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Addendum StartPage: 0

2006/JUN/02/FRI 04:47 PM HAZEN&TERRILL

FAX No. 5124749888

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June 2, 2006

Via Facsimile: (512) 475-4964

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

As the Court is aware, Bexar Metropolitan Water District ("BexarMet") seeks a dismissal of the above-captioned case without prejudice under 30 TEX. ADMIN. CODE § 80.25(e)(2). That rule requires BexarMet to reimburse certain expenses incurred by the Guadalupe-Blanco River Authority ("GBRA") in this matter. On May 2, 2006, GBRA provided BexarMet a detail of the expenses claimed under 30 TEX. ADMIN. CODE § 80.25(e)(2). That list is attached to this letter. The expenses claimed by GBRA total \$2,396.14. Of that amount, \$903.89 is claimed for "computer legal research." Although several of the expenses claimed by GBRA, e.g. \$1,001.05 for in-house photocopying, may be unrecoverable under 30 TEX. ADMIN. CODE § 80.25(e)(2), BexarMet objects only to GBRA's claim for \$903.89 for "computer legal research." BexarMet respectfully requests that the Court rule that BexarMet need not reimburse that expense to be entitled to a dismissal without prejudice.

BexarMet is not required to pay GBRA's incidental litigation expenses to be entitled to withdraw its application without prejudice under 30 TEX. ADMIN. CODE § 80.25(e)(2). In its preamble to 30 TEX. ADMIN. CODE § 80.25(e)(2), the Commission treated the "expenses" that must be reimbursed under that rule as 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" is assigned a specific legal meaning in Texas law. It *excludes* incidental litigation costs such as photocopying, travel, long distance postage, and messenger expenses. See, *Flint & Assocs. v. Intercontinental Pipe & Steel, Inc.*, 739

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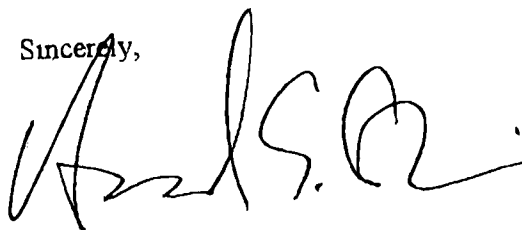
The Honorable Mike Rogan
Administrative Law Judge
June 2, 2006
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S W 2d 622, 626 (Tex. App.-Dallas 1987, writ denied) (reforming judgment to exclude \$10,000.00 awarded as "reasonable, non-taxable court cost expenses," for photocopy, travel, long distance postage, and messenger costs")

While every expense claimed by GBRA may be categorized as an incidental litigation expense, BexarMet objects only to GBRA's claim for "computer legal research" expenses. Those expenses are distinguishable from the others because they are clearly an item of overhead that is recoverable through attorneys' fees, but not as costs. The cost of computer legal research "make[s] up the overhead of a law practice," and thus should be "considered in setting hourly billing rates and reasonable fees." *Id.* at 626-27. In other words, just as BexarMet is not required to pay for Vinton and Elkins law books or secretaries, it is not required to pay for its computer database usage. BexarMet is not obligated to reimburse GBRA's attorneys' fees in order to be entitled to a dismissal without prejudice under 30 TEX. ADMIN. CODE § 80.25(e)(2), only its costs. Accordingly, BexarMet requests that the Court rule that BexarMet need not reimburse GBRA for its "computer legal research" costs under that rule. No hearing on this matter should be necessary, as the question presented is one of law.

Thank you for your consideration in this matter.

Sincerely,



Howard S. Slobodin
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

The Honorable Mike Rogan
Administrative Law Judge
June 2, 2006
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bcc: Gil Olivares (gilivares@bexamet.org)
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<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>			
See attached June 2, 2006 correspondence from Howard S. Slobodin.			
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June 5, 2006

The Honorable Mike Rogan
Administrative Law Judge
State Office of Administrative Hearings
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Austin, Texas 78701

By Facsimile and First Class Mail

TEXAS
COMMISSION ON
ENVIRONMENTAL
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JUN 5 11 14
CHIEF COUNSEL'S OFFICE

Re: SOAH Docket No. 582-05-1005; TCEQ Docket No. 2004-1384-UCR
§11.041 Petition of BexarMet

Dear Judge Rogan,

Guadalupe-Blanco River Authority ("**GBRA**") incurred a total of \$2,396.14 in expenses associated directly with this case, including \$903.89 for computer research expenses billed to GBRA by my law firm. *See* Ex. 1. In its June 2, 2006 letter, Petitioner argues that none of GBRA's expenses are recoverable under 30 TEX. ADMIN. CODE. § 80.25(e)(2), but it only objects to reimbursing computer legal research expenses. As a matter of law, Petitioner should be ordered to pay all GBRA's documented expenses.

Petitioner's counsel has lost this argument previously. In SOAH Docket Number 582-04-4678, TCEQ Docket Number 2003-1067-WR, involving the Canyon Regional Water Authority ("**CRWA**"), CRWA, represented by Petitioner's counsel here, similarly opposed all expenses filed by GBRA (including computer research expenses-*see* Ex. 2) on the basis that none were "costs." *See* Ex. 3. As I recall, that position met harsh criticism from SOAH Judge Ingraham, who advised CRWA in open hearing that she did not believe that the Commission meant for § 80.25(e)(2) to be interpreted so narrowly. Eventually, GBRA recovered in that matter all of its claimed expenses from CRWA, including those for computer research. That same result should occur here, and BexarMet should be ordered to pay GBRA \$2,396.14 if it wants to withdraw its §11.041 petition without prejudice.

Thank you for your time and attention to this matter.

Very truly yours,

Molly Cagle
Molly Cagle

From:
06/05/2006 04 08 FAX

Jun 5 2006 16:14

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V&E

The Honorable Mike Rogan June 5, 2006 Page 2

Attachments

cc: LaDonna Castañuela (*By Facsimile*)
Service List (*By Facsimile*)