

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. 8
EXTENDING DEADLINE FOR REPORT


On May 2, 2006, Guadalupe-Blanco River Authority ("GBRA"), an intervenor in the captioned action, submitted to the State Office of Administrative Hearings ("SOAH") a scheduled status report, indicating that the parties have been prevented from fully discussing the appropriate level of GBRA's reimbursable expenses in this proceeding, because of out-of-town personal commitments on the part of one party representative. GBRA proposed leaving the record open for an additional two weeks to allow the parties further opportunity to resolve questions regarding the appropriate expenses.

Based upon the parties' representations, the ALJ hereby extends until **May 23, 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 a 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 May 23, 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 8, 2006.



MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS
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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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05/08/2006

DATE:

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NUMBER OF PAGES INCLUDING THIS COVER SHEET:

REGARDING:

ORDER NO. 8 - EXTENDING DEADLINE FRO REPORT

DOCKET NUMBER:

582-05-1005

FROM:

JUDGE MIKE ROGAN

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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****05/08/2006****4**

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

READING:

ORDER NO. 8 - EXTENDING DEADLINE FOR REPORT**582-05-1005**

LET NUMBER:

JUDGE MIKE ROGAN

1:

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MR

Vinson & Elkins

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From:

Molly Cagle

Date:

May 2, 2006

Regarding:

Number of Pages:

5

Hard Copy Follows.

No

①

TO:

Mike Rogan, SOAH Administrative
Law Judge

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PAGES:

(including this transmittal page)

CLIENT/MATTER: GUA160/23007

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

MESSAGE: Please see attached GBRA's Status Report in response to SOAH Order No. 7

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May 2, 2006

Via Facsimile 475-4994

Mr. 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
Status Report in Response to Order No. 7

Dear Judge Rogan:

Guadalupe-Blanco River Authority ("**GBRA**") encloses with this letter its Status Report in the above referenced case.

Thank you for your time and attention to this matter.

Very truly yours,


Molly Cagle

Enclosure

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

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

**IN RE THE PETITION OF
BEXAR METROPOLITAN
WATER DISTRICT
TO COMPEL RAW WATER
COMMITMENT FROM
GUADALUPE-BLANCO
RIVER AUTHORITY**

§
§
§
§
§
§
§

**BEFORE
THE TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY**

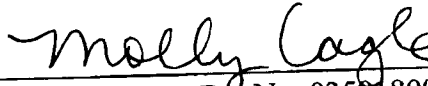
STATUS REPORT

This status report is submitted on behalf of Guadalupe-Blanco River Authority ("GBRA") in response to Order No. 7, Directing Parties to Determine Expenses, and request for status report.

Because of extended, out-of-town personal commitments, counsel for GBRA was not able to confer with Bexar Metropolitan Water District ("Bexar Met") during the period proposed for conference in Order No. 7. The undersigned advised Mr. Paul Terrill via phone message yesterday that a summary of expenses would be forthcoming today, and that GBRA would file a status report with the Judge taking responsibility for the lack of activity regarding resolution of expenses. A summary of expenses has now been sent to Mr. Terrill for his consideration. We apologize to Your Honor and to BexarMet for any inconvenience our delay in conferring regarding expenses, or submission of this status report may have caused.

Under the circumstances, GBRA respectfully requests that the Judge leave the record open in this matter for at least two weeks, to allow GBRA to file any papers which may be appropriate. We are hopeful that reimbursement of expenses will be resolved by that date as well.

Respectfully submitted,



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ATTORNEYS FOR GUADALUPE- BLANCO
RIVER AUTHORITY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Guadalupe-Blanco River Authority's Status Report was served on the following person(s) via electronic mail and/or facsimile on May 2, 2006.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

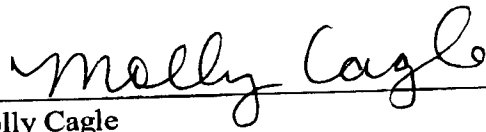
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**SOAH DOCKET NO. 582-05-1005
TCEQ DOCKET NO. 2004-1384-UCR**

**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. 7
DIRECTING PARTIES TO DETERMINE EXPENSES**

On April 14, 2006, Bexar Metropolitan Water District, Petitioner in the captioned action, submitted to the State Office of Administrative Hearings ("SOAH") a letter clarifying that it seeks to dismiss the captioned action *without prejudice*. Accordingly, Petitioner stated that it is also seeking "an accounting of GBRA's expenses, not including its attorney's fees, in this proceeding." Under the rules of the Texas Commission on Environmental Quality ("TCEQ"), at 30 TAC § 80.25(e), the party initiating an action is entitled to withdraw it without prejudice if it reimburses other parties for all expenses, not including attorney's fees, that those other parties have incurred in the case.

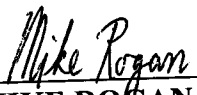
The ALJ directs the parties (primarily the Petitioner and GBRA) to confer and determine whether they can agree upon the appropriate amount of case expenses for Petitioner to defray in order to qualify for dismissal without prejudice under 30 TAC § 80.25(e). By **May 1, 2006**, Petitioner shall submit to the ALJ a 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 (hearing, submission of affidavits, or other process) that will enable the ALJ to make an efficient determination of reimbursable expenses.

Other parties may also submit status reports by May 1, if desired. Any proposed procedural schedules should reflect consultation with other parties in an effort to reach agreement on an acceptable process of accounting for expenses.

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 April 19, 2006.



MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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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**

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04/19/2006

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ORDER NO. 7 - DIRECTING PARTIES TO DETERMINE EXPENSES

DOCKET NUMBER:

582-05-1005

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H. Rogan

HAZEN & TERRILL

A PROFESSIONAL CORPORATION

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Tel (512) 474-9100
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April 14, 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 the Court's request for clarification regarding BexarMet's Motion to Withdraw its Petition to Compel Raw Water Commitment, please be advised that BexarMet requests dismissal of that Petition without prejudice. A review of the Water Code and the TCEQ's rules provides no guidance on the effects of a dismissal with prejudice in this matter. Because the potential consequences of a dismissal with prejudice are unknown, BexarMet must request a dismissal without prejudice of its Petition to Compel.

The purpose of BexarMet's Petition to Compel was to secure water for use in Comal County, Texas. BexarMet was forced to petition the TCEQ because of GBRA's monopolistic exercise of its dominant share of water rights in the Guadalupe River basin. Despite having almost 30,000 acre-feet of water available, GBRA refused to provide water to its competitor — BexarMet. Even given GBRA's anti-competitive refusal to provide BexarMet water, GBRA does not dispute that BexarMet may serve in four service areas in Comal County certificated to BexarMet by the TCEQ and confirmed and ratified by the Texas Legislature in Senate Bill 1494, Act of May 28, 2003, 78th Leg., R.S., ch. 375, 2003 Tex. Gen. Laws 1593 ("SB 1494"). However, GBRA has raised SB 1494 as a bar to BexarMet's hypothetical service in other areas of Comal County in this action. That service is purely hypothetical because BexarMet does not seek to provide water service to any Comal County areas other than its four CCN areas ratified by SB 1494 and a CCN application exempt from SB 1494. GBRA has urged these same SB 1494 claims in another forum — in Cause No. C2003-1201A, *City of Bulverde, Texas, and Guadalupe-Blanco River Authority v. Bexar Metropolitan Water District*, in the 22nd Judicial District Court, Comal County, Texas.

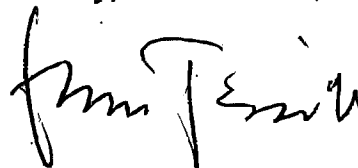
Given GBRA's past behavior, BexarMet's future water needs in the four Comal County CCN areas ratified by SB 1494 could theoretically necessitate another petition to compel against GBRA. BexarMet cannot risk GBRA raising a dismissal with prejudice in this matter as a bar to such further

The Honorable Mike Rogan
Administrative Law Judge
April 14, 2006
Page 2

requests. Such a claim by GBRA would be consistent with its monopolistic use of its control over the state-owned waters of the Guadalupe River basin to attempt to oust BexarMet from service in Comal County completely. Moreover, GBRA would likely attempt to use a BexarMet request for dismissal with prejudice in this case against BexarMet in GBRA's Comal County District Court suit. For those reasons, BexarMet must request that its Petition to Compel in this matter be dismissed without prejudice. Consistent with 30 TEX. ADMIN. CODE § 80.25, BexarMet is seeking an accounting of GBRA's expenses, not including its attorneys' fees, in this proceeding.

Thank you for your consideration in this matter.

Sincerely,



Paul M. Terrill III
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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Austin, Texas 78701
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Fax (512) 474-9888**FAX COVER SHEET****DATE :** April 14, 2006**TIME :** 5:48pm**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
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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>			
See attached April 14, 2006 correspondence from Paul M. Terrill, III.			
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April 14, 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 the Court's request for clarification regarding BexarMet's Motion to Withdraw its Petition to Compel Raw Water Commitment, please be advised that BexarMet requests dismissal of that Petition without prejudice. A review of the Water Code and the TCEQ's rules provides no guidance on the effects of a dismissal with prejudice in this matter. Because the potential consequences of a dismissal with prejudice are unknown, BexarMet must request a dismissal without prejudice of its Petition to Compel.

The purpose of BexarMet's Petition to Compel was to secure water for use in Comal County, Texas. BexarMet was forced to petition the TCEQ because of GBRA's monopolistic exercise of its dominant share of water rights in the Guadalupe River basin. Despite having almost 30,000 acre-feet of water available, GBRA refused to provide water to its competitor — BexarMet. Even given GBRA's anti-competitive refusal to provide BexarMet water, GBRA does not dispute that BexarMet may serve in four service areas in Comal County certificated to BexarMet by the TCEQ and confirmed and ratified by the Texas Legislature in Senate Bill 1494. Act of May 28, 2003, 78th Leg., R.S., ch. 375, 2003 Tex. Gen. Laws 1593 ("SB 1494"). However, GBRA has raised SB 1494 as a bar to BexarMet's hypothetical service in other areas of Comal County in this action. That service is purely hypothetical because BexarMet does not seek to provide water service to any Comal County areas other than its four CCN areas ratified by SB 1494 and a CCN application exempt from SB 1494. GBRA has urged these same SB 1494 claims in another forum — in Cause No. C2003-1201A, *City of Bulverde, Texas, and Guadalupe-Blanco River Authority v. Bexar Metropolitan Water District*, in the 22nd Judicial District Court, Comal County, Texas.

Given GBRA's past behavior, BexarMet's future water needs in the four Comal County CCN areas ratified by SB 1494 could theoretically necessitate another petition to compel against GBRA. BexarMet cannot risk GBRA raising a dismissal with prejudice in this matter as a bar to such further

The Honorable Mike Rogan
Administrative Law Judge
April 14, 2006
Page 2

requests. Such a claim by GBRA would be consistent with its monopolistic use of its control over the state-owned waters of the Guadalupe River basin to attempt to oust BexarMet from service in Comal County completely. Moreover, GBRA would likely attempt to use a BexarMet request for dismissal with prejudice in this case against BexarMet in GBRA's Comal County District Court suit. For those reasons, BexarMet must request that its Petition to Compel in this matter be dismissed without prejudice. Consistent with 30 TEX. ADMIN. CODE § 80.25, BexarMet is seeking an accounting of GBRA's expenses, not including its attorneys' fees, in this proceeding.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Terrill III". The signature is stylized with a large, looped "P" and "T".

Paul M. Terrill III
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*
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