



Control Number: 43572



Item Number: 26

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

15/2005/THU 03:08 PM

43572

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September 15, 2005

Via Fax 512-239-3311
Total Pages: 41

LaDonna Castañuela, Esq. (MC-105)
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

RE: SOAH Docket No. 582-03-3725; 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 Ms. Castañuela:

Enclosed please find the following document for filing in the above-referenced cause:

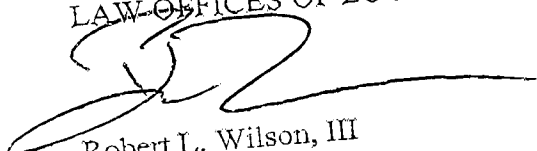
Applicant, Bexar Metropolitan Water District's Response in Opposition to Bitterblue, Inc.'s Motion to Intervene

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Copies of the above listed documents 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.

Sincerely,

LAW OFFICES OF LOUIS T. ROSENBERG, P.C.


Robert L. Wilson, III
RLW:slb

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LaDonna Castañuela, Esq.
September 15, 2005
Page 2 of 2

Enclosures: (1) **Original** and one copy of **Applicant, Bexar Metropolitan Water District's Response in Opposition to Bitterblue, Inc.'s Motion to Intervene**; and
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Cc: The Hon. Cassandra J. Church
Administrative Law Judge
SOAH

(via fax 512-475-4994)

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Bexar Metropolitan Water District

Louis T. Rosenberg, Esq.
Sonia C. Rosenberg, Office Manager

SOAH DOCKET NO. 582-03-3725
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

APPLICANT, BEXAR METROPOLITAN WATER DISTRICT's,
RESPONSE IN OPPOSITION TO BITTERBLUE, INC.'S
MOTION TO INTERVENE

COMES NOW, Bexar Metropolitan Water District ("BexarMet"), Applicant in the above-numbered and styled administrative proceeding, and files this, its Response in Opposition to the Motion to Intervene¹ filed by Bitterblue, Inc. ("Bitterblue"). In support of this Opposition, BexarMet shows as follows:

I.

**Bitterblue Lacks the Requisite Standing and Justiciable Interest
Required for Intervention/Party Status**

Bitterblue has not alleged, and cannot demonstrate that it is a city or a neighboring water system. Moreover, Bitterblue has not alleged, and cannot prove that it is a landowner, owning property in BexarMet's proposed service area.² Indeed, Bitterblue is not even an "affected person,"

¹ Although captioned as a "Motion to Intervene and For Dismissal by Summary Disposition," the Motion is essentially one for party status. Pursuant to Order No. 12 entered in this cause, only the application for party status is ripe for consideration at this time. This Motion is not intended to respond to the Motion for Dismissal, and BexarMet reserves the right to file a separate response to such Motion, if necessary. Bitterblue's Motion is referred to hereinafter as Bitterblue's "Motion to Intervene."

² As such, HB 2876 (which is not even the law governing this proceeding), offers Bitterblue no basis for standing because Section 1 of the Bill simply expands the definition of "affected person" to include a "landowner within an area for which a certificate of public convenience and necessity is filed." Because Bitterblue is not a "landowner," the effective date

now or at the time that the application to amend was filed.³ Bitterblue's best argument proffered in support of its claimed justiciable interest is that it is the "General Partner" of various limited partnerships, which purportedly own property within the proposed area. However, as more fully described herein, this assertion is simply untrue. As a result, Bitterblue wholly lacks standing to intervene in this case, and has absolutely no direct, demonstrable interest in the outcome of this proceeding. Stated differently, Bitterblue lacks the justiciable interest required by 30 TAC § 80.109(a) for intervention and party status.

A. Bitterblue Does Not Own Real Property Within the Proposed Service Area.

Bitterblue's Motion to Intervene affirmatively states that it "owns" or has "a contract to acquire an ownership interest in" property within the proposed area.⁴ However, review of the official property records and tax rolls maintained by the Bexar Appraisal District belies this assertion, and reveals that Bitterblue owns only two (2) parcels of real property in Bexar County, Texas: (i) a tract of land situated at 6210 De Zevala Road; and (ii) a tract located on Boerne Stage Road. *See Exhibit A*, attached hereto.

It is undisputed that *neither* of Bitterblue's properties are situated within the area made the subject of this proceeding. As such, Bitterblue is not a "landowner" with respect to BexarMet's application, and its allegations concerning "ownership" are false.

of the statute will offer Bitterblue no valid basis for Intervention.

³ See 30 TAC § 291.3(3).

⁴ See Bitterblue's Motion to Intervene at ¶ I on Page 1.

B. Bitterblue is "Not" the General Partner of Any Owner of Any Tract in the Proposed Area

Similarly, in the very first sentence of Paragraph I of its Motion to Intervene, Bitterblue alleges that it "is the General Partner of the Limited Partnerships" which do own the property in question.⁵ This identical claim is made in the Affidavit of William Eugene Powell attached as "Exhibit C" to Bitterblue's Motion.. However, such an assertion is also patently false.

In stark contrast to both Bitterblue's Motion to Intervene, and Mr. Powell's sworn Affidavit testimony, the official corporation records of the Texas Secretary of State reveal the following:

- i. The "Longover Partnership"⁶ is not a partnership, corporation or other agency registered with the Texas of State, and there exists no registered limited partnership operating under the name "Longover Partnership." *See Exhibit B.*
- ii. The General Partner of "Bass Properties, L.P." ⁷ is Bass Properties, Management, L.L.C. *See Exhibit C.*
- iii. The general partner of The Kinder Partnership, Ltd.,⁸ is "Kinder Management, Inc." *See Exhibit D.*

Indeed, *Bitterblue is not the General partner of any limited partnership which owns property within the proposed area.* This fact is admitted in Bitterblue's "Supplement" to its Motion to Intervene, which is completely inconsistent with the original Motion to Intervene, and with Mr. Powell's affidavit. Based upon the demonstrable untruths in the affidavit, which was made under

⁵ See Bitterblue's Motion to Intervene at ¶ I on Page 1.

⁶ Bitterblue has alleged that the "Friesenhahn Tract 1 is owned by Longover Partnership." This unidentifiable partnership has also been alleged to have a "right of first refusal" to purchase the Friesenhahn Tract 2.

⁷ Bitterblue has alleged that the "Bass Residential and Commercial Tracts" are owned by "Bass Properties, L.P."

⁸ Bitterblue has alleged that the "Kinder Tract" is owned by "The Kinder Partnership, L.P."

oath, there exist serious doubts about the Affiant's overall credibility.

A party has a justiciable interest in a proceeding only when his interests will be affected by the litigation.⁹ Only the landowning limited partnerships (if they exist at all) maintain a justiciable interest in those proceedings. In order to properly assert that justiciable interest, those landowners would be required to seek party status by and through their general partners. Bitterblue, however, is neither a landowner, nor a General Partner of any partnership owning land in the proposed area. As such, Bitterblue's Motion to Intervene fails on grounds of lack of standing and lack of justiciable interest.¹⁰

II.

Bitterblue is More Than Three Years Late in Opposing BexarMet's Application / Seeking Party Status and Inclusion Now Would Unreasonably Delay This Proceeding

Both Bitterblue *and the landowners it purports to represent* failed to file protests or requests for contested case hearings within the 30 day protest period prescribed by 30 TAC § 291.106 (a)(3). But for the timely protest of BSR, BexarMet's instant application could have been granted by the Executive Director of the TNRCC as long ago as May 2002.¹¹ Had such action occurred, Bitterblue would have no procedural vehicle within which to make the contrived allegations of 13th hour "justiciable interest" and "extenuating circumstances" it now advances in its Motion to Intervene.

Bitterblue (and the alleged "Limited Partnerships" owning the subject property) not only

⁹ See *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex.App.-Fort Worth 2003, no pet.).

¹⁰ Further, Bitterblue lacks a primary right of action, even if it is an individual stakeholder in the various land-owning entities because an individual stakeholder in a legal entity does not have standing to sue or intervene on behalf of the entity.

¹¹ See 30 TAC § 291.107(c).

SOAH SERVICE LIST
FOR
SOAH Docket Number 582-03-3725
TCEQ Docket No. 2003-0664-UCR.

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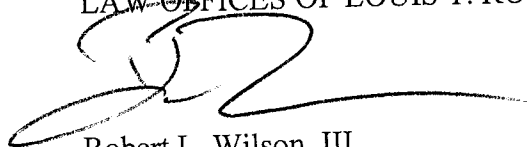
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SEP 19 9:33 AM '05

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Unreasonably Delay This Proceeding

Both Bitterblue *and the landowners it purports to represent* failed to file protests or requests for contested case hearings within the 30 day protest period prescribed by 30 TAC § 291.106 (a)(3). But for the timely protest of BSR, BexarMet's instant application could have been granted by the Executive Director of the TNRCC as long ago as May 2002.¹¹ Had such action occurred, Bitterblue would have no procedural vehicle within which to make the contrived allegations of 13th hour "justiciable interest" and "extenuating circumstances" it now advances in its Motion to Intervene.

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⁹ See *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex.App.-Fort Worth 2003, no pet.).

¹⁰ Further, Bitterblue lacks a primary right of action, even if it is an individual stakeholder in the various land-owning entities because an individual stakeholder in a legal entity does not have standing to sue or intervene on behalf of the entity.

¹¹ See 30 TAC § 291.107(c).

missed the deadline for the protest period prescribed by the agency and its internal rules, but it also disregarded the opportunity to petition the ALJ for party status in July 2003 (at the time of the preliminary hearing).¹² Like SAWS, Bitterblue has made no effort to intervene in this case during the two years since. Allowing Bitterblue to intervene at this late date would cast aside the substantial efforts and expenditures of both BexarMet and BSR, which have each met all of the deadlines prescribed by Order No. 9. BexarMet, in addition to disrupting the work activities of its employee-witnesses, has engaged the services of expert witnesses, court reporters, copy services, and couriers in order to meet the deadlines established by Order No. 9. Obviously, there were substantial expenditures associated with this compliance. These costs cannot be recovered through this proceeding, and extension of the duration of this proceeding will certainly result in redundant expenditures and escalating attorneys' fees and costs.

This proceeding is set for Hearing on the Merits on October 17, 2005, and the deadline for completion of discovery has already passed.¹³ Introducing Bitterblue as an Intervenor to this case will undoubtedly cause the instant "hearing in progress [to] be unreasonably delayed."¹⁴ This fact, alone, justifies denial of the Motion to Intervene.

III.
There Exist No "Extenuating Circumstances"
Requiring Bitterblue's Participation in This Proceeding

Like those concocted by SAWS, Bitterblue's purported "extenuating circumstances" are largely contrived. Bitterblue's Motion fails to reference or identify "extenuating circumstances,"

¹² See 30 TAC § 80.105(b)(1).

¹³ See Order No. 9.

¹⁴ 30 TAC § 80.109(a).

and the attached Affidavit reveals little more than a case of “sour grapes.” Bitterblue is a developer corporation, whose principals have a history of disagreements with BexarMet. Most of Mr. Powell’s affidavit testimony is a rambling recitation of that history, which is wholly irrelevant – especially since most of the “facts” alleged in the Affidavit relate to BexarMet’s dealings with Denton Development Company, Inc.¹⁵ – a corporation who has nothing to do with this proceeding, and has not sought party status herein. Indeed, the timing of Bitterblue’s Intervention, alone, is suspect as it correlates closely with BexarMet’s demand that Denton Development pays to BexarMet substantial sums which are due and owing. *See Exhibit E.* The true purpose of Bitterblue’s Motion is simply leverage and retaliation, and has little to do with Bitterblue’s concern about the merits of BexarMet’s application.

Taking another page out of the SAWS play book, Bitterblue asks the ALJ to accept as true Mr. Powell’s false, conclusory, and unqualified allegations concerning matters such as SAWS’ and BexarMet’s respective capabilities, and the utilities’ respective rates. Not only are these “conclusions” unfounded and made by a person with insufficient testimonial qualifications, but they are clearly objectionable, and should not be considered under any stretch of evidentiary decorum, especially in light of the proven falsehoods concerning Bitterblue’s status as “General Partner.” BexarMet also objects to the form of the Affidavit insofar as the document purports to state “facts” *prior to* the certification by the Affiant that all such “facts” are “true and correct” and

¹⁵ Paragraph II of the Motion to Intervene makes several references to representations and demands made by BexarMet with respect to Bitterblue. BexarMet would show that Bitterblue was not a party to the “Oliver Ranch” Development, and that BexarMet issued a demand to Denton Development, and not Bitterblue. Bexause denton failed to respond to BexarMet’s justified demands, BexarMet was required to file a collections lawsuit against denton. Bitterblue is not a party to that action.

made “upon personal knowledge.”

IV.
Conclusion

Bitterblue’s untimely Motion to Intervene must be denied on grounds that Bitterblue lacks a justiciable interest in this proceeding. Moreover, Bitterblue has failed to meet its sole burden of demonstrating good cause and extenuating circumstances justifying its late-entry into this proceeding. Finally, the Motion fails to rebut the fact that the delay occasioned by granting Bitterblue party status can only be unreasonable, given the advanced stages of this proceeding, and the substantial resources expended by Applicant and the other existing parties.


PRAYER

WHEREFORE, PREMISES CONSIDERED, BexarMet prays that the ALJ denies the Motion of Bitterblue, Inc. to Intervene. BexarMet further prays for all relief to which it may be entitled at law or in equity.

Respectfully submitted,

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Facsimile: 210-922-5152

*Attorneys for Applicant,
Bexar Metropolitan Water District*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was this the 16th day of September, 2005, forwarded by ☐ certified mail return receipt requested, ☒ facsimile transmission, ☐ hand delivery, ☐ overnight delivery, to the attached Service List for SOAH Docket Number 582-03-3725/TCEQ Docket No. 2003-0664-UCR.



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ATTN: Docket Clerk
P.O. Box 13025
Austin, Texas 78711
(via first class mail)

LaDonna Castañuela, Esq. (MC-105)
Chief Clerk
Texas Commission on Environmental
Quality
P.O. Box 13087
Austin, Texas 78711-3087
(via fax: 512-239-3311)

Bruce Wasinger, Esq.
Bickerstaff, Heath, Smiley, Pollen, Kever &
McDaniel, LLP
(via fax: 512/320-5638)

THIS FAX TRANSMISSION IS CONFIDENTIAL. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, OR IF YOU HAVE ANY PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL (210) 225-5454. THANK YOU.

De Mazieres Building, 322 Martinez Street, San Antonio, Texas 78205
Phone (210) 225-5454 C Fax (210) 225-5450 C E-Mail: firm@ltrlaw.com C Website: www.ltrlaw.com

Exhibit A



BEXAR APPRAISAL DISTRICT

Michael A. Amezcuita
Chief Appraiser

411 N. Frio, P.O. Box 830248
San Antonio, TX 78283-0248
Phone (210) 224-8511
Fax (210) 242-2451

BOARD OF DIRECTORS

KEITH HUGHEY
Chairman
JAMES MCADEN
Vice-Chairman
BETTY LEFLORE
Secretary

AARON VALENZUELA
HELEN DUTMER

SYLVIA S. ROMO, CPA, RTA

September 7, 2005

Stephanie Hoffman
322 Martinez St.
San Antonio, TX 78205

Re: Bitterblue

Dear Ms. Hoffman:

This letter is in response to your open records request to Bexar Appraisal District, in which you request:

A letter either certified or on Bexar Appraisal District letterhead stating that accounts 989078, 562098, and 829884 are as of today's date the only properties listed for Bitterblue

The Bexar Appraisal District has reviewed your request and found after performing a property search by the owner name of Bitterblue only the three accounts you referenced in your request. This information is based on a property search performed on September 7, 2005 using the Bexar Appraisal District's website and online system PACS.

Please contact me at (210) 242-2501 if you have any questions or require additional information.

Sincerely,

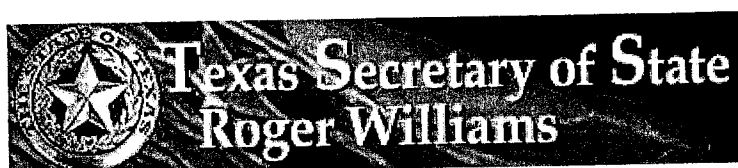
Barbara M. Adan

Barbara M. Adan
Records Management Officer



ID	Type	Taxpayer	HS	Situs Address	Legal	GEO ID
2005 562096	Real	BITTERBLUE INC	No	6210 DE ZAVALA RD	MC6 14862 P-14C AB5 574	14362-000-0449
2005 829884	Personal	BITTERBLUE INC	No	11 LYNN BATTS 100 SAN ANTONIO, TX 78218-3017	BITTERBLUE INC 000011 00 LYNN BATTS FURN FIXT EQPT VEH SUP	90205-335-9400
2005 989078	Real	BITTERBLUE/TWO CREEKS	No	BOERNE STAGE TX	CB 4712 P-3B AB5 598 (OUT OF P-3A)	04712-000-0031

Exhibit B


SOSDirect
[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)
FIND ENTITY NAME SEARCH

This search was performed on with the following search parameter:
ENTITY NAME : Longover

<u>Mark</u>	<u>Filing Number</u>	<u>Name</u>	<u>Entity Type</u>	<u>Entity Status</u>	<u>Name Type</u>	<u>Name Status</u>
<input type="radio"/>	<u>150672600</u>	LONGVIEW, INC.	Domestic Business Corporation	Merged	Legal	Inactive
<input type="radio"/>	<u>642210</u>	LONGVIEW ASSOCIATES, LTD.	Domestic Limited Partnership (LP)	Cancelled	Legal	Inactive
<input type="radio"/>	<u>916810</u>	LONGVIEW MALL COMPANY	Domestic Limited Partnership (LP)	Cancelled	Legal	Prior
<input type="radio"/>	<u>916810</u>	LONGVIEW MALL COMPANY LIMITED PARTNERSHIP	Domestic Limited Partnership (LP)	Cancelled	Legal	Inactive
<input type="radio"/>	<u>1090410</u>	LONGVIEW ASSOCIATES	Domestic Limited Partnership (LP)	Cancelled	Legal	Inactive
<input type="radio"/>	<u>1250910</u>	LONGVIEW ASSOCIATES, LTD.	Domestic Limited Partnership (LP)	Cancelled	Legal	Inactive
<input type="radio"/>	<u>1335300</u>	LONGVIEW OIL COMPANY	Domestic Business Corporation	Forfeited existence	Legal	Inactive
<input type="radio"/>	<u>1478311</u>	LONGVIEW ASSOCIATES, LTD.	Foreign Limited Partnership	Cancelled	Legal	Inactive
<input type="radio"/>	<u>1624006</u>	LONGVIEW REALESTATE INC.	Foreign Business Corporation	Forfeited existence	Legal	Prior
<input type="radio"/>	<u>1819806</u>	LONGVIEW EQUITIES INC.	Foreign Business Corporation	Withdrawn	Legal	Inactive

Records 1 to 10 of 706 scroll

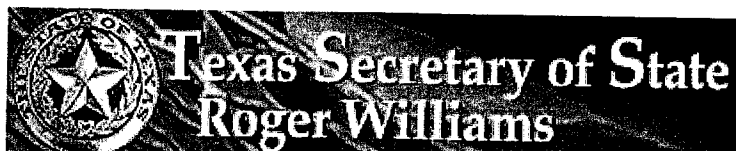
OR proceed to page

of 71 pages

Instructions:

- To view additional information pertaining to a particular filing select the number associated with the name.
- To place an order for additional information about a filing select the radial button listed under 'Mark' that is

associated with the entity and press the 'Order' button.

**SOSDirect**[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)**FIND ENTITY NAME SEARCH**

This search was performed on with the following search parameter:

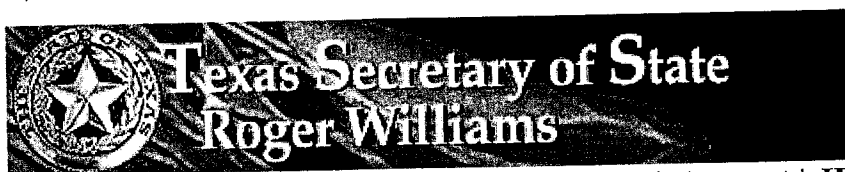
ENTITY NAME : Long over

There are no records which match your inquiry.

[Return to Order](#)[New Search](#)**Instructions:**

- To view additional information pertaining to a particular filing select the number associated with the name.
- To place an order for additional information about a filing select the radial button listed under 'Mark' that is associated with the entity and press the 'Order' button.

Exhibit C



[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

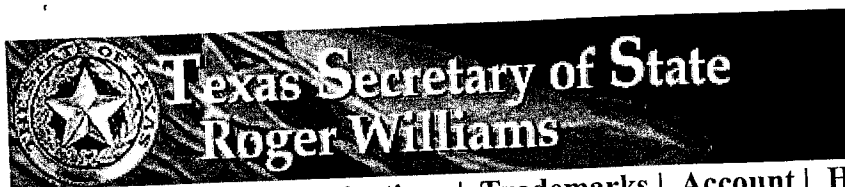
Filing Number: 13680010 **Entity Type:** Domestic Limited Partnership (LP)
Original Date of Filing: June 20, 2000 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 00000000000 **FEIN:**
Duration: Perpetual

Name: BASS PROPERTIES, L.P.
Address: 26950 BULVERDE RD
San Antonio, TX 78260 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Last Update June 20, 2000	Name BASS PROPERTIES MANAGEMENT, L.L.C.	Title General Partner	Address 26950 BULVERDE RD San Antonio, TX 78260 USA		

[Order](#)[Return to Search](#)**Instructions:**

- To place an order for additional information about a filing press the 'Order' button.



[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 13680010 **Entity Type:** Domestic Limited Partnership (LP)
Original Date of Filing: June 20, 2000 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 000000000000 **FEIN:**
Duration: Perpetual

Name: BASS PROPERTIES, L.P.
Address: 26950 BULVERDE RD
 San Antonio, TX 78260 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Inactive Date					
Name	Address				
Joan K Bass	26950 BULVERDE RD San Antonio, TX 78260 USA				

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

Exhibit D



Texas Secretary of State
Roger Williams

SOSDirect

[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 11226610 **Entity Type:** Domestic Limited Partnership (LP)
Original Date of Filing: September 3, 1998 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 000000000000 **FEIN:**
Duration: Perpetual

Name: THE KINDER PARTNERSHIP, LTD.
Address: 256 MONTCLAIR
San Antonio, TX 78209 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Last Update September 13, 2005	Name Kinder Management, Inc.	Title General Partner	Address 610 Rockhill Drive San Antonio, TX 78209 USA		

[Order](#)

[Return to Search](#)


Instructions:

- To place an order for additional information about a filing press the 'Order' button.

**Certificate of Amendment
of
The Kinder Partnership, Ltd.**

FILED
In the Office of the
Secretary of State of Texas
JAN 16 2003
Corporations Section

The undersigned limited partnership, (the "Partnership"), having filed an original certificate or agreement of limited partnership, hereby duly executes this Certificate of Amendment of Limited Partnership, which is being filed with the Secretary of State in accordance with Section 2.02 of the Texas Revised Limited Partnership Act.

- 
1. The name of the Partnership is The Kinder Partnership, Ltd.
 2. The name under which the Partnership was originally formed is The Kinder Partnership, Ltd., the date on which it was filed with the Secretary of State was September 3, 1998, and the limited partnership number assigned by the Secretary of State is 00112266-10.
 3. The name and address of the new General Partner which is to be the sole General Partner is Kinder Management, Inc., 7744 Broadway #101, San Antonio, Texas 78209.

SIGNED on this 16th day of January, 2003
Kinder Management, Inc., General Partner

by Marilyn S. Hershman
Marilyn S. Hershman
Attorney-in-Fact for the General Partner

Exhibit E

August 2, 2005

**VIA FACSIMILE (210) 828-6740
AND CERTIFIED MAIL**

Ann D. Wells
Registered Agent/Secretary
Denton Development Company, Inc.
3303 Oakwell Court #100
San Antonio, Texas 78218

**Re: Oliver Ranch Subdivision Unit 7
Labor and Materials charges owed to Bexar Metropolitan Water District
("BexarMet") by Denton Development Company, Inc.,
Amount: \$635,732.41**

Dear Ms. Wells:

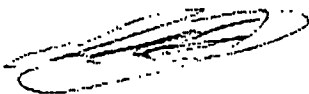
I am BexarMet's In-House General Counsel. This letter will serve as notice of BexarMet's claim in the amount of \$635,732.41 for unpaid labor and material charges owed by Denton Development Company, Inc., to BexarMet.

Enclosed please find a copy of the invoices and the invoice summary. Please contact me directly at (210) 354-6502 to discuss this matter as soon as possible.

I look forward to hearing from you so that we can timely resolve this matter.

Sincerely,

BEXARMET WATER DISTRICT



Adolfo Ruiz
General Counsel

Enclosures

cc: Gil Olivares, General Manger
BexarMet Water District



BexarMet Water District

8/1/2005

Register: Accounts Receivable

From 01/01/2000 through 08/01/2005

Sorted by: Date, Type, Number/Ref

Date	Number	Customer	Memo/Description	Qty	Rate	Charge	Paid	Balance
08/10/2000	905	Pape-Dawson Engi...				441,484.59		441,484.59
02/07/2001	1003	Pape-Dawson Engi...				537,150.61		978,635.20
04/30/2001		Pape-Dawson Engi...	Payment from Pape ...				819,861.00	158,774.20
07/15/2003	2886	Pape-Dawson Engi...				476,958.21		635,732.41



BexarMetro Water District

P.O. Box 245994
San Antonio, Texas 78224

INVOICE

DATE	INVOICE #
8/10/2000	905

BILL TO:

Denton Development Co. Inc.
Attention: Don Kosal
11 Lynn Batts Lane, Suite 100
San Antonio, Texas 78218-3077

DUE DATE

8/25/2000

DESCRIPTION	AMOUNT
Oliver Ranch Subdivision Unit 7	
Material Invoices Received to Date as follows:	
Municipal Pipe & Fab, Invoice 2035873, Date: 7/28/00	3,584.46
Municipal Pipe & Fab, Invoice 2033939, Date: 7/14/00	27.18
US Pipe & Foundry Co., Invoice 282734, Date: 7/21/00	1,628.93
US Pipe & Foundry Co., Invoice 282356, Date: 7/20/00	3,360.29
US Pipe & Foundry Co., Invoice 282136, Date: 7/18/00	1,875.67
US Pipe & Foundry Co., Invoice 280290, Date: 7/10/00	22,341.46
US Pipe & Foundry Co., Invoice 278700, Date: 6/27/00	22,284.53
US Pipe & Foundry Co., Invoice 279590, Date: 7/03/00	11,202.09
US Pipe & Foundry Co., Invoice 279581, Date: 7/03/00	22,404.18
US Pipe & Foundry Co., Invoice 280612, Date: 7/11/00	33,178.20
US Pipe & Foundry Co., Invoice 280884, Date: 7/12/00	33,450.93
US Pipe & Foundry Co., Invoice 279384, Date: 6/30/00	44,732.03
US Pipe & Foundry Co., Invoice 280279, Date: 2/10/00	44,755.75
US Pipe & Foundry Co., Invoice 281132, Date: 7/13/00	66,762.39
US Pipe & Foundry Co., Invoice 279952, Date: 7/06/00	33,482.28
Vulcan Materials Company, Invoice 661338, Date: 6/30/00	4,049.25
Vulcan Materials Company, Invoice 663056, Date: 7/10/00	4,228.69
Subtotal for Materials	353,348.31
Labor Invoices Received to Date as follows:	
Pipelayers, Inc. Estimate #1 Period: May 1, 2000 to June 7, 2000	41,040.00
Pipelayers, Inc. Estimate #2 Period: June 7, 2000 to June 28, 2000	39,685.68
Pipelayers, Inc. Estimate #3 Period June 29, 2000 to July 31, 2000	7,410.60
Subtotal for Labor	88,136.28

Contact/Further Information: Virginia Koepp
Customer Service Department
Telephone 210-354-6589
Please make check payable to:
BexarMetro Water District

TOTAL: \$441,484.59



BexarMetro Water District

P.O. Box 245994
San Antonio, Texas 78224

INVOICE

DATE	INVOICE #
2/7/2001	1003

BILL TO:

Denton Development Co. Inc.
Attention: Don Kosal
11 Lynn Batts Lane, Suite 100
San Antonio, Texas 78218-3077

DUE DATE

2/22/2001

DESCRIPTION	AMOUNT
Oliver Ranch Subdivision Unit 7	
Material Invoices Received to Date as follows:	
Cierra Pipe, Inc., Invoice S-24881, Date: 6/15/00	7,807.35
Clow Valve Co., Invoice 98055453, Date: 3/23/00	7,276.00
Clow Valve Co., Invoice 98055988, Date: 3/29/00	2,850.00
Clow Valve Co., Invoice 98056189, Date: 3/30/00	4,560.00
Clow Valve Co., Invoice 98056323, Date: 3/31/00	17,370.00
Clow Valve Co., Invoice 98059281, Date: 5/01/00	984.00
Municipal Pipe & Fab., Invoice 2025164, Date: 4/12/00	723.43
Municipal Pipe & Fab., Invoice 2022879, Date: 4/25/00	8,804.40
Municipal Pipe & Fab., Invoice 2026335, Date: 5/12/00	2,425.89
Municipal Pipe & Fab., Invoice 2021935, Date: 6/13/00	33,600.00
Municipal Pipe & Fab., Invoice 2022701, Date: 6/13/00	6,212.57
Municipal Pipe & Fab., Invoice 2022834, Date: 6/13/00	25,400.13
Municipal Pipe & Fab., Invoice 2033941, Date: 7/14/00	402.68
Municipal Pipe & Fab., Invoice 2035873, Date: 7/28/00	3,584.46
Municipal Pipe & Fab., Invoice 2037339, Date: 8/19/00	567.80
Municipal Pipe & Fab., Invoice 2038990, Date: 8/23/00	684.80
Municipal Pipe & Fab., Invoice 2041408, Date: 9/18/00	1,224.00
US Filter Co., Invoice 6178109, Date: 3/17/00	44,638.16
US Filter Co., Invoice 6212065, Date: 3/22/00	2,705.00
US Filter Co., Invoice 6235970, Date: 3/30/00	1,497.66
US Filter Co., Invoice 6538944, Date: 7/17/00	3,382.00
US Filter Co., Invoice 6651533, Date: 8/16/00	420.00
US Filter Co., Invoice 6740223, Date: 10/02/00	356.00
US Filter Co., Invoice 6802086, Date: 10/10/00	8,029.72
US Filter Co., Invoice 6956595, Date: 11/28/00	629.00

Contact/Further Information: Virginia Koepp
Customer Service Department
Telephone 210-354-6589
Please make check payable to:
BexarMetro Water District

TOTAL:



BexarMetro Water District

P.O. Box 245994

San Antonio, Texas 78224

INVOICE

DATE	INVOICE #
2/7/2001	1003

BILL TO:

Denton Development Co. Inc.
 Attention: Don Kosal
 11 Lynn Batts Lane, Suite 100
 San Antonio, Texas 78218-3077

DUE DATE

2/22/2001

DESCRIPTION	AMOUNT
US Filter Co., Invoice 6907393, Date: 11/09/00	8,825.54
US Filter Co., Invoice 6928622, Date: 11/15/00	8,203.67
US Filter Co., Invoice 6972140, Date: 12/01/00	1,024.21
US Pipe & Foundry Co., Invoice 263889, Date: 3/21/00	1,774.55
US Pipe & Foundry Co., Invoice 264097, Date: 3/23/00	23,823.47
US Pipe & Foundry Co., Invoice 277326, Date: 6/16/00	11,233.50
US Pipe & Foundry Co., Invoice 277338, Date: 6/16/00	11,247.95
US Pipe & Foundry Co., Invoice 279952, Date: 7/06/00	33,482.28
US Pipe & Foundry Co., Invoice 282734, Date: 7/21/00	1,628.93
Vulcan Materials Company, Invoice 661338, Date: 6/30/00	4,049.25
Vulcan Materials Company, Invoice 663056, Date: 7/10/00	4,228.69
Subtotal for Materials	295,657.09
Labor Invoices Received to Date as follows:	
Pipelayers, Inc. Date: Pay Estimate #2, January 23, 2001	241,493.52
Subtotal for Labor	241,493.52

Contact/Further Information: Virginia Koepp
 Customer Service Department
 Telephone 210-354-6589
 Please make check payable to:
 BexarMetro Water District

TOTAL: \$537,150.61



BexarMet Water District

P.O. Box 245994
San Antonio, Texas 78224

INVOICE

DATE	INVOICE #
7/15/2003	2886

BILL TO:

Denton Development Co. Inc.
Attention: Don Kosal
11 Lynn Batts Lane, Suite 100
San Antonio, Texas 78218-3077

DUE DATE

7/30/2003

DESCRIPTION	AMOUNT
Oliver Ranch Subdivision Unit 7	
Material Invoices Received to Date as follows:	
David Friesenhahn Trucking, Invoice 807677, Date: 7/31/2001	20.00
Flasher Equipment Co. Inc., Invoice 155087, Date: 9/30/2000	63.30
Ingram Readymix Inc., Invoice 663268, Date: 9/30/2000	396.00
Lytle Grass Farms, Invoice 51101, Date: 5/11/2001	260.00
Martin Marietta Materials, Invoice 9-215238, Date: 9/30/2000	5,159.59
Vulcan Material Co. Inc., Invoice 670053, Date: 8/17/2000	2,939.04
Vulcan Material Co. Inc., Invoice 670054, Date: 8/17/2000	996.42
Vulcan Material Co. Inc., Invoice 673216, Date: 8/29/2000	2,994.48
Vulcan Material Co. Inc., Invoice 674866, Date: 8/31/2000	2,789.54
Vulcan Material Co. Inc., Invoice 674867, Date: 8/31/2000	3,986.16
Vulcan Material Co. Inc., Invoice 676530, Date: 8/31/2000	813.49
Vulcan Material Co. Inc., Invoice 676531, Date: 8/31/2000	190.90
Vulcan Material Co. Inc., Invoice 676532, Date: 8/31/2000	769.83
Vulcan Material Co. Inc., Invoice 676533, Date: 8/31/2000	757.20
Vulcan Material Co. Inc., Invoice 676534, Date: 8/31/2000	754.89
Vulcan Material Co. Inc., Invoice 677883, Date: 9/30/2000	4,001.40
Vulcan Material Co. Inc., Invoice 677884, Date: 9/30/2000	701.60
Vulcan Material Co. Inc., Invoice 677885, Date: 9/30/2000	756.96
Vulcan Material Co. Inc., Invoice 677886, Date: 9/30/2000	764.68
Vulcan Material Co. Inc., Invoice 677887, Date: 9/30/2000	771.90
Vulcan Material Co. Inc., Invoice 679418, Date: 9/30/2000	1,097.43
Vulcan Material Co. Inc., Invoice 679419, Date: 9/30/2000	351.01
Vulcan Material Co. Inc., Invoice 679420, Date: 9/30/2000	770.32
Vulcan Material Co. Inc., Invoice 679421, Date: 9/30/2000	603.58
Vulcan Material Co. Inc., Invoice 680985, Date: 9/30/2000	1,205.33

Contact/Further Information: Virginia Koepp
Customer Service Department
Telephone 210-354-6589
Please make check payable to:
BexarMetro Water District

TOTAL:



BexarMet Water District

P.O. Box 245994
San Antonio, Texas 78224

INVOICE

DATE	INVOICE #
7/15/2003	2886

BILL TO:

Denton Development Co. Inc.
Attention: Don Kosal
11 Lynn Batts Lane, Suite 100
San Antonio, Texas 78218-3077

DUE DATE

7/30/2003

DESCRIPTION	AMOUNT
Vulcan Material Co. Inc., Invoice 680986, Date: 9/30/2000	986.12
Vulcan Material Co. Inc., Invoice 682575, Date: 10/24/2000	1,144.48
Vulcan Material Co. Inc., Invoice 682576, Date: 10/31/2000	596.03
Vulcan Material Co. Inc., Invoice 684142, Date: 10/31/2000	100.02
Vulcan Material Co. Inc., Invoice 686668, Date: 10/31/2000	260.16
Vulcan Material Co. Inc., Invoice 686671, Date: 11/27/2000	225.61
Vulcan Material Co. Inc., Invoice 686673, Date: 11/27/2000	111.61
Vulcan Material Co. Inc., Invoice 688763, Date: 11/27/2000	2,309.94
Vulcan Material Co. Inc., Invoice 688764, Date: 11/27/2000	67.93
Vulcan Material Co. Inc., Invoice 686669, Date: 11/27/2000	924.49
Vulcan Material Co. Inc., Invoice 686672, Date: 11/27/2000	1,047.92
Vulcan Material Co. Inc., Invoice 690131, Date: 11/29/2000	1,070.54
Vulcan Material Co. Inc., Invoice 682577, Date: 11/29/2000	1,112.95
Vulcan Material Co. Inc., Invoice 682578, Date: 11/29/2000	390.43
Vulcan Material Co. Inc., Invoice 684140, Date: 11/29/2000	889.58
Vulcan Material Co. Inc., Invoice 684141, Date: 11/29/2000	717.29
Vulcan Material Co. Inc., Invoice 688762, Date: 11/29/2000	2,740.47
Vulcan Material Co. Inc., Invoice 686670, Date: 11/30/2000	1,068.68
Vulcan Material Co. Inc., Invoice 691022, Date: 11/30/2000	1,895.54
Vulcan Material Co. Inc., Invoice 932857, Date: 01/31/2001	875.94
Subtotal for Materials	52,450.78
Labor Invoices Received to Date as follows:	
Pipelayers Inc., Estimate #4, Date: 9/20/2000	142,741.08
Pipelayers Inc., Estimate #5, Date: 10/30/2000	63,136.80
Pipelayers Inc., Estimate #5, Date: 12/14/2000	106,416.90
Pipelayers Inc., Invoice 10801, Date: 1/11/2001	1,935.09

Contact/Further Information: Virginia Koepp
Customer Service Department
Telephone 210-354-6589
Please make check payable to:
BexarMetro Water District

TOTAL:

**BexarMet Water District**

P.O. Box 245994

San Antonio, Texas 78224

INVOICE

DATE	INVOICE #
7/15/2003	2886

BILL TO:

Denton Development Co. Inc.
Attention: Don Kosal
11 Lynn Batts Lane, Suite 100
San Antonio, Texas 78218-3077

DUE DATE**7/30/2003**

DESCRIPTION	AMOUNT
Pipelayers Inc., Estimate #7, Date: 1/23/2001	42,973.65
Pipelayers Inc., Estimate #8, Date: 1/24/2001	42,084.90
Pipelayers Inc., Estimate #11, Date: 6/30/2001	9,144.00
Subtotal for Labor	408,432.42
Labor - Direct Labor Charged to Oliver Ranch Subdivision Unit 7	6,442.65
Overhead Labor: 476 Hours @ \$16.36 per hour	7,787.36
Vehicle & Equipment Overhead: 410 Hours @ \$4.50 per hour	1,845.00
Subtotal for Labor	16,075.01

Contact/Further Information: Virginia Koepp
Customer Service Department
Telephone 210-354-6589
Please make check payable to:
BexarMetro Water District

TOTAL: \$476,958.21

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Address <input type="checkbox"/> Address</p>	
<p>1. Article Addressed to:</p> <p>Ann D. Wells Denton Development Co., Inc. 3303 Oakwell Court #100 San Antonio, TX 78248</p>		<p>B. Received by (Printed Name) Ann Wells</p> <p>C. Date of Delivery 8-10-05</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	

UNITED STATES POSTAL SERVICE



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BexarMet
 WATER DISTRICT
 P.O. BOX 245994
 SAN ANTONIO, TEXAS 78224-5994
 8-2-TWK



02-13-15A10:53 RCVD

3303 Oakwell Court, Suite 110
San Antonio, Texas 78218
Telephone: 210.804.0800
Facsimile: 210.804.0802

Dale Wilson

Writer's Email: dwilson@lawwilson.com

August 12, 2005

Mr. Adolfo Ruiz
BexarMet Water District
2047 W. Malone
San Antonio, Texas 78225

Via Email: aruiz@bexarmet.org

Re: Oliver Ranch Subdivision Unit 7

Dear Mr. Ruiz:

This firm represents Denton Development Company, Inc. ("DDC") in connection with the above-referenced matter.

DDC is in receipt of your letter dated August 2, 2005, asserting Bexar Met's claim in the amount of \$635,732.41, for unpaid labor and material charges owed by DDC to Bexar Met. Please be advised that DDC is not aware of any obligation to pay such amounts to Bexar Met and denies any liability for such amounts.

If you have any information or other evidence to support such claim, please provide me with such information. Please direct all further communication to DDC regarding this matter to me at the contact numbers / address stated herein.

Sincerely,

By: 
Dale Wilson

DWkal
cc: Ann D. Wells
Lloyd A. Denton, Jr.
Sarah Carrington
Enclosed: as stated

Via Email: adwells@swbell.net
Via Email: laddiedenton@bitterblue.com
Via Email: sarahcarrington@bitterblue.com

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2005CI1401 COPY

Cause No.

BEXAR METROPOLITAN WATER DISTRICT
Plaintiff,

v.

DENTON DEVELOPMENT COMPANY, INC.,
Defendant.

2005 AUG 31 IN THE DISTRICT COURT

BY **224M** JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

BEXAR METROPOLITAN WATER DISTRICT ("BexarMet") Plaintiff herein, files its Original Petition against **DENTON DEVELOPMENT COMPANY, INC., ("Denton")** and would show unto this Court the following:

Discovery Level. Discovery in this case is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure

Parties. Plaintiff is a water conservation district and a body politic and corporate, created and operating pursuant to Article XVI, Section 59 of the Constitution of the State of Texas and Texas Revised Civil Statutes Articles 8280-126, as amended, and a political subdivision of the State of Texas, with its principal place of business located at 2047 W. Malone, P.O. Box 245994, San Antonio, Texas 78224-5994. Defendant is a corporation organized and existing under Texas law, with a place of business in San Antonio, Bexar County, Texas and can be served by serving its registered agent for service Ann D. Wells at 1919 Oakwell Farms Pky, Suite #125A, San Antonio, Texas 78218.

Venue. Venue in Bexar County is proper in this cause under Section 15.002 (a) (1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

CAUSES OF ACTION

A. Collection of Impact Fees.

BexarMet is a political subdivision of the State of Texas and is governed by V.T.C.A., Water Code Section 49.001 et.seq. Pursuant to Section 49.212 (d) of the Water Code, BexarMet has the authority to charge an impact fee for, "construction, installation, or inspection of a tap or connection to district water, sanitary sewer, or drainage facilities, including all necessary service lines and meters, or for wholesale facilities that serve such water, sanitary sewer, or drainage facilities . . . " Section 49.212 (a) provides the following:

A district may adopt and enforce all necessary charges, mandatory fees, or rentals in addition to taxes, for providing or making available any district facility or service, including fire-fighting activities provided under Section 49.351.

Denton is a developer who requested that BexarMet supply water connections to its Oliver Ranch (a/k/a Lookout Canyon) development. On or about May 2000, BexarMet commenced construction of the infrastructure to provide the Oliver Ranch development with water. The construction was complete on or about January 2001. In the Oliver Ranch development in question, there exists Two Thousand Nine Hundred Forty (2,940) Equivalent Dwelling Units ("EDUs") for which Denton is obligated to pay impact fees to BexarMet in the amount of \$494.50 per edu. The total sum of impact fees due to BexarMet is \$1,453,830.00. Denton has paid BexarMet a total of

\$819,861.00 of this amount. Denton owes the balance of \$633,969.00 which is currently due to BexarMet. As authorized by statute, BexarMet brings this cause of action to enforce and collect the balance due on impact fees owed by Denton.

**B. Alternative Pleading
Breach of Contract**

Pleading in the alternative and not waiving the above-referenced cause of action, On or about March 27, 2001, BexarMet and Denton entered into a contract whereby Denton agreed to grant BexarMet certain water utility and service easements, Denton agreed to pay a portion of construction costs of certain water facilities to extend water service lines and facilities to the Oliver Ranch (a/k/a Lookout Canyon) development and to dedicate to BexarMet a 1.92 parcel of land for construction of a water storage tank and a 0.18 parcel of land for a proposed water well. Denton has not conveyed the above-referenced parcels to BexarMet and is therefore in breach of the contract. BexarMet seeks specific performance for Denton to convey the above-referenced parcels to BexarMet.

WHEREFORE, Plaintiff prays that Defendant be cited to appear and answer and that upon final trial of this cause, Plaintiff recovers:

1. Judgment against Defendant for unpaid impact fees in the amount of \$633,969.00;
2. Prejudgment interest on Plaintiff's damages as allowed by law;
3. Interest on the judgment at the legal rate from date of judgment;
4. In the alternative, specific performance under the contract for Denton to convey to BexarMet the two parcels of land;
5. Costs of court; and

6. Such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

BEXAR METROPOLITAN WATER
DISTRICT
2047 W. Malone
San Antonio, Texas 78225
Telephone: (210) 354-6502
Facsimile: (210) 922-5152

By:



ADOLFO RUIZ
GENERAL COUNSEL
State Bar No. 17385600

ATTORNEY FOR DEFENDANT,
BEXAR METROPOLITAN WATER
DISTRICT.