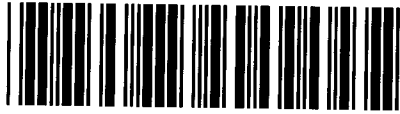




Control Number: 43572



Item Number: 92

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
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

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

PUBLIC UTILITY COMMISSION  
FILING CLERK

September 8, 2006

The Honorable Cassandra J. Church  
Administrative Law Judge  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78711

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ADMINISTRATIVE  
HEARINGS  
23 SEP 12 AM 8:23

RE: SOAH Docket No. 582-03-3725; TCEQ Docket No. 2003-0664-UCR  
Application of Bexar-Met to Amend Water CCN No. 10675

Dear Judge Church:

Enclosed please find the Executive Director's Response to Bitterblue's Motion to Revise and Clarify Order No. 22 in the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Todd Galiga".

Todd Galiga  
Staff Attorney  
Environmental Law Division  
TCEQ

Enclosure

cc: Service List

92

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

<b>APPLICATION BY BEXAR-</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>METROPOLITAN WATER DISTRICT</b>	§	
<b>TO AMEND WATER CCN NO. 10675</b>	§	<b>OF</b>
<b>IN BEXAR COUNTY</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

**EXECUTIVE DIRECTOR' RESPONSE TO BITTERBLUE'S MOTION TO REVISE  
AND CLARIFY ORDER NO. 22**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Comes now, the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") and files the Executive Director's Response to Bitterblue's Motion to Revise and Clarify Order No. 22 in the above referenced Docket, and would respectfully show as follows:

The Executive Director concurs with Bitterblue, Inc. ("Bitterblue") that Bexar Metropolitan Water District's ("Bexar Met") pending application to amend CCN No. 10675 should be dismissed in its entirety. As noted in Order No. 22, on May 5, 2006 Judge Gary Steel of the 22nd District Court in Comal County ruled that Bexar Met cannot provide service outside the District's statutory boundaries. Judge Steel also held that "following the passage of . . . Senate Bill 1494, . . . the District's statutory boundaries for retail water services are set out in Section 5A(b) of Bexar Met's enabling act (such statutory boundaries being those defined in CCN Nos. 10675, 12759, and 12760, as those CCNs existed on the date of the passage of Senate Bill 1494)."

In addition, as discussed by the parties at the September 6, 2006 prehearing conference, on September 1, 2006 Judge Scott Jenkins of the 200<sup>th</sup> District Court in Travis County informed the San Antonio Water System ("SAWS") and Bexar Met that he intends to rule in favor of SAWS on all its claims against Bexar Met and the TCEQ. The Final Judgment in that case, which has been approved as to form by counsel for Bexar Met and which Judge Jenkins is expected to sign on or before September 8, 2006, states that Bexar Met cannot provide services outside the District's statutory boundaries. The Final Order expected from Judge Jenkins also states that "Bexar Met has no authority to seek to obtain from TCEQ, and TCEQ has no authority to grant to Bexar Met, a CCN or an amended CCN for Bexar Met to provide retail water utility service to any property in an area outside the territory described in . . . this Final Judgment."

As discussed in Bitterblue's May 12, 2006 supplement to its Motion, the CCN area requested by Bexar Met is outside of the District's current statutory boundaries. As a result,

based on the decision from Judge Steel and the decision expected shortly from Judge Jenkins, the Executive Director recommends that Bexar Met's application be dismissed due to Bexar Met's lack of authority to provide retail water service to the requested area. Continuing with the evidentiary hearing on Bexar Met's application in light of two District Court decisions that Bexar Met cannot serve the requested area would be an inefficient use of time and resources for SOAH, the parties, and the Commission.

Furthermore, due to the statement in the Final Judgment expected from Judge Jenkins that the TCEQ has no authority to grant a CCN amendment to Bexar Met to provide retail water service outside its current statutory boundaries, the Executive Director requests that Bexar Met's application be dismissed in its entirety as soon as the Final Judgment is signed.

Wherefore, premises considered, the Executive Director respectfully requests that SOAH dismiss Bexar Met's application to amend CCN No. 10675 in its entirety.

Respectfully submitted,

Glenn Shankle  
Executive Director

Robert Martinez, Director  
Environmental Law Division

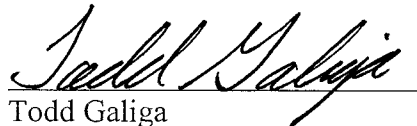


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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of September, 2006, a true and correct copy of the foregoing Executive Director's Response to Bitterblue's Motion to Revise and Clarify Order No. 22 was sent to all persons on the attached mailing list by hand-delivery, inter-agency mail, facsimile, or by deposit in the U.S. Mail.

A handwritten signature in cursive script, reading "Todd Galiga", is written over a horizontal line.

Todd Galiga  
Staff Attorney  
TCEQ Environmental Law Division

**MAILING LIST**  
**Bexar Metropolitan Water District**  
**TCEQ Docket No. 2003-0664-UCR; CCN No. 10675**

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