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

PUBLIC UTILITY COMMISSION FILING CLERK

IN RE: THE APPLICATION OF BEXAR §

BEFORE THE STATE OFFICE

METROPOLITAN WATER DISTRICT

OF

TO AMEND WATER CCN NO. 10675 IN

Ur

BEXAR COUNTY

ADMINISTRATIVE HEARINGS

ORDER NO. 7 FURTHER EXTENDING ABATEMENT AND REQUIRING STATUS REPORT

On January 31, 2005, BSR Water Company (Sneckner) filed a motion to extend the abatement of the pending case due to a lawsuit on issues related to contested case issues. The lawsuit has been reset for August 15, 2005. The Executive Director of Texas Commission on Environmental Quality (TCEQ) and the Office of Public Interest Counsel (OPIC) of TCEQ did not oppose the motion. Bexar Metropolitan Water District Water Services, Inc., did not object to the motion within the period of time for responses to motion. 1 Tex. ADMIN. CODE § 155.29(d).

For good cause shown, the motion is granted. The case is hereby abated until September 1, 2005. On or before that date the parties should file a status report, a proposed schedule leading to a hearing on the merits, or other appropriate motion.

SIGNED February 16, 2005.

CASSANDRA J. CHURCH

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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WATER SUPPLY CONTRACT AND SERVICE AREA SETTLEMENT AGREEMENT

STATE OF TEXAS

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COUNTY OF BEXAR

This Water Supply Contract and Service Area Settlement Agreement (this "Agreement") is made and entered into this day of rabruary, 2000, by and between BSR Water Company, a Texas Corporation which is the holder of a Certificate of Convenience and Necessity ("CCN") issued by the State of Texas for the operation of a potable water system in Bexar County, Texas, it successors or assigns ("BSR"), and the City of San Antonio, acting by and through the San Antonio Water System, a wholly owned independently managed municipal water, waste-water, and water recycling utility ("SAWS"), together "the Parties", for an initial term of five (5) years, subject to renewal as provided for herein, as follows:

WHEREAS, SAWS has applied for an expansion of its CCN to cover an area that would surround the land contained within the CCN held by BSR, and BSR has filed a protest and has requested a contested case hearing with the Texas Natural Resources Conservation Commission ("TNRCC") in opposition to such expansion; and

WHEREAS, the Parties have agreed on acceptable terms under which BSR would withdraw its protest and request for contested case hearing against SAWS and would support SAWS' application for CCN expansion in return for SAWS' agreement to certain mutually beneficial conditions with respect to future expansion of the BSR CCN and BSR selling water to SAWS and for other enumerated consideration; and

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WHEREAS, SAWS and BSR have approved the terms of this agreement subject only to the verification of the availability of the Groundwater supply during an inspection period as defined in Article VIII of the Agreement; and

WHEREAS, the Parties desire to memorialize their agreement for the purpose of setting forth the obligations and rights of the Parties and to obtain formal approval of such agreement by SAWS Board and BSR.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. ACKNOWLEDGMENT OF CONSIDERATION

Section 1.01 Adequate Consideration Received. SAWS and BSR hereby mutually agree that each of the parties are entering into this Agreement based on the agreements of the other party and the consideration that is identified under the Rights and Obligations of each party as set forth below. Both BSR and SAWS hereby agree that they have independently received sufficient and adequate consideration from the other for the purpose of binding themselves to the Rights and Obligations identified in this Agreement.

Section 1.02 Mutual Reliance. It is expressly understood by SAWS that BSR would not agree to the Obligations imposed by this Agreement absent the consideration to be provided by SAWS to BSR in the form of an agreement regarding the potential expansion of the BSR CCN, and other consideration as expressly set forth within the terms of this Agreement. Likewise, BSR hereby acknowledges that SAWS is agreeing to the Obligations imposed on it by this Agreement in return for the rights and benefits that SAWS is to receive pursuant to the terms of this Agreement from BSR, and absent those benefits SAWS would not commit itself to the Obligation to provide various enumerated benefits to BSR pursuant to the terms of this agreement. In the event one party fails to comply with this Agreement, the other non-defaulting

party will, by agreement of the parties herein made, be returned to the position they were in prior to reliance on this Agreement and to the breach of the defaulting party, at the cost of said defaulting party.

Section 1.03 <u>Breach of Consideration</u>. Both parties mutually agree that in the event either party fails to comply with any of the specific Obligations imposed on the respective party by this Agreement, such failure shall constitute a breach of the Agreement and shall entitle the party that has been harmed to seek enforcement of this Agreement as well as remedies for the breach hereof as allowed for in Article VI, as set forth below.

ARTICLE II. OBLIGATIONS OF BSR

Section 2.01 <u>General</u>. In return for the rights and benefits to be conveyed to BSR by SAWS as outlined in this document, BSR hereby agrees to perform each of the Obligations as described and set forth in this Article for the benefit of SAWS.

Section 2.02 Withdrawal of Protest. BSR shall, within ten (10) days from the receipt of the first annual payment required by Section 5.02 of this Agreement, but no later than seventy-two (72) hours prior to the docketed date and time of any hearing on BSR's protest by the TNRCC, execute a letter mutually acceptable to BSR and SAWS withdrawing its Request For a Contested Case Hearing and Protest that has previously been submitted to the TNRCC in opposition to SAWS' CCN expansion application No. 32248-C. BSR shall have the letter withdrawing the Protest and Request For Contested Case Hearing with respect to the application by SAWS for expansion of their CCN executed by appropriate parties over which BSR exercises direct control or authority and that are a signatory to the original Letter of Protest and Request For Contested Case Hearing submitted to the TNRCC opposing SAWS' efforts to expand its CCN.

Section 2.03 Letters of Support by BSR. Within ten (10) days from the receipt of the first annual payment required by Section 5.02 of this Agreement, but no later than seventy-two (72) hours prior to the docketed date and time of any hearing on BSR's protest by the TNRCC, BSR shall submit an original executed letter supporting SAWS' application for expansion of its CCN in those areas identified in Exhibit "B" generally described as the areas surrounding the BSR CCN. The letter of support may be used by SAWS in any proceeding before the State of Texas, TNRCC, or any judicial, quasi-judicial, or administrative proceeding or hearing relating to or evolving from SAWS' application for expansion of its CCN into the areas surrounding the property contained within the limits of the CCN that has been issued to BSR; however, the said letter may not be used in any manner directly adverse to BSR.

Section 2.04 <u>Dedication of Easements</u>. BSR shall dedicate to SAWS all easements within existing boundaries of the BSR CCN reasonably necessary for the construction of wells and supply pipeline(s) to produce and transport water produced from wells located within the existing BSR CCN pursuant to this agreement to a delivery point located at the limits of the BSR CCN. Said easement(s) shall be sixteen feet (16') in width, and shall include a twenty foot (20') temporary construction easement(s) that shall be in existence from the time the easement is granted until the facilities to be built within the easement(s) have been constructed. The permanent sixteen foot (16') easement(s) and temporary twenty foot (20') construction easement shall be non-exclusive easements benefiting SAWS for the purpose of transporting water produced from wells within the BSR CCN to the point of delivery. The cost for all engineering and surveying associated with the placement of the easements shall be borne by SAWS. The location of the permanent and temporary construction easements shall, to the extent possible, be adjacent to the property lines or boundaries of the BSR CCN in locations that are mutually

agreeable to SAWS and BSR. In no event shall BSR be required to dedicate more than a total of five (5) acres of real property contained in easements within the limits of the BSR CCN as a result of this Agreement. The location and placement of all easements shall be made expressly subject to approval by BSR and an engineer licensed by the State of Texas chosen by BSR for the purpose of reviewing and confirming the locations of said easements, the agreement by BSR with respect to location hereof shall not be unreasonably withheld. In the event SAWS ceases to purchase water from BSR pursuant to this Agreement, all easements provided by BSR to SAWS hereunder shall be deemed released by SAWS and shall revert to the Grantor thereof without any future action being required as evidenced by a Memorandum of Reversion being recorded in the Deed Records of Bexar County. Language providing for the right of said reversion shall be made a part of any such easements.

Section 2.05 <u>Compliance With SAWS Specifications</u>. Any water infrastructure to be constructed within the boundaries of the BSR CCN shall be designed and constructed according to the published specifications for design and construction of water improvements that are relied on by SAWS in reviewing or inspecting such improvements. BSR further agrees to require every lot platted and served within the boundaries of the BSR CCN to utilize a water meter that is of equal or better specifications than those used or required by SAWS to connect to the water supply system.

ARTICLE III. BSR AGREEMENT TO GIVE RIGHT OF FIRST REFUSAL TO SAWS

Section 3.01. <u>Right of First Refusal</u>. In the event that BSR has received an offer acceptable to BSR to sell its CCN and distribution system (with or without liabilities) to a third party, SAWS shall have the Right of First Refusal to purchase the said CCN and distribution

system to be sold for the same price and under the same terms as the price and terms offered by the respective third party purchaser. BSR is required to provide SAWS with copies of any such acceptable sales agreement that provides for the sale of the CCN or of the distribution system within five (5) days from the date such agreement(s) are finalzed. However, if SAWS does not exercise its Right of First Refusal by notifying BSR in writing of SAWS' intent to purchase under the right within thirty (30) days from receipt of the third party's sales agreement, and/or SAWS does not deposit the funds in escrow required for the purchase within one hundred twenty (120) days from receipt of such agreement from BSR, then SAWS shall have forfeited its Right of First Refusal and the consent of SAWS shall not be required for BSR to go forward with the sale of its CCN or facilities to the aforementioned third party purchaser, without recourse by SAWS. The Right of First Refusal provided to SAWS pursuant to this Section shall be valid until this agreement is terminated in whole or in part as allowed for herein.

ARTICLE IV. OBLIGATIONS OF SAWS

Section 4.01. General. In return for the rights and benefits to be conveyed to SAWS by BSR as outlined in this Agreement, SAWS hereby agrees to perform each of the Obligations as described and set forth in this Article for the benefit of BSR.

Section 4.02 Support of Expansion of BSR CCN. SAWS agrees that it shall not oppose, and shall support any attempt or action by BSR to expand the area of the BSR CCN provided that such expansion is within the limits of the "Expansion Areas" identified in Exhibit "A" which is attached hereto and made a part of this Agreement for all purposes. Further, BSR agrees that any property that is added to the area covered by the BSR CCN as a result of such expansion shall be subject to the Right of First Refusal held by SAWS pursuant to this Agreement. SAWS and BSR agree that the applicable terms of this Agreement shall be applied

to any property that is added to the BSR CCN after the date of this Agreement and to any Groundwater produced by or sold to SAWS from such added property. As part of the consideration for the benefits received by SAWS under this Agreement, SAWS hereby agrees not to oppose and to suppport the transfer to BSR of any portion of SAWS' CCN that is located within the "Expansion Area" for BSR's CCN expansion as identified on Exhibit "A". Such support by SAWS to a expansion or transfer under this section shall be provided by SAWS pursuant to this Agreement and SAWS shall take all necessary and reasonable actions and make any necessary and reasonable filings with any state agency in order to effectuate said expansion or transfer upon written request by RSR. The right to apply for a transfer of CCN from SAWS to BSR to expand the BSR CCN in the "Expansion Area", as identified, shall be valid until this agreement is terminated as allowed for herein, but shall expire in the event the BSR CCN is assigned or transferred to a third party without the cosent of SAWS.

ARTICLE V. PROVISION OF NON-EDWARDS WATER

Section 5.01 Provision of Non-Edwards Water. Subject to the provisions of Article I hereof and subject to availability, BSR agrees to provide SAWS, on an Intra-Utility Wholesale basis, the right to produce an amount of non-Edwards water (equal to or exceeding one thousand five hundred (1,500) acre feet per year) to be produced from property within the BSR CCN for treatment and ultimate use as potable drinking water by SAWS (referred to herein as the "Groundwater"). All wells and facilities used for the production of this Groundwater shall. comply with all applicable federal, state and local standards for potable or drinking water supply wells.

Section 5.02 Rate for Groundwater. In return for the right to produce and purchase the Groundwater from within the BSR CCN and the other rights received by SAWS hereunder

during the term of this Agreement, SAWS shall pay BSR an initial payment of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) being due and payable on or before the sixtieth (60") day following the execution of this agreement by SAWS (the "Initial Payment"), and shall pay subsequent annual payments of ONE HUNDRED THOUSAND AND No/100 Dollars (\$100,000.00) being due and payable on or before the 28th day of February of each subsequent year (the "Annual Payment"). The Initial Payment, and the Annual Payment shall be non-refundable and the annual payments shall be credited toward the payment of any Quarterly Payments, as defined herein, required to be made by SAWS, for the respective year. In the event there is a balance of the Annual Payment that is not applied toward the Quarterly Payments payable in the same year, the amount of the Annual Payment not used as a credit against the Quarterly Payments shall be maintained by BSR and shall not be carried forward to the next year, or in any other way diminish the requirement of SAWS to make any subsequent Annual Payments. In return for the said Annual Payment, BSR agrees to provide SAWS with the right to produce up to 1,500 acre feet of Groundwater per year from the Trinity Aquifer Formation within the existing boundaries of the BSR CCN at rate of ONE HUNDRED FIFTY and no/100 (\$150.00) per acre foot. SAWS shall be required to pay a rate of TWO HUNDRED AND no/100 (\$200) per acre foot for any water in excess of 1500 acre feet received from within the boundaries of the BSR CCN by SAWS during any calendar year. The rate paid by SAWS for an acre foot of water sold to or received by SAWS from within the applicable boundaries of the BSR CCN pursuant to this agreement (\$150.00 per acre foot or \$200.00 per acre foot, as applicable) will be hereafter referred to as the "Base Rate".

Section 5.03 <u>Calculation of Payments for Water Received</u>. The amount to be paid by SAWS to BSR for the production or purchase of Groundwater pursuant to this agreement shall

be based on the number of acre feet of water produced from the well(s) on the property located within the applicable BSR CCN, as metered at the point of delivery. For the purpose of this section, the Point of Delivery shall mean the point at which the water pipeline transporting the Groundwater produced from said wells leaves the applicable boundaries of the BSR CCN through the installed flow meter(s). SAWS, at it's cost, shall install and maintain a tamper resistant flow meter(s) at the Point(s) of Delivery for the purpose of measuring the total number of gallons of water produced or received by SAWS pursuant to this agreement. Payment for water produced or received by SAWS shall be due and payable on a quarterly basis. SAWS shall report the meter readings to BSR on the last day of each quarter in each calender year in a quarterly report due with any applicable quarterly payments. SAWS shall be responsible for payment to BSR of a sum equal to the applicable Base Rate, times the number of acre feet of Groundwater received by SAWS at the Delivery Point during the applicable quarter (the "Quarterly Payment"). The Quarterly Payment, less the applicable credit for the annual payment pursuant to Section 5.02, shall be payable to BSR within thirty days following the last day of the applicable quarter in which Groundwater is received. Quarterly Payments shall be delivered by SAWS to BSR using the United States Postal Service (first class mail) or by hand delivery on or before the date they are due to the following address:

> BSR Water Company C/o Sneckner Partners, LTD 12255 West Avenue, Suite 5 San Antonio, Texas 78216

BSR shall be entitled to charge SAWS interest at a rate of 10 percent per annum for any Quarterly Payments that are not received by BSR by the 30th day following the last day of the respective quarter in which Groundwater was received.

Adjustments in Base Rate. The Base Rate, as defined herein, for Section 5.04 Groundwater received by SAWS pursuant to this Agreement, shall be reviewed and adjusted on an annual basis during the term of this Agreement. Within ninety (90) days from the date of execution of this Agreement, SAWS shall provide BSR with the average price paid by the Regional Water Resources Development Group (hereafter ""Development Group") for the lease and for the purchase of water rights during the twelve (12) months preceding the execution of this Agreement. The average price paid by the Development Group for the purchase of water rights during the preceding twelve (12) month period shall be referred to as the "Initial Purchase Rate", and the average rate paid for the lease of water during the preceding twelve (12) month period by the Development Group shall be hereafter referred to as the "Initial Lease Rate". On an armual basis during the term of this Agreement, SAWS shall provide BSR with an accurate and swom statement indicating the average rate paid for the purchase of water rights, and the average rate paid for the lease of water rights, (on an acre-foot basis) by the Development Group, or any member thereof, acting on behalf of the Development Group, during the preceding twelve (12) month period. The average amount paid for the purchase of water rights during the preceding twelve (12) month period shall be hereafter referred to as the "Purchase Comparison Rate", and the average price paid during the preceding twelve (12) month period for the lease of water rights shall be hereafter referred to as the "Lease Comparison Rate". The Base Rate shall be adjusted effective as of January 1" of each year during the term of this Agreement by a percentage equal to the greater of:

(a) the percentage difference between the Initial Purchase Rate and the Purchase Comparison

Rate for the respective year: or



- (b) the percentage difference between the Initial Lease Rate and the Lease Companison Rate for the respective year; or
- (c) the percentage increase in the Producer Price Index ("PPI") from the 1999 base, as published in the applicable year er

(d) the percentage increase in the Consumer Price Index (CPI U. U.S. City Average, all-

- items, index base period 1999) from the 1999 base, as published in the applicable year.

For the purpose of clarification and by way of example, in the event the Initial Purchase Rate for water during the twelve (12) month period prior to the execution of this Agreement was \$7,000 per acre-foot, and the average rate paid for the purchase of an acre-foot of water during the twelve (12) month period preceding the date of annual adjustment, or the comparison purchase price, was \$1,000.00, then the Base Rate would be increased by thirty percent (30%), reflecting the percentage difference between the Initial Purchase Rate and the Comparison Purchase Rate pursuant to this section. This example assumes that the percentage difference between the Initial Purchase Rate and the Purchase Comparison Rate was a higher percentage than the difference between the Initial Lease Rate and the Lease Comparison Rate, the PPI, and the CPI-U, as defined above. Unless the alternative pricing option is exercised by BSR during the term of this Agreement as provided for below, the term "Base Rate" as utilized anywhere in this Agreement in a given year, shall mean the Base Rate as identified in Section 5.03 above, as increased by each of the cumulative Annual Adjustments authorized by this section. Each Annual Adjustment shall be cumulative of all previous adjustmens in the said Base Rate.

Section 5.05 Alternative Pricing Option. SAWS reserves the right to terminate this Agreement if the Alternative Pricing Option is elected by BSR for Groundwater produced and sold to SAWS from wells constructed by SAWS within the existing BSR CCN within five (5)

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years from the execution of this Agreement. BSR may elect, at BSR's sole discretion, at any time during the term of this Agreement to provide Groundwater to SAWS under an Alternative Pricing Option as described in this section, by providing SAWS with written notification of their election. The Alternative Pricing Option would become effective ninety (90) days after the receipt by SAWS of written notification from BSR of its election to exercise its option to implement the Alternative Pricing Option for the sale of Groundwater. Within thirty (30) days from delivery to SAWS of the written notice that BSR has exercised its option to implement the Alternative. Pricing Option, SAWS must provide BSR with the dollar amount required to reimburse SAWS for any unamortized cost that SAWS has expended for the drilling of any wells within the BSR CCN and the construction of any water supply pipelines or other related infrastructure within the limits of the BSR CCN pursuant to this Agreement. BSR shall be required to pay such unamortized costs to SAWS on or before the sixtieth (60th) day from the date of delivery of written notice of election to implement the Alternative Pricing Option. Subsequent to implementation of the Alternatiave Pricing Option, notwithstanding any other povisions of this Agreement to the contrary, the Base Rate shall be changed from the ordinary amount to a new Base Rate of \$300 per acre-foot, subject to annual adjustment. implementation of the Alternative Pricing Option by BSR, if implemented, shall in no way modify the review and adjustment of Base Rate on an annual basis as required by Section 5.04 of this Agreement. In the event the Alternative Pricing Option is implemented and elected by BSR, BSR or its agents shall be responsible for the construction and maintenance of any and all wells, pipelines, and infrastructure, located on the production side of the delivery point(s) within the BSR CCN from the effective date of the implementation of the Alternative Pricing Option until the date of termination of this Agreement.

Section 5.06 Well Construction. Within one hundred eighty (180) days from the execution of this Agreement, SAWS shall drill, complete, and construct test well(s) according to the minimum specifications on Exhibit "C", perform a flow test on said test well, and provided adequate flow exists, convert the said test well into a production well. In the event the initial test well fails to provide adequate flow results when tested, SAWS shall be required to drill and complete a second test well at a location within the BSR CCN that is mutually acceptable to BSR and SAWS. SAWS shall, likewise, be required to conduct a flow test on such second test well, if required, and convert said second test well to a production well contingent upon adequate flow indicating that the well field contemplated by this agreement (CP TO FIGHT (S) (LellS) indicating that the well field contemplated by this agreement (SAWS shall use its best efforts to drill and construct said test wells in a manner to optimize production, including but not limited to the completion of the said wells into the Lower Trinity and Cow Creek Aquifer and the use of acid to enhance production.

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If the required test well(s) demonstrate the ability to produce adequate quantities, as described above, of Groundwater on a sustainable basis, SAWS shall drill, construct, and produce Groundwater from at least three (3) production wells located within the BSR CCN pursuant to this Agreement within twelve (12) months from the date the first successful test well is completed. SAWS shall supply BSR with copies of specifications and bids for all wells constructed under this Agreement in a timely manner.

Section 5.07 <u>Infrastructure Construction and Maintenance</u>. SAWS shall construct, at its sole cost, any and all pipelines that are necessary for delivery of water under this Agreement constructed pursuant to this Agreement within or upon the property dedicated through an

easement or conveyance by BSR to SAWS within a reasonable time (not to exceed ninety (90) days) after the supply wells are operational.

Section 5.08 Operation and Maintenance of Wells. SAWS agrees to operate and maintain all wells, pipelines, and facilities necessary for delivery of water under this Agreement located within the BSR CCN pursuant to this Agreement BSR shall have the right to receive water from any segment of the pipeline(s) or from the wells constructed by SAWS provided that the water is used within the boundary of the BSR CCN, and the point of receipt of such water is on the production side of the Delivery Point (as defined). BSR shall be required to pay SAWS a fee for each acre-foot of water received by BSR under that section that is equal to one hundred fifty percent (150%) of the average cost for electricity paid by SAWS to produce an acre-foot of water from the wells operated by SAWS within the BSR CCN pursuant to this Agreement. SAWS shall have priority to the first 1300 acre feet produced annually during the term of this Agreement.

ARTICLE VI. REMEDIES IN EVENT OF BREACH

Section 6.01 Remedies. If either party fails to consummate the obligations or recognize the rights of the other party contemplated herein for any reason, the Party harmed by such default may, in addition to any other rights that it may have, either: (i) enforce specific performance of this Agreement through a court, if required for enforcement purposes, or (ii) take any other legal action necessary for the recovery of damages, if applicable, or for any other legal or equitable relief. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained shall not be deemed to be a waiver of any

other condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained.

Section 6.02 Attorney's Fees. Should any party employ an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment agrees to pay the other party or parties all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred in connection therewith.

SECTION VII. MISCELLANEOUS

Section 7.01 Survival of Representations and Warranties. The representations and warranties contained herein or in any instrument or document delivered or to be delivered pursuant to this Agreement, shall survive the Closing regardless of any investigation made by or on behalf of any party hereto.

Section 7.02 Further Assurances. The Parties hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments, and documents, as any other party or parties hereto may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

Section 7.03 Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon receipt thereof if delivered personally or transmitted by telex or facsimile transmission or sent by certified or registered mail, return receipt requested, postage prepaid, to the Parties hereto

at the following addresses or to such other address as any party hereto shall hereafter specify by notice to the other party hereto:

IF TO BSR TO:

BSR Water Company c/o Sneckner Partners, Ltd. 12255 West Avenue, Suite 5 San Antonio, Texas 78216

IF TO SAWS TO:

San Antonio Water System
1001 E. Market Street
San Antonio, Texas 78205
Attention: Michael F. Thuss P.E.
President and Chief Executive Officer

Section 7.04 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, understandings, and arrangements, oral or written, between the Parties hereto with respect to the subject matter hereof.

Section 7.05 <u>Binding Effect - Benefits</u>. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns.

Section 7.06 <u>Amendments and Waivers</u>. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

Section 7.07 <u>Section and Other Headings</u>. The section and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

Section 7.08 Execution in Counterparts. This Agreement may be executed in any number of counterparts; each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 7.09 Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas.

Section 7.10 Expenses. Each party hereto shall pay its own cost and expenses (including attorneys' fees) incidental to the negotiation, preparation and consummation of this Agreement.

Section 7.11 Exhibit. The Exhibit annexed hereto is made a part of this Agreement as if set forth in full herein.

Section 7.12 Severability. If any term or provision of this Agreement is hereinafter held to be invalid or unenforceable for any reason, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent not prohibited by law.

Section 7.13 Force Majeure. If, after a good faith effort, either party should be prevented from complying with any express or implied covenant of this Agreement or from producing any marketable water pursuant to Article VI. herein, by reason of scarcity of water or inability to obtain or to use equipment or material, or by operation of force majeure, including war, rebellion, riots, strikes, acts of God, or any other valid Federal or State rule or regulation, then while so prevented, that party's obligation to comply with such covenant shall be suspended, and that party shall not be liable for damages for failure to comply with therewith. Additionally, the effective period in Agreement shall be extended so long as that party is prevented from complying with any such affected covenant, by any such cause; and the time

while that party is so prevented shall not be counted against that party, anything in this Agreement to the contrary notwithstanding.

Section 7.14 Extension of Term of Agreement. This Agreement may be extended for up to three (3) additional consecutive terms of five (5) years each, unless SAWS informs BSR of the desire not to automatically extend in writing at least six (6) months prior to the expiration of this Agreement, or of a consecutive five (5) year extension thereof.

In the event unfavorable conditions develop that are Section 7.15 Termination. directly related to the provision of Groundwater from BSR to SAWS pursuant to this Agreement, and such unfavorable conditions are outside of the reasonable control of SAWS, SAWS may terminate those portions of this Agreement obligating SAWS to produce and SAWS to purchase Groundwater provided that the requirements of this section are fully complied with and SAWS provides BSR with six (6) months advanced notice of such termination. In the event SAWS elects to terminate the provisions of this Agreement pertaining to the sale by BSR and purchase by SAWS of Groundwater, SAWS shall provide written notice of intent to terminate to BSR by certified mail, return receipt requested, six (6) months prior to the proposed date of termination. The written notice must indicate clearly that SAWS intends to terminate the provision of water by BSR to SAWS pursuant to this Agreement and, specifically, pursuant to the terms of this section, and shall with specificity indicate each reason that SAWS is making the basis for the termination that represent unfavorable conditions beyond SAWS' reasonable control. Upon receipt of the said notice for termination, BSR shall, at SAWS' expense, have an appraisal performed of the: (i) amortized value of all wells and related equipment and infrastructure installed by SAWS within the BSR CCN as a result of this Agreement; and (ii) of the value of the remaining unexpired term of this Agreement to BSR given ordinary market conditions and

considering all conditions then existing affecting production of groundwater. The difference between the remaining amortized value of the improvements owned and installed by SAWS within the BSR CCN, and the sum of the remaining value to BSR of the unexpired term of this Agreement as of the date of notice of termination shall equal the amount required to be paid by SAWS to BSR in order to effectuate termination of the provisions of this Agreement pertaining to the sale by BSR and purchase by SAWS of-Groundwater (the "Termination Cost"). The obligation of SAWS to purchase Groundwater from BSR, and of BSR to provide Groundwater to SAWS, shall effectively terminate upon receipt by BSR of the uncontested Termination Cost of this Agreement as described above. In the event the value to be paid by SAWS to BSR in order to terminate the applicable sections of this Agreement is contested by BSR, the Termination Cost shall be determined by an unbiased panel of appraisers. In the event arbitration is necessary, both SAWS and BSR shall have the right to choose one appraiser and the two (2) appraisers shall agree on the third to form the panel for preparing the appraisal. The final appraisal of the panel establishing the Termination Payment according to the formula provided for above shall be final and binding on both parties. The right to terminate under this section may not be exercised before the expiration of two (2) years from the effective date of this Agreement or any subsequent extension or renewal hereof.

Section 7.16 <u>Assignment.</u> This Agreement shall be binding on the parties hereto and their respective heirs, representatives and successors. Neither party may assign its interest in this Agreement without the written consent of the other party, which consent may not be unreasonably withheld or delayed. As a condition to its consent, either party may require the other party's assignee to assume in writing all of the assignor's obligations under this

Agreement. Except as otherwise provided herein, any attempted transfer or assignment without the written consent of the other party shall be void and confer no rights upon any third parties.

SECTION VIII. INSPECTION AND OPTION PERIOD

Section 8.01 Inspection and Option Period. Any provision above to the contrary not withstanding, in return for the payment by SAWS to BSR of an option payment in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) to be paid within ten (10) days after the execution of this Agreement, the "Option Payment", BSR agrees that SAWS shall have 180 days from February 7, 2000 to drill the test wells and conduct the flow tests required by Section 5.06 of this Agreement. If during the said 180 day period none of the test wells required to be drilled and tested hereunder provide "adequate flow" as required by Section 5.06 above, then this Agreement shall terminate provided that before the expiration of the option period SAWS informs BSR in writing that none of the said test wells were capable of producing adequate flows pursuant to Section 5.06 of the Agreement. In the event this Agreement is terminated during the option period, then the Option Payment shall be considered by the parties to be the Initial Payment made in satisfaction of Section 5.02 of this Agreement, but will not be credited to the purchase of Groundwater. In the event this Agreement is terminated during the Option Period, all wells and infrastructure installed by or on behalf of SAWS shall be considered the property of BSR as additional consideration for the granting of the said Option Period to SAWS. If this Agreement is not terminated pursuant to this section, the Agreement will be considered in full force and in effect as provided for in Section 1.01 through 7.16, above.

The effective Date of this Agreement shall be the day of february, 2000

Executed in multiple original counterparts as of the date and year written below the respective signatures of the Parties.

BSR WATER COMPANY

By: LOO Sheekner, Jr.
Title: President

- Date: 2-8-2000

SAN ANTONIO WATER SYSTEM

- Muchants Chan

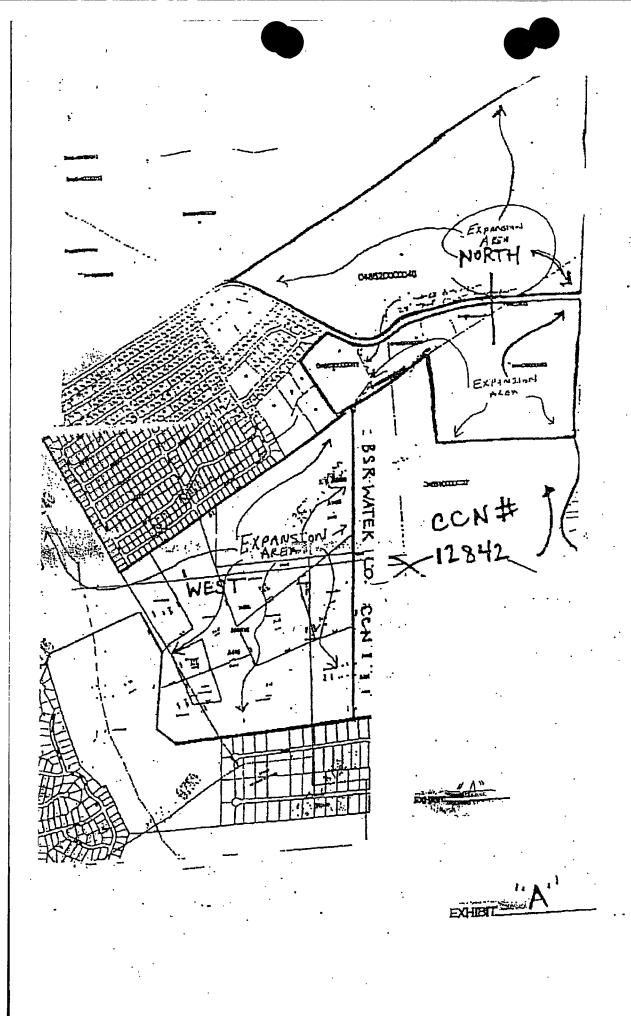
MICHAEL F. THUSS, P.E.

Title: President and Chief Executive Officer

Date:

ACKNOWLEDGMENTS

STATE OF TEXAS	§ .		
COUNTY OF BEXAR	·§	. .	
SNECKNER, JR., known to me instrument and acknowledged to JR., and that he has executed the purposes and consideration there	ne to be the per or me that the same as Pre ein expressed and seal of office	me was the act of said person sident of the BSR WATER	bed to the foregoing W. R. SNECKNER, COMPANY, for the ed.
			. , , ,
STATE OF TEXAS	§ .		· e
COUNTY OF BEXAR	§		
BEFORE ME, the und MICHAEL F. THUSS, P.E., kn foregoing instrument and acknowledge MICHAEL F. THUSS, P.E., and Officer of the San Antonio Water and in the capacity therein stated.	own to me to owledged to no that he has exect System, for the	ne that the same was the accuracy the same as President a	s subscribed to the act of said person. Ind Chief Executive
Given under my hand and	scal of office th	isday of	, 2000.
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•		-	•
	Notary P	Public - State of Texas	



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EXHIBIT BY

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