

deposited, with Escrow Agent, good funds in the amount shown on line 303 of the Settlement Statement.

Section 2.02 Deposit of Closing Documents. At Closing, BexarMet and WSI will deliver the fully executed Closing Documents to Escrow Agent.

III.ARTICLE

CREATION AND OPERATION OF ESCROW

Section 3.01 Escrow Fund. The Escrow Agent has created or will immediately create on its books a special trust fund and irrevocable escrow for the funds to be deposited into the Escrow Fund, which Escrow Fund shall be known and carried on the Escrow Agent's books as the "BexarMet/WSI Acquisition Fund". The Escrow Agent hereby agrees that upon directions of BexarMet and WSI and upon deposit of the executed Closing Documents and receipt of the good funds from BexarMet mentioned in Section 2.01 above, Escrow Agent (a) will close the transaction contemplated in the Purchase Agreement, including recording and delivering the Closing Documents, except for the Note and the Release Documents; (b) will collect from, and utilize sufficient funds to pay, each parties costs of closing assigned in the Purchase Agreement, including payment of taxes owing at time of closing, and (c) will deposit WSI's cash proceeds (Settlement Statement line 509 amount) in the Escrow Fund, and will hold the Note and the Release Documents (the "Escrowed Documents"). Such deposit to the Escrow Fund, all investment proceeds therefrom, and all cash balances from time to time on deposit therein shall remain in the Escrow Fund, shall become a part thereof, and shall be applied only in strict conformity with the terms and conditions of this Escrow Agreement. The Escrow Fund shall be held in escrow by Escrow Agent in an interest-bearing investment account with said interest to accrue on the Escrow Fund one-half (½) to the benefit of BexarMet and one-half (½) to the benefit of WSI. The Escrow Fund shall be held by the Escrow Agent in escrow in accordance with the terms hereof.

Section 3.02 Escrow Fund Disbursement. WSI shall, upon WSI's receipt of same, promptly deliver to the Escrow Agent and BexarMet, the Orders, together with, at WSI's expense, the written opinion ("Opinion Letter") of Mark H. Zeppa, Attorney at Law, 4833 Spicewood Springs Road, Suite 202, Austin, TX 78759-8436, stating that all regulatory, administrative and statutory time periods for a request for a rehearing of the Order by TCEQ and for an appeal of the Order to the District Court have passed and no such request or appeal has been filed or notice thereof given. An opinion letter in the form of Exhibit "A" attached hereto will satisfy this requirement. Upon and only upon the Escrow Agent's receipt of the Order and Opinion Letter prior to 5:00 p.m. on the Mandatory Transfer Date, the Escrow Agent is hereby instructed to deliver the Note to WSI, deliver to the Third Party Creditor the funds required by the Third Party Creditor to release and record the Release Documents, and distribute WSI's remaining cash proceeds shown on line 509 of the Settlement Statement to WSI out of the Escrow Fund, subject to any adjustments, if any, including compensation to Escrow Agent as set out in paragraph 5.03 herebelow, in order to complete the funding of WSI's closing proceeds and immediately refund to BexarMet, after the distribution of the interest as provided in Section 3.01 above, any of the Escrow Fund then remaining, less any adjustments, if any, including compensation to Escrow Agent as set out in paragraph 5.03 herebelow, whereupon the Escrow Agent shall be discharged from any further duties regarding the Escrow Fund. Notwithstanding the preceding sentence, in the event the Orders are not received by the Escrow Agent prior to 5:00 p.m. on the Mandatory Transfer Date, the Escrow Agent shall only release the Escrowed Documents and pay any sums in the Escrow Fund pursuant to instructions given to the Escrow Agent agreed to in writing by both WSI and BexarMet. The Escrow Agent shall deliver any original Orders received by the Escrow Agent to BexarMet.

Section 3.03 Trust Funds. The Escrow Agent shall hold and dispose of the Escrowed Documents and the assets of the Escrow Fund only as set forth herein or as subsequently instructed by instructions given to the Escrow Agent agreed to in writing by both BexarMet and WSI. The Escrow Fund amounts received and held by the Escrow Agent under this Escrow Agreement shall not be considered as general funds of the Escrow Agent, nor as a banking deposit by BexarMet or WSI, and the Escrow Agent

shall have no right to title with respect thereto except as a constructive trustee and as an escrow agent under the terms of this Escrow Agreement. The amounts received by the Escrow Agent under this Escrow Agreement shall not be subject to warrants, drafts or checks drawn by BexarMet or WSI.

IV.

ARTICLE

INVESTMENTS

Section 4.01 (a) Investments. The Escrow Fund may only be invested in Permitted Investments designated in writing by a BexarMet Representative, and the Escrow Agent shall not have any right, power or duty to invest or reinvest any money held hereunder, or to make substitutions of the Permitted Investments, or to sell, transfer or otherwise dispose of the Permitted Investments.

(b) Substitutions. At the written direction of a BexarMet Representative, the Escrow Agent shall redeem all or any part of the Permitted Investments and reinvest the proceeds thereof, together with all or any part of any cash held in the Escrow Fund, in other Permitted Investments.

(c) Separate Investment Authorization. Except that notwithstanding anything to the contrary herein contained, this Section 4.01 may be modified in whole or in part by a separate agreement between BexarMet, WSI and Escrow Agent styled "Investment Authorization".

Section 4.02 Investment Results. Interest and other earnings on the Permitted Investments shall be added to the Escrow Fund. Any loss incurred from an investment, including, without limitation, market loss resulting from early liquidation of assets, and all costs of investment or liquidation, and withholding and other taxes, will be borne by the Escrow Fund. BexarMet and WSI agree to furnish to the Escrow Agent as required, all appropriate tax forms and information in order for the Escrow Agent to comply with tax laws. To the extent BexarMet and/or WSI does not provide information and tax forms, the party failing to provide such requested information assumes all liability for failure to report or withhold income under the tax laws.

ARTICLE V.

RECORDS AND REPORTS

Section 4.01 Records. The Escrow Agent will keep books of records and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Fund and all proceeds thereof, and such books shall be available for inspection at reasonable hours and under reasonable conditions by BexarMet and WSI.

Section 4.02 Reports. While this Escrow Agreement remains in effect, the Escrow Agent monthly shall prepare and send to WSI and BexarMet, a written statement of all Permitted Investments and the cash balance on deposit in the Escrow Fund as of the end of such period.

ARTICLE V.

CONCERNING THE ESCROW AGENT

Section 5.01 Representation. The Escrow Agent hereby represents that it has all necessary power and authority to enter into this Escrow Agreement and undertake the obligations and responsibilities imposed upon Escrow Agent herein, and to act as an Escrow Agent for a conservation and reclamation district and political subdivision of the State of Texas, and that it will carry out all of its obligations hereunder.

Section 5.02 Limitation on Liability. Notwithstanding any provision contained herein to the contrary, the Escrow Agent shall not have any liability whatsoever for the insufficiency of funds from time to time in the Escrow Fund or any failure of the obligors of the Permitted Investments to make timely payment thereon. The recitals herein shall not be considered as made by, or imposing any obligation or liability upon, the Escrow Agent. In its capacity as Escrow Agent, it is agreed that the Escrow Agent need look only to the terms and provisions of this Escrow Agreement. The Escrow Agent makes no representations as to the value, condition or sufficiency of the Escrow Fund, or any part thereof, or as to the title thereto, or as to the security afforded thereby or hereby, and the Escrow Agent shall not incur any liability or responsibility in respect to any of such matters. The Escrow Agent shall not be responsible or liable to any person in any manner whatever for the genuineness, effectiveness or validity of the Opinion Letters or the Orders, or for the identity or authority of any persons executing the Opinion Letter or the Orders. The Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder. Unless it is specifically otherwise provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency, the Escrow Agent's sole duty hereunder being to safeguard the Escrow Fund and to dispose of and deliver the same in accordance with this Escrow Agreement. If, however, the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent shall be obligated, in making such determination, only to exercise reasonable care and diligence, and in event of error in making such determination, the Escrow Agent shall be liable only for its own willful misconduct or its gross negligence. In determining the occurrence of any such event or contingency, the Escrow Agent may request from WSI or BexarMet or any other person such reasonable additional evidence as the Escrow Agent, in its discretion, may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may make inquiries of, and consult with, among others, WSI or BexarMet at any time. In the event any dispute between any of the parties shall occur concerning any of the subject matters of this Escrow Agreement or concerning any claim or any party to any sums in the Escrow Fund, the Escrow Agent is hereby authorized to interplead all sums in the Escrow Fund into a court of competent jurisdiction in Bexar County, Texas.

5.03 Compensation. BexarMet and WSI hereby jointly agree to equally pay reasonable, necessary and customary fees to the Escrow Agent for the normal administration of the Escrow Agreement and to reimburse the Escrow Agent for expenses actually incurred by the Escrow Agent in performing such services, and the Escrow Agent hereby agrees to look to BexarMet and WSI jointly and equally for the payment of such fees and reimbursement of such expenses. BexarMet and WSI further hereby agree to pay reasonable, necessary and customary fees to the Escrow Agent for the extraordinary administration of the Escrow Agreement in the event of a dispute or litigation regarding the Escrow Fund, and to reimburse the Escrow Agent for all such expenses incurred by the Escrow Agent and its counsel in performing such extraordinary services, and in which event the Escrow Agent hereby agrees to look jointly and severally to BexarMet and WSI for the payment of such fees and reimbursement of such expenses. The Escrow Agent hereby agrees that in no event shall it ever assert any claim or lien against the Escrow Fund for any fees for its services, whether regular or extraordinary, as Escrow Agent, or in any other capacity, or for reimbursement for any of its expenses or for any other liability or claim it may have against WSI or BexarMet.

5.04 Successor Escrow Agents. If at any time the Escrow Agent or its legal successor or successors should become unable, through operation of law or otherwise, to act as Escrow Agent hereunder, or if its property and affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Escrow Agent hereunder. In such event WSI and BexarMet, by joint appropriate action, promptly shall appoint an Escrow Agent to fill such vacancy. If no successor Escrow Agent shall have been appointed by WSI and BexarMet within 60 days, WSI or BexarMet may apply to any court of competent jurisdiction in the State of Texas to appoint a successor Escrow Agent; such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Escrow Agent.

Any successor Escrow Agent shall be a corporation organized and doing business under the laws of the United States or the State of Texas, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000.00 and subject to the supervision or examination by federal or state authority and able to hold funds of political subdivisions of the State of Texas.

Any successor Escrow Agent shall execute, acknowledge and deliver to WSI and BexarMet and the Escrow Agent an instrument accepting such appointment hereunder, and the Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent, subject to the terms of this Escrow Agreement, all the rights, powers and trusts of the Escrow Agent hereunder. Upon the request of any such successor Escrow Agent, BexarMet and WSI shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers and duties. The Escrow Agent shall pay over to its successor Escrow Agent, a proportional part of the Escrow Agent's fee hereunder.

Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell, lease or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which is a party, *ipso facto*, shall be and become successor Escrow Agent hereunder and vested with all of the title to the Escrow Fund and all the trusts, powers, rights, obligations, duties, remedies, discretions, immunities, privileges and all other matters as was its predecessor, all without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 5.05 Indemnification of the Escrow Agent. BexarMet and WSI agree to indemnify, defend and hold the Escrow Agent harmless against all losses, claims, damages, demands, liabilities and expenses (including attorney's fees and expenses), arising out of or in connection with this Escrow Agreement or any transaction related hereto, except to the extent that any such loss, liability or expense results from the gross negligence or willful misconduct of the Escrow Agent. The foregoing indemnities shall survive the resignation of the Escrow Agent and the termination of this Escrow Agreement.

ARTICLE VI.

TERMINATION OF ESCROW AGREEMENT

Section 6.01 Termination of Escrow Agreement. Upon the taking of all the actions as described herein by the Escrow Agent, the Escrow Agent shall have no further obligations or responsibilities hereunder to BexarMet, WSI or to any other person or persons in connection with this Escrow Agreement. This Escrow Agreement may be terminated at any time by joint written instructions to the Escrow Agent executed by both BexarMet and WSI, in which event the Escrow Agent shall deliver and/or dispose of the Closing Documents and the Escrow Funds as specified in such termination notice.

ARTICLE VII.

MISCELLANEOUS

Section 7.01 Notice: Any notice, authorization, request or demand required or permitted to be given hereunder shall be given pursuant to the provisions of Section 11.7 of the Purchase Agreement. The address for notice to the Escrow Agent shall be 2961 Mossrock, San Antonio, Texas 78230.

Section 7.03 Binding Escrow Agreement. This Escrow Agreement shall be binding upon BexarMet, WSI and the Escrow Agent and their respective successors and legal representatives, and shall inure solely to the benefit of BexarMet, WSI and the Escrow Agent, and their respective successors and legal representatives.

Section 7.04 Severability. In case any one or more of the provisions contained in this Escrow Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of the Escrow Agreement, but this Escrow Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 7.05 Texas Law Governs. This Escrow Agreement shall be governed by the provisions hereof and by the applicable laws of the State of Texas.

Section 7.06 Time of the Essence. Time shall be of the essence in the performance of obligations from time to time upon the Escrow Agent by this Escrow Agreement.

Section 7.07 Changes in Escrow Agreement Generally Prohibited. This Escrow Agreement shall not be repealed, revoked, altered or amended except by the written agreement of BexarMet, WSI, and Escrow Agent.

Section 7.08 Counterparts. This Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, and all counterparts shall together constitute one and the same instrument.

EXECUTED as of the date first written above.

WATER SERVICES, INC.

BY: _____

THOMAS BAUDAT, President

BEXAR METROPOLITAN WATER DISTRICT

By: _____

THOMAS C. MORENO, General Manager/CEO

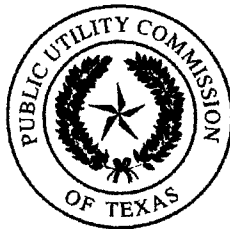
STEWART TITLE COMPANY

2961 Mossrock

San Antonio, Texas 78230

By: _____

Date



House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions and records relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014.

Central Records Personally Identifiable Information Audit

NOTICE OF REDACTION

Documents containing Personally Identifiable Information* have been redacted from electronic posting, in accordance with Texas privacy statutes.

*"Personally Identifiable Information" (PII) is defined to include information that alone or in conjunction with other information identifies an individual, including an individual's: Social security or employer taxpayer identification number, driver's license number, government-issued identification card number, or passport numbers, checking and savings account numbers, credit card numbers, debit card numbers, unique electronic identification number, address, or routing code, electronic mail names or addresses, internet account numbers, or internet identification names, digital signatures, unique biometric data, and mother's maiden name, marriage and any other numbers or information used to access an individual's financial account.

LAW OFFICES OF MARK H. ZEPPA, P.C.

4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759-8436
(512) 452-1642
Fax(512) 346-6847
mhzeppa@attglobal.net

_____, 20____

Mr. North O. West, Esq.
West and West, P.C.
2929 Mossrock, Suite 204
San Antonio, Texas 78230

Re: Counsel's Opinion on Finality of Administrative Review and Approval of the Sale
of Water Utility Assets from Water Services, Inc. to Bexar Metropolitan Water
District

Dear Mr. West:

Pursuant to Section 3.02 of the "Escrow Agreement and First Amendment to Purchase Agreement" between Water Services, Inc. ("WSI") and Bexar Metropolitan Water District ("BexarMet"), I render to you my counsel's opinion that the administrative review and approval process on this public water utility asset sale and certificate of convenience and necessity ("CCN") transfer has been satisfactorily completed, that all appeal periods thereon have tolled and that no timely appeals have been filed. This opinion is based upon the following actions that, as special counsel to WSI by agreement between the parties, I have researched files on this matter and the public records, of the Texas Commission on Environmental Quality ("TCEQ"):

1. A joint application for approval of this sale and CCN transfer was filed with the TNRCC by WSI and BexarMet on _____, 20____ pursuant to Texas Water Code ("Code") 13.301 which was accepted by the agency and designated as Application No. _____.
2. By letter dated _____, Mr. Doug Holcomb, P. E., Manager of the Utility Certification Team, TNRCC Water Permitting Division, on behalf of the TNRCC Executive Director, notified BexarMet and WSI that the parties were authorized to close this sale without hearing, pursuant to Code 13.301 (d).

bmwd\wsi
October 7, 2003
Page 85

DRAFT

EXHIBIT "A". Section 3.02 Opinion Letter

3. On _____, 20____, the sale was closed in the offices of West & West, P. C. Evidence of the closing and transfer of control over the water system, in the form of a sworn affidavit of _____ and a signed HUD closing statement was filed with the TCEQ on _____, 20____.

4. On _____, 20____, the TCEQ Executive Director entered his order canceling WSI's CCN No. 11106 and amending BexarMet's CCN No. 10675 to include the former WSI service area in _____ County, Texas. This order was entered pursuant to 30 T.A.C. 31, 33 and 35.

5. Notice of the Executive Director's order was mailed to the parties on or about _____, 20____. Pursuant to 30 T.A.C. 50.39, WSI, BexarMet, the TCEQ's Public Interest Counsel or other person had twenty (20) days, plus three (3) days mail time, from this date to file a motion for reconsideration of the Executive Director's order with the TCEQ's Chief Clerk as a prerequisite to an appeal of this order.

6. No motion for reconsideration was filed by 5:00 P.M., _____, 20____ thus, the Executive Director's order amending BexarMet's CCN to include WSI's service area is final and non-appealable.

[OR]

6. A Motion for reconsideration was filed by _____ on _____, 20____, more than 20 days from _____. No agreement to extend the filing deadline was entered into by all parties; therefore, the motion was untimely and void. Thus, the Executive Director's order amending BexarMet's CCN to, include WSI's service area is final and nonappealable.

[OR]

6. A motion for reconsideration was filed by _____ on _____, 20____, less than 20 days from _____. The motion was denied by the TCEQ commissioners by order dated _____.

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 23, 2004

CERTIFIED MAIL

Mr. Mark H. Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759-8436

Re: Application No. 34458-S, Application of the Bexar Metropolitan Water District, Certificate of Convenience and Necessity (CCN) No. 10675, to purchase facilities, to transfer a portion of CCN No. 11106 from Water Services, Inc. and to transfer a portion of CCN No. 12865 from Diamond Water Company, a Texas Corporation in Bexar, Comal and Kendall Counties, Texas

CN: 600652739 ; RN: 101450955

Dear Mr. Zeppa:

We have reviewed the criteria in Texas Water Code (TWC), Section 13.301(e) and determined that a public hearing will not be requested. You may complete your proposed transaction as scheduled, or at any time after you receive this notification. Please note that the transaction must comply with the requirements of TWC Section 13.301(d) and therefore cannot be completed prior to the issuance of this letter.

Your next step is to file a copy of the signed contract or bill of sale and documents supporting the disposition of customer deposits with the Utilities & Districts Section, Water Supply Division, within 30 days after the effective date of the transaction.

The second part of the application, which is transferring the CCN, will occur following receipt of executed closing documents. However, please note that, from the time the application is filed until the CCN is issued, it is the applicant's (buyer and seller) responsibility to notify and update the Utilities & Districts Section, Water Supply Division, of changes in the financial, managerial, or technical information provided in the application.

The application cannot be approved or the CCN transferred and issued until we receive evidence that the transaction was completed. After the proper documentation is received, staff will prepare a proposed map, certificate, and recommendation for both applicants to review before submitting them to the Executive Director for approval and the issuance of the CCN. A copy of this information will be sent to both applicants, the buyer and seller. If you concur with the recommendation, the consent

Mr. Mark H. Zeppa

Page 2

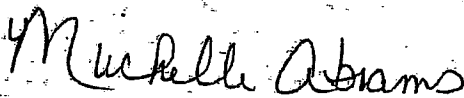
June 23, 2004

forms must be signed and returned by both applicants before the recommendation to transfer the CCN can be approved by the Executive Director. If both consents are not provided, the CCN will remain in the name of the seller and for purposes of TWC Section 13 regulation, the seller remains responsible for the system(s). (See TWC, Section 5.122 and 3.0 Texas Administrative Code Section 50.33).

As an alternative to the seller having to continue involvement in the process, if the closing document(s) includes a statement that the seller concurs with the transfer of the CCN to the buyer with specific references to the statute and rule noted above, that statement can serve to authorize the Executive Director to take action upon receipt of the buyer's signed consent form. The closing document(s) and any accompanying correspondence will be needed to clearly indicate that the seller is consenting to the subsequent transfer of the CCN. In this situation, however, the seller is relying on the buyer to provide the final consent on the CCN transfer.

If you have any questions, please contact Ms. Sheresia Perryman by phone at 512/239-3654, by fax at 512/239-6972, by email at sperryma@tceq.state.tx.us, or if by correspondence, include MC 153 in the letterhead address.

Sincerely,



Michelle Abrams, Team Leader
Utilities & Districts Section
Water Supply Division

MA/SP/ac

cc: Bruce Wassinger



Frank Madla

Texas State Senate
District 19

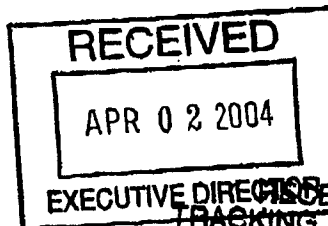
1313 S.E. Military Dr., Suite 101
San Antonio, Texas 78214-2850
(210) 827-9484
FAX (210) 922-9521
P.O. Box 1206A
Austin, Texas 78711
(512) 463-0119
FAX (512) 463-1062
Dial 711 For Relay Texas

SPH
IGR
MH
CB
file

FILED FOR RECORD
At 3:30 o'clock PM

MAY 11 2004

KATHY H. FAULKNER
Texas District Court, Comal County, TX
Dep't



EXECUTIVE DIRECTOR RECEIVED BY
TRACKING #
ASSIGNED TO:

April 1, 2004

Ms. Margaret Hoffman
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

APR 02 2004

DUE DATE:

Re: Senate Bill 1494

Dear Ms. Hoffman:

Please accept this letter as one to address issues raised by your staff concerning Senate Bill 1494 and its effect on Bexar Metropolitan Water District's (BexarMet) ability to secure additional certificated areas within and outside of Bexar County. As expressed in my letter of March 26, 2004 (attached), SB 1494 was enacted to remove antiquated annexation provisions from BexarMet's enabling act in recognition of the *Rios v. BexarMet* federal voting rights decision, and to remove BexarMet's groundwater management responsibilities.

Further, as I stated in my letter of March 26, it was not my intent that SB 1494 restrict or abridge any of BexarMet's powers granted by its enabling statute or general law, other than those named above. I specifically did not intend SB 1494 to limit BexarMet's power to expand or acquire additional certificates of convenience and necessity (CCN). The committee substitute presented to the Senate Natural Resources Committee, along with my brief statement of legislative intent, was adopted without objection.

This letter is provided to further emphasize that my sponsorship of SB 1494 was directed, as stated above, to removing antiquated provisions of BexarMet's 1945 act and to conform it to the *Rios v. BexarMet* decision. It was in no way intended to diminish the TCEQ's jurisdiction to grant BexarMet CCNs in connection with any such application duly processed by the Commission, whether the certificated area sought is within or outside of Bexar County. In other words, if the Commission finds BexarMet's application is qualified, SB 1494 should not be an obstacle to its approval.

I would appreciate your assistance in resolving this issue as soon as possible. Should you have any questions, or wish to discuss this further, please do not hesitate to contact me.

Yours truly,

Frank Madla
Frank Madla

FM/ja

PETITIONER'S
EXHIBIT

5/11/04 14
R

STATE OF TEXAS §
COUNTY OF TRAVIS § MAY 07 2004

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the Records of the Commission. Given under my hand and the seal of office.

Robert D. Cadenhead
Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

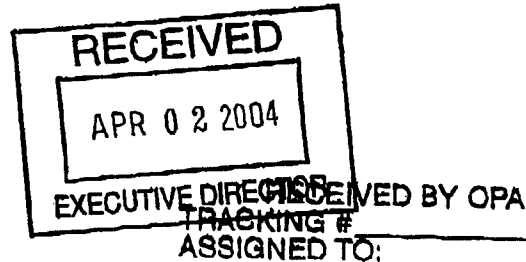
OPH
IGR
MH
CB
file

1312 S.E. Military Dr., Suite 101
San Antonio, Texas 78214-2850
(210) 827-9464
FAX (210) 922-9521
P.O. Box 12068
Austin, Texas 78711
(512) 463-0119
FAX (512) 463-1017
Dial 711 For Relay Calls

Frank Madla
Texas State Senate
District 19



April 1, 2004



Ms. Margaret Hoffman
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

APR 02 2004

DUE DATE:

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Yours truly,

Frank Madla
Frank Madla

FM/ja

STATE OF TEXAS § MAY 07 2004
COUNTY OF TRAVIS §

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the Records of the Commission. Given under my hand and the seal of office.

Robert D. Cadenhead
Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

COMMITTEES

State Affairs
Infrastructure Development & Security

Intergovernmental Relations, Chairman

Veterans Affairs & Military Installations
Subcommittee on Base Realignment & Closure

JPH
IGR
MH
CB
file**Frank Madla**Texas State Senate
District 191312 S.E. Military Dr., Suite 101
San Antonio, Texas 78214-2850
(210) 827-9464
FAX (210) 822-9521
P.O. Box 12068
Austin, Texas 78711
(512) 463-0119
FAX (512) 463-1017
Dial 711 For Relay Calla

April 1, 2004

RECEIVED

APR 02 2004

EXECUTIVE DIRECTOR
TRACKING #
ASSIGNED TO: _____

APR 02 2004

Ms. Margaret Hoffman
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

DUE DATE: _____

Re: Senate Bill 1494

Dear Ms. Hoffman:

Please accept this letter as one to address issues raised by your staff concerning Senate Bill 1494 and its effect on Bexar Metropolitan Water District's (BexarMet) ability to secure additional certificated areas within and outside of Bexar County. As expressed in my letter of March 26, 2004 (attached), SB 1494 was enacted to remove antiquated annexation provisions from BexarMet's enabling act in recognition of the *Rios v. BexarMet* federal voting rights decision, and to remove BexarMet's groundwater management responsibilities.

Further, as I stated in my letter of March 26, it was not my intent that SB 1494 restrict or abridge any of BexarMet's powers granted by its enabling statute or general law, other than those named above. I specifically did not intend SB 1494 to limit BexarMet's power to expand or acquire additional certificates of convenience and necessity (CCN). The committee substitute presented to the Senate Natural Resources Committee, along with my brief statement of legislative intent, was adopted without objection.

This letter is provided to further emphasize that my sponsorship of SB 1494 was directed, as stated above, to removing antiquated provisions of BexarMet's 1945 act and to conform it to the *Rios v. BexarMet* decision. It was in no way intended to diminish the TCEQ's jurisdiction to grant BexarMet CCNs in connection with any such application duly processed by the Commission, whether the certificated area sought is within or outside of Bexar County. In other words, if the Commission finds BexarMet's application is qualified, SB 1494 should not be an obstacle to its approval.

I would appreciate your assistance in resolving this issue as soon as possible. Should you have any questions, or wish to discuss this further, please do not hesitate to contact me.

Yours truly,

Frank Madla

FM/ja

STATE OF TEXAS § MAY 07 2004
COUNTY OF TRAVIS §

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the Records of the Commission.

Given under my hand and the seal of office
Robert D. Cadenhead
Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

COMMITTEES

Intergovernmental Relations, Chairman

State Affairs
Infrastructure Development & SecurityVeterans Affairs & Military Installations
Subcommittee on Base Realignment & Closure



Frank Madla

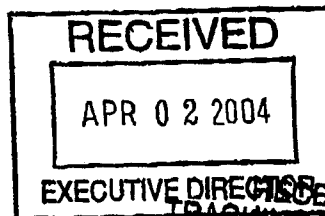
Texas State Senate
District 19

1313 S.E. Military Dr., Suite 101
San Antonio, Texas 78214-2850
(210) 827-9484
FAX (210) 822-9521
P.O. Box 12068
Austin, Texas 78711
(512) 463-0119
FAX (512) 463-1017
Dial 711 For Relay Calls

OPA
IGR
MH
CB
file

April 1, 2004

Ms. Margaret Hoffman
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087



EXECUTIVE DIRECTOR RECEIVED BY OPA
TRACKING #
ASSIGNED TO: _____

APR 02 2004

Re: Senate Bill 1494

DUE DATE: _____

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Please accept this letter as one to address issues raised by your staff concerning Senate Bill 1494 and its effect on Bexar Metropolitan Water District's (BexarMet) ability to secure additional certificated areas within and outside of Bexar County. As expressed in my letter of March 26, 2004 (attached), SB 1494 was enacted to remove antiquated annexation provisions from BexarMet's enabling act in recognition of the *Rios v. BexarMet* federal voting rights decision, and to remove BexarMet's groundwater management responsibilities.

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Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

OPA
IGR
MH
CB
file

Frank Madla
Texas State Senate
District 19

1318 S.E. Military Dr., Suite 101
San Antonio, Texas 78214-2850
(210) 227-9464
FAX (210) 922-9521
P.O. Box 12068
Austin, Texas 78711
(512) 463-0119
FAX (512) 463-1017
Dial 711 For Relay Calls

April 1, 2004

RECEIVED

APR 02 2004

EXECUTIVE DIRECTOR
TRACKING #
ASSIGNED TO: _____

APR 02 2004

Ms. Margaret Hoffman
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

DUE DATE: _____

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Frank Madla

FM/ja

STATE OF TEXAS § MAY 07 2004
COUNTY OF TRAVIS §

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Robert D. Cadenhead
Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

State Affairs
Infrastructure Development & Security

COMMITTEES
Intergovernmental Relations, Chairman

Veterans Affairs & Military Installations
Subcommittee on Base Realignment & Closure



Texas Commission on Environmental Quality

Date: April 7, 2004

To: Margaret Hoffman, Executive Director
Texas Commission on Environmental Quality

Thru: *MA* Michelle Abrams, Team Leader
Utilities & District Section
Water Supply Division

MA Joe Strouse, Team Leader
Utilities & Districts Section
Water Supply Division

From: Mike Howell
Utilities Technical Review Team
Water Supply Division

Subject: Executive Summary and Staff Recommendation for Executive Director Approval
of Application No. 34354-C

CN: 600652739 RN: 101450955

Bexar Metropolitan Water District has applied to Amend CCN No. 10675 in Bexar County;
Application No. 34354-C.

The applicant meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 291 rules and regulations. This application is proposing dual certification with a portion of San Antonio Water System, Certificate of Convenience and Necessity (CCN) No. 10640. San Antonio Water System has consented to this application. Approving the application to amend CCN No. 10675 is necessary for the service, accommodation, convenience and safety of the public.

The applicant is capable of providing continuous and adequate service.

Staff recommends approval of the order.

JS/MA/MH/ac

**PETITIONER'S
EXHIBIT**

5/1/04 15
A

By: *[Signature]*
KATHY H. FAULKNER
Clerk District Court, Comal County, TX
Deputy

MAY 11 2004

At 3:30 o'clock PM
FILED FOR RECORD

STATE OF TEXAS § APR 21 20
COUNTY OF TRAVIS §
I hereby certify that this is a true and correct copy of
Texas Commission on Environmental Quality document
which is filed in the Records of the Commission.
Given under my hand and the seal of office.
Robert D. Cadenhead
Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

Bexar Metropolitan Water District

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 10675

to provide continuous and adequate water utility service to that service area or those service areas in Bexar, Comal, and Medina Counties as by final Order duly entered by this Commission, which Orders resulting from Application No. 34354-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Bexar Metropolitan Water District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

San Antonio Water System

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 10640

to provide continuous and adequate water utility service to that service area or those service areas in Bexar County as by final Order duly entered by this Commission, which Orders resulting from Application No. 34354-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Bexar Metropolitan Water District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



APPLICATION NO. 34354-C

IN THE MATTER OF THE
APPLICATION OF BEXAR
METROPOLITAN WATER DISTRICT
TO AMEND CERTIFICATE OF
CONVENIENCE AND NECESSITY NO.
10675 IN BEXAR COUNTY, TEXAS

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

On _____, the Executive Director of the Texas Commission on Environmental Quality pursuant to Chapters 5 and 13 of the Texas Water Code considered the application of Bexar Metropolitan Water District to amend Certificate of Convenience and Necessity No. 10675 in Bexar County, Texas.

Notice of the application was given to all affected and interested parties;

The criteria set forth in *Texas Water Code* Section 13.246(C), has been considered; and

The certificate amendment, and obtaining dual certification with a portion of San Antonio Water System, requested in this application is necessary for the service, accommodation, convenience, and safety of the public.

Now, therefore, be it ordered by the Texas Commission on Environmental Quality that the application is granted and Certificate of Convenience and Necessity No. 10675 be amended in accordance with the terms and conditions set forth herein and in the certificate.

IT IS FURTHER ORDERED that Bexar Metropolitan Water District shall serve every customer and applicant for service within the area certified under Certificate of Convenience and Necessity No. 10675 and that such service shall be continuous and adequate.

Texas Commission on Environmental Quality

Issued date:

For the Commission

MAILING LIST FOR APPLICATION NO. 34354-C

Mr. Michael J. Albach
Bexar Metropolitan Water District
P.O. Box 245994
San Antonio, TX 78224-5994

Mr. Kelley Neumann, P.E.
San Antonio Water System
1001 E. Market St.
P.O. Box 2449
San Antonio, TX 78298-2449

Brown Engineering Company
Attn: Mark Brown
1000 Central Parkway North
Suite 100
San Antonio, Texas 78232

TCEQ:

Region 13 Office

Luci Sainvilus and Teri Cisneros, Data Entry Team, MC 155
Utilities & District Section, Water Supply Division, MC 153

Please send a copy of the signed order to Central Records to be included in the following
Certificate of Convenience and Necessity (CCN) permanent files:

Bexar Metropolitan Water District, CCN No. 10675

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Kathleen Hartnett White, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 7, 2004

CERTIFIED MAIL

Mr. Michael J. Albach
Bexar Metropolitan Water District
P O Box 245994
San Antonio, TX 78224-5994

Re: Application No. 34354-C, Application of Bexar Metropolitan Water District to amend Certificate of Convenience and Necessity No. 10675 in Bexar County, Texas

CN: 600652739 RN: 101450955

Dear Mr. Albach:

We have reviewed the above referenced application.

ENCLOSED ARE:

- ▶ **CONSENT FORM**
- ▶ The proposed map, certificate, and staff recommendation.
- ▶ Information Order Form which lists all forms and other information available for your use.

YOU SHOULD DO THE FOLLOWING:

- ▶ Review the map, certificate, and recommendation. If these documents are **accurate and you agree** with all of the provisions of the order, you must sign the **CONSENT FORM** and mark the line that says you concur and return the signed statement. You should keep a copy of the letter you signed along with the documents for your records. Failure to return the signed statement could result in your application being returned.
- ▶ Notify us (**in writing**) within **14 days** of the date of this letter, if these documents are **inaccurate or you disagree** with any of the provision of the order. You may do this by marking the line on the **CONSENT FORM** that says you do not concur, signing the form and mailing it to the address on the form.
- ▶ **NOTE:** This letter does not authorize you to provide utility service. You must wait until the Commission has approved your application and issued you a CCN.

WE WILL DO THE FOLLOWING:

- ▶ Submit the order for this application to the Executive Director for signature. However, before the Executive Director can sign the order, we **must** receive your written consent to the staff's recommendation.

CONSENT FORM

Applicant's Name: Bexar Metropolitan Water District
Application No.: 34354-C

- ☐ I concur with the recommendation contained in the staff memorandum transmitted by letter dated April 7, 2004
- ☐ I do not concur with and intend to respond to the recommendation contained in the staff memorandum transmitted by letter dated April 7, 2004
I understand that I have 14 days from the date of this letter to provide my response.

I am authorized by San Antonio Water System to sign this form.

Signature: _____

Printed Name: _____

Relationship to Applicant: _____

Date signed: _____

Mail to:
Mr. Mike Howell
Utilities & Districts Section, MC 153
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

Mr. Michael J. Albach
Bexar Metropolitan Water District
P O Box 245994
San Antonio, TX 78224-5994

Re: Application No. 34354-C, Application of Bexar Metropolitan Water District to amend
Certificate of Convenience and Necessity No. 10675 in Bexar County, Texas

CN: 600652739 RN: 101450955

Dear Mr. Albach:

Enclosed is a certified copy of an order and a copy of the Certificate of Convenience and Necessity issued by the Commission in the above referenced application.

If you have any questions, please contact Mr. Mike Howell by phone at 512/239-1108, by fax at 512/239-6972, by email at mhowell@tceq.state.tx.us, or if by correspondence, include MC 153 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Abrams".

Acting Section Manager
Utilities & Districts Section
Water Supply Division

MH/ac

Enclosures

cc: mailing list

ORIGINAL

A 10989

APPLICATION NO. A-10,989

IN THE SUPREME COURT OF TEXAS

CITY OF SAN ANTONIO, ET AL.,

Petitioners

v.

TEXAS WATER COMMISSION, ET AL.,

Respondents

GUADALUPE-BLANCO RIVER AUTHORITY'S REPLY
TO THE APPLICATION FOR WRIT OF ERROR

FILED
IN SUPREME COURT
OF TEXAS

AUG 20 1965

BY **GEO. H. TEMPLIN, CLERK**

DEPUTY

DONALD L. HOWELL
VICTOR W. BOULDIN
VINSON, ELKINS, WEEMS & SEARLS
2100 First City National Bank Building
Houston, Texas 77002

ATTORNEYS FOR RESPONDENT,
GUADALUPE-BLANCO RIVER AUTHORITY

VINSON, ELKINS, WEEMS & SEARLS
ATTORNEYS AT LAW
FIRST CITY NATIONAL BANK BUILDING
HOUSTON, TEXAS

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APPLICATION NO. A-10,989
IN THE SUPREME COURT OF TEXAS

CITY OF SAN ANTONIO, ET AL.,
Petitioners

v.

TEXAS WATER COMMISSION, ET AL.,
Respondents

GUADALUPE-BLANCO RIVER AUTHORITY'S REPLY
TO THE APPLICATION FOR WRIT OF ERROR

TO THE HONORABLE SUPREME COURT OF TEXAS:

Guadalupe-Blanco River Authority, a conservation and reclamation district and political subdivision of the State of Texas, Respondent, replies to the Application for Writ of Error of the City of San Antonio, et al., filed in the Supreme Court on August 9, 1965, as follows:

„

STATEMENT OF THE CASE

The statement of the Court of Civil Appeals as to the nature and result of the suit is correct except for the following statement (Op. p. 4):

"At this point of the trial appellants rested and made a motion for judgment alleging that there were no fact issues in dispute, only matters of law. This motion was overruled by the court, however at this same point in the trial, the Attorney General acting on behalf of the Commission and its individual members made a motion for summary judgment urging the fact that the case was to be tried under the substantial evidence rule, that the appellants had failed as a matter of law to present any evidence tending to show that the Commission's order was unreasonable and not supported by substantial evidence and had wholly failed to overcome the presumption of the validity of the orders. The court agreed to carry the Attorney General's motion along with the trial, however, at the conclusion of the trial he overruled this motion. After the court stated that it would carry the Attorney General's motion with the case, the Attorney General announced that the Commission did not desire to introduce evidence and rested."

The facts are that:

- ✓ (a) Petitioners (San Antonio) filed and presented a motion for summary judgment in each of the consolidated cases before trial commenced which were carried with the case (S.F. 3).
- (b) When San Antonio rested after introducing its documentary evidence (P. Exs. 1-20), the Attorney General moved on behalf of the Water Commission for judgment on the ground that Petitioners had offered no evidence purporting to show that the Commission's orders complained of were not supported by substantial evidence (S.F. 35-38), which motion was also carried with the case (S.F. 40).

(c) The Attorney General stated that the Water Commission would offer no evidence and Assistant Attorney General Frank R. Booth, at his request, was then excused from attendance upon the court until arguments on the merits were to be heard (S.F. 40).

(d) The foregoing motions were disposed of in the final judgment as follows:

"1. That Plaintiffs' motion for summary judgment in each of the consolidated cases is hereby overruled and denied;

"2. That the motions of the Texas Water Commission and its individual members, Joe D. Carter, O. F. Dent and H. A. Beckwith, made after Plaintiffs had rested, for judgment in each of the consolidated cases that Plaintiffs take nothing, are hereby granted;"

(The transcript is not available for page reference.)

COUNTERPOINTS

FIRST COUNTERPOINT

The Court of Civil Appeals properly held that the Texas Water Commission was vested with broad discretion in either granting or denying San Antonio's Application No. 1956 and Guadalupe-Blanco River Authority's Application No. 1964 and that Petitioners were not entitled to a permit as a matter of law. (In reply to Third Point.)

SECOND COUNTERPOINT

Petitioners having failed to offer any evidence tending to show that the order of the Texas Water

Commission denying San Antonio's Application No. 1956 was not supported by substantial evidence or was unreasonable, arbitrary and capricious, the Court of Civil Appeals did not err in sustaining the validity of such order and in granting the motion of the Texas Water Commission for judgment. (In reply to First Point.)

THIRD COUNTERPOINT

Petitioners having failed to offer any evidence tending to show that the issuance of Permit No. 1886 to Guadalupe-Blanco River Authority by the Texas Water Commission was not supported by substantial evidence or was unreasonable, arbitrary and capricious, the Court of Civil Appeals did not err in sustaining the validity of such permit and in granting the motion of the Texas Water Commission for judgment. (In reply to First Point.)

FOURTH COUNTERPOINT

The evidence adduced by Respondent Guadalupe-Blanco River Authority and the Intervenors conclusively demonstrates that the orders of the Texas Water Commission denying San Antonio's Application No. 1956 and granting GBRA's Application No. 1964 in part are fully supported by substantial evidence and the Court of Civil Appeals did not err in sustaining the validity of such orders. (In reply to First Point.)

FIFTH COUNTERPOINT

The Court of Civil Appeals did not err in holding that the Texas Water Commission followed the governing statutes in issuing Permit No. 1886 or in refusing to hold that in granting such permit the Commission unlawfully delegated its authority and acted in bad faith. (In reply to Second and Third Points.)

SIXTH COUNTERPOINT

The uncontradicted documentary evidence having established that the State has heretofore granted

substantial water rights on the Guadalupe River, the burden was upon Petitioners to rebut the presumed finding by the Texas Water Commission that the grant of Application No. 1956 would impair such existing water rights and, Petitioners having failed to offer any evidence on the subject, the Court of Civil Appeals correctly sustained the order of the Texas Water Commission denying said application. (In reply to Fourth Point.)

SEVENTH COUNTERPOINT

Since Permit No. 1886 authorizes the impoundment and use of water from Canyon Reservoir for municipal purposes, the highest preferential use prescribed by Art. 7471, the question of the repeal of Art. 7589 by the Wagstaff Act does not arise in this case. (In reply to Fifth Point.)

EIGHTH COUNTERPOINT

Petitioners having applied for a permit to appropriate 100,000 acre feet of water per annum and having prayed in the trial court for judgment for that quantity of water, the Court of Civil Appeals did not err in giving effect to evidence regarding such quantity. (In reply to Sixth Point.)

NINTH COUNTERPOINT

The Court of Civil Appeals did not err in failing to hold Art. 7472c unconstitutional. (In reply to Seventh Point.)

TENTH COUNTERPOINT

The issuance of a permit to Guadalupe-Blanco River Authority to use 50,000 acre feet of water per annum for municipal purposes within the Guadalupe watershed did not constitute a finding that an equal amount of water could be diverted out of the watershed without impairing existing non-consumptive water rights of prior appropriators. (In reply to Eighth Point.)

ELEVENTH COUNTERPOINT

The Court of Civil Appeals did not err in considering and giving effect to the official publication of the Texas Water Commission listing permits and certified filings on the Guadalupe River. (In reply to Ninth Point.)

✓
CROSS ASSIGNMENTS

FIRST CROSS-POINT

The trial court erred in excluding Exhibit GB-33 and Exhibit GB-34, being letters from the Board of Water Engineers designating GBRA as the sole agency of the State to deal with the Corps of Engineers in regard to Canyon Reservoir.

SECOND CROSS-POINT

The trial court erred in excluding GBRA's Exhibit GB-32 dealing with the plan approved by the San Antonio River Authority and GBRA for the furnishing of water to San Antonio from the proposed Cuero Dam and Reservoir Project on the Guadalupe River in exchange for the return of an equal amount of water from the proposed Goliad Reservoir on the San Antonio River.

STATEMENT, ARGUMENT AND AUTHORITIES UNDER
FIRST, SECOND AND THIRD COUNTERPOINTS

FIRST COUNTERPOINT RESTATED

The Court of Civil Appeals properly held that the Texas Water Commission was vested with broad discretion in either granting or denying San Antonio's Application No. 1956 and Guadalupe-Blanco River Authority's Application No. 1964 and that Petitioners were not entitled to a permit as a matter of law. (In reply to Third Point.)

SECOND COUNTERPOINT RESTATED

Petitioners having failed to offer any evidence tending to show that the order of the Texas Water Commission denying San Antonio's Application No. 1956 was not supported by substantial evidence or was unreasonable, arbitrary and capricious, the Court of Civil Appeals did not err in sustaining the validity of such order and in granting the motion of the Texas Water Commission for judgment. (In reply to First Point.)

THIRD COUNTERPOINT RESTATED

Petitioners having failed to offer any evidence tending to show that the issuance of Permit No. 1886 to Guadalupe-Blanco River Authority by the Texas Water Commission was not supported by substantial evidence or was unreasonable, arbitrary and capricious, the Court of Civil Appeals did not err in sustaining the validity of such permit and in granting the motion of the Texas Water Commission for judgment. (In reply to Second Point.)

The Court of Civil Appeals has written an excellent opinion and has correctly decided the issues presented in this case. Therefore, Respondent Guadalupe-Blanco River Authority (GBRA) will reply only briefly to the points raised in the Application. The Petitioners, City of San Antonio and Waterworks Board of Trustees of San Antonio, will be referred to, for brevity, as "San Antonio."

In support of its motions for summary judgment, San Antonio took the position in the trial court that, if there is unappropriated water in the Guadalupe River at the Canyon Reservoir and

if the City Council of San Antonio determines that it would be for the best interests of San Antonio to obtain a water supply from that source, the Texas Water Commission has no discretion but is obligated to grant San Antonio a permit as a matter of law.

The evidence which they introduced in the trial court before resting their main case was documentary, the only oral evidence being for the purpose of identifying one of the exhibits (S.F. 24). The documentary evidence bearing on the Commission's refusal of San Antonio's application (Cause No. 108,098) consisted, generally, of a certificate that San Antonio's Home Rule Charter had been filed with the Secretary of State, resolutions and ordinances relating to the filing of San Antonio's presentation and application for permit, the presentation and application themselves, the orders of the Water Commission denying the application, and similar evidence intended to show that San Antonio had taken the necessary steps to apply to the Water Commission for a permit. The only evidence relating to San Antonio's attack on the permit issued to GBRA (Cause No. 108,099) introduced in San Antonio's main case was a copy of GBRA's application, the order of the Commission granting this application and a copy of Permit No. 1886 as issued to GBRA.

S.A.'s evidence

None of San Antonio's evidence was intended to show that the orders and acts of the Water Commission denying San Antonio's application and granting GBRA's application were unreasonable, arbitrary or capricious or were not supported by substantial evidence. Knowing of the vast amount of evidence introduced by GBRA and the Intervenor at the hearing before the Water Commission in 1956 and also knowing the impossibility of establishing that the Commission's acts and orders were not supported by substantial evidence, San Antonio elected to abandon the elaborate technical evidence it had introduced before the Water Commission in 1956 and to rest its case on the proposition that it was entitled to a permit as a matter of law.

When San Antonio rested its main case, the Attorney General moved for a judgment on behalf of the Water Commission and its members on the ground that San Antonio had wholly failed to discharge its burden of proving that the Commission's orders and acts were not supported by substantial evidence. The Attorney General declined to offer any evidence and rested on his motion. This motion was later granted by the trial court and judgment was entered that Plaintiffs take nothing and adjudging that the acts and orders of the Commission attacked by San Antonio were valid.

The trial court made the following finding (No. 11):

"At the trial, the Plaintiffs made the contention that they were entitled to the issuance of a permit as a matter of law and offered no evidence of any character showing, or tending to show, that the two orders entered by the Texas Water Commission on July 5, 1957, were unreasonable or were not supported by substantial evidence or that the Texas Water Commission was arbitrary and capricious in making and entering said orders and in issuing Permit No. 1886."

and concluded (Nos. 1 and 2) that:

✓ "The Texas Water Commission was vested with a broad discretion in either granting or denying Plaintiff's Application No. 1956 and Guadalupe-Blanco River Authority's Application No. 1964.

✓ "The burden was on Plaintiffs to show that such discretion was improperly exercised and that the orders and acts of the Commission complained of were not supported by substantial evidence. Plaintiffs made no effort to discharge such burden."

These conclusions of law follow the holding of this Court in the leading and controlling case of Southern Canal Co. v. Board of Water Engineers, 159 Tex. 227, 318 S.W. 2d 619 (1958), and, also, the holding of the Austin Court of Civil Appeals in Clark v. Briscoe Irr. Co., 200 S.W. 2d 674 (no writ hist. - 1947). (See CCA opinion, pp. 11-12.) San Antonio's contrary contention is inconsistent with the various statutes governing the powers and duties of the Water Commission which are summarized on pages 7-10 of the opinion of the Court of Civil Appeals. San Antonio now concedes on page 5 of the Application that

the Water Commission is vested with discretion in either granting or denying the applications for permits here involved and that the burden is on the party complaining of the Commission's actions to show that such actions are not supported by substantial evidence. Since San Antonio made no attempt to discharge that burden, GBRA respectfully submits that the trial court properly granted the State's motion for judgment and entered the only judgment that should have been entered in this case.

STATEMENT, ARGUMENT AND AUTHORITIES
UNDER FOURTH COUNTERPOINT

FOURTH COUNTERPOINT RESTATED

The evidence adduced by Respondent Guadalupe-Blanco River Authority and the Intervenor conclusively demonstrates that the orders of the Texas Water Commission denying San Antonio's Application No. 1956 and granting GBRA's Application No. 1964 in part are fully supported by substantial evidence ✓ and the Court of Civil Appeals did not err in sustaining the validity of such orders (In reply to First Point.)

GBRA and the Intervenor cities and corporations owning water rights on the Guadalupe or having other direct interests in this suit, although fully agreeing with the propriety of the Attorney General's position on his motion for judgment, elected to present evidence on some of the principal issues which led the Water Commission to deny San Antonio's application and to grant GBRA's

application in part. They were of the opinion that the trial and appellate courts should know all the facts bearing upon this controversy notwithstanding that San Antonio had failed to make out a case. Most of the Statement of Facts is given over to testimony of expert witnesses for GBRA and the Intervenor which fully supports the trial court's Findings No. 13(a)-(k) stating numerous facts and reasons for denying San Antonio's application and for granting GBRA's application in part. These findings amply explain and support the actions of the Water Commission in this matter. They, in turn, are amply supported by substantial evidence as noted below.

The obvious weakness of San Antonio's position in the trial court that the Water Commission could not exercise a reasonable discretion in granting or denying San Antonio's application and that San Antonio was entitled to a permit as a matter of law, forced Petitioners to attempt a shift in their argument in the Court of Civil Appeals. They conceded in that court, as they do in this court, that the burden was on them to overcome the presumption of validity which attends the acts and orders of the Commission by the introduction of evidence demonstrating that such acts and orders are not supported by substantial evidence. They then contended that the evidence introduced by GBRA and the

Intervenors served to remedy the deficiency in San Antonio's affirmative evidence. The Court of Civil Appeals questions, but does not find it necessary to decide, the propriety of San Antonio's relying entirely upon adversary evidence to make out their case. (Op. p. 15.) GBRA likewise finds it unnecessary to discuss the point since the adversary evidence not only fails to aid San Antonio's case but overwhelmingly demonstrates that the Commission's acts and orders are fully supported by substantial evidence.

For the Court's convenience, we make brief reference to the evidence supporting each of the trial court's Findings 13(a)-(k) as follows:

(a) San Antonio has no need for additional water supply for at least 15 to 20 years: See testimony of San Antonio Water Manager (S.F. 145-148) and P. Ex. 21, a report prepared by San Antonio. (All exhibits sent up as originals.)

(b) There is a present and immediate need for stored water from Canyon Reservoir for cities in the Guadalupe Basin: See testimony of the Manager of Utilities for the City of Seguin (S.F. 269-279), and the City Manager of Port Lavaca (S.F. 248-255).

GBRA's evidence

(c) The unwillingness of the Corps of Engineers to deal with a large number of cities in contracting for use of the conservation pool in a Federal reservoir is shown in Northeast Tarrant Co. W.A. v. Board of W. Eng., 367 S.W. 2d 720, 726 (1963). The duty and obligation of GBRA to develop the water resources of the Guadalupe basin for all cities and other users within its boundaries is shown by the GBRA Act (Art. 8280-106, V.T.C.S.).

(d) San Antonio's heavy pumping from the Edwards Formation has destroyed the dependable spring flow of the Guadalupe River: See testimony of M. A. Dillingham, Consulting Engineer (S.F. 187-191).

(e) Foreseeable needs for water in the Guadalupe Basin exceed total supply when fully developed: See testimony of James A. Cotton, Consulting Engineer (S.F. 110-113) and GB Ex. 3.

(f) San Antonio's requested diversion would impair vested water rights of prior appropriators on the Guadalupe River: See testimony of M. A. Dillingham (S.F. 169-198) and GB Ex. 8, GB Ex. 12 and GB Ex. 13.

(g) Diversion of water from the Guadalupe Basin to San Antonio would be of prejudice to persons and


property in the Guadalupe Basin: See testimony and exhibits under (f) next above and testimony of Du Pont Manager, Morris Shattuck (S.F. 280-284), Carbide Manager, R. P. Barry (S.F. 285-287), and C.P. & L. executive, R. W. Maierhofer (S.F. 287-297).

(h) Canyon Reservoir would not provide a dependable water supply for San Antonio: See testimony of James A. Cotton (S.F. 127-134).

(i) Canyon Reservoir water can be used 20 times within the Guadalupe Basin: See testimony of M. A. Dillingham (S.F. 199-205).

(j) Canyon Reservoir's location in the Balcones Fault Zone creates threat of leakage: See testimony of Floyd T. Johnson, Geologist (S.F. 214-220) and GB Ex. 14, and testimony of Jack R. Barnes, Consulting Engineer and Geologist (S.F. 243-247) and GB Ex. 16 and GB Ex. 17 (a picture).

(k) San Antonio has not developed the large quantities of water available from the San Antonio River: See testimony of James A. Cotton (S.F. 113-126), Floyd T. Johnson (S.F. 209-214) and Jack R. Barnes (S.F. 238-242) and GB Ex. 6 and GB Ex. 15.



It is clear from the evidence outlined above that there were many reasons why the Water Commission denied the one application and granted the other after 17 days of hearings and that its acts and orders are amply supported by substantial evidence. For this additional reason, the judgments of the courts below are correct and application for writ of error should be refused by this Court.

STATEMENT, ARGUMENT AND AUTHORITIES
UNDER FIFTH COUNTERPOINT

FIFTH COUNTERPOINT RESTATED

The Court of Civil Appeals did not err in holding that the Texas Water Commission followed the governing statutes in issuing Permit No. 1886 or in refusing to hold that in granting such permit the Commission unlawfully delegated its authority and acted in bad faith. (In reply to Second and Third Points.)

San Antonio challenges by argument wholly unsupported by any evidence, the good faith of the Water Commission in granting a permit to GBRA for supplying water to cities within GBRA's boundaries. They contend that the Guadalupe Valley cities have no present or future need for water and that the yield of Canyon Reservoir should be reserved for some possible need of San Antonio 15 or 20 years from now.

On the question of good faith, the Court may wish to compare

the testimony of Mr. Bruce Sasse, General Manager of the San Antonio Water Board (S.F. 146-148) that San Antonio has an ample water supply and will not need additional water for at least 15 or 20 years with the representations made by San Antonio to this Court ten years ago which misled the Court to say in Board of Water Engineers v. San Antonio, 155 Tex. 111, 283 S.W. 2d 722, 723 (1955), that San Antonio "is faced with a serious water-supply problem by reason of a large and rapid increase in population and water consumption within and around its corporate limits, coupled with a serious fall in its potential underground water supply." Why was San Antonio's water supply problem so acute in 1955 but, with no new source of supply, not at all acute in 1965?

San Antonio offered no evidence at all on its claim that there is no need for additional municipal water by cities in GBRA's territory. On the other hand, the Manager of Utilities for the City of Seguin and the City Manager of Port Lavaca both testified to the urgent need for additional water from storage for municipal purposes within GBRA's area. (See analysis of evidence under Fourth Counterpoint, supra.) San Antonio's assertion that the issuance of a permit to GBRA by the Water Commission for water for municipal uses within the Guadalupe Basin

was made in bad faith is contrary to all the evidence in the record and constitutes an irresponsible and unwarranted attack on the able members of that Commission.

✓ San Antonio lifts the term "blanket permits" out of the emergency clause of the 1953 Act amending Art. 7492 and makes a specious argument that Permit No. 1886 issued to GBRA for 50,000 acre feet of water per annum for municipal uses is condemned by this emergency clause. The 1953 amendment followed a series of opinions by the Attorney General (Opinions Nos. O-4304, O-7738, V-803 and WW-188) on the question of whether or not two certain river authorities had been granted water rights directly by the Legislature or whether they were required to obtain permits from the Water Commission and pay the statutory fees the same as other persons and corporations. The amendment made clear that the Legislature intended that all such river authorities must obtain permits and pay the required fees before appropriating water, and the emergency clause merely stated the need to clarify the statutes on this point. Neither Art. 7492 nor the 1953 emergency clause bears upon the type of permit which the Commission may issue. The contents of a permit are prescribed by Art. 7515 and, insofar as the purpose of use is concerned, the only requirement is that the permit shall state "the

use or purpose for which the appropriation of water is to be made."

Permit No. 1886 is of the general type which the Commission has been issuing since its creation more than 50 years ago. (See GB Exs. Nos. 10, 11, 18-25, C. P. & L. Ex. No. 3 and the exhibits attached to "Guadalupe-Blanco River Authority's Reply to Appellants' Reply to the Motion for Rehearing" filed in the Court of Civil Appeals.) The Court of Civil Appeals correctly held that in granting a part of GBRA's Application No. 1964, the Commission exercised the discretion and powers granted to it by Arts. 7506, 7507 and other relevant statutes and did not delegate any of those powers or discretion to GBRA. The river authority is a public agency of the State of Texas performing designated State functions /Brazos River Authority v. McCrow, 126 Tex. 506, 91 S.W. 2d 665 (1936), and governed by a board of nine directors appointed by the Governor, with one member from each of nine counties within the boundaries of the Authority (Kendall County is represented by an unofficial adviser). The Authority is required by its Act of creation (Art. 8280-106, V.T.C.S.), by the common law /Borden v. Trespalacios Rice & Irr. Co., 98 Tex. 494, 86 S.W. 11 (1905); Allen v. Park Place Water, etc., Co., 266 S.W. 219 (err. ref. - 1924), and by Arts. 7560-7567, R.C.S., to serve all cities within its

boundaries without discrimination. In addition, Permit No. 1886 specifically requires GBRA to obtain the approval of the Water Commission on all contracts with municipalities before any water is used under the permit, and the Commission may, if it deems necessary, require the individual cities to obtain use permits under Rule 205.2 of the Commission (see GB Ex. 29 - Commission's Rules and Regulations, etc.) before the Commission approves such a contract.

GBRA respectfully submits that Permit No. 1886 is not a "blanket permit" but is a specific permit for a specific quantity of water for a specific use and that in issuing such permit the Water Commission has not unlawfully delegated any of its powers or discretion to GBRA.

STATEMENT, ARGUMENT AND AUTHORITIES
UNDER SIXTH AND SEVENTH COUNTERPOINTS

SIXTH COUNTERPOINT RESTATED

The uncontradicted documentary evidence having established that the State has heretofore granted substantial water rights on the Guadalupe River, the burden was upon Petitioners to rebut the presumed finding by the Texas Water Commission that the grant of Application No. 1956 would impair such existing water rights and, Petitioners having failed to offer any evidence on the subject, the Court of Civil Appeals correctly sustained the order of the Texas Water Commission denying said application. (In reply to Fourth Point.)

SEVENTH COUNTERPOINT RESTATED

Since Permit No. 1886 authorizes the impoundment and use of water from Canyon Reservoir for municipal purposes, the highest preferential use prescribed by Art. 7471, the question of the repeal of Art. 7589 by the Wagstaff Act does not arise in this case. (In reply to Fifth Point.)

✓ Not only did San Antonio fail to offer any evidence tending to show that there is unappropriated water in the Guadalupe River and that the grant of its Application No. 1956 would not impair existing water rights, the evidence introduced by Respondents shows conclusively that San Antonio's requested diversion would substantially impair such existing rights. The witness, M. A. Dillingham, testified that the rights of Texas Power Corp. and Texas Hydro-Electric Corp. would be damaged to the extent of \$596,900 over a 15-year test period (S.F. 177-178 - GB Ex. 8) and that the water supply and operations of DuPont's plant at Victoria and Carbide's plant at Seadrift would also be adversely and seriously affected (S.F. 179-198, G.B. Exs. 12, 13). These facts were confirmed by the managers of the DuPont and Carbide plants (S.F. 280-286). An executive of Central Power & Light Co. also testified to serious curtailment of that company's operations at its electric-steam power plant at Victoria and hydro-electric plants at Gonzales and Cuero due to shortage of water in past droughts which would be worsened if San Antonio's request for