

Control Number: 43943



Item Number: 14

Addendum StartPage: 0

**SOAH DOCKET NO. 582-04-4678
TCEQ DOCKET NO. 2003-1067-WR**

**APPLICATION OF CANYON REGIONAL
WATER AUTHORITY TO AMEND
CERTIFICATE OF ADJUDICATION
NO. 18-3834**

§
§
§
§

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

AFFIDAVIT OF MOLLY CAGLE

THE STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared Molly Cagle who, being
by me duly sworn, deposed as follows:

1. "My name is Molly Cagle, and I am a partner with Vinson & Elkins, L.L.P. I am responsible for supervising all work by Vinson & Elkins ("V&E") attorneys, legal assistants, and staff on GBRA's protest of the Canyon Regional Water Authority ("CRWA") Application to Amend Certificate of Adjudication No. 18-3834 (the "Application"). I also am the billing attorney for all Guadalupe-Blanco River Authority ("GBRA") matters handled by V&E.
2. "I am over the age of 18 years, have never been convicted of a felony or a crime of moral turpitude, and am of sound mind and fully qualified to make this Affidavit.
3. "To assist in the preparation of this affidavit, I reviewed all V&E invoices for services submitted to GBRA for calendar year 2004 and Invoice Nos. 25100665, 25108949, 25108945, 25113113, 25113123, 25115537, for legal services beginning May 1, 2004 and ending September 30, 2004 reflecting attorney fees

EXHIBIT 2

**GBRA
EXHIBIT E**

and expenses for representing GBRA in the permitting process for the Application. Vinson & Elkins has not yet finalized an invoice reflecting fees and expenses for October 2004 for the permitting process for the Application. Nevertheless, the invoice has been prepared as a preliminary bill for purposes of preparing this affidavit; this preliminary bill is referred to as a Pre-bill No 2755480.

4. "The total expenses in the chart set forth in Paragraph 5 represent charges as set forth in the Standard Terms of Engagement For Legal Services section of its Engagement Letter with GBRA. V&E charges GBRA \$0.15 per page for non color duplicating, including monochrome photocopy, digital monochrome duplication, printing electronic and scanned images, and printing for duplication purposes. Color duplicating is charged at \$0.65 per page. Charges from a service provider are billed at the Firm's actual cost. In this instance, IKON, an outside copying service, duplicated the documents produced by CRWA and charged \$4,479.19 for its services. That expense is passed through at the actual invoiced amount. V&E charges GBRA \$0.25 per page for outgoing telefaxes, which includes all telephone costs. Long distance calls, including international long distance calls, audio conferencing services, and calling card calls are charged at the Firm's actual cost for the call or conference. Travel expenses charged to the client represent actual, out-of-pocket costs incurred on behalf of GBRA.
5. "Based upon my review of the invoices identified in paragraph 3 of this affidavit and Prebill No. 2755480, I attest that the following reflects an accurate total of the

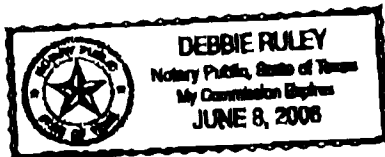
expenses incurred by GBRA through Vinson & Elkins in connection with the permitting process for the Application:

(1) Travel	Travel to and from the Texas Commission on Environmental Quality and CRWA's offices in New Braunfels.	\$23.88
(2) In-house Photocopying	Copying documents for the preliminary hearing; Copying Applicant's prefiled testimony; Copying GBRA's prefiled testimony and exhibits; Copying prefiled testimony and exhibits from other witnesses to distribute to GBRA witnesses; Copying pleadings for filing and service to the parties.	\$971.45
(3) Facsimiles	Filing by facsimile various pleadings.	\$147.50
(4) Courier Services	FedEx of GBRA's writing discovery requests to John Hohn.	\$11.22
(5) Computer Legal Research		\$464.87
(6) Administrative Costs	Secretarial overtime related to the preliminary hearing.	\$40.00
(7) Long Distance Telephone	Calls to GBRA and expert witnesses.	\$8.10
(8) Postage	Postage for filing prefiled testimony and various pleadings.	\$97.59
(9) Outside Professional Services	Out-sourced professional copying expenses related to copying CRWA's production documents. See "Attachment A" to Exhibit E.	\$4,479.19

6. "The overall total of \$6,243.80 represents all expenses incurred by GBRA through services provided by Vinson & Elkins in the above-referenced matter to date, and does not include any future expenses that might be incurred after October 29, 2004.
7. "I have personal knowledge of all the facts set forth in this Affidavit and the contents of this Affidavit are true and correct to the best of my knowledge."

Molly Cagle
Name: Molly Cagle
Title: Partner
Company: Vinson & Elkins, L.L.P.

SUBSCRIBED AND SWORN TO BEFORE ME on this 29th day of October, 2004



Debbie Ruley
Notary Public in and for the State of TEXAS
My Commission Expires: 6-8-2006

FILE COPY

SOAH DOCKET No. 582-04-4678
TCEQ DOCKET No. 2003-1067-WR

APPLICATION OF THE CANYON
REGIONAL WATER AUTHORITY
TO AMEND CERTIFICATE OF
ADJUDICATION NO. 18-3834

§
§
§
§

BEFORE THE STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**CANYON REGIONAL WATER AUTHORITY'S
OBJECTION TO SUMMARY OF EXPENSES INCURRED
BY GUADALUPE-BLANCO RIVER AUTHORITY**

TO THE HONORABLE DEBORAH INGRAHAM, ADMINISTRATIVE LAW JUDGE:

NOW COMES Canyon Regional Water Authority ("CRWA") and files this Objection to Summary of Expenses Incurred by Guadalupe-Blanco River Authority ("GBRA"). CRWA moves the Court to find GBRA's claimed costs to be unrecoverable under 30 TEX. ADMIN. CODE § 80.25(e)(2), and in support whereof respectfully shows the Court as follows:

1. CRWA filed a Notice of Withdrawal Without Prejudice in this matter on October 19, 2004, pursuant to 30 TEX. ADMIN. CODE § 80.25(e)(2). At hearing the following day, and again in its Order No. 6, the Court directed CRWA to pay the undisputed costs of the protesting parties under that rule.

2. By a letter dated November 4, 2004, CRWA advised the Court that, although it objected to the recoverability of costs claimed by protestants San Marcos River Foundation ("SMRF"), San Antonio River Authority ("SARA") and the City of Victoria, Texas ("Victoria"), CRWA would pay each of those parties' claimed costs in full. A copy of that November 4, 2004, letter is attached hereto as Exhibit A and incorporated by reference.

3. By that same letter, CRWA advised the Court that it disputed the costs presented in

GBRA's Summary of Expenses Incurred by the Guadalupe-Blanco River Authority ("Summary of Expenses"). See, Exhibit A.

4. In its Summary of Expenses, GBRA included the fees of three outside expert witnesses it retained, one GBRA staff person's salary expense, and other nontaxable incidental litigation expenses, including amounts for delivery services, postage, travel and long-distance phone calls.

5. CRWA is not required to reimburse any of GBRA's claimed costs under 30 TEX ADMIN. CODE § 80.25(e)(2) to be entitled to withdraw its application without prejudice.

I. ARGUMENT & AUTHORITIES

6. SMRF's claimed costs in this matter were \$3,150.33, SARA's claimed costs were \$7,263.40 and Victoria's claimed costs were \$3,315.93. Although each of these protestants' cost claims included amounts for unrecoverable items, CRWA agreed to pay each of their claims in full, without admitting any right to reimbursement. See, Exhibit A.

7. GBRA claims it has incurred costs in this matter of \$26,923.56. *Id.* GBRA's cost claim is \$19,660.16 more than SARA's, \$23,607.63 more than Victoria's and \$23,773.23 more than SMRF's.

8. In its Summary of Expenses, GBRA seeks to recover \$18,303.79 for work conducted by three retained expert witnesses in this matter.

9. In addition, GBRA claims it is entitled to recover a pro-rata portion of the salary of Mr. Fred Blumberg, who is a full-time employee of GBRA. GBRA alleges that it has "incurred" \$2,375.97 in costs for Mr. Blumberg's work on CRWA's application that is the subject of this case.

10. In addition to the witness expenses GBRA allegedly incurred in this matter, it also seeks another \$6243.80 for other miscellaneous litigation expenses, including \$5450.64 for

photocopying expenses alone. Those copying costs were allegedly incurred to copy documents produced by CRWA in response to an untimely request by GBRA. Because GBRA's document request was not properly served prior to the close of discovery, the copying costs GBRA seeks to recover pursuant to an invalid discovery request is both unreasonable and unrecoverable.

11. CRWA is not required to pay either GBRA's witness expenses or its miscellaneous litigation expenses to be entitled to withdraw its application without prejudice under 30 TEX. ADMIN. CODE § 80.25(e)(2)

12. In its preamble to 30 TEX. ADMIN. CODE § 80.25(e)(2), the Commission treated the "expenses" referred to by 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).

A. Witness costs

13. The term "costs" is assigned a specific legal meaning in Texas law. Expert witness fees are not recoverable as "costs." See, *Richards v. Mena*, 907 S.W.2d 566, 571 (Tex. App.—Corpus Christi 1995, writ dismissed by agreement) (finding that "Regardless of any good cause shown, costs of experts are incidental expenses . . . and not recoverable." (emphasis added); See also, *Whitley v. King*, 581 S.W.2d 541, 544 (Tex. Civ. App.—Fort Worth 1979, no writ)).

14. GBRA's Summary of Expenses includes a claim for \$20,679.76 for expert witness costs associated with its witnesses Lee Wilson, James Kowis, Sam Vaughn and Fred Blumberg. GBRA's expert witness fees are not recoverable costs, and CRWA need not pay them to be entitled to withdraw its application without prejudice.

15. In addition, \$2,375.00 of GBRA's claimed witness costs are for Mr. Blumberg's work in connection with CRWA's application. Mr. Blumberg is a deputy general manager of GBRA and is a salaried employee. GBRA would pay Mr. Blumberg's salary irrespective of his work in connection with this matter. Mr. Blumberg's salary is not a cost "incurred in the permitting process" by GBRA, within the meaning of 30 TEX. ADMIN. CODE § 80.25(e)(2). CRWA need not reimburse GBRA for expenses not "incurred in the permitting process" to be entitled to withdraw its application without prejudice.

B. Incidental litigation costs

16. The term "costs" is also defined to exclude incidental litigation costs such as photocopying, travel, long distance, postage, and messenger expenses. See, *Flint & Assoc. v. Intercontinental Pipe & Steel, Inc.*, 739 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.).

17. GBRA's Summary of Expenses includes \$5,450.64 in photocopying expenses, and another \$793.16 in travel, facsimile, messenger expenses, computer legal research, secretarial overtime, long distance charges and postage. None of these items are recoverable costs under 30 TEX. ADMIN. CODE § 80.25(e)(2). Even assuming any of GBRA's claimed miscellaneous litigation costs are recoverable, they are so manifestly unreasonable and disproportionate compared to those of the other protestants that they should be disallowed.

Prayer

WHEREFORE, PREMISES CONSIDERED, CRWA prays that the Administrative Law Judge enter an order finding that CRWA need not pay any of the costs presented in GBRA's Summary of Expenses in order to be entitled to withdraw its application without prejudice. Further,

From:
06/05/2006 04:09 FAX

Jun 5 2006 16:16

P. 1
017/019

CRWA prays for any such other and further relief to which it may show itself legally or equitably entitled.

Respectfully submitted,

HAZEN & TERRILL, P.C.

By: 

Paul M. Terrill III
State Bar No. 00785094
Howard S. Slobodin
State Bar No. 24031570
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)

HOHN & JANSSEN

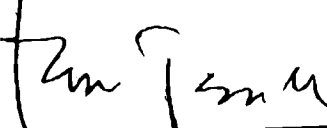
By: 

John Hohn
State Bar No. 09813250
110 E. San Antonio
San Marcos, Texas 78666
(512) 474-9100
(512) 474-9888 (fax)

ATTORNEYS FOR APPLICANT
CANYON REGIONAL WATER AUTHORITY

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2004, a true and correct copy of the foregoing *Objection to Summary of Expenses Incurred by Guadalupe-Blanco River Authority*, was delivered, by U.S. Mail, postage prepaid, on all of those individuals on the attached Service List except by hand-delivery to Ms. Cagle and ALJ Ingraham:


Paul M. Terrill III

SERVICE LIST - SOAH DOCKET NO. 582-04-4678 - CRWA/LAKE DUNLAP

Robin Smith, Attorney
Texas Commission on Environmental Quality
MC-173
P O Box 13087, Austin, Texas 78711-3087
Tel (512) 239-2497
Fax (512) 239-0606

Chief Clerk
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711
Fax (512) 475-4994

Kathy Hopkins, Permit Writer
TCEQ Water Supply Division, MC 160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-2567
Fax: (512) 239-4770

Docket Clerk
Office of Chief Clerk
TCEQ
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-3300
Fax: (512) 239-3311

Scott Humphrey, Attorney
Public Interest Counsel, MC 103
Office of the Public Interest Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax (512) 239-6377

Deborah L. Ingraham
Administrative Law Judge
State Office of Administrative Hearings
300 W 15th Street, Suite 502B
Austin, Texas 78701
Phone (512) 475-4993
Facsimile (512) 936-0770

Molly Cagle
Vinson & Elkins, L.L.P.
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, Texas 78701-3200
Tel: (512) 542-8552
Fax (512) 236-3280

Fred B. Werkenthin, Jr., Attorney
Booth, Ahrens & Werkenthin, P.C.
515 Congress Ave., Ste. 1515
Austin, Texas 78701-3503
Tel: (512) 472-3236
Fax: (512) 473-2609

Phillip Poplin, Attorney
Henry & Poplin
819 1/2 W 11th Street
Austin, Texas 78701
Tel: (512) 748-1297
Fax: (512) 708-1297

Mike Fields, Facilities Manager
Victoria WLE, LP
P.O. Box 8
Fannin, Texas 77960
Tel: (361) 788-5112
Fax: (361) 788-5136

Edmond R. McCarthy, Jr.
Attorney for San Antonio River Authority
711 W. 7th Street
Austin, Texas 78701
Tel: (512) 225-5606
Fax (512) 225-5565

From:
06/05/2006 04:07 FAX

Jun 5 2006 16:14

P.01 01/019

Vinson & Elkins

Facsimile

Molly Cagle mcagle@velaw.com
Tel 512 542 8552 Fax 512.238.3280

CHIEF CLERK'S OFFICE

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

From:

Molly Cagle

Date:

June 5, 2006

Regarding:

GUA160/23007

Number of Pages:

Hard Copy follows.

YES

To:

Mike Rogan
SOAH

Fax:

475-4994

Phone:

and 936-0730

Message:

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

Confidentiality Notice: The information contained in this FAX may be confidential and/or privileged. This FAX is intended to be reviewed initially by only the individual named above. If the reader of this TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this FAX or the information contained herein is prohibited. If you have received this FAX in error, please immediately notify the sender by telephone and return this FAX to the sender at the above address. Thank you.

Vinson & Elkins LLP Attorneys at Law Austin Beijing Dallas
Dubai Houston London Moscow New York Tokyo Washington

2801 Via Fortuna, Suite 100, Austin, Texas 78748-7588
Tel 512 542 8400 Fax 512 542.8612 www.velaw.com

V&E Fax

April 5, 2006 Page 1

From:	Date:	
Molly Cagle	June 5, 2006	YES
Regarding:	Number of Pages:	Hard Copy Follows

DATE: June 5, 2006

TO: Docket Clerk, TCEQ FAX: (512) 239-3311
PHONE: (512) 239-3300

TO: Todd Galiga, Staff Attorney FAX: (512) 239-0606
PHONE: (512) 239-0600

TO: Scott Humphrey, Office of the Public Interest Counsel FAX: (512) 239-6377
PHONE: (512) 239-6363

TO: Roger Nevola FAX: 499-0575
PHONE: 499-0500

TO: Paul M. Terrill FAX: (512) 474-9888
PHONE: (512) 474-9100

PAGES: (including this transmittal page) CLIENT/MATTER: GUA160/23007

FROM: Molly Cagle

RE: SOAH Docket No. 582-05-1005; TCEQ Docket No.2004-0384-UCR

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CHIEF OF OFFICE

June 5 11 14

mr

HAZEN & TERRILL

A PROFESSIONAL CORPORATION

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

May 25, 2005

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

Via Facsimile: (512) 475-4994

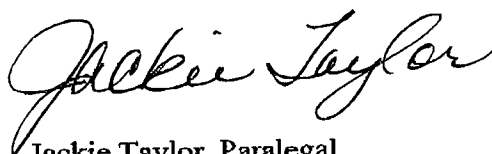
Re: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition
of Bexar Metropolitan Water District to Compel Raw Water Commitment from
Guadalupe-Blanco River Authority

Dear Judge Rogan:

Please be advised that Paul M. Terrill, III, counsel for Bexar Metropolitan Water District.
will be on vacation from June 10, 2005 through June 25, 2005. We respectfully request that no
hearings be set during this time frame.

Thank you for your courtesies in this matter.

Sincerely,



Jackie Taylor, Paralegal
HAZEN & TERRILL, P.C.

/jat

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*

*** TX REPORT ***

FILE COPY

TRANSMISSION OK

TX/RX NO 2241
RECIPIENT ADDRESS ##79661#915124749888
DESTINATION ID
ST. TIME 05/08 04:52
TIME USE 00:50
PAGES SENT 4
RESULT OK

V&E Fax

April 5 2006 Page 1

From:	Date:
Molly Cagle	May 2, 2006
Regarding:	Number of Pages: Hard Copy Follows

TO: Paul M. Terrill

FAX: (512) 474-9888

PHONE: (512) 474-9100

PAGES: 4 (including this transmittal page)

CLIENT/MATTER: GUA160/23007

RE: SOAH Docket No. 582-05-1005; TCEQ Docket No.2004-0384-UCR

MESSAGE:

HAZEN & TERRILL

A PROFESSIONAL CORPORATION

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888**FAX COVER SHEET****DATE : May 25, 2005****TIME : 11:23am****PLEASE DELIVER TO:**

NAME :	Mike Rogan, ALJ	FAX NUMBER :	475-4994
	Docket Clerk		239-3311
	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		
CM #	9234		
TOTAL NUMBER OF PAGES SENT (Including coversheet) :			2 pages
IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.			
REMARKS :			
<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 vacation letter from Paul M. Terrill, III.			
CONFIDENTIALITY NOTICE			
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.			