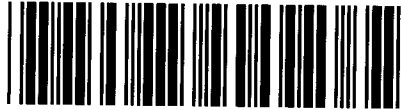




Control Number: 43572



Item Number: 93

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

43572

## MATHEWS &amp; FREELAND, L.L.P.

RECEIVED

JIM MATHEWS  
JOE FREELAND

ATTORNEYS AT LAW  
P.O. Box 1568  
AUSTIN, TEXAS 78768-1568

2014 NOV 13 AM 11:01  
(512) 404-7800  
PUTTING CLERK

September 8, 2006

*Via Fax: (512) 475-4995*

Honorable Cassandra J. Church  
Honorable Henry D. Card  
Administrative Law Judges  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street  
Austin, Texas 78701

Re: In Re: Application of Bexar Metropolitan Water District to Amend Water CCN No. 10675 in Bexar County, TCEQ Docket No. 2003-0664-UCR, SOAH Docket No. 582-03-3725; Application from San Antonio Water System, CCN No. 10640 in Bexar County, TCEQ Docket No. 2005-1880-UCR, SOAH Docket No. 582-06-0837

Dear Judges Church and Card:

Attached is the Order on Final Judgment in *SAWS v. White*, from the Travis County District Court which was signed today by Judge Jenkins. A copy of the judgment is being served on all parties in both dockets.

Sincerely,



Jim Mathews

cc: Service List  
Steve Kosub

AB

SEP-08-2006 15:49

DISTRICT JUDGES OFFICE

512 854 9332

P.01/09

**53RD DISTRICT COURT**

TRAVIS COUNTY COURTHOUSE

P. O. BOX 1746

AUSTIN, TEXAS 78767

FAX (512) 854-9332

**SCOTT H. JENKINS**Judge  
(512) 854-9308**LAWRENCE ANDREWS**Bailiff  
(512) 854-9397**NANCY HERRERA**Judicial Aide  
(512) 854-9303**CHAVELA PRINCE**Official Reporter  
(512) 854-9322**CONNIE JEFFERSON**Court Clerk  
(512) 854-9437**BARBARA HANNON**Staff Attorney  
(512) 854-9366

September 8, 2006

Mr. Max Renea Hicks  
Attorney at Law  
1250 Norwood Tower  
114 West 7<sup>th</sup> Street  
Austin, Texas 78701  
**VIA FACSIMILE: (512) 480-9105**

Re: Cause No. D-1-GV-06-000053; *City of San Antonio vs. White, et al*; in the  
200<sup>th</sup> Judicial District, Travis County, Texas.

Dear Counsel:

Enclosed is a copy of an Order on Pending Matters and an Order on Final Judgment in the above-cause. This order has been signed by the Court and filed with the District Clerk's office.

Sincerely,

NANCY HERRERA  
Judicial Aide, 53rd District Court  
Travis County, Texas

Orig: Ms. Amalia Rodriguez-Mendoza, Travis County District Clerk

Enc.

cc: Mr. Brian Berwick (VIA FACSIMILE: 512-320-0052)  
Mr. Celina Romero (VIA FACSIMILE: 512-474-1129)  
Mr. Laurence S. Kurth (VIA FACSIMILE: 512-582-0231)  
Mr. Jim George (VIA FACSIMILE: 512-499-0094)

SEP-08-2006 15:49

DISTRICT JUDGES OFFICE

S12 854 9332

P.02/09

**CAUSE NO. D-1-GV-06-000053**

**CITY OF SAN ANTONIO, acting by  
and through the  
SAN ANTONIO WATER SYSTEM,  
*Plaintiff,***

**vs.**

**KATHLEEN HARTNETT WHITE, in her  
official capacity as Chairman of the  
Texas Commission on Environmental  
Quality,**

**and**

**RALPH MARQUEZ and LARRY SOWARD,  
in their official capacities as  
Commissioners of the Texas Commission  
on Environmental Quality,**

**and**

**GLENN SHANKLE, in his official capacity  
as Executive Director of the Texas  
Commission on Environmental Quality,**

**and**

**BEXAR METROPOLITAN WATER DISTRICT,  
*Defendants.***

**IN THE DISTRICT COURT**

**OF TRAVIS COUNTY, TEXAS**

**200<sup>th</sup> JUDICIAL DISTRICT**

**ORDER ON PENDING MATTERS**

Before the Court are the following matters: Bexar Metropolitan Water District's Special Exception and Plea to the Jurisdiction; Plaintiff's Amended Motion for Partial Summary Judgment by the City of San Antonio, acting by and through the San Antonio Water System ("SAWS"); the Motion for Partial Summary Judgment by Defendant Bexar Metropolitan Water District ("BexarMet"); the City of San Antonio's Motion for Summary Judgment as to Rivara and Fiorino Intervenor by SAWS; the Motion for Summary Judgment by the Rivara and Fiorino Intervenor; the Motion for Leave to File Additional Evidence by BexarMet; the Rivara and

ORDER ON PENDING MATTERS

Fiorino Intervenor's Objection to Exhibit A to SAWS' Response in Opposition to Rivara and Fiorino's Motion for Summary Judgment; Bexar Metropolitan Water District's Motion for Leave to File Additional Case Law and Evidence; SAWS's Motion for Leave to File Additional Summary Judgment Evidence; Rivara and Fiorino's Motion for Leave to File Additional Summary Judgment Evidence; and SAWS's Objection to portions of Rivara and Fiorino's Additional Summary Judgment Evidence. The parties all having announced ready, and after considering these pleadings, responses, supplements, and replies concerning them, the Stipulation filed June 2, 2006, the pleadings and other papers on file in this cause, the summary judgment evidence presented, and the arguments of counsel, the Court determines as follows:

BexarMet's Motion for Leave to File Additional Evidence, BexarMet's Motion for Leave to File Additional Case Law and Evidence, SAWS's Motion for Leave to File Additional Summary Judgment Evidence, and Rivara and Fiorino's Motion for Leave to File Additional Summary Judgment Evidence are GRANTED.

BexarMet's Special Exception is DENIED.

BexarMet's Plea to the Jurisdiction is DENIED.

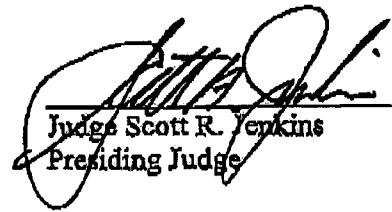
Rivara and Fiorino Intervenor's Objection to Exhibit A to SAWS' Response in Opposition to Rivara and Fiorino's Motion for Summary Judgment is DENIED. SAWS's Objection to specified portions of the Joseph Fiorino Affidavit attached to Rivara and Fiorino's Motion for Leave to File Additional Summary Judgment Evidence is GRANTED.

Bexar Met's Motion for Partial Summary Judgment and the Motion for Summary Judgment by the Rivara and Fiorino Intervenor's are DENIED.

Plaintiff's Amended Motion for Partial Summary Judgment by SAWS and the City of San Antonio's Motion for Summary Judgment as to Rivara and Fiorino Intervenor's by SAWS are GRANTED.

All pending motions and objections not otherwise addressed here are DENIED.


SIGNED this 8th day of September, 2006.

  
Judge Scott R. Jenkins  
Presiding Judge

APPROVED AS TO FORM:

  
Renea Hicks

ATTORNEY FOR PLAINTIFF CITY OF SAN ANTONIO, ACTING BY AND  
THROUGH THE SAN ANTONIO WATER SYSTEM

  
Brian E. Berwick  
Assistant Attorney General

ATTORNEY FOR TCEQ DEFENDANTS KATHLEEN HARTNETT WHITE, RALPH  
MARQUEZ, LARRY SOWARD, AND GLENN SHANKLE

  
Celina Romero  
CLARK, THOMAS & WINTERS, PC

ATTORNEY FOR DEFENDANT BEXAR METROPOLITAN WATER DISTRICT

  
Laurence S. Kurth  
CLARK, THOMAS & WINTERS, PC

ATTORNEY FOR INTERVENORS JUAN AND LUANN RIVARA AND JOSEPH AND  
DAWN FIORINO

SEP-08-2006 15:49

DISTRICT JUDGES OFFICE

512 854 9332

P.05/09

Judge Scott R. Jenkins  
Presiding Judge

APPROVED AS TO FORM:

Renea Hicks

ATTORNEY FOR PLAINTIFF CITY OF SAN ANTONIO, ACTING BY AND  
THROUGH THE SAN ANTONIO WATER SYSTEM

Brian E. Berwick

Brian E. Berwick  
Assistant Attorney General

ATTORNEY FOR TCEQ DEFENDANTS KATHLEEN HARTNETT WHITE, RALPH  
MARQUEZ, LARRY SOWARD, AND GLENN SHANKLE

Celina Romero

CLARK, THOMAS & WINTERS, PC

ATTORNEY FOR DEFENDANT BEKAR METROPOLITAN WATER DISTRICT

Laurence S. Kurth

CLARK, THOMAS & WINTERS, PC

ATTORNEY FOR INTERVENORS JUAN AND LUANN RIVARA AND JOSEPH AND  
DAWN FIORINO

ORDER ON PENDING MATTERS

-3-

\*\* TOTAL PAGE. 03 \*\*

09/08/06 FRI 16:51 [TX/RX NO 5978]



Judgment by the Rivara and Florino Intervenor. Therefore, in light of the foregoing rulings and the fact that, through the filing of its Third Amended Original Petition, Plaintiff SAWS has waived any claim for attorney fees, the Court renders Final Judgment in this matter.

It is ORDERED, ADJUDGED, and DECREED that judgment is entered for Plaintiff SAWS on all its claims, and against Defendants BexarMet, the Defendant TCEQ officials in their official capacities (Kathleen Hartnett White, Ralph Marquez, Larry Soward, and Glenn Shankle), and the Fiorino and Rivara Intervenor (Joseph and Dawn Fiorino and Juan and Luann Rivara), on all their claims.

It is FURTHER ORDERED, ADJUDGED, and DECREED that, under general law and the BexarMet Enabling Act, as amended\*:

- A. BexarMet cannot provide services outside the District's statutory boundaries.
- B. BexarMet's statutory boundaries are:
  - (i) the territory specifically identified in Section 5 of the BexarMet Enabling Act, as amended; and
  - (ii) the territory specifically identified by Section 5A(b) of the BexarMet Enabling Act, as amended, but for the purpose of the exercise of its current retail water utility services only. For purposes of this Final Judgment, "territory specifically identified by Section 5A(b) of the BexarMet Enabling Act, as amended" is confined to only the territory located inside Certificates of Convenience and Necessity (CCNs) Nos. 10675, 12759, and 12760 issued by the Texas Commission

---

\* When used in this Final Judgment, "BexarMet Enabling Act, as amended" means the Act of May 1, 1945, 49<sup>th</sup> Leg., R.S., ch. 306, 1945 Gen. Laws 456, as amended by the following: the Act of April 21, 1953, 53<sup>rd</sup> Leg., R.S., ch. 66, 1953 Gen. Laws 100; the Act of April 3, 1957, 55<sup>th</sup> Leg., R.S., ch. 40, 1957 Gen. Laws 86; the Act of May 15, 1997, 75<sup>th</sup> Leg., R.S., ch. 91, 1997 Gen. Laws 178; and the Act of June 18, 2003, 78<sup>th</sup> Leg., Reg. Sess., ch. 375, 2003 Gen. Laws 1593. When used in this Final Judgment, "Senate Bill 1494" means the last-listed of these bills, the Act of June 18, 2003, 78<sup>th</sup> Leg., Reg. Sess., ch. 375, 2003 Gen. Laws 1593.


on Environmental Quality (TCBQ), as those CCNs existed on June 18, 2003.

- C. BexarMet has no authority to annex and incorporate additional area to its territory.
- D. BexarMet has no authority to seek to obtain from TCBQ, and TCBQ has no authority to grant to BexarMet, a CCN or an amended CCN for BexarMet to provide retail water utility service to any property in an area outside the territory described in Paragraph I.B, above, of this Final Judgment.


It is FURTHER ORDERED, ADJUDGED, and DECREED that the Texas Legislature's consideration and passage of Senate Bill 1494 did not violate subsection (d) of Article XVI, Section 59, of the Texas Constitution.

All costs shall be borne by the party incurring them. This judgment is a final, appealable judgment, disposing of all parties and all issues. All relief not expressly granted herein is denied.


SIGNED this 24th day of September, 2006.

  
Judge Scott R. Jenkins  
Presiding Judge

APPROVED AS TO FORM:

  
Renea Hicks

ATTORNEY FOR PLAINTIFF CITY OF SAN ANTONIO, ACTING BY AND  
THROUGH THE SAN ANTONIO WATER SYSTEM

  
Brian E. Berwick  
Assistant Attorney General

ATTORNEY FOR TCEQ DEFENDANTS KATHLEEN HARTNETT WHITE,  
RALPH MARQUEZ, LARRY SOWARD, AND GLENN SHANKLE

  
Celina Romero  
CLARK, THOMAS & WINTERS, PC

ATTORNEY FOR DEFENDANT BEXAR METROPOLITAN WATER DISTRICT

  
Laurence S. Kurth  
CLARK, THOMAS & WINTERS, PC

ATTORNEY FOR INTERVENORS JUAN AND LUANN RIVARA AND JOSEPH  
AND DAWN FIORINO

**MATHEWS & FREELAND, LLP L.L.P.**

**ATTORNEYS AT LAW**

P.O. Box 1568  
Austin, Texas 78768-1568

Jim Mathews  
Joe Freeland

(512) 404-7800  
FAX: (512) 703-2785

# Fax

To:	Company	Fax
Cassandra Church	SOAH	475-4994
Henry Card	SOAH	475-4994
Robert L. Wilson, III	RL Wilson, PC	(210) 223-4200
Todd Galiga	TCEQ	239-0606
Ronald J. Freeman	Freeman & Corbett	453-0865
Bruce Wasinger	Bickerstaff Heath	320-5638
Janessa Glenn	Jenkins & Gilchrist	499-3810
LaDonna Castanuela	TCEQ Chief Clerk	239-3311
Blas Coy	OPIC	239-6377

From:	Fax	Phone
Jim Mathews	512/703-2785	512/404-7800

**Number of Pages (including this one):** 11

**Date:** September 8, 2006

To confirm receipt, or if you do not receive all pages, please call:

Nina Hall

**Reference:**

SOAH Docket 582-06-0837 TCEQ Docket 2005-1880-UCR  
SOAH Docket 582-03-3725 TCEQ Docket 2003-0664-UCR

☐ **Urgent**   ☐ **For Review**   ☐ **Please Comment**   ☐ **Please Reply**   ☐ **Please Recycle**

Confidentiality Notice: This page and any accompanying documents contain confidential information intended for a specific individual and purpose. This faxed information is private. If you are not the intended recipient, you are hereby notified that any disclosure, copying or distribution, or the taking of any action based on the contents of this information is strictly prohibited.