

Control Number: 43572



Item Number: 73

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

43572

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

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

**Motion to Revise and Clarify Order No. 22 Ruling on Motion For Dismissal by Summary
 Disposition by Bitterblue, Inc.**

Comes now, Bitterblue, Inc. ("Bitterblue") and files this its "Motion to Revise and Clarify Order No. 22 Ruling on Motion for Dismissal by Summary Disposition by Bitterblue, Inc.," 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 respectfully submits that Order No. 22 in this case needs to be revised and clarified. Order No. 22 appears to limit the ALJ's dismissal of Bexar Met's Application only to the Kinder Tract. In fact, (i) the motion for summary disposition filed by Bitterblue, (ii) the evidence presented by Bitterblue in this Docket in support of its motion for summary disposition and (iii) the logical ramifications of the ALJ's interpretation of the "date of referral" of Bexar Met's Application in Order No. 22, when combined with Judge Steel's ruling in the Comal County case, mandate that Bexar Met's entire Application should be dismissed. Bitterblue's evidence will be discussed later. Bitterblue will first focus on the logical ramifications of the ALJ's interpretation of the "date of referral" of Bexar Met's Application in Order No. 22 when combined with Judge Steel's ruling in the Comal County case.

II.

Order No. 22 correctly finds that the date of referral to SOAH was after the June 18, 2003, deadline set by SB 1494 for Bexar Met's Application to be grandfathered by Section 5 (c) of that Act. And, Judge Steel's ruling holds that Bexar Met may not further serve any areas outside of its current CCN boundaries. If both of these statements are correct (and they are), then logically, the entire Application should be dismissed because Judge Steel has held that Bexar Met cannot serve outside of, or amend, its boundaries and the Application seeks to do just that. Bexar Met's attempt to get *any* additional CCN territory in this Docket would violate Judge Steel's ruling since the Application was referred to SOAH after the June 18, 2003 deadline for grandfathering in Sec. 5 (c) of SB 1494. The ALJ should therefore grant Bitterblue's motion

for dismissal as to the entire requested area^a because it is not within Bexar Met's boundaries. This would save all parties much time and expense from further litigating this case now that the dispositive issue of the "date of referral" has been ruled on in Bitterblue's favor.

III.

In addition to this logical extrapolation of Order No. 22 and Judge Steel's ruling, Bitterblue would also show that its motion for summary disposition and the undisputed evidence entitle it to greater relief than just dismissal of the Kinder Tract. Order No. 15 in this case, in the next to last paragraph on page 4 of that order stated:

"Bitterblue established that it did have authority to proceed in this case in regard to the Kinder property...."

However, in the first full paragraph on page 2 of Order No. 15, the ALJ also stated:

"Bitterblue represents several property owners within the proposed amended service territory and is actively engaged in planning for and the development of those properties...."

In point of fact, Bitterblue presented evidence that:

1. Bitterblue is the general partner of, and the duly authorized representative of, not only the owners of the Kinder Tract, but also of the Bass I, Bass II and Bass III Tracts. A copy of Bitterblue's authorization to represent Bass Properties, L. P., the owner of the Bass I, Bass II and Bass III Tracts is again attached to this Motion as **Exhibit A**.
2. Mr. Gene Dawson, Bitterblue's consulting engineer, presented an affidavit in support of the Motion for Summary Disposition stating in Paragraph 4 that:

"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 Bitterblue Tracts lie completely outside of the District's boundaries."

3. Mr. Dawson also attached a map showing that all four of the Bitterblue tracts are outside of Bexar Met's current boundaries. A simplified version of that same map is attached as **Exhibit B** to this Motion. It shows that the Kinder, Bass I, Bass II and Bass III Tracts are clearly outside of Bexar Met's current boundaries.

Further, Bitterblue would now show that it has entered into a "Utility Service Agreement" with SAWS for SAWS to provide retail water service to the Kinder, Bass I, Bass II and Bass III Tracts. A copy of that service agreement is attached hereto as **Exhibit C**. Thus, not only are the Kinder, Bass I, Bass II and Bass III Tracts represented by Bitterblue in this Docket and outside

^a See Paragraph IV below---Bitterblue asked for this greater relief.

of Bexar Met's boundaries, but they are now in the process of being served by SAWS, which has the legal right to do so since these areas are un-certificated and SAWS, (being a municipality and, therefore, a "retail public utility" under Sec. 13.002 (19), Water Code) does not need a CCN to serve un-certificated areas.^b Thus, Bitterblue's own evidence justifies, at the very least, dismissal of not only the Kinder Tract, but also the Bass I, Bass II Bass III Tracts covered by the SAWS Utility Service Agreements.

IV.

Bitterblue's Motion for Summary Disposition asked that "BMWD's [A]pplication be dismissed, or, in the alternative, that BMWD be instructed to amend the Application to exclude the Properties from its Proposed Service Area." Thus, Bitterblue has requested, and is entitled to, much broader relief than was granted by Order No. 22 and that broader relief is justified by the applicable and undisputed facts.

V.

Failure of Order No. 22 to not also dismiss, at least, the Bass I, II and III Tracts^c is not only contrary to the law and undisputed facts, but would, if Order 22 is interpreted as dismissing Bitterblue entirely from the case^d even though the Bass I, II and III Tracts are still in the case, leave Bitterblue unable to continue to represent the owner of those Tracts or Bitterblue's interests therein, an interest which now includes a \$1,600,000 obligation on the part of Bitterblue to build water line facilities to enable SAWS to serve the Kinder and Bass I, II and III Tracts under the USA with SAWS. Such a result would be manifestly unfair. Therefore, the ALJ should clarify Order 22 to add the Bass I, II and III Tracts and/or clarify that Bitterblue is still a party in the case as to those tracts if they are not dismissed also.

Wherefore, premises considered, Bitterblue respectfully requests that after due consideration of this Motion Order No. 22 be revised:

1. to dismiss Bexar Met's Application in its entirety;
2. in the alternative, to dismiss Bitterblue as to the Kinder, Bass I, Bass II and Bass III Tracts shown to be controlled by Bitterblue and getting retail water service pursuant to Bitterblue's USA with SAWS;
3. that if neither 1 or 2 is granted that the ALJ clarify that Bitterblue is still a party in the case; and
4. for such other relief to which Bitterblue may be entitled.

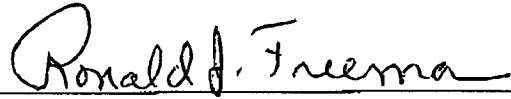
^b See Water Code, Sec. 13.242 (a), which requires a "retail public utility" to obtain a CCN only if the area it intends to provide retail water service to is already "being lawfully furnished" with retail water service.

^c In addition to the Kinder Tract.

^d It should be noted that Order No. 22 is unclear as to whether Bitterblue is still a party in the case. Accordingly, Bexar Met and Bitterblue have entered into a Rule 11 agreement, which will be filed shortly, delaying further discovery and pre-filing of testimony in this case until Order No. 22 is clarified.

Respectfully submitted,

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

A handwritten signature in cursive script, reading "Ronald J. Freeman", is written over 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 13th day of July, 2006, a true and correct copy of this motion was served on the parties of record by facsimile transmission and First Class Mail.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

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

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Todd 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.
115 E. Travis, Suite 1230
San Antonio, TX 78205
Fax: (210) 223-4200

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

BSR WATER COMPANY
(SNECKNER PARTNERS, LTD.)

David L. Earl
Law Offices of Earl & Brown
A Professional Corporation
River View Towers
111 Solcudad 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

TCEQ DOCKET CLERK

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

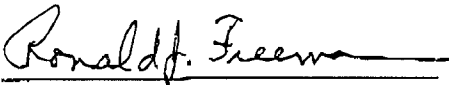

Ronald J. Freeman

EXHIBIT A

AUTHORIZATION

Bass Properties, L.P., a Texas limited partnership ("Partnership"), as the owner of approximately 208 acres of land in Bexar County, Texas, hereby authorizes and directs Bitterblue, Inc., a Texas corporation, to represent the interests of and appear for and on behalf of the Partnership, at all hearings, proceedings and other matters relating to or in connection with the following:

Application of Bexar Metropolitan
Water District to Amend Water CCN
No. 10675 in Bexar County
Before the State Office Of Administrative Hearings
SOAH Docket No. 582-03-3725
TCEQ Docket No. 2003-0664-UCR

Effective as of September 9, 2005.

**BASS PROPERTIES, L.P., a Texas
limited partnership**

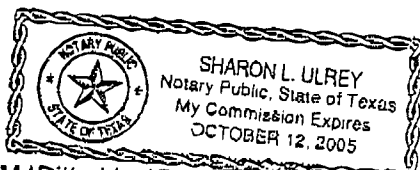
By Its General Partner:
Bass Properties Management, L.L.C., a
Texas limited liability company

By: Joan K. Bass
Name: JOAN K. BASS
Title: General Partner

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on September 9, 2005,
by Joan K. Bass of Bass Properties
Management, L.L.C., a Texas limited liability company, as the sole general
partner of Bass Properties, L.P., a Texas limited partnership, on behalf of said
limited partnership.



Sharon L. Ulrey
Notary Public, State of Texas

M:\Bitterblue\Bass Family Authorization.1.doc

EXHIBIT B

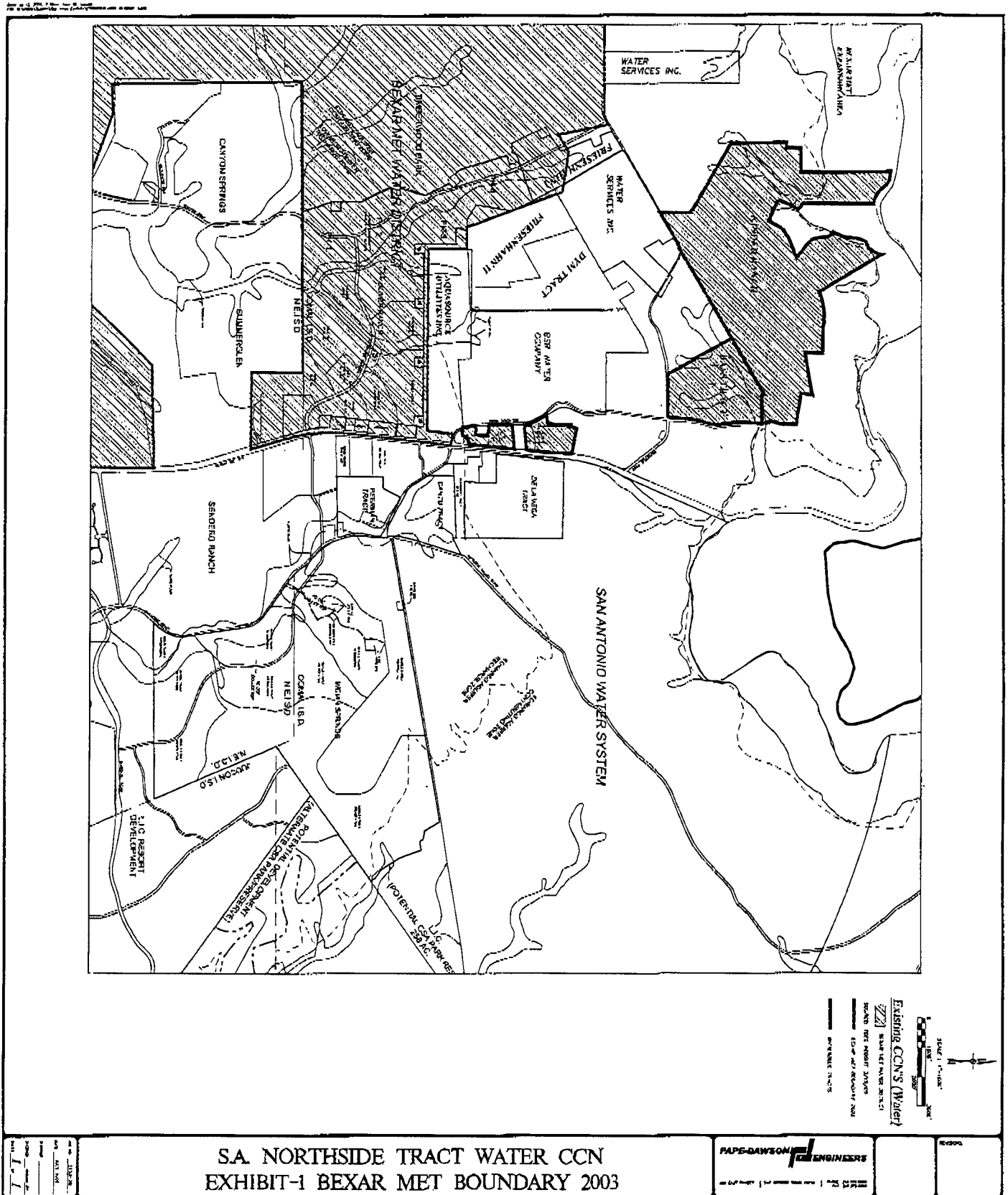


EXHIBIT C**UTILITY SERVICE AGREEMENT**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Utility Service Agreement ("Agreement") is entered into by and between the San Antonio Water System Board of Trustees, through Resolution Number 05-373, acting by and through its President/Chief Executive Officer ("SAWS") and Bitterblue, Inc., ("Developer") together the Parties ("Parties").

Recitals

Whereas, Developer has requested that SAWS provide water and wastewater service (the "Services") to an approximate collective total 1,088-acre tract of land, (the "Kinder, Friesenhahn, and Bass Tract" or "Tract"), which is located over the Edwards Aquifer Recharge Zone, such Tract being more particularly described in Attachment III hereto, as accepted by SAWS; and

Whereas, SAWS desires to provide the Services to the Developer pursuant to this Agreement, the SAWS Utility Service Regulations, and all applicable local, state, and federal regulations, as amended,

Now Therefore, The Parties Hereto Agree To The Following Terms and Conditions:

1.00 Interpretation of Agreement.

1.01 The Parties acknowledge that the Services contemplated by this Agreement shall be provided in accordance with the SAWS Utility Service Regulations, Design Criteria, Schedules, Attachments and Instruments thereto, as amended (together "USR"). In the event the specific terms of this Agreement are in conflict with the USR, the specific terms of this Agreement shall apply. The above notwithstanding, for the specific conflicting terms to prevail, the conflict must be expressly noted in the Agreement. The Parties further acknowledge that this Agreement is subject to future acts of the City Council of the City of San Antonio with respect to the adoption or amendment of impact fee ordinances/resolutions.

1.02 The Parties agree that the purpose of this Agreement is the reservation of the designated water supply and/or wastewater discharge capacity for the Tract. Any rights that the Developer claims arise under Chapter 245, Texas Local Government Code, that are related to this Agreement are dependent upon the provision of all information required by the Fair Notice Declaration that is attached hereto and is incorporated by reference as Attachment "IX."

2.00 Obligation Conditioned.

The obligation of SAWS to provide the Services is conditioned upon present rules, regulations and statutes of the United States of America and the State of Texas and any court order that directly affects the SAWS' Regional Water Production and Distribution System and/or Regional Wastewater Transportation and Treatment System and/or the utility infrastructure directly servicing the Tract. Developer acknowledges that if the rules, regulations and statutes of the United States of America and/or the State of Texas that are in effect upon the execution date of this Agreement are repealed, revised or amended to such an extent that SAWS becomes incapable of, or prevented from, providing the Services, then no liability of any nature is to be imposed upon SAWS as a result of SAWS' compliance with such legal or regulatory mandates. SAWS agrees that it will use its best efforts to prevent the enactment of such legal or regulatory mandates.

3.00 Term.

3.01 The term of this Agreement shall be seven (7) years from the Effective Date if the Developer complies with the requirements set out in G.C. 19.00 (attached) within the time period therein stated. This Agreement shall automatically expire if Developer fails to comply with the requirements of G.C. 19.00 within the time period therein provided. The term of this Agreement may be extended to fifteen (15) years from the Effective Date, if Developer complies with the requirements to extend the term set forth in G.C. 19.00 within the time period therein stated. Certain obligations of SAWS (described in Section 3.03 below) may survive the expiration of the term of this Agreement, to the extent that Developer has (i) paid all applicable impact fees for the Services at the then-current rate, and (ii) complied with all On-Site and Off-Site utility infrastructure requirements of this Agreement (described in the Special Conditions), including over-sizing requirements.

3.02 To the extent that SAWS' obligations do not survive the expiration of this Agreement, Developer understands and agrees that a new Utility Service Agreement must be entered into with SAWS to receive the Services for the development project that is the subject of this Agreement.

3.03 To the extent that Developer timely pays all applicable impact fees and complies with all On-Site and Off-Site utility infrastructure requirements prior to the expiration of this Agreement, the following obligations will survive expiration of this Agreement:

- (i) SAWS' recognition of Guaranteed Capacity.
- (ii) SAWS' continued recognition of impact fee credits previously earned by the Developer pursuant to Sections 15.8 and 15.9 of the USR.
- (iii) SAWS' continued provision of the Services to retail customers located in the Tract, so long as such customers pay for the services and comply with the regulations applicable to individual customers.

4.00 Entire Agreement.

The following documents attached hereto and incorporated herein are as fully a part of this Agreement as if herein repeated in full, together with this Agreement, comprise the Agreement in its entirety:

Attachment I:	General Conditions
Attachment II:	Special Conditions
Attachment III:	Description of Tract
Attachment IV:	Board Summary & Recommendation and Resolution (if necessary)
Attachment V:	Developer Water and/or Wastewater Master Plan (if necessary)
Attachment VI:	Engineering Study
Attachment VII:	Lift Station & Force Main Supplemental Agreement (if necessary)
Attachment VIII:	Water Recycling and Conservation Plan (if necessary)
Attachment IX:	Fair Notice Declaration (if Developer claims rights under Chapter 245 of the Texas Local Government Code)

5.0 Developer's Obligations.

The Developer acknowledges and agrees that the capacity provided by this Agreement runs with the land and shall be an appurtenance to the Tract. The Developer acknowledges that recordation of this Agreement in the Real Property Records of the County in which the Tract is located within three (3) years of the Effective Date of this Agreement is required; otherwise, this Agreement will automatically terminate. Developer shall record the Agreement and supply the Director with a recorded copy. The Developer shall maintain records of EDU's remaining on the Tract pursuant to the approved Developer Master Plan. Developer shall provide SAWS with such records upon SAWS written request. Developer further agrees to defend, indemnify and hold harmless SAWS and its successor and assigns from the claims of third parties arising out of SAWS' recognition of the transfer of capacity under this Agreement to Developer's subsequent purchasers, successors and assigns.

6.00 Indemnity.

TO THE EXTENT ALLOWED BY LAW AND TEXAS CONSTITUTION, THE DEVELOPER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SAWS AND ITS SUCCESSOR AND ASSIGNS FROM THE CLAIMS OF THIRD PARTIES ARISING OUT OF SAWS' RECOGNITION OF THE TRANSFER OF CAPACITY UNDER THIS AGREEMENT TO DEVELOPER'S SUBSEQUENT PURCHASERS, SUCCESSORS AND ASSIGNS.

7.00 Notices.

Any notice, request, demand, report, certificate or other instrument which may be required or permitted to be furnished to or served upon the parties shall be deemed sufficiently given or furnished or served if in writing and deposited in the United States mail, registered or certified, return receipt requested, addressed to such party at the address set forth below:

Utility Service Agreement
USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC
01/23/06, Page 3 of 5

IF TO SAN ANTONIO WATER SYSTEM:

SAN ANTONIO WATER SYSTEM

POST OFFICE BOX 2449

SAN ANTONIO, TEXAS 78298-2449

ATTN: SAM MILLS, P.E., DIRECTOR INFRASTRUCTURE PLANNING

IF TO DEVELOPER:

BITTERBLUE, INC.

11 LYNN BATTS LANE, SUITE 100

SAN ANTONIO, TEXAS 78218

ATTN: WILLIAM E. POWELL, CEO

8.00 Severability.

If for any reason any one or more paragraph of this Agreement are held legally invalid, such judgment shall not prejudice, affect impair or invalidate the remaining paragraphs of the Agreement as a whole, but shall be confined to the specific sections, clauses, or paragraphs of this contract held legally invalid.

9.00 Effective Date.

The Effective Date of this Agreement shall be the date signed by the authorized representative of the San Antonio Water System.

ACCEPTED AND AGREED TO IN ALL THINGS:

San Antonio Water System

Developer

David E. ChardavoyneWilliam E. PowellBy: David E. ChardavoyneBy: William E. PowellTitle: President/ Chief Executive OfficerTitle: CEODate: 25 January 2006Date: 1/24/06

ACKNOWLEDGEMENTS

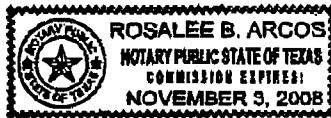
STATE OF TEXAS, COUNTY OF BEXAR

§

BEFORE ME, the undersigned Notary Public, on this day personally appeared William E. Powell known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as William E. Powell for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24th day of January, 2006.

(seal)



Rosalee B. Arcos
Notary Public

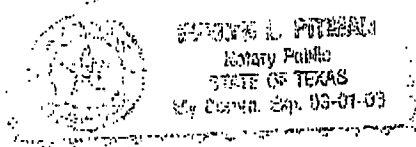
STATE OF TEXAS, COUNTY OF BEXAR

§

BEFORE ME, the undersigned Notary Public, on this day personally appeared David E. Chardavoyne known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as David E. Chardavoyne for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of January, 2006.

(seal)



Patricia L. Pithman
Notary Public

Utility Service Agreement

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 5 of 5

GENERAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT**G.C.1.00 Definitions.****G.C.1.01 Developer.**

Owner of the tract, his subsequent purchasers, successors, and/or assigns.

G.C.1.02 Director of Infrastructure Planning.

The Director of Infrastructure Planning of the San Antonio Water System or his/her designated representative.

G.C. 1.03 Definition of Terms.

Unless defined in the Utility Service Agreement (the "Agreement"), the terms used in this General Conditions of the Utility Service Agreement (the "General Conditions") shall have the same definitions and meaning as those set out in Chapter 2, Definitions, of the Utility Service Regulations ("USR"). In the event a term is specifically defined in the General Conditions, and the definition is in conflict with that found in the USR, and such conflict is acknowledged in the General Conditions, the definition set out in the General Conditions shall apply.

G.C.2.00 Required Submittals.

If determined to be necessary by the Director of Infrastructure Planning ("Director"), the Developer hereby agrees to submit the following documents prior to the execution of the Agreement: Developer Master Plan, Developer Utility Layout, Water Recycling and Conservation Plan, and Engineering Report. The Parties agree that such documents are included instruments to the Agreement. The submittal of such documents is a condition precedent to plat recordation and initiation of Services. Developer shall modify such documents as may be reasonably required by the Director. Such documents shall be updated as required by the Director and the USR.

G.C.3.00 Dedication to SAWS.

The Developer agrees to dedicate, grant, and convey to SAWS all rights, title and interest of Developer in both the Off-Site and On-Site utility infrastructure that the Developer is required to construct under the Special Conditions of the Utility Service Agreement (the "Special Conditions"), and to dedicate, grant, and convey to SAWS easements for such utility infrastructure. Upon written acceptance of Off-Site and On-Site utility infrastructure by SAWS, the infrastructure shall be owned, operated and maintained by SAWS.

G.C.4.00 Design and Construction Requirements.

The design and construction of all Off-Site and On-Site utility infrastructure shall, at a minimum, comply with the requirements established by SAWS, including the USR, the City of San Antonio, the County of Bexar, the State of Texas, and any agency thereof with jurisdiction, including but not limited to the Texas Commission on Environmental Quality and the Texas Department of Health. Off-Site and On-Site utility infrastructure shall be constructed under the inspection of SAWS. Provision of the Services to the Tract shall not commence until the Director has accepted and approved Off-Site and On-Site utility infrastructure in writing.

G.C.5.00 Joint Venture Agreements.

In the event the Developer enters into a Joint Venture Agreement covering the costs for supplying the Services to the Tract, the Developer shall send a copy of such agreement to the attention of the Director.

G.C.6.00 Assignment.

The Agreement may not be assigned in whole or in part.

General Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 1 of 4

G.C.7.00 Event of Foreclosure.

In the event Developer's interest in the Tract described in Attachment III are extinguished by an act of foreclosure, and the foreclosing party has supplied sufficient evidence to SAWS that they are the successor in interest to the Tract as a result of such foreclosure, and that there are no lawsuits pending concerning the Tract, SAWS shall consider the foreclosing party a successor in interest if the foreclosing party executes a utility service agreement with SAWS after the Director determines that the execution of such an agreement will not be adverse to SAWS' interest.

G.C.8.00 Payment for Provision of Utility Service.

In the event payment for the Services provided to a subdivision plat within the Tract is not billed by SAWS, the amount of the monthly fees for the provision of the Services will be those charged to the various customer classifications as set by City Ordinances, with the billing and collection thereof on behalf of SAWS, being the responsibility of the billing utility purveyor. To facilitate this arrangement, Developer is to insert into any utility agreement with whatever utility purveyor is to bill for utility services to a subdivision plat within the Tract, a provision requiring said purveyor to enter into a Contract with SAWS to bill and collect SAWS' monthly utility services fees and transmit said fees to SAWS. The billing utility purveyor shall advise customers that delinquent non-payment of any of SAWS' fees will result in interruption and/or termination of the Services provided by SAWS, in accordance with applicable interruption and termination policies and procedures, as amended. SAWS shall not be obligated to provide the Services to any plat within the Tract unless and until the utility purveyor has executed a contract with SAWS to provide for the billing and collection of the Services provided by SAWS.

G.C.9.00 Enforcement of Industrial Waste Ordinance if Required by SAWS.

The Developer shall cause to be recorded in the Deed and Plat Records of the counties in which the Tract is located, a restrictive covenant covering the entire Tract. This restrictive covenant shall run with the land in the Tract described in Attachment III. Such covenant shall contain language expressly granting to SAWS the right, should SAWS so elect, to enforce and or otherwise pursue to the extent provided at law or in equity, the provisions of the City's Industrial Waste Ordinance No. 57214, as amended or as may be amended (codified as Chapter 34, Article V, Division 3 of the City Code). SAWS' right shall include, to the extent provided at law or in equity, the right to inspection, sampling and monitoring of the collection system to assure ordinance compliance.

Recordation of the Covenant shall be a condition precedent for SAWS' provision of the Services to any portion of said Tract.

G.C.10.00 Oversizing.

Developer must pay for all mains and other utility facilities needed to serve the Tract. SAWS may require the installation of oversized water mains and wastewater mains and related facilities. SAWS' requirements for oversizing, if any, are set forth in the Special Conditions. SAWS will execute a trilateral contract with Developer and a contractor for the construction of oversized facilities. Contracts for the construction of oversized facilities must be competitively bid as required by law. SAWS will reimburse the Developer for the oversize construction cost differential upon completion of the approved facility installation and SAWS' acceptance of such facility. SAWS will determine whether to provide such reimbursement in the form of a cash reimbursement or in credits to be applied to impact fees. All oversizing shall be done in accordance with the USR.

G.C.11.00 Off-Site /On-Site Facilities.

Developer shall construct and install all required Off-Site and On-Site utility infrastructure in accordance with the USR and Special Conditions, at no cost to SAWS. Any specific requirements related to the facilities are set forth in the Special Conditions.

General Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 2 of 4

G.C.12.00 Impact Fee Payment.

Developer agrees that the Agreement does not constitute an assessment of impact fees. Developer agrees to pay all applicable impact fees at the time and in the amount prescribed by ordinance or resolution of the City Council of the City of San Antonio and the USR, as amended. An estimate of the impact fees for the development Tract is provided in the Special Conditions. The estimate does not constitute an assessment of impact fees, and the amount of impact fees is subject to change by the City Council of the City of San Antonio as provided by law.

G.C.13.00 SAWS' Obligation to Supply Service.

To the extent that Developer pays all applicable impact fees and complies with all Off-Site and On-Site utility infrastructure requirements, Developer shall be entitled to the permanent use and benefit of the Services and is entitled to receive immediate service from any existing facilities with actual capacity to serve the development for which impact fees were paid, subject to compliance with other valid regulations. If, after collecting the impact fees, there is no actual capacity in existing facilities to provide the Services, SAWS will provide the Services within a reasonable period of time not to exceed five (5) years, as prescribed by Chapter 395 of the Local Government Code, as amended. In the event Services are required by Developer earlier than the five (5) year period, Developer and SAWS may agree that Developer may construct or finance the capital improvements or facility expansions required to provide Services, and the costs incurred or funds advanced will be credited against impact fees otherwise due from the new development or reimbursed to Developer from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to Developer at the time the other new development records it plat.

G.C.14.00 Facility Design and Construction.

The Developer shall design and construct all On-Site and Off-Site utility infrastructure described in the Special Conditions, including any oversizing, in accordance with the USR and all applicable local, state and federal requirements. Developer further recognizes that SAWS' approval in all respects as to facility right-of-way adequacy, location, size, grade and invert elevation is a condition precedent to any further obligation of SAWS. Specific design and construction requirements are set forth in the Special Conditions.

G.C.15.00 Use of Capacity by SAWS.

Developer understands that capacity in Off-Site and On-Site utility infrastructure resulting from the Agreement for the Tract may be utilized by SAWS for other tracts requesting service from SAWS. SAWS shall keep accurate records of the capacity provided to the Tract under the Agreement, whether Set-Aside or Guaranteed Capacity, and in no event will Developer be denied capacity as a result of SAWS' utilization of such capacity for another tract. Set-Aside capacity shall not survive the expiration of the Agreement.

G.C.16.00 Utility Master Plan Requirements.

The Developer will prepare a utility master plan, which details the water and/or wastewater systems for the Tract pursuant to the USR, as amended.

G.C.17.00 Phased Utility Master Plans.

If the Developer's water and/or wastewater systems are to be installed in phases or units, the Developer shall submit overall utility master plans to SAWS for review and approval. The overall utility master plan(s) shall be submitted before the first construction phase is submitted for plat approval. The overall utility master plan(s) shall show the development phases or units including the sequence and a timetable for build-out. The Developer shall also provide SAWS with a digital version of the proposed recorded plat, as submitted for plat recordation in a format acceptable to SAWS, for each phase or unit of the development project.

General Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 3 of 4

G.C.18.00 Conformance of Plans to Utility Master Plan.

All water and wastewater system facilities to serve the Tract shall be designed and constructed in conformance with the approved utility master plan. Changes in the water and wastewater system design shall be resubmitted to SAWS for written approval.

G.C.19.00 Timing Requirements for Submission of Plans.

Developer shall have three (3) years from the Effective Date of the Agreement to complete and submit the required utility master plan and to start construction of the Off-Site and On-Site utility infrastructure described in the Special Conditions. Developer agrees that the Agreement for the provision of Services shall automatically expire if Developer has not submitted a utility master plan and started construction of required Off-Site and On-Site utility infrastructure within three (3) years of the Effective Date of the Agreement, and a new request for the Services must be submitted to SAWS, which SAWS will grant based on then existing policies and regulations. In the event Developer meets the above-mentioned requirements within the three (3) year period provided, the Agreement shall remain in effect for seven (7) years from the Effective Date. If Developer submits a revised Utility Master Plan in accordance with the USR prior to the expiration of the seven (7) year period, the Agreement for the provision of Services may be extended to a maximum term of fifteen (15) years from the Effective Date.

SPECIAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT**WATER SERVICE****S.C.1.00 Tract Location and Ultimate Demand.**

Kinder and Bass, a 987-acre tract, as part of the collective total 1,088-acre tract, is located outside the City limits and outside SAWS' service area, north of Estate Gate, and west of US Highway 281, as shown in Attachment III (the "Tract"). A portion of the tract is located over the Edwards Aquifer Recharge Zone.

The ultimate demand on the SAWS' facilities shall not exceed 4,031 equivalent dwelling units (EDUs) of water supply, for the proposed development.

S.C.2.00 Infrastructure Requirements.

Water Supply to the tract will be from Pressure Zone 11A. To supply water to the 987-acre Tract consistent with the Board's USR, the flow capacity of a 24-inch main is required. There are existing 24-inch mains along Bulverde Road and US Highway 281, within the vicinity of the proposed Tract to which connections can be made. The Developer will be required to construct a looped 24-inch main through the Tract, by connecting to the existing 24-inch mains along Bulverde Road and US Highway 281.

Furthermore, all other requirements will be determined at the time master plans are submitted, to SAWS, for each development. *Note:* water service to the proposed Tract may be contingent upon SAWS acquiring the Certificate of Convenience and Necessity (CCN) for this particular area of Bexar County.

S.C. 3.00 SAWS Master Plan and Oversizing Requirements.

Not Applicable.

S.C.4.00 Eligibility for Impact Fee Credits.

Not Applicable.

S.C.5.00 Engineering Study Report and/or Pro-Rata Fee Eligibility.

The engineering study report "Kinder, Friesenhahn, and Bass, 1,258-Acre Tracts, Utility Service Agreement Engineering Report", by Bitterblue, Inc., dated August 9, 2005 is included as Attachment VI.

S.C.6.00 Developer On-Site Requirements.

The Developer shall acquire any right-of-way or easements, and install all On-Site utility infrastructure required to serve the Tract in accordance with SAWS' USR, solely at the Developer's cost. Other On-Site requirements within the Tract will be determined at such time

Special Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 1 of 5

as the engineer submits an overall Utility Master Plan, and any subsequent revisions, for the Tract.

S.C.7.00 Requirement to Install Approved Pressure Regulators and/or Booster Pumps.

A portion of the tract is below the ground elevation of 1,215 feet where the static pressure will normally exceed 80 psi. At all such locations, the Developer or builder shall install at each lot, on the customer's side of the meter an approved type pressure regulator in conformance with the Plumbing Code of the City of San Antonio.

S.C.8.00 Time for Water Impact Fee Assessment and Payment.

Water Impact Fees will be assessed at the rates in effect at the time of plat recordation or the latest date allowed by law. Impact fees will be collected at either the time of plat recordation or connection to the SAWS' water system, as determined by SAWS.

S.C.9.00 Water Impact Fee Estimates Based Upon Current Charges.

Following is an estimate of impact fees for the provision of Services contemplated under the Agreement, which are based on current impact fee rates. This estimate shall not constitute an assessment of impact fees and impact fee rates are subject to change by the San Antonio City Council.

Type of Impact Fee	EDUs	\$/EDUs	Current Total
Flow Development	4,031	\$ 362.00	\$ 1,459,222.00
System Development (PZ 11A)	4,031	\$ 945.00	\$ 3,809,295.00
Water Supply	4,031	\$ 852.00	\$ 3,434,412.00
Total		\$ 2,159.00	\$ 8,702,929.00

S.C.10.00 Pro-Rata Charge Requirement.

Developer shall be required to pay a Pro-Rata Charge pursuant to the USR, as amended, prior to connection to the SAWS water system if Developer is tying into a main that is subject to a pro-rata refund.

S.C.11.00 Additional Terms.

Additional terms and provisions for construction of the water infrastructure improvements are set forth in the 24-inch water main construction agreement between the San Antonio Water System and Bitterblue, Inc., of event date herewith ("Construction Agreement"). In the event of any conflict or inconsistency between the terms of this Agreement and the Construction Agreement, the terms of the Construction Agreement shall control.

SPECIAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT**WASTEWATER SERVICE****S.C.1.00 Tract Location and Ultimate Demand.**

Kinder, Friesenhahn, and Bass, a collective total 1,088-acre tract outside the City limits and outside SAWS' service area, is located north of Estate Gate, west of US Highway 281, as shown in Attachment III (the "Tract"). A portion of the Tract is located over the Edwards Aquifer Recharge Zone.

The ultimate demand on the SAWS' facilities shall not exceed 4,031 equivalent dwelling units (EDUs) of wastewater discharge, for the proposed development.

S.C.2.00 Infrastructure Requirements.

The Tract is situated within SAWS' Outer Service Area (OSA) and lies within the Cibolo Creek and Upper Salado Creek Watersheds. Wastewater service to the tract requires the capacity of a paralleled 12-inch gravity main at 0.30 percent minimum slope for 1,291 EDU's of the 4,031 EDU's to flow through the Mud Creek Outfall and the extension of an 18-inch gravity main at 0.17 percent minimum slope for the remaining 2,740 EDU's to flow through the Indian Springs Outfall. The Developer may use the existing capacity not already used or previously committed in the Mud Creek Outfall main, within the Oliver Ranch or Canyon Springs developments. The nearest accessible wastewater main is a 30-inch gravity wastewater main crossing US Highway 281, north of Sonterra Boulevard. The Developer will be required to construct a 12-inch main from the Tract, which will parallel the existing wastewater infrastructure and connect to the existing 30-inch main crossing US Highway 281, north of Sonterra Boulevard. Each segment of the required 12-inch parallel wastewater main along the Mud Creek Outfall must be constructed once the capacity of the existing outfall main has been exceeded by flows generated from the proposed Tract on a segment by segment basis. The Developer may be required to upgrade the existing lift station/force main system located south of Evans Road, west of US Highway 281 to accommodate the required wastewater flows from the proposed Tract. The Developer may connect a maximum of 1,291 EDU's of capacity to the existing lift station/force main system and to the existing 30-inch main along US Highway 281.

Furthermore, all other requirements will be determined at the time master plans are submitted, to SAWS, for each development. Capacity in the existing wastewater outfall between Oliver Ranch and US Highway 281 is currently committed to Stone Oak, Canyon Springs, and Oliver Ranch tracts. SAWS staff are currently working with representatives from the Stone Oak, Canyon Springs, and Oliver Ranch tracts to revise the contracted capacity requirements for these tracts. Based on the results of these proposed revisions, some capacity may become available in portions of the existing outfall to serve the tract, as warranted.

Special Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 3 of 5

S.C.3.00 San Antonio Water System Master Plan and Oversizing Requirements.

SAWS is currently revising the Master Wastewater Infrastructure Plan to accommodate flows from undeveloped areas within the Cibolo Creek and Upper Salado Creek Watersheds. The revised San Antonio Water System Wastewater Master Plan and the anticipated growth in this area may include the oversizing of approximately 47,310-feet of proposed 12-inch main to a 27-inch main. The total estimated cost of the main is \$16,605,810. The Developer estimated share of the cost is \$3,280,160 and SAWS' estimated share of the cost is \$13,325,650.

S.C.4.00 Impact Fee Credit Eligibility.

The 27-inch main was not included as a Capital Improvement Project in the current impact fees. Therefore, the impact fee credits for the Developer's proportionate share of the oversizing, is contingent upon inclusion of the 27-inch outfall main in the proposed impact fee calculations.

S.C.5.00 Engineering Study Report and/or Pro-Rata Refund Eligibility.

The engineering study report "Kinder, Friesenhahn, and Bass, 1,258-Acre Tracts, Utility Service Agreement Engineering Report", by Bitterblue, Inc., dated August 9, 2005 is included as Attachment VI.

S.C.6.00 Developer On-Site and/or Off-Site Requirements.

The Developer will also be required to acquire any right-of-way and easements, install all On-Site and Off-Site utility infrastructure, and upgrade existing lift stations necessary to serve the Tract in accordance with SAWS' USR, solely at the Developer's cost. Other On-Site utility infrastructure requirements within the Tract will be determined at such time as the engineer submits an overall Utility Master Plan, and any subsequent revisions, for the Tract.

S.C.7.00 Lift Stations and Force Mains.

Lift stations and force mains are only allowed by prior written supplemental agreement with SAWS. Applicable fees, as set out in the supplemental agreement, must be paid in full prior to service connection.

S.C.8.00 Time for Wastewater Impact Fee Assessment and Payment.

Wastewater Impact Fees will be assessed at the rates in effect at the time of plat recordation or the latest date allowed by law. Wastewater Impact Fees will be collected at either the time of plat recordation or connection to the SAWS wastewater system, as determined by SAWS.

S.C.9.00 Wastewater Impact Fee Estimates Based Upon Current Charges.

Following is an estimate of impact fees for the provision of Services contemplated under the Agreement, which are based on impact fee rates in effect as of the Effective Date of the Agreement. This estimate shall not constitute an assessment of impact fees and impact fee rates are subject to change by action of the San Antonio City Council as permitted by law.

Special Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 4 of 5

Type of Impact Fee	EDUs	\$/EDUs	Current Total
Wastewater Collection	4,031	\$ 366.00	\$ 1,475,346.00
Wastewater Treatment (OSA)	4,031	\$ 750.00	\$ 3,023,250.00
Total		\$ 1,116.00	\$ 4,498,596.00

S.C.10.00 Pro-Rata Payment Fee Requirement.

Developer shall be required to pay a pro-rata fee pursuant to the USR, as amended, prior to connection to the wastewater system, if Developer is tapping into a main that is subject to a pro-rata refund.

ATTACHMENT IX**FAIR NOTICE DECLARATION**

Any rights that the Developer claims arise under Chapter 245, Texas Local Government Code that are related to this Agreement are dependent upon the provision of all information required by this Fair Notice Declaration. In the absence of any of the required information, fair notice of a project is not given.

1. A legal description of the Tract must be attached to the Agreement as Attachment IX (A).
2. A detailed plan must be attached to the Agreement as Attachment IX (B) that provides the following information:
 - a. lot configuration, size, and location for each lot within the Tract
 - b. a specific description of the proposed land use for each lot
 - c. street layout
 - d. easement locations
 - e. total number and types of units by land use (single-family, multi-family, school, hotel, office, restaurant, or other specific description)
3. A narrative description of the sequence and timetable for the build-out of the proposed development must be attached to the Agreement as Attachment IX (C).

03

FREEMAN & CORBETT, LLP

PHONE (512) 451-6689

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

FAX (512) 453-0865

July 13, 2006

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

RE: State Office of Administrative Hearings Docket No. 582-03-3725
Texas Commission on Environmental Quality Docket No. 2003-0664-UCR
***In Re: The Application of Bexar Metropolitan Water District to Amend Water CCN No.
10675 in Bexar County***

Dear Judge Church:

Enclosed please find a Motion to Revise and Clarify Order No. 22 Ruling on Motion for Dismissal by Summary Disposition by Bitterblue, Inc. Copies are being sent to all parties of record.

Very truly yours,



Ronald J. Freeman

RJF/gmm

CC: All Parties of Record per Attached Certificate of Service

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

**Motion to Revise and Clarify Order No. 22 Ruling on Motion For Dismissal by Summary
Disposition by Bitterblue, Inc.**

Comes now, Bitterblue, Inc. ("Bitterblue") and files this its "Motion to Revise and Clarify Order No. 22 Ruling on Motion for Dismissal by Summary Disposition by Bitterblue, Inc.," 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 respectfully submits that Order No. 22 in this case needs to be revised and clarified. Order No. 22 appears to limit the ALJ's dismissal of Bexar Met's Application only to the Kinder Tract. In fact, (i) the motion for summary disposition filed by Bitterblue, (ii) the evidence presented by Bitterblue in this Docket in support of its motion for summary disposition and (iii) the logical ramifications of the ALJ's interpretation of the "date of referral" of Bexar Met's Application in Order No. 22, when combined with Judge Steel's ruling in the Comal County case, mandate that Bexar Met's entire Application should be dismissed. Bitterblue's evidence will be discussed later. Bitterblue will first focus on the logical ramifications of the ALJ's interpretation of the "date of referral" of Bexar Met's Application in Order No. 22 when combined with Judge Steel's ruling in the Comal County case.

II.

Order No. 22 correctly finds that the date of referral to SOAH was after the June 18, 2003, deadline set by SB 1494 for Bexar Met's Application to be grandfathered by Section 5 (c) of that Act. And, Judge Steel's ruling holds that Bexar Met may not further serve any areas outside of its current CCN boundaries. If both of these statements are correct (and they are), then logically, the entire Application should be dismissed because Judge Steel has held that Bexar Met cannot serve outside of, or amend, its boundaries and the Application seeks to do just that. Bexar Met's attempt to get *any* additional CCN territory in this Docket would violate Judge Steel's ruling since the Application was referred to SOAH after the June 18, 2003 deadline for grandfathering in Sec. 5 (c) of SB 1494. The ALJ should therefore grant Bitterblue's motion

for dismissal as to the entire requested area^a because it is not within Bexar Met's boundaries. This would save all parties much time and expense from further litigating this case now that the dispositive issue of the "date of referral" has been ruled on in Bitterblue's favor.

III.

In addition to this logical extrapolation of Order No. 22 and Judge Steel's ruling, Bitterblue would also show that its motion for summary disposition and the undisputed evidence entitle it to greater relief than just dismissal of the Kinder Tract. Order No. 15 in this case, in the next to last paragraph on page 4 of that order stated:

"Bitterblue established that it did have authority to proceed in this case in regard to the Kinder property...."

However, in the first full paragraph on page 2 of Order No. 15, the ALJ also stated:

"Bitterblue represents several property owners within the proposed amended service territory and is actively engaged in planning for and the development of those properties...."

In point of fact, Bitterblue presented evidence that:

1. Bitterblue is the general partner of, and the duly authorized representative of, not only the owners of the Kinder Tract, but also of the Bass I, Bass II and Bass III Tracts. A copy of Bitterblue's authorization to represent Bass Properties, L. P., the owner of the Bass I, Bass II and Bass III Tracts is again attached to this Motion as **Exhibit A**.
2. Mr. Gene Dawson, Bitterblue's consulting engineer, presented an affidavit in support of the Motion for Summary Disposition stating in Paragraph 4 that:

"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 Bitterblue Tracts lie completely outside of the District's boundaries."

3. Mr. Dawson also attached a map showing that all four of the Bitterblue tracts are outside of Bexar Met's current boundaries. A simplified version of that same map is attached as **Exhibit B** to this Motion. It shows that the Kinder, Bass I, Bass II and Bass III Tracts are clearly outside of Bexar Met's current boundaries.

Further, Bitterblue would now show that it has entered into a "Utility Service Agreement" with SAWS for SAWS to provide retail water service to the Kinder, Bass I, Bass II and Bass III Tracts. A copy of that service agreement is attached hereto as **Exhibit C**. Thus, not only are the Kinder, Bass I, Bass II and Bass III Tracts represented by Bitterblue in this Docket and outside

^a See Paragraph IV below---Bitterblue asked for this greater relief.

of Bexar Met's boundaries, but they are now in the process of being served by SAWS, which has the legal right to do so since these areas are un-certificated and SAWS, (being a municipality and, therefore, a "retail public utility" under Sec. 13.002 (19), Water Code) does not need a CCN to serve un-certificated areas.^b Thus, Bitterblue's own evidence justifies, at the very least, dismissal of not only the Kinder Tract, but also the Bass I, Bass II Bass III Tracts covered by the SAWS Utility Service Agreements.

IV.

Bitterblue's Motion for Summary Disposition asked that "BMWD's [A]pplication be dismissed, or, in the alternative, that BMWD be instructed to amend the Application to exclude the Properties from its Proposed Service Area." Thus, Bitterblue has requested, and is entitled to, much broader relief than was granted by Order No. 22 and that broader relief is justified by the applicable and undisputed facts.

V.

Failure of Order No. 22 to not also dismiss, at least, the Bass I, II and III Tracts^c is not only contrary to the law and undisputed facts, but would, if Order 22 is interpreted as dismissing Bitterblue entirely from the case^d even though the Bass I, II and III Tracts are still in the case, leave Bitterblue unable to continue to represent the owner of those Tracts or Bitterblue's interests therein, an interest which now includes a \$1,600,000 obligation on the part of Bitterblue to build water line facilities to enable SAWS to serve the Kinder and Bass I, II and III Tracts under the USA with SAWS. Such a result would be manifestly unfair. Therefore, the ALJ should clarify Order 22 to add the Bass I, II and III Tracts and/or clarify that Bitterblue is still a party in the case as to those tracts if they are not dismissed also.

Wherefore, premises considered, Bitterblue respectfully requests that after due consideration of this Motion Order No. 22 be revised:

1. to dismiss Bexar Met's Application in its entirety;
2. in the alternative, to dismiss Bitterblue as to the Kinder, Bass I, Bass II and Bass III Tracts shown to be controlled by Bitterblue and getting retail water service pursuant to Bitterblue's USA with SAWS;
3. that if neither 1 or 2 is granted that the ALJ clarify that Bitterblue is still a party in the case; and
4. for such other relief to which Bitterblue may be entitled.

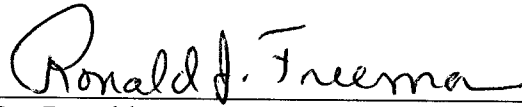
^b See Water Code, Sec. 13.242 (a), which requires a "retail public utility" to obtain a CCN only if the area it intends to provide retail water service to is already "being lawfully furnished" with retail water service.

^c In addition to the Kinder Tract.

^d It should be noted that Order No. 22 is unclear as to whether Bitterblue is still a party in the case. Accordingly, Bexar Met and Bitterblue have entered into a Rule 11 agreement, which will be filed shortly, delaying further discovery and pre-filing of testimony in this case until Order No. 22 is clarified.

Respectfully submitted,

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

A handwritten signature in black ink, reading "Ronald J. Freeman". The signature is written in a cursive style with a large, looped "R" and "F".

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 13th day of July, 2006, a true and correct copy of this motion was served on the parties of record by facsimile transmission and First Class Mail.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

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

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Todd 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.
115 E. Travis, Suite 1230
San Antonio, TX 78205
Fax: (210) 223-4200

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

BSR WATER COMPANY
(SNECKNER PARTNERS, LTD.)

David L. Earl
Law Offices of Earl & Brown
A Professional Corporation
River View Towers
111 Soledad Street, Suite 1111
San Antonio, TX 78205

Fax: (210) 222-9100

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

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

WATER SERVICES, INC.

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

CITY OF BULVERDE

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

SAN ANTONIO WATER SYSTEM

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

TCEQ DOCKET CLERK

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

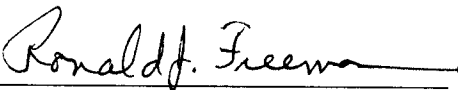

Ronald J. Freeman

EXHIBIT A

AUTHORIZATION

Bass Properties, L.P., a Texas limited partnership ("Partnership"), as the owner of approximately 208 acres of land in Bexar County, Texas, hereby authorizes and directs Bitterblue, Inc., a Texas corporation, to represent the interests of and appear for and on behalf of the Partnership, at all hearings, proceedings and other matters relating to or in connection with the following:

Application of Bexar Metropolitan
Water District to Amend Water CCN
No. 10675 in Bexar County
Before the State Office Of Administrative Hearings
SOAH Docket No. 582-03-3725
TCEQ Docket No. 2003-0664-UCR

Effective as of September 9, 2005.

BASS PROPERTIES, L.P., a Texas
limited partnership

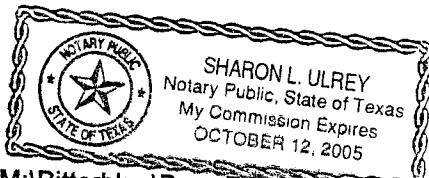
By Its General Partner:
Bass Properties Management, L.L.C., a
Texas limited liability company

By: Joan K. Bass
Name: JOAN K. BASS
Title: General Partner

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on September 9, 2005,
by Joan K. Bass, _____ of Bass Properties
Management, L.L.C., a Texas limited liability company, as the sole general
partner of Bass Properties, L.P., a Texas limited partnership, on behalf of said
limited partnership.



Sharon L. Ulrey
Notary Public, State of Texas

OVERSIZED MAP(S)

Exhibit A

**TO VIEW OVERSIZED DOCUMENT
PLEASE TO GO or CALL
PUC CENTRAL RECORDS
MAIL LINE
512.936.7185**

2.00 Obligation Conditioned.

The obligation of SAWS to provide the Services is conditioned upon present rules, regulations and statutes of the United States of America and the State of Texas and any court order that directly affects the SAWS' Regional Water Production and Distribution System and/or Regional Wastewater Transportation and Treatment System and/or the utility infrastructure directly servicing the Tract. Developer acknowledges that if the rules, regulations and statutes of the United States of America and/or the State of Texas that are in effect upon the execution date of this Agreement are repealed, revised or amended to such an extent that SAWS becomes incapable of, or prevented from, providing the Services, then no liability of any nature is to be imposed upon SAWS as a result of SAWS' compliance with such legal or regulatory mandates. SAWS agrees that it will use its best efforts to prevent the enactment of such legal or regulatory mandates.

3.00 Term.

3.01 The term of this Agreement shall be seven (7) years from the Effective Date if the Developer complies with the requirements set out in G.C. 19.00 (attached) within the time period therein stated. This Agreement shall automatically expire if Developer fails to comply with the requirements of G.C. 19.00 within the time period therein provided. The term of this Agreement may be extended to fifteen (15) years from the Effective Date, if Developer complies with the requirements to extend the term set forth in G.C. 19.00 within the time period therein stated. Certain obligations of SAWS (described in Section 3.03 below) may survive the expiration of the term of this Agreement, to the extent that Developer has (i) paid all applicable impact fees for the Services at the then-current rate, and (ii) complied with all On-Site and Off-Site utility infrastructure requirements of this Agreement (described in the Special Conditions), including over-sizing requirements.

3.02 To the extent that SAWS' obligations do not survive the expiration of this Agreement, Developer understands and agrees that a new Utility Service Agreement must be entered into with SAWS to receive the Services for the development project that is the subject of this Agreement.

3.03 To the extent that Developer timely pays all applicable impact fees and complies with all On-Site and Off-Site utility infrastructure requirements prior to the expiration of this Agreement, the following obligations will survive expiration of this Agreement:

- (i) SAWS' recognition of Guaranteed Capacity.
- (ii) SAWS' continued recognition of impact fee credits previously earned by the Developer pursuant to Sections 15.8 and 15.9 of the USR.
- (iii) SAWS' continued provision of the Services to retail customers located in the Tract, so long as such customers pay for the services and comply with the regulations applicable to individual customers.

4.00 Entire Agreement.

The following documents attached hereto and incorporated herein are as fully a part of this Agreement as if herein repeated in full, together with this Agreement, comprise the Agreement in its entirety:

Attachment I:	General Conditions
Attachment II:	Special Conditions
Attachment III:	Description of Tract
Attachment IV:	Board Summary & Recommendation and Resolution (if necessary)
Attachment V:	Developer Water and/or Wastewater Master Plan (if necessary)
Attachment VI:	Engineering Study
Attachment VII:	Lift Station & Force Main Supplemental Agreement (if necessary)
Attachment VIII:	Water Recycling and Conservation Plan (if necessary)
Attachment IX:	Fair Notice Declaration (if Developer claims rights under Chapter 245 of the Texas Local Government Code)

5.0 Developer's Obligations.

The Developer acknowledges and agrees that the capacity provided by this Agreement runs with the land and shall be an appurtenance to the Tract. The Developer acknowledges that recordation of this Agreement in the Real Property Records of the County in which the Tract is located within three (3) years of the Effective Date of this Agreement is required; otherwise, this Agreement will automatically terminate. Developer shall record the Agreement and supply the Director with a recorded copy. The Developer shall maintain records of EDU's remaining on the Tract pursuant to the approved Developer Master Plan. Developer shall provide SAWS with such records upon SAWS written request. Developer further agrees to defend, indemnify and hold harmless SAWS and its successor and assigns from the claims of third parties arising out of SAWS' recognition of the transfer of capacity under this Agreement to Developer's subsequent purchasers, successors and assigns.

6.00 Indemnity.

TO THE EXTENT ALLOWED BY LAW AND TEXAS CONSTITUTION, THE DEVELOPER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SAWS AND ITS SUCCESSOR AND ASSIGNS FROM THE CLAIMS OF THIRD PARTIES ARISING OUT OF SAWS' RECOGNITION OF THE TRANSFER OF CAPACITY UNDER THIS AGREEMENT TO DEVELOPER'S SUBSEQUENT PURCHASERS, SUCCESSORS AND ASSIGNS.

7.00 Notices.

Any notice, request, demand, report, certificate or other instrument which may be required or permitted to be furnished to or served upon the parties shall be deemed sufficiently given or furnished or served if in writing and deposited in the United States mail, registered or certified, return receipt requested, addressed to such party at the address set forth below:

IF TO SAN ANTONIO WATER SYSTEM:

SAN ANTONIO WATER SYSTEM

POST OFFICE BOX 2449

SAN ANTONIO, TEXAS 78298-2449

ATTN: SAM MILLS, P.E., DIRECTOR INFRASTRUCTURE PLANNING

IF TO DEVELOPER:

BITTERBLUE, INC.

11 LYNN BATTS LANE, SUITE 100

SAN ANTONIO, TEXAS 78218

ATTN: WILLIAM E. POWELL, CEO

8.00 Severability.

If for any reason any one or more paragraph of this Agreement are held legally invalid, such judgment shall not prejudice, affect impair or invalidate the remaining paragraphs of the Agreement as a whole, but shall be confined to the specific sections, clauses, or paragraphs of this contract held legally invalid.

9.00 Effective Date.

The Effective Date of this Agreement shall be the date signed by the authorized representative of the San Antonio Water System.

ACCEPTED AND AGREED TO IN ALL THINGS:

San Antonio Water System

Developer

David E. Chardavoyne

William E. Powell

By: David E. Chardavoyne

By: William E. Powell

Title: President/ Chief Executive Officer

Title: CEO

Date: 25 January 2006

Date: 1/24/06

ACKNOWLEDGEMENTS

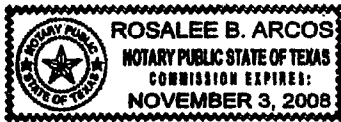
STATE OF TEXAS, COUNTY OF BEXAR

§

BEFORE ME, the undersigned Notary Public, on this day personally appeared William E. Powell known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as William E. Powell for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24th day of January, 2006.

(seal)



Rosalee B. Arcos
Notary Public

STATE OF TEXAS, COUNTY OF BEXAR

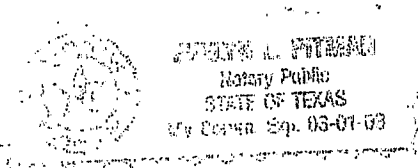
§

BEFORE ME, the undersigned Notary Public, on this day personally appeared David E. Chardavoyne known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as David E. Chardavoyne for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of January, 2006.

(seal)

David E. Chardavoyne
Notary Public



GENERAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT

G.C.1.00 Definitions.

G.C.1.01 Developer.

Owner of the tract, his subsequent purchasers, successors, and/or assigns.

G.C.1.02 Director of Infrastructure Planning.

The Director of Infrastructure Planning of the San Antonio Water System or his/her designated representative.

G.C. 1.03 Definition of Terms.

Unless defined in the Utility Service Agreement (the "Agreement"), the terms used in this General Conditions of the Utility Service Agreement (the "General Conditions") shall have the same definitions and meaning as those set out in Chapter 2, Definitions, of the Utility Service Regulations ("USR"). In the event a term is specifically defined in the General Conditions, and the definition is in conflict with that found in the USR, and such conflict is acknowledged in the General Conditions, the definition set out in the General Conditions shall apply.

G.C.2.00 Required Submittals.

If determined to be necessary by the Director of Infrastructure Planning ("Director"), the Developer hereby agrees to submit the following documents prior to the execution of the Agreement: Developer Master Plan, Developer Utility Layout, Water Recycling and Conservation Plan, and Engineering Report. The Parties agree that such documents are included instruments to the Agreement. The submittal of such documents is a condition precedent to plat recordation and initiation of Services. Developer shall modify such documents as may be reasonably required by the Director. Such documents shall be updated as required by the Director and the USR.

G.C.3.00 Dedication to SAWS.

The Developer agrees to dedicate, grant, and convey to SAWS all rights, title and interest of Developer in both the Off-Site and On-Site utility infrastructure that the Developer is required to construct under the Special Conditions of the Utility Service Agreement (the "Special Conditions"), and to dedicate, grant, and convey to SAWS easements for such utility infrastructure. Upon written acceptance of Off-Site and On-Site utility infrastructure by SAWS, the infrastructure shall be owned, operated and maintained by SAWS.

G.C.4.00 Design and Construction Requirements.

The design and construction of all Off-Site and On-Site utility infrastructure shall, at a minimum, comply with the requirements established by SAWS, including the USR, the City of San Antonio, the County of Bexar, the State of Texas, and any agency thereof with jurisdiction, including but not limited to the Texas Commission on Environmental Quality and the Texas Department of Health. Off-Site and On-Site utility infrastructure shall be constructed under the inspection of SAWS. Provision of the Services to the Tract shall not commence until the Director has accepted and approved Off-Site and On-Site utility infrastructure in writing.

G.C.5.00 Joint Venture Agreements.

In the event the Developer enters into a Joint Venture Agreement covering the costs for supplying the Services to the Tract, the Developer shall send a copy of such agreement to the attention of the Director.

G.C.6.00 Assignment.

The Agreement may not be assigned in whole or in part.

General Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 1 of 4

G.C.7.00 Event of Foreclosure.

In the event Developer's interest in the Tract described in Attachment III are extinguished by an act of foreclosure, and the foreclosing party has supplied sufficient evidence to SAWS that they are the successor in interest to the Tract as a result of such foreclosure, and that there are no lawsuits pending concerning the Tract, SAWS shall consider the foreclosing party a successor in interest if the foreclosing party executes a utility service agreement with SAWS after the Director determines that the execution of such an agreement will not be adverse to SAWS' interest.

G.C.8.00 Payment for Provision of Utility Service.

In the event payment for the Services provided to a subdivision plat within the Tract is not billed by SAWS, the amount of the monthly fees for the provision of the Services will be those charged to the various customer classifications as set by City Ordinances, with the billing and collection thereof on behalf of SAWS, being the responsibility of the billing utility purveyor. To facilitate this arrangement, Developer is to insert into any utility agreement with whatever utility purveyor is to bill for utility services to a subdivision plat within the Tract, a provision requiring said purveyor to enter into a Contract with SAWS to bill and collect SAWS' monthly utility services fees and transmit said fees to SAWS. The billing utility purveyor shall advise customers that delinquent non-payment of any of SAWS' fees will result in interruption and/or termination of the Services provided by SAWS, in accordance with applicable interruption and termination policies and procedures, as amended. SAWS shall not be obligated to provide the Services to any plat within the Tract unless and until the utility purveyor has executed a contract with SAWS to provide for the billing and collection of the Services provided by SAWS.

G.C.9.00 Enforcement of Industrial Waste Ordinance if Required by SAWS.

The Developer shall cause to be recorded in the Deed and Plat Records of the counties in which the Tract is located, a restrictive covenant covering the entire Tract. This restrictive covenant shall run with the land in the Tract described in Attachment III. Such covenant shall contain language expressly granting to SAWS the right, should SAWS so elect, to enforce and or otherwise pursue to the extent provided at law or in equity, the provisions of the City's Industrial Waste Ordinance No. 57214, as amended or as may be amended (codified as Chapter 34, Article V, Division 3 of the City Code). SAWS' right shall include, to the extent provided at law or in equity, the right to inspection, sampling and monitoring of the collection system to assure ordinance compliance.

Recordation of the Covenant shall be a condition precedent for SAWS' provision of the Services to any portion of said Tract.

G.C.10.00 Oversizing.

Developer must pay for all mains and other utility facilities needed to serve the Tract. SAWS may require the installation of oversized water mains and wastewater mains and related facilities. SAWS' requirements for oversizing, if any, are set forth in the Special Conditions. SAWS will execute a trilateral contract with Developer and a contractor for the construction of oversized facilities. Contracts for the construction of oversized facilities must be competitively bid as required by law. SAWS will reimburse the Developer for the oversize construction cost differential upon completion of the approved facility installation and SAWS' acceptance of such facility. SAWS will determine whether to provide such reimbursement in the form of a cash reimbursement or in credits to be applied to impact fees. All oversizing shall be done in accordance with the USR.

G.C.11.00 Off-Site /On-Site Facilities.

Developer shall construct and install all required Off-Site and On-Site utility infrastructure in accordance with the USR and Special Conditions, at no cost to SAWS. Any specific requirements related to the facilities are set forth in the Special Conditions.

G.C.12.00 Impact Fee Payment.

Developer agrees that the Agreement does not constitute an assessment of impact fees. Developer agrees to pay all applicable impact fees at the time and in the amount prescribed by ordinance or resolution of the City Council of the City of San Antonio and the USR, as amended. An estimate of the impact fees for the development Tract is provided in the Special Conditions. The estimate does not constitute an assessment of impact fees, and the amount of impact fees is subject to change by the City Council of the City of San Antonio as provided by law.

G.C.13.00 SAWS' Obligation to Supply Service.

To the extent that Developer pays all applicable impact fees and complies with all Off-Site and On-Site utility infrastructure requirements, Developer shall be entitled to the permanent use and benefit of the Services and is entitled to receive immediate service from any existing facilities with actual capacity to serve the development for which impact fees were paid, subject to compliance with other valid regulations. If, after collecting the impact fees, there is no actual capacity in existing facilities to provide the Services, SAWS will provide the Services within a reasonable period of time not to exceed five (5) years, as prescribed by Chapter 395 of the Local Government Code, as amended. In the event Services are required by Developer earlier than the five (5) year period, Developer and SAWS may agree that Developer may construct or finance the capital improvements or facility expansions required to provide Services, and the costs incurred or funds advanced will be credited against impact fees otherwise due from the new development or reimbursed to Developer from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to Developer at the time the other new development records its plat.

G.C.14.00 Facility Design and Construction.

The Developer shall design and construct all On-Site and Off-Site utility infrastructure described in the Special Conditions, including any oversizing, in accordance with the USR and all applicable local, state and federal requirements. Developer further recognizes that SAWS' approval in all respects as to facility right-of-way adequacy, location, size, grade and invert elevation is a condition precedent to any further obligation of SAWS. Specific design and construction requirements are set forth in the Special Conditions.

G.C.15.00 Use of Capacity by SAWS.

Developer understands that capacity in Off-Site and On-Site utility infrastructure resulting from the Agreement for the Tract may be utilized by SAWS for other tracts requesting service from SAWS. SAWS shall keep accurate records of the capacity provided to the Tract under the Agreement, whether Set-Aside or Guaranteed Capacity, and in no event will Developer be denied capacity as a result of SAWS' utilization of such capacity for another tract. Set-Aside capacity shall not survive the expiration of the Agreement.

G.C.16.00 Utility Master Plan Requirements.

The Developer will prepare a utility master plan, which details the water and/or wastewater systems for the Tract pursuant to the USR, as amended.

G.C.17.00 Phased Utility Master Plans.

If the Developer's water and/or wastewater systems are to be installed in phases or units, the Developer shall submit overall utility master plans to SAWS for review and approval. The overall utility master plan(s) shall be submitted before the first construction phase is submitted for plat approval. The overall utility master plan(s) shall show the development phases or units including the sequence and a timetable for build-out. The Developer shall also provide SAWS with a digital version of the proposed recorded plat, as submitted for plat recordation in a format acceptable to SAWS, for each phase or unit of the development project.

G.C.18.00 Conformance of Plans to Utility Master Plan.

All water and wastewater system facilities to serve the Tract shall be designed and constructed in conformance with the approved utility master plan. Changes in the water and wastewater system design shall be resubmitted to SAWS for written approval.

G.C.19.00 Timing Requirements for Submission of Plans.

Developer shall have three (3) years from the Effective Date of the Agreement to complete and submit the required utility master plan and to start construction of the Off-Site and On-Site utility infrastructure described in the Special Conditions. Developer agrees that the Agreement for the provision of Services shall automatically expire if Developer has not submitted a utility master plan and started construction of required Off-Site and On-Site utility infrastructure within three (3) years of the Effective Date of the Agreement, and a new request for the Services must be submitted to SAWS, which SAWS will grant based on then existing policies and regulations. In the event Developer meets the above-mentioned requirements within the three (3) year period provided, the Agreement shall remain in effect for seven (7) years from the Effective Date. If Developer submits a revised Utility Master Plan in accordance with the USR prior to the expiration of the seven (7) year period, the Agreement for the provision of Services may be extended to a maximum term of fifteen (15) years from the Effective Date.

SPECIAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT

WATER SERVICE

S.C.1.00 Tract Location and Ultimate Demand.

Kinder and Bass, a 987-acre tract, as part of the collective total 1,088-acre tract, is located outside the City limits and outside SAWS' service area, north of Estate Gate, and west of US Highway 281, as shown in Attachment III (the "Tract"). A portion of the tract is located over the Edwards Aquifer Recharge Zone.

The ultimate demand on the SAWS' facilities shall not exceed 4,031 equivalent dwelling units (EDUs) of water supply, for the proposed development.

S.C.2.00 Infrastructure Requirements.

Water Supply to the tract will be from Pressure Zone 11A. To supply water to the 987-acre Tract consistent with the Board's USR, the flow capacity of a 24-inch main is required. There are existing 24-inch mains along Bulverde Road and US Highway 281, within the vicinity of the proposed Tract to which connections can be made. The Developer will be required to construct a looped 24-inch main through the Tract, by connecting to the existing 24-inch mains along Bulverde Road and US Highway 281.

Furthermore, all other requirements will be determined at the time master plans are submitted, to SAWS, for each development. *Note:* water service to the proposed Tract may be contingent upon SAWS acquiring the Certificate of Convenience and Necessity (CCN) for this particular area of Bexar County.

S.C. 3.00 SAWS Master Plan and Oversizing Requirements.

Not Applicable.

S.C.4.00 Eligibility for Impact Fee Credits.

Not Applicable.

S.C.5.00 Engineering Study Report and/or Pro-Rata Fee Eligibility.

The engineering study report "Kinder, Friesenhahn, and Bass, 1,258-Acre Tracts, Utility Service Agreement Engineering Report", by Bitterblue, Inc., dated August 9, 2005 is included as Attachment VI.

S.C.6.00 Developer On-Site Requirements.

The Developer shall acquire any right-of-way or easements, and install all On-Site utility infrastructure required to serve the Tract in accordance with SAWS' USR, solely at the Developer's cost. Other On-Site requirements within the Tract will be determined at such time

Special Conditions of USA

USA_Kinder, Friesenhahn, & Bass Tracts_rev.DOC

01/23/06, Page 1 of 5

as the engineer submits an overall Utility Master Plan, and any subsequent revisions, for the Tract.

S.C.7.00 Requirement to Install Approved Pressure Regulators and/or Booster Pumps.

A portion of the tract is below the ground elevation of 1,215 feet where the static pressure will normally exceed 80 psi. At all such locations, the Developer or builder shall install at each lot, on the customer's side of the meter an approved type pressure regulator in conformance with the Plumbing Code of the City of San Antonio.

S.C.8.00 Time for Water Impact Fee Assessment and Payment.

Water Impact Fees will be assessed at the rates in effect at the time of plat recordation or the latest date allowed by law. Impact fees will be collected at either the time of plat recordation or connection to the SAWS' water system, as determined by SAWS.

S.C.9.00 Water Impact Fee Estimates Based Upon Current Charges.

Following is an estimate of impact fees for the provision of Services contemplated under the Agreement, which are based on current impact fee rates. This estimate shall not constitute an assessment of impact fees and impact fee rates are subject to change by the San Antonio City Council.

<u>Type of Impact Fee</u>	<u>EDUs</u>	<u>\$/EDUs</u>	<u>Current Total</u>
Flow Development	4,031	\$ 362.00	\$ 1,459,222.00
System Development (PZ 11A)	4,031	\$ 945.00	\$ 3,809,295.00
Water Supply	4,031	\$ 852.00	\$ 3,434,412.00
Total		\$ 2,159.00	\$ 8,702,929.00

S.C.10.00 Pro-Rata Charge Requirement.

Developer shall be required to pay a Pro-Rata Charge pursuant to the USR, as amended, prior to connection to the SAWS water system if Developer is tying into a main that is subject to a pro-rata refund.

S.C.11.00 Additional Terms.

Additional terms and provisions for construction of the water infrastructure improvements are set forth in the 24-inch water main construction agreement between the San Antonio Water System and Bitterblue, Inc., of event date herewith ("Construction Agreement"). In the event of any conflict or inconsistency between the terms of this Agreement and the Construction Agreement, the terms of the Construction Agreement shall control.

SPECIAL CONDITIONS OF THE UTILITY SERVICE AGREEMENT

WASTEWATER SERVICE

S.C.1.00 Tract Location and Ultimate Demand.

Kinder, Friesenhahn, and Bass, a collective total 1,088-acre tract outside the City limits and outside SAWS' service area, is located north of Estate Gate, west of US Highway 281, as shown in Attachment III (the "Tract"). A portion of the Tract is located over the Edwards Aquifer Recharge Zone.

The ultimate demand on the SAWS' facilities shall not exceed 4,031 equivalent dwelling units (EDUs) of wastewater discharge, for the proposed development.

S.C.2.00 Infrastructure Requirements.

The Tract is situated within SAWS' Outer Service Area (OSA) and lies within the Cibolo Creek and Upper Salado Creek Watersheds. Wastewater service to the tract requires the capacity of a paralleled 12-inch gravity main at 0.30 percent minimum slope for 1,291 EDU's of the 4,031 EDU's to flow through the Mud Creek Outfall and the extension of an 18-inch gravity main at 0.17 percent minimum slope for the remaining 2,740 EDU's to flow through the Indian Springs Outfall. The Developer may use the existing capacity not already used or previously committed in the Mud Creek Outfall main, within the Oliver Ranch or Canyon Springs developments. The nearest accessible wastewater main is a 30-inch gravity wastewater main crossing US Highway 281, north of Sonterra Boulevard. The Developer will be required to construct a 12-inch main from the Tract, which will parallel the existing wastewater infrastructure and connect to the existing 30-inch main crossing US Highway 281, north of Sonterra Boulevard. Each segment of the required 12-inch parallel wastewater main along the Mud Creek Outfall must be constructed once the capacity of the existing outfall main has been exceeded by flows generated from the proposed Tract on a segment by segment basis. The Developer may be required to upgrade the existing lift station/force main system located south of Evans Road, west of US Highway 281 to accommodate the required wastewater flows from the proposed Tract. The Developer may connect a maximum of 1,291 EDU's of capacity to the existing lift station/force main system and to the existing 30-inch main along US Highway 281.

Furthermore, all other requirements will be determined at the time master plans are submitted, to SAWS, for each development. Capacity in the existing wastewater outfall between Oliver Ranch and US Highway 281 is currently committed to Stone Oak, Canyon Springs, and Oliver Ranch tracts. SAWS staff are currently working with representatives from the Stone Oak, Canyon Springs, and Oliver Ranch tracts to revise the contracted capacity requirements for these tracts. Based on the results of these proposed revisions, some capacity may become available in portions of the existing outfall to serve the tract, as warranted.

S.C.3.00 San Antonio Water System Master Plan and Oversizing Requirements.

SAWS is currently revising the Master Wastewater Infrastructure Plan to accommodate flows from undeveloped areas within the Cibolo Creek and Upper Salado Creek Watersheds. The revised San Antonio Water System Wastewater Master Plan and the anticipated growth in this area may include the oversizing of approximately 47,310-feet of proposed 12-inch main to a 27-inch main. The total estimated cost of the main is \$16,605,810. The Developer estimated share of the cost is \$3,280,160 and SAWS' estimated share of the cost is \$13,325,650.

S.C.4.00 Impact Fee Credit Eligibility.

The 27-inch main was not included as a Capital Improvement Project in the current impact fees. Therefore, the impact fee credits for the Developer's proportionate share of the oversizing, is contingent upon inclusion of the 27-inch outfall main in the proposed impact fee calculations.

S.C.5.00 Engineering Study Report and/or Pro-Rata Refund Eligibility.

The engineering study report "Kinder, Friesenhahn, and Bass, 1,258-Acre Tracts, Utility Service Agreement Engineering Report", by Bitterblue, Inc., dated August 9, 2005 is included as Attachment VI.

S.C.6.00 Developer On-Site and/or Off-Site Requirements.

The Developer will also be required to acquire any right-of-way and easements, install all On-Site and Off-Site utility infrastructure, and upgrade existing lift stations necessary to serve the Tract in accordance with SAWS' USR, solely at the Developer's cost. Other On-Site utility infrastructure requirements within the Tract will be determined at such time as the engineer submits an overall Utility Master Plan, and any subsequent revisions, for the Tract.

S.C.7.00 Lift Stations and Force Mains.

Lift stations and force mains are only allowed by prior written supplemental agreement with SAWS. Applicable fees, as set out in the supplemental agreement, must be paid in full prior to service connection.

S.C.8.00 Time for Wastewater Impact Fee Assessment and Payment.

Wastewater Impact Fees will be assessed at the rates in effect at the time of plat recordation or the latest date allowed by law. Wastewater Impact Fees will be collected at either the time of plat recordation or connection to the SAWS wastewater system, as determined by SAWS.

S.C.9.00 Wastewater Impact Fee Estimates Based Upon Current Charges.

Following is an estimate of impact fees for the provision of Services contemplated under the Agreement, which are based on impact fee rates in effect as of the Effective Date of the Agreement. This estimate shall not constitute an assessment of impact fees and impact fee rates are subject to change by action of the San Antonio City Council as permitted by law.

<u>Type of Impact Fee</u>	<u>EDUs</u>	<u>\$/EDUs</u>	<u>Current Total</u>
Wastewater Collection	4,031	\$ 366.00	\$ 1,475,346.00
Wastewater Treatment (OSA)	4,031	\$ 750.00	\$ 3,023,250.00
Total		\$ 1,116.00	\$ 4,498,596.00

S.C.10.00 Pro-Rata Payment Fee Requirement.

Developer shall be required to pay a pro-rata fee pursuant to the USR, as amended, prior to connection to the wastewater system, if Developer is tapping into a main that is subject to a pro-rata refund.

ATTACHMENT IX

FAIR NOTICE DECLARATION

Any rights that the Developer claims arise under Chapter 245, Texas Local Government Code that are related to this Agreement are dependent upon the provision of all information required by this Fair Notice Declaration. In the absence of any of the required information, fair notice of a project is not given.

1. A legal description of the Tract must be attached to the Agreement as Attachment IX (A).
2. A detailed plan must be attached to the Agreement as Attachment IX (B) that provides the following information:
 - a. lot configuration, size, and location for each lot within the Tract
 - b. a specific description of the proposed land use for each lot
 - c. street layout
 - d. easement locations
 - e. total number and types of units by land use (single-family, multi-family, school, hotel, office, restaurant, or other specific description)
3. A narrative description of the sequence and timetable for the build-out of the proposed development must be attached to the Agreement as Attachment IX (C).

EXHIBIT C

UTILITY SERVICE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Utility Service Agreement ("Agreement") is entered into by and between the San Antonio Water System Board of Trustees, through Resolution Number 05-373, acting by and through its President/Chief Executive Officer ("SAWS") and Bitterblue, Inc., ("Developer") together the Parties ("Parties").

Recitals

Whereas, Developer has requested that SAWS provide water and wastewater service (the "Services") to an approximate collective total 1,088-acre tract of land, (the "Kinder, Friesenhahn, and Bass Tract" or "Tract"), which is located over the Edwards Aquifer Recharge Zone, such Tract being more particularly described in Attachment III hereto, as accepted by SAWS; and

Whereas, SAWS desires to provide the Services to the Developer pursuant to this Agreement, the SAWS Utility Service Regulations, and all applicable local, state, and federal regulations, as amended.

Now Therefore, The Parties Hereto Agree To The Following Terms and Conditions:

1.00 Interpretation of Agreement.

1.01 The Parties acknowledge that the Services contemplated by this Agreement shall be provided in accordance with the SAWS Utility Service Regulations, Design Criteria, Schedules, Attachments and Instruments thereto, as amended (together "USR"). In the event the specific terms of this Agreement are in conflict with the USR, the specific terms of this Agreement shall apply. The above notwithstanding, for the specific conflicting terms to prevail, the conflict must be expressly noted in the Agreement. The Parties further acknowledge that this Agreement is subject to future acts of the City Council of the City of San Antonio with respect to the adoption or amendment of impact fee ordinances/resolutions.

1.02 The Parties agree that the purpose of this Agreement is the reservation of the designated water supply and/or wastewater discharge capacity for the Tract. Any rights that the Developer claims arise under Chapter 245, Texas Local Government Code, that are related to this Agreement are dependent upon the provision of all information required by the Fair Notice Declaration that is attached hereto and is incorporated by reference as Attachment "IX."