



Control Number: 43943



Item Number: 23

Addendum StartPage: 0

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HAZEN & TERRILL

A PROFESSIONAL CORPORATION

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

July 5, 2006

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

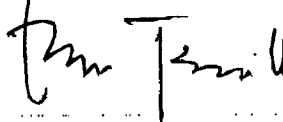
Re: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition
of Bexar Metropolitan Water District to Compel Raw Water Commitment from
Guadalupe-Blanco River Authority

Dear Judge Rogan:

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*

HAZEN & TERRILL

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July 5, 2006

Via Hand Delivery

Vinson & Elkins LLP,
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, Texas 78746

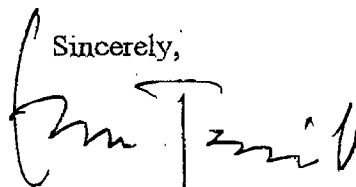
Re: TCEQ DOCKET NO. 2004-1384-UCR; SOAH DOCKET NO. 582-05-1005;
In re Petition of Bexar Metropolitan Water District to Compel Raw Water
Commitment from Guadalupe-Blanco River Authority

Dear Ms. Cagle:

Enclosed please find Bexar Metropolitan Water District's Check No. 62457, payable to the Guadalupe-Blanco River Authority, for expenses in the amount of \$1,492.25. Pursuant to Judge Rogan's Order Number 11 (copy attached) this payment covers all legitimate expenses Bexar Met is required to reimburse to obtain a dismissal of this matter without prejudice pursuant to 30 TEX. ADMIN. CODE § 80.25(e)(2).

Thank you for your courtesies.

Sincerely,

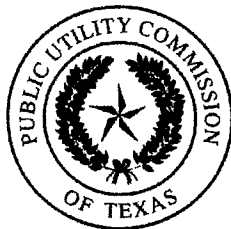


Paul M. Terrill
HAZEN & TERRILL, P.C.

/bhf

Enclosures

cc: Roger Nevola



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.

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

| | | |
|--------------------------------|---|-------------------------|
| PETITION OF BEXAR METROPOLITAN | § | BEFORE THE STATE OFFICE |
| WATER DISTRICT TO COMPEL RAW | § | |
| WATER COMMITMENT FROM | § | OF |
| GUADALUPE-BLANCO RIVER | § | |
| AUTHORITY | § | 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
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

HAZEN & TERRILL

A PROFESSIONAL CORPORATION

810 West 10th Street
Austin, Texas 78701
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FAX COVER SHEET**DATE : July 5, 2006****TIME : 2:21pm****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 |
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| 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> | | | |
| Please see attached correspondence from Paul Terrill dated July 5, 2006. | | | |
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MK

HAZEN & TERRILL

A PROFESSIONAL CORPORATION

810 West 10th Street
Austin, Texas 78701-2005
Tel (512) 474-9100
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June 20, 2006

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:

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 & Assocs. 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

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

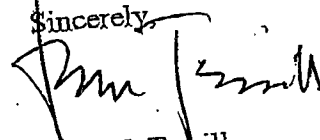
photocopying, travel, long distance, postage, and messenger expenses in Texas law. *See, Flint*, 739 S.W.2d at 626 (Tex. App.-Dallas 1987, writ denied); *see also Shenandoah Associates v. J & K Properties, Inc.*, 741 S.W.2d 470, 486-877 (Tex. App.-Dallas 1987, writ denied) superceded in part by rule now allowing recovery of trial transcripts, as stated in *Crescendo Investments v. Brice*, 61 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 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 F have been clarified and streamlined, and duplicate procedures have been consolidated with the general procedures in Chapter 80. Language is added to 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 39, when proposed.

Chapter 339 is proposed to be repealed in its entirety.

Chapter 340 is amended to consolidate requirements

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:

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* * *


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.

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

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GBRA

PAUL TERRILL
ATTORNEY
810 W 10TH STREET
AUSTIN, TX 78701
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BEXAR METROPOLITAN WATER DIST.

ROGER NEVOLA
ATTORNEY
BEXAR COUNTY COURTESY COPY
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MARK ZEPPA

SCOTT HUMPHREY
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087
AUSTIN, TX 78711-3087
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TCEQ

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

xc: Docket Clerk, State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS
WILLIAM P. CLEMENTS BUILDING, J

300 West Fifteenth Street
Austin, Texas 78701
Phone (512) 475-4993
Facsimile (512) 475-4994

06/27/2006

DATE:

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REGARDING:

ORDER NO. 11 - IDENTIFYING REIMBURSABLE EXPENSES

DOCKET NUMBER:

582-05-1005

FROM:

JUDGE MIKE ROGAN

FAX TO:

FAX TO:

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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STATE OFFICE OF ADMINISTRATIVE HEARINGS

WILLIAM P. CLEMENTS BUILDING, Jr.

300 West Fifteenth Street

Austin, Texas 78701

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06/27/2006

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ORDER NO. 11 - IDENTIFYING REIMBURSABLE EXPENSES

DOCKET NUMBER:

582-05-1005

FROM:

JUDGE MIKE ROGAN

FAX TO:

FAX TO:

PAUL TERRILL

(512) 474-9888

MOLLY CAGLE

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SCOTT HUMPHREY (TEXAS COMMISSION ON
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ENVIRONMENTAL QUALITY)

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TCEQ Docket Clerk, Fax Number 512/239-3311

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HAZEN & TERRILL
A PROFESSIONAL CORPORATION

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

June 20, 2006

Via Facsimile: (512) 475-4994

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 & Assocs. 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

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

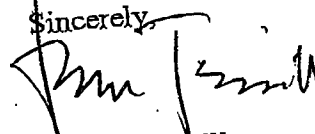
photocopying, travel, long distance, postage, and messenger expenses in Texas law. *See, Flint*, 739 S.W.2d at 626 (Tex. App.-Dallas 1987, writ denied); *see also Shenandoah Associates v. J & K Properties, Inc.*, 741 S.W.2d 470, 486-877 (Tex. App.-Dallas 1987, writ denied) superceded in part by rule now allowing recovery of trial transcripts, as stated in *Crescendo Investments v. Brice*, 61 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 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 F have been clarified and streamlined, and duplicate procedures have been consolidated with the general procedures in Chapter 80. Language is added to 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 39, when proposed.

Chapter 339 is proposed to be repealed in its entirety.

Chapter 340 is amended to consolidate requirements

HAZEN & TERRILL

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810 West 10th Street

Austin, Texas 78701

Tel (512) 474-9100

Fax (512) 474-9888

FAX COVER SHEET**DATE : June 20, 2006****TIME : 4:43pm****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 | | |
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| 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> | | | |
| Please see attached correspondence from Paul Terrill dated June 20, 2006. | | | |
| CONFIDENTIALITY NOTICE | | | |
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Vinson&Elkins

Molly Cagle mcagle@velaw.com
Tel 512.542.8552 Fax 512.236.3280

June 5, 2006

By Facsimile and First Class Mail

The Honorable Mike Rogan
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502B
Austin, Texas 78701

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

V&E

Attachments

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

Vinson&Elkins

Molly Cagle mcagle@velaw.com
Tel 512.542.8552 Fax 512.236.3280

May 2, 2006

Via Fax

Paul M. Terrill III
Hazen & Terrill, P.C.
810 West 10th Street
Austin, Texas 78701-2005

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

Dear Paul:

As I mentioned in my voice mail yesterday, I have examined the relevant bills for the above referenced §11.041 matter. Enclosed is a chart, Summary of Expenses Incurred by Guadalupe-Blanco River Authority ("**GBRA**"), summarizing the Vinson & Elkins ("**V&E**") expenses associated directly with this case to date. GBRA may have incurred other expenses that are reimbursable in defending this matter, but we have elected not to pursue them at this time.

By way of summary, VE prepares and submits to GBRA separate monthly invoices for each matter that we are handling. To prepare the enclosed chart, we used only the expenses billed on the §11.041 matter. Expenses are charged in accordance with my firm's Standard Terms of Engagement for Legal Services. Thus, we charge \$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, Pitney Bowes Management Services, an outside document preparation service, bound documents and charged \$13.21 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

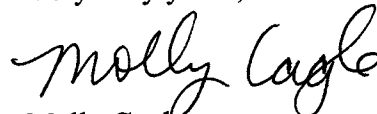
EXHIBIT 1

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.

I plan to send a status report to the Judge shortly advising him that I forwarded this summary to you today, and asking for two weeks for GBRA to file papers in this case. As stated in my voice mail, and as I plan to advise the Judge, Roger and I have been traveling weekly to California since Bexar Metropolitan Water District filed its last motion in this case and we simply have not been able to confer with you on expenses or to otherwise respond to the Judge within the schedule he requested. I apologize if this has inconvenienced you.

Please let me know if you need any additional information regarding the attached chart.

Very truly yours,


Molly Cagle

Enclosure

cc: Fred Blumberg
Roger Nevola

699883_1.DOC

**Summary of Expenses Incurred by GBRA in conjunction with the BexarMet
§11.041 petition**

| Expense | Description | Amount |
|-------------------------------|---|---------------|
| Miscellaneous | Retrieve archived newspaper article for the Second Supplement Appendix to the Motion to Dismiss. | \$ 4.95 |
| In-house Photocopying | Copying research documents for review of the petition; copying Notice of Hearing and Scheduling Order; copying exhibits for Motion to Dismiss; copying discovery requests; copying pleadings for filing and service to the parties. | \$ 1,001.05 |
| Courier Services | FedEx to GBRA and Pro Courier to TCEQ various pleadings. | \$ 313.74 |
| Computer Legal Research | | \$ 903.89 |
| Facsimiles | Filing by facsimile various pleadings. | \$ 78.25 |
| Postage | Postage for engagement letter; postage for various pleadings. | \$ 36.90 |
| Travel | Travel to TCEQ. | \$ 3.65 |
| Long Distance Telephone | Calls to GBRA. | \$ 40.50 |
| Outside Professional Services | Out-sourced professional binding services. | \$ 13.21 |

*** TX REPORT ***

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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: .

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

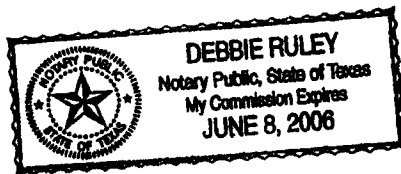
expenses incurred by GBRA through Vinson & Elkins in connection with the permitting process for the Application:

| | | |
|-----------------------------------|--|------------|
| (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 pre-filed 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 & Assocs. 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,

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.

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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:


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**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. 10
ALLOWING FURTHER BRIEFING OR ARGUMENT**

On June 2, 2006, Petitioner submitted to the State Office of Administrative Hearings ("SOAH") a letter report and brief, proposing that Petitioner reimburse GBRA \$1,492.25 for expenses incurred in this action, in order to qualify for dismissal without prejudice under 30 TAC § 80.25(e). Petitioner agreed, that is, to pay a portion of GBRA's total claimed expenses of \$2,396.14, objecting only to GBRA's claim of \$903.89 for "computer legal research."

GBRA responded to Petitioner's proposal on June 6, 2006, urging that Petitioner be ordered to pay the entire \$2,396.14 in expenses identified by GBRA. The Response noted that a SOAH judge previously has found the categories of expenses in question (including computer research expenses) to be reimbursable under § 80.25(e). This ruling occurred, specifically, in SOAH Docket No. 582-04-4678, involving Canyon Regional Water Authority ("CRWD").

The undersigned ALJ is not at all certain that the CRWD case provides a definitive precedent on the issue of allowable expenses, since the cited decision on that issue does not seem to have been explained in a written order or specifically adopted by the TCEQ commissioners thereafter. Petitioner has presented a reasonable argument that legal research expenses may *not* fall within those expenses allowable under § 80.25(e), but the principal authority it identified for this position is apparently mis-cited – *i.e.*, 21 *TexReg* 2137 does not include any discussion of that rule.

Under these circumstances, the ALJ will allow the parties until **June 20, 2006**, to revise, supplement, or amplify their arguments and citations of authority with respect to the pending issue. Petitioner has urged that the issue represents a question of law, with no hearing on the matter

Order No. 7


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

necessary. Given that the parties apparently agree on the amounts attributable to GBRA's various expenses, the ALJ agrees. GBRA's response of June 6 also seems implicitly in agreement on that point. The ALJ therefore will rule on the issue of allowable expenses after reviewing the material submitted by June 20, unless a party promptly presents a convincing showing that some other procedure would be more appropriate.

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 7, 2006.



MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

WILLIAM P. CLEMENTS BUILDING, Jr.

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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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ORDER NO. 10 - ALLOWING FURTHER BRIEFING OR ARGUMENT

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582-05-1005

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582-05-1005

JUDGE MIKE ROGAN

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Vinson&Elkins

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| | | | |
|-------------------|--------------|-------------------------|---------------------------|
| From: | | Date: | |
| Molly Cagle | | June 5, 2006 | |
| Regarding: | | Number of Pages: | Hard Copy Follows: |
| GUA160/23007 | | | YES |
| To: | Fax: | Phone: | |
| Mike Rogan | 475-4994 | | |
| SOAH | and 936-0730 | | |
| Message: | | | |

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

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V&E Fax

April 5, 2006 Page 1

| | | |
|-------------|--------------------------------------|--------------------|
| From: | Date: | |
| Molly Cagle | <i>June</i> April 5, 2006 | YES |
| Regarding: | Number of Pages: | Hard Copy Follows: |

DATE: June 5, 2006

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

Vinson&Elkins

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Tel 512.542.8552 Fax 512.236.3280

June 5, 2006

By Facsimile and First Class Mail

The Honorable Mike Rogan
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502B
Austin, Texas 78701

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 ("**CWRA**"), 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

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708658_2.DOC

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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*)

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May 2, 2006

Via Fax

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

Dear Paul:

As I mentioned in my voice mail yesterday, I have examined the relevant bills for the above referenced §11.041 matter. Enclosed is a chart, Summary of Expenses Incurred by Guadalupe-Blanco River Authority ("**GBRA**"), summarizing the Vinson & Elkins ("**V&E**") expenses associated directly with this case to date. GBRA may have incurred other expenses that are reimbursable in defending this matter, but we have elected not to pursue them at this time.

By way of summary, VE prepares and submits to GBRA separate monthly invoices for each matter that we are handling. To prepare the enclosed chart, we used only the expenses billed on the §11.041 matter. Expenses are charged in accordance with my firm's Standard Terms of Engagement for Legal Services. Thus, we charge \$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, Pitney Bowes Management Services, an outside document preparation service, bound documents and charged \$13.21 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

EXHIBIT 1

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699882_1.DOC

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