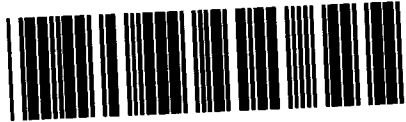


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**SOAH DOCKET NO. 582-05-1005
TCEQ DOCKET NO. 2004-1384-UCR**

PETITION OF BEXAR METROPOLITAN § WATER DISTRICT TO COMPEL RAW § WATER COMMITMENT FROM § GUADALUPE-BLANCO RIVER § AUTHORITY §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**ORDER NO. 1
MEMORIALIZING PRELIMINARY HEARING AND
REFERRING CASE FOR MEDIATED SETTLEMENT CONFERENCE**

This Order confirms actions taken at the preliminary hearing in the above-captioned matter, held on January 11, 2005, in Austin, Texas.

JURISDICTION

Based upon documents placed in the record at the preliminary hearing, which demonstrated adequate public notice of this action and of the scheduling of the preliminary hearing, the Administrative Law Judge ("ALJ") concluded that jurisdiction over this matter on the part of the Texas Commission on Environmental Quality ("TCEQ") and the State Office of Administrative Hearings ("SOAH") had been formally confirmed.

At the preliminary hearing, the Petitioner, Bexar Metropolitan Water District, withdrew, for the time being, the First Amended Petition submitted to SOAH on January 7, 2005, and proceeded on the basis of the petition originally filed in this matter with TCEQ.

PARTIES

The following are designated as parties to this proceeding:

- * The Petitioner, Bexar Metropolitan Water District;
- * The Executive Director of TCEQ;

- * The Public Interest Counsel ("PIC") of the TCEQ;
- * Guadalupe-Blanco River Authority.

AGREED SCHEDULE

The parties have agreed to the following schedule, which the ALJ hereby adopts, for this proceeding:

- | | |
|---------------------|---|
| * Immediately | Referral to mediation by agreement of parties. If mediation is successful (in whole or part), any party may submit a proposed amended schedule at mediation's conclusion. |
| * January 18, 2005: | Discovery begins. |
| * February 1: | Petitioner to submit brief written status report concerning mediation. Other parties may submit reports, as well, if desired. |
| * February 15: | Deadline for submitting jurisdictional and preliminary motions. |
| * May 25: | Deadline for Petitioner to file all exhibits and written testimony for all witnesses it intends to call in its direct case. |
| * July 1: | Petitioner to submit brief written status report on case. Other parties may submit reports, as well, if desired.

Parties to propose allocations of hearing time. |
| * August 2: | Deadline for GBRA to file all exhibits and written testimony for all witnesses it intends to call in its direct case. |
| * August 30: | Deadline for submission of all written discovery requests, except requests for admissions. |

- * September 2: Deadline for Executive Director's office to file all exhibits and written testimony for all witnesses it intends to call in its direct case.
- * September 15: Deadline for submission of requests for admissions.
- * September 21: Deadline for seeking supplemental discovery and proposing amended hearing schedules.
- * September 28: Deadline to complete depositions (except by agreement of parties).
- * October 3: Deadline for filing any motions to compel.

Deadline for filing any objections to prefiled testimony and exhibits.
- * October 11: Deadline for filing dispositive motions.
- * October 18: Prehearing conference.
- * October 24: Evidentiary hearing (four days), to convene at **9 a.m.** in the William P. Clements Building, 300 W. 15th St., Austin, Tex.

Agreed provisions relating to discovery and service:

1. Responses to written discovery requests are due 20 days after the receipt of the corresponding request.
2. A written objection to any discovery request shall be filed five days after receipt of the request, or the objection is waived.
3. With respect to service of all documents, those served by mail or delivery must be deposited in the U.S. mail or with a delivery service on the date specified in the schedule and at a time and place and in such manner that they are likely to be received by other parties no later than three calendar days after the date they are so deposited. For all documents served by mail or delivery service, all parties are requested to send copies to other parties by fax or by e-mail (in PDF or WORD), as may be requested by each party, on the date they are deposited in the mail.

REFERRING CASE FOR MEDIATED SETTLEMENT CONFERENCE

During the preliminary hearing, all parties agreed to a mediated settlement conference, pursuant to 1 TAC 155.37(a), to be conducted within the subsequent 30 days, if practicable, with the object of resolving disputes among the parties with respect to the pending petition of Bexar Metropolitan Water District.

The ALJ has determined that the request for a mediated settlement conference has merit.

IT IS, THEREFORE, ORDERED:

1. This case is hereby referred for a period of mediation to Renee M. Rusch, Alternative Dispute Resolution Team Leader for SOAH, who will coordinate with the ADR Director at the TCEQ regarding the mediation.
2. If mediation is not successful, the case will be returned to the presiding ALJ by **February 15, 2005**, unless the parties inform the undersigned ALJ that the mediation period needs to be extended and the ALJ issues an order to that effect.
3. Each party is ordered to appear at the mediated settlement conference with a party representative who has full settlement authority for this matter.

DISCOVERY

Discovery in this matter will be conducted in accordance with the Texas Rules of Civil Procedure ("TRCP")—and specifically in accordance with TRCP 190.4 ("Level 3 discovery")—except as provided in this order and subsequent orders issued by the ALJ in this proceeding. Discovery in this matter shall be compellable.

Parties should NOT file with the ALJ any discovery requests, responses to discovery requests, or similar discovery documents directed primarily to other parties, unless their submission becomes necessary to enable the ALJ to rule upon a discovery dispute.

Discovery Disputes. The parties are expected to attempt in good faith to resolve discovery disputes between themselves; however, significant disputes which cannot be resolved should be brought to the judge's attention – in the form of a written motion copied to all parties – as they occur. Any request for relief should include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

While the parties are encouraged to negotiate discovery disputes, they are on notice that they are responsible for completing discovery within the overall scheduling framework for this proceeding. Parties may not avoid substantive deadlines and should not expect continuances if they have waited too long to bring unresolved problems or outstanding discovery requests to the ALJ's attention and have therefore failed to obtain discovery needed for the timely completion of preparations prior to hearing.

TIME ALLOCATIONS

To assure that the evidentiary hearing can be completed within the scheduled time period, the parties will be allocated specific amounts of time within which to complete their presentations (direct cases, cross-examination, and any rebuttal).

Experience indicates that a one-day hearing will yield about six hours of allocable time for presentations. The parties are directed to submit proposals for the allocation of such time (supported, as necessary, by coherent rationales) by **July 1, 2005**. Of course, as long as the parties are efficient in their utilization of hearing time, the ALJ will attempt to be somewhat flexible in administering any time limitations imposed.

CONFERRING PRIOR TO SEEKING RELIEF

The parties are directed to confer and attempt in good faith to negotiate an agreed resolution to all procedural and discovery disputes prior to seeking relief from the judge. Any party seeking relief shall certify that this attempt has been made.

APPLICABLE RULES

This hearing will be conducted in accordance with the TCEQ enforcement rules (30 TAC Chap. 70) and other pertinent TCEQ and SOAH in effect on the date of the preliminary hearing (January 11, 2005).

MOTIONS: DELIVERY AND RESPONSES

Any motion filed in this proceeding shall be actually delivered to other parties the same day it is delivered to the ALJ. Motions (and other correspondence) may be delivered initially via FAX, followed by hard copy. Unless otherwise provided, parties may respond to any motion within five calendar days after receipt of such motion. Rulings will be based on the written pleadings unless the ALJ determines that a prehearing conference is necessary.

TELEPHONE CONFERENCES

If a party desires a telephone conference for any purpose, that party is responsible for arranging a time for the conference call and for setting up the call. The party must ascertain that the ALJ is available.

If the assigned ALJ is unavailable on a given day and a ruling is needed immediately, the parties must consult the director of SOAH's Natural Resource Division, who will make provision for this contingency.

MAILING LIST

When submitting to the ALJ any pleading or correspondence relating to this matter, the sender must submit the original of the document to the Docket Clerk of the TCEQ, whose address is noted on the attached mailing list. One copy should be provided to the ALJ and one copy to each other person on the mailing list.

PRESENTATION AND BURDEN OF PROOF

The Petitioner has the right to open and close and bears the burden of proof to show that the authorization sought is consistent with the public interest. Pertinent proofs are by a preponderance of the evidence. 30 TAC § 80.17. The Executive Director has the right to present its case after presentations by other parties. 30 TAC § 80.117(b).

Number of rounds of questioning per witness:	Direct examination
	Cross (covering any relevant issue)
	Redirect (limited to cross)
	Re-cross (limited to redirect)

GENERAL PROCEDURE


Unless a party clearly requests and justifies oral argument in its filings, rulings on all motions or matters that may arise will be made on the basis of the written pleadings.

Any document or matter ordered "due" by a certain date or time must be delivered to the receiving parties by such deadline. Unless otherwise noted, the delivery deadline on any prescribed date is 5 p.m. For purposes of calculating deadlines on responses and replies, the ALJ assumes that anything he receives is also received by the other parties on the same day.

PROCEDURAL QUESTIONS

Routine procedural and logistical questions may be directed to Brenda Bishop at (512) 463-5766; however, please note that SOAH support personnel are not authorized to provide general advice or the interpretation of regulations or policy.

SIGNED January 13, 2005.



MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

WILLIAM P. CLEMENTS BUILDING, Jr.

300 West Fifteenth Street

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Phone (512) 475-4993

Facsimile (512) 475-4994

DATE:

January 13, 2005

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

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REGARDING

ORDER NO. 1

DOCKET NUMBER:

582-05-1005

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TCEQ Docket Clerk, Fax Number 512/239-3311

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AGENCY: Texas Commission on Environmental Quality (TCEQ)
STYLE/CASE: BEXAR METROPLITIAN WATER DISTRICT
SOAH DOCKET NUMBER: 582-05-1005
REFERRING AGENCY CASE: 2004-1384-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

MIKE ROGAN
ADMINISTRATIVE LAW JUDGE

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REPRESENTATIVE / ADDRESS

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