investigation of facts to be presented to the Commission at a hearing on an application for a permit, if one is filed, does not constitute a pre-judging by the Commission that such person is entitled to a permit. The Commission's discretion is to be exercised after such facts are made known to it, and not before.

3. The Wagstaff Act. San Antonio glosses over the actual language of the Wagstaff Act to contend that it creates an "emphatic and unconditional priority" for cities. The argument is premised on a misreading of the Act. The Act creates a preference for domestic and municipal uses, not a preference for cities as applicants. The statutory language could hardly be clearer. Any supplier of water to a city needs a permit for domestic and municipal uses, just as a city needs a permit for domestic and municipal uses. The Act provides a preference for the uses, not a preference to an applicant for a permit because it happens to be a city. Otherwise, the Legislature would be in the anomalous position of favoring cities which happen to operate their own waterworks over cities which have waterworks operated by private water supply corporations, by water control and improvement districts, by fresh water supply districts, by river authorities, or by any other water supplier.

Article 7471 provides:

> "In the conservation and utilization of water declared the property of the State, the public welfare requires not only the recognition of the uses beneficial to the public well-being, but requires as a constructive public policy, a declaration of priorities in the allotment and appropriation thereof; and it is hereby declared to be the public policy of the State essential to the public welfare and for the benefit of the people that in the allotment and appropriation of waters defined in Article 7467 ... preference and priority be given to the following uses in the order named, to-wit:
>
> "1. Domestic and Municipal uses, including water for sustaining human life and the life of domestic animals." (Emphasis supplied.)
>
> (Other uses follow.)

There is one, and only one, provision in the entire Wagstaff Act which even speaks of cities: Art. 7472. And Art. 7472 manifestly does not apply here. It provides:

> "As between appropriators, the first in time is the first in right, providing, however, that all appropriations for allotments of water hereafter made for hydro-electric power, irrigation, manufacturing, mining, navigation, or any other purposes than domestic or municipal purposes, shall be granted subject to the right of any city, town or municipality in this State to make further appropriations of said water thereafter without the necessity of condemnation or paying therefor, for domestic and municipal purposes as herein defined in Paragraph No. '1' of Article 7471, as herein amended, any law to the contrary notwithstanding." (Emphasis supplied.)

The right is only the right to appropriate water which has already been appropriated (after 1931) to inferior uses without the necessity of paying therefor. Even this provision does not allow a city to appropriate water which is already used for domestic and municipal uses, since it specifically provides that it applies only to "other purposes than" domestic and municipal. It does not aid San Antonio as against GBRA whose permit is also for domestic and municipal uses. Of course, San Antonio is not trying to appropriate water already appropriated for inferior uses without paying therefor. San Antonio is trying to obtain an original permit for unappropriated water. This Court has already held that this provision does not give cities an unbridled right to appropriate water without regard to other provisions of law. City of Wichita Falls v. Bruner, 165 S. W. 2d 480, 484-485 (Tex.Civ.App. - Fort Worth, 1942, err. ref.).

The Wagstaff Act further expressly recognizes governmental suppliers of water to cities for domestic and municipal uses. Article 7472(b), not quoted in full in San Antonio's brief (p. 27), provides:

> "The right to take water necessary for domestic and municipal supply purposes is primary and fundamental, and the right to

> recover from other uses, waters essential to such purposes, shall be paramount and unquestioned in the policy of the State, and in the manner Constitutional and Statutory authority provide. All political sub-divisions of the State and Constitutional, Governmental Agencies exercising delegated Legislative powers are recognized to have the Right of Eminent Domain, to be exercised as permitted by law for uses, domestic and municipal, ..."

DECIDING BETWEEN TWO APPLICATIONS FOR THE SAME PRIORITY OF USES

Realizing, then, that the Wagstaff Act creates a preference only for uses, not for cities as applicants, the problem still remains of how to decide between two applications for the same water for the same priority of uses. San Antonio and GBRA are applicants for the same water for the same priority of use: Domestic and Municipal. There is no "preference ... in the order of preferential uses declared" because both San Antonio and GBRA asked for water for domestic and municipal uses. The Water Rights Commission must decide between the two applications. The Legislature has established numerous criteria discussed supra. The Wagstaff Act sets out one standard by providing "as between applicants" it is the "duty" of the Commission that "preference also be given to those applications, the purposes for which contemplate and will effectuate the maximum utilization of water." Article 7472(c) is clear:

> "... it shall be the duty of the State Board of Water Engineers or other agency of the State designated for the purpose to observe the rule that as between applicants for rights to use the waters of the State, preference be given not only in order of preferential uses declared, but that preference also be given those applications the purposes of which contemplate and will effectuate the maximum utilization of waters and are designated and calculated to prevent the escape of waters without contribution to a beneficial public service." (Emphasis supplied.)

This provision is precisely in point in this case to provide one standard for deciding "as between applicants" for the same water and for the same priority of use, and the Commission is the agency designated to apply this standard.

There is no inconsistency with the provision that domestic and municipal uses shall remain prior to all other uses. Nor is there any defect in the caption of the Act which states: "declaring the policy of the State to the use of public waters." There is no need here even to consider if an inferior use could prevail over a prior use because of a greater utilization of waters. This question is not before the Court.

The Wagstaff Act thus provides a harmonious and comprehensive basis for determining priority of uses, for deciding between applications of the same priority of use, and for protecting the rights of all cities and governmental suppliers of water to obtain adequate amounts of water. When read with the

statutes reviewed by the Court of Civil Appeals (pp. 205-206), and mentioned above, which, together, fix the criteria to be observed by the Commission in passing upon requests for appropriations, there is no basis for the contention that San Antonio had an overriding right to require the Commission to grant its application to the exclusion of the cities within the Guadalupe Valley.

4. No Proof of Unappropriated Water for San Antonio. Although the evidence shows that San Antonio made a "yield study" of Canyon Reservoir which was presented to the Commission in the 1956 hearings (S.F. 128-132), San Antonio offered no evidence on this subject in the trial court.[1/] There is no evidence as to the quantity of water, if any, which may be diverted by pipeline directly from the reservoir to San Antonio without impairing vested water rights downstream on the Guadalupe. Nor is there any evidence as to the minimum quantity which would justify the expenditure necessary to construct pipelines, pumping stations and treatment works to convey such water some 40

1/ This study showed that if San Antonio had a permit as requested and took water at the rate of 100,000 acre feet a year as long as there was water in Canyon Reservoir, they would dry up the reservoir and be without water for 52 out of the 70-odd months in a recurrence of the drought experienced in the mid-fifties.

miles through the Hill Country to San Antonio and provide potable water to customers whose present supply now flows in substantial part by artesian pressure above the earth's surface.

The grant of 50,000 acre feet per annum to GBRA is neither an express nor an implied finding that the same quantity would be available for export to San Antonio. The facts are different in regard to the respective methods of taking water from the reservoir and this difference also makes a big difference in the impact of the two plans on vested water rights on the Guadalupe below Canyon Dam.

These very substantial existing water rights are enumerated on page 211 of the Court of Civil Appeals' opinion, but this enumeration does not reveal all pertinent facts.

There are nine hydroelectric plants on that part of the Guadalupe from a point immediately above Seguin to a point near Gonzales. They operate under "certified filings" and old permits issued before the Wagstaff Act was enacted in 1931. Their rights range from a maximum of 1,380 cubic feet per second of time (cfs) at the Texas Hydro-electric Corporation plant which is most upstream, to a minimum of 415 cfs at the municipal plant owned and operated by the City of Seguin. These plants flood and go out of operation when the river flow reaches 5,000

cfs, and their efficiency is greatly reduced by a reduction in "head" when the flow exceeds 2,500 cfs (S.F. 106-7). Therefore, the natural effect of a dam and reservoir upstream which impounds destructive flood flows and converts them into reduced regulated flows is beneficial to these plants unless the water is diverted from the reservoir and not permitted to pass downstream. GBRA's permit authorizes it to use the bed and banks of the Guadalupe River to convey its 50,000 acre feet of water to the pumping plants of cities below Canyon Dam and, as explained by Mr. James A. Cotton, expert witness and consulting engineer of Dallas, "if you impound some of the water up to 1,300 second feet and release it in a regulated manner, it adds to the dependable yield or outflow from the reservoir without harm to the two water rights that I mentioned." (S.F. 106.)

Of course, the use of water to generate hydroelectric energy does not consume the water and after it has passed through the most downstream plant, it is still available for consumptive uses.[2/] Also, in studying the dependable yield of

2/ Much of the unconsumed hydroelectric waters will flow into the proposed Cuero Reservoir which will be below the hydro-plants. This is one reason why more water would be available to San Antonio from Cuero Reservoir (than from Canyon Reservoir) as proposed in the agreement between GBRA and the San Antonio River Authority. See GB Ex. 32 and GBRA's Second Cross-Point.

Canyon Reservoir, Mr. Cotton found that the highest "demand" (maximum water rights) of all appropriators on the Guadalupe was the non-consumptive right at the most upstream hydroelectric plant above Seguin and that all other rights would be satisfied if Canyon Dam was operated to satisfy this maximum right (S.F. 92-110). For this reason, he did not make the customary yield study which would consider each and every water right downstream (S.F. 94-98).

The error of San Antonio's assumption, without proof, that the GBRA permit which, based upon the testimony of Mr. Cotton and other similar testimony, granted 50,000 acre feet per annum to be transported downstream in the bed and banks of the Guadalupe River, necessarily constituted a finding that the same quantity of water would be available for diversion by pipeline to San Antonio from the reservoir, which is located above all of the hydroelectric plants, is shown by the following questions asked of Mr. Cotton and his replies (S.F. 95):

> "Q. Did you contemplate that these waters would be released from the dam in a manner that would not impair the rights of prior appropriators downstream?
>
> "A. That was the assumption on which these studies are made, that all waters would be released in a regulated flow instead of a flood flow.

"Q. Would the same results have been reached if you had assumed that 100,000 acre feet of this water per annum would have been removed from the watershed at or near the reservoir and taken into another watershed?

"A. No, this would not be the same, because the water would not be available to the prior downstream rights."

The record is completely void of any evidence as to the quantity of water, if any, which was unappropriated at the Canyon site for conveyance by pipeline to San Antonio. The lower courts held that San Antonio's proposed use would impair vested water rights and this finding is amply supported by the evidence, including the testimony of Mr. M. A. Dillingham, an eminent consulting engineer of Houston, whose studies covering a period of 15 years showed a monetary loss to Texas Power Corp. and Texas Hydro-Electric Corp. of about $600,000 (S.F. 178 - see GB Ex. 8).

The testimony of Mr. Cotton and Mr. Dillingham, considered in the vacuum created by San Antonio's position, does not support an assumption that the grant of 50,000 acre feet of water per annum constitutes a finding that a like amount of water is unappropriated at the Canyon site and available for direct diversion from the reservoir to San Antonio. San Antonio failed even to attempt to prove that there is unappropriated water at the source for its use and misplaces its reliance on GBRA's testimony.

STATEMENT, ARGUMENT AND AUTHORITIES
IN REPLY TO PETITIONERS' THIRD POINT

Petitioners' Third Point is predicated solely upon two false assumptions of fact which are not only unsupproted by any evidence but are contrary to the undisputed evidence. Petitioners say that as against their application the Commission did not have "power under the law to deny such application merely because

> 1. "the Commission is of the opinion that sometime in the indefinite future the water may be put to multiple uses with inferior priority,
>
> 2. "there being no other bona fide applications for municipal purposes before the Commission at the time it denied the application for the highest priority of use, namely, bona fide domestic and municipal use." (Numbers supplied.)

The first basis of this Third Point is false, viz., that the Commission denied San Antonio's application "merely because the Commission is of the opinion that sometime in the indefinite future the water may be put to multiple uses with inferior priority." The Commission did not deny San Antonio's application in order to reserve this water for future use within the Guadalupe watershed for inferior uses. It granted GBRA a permit to use this water now for the number one preferential use, namely, municipal and domestic use. It denied GBRA's application

insofar as it requested water for industrial, irrigation and hydroelectric uses.

The second basis is equally false. As discussed infra, the undisputed evidence shows an urgent and immediate need for stored waters to firm-up the undependable flow of the Guadalupe River for municipal and domestic needs of cities which GBRA is charged by law with a duty to serve. These cities assert that need before this Court in this case. It is San Antonio's application that the undisputed evidence shows not to be bona fide. Such is the evidence of the General Manager of San Antonio's City Water Board that there is no shortage of water in San Antonio and that no supplemental supply will be needed for at least 25 or 30 years after the Commission passed upon San Antonio's application. (S.F. 145-148.)

San Antonio offered no evidence in the trial court touching upon the question of whether GBRA's application was filed in good faith. Notwithstanding that San Antonio, as the one attacking the Commission's order, failed to discharge its burden of proof, nevertheless GBRA, the cities of Seguin and Port Lavaca, and du Pont and Carbide introduced very substantial evidence both of an existing bona fide need and a growing future need for water for municipal and domestic uses within

the area which GBRA is charged by law with serving. (This evidence is discussed under the Second Point, infra.) The suggestion that GBRA's application for domestic and municipal water was not made in good faith is purely a figment of San Antonio's imagination.

There is no basis in fact for San Antonio's Third Point. The legal theories which it presents are not raised by any evidence in the record.

STATEMENT, ARGUMENT AND AUTHORITIES
IN REPLY TO PETITIONERS' SECOND POINT

Petitioners' Second Point is multifarious and does not warrant consideration by this Court. We copy the Second Point and assign numbers to each independent ground for clarity:

> "The Court of Civil Appeals erred in holding that by the issuance of Permit 1886 to Guadalupe-Blanco River Authority
>
> (1) the Water Commission followed the requirements of the appropriation statutes,
>
> and erred in refusing to reverse and render the judgment of the trial court in upholding the granting of such permit because
>
> (2) the undisputed evidence in the trial court conclusively negatives the idea that 50,000 acre feet of unappropriated water would be used for municipal purposes and
>
> (3) because the granting of such permit was an illegal attempt by the Commission to delegate its exclusive authority to the Guadalupe-Blanco River Authority, and
>
> (4) the granting of such permit for municipal purposes was in bad faith, arbitrary and capricious."

This point presents different and wholly independent grounds for reversal and presents them in a non sequitur and illogical manner. Nevertheless, without waiving its objection

to consideration of the Point by the Court, GBRA replies as follows:

On the point that the Commission did not follow the appropriation statutes in granting GBRA's Permit No. 1886, San Antonio does not question that:

(a) GBRA is authorized by law to apply to the Commission for a permit to appropriate water for municipal purposes and to sell such water, if granted, to municipal corporations;

(b) GBRA's Application No. 1964 complied with the governing statutes;

(c) The Commission was authorized to entertain and pass upon such application;

(d) The Commission heard evidence at a public hearing, after due notice, and entered an order disposing of the application.

San Antonio apparently makes three arguments of law, supported by a host of gross misstatements of fact. (See Appendix for Erroneous Statements of Fact.) The arguments of law may be summarized as follows:

1. The GBRA permit is a blanket permit covering all the unappropriated water from Canyon Reservoir (Brief, p. 35).

2. The GBRA permit is an illegal attempt by the Water

Rights Commission to delegate to GBRA the "legislative power" which was granted to the Commission (Brief, p. 35).

3. GBRA applied for the permit in bad faith.

BLANKET PERMIT

The term "blanket permit" does not appear in any provision of substantive law. The term is lifted whole cloth, out of context from the emergency clause of Art. 7492. San Antonio does not suggest any particular meaning to be assigned to the term. San Antonio simply assumes that GBRA's permit to appropriate 50,000 acre feet of water is a "blanket permit". Actually, it is a permit for a specific amount of water (50,000 acre feet) from a specific installation (Canyon Reservoir) for a specific use (domestic and municipal). San Antonio appears to contend that the GBRA permit is a "blanket permit" because it grants too much water ("the entire unappropriated water of a watershed"). But San Antonio surely cannot object on this ground since it stands in this Court contending that it should be issued a permit for the same amount of the same water. San Antonio surely cannot object to the appropriation of the water solely for municipal uses, since it also stands in this Court asking for the same amount of the same water solely for municipal uses. So we are left with an empty epithet.

San Antonio overlooks even the language of the emergency clause. The clause actually provides:

> "The fact that the present water laws should be clarified so that they (i.e., the laws) may not be interpreted as granting blanket permits or control over the waters of certain streams or parts of streams to state political subdivisions and to make certain that final authority rests with the Board of Water Engineers to grant in accordance with the present system of water use priorities all permits for specific installations creates an emergency ...." (Emphasis supplied.)

Now what is the mischief which is sought to be corrected? Some river authorities had claimed a direct grant from the Legislature in their enabling acts of all unappropriated water in the rivers within their boundaries. They had asserted that they were not required to obtain permits from the Commission. The Attorney General's Department had issued several written opinions, with varying results. (See opinions Nos. 0-4304, 0-7738, V-803 and WW-188). For example, in Opinion 0-7338 (later overruled), the Attorney General stated:

> "The powers thus conferred on the Upper Colorado River Authority are broad and ample; nothing can be added thereto or is acquired by the permit of the Board of Water Engineers ... that House Bill 77 ... creating the Upper Colorado River Authority has necessarily superseded the pre-existing statute under which the Board of Water Engineers issues its permits insofar as the Upper and Lower Colorado River Authorities are concerned." (Emphasis supplied.)

In order to remove all doubt that river authorities and other public agencies cannot appropriate public waters without first obtaining a permit, the Legislature amended Art. 7492 by adding only the underlined language shown below:

> "Every person, association of persons, public or private corporation, political subdivision of the State, agency of the State or of the United States, who shall, after this Act shall take effect, desire to acquire the right to appropriate, for the purposes stated in this Chapter, unappropriated water of the State, shall ... make an application in writing to the Board for a permit to make such appropriation, storage or diversion."

The emergency clause of the Act provided:

> "The fact that the present water laws of Texas should be clarified so that they may not be interpreted as granting blanket permits or control over the waters of certain streams or parts of streams to State political subdivisions and to make certain that final authority rests with the Board of Water Engineers to grant in accordance with the present system of water use priorities all permits for specific installations creates an emergency ...", etc. (Emphasis supplied.)

It will be noted that neither the body nor the emergency clause of the act deals with the contents or nature of permits which the Commission may issue. It provides that the water laws shall not be interpreted as "granting blanket permits or control over the waters of certain streams or parts of streams to political subdivisions," but all political subdivisions

shall be required to obtain a permit the same as any other person. Neither the emergency clause nor the body of the act purports to deal with the contents of any permit to be issued by the Commission. Certainly, the act does not define a "blanket permit" or purport to prohibit such a phantom.

Emphasizing this intent, the emergency clause then states that the final authority to grant a permit shall rest with the Commission in accordance with the present system of water use priority. There was no attempt to change the present system. There was only an attempt to clarify the water laws so that they should not be construed as exempting any governmental body from having to obtain a permit from the Commission.

ILLEGAL DELEGATION

The illegal delegation argument attacks the permit itself as void. The argument is apparently based upon a contention that a permit to appropriate water to serve others must specify in the permit itself each ultimate user and the amount of water to be furnished to each user, or the permit is void.

San Antonio cites no water law cases to support this argument and cites no water law statute to support the argument. The argument is fabricated out of cases such as State v. Jackson involving, of all things, the right of the Legislature to withdraw

powers from an administrative agency and the invalidity of certain contracts by cities. (See Brief, p. 37.)

The permit does not specify the cities, towns and villages to which GBRA will supply water because:

(a) The statutes do not make such requirement;

(b) The Commission's rules do not make such requirement;

(c) It has not been the practice of the Commission in its 53-year history to specify or limit, in permits, the places where water granted for municipal purposes must be used;

(d) It is impossible to foresee over the useful life of a reservoir project, ordinarily more than 100 years, where water will be needed or in what quantities; and

(e) There is no need to specify the places of use because it is both the common law duty and the statutory duty of a public or private corporation making an appropriation of water for service to others to supply water without discrimination to all who are entitled thereto.

(An adequate remedy is provided by Arts. 7560, et seq., if this duty is not performed.)

The Texas statutes have never required a permit to appropriate water to serve others to specify in the permit itself the ultimate users or amount of water to be furnished to each ultimate user. GBRA would further show that the laws of Texas provide broad and ample regulation for the failure of a permittee to supply water.

THE PERMIT ITSELF

There is nothing unusual in the fact that GBRA's permit is a permit to appropriate water for service to others. Respondent previously pointed to Mr. Wells A. Hutchins' statement in "The Texas Law of Water Rights," at page 171:

> "Throughout the history of water legislation in Texas runs the principle that water may be appropriated for the personal use of the appropriator, or for service to others."

San Antonio asserts in its pleadings in Cause No. 108,098 that it has assumed the duty of providing water for the 650,000 people in the San Antonio metropolitan area. The then current census shows San Antonio had a population of 408,442 and it is clear that San Antonio proposed to furnish water not only to its own citizens but also to those in other incorporated cities and

towns, water districts and other communities in Bexar County, such as the incorporated cities of Alamo Heights, Terrell Wells, Terrell Hills, Olmos Park and numerous other communities. San Antonio's application does not specify which of these cities, towns, districts and communities are to be furnished water. Therefore, San Antonio requested the same type of permit it now attacks.

There are two steps which are relevant to the contents of the permit itself:

(1) The application; and

(2) The permit.

The water laws of Texas specify in detail at each of these steps the information or content which is required. None of the laws require specification of the ultimate users and the amount of water to be furnished to each ultimate user for a permit to serve others.

Article 7493 describes in detail the contents of the application. Article 7493 requires:

> "Such application shall be in writing and sworn to; shall set forth the name and post office address of the applicant; the source of water supply; the nature and purposes of the

> proposed use and the amount of water to be used for each purpose; the location and description of the proposed dam, lake, reservoir, headgate, intake, pumping plant, ditch, canal or other work, time within which it is proposed to begin construction and the time required for the application of the water to the proposed use and, if such proposed use is for irrigation, a description of the lands proposed to be irrigated, and, as near as may be, the total acreage thereof. If the applicant proposes to use water temporarily or during certain months or seasons of the year, the use or the months or seasons of the year water will be used, together with such other data and information as the Board may prescribe."

It will be noted that this statute makes only one requirement specifying the <u>place</u> of use and that relates solely to irrigation water. It does not require that the place of use of municipal water be specified. The implication of law is that by making such requirement as to the one use, all others are excluded. Such has been the administrative construction for half a century.

Article 7531 authorizes the Water Commission to adopt rules and regulations for the performance of the duties, powers and functions prescribed and vested in it by the water laws of Texas. These rules and regulations have been admitted into evidence in this case. Examination of the rules and regulations will disclose that they make no requirement that the permit

itself specify each ultimate user and the amount of water to be furnished each ultimate user in a permit to serve others.

Article 7531 does empower the Board, however, to enforce by injunction, mandatory injunction or other appropriate remedy

> "All of the terms and conditions, which are not in conflict with this chapter, contained in declarations of appropriations and in permits to appropriate water heretofore granted and which may hereafter be granted by it under authority of law."

Consequently, the Commission does have the power to impose conditions and terms in the body of the permit. And in this case the Commission did so. Permit No. 1886 provides:

> "It is specifically provided that no releases of water under the terms of this permit shall be made to any municipality until a copy of the executed contract between said municipality and the permittee has been filed with and approved by the Board of Water Engineers, and this applies to assignees and agents of municipalities."

Article 7515 describes in detail the contents of the permit:

> "Upon the approval of an application the Board shall issue a permit to the applicant. The permit shall give the applicant the right to take and use water only to the extent and purposes stated therein. Every permit issued by the Board shall be in writing, attested by the seal of the Board and shall contain substantially the following: The name of the applicant to whom issued; the date of the issuance thereof; the date of the filing of the original application therefor in the office of the Board; the use or purpose for which the

> appropriation of water is to be made; the amount or volume of water authorized to be appropriated for each purpose; a general description of the source of supply from which the appropriation is proposed to be made; if such appropriation is for irrigation, a description and statement of the approximate area of the land to be irrigated; the time within which the construction of work shall begin and the time within which the same shall be completed; and if such appropriation is for temporary or seasonal use, the permit shall state the period of such temporary use or the months or seasons of the year water will be used, together with such other data and information as the Board may prescribe. Acts 1917, p. 218, sec. 32; Acts 1953, 53rd Leg., p. 870, ch. 355, § 3."

It will be noted that this statute also makes only one requirement in regard to specifying the place of use and that relates solely to irrigation waters. It does not require that the place of use of municipal water be specified and again the implication is that by making such requirement as to one use, all others are excluded. Such has been the administrative construction by the Commission and conforms to its Rules and Regulations.

REGULATION OF PERMITTEE

To say that the laws of Texas do not require the permit itself to regulate each ultimate user and the amount of water to be furnished to each ultimate user is not to say that GBRA has the right to decide for itself how it shall furnish its water. Of course the permit itself would not require a statement as to each ultimate user and the amount of water to be

furnished to each ultimate user because the practical problems of determining in advance of an actual contract who would be served and what amount each customer would want. But, if GBRA should attempt to refuse to serve others, the laws of Texas provide broad and ample remedies and protections.

The first protection is contained in the GBRA Act, Art. 8280-106. GBRA is governed by a Board of nine directors who can only be appointed from nominations furnished to the governor by the Water Rights Commission, and after confirmation by the Senate. See Art. 8280-106, § 4. Any director may be removed by the authority which appointed him for inefficiency, neglect of duty or mis-conduct in office. In addition, powers and duties of the GBRA are "subject to the continuing rights of supervision by the State, which shall be exercised through the State Board of Water Engineers." Art. 8280-106, § 3.

If GBRA should fail, as San Antonio asserts, to furnish any municipal water to any of its constituent cities, the remedy is obvious and simple: Cancellation of the permit. Article 7519a empowers the Water Rights Commission to initiate proceedings to cancel any permit which is not being used. Should GBRA refuse to sell municipal water to any particular municipality, GBRA can be required to disgorge the water. Under the common law, the grant of the power of eminent domain carries

with it the duty to serve the public without discrimination.

In Allen v. Park Place Water, etc. Co., 266 S.W. 219 (Tex.Civ.App. 1924, err. ref.), the Court said at page 222:

> "A water corporation, such as appellee in the present case, is a quasi public corporation, and assumes the obligation to supply water to all who may apply therefor who reside within the territory in which the corporation undertakes to operate, provided the demand for such water is reasonable and within the capacity of the corporation [citing authority].
>
> "Corporations which undertake to supply water for domestic purposes to any territory are required to do so without discrimination, and to treat all of those similarly situated within such territory alike with reference to service and rates [citing authority]."

Not only does the common law require service without discrimination, but the statutes of Texas specifically entitle the Water Rights Commission to compel GBRA to furnish water. Article 7560 provides that any person entitled to use water from any reservoir can present a petition to the Commission showing that GBRA has "a supply of water not contracted to others and available for his use, and fails or refuses to supply such water to him ...."

If GBRA fixes an unreasonable price, the Water Rights Commission is entitled under Art. 7563 to fix reasonable rates

for furnishing the water for all purposes. In addition, the same common law of Texas referred to above requires that water be furnished without unjust discrimination and at reasonable rates.

If GBRA should not refuse to supply water to any municipality, but instead should seek to supply an unreasonable amount of water to any particular municipality, then the remedy is equally clear. Under the very terms of the permit itself, the Water Rights Commission can refuse to approve the contract because it attempts to furnish too much water, or attempts to furnish it at an unreasonable price, or for any other reason.

The GBRA Act, the common law, the statutes, the permit itself, and the rules and regulations of the Water Rights Commission all provide broad and ample remedies and protection against any action by GBRA in failing to sell or in selling its water to municipalities. There is no hiatus to the law here; the law has provided full and complete remedies. In addition, as the Austin Court of Civil Appeals held in regard to the scope of the proviso in the GBRA permit itself:

> "Under this language, the Commission could and should withhold its approval of any such contract if the water is not to be used for municipal purposes; if the water is more or less than the

> Commission deems adequate and proper for a particular city, if the water is to be exported beyond GBRA's boundaries, if the means of transportation are wasteful, if the rates are unreasonable or unjustly discriminatory, or for any number of reasons."

GBRA acknowledges the correctness of this construction of the permit, and acknowledges the power of the Water Rights Commission to exercise that continuing supervision over its permit which San Antonio desires it to exercise.

THE BAD FAITH ARGUMENT

San Antonio appears to make two different charges of bad faith. One is that there is no need for municipal water by the constituent cities of the GBRA, so GBRA sought the permit in bad faith. The second is that there is a need but GBRA will refuse to satisfy it because GBRA will keep the water to turn the turbines of its recently acquired hydroelectric plants. The inconsistency is apparent. Both arguments are desperate fabrications originated after appeal of the cases since San Antonio made no attempt in the trial court to introduce evidence on the good or bad faith of GBRA.

Petitioners' statement that "the undisputed evidence in the trial court conclusively negatives the idea that the 50,000 acre feet of unappropriated water would be used for municipal

purposes" is untrue. The undisputed evidence shows exactly the opposite.

It was, of course, proper for the Commission and the trial court to hear evidence as to the existing and expected water need of the rival applicants. The only evidence offered in the trial court by San Antonio on this point was an excerpt from "A Plan for Meeting the 1980 Water Requirements of Texas" prepared by the Texas Board of Water Engineers in May, 1961, long after the hearings on these applications had closed and long after the orders complained of had been entered. This evidence is of no probative force because, as Petitioners concede, judicial review of an administrative order must be made in the light of conditions existing at the time the order was entered. The 1961 report could have no bearing on the reasonableness of the 1957 orders.

The report's estimate that 138,000 acre feet of surface water must be imported into the entire San Antonio River basin by 1980 is for industrial as well as municipal needs. There is no evidence of specific need for municipal water by San Antonio and the need for any municipal water is refuted by San Antonio's Exhibit No. 21 entitled "The Rule of the Edwards Reservoir in the San Antonio Water Story", City Water Board, August, 1963, which has been sent up as an original exhibit. (See S.F. 144, et seq.) On page 18, under the caption "How

Urgent Is This Problem", San Antonio City Water Board says:

> "No emergency exists now, and no emergency is likely to come about in the next 15 or 20 years. There is no water shortage in the San Antonio area. The need is one of planning for the future, not obtaining more water for the present."

On page 19, the City Water Board further asserts that:

> "San Antonio must obtain another supply for water within the next two decades to augment the supply from the Edwards Limestone Reservoir." (Emphasis supplied.)

The next two decades extend well beyond 1980 which, added to the decade which has elapsed since the hearings were held in 1956, means that at the time of the hearings San Antonio's position was that of a "dog in the manger" who wanted to "tie up" this water and preclude its use by others who need it when San Antonio would have no need of it for thirty years.

Contrast this deplorable attitude with the testimony adduced in the trial court by Respondents which demonstrates an immediate need for stored waters by cities which look to GBRA for their water supply:

(1) The testimony of Mr. George Cushman, Manager of Utilities for the City of Seguin, that the City has only one source of water and that is the Guadalupe River which has dried up completely at certain times in the past; that the City would

have been completely out of water during such time but for a small amount in a hydroelectric pool of Texas Power Corporation; that the quality of this water was jeopardized by sewage effluent from New Braunfels and other communities upstream; that the flow of the Guadalupe River is dropping off constantly while the City's needs are increasing and that there is a definite need for stored water to firm up the City's water supply both for the present and in the future (S.F. 268-279).

(2) The testimony of Mr. Herman Ladwig, City Manager of the City of Port Lavaca, that Port Lavaca's water supply from wells is insufficient to meet the rapid growth in water requirements of the City and that water quality is deteriorating because of the intrusion of saltwater; that it is necessary for the City to turn to the Guadalupe River for its water supply, and GBRA has been requested to supply water to the City which has no other place to turn for a supply (S.F. 247-255).

(3) The testimony of Mr. Lawrence Shattuck, Manager of du Pont's chemical plant at Victoria (S.F. 280-285), and of Mr. R. P. Barry, Manager of Union Carbide's chemical plant at Seadrift (S.F. 285-287), that their respective plants are constantly growing, that the lower Guadalupe area is rapidly expanding in industrial development with a corresponding increase

in population which will require additional water for municipal and domestic purposes.

The uncontradicted evidence shows that it is the cities in GBRA's territory which need and will use water from Canyon Reservoir and that San Antonio is the one which will have no need for additional water for two decades.

In its second bad faith argument, San Antonio concedes that there is a need for municipal water, but darkly asserts that GBRA will refuse to supply this water so that it can turn the turbines in "recently acquired" hydroelectric plants. Of course the record is barren of evidence to support this incredible argument.

The facts are that GBRA has recently purchased hydroelectric plants, but it did not do so for more than six years after the hearing before the Water Rights Commission. Consequently, this is totally irrelevant to the good or bad faith of GBRA or the Commission at the time of the hearing.

The hydroelectric plants have their own permits for water. The permits are old permits which are more than adequate for the plants. The hydroelectric use of water is, of course, a non-consumptive use. Running water through turbines does not use of water. Surely even San Antonio recognizes the value of

multiple uses of the public waters of Texas, and since these prior permits already held by the plants provide adequate water there is no reason for GBRA to refuse to sell the water to its constituent cities.

As previously discussed, GBRA would not, and could not, refuse to sell the water if it wanted to. It simply does not have the power to refuse to sell in light of the broad scope of the Texas common law, the Texas statutes and the powers of the Water Rights Commission.

CROSS-POINTS

The foregoing argument demonstrates the materiality and admissibility of GBRA's documentary evidence which was excluded by the trial court.

The First Cross-Point relates to two letters addressed by the Chairman of the Board of Water Engineers (Commission) to the Corps of Engineers designating GBRA as the sole agent of the State to deal with the Corps in connection with Canyon Reservoir.

The Second Cross-Point deals with the exclusion of an agreement made between GBRA and the San Antonio River Authority under which San Antonio could receive some 180,000 acre feet

of water per annum (if and when needed) from a reservoir to be constructed on the Guadalupe near Cuero (and below all hydro-electric plants on the Guadalupe) in exchange for an equal quantity of water from the proposed Goliad Reservoir to be constructed on the San Antonio River.

GBRA urges its two Cross-Points and requests that if the application is not dismissed for want of jurisdiction and for mootness, they be sustained.

THE WATER RESOURCES ADMINISTRATION AND DEVELOPMENT ACT OF 1965

Respondent has already expressed its view of the effect of this Act in its Motion to Dismiss (pp. 17-20) and in its Reply to Petitioners' Reply to Motion to Dismiss (pp. 7-9). GBRA's position is that the Legislative policy declared against trans-basin diversions (as opposed to any plan which would not be binding on the Water Rights Commission) makes this case moot since the undisputed evidence shows the Guadalupe and Blanco Rivers basin is not a basin of surplus for water planning purposes.

Further, the Legislative policy declared in the 1965 Act attempts to restrict the discretion to grant permits for trans-basin diversions. When read in conjunction with other Texas statutes, this Legislative policy at least shows that the Commission

had, and has, the discretion to deny San Antonio's permit without reaching the question of whether the Commission had no discretion except to deny it.

CONCLUSION

For the reasons stated, GBRA respectfully submits that:

(a) Its motion to dismiss for want of jurisdiction and for mootness should be granted; or

(b) In the alternative, the judgments of the trial court and Court of Civil Appeals should be in all things affirmed.

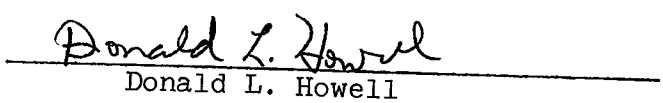
Respectfully submitted,

DONALD L. HOWELL
VICTOR W. BOULDIN
VINSON, ELKINS, WEEMS & SEARLS

By 
Victor W. Bouldin
2100 First City National Bank Building
Houston, Texas 77002

ATTORNEYS FOR RESPONDENT,
GUADALUPE-BLANCO RIVER AUTHORITY

A copy of this reply has been mailed, properly stamped and addressed, to counsel for Petitioners, this 18th day of February, 1966.


Donald L. Howell

APPENDIX

ERRONEOUS STATEMENTS BY PETITIONERS

The application for writ of error is replete with errors in the facts stated. We note some of them, as follows, as they appear:

Erroneous Statement and Reply

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7 "... the undisputed evidence in the trial court being that the safe yield of the dam would be 100,000 acre feet annually ...."

Fact: The testimony of Mr. James A. Cotton that the reservoir would yield 96,700 acre feet per annum (S.F. 98) related to "theoretical yields based on the amount of water that could be obtained from the respective amounts of storage with no releases to satisfy downstream rights" (S.F. 95). A yield study which does not honor vested rights downstream does not reveal the "safe yield" of the reservoir.

7 "... the Commission having found that there is that amount [50,000 acre feet annually] of unappropriated water at the source."

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Fact: The Commission did not make a finding that this quantity would be available to San Antonio. (See pages 28-32, supra.)

11 Similar reference to "safe yield" of reservoir.

Fact: See above.

13 "... when [water is] used for municipal purposes it would be used water, consumed water ...."

Fact: From 60% to 70% of water used for municipal purposes ordinarily is discharged back into the stream. Cities would be totally submerged under water in a short time if this were not true.

17 "Substantial evidence introduced in the trial court by GBRA, referred to supra, fully supports the finding by the Texas Water Commission that after honoring all existing water rights there remained 50,000 acre feet of unappropriated water."

Fact: Not for diversion to San Antonio. See discussion above, pages 28-32.

19. "Another instance cannot be found in which the entire unappropriated water of a watershed has been granted to a river authority for municipal purposes ...."

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Fact: Canyon Reservoir is located in the upper reaches of the Guadalupe River - over 75% of the flow of the river enters below Canyon Dam and is not included in Permit No. 1886. There is not a single instance when a river authority or any other state or local agency ever assumed the risk of spending or repaying millions of dollars on the construction of a dam and reservoir unless it first obtained a permit authorizing it to impound water in the reservoir and to appropriate the dependable yield thereof.

19 "... when the paramount right of priority of all cities in the watershed is made subject to the decision of the river authority as to whether it will elect to contract to supply water to a city or cities or whether it will be more profitable to the river authority to continue to use the unappropriated water covered by the permit to turn the turbines of the hydro-electric plants which the Guadalupe-Blanco River Authority has recently purchased." (Emphasis supplied.)

Fact: The GBRA is governed by a board of nine directors nominated by the Commission, appointed

Page

by the Governor and confirmed by the Senate. They come from nine of the ten counties within GBRA's boundaries (Kendall County is represented by an observer), and they would be no more inclined to violate their common law and statutory duty to supply water without discrimination than would members of the Commission. If they did, the Commission can provide a remedy as set forth in Art. 7560, et seq.

As noted, GBRA did not own any hydroelectric plant when the Commission passed on these applications or for six years thereafter. (They were purchased in 1963.) Each plant has its own high priority water right fully sufficient for its purposes which is superior in right to Permit No. 1886. Further, hydroelectric uses are not consumptive and such water may also be used for municipal or other uses below.

20. Same as next above.

20 "No contracts have been executed between GBRA and any city and the probabilities are that no contract

will be executed in the foreseeable future."

Fact: Substantial agreement has been reached between GBRA and the City of Port Lavaca on a contract to supply up to 4,480 acre feet of water per annum to that city and also between GBRA and Spring Hill Water Supply Corp., a non-profit corporation organized to provide a water supply and distribution system, to serve the Spring Hill community in Guadalupe County with some 280 acre feet of water per annum. Copies of each of these agreements will be submitted to the Commission for its approval within 30 days, as required by Permit No. 1886.

29 "There is not one scintilla of evidence in this record that the granting of a permit to the City of San Antonio for the diversion of 50,000 acre feet would violate any existing water right."

Fact: Mr. M. A. Dillingham's entire testimony is directed to the amount of damage which would be suffered by two owners of water rights. (S.F. 151-205.) However, it is sufficient to point out

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that there is no evidence to show that the diversion of any quantity of water to San Antonio would not violate existing rights.

The failure of land to produce as much revenue as amount of flat water rate fixed by permanent water contract does not defeat irrigation company's right to collect such rate from owner. Combs v. United Irr. Co. (Civ.App. 1937) 110 S.W.2d 1157, dismissed.

Cash flow theory whereby Trinity River Authority would set rates for irrigation water sufficient to enable it to meet operation and maintenance expenses and debt-service requirements was not the only permissible standard for setting rates. Trinity River Authority of Tex. v. Texas Water Rights Commission (Civ.App. 1972) 481 S.W.2d 192, ref. n.r.e.

§ 11.041. Denial of Water: Complaint

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the commission a written petition showing:

(1) that he is entitled to receive or use the water;

(2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of $25, the executive director shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint, the commission shall enter an order setting a time and place for a hearing on the petition.

(d) The commission may require the complainant to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director determines that no probable grounds exist for the complaint, the executive director shall dismiss the complaint. The commission may either return the deposit or pay it into the State Treasury.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 795, § 1.005, eff. Sept. 1, 1985.

Historical and Statutory Notes

The 1985 amendment, in subsecs. (a) and (g), substituted "commission" for "department".

Acts 1985, 69th Leg., ch. 795, § 10.003(e) provides:

"Nothing in this Act shall affect the jurisdiction of the Texas Water Commission otherwise afforded under Sections 11.036, 11.041, 12.013, and 50.275, Water Code."

Derivation:

Acts 1913, 33rd Leg., p. 358, ch. 171, §§ 60, 61, 62.
Rev.Civ.St.1911, arts. 5002f, 5002g, 5002h.
Acts 1917, 35th Leg., p. 226, ch. 88, §§ 59, 60, 61.
Vernon's Ann.Civ.St. arts. 7560, 7561, 7562.
Acts 1971, 62nd Leg., ch. 58, § 1.
V.T.C.A. Water Code, former § 5.041.

Library References

Waters and Water Courses ⇐ 158.5, 202, 203, 217, 256, 257.
WESTLAW Topic No. 405.
C.J.S. Waters §§ 225, 280, 284, 315, 359, 363.

Texts and Treatises

73 Texas Jur 3d, Water §§331, 473.

Notes of Decisions

1. Validity of prior law

Vernon's Ann.Civ.St. arts. 7560 to 7568 (repealed; see, now, §§ 11.041, 12.013, 5.351 note), providing for board of water engineers, were not invalid as creating executive board with legislative and judicial powers or as violating due process. Burgess v. American Rio Grande Land & Irr. Co. (Civ.App. 1927) 295 S.W. 649, error refused.

2. Purpose

Vernon's Ann.Civ.St. art. 7560 (repealed; see, now, this section) was passed for the purpose of allowing any person to petition the Board who did not have a contract for water and was entitled to receive or use water from some public source, if such source had a supply of water, was not contracted to others and was available for his use, and one controlling the water who failed or refused to supply him or demanded unjust rates. LaCour v. Devers Canal Co. (Civ. App. 1959) 319 S.W.2d 951, ref. n.r.e..

3. Conditions precedent to suit

In action by rice farmers for breach of agreement by company to furnish water at price agreed upon, allegations that the defendants adopted an arbitrary and unreasonable water policy by refusing the plaintiffs water to grow rice crops did not require that the suits for damages must first be urged before the Board of Water Engineers before the suit could be maintained. LaCour v. Devers Canal Co. (Civ.App. 1959) 319 S.W.2d 951, ref. n.r.e..

Where suits by rice farmers were not brought to establish their rights as riparian owners to a certain water service but were suits for damages for breach of contract based on an irrigation company's refusal to continue to furnish water during the crop year, prior resort to the Board of Water Commissioners under Vernon's Ann. Civ.St. art. 7560 (repealed; see, now, this section) was not required to be made by the farmers before bringing the actions. LaCour v. Devers Canal Co. (Civ.App. 1959) 319 S.W.2d 951, ref. n.r.e..

4. Rates

Water Rights Commission had jurisdiction to determine rates charged for water supplied without contract by City of Dallas to other municipalities. Texas Water Rights Commission v. City of Dallas (Civ.App. 1979) 591 S.W.2d 609, ref. n.r.e..

Water Rights Commission was authorized to order refund of excessive rates paid from and after retroactively effective date of order setting rates for water supplied by city to other cities. Texas Water Rights Commission v. City of Dallas (Civ.App. 1979) 591 S.W.2d 609, ref. n.r.e..

Texas Water Commission has jurisdiction, pursuant to this section and § 12.013, to review water rates charged by Lakeway Municipal Utility District as to reasonableness. Op.Atty.Gen. 1985, No. JM–297.

5. Private irrigation companies

Irrigation company, not organized under Rev. Civ.St. 1911, art. 5002 (see, now, Vernon's Ann. Civ.St. art. 1526), which privately acquired and owned its waters, lands, ditches, canals, etc., without invoking power of condemnation was not subject to control of state board of water engineers, under Rev.Civ.St. 1911, art. 5002f (see, now, this section), so that, if purchasers from the company had any rights against its

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April 7, 2005

***Via Facsimile*: (512) 475-4994**

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

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

Dear Judge Rogan:

As expressed to counsel for the Guadalupe-Blanco River Authority ("GBRA") prior to GBRA's request to the Court for leave to file a reply, BexarMet did not oppose that request nor its proposed submission deadline, provided conforming changes to the procedural schedule in this case could also be made. As ordered by the Court today, GBRA may submit such a reply by April 21, 2005. Assuming that the Court will require time to review GBRA's reply brief, a decision on GBRA's Motion may not come until May of this year, or after.

Under Order No. 1, BexarMet must pre-file its direct testimony and exhibits with the Cou no later than May 25, 2005. That schedule was predicated on much earlier resolution jurisdictional matters in this case. Even if the Court rules on GBRA's Motion to Dism immediately upon receipt of its reply brief, BexarMet will have only weeks to prepare its extens pre-filed testimony in this case if the Court denies GBRA's Motion. To this point, in light of outstanding jurisdictional issues, the parties have not engaged in any discovery besides request disclosure. Moreover, both parties have delayed the resolution of these threshold jurisdicti questions by requesting additional briefing time (GBRA has sought 2 extensions totaling 40 and BexarMet requested 20 days to respond to GBRA's Motion to Dismiss).

In the interest of judicial economy, BexarMet respectfully requests the entry of an which either: 1) abates all procedural deadlines in this matter pending the Court's decis GBRA's Motion to Dismiss, and requires entry of a new procedural schedule if and when th deny's GBRA's Motion; or, 2) enters a new procedural schedule immediately that allows Be adequate time to conduct discovery and prepare its pre-filed testimony in this matter, assu Court denies GBRA's Motion. Counsel for BexarMet attempted to confer with Counsel fo regarding this issue when first contacted about GBRA's requested extension and again t has not received a response yet.

If the Court is inclined to enter a superceding procedural schedule immediately, rather than abate the present schedule and order entry a new schedule if GBRA's Motion to Dismiss is denied, BexarMet respectfully requests an opportunity to confer with GBRA regarding a substitute agreed schedule, prior to the entry of a schedule of the Court's choosing.

Sincerely,

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

encl.

cc: Docket Clerk *Via fax to 239-3311*
Todd Galiga *Via fax to 239-0606*
Scott Humphrey *Via fax to 239-6377*
Molly Cagle *Via fax to 236-3280*
Roger Nevola *Via fax to 499-0575*

Vinson&Elkins

David P. Blanke dblanke@velaw.com
Tel 512.542.8622 Fax 512.236.3314

April 11, 2005

Via Facsimile (512.475.4994)

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

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

Dear Judge Rogan:

We are writing on behalf of Guadalupe-Blanco River Authority ("***GBRA***") to address two subjects in Paul Terrill's April 7 letter.

On April 6, when we requested leave for GBRA to file a reply brief in support of its Motion to Dismiss, Mr. Terrill had advised us that he was not inclined to object to the request for leave; however, he also informed us that he had to check with BexarMet about its position. We had heard nothing further at the time we wrote to request leave. Had vacating the existing schedule been raised, we would have agreed. A proposed order to that effect is enclosed.

Lastly, Mr. Terrill reports that "in light of the outstanding jurisdictional issues, the parties have not engaged in discovery" of any significance. We cannot speak to BexarMet's reasons for not engaging in discovery, but there has been no agreement to postpone discovery while the Motion to Dismiss remains pending. Of course, should the ALJ grant the Motion, further discovery would be unnecessary.

Very truly yours,

David P. Blanke

Enclosure

cc: LaDonna Castañuela, TCEQ Chief Clerk
All Parties and Counsel of Record

558725_1.DOC

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

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

ORDER NO. _____
VACATING PROCEDURAL DEADLINES

Before the ALJ is Guadalupe-Blanco River Authority's ("***GBRA***") Motion to Dismiss. Bexar Metropolitan Water District ("***BexarMet***") requests that the existing deadlines in this matter be vacated pending a ruling on that Motion. GBRA does not oppose that request.

The ALJ therefore vacates the scheduling deadlines previously established. If necessary, once a ruling is made on GBRA's Motion to Dismiss, a new scheduling order will be entered.

SIGNED April ____, 2005.

MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Vinson&Elkins

Facsimile

David P. Blanke dblanke@velaw.com
Tel 512.542.8622 **Fax** 512.236.3314

From:	Date:	
David P. Blanke	April 11, 2005	DB1112
Regarding:	**Number of Pages:**	**Hard Copy Follows:**
GUA160/29011	3	No
To:	**Fax:**	**Phone:**
Mike Rogan SOAH	**512.936.0730 or** **475.4994**	

Message:

Please see attached.