

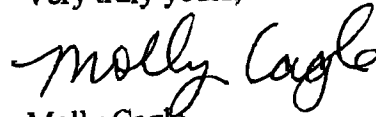
V&amp;E

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

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

| <b>Expense</b>                | <b>Description</b>  | <b>Amount</b> |
|-------------------------------|---|---------------|
| 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      |

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April 5, 2006 Page 1

|                    |                                     |
|--------------------|-------------------------------------|
| From:              | Date:                               |
| <b>Molly Cagle</b> | 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

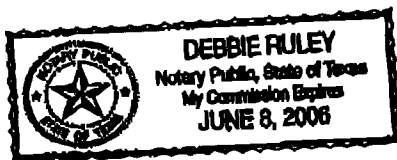
expenses incurred by GBRA through Vinson & Elkins in connection with the permitting process for the Application:

|                                   |  |            |
|-----------------------------------|--|------------|
| (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 29<sup>th</sup> day of October, 2004.



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

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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

§  
§  
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§

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

*Canyon Regional Water Authority's  
Objection to Summary of Expenses Incurred  
by Guadalupe-Blanco River Authority*

**EXHIBIT 3**

Page 1 of 7



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,

*Canyon Regional Water Authority's  
Objection to Summary of Expenses Incurred  
by Guadalupe-Blanco River Authority*

Page 4 of 7

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. 10<sup>th</sup> 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

*Canyon Regional Water Authority's  
Objection to Summary of Expenses Incurred  
by Guadalupe-Blanco River Authority*

Page 6 of 7

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

Robin Smith, Attorney  
Texas Commission on Environmental Quality  
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Fax: (512) 239-0606

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TCEQ Water Supply Division, MC 160  
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Austin, Texas 78711-3087  
Tel: (512) 239-2567  
Fax: (512) 239-4770

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Public Interest Counsel, MC 103  
Office of the Public Interest Counsel  
Texas Commission on Environmental Quality  
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Fax: (512) 239-6377

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Fax: (512) 236-3280

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Henry & Poplin  
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Attorney for San Antonio River Authority  
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Chief Clerk  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711  
Fax: (512) 475-4994

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

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

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

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

V&amp;E Fax

|             |                    |
|-------------|--------------------|
| From:       | Date:              |
| Molly Cagle | June 5, 2006       |
| Regarding:  | YES                |
|             | 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

# Vinson&Elkins

Molly Cagle mcagle@velaw.com  
Tel 512.542.8552 Fax 512.238.3280

June 5, 2006

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

*By Facsimile and First Class Mail*

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

Vinson & Elkins LLP Attorneys at Law Austin Beijing Dallas Dubai  
Houston London Moscow New York Shanghai Tokyo Washington  
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2801 Via Fortuna, Suite 100, Austin, TX 78746-7568  
Tel 512.542.8400 Fax 512.542.8612 [www.velaw.com](http://www.velaw.com)



V&E

The Honorable Mike Rogan June 5, 2006 Page 2

**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

Vinson & Elkins LLP Attorneys at Law Austin Beijing Dallas Dubai  
Houston London Moscow New York Shanghai Tokyo Washington  
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2801 Via Fortuna, Suite 100, Austin, TX 78746-7568  
Tel 512.542.8400 Fax 512.542.8612 [www.velaw.com](http://www.velaw.com)

V&amp;E

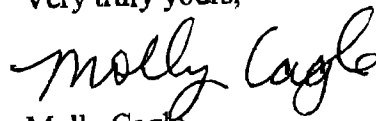
Mr. Paul M. Terrilli III May 2, 2006 Page 2

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

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

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April 5, 2006 Page 1

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| From:              | Date:                               |
| <b>Molly Cagle</b> | 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:

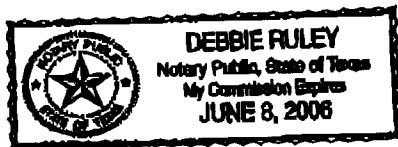
|                                   |  |            |
|-----------------------------------|--|------------|
| (1) Travel                        | Travel to and from the Texas Commission on Environmental Quality and CRWA's offices in New Braunfels.  | \$23.88    |
| (2) In-house Photocopying         | 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 29<sup>th</sup> 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

*Canyon Regional Water Authority's  
Objection to Summary of Expenses Incurred  
by Guadalupe-Blanco River Authority*

**EXHIBIT 3**

Page 1 of 7

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,

*Canyon Regional Water Authority's  
Objection to Summary of Expenses Incurred  
by Guadalupe-Blanco River Authority*

*Page 4 of 7*

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. 10<sup>th</sup> Street  
Austin, Texas 78701  
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(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

*Canyon Regional Water Authority's  
Objection to Summary of Expenses Incurred  
by Guadalupe-Blanco River Authority*

Page 6 of 7

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

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TCEQ Water Supply Division, MC 160  
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Public Interest Counsel, MC 103  
Office of the Public Interest Counsel  
Texas Commission on Environmental Quality  
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Chief Clerk  
State Office of Administrative Hearings  
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Docket Clerk  
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TCEQ  
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Deborah L. Ingraham  
Administrative Law Judge  
State Office of Administrative Hearings  
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Victoria WLE, LP  
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Fannin, Texas 77960  
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Vinson&amp;Elkins

Facsimile

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 Tel 512.542.8552 Fax 512.236.3280

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

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

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

2801 Via Fortuna, Suite 100, Austin, Texas 78746-7568  
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mr

**HAZEN & TERRILL**

A PROFESSIONAL CORPORATION

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

June 5, 2006

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

*Via Facsimile: (512) 475-4994*

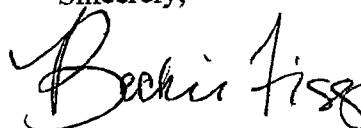
Re: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition  
of Bexar Metropolitan Water District to Compel Raw Water Commitment from  
Guadalupe-Blanco River Authority

Dear Judge Rogan:

Please find enclosed a list provided to Bexar Metropolitan Water District by the Guadalupe-Blanco River Authority ("GBRA") on May 2, 2006. It is the summary of expenses incurred by GBRA in conjunction with the above-captioned case. The list was inadvertently left off of the letter sent to you on Friday, June 2, 2006.

If you have any questions, please feel free to contact our office.

Sincerely,



Beckie Figg, Legal Assistant  
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 5, 2006  
Page 2

bcc: Gil Olivares ([gilivares@bexarmet.org](mailto:gilivares@bexarmet.org))  
Adolfo Ruiz ([aruiz@bexarmet.org](mailto:aruiz@bexarmet.org))

**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    |

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810 West 10<sup>th</sup> Street  
Austin, Texas 78701  
Tel (512) 474-9100  
Fax (512) 474-9888**FAX COVER SHEET****DATE : June 5, 2006****TIME : 11:36am****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 :  | Beckie Figg, Legal Assistant |              |          |
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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 correspondence.  |                              |              |          |
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MR

**HAZEN & TERRILL**

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

June 2, 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 15<sup>th</sup> Street  
Austin, Texas 78701

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

Dear Judge Rogan:

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 it claims 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

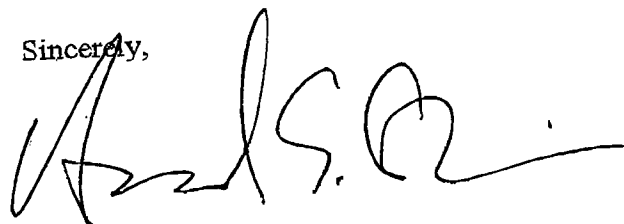
The Honorable Mike Rogan  
Administrative Law Judge  
June 2, 2006  
Page 2

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 Vinson 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  
Page 3

bcc: Gil Olivares ([gilivares@bexarmet.org](mailto:gilivares@bexarmet.org))  
Adolfo Ruiz ([aruiz@bexarmet.org](mailto:aruiz@bexarmet.org))



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**FAX COVER SHEET****DATE : June 2, 2006****TIME : 4:46pm****PLEASE DELIVER TO:**

|   |                           |              |          |
|---|---------------------------|--------------|----------|
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|   | 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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| <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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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. 9  
FURTHER EXTENDING DEADLINE FOR REPORT


On May 23, 2006, Petitioner submitted to the State Office of Administrative Hearings ("SOAH") a scheduled status report, indicating that the parties are continuing to discuss the appropriate level of reimbursable expenses in this case and proposing that the record remain open for an additional week to allow the parties further opportunity to resolve questions regarding those expenses.

Based upon the parties' representations, the ALJ hereby extends until **June 2, 2006**, the deadline to propose an appropriate amount of case expenses for Petitioner to defray in order to qualify for dismissal without prejudice under 30 TAC § 80.25(e). By that date, Petitioner shall submit to the ALJ another brief written status report, indicating whether the parties have reached an agreement regarding expenses or expect to be able to do so within a reasonably short time thereafter. If no agreement is then anticipated, the report should include a proposal for a procedural mechanism that will enable the ALJ to make an efficient determination of reimbursable expenses. Other parties may also submit status reports by June 2, if desired.

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 May 24, 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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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

xc: Docket Clerk, State Office of Administrative Hearings

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**05/24/2006**

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**ORDER NO. 9 - FURTHER EXTENDING DEADLINE FOR REPORT**

DOCKET NUMBER:

**582-05-1005**

FROM:

**JUDGE MIKE ROGAN**

**FAX TO:**

**FAX NO:**

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JW

# HAZEN & TERRILL

A PROFESSIONAL CORPORATION

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

May 23, 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 15<sup>th</sup> Street  
Austin, Texas 78701

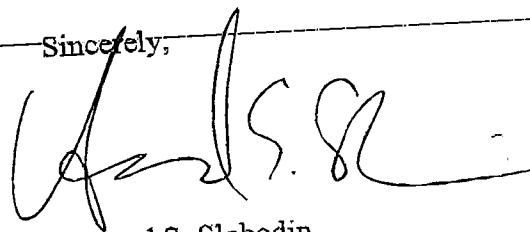
Re: TCEQ Docket No. 2004-1384-UCR; SOAH Docket No. 582-05-1005; In re Petition  
of Bexar Metropolitan Water District to Compel Raw Water Commitment from  
Guadalupe-Blanco River Authority

Dear Judge Rogan:

In response to Order No. 8, please be advised that Petitioner Bexar Metropolitan Water District ("BexarMet") and Respondent Guadalupe-Blanco River Authority ("GBRA") are in continuing discussions regarding the amount of reimbursable expenses claimed by GBRA under 30 TEX. ADMIN. CODE § 80.25(e)(2). I anticipate that the parties will conclude those discussions by June 2, 2006. The parties respectfully request the opportunity to continue their discussions until that time, and advise the Court on June 2, 2006 whether an agreement regarding those expenses has been reached. If no agreement has been reached by that time, BexarMet will propose to the Court a procedural mechanism that would enable the ALJ to make an efficient determination of reimbursable expenses, as required by Order No. 8.

Thank you for your consideration in this matter.

Sincerely,



Howard S. Slobodin  
HAZEN & TERRILL, P.C.

The Honorable Mike Rogan  
Administrative Law Judge  
May 23, 2006  
Page 2

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  
May 23, 2006  
Page 3

bcc: Gil Olivares ([golivares@bexarmet.org](mailto:golivares@bexarmet.org))  
Adolfo Ruiz ([aruiz@bexarmet.org](mailto:aruiz@bexarmet.org))

**HAZEN & TERRILL**

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