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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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FROM: ROBERT L. WILSON, III

TOTAL PAGES: 10

RE: SOAH DOCKET NO. 582-03-3725: TCEQ DOCKET NO. 2003-0664-UCR,
IN RE: THE APPLICATION OF BEXAR METROPOLITAN WATER DISTRICT
TO AMEND WATER CCN NO. 10675 IN BEXAR COUNTY, BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Please find enclosed Bexar Metropolitan Water District's Response in Opposition to
SAWS' "Second" Motion to Intervene in regards to the above-referenced matter.

86

**SOAH DOCKET NO. 582-03-3275
TCEQ DOCKET NO. 2003-0664-UCR**

**IN RE: THE APPLICATION OF
BEXAR METROPOLITAN
WATER DISTRICT TO AMEND
WATER CCN NO. 10675
IN BEXAR COUNTY**

§
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**BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS**

**BEXAR METROPOLITAN WATER DISTRICT'S
RESPONSE IN OPPOSITION TO SAWS'
"SECOND" MOTION TO INTERVENE**

COMES NOW, Bexar Metropolitan Water District ("BexarMet"), Applicant in the above-numbered and styled administrative proceeding, and files this, its Response in Opposition to the "Second" Motion to Intervene filed by San Antonio Water System ("SAWS"). In support of this Opposition, BexarMet re-asserts all grounds set-forth in its Response to SAWS' "First" Motion to Intervene, and shows as follows:

I. INTRODUCTION

Dissatisfied with the ALJ's ruling in Order No. Order No. 15 issued on September 28, 2005, SAWS' latest effort at obtaining party status alleges "changed circumstances," which would justify its admission as a party to this proceeding. The "circumstances" identified, however, are hardly new or changed, and wholly fail to undermine the validity of the ALJ's thoughtful and well-reasoned analysis found in Order No. 15. There exist no more "good cause" or "extenuating circumstances" today, than there did last fall, when SAWS attempted its 13th-hour crash of the party which is this proceeding. The primary difference is that SAWS is even later to the party now, and cannot demonstrate good cause for its late filing. In sum, SAWS' Motion is untimely, without merit, and

unoriginal. Thus, its request for party status must be, once again, denied.

II. "CHANGED CIRCUMSTANCES" ARE CONTRIVED

1. SAWS' Own CCN Application

This entire argument was presented in SAWS' First Motion to Intervene, and is as unconvincing now as it was eleven months ago when the ALJ rejected it. The fact that SAWS filed its own Application for CCN some three and one-half years after BexarMet did so – does not rise to the level of creating a "justiciable interest." Under SAWS' asserted logic, any party could gain late admittance to any proceeding by filing a similar proceeding in another forum. Could the City of New Braunfels gain admission to this proceeding if it were to file a competing CCN Application today? SAWS was aware of this proceeding both in 2002 when it received notice pursuant to 30 TAC § 291.106 and in August 2005 when it filed its CCN application. SAWS' re-hash of the argument that its own filing creates a justiciable interest in this proceeding is nothing more than an effort to fabricate standing. Clearly, this is not what was intended by inclusion of the "justiciable interest" requirement in 30 TAC § 80.109(a).

2. SAWS Has Agreed to Serve Bitterblue

This argument is equally unoriginal, and is irrelevant. First, BexarMet is no longer seeking a CCN for any of the tracts for which SAWS and Bitterblue have entered into utility service agreements. Further, both SAWS and Bitterblue used their "agreement" concerning service as the basis for their intervention efforts last fall. The evidentiary hearings conducted on the two applications included testimony from both SAWS and Bitterblue officials relating to Bitterblue's request for SAWS service. The fact that those entities have formalized their service arrangement by entering a USA is not a "changed circumstance." Moreover, the SAWS/Bitterblue USA was

signed on **January 24, 2006**. The second Motion to Intervene was filed some 6 months later – on July 14, 2006. Thus, the USA both fails to change the “circumstances” regarding SAWS *vis-a-vis* this proceeding, and is a stale non-event. Add to this the fact that BexarMet is not, by way of this application, seeking a CCN for any property for which SAWS and Bitterblue have contracted for service, and only one conclusion is possible – the USA is irrelevant, and cannot serve as the basis for admitting SAWS to this proceeding.

3. **Order No. 22**

As set-forth in BexarMet’s Motion to Dismiss BSR Water Co. And Bitterblue, BexarMet is not seeking a CCN to serve the Bass tract. BexarMet concedes that SAWS and Bitterblue have entered into a USA for this tract, and has, accordingly, amended its application to exclude this area from its pending application. BexarMet has offered to Bitterblue the relief it sought in its “Motion to Clarify,” and Bitterblue is free to contract with SAWS or whomever its desires to provide service to the tracts it identified, and made the subject of Bitterblue’s “Motion to Intervene.” Neither SAWS nor Bitterblue maintain any standing in this application as either the result of Order No. 22 or any agreement (USA or otherwise) regarding service to the Kinder or Bass tracts. As such, SAWS’ argument fails, and its Motion to Intervene must be denied.

4. **Acquisition of BSR CCN**

Both BSR and SAWS have “anticipated” that transfer of BSR’s CCN “should” occur soon, but SAWS provided no explanation as to why this would assist it in demonstrating the requisite criteria provided in 30 TAC § 80.109(a). BSR, on the other hand, argues that the “anticipated” transfer would not obviate *its* “justiciable interest” in BexarMet’s application, or the need for its further participation in this proceeding. SAWS has failed to carry its sole burden of demonstrating

that this litigation would impact or be implicated by its proposed acquisition of the BSR CCN. Without such a showing, there cannot a "justiciable interest."¹ Accordingly, SAWS' Motion to Intervene fails as matter of law.

III. SAWS INCLUSION WOULD UNREASONABLY DELAY THIS PROCEEDING

Although fully advised in writing of the nature and substance of BexarMet's Application to Amend in early 2002, SAWS failed to file a protest or request for contested case hearing within the 30 day protest period prescribed by 30 TAC § 291.106 (a)(3). But for the timely protest of BSR and others, the Application could have been granted by the Executive Director of the TNRCC as long ago as May 2002.² Had such action occurred, SAWS would have no procedural vehicle within which to make the contrived allegations of 13th hour "justiciable interest" it now proffers in its Motion to Intervene.

SAWS not only missed the deadline for the protest period prescribed by the agency and its internal rules. As fully set-forth above, it also disregarded the opportunity to petition the ALJ for party status in July 2003 (at the time of the preliminary hearing),³ and made no effort to intervene in this case for the following two years. SAWS' request for Intervention was considered and denied by the ALJ in August 2005, and it waited to file a request for rehearing until late July 2006, after the parties have exchanged written discovery and conducted depositions.

Four BexarMet witnesses have been deposed, and BexarMet has served and answered

¹ See *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex.App.-Fort Worth 2003, no pet.).

² See 30 TAC § 291.107(c).

³ See 30 TAC § 80.105(b)(1).

discovery with respect to all other parties. It has produced approximately 1,200 pages of documents to Bitterblue. Allowing SAWS to intervene at this late date would cast aside the substantial efforts and expenditures of the existing parties, all of which have labored to meet the deadlines prescribed by the ALJ. BexarMet, in addition to disrupting the work activities of its employee-witnesses, has engaged the services of expert witnesses, court reporters, copy services, and couriers in order to meet the deadlines established by this tribunal. Obviously, there were substantial expenditures associated with this compliance. These costs cannot be recovered through this proceeding, and extension of the duration of this proceeding will certainly result in redundant expenditures and escalating attorneys' fees and costs. Introducing SAWS as an Intervenor to this case will undoubtedly cause the instant "hearing in progress [to] be unreasonably delayed."⁴ This fact, alone, justifies denial of the Motion to Intervene.

IV. THERE ARE STILL EXIST NO "EXTENUATING CIRCUMSTANCES"
REQUIRING SAWS' PARTICIPATION IN THIS PROCEEDING

SAWS' "Second" Motion does not demonstrate or even make passing reference to "extenuating circumstances." The present Protestants to the case can make each of the arguments SAWS desires to assert. In the absence of demonstrating "extenuating circumstances," SAWS' Motion must be denied without notice or hearing.

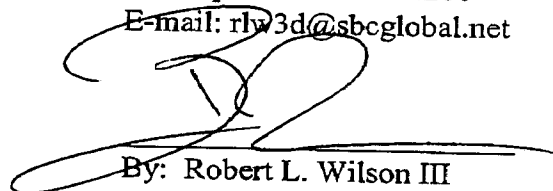
⁴ 30 TAC § 80.109(a).

PRAYER

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

Respectfully submitted,

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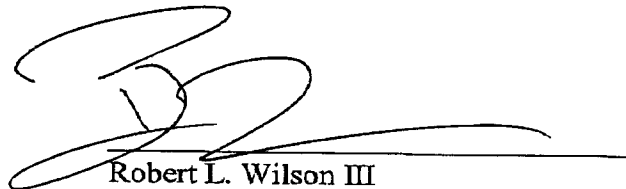
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was this 3rd day of August, 2006, forwarded by ☐ certified mail return receipt requested, ☒ facsimile transmission, ☐ hand delivery, ☐ overnight delivery, to the attached Service List for SOAH Docket Number 582-03-3725/TCEQ Docket No. 2003-0664-UCR.



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