



Control Number: 43943



Item Number: 10

Addendum StartPage: 0

**SOAH DOCKET NO. 582-05-1005
TCEQ DOCKET NO. 2004-1384-UCR**

**PETITION OF BEXAR METROPOLITAN §
WATER DISTRICT TO COMPEL RAW §
WATER COMMITMENT FROM §
GUADALUPE-BLANCO RIVER §
AUTHORITY §**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**ORDER NO. 11
IDENTIFYING REIMBURSABLE EXPENSES**

After examining the parties' arguments and other authorities, the Administrative Law Judge ("ALJ") concludes that Petitioner would be entitled, under 30 TAC § 80.25(e)(2), to dismissal of the captioned action without prejudice upon reimbursing GBRA \$1,492.25 for expenses incurred in that action. Such reimbursement would exclude GBRA's claim of \$903.89 for "computer legal research," a category of expenditures that the ALJ concludes should be encompassed within non reimbursable "attorney's fees."

The specific language of 30 TAC § 80.25(e)(2) is as follows:

An applicant is entitled to an order dismissing an application without prejudice if:

2. the applicant reimburses the other parties all expenses, not including attorney's fees, that the other parties have incurred in the permitting process for the subject application.

The rule thus appears to require that an applicant actually pay other parties' legitimate expenses (not simply agree to pay them) before the applicant becomes eligible for dismissal without prejudice. Therefore, the ALJ directs Petitioner to effect payment of \$1,492.25 to GBRA as soon as practicable and to notify the ALJ when that is accomplished. The ALJ will then issue a Proposal for Decision recommending dismissal of the pending application without prejudice. GBRA, of course, will be able to argue for additional payment, covering its computer research expenses, when the proposal is submitted to the TCEQ Commissioners.

SOAH Docket No. 582-05-1005
TCEQ Docket No. 2004-1384-UCR

Order No. 11

Page 2

PROCEDURAL QUESTIONS

Routine procedural and logistical questions may be directed to Rita McBride at (512) 475-3419; however, please note that SOAH support personnel are not authorized to provide general advice or the interpretation of regulations or policy.

SIGNED June 27, 2006.

Mike Rogan
MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

WILLIAM P. CLEMENTS BUILDING, Jr.

300 West Fifteenth Street

Austin, Texas 78701

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SERVICE LIST

AGENCY:

Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE:

BEXAR METROPLITIAN WATER DISTRICT

SOAH DOCKET NUMBER: 582-05-1005

REFERRING AGENCY CASE: 2004-1384-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ MIKE ROGAN**

REPRESENTATIVE / ADDRESS

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GBRA

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BEXAR METROPOLITAN WATER DIST.

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TCEQ

From: 5129360770
06/27/2006 14:24 FAX 512 936 0770

SOAH

Jun 27 2006 14:25

06/27/005

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DATE:

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

REGARDING:

ORDER NO. 11 - IDENTIFYING REIMBURSABLE EXPENSES

582 05-1005

DOCKET NUMBER

JUDGE MIKE ROGAN

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06/27/2006

CLERK OF COURT

HAZEN & TERRILL

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July 5, 2006

Via Facsimile: (512) 475 1994

The Honorable Mike Rogan
Administrative Law Judge
State Office of Administrative Hearings
William P. Clements Building, Jr.
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Austin, Texas 78701

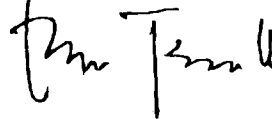
Re TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition
of Bexar Metropolitan Water District to Compel Raw Water Commitment from
Guadalupe-Blanco River Authority

Dear Judge Rogan:

Enclosed please find correspondence dated July 5, 2006, between Bexar Metropolitan Water District and the Guadalupe-Blanco River Authority regarding the reimbursement of all legitimate expenses pursuant to Order No. 11- Identifying Reimbursable Expenses. As you will see, BexarMet has tendered a check to GBRA for \$1,492.25, being the full amount required by Order No. 11. With this full payment of all reimbursable expenses, BexarMet respectfully requests a dismissal of this matter without prejudice pursuant to 30 TEX. ADMIN. CODE § 80.25(e)(2).

Thank you for your consideration in this matter.

Sincerely,



Paul M. Terrill
HAZEN & TERRILL, P.C.

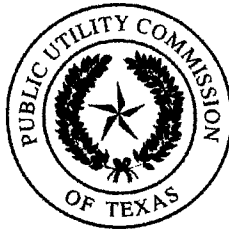
encl.

cc Docket Clerk *Via fax to 239-3311*
Todd Galiga *Via fax to 239-0606*
Scott Humphrey *Via fax to 239-6377*
Molly Cagle *Via fax to 236-3280*
Roger Nevola *Via fax to 499-0575*

CHIEF OF OFFICE

JUL 10 2006

STATE OFFICE OF ADMINISTRATIVE HEARINGS



House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions and records relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014.

Central Records Personally Identifiable Information Audit

NOTICE OF REDACTION

Documents containing Personally Identifiable Information* have been redacted from electronic posting, in accordance with Texas privacy statutes.

*"Personally Identifiable Information" (PII) is defined to include information that alone or in conjunction with other information identifies an individual, including an individual's: Social security or employer taxpayer identification number, driver's license number, government-issued identification card number, or passport numbers, checking and savings account numbers, credit card numbers, debit card numbers, unique electronic identification number, address, or routing code, electronic mail names or addresses, internet account numbers, or internet identification names, digital signatures, unique biometric data, and mother's maiden name, marriage and any other numbers or information used to access an individual's financial account.

HAZEN & TERRILL

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June 20, 2006

Via Facsimile: (512) 475-4094

The Honorable Mike Rogan
Administrative Law Judge
State Office of Administrative Hearings
William P. Clements Building, Jr.
300 West 15th Street
Austin, Texas 78701

Re: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition
of Bexar Metropolitan Water District to Compel Raw Water Commitment from
Guadalupe-Blanco River Authority

Dear Judge Rogan

In response to Order No. 20, Bexar Metropolitan Water District ("BexarMet") provides this additional authority regarding its claim that it need not reimburse the Guadalupe-Blanco River Authority's ("GBRA") "computer legal research" expenses under 30 TEX. ADMIN. CODE § 80.25(e)(2). That rule requires BexarMet to reimburse certain expenses incurred by the GBRA to secure a dismissal without prejudice. "Computer legal research" expenses are not among those expenses that must be reimbursed because they "make up the overhead of a law practice," and thus should be "considered in setting hourly billing rates and reasonable fees." *Flint & Associates v. Intercontinental Pipe & Steel, Inc.*, 739 S.W.2d 622, 626-27 (Tex. App.-Dallas 1987, writ denied) (reforming judgment to exclude \$10,000.00 awarded as "reasonable, non-taxable court cost expenses," for photocopy, travel, long distance, postage, and messenger costs.). Accordingly, BexarMet has asked the Court to order that it need only reimburse GBRA a total of \$1492.25 — the total of the expenses GBRA has claimed less the amount it claims for "computer legal research" — in order to secure a dismissal without prejudice of this matter.

BexarMet is not required to pay GBRA's incidental litigation costs, such as "computer legal research" costs, to be entitled to withdraw its petition without prejudice under 30 TEX. ADMIN. CODE § 80.25(e)(2). The preamble to 30 TEX. ADMIN. CODE § 80.25(e)(2), found at 21 TEX. REG. 2137 (copy attached hereto), provides that the "expenses" that must be reimbursed under that rule are synonymous with "costs":

Section 80.25 is modified to clarify that attorney's fees are not included in the *payment of 'costs'* required for withdrawal of an application without prejudice, and makes it clear that *payment of 'costs'* is one of three avenues for withdrawal without prejudice

21 TEX. REG. 2137 (emphasis added). The term "costs" *excludes* incidental litigation costs such as

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FAX No. 5124749888

The Honorable Mike Rogan
Administrative Law Judge
June 20, 2006
Page 2

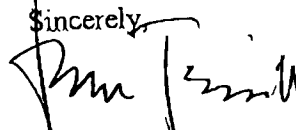
photocopying, travel, long distance, postage, and messenger expenses in Texas law. *See, Flint*, 89 S.W.2d at 626 (Tex. App.-Dallas 1987, writ denied); *see also Shenandoah Associates v. J & K Properties, Inc.*, 741 S.W.2d 470, 486-877 (Tex. App.-Dallas 1987, writ denied) superceded in part by rule now allowing recovery of trial transcripts, as stated in *Crescendo Investments v. Brice*, 81 S.W.3d 465 (Tex. App.-San Antonio 2001, pet. denied) (applying general rule that expenses incurred in prosecuting a suit are "not recoverable as costs or damages unless recovery of those items is expressly provided for by statute" to exclude recovery of costs for delivery services, travel, long distance calls, postage, reproduction expense, binding of briefs, office air-conditioning and secretarial overtime) (emphasis added). Incidental litigation costs may be recoverable through attorneys' fees, but only where recovery of fees is authorized, which is plainly not the case here. 30 TEX. ADMIN. CODE § 80.25(e)(2).

Even though every expense claimed by GBRA is an incidental litigation cost, BexarMet has only objected to GBRA's claim for "computer legal research" expenses. Those expenses are clearly an item of overhead that is recoverable through attorneys' fees. Again, 30 TEX. ADMIN. CODE § 80.25(e)(2) contemplates the reimbursement of *recoverable* costs as defined by Texas case law but expressly excludes attorneys' fees or items that are a component of those fees. Even GBRA would agree that BexarMet is not required to pay for Vinson & Elkins' legal research materials kept in paper format (e.g., West reporters, Vernon's statutes, digests, etc.). The cost of maintaining legal research materials is part of the everyday overhead that all law firms pay as an ordinary cost of doing business. By what provision in 30 TEX. ADMIN. CODE § 80.25, then, does GBRA claim that BexarMet should pay for Vinson & Elkins' *electronic* legal research materials as opposed to those kept in *paper* format? BexarMet respectfully submits that 30 TEX. ADMIN. CODE § 80.25(e)(2) provides no support for such a distinction.

Accordingly, BexarMet respectfully requests that the Court rule that BexarMet need not reimburse GBRA for its "computer legal research" costs under 30 TEX. ADMIN. CODE § 80.25(e)(2) without the necessity of a hearing.

Thank you for your consideration in this matter.

Sincerely,



Paul M. Terrill
HAZEN & TERRILL, P.C.

encl

cc: Docket Clerk Via fax to 239-3311
Todd Galiga Via fax to 239-0606
Scott Humphrey Via fax to 239-6377
Molly Cagle Via fax to 236-3280
Roger Nevola Via fax to 499-0575

21 TexReg 2137
21 Tex. Reg. 2137, 1996 WL 182410 (Tex. Reg.)
(Cite as: 21 Tex. Reg. 2137)

TEXAS REGISTER
Volume 21, Number 20
March 19, 1996
PROPOSED RULES
TITLE 30 ENVIRONMENTAL QUALITY
PART I TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION
CHAPTER 80 CONTESTED CASE HEARINGS
SUBCHAPTER A. GENERAL RULES

Additions are indicated by << + Text + >>,
deletions by << - Text - >>

*2137 30 TAC s 80.1, 80.3, 80.5, 80.7, 80.9,
80.11, 80.13, 80.15, 80.17, 80.19, 80.21, 80.23,
80.25, 80.27, 80.29, 80.31, 80.33

*2136 The Texas Natural Resource Conservation
Commission (commission) proposes new s 80.1,
80.3, 80.5, 80.7, 80.9, 80.11, 80.13, 80.15, 80.17,
80.19, 80.21, 80.23, 80.25, 80.27, 80.29, 80.31,
80.33, 80.101, 80.103, 80.105, 80.107, 80.109,
80.111, 80.113, 80.115, 80.117, 80.119, 80.125,
80.127, 80.129, 80.131, 80.133, 80.135, 80.137,
80.151, 80.153, 80.155, 80.201, 80.203, 80.205,
80.207, 80.209, 80.213, 80.215, 80.251, 80.253,
80.255, 80.257, 80.259, 80.261, 80.263, 80.265,
80.267, 80.269, 80.271, 80.273, 80.275, 80.277,
and 80.279, concerning the commission's
procedural rules

This proposal is the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules of the commission. The first phase of the project (Phase I) was intended to implement recent legislation and was completed in the summer of 1995. Phase I made limited substantive changes to the commission's rules and began limited reorganization. Phase II is a more ambitious attempt to reorganize and consolidate the commission's procedural rules, and to eliminate conflicting procedural requirements based solely on media or type of hearing. By consolidating these rules, the commission seeks to cut back on the duplication of requirements and definitions that might create unwarranted non-statutory differences in the treatment of persons working with the commission. As part of this ongoing project, the commission is continuing to examine program and media specific rules for inconsistency with the general rules of the agency. It is anticipated that any further consolidation will be proposed as amendments to specific programs or chapters and

not as a further major revision to these procedural rules.

Proposed numbering changes attempt to impose a more logical organization upon the most widely applicable rules of the commission by taking advantage of newly available chapters in Title 30. Chapters 1-99 will be reserved for the procedural rules and broadly applicable substantive rules of the commission. By locating generally applicable rules at the beginning of Title 30, commission rules should be organized in a more logical and user-friendly format. The proposed new format consists of the following reservation of chapters: Chapters 1-10-general rules of the commission; Chapters 11-19-miscellaneous provisions not specific to any media; Chapters 20-29-rulemaking; Chapters 30-49-application procedures; Chapters 50-69-processing of applications; Chapters 70-79-enforcement; and Chapters 80-89-hearings-contested/other. The current proposal conforms to this new format.

Media specific substantive rules, and limited procedural rules will continue to be found in Chapters 100-399 of Title 30.

Proposed new Chapters 1, 3, 5, 10, and 70 were published in the February 20, 1996, issue of the Texas Register (21 TexReg 1349). Proposed new Chapters 1 and 10 replace and make limited changes to existing Chapter 261. Chapter 1 sets forth the general rules of the agency. Chapter 10 governs the conduct of commission meetings.

Proposed new Chapter 3 is intended to consolidate the definitions broadly applicable across chapters. Definitions within specific chapters that conflict with definitions in Chapter 3 will continue to apply to the particular chapter within which they are found. Long-term plans call for consolidating these definitions as much as possible, but any further consolidation beyond this proposal will be undertaken as changes to specific chapters.

Proposed new Chapter 5 replaces existing Chapter 345 and sets forth the rules governing the composition of advisory groups to the commission without substantive changes from the existing rules.

Proposed new Chapter 20 contains the rules governing agency rulemaking from Chapter 275 without substantive changes.

21 TexReg 2137
(Cite as: 21 Tex. Reg. 2137, *2136)

A planned new Chapter 39 contains requirements for notices of public hearings moved, duplicated, or cross-referenced from other chapters. The commission anticipates that this chapter will be proposed later this year.

Proposed Chapter 40 replaces Chapter 264, relating to Alternative Dispute Resolution (ADR) before the commission. No substantive changes to ADR procedures are proposed.

Proposed new Chapters 50 and 55 replace existing Chapter 263. Chapter 50 relates to actions taken on an application by the commission *2137 or the executive director. Chapter 50, Subchapter B relates to actions taken by the commission on uncontested applications. Chapter 50, Subchapter C relates to action by the executive director and is recodified primarily from Subchapter A of Chapter 263, but also duplicates a portion of Chapter 305, Subchapter E. The principal change to current practice proposed in Chapter 50 is the consolidation of the process for executive director approval of air, water, and waste applications into a single process governing all media. This single process eliminates the Texas Register notice requirement regarding possible action by the executive director. The proposed rules continue the disjunction between media of the limitation upon the executive director's authority to act on protested applications.

Proposed new Chapter 55 relates to commission action upon hearing requests related to permit applications and is a recodification of Subchapter B of Chapter 263. The commission seeks to clarify the process in this new chapter. New s 55 21(d) attempts to clearly set forth the timelines for filing hearing requests. Persons concerned with production area authorizations should note that the public notice requirement for an application has been increased from ten to 30 days in s 55 21(d). Section 55 27 makes clear it is necessary to both seek party status and file a motion for rehearing of the denial of a hearing request prior to seeking judicial review, and that this motion should be filed after action by the commission on the permit or other application. Future rulemaking will be undertaken to further define the factors considered in evaluating hearing requests. At this time, there is insufficient experience with the current process, adopted in August of 1995, to fairly evaluate how well existing rules concerning the processing of hearing requests are meeting the needs of the regulated community, the public, and the

commission.

Proposed new Chapter 70 contains the sections from Chapter 337 that were not related to hearing procedures.

Proposed Chapter 80 unifies the contested use hearing procedures contained in current Chapters 265 and 337. Where substantive and procedural issues differed significantly under the existing rules, the commission attempted to maintain these differences. Section 80.25 is modified to clarify that attorney's fees are not included in the payment of costs required for withdrawal of an application without prejudice, and makes it clear that payment of costs is one of three avenues for withdrawal without prejudice. Section 80.107 duplicates the sanctions list allowed in Senate Bill 12, and unifies the sanctions sections from the other rules proposed for repeal or amendment in this package. Section 80.137 modifies the summary judgment procedure from Chapter 337. Inclusion of this procedure in Chapter 80 will make summary disposition available in all contested cases. Discovery rules that duplicate the Texas Rules of Civil Procedure have been replaced with a reference to those rules. Voluntary discovery rules have been eliminated. Language is added to the discovery rules to make clear that drafts of prefiled testimony are not discoverable. The 'freeze rules' in Chapter 265, Subchapter B, have been clarified and streamlined, and duplicate procedures have been consolidated with the general procedures in Chapter 80. Language is added in s 80.207 to require a reasonable basis for protestants' issues listed in the freeze process. This change was not intended to shift the burden of proof upon an application. Twenty days have been added to the end of the first discovery period in the freeze process to allow more time for the listing of issues.

Proposed new Chapter 86 contains special procedural rules of Chapter 275 (which is proposed for repeal) not moved to Chapter 20. No substantive changes are proposed in this recodification.

Chapter 305, Subchapter E is proposed for repeal. Rules contained in that subchapter will be recodified in Chapters 50 and 55, and in the new Chapter 40 when proposed.

Chapter 339 is proposed to be repealed in its entirety.

Chapter 340 is amended to consolidate requirements.

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FAX COVER SHEET**DATE : June 20, 2006****TIME : 4:43pm****PLEASE DELIVER TO:**

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	Office of the Chief Clerk		
	Todd Galiga		239-0606
	Scott Humphrey		239-6377
	Molly Cagle		236-3280
	Roger Nevola		499-0575
FROM	Jackie Taylor, Paralegal		
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TOTAL NUMBER OF PAGES SENT (Including coversheet) :			4 pages
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<p><i>TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition of Bexar Metropolitan Water District to Compel Raw Water Commitment from Guadalupe-Blanco River Authority</i></p> <p>Please see attached correspondence from Paul Terrill dated June 20, 2006.</p>			
<p align="center">CONFIDENTIALITY NOTICE</p> <p>This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.</p>			

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TUESDAY
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11:52 AM