



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.

CHIEF OF OFFICE

6/27/06

COMMUNICATIONS SECTION

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

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### 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  
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**

**Phone (512) 475-4993**

**Facsimile (512) 475-4994**

**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**

**PARTIES**

**MOLLY CAGLE  
ATTORNEY  
2801 VIA FORTUNA, STE. 100  
AUSTIN, TX 78746  
(512) 542-8400 (PH)  
(512) 542-8612 (FAX)**

**GBRA**

**PAUL TERRILL  
ATTORNEY  
810 W 10TH STREET  
AUSTIN, TX 78701  
(514) 474-9100 (PH)  
(512) 474-9888 (FAX)**

**BEXAR METROPOLITAN WATER DIST.**

**ROGER NEVOLA  
ATTORNEY  
BEXAR COUNTY COURTESY COPY  
PO BOX 2103  
AUSTIN, TX 78767  
(512) 499-0500 (PH)  
(512) 499-0575 (FAX)**

**MARK ZEPPA**

**SCOTT HUMPHREY  
ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF PUBLIC INTEREST COUNSEL  
P.O. BOX 13087  
AUSTIN, TX 78711-3087  
(512) 239-6960 (PH)  
(512) 239-6377 (FAX)**

**TCEQ**

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

SOAH

Jun 27 2006 14:25

05/005

**TODD GALIGA**  
**STAFF ATTORNEY, EXECUTIVE DIRECTOR**  
**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
**, MC-173 PO 13087**  
**AUSTIN, TX 78711-3087**  
**(512) 239-0600 (PH)**  
**(512) 239-0606 (FAX)**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

xc: Docket Clerk, State Office of Administrative Hearings

SOAH

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

06/27/2006

45

DATE:  
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REGARDING:

**ORDER NO. 11 - IDENTIFYING REIMBURSABLE EXPENSES**

582 05-1005

DOCKET NUMBER  
FROM:

**JUDGE MIKE ROGAN**

| <u>FAX TO:</u>   | <u>FAX TO:</u> |
|--|----------------|
| PAUL TERRILL   | (512) 474-9888 |
| MOLLY CAGLE  | (512) 542-8612 |
| ROGER NEVOLA   | (512) 499-0575 |
| SCOTT HUMPHREY (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY) | (512) 239-6377 |
| TODD GALIGA (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)    | (512) 239-0606 |

TCEQ Docket Clerk, Fax Number 512/239-3311

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TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY  
CLERK'S OFFICE  
JUN 27 2006 14:22

# HAZEN & TERRILL

A PROFESSIONAL CORPORATION

810 West 10<sup>th</sup> Street  
Austin, Texas 78701-2005  
Tel (512) 474-9100  
Fax (512) 474-9888

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.  
300 West 15<sup>th</sup> 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:

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.

CHIEF OF OFFICE

25  
TERRILL

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*



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

A PROFESSIONAL CORPORATION

810 West 10<sup>th</sup> Street  
Austin, Texas 78701-2005  
Tel (512) 474-9100  
Fax (512) 474-9888

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 15<sup>th</sup> 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

OFFICE OF THE ATTORNEY GENERAL  
STATE OF TEXAS  
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The Honorable Mike Rogan  
 Administrative Law Judge  
 June 20, 2006  
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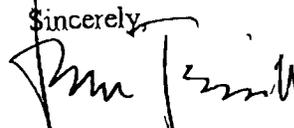
photocopying, travel, long distance, postage, and messenger expenses in Texas law. *See, Flint*, 19 S.W.2d at 626 (Tex. App.-Dallas 1987, writ denied); *see also Shenandoah Associates v. J & K Properties, Inc.*, 741 S.W.2d 470, 486-877 (Tex. App.-Dallas 1987, writ denied) superceded in part by rule now allowing recovery of trial transcripts, as stated in *Crescendo Investments v. Brice*, 11 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

(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 distinction 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 case 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 protesting 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 80 when proposed.

Chapter 339 is proposed to be repealed in its entirety.

Chapter 340 is amended to consolidate requirements.

**HAZEN & TERRILL**

A PROFESSIONAL CORPORATION

810 West 10<sup>th</sup> Street  
Austin, Texas 78701  
Tel (512) 474-9100  
Fax (512) 474-9888

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PM 4:52

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

|   |                                  |                     |                 |
|---|----------------------------------|---------------------|-----------------|
| <b>NAME</b>   | <b>Mike Rogan, ALJ</b>           | <b>FAX NUMBER :</b> | <b>475-4994</b> |
|   | <b>Docket Clerk</b>              |                     | <b>239-3311</b> |
|   | <b>Office of the Chief Clerk</b> |                     |                 |
|   | <b>Todd Galiga</b>               |                     | <b>239-0606</b> |
|   | <b>Scott Humphrey</b>            |                     | <b>239-6377</b> |
|   | <b>Molly Cagle</b>               |                     | <b>236-3280</b> |
|   | <b>Roger Nevola</b>              |                     | <b>499-0575</b> |
| <b>FROM</b>   | <b>Jackie Taylor, Paralegal</b>  |                     |                 |
| <b>CM #</b>   | <b>9234</b>                      |                     |                 |
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| <b>REMARKS</b>  |                                  |                     |                 |
| <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>   |                                  |                     |                 |
| Please see attached correspondence from Paul Terrill dated June 20, 2006.   |                                  |                     |                 |
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