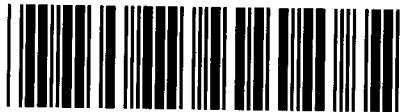




Control Number: 43572



Item Number: 53

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

CCN/10675/582-03-3275/50

FREEMAN & CORBETT, LLP

PHONE (512) 451-6689

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

43572
FAX (512) 453-0865

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May 12, 2006

PUBLIC UTILITY COMMISSION
FILING CLERK

Via Hand-Delivery or U.S. Mail

Ms. Cassandra J. Church
Presiding Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

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

Dear Judge Church:

Enclosed please find Intervenor Bitterblue, Inc.'s Supplement to Motion for Dismissal by
Summary Disposition. Copies are being sent to all parties of record as set forth in the Certificate of
Service.

Very truly yours,

Ronald J. Freeman

Ronald J. Freeman

cc: All Parties of Record per Attached Certificate of Service

RECEIVED
ADJUTANT GENERAL'S
2006 MAY 12 PM 1:03

Ronald J. Freeman
rfreeman@freemanandcorbett.com

Anthony S. Corbett
tcorbett@freemanandcorbett.com

53

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

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

Supplement to Motion For Dismissal by Summary Disposition

Comes now, Bitterblue, Inc. ("Bitterblue") and files this its Supplement to its earlier Motion to Intervene and for Dismissal by Summary Disposition in the referenced Docket involving an application (the "Application") for a certificate of convenience and necessity filed by Bexar Metropolitan Water District ("BMWD"), and would respectfully show as follows:

I.

Bitterblue has previously been granted the right to intervene in this cause and its motion to dismiss the Application was taken under advisement by the Administrative Law Judge and the case abated pending a ruling by the District Court of Comal County on competing motions for summary judgment filed in that case by BMWD and GBRA on the threshold issue in this case: whether BMWD has legal authority to provide retail water utility service outside its current statutory boundaries. Bitterblue has argued that BMWD's statutory authority has been limited by the Texas Legislature such that BMWD only has the statutory authority to provide retail water service within BMWD's boundaries—and nowhere else. Bitterblue further pointed out that the properties proposed to be included within BMWD's CCN and served by BMWD pursuant to the pending Application are not within BMWD's boundaries and, therefore, cannot legally be served by BMWD. The reason for the abatement, the awaiting of Judge Steel's ruling in the Comal County case, has passed, and Judge Steel has agreed with the reasoning of Bitterblue, as advanced by GBRA in the Comal County case. Judge Steel has also now entered his final judgment in that case and a copy is attached as **Appendix 1** hereto.

II.

As set forth in Judge Steel's final judgment (**Appendix 1** hereto):

- "(i) [BMWD] cannot provide services outside the District's statutory boundaries;
- "(ii) Following passage of the Act of June 18, 2003, 78th Leg., Reg. Sess., Ch. 375, 2003 Gen. Laws 1593 ("Senate Bill 1494"), [BMWD's] ... statutory boundaries for retail water utility services are set out in Section 5A(b) of [BMWD's] enabling act (such statutory boundaries being those defined in

Certificates of Convenience and Necessity ("CCNs") Nos. 10675, 12759, and 12760 ... as those CCNS existed on the date of passage of SB 1494..."
[Emphasis added.]

It is undisputed that the area BMWD now seeks to add to its CCNs in the Application are outside of BMWD's retail water service boundaries. As further evidence of this, please see the Affidavit of Gene Dawson, Jr., attached hereto as **Appendix 2**, attesting to the fact that the area BMWD currently requests to add to its CCNs in the Application is outside of BMWD's current boundaries. And, please note that BMWD could not even annex this area if it wanted to because Judge Steel's final judgment further provides:

"(iii) Following the passage of Senate Bill 1494, [BMWD] has no authority to annex or incorporate additional area to its territory."

III.

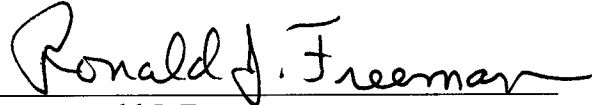
Law Supporting Motion for Summary Disposition

TCEQ Rules provide that a party may file a motion for summary disposition of an application if, based on undisputed and uncontroverted facts, dismissal of an application is warranted as a matter of law. Such is the case here as to BMWD's Application. As shown in Bitterblue's Motion to Dismiss, as supplemented herein, it is undisputed that the area requested by the Application, including all or relevant portions of Bitterblue's Tracts, is not within BMWD's boundaries. Accordingly, based on these undisputed and uncontroverted facts, BMWD's enabling legislation, as determined by Judge Steel in the Comal County case, does not provide BMWD the statutory authority to provide retail water service to the requested area or to annex it. Therefore, BMWD's Application should be dismissed.

Wherefore, premises considered, Bitterblue respectfully requests that, after due consideration of this Motion in accordance with the TCEQ's rules, BMWD's Application be dismissed.

Respectfully submitted,

Freeman & Corbett, L.L.P.
Attorneys for Intervenor, Bitterblue, Inc.

A handwritten signature in cursive script that reads "Ronald J. Freeman". The signature is written in black ink and is positioned above a horizontal line.

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

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of May, 2006, a true and correct copy of Bitterblue's Supplement to Motion for Dismissal by Summary Disposition was served on the parties of record by either hand-delivery or First Class Mail.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

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

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
MC-105
P.O. Box 13087
Austin, TX 78711-3087
Fax: (512) 239-3311

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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

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

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

BEXAR METROPOLITAN WATER
DISTRICT

Robert Wilson III
R. L. Wilson, P.C.
P.O. Box 831583
San Antonio, TX 78283
Fax: (210) 223-4200

Adolfo Ruiz
Bexar Metropolitan Water District
2047 W. Malone
San Antonio, TX 78225

BSR WATER COMPANY
(SNECKNER PARTNERS, LTD.)

Fax: (210) 922-5152

David L. Earl
Law Offices of Earl & Brown
A Professional Corporation
River View Towers
111 Soledad Street, Suite 1111
San Antonio, TX 78205
Fax: (210) 222-9100

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

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

WATER SERVICES, INC.

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

CITY OF BULVERDE

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

SAN ANTONIO WATER SYSTEM

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

Ronald J. Freeman
Ronald J. Freeman

Convenience ("CCNs") Nos. 10675, 12759, and 12760 issued by the Texas Commission on Environmental Quality, as those CCNs existed on the date of passage of Senate Bill 1494); and

(iii) Following the passage of Senate Bill 1494, BexarMet has no authority to annex and incorporate additional area to its territory.

All costs shall be borne by the party incurring them. This is a final judgment. All relief not expressly granted herein is denied.

Signed this 5th day of May ~~April~~ 2006.

Original Signed By
GARY STEEL

JUDGE PRESIDING

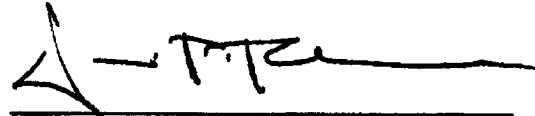
FORM OF JUDGMENT PROPOSED BY:

Sydney W. Falk / by APB - / permission

C. Robert Heath
State Bar No. 09347500
Sydney W. Falk, Jr.
State Bar No. 06795400
Bruce Wasinger
State Bar No. 20901100
Bickerstaff, Heath, Pollan & Caroom, L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443
512.472.8021
512.320.5638 (Fax)

Frank Garza
State Bar No. 07731590
Davidson & Troilo, P.C.
7550 West IH-10, Suite 800
San Antonio, Texas 78229
210.349.6484
210.349.0041 (Fax)

Attorneys for Plaintiff City of Bulverde



Molly Cagle
State Bar No. 03591800
David P. Blanke
State Bar No. 02453600
The Terrace 7
Vinson & Elkins L.L.P.
2801 Via Fortuna, Suite 100
Austin, Texas 78746
512.542.8400
512.236.3314 (Fax)

Roger P. Nevola
State Bar No. 14937500
Law Offices of Roger P. Nevola
P. O. Box 2103
Austin, Texas 78768-2 103
512.499.0500
512.499.0575 (Fax)

*Attorneys for Plaintiff
Guadalupe-Blanco River Authority*

APPENDIX 2

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

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

AFFIDAVIT OF GENE DAWSON, JR.

THE STATE OF TEXAS	§
	§
COUNTY OF BEXAR	§

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

"My name is Gene Dawson, Jr. I am over twenty-one years of age, of sound mind and in all ways qualified to make this Affidavit. I have personal knowledge of all facts stated herein and they are true and correct to the best of my knowledge and information. I am a duly registered professional engineer under the laws of the State of Texas.

(1) I am familiar with the boundaries of the Bexar Metropolitan Water District (the "District") as provided in Section 5 of the act creating the District and with the area within Certificates of Convenience and Necessity Nos. 10675, 12759 and 12760, as issued to the District and referenced in Section 5A of the act creating the District, copies of which Sections 5 and 5A are attached hereto as **Exhibit 1**.


(2) I am familiar with the map attached hereto as **Exhibit 2**, and it accurately reflects the boundaries of the District as specified in both Sections 5 and 5A of the act creating the District in

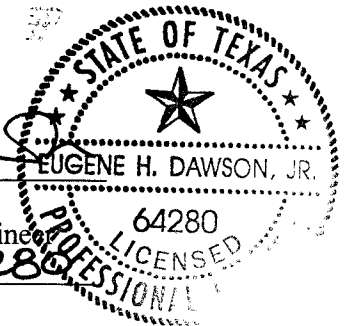
the vicinity of the area sought to be certificated by the District in SOAH Docket No. 582-03-3725 (TCEQ Docket No. 2003-0664-UCR).

(3) I am also familiar with the boundaries of the proposed new service area the District is requesting in SOAH Docket No. 582-03-3725 (TCEQ Docket No. 2003-0664-UCR) and that area is shown in green shading on Exhibit 2. Further, I am familiar with the properties which Intervenor Bitterblue, Inc., seeks to be excluded from the District's application for amendment to its CCN in SOAH Docket No. 582-03-3725 (TCEQ Docket No. 2003-0664-UCR), said properties known and referred to by me as Friesenhahn I (a portion), Friesenhahn II (a portion), Bass Tract (entirely) and Kinder Ranch (entirely) (collectively, such tracts being referred to as the "Bitterblue Tracts"). The boundaries of each of the Bitterblue Tracts are also accurately shown in solid blue lines on **Exhibit 2** hereto.

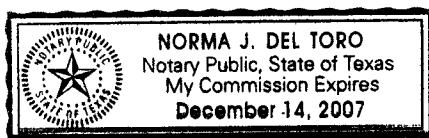
(4) No portion of the current boundaries of the District as established either by Section 5 or Section 5A of the act creating the District includes any part of the area the District is requesting be added to its CCN in SOAH Docket No. 582-03-3725 (TCEQ Docket No. 2003-0664-UCR). More particularly, the all of the Bass Tract and all of the Kinder Ranch lie completely outside of the District's boundaries, while the Friesenhahn I Tract and the Friesenhahn II Tract lie partially outside of the District's boundaries.

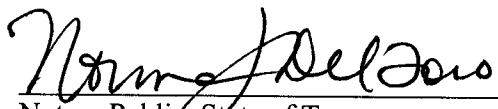
WITNESS MY HAND AND SEAL THE 11 day of May, 2006."


Gene Dawson, Jr.
Registered Professional Engineer
Registration Number 64280



Sworn to and subscribed before me on this the 11th day of May, 2006.




Notary Public, State of Texas
Printed Name: Norma J Del Toro

12-14-07

(SEAL)

My Commission Expires: 12-14-07

in which the district's principal office is located; provided, however, that no rule or regulation which provides a penalty for the violation thereof shall be in effect, as to enforcement of the penalty, until five days next after the district may have caused a substantive statement of the particular rule or regulation and the penalty for the violation thereof to be published, once a week for two consecutive weeks, in one or more newspapers affording general circulation in the area in which the property of the district is situated; and, the substantive statement so to be published shall be as condensed as is possible to afford an intelligent direction of the mind to the object sought to be accomplished or the act forbidden by the rule or regulation; one notice may embrace any number of regulations; there must be embraced in the notice advice that breach of the particular regulation, or regulations, will subject the violator to the infliction of a penalty and there also shall be included in the notice advice that the full text of the regulation sought to be enforced is on file in the principal office of the District, where the same may be read by any interested person. Five (5) days after the second publication of the notice hereby required, the advertised regulation shall be in effect, and ignorance of any such regulation shall not constitute a defense to a prosecution for the enforcement of a penalty; and, the rules and regulations authorized hereby, after the required publication, shall judicially be known to the courts and shall be considered of a nature like unto that of valid penal ordinances of a city of the State;

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

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

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

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

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

Sec. 4. (a) The powers vested in and the duties devolved upon the District in this Act are subject to the continuing right of supervision of the flow waters of its rivers and streams and the impounding of flood waters, by the State Board of Water Engineers, and in instances where the plans of the District provide for the use of water from any rivers or streams or the impounding of any flood waters thereof, it shall submit such plans to the State Board of Water Engineers for approval as to efficacy and shall make application for a permit as required by law;

(b) Where the general plans of the District provide for the disposal of sewage and wastes, such plans shall be submitted to the State Board of Water Engineers for approval as to compliance with the provisions of Article 848a of the Penal Code of Texas.

Sec. 5. The District is hereby created and established, situated wholly in Bexar County, Texas, having the following metes and bounds: Beginning at the intersection of the North line of Chavanaux Road with East line of U. S. Highway 281,

Thence North along
tion with the North line
Thence West along
Pleasanton Road,
Thence South along
tion with the North line
Thence West along
Creek to an intersection
of the SAU & G Railroad
Thence North along
Mile Creek to an inter-
tonio at Military Drive,
Thence West along t
West line of Somerset I
Thence Southwester
point on the South lim
Avenue and Virginia A
Thence West along
intersection with Washi
Thence South along
boundary of South Sar
of Virginia Avenue,
Thence West along
boundary of South Sar
of Quintana Road,
Thence Northeast al
section with the South l
Thence In a Westerl
to its intersection with
Thence In a South
line of the G H & S A
the Southeast corner of
Thence West along
and 5442 to its intersect
Thence In a Northw
Creek to its intersectio
Thence In a Northw
North side of Military
U. S. Highway No. 90,
Thence In an Easte
line of U. S. Highway
Acme Road,
Thence North along
of Commerce Street,
Thence West along
line of Callaghan Road,
Thence North along
approximate divide bet
ing along the Southeas
of Alazan to its inters
Road,
Thence Northwest a
its intersection with the
Thence Northeast a
intersection with the So

Thence North along East side of U. S. Highway 281 to its intersection with the North line of Ashley Road,

Thence West along the North line of Ashley Road to the East line of Pleasanton Road,

Thence South along the Eastline of Pleasanton Road to an intersection with the North line of Baatz Boulevard,

Thence West along the North line of Baatz Boulevard near Six Mile Creek to an intersection with the East line of the Right-of-Way boundary of the SAU & G Railroad,

Thence North along the East Railroad Right-of-Way line across Six Mile Creek to an intersection with the corporate city limits of San Antonio at Military Drive,

Thence West along the corporate limit line to an intersection with the West line of Somerset Road,

Thence Southwesterly along the West line of Somerset Road to a point on the South limits of South San Antonio being between Arcadia Avenue and Virginia Avenue,

Thence West along the South boundary of South San Antonio to its intersection with Washington Street,

Thence South along the East line of Washington Street which is the boundary of South San Antonio to its intersection with the South line of Virginia Avenue,

Thence West along the South line of Virginia Avenue which is the boundary of South San Antonio to its intersection with the West line of Quintana Road,

Thence Northeast along the West line of Quintana Road to its intersection with the South line of Military Drive,

Thence In a Westerly direction along the South line of Military Drive to its intersection with the west line of the G H & S A Right-of-Way,

Thence In a Southwesterly direction along the West Right-of-Way line of the G H & S A which line is also a boundary of Kelly Field to the Southeast corner of County Block No. 5441,

Thence West along the common boundary of County Block Nos. 5441 and 5442 to its intersection with the East bank of Leon Creek,

Thence In a Northwesterly direction along the East bank of the Leon Creek to its intersection with the North side of Military Drive,

Thence In a Northwesterly direction across Leon Creek and along the North side of Military Drive to its intersection with the South line of U. S. Highway No. 90,

Thence In an Easterly and Northeasterly direction along the South line of U. S. Highway No. 90 to its intersection with the East line of Acme Road,

Thence North along the East line of Acme Road to the North line of Commerce Street,

Thence West along the North line of Commerce Street to the East line of Callaghan Road,

Thence North along the East line of Callaghan Road which is the approximate divide between Leon Creek and Alazan Creek, and continuing along the Southeast line of Callaghan Road across the headwaters of Alazan to its intersection with the Northeast line of Fredricksburg Road,

Thence Northwest along the Northeast line of Fredricksburg Road to its intersection with the South line of Kenney Road,

Thence Northeast along the Southeast line of Kenney Road to its intersection with the Southwest line of Keller Road,

Thence Southeast along the Southwest line of Keller Road across the headwaters of Olmos Creek to its intersection with the East line of San Pedro Avenue,

Thence North along the East line of San Pedro Avenue across the upper reaches of Olmos Creek to the Southeast line of Isom Road,

Thence In a Northwesterly direction along the Southeast line of Isom Road to meet the City of San Antonio corporate line on the Northwest side of the Airport,

Thence Northeast along the City of San Antonio corporate line bounding the airport to the Bitters Road,

Thence Southeast along the City of San Antonio corporate line and the Airport boundary to the Wetmore Road,

Thence Southwest along the City of San Antonio corporate line and the Wetmore Road to the North Loop Road,

Thence Southeast following the City of San Antonio corporate line along the North Loop Road to its intersection with the South line of the Military (Camp Bullis) Road,

Thence East along the South line of the Military Road and South along the West line of Military Road across the upper reaches of Salado Creek and across U. S. Highway 81 to its intersection with the South line of Rittiman Road,

Thence East along the South line of the Rittiman Road to its intersection with the West bank of Salado Creek,

Thence Downstream along the West Bank of the Salado Creek and the West channel of the Salado Creek to a point where it intersects the South line of John's subdivision,

Thence In a Southwesterly direction to a point on the West side of Goliad Road 2577' Northwest of the Goliad Road and Military Drive intersection.

Thence In a Southeasterly direction along the West line of Goliad Road across Military Drive and along the East boundary of Brooks Field to its intersection with the North line of San Juan Road,

Thence West along the North line of San Juan Road which is the boundary of Brooks Field to its intersection with Southton Road,

Thence North along the East line of Southton Road which is the boundary of Brooks Field to its intersection with the North line of the old Corpus Christi Road which is the boundary of Brooks Field,

Thence West and Northwest along the North and Northeast line of the old Corpus Christi Road the Right-of-Way of which is now included in the Brooks Field Reservation to its intersection with the South line of the South Loop Road,

Thence In a Westerly direction along the South line of the South Loop Road across U. S. Highway 181 of the Right-of-Way of the SA & AP Railroad to its intersection with the East bank of the San Antonio River,

Thence South along the meandering of the River to a point of intersection between the East bank of the River and the North line of Chavanau Road, extended,

Thence West along the North line of Chavanau Road, extended, and the North line of Chavanau Road to the point of beginning,

except the area embraced within the corporate limits of the cities of Alamo Heights, Olmos Park and Terrell Hills as of the effective date of this Act.

Sec. 6. Areas of territory not included within the limits of any incorporated village, town or city, and not in the District, as hereinabove defined, may be annexed to the District in the following manner:

(1) A petition praying for annexation of such territory or by fifty

(50) such taxpayers if may be presented to the Board. Said petition may be presented to the Board at any time after the date of said Board. Said petition may be presented to the Board at any time after the date of said Board.

(2) The Board of Commissioners may, by resolution, fix a time within which time shall be no resolution and notice of places within the District proposed to be annexed shall be published in a newspaper at least fifteen (15) days before notice shall state the territory and bounds of the territory.

(3) If upon the hearing the annexation of such territory shall be found to be in the best interest and best facilities of the District, the Board by resolution may, at its discretion, annex the territory, into the District.

(4) Any territory the annexation of which is necessary to the payment of the indebtedness owed, containing the annexation of any part of the District shall have been and held for the purpose of voting voters residing in the District in the sumption of the indebtedness of the levy of the tax there may be substituted. The manner of calling the election shall be governed by the provisions of the ninth Legislature, Regulations to vote bonds and

Sec. 6a. If any territory, which may be located within the District as defined by this Act, be annexed to and become a part of the District, the territory thus annexed to the District shall not be included in such inclusion shall not be a majority of the qualified voters of the territory annexed have been owed, contracted or a called, held and conducted in paragraph (4) of Section 6.

Sec. 7. When this Act shall take effect, the Board of Bexar County, Texas, for said District, shall be a resident qualified person comprising said District, appointed, shall qualify and bond hereinafter prescribed number as President, Treasurer. Each of s

TRX. SESS. L. '45-32

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

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

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

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

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

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

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

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

(b) The repeal of Sections 6, 6a, and 20, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (Article 8280-126, Vernon's Texas Civil Statutes), does not affect an annexation proceeding initiated before the effective date of this Act. An annexation proceeding initiated before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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