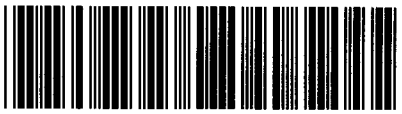

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August 25, 2005

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Honorable Cassandra J. Church
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street
Austin, Texas 78701

Via Fax 512/475-4994
Total Pages: 20

3725

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

Dear Judge Church:

Enclosed please find **Bexar Metropolitan Water District's Response in Opposition to SAWS' Motion to Intervene and to Remand/Abate**. In conformity with SOAH Rules a copy is also being provided to you via first class mail.

Concurrently with this transmission, copies are being served on counsel for all parties.

Sincerely,

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

Robert L. Wilson III
RLW:slb

Enclosure as noted above.

Cc: Service List

F. Gilbert Olivares, Esq., General Manager
Adolfo Ruiz, In-House Counsel
Bexar Metropolitan Water District

6

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

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P.O. Box 13025
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SOAH DOCKET NO. 582-03-3275
TCEQ DOCKET NO. 2003-0664-UCR

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

BEXAR METROPOLITAN WATER DISTRICT'S
RESPONSE IN OPPOSITION TO SAWS' MOTION TO INTERVENE
AND TO REMAND/ABATE

COMES NOW, Bexar Metropolitan Water District ("BexarMet"), Applicant in the above-numbered and styled administrative proceeding, and files this, its Response in Opposition to the Motion to Intervene and to Remand/Abate[1] filed by San Antonio Water System. ("SAWS"). In support of this Opposition, BexarMet shows as follows:

I. Introduction / Procedural History

1.01 On or about March 25, 2002, BexarMet filed its Application to Amend Certificate of Convenience and Necessity ("CCN") 10675 with the then-Texas Natural Resources Conservation Commission ("TNRCC").[2] Contemporaneously with submitting the Application, BexarMet provided notice of the filing to neighboring systems and cities, including SAWS, as required by 30 TAC § 291.106. A copy of the Notice issued to SAWS is attached hereto as ***Exhibit A***.

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[1] The Motion is referred to hereinafter as SAWS' "Motion to Intervene."

[2] On September 1, 2002, the TNRCC changed its name to the Texas Commission on Environmental Quality ("TCEQ"). The terms TNRCC and TCEQ are used interchangeably herein.

1.02 Despite receiving the required notice, which facially specifies the procedure for protesting the application and seeking a contested case hearing thereon,[3] SAWS did neither. Indeed, SAWS, by this time, had contractually agreed with BexarMet not to oppose its Application, and had explicitly advised the TNRCC that it had no desire to provide service to the requested area.

1.03 Some three years later, in June 2003, BexarMet's Application was forwarded to the State Office of Administrative Hearings ("SOAH") for consideration of its merits and the timely protests filed by entities obviously more diligent than SAWS, including BSR Water Company ("BSR"). In accordance with 30 TAC. § 80.105, the Administrative Law Judge ("ALJ") conducted a preliminary hearing, and designated the parties to this proceeding on or about July 17, 2003. SAWS neither attended the hearing, nor sought party status at that time. As such, they were never designated as a party to this proceeding.

1.04 Based upon ongoing negotiations between BexarMet and BSR (the only remaining protestant after the preliminary hearing) this case was abated a number of times. Throughout these periods of virtual silence, SAWS never petitioned the ALJ for party status, or expressed any statement of "justiciable " or even passing interest in this proceeding.

1.05 On May 10, 2005, BexarMet filed a Motion seeking to have the abatement lifted, and to have this proceeding reinstated to the active docket. The ALJ conducted a lengthy telephonic hearing on BexarMet's request on June 6, 2005, and granted the Motion. At that time, the ALJ and parties worked diligently to achieve an agreed procedural schedule setting-forth the date for a hearing on the merits, discovery deadlines, and pre-filed evidence deadlines.

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[3] ***See*** 30 TAC § 291.106(a)(3).

This schedule was set-forth in the ALJ's Order No. 9, which extensively addresses the pre-hearing timline and procedures. Notable only by its absence in the effort to reach an agreeable schedule was SAWS, who , even by then, had expressed no intention to participate in this proceeding.

1.06 In accordance with Order No. 9, BexarMet expended substantial time, resources and attorneys' fees to comply with all Order No. 9-prescribed deadlines, including the deadlines to complete discovery (by August 25, 2005) and to file its written direct case evidence (by July 20, 2005). Again, throughout this period of extensive work effort, SAWS never voiced even a whisper of interest in this proceeding.

1.07 Finally, on August 18, 2005 – a date which is ***more than three (3) years after*** the Application to Amend was filed, approximately one month ***after*** BexarMet filed all testimony and exhibits, and ***after*** BexarMet responded to two rounds of discovery issued by BSR – SAWS filed its Motion to Intervene. SAWS' Motion to Intervene is untimely, fails on its merits, and fails to demonstrate the requisite criteria provided in 30 TAC § 80.109(a). Accordingly, the Motion to Intervene must, as matter of law and equity, be denied in all respects.

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

2.01 Although fully advised in writing of the nature and substance of BexarMet's Application to Amend in early 2002, SAWS failed to file a protest or request for contested case hearing within the 30 day protest period prescribed by 30 TAC § 291.106 (a)(3). But for the timely

protest of BSR and others, the Application could have been granted by the Executive Director of the TNRCC as long ago as May 2002.[4] Had such action occurred, SAWS would have no procedural vehicle within which to make the contrived allegations of 13th hour "justiciable interest" it now proffers in its Motion to Intervene.

2.02 SAWS not only missed the deadline for the protest period prescribed by the agency and its internal rules. As fully set-forth above, it also disregarded the opportunity to petition the ALJ for party status in July 2003 (at the time of the preliminary hearing),[5] and has made no effort to intervene in this case during the two years since.

2.03 Allowing SAWS to intervene at this late date would cast aside the substantial efforts and expenditures of both BexarMet and BSR, which have each met all of the deadlines prescribed by Order No. 9. BexarMet, in addition to disrupting the work activities of its employee-witnesses, has engaged the services of expert witnesses, court reporters, copy services, and couriers in order to meet the deadlines established by Order No. 9. Obviously, there were substantial expenditures associated with this compliance. These costs cannot be recovered through this proceeding, and extension of the duration of this proceeding will certainly result in redundant expenditures and escalating attorneys' fees and costs.

2.04 This proceeding is set for Hearing on the Merits on October 17, 2005, and the deadline for completion of discovery has already passed.[6] Introducing SAWS as an Intervenor to this

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[4] *See* 30 TAC § 291.107(c).

[5] *See* 30 TAC § 80.105(b)(1).

[6] *See* Order No. 9.

case will undoubtedly cause the instant "hearing in progress [to] be unreasonably delayed."[7] This fact, alone, justifies denial of the Motion to Intervene.

2.05 Further, if SAWS' Motion to Intervene is granted, not only will the existing parties suffer unreasonable delay, but the ultimate issue in the proceeding will also be modified so as to reflect SAWS' competing application, allegedly filed on August 16, 2005.[8] That is, the burden of proof in the case will be converted from BexarMet's simple demonstration that it meets the criteria for granting a CCN, [9] to one of BexarMet and SAWS seeking to prove that they, respectively, are "better-suited" to serve the proposed area.

2.06 Manipulation of the burden of proof in this respect would require the existing parties to seek new witnesses, including experts. It would also require additional time and expense for discovery, and completely change the analysis under which the ALJ and existing parties have been operating for the two years since this matter has been on file at SOAH. Neither the "facts" alleged in SAWS' Motion, nor the procedural rules of the TCEQ provide for such perversion of a pending case which is barely two months from trial on the merits. SAWS' Motion must be denied.

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[7] 30 TAC § 80.109(a).

[8] Notably, SAWS' purported "application to amend its CCN to include the Requested Area" was not attached to the Motion to Intervene. BexarMet has not been served with a copy of such purported application, and maintains no knowledge as to its contents or whether/when it was filed. Further, BexarMet has no reason to believe that the SAWS application meets the criteria of 30 TAC § 291.105.

[9] *See* 30 TAC § 291.102.

III.
SAWS Has Contractually Agreed Not to Seek Certification for BexarMet's Proposed Area and Has Voluntarily Excluded The Subject Territory From Its Own CCN Applications

3.01 Perhaps most disingenuous about the Motion to Intervene is the fact that SAWS contractually agreed not to seek a CCN concerning the proposed service area in September 2000. More specifically, SAWS and BexarMet have historically been, and remain, logical competitors. They are the two largest water purveyors in Bexar County, and necessarily compete for limited water resources and customer connections in that geographic area.

3.02 Between June 1998 and the fall of 2000, BexarMet and SAWS found themselves crosswise on numerous CCN Applications. That is, each had made a routine practice of opposing the other's various applications. In an effort to resolve their numerous disputes, and at the behest of the TCEQ, SAWS and BexarMet entered into an "Interlocal Operational Agreement CCN Service Areas" on September 22, 2000.[10] The Interlocal Agreement is attached hereto as ***Exhibit B***.

3.03 As expressly set-forth in its terms, the Interlocal Agreement was "reached by the respective staffs of SAWS and BexarMet...[and]...[t]he principles underlying [the] agreement were endorsed by executive management of both utilities and by the Water Resources Committee of the SAWS Board of Trustees."[11] Further, the Interlocal Agreement is signed by the then-Chief Executive Officer of each utility. Thus, both organizations recognized the value of

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[10] The document is formally captioned "Interlocal Operational Agreement CCN Service Areas San Antonio Water System & Bexar Metropolitan Water District." It is referred to hereinafter as the "Interlocal Agreement."

[11] *See Exhibit B* at ¶ 3 on p. 1.

compromise, and entered into a series of agreements, each of which are delineated in the Interlocal Agreement.

3.04 Of particular importance to this proceeding is the agreement set-forth in paragraph 5, which provides as follows:

> "Application No. 32248-C (area along U.S.281N). SAWS agrees to amend its existing application ***to exclude the currently uncertificated areas west of U.S. 281.*** SAWS further agrees to decertify that portion of its existing certificated service area that is bounded by the western property line if the Mountain Lodge subdivision and south of Wilderness Oaks Drive (Map2). ***Bexar Met will then be free to file an application with TNRCC to include those properties in its CCN.*** In return BexarMet will rescind its protest pending at TNRCC for SAWS Application No. 32248-C as amended, and to Application Num,bers 32243-C, 32251-C, 34495-C, 32250-C, 32252-C , 322530-C."[12]

3.05 True to its word, BexarMet withdrew its various protests to SAWS' applications, and filed its own application to serve the subject area.[13] SAWS then revised its Application to Amend CCN 32248-C, so as to exclude the subject area, in deference to BexarMet's forthcoming application.[14]

3.06 At the time BexarMet filed the Application presently before the ALJ, SAWS was aware of the following:

a. BexarMet's intent to serve the subject area;

b. The location of the subject area with respect to the City limits;

c. SAWS' written agreement not to seek a CCN to serve the area; and

d. SAWS' express, bargained-for consideration, received from BexarMet in

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[12] *See Exhibit B* at ¶ 5 on p. 1 (emphasis added).

[13] BexarMet's Application is made the basis of this contested case proceeding.

[14] Again, that application by BexarMet is the one *sub judice*.

exchange for not opposing BexarMet's efforts to include the subject area in its CCN.

3.07 For a host of political, strategic and financial reasons not stated in the Motion to Intervene, SAWS simply dislikes the Interlocal Agreement its CEO signed in September 2000, with the approval of his Board's Water Resources Committee. SAWS now seeks to Intervene in this case – under the guise of concocted "extenuating circumstances" – not to ensure continuous and adequate service to the public, but instead, as a weapon in its broader, historical rivalry with BexarMet referenced in Paragraphs 3.01 and 3.02, above. Stated simply, SAWS perceives an opportunity for a land/customer/water grab, based upon BexarMet's pre-filed case evidence, and wants to ensure that it does not suffer as the result of its own further inaction. This is an insufficient and inappropriate basis for intervention into this proceeding. Resultantly, the Motion to Intervene must be denied.

IV.
SAWS Has No Justiciable Interest in this Proceeding

4.02 SAWS' Motion to Intervene fails to set-forth a valid justiciable interest. Back in 2002 – the proper time to protest and request party status in this proceeding -- SAWS was well aware (from the face of the Notice and through extensive discussions with BexarMet) that the geographic area being requested by BexarMet "lies entirely inside the ETJ of the City."[15] BexarMet's proposed service area was within the City's ETJ at that time, as much as it is today. Unabashed by the incredulousness of its position, SAWS implies that it experienced a recent epiphany which revealed the locale of the proposed area *vis-a-vis* the City limits.

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[15] *See* SAWS "Motion to Intervene" at ¶ 2(A) on p. 2.

This argument wholly lacks merit, and any novel concern on SAWS' part regarding BexarMet service within areas which may potentially be "annexed into the City" is three (3) years late.[16] That is, the possibility that the City of San Antonio might, at some unspecified date in the future, annex the proposed service area does not create a justiciable interest.

4.02 Likewise, SAWS' other purported "interest" in this case – that it filed its own Application for CCN last week--does not rise to the level of being "justiciable." Under that logic, any party could gain late admittance to any proceeding by filing a related proceeding in another forum. SAWS' filing of its own CCN application is nothing more than an attempt to fabricate a justiciable interest in the outcome of this proceeding. Clearly, this is not what was intended by inclusion of the "justiciable interest" requirement in 30 TAC § 80.109(a).

4.03 A party has a justiciable interest only when his interests will be affected by the litigation.[17] At this time, the proposed service area is outside the City limits of San Antonio, and there exists no reason to infer that SAWS' newly-filed CCN Application will be granted. Indeed, it is likely that, if and when the application is deemed administratively complete by the TCEQ, BexarMet, BSR and others will file protests thereto. SAWS' application will then become the subject of yet-another contested case proceeding, the results of which are far too

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[16] This purported concern relating to future annexation is one of the two alleged bases of SAWS' "justiciable interest" in this case. However, SAWS has failed to identify any action or initiative by the San Antonio City Council to annex the proposed area. Thus, there exists no valid prospect that SAWS will, in the foreseeable future, maintain any responsibility with respect to this area. In the absence of such a prospect, there exists, at best, a contingent interest on the part of SAWS. Such contingent interest cannot satisfy the requirements of 30 TAC § 80.109(a) for late intervention.

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

speculative to consider here. SAWS ***might*** have a justiciable interest in this proceeding if (i) the proposed area were within the San Antonio City limits; or (ii) its CCN Application had been granted, but neither factor is present here. Further, there exists no reasonable degree of certainty that either potentiality will come to fruition, and SAWS has offered no evidence to support a present, personal interest in the outcome of this proceeding.

4.04 SAWS has failed, from the face of its Motion, to demonstrate its justiciable interest. Thus, the ALJ may properly deny the Motion to Intervene without further consideration or hearing.[18]

V.
There Exist No "Extenuating Circumstances" Requiring SAWS' Participation in This Proceeding

5.01 Much like its alleged "justiciable interest," SAWS' purported "extenuating circumstances" are largely contrived. SAWS relies heavily on the request for service it received from Bitterblue, Inc. – a developer corporation with a history of disagreements with BexarMet. In that regard, SAWS asks the ALJ to accept as true the unsworn, conclusory, rank hearsay allegations of a developer concerning matters such as SAWS' and BexarMet's respective capabilities, and the utilities' respective rates.[19] Not only are these "conclusions" unfounded and made by a person with insufficient testimonial qualifications, but they are clearly objectionable, and should not be considered under any stretch of evidentiary

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[18] ***See National Union Fire Ins. Co. of Pittsburgh, Pa. v. Pennzoil Co.***, 866 S.W.2d 248 (Tex.App.–Corpus Christi, 1993), rehearing overruled (holding that trial court may determine intervening party's justiciable interest in lawsuit on basis of sufficiency of petition in intervention).

[19] *See* SAWS "Motion to Intervene" at ¶ 2(B)(1) on p. 4.

decorum.

5.02 Moreover, SAWS' contention that a developer "would prefer service from SAWS rather than BexarMet"[20] is undisputedly irrelevant. HB 2876 is not the law governing this Application, and the landowner's selection of a utility provider is neither dispositive, nor compliant with TEX.WATER CODE § 13.242, which grants the regulatory agency (and not the landowner) authority over issuance of CCNs for specified geographic areas.

5.03 SAWS' diatribe about BexarMet's "newly developed service problems, " while entertaining, is devoid of key information, including the fact that BexarMet routinely supplies SAWS with water for SAWS to serve portions of its own service area, especially that near Talley Road in west Bexar County. That area is within SAWS' existing CCN, but SAWS maintains no facilities with which to provide service. Thus, SAWS looks to BexarMet to fulfill 100% of the water needs of a developer in that area. Further, SAWS obviously overlooked BexarMet's pre-filed case evidence relating to development of the Middle Trinity Aquifer in the proposed service area.

5.04 Also missing from SAWS' Motion is reference to the fact that SAWS is now a self-styled "wholesale water provider" for the region. Though not helpful in its venture to intervene in this case, a regional provider generally provides for a region. SAWS cannot credibly proclaim itself to be a "regional wholesale provider," while simultaneously asserting that it does not desire to supply wholesale water to other entities in the region. Irrespective, BexarMet has demonstrated the existence of substantial non_SAWS water resources to serve the proposed area. Meanwhile, SAWS has failed to demonstrate extenuating circumstances

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[20] *See* SAWS "Motion to Intervene" at ¶ 2(B)(1) on p. 4.

requiring its participation in this case.

5.05 Finally, SAWS' contentions regarding BexarMet's enabling legislation, though unclear, seem to insinuate that the Legislature, through enactment of SB 1494, intended to supplant TEX.WATER CODE § 13.242 concerning the expansion of a regulated entity's service area. Clearly, this issue is beyond the scope of an administrative proceeding, and is wholly irrelevant to the issue of whether SAWS should be allowed to intervene. In any regard, that line of argument fails to speak to the issues of justiciable interest or extenuating circumstances.

VI.
Conclusion

SAWS Motion to Intervene must be denied on grounds that it is untimely, and fails to provide good cause and extenuating circumstances justifying SAWS' participation in this proceeding. Moreover, SAWS admits that the delay in this proceeding will be substantial. This delay can only be unreasonable, given the advanced stages of this proceeding, and the substantial resources expended by Applicant and the other existing parties. For these same reasons, abatement and/or remand are inappropriate, and must be denied.

PRAYER

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

Respectfully submitted,

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Attorneys for Applicant,
Bexar Metropolitan Water District

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was this the 25th day of August, 2005, forwarded by [ ] certified mail return receipt requested, [x] facsimile transmission, [ ] hand delivery, [ ] overnight delivery, to the attached Service List for SOAH Docket Number 582-03-3725/TCEQ Docket No. 2003-0664-UCR.

_____
Robert L. Wilson III

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

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Fax: 512-239-3311

Courtesy Copy to the Following Party via First Class Mail:

State Office of Administrative Hearings
ATTN: SOAH Docket Clerk
P.O. Box 13025
Austin, Texas 78711

Notice to Neighboring Systems and Cities

NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) TO PROVIDE WATER UTILITY SERVICE IN COMAL COUNTY

To: San Antonio Water System
P.O. Box 2449
San Antonio, TX 78298-2449

Notice Mailed: Date pending TNRCC approval of notification

Bexar Metropolitan Water District has filed an application to amend water CCN No. 10675 with the Texas Natural Resource Conservation Commission to provide water utility service in Bexar County.

The proposed utility service area is located approximately 20 miles north of downtown San Antonio Texas, and is generally bounded on the north by the Cibolo Creek ; on the east by State Hwy 281 ; on the south by Borgfeld Rd ; and on the west by Camp Bullis .

The total area being requested includes approximately 5,543 acres and 0 current customers.

The Executive Director will issue this CCN unless one or more persons file written protests and/or a request for a hearing within 30 days after this notice is provided. To request a hearing you must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent, would be adversely affected by the granting of the application for a CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Persons who wish to request a hearing or comment should write the:

Texas Natural Resource Conservation Commission
Water Utilities Division
Utility Rates and Services Section, MC-153
P. O. Box 13087
Austin, TX 78711-3087

within thirty (30) days from the date of this publication or notice. No public hearing will be held unless a request for a hearing is received. Only those individuals who submit a written request to be notified of a hearing schedule will receive notice if a hearing is scheduled.

If one or more requests for a hearing are filed, the Executive Director will not issue the CCN and will forward the application to the State Office Administrative Hearings (SOAH) where a hearing may be held. In the event an evidentiary hearing is held, the SOAH will submit a recommendation to the Commission for final decision. If a hearing is held it will be a legal proceeding similar to civil trials in State District Court.

EXHIBIT A

IF YOU WANT TO REQUEST A HEARING, you must submit the following within **thirty (30) days** from the date of this publication or notice:

- the utility's (applicant) name & CCN number
- your name or the name of the group or association you represent
  your address & daytime telephone number, and fax number (if any)
- the statement, "I/we request a contested case hearing"
- a brief description of the reason why you are requesting the hearing
- any proposed adjustments to the application which would satisfy your concerns.

Requests for a contested case hearing must be signed & submitted in writing to:

Texas Natural Resource Conservation Commission
Water Utilities Division
Utility Rates and Services Section, MC 153
P. O. Box 13087
Austin, Texas 78711-3087

No public hearing will be held **unless** a request for a hearing is received. Only those individuals who submit a written request to be notified of a hearing schedule will receive notice if a hearing is scheduled.

If one or more requests for a hearing are filed, the Executive Director will not issue the CCN and will forward the application to the State Office Administrative Hearings (SOAH) where a hearing may be held. In the event an evidentiary hearing is held, the SOAH will submit a recommendation to the Commission for final decision. If a hearing is held it will be a legal proceeding similar to civil trials in State District Court.

IF A HEARING IS HELD, it is important that you or your representative attend to present your concerns. Your request serves only to cause a hearing to be held and is not used during the hearing

INTERLOCAL OPERATIONAL AGREEMENT
CCN SERVICE AREAS
SAN ANTONIO WATER SYSTEM
&
BEXAR METROPOLITAN WATER DISTRICT

1. Between June 1998 and January 1999 the San Antonio Water System (SAWS) filed multiple applications to amend its Certificate of Convenience and Necessity for potable water service with the Texas Natural Resource Conservation Commission (TNRCC). Some of these applications resulted in conflicting areas of interest for both utilities.

2. Recognizing that prolonged legal proceedings are in neither utility's best interests, SAWS and Bexar Met initiated a series of negotiations to try and resolve their differences without legal action.

3. This agreement recognizes those efforts and delineates the agreement reached by the respective staffs of SAWS and Bexar Met. The principles underlying this agreement were endorsed by executive management at both utilities and by the Water Resources Committee of the SAWS Board of Trustees.

4. Application No. 32243-C (area along IH 10 W). SAWS will amend its existing application to exclude everything east of IH 10 as depicted in the attached map (Map 1). Bexar Met will then be free to file a CCN application for that area. SAWS agrees not to oppose Bexar Met application. Bexar Met agrees to withdraw its opposition to SAWS Application No. 32243-C, as amended, and to Application No. 32244.

5. Application No. 32248-C (area along U.S. 281 N). SAWS agrees to amend its existing application to exclude the currently uncertificated areas west of U.S. 281. SAWS further agrees to rescind its Application No. 32249-C. SAWS further agrees to decertify that portion of its existing certificated service area that is bounded by the western property line of the Mountain Lodge subdivision and south of Wilderness Oaks Drive (Map 2). Bexar Met will then be free to file an application with TNRCC to include those properties in its CCN. In return, Bexar Met will rescind its protest pending at TNRCC for SAWS Application No. 32248-C, as amended, and to Application Numbers 32251-C,32295-C, 32250-C, 32252-C, 32253-C.

6. Application No. 32246-C (area along FM 471 and State Highway 211 in western Bexar County). SAWS agrees to amend its existing application to include the area in Map 3. SAWS will not oppose any application that

EXHIBIT
B

Bexar Met may file for the remaining portion of that application in the future. Bexar Met will decertify the area covered by Application No. 32247-C to SAWS and will decertify its portion of the existing dual certification with SAWS for the area adjacent to Applicaton No. 32247-C, except that subdivision developed by Mr. Gordon Hartman that is presently being served by Bexar Met.

ACCEPTED AND AGREED TO THIS 22nd DAY OF September, 2000.

Michael F. Thuss, P.E.
President/CEO
San Antonio Water System

Thomas C. Moreno
General Manager/CEO
Bexar Metropolitan Water District