

PROPOSAL FOR DECISION

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does not mean a CCN holder is not required to have the capacity to provide continuous and adequate service.

Texas Local Government Code § 402.001(b) permits a municipality to purchase, construct, or operate a utility system inside or outside its municipal boundaries and may regulate the system in a manner that protects the interests of the municipality. Protestants' argument was persuasive that this provision speaks to municipally owned, operated, or constructed water systems rather than ones owned, operated, or constructed by a third party. Further, the right to purchase, construct, and operate a water system is not inconsistent with the WATER CODE provisions requiring a CCN holder to have the capacity to provide continuous and adequate service.

Protestants' argument that the Attorney General and TCEQ would have difficulty taking enforcement action against a party in GBRA's position points up further difficulties with the application.

Bulverde contended that the critical issue in this case is whether a new city may obtain a CCN when it has contracted with another utility to provide service on its behalf. Although its argument had some appeal from a purely public policy standpoint, it was ultimately not persuasive for the reasons stated above.

In summation, the overriding issue is whether Bulverde's contracts with GBRA is sufficient to demonstrate that Bulverde "possesses . . . the capability to provide continuous and adequate service." The testimony and the terms of the contracts show it does not. The parties have negotiated arms-length agreements, pursuant to which they have separate rights and duties, including rights in the event of contractual disputes. GBRA and Bulverde are not partners in



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application. If they were, the application would be deficient because GBRA has not applied for an amendment to its CCN.⁸⁰

D. Ability of Bulverde to Provide Adequate Service/Access to an Adequate Supply of Water

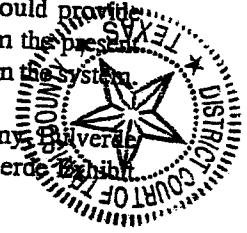
1. Bulverde

Bulverde contended there was ample evidence to prove it has access to an adequate supply of water. It cited its agreements with GBRA pursuant to which GBRA has agreed to sell up to 400 acre-feet of treated water annually to the City from the Western Canyon Project. The project will pass through Bulverde's requested service area, providing Bulverde access at numerous delivery points; it will serve approximately 800 connections. There will be metering and control equipment at each delivery point. It could be connected to BexarMet's existing Bulverde Hills certified area for emergency needs.⁸¹

The Western Canyon Project will have an interconnected water distribution system to serve the requested area as Bulverde grows. Bulverde and GBRA anticipate constructing ground and elevated storage facilities and installing service pumps as recommended in the Bulverde Master

⁸⁰This case is distinguishable from the applications of Mustang Water Supply Corporation and the Town of Little Elm for CCNs, TCEQ Dockets 2000-1233-UCR and 1999-1216-UCR, SOAH Docket No. 582-01-1618, where the Administrative Law Judge and the Commission disagreed with the Executive Director's position that because a CCN applicant would not own the facilities it would use to provide retail wastewater service, it would not bear ultimate responsibility for the facilities and could not assure continuous and adequate service. The Executive Director pointed out that a water district would own the sewer treatment plant and another water district would hold the sanitary sewer permit and own the local wastewater treatment and transportation system. The Administrative Law Judge found that the application met all legal criteria for approval of the application. The applicant was a water supply corporation that had applied to become a special utility district. Its existing water service systems and facilities were rated superior by TCEQ and it was already certified to provide water service in the requested area. It would provide operations and maintenance of the wastewater collection system. Obviously, this case is different from the present docket where Bulverde has had no experience in providing water service and will not operate and maintain the system.

⁸¹Welsch testimony, Bulverde Exhibit D at 5-7, 9-10 and Attachment 18 at 10; Blumberg testimony, Bulverde Exhibit E at 11-12; Pape-Dawson, Engineers, Inc. vice-president William Vandertulip testimony, Bulverde Exhibit G at 7-8; Master Plan Report, Bulverde Exhibit H at 3-5.



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Plan Report. The transmission systems will include water storage systems, pump stations, and secondary disinfection facilities. The facilities will be designed in accordance with the more stringent GBRA design criteria of 446 gallons of storage per connection rather than the 300 gallons required by TCEQ.⁸²

Mr. Blumberg testified all the facilities will meet applicable legal requirements.⁸³

Bulverde acknowledged that 400 acre-feet may not be enough to serve the 1600 connections anticipated in Bulverde's application, but contended it is enough to meet immediate needs in the requested area as well as growth needs for the next 20 years. Bulverde and GBRA will work together as demand grows to develop other water sources, including development of limited amounts of groundwater, using imported water, and implementing conservation measures.⁸⁴

Bulverde asserted even though it may be the spring of 2004 before it can provide water through the Western Canyon Project, it could provide water from other sources on a temporary basis. As an example, it could receive water if GBRA sent raw water through Canyon Lake WSC which would treat the water through its River Crossing Subdivision system, thereby allowing the Bulverde Water System to receive treated water on the north side of State Highway 46.⁸⁵

⁸²Vandertulip testimony, Bulverde Exhibit GBRA at 7-8; Blumberg testimony, Bulverde Exhibit E at 11-12; Bulverde Exhibit D, Attachment 16..

⁸³Bulverde Exhibit E at 12-13.

⁸⁴Welsch testimony, Bulverde Exhibit D at 10.

⁸⁵Vandertulip testimony, Bulverde Exhibit G at 8; Tr. at 908-909. Mr. Vandertulip testified Bulverde had had conversations with Canyon Lake WSC about providing water on an interim basis within eight months. *Id.*



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Bulverde pointed out that it may request additional water from the Western Canyon Project and if water is available and the parties agree on terms, GBRA will likely sell it.⁸⁶

Bulverde responded to Protestants' argument that it could not comply with 30 TAC § 291.85(b)⁸⁷ because it cannot provide service within 180 days of a qualified application—Protestants cited the fact that water from the Western Canyon Project will not be available until the spring of 2004. Bulverde argued the rule does not impose an absolute obligation to provide service within 180 days or even a fixed period within which service must be provided. It cited several rule provisions in support of this position.

Subsection (a) of the Rule 291.85 provides that utilities must serve only a "qualified service applicant" and a qualified service applicant must meet the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service. Bulverde's subdivision ordinance⁸⁸ and contracts with GBRA provide that

⁸⁶Welsch testimony, Tr. at 172-176.

⁸⁷Section 291.85(b) provides:

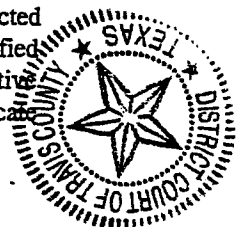
§ 291.85. **Response to Requests for Service by a Retail Public Utility Within its Certified Area**

(a) . . .

(5) If construction is required to fill the order and if it cannot be completed within 30 days, the retail public utility shall provide a written explanation of the construction required and an expected date of service.

(b) Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date of a completed application was accepted from a qualified applicant may constitute refusal to serve, and may result in the assessment of administrative penalties or revocation of the certificate of convenience and necessity or the granting of a certificate to another retail public utility to serve the applicant.

⁸⁸Bulverde Exhibit A, Attachment 5 at 42-43.



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a developer becomes a qualified applicant by paying the cost of constructing lines to serve him or her and possibly having to grant an easement for constructing the lines.

Section 291.85(a)(5) provides, if construction is required to fill an order and the order cannot be filed within 30 days, a retail public utility must provide a written explanation of the construction required and the expected date of service.

Section 291.85^c and (d) provide that a customer must be informed in writing of extension and construction costs and permit a retail public utility to require a service applicant to grant easements necessary for service.

Bulverde contended that taken together, these rules provide when construction is necessary, a retail public utility may take longer than 180 days to provide service after giving the customer a written explanation of the construction requirement and an expected date of service. Bulverde also argued an absolute 180-day requirement to provide service is contrary to good public policy and discourages regionalization. It maintained entities will be unwilling to provide service to larger areas and spend the money necessary to do so with that requirement. It asserted it is unlikely that individual property owners will request service until a line is extended to them because of the expense of line extensions.

2. Executive Director

The Executive Director urged denial under these criteria based on its arguments in Section C above, that Bulverde does not have the financial, managerial, or technical capability to provide water service.



3. Protestants

Protestants cited pre-filed testimony from GBRA director of project development David Welsch that the 400 acre-feet of water per year from GBRA's Western Project will not be enough to meet projected water needs in the requested area. They cited the testimonies of Mr. Welsch that obtaining other water supplies, including groundwater, will be necessary,⁸⁹ and Mr. Barton that Bulverde has no plans to seek other supplies and is depending on GBRA.⁹⁰

According to Protestants, GBRA has not explained where Bulverde will get the other water and there is no indication of how Bulverde will finance additional water services--the rate structures in the Bulverde/GBRA contracts cover only the GBRA costs of operation and the debt service GBRA incurs with no indication of another source of funds for additional water.

Protestants argued if Bulverde is granted a CCN this year, it will not be able to fulfill the Commission's service requirement rules at 30 TAC § 291.85(a)-(b) because it will not be operational until the spring of 2004. Section (b) states, except for good cause shown, a failure to provide service within 30 days of an expected date or within 180 days of a completed application from a qualified applicant may constitute a refusal to serve and result in administrative penalties. BexarMet contended Bulverde's application is premature.

Protestants pointed out that the conceptual master plan presented by Mr. Vandertulip has not been formally approved by either the Bulverde city council or the GBRA board. It has not been funded, no rights-of-way have been obtained, and there are no developer-funded service requests in hand.

⁸⁹Bulverde Exhibit D at 10 and Ex. 18.

⁹⁰Barton testimony, Tr. at 65.



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Protestants argued, under its ordinances, Bulverde will not allow interim groundwater systems even if extension of the GBRA system is prohibitively expensive.

Protestants cited the fact that a district court order permitting GBRA to use Canyon Lake water for the Western Canyon Project is now on appeal.⁹¹

Protestants cited testimony from WSI vice-president and chief operator David Wallace and Mr. Ahrens that Mr. Barton said the City wants a CCN as a tool to control and restrict growth in the area.⁹²

4. Analysis

The ALJ concludes that Bulverde clearly proved it will, with GBRA's help,⁹³ provide adequate service and have access to an adequate water supply after the completion of the Western Canyon Project in the spring of 2004. Although the evidence of its ability to provide water service before that time is much less substantial, the ALJ finds that it will have that ability.

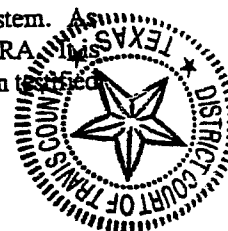
Bulverde's access to an adequate water supply before the spring of 2004 is addressed first. Mr. Welsch testified GBRA would look at groundwater on an interim basis. GBRA believes it is not bad per se to use Trinity Aquifer water, but that it is being overused. Bulverde's master plan contemplates that some areas will remain on the Trinity Aquifer.⁹⁴ GBRA presently has a

⁹¹BexarMet Exhibit G. *Friends of Canyon Lake, Inc. v. Guadalupe-Blanco River Authority, et al.*, Cause 03-02-00221-CV, (Tex App.— Austin).

⁹²Wallace testimony, WSI Exhibit A at 17; Ahrens testimony, BexarMet Exhibit C at 13.

⁹³This conclusion is based strictly on the assumption that GBRA will operate Bulverde's water system. As previously discussed, that assumption is not necessarily guaranteed under Bulverde's agreements with GBRA. It is clear that Bulverde itself, without help from a third party, does not have access to adequate water—Mr. Barton testified that Bulverde is not able to provide service to the area without its agreements with GBRA. Tr. at 122, 128.

⁹⁴Tr. at 181-182.



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large service area within the requested area at the Johnson Ranch just east of Highway 281 and another large service area to the immediate northeast of the requested area.⁹⁵ Mr. Miller testified there should be enough Trinity Aquifer water in the eastern portion of the requested area (east of Highway 281) and that it is conceivable to drill wells in areas where there is ample water and transport it to areas where the aquifer is deficient.⁹⁶ Bulverde and GBRA will work together to develop other resources including limited groundwater, importing water, and conservation measures. Protestants' witness Charles Ahrens testified it is conceivable to construct stand-alone wells as an interim measure if necessary.⁹⁷

Mr. Welsch testified that GBRA has had conversations with Canyon Lake WSC and has considered interim projects with hydrologists and geologists similar to the ones BexarMet has proposed, *i.e.* an eight-month project to provide water to users who have a present need for water. GBRA would consider those short-term options as part of a master plan for building parts of the pipeline that would be used later in the entire project. Mr. Welsch acknowledged not having any presently drafted or signed agreements with Canyon Lake WSC, but said GBRA has drafted a conceptual plan that has been approved by GBRA's general manager. The plan has not been approved by the GBRA board or the Bulverde city council and has not been funded.⁹⁸

Mr. Vandertulip testified initial components of the system could be in place within eight months. The initial water could be sent to Canyon Lake WSC which could treat the water through its River Crossing Subdivision system, after which GBRA would receive treated water on the north side of Highway 46. The treated water could then be distributed to current requests for

⁹⁵Bulverde Exhibit 10.

⁹⁶Bulverde Exhibit I at 5-7; Tr. at 281-286, 291.

⁹⁷Tr. at 479.

⁹⁸Tr. at 909-910. Mr. Welsch also testified if someone asked for water at this time, it would probably take six months to develop and submit a plan to the customer with alternate water sources; Bulverde would trust that the customer would review them and decide whether they were reasonable. Tr. at 167-168.



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service in the area and to BexarMet's storage tank in Bulverde Hills to meet emergency needs. Additional distribution mains and storage tanks can be scheduled to match completion of the transmission main.⁹⁹

GBRA's long record of service, compliance record, and willingness to take interim steps to meet its obligations persuade the ALJ that it will likely comply with applicable regulations, including 30 TAC § 291.85(b).¹⁰⁰

There are additional factors showing Bulverde will be able to provide water after the spring of 2004. The 400-acre feet of water Bulverde will start to receive beginning in the spring of 2004 will be part of the much larger Western Canyon Project pursuant to which GBRA will have access to 10,000 acre-feet of treated water to be provided to customers in Comal, Kendall, and Bexar Counties.¹⁰¹ Canyon Reservoir water has the advantage of a "firm yield," meaning water is available even during drought.¹⁰²

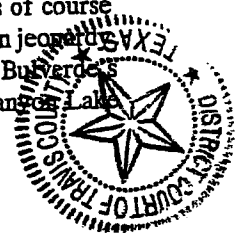
According to Mr. Welsch, GBRA anticipates 2400 customers in the requested service area. The preponderant evidence is the 400 acre-feet of water committed to Bulverde will be enough to meet immediate and growth needs for the next 20 years. This water would need to be

⁹⁹Bulverde Exhibit G at 8; Tr. at 269-270,

¹⁰⁰Protestants' construction of 30 TAC § 291.85(b) is more persuasive than Bulverde's. The rule states, except for good cause, the failure to provide service within 30 days of an expected date (of service) or within 180 days of the date a completed application is accepted from a qualified applicant may result in administrative penalties or revocation of a CCN. As can be seen, the rule is written in the disjunctive. Read literally, a failure to provide service on either ground would subject the CCN holder to disciplinary action. There is nothing in other portions of § 291.85 that is contrary to this reading.

¹⁰¹The outcome of the appeal in *Friends of Canyon Lake* to stop GBRA from using this water is of course unknown. If GBRA should lose the lawsuit, the 400 acre-feet promised to Bulverde could obviously be in jeopardy. GBRA won in the trial court. This analysis is based on the assumption that the lawsuit will not impede Bulverde's plans. (GBRA recently received TCEQ approval to use an additional 40,000 acre-feet of water out of Canyon Lake (Bulverde Exhibit P).

¹⁰²Tr. at 198.



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supplemented at some point by groundwater on a limited basis and perhaps imported water from the Texas coast.¹⁰³ Mr. Barton thought the 400-acre feet would suffice for six to eight years.¹⁰⁴

Bulverde may request additional water and GBRA will likely sell it if the parties can agree on terms. The South Texas Regional Water Plan Summary indicates that GBRA has no shortage of water today and will not have any shortage in the next 30 or 50 years.¹⁰⁵

GBRA has a successful service record for over 30 years providing service to cities, parks and other facilities in the Guadalupe/Blanco River basin. It currently owns and/or operates five water treatment plants. As indicated previously it now serves more than 70,000 persons and handles accounts, billing, collections, and customer service for about 3,000 wholesale and retail customers. The evidence indicates it has an excellent service and compliance record with 27 certified operators.

E. Financial Stability of Bulverde, Including, if Applicable, the Adequacy of its Debt-Equity Ratio

1. Bulverde

Bulverde contended it is financially stable according to its 2000 audit report, its financial report for fiscal year 2001, and other financial data, with over \$1,000,000 in the bank and revenue from property taxes, franchise taxes, sales taxes, and other charges equaling \$612,480

¹⁰³Tr. at 184-185; 193. BexarMet's contention that Mr. Welsch conceded that 400 acre-feet would be insufficient to meet Bulverde's projected water needs in the requested area was not persuasive. Mr. Welsch testified that 400 acre-feet is not sufficient to serve the 1600 connections Bulverde identified as potential customers in its application, but it would be more than sufficient to meet projected needs for the next 20 years. He said as demand grows, GBRA and Bulverde would work together to develop alternatives. Bulverde Exhibit D at 10.

¹⁰⁴Bulverde Exhibit D at 10; Tr. at 92.

¹⁰⁵Bulverde Exhibit D, Attachment 21 at ES-44.



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for the fiscal year ending December 31, 2000.¹⁰⁶ Mr. Schuerg testified GBRA could construct the water system and remain financially stable.¹⁰⁷ Bulverde maintained it will not have any additional financial burdens because GBRA has agreed to finance and operate the water system.¹⁰⁸

2. The Executive Director

Based on testimony from Mr. Howell and a memorandum from TCEQ certification and rate analyst Dan Smith,¹⁰⁹ the Executive Director argued the City did not present adequate information for a determination of whether it has the financial ability to own, operate, and maintain the proposed system. Because of this, the financial stability of the applicant, a criterion the Commission must consider under WATER CODE § 13.246(c), could not be determined.

3. Protestants

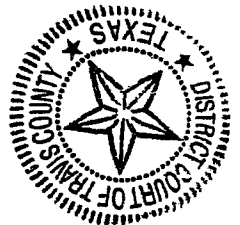
Protestants said it already discussed this criterion in Part C, dealing with Bulverde's financial, managerial, and technical capability. They asserted that Bulverde has not demonstrated it will have the independent financial resources to assume the responsibility of a public water system.

¹⁰⁶Bulverde Exhibit A, Attachments 2 and 3; Schuerg testimony, Bulverde Exhibit F at 5; Barton testimony, Tr. at 67-68.

¹⁰⁷Bulverde Exhibit F at 8.

¹⁰⁸Schuerg testimony at 8.

¹⁰⁹ED Exhibit 1-F at 5 and 1-G.



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4. Analysis

Bulverde appears to be sufficiently financially stable to assume its financial obligations under its contracts with GBRA, *i.e.* to pay \$23,000 to \$27,000 per year for its rights to 400 acre-feet of water to be supplied by GBRA.¹¹⁰ The City had an equity balance of more than \$1,000,000 for the year ending December 31, 2001, with net income of more than \$260,000 for the entire year. It intends to pay for the water through sales taxes and franchise fees. In addition to being financed by GBRA, operation of the water system will be paid for by the system's customers and, as new development occurs, a portion of the reservation fee for the water supply will also be paid by developers.¹¹¹

As asserted by the Executive Director, the evidence does not show, however, that Bulverde has the financial ability to own, operate, and maintain the proposed system apart from its contacts with GBRA.

F. Feasibility of Obtaining Service From an Adjacent Retail Public Utility/Adequacy of Service to Requested Area

1. Bulverde

Bulverde contended the water service currently provided in the requested area is inadequate and it is not feasible for customers in the area to obtain service from other providers. Mr. Welsch testified, to the best of his knowledge, the other utilities do not have infrastructure or long-term

¹¹⁰Tr. at 68.

¹¹¹Bulverde Exhibit A at 18, Attachment 2.



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adequate water supplies in the requested area.¹¹² Bulverde cited testimony that neither Comal nor its affiliate B & M Reality, d/b/a BBR Water Company (BBR) are capable of or have an interest in serving the entire requested service area¹¹³ and neither WSI nor Diamond have the capacity to serve the entire requested service area and do not intend to provide water west of Highway 281.¹¹⁴

Bulverde argued Mr. Wallace's claim that Diamond or WSI can provide water to the requested service area east of Highway 281 is questionable and speculative. It maintained the 500-acre feet of surface water available under WSI's contract with GBRA¹¹⁵ is intended to provide water to WSI's and Diamond's existing developments,¹¹⁶ which are not yet completed—one, Rim Rock, is only about 50 per cent developed and another, Oak Village North, is about 85 per cent complete.¹¹⁷ WSI and Diamond are currently serving 900 homes in the requested area and 1,822 customers overall.¹¹⁸ In the past WSI and Diamond had difficulty in meeting water demands in Oak Village North.¹¹⁹ Bulverde contended WSI and Diamond need all their capacity to serve their existing certified areas.

According to Bulverde, if WSI or Diamond provided water service to the requested service area by drilling additional wells, it would undermine the water management strategy proposed in the South Texas Regional Project, which includes minimizing depletion of aquifer water and

¹¹²Bulverde Exhibit D at 18.

¹¹³Comal owner Terrance Ciliske testimony, Tr. at 680; Brown Engineering Company vice president Mark Brown testimony, Tr. at 694.

¹¹⁴WSI and Diamond vice president David Wallace testimony, Tr. at 636.

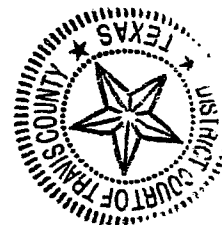
¹¹⁵WSI Exhibit A, Attachment 3.

¹¹⁶Wallace testimony, Tr. at 618.

¹¹⁷*Id.* at 626-627.

¹¹⁸*Id.* at 623; WSI CCN amendment application at 10.

¹¹⁹Wallace testimony, Tr. at 624.



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encouraging the use of surface water from the Western Canyon Project.¹²⁰ Bulverde pointed out, for WSI or Diamond to provide service to the requested area, they must obtain TCEQ approved amendments to their CCNs.¹²¹ There is no guarantee they could.

Bulverde contended BexarMet's water service in the requested area is also inadequate. It argued, except for the Trinity Aquifer, BexarMet's water supplies are all located outside Comal County. Even if BexarMet could use the water, it has no ability to "wheel" the water into Comal County through the use of other utilities' facilities. The Trinity Aquifer is an inadequate source of water to support growing demand in the area.¹²²

Bulverde disputed the Executive Director's argument that it failed to address the feasibility of obtaining service from adjacent public utilities because it did not contact them. It argued that contacting neighboring utilities is not the only way to determine the adequacy of their water resources.

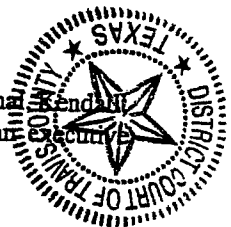
Bulverde maintained there can be no dispute that its proposal meets the legislative goal of regionalization because it is not building a physically separate system. Its system will be interconnected to GBRA's Western Canyon Project, which will deliver treated water to western Comal County and will be interconnected with GBRA's certified area known as the Johnson Ranch.¹²³ Based on these considerations, Bulverde argued it was unnecessary for it to show it was uneconomical for it to regionalize with another public utility under 30 TAC § 291.102(b).

¹²⁰Bulverde Exhibit D, Attachment 21 at ES-22.

¹²¹WATER CODE § 13.242(a).

¹²²Bulverde Exhibit D, Attachment 16, GBRA Regional Water Supply Project for Portions of Comal and Bexar Counties; Bulverde Exhibit D, Attachment 21, South Central Texas Regional Water Plan summary..

¹²³Bulverde Exhibit H, Attachment A.



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2. Executive Director

Based on testimony from Mr. Barton that Bulverde did not contact neighboring utilities to see if it was feasible to connect with any of their services,¹²⁴ the Executive Director contended Bulverde failed to adequately demonstrate that it is not feasible to obtain service from an adjacent retail public utility as required by WATER CODE § 13.241(d) and 30 TAC § 291.102(b).

The Executive Director cited Mr. Howell's testimony that other certified providers adjacent to or surrounded by the proposed service area are willing to amend their CCNs to provide service to portions of the area sought by Bulverde.¹²⁵

The Executive Director also cited Mr. Howell's testimony that the area requested is not currently served by a centralized utility system and that individuals in the area are served by private wells.¹²⁶ Mr. Howell contended it is in the best interests of the public to have a single, reliable water supplier certified to the entire area that water service is needed and wanted.

The Executive Director disputed Bulverde's assertions that it would not be feasible to obtain service from WSI or Diamond because they do not have sufficient water to serve both their existing certified area and the requested area and because there is no guarantee an amendment to their certificates would be approved. She pointed out that Bulverde admitted in its closing brief that it currently lacks sufficient water resources to serve the requested area¹²⁷ and that WATER CODE § 13.246(b) permits the Commission to issue a certificate for a part of a requested area.

¹²⁴Tr. at 10.

¹²⁵Executive Director Exhibit F at 5.

¹²⁶Howell testimony, ED Exhibit F at 3-4.

¹²⁷Bulverde Closing Brief, August 9, 2002, at 15. Bulverde said it recognizes that 400-acre-feet of water from GBRA is not enough to serve 1600 anticipated connections, but asserted it is sufficient to meet immediate and expected water needs for the next 20 years. *Id.*



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3. Protestants

In addition to the legal authority the Executive Director discussed, Protestants cited TEX. HEALTH & SAFETY CODE § 341.0315(b),¹²⁸ as mandating a policy in favor of existing regional water utility systems over new ones. They cited 30 TAC § 290.39(f)(2), requiring the applicant to "submit copies of written requests seeking to obtain service from each of those drinking water supply systems [within a two mile radius of the proposed system] and copies of the responses" It pointed to the fact that Bulverde did not contact other existing utilities.

Protestants identified existing utilities as serving or wanting to serve the following portions of the Bulverde requested service area:

- BexarMet is serving or requesting to serve the Bulverde service area west of Highway 281, except for a small portion covered by Comal's CCN amendment.¹²⁹
- WSI seeks to serve that portion of the area east of Highway 281 and south of Highway 46 inside of FM 3009 except the strip between Highway 281 and Stahl Road.¹³⁰
- Lomas Water Company and BBR have pending CCN amendment applications for service areas overlapped by the territory requested by WSI.¹³¹

¹²⁸Section 341.0315(b) provides, "The commission shall encourage and promote the development and use of regional and area wide drinking water supply systems."

¹²⁹BexarMet Exhibit C, Attachments 6 and 9; Comal Exhibit A, Attachment 2.

¹³⁰WSI Exhibit A, Attachment 5, CCN map.

¹³¹WSI Exhibit D.



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Protestants pointed out that each of these utilities already serves customers outside their exiting CCNs and asserted they are legally entitled to serve adjoining properties within one-fourth mile of their certified areas.¹³² Each utility has an application at TCEQ to expand its certified area.

Protestants contended the only portions left of the Bulverde requested service area that are not inside an existing or proposed service area are a few isolated strips of land along Highway 281 and Stahl Road, north of Highway 46 and east of Highway 281, and between Cibolo Creek and FM 1863 and east of FM 3009. They said each of these strips border the existing service area of a retail public water utility and most of the area could be served via the one-quarter mile buffer extension zone permitted by WATER CODE § 13.243(1) if the requested amendments are granted.

According to Protestants, Bulverde's argument that none of the neighboring utilities are capable of serving the entire area ignores the fact that TCEQ may grant the CCN for all or a portion of the requested area.¹³³ Protestants acknowledged that the neighboring utilities need CCN amendments to expand their service area, but pointed out that Bulverde failed to even ask them if they could serve a portion of the area. Protestants argued, since each of the existing water utilities has a track record of providing water utility service to the public, state policies for utilizing existing utility resources should prevail.¹³⁴ They contended there is no need for water utility service from Bulverde.

¹³²WATER CODE § 13.243(1) provides a certified water utility is entitled to extend its service area to adjoining properties within one-fourth mile of the boundary of its certified area.

¹³³WATER CODE § 13.246(b).

¹³⁴WSI Exhibit A, Attachment 4, *The Feasibility of Regionalization: Water Utility Program*, Chapter 1.



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Protestants contended Bulverde/GBRA does not intend to design and construct a water system to serve the entire service area,¹³⁵ even though Mr. Barton said the service area will encompass a 50-year growth projection.¹³⁶ Bulverde has not submitted a plan to show how individual property owners are going to get water extended to their properties and, unlike existing purveyors, Bulverde has no track record in doing so.

The following discussion deals with BexarMet's response to Bulverde's assertions that it is not be feasible to obtain water from BexarMet.

In response to Bulverde's argument that BexarMet is incapable of serving the area, BexarMet argued it is not required to serve an area with surface water only. It is allowed to serve any portion of the requested area through TCEQ-approved groundwater supplied water systems.¹³⁷ If its planned transmission line is not in place when it receives a qualified service applicant/developer request, it intends to use groundwater as an interim means to achieve compliance with 30 TAC § 291.85(b).¹³⁸

BexarMet maintained it has one alternate water supply contract with Canyon Lake WSC.¹³⁹ Construction is currently underway to bring the water to a jointly owned BexarMet/Canyon Lake WSC transmission line and elevated storage tank on Highway 281 and then west on Highway 46 and south to BexarMet's Bulverde Hills subdivision service area.¹⁴⁰ The transmission line and storage tank are the first step of a network of transmission lines designed by BexarMet deputy

¹³⁵Bulverde Exhibit H - Master Plan.

¹³⁶Tr. at 62.

¹³⁷30 TAC §§ 290.38 - 290.48; *Sipriano v. Great Spring Waters of America, Inc.*, 1 S.W. 3rd 75 (Tex. 1999).

¹³⁸Ahrens testimony, BexarMet Exhibit C at 26.

¹³⁹BexarMet Exhibit C, Attachment 5.

¹⁴⁰BexarMet deputy general manager of operations Larry Bittle testimony, Tr. at 501-502.



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general manager and chief engineer Johnnie Terrazas.¹⁴¹ Bulverde's argument that BexarMet does not have a means of delivering water from Bexar County to supply Comal County ignores its plan for phased construction of transmission lines.

BexarMet asserted it has other water resources to the south of the requested area in Bexar County, Trinity Aquifer wells, Edwards Aquifer wells, and purchased water contracts. It may mix water resources throughout the district subject to availability of transmission line paths through which to route the water. BexarMet is exploring routing through its own lines or by wheeling through neighboring utilities' systems.

Mr. Ahrens testified BexarMet executed its first surface water supply contract with GBRA for water in Bexar County in July 1998, and has applied to transfer 400 acre-feet of its water rights under the contract from Bexar to Comal County for use in the proposed area. This was followed by BexarMet's succession to Bulverde Water Company rights to the GBRA regional surface water project in western Comal County.¹⁴²

Overall, BexarMet argued it has proposed a water resource development plan consistent with the statutory mandate for "an access to an adequate water supply." This includes: groundwater wells serving individual systems; a network of transmission lines interconnecting systems; a Canyon Lake WSC feeding transmission line network; GBRA Western Project water if available in the future; other BexarMet water resources from Bexar County feeding transmission network through transmission line(s) to be built and/or wheeling through neighboring utility systems; and other unidentified water sources such as from existing regional purveyors like WSI.

¹⁴¹BexarMet Exhibit C, Attachment 6.

¹⁴²BexarMet Exhibit C at 6-7; BexarMet Exhibit C, Attachment 3. BexarMet said GBRA has refused to finalize negotiations for another contract in Comal County. BexarMet Exhibit C, Attachment 4. BexarMet argued that GBRA's refusal may be coming to an end as a result of this case and its own arguments in *City of San Antonio vs. Texas Water Commission*, 407 S.W. 2d 752, 768 (Tex. 1966) (requiring the sale of water and service to the public without discrimination).



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BexarMet contended that a plan of mixed surface and ground water resources are compatible with TCEQ regulations and state water laws. WSI has a similar proposal before TCEQ. GBRA witness Ed Miller acknowledged that the Trinity Aquifer has never been documented to go dry; its problem has been low production during times of drought. BexarMet asserted Mr. Miller testified the Trinity aquifer water problem can be cured by appropriately spacing wells on the aquifer.¹⁴³

BexarMet asserted its water resource plan will be developed like other water systems have developed—as customer growth and demand dictates.¹⁴⁴

4. Analysis

Bulverde did not adequately address this criteria. To demonstrate that regionalization or consolidation with another retail public utility is not economically feasible, the Commission's rules at 30 TAC § 291.102(b) require applicants for a new CCN to provide certain information, including, but not limited to: a description of the type of service that a neighboring public drinking water system is willing to provide and comparison with the service the applicant is proposing; and an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring public drinking water supply system for at least five years. Bulverde did not provide all the information required by the Commission's rules. It argued it is not necessary to contact neighboring utilities to determine the adequacy of their water resources. However, the ultimate determination on the adequacy of neighboring utilities' resources rests with the Commission, not Bulverde. A failure to provide required information hampers the Commission's ability to make that decision.

¹⁴³Tr. at 281; Bulverde Exhibit I at 7.

¹⁴⁴As support for gradual development, Protestants cited the progressively increasing minimum plan requirements tied to population increases in the Public Drinking Water System Hygiene Rules at 30 TAC § 291.102(b).



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Bulverde's argument that the policy of regionalization will be met because Bulverde's system will be connected with the much larger Western Canyon Project had some appeal; nonetheless, Bulverde did not provide the Commission all the information it has required to adequately address this issue.¹⁴⁵

There is evidence that Bulverde's real reason for deciding not to seek service from neighboring utilities is simply that it did not want the service. Mr. Barton testified Bulverde believes an integrated single entity covering Bulverde's requested area would be more efficient and better manage the limited groundwater with surface water than numerous small systems.¹⁴⁶ Additionally, according to Mr. Wallace and Mr. Ahrens, Mr. Barton said Bulverde wants a CCN as a tool to control and restrict growth in the area.¹⁴⁷

Bulverde's arguments that service is inadequate from neighboring utilities was unpersuasive. Several existing utilities, including WSI, Lomas, and BBR, presently serve uncertified adjoining properties within one-fourth mile of the boundary of their certified area, as permitted by WATER CODE § 13.243(1)¹⁴⁸ BexarMet is an existing retail public utility that serves portions of the requested area and will serve about half of the area requested by Bulverde if its application is approved. However, whether its application will be approved is unknown.¹⁴⁹

¹⁴⁵It should be noted that a legal challenge to the Western Canyon Project is currently on appeal in the appellate courts. Although GBRA won at the trial court level, the likely outcome of the appeal is unknown.

¹⁴⁶Bulverde Exhibit A at 9.

¹⁴⁷WSI Exhibit A at 17; BexarMet Exhibit C at 13.

¹⁴⁸Those utilities have pending CCN amendment applications requesting to serve additional areas. However, because the applications were not decided at the time of the hearing, it is purely speculative to say whether they will be approved.

¹⁴⁹A discussion of BexarMet's access to adequate water follows in the part of this proposal that addresses its application.



Testimony from WSI and Diamond was they could not serve the entire area. They did not say they could not provide some water.¹⁵⁰ The Commission may issue a CCN for construction of only a portion of a water system or for the partial exercise of a CCN.¹⁵¹

G. Effect of Granting the Amendment on Bulverde and on any Retail Public Utility of the Same Kind Already Serving the Proximate Area

1. Bulverde

a. Effect on Bulverde

Bulverde contended an approval of its application will have a positive effect on it by promoting development, adding to its economic base, attracting business, stabilizing its economy, and ensuring an integrated single municipal utility for it, its ETJ, and its surrounding area. It will assure a long-term water supply to the requested area that will comply with regulatory standards. There will be no negative financial effects for Bulverde because the system will be designed, constructed, operated, maintained, and financed by GBRA.¹⁵²

Bulverde conceded it is not yet a "retail public utility," but maintained that does not preclude a consideration of how it may be affected by the issuance of a CCN to either it or BexarMet. It argued the Commission's rules suggest the effect of granting a CCN on cities should be considered because they require notice to all neighboring municipalities.¹⁵³

¹⁵⁰Tr. at 636, 680, 694.

¹⁵¹WATER CODE § 13.256(b).

¹⁵²Barton testimony, Bulverde Exhibit A at 9, 16; Welsch testimony, Bulverde Exhibit D at 19. Attachment

¹⁵³30 TAC § 291.106(b).



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Bulverde disputed Protestants' assertions that its reasons for seeking a CCN are irrelevant—it emphasized the effect a CCN will have on it and its need to have jurisdiction over water service to its citizens. It argued it is entitled to use all mechanisms available to it to provide and protect its water system and public health and welfare.¹⁵⁴

Bulverde discounted Protestants' argument that as a late-comer it has a lesser right to a CCN. It argued that pre-existing utilities are not preferred in CCN applications and pointed out it filed its application nearly four months before BexarMet. It also contended a municipality's incorporation date has no bearing on its authority to provide water service to its citizens.

b. Effect on Other Utilities

Bulverde pointed out, of the ten separate public utilities in the immediate area, four¹⁵⁵ have shown no interest in serving the requested area and have not protested the application. It has settled its differences with Canyon Lake WSC¹⁵⁶ and that utility has no interest in serving the requested area. The other five utilities, BBR, Comal, WSI, Diamond, and BexarMet, are protesting its application.

Bulverde argued that granting it a CCN will have little or no overall impact on other retail public utilities. It argued, with Bulverde providing water service to the requested area, other utilities will be able to focus on serving their existing certified areas and there will be less competition for groundwater sources.¹⁵⁷

¹⁵⁴TEX. LOCAL GOV'T CODE ANN. §§ 51.001 and 402.001 and WATER CODE §§ 13.241-13.247

¹⁵⁵Lomas Water Company, Berry Oaks Water Company, El Ridge Water Company, and the City of Fair Oaks.

¹⁵⁶Bulverde Exhibit C.

¹⁵⁷Welsch testimony, Bulverde Exhibit D at 17



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In contending that other utilities will not be effected by granting it a CCN, Bulverde repeated many of the arguments it asserted to show the other utilities cannot provide adequate water service—that they do not provide service to the area, have little or no infrastructure in the area,¹⁵⁸ and there was no evidence identifying who they are serving within one-quarter mile of their certified areas; that neither Comal nor BBR have the ability to serve the requested area because they are primarily interested in providing water service to properties immediately adjacent to their certified areas;¹⁵⁹ that BexarMet, WSI, and Diamond do not have adequate long-term water supplies sufficient to meet the needs of the requested service area¹⁶⁰ (both BexarMet and WSI have reported deficits in meeting existing water supply needs);¹⁶¹ that WSI's rights to 500 acre-feet of water from the Western Canyon Project is necessary for current needs; and that BexarMet does not have access to sustainable surface water in Comal County, but must rely on limited and variable groundwater sources.

2. Executive Director

The Executive Director pointed out that granting a CCN will obligate Bulverde to provide continuous and adequate service and respond to requests for service within an adequate time.¹⁶²

¹⁵⁸*Id.*

¹⁵⁹Ciliske testimony, Tr. at 680; Brown testimony, Tr. at 694.

¹⁶⁰Welsch testimony, Bulverde Exhibit D at 17.

¹⁶¹*Id.* at 15; Ahrens testimony, Tr. at 395-398; Wallace testimony, Tr. at 624.

¹⁶²ED Exhibit F-1 at 4.



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3. Protestants

a. Effect of Granting the Certificate on Bulverde

Protestants cited Mr. Barton's reasons for the CCN application as: the inability of the Trinity Aquifer, the only source of groundwater in western Comal County, to supply water for long-term population growth; the proliferation of CCN's with new water systems being built for new subdivisions; an integrated single entity's ability to cover the requested area more efficiently and to better manage limited groundwater with conjunctive use of surface water; Bulverde's citizens' health and welfare being best served by planning for a municipal water system; ensuring the adequacy of water service in Bulverde's city limits, ETJ, and surrounding areas; and the receipt of requests for water service.

Protestants said Bulverde's claims concerning the benefits of a municipal water system are untrue and misleading because the application is really for a GBRA water system. Only at some uncertain future date, if Bulverde has the financial means, will it be able to purchase the distribution system portions of the water system. Bulverde will never have the right to own or control the transmission lines, water production, or treatment plant.

Protestants argued Bulverde is wrong that there will be little negative impact from its receiving a CCN. They pointed out there is significant regulatory risk in ensuring that a water system operates in accordance with law. CCN violations can run up to \$5,000.00 per day per violation.¹⁶³

According to Protestants, most of the reasons Bulverde expressed for wanting a CCN are not relevant to the provision of water utility service by a state-approved purveyor and are beyond

¹⁶³WATER CODE § 13.414(a).



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Bulverde's jurisdiction as a general law municipality. Holding a water utility CCN will provide no greater authority. The proliferation of new CCNs is a matter strictly within the control of TCEQ. Bulverde will be given notice of all applications in the immediate area and the right to protest. Granting a CCN will have no bearing on whether there are new subdivisions—the Commission will decide the number of area water systems. The Commission has exclusive jurisdiction under TEX. HEALTH & SAFETY CODE ch. 341 to promulgate the Chapter 290 Public Drinking Water System Hygiene Rules to establish minimum standards for water systems. A CCN does not add or detract from municipal powers.

Protestants asserted that Bulverde's interest in insuring adequate water service inside the city, its ETJ, and adjacent area is no greater than the interests of the general public, water purveyors, and the Commission. That is the reason the legislature has mandated regionalization of water services, which the Commission has formalized in its rules and the TCEQ Regionalization Policy Guide.

Protestants maintained a CCN has nothing to do with protecting a city's infrastructure. A municipality adopts road ordinances governing road cuts and rights-of-way usage as part of its city government role.

In Protestants' opinions, it is a matter of conjecture whether a single integrated utility can more efficiently manage limited groundwater and surface use than numerous small systems. A water system properly designed, sized, and constructed into the Trinity Aquifer to meet the demand of a limited customer base can capably meet demand through the worst droughts of record.¹⁶⁴ The existence of a single integrated system around them will have no impact on their specialized operations.¹⁶⁵

¹⁶⁴Citing testimony from Mark S. Brown, professional engineer consultant for Comal and BBR; C and Comal Exhibit C.

¹⁶⁵Citing WSI Exhibit A, Attachment 4, page 1 insert and page 3, paragraph 1 bullet points.



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Protestants asserted that regardless of the merits of a single integrated entity versus small systems, BexarMet on the west and WSI on the east achieve the same desired goal without the need for a start-up utility.

Protestants acknowledged Bulverde is probably right that the development of multiple water resources will be necessary to sustain long-term growth because the Trinity Aquifer alone will likely be inadequate, but maintained BexarMet, Canyon Lake, WSI, Diamond, and Fair Oaks are presently developing those resources.

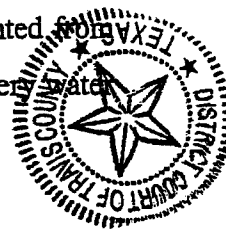
Protestants cited the fact that a system's size is not a ground for denying it under the criteria listed in WATER CODE § 13.246⁹ and 30 TAC § 291.102.

Protestants stressed there will be no effect on water service requests until 2004, when the water system will be in place. Even then, the service will be provided by GBRA rather than Bulverde.

According to Protestants, the use of a CCN as a monopoly on utility services to control growth by a municipality is a gross perversion and distortion of the universal service intent of WATER CODE ch. 13.

- b. Effect of Granting the Certificate on Other Public Utilities of the Same Kind Already Serving the Area

Protestants challenged Bulverde's assertions that granting the application would have little effect on neighboring utilities. They asserted that neighboring utilities will be prevented from expanding their areas because Bulverde's application abuts the existing boundary of every water utility in the area.



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Protestants indicated that Comal, Lomas, and BBR would be barred from serving uncertified properties they are now serving within a quarter mile of their certified areas and which they (Comal, Lomas, and BBR) or their affiliates own in whole or in part. WSI and Diamond would not be able to extend their customer bases, which in turn would make the purchase of groundwater from GBRA less affordable. They would not be able to continue their long-term ongoing regional resource development plans to serve western Comal County. These utilities have all already begun construction projects within the areas they serve to provide improved service. BexarMet would lose the opportunity to develop a customer base to finance its ongoing water resource program for its existing customers and the region.

In Protestants opinions, TCEQ is estopped from granting a CCN to some of the requested service area because it is already being "served" by Comal, BBR, Lomas, and BexarMet. Service is defined in WATER CODE § 13.002(21) as "any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons . . . and the public" Protestants noted that Bulverde did not request dual certification or decertification in these areas.¹⁶⁶

Protestants asserted a high per-capita cost will be incurred in beginning a water supply system from scratch. There will not be an existing nucleus of customers to absorb start up costs. Moreover, although developers may pay for new subdivision additions, existing residents of the Bulverde service area will pay extremely high connection charges or rates if GBRA rolls the costs of a new system into the initial rates of existing residential areas.

¹⁶⁶WATER CODE § 13.242(a) precludes a retail public utility from serving an area already being lawfully served by a certified utility unless it also receives a CCN.



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4. Analysis

The ALJ concludes that granting the CCN in its entirety will have an adverse effect on existing public retail utilities for the reasons cited by Protestants. Comal, Lomas, BBR, Diamond, WSI would be barred from serving uncertified areas they are now serving within a quarter mile of their certified areas (portions of these areas are owned by the utilities or affiliated entities) and they could not extend their customer bases. An approval of the Bulverde application might impair those utilities' plans to expand their customer base and reduce costs through economies of scale.

Granting a CCN to Bulverde will help assure a long-term water supply to its residents, thereby promoting development, adding to its economic base, and attracting businesses—the Trinity Aquifer alone will probably be inadequate to sustain long-term growth in the area. Bulverde will gain jurisdiction over the water service provided to its citizens. Granting a CCN could possibly have a negative effect on Bulverde if it or GBRA run afoul of TCEQ regulations.

H. Probable Improvement of Service or Lowering of Costs to Consumers in the Area

1. Bulverde

Bulverde maintained its proposal would be an improvement because there is a need for water service in the requested area.

Bulverde said it anticipates its cost to provide the service to be similar to that of any other entity providing service because all will have similar infrastructure costs.¹⁶⁷ It argued there is no

¹⁶⁷Schuerg testimony, Bulverde Exhibit F at 8 and Tr. at 249.



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evidence to support Protestants' contention that entities already serving the area could provide water more cheaply because none of the entities could support the entire area with existing systems. They would be obliged to construct a system similar to Bulverde's.¹⁶⁸

Bulverde contended it is not necessary to have a rate structure in hand to have a reasonable idea of whether there will be an improvement of service or lowering of costs. It cited WATER CODE § 13.246(c), requiring evidence of a "probable" lowering of costs, to show the WATER CODE does not contemplate an established rate structure at the time of a CCN application. It asserted it is illogical to require an existing rate structure for utilities that do not yet possess a CCN and have not yet installed an infrastructure, built water treatment facilities, or hired employees.

Bulverde disputed Protestants' assertion that it would be at GBRA's mercy for charges. It pointed out that the Operating Agreement requires Bulverde's approval of all rates and requires only that GBRA's cost be covered.¹⁶⁹

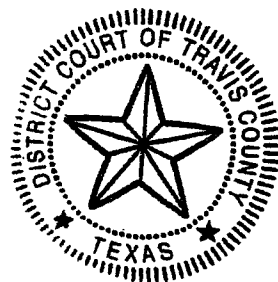
2. The Executive Director

The Executive Director cited testimony from Mr. Howell indicating that Bulverde did not provide information regarding the cost to consumers if the application is granted,¹⁷⁰ and testimony

¹⁶⁸Bulverde also contended GBRA, as a large water provider, has the ability to provide high quality water service at a lower cost. It has considerable operational expertise, volume purchasing power, a long history of obtaining financing, including access to long-term tax-exempt bonds, and significant reserves. Schuerg testimony, Bulverde Exhibit F at 5, 8-9 and Attachment 26; Tr. at 247.

¹⁶⁹Bulverde Exhibit D, Attachment 19 at § 3.2(b).

¹⁷⁰Executive Director Exhibit F at 5.



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from Mr. Barton that Bulverde does not know what the rates will be.¹⁷¹ She contended Bulverde's argument that it could likely provide service at a lower cost was speculative. She concluded the evidence failed to show whether there will be a lowering of costs to consumers.

The Executive Director asserted, because there is presently no uniform water service to the requested area, any regulated centralized water service will be an improvement over on-site ground water wells.

3. Protestants

a. Improvement of Service

Protestants acknowledged that any state-approved water utility will improve service. They argued, however, in the case of Bulverde, that users would be penalized in the short term because the system will not be completed until 2004, and even after that date, the Bulverde master plan does not contemplate construction of a water distribution system throughout the requested service area. This could result in a qualified landowner not being able to afford service because of extension costs to the nearest portion of the distribution system.

b. Lowering Costs to Consumers

Citing Mr. Barton's testimony that it is premature to ask GBRA about the rate cost to consumers because they "don't know exactly what the system is going to cost,"¹⁷² Protestants argued that Bulverde failed to produce evidence on a § 13.246⁹ criterion that the Commission must review before granting an application. If it is premature for Bulverde to know its costs,

¹⁷¹Tr. at 70.

¹⁷²Tr. at 71-72.



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Protestants contend it is premature to consider its application. Protestants disputed Bulverde's claims of lower costs because there is no evidence of what the costs will be.

Protestants cited GBRA's argument that it could charge lower rates because it has a large customer base and its experience in designing, constructing, and operating water systems. It said that assertion applies equally to BexarMet. They asserted its rates, terms, and conditions are known and have passed statutory review.

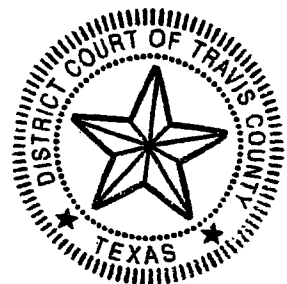
Protestants cited the Bulverde/GBRA Operating Agreement, providing that GBRA designates the rates and the only rate making criteria stated in the agreement are GBRA's costs. They pointed out GBRA is entitled to keep all the money collected from Bulverde's water users.¹⁷³ There was no evidence of any revenues generated for Bulverde's benefit.

4. Analysis

The ALJ agrees with the Executive Director that any uniform regulated water service will bring an improvement over on-site ground wells in the area. This is particularly true for service from Bulverde/GBRA on and after the spring of 2004, but is also true of service before that date.

The ALJ also agrees with the Executive Director and Protestants that the evidence failed to show what the rates will be because Bulverde is not certain what it will charge. As a result, the Commission does not have rate information upon which to base a decision.

¹⁷³Bulverde Exhibit D, Attachment 19, §§ 6.1 and 6.2.





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I. Need for Additional Service in Requested Area

1. Bulverde

Bulverde argued there is a need for additional water service in the requested area based on Mr. Howell's testimony that there is a need,¹⁷⁴ the fact there is currently no water service throughout the requested area, evidence that the area around Bulverde is growing rapidly,¹⁷⁵ and the numerous requests Bulverde has received from throughout the area.¹⁷⁶

Bulverde maintained an approval of its application will assure timely water service in the requested area and enable Bulverde and GBRA to construct an adequate water system.

2. Executive Director

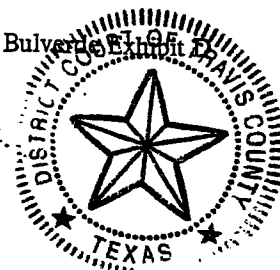
The Executive Director re-emphasized the above-quoted language in WATER CODE § 13.246(b), that the certificate must be "necessary for the service, accommodation, convenience, or safety of the public." Citing Mr. Howell's testimony that Bulverde provided requests for service covering part but not all of the requested area,¹⁷⁷ she argued a sufficient need for service is shown in certain parts of the requested area, given the likelihood of development, but that a need in the entire area has not been shown.

¹⁷⁴Tr. at 815.

¹⁷⁵Howell testimony, Executive Director Exhibit F at 5, Tr. at 815; Welsch testimony, Bulverde Exhibit D at 18-19, Attachment 21 at ES-8.

¹⁷⁶Bulverde Exhibit A, Attachment 12; Welsch testimony, Bulverde Exhibit D at 13-14.

¹⁷⁷ED Exhibit F at 4.



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3. Protestants

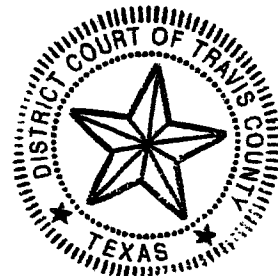
Protestants agreed with Bulverde that there is a need for additional service in the requested area, but argued that granting the Bulverde application would unnecessarily create a new CCN in contravention of the legislative mandate favoring the use of existing utilities when feasible. They contended a CCN is not necessary for Bulverde to fulfill its municipal service obligations and pointed out that all necessary regulation of water service is within the authority of TCEQ rather than a local municipality. They asserted that BexarMet, rather than Bulverde, is the best choice to serve water needs for regional growth because it is an experienced water utility.

BexarMet discounted Bulverde's assertions that it could not serve the area because it does not have a Western Canyon Project water supply contract for the requested service area and because it and WSI have had rationing problems in two subdivisions in prior years. It contended Bulverde's arguments ignore the major capital improvements these utilities have taken.

4. Analysis

Based on several factors, the ALJ concludes there is a need for service in the requested area. It is undisputed that water from the Trinity Aquifer is inadequate for long-term population growth, which has been estimated at between four and seven percent per year. The area is a prime growth corridor for San Antonio. The area is presently served by small CCNs often providing water to a particular subdivision or small personal wells. A regulated centralized system would be an improvement. With a reliable and adequate water supply, it is anticipated that significant residential and commercial growth will occur. However, utilities will be reluctant to build a water system without a reasonably protected customer base.¹⁷⁸

¹⁷⁸Ahrens testimony, BexarMet Exhibit C at 11-12, 20.



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As argued by the Executive Director, a regulated centralized service will be an improvement over on-site water wells.

There are requests for service from several parts of the requested area. These include several requests in large areas in far western Comal County near the Kendall County line, several requests for service along Highway 281 in the south portion of the requested area, a request in the east-central portion, and another in the southeastern portion.¹⁷⁹ In addition, BexarMet received requests¹⁸⁰ from a Sonic Drive-in, Denny's Restaurant, and 150 apartment units in the north central portion of the requested near the junction of Highways 281 and 46; it received a request near BexarMet's present CCN at an HEB near the juncture of those two highways, but it is not clear whether it is in or just north of the requested area.¹⁸¹ BexarMet witness Charles Ahrens testified BexarMet has received several more requests for service generally west of Highway 281 along Highway 46 since its filed its application. BexarMet witness Johnnie Terrazas testified these are mostly south of Highway 46 along Highway 281, but Mr. Bittle indicated they were mostly north of Highway 46.¹⁸²

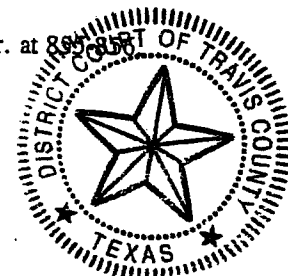
There is a need for water service from an entity like GBRA, that will provide service if the CCN is approved. GBRA serves about 72,000 persons and has been operating water systems since 1970. It handles accounts, billing, collections, and customer service for about 3,000 wholesale and retail customers. It currently owns and/or operates five water treatment plants. It has implemented policies to ensure that facilities are operated in compliance with good management practices and TCEQ regulations. It has an excellent service and compliance record. It has 27 certified operators holding Class A, B, C, and D licenses. The water system will be

¹⁷⁹Bulverde Exhibit D, Attachment 23.

¹⁸⁰Mr. Howell indicated a need exists independently of whoever the applicant is. Tr. at 895-958.

¹⁸¹BexarMet Exhibit C, Attachment 7.

¹⁸²Tr. at 410-411, 494-495, 512-513.



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operated and maintained like other GBRA operated water systems. It has a history of obtaining funding and can obtain favorable financing through volume purchasing.¹⁸³

There is no evidence supporting the Executive Director's position that it is preferable to grant CCNs piecemeal, only where specific requests are received.

J. Environmental Integrity

1. Bulverde

Bulverde contended an approval of its application would have a positive effect on environmental integrity because it would insure an adequate, sustainable long-term water supply for an area where the Trinity Aquifer has been the sole source of water. It cited evidence that Trinity Aquifer groundwater is highly variable, unreliable during times of drought, and inadequate to meet the projected demands of the region.¹⁸⁴ According to the South Texas Regional Plan, surface water is needed for the area. It argued that Bulverde's plan to bring in surface water will minimize depletion of the Trinity Aquifer and result in an overall environmental benefit.¹⁸⁵

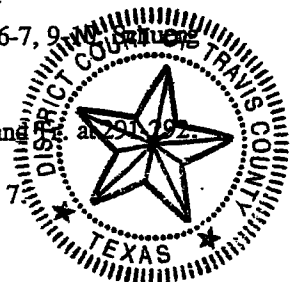
2. The Executive Director

The Executive Director maintained the record does not indicate any undue endangerment to the environment if the application is granted. She said, although the actual effect on the environment cannot be determined without reviewing plans and specifications, it is clear that

¹⁸³Bulverde Exhibit D, Attachment 19; Blumberg testimony, Bulverde Exhibit E at 2, 4, 6-7, 9 and 10; Bulverde testimony, Bulverde Exhibit F at 8; Tr. at 247.

¹⁸⁴Bulverde Exhibit D, Attachment 16, ES-1; Miller testimony, Bulverde Exhibit I at 5-6 and 7; Tr. at 291, 292.

¹⁸⁵Bulverde Exhibit D, Attachment 21 at ES-37; Miller testimony, Bulverde Exhibit I at 7.



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environmental integrity will be temporarily disturbed from the construction of water distribution lines, additional pumping, and storage facilities by whichever utility provides service in the area.¹⁸⁶

3. Protestants

Protestants argued there is no scientific evidence to support a conclusion that use of surface water from the Western Canyon Project will have an overall benefit to the environment. They cited Mr. Miller's testimony where, when he was asked whether there would be any benefit to the environment from granting the CCN, he said "perhaps."¹⁸⁷ They contended that low aquifer production in times of drought does not equate to an adverse environmental impact. They pointed out there has been no evidence of harm to flora, fauna, geological formations, or any other unique environmental feature.

Protestants maintained the environmental impact will be similar for any retail public utility serving the area because of the necessary construction of transmission and distribution systems, each utility will be subject to the same regulations, there will be the same temporary disruption of soils and animal habitat, and there will be the same post-construction restoration efforts.

4. Analysis

The ALJ agrees with the Executive Director and Protestants that the record does not show any undue endangerment to the environment from granting either the Bulverde or BexarMet applications. Environmental integrity will be temporarily interrupted by the construction of water distribution systems, additional pumping, and storage facilities by any utility providing service.

¹⁸⁶Howell testimony, Executive Director Exhibit F at 5.

¹⁸⁷Bulverde Exhibit I at 7.



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to the area. Each utility will be subject to the same regulations. There is no scientific evidence of harm to flora, fauna, geological formations, or any other unique environmental feature. Bulverde's argument that using surface water is better for the environment than groundwater is unsupported by scientific evidence.

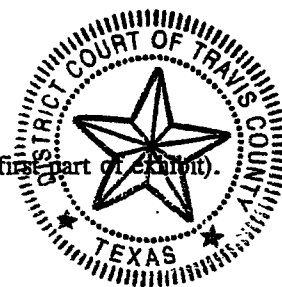
K. Providing Drinking Water Meeting Health & Safety Code and Water Code Requirements

1. Parties

Bulverde cited evidence that GBRA will be able to provide drinking water that meets the requirements of WATER CODE § 13.241(b)(1), requiring the Commission to "ensure that an applicant is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and the requirements of this code." It asserted its water system is designed to maintain a minimum pressure of 35 pounds per square inch (PSI), and 20 PSI during fire fighting, line flushing, or other unusual conditions; it is designed with a capacity to serve each connection at a rate of 0.6 gallons per minute (GPM); the storage capacity exceeds TCEQ minimum requirements of 300 gallons storage per connection because it is designed according to the GBRA storage criteria of 446 gallons per connection.¹⁸⁸

Protestants argued the Bulverde application does not meet WATER CODE § 13.241(b)(1) standards because GBRA, rather than Bulverde, will provide GBRA-produced and treated water through a GBRA-owned and -operated transmission and distribution system to end use customers billed and serviced by GBRA. They cited Mr. Barton's testimony that Bulverde does not have a contract to buy water from any entity other than GBRA and that its plans to provide water utility

¹⁸⁸Vandertulip testimony, Bulverde Exhibit G at 7-9; Bulverde Exhibit H at 3-5 (at first part of Exhibit). Bulverde asserted the system will comply with 30 TAC §§ 290.44(d) and 290.45.



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service are totally dependent on GBRA.¹⁸⁹ They argued that while GBRA might be able to operate a qualified water system, GBRA is not the CCN applicant.

The Executive Director did not specifically address this standard.

2. Analysis

Based on GBRA providing the drinking water, the ALJ concludes that Bulverde will be able to provide water meeting applicable legal requirements if its application is approved. GBRA has a long history of providing water to thousands of customers in several different regions.

L. Whether Granting a CCN is Necessary for the Service, Accommodation, Convenience, and Safety of the Public

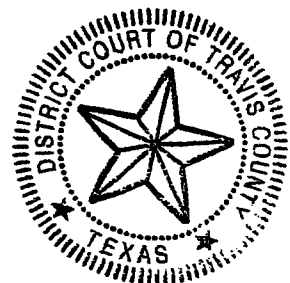
1. Bulverde¹⁹⁰

Bulverde maintained the granting of a CCN is necessary for the service, accommodation, convenience, and safety of the public because it will assure continuous and adequate water service to the requested service area. It asserted its long-term water supply contract with GBRA, whereby GBRA will sell it 400 acre-feet of treated water annually from GBRA's Western Canyon Project, will bring surface water to an area where groundwater is insufficient to meet increasing water needs. It noted the South Central Regional Plan recommendation that surface water be provided to the area through the Western Canyon Project.¹⁹¹ It contended the surface water will ensure a firm, reliable source of water and decrease demand on the Trinity Aquifer.

¹⁸⁹Tr. at 65, 78.

¹⁹⁰Most of Bulverde's arguments under this heading are more fully stated above.

¹⁹¹Bulverde Exhibit D, Attachment 21 at ES-37.



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Bulverde maintained GBRA has the technical, managerial, and financial capability to provide high-quality, reliable potable water to the requested service area. It argued that implementing the Bulverde Service Area Water Distribution System Master Plan ensures that facilities will be in place as the area grows.

Bulverde asserted that other utilities in the area do not intend to provide water beyond their existing boundaries and that BexarMet, WSI, and Diamond do not have access to a sufficient firm water supply to provide continuous and adequate service.¹⁹²

2. Protestants

Protestants acknowledged if GBRA were the applicant, granting the CCN might be necessary for the service, accommodation, convenience, and safety of the public, but argued that Bulverde will have that responsibility as a CCN-holder with no means of assuring continuous and adequate service.

Protestants criticized Bulverde's citation to the South Central Regional Water Plan as recommending water from the Western Canyon Project. They contended that neither Senate Bill (SB) One, Acts of the 77th Legislature; the State Water Plan; nor the SB One Regional Water Plan mandates the use of surface water as a sole source supply for retail public utilities in western Comal County. They maintained state policy merely calls for the conjunctive use of surface and groundwater.

3. Analysis

The matters in this analysis have already been discussed under Part H, concerning the probable improvement and lowering of costs to consumers, and Part I, concerning whether there

¹⁹²Barton testimony, Bulverde Exhibit A at 16-17.



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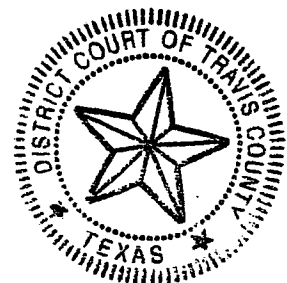
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is a need for additional service in the requested area. As indicated in those discussions, the evidence shows additional service to the area is necessary.

M. Summary of ALJ's Evaluations Under WATER CODE §§ 13.241 and 13.246

The ALJ concludes that Bulverde's application should be denied. The evidence is overwhelming that Bulverde, by itself, does not possess the financial, managerial, and technical capability to provide continuous and adequate service. Bulverde has relied on GBRA to fulfill that role.

With Bulverde's application dependent on GBRA's capabilities, it is important to look at Bulverde's contractual relationship with GBRA. If Bulverde and GBRA were tied together to such an extent that GBRA appeared to be equally responsible for the CCN with essentially the same rights and duties as Bulverde towards customers, Bulverde might have argued that all financial, managerial, and technical requirements were assured (although the more the application seemed like a Bulverde/GBRA joint venture, the more it would seem necessary for GBRA to have applied for a CCN). However, the Bulverde/GBRA contracts reveal an arms-length relationship with separate rights and duties between Bulverde and GBRA, including provisions showing that Bulverde's obligation to pay will not be affected for any reason until all bond debt is paid, GBRA will have a right to sell its interest in the water distribution system, GBRA will have a right to suspend service under certain circumstances, Bulverde will be required to give GBRA notice and 30 days to cure any default under the contract, and Bulverde will be required to indemnify and hold GBRA harmless for certain claims and costs from the negligent operation of the water system. Additionally, a non-CCN holder in GBRA's position would not be subject to the same enforcement authority from the Commission or the Attorney General as a CCN-holder would be.



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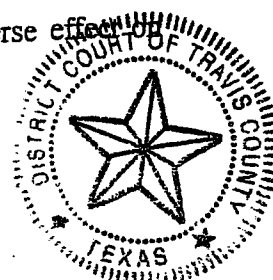
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Bulverde failed to adequately demonstrate that it would not be feasible to satisfy some or all of its water needs from existing utilities. Contrary to the Commission's rules at 30 TAC § 291.102(b), Bulverde did not contact neighboring utilities to determine the feasibility of obtaining service from them. As a result, the Commission did not have all the information it requires to adequately determine whether it would be feasible to obtain service from them. Moreover, it appears that some water service from neighboring utilities would be feasible—neighboring utilities are already serving customers within one-fourth mile of their boundaries as permitted by applicable law.

Notwithstanding the overall conclusion that Bulverde did not qualify under applicable statutory standards and its application should be denied, it did satisfy some of the statutory requirements for receiving a CCN if GBRA's capabilities are also taken into consideration. Bulverde demonstrated that it would have access to an adequate source of water. This is particularly true beginning in the spring of 2004, when it will be connected to GBRA's Western Canyon Project with access to a firm yield of water from Canyon Lake. In the long run, Bulverde's access through GBRA to Canyon Lake water is superior to BexarMet's projected water supplies. Although less certain, Bulverde will have an adequate access to water before the spring of 2004, based on GBRA's ability to drill additional wells in the Trinity Aquifer, including stand alone wells, the feasibility of using Canyon Lake WSC facilities to bring water to the area within eight months, and GBRA's demonstrated ability to provide water to its customers.

Granting the CCN would have a positive effect on Bulverde by helping to assure a long-term water supply to its residents, thereby promoting development, adding to its economic base, and attracting businesses. Bulverde would gain jurisdiction over water service provided to its citizens. However, granting a CCN could possibly have a negative effect on Bulverde if it or GBRA run afoul of TCEQ regulations. Granting the CCN would have an adverse effect on neighboring utilities now serving within one-fourth mile of their certified areas.



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The evidence demonstrated a need for service in the area. The Trinity Aquifer is inadequate to support long-term growth. The area is a prime growth corridor for the San Antonio metropolis. It is presently served by small utilities, often serving a particular subdivision and small personal wells. A reliable, regulated, and centralized service would be an improvement over existing private wells and would make growth feasible. Utilities will be reluctant to build a water system without a reasonably protected customer base. There are several requests for service spread throughout the requested area. And GBRA has a demonstrated ability to serve large areas with many customers.

With GBRA's agreement to finance the water supply system, Bulverde will have sufficient funds to pay its \$23,000 to \$27,000 per year obligation for its right to 400 acre-feet of water from GBRA. Among other matters, Bulverde's net income for 2001 exceeded \$260,000.

Granting the CCN would improve service to the area because it would bring a uniform regulated water service as an alternative to on-site groundwater wells. It is uncertain whether costs would be lowered because Bulverde has not yet determined its rates.

The evidence does not show any undue endangerment to the environment. Environmental integrity will be temporarily disrupted from construction of transmission lines and storage facilities, but there is no scientific evidence of endangerment to any environmental feature.

Based on GBRA's long history of successfully providing drinking water to thousands of customers in several areas, the preponderant evidence is that Bulverde will be able to provide drinking water meeting applicable legal requirements.

On the basis of evidence showing there is a need for service and there would be a probable improvement of service in the requested area, it appears that granting the application would accommodate and serve the public, assuming GBRA will continue to provide the service.



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VII. BexarMet Application

A. General Description

BexarMet¹⁹³ requested Commission approval of an amendment to its water CCN No. 10675 to serve an area in western Comal County roughly bounded by FM 3009 and Highway 281 to the east, Cibolo Creek to the south, the Kendall County line on the west and the Guadalupe River on the north.¹⁹⁴ To settle protests with Canyon Lake WSC and Comal, it amended its requested service area to delete certain territory.¹⁹⁵

BexarMet began providing service to parts of the requested service area in April 1998, when it purchased the assets of the Bulverde Water Company. These included Bulverde Hills Water system, Oakland Estates Water system, and Spring Branch Water system. To date, BexarMet has served these systems from Trinity Aquifer groundwater except during droughts, when it has rationed water and hauled in water by tanker truck from other BexarMet service areas.¹⁹⁶

¹⁹³BexarMet is a general law water conservation district and municipal corporation created by a special act of the Texas Legislature in 1945 under authority of TEX. CONST. ANN. art. 16 § 59. It is governed by a board of directors elected by a vote of the electors of the district. It has over 70,000 accounts and 250 employees. Bexar Metropolitan District Act, 49th Leg., R.S., ch. 306, 1945 Tex. Gen. Laws 491 (BexarMet Act); pre-filed testimony of deputy general manager for production Charles Ahrens, BexarMet Exhibit C at 14.

¹⁹⁴BexarMet Exhibit C, Attachment 6. Mr. Ahrens explained that the anticipated timing of the application was delayed when BexarMet was involved in a protracted certification dispute with SAWS, East Central Water Supply Corporation and a number of other intervening parties. Once the litigation was resolved, it was ready to pursue the application. It has vigorously pursued the application after Bulverde filed for its own CCN. BexarMet Exhibit C at 11-12.

¹⁹⁵BexarMet Exhibits A and B.

¹⁹⁶Ahrens pre-filed testimony, BexarMet Exhibit C at 4-5.



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BexarMet operates a fourth water system serving the HEB Grocery chain under a water CCN amendment and BexarMet's first sewer CCN on Highway 46 immediately west of Highway 281.¹⁹⁷

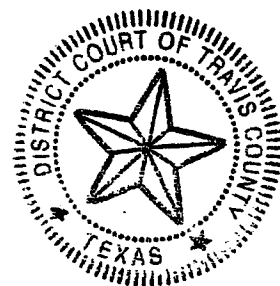
BexarMet indicated it has received a few requests for service in the proposed area, shown at BexarMet Exhibit C, Attachment 7. However, the application was filed not to meet specific service requests from individual landowners, but to meet the growing retail water utility needs of a defined regional area. Mr. Ahrens asserted that obtaining approval of portions of the requested service area not covered by a specific request is a key factor because the addition of those areas will assist in spreading the development costs to bring water and infrastructure to existing and future areas. He indicated the requested area is a prime San Antonio growth area, which is presently limited by water availability.¹⁹⁸

Mr. Ahrens testified BexarMet filed this application consistent with its practice of requesting a CCN whenever it believed it could provide utility service to benefit the public. In addition, it has already spent over one million dollars on contracts with GBRA and Canyon Lake WSC and facilities firming up BexarMet's exclusive service rights to its targeted area. He said BexarMet negotiated a contract with Canyon Lake WSC in August 2001 for water resources and a joint facilities agreement pursuant to which the two utilities are constructing a joint-use transmission line and elevated storage tank that BexarMet will use to serve the Bulverde area. The tank is just east of Highway 281 near its intersection with Highway 46. He testified BexarMet and Canyon Lake WSC have continued to fine-tune their relationship and have strived to work closer for the betterment of the region.¹⁹⁹

¹⁹⁷*Id.*, at 5.

¹⁹⁸*Id.*, at 11.

¹⁹⁹*Id.*, at 2-3, 7, 11.



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Mr. Ahrens testified BexarMet has executed its first surface water contract with GBRA. It has applied to transfer 400 acre feet of its water rights under that contract from Bexar County to Comal County for use in the proposed area. He also said BexarMet succeeded to Bulverde Water Company's rights to the GBRA regional surface water project for western Comal County.²⁰⁰

BexarMet intends to supply water to its customers in the area through a combination of Trinity Aquifer water, Canyon Lake surface water from GBRA and Canyon Lake WSC, and other sources either available to BexarMet or to be developed.²⁰¹

B. Brief Statement of Party Positions and Analysis

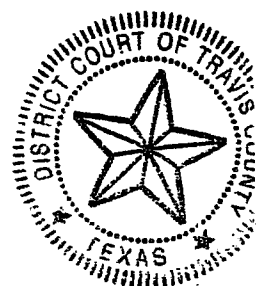
BexarMet contended it satisfied each legal criterion necessary to amend its CCN and urged an approval of its application.

The Executive Director maintained BexarMet should be permitted to amend its CCN to include those areas it is currently serving and specific areas for which developers have requested service. He recommended that the application be denied for all other areas because BexarMet failed to show the requisite need.

Bulverde/GBRA argued the application should be denied because BexarMet is not legally authorized to provide service in the requested area, it does not have adequate water resources to serve the area, there is not a need for BexarMet's service in the requested area, granting the certificate would have an adverse effect on Bulverde, and granting the certificate would harm the environment.

²⁰⁰*Id.*, at 6.

²⁰¹*Id.* at 6-9.



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The ALJ concludes that the application should be granted for the requested service area south of Highway 46, except that BexarMet should be permitted to serve within Bulverde's corporate limits only if it obtains Bulverde's consent or its district boundaries are expanded to include Bulverde's corporate limits. He concludes that BexarMet did not demonstrate a need for service in the area north of Highway 46 except for existing service areas and areas where there are specific requests for service.

C. BexarMet's Authority to Expand into Comal County

1. Bulverde/GBRA

Bulverde/GBRA argued it is impermissible, under BexarMet's enabling legislation,²⁰² for it to provide service to the requested area. They contended a United States district court case cited by BexarMet²⁰³ does not permit it to expand its legislative boundaries by simply obtaining TCEQ approval of an amendment to its CCN.

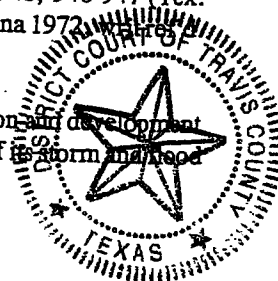
Bulverde/GBRA cited case law holding that a water district like BexarMet has only powers that are expressly granted by statute or implied as an incident to the express powers granted.²⁰⁴ They pointed out that BexarMet was created in 1945 under authority of TEX. CONST. ANN. art. XVI § 59(a)²⁰⁵ with the express purpose of managing storm and flood waters for rivers and streams located "wholly within Bexar County." They argued nothing in the BexarMet Act,

²⁰²Bexar Metropolitan District Act, 49th Leg., R.S., ch. 306, 1945 Tex. Gen. Laws 491 (BexarMet Act).

²⁰³*Rios v. Bexar Metropolitan Water District*, Cause No. SA-96-CA-335.

²⁰⁴*Tri-City Fresh Water Supply District No. 2 of Harris County v. Mann*, 142 S.W. 2d 945, 946-947 (Tex. 1940); *Franklin County Water District v. Majors*, 476 S.W. 2d 371, 373 (Tex. Civ. App.-Texarkana 1972, n.r.e.).

²⁰⁵Article XVI § 59^a authorizes the legislature to enact laws appropriate for the conservation and development of all of the state's natural resources, including the control, storing, preservation and distribution of its storm and flood waters and the waters of its rivers and streams for irrigation, power, and other useful purposes.



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including BexarMet's general and express powers,²⁰⁶ authorizes BexarMet to provide water service in the requested area.

Bulverde/GBRA contended for BexarMet to provide water service to the requested area, it must show that it has annexed a territory into its district, that it has annexed the territory into the district because the area was annexed by the City of San Antonio, or that it is providing service incidental to the acquisition of necessary resources to serve the district.²⁰⁷

Bulverde/GBRA maintained there is no evidence that BexarMet has annexed the requested area in accordance with the BexarMet Act.²⁰⁸ Under § 6 of the Act, BexarMet may annex land outside the corporate limits of a city only if certain conditions are met: it must receive a petition for annexation; it must hold a hearing to consider the petition; its board of directors must find the annexation to be advantageous and in BexarMet's best interests; and an election must be held in the territory to be annexed with a majority of the voters voting to assume a pro rata share of BexarMet's indebtedness.²⁰⁹

Bulverde/GBRA also asserted BexarMet has not shown implied authority to provide water service to the requested area. They argued, although the BexarMet Act empowers it to secure the

²⁰⁶BexarMet Act §§ 2 and 3; TEX. CONST. ANN. ART. 16, § 59.

²⁰⁷BexarMet Act, §§ 6 and 6a. Bulverde/GBRA also cited *Harris County Water Control & Improvement Dist. No. 58*, 357 S.W. 2d 789, 795-796 (Tex. Civ. App.-Houston 1962, writ ref'd. n.r.e.) (stating if the needs of Harris County Water Control & Improvement District are served, water may be furnished outside district limits as an incident to the district's primary obligation) and OP. TEX. ATT'Y. GEN. No. H-1195 (1978) (opining that the Upper Colorado River Authority could sell water outside its boundary only if it was incidental to its securing resources to provide services within the district).

²⁰⁸BexarMet Exhibit C, Tab 9 at 143; Tr. at 424-427.

²⁰⁹Under BexarMet Act § 6a, BexarMet's boundaries will be automatically expanded to include ~~also annexed~~ by the City of San Antonio, but only after a majority of the taxpayers in the area vote to assume BexarMet's indebtedness.



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necessary resources or facilities for which it was created,²¹⁰ selling water outside the district must be incidental to the acquisition of resources necessary for providing services within the district-BexarMet is not authorized to "roam at large throughout the State and distribute water wherever it wishes without regard to limitations placed on it by statute."²¹¹ If BexarMet's needs are served incidentally by providing water outside its boundaries, it may do so, but where the source of water is wholly unconnected with the district limits and the distribution is in an area wholly unconnected with and outside the district, the service is *ultra vires*.²¹²

According to Bulverde/GBRA, BexarMet has not shown that the sale of water to the requested area will be incidental to the acquisition of necessary water resources to serve the district. To the contrary, Mr. Ahrens testified that none of the area is interconnected with BexarMet, and BexarMet has needed to truck in water to serve its Comal County service areas.²¹³

Bulverde/GBRA acknowledged that WATER CODE § 49.215(a) provides that a district like BexarMet may provide water service to areas contiguous to or in the vicinity of the district provided there is not a duplication of a service or facility of another public utility, but argued that BexarMet's proposed water service would duplicate that provided by Bulverde and GBRA.

In addition to the above-stated matters, Bulverde/GBRA argued BexarMet must also receive Bulverde's approval to serve within its corporate limits. It cited WATER CODE § 49.215(a), which states a district may not provide water utility services and facilities in "areas outside the district that are also within the corporate limits of a city," unless it obtains "a resolution or ordinance of the city granting consent" Bulverde maintained BexarMet has

²¹⁰WATER CODE § 49.215(a); BexarMet Act § 3(f)-(h).

²¹¹Harris County Water Control & Improvement Dist. No. 58, at 795.

²¹²*Id.* at 796.

²¹³*Id.*, at 373, 395-398.

