

Control Number: 43572



Item Number: 84

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

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August 1, 2006

Docket Clerk
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Via Courier

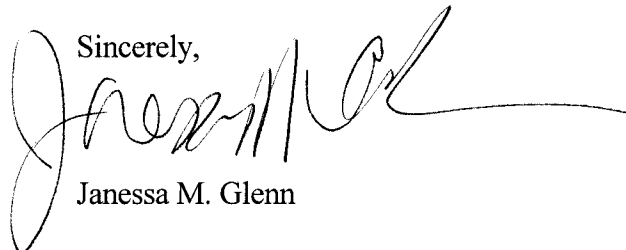
Re: State Office of Administrative Hearing Docket No. 582-03-3275;
TCEQ Docket No. 2003-0664-UCR *In Re: The Application of Bexar
Metropolitan Water District to Amend Water CCN No. 10675 in Bexar Met*

Dear Clerk:

Enclosed for filing is the original and two copies of BSR's Response to Applicant's Motion to Dismiss BSR Water Co. and Bitterblue, Inc. as Parties. Please file-stamp the extra copy and return it to us with the courier.

Thank you for your assistance in this matter. If there are any questions or problems, please feel free to contact my secretary, Ly Nguyen, at 512-499-3879.

Sincerely,



Janessa M. Glenn

JMG:ltm

Enclosures

cc (w/encl.): Parties of Record (*Via Facsimile & First Class Mail*)

84

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

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

BSR'S RESPONSE TO APPLICANT'S MOTION TO DISMISS
BSR WATER CO. AND BITTERBLUE, INC. AS PARTIES

COMES NOW, BSR Water Company ("BSR") and files this Response to Applicant's Motion to Dismiss BSR Water Co. and Bitterblue, Inc. as Parties, and would respectfully show as follows:

I. RESPONSE

On or about July 27, 2006, Applicant Bexar Metropolitan Water District ("Bexar Met") filed its Motion to Dismiss BSR Water Co. and Bitterblue, Inc. as Parties. Bexar Met seeks the dismissal of BSR as a party in this matter, alleging that BSR is no longer an "affected party" and no longer maintains a justiciable interest with respect to Bexar Met's Application. Bexar Met's request for dismissal of BSR is completely unsupportable and must be denied.

1. *Bexar Met's Application Should be Dismissed in the First Instance.*

Both BSR and Bitterblue have filed Motions seeking the dismissal Bexar Met's entire Application that is the subject of this proceeding. Additionally, San Antonio Water Systems ("SAWS") has sought to be named as a party in this matter, and once its intervention is granted, also seeks dismissal of Bexar Met's entire Application. Those requests for dismissal are all pending at

this time. As argued therein, and as stated in Order No. 22 in this matter, Bexar Met lacks statutory authority to service the area that is the subject of its Application. Accordingly, BSR urges that the proper action in this case is dismissal of Bexar Met's Application, and resulting dismissal of this proceeding based on lack of continued jurisdiction.

2. *BSR is an Affected Person and Retains a Justiciable Interest.*

In any event BSR is an affected person and must remain a party in this matter.

The TCEQ rules state a party to a proceeding must have a "justiciable interest in the matter being considered...." 30 Tex. Admin. Code § 80.109(a)¹. Section 80.109(b) states that "affected persons" shall be parties to hearings on permit applications, based upon the standards set forth in § 55.29...." 30 Tex. Admin. Code § 80.109(b)(5). Section 55.29, in turn, provides that "an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 Tex. Admin. Code § 55.29(a).

a. BSR has an undeniable justiciable interest.

Bexar Met claims that BSR is no longer an "affected party" concerning Bexar Met's Application, and thus BSR should be dismissed from this proceeding. In support Bexar Met notes that BSR and SAWS have filed with the Texas Commission on Environmental Quality an Intent to Sell Facilities and Transfer BSR's current CCN # 12842 to SAWS. Bexar Met claims that because of this transfer,² BSR is no longer a holder of a "neighboring utility" relative to the area Bexar Met

¹ This requirement is improperly cited by Bexar Met as 30 Tex. Admin. Code § 80.019(a).

² Bexar Met states in its Motion to Dismiss that the transfer of CCN# 12842 to SAWS was "approved" by the TCEQ. At this time, the TCEQ has denied Bexar Met's request for a contested case hearing with respect to that Intent to Transfer, but BSR has not received notice from the TCEQ that the transfer has been finally approved. BSR does anticipate that the transfer will be approved in the near future.

wishes to serve by its Application, and thus no longer has a justiciable interest in whether Bexar Met's Application is granted or not. Nothing could be further from the truth.

The transfer of BSR's CCN #12842 to SAWS is the result of an agreement between BSR and SAWS, following lengthy and costly litigation between BSR and SAWS. The transfer is but one part of that very complex agreement. Importantly, that agreement includes contract provisions whereby SAWS has agreed to purchase water from BSR for SAWS' service of the very area Bexar Met seeks to service through Bexar Met's Application. This is based on SAWS' currently pending competing application on file with the TCEQ to service the area Bexar Met seeks to service by its Application. SAWS' obligation to purchase water from BSR pursuant to the agreement will be highly lucrative to BSR, potentially amounting to hundreds of thousands of dollars. But this monetary benefit to BSR directly depends upon SAWS (and not Bexar Met) obtaining the CCN to service the 5400 area for which SAWS and Bexar Met have competing applications now pending. Obviously, BSR has a huge financial stake in the question of who services this area.

TCEQ Rule 55.29 specifically provides that an affected person's personal justiciable interest can be related to a legal right or economic interest that will be affected by an application. Clearly, BSR's legal rights under its agreement with SAWS, and its economic interests stemming from that agreement, are both directly and substantially affected by whether or not Bexar Met's Application is granted. Unquestionably, BSR is an affected person with a justiciable interest in the outcome of Bexar Met's Application. Dismissing BSR would clearly be in direct violation of the TCEQ's rules on grating party status. Any argument to the contrary is so completely unsupportable that BSR wonders as to Bexar Met's even making it.

b. Dismissing BSR would be highly inequitable.

BSR has been involved in the convoluted history related to this area and how it will eventually be serviced since at least 1998. BSR's fight to secure its rights in the rapidly developing area that is now the subject of Bexar Met's and SAWS' pending and competing applications began when BSR filed a protest with the TCEQ against SAWS' original application seeking to service this area. SAWS original application would have cut off any effort by BSR to expand its CCN retail service area to property adjoining the BSR ranch, and thus would have denied BSR any chance of valuable future expansion. Following months of negotiations concerning BSR's protest, BSR and SAWS signed a written contract to resolve their differences in February of 2000. That contract obligated SAWS to support the transfer of a certain amount of acreage out of SAWS' newly acquired CCN to BSR, so that BSR could expand its retail sales of water. BSR then withdrew its protest of SAWS' application.

Bexar Met had also filed a protest to the SAWS original application. As a result of negotiations between SAWS and Bexar Met relative to that protest, SAWS and Bexar Met entered into an agreement whereby SAWS gave to Bexar Met the right to sell water on the same acreage it had agreed to support BSR serving.

BSR then filed suit against SAWS, resulting in lengthy litigation as to whether SAWS had breached its contract with BSR by entering into the contract with Bexar Met. Thankfully, SAWS and BSR were eventually able to reach an agreement to resolve their differences (which is the agreement discussed above that forms BSR's continued justiciable interest in this proceeding). In the meantime, Bexar Met applied for a CCN for the area, which is the subject of the instant

proceeding. SAWS then discovered problems with Bexar Met that call into question the ability of Bexar Met to service the area, and in 2005 SAWS once again filed a request for a CCN to service the area.

All of this is important because, from 1998 until the present, BSR has spent an enormous amount of time and money protecting its legal rights concerning the eventual fate of this area. To dismiss BSR out of this case now, in the face of BSR's continued financial and legal interest in the final outcome, and after eight years of fighting two powerful water utility companies, would be a gross injustice to the family that are the owners of BSR.

II. Prayer

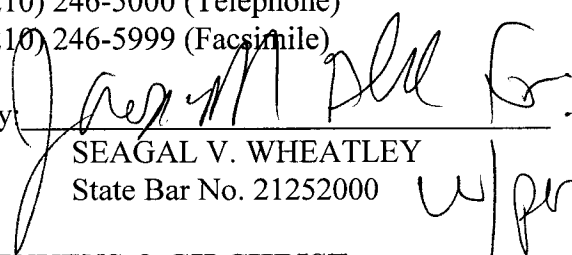
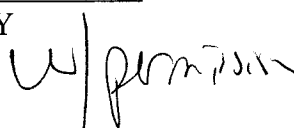
BSR requests that that Bexar Met's Motion to Dismiss BSR as a party be denied in its entirety and for such other relief to which BSR may be entitled.

Respectfully submitted,

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ATTORNEYS FOR BSR Water Company

CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of August, 2006, a true and correct copy of the foregoing was served on the parties of record by facsimile transmission and First Class Mail.


Janessa M. Glenn

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