

plants and facilities of the District adequate to serve the additional territory without injury to or impairment of other lands and properties in the District, the Board by resolution duly adopted may receive such territory, or any part thereof, into the District.

(4) Any territory thus annexed shall bear its pro rata part of all indebtedness owed, contracted or authorized by the District, provided that the annexation of any such territory shall not become final until the pro rata part of the indebtedness owed, contracted or authorized by the District shall have been assumed by a majority vote at an election called and held for the purpose of submitting to the qualified property taxpaying voters residing in the territory annexed the proposition of the assumption of the indebtedness owing at that time and the authorization of the levy of the tax or taxes in payment thereof and at the same election there may be submitted the proposition of voting a maintenance tax. The manner of calling and holding such elections shall be in all things governed by the provisions of Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, as amended¹ relating to elections to vote bonds and levy taxes.

¹ Article 7880—1 et seq.

Sec. 6a. If any territory, whether or not incorporated as a city or town, which may be located within or without the perimeter of the District as defined by this Act and which is not a part of the District, should be annexed to and become a part of the City of San Antonio, the boundaries of the District shall automatically be extended so as to include territory thus annexed to the City of San Antonio provided however that such inclusion shall not become final until an election has been held and a majority of the qualified property taxpaying voters residing in the territory annexed have voted to assume the indebtedness and taxes then owed, contracted or authorized by the District. Such election shall be called, held and conducted in the same manner as the elections provided in paragraph (4) of Section 6.

Sec. 7. When this Act becomes effective the Commissioners Court of Bexar County, Texas, shall be authorized to appoint a Board of Directors for said District, consisting of five (5) persons, each of whom shall be a resident qualified elector owning taxable property within the area comprising said District. The members of said Board of Directors, when appointed, shall qualify by taking the oath of office and executing the bond hereinafter prescribed, and shall organize by electing one of their number as President, one as Vice-President, and one as Secretary and Treasurer. Each of such Directors shall take and subscribe to an oath of office, similar to the oath required of County Commissioners and shall execute a bond in the sum of Five Thousand Dollars (\$5,000), payable to the District, conditioned substantially as bonds prescribed for County Commissioners. The sufficiency of such bonds shall be determined by the Commissioners Court, which bonds after approval by said Court shall be recorded in the

official bond records of the County and shall thereafter be deposited with the depository selected and approved for the deposit of funds of the District. The terms of such Directors shall expire on the first Tuesday of April, 1946, and upon the election and qualification of their successors. The Board of Directors shall fill all vacancies on the Board by appointment and such appointees shall hold office until the first Tuesday of April, 1946, and upon the election and qualification of their successors.

Sec. 8(a). The five (5) members of the Board of Directors shall hereafter be elected for a term of six (6) years each, provided that an election for two (2) Directors for a term of six (6) years shall be held on the first Tuesday in April, 1954; the terms of three (3) members of the present Board shall be, and are, hereby, extended to the first Tuesday in April, 1957; and the present Directors shall determine such three (3) by lot. Three (3) Directors shall be elected on the first Tuesday in April, 1957, and two (2) Directors and three (3) Directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six-year terms expire. The two (2) or three (3) persons, respectively, receiving the greatest number of votes shall be declared elected. Each Director shall hold office until his successor shall have been elected or appointed and shall have qualified. As amended Act 1953, 53rd Leg., p. 100, ch. 66, § 1.

(b) such elections shall be called, conducted and canvassed in the manner provided by Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, and any amendments thereto¹;

(c) the Board of Directors shall fill all vacancies on the Board by appointment and such appointees shall hold office for the unexpired term for which they were appointed;

(d) any three members of the Board shall constitute a quorum for the adoption of passage of any resolution or order or the transaction of any business of the District;

(e) directors thus elected shall have the same qualifications and shall otherwise qualify for said office as provided herein for the first Board of Directors and shall organize in like manner.

¹ Article 7830—1 et seq.

Sec. 9. The Board of Directors from time to time shall be authorized to make or cause to be made surveys and engineering investigations for the information of the District to facilitate the accomplishment of the purposes for which the District is created, as expressed in the provisions of this Act; and may employ engineers, attorneys and all other technical and nontechnical employees or assistants and fix and provide the amount and manner of their compensation, and may provide for payment of expenditures deemed essential to the proper maintenance and administration of the District. The members of the Board of Directors shall receive a per diem of not more than Ten Dollars (\$10) per day, for the time actually expended

on business of the District, together with traveling and other necessary expenses, provided that such per diem fee shall not be paid to a Director for more than one hundred (100) days in any one year.

Sec. 10. Taking into consideration the fact that the District should be incurring some obligations and making some expenditures before funds can be available to pay such obligations and expenditures, for the purpose of providing funds needed to procure necessary engineering surveys, the collection and compilation of data relating to general conditions influencing and determining the character and extent of the improvements, works and facilities essential to the accomplishment of any one or more of the several purposes of the District it is hereby provided that any political subdivision, city or town, situated within the District or any civic organization or Planning Board or Committee may expend funds or use its services for said engineering surveys and data. Any city or town or political subdivision situated within the District may appropriate money from its general funds or such other funds as may be legally available for such purpose. The District, however, shall have full power to make binding commitments to any creditor in reference to any such expenditures payable out of any revenues currently anticipated, other than taxes, and it shall be competent for the District to contract with any such political subdivision, city or town to repay any money advanced as a loan to the District.

Sec. 11. The District may upon a favorable majority vote of the qualified property taxpaying electors voting at an election held for the purpose levy, assess and collect a tax to provide funds necessary to construct or acquire, maintain and operate improvements, works, plants and facilities deemed essential or beneficial to the District and also when so authorized at an election may levy, assess and collect a tax to provide funds adequate to defray the cost of the maintenance and operation and for administration of the District. Elections for the voting of such tax shall be ordered by the Board of Directors and shall be held and conducted in the manner provided by Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, as amended¹, and the laws relating to general elections not inconsistent with the provisions of said Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, as amended, and such taxes shall constitute a lien on the property against which such taxes are levied and assessed and limitations shall not bar the collection or enforcement thereof.

¹ Article 7380—1 et seq.

Sec. 12. The District funds shall be deposited in a depository duly designated and secured in the manner provided by general law for the depositing and securing of County funds.

Sec. 13. In furtherance of the purposes for which it is created and to provide funds for the construction or purchase, improvement,

extension, repair, replacement or betterment of waterworks systems, storm sewers, sanitary sewer systems, sewage disposal plants or any other improvements, works, plants or facilities deemed necessary to accomplish any part of its plans and purposes the District shall have the power to borrow money and to evidence such loan by the authorization, issuance and sale of its negotiable bonds, provided that it shall not be authorized, to issue bonds or incur any form of continuing obligations or indebtedness for said purposes which would be payable from the proceeds of taxes levied against lands or properties within the District, unless the proposition for the incurring of such indebtedness shall have been submitted to the qualified property tax-paying voters of the District and approved by a majority of such electors voting thereon. The Board of Directors is authorized to call an election for the issuance of any such bonds and the levy of a tax in payment thereof and such proposition shall be submitted in the manner provided by Chapter 1, Title 22 of the Revised Civil Statutes of Texas, 1925, relating to County and City bond elections, to the qualified property taxpaying resident voters of the District who have duly rendered property for taxation. If at such election a majority of the legal votes cast are favorable to the issuance of the bonds they may be issued to mature serially or otherwise, as may be determined by the Board, not more than forty (40) years from their date, with or without option of prior redemption, and if an option of redemption prior to maturity is reserved it shall be plainly so stated in the resolution authorizing such bonds and in the face of each bond, together with the prices at which and the terms under which the bonds may be so redeemed; provided the price so fixed for prior redemption shall never exceed one hundred and five per cent (105%) of the principal amount of such bonds, plus the interest accrued to date of redemption and such bonds shall bear interest at not exceeding five per cent 5% per annum. All bonds issued under the provisions of this Act shall be executed in the name of the District, shall be signed by the President and Secretary of the Board of Directors and shall have the official seal of the District impressed thereon. The tax authorized to be levied in payment of the bonds shall be levied upon all taxable property situated in said District in an amount and at a rate sufficient to pay the interest as it accrues and create a sinking fund to retire said bonds as such bonds mature, and such tax shall be assessed and collected annually.

Sec. 14. The District is hereby authorized to issue its negotiable bonds, secured only by pledge of net revenues to be derived from the operation of any of its works, plants or facilities, and in such amounts as may be authorized by the Directors, to provide funds for the construction or purchase, improvement, extension, repair, replacement or betterment of waterworks systems, storm sewers, sanitary sewer systems, sewage disposal plants or any other improvements, works, plants or facilities deemed by the Board of

Directors as essential or convenient for the accomplishment of its purposes. The term "net revenue" as used in this Act shall be construed to mean the revenues of the District from whatever source derived, except taxes, remaining after the payment of all costs of collection of such revenues, all costs of operation and maintenance, depreciation and necessary replacements of such works, plants and facilities, owned or acquired or controlled by the District. All such bonds shall be authorized by resolution of the Board of Directors, concurred in by a majority of the members of the Board without the necessity of an election, and shall bear interest at not exceeding five per cent (5%) per annum, mature serially or otherwise not more than forty (40) years from their date, be payable at such place or places as such resolution shall provide, be signed by the President and Secretary of the Board and have the seal of the District affixed thereto. Such bonds are sometimes referred to in this Act as "Revenue Bonds". In the discretion of the Board of Directors it may defer the issuance of Revenue Bonds on any occasion until the proposition for the issuance of such bonds may be submitted at an election, which shall be called and held in the manner provided in Section 13 hereof for the voting of tax bonds, and unless such election shall have resulted favorably to the issuance of the Revenue Bonds. The resolution authorizing any such bonds may contain provisions which shall be a part of the contract between the District and the bondholders. Such resolution may include among other provisions any of the following:

(a) Reserving the right to redeem such bonds prior to maturity at such time or times, in such amounts and at such prices as may be thus provided, but in no event shall the price so fixed for prior redemption ever exceed one hundred and five per cent (105%) of the principal amount of such bonds plus accrued interest;

(b) providing for the setting aside of sinking funds or reserve funds and the regulation for disposition thereof;

(c) pledging to secure the payment thereof all or any part of the net revenues thereafter received by the District in respect of the property, real, personal, or mixed, acquired or to be acquired or constructed with such bonds or the proceeds thereof, or all of any part of the net revenues thereafter received by the District from whatsoever source, except taxes;

(d) prescribing the purposes to which the proceeds of such bonds or any bonds thereafter to be issued may be applied;

(e) covenant to fix and collect fees, rates and charges for use of works, plants and facilities sufficient to produce net revenues adequate to pay such bonds, plus interest, and prescribing the use and disposition of all District revenues except taxes;

(f) prescribing limitations upon the issuance of additional revenue bonds and upon all agreements which may be made between

the District and the purchasers and subsequent holders of bonds to be issued subsequently; .

(g) providing for the construction, extension, improvement, operation, maintenance, depreciation, replacement and betterment of the properties of the District and carrying insurance of any and all kinds upon all or part of its properties;

(h) fixing the procedure, by which any contract with the bondholders may be amended and for the execution and delivery of an indenture or agreement for the benefit of the holders of such bonds, which indenture or agreement may define "events of default" and prescribe the remedies therefor and contain such other items, conditions and covenants as may be agreed upon that are not inconsistent with the provisions of this Act or the Constitution of the State of Texas.

Sec. 15. All bonds issued by authority of this Act may be (1) sold for cash at public or private sale, at such price or prices as the Board of Directors shall determine at not less than par and accrued interest, (2) may be issued on such terms as the Board of Directors shall determine in exchange for property of any kind which the Board shall deem necessary or convenient for any corporate purposes, or (3) without the necessity of an election may be issued to refund any bonds issued at any time under authority of this Act; provided that before any bonds are sold or otherwise delivered they shall be submitted to and approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts of the State of Texas in the manner and with the effect provided in Article 709 to 715, inclusive, Revised Civil Statutes of Texas, 1925.

Sec. 16. Whenever any city, town, or political subdivision situated within said District shall have issued its bonds and shall have applied the proceeds thereof to the purchase and construction or repair and improvement of any works, plants or facilities, and it shall be determined by the Board of Directors that it will be beneficial and to the best interests of the District to acquire such works, plants, or facilities in whole or in part and operate same in furtherance of its authorized purposes the District in addition to any other consideration which might be paid in the acquisition of such properties shall have the authority to issue its bonds, hereinafter called "Compensation Bonds", in an amount equal to the amount of bonds outstanding, the proceeds of which were spent by any such city, town or political subdivision, in the construction, purchase, repair, or improvement of the works, plants or facilities or any part thereof thus to be acquired by the District. No such bonds shall be so issued until there shall have been submitted to the resident qualified property taxpaying electors of the District the question as to whether such bonds shall be issued and a tax levied upon the property in the District subject to taxation for the purpose of paying the inter-

est on said bonds and to provide a sinking fund for their redemption at maturity. Such election shall be called and held as provided for the voting of tax bonds authorized in this Act.

Sec. 17. If the proposition to issue such Compensation Bonds and to levy a tax in payment thereof shall have received a favorable vote and the bonds shall have been approved and registered as provided in Section 15 of this Act, the Board of Directors at the earliest practicable date thereafter shall deposit with the proper officials of such city, town or political subdivision for the credit of the interest and sinking fund an amount of District bonds equal to the amount of bonds then outstanding against such city, town or political subdivision thus to be compensated as provided in the next proceeding [preceding] section. The resolution of the Board of Directors authorizing the deposit of such Compensation Bonds for the credit of the interest and sinking fund of such city, town or political subdivision shall be submitted to the Attorney General of Texas for approval concurrently with the submission to him of the proceedings authorizing the issuance of such bonds before such Compensation Bonds shall be so deposited, provided that the resolution authorizing the deposit of such bonds shall provide that the bonds are deposited as a guaranty for the payment of the outstanding bonds of such city, town or political subdivision and that such bonds shall not be drawn down except by proper resolution of the Board of Directors reciting the reasons therefor and providing for satisfaction of the guaranty in an amount equal to the bonds withdrawn as in this section provided.

The governing body of such city, town or political subdivision shall not be required to collect taxes for the payment of the bonds thus compensated, so long as the District shall pay the interest and the principal as it matures on the Compensation Bonds deposited to said interest and sinking fund. There shall be surrendered to the District concurrently with such payment the respective maturing interest coupons and bonds in an amount equivalent to such payment and thereupon the coupons and bonds so surrendered shall be cancelled by the District. The District may reserve the right to take up, uncanceled, any of said Compensation Bonds by surrendering in lieu thereof for cancellation a like principal amount of the bonds of such city, town or political subdivision for which the Compensation Bonds were issued, provided the bonds surrendered shall have the same maturities as the Compensation Bonds thus taken up. Such reserved right shall be stated in or stamped on such bonds. The funds thus received and credited to the interest and sinking fund of the bonds so compensated shall be used solely for the payment of interest and principal maturing on such outstanding bonds.

Sec. 18. Such Compensation Bonds shall be issued in similar denominations, bear the same rate of interest payable at same time,

having the same principal maturity dates and similar options of prior payment, if any, as the outstanding bonds of the city, town or political subdivision thus to be compensated; provided said District bonds shall be dated on a date after the election at which they were authorized.

Sec. 19. The District without the necessity of an election is hereby authorized to issue its refunding bonds in exchange for or in lieu of any of its bonds (including Compensation Bonds) theretofore legally issued and outstanding. Such refunding bonds may mature serially or otherwise, with or without option or prior payment, not more than forty (40) years from their date, bearing interest at the same or a lower rate than that borne by the bonds then to be refunded, provided that such refunding bonds may bear an interest coupon rate greater than that borne by the bonds to be refunded if it is shown mathematically that a saving in total interest cost will result therefrom. All such refunding bonds shall be submitted to the Attorney General of Texas for approval and the Comptroller of Public Accounts for registration in the manner and with the same effect as provided by general law for the authorization, issuance and delivery of refunding bonds by counties.

Sec. 20. The Assessor and Collector of taxes of Bexar County shall, ex officio, be the Assessor and Collector of taxes for the District. The blanks used by the Assessor and Collector to accept rendition of property for taxation by the County shall be printed so as to show that the rendition of property situated in the District is also made for the benefit of the District. The property which is situated in the District shall be clearly indicated on the approved tax rolls in the office of the Assessor and Collector. The value of property situated in the District as equalized by the Board of Equalization of Bexar County, finally approved by the Commissioners Court of Bexar County and as extended on the approved tax rolls of Bexar County shall constitute the assessed values of such property for purposes of District taxation. Within five (5) days after the approval of the report of the Board of Equalization by the Commissioners Court of the County, the Assessor and Collector of taxes shall certify to the District the total assessed valuation of property situated in the District according to such approved rolls.

Sec. 21. Within ten (10) days after the amount of assessed valuations of property shall have been certified to the District by the Assessor and Collector, it shall be the duty of the Board of Directors to fix the tax rate of the District for the current year and to certify such rate to the Assessor and Collector immediately after it shall have been fixed. The Assessor and Collector shall extend on the tax rolls as to each item of property shown on the tax rolls to be situated in the District the amount of tax levied by and for the District. At the time the Assessor and Collector makes collection of

taxes for State and County purposes he shall at the same time collect the taxes levied for the District, and shall not accept payment of taxes levied against any property for State and County purposes without at the same time collecting the tax so levied for the District. For his services thus rendered to the District in assessing and collecting such taxes, the Assessor and Collector shall be entitled to deduct from all taxes thus collected on the current year's tax rolls a sum equivalent to one per cent (1%) thereof, and for the collection of delinquent taxes compensation in like manner to that which he receives in collecting delinquent State and County taxes, provided that no duplicated charge shall be made for costs of suit where a charge is made in reference to enforcement of State and County taxes.

Sec. 22. The provisions of Chapters 1 to 11, inclusive, Title 122 of the Revised Civil Statutes of Texas, 1925, as amended, relating to the assessing and collecting of taxes by the State and Counties of Texas, except where in conflict with provisions of this Act, shall apply to the assessing and collecting of such taxes.

Sec. 23. The District shall have the right to fix and collect charges, fees or tolls for the use of its sanitary systems and facilities or for any services rendered by said systems or facilities and to contract with any person, private corporation, municipal corporation, political subdivision, or the Board of Trustees thereof, for the billing and collecting of such charges, fees or tolls simultaneously with the collection of charges for water service, and the District shall have the right to impose penalties for failure to pay when due such charges, fees or tolls. The rights and powers herein conferred shall not be construed to limit the further right and power of the District to fix and collect charges, fees and tolls for any service which may be rendered by any of the works, plants and facilities owned or controlled, and operated by the District in performance of any of the purposes or functions for which it is created, nor shall it be so construed as to deprive the District of the right to impose penalties for failure to pay such charges, fees or tolls as may be thus fixed, when due.

Sec. 24. In connection with the power of the District to promulgate rules and regulations for the operation, maintenance, and functions of the District and to enforce proper observance thereof all home rule cities and all cities and towns operating under general law located within the District are authorized to pass ordinances in harmony with all such rules and regulations as may be adopted by the District or in the alternative the District is authorized to enforce its own rules and regulations within such cities and towns. It shall be the duty of such cities and towns to enforce observance of all such ordinances. The duties imposed and the powers conferred on such cities and towns with reference to such rules and regulations shall likewise be applicable to Bexar County.

Sec. 25. All cities and towns, including home rule cities and political subdivisions situated in the District, shall have the power to grant to the District the right to operate and maintain such works, plants or facilities as may be located in such cities and towns and which may be deemed by the District to be necessary or convenient to accomplish the purposes of the District. The terms and conditions of such grant may be such as may be agreed upon between any such cities, towns or political subdivisions and the District taking into consideration the purposes and objects for which the District is created.

Sec. 26. The negotiable tax bonds authorized by this Act shall be eligible for purchase for any public funds in accordance with the laws governing investment of such public funds and shall be eligible to secure public funds on deposit in duly qualified depositories of the State and any municipal corporation, county or other political subdivision thereof.

Sec. 27. Any obligation issued pursuant to the provisions of this Act shall be exempt from taxation by the State of Texas or by any municipal corporation, county or other political subdivision or taxing District of the State.

Sec. 28. Nothing contained in this Act shall be construed as affecting the San Antonio River Canal and Conservancy District [now San Antonio River Authority] as created by Acts 1937, Forty-fifth Legislature, House Bill No. 726, as amended¹, nor as restricting, modifying or affecting in any manner or to any extent the authority, powers and functions of said San Antonio River Canal and Conservancy District nor as amending any law or statute relating thereto.

¹ Article 8230—113.

Sec. 29. Nothing contained in this Act shall be construed to diminish, or in any other manner affect, the power of the City of San Antonio to operate its municipal water supply system, nor the use of the subterranean waters of the City of San Antonio. Nor shall anything contained in this Act be construed to affect, diminish or impair any of the other powers now vested in the City of San Antonio by its Charter and the Statutes of the State of Texas, nor as amending or repealing any law relating thereto.

Sec. 30. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. Acts 1945, 49th Leg., p. 491, ch. 306.

Art. 8280—126. Bexar County Metropolitan Water District

Sec. 8. (e) Directors succeeding the first Board, whether now or hereafter elected, shall be qualified resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said District, and shall organize in like manner. As amended Acts 1957, 65th Leg., p. 86, ch. 49, § 1.

Emergency. Effective April 3, 1957

Library references

Waters and Water Courses — 18312
C.J.S. Waters § 241.

1. Construction and application

Metropolitan water district laying water mains in street which subsequently becomes

a part of city of San Antonio through annexation, was required to pay costs in conforming mains to improvements in streets made by city subsequent to annexation. City of San Antonio v. Bexar Metropolitan Water Dist., Civ.App., 192 S.W.2d 491, error refused.

EXHIBIT B

AN ACT

relating to the authority of the Bexar Metropolitan Water District to issue bonds and to enter into certain agreements.

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

SECTION 1. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (Article 8280-126, Vernon's Texas Civil Statutes), is amended by adding Sections 15A and 15B to read as follows:

Sec. 15A. Sections 49.181 and 49.183, Water Code, do not apply to the issuance or sale of District bonds.

Sec. 15B. The District shall take all action, including issuing bonds for facilities, deemed necessary and desirable by the Board to conserve and protect the water in the Edwards Aquifer, including the development of alternate water supplies to its customers such as surface water sources and reuse or retreatment of water owned by the District. In that connection, the District may issue bonds and may acquire, construct, purchase, improve, renovate, or take any other similar action to provide facilities designed to achieve such purposes, including, but not limited to, entering into installment purchase or sale agreements, lease purchase agreements, leases, construction contracts, or similar agreements with any person upon the terms and containing the provisions determined by the Board, in its sole discretion, to be advantageous to the District.

SECTION 2. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission.

(b) The Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

President of the Senate

Speaker of the House

I certify that H.B. No. 376 was passed by the House on April 11, 1997, by the following vote: Yeas 132, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 376 was passed by the Senate on May 5, 1997, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

EXHIBIT C

(PFD Pages 1-5 and 74-86)

APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
BULVERDE TO OBTAIN A WATER	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY	§	
(APPLICATION NO. 33194-C)	§	
	§	OF
APPLICATION OF BEXAR	§	
METROPOLITAN WATER DISTRICT	§	
TO AMEND ITS WATER	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY NO. 10675	§	ADMINISTRATIVE HEARINGS
(APPLICATION NO. 33309-C)	§	

Because there are no disputed matters concerning notice or jurisdiction, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

III. Recommendations

The Texas Commission on Environmental Quality (TCEQ or Commission) Executive Director recommended denying Bulverde's application primarily on the basis of her belief that Bulverde does not have the financial, managerial, and technical capability to provide continuous and adequate service. She also argued that Bulverde has not demonstrated a need for the CCN except in areas where there has been a specific request for service.

The Executive Director recommended approving BexarMet's application in areas where it has received specific requests for service and where it currently provides service within the requested area.

The Administrative Law Judge (ALJ) agrees with the Executive Director's recommendation that Bulverde's application should be denied because it has not shown that it has the financial, managerial, and technical capability to provide continuous and adequate service. The ALJ agrees with the Executive Director's recommendation that the BexarMet application should be approved in part, but disagrees that it should be limited to the extent the Executive Director contended. He recommends that BexarMet's application be granted for the requested service area south of Highway 46, except that it be permitted to serve within Bulverde's corporate limits only if it obtains Bulverde's consent to do so or its district boundaries are expanded to include Bulverde's corporate limits. He recommends approval of BexarMet's application north of Highway 46 only where it has specific requests for service and in its two existing service areas. ¹

¹Attachments 1 and 2 are maps of the BexarMet and Bulverde requested service areas. The overlapping area is shown in green on the Bulverde map (Attachment 2).

PROPOSAL FOR DECISION

SOAH DOCKET NOS.: 582-01-3633 & 582-02-0432

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TQEC DOCKET NOS.: 2001-0697-UCR & 2001-0951-UCR

IV. Procedural History

On June 28, 2000, Bulverde filed its application for a CCN. Notice of the application was mailed on October 13, 2000, to persons within the requested service area and to cities and neighboring retail public utilities providing the same utility service whose corporate limits or CCN boundaries are within two miles of the requested area. On October 19, 2000, the same notice was published in the BULVERDE COMMUNITY NEWS, a newspaper regularly published and generally circulated in Comal County, Texas.

On July 12, 2001, the Commission referred Bulverde's application to the State Office of Administrative Hearings (SOAH). Notice of the preliminary hearing was mailed on August 16, 2001, to all parties requesting a hearing on the application. A preliminary hearing was held on September 10, 2001, at which time the following were admitted as parties:

- Bulverde, represented by Mayo J. Galindo, subsequently also represented by Bruce Wasinger and Emily Rogers
- The Executive Director, represented by Fread Houston²
- BexarMet, represented by Mark H. Zeppa
- Comal Water Company (Comal), represented by Kathleen B. Cileske, subsequently represented by Mr. Zeppa
- Water Services, Inc. (WSI), represented by David L. Wallace, subsequently

²The Executive Director filed a notice of substitution of counsel on November 13, 2001, and she was subsequently represented by Todd Galiga and John Deering.

PROPOSAL FOR DECISION

SOAH DOCKET NOS.: 582-01-3633 & 582-02-0432

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represented by Mr. Zeppa

- Diamond Water Company (Diamond), represented by David L. Wallace, subsequently represented by Mr. Zeppa
- San Antonio Water System (SAWS), represented by Martin Rochelle
- Canyon Lake Water Supply Corporation (Canyon Lake WSC), represented by John O. Houchins

On November 20, 2001, SAWS withdrew as a party, and was removed as a party.

On November 3, 2000, BexarMet filed its application to amend its CCN. Notice of BexarMet's application was mailed on May 1, 2001, to persons within the service area and to cities and neighboring retail public utilities providing the same utility service whose corporate limits or CCN boundaries were within two miles of the requested service area. On May 13, and 20, 2001, the same notice was published in the SAN ANTONIO EXPRESS NEWS, a newspaper regularly published in Bexar County and generally circulated in Comal County.

On August 22, 2001, the Commission referred BexarMet's application to SOAH. Notice of the preliminary hearing was mailed on October 23, 2001, to all parties who had requested a hearing on the application. A preliminary hearing was held on December 4, 2001, at which time the Executive Director moved to consolidate the two applications. All of the parties present supported the motion and it was granted. Guadalupe Blanco River Authority (GBRA), represented by Bruce Wasinger, was admitted as a party.

On December 11, 2001, BSR Water Company requested party status. BexarMet opposed

PROPOSAL FOR DECISION

SOAH DOCKET NOS.: 582-01-3633 & 582-02-0432

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the request in a filing dated December 17, 2001. In an order dated December 20, 2001, the request was denied.

Comal initially opposed the BexarMet application, but reached a settlement with BexarMet before the hearing on the merits and withdrew its opposition. It continued to oppose Bulverde's application.

The hearing on the merits convened on June 11, 2002, and concluded on June 13, 2002. Canyon Lake WSC initially opposed both applications, but reached a settlement with both applicants during the hearing and withdrew its opposition and withdrew as a party during the hearing. BexarMet, Comal, WSI, and Diamond (Protestants) opposed Bulverde's application. Bulverde and GBRA opposed BexarMet's application. The record was left open until August 9, 2002, for the presentation of post-hearing briefs and until September 11, 2002, for the presentation of reply briefs. All the parties submitted initial and reply briefs. The record was reopened on October 16, 2002, and October 18, 2002, for the receipt of additional documentation and arguments. The record finally closed on October 18, 2002.

V. Statutory Standards

The parties cited WATER CODE §§ 13.241 and 13.246 as containing the controlling standards for judging the Bulverde and BexarMet applications.³

³The Commission's rules at 30 TEX. ADMIN. CODE (TAC) § 291.102 (a)-(d) contain substantially similar standards, but also specify which standards apply to new CCN applications only and which apply to both new and CCN amendment applications.

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The ALJ concludes that the application should be granted for the requested service area south of Highway 46, except that BexarMet should be permitted to serve within Bulverde's corporate limits only if it obtains Bulverde's consent or its district boundaries are expanded to include Bulverde's corporate limits. He concludes that BexarMet did not demonstrate a need for service in the area north of Highway 46 except for existing service areas and areas where there are specific requests for service.

C. BexarMet's Authority to Expand into Comal County

1. Bulverde/GBRA

Bulverde/GBRA argued it is impermissible, under BexarMet's enabling legislation,²⁰² for it to provide service to the requested area. They contended a United States district court case cited by BexarMet²⁰³ does not permit it to expand its legislative boundaries by simply obtaining TCEQ approval of an amendment to its CCN.

Bulverde/GBRA cited case law holding that a water district like BexarMet has only powers that are expressly granted by statute or implied as an incident to the express powers granted.²⁰⁴ They pointed out that BexarMet was created in 1945 under authority of TEX. CONST. ANN. art. XVI § 59(a)²⁰⁵ with the express purpose of managing storm and flood waters for rivers and streams located "wholly within Bexar County." They argued nothing in the BexarMet Act, including

²⁰²Bexar Metropolitan District Act, 49th Leg., R.S., ch. 306, 1945 Tex. Gen. Laws 491 (BexarMet Act).

²⁰³*Rios v. Bexar Metropolitan Water District*, Cause No. SA-96-CA-335.

²⁰⁴*Tri-City Fresh Water Supply District No. 2 of Harris County v. Mann*, 142 S.W. 2d 945, 946-947 (Tex. 1940); *Franklin County Water District v. Majors*, 476 S.W. 2d 371, 373 (Tex. Civ. App.—Texarkana 1972, writ ref'd. n.r.e.).

²⁰⁵Article XVI § 59© authorizes the legislature to enact laws appropriate for the conservation and development of all of the state's natural resources, including the control, storing, preservation and distribution of its storm and flood waters and the waters of its rivers and streams for irrigation, power, and other useful purposes.

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BexarMet's general and express powers,²⁰⁶ authorizes BexarMet to provide water service in the requested area.

Bulverde/GBRA contended for BexarMet to provide water service to the requested area, it must show that it has annexed a territory into its district, that it has annexed the territory into the district because the area was annexed by the City of San Antonio, or that it is providing service incidental to the acquisition of necessary resources to serve the district.²⁰⁷

Bulverde/GBRA maintained there is no evidence that BexarMet has annexed the requested area in accordance with the BexarMet Act.²⁰⁸ Under § 6 of the Act, BexarMet may annex land outside the corporate limits of a city only if certain conditions are met: it must receive a petition for annexation; it must hold a hearing to consider the petition; its board of directors must find the annexation to be advantageous and in BexarMet's best interests; and an election must be held in the territory to be annexed with a majority of the voters voting to assume a pro rata share of BexarMet's indebtedness.²⁰⁹

Bulverde/GBRA also asserted BexarMet has not shown implied authority to provide water service to the requested area. They argued, although the BexarMet Act empowers it to secure the

²⁰⁶BexarMet Act §§ 2 and 3; TEX. CONST. ANN. ART. 16, § 59.

²⁰⁷BexarMet Act, §§ 6 and 6a. Bulverde/GBRA also cited *Harris County Water Control & Improvement Dist. No. 58*, 357 S.W. 2d 789, 795-796 (Tex. Civ. App.—Houston 1962, writ ref'd. n.r.e.) (stating if the needs of Harris County Water Control & Improvement District are served, water may be furnished outside district limits as an incident to the district's primary obligation) and O.P. TEX. ATT'Y. GEN. No. H-1195 (1978) (opining that the Upper Colorado River Authority could sell water outside its boundary only if it was incidental to its securing resources to provide services within the district).

²⁰⁸BexarMet Exhibit C, Tab 9 at 143; Tr. at 424-427.

²⁰⁹Under BexarMet Act § 6a, BexarMet's boundaries will be automatically expanded to include land annexed by the City of San Antonio, but only after a majority of the taxpayers in the area vote to assume BexarMet's indebtedness.

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necessary resources or facilities for which it was created,²¹⁰ selling water outside the district must be incidental to the acquisition of resources necessary for providing services within the district—BexarMet is not authorized to “roam at large throughout the State and distribute water wherever it wishes without regard to limitations placed on it by statute.”²¹¹ If BexarMet’s needs are served incidentally by providing water outside its boundaries, it may do so, but where the source of water is wholly unconnected with the district limits and the distribution is in an area wholly unconnected with and outside the district, the service is *ultra vires*.²¹²

According to Bulverde/GBRA, BexarMet has not shown that the sale of water to the requested area will be incidental to the acquisition of necessary water resources to serve the district. To the contrary, Mr. Ahrens testified that none of the area is interconnected with BexarMet, and BexarMet has needed to truck in water to serve its Comal County service areas.²¹³

Bulverde/GBRA acknowledged that WATER CODE § 49.215(a) provides that a district like BexarMet may provide water service to areas contiguous to or in the vicinity of the district provided there is not a duplication of a service or facility of another public utility, but argued that BexarMet’s proposed water service would duplicate that provided by Bulverde and GBRA.

In addition to the above-stated matters, Bulverde/GBRA argued BexarMet must also receive Bulverde’s approval to serve within its corporate limits. It cited WATER CODE § 49.215(a), which states a district may not provide water utility services and facilities in “areas outside the district that are also within the corporate limits of a city,” unless it obtains “a resolution or ordinance of the city granting consent” Bulverde maintained BexarMet has not done this.

²¹⁰WATER CODE § 49.215(a); BexarMet Act § 3(f)-(h).

²¹¹*Harris County Water Control & Improvement Dist. No. 58*, at 795.

²¹²*Id.* at 796.

²¹³*Id.*, at 373, 395-398.

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It distinguished the former TCEQ decision in *City of Hudson Oaks*, Docket No. 6507-S (May 8, 1990), which was relied on by BexarMet as authority that a municipality does not require the consent of another municipal corporation to serve within its boundary. It argued that case was different from the present case because the opposing municipality did not indicate its intent or desire to extend its system into the service area.

Bulverde/GBRA cited WATER CODE § 13.244© as requiring each applicant for a CCN to provide evidence to TCEQ that it has received the “required consent, franchise, or permit” from a municipality. They said BexarMet has not received Bulverde’s consent.²¹⁴ They argued, under WATER CODE § 49.215(a), BexarMet must obtain the consent even if Bulverde has not adopted a franchise ordinance.

Bulverde/GBRA cited provisions of the BexarMet Act in support of its argument. Section 6 provides that “areas of territory *not included within the limits of any incorporated city*, and not the District, . . . may be annexed to the District. . . .” (Emphasis supplied by Bulverde/GBRA.) Section 3(r) provides that BexarMet may “operate and maintain *with the consent of the governing body of any city, town, or political subdivision* located in the District . . .” facilities necessary to accomplish the purpose of BexarMet Act. (Emphasis from Bulverde/GBRA.)

Bulverde/GBRA contended the public interest protections provided by these provisions are to ensure that cities are able to serve their own citizens and to limit competition among cities and duplication of facilities.

Bulverde/GBRA argued, because BexarMet does not have authority to provide water within the city limits of Bulverde, its application should be denied as a matter of law.

²¹⁴BexarMet Exhibit C, Tab 9, at 143; Tr. at 427.

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Bulverde/GBRA cited Mr. Ahrens's testimony indicating a BexarMet position that its boundaries automatically expand whenever its CCN is amended.²¹⁵ Bulverde/GBRA argued the court in *Rios v. Bexar Metropolitan Water District* did not expand BexarMet's legislatively established boundaries. It simply settled Voting Rights Act of 1965 issues by holding that persons living in certain BexarMet certified areas have an interest in the governance of BexarMet and a right to vote in BexarMet's elections. Because of this, they should be included in BexarMet's political boundaries, notwithstanding the BexarMet Act and other state law to the contrary. Bulverde/GBRA maintained *Rios* does not authorize BexarMet to expand its legislative boundaries by simply receiving approval to expand its CCN, rewrite the legislative mandate in the BexarMet Act describing how it expands its boundaries, or authorize TCEQ to expand BexarMet's statutory boundaries by approving a CCN amendment.

2. The Executive Director

The Executive Director argued it is legal for BexarMet to provide water service in Comal County on the basis of WATER CODE § 49.215(a), which authorizes water districts to purchase, construct, acquire, own, operate, repair, improve, or extend all works, improvements, facilities, plants, equipment, and appliances necessary to provide any services or facilities authorized to be provided by the district to areas contiguous to or in the vicinity of the district provided the district does not duplicate a service or facility of another public utility.

She argued, because neither Bulverde nor GBRA provide water service in the area and will not be able to do so until 2004, BexarMet is not prevented by the non-duplication-of-service clause from providing service.

²¹⁵Tr. at 424-427.

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The Executive Director maintained Bulverde/GBRA are correct in their argument that BexarMet may not serve within the Bulverde city limits without its permission. She cited the following language in the second sentence of WATER CODE § 49.215(a):

A district providing potable water and sewer utility services to household users shall not provide services or facilities to serve areas outside the district that are also within the corporate limits of a city without securing a resolution or ordinance of the city granting consent for the district to serve the area within the city.

3. BexarMet

BexarMet contested Bulverde/GBRA's argument on several grounds. As an initial matter, it contended the issue need not be reached because TCEQ decided the matter in BexarMet's favor when it granted BexarMet's HEB CCN application in Comal County on June 1, 2000, after the 1999 incorporation of the City of Bulverde.²¹⁶ It contended Bulverde/GBRA's argument is a collateral attack on a prior Commission order that is estopped by *stare decisis*.

BexarMet cited multiple means of expanding the BexarMet district. All parties agree that BexarMet can hold an expansion election (the method that must be followed if the district wants to levy ad valorem taxes) and that its boundaries automatically expand whenever territory is annexed to the City of San Antonio.

Bulverde/GBRA argued a third means of expansion was created when BexarMet received a CCN under the Public Utility Regulatory Act, TEX. REV. CIV. STAT. ANN. art. 1346c (legislation preceding the WATER CODE). This provided it with a state-sanctioned means to provide water service outside the boundaries of where it has already expanded by traditional means. Pursuant

²¹⁶BexarMet also asserted that it is certified and serves inside other cities and other counties, but did not present supporting evidence to that effect.

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to this authority, BexarMet has obtained CCNs and certified service areas which until 1996 were outside the district (the 1996-and-after exception is explained below in the discussion of *Rios*).

BexarMet cited *Rios*, in which it was sued in 1996 for an alleged violation of the *Voting Rights Act of 1965*, as amended, 42 USC § 1973. It maintained the district court held as a matter of law that its boundaries would henceforth automatically expand to match its state-certified service area. It argued, under the United States Constitution Supremacy Clause, its boundaries automatically expand as a matter of law to encompass a new service area whenever TCEQ issues it a new CCN or amends its CCN.

BexarMet contended its service as a water district is consistent with general service rights under WATER CODE § 49.215. Subsection (d) says a water district may serve outside of the district without a CCN as long as it does not duplicate service. It said it is the single service provider wherever it serves and Bulverde is not yet serving its requested area.²¹⁷

In response to arguments that it may not provide water service inside Bulverde's corporate limits without consent, BexarMet maintained it is a unique creation of the legislature because it is a TEX. CONST. ANN. art. 16 § 59 water district **and** a municipal corporation.²¹⁸ As held by the Texas Water Commission (successor to the Public Utility Commission and predecessor to both the TNRCC and TCEQ) in *City of Hudson Oaks*, a municipality does not require the consent of another corporation to serve within its neighbor's boundary. BexarMet contended a municipal corporation is not required to obtain the consent of another municipal corporation to provide water utility service anywhere. Additionally, a political subdivision is not obligated to obtain a franchise

²¹⁷Barton testimony, Tr. at 63-64.

²¹⁸In BexarMet Act § 2, the legislature declared BexarMet to be "a municipal corporation, vested with all the authority as such under the constitution and laws of the State of Texas. . . ."

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under the Texas Local Government Code from a municipality because a political subdivision cannot be taxed or assessed a franchise fee.²¹⁹

4. Analysis

a. BexarMet's Authority

The ALJ concludes BexarMet has authority to obtain a CCN to serve its requested area.

The beginning point in analyzing BexarMet's authority is to recognize that water districts have only such power as is granted by statute or implied as an incident to powers expressly granted.²²⁰ Thus, it is necessary to review the powers specifically granted to BexarMet.

Bulverde/GBRA's basic analysis, which focused on the BexarMet Act, was not persuasive. WATER CODE § 49.211(a) provides that a "district"²²¹ shall have the functions, powers, authority, rights, and duties that will permit accomplishment of the purposes for which it was created **or the purposes authorized by the constitution, this code, or any other law.**" (Emphasis added.) WATER CODE § 49.211(b) provides that a "district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation **or the purposes authorized by this code or any other law** ." (Emphasis added.) Thus, contrary to Bulverde/GBRA's argument, BexarMet may act in ways not expressed in the BexarMet Act to accomplish the purposes of laws other than the BexarMet Act.

One of the WATER CODE purposes is expressly stated in the first sentence of § 49.215(a), which permits a district to extend improvements, facilities, and equipment that are necessary to provide its authorized services or facilities to areas contiguous to or in the vicinity of the district,

²¹⁹TEX. TAX CODE ANN. § 49.220. BexarMet acknowledged that it might need road use permits, but asserted these are obtained in the ordinary course of business as the need arises. BexarMet will obtain easements for line construction but Bulverde will have no authority over its construction in private easements.

²²⁰*Tri-City Fresh Water Supply District No. 2 of Harris County; Franklin County Water District*. The same is true for municipal corporations. *City of West Lake Hills v. Westwood, Inc.*, 598 S.W. 2d 681, 683 (Tex. Civ. App. – Waco 1980, no writ).

²²¹Defined to include districts like BexarMet created under authority of TEX. CONST. ANN. art. XVI, § 59.

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except that it may not duplicate a service provided by another public entity. BexarMet has applied to serve areas contiguous to or in the vicinity of its district that are not being served by other public entities.

Another WATER CODE purpose is stated in § 49.215(d), which provides:

(d) A district shall not be required to hold a certificate of convenience and necessity as a precondition to providing retail water or sewer service to **any** customer or service area This subsection does not authorize a district to provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without that district's consent, **unless the district has a valid certificate of convenience and necessity to provide services to that area.** (Emphasis added.)

Of particular significance is the highlighted portion of § 49.215(d), which says the limitation on serving **any** service area that is already certified to or is within the boundaries of another entity does not apply to a district that has a CCN to provide service in the area. Thus, **any** "district," may serve **any** service area if it has a CCN to do so. That is the purpose of BexarMet's application under WATER CODE § 13.241 *et seq.*²²²

BexarMet's contention that Bulverde/GBRA has collaterally attacked a prior TCEQ decision and its assertions are estopped by *stare decisis* was not persuasive. Collateral estoppel applies only to matters actually litigated²²³ and to the same parties as the previous action or to those who stand in privity with the previous parties.²²⁴ The TCEQ order approving BexarMet's request to serve HEB was not protested.²²⁵ Thus, the issue of BexarMet's authority was not litigated. There was no evidence that Bulverde/GBRA was a party to or an entity in privity with other parties in that application. BexarMet's argument that *stare decisis* should apply to an uncontested CCN amendment was unconvincing.

²²²This construction is supported by WATER CODE § 13.244(a), which recognizes a public utility's authority to obtain a CCN by requiring it to submit to the Commission an application to obtain a CCN or CCN amendment.

²²³*Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W. 2d 507, 521 (Tex. 1997).

²²⁴*Wilhite v. Adams*, 640 S.W. 2d 875, 876 (Tex. 1982).

²²⁵BexarMet Exhibit F.

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- b. Whether BexarMet May Serve Within Bulverde's Corporate Limits Without Consent

The ALJ concludes BexarMet should be permitted to provide water service in Bulverde's corporate limits only if it obtains Bulverde's consent or if its district boundaries are expanded to include Bulverde's corporate limits. Any order approving BexarMet's application for Bulverde's corporate limits should be expressly conditioned on BexarMet's satisfying one of those criteria.²²⁶

The second sentence of WATER CODE § 49.215(a) provides:

§ 49.215. Service to Areas Outside the District

(a) A district providing potable water and sewer utility services to household users shall not provide services or facilities to serve areas **outside the district** that are also within the corporate limits of a city without securing a resolution or ordinance of the city granting consent for the district to serve the area within the city.

(Emphasis added.)²²⁷

As can be seen, the statute requires Bulverde's approval for BexarMet to serve within Bulverde's corporate limits **if the service is to be outside BexarMet's district**. It is undisputed that BexarMet's political boundaries do not now include Bulverde's corporate limits and BexarMet has not received Bulverde's consent to serve within its corporate limits.²²⁸

²²⁶WATER CODE § 13.246(b) authorizes the Commission to issue a certificate for the partial exercise of a right or privilege and to impose special conditions to ensure continuous and adequate service.

²²⁷The ALJ concludes it is appropriate for the Commission to consider whether a CCN approval to provide water service in a particular area would directly conflict with a Water Code provision, even though that standard is not expressly stated as one of the criteria in WATER CODE §§ 13.241 and 13.246. (The issue is arguably covered under § 13.241(b), which requires the Commission to ensure that at an applicant "is capable of providing drinking water that meets the requirements of . . . this code.")

²²⁸WATER CODE § 13.245© provides that each CCN applicant must file with the Commission evidence of any required consent from appropriate municipalities.

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There are several conceivable ways for BexarMet to expand its district boundaries. Sections 6 and 6a of the BexarMet Act provide two of the ways. However, they do not authorize expanding into Bulverde's corporate limits. Section 6 provides that territory "not included within the limits of any incorporated village, town or city" may be annexed into the district. Section 6a of the BexarMet Act provides that BexarMet's boundaries will expand to match the boundaries of the City of San Antonio, including territories incorporated as a city or town. However, Bulverde is not part of San Antonio.²²⁹

Although not cited by the parties, WATER CODE §§ 49.301 and 49.302 also authorize ways for BexarMet to expand its boundaries. However, to do so, it must receive a petition from a certain percentage of landowners or a certain number of landowners. There is no evidence that has occurred or that BexarMet seeks to expand its boundaries in that way.

The other means of expanding its boundaries asserted by BexarMet is under authority of the *Rios* decision. In that case, the court approved a consent order containing a remedial plan for Voting Rights Act violations by BexarMet relating to a dilution of its Hispanic customers' voting. BexarMet contended the court's Order provided that BexarMet's political boundaries would henceforth automatically expand to match its state-certified service areas. The ALJ is unable to find that holding in the Order although he agrees with the court's statement ²³⁰ that the remedial plan is "hardly a model of clarity." The Order language that comes closest to supporting BexarMet's contention appears to be at pages 15 and 16 of the Order in the Findings of Fact:²³¹

The Court finds and the parties agree that under the current electoral system, large number[s] of voters in areas served by the District under CCN's are not allowed to run or vote for the directors of the District. **The Court finds and the parties agree that all persons living in the CCN areas of the District have an interest in the governance of the District and a right to vote in the elections for Directors and therefore should be in the District's Political Boundary**

²²⁹Sections 3(r) and 25 of the BexarMet Act authorize BexarMet to provide water service in cities or towns with their consent.

²³⁰See page 15 of the court's Findings of Fact and Conclusions of Law in Support of Preliminary Injunction and Approval of Consent Order.

²³¹The Order states on page 32 that all fact findings "shall be considered conclusions of law, if appropriate and vice versa."

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notwithstanding state law and the District's Special Act to the contrary .
(Emphasis added.)

On page 23 of the Order under Conclusions of Law, the court said:

The Court finds and the parties agree that Chapter 49, § 103(d) of the Texas Water Code, effective September 1, 1995, provides authority for the Bexar Metro Board of Directors to apportion the areas within the Political Boundaries of the District **(the District's CCN areas served are hereby being made the Political Boundaries of the District pursuant to Section 2 [of the Voting Rights Act])**.
(Emphasis added.)

None of this language expressly states that the court's ruling makes the remedial plan applicable to BexarMet's future CCN acquisitions. The second sentence of the first quoted language applies to "all persons living in the CCN areas," not to persons who may live there in the future. The parenthetical portion of the second quoted language is also stated in the present rather than future tense.

This understanding of the Order is consistent with the court's finding of a Voting Rights Act violation, which is based on **existing** facts to justify an order remedying an **existing** situation. For example, on page two of its Order, the court stated a three-prong test to prove a violation—the minority group must be able to demonstrate that it is large and geographically compact, that it is politically cohesive, and that the white majority votes sufficiently as a block to enable it, in the absence of special circumstances, to defeat the minority's preferred candidate. The court found these matters in the affirmative in 1996 for BexarMet's service areas in Bexar, Atascosa, and Medina Counties. One of the primary reasons for the finding was that BexarMet's board of directors was elected at-large. The board is now elected through single-member districts. It is not known whether these same three-prong-test facts would exist in Comal County if BexarMet's application were approved. It would seem surprising for the court to presume the existence of those facts prospectively to justify applying the same remedy in Comal County and other places into the indefinite future.

The ALJ notes that on pages 31 and 32 of the Order, the court said it "shall retain jurisdiction to give effect to Section 2 voting rights protection outlined in this Order, and this Order retaining jurisdiction shall control over any state or federal action . . . and this Court further

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retains jurisdiction for the purpose of clarification and implementation upon motion by Plaintiff or Defendants.” In view of this provision and the above-described analysis of *Rios*, BexarMet should bear the burden of obtaining a ruling or other satisfactory evidence from the court that its district boundaries will expand to include its requested service area in Comal County if its CCN application is granted.

The following is a discussion of BexarMet’s other contentions. The ALJ disagrees with BexarMet’s argument based on *City of Hudson Oaks*. BexarMet accurately stated the Commission’s conclusion in that case was that it was unnecessary for one municipality to obtain a second municipality’s consent to serve within the second municipality’s corporate limits. The Commission’s ruling was based in part on its interpretation of Local Government Code § 402.001(b) and (c), that a municipality is authorized to provide water service outside its boundaries, including service inside the corporate limits of another municipality. However, that decision was made in 1990 before the enactment of WATER CODE § 49.215 in 1995. From 1995 forward, a district like BexarMet is not permitted to provide water service outside its district within the corporate limits of a city without the city’s consent.²³²

The ALJ disagrees with BexarMet if it is arguing that BexarMet’s municipal-corporation status somehow exempts it from obtaining Bulverde’s consent under § 49.215 because that statute applies to “districts” rather than municipal corporations. The word “district” in § 49.215 is defined in WATER CODE § 49.001(a)(1) to mean “any district or authority created by authority of . . . Section 59, Article XVI, Texas Constitution, regardless of how created.” Because BexarMet is purely a Article XVI § 59 creation,²³³ its municipal corporation status is not separate from but is included within the meaning of the word “district” as used in § 49.215.

D. Ability of BexarMet to Provide Adequate Service/Access to Adequate Water Supply

1. BexarMet

BexarMet contended the WATER CODE requires it to have access to an adequate supply of water, not that it have the water “in hand” when the application is filed or on the day of the hearing. It argued it is legally permissible for it to serve any portion of its requested area through

²³²The commission’s determination in *City of Hudson Oaks* also rested on the Commission’s exclusive authority to grant or deny a CCN. However, § 49.215 still controls what BexarMet may or may not do.

²³³BexarMet Act § 1.

EXHIBIT D



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March 25, 2004

Ms. Margaret Hoffman
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Austin, Texas 78711-3087

Dear Ms. Hoffman:

At the request of Bexar Metropolitan Water District (BexarMet), I introduced and passed Senate Bill 1494 relating to the powers of BexarMet, during the 78th Legislative Session. My intent, among other things (see enclosure), was to repeal antiquated expansion provisions in BexarMet's enabling act that were inconsistent with the Federal Court's decision in the 1996 court case, *Rios v. BexarMet, et al*, and to remove BexarMet's ability to regulate groundwater.

It is my understanding that some confusion has arisen in a pending certification-related application, specifically TCEQ CCN Amendment Application #34354-C, concerning the effect of this bill on BexarMet's ability to expand in the future. I understand the pending application has been deemed administratively complete and was uncontested. Finally, it is also my understanding the application is for land located within Bexar County.

Based on the above, please accept this letter to clarify that it was not my intent to restrict or abridge certain powers of BexarMet existing in BexarMet's enabling statute or general law, especially the power to expand or acquire additional certificates of convenience and necessity.

Should you need additional information regarding the legislative intent of SB 1494, please do not hesitate to contact me.

Yours truly,

Frank Madla

FM/ja

enclosure

cc: Ms. Stephanie Bergeron, Environmental Law Division
Mr. Robert Martinez, Environmental Law Division

State Affairs
Infrastructure Development & Security

COMMITTEES
Intergovernmental Relations, Chairman

Veterans Affairs & Military Installations
Subcommittee on Base Realignment & Closure



STATEMENT OF LEGISLATIVE INTENT

SB 1494

by Frank Madla

It is the intent of the Committee Substitute for Senate Bill 1494 to clarify the powers and duties within, and only within, the boundaries of the Bexar Metropolitan Water District.

Nothing contained in the Committee Substitute for Senate Bill 1494 shall be interpreted to diminish, or in any other manner affect, the Springhills Water Management District or the Bandera County River Authority, nor restrict, modify, or affect in any manner or to any extent the authority, powers and functions of the Springhills Water Management District or Bandera County River Authority nor amend any law or statute relating thereto.

EXHIBIT E



Frank Madla

Texas State Senate
District 19

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April 1, 2004

Ms. Margaret Hoffman
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Senate Bill 1494

Dear Ms. Hoffman:

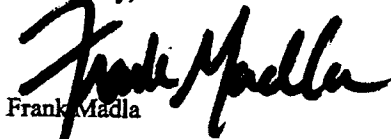
Please accept this letter as one to address issues raised by your staff concerning Senate Bill 1494 and its effect on Bexar Metropolitan Water District's (BexarMet) ability to secure additional certificated areas within and outside of Bexar County. As expressed in my letter of March 26, 2004 (attached), SB 1494 was enacted to remove antiquated annexation provisions from BexarMet's enabling act in recognition of the *Rios v. BexarMet* federal voting rights decision, and to remove BexarMet's groundwater management responsibilities.

Further, as I stated in my letter of March 26, it was not my intent that SB 1494 restrict or abridge any of BexarMet's powers granted by its enabling statute or general law, other than those named above. I specifically did not intend SB 1494 to limit BexarMet's power to expand or acquire additional certificates of convenience and necessity (CCN). The committee substitute presented to the Senate Natural Resources Committee, along with my brief statement of legislative intent, was adopted without objection.

This letter is provided to further emphasize that my sponsorship of SB 1494 was directed, as stated above, to removing antiquated provisions of BexarMet's 1945 act and to conform it to the *Rios v. BexarMet* decision. It was in no way intended to diminish the TCEQ's jurisdiction to grant BexarMet CCNs in connection with any such application duly processed by the Commission, whether the certificated area sought is within or outside of Bexar County. In other words, if the Commission finds BexarMet's application is qualified, SB 1494 should not be an obstacle to its approval.

I would appreciate your assistance in resolving this issue as soon as possible. Should you have any questions, or wish to discuss this further, please do not hesitate to contact me.

Yours truly,


Frank Madla

FM/ja

enclosure

cc: Ms. Carolyn Brittin, Office of the Executive Director