
 - 5. Except as amended herein, the terms and conditions of the Agreement shall continue in full force and effect and are hereby ratified in their entirety.
 - 6. This amendment may be executed in one (1) or more counterparts, each of which when taken together shall constitute but one and the same Amendment. Counterparts bearing facsimile signatures shall be deemed to constitute originals.

Executed to be effective as of the date first written above.

BSR WATER COMPANY

SAN ANTONIO WATER SYSTEM

By: [Signature]

By: [Signature]

Printed Name: W.R. SNECKNER, JR.

Printed Name: Eugene E. Habigee

Date: 3-27-01

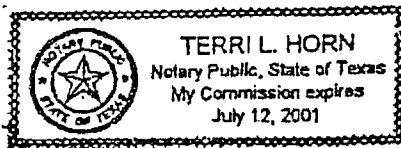
Date: May 31, 2001

STATE OF TEXAS

COUNTY OF BEXAR

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This instrument was acknowledged before me on the 27th day of March, 2001, by W.R. Sneckner, Jr., of BSR Water Company, a Texas corporation, on behalf of said corporation.



[Signature]

Notary Public, State of Texas

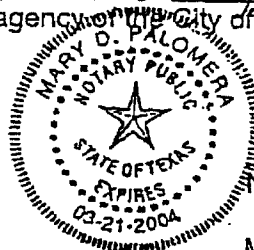
My commission expires: 7/12/01

STATE OF TEXAS

COUNTY OF BEXAR

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This instrument was acknowledged before me on the 31st day of May, 2001, by Eugene E. Habigee, of San Antonio Water System, an agency of the City of San Antonio, Texas, on behalf of said agency.



[Signature]

Notary Public, State of Texas

My commission expires: 3-21-2004

BSR

FIRST AMENDMENT
TO THE WATER SUPPLY CONTRACT
AND SERVICE AREA SETTLEMENT AGREEMENT

The First Amendment to the Water Supply Contract and Service Area Settlement Agreement (the "Amendment") is made and entered into to be effective as of the 27th day of March, 2001 by and between the San Antonio Water System, an agency of the City of San Antonio, a Texas municipal corporation ("SAWS") and BSR Water Company, a Texas corporation ("BSR").

Recitals

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Whereas, SAWS and BSR now desire to amend the Agreement to allow SAWS additional time to drill and construct the required wells and to modify the Agreement as set forth below.

Agreement

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2. Section 5.07 of the Agreement is hereby amended and restated in its entirety as follows:
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 - b. SAWS, at its sole expense, shall extend a water line to the new residence being built within the BSR CCN. This water line will provide water to the new residence but the water will not be chlorinated. Chlorination is solely at the option and expense of BSR. Water will also be supplied to the two stock tanks located on

the property as shown in Exhibit "D", attached hereto and incorporated herein for all purposes. SAWS will determine the most economic method and line sizing to provide these services at adequate pressure and flows for the intended purposes and will install flow meters to determine the amount of water that is used for these purposes. Water flow meters shall be installed at the deviation point from any SAWS well installation or SAWS installed distribution line. BSR may install additional services and meters on the service line provided they are on the outlet side of the flow meter to be installed by SAWS. BSR explicitly understand and agrees that such provision of service to the residence does not infringe upon the "rights and privileges" of the BSR CCN. Additionally, BSR will pay SAWS for the water received by BSR for the new residence and two (2) stock tanks through the SAWS flow meters pursuant to the terms of Section 5.08 of the Agreement. BSR shall not pay SAWS for water received by BSR from the existing well(s) described in Subsection C below.

- c. On a temporary basis, until the water supply line to the new residence required in Subsection B, above can be constructed, SAWS will install a 2" diameter water line from the existing well(s) to the new residence on the BSR property. SAWS will verify that sufficient water production is available to supply both residences within the BSR CCN. SAWS, at its cost, will perform the actions required to provide temporary water to the residences. These temporary improvements will be used and maintained by SAWS until the facilities in Subsection B above are completed, after which the temporary improvements will be left in place and become the property and responsibility of BSR.

3. Section 5.06 of the Agreement is hereby amended and restated in its entirety as follows:

- a. SAWS shall apply to the Texas Natural Resource Conservation Commission (the "TNRCC") for a permit to drill the additional wells, as public drinking water supply wells, within sixty (60) days from the execution of this Agreement, however, SAWS will make all reasonable efforts to apply for such permits within thirty (30) days. SAWS shall have the additional wells under construction on or before August 24, 2001. SAWS shall drill, complete and construct test well(s) according to the minimum specifications on Exhibit "C", perform a flow test on the test well, and provided adequate flow exists, convert the test well into a production well. In the event the initial test well fails to provide adequate flow results when tested, SAWS shall be required to drill and complete a second test well at a location within the BSR CCN that is mutually acceptable to BSR