



Control Number: 43891



Item Number: 5

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

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

May 20, 2005

FACSIMILE: 239-5533

Duncan Norton
General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

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

Dear Mr. Norton:

This letter is to advise you I will be on annual leave from May 23-27, 2005. I have Bexar Metropolitan's May 11, 2005, motion to lift the abatement and BSR Water Company's May 17, 2005 reply. I will review these pleadings and issue my rulings on these matters promptly upon my return to the office.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Church", written over the typed name and title.

Cassandra J. Church
Administrative Law Judge

CJC/pp
cc: Mailing List

65:9 WA 5-030410Z

STATE OFFICE OF ADMINISTRATIVE HEARINGS
WILLIAM P. CLEMENTS BUILDING
300 West Fifteenth Street
Austin, Texas 78701
Phone (512) 475-4993
Facsimile (512) 475-4994

SERVICE LIST

AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

STYLE/CASE: IN THE APPLICATION OF BEXAR METROPOLITAN WATER
DISTRICT TO AMEND WATER CCN NO. 10675 IN BEXAR
COUNTY

SOAH DOCKET NUMBER: 582-03-3725
TCEQ DOCKET NUMBER: 2003-0664-UCR

ADMINISTRATIVE COURT

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

CASSANDRA J. CHURCH
PRESIDING ADMINISTRATIVE LAW JUDGE

PARTIES

REPRESENTATIVE/ADDRESS

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Todd Burkey
Attorney
Texas Commission on Environmental Quality
MC-175
P.O. Box 13087
Austin, TX 78711-3087
Tel 512/239-0600
Fax 512/239-3434
512/239-0606

OFFICE OF PUBLIC INTEREST COUNSEL
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Blas Coy, Jr.
Office of the Public Interest Counsel
Texas Commission on Environmental Quality
MC-103
P.O. Box 13087
Austin, TX 78711-3087
Tel 512/239-6363
Fax 512/239-6377

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

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PAGE 2

BEXAR METROPOLITAN WATER
DISTRICT
WATER SERVICES, INC.

Louis T. Rosenberg
Robert Wilson III
Law Offices of Louise T. Rosenberg, P.C.
De Mazieres Building
322 Martinez Street
San Antonio, Texas 78205
Tel: 210/225-5454
Fax: 210/225-5450

Adolfo Ruiz
Bexar Metropolitan Water District
2047 W. Malone
San Antonio, Texas 78225
Tel: 210/354-6502
Fax: 210/922-5152

BSR WATER COMPANY - Lead Attorney
(SNECKNER PARTNERS, LTD.)

David L. Earl
Law Offices of Earl & Brown
A Professional Corporation
River View Towers
111 Soledad Street, Suite 1111
San Antonio, Texas 78205
Tel 210/222-1500
Fax 210/222-9100

COURTESY COPY OF ORDER MAILED OR
FAXED TO THE FOLLOWING PARTY:

CITY OF BULVERDE

Bruce Wasinger
Attorney
Bickerstaff, Heath, Smiley, Pollen, Kever &
McDaniel, L.L.P.
816 Congress, Suite 1700
Austin, Texas 78701-2443
Tel 512/472-8021
Fax 512/320-5638

BSR WATER COMPANY
(SNECKNER PARTNERS, LTD.)

Janessa Glenn
Attorney
600 Congress Avenue
Austin, Texas 78701
Tel 512/499-3858
Fax 512/404-3520

STATE OFFICE OF ADMINISTRATIVE HEARINGS

William P. Clements Building
300 West Fifteenth Street
Room 502
Austin, Texas 78701
Phone (512) 475-4993
Facsimile (512) 936-0730

DATE:

May 20, 2005

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

42

SOAH DOCKET NO.:

582-03-3725

TCEQ DOCKET NO.:

2003-0664-UCR

REGARDING:

LETTER REGARDING EXCEPTIONS AND REPLIES

FROM:

JUDGE CASSANDRA J. CHURCH

FAX TO:	FAX NO:
Blas Coy, Jr. (TCEQ - OPIC)	239-6377
Docket Clerk (TCEQ)	239-3311
Todd Burkey (TCEQ)	239-3434 or 239-0606
Louis T. Rosenberg (Bexar Metropolitan Water District and Water Services, Inc.)	210/225-5450
Adolfo Ruiz (Bexar Metropolitan Water District and Water Services, Inc.)	210/922-5152
David Earl (BSR Water Company- Lead Counsel)	210/222-9100
Bruce Wasinger (City of Bulverde-Courtesy Copy)	320-5638
Janessa Glenn (BSR Water Company)	404-3520
Kennedy Reporting	474-6704

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MAY/20/2005/FRI 04 23 PM

P.001/0:7

LAW OFFICES OF
LOUIS T. ROSENBERG, P.C.
A PROFESSIONAL CORPORATION

LOUIS T. ROSENBERG
Attorneys and Counselors at Law

ROBERT L. WILSON, III
Attorneys and Counselors at Law

De Mazieres Building
322 Martinez Street
San Antonio, Texas 78205
Phone (210) 225-5454
Fax (210) 225-5450

E-mail: firm@ltrlaw.com

Website: www.ltrlaw.com

May 20, 2005

SONIA CANTU ROSENBERG
Office Manager/Paralegal

SHELLI L. BAKER
Sr. Admin. Assist./Paralegal

Honorable Cassandra J. Church
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street
Austin, Texas 78701

Via Fax 512/475-4994

Total Pages: 15

RE: 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*, Before the State Office of Administrative Hearings

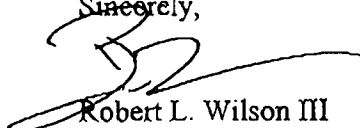
Dear Judge Church:

I am in receipt of your letter to Mr. Norton dated today. BexarMet appreciates your intention to promptly issue a ruling on its "Motion to Lift Abatement" filed by me.

So that you may be aware of the true nature of BSR's lawsuit against SAWS -- which BSR contends provides a basis for continued abatement -- I have enclosed a copy of BSR's Original Petition. The Petition is BSR's latest live pleading filed in the Bexar County District Court lawsuit. Please note that BexarMet is not named as a party or potential party in the Petition, and there is no mention this proceeding.

Thank you for your attention to this matter.

Sincerely,


Robert L. Wilson III

Enclosure: *Plaintiffs' Original Petition* filed in Cause No. 2004-CI-02288

Cc: Service List

F. Gilbert Olivares, Esq., General Manager
Adolfo Ruiz, In-House Counsel
Bexar Metropolitan Water District

CHIEF CLERKS OFFICE

2005 MAY 23 PM 1:12

EX-100
MAY 23 2005

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STATE OFFICE OF ADMINISTRATIVE HEARINGS
WILLIAM P. CLEMENTS BUILDING
300 West Fifteenth Street
Austin, Texas 78701
Phone (512) 475-4993
Facsimile (512) 475-4994

SERVICE LIST

AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

STYLE/CASE: IN THE APPLICATION OF BEXAR METROPOLITAN WATER DISTRICT TO AMEND WATER CCN NO. 10675 IN BEXAR COUNTY

SOAH DOCKET NUMBER: 582-03-3725
TCEQ DOCKET NUMBER: 2003-0664-UCR

ADMINISTRATIVE COURT

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

CASSANDRA J. CHURCH
PRESIDING ADMINISTRATIVE LAW JUDGE

PARTIES

REPRESENTATIVE/ADDRESS

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Todd Burkey
Attorney
Texas Commission on Environmental Quality
MC-175
P.O. Box 13087
Austin, TX 78711-3087
Tel 512/239-0600
Fax 512/239-3434
512/239-0606

OFFICE OF PUBLIC INTEREST COUNSEL
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Blas Coy, Jr.
Office of the Public Interest Counsel
Texas Commission on Environmental Quality
MC-103
P.O. Box 13087
Austin, TX 78711-3087
Tel 512/239-6363
Fax 512/239-6377

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SOAH DOCKET NO. 582-03-3715
TCEQ DOCKET NO.2003-0664-UCR

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PAGE 2

BEXAR METROPOLITAN WATER
DISTRICT
WATER SERVICES, INC.

Louis T. Rosenberg
Robert Wilson III
Law Offices of Louise T. Rosenberg, P.C.
De Mazieres Building
322 Martinez Street
San Antonio, Texas 78205
Tel: 210/225-5454
Fax: 210/225-5450

Adolfo Ruiz
Bexar Metropolitan Water District
2047 W. Malone
San Antonio, Texas 78225
Tel: 210/354-6502
Fax: 210/922-5152

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River View Towers
111 Soledad Street, Suite 1111
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Fax 210/222-9100

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Attorney
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McDaniel, L.L.P.
816 Congress, Suite 1700
Austin, Texas 78701-2443
Tel 512/472-8021
Fax 512/320-5638

BSR WATER COMPANY
(SNECKNER PARTNERS, LTD.)

Janessa Glenn
Attorney
600 Congress Avenue
Austin, Texas 78701
Tel 512/499-3858
Fax 512/404-3520

xc: Docket Clerk, State Office of Administrative Hearings
Docket Clerk, Office of the Chief Clerk, TCEQ, Fax No. (512) 239-3311

FILED
2004 OCT 22 88

BSR WATER COMPANY, A Texas
Corporation, SNECKNER PARTNERS,
LTD, A Texas Limited Partnership; and
DEBRA SNECKNER KENNEDY, SHERRI
MARTINEAU SNECKNER, WILLIAM
KENDRICK SNECKNER, and LOVA
CATHERINE SNECKNER BUCKNER,
Plaintiffs

VS.

THE CITY OF SAN ANTONIO, As Owner
of SAN ANTONIO WATER SYSTEM
Defendants

IN THE DISTRICT COURT

225th

JUDICIAL DISTRICT

CHIEF CLERK'S OFFICE

MAY 23 2005 17:17

BEXAR COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME BSR WATER COMPANY, a Texas corporation, SNECKNER PARTNERS, LTD, a Texas Limited Partnership, and DEBRA SNECKNER KENNEDY, SHERRI MARTINEAU SNECKNER, WILLIAM KENDRICK SNECKNER, and LOVA CATHERINE SNECKNER BUCKNER, as Plaintiffs, and bring this case against the CITY OF SAN ANTONIO and its wholly owned water utility, SAN ANTONIO WATER SYSTEM ("SAWS"), and for their causes of action would show the Court the following:

I.

DISCOVERY PLAN

Plaintiffs allege that discovery is intended to be conducted under Level 2 pursuant to Rule 190(a).

II.

THE PARTIES

A. The Plaintiffs, consisting of members of the family of William Kendrick Sneckner and his wife, who have been and are owners of approximately 442 acres of real property located in Bexar County, Texas that is in the fast-growing portion of the County on U. S. Highway 281 North, near Bulverde Road.

The Sneckner family individually or through the Plaintiffs' entities has owned the property involved in this suit for almost forty (40) years.

The legal description of the real property is described in *Exhibit I* attached hereto

B The Defendant, the City of San Antonio ("The City"), owns the San Antonio Water System, which supplies and sells water to various users in and around Bexar County, Texas, and through such ownership, the City is liable for the acts of SAWS sued upon herein.

III.

JURISDICTION AND VENUE

All Parties are residents of Bexar County, Texas.

The Defendant, The City of San Antonio and its wholly-owned water utility, SAWS, may be served with a citation by serving the City of San Antonio Clerk at City Hall, 100 Military Plaza, San Antonio, Texas 78205.

IV.

FACTUAL BACKGROUNDA The Sneckner and San Antonio Water System (SAWS) Contract

This case tells the story of the blatant arrogance of the City's wholly owned water utility, San Antonio Water System ("SAWS"), and its grossly unfair and abusive treatment of the Sneckners, a long-time San Antonio family and citizens of San Antonio.

As a result of the wrongful actions of SAWS, the Sneckner family has been substantially damaged and, in effect, squeezed out of any viable opportunity to benefit from its agreement with SAWS.

For some time, SAWS has been engaged in a near frenetic activity to secure rights to purchase as much water as possible from citizens who owned property where water wells could be drilled to produce water.

To acquire such water rights, SAWS was aware that it faced severe competition from other providers, including the large private utility, Bexar Metropolitan Water District ("Bexar Met") which was equally interested in acquiring such rights to purchase water.

Nowhere has such activity been more prevalent than on the north side of San Antonio and in particular, along either side of U.S. Highway 281 North of Highway 1604 near the Sneckner property.

The Sneckner property is located on and near the Trinity aquifer and represents a viable source of ground water from wells, not only from the Sneckner property, but adjacent property as well.

At all relevant times, the Sneckners held a valid state certificate to drill water wells on its own property located just West of U.S. Highway 281 near the Bulverde Road area, as identified as the green outlined area on *Exhibit 2*. However, SAWS lusted to surround Sneckner's property and sought amendments to SAWS' state certificates to purchase and distribute water from land surrounding and near to the Sneckner's property to the Sneckner's substantial detriment.

In order to protect the water under its own property and its clear right to expand its service area, the Sneckners filed protests with the State opposing SAWS' water grab, because such expansion of SAWS' area would damage the Sneckners' rights to expand in the same area.

Therefore, in an effort to amicably resolve these competing interests, on February 15, 2000, SAWS, the Sneckners, and their small family water company, BSR Water Company, after full negotiations, agreed to resolve their differences and signed a written contract to evidence their agreement (the contract is entitled "Water Supply Contract and Service Area Settlement Agreement of February 15, 2000" and its March 27, 2001 Amendment are attached as *Exhibits 3 and 3A*).

The BSR/SAWS contract stated in relevant parts:

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...

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.

Section 1.03 Breach of Consideration. 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.

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 support 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 an 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 BSR. 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 consent of SAWS.

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

The map attached as Exhibit "A" to the February 15, 2000 agreement depicts the agreed Expansion Area in yellow.

The February 15, 2000 contract and its amendment were intended clearly by SAWS and the Sneckners to settle all water issues between SAWS and to provide the Sneckners with a very valuable right to expand its state certificate or, equally valuable, to require SAWS to transfer any state certificate it received to BSR. Therefore, the SAWS agreement protected the Sneckners because the State of Texas could either approve Sneckners' expansion rights or, in the event the State of Texas approved SAWS' expansion rights, Sneckner would nevertheless be protected because SAWS was obligated to transfer such right to Sneckner, who would end up as the lawful owner of a certificate that would permit them to drill for and sell water to customers in the expanded land area, or to sell the water to SAWS or other purchasers at a profit.

The SAWS agreement further provided that:

- 1 SAWS would support the Sneckners' expansion of its current state certificate into areas near the Sneckners' own property; or SAWS agreed to transfer to Sneckner any certificate SAWS would obtain in the new expanded area,
- 2 SAWS agreed to reduce the area of SAWS' requested new certificate to accommodate the Sneckners' new and valuable expansion; and
- 3 SAWS agreed to pay the Sneckners for water purchased by SAWS from the Sneckners' new expanded area

This contract was extremely valuable to the Sneckner family and as a result of the contract, the Sneckner family agreed to and did, withdraw their earlier opposition to SAWS' attempt to expand its area as such opposition was no longer necessary in light of SAWS' agreement. The withdrawal letter from BSR to the State of Texas dated March 7, 2000 is attached as *Exhibit 4*.

Both SAWS and the Sneckner family believed they had reached a firm resolution of their issues and the Sneckner family looked forward to a good and profitable working relationship with SAWS.

B. The Bexar Met and San Antonio Water Systems (SAWS) Contract (SAWS' Breach of Its Promise)

However, no sooner had the ink dried on the February 15, 2000 contract with BSR, that SAWS set out on a devious plan to scuttle the Sneckner family and the agreement it had just made with BSR. SAWS began to discuss with Bexar Met, its main competitor, and Sneckners' competitor, a plan undisclosed and hidden from Sneckner, the result of which would deny to the Sneckner family any expansion rights and the valuable right to receive payments of several million dollars from SAWS or other water purchasers for water to be purchased in Sneckner's new agreed expanded area.

Thus the stage was set for the two largest utilities to conspire together and use their considerable influence with the state water agency to harm the Sneckner family.

On or about September 22, 2000, only seven (7) months after having made the Sneckner agreement, SAWS and Bexar Met entered into an agreement not disclosed to Sneckners whereby SAWS agreed to give to Bexar Met the very expansion rights SAWS had agreed to provide to Sneckners in Sneckners' new expanded area. SAWS agreed with Bexar Met that SAWS would

relinquish all rights it had to expand to all property west of U S Highway 281 where the Sneckners' property and expanded area are located, and further agreed that Bexar Met could operate exclusively in that area to Sneckners' obvious substantial detriment and damage. Of course, the evil of the SAWS/Bexar Met agreement was that the territory SAWS relinquished to Bexar Met was the very same property SAWS had agreed to support Sneckner's expanded application or to transfer SAWS' new certificate to Sneckner and pay Sneckner for all water produced in that area.

(A copy of the agreement between SAWS and Bexar Met of September 22, 2000 is attached as *Exhibit 5* hereto, paragraph 5).

Paragraph 5 of the SAWS and Bexar Met Agreement expressly provided that:

5. Application No. 32248-C (area along U.S. 281 N). SAWS agrees to amend its existing application to exclude the currently uncertificated areas west of U.S. 281. SAWS further agrees to rescind its Application No. 32249-C. SAWS further agrees to decertify that portion of its existing certificated service area that is bounded by the western property line of the Mountain Lodge subdivision and south of Wilderness Oaks Drive (Map 2). Bexar Met will then be free to file an application with TNRCC to include those properties in its CCN. In return, Bexar Met will rescind its protest pending at TNRCC for SAWS Application No. 32248-C, as amended, and to Application Numbers 32251-C, 32295-C, 32250-C, 32252-C, 32253-C. (Emphasis added)

Thus, by virtue of the SAWS and Bexar Met September 22, 2000 Agreement, SAWS agreed to amend its existing application to "exclude" the currently uncertificated areas west of U.S. 281 (the same property SAWS agreed to transfer to BSR) and further then that "Bexar Met will then be free to file an application with TNRCC to include these properties in its CCN" (Certificate of Convenience and Necessity).

Thus, SAWS' double-dealing with the Sneckner family was now complete. SAWS had clearly breached its recently undertaken written obligations to the Sneckner family and made a

totally opposite agreement with its competitor, Bexar Met, all to the substantial damage of the Sneckner family

In fact, SAWS, with full knowledge that on September 22, 2000 it had given away an opportunity for BSR to expand, due to its secret agreement of that date with Bexar Met, nevertheless on March 27, 2001 again fraudulently induced BSR to enter into an amendment to the original SAWS/BSR agreement. On March 27, 2001, SAWS, not having even fully complied with its original contract with BSR to drill water wells on BSR's existing property, then requested permission from BSR for additional time to drill and construct the required water wells on BSR's existing property, yet SAWS never disclosed to BSR that SAWS had secretly entered into the September 22, 2000 agreement with Bexar Met.

Thus, SAWS had become a traitor to the Sneckner family who was caught blind-sided by SAWS' flagrant breaches of its clear obligation to the Sneckner family and the resultant substantial monetary damages for the promised water payments from SAWS for water that would now be produced instead by Bexar Met who has no contract with Sneckner for such payments.

The SAWS/Bexar Met agreement has destroyed any chance of Sneckner expanding its certificate or to rely on SAWS' agreement to promise and transfer its certificate to Sneckner because SAWS has clearly abandoned such support by ceding the Sneckners' agreed expansion area to Bexar Met.

As a result, the Sneckner family has incurred substantial monetary damages because of SAWS' flagrant breach of its contract with the Sneckners and is liable for such damages which will be in the range of several millions of dollars.

Any attempts now by the Sneckner family to attempt to expand its water area in view of the SAWS/Bexar Met agreement would be fruitless, and any reasonable opportunity to now seek

expansion of the area has been forever lost because BSR simply does not have the ability to compete with a huge utility like Bexar Met for a certificate to serve the same area. Whereas BSR, under the SAWS agreement, had the weight of SAWS on their side with the state water agency, which could have greatly enhanced the granting of the new certificate to SAWS. Thus, the Sneckners' only recourse is to bring this suit for substantial monetary damages against SAWS to recover the benefits it would have had under its now ill-fated agreement and broken agreement with SAWS.

Thus, on March 27, 2001, BSR was fraudulently induced by SAWS executed the amendment in reliance on SAWS' representation that SAWS would honor its obligations to BSR to also drill water wells on BSR's existing property.

Furthermore, SAWS breached the March 27, 2001 amendment by failing to even honor its terms, as agreed, and to produce water for BSR's existing property.

Thus, SAWS had achieved its illicit goal:

- SAWS defrauded BSR into believing SAWS would support BSR's expansion into an area that SAWS would not enter.
- SAWS secretly transferred its right to enter such area to Bexar Met.
- SAWS deceived BSR into withdrawing BSR's protest to SAWS' earlier effort to expand.
- SAWS delayed performance of other portions of its agreement on BSR's own property by failing to produce valuable water from BSR's own property

SAWS now had clear sailing as a result of its fraud and breaches of contract. It had effectively gotten BSR out of its way, and could deal with Bexar Met in the same land area to both SAWS and Bexar Met's mutually beneficial financial good by squeezing out the little man in its contractual shell game.

C. SAWS' Additional Broken Promises on BSR's Own Property

As noted above, SAWS had dual obligations to BSR pursuant to its agreed February 15, 2000 written contract with BSR, and its March 27, 2001 amendment (*Exhibits 3 and 3A*).

One obligation of SAWS was, as seen, to obtain and transfer its new CCN to Sneckner in the Expansion Area. That promise was broken.

However, SAWS' other dual obligation was to assist the Sneckner family to realize the economic value of water under Sneckner's own property where Sneckner already owned an existing valuable permit from the State of Texas to drill, produce and commercially sell water.

SAWS, therefore, also agreed to drill up to eight (8) wells on Sneckner's existing property to produce water and purchase such water from Sneckner.

SAWS agreed that it would promptly construct such wells to maximize water production in order to assure Sneckner that SAWS would allow Sneckner to achieve the highest possible economic use of the water for sale to SAWS. However, to this date SAWS has flagrantly breached its agreement and has never fully operated even four (4) wells on Sneckner's property, and SAWS has been almost three (3) years late in operating the first two wells.

Due to SAWS' inexcusable breaches of contract, many millions of gallons of water have flowed under Sneckner's property during the period that such wells were to be completed, and such water has been produced by other landowners down-grade from Sneckner's property, thus permitting other landowners to sell the water to SAWS at very profitable rates and denying such monetary benefits to the Sneckner family. Furthermore, due to SAWS' clear breaches, the Sneckners will continue for the foreseeable future to continue to suffer very substantial damages.

In addition, SAWS agreed in its contract to operate the wells on Sneckner's property to "optimize production" of water. SAWS, in breach of its contract, has not only failed to

"optimize production" from the two wells that SAWS has been working on, but has purchased water from other down-grade landowners to such an extent that SAWS now claims it will not even produce the minimum amount of water that it promised to produce and purchase from the Sneckner family.

In addition, SAWS has directly caused the Sneckner family to lose extremely valuable rights to sell its own water to other land developers who could use the water for current and planned development.

All of the above acts constitute clear fraud on the part of SAWS and, alternatively, have made numerous flagrant breaches of its contract with the Sneckner family

As a result, the Sneckner family has suffered substantial damages in the amount of several million dollars, all of which should also result in punitive damages to be awarded against SAWS.

As a result, Sneckner has been damaged by SAWS' breaches of its dual obligations to produce water in such quantities as the well logs indicate is possible for substantial monetary losses caused by the failure to sell the water at profitable rates.

V.

CAUSES OF ACTION

Plaintiffs incorporate the foregoing paragraphs.

As a result of SAWS's wrongful acts, SAWS is liable for:

1. Fraud,
2. Fraudulent Inducement; and/or
3. Breach of Contract; and/or
4. Conversion

SAWS, by relinquishing the expansion area and its promised support of BSR, not only breached the contract with BSR, but also wrongfully converted BSR's right to expand by giving such area to Bexar Met. In addition, SAWS is guilty of blatant fraud in inducing the Sneckner family to enter into contracts and to rely on SAWS promises to its detriment

VI.

ATTORNEYS FEES

Plaintiffs have been required to engage the services of the undersigned attorneys to prosecute these claims. Pursuant to section 38.001 et seq. of the Texas Civil Practice & Remedies Code, Plaintiffs seeks to recover from SAWS all reasonable attorneys fees and costs of court, in addition to damages in this matter.

VII.

PERFORMANCE OF CONDITIONS PRECEDENT

All conditions precedent to Plaintiffs' recovery generally and to the recovery of attorneys fees specifically have been performed or have occurred other than those excused by the conduct of the Defendant

VIII.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all causes in this action. The jury fee of \$30 00 is tendered herewith.

Wherefore, Plaintiffs pray that the City of San Antonio be cited to appear and answer herein, and upon final trial hereof, that Plaintiffs be awarded a judgment against Defendant in the amount of actual damages, plus prejudgment and post judgment interest, attorneys fees, costs of court and such other relief to which Plaintiffs may be entitled.

Respectfully submitted,

JENKENS & GILCHRIST
A Professional Corporation
Weston Centre, Suite 900
112 East Pecan Street
San Antonio, Texas 78205
(210) 246-5000 (Telephone)
(210) 246-5999 (Facsimile)

By: 

SEAGAL V WHEATLEY
State Bar No. 21252000

ATTORNEYS FOR PLAINTIFFS