



Control Number: 43572



Item Number: 13

Addendum StartPage: 0

FREEMAN & CORBETT, LLP

PHONE (512) 451-6689

8500 Bluffstone Cove, Suite B-104
Austin, Texas 78759

FAX (512) 453-0865

FAX COVER SHEET

From: Ronald J. Freeman
Client/Matter: Application of Bexar Metropolitan Water District to Amend Water CCR
 No. 10675 in Bexar County, TCEQ Docket No. 2003-0664-UCR, SOAH
 Docket No. 582-03-3725
Date: August 31, 2005 (5:41pm)

To: FAX NUMBER TRANSMITTED TO:

Cassandra J. Church, SOAH	(512) 936-0730
Todd Burkey & Todd Galiga, TCEQ	(512) 239-3434
Blas Coy, Jr, Office of Public Interest Counsel, TCEQ	(512) 239-6377
Louis T. Rosenberg & Robert Wilson III	(210) 225-5450
Adolfo Ruiz, Bexar Metropolitan Water District	(210) 922-5152
David L. Earl	(210) 222-9100
Janessa Glenn	(512) 404-3520
Seagal V. Wheatly	(210) 246-5999
Mark H. Zeppa	(512) 346-6847
Bruce Wasinger	(512) 320-5638
Jim Mathews	(512) 703-2785

DOCUMENTS	NUMBER OF PAGES*
1	22

COMMENTS:

Originals will follow by mail.

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.

* INCLUDING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT 512 451-6689.

PHONE (512) 451-6689

FREEMAN & CORBETT, LLP
8500 Bluffstone Cove, Suite B-104
Austin, Texas 78759

FAX (512) 453-0865

August 31, 2005

Via Facsimile & U.S. Mail

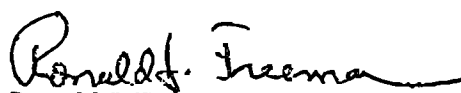
Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, Mail Code 105
Austin, Texas 78711-3087

RE: Application of Bexar Metropolitan Water District to Amend Water CCN No. 10675 in Bexar County, TCEQ Docket No. 2003-0664-UCR, SOAH Docket No. 582-03-3725

Dear Ms. Castañuela:

Enclosed for filing in the above referenced cause please find the Bitterblue, Inc., et al's Motion to Intervene and For Dismissal by Summary Disposition. Because this motion is being served on you by fax, the original will be forwarded to you by mail as required by TCEQ's rules. We will request that the Administrative Law Judge consider this Motion tomorrow at 1:30 p.m. since it involves the same issues as the Motion for Intervention filed by San Antonio Water System which will be heard at that time.

Very truly yours,


Ronald J. Freeman

RJF/gmm

CC: Gene Powell
Service List

Ronald J. Freeman
rfreeman@freemanandcorbett.com

Anthony S. Corbett
tcorbett@freemanandcorbett.com

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

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

Motion to Intervene and For Dismissal by Summary Disposition

Comes now, Bitterblue, Inc. ("Bitterblue") acting on behalf of itself and on behalf of the entities listed on **Exhibit A** hereto (the "Limited Partnerships") (collectively, Bitterblue, Inc., and the Limited Partnerships are hereafter referred to collectively as the "Movants") and files this its Motion to Intervene and for Dismissal by Summary Disposition in the referenced Docket involving an application (the "Application") for a certificate of convenience and necessity filed by Bexar Metropolitan Water District ("BMWD"), and would respectfully show as follows:

I.

Justiciable Interest

Bitterblue is the General Partner of the Limited Partnerships. Each of the Limited Partnerships owns, or has a contract to purchase or manage, properties within the area requested by BMWD in the referenced Docket (the "Proposed Service Area"). Attached as **Exhibit A** to this Motion is a list of the properties in which the Limited Partnerships either have an ownership interest or a contract to acquire an ownership interest within the Proposed Service Area (the "Properties"). Attached as **Exhibit B** is a map showing the general location of the Properties.¹ The Properties total approximately 1,239 acres. Movants intend to develop the Properties for residential, commercial and other uses. Because they own, or have a contract to acquire an ownership interest in, the Properties which are within the Proposed Service Area, the Movants are directly affected by the application filed by BMWD in the referenced Docket and have a justiciable interest in the Application under TCEQ rules.

II.

Motion to Intervene

TCEQ Rules provide that a party with a justiciable interest in a proceeding may seek to intervene in a proceeding after parties have been named if the party shows that good cause and

¹ A larger version of Exhibit B will be brought to the hearing.

extenuating circumstances exist and that granting the intervention will not unreasonably delay the hearing process. The Movants would show that good cause and extenuating circumstances exist for the reasons stated by San Antonio Water System in its Motion to Intervene and Remand/Abate, which motion is hereby incorporated by reference herein for all intents and purposes. The Movants would further show as follows:

Bitterblue is the General Partner not only for the Limited Partnerships, but also for other landowners/limited partnerships which have developed other property within existing service area of BMWD in the vicinity of the Properties. In connection with such other properties, Bitterblue has dealt extensively with BMWD who is obligated to provide retail water service to the other properties. Over the past six years, Bitterblue has worked extensively with BMWD to develop an area of approximately 400 acres known as "Oliver Ranch" (and also known locally as Lookout Canyon) which is in the vicinity of the Properties. In connection with the Oliver Ranch development, BMWD represented to Bitterblue (and to Bitterblue's associate, Denton Development) that BMWD would extend water infrastructure to Oliver Ranch in a timely fashion to meet Bitterblue's development needs if Bitterblue would prepay approximately \$816,000 for the cost of the infrastructure. Accordingly, as described in the attached Affidavit of Wm. Eugene Powell, Chief Executive Officer of Bitterblue (**Exhibit C** attached hereto), Bitterblue paid that amount to BMWD based on BMWD's representation that BMWD would construct specific water infrastructure to serve the other property. In addition, Bitter agreed to have the landowners or developers of these Oliver Ranch pay to BMWD impact fees at the time of the filing of final development plats for certain of the properties in reliance on BMWD's commitment to timely furnish adequate retail water supply for the connections being developed on Oliver Ranch. Contrary to its representations, however, BMWD failed to timely provide adequate retail water service for the development of the other properties. See **Exhibit C**. In fact, despite the fact that Bitterblue had already paid \$816,000 to BMWD and had repeatedly tendered the well and storage tank sites to BMWD and the developers in Oliver Ranch and the developers had paid a substantial amount of additional impact fees to BMWD, on August 2, 2005, BMWD's General Counsel sent a "demand" letter to Bitterblue demanding that Bitterblue pay an additional \$635,732.41 to BMWD for water service to Oliver Ranch. Bitterblue does not owe any additional amounts to BMWD, however. In addition, as further described in **Exhibit C**, retail water service to Oliver Ranch was not provided in a timely fashion and Bitterblue is concerned that BMWD does not have sufficient resources or managerial or operational capability to provide water service to any additional properties, including the Properties. Because Bitterblue has only recently become aware of BMWD's woeful inadequacy of meeting its service obligations, Bitterblue has only now had reason to protest BMWD's Application. Some of these reasons are more fully explained in the attached Affidavit of Wm. Eugene Powell, attached as **Exhibit C**.

III.

Facts Supporting Motion for Dismissal by Summary Disposition

In addition, Bitterblue has only now become aware, as a result of the SAWS Motion to Intervene and Abate/Remand, that BMWD's statutory authority has been limited by the Texas Legislature such that BMWD only has the statutory authority to provide retail water service

within BMWD's boundaries. The Properties proposed to be included within BMWD's CCN and served by BMWD pursuant to the pending Application are not, and can never be, within BMWD's boundaries and, therefore, cannot legally be served by BMWD. The legislative enactment creating and governing BMWD and granting it the power to provide retail water service simply does not authorize BMWD to provide retail water service to the Properties. See Sec. 3 and 5A, as amended, of BMWD's statutory enabling legislation attached as **Exhibit D**. These Sections specifically provide that BMWD may distribute water "within the District" (Sec. 3 (a)) and that BMWD's boundaries are limited to its CCN area in effect at the time of enactment of the 2003 amendment (Sec. 5A (a) and (b)).

BMWD may argue that it has authority to provide retail water service to areas outside its boundaries pursuant to Sec. 49.215, Texas Water Code. Such an argument is without merit. Chapter 49, Texas Water Code, is a general law applying to all water districts, except as otherwise provided therein. The problem with BMWD's argument that Sec. 49.215 authorizes it to provide retail water service outside of its boundaries is that Sec. 49.002 states:

(a) ...[T]his chapter applies to all general and special law districts to the extent that the provisions of this chapter do not directly conflict with a provision in any chapter of this Code or any Act creating or affecting a special law district. In the event of such a conflict, the specific provisions in such other chapter or Act shall control.

...

BMWD is a special law district. And, Sec. 3 (a) and 5A, as amended, of BMWD's enabling legislation (see **Exhibit D** attached—SB 1494, Texas Legislature, 2003, effective June 18, 2003) specifically provides that BMWD's retail water service area is limited to BMWD's CCN service area in 2003 when that legislation was passed, and BMWD's service area did not include the Properties at that time. Further, Sec. 5 (b) and (c) of SB 1494 (the 2003 amendment to BMWD's enabling legislation attached as **Exhibit D**) is of no help to BMWD. That Section provides that the 2003 amendment does not apply to a pending CCN application of BMWD at the TCEQ "that has been referred to [SOAH] before the effective date of this Act" However, again, no application for a CCN was filed by BMWD and pending at SOAH as of the effective of the 2003 amendment involving the Properties. The current Application was not referred to SOAH until June 20, 2003, two days after that deadline. Accordingly, BMWD's own enabling legislation makes it clear that BMWD's retail water service area does not include the Properties and cannot include the Properties unless they are annexed into BMWD's boundaries. That will not happen.

In order to annex the Properties into its boundaries, BMWD must rely on the owners of the Properties to file a petition requesting annexation. See Sec. 49.301, Texas Water Code. No such petition has been filed and Bitterblue does not intend to file such a petition. Therefore, the Properties will never be within BMWD's boundaries and cannot be served with retail water service by BMWD as a matter of law.

IV.

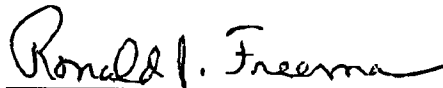
Law Supporting Motion for Summary Disposition

TCEQ Rules provide that a party may file a motion for summary disposition of an application if, based on undisputed and uncontroverted facts, dismissal of an application is warranted as a matter of law. Such is the case here as to BMWWD's Application. As shown in this Motion, it is undisputed that the Properties are not within BMWWD's boundaries and were not within any pending CCN application of BMWWD on the legislative deadline for BMWWD to have an application referred to SOAH in order to serve the area if it is outside of BMWWD's boundaries. Accordingly, based on these undisputed and uncontroverted facts, BMWWD's enabling legislation does not provide BMWWD within the statutory authority to provide water service to the Properties. Therefore, BMWWD's Application should either be dismissed, or BMWWD should be instructed to amend the Application to exclude the Properties from its Proposed Service Area.²

Wherefore, premises considered, Movants respectfully request that they be admitted as parties to this case, and that after due consideration of this Motion in accordance with the tCEQ's rules, BMWWD's application be dismissed, or, in the alternative, that BMWWD be instructed to amend the Application to exclude the Properties from its Proposed Service Area.

Respectfully submitted,

Freeman & Corbett, L.L.P.
Attorneys for Movants



By: Ronald J. Freeman
State Bar No. 0070431
8500 Bluffstone Cove, Ste. B-104
Austin, Texas 78759
Phone (512) 451-6689
Fax (512) 453-0865

² These issues are being litigated by BMWWD and the Guadalupe-Blanco River Authority in a case in Comal County District Court presently set for summary judgment consideration. An alternative would be for the ALJ to abate this case until that court case is resolved.

CERTIFICATE OF SERVICE

I hereby certify that on this the 31st day of August 2005, a true and correct copy of Movants' Motion to Intervene and for Dismissal by Summary Disposition was served on the parties of record by facsimile transmission and First Class Mail.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

Cassandra J. Church
Presiding Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, TX 78711-3025
Fax: (512) 936-0730

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Todd Burkey & Todd Galiga
Attorney
Texas Commission on Environmental Quality
MC-175
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-3434

OFFICE OF PUBLIC INTEREST COUNSEL
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Blas Coy, Jr.
Office of the Public Interest Council
Texas Commission on Environmental Quality
MC-103
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-6377

BEXAR METROPOLITAN WATER
DISTRICT

Louis T. Rosenberg
Robert Wilson III
Law Offices of Louis T. Rosenberg
De Mazieres Building
322 Martinez Street
San Antonio, TX 78205
Fax: (210) 225-5450

Adolfo Ruiz
Bexar Metropolitan Water District
2047 W. Malone
San Antonio, TX 78225
Fax: (210) 922-5152

BSR WATER COMPANY
(SNECKNER PARTNERS, LTD.)

David L. Earl
Law Offices of Earl & Brown
A Professional Corporation

River View Towers
111 Soledad Street, Suite 1111
San Antonio, TX 78205
Fax: (210) 222-9100

Janessa Glenn
Jenkins & Gilchrist
A Professional Corporation
401 Congress Avenue, Suite 2500
Austin, TX 78701-3799
Fax: (512) 404-3520

Seagal V. Wheatly
Jenkins & Gilchrist
A Professional Corporation
Weston Centre, Suite 900
112 E. Pecan Street
San Antonio, TX 78205
(210) 246-5999

WATER SERVICES, INC.

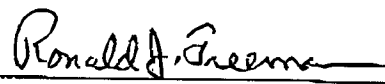
Mark H. Zeppa
Attorney
4833 Spicewood Springs Road #202
Austin, TX 78759-8436
Fax: (512) 346-6847

CITY OF BULVERDE

Bruce Wasinger
Attorney
Bickerstaff, Heath, Smiley, Pollen, Kever &
McDaniel, LLP.
816 Congress Avenue, Suite 1700
Austin, TX 78701-2443
(512) 320-5638

SAN ANTONIO WATER SYSTEM

Jim Mathews
MATHEWS & FREELAND, L.L.P.
P.O. Box 1568
Austin, Texas 78768-1568
Fax: (512) 703-2785



Ronald J. Freeman

EXHIBIT A**BORGFELD RD. & BULVERDE RD. AREA**

PROJECTED WATER DEMAND				ACRES	LIMITED PARTNERSHIP/ MANAGEMENT AGREEMENT		AUTHORIZATION LETTER FROM LANDOWNER TO BITTERBLUE
PROPERTY / PROJECT	EQUIVALENT DWELLING UNITS (EDU)	ACRE FEET	TO BE SET UP		SET UP	GENERAL PARTNER	
A. Friesenhahn Tract #1	450	225		101	Yes	Bitterblue, Inc.	
B. Friesenhahn Tract #2	413	207	Yes	150			Yes; Partnership being formed
C. Bass Residential Tracts	380	190	Yes	150			Yes; Partnership being formed
D. Bass Commercial Tracts	280	140	Yes	58			Yes; Partnership being formed
E. Kinder Tract	2,508	1,254		780	Yes	Bitterblue, Inc.	
TOTAL PROJECTED EDU DEMAND	4,031	2,016		1,239			

F:\SARAH\123data\Water\Projected Water Demand Chart #2.xls 8/31/2005 4:06 PM

EXHIBIT C

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

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

AFFIDAVIT OF WM. EUGENE POWELL

STATE OF TEXAS	§
	§
COUNTY OF BEXAR	§

Before me, the undersigned authority, on this day personally appeared Wm. Eugene Powell, known to me to be the person whose name is subscribed below, and being by me first duly sworn did depose and say as follows:

'My name is Wm. Eugene Powell. I am Chief Executive Officer of Bitterblue, Inc. ('Bitterblue'). Bitterblue is the general partner of a number of limited partnerships which develop property and manage development in San Antonio and Bexar County, Texas, including Lookout Canyon (formerly known as Oliver Ranch) Subdivision ('Lookout Canyon') as discussed below, and including the 'Properties' (as defined in the Motion to Intervene filed by Bitterblue in the referenced proceeding). I have personal knowledge of all facts stated herein, and the same are true and correct to my personal knowledge.

In 1999, Bitterblue and a related entity, Denton Development Company, Inc., were completing plans to develop the 400 acre Lookout Canyon tract in north central San Antonio. In order to obtain water for this development, Bitterblue or its affiliated entities entered into a verbal agreement with Bexar Metropolitan Water District ('Bexar Met') wherein Bexar Met would bring a trunk line from Timberwood Park east to Oliver Ranch. Bexar Met told Bitterblue and Bitterblue's representative, Laddie Denton, that Bexar Met wanted the following in order to build the line (1) \$819,861.00, (2) a fee simple well site where they could drill a well, to produce water for off-site uses, and they wanted a fee simple storage tank site where they could install a water storage tank for water produced from the well and/or other sources, including water purchased from SAWS, for off-site use. They also wanted to be able to bill all of the developers in Lookout

Canyon for impact fees. These terms were set forth in a Water Service Contract, extensively negotiated and drafted with input from Tom Moreno, the then General Manager and North O. West, Bexar Met's legal counsel, during the period from February 2000 to March 2001. After months of waiting for Bexar Met to execute the Water Service Contract as promised, and at the specific request of Bexar Met the final Contract dated March 27, 2001, was signed on behalf of Denton Development Company, Inc., and tendered with check to Bexar Met for \$819,861.00. Bexar Met accepted that check and cashed it, but never returned the Contract executed on behalf of Bexar Met as agreed. Bexar Met moved forward to build the line. The line was contracted out to Pipe Layers Construction. The job should have taken four (4) months, but because of the delay in delivery of funds and delivery of pipe by Bexar Met, the job took twelve (12) months. Bitterblue during that time repeatedly tried to obtain a written agreement from Bexar Met outlining all of the above with Bexar Met, and Bexar Met refused to respond. Some five (5) years later Bexar Met has tendered to Denton Development a bill for \$635,732.41 for unspecified additional cost on that pipeline. A copy of that letter is attached as Exhibit D to Bitterblue's Motion to Intervene in this Docket. Bitterblue objected to that bill. When confronted with this, the new counsel at Bexar Met knew nothing about the well site, nothing about the tank site, and nothing about the fact that Bexar Met was charging impact fees up front on their entire plat to builders in Lookout Canyon.

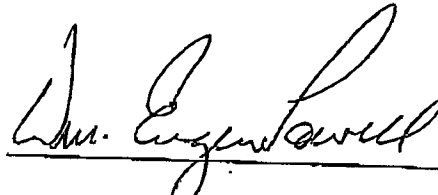
The next thing that I would point out is in the summer of 2005, Bitterblue became aware --- that Bexar Met did not have enough water in north central San Antonio in the area that they are wanting certification to serve their existing customers, and Bexar Met was thus buying \$150,000 a month in water from SAWS to service the Stone Oak area. Stone Oak is directly south of the area that Bexar Met has applied to serve.

The next issue we faced was a review of the water rates in the area of town around the CCN area being applied for by Bexar Met. A comparison of the rates showed that Bexar Met is charging its rate payers significantly more, in fact, sometimes double and sometimes almost triple, the rates charged by SAWS in the same area of town.

The next issue was in the spring and summer of 2005, Bitterblue attempted repeatedly to meet with Bexar Met to obtain a commitment of service for the approximately 4,000 residential units that Bitterblue was going to build on the Properties at issue in this matter, and could not get meetings nor could we get commitments. Finally, we did have a meeting, which was orchestrated by Robin Lloyd of Austin with Gil Olivares, the new general manager of BMWD. After that, we tried to meet again with Gil Alavirez, and Gil would not meet with us, would not return our phone calls, and would not respond to our correspondence. So at the end of summer of 2005, Bitterblue was faced with the prospect of moving forward with over \$80 million dollars in lot and infrastructure construction on land valued at over \$20,000,000 in north central San Antonio and

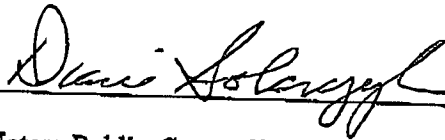
obtaining our water commitment from a utility that (1) we knew had mishandled installations for us in the past, (2) who was not responsive, at best, to our requests for service, (3) did not have enough water and was purchasing water from SAWS at the time, and (4) was charging customers in the area of the CCN an average of 1.77 time the rates charged by SAWS in the same area of town. Faced with these insurmountable hurdles Bitterblue was encouraged by our staff, our partners and our lenders to seek water service commitments from SAWS.

Further, Affiant sayeth not?"



Wm. Eugene Powell

SWORN TO AND SUBSCRIBED before me this 31st day of August, 2005.



Notary Public, State of Texas

Printed Name: _____

My Commission Expires: _____

(SEAL)

EXHIBIT D

S.B. No. 1494

AN ACT

relating to the powers of Bexar Metropolitan Water District.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (Article 8280-126, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. The District is hereby created as a governmental agency, a body politic and corporate, and a municipal corporation, vested with all the authority as such under the Constitution and laws of the State of Texas; and shall have and be empowered to exercise all the rights, privileges, functions, and powers of such governmental agency and body politic and corporate as authorized or implied by the provisions of Article 16, Section 59 of the Constitution and as have been or may be conferred by General Law upon conservation districts and as authorized or implied by the provisions of this Act, for the purpose of controlling, conserving, protecting, preserving, distributing, and utilizing the storm and flood waters of the rivers and streams situated in said District ~~[and the underground waters situated thereunder]~~ and for the purpose of regulating and controlling the disposal of sewage, wastes, and other refuse, and the collection and disposal thereof, to prevent the contamination and pollution of the public waters of the District. It shall have the power to formulate and execute any and all plans deemed essential to the accomplishment of the

S.B. No. 1494

1 purposes for which it is created and shall be recognized to have
2 such authority and power of control and regulation over the storm
3 and flood waters of its rivers and streams [~~and its underground~~
4 ~~waters~~] as may be exercised by the State of Texas, subject to the
5 provisions of the Constitution and Section 4 of this Act.

6 SECTION 2. Section 3, Chapter 306, Acts of the 49th
7 Legislature, Regular Session, 1945 (Article 8280-126, Vernon's
8 Texas Civil Statutes), is amended to read as follows:

9 Sec. 3. In addition to the powers vested by the Constitution
10 and general laws in such public agency for the greatest practicable
11 measure of the conservation, preservation, and beneficial
12 utilization of its public waters, the power to control and utilize
13 its public waters and to regulate the disposal and the disposal of
14 sewage, waste, and refuse, the District shall have the following
15 general powers:

16 (a) Through every practical and legal means to develop,
17 transport, deliver, distribute, store, and treat water for use
18 within the District, including [~~control and regulate and to~~
19 ~~coordinate the control and regulation of the waters of the~~
20 ~~watershed of the San Antonio River and tributaries in the District~~
21 ~~and~~] the storm and flood [~~and underground~~] waters within [~~of~~] the
22 District, including the power to cooperate with the United States
23 Government or any agency thereof, or any municipality, public,
24 quasi-public or private agency and to contract, negotiate, and
25 enter into agreements with any one or more of such agencies in
26 effecting such purposes;

27 (b) to store, control, and conserve storm and flood waters

S.B. No. 1494

1 of its rivers and streams and to prevent the escape of any such
2 waters without first obtaining therefrom a maximum of public
3 service; to prevent devastation of property from overflow and to
4 protect life and property from uncontrolled flood and storm waters;

5 (c) to conserve and distribute waters essential for
6 domestic and other uses by the inhabitants of the District,
7 including necessary water supply for cities and towns situated
8 within the District;

9 (d) to provide for the development of drainage systems to
10 control, regulate, and dispose of all storm and flood waters of the
11 District so as to protect effectively lives and property, and to
12 utilize such waters for each and every purpose for which flood and
13 storm waters when controlled, conserved, or regulated may be
14 utilized as contemplated by the Constitution and the public policy
15 therein declared;

16 (e) to provide by purchase, construction, lease, gift, or in
17 any other manner and to operate any and all facilities deemed by the
18 District essential for preserving the purity of all the surface and
19 underground waters of the District for the protection of the health
20 of its inhabitants, and to formulate plans to make and enforce rules
21 and regulations for the effective disposal of any and all sewage
22 wastes, refuse, or residuum, however accumulated; which otherwise
23 would contaminate, pollute, or render unsafe and insanitary the
24 surface and underground waters of the District and which might
25 threaten or impair the health of its inhabitants or which might
26 adversely affect the health of the inhabitants downstream below the
27 District;

S.B. No. 1494

1 (f) to acquire by purchase, construction, lease, gift, or in
2 any other manner (otherwise than by condemnation) and to maintain,
3 use, and operate any and all property of any kind, real, personal,
4 or mixed, or any interest therein within or without the boundaries
5 of the District deemed by its Board of Directors necessary or
6 convenient to the exercise of the powers, rights, privileges, and
7 functions conferred upon it by this Act;

8 (g) to acquire by condemnation any and all property of any
9 kind, real, personal, or mixed, or any interest therein, within or
10 outside of the boundaries of the District, necessary to the
11 exercise of the powers, rights, privileges, and functions conferred
12 by this Act, in the manner provided by General Law relative to
13 condemnation, or at the option of the District, in the manner
14 provided by law with respect to condemnation by agencies organized
15 pursuant to Section 59, Article 16 of the Constitution of the State
16 of Texas; provided that the District shall not have the right or
17 power to so condemn any such property that may be owned by any other
18 political subdivision, city, or town located within the District;

19 (h) to cooperate, contract, and enter into agreements with
20 towns, cities, districts, or political subdivisions located in or
21 outside of the District and with Bexar County, in the construction,
22 purchase, lease, maintenance, improvement, use, and operation of
23 any and all facilities, works, and plants necessary or convenient
24 to the accomplishment of the purposes for which the District was
25 created;

26 (i) to make contracts with any person, private corporation,
27 municipal corporation, political subdivision, or the Board of

S.B. No. 1494

1 Trustees thereof, operating water distribution facilities for the
2 benefit of a city or town within the District, under which the
3 District may perform services for such parties or such parties may
4 perform services for the District, or under which either may
5 operate all or any part of the facilities of the other, having due
6 regard for the duties and obligations of such parties in the
7 instrument prescribing their or its duties;

8 (j) to construct, extend, improve, maintain, and
9 reconstruct, to cause to be constructed, extended, improved,
10 maintained, or reconstructed and to use and operate any and all
11 facilities of any kind necessary or convenient to the exercise of
12 the powers, rights, privileges, and functions conferred by this
13 Act;

14 (k) to sue and be sued in its corporate name;

15 (l) to make by-laws for the management and regulation of its
16 affairs conformably to the powers and purposes herein conferred and
17 consistent with the Constitution of this State;

18 (m) to make rules and regulations and to prescribe penalties
19 for the breach of any rule or regulation of the District, which
20 penalties shall not exceed fines of more than Two Hundred Dollars
21 (\$200), or imprisonment for more than thirty (30) days, or may
22 provide both such fine and such imprisonment. The penalties hereby
23 authorized shall be in addition to any other penalties provided by
24 the laws of Texas and may be enforced by complaints filed in the
25 appropriate court of jurisdiction in the county in which the
26 district's principal office is located; provided, however, that no
27 rule or regulation which provides a penalty for the violation

SAWS Exhibit 4 Page 5

S.B. No. 1494

1 thereof shall be in effect, as to enforcement of the penalty, until
2 five days next after the district may have caused a substantive
3 statement of the particular rule or regulation and the penalty for
4 the violation thereof to be published, once a week for two
5 consecutive weeks, in one or more newspapers affording general
6 circulation in the area in which the property of the district is
7 situated; and, the substantive statement so to be published shall
8 be as condensed as is possible to afford an intelligent direction of
9 the mind to the object sought to be accomplished or the act
10 forbidden by the rule or regulation; one notice may embrace any
11 number of regulations; there must be embraced in the notice advice
12 that breach of the particular regulation, or regulations, will
13 subject the violator to the infliction of a penalty and there also
14 shall be included in the notice advice that the full text of the
15 regulation sought to be enforced is on file in the principal office
16 of the District, where the same may be read by any interested
17 person. Five (5) days after the second publication of the notice
18 hereby required, the advertised regulation shall be in effect, and
19 ignorance of any such regulation shall not constitute a defense to a
20 prosecution for the enforcement of a penalty; and, the rules and
21 regulations authorized hereby, after the required publication,
22 shall judicially be known to the courts and shall be considered of a
23 nature like unto that of valid penal ordinances of a city of the
24 State;

25 (n) to adopt, use, and alter a corporate seal;

26 (o) to appoint agents and employees; prescribe their duties
27 and fix their compensation;

S.B. No. 1494

1 (p) to make contracts and execute instruments necessary or
2 convenient to the exercise of the powers, rights, privileges, and
3 functions herein conferred;

4 (q) to borrow money for its authorized purposes, to accept
5 grants or loans or allotments from the United States Government or
6 any of its agencies, or others, and in connection with any such
7 grants, loans, or allotments to enter into such agreements as may be
8 required to make them effective, and for the purpose of obtaining
9 funds to issue its negotiable tax bonds and its negotiable revenue
10 bonds in the manner and to the extent hereinafter provided;

11 (r) to operate and maintain with consent of the governing
12 body of any city, town, or political subdivision located in the
13 District any works, plants, or facilities deemed necessary or
14 convenient to the accomplishment of the purposes for which the
15 District is created;

16 (s) to enter into planning agreements with the Texas Water
17 Development Board under Subchapter C, Chapter 16, Water Code, for
18 the purpose of conducting studies necessary to maintain retail
19 water supply services to customers within the boundaries of the
20 District; and

21 (t) to cooperate with and support local fire departments and
22 economic development activities sponsored by local entities within
23 the District that use water and water resources provided, or to be
24 provided, by the District.

25 SECTION 3. Chapter 306, Acts of the 49th Legislature,
26 Regular Session, 1945 (Article 8280-126, Vernon's Texas Civil
27 Statutes), is amended by adding Section 5A to read as follows:

SAWS Exhibit 4 Page 7

S.B. No. 1494

1 Sec. 5A. (a) The District's boundaries for purposes of the
2 exercise of its powers and duties is defined in Section 5 of this
3 Act.

4 (b) In conformity with the court's judgment dated April 22,
5 1996, in Cause No. SA96CA0335, Rios v. Bexar Metropolitan Water
6 District et al., in the United States District Court, Western
7 District of Texas, and for the purpose of the exercise of its
8 current retail water utility services, the District's boundaries
9 shall include the territory defined in all or applicable portions
10 of census tracts or property situated within any area certificated
11 by the Texas Commission on Environmental Quality to the District on
12 the date of passage of the Act adding this section pursuant to
13 Certificates of Convenience and Necessity Nos. 10675, 12759, and
14 12760.

15 SECTION 4. Sections 6, 6a, and 20, Chapter 306, Acts of the
16 49th Legislature, Regular Session, 1945 (Article 8280-126,
17 Vernon's Texas Civil Statutes), are repealed.

18 SECTION 5. (a) This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2003.

23 (b) The repeal of Sections 6, 6a, and 20, Chapter 306, Acts
24 of the 49th Legislature, Regular Session, 1945 (Article 8280-126,
25 Vernon's Texas Civil Statutes), does not affect an annexation
26 proceeding initiated before the effective date of this Act. An
27 annexation proceeding initiated before the effective date of this

SAWS Exhibit 4 Page 8

S.B. No. 1494

1 Act is governed by the law in effect immediately before the
2 effective date of this Act, and the former law is continued in
3 effect for that purpose.

4 (c) The repeal of Sections 6, 6a, and 20, Chapter 306, Acts
5 of the 49th Legislature, Regular Session, 1945 (Article 8280-126,
6 Vernon's Texas Civil Statutes), does not affect a pending
7 application for a certificate of convenience and necessity that has
8 been referred by the Texas Commission on Environmental Quality to
9 the State Office of Administrative Hearings before the effective
10 date of this Act. An application referred before the effective date
11 of this Act is governed by the law in effect immediately before the
12 effective date of this Act, and the former law is continued in
13 effect for that purpose.