

Control Number: 43943



Item Number: 38

Addendum StartPage: 0

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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

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

2005-05-11 PM 4:30

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ORIGINAL
FILED

FIRST AMENDED PETITION OF BEXAR METROPOLITAN
WATER DISTRICT TO COMPEL RAW WATER COMMITMENT
FROM GUADALUPE-BLANCO RIVER AUTHORITY

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

NOW COMES the Bexar Metropolitan Water District ("BexarMet" or "Petitioner") and files this First Amended Petition to Compel a Raw Water Commitment from the Guadalupe-Blanco River Authority ("GBRA"), pursuant to TEX. WATER CODE § 11.041. In support of its First Amended Petition to Compel a Raw Water Commitment from the Guadalupe-Blanco River Authority ("Petition"), BexarMet respectfully shows as follows:

I. INTRODUCTION

GBRA controls a dominant share of water rights in the Guadalupe River basin. Pursuant to a Commission permit, GBRA controls water rights for 90,000 acre-feet per year of raw water from Canyon Lake. That water is not owned by GBRA — it is a public resource, owned by the State in trust for the benefit of the people of Texas. TEX. WATER CODE § 11.021(a); *Lower Colorado River Authority v. Texas Dept. of Water Resources*, 689 S.W.2d 873, 875 (Tex. 1984). Despite having almost 30,000 acre-feet per year of raw water available for commitment, GBRA has refused repeated requests by BexarMet to provide it with a mere 3000 acre-feet of water per year to serve its customers in Comal County.

In addition to controlling the predominant source of state-owned surface water in Comal County, GBRA recently began efforts to provide retail water service in Comal County in competition with BexarMet. GBRA has abused its position as the dominant holder of state-owned water to deny its retail water service competitor — BexarMet — the water needed for retail service operations in Comal County. GBRA's permit to appropriate state water grants it only usufructory rights. *Texas Water Rights Comm'n v. Wright*, 464 S.W.2d 642, 650 (Tex. 1971). GBRA's limited rights in state-owned water require it to make uncommitted water under its control available to "[a]ny person entitled to receive or use water," at a price that is "just and reasonable and without discrimination." TEX. WATER CODE §§ 11.036, 11.041; *See also* TEX. WATER CODE § 12.013.

By denying BexarMet's request, GBRA has improperly exercised control of a public resource for its own advantage and impermissibly discriminated against BexarMet. Because GBRA has refused BexarMet's request for state-owned water, BexarMet appeals to the Commission to order GBRA to provide BexarMet with 3,000 acre-feet per year of raw water for use in Comal County at a just and reasonable rate for a term of 30 years.

II. PARTIES

1. BexarMet is a general and special law district created under TEX. CONST. art. XVI, § 59, and is a municipal corporation and political subdivision of the State of Texas.
2. GBRA is a ten county conservation and reclamation district created under TEX. CONST. art. XVI, § 59, and is a political subdivision of the State of Texas. GBRA's statutory district includes Comal County.

III. BACKGROUND

3. GBRA controls 90,000 acre-feet of state-owned water in Canyon Lake under its Certificate of Adjudication No. 18-2074E ("Canyon Permit"). By GBRA's estimate, it has 28,410 acre-feet of uncommitted state-owned water under its control. A chart prepared by GBRA reflecting

GBRA's water commitments, provided to its customers on September 30, 2003, is attached hereto as Exhibit A, and incorporated herein by reference.

4. Created by the Legislature in 1945, BexarMet currently provides water to over 70,000 locations and 250,000 individuals in Atascosa, Bexar, Comal and Medina Counties in Texas. BexarMet's operations include approximately 850 miles of pipeline, 105 wells, 97 storage tanks, which contain about 50 million gallons of water. BexarMet has provided retail water service in Comal County since 1998.

5. BexarMet is entitled to serve in Comal County pursuant to TCEQ-issued CCN No. 10675, covering areas formerly served by the Bulverde Water Company, Bulverde Hills Water System, Oakland Estates water system and Spring Branch water system. BexarMet is also authorized to provide service to an HEB in the Bulverde area. The TCEQ, through delegation to its Executive Director, has also authorized the transfer of portions of CCN Nos. 11106 and 12865 held by Water Services, Inc. and the Diamond Water Company to BexarMet. The TCEQ's authorization of CCN transfer includes several areas in Comal County. A copy of the TCEQ's authorization is attached hereto as Exhibit B and incorporated herein by reference. The TCEQ order authorizing the CCN transfer is now final and unappealable.¹

6. BexarMet began its efforts to secure raw water from GBRA in March of 2003, following BexarMet's termination of a 1998 contract with GBRA that was supposed to provide BexarMet with 2000 acre-feet per year of treated water as part of GBRA's Western Canyon Project. BexarMet opted out of the Western Canyon Project because, despite paying for water for several

¹ The Executive Director approved BexarMet's purchase and CCN transfer application over the protests of parties including GBRA. The TCEQ Executive Director found GBRA's protest and hearing request to be meritless, and denied that request. GBRA, together with the City of Bulverde, then moved for reconsideration of the Executive Director's order by the TCEQ Commissioners. That request for reconsideration was overruled by TCEQ on August 16, 2004. GBRA and Bulverde had 30 days to appeal the agency's order, but they failed to do so. TEX. WATER CODE §5.351(b). Thus, the TCEQ's order both approving the CCN transfer and denying GBRA/Bulverde's hearing request is final and unappealable.

years, BexarMet had yet to receive any water and, due to numerous delays, would not receive any water until at least 2005. Additionally, the cost projections for the water had increased substantially — with no end to the rate increases in sight.

7. At the termination of its Western Canyon Project contract, BexarMet requested that its 2000 acre-feet treated water entitlement be converted to a raw water commitment for immediate use in Comal County. BexarMet's reiterated its request by letters to GBRA in May and June of 2003. Despite repeated requests from BexarMet and an abundance of available water, GBRA refused to commit the 2000 acre-feet per year.

8. On August 6, 2003, GBRA announced its intention to increase its basin-wide Firm Water Rate from \$80.00 to \$84.00 per acre-foot per year. The primary reason GBRA identified for the rate increase was the loss of 2,950 acre-feet in commitments for water from Canyon Lake. By letter dated August 8, 2003, Bexar Met again requested 2000 acre-feet of water, noting that BexarMet's request would immediately offset two-thirds of GBRA's lost commitments and the consequent rate hike. A copy of the August 8, 2003 letter is attached as Exhibit C and incorporated by reference. GBRA again failed to honor BexarMet's request.

9. About one month later, BexarMet increased its request for a commitment of Canyon Lake water to 3000 acre-feet per year. A copy of the September 19, 2003, letter from BexarMet requesting a 3000 acre-feet per year contractual commitment from GBRA is attached hereto as Exhibit D and incorporated by reference. BexarMet's request reflects its prudent water planning efforts to accommodate the substantial growth anticipated in Comal County. BexarMet's requested commitment is needed to meet its obligations under the Water Code and the Commission's rules to maintain supply well ahead of projected demand. *See*, TEX. WATER CODE § 13.139(d); 30 TEX. ADMIN. CODE § 291.93(3); *See also*, TEX. UTIL. CODE § 186.002.

10. In addition, regional planning groups require water user groups to provide water management strategies that account for needs in 50 year cycles. The amount of water BexarMet requested for both present and future needs is justified by population and demand projections quantified over the next 50 years. BexarMet must consider both current and future demand in Comal County, and is entitled to a supply of state-owned water which is sufficient to meet that demand.

11. Although GBRA has almost 30,000 acre-feet of raw water available on a yearly basis, and had recently lost commitments for approximately 3000 acre-feet of water per year, GBRA rejected BexarMet's request. GBRA's rejection of BexarMet's 3000 acre-feet request was accompanied by a supposed offer of 428.5 acre-feet per year. A letter reflecting GBRA's rejection of BexarMet's request and its purported offer of a 428.5 acre-feet commitment is attached hereto as Exhibit E and incorporated by reference.

12. BexarMet accepted GBRA's offer of 428.5 acre-feet in partial fulfillment of its 3000 acre-feet request by a letter dated October 23, 2003, attached hereto as Exhibit F and incorporated by reference. Rather than responding to BexarMet's acceptance of GBRA's offer by forwarding a contract, GBRA again threw up roadblocks by making arbitrary demands that have no basis in the Water Code or the Commission's rules. A copy of the October 30, 2003, letter from GBRA is attached hereto as Exhibit G and incorporated herein by reference.

13. Despite an abundance of available water and in the face of BexarMet's repeated requests for a commitment of 3000 acre-feet of raw water, GBRA has refused those requests. To date, GBRA has even failed to follow through on its supposed offer of 428.5 acre-feet of water.

14. With almost 30,000 acre-feet of raw water available in Canyon Lake, a recent loss of commitments for that same water and a consequent rate increase, one might ask: Why would GBRA refuse to sell water to a ready, willing and able buyer? GBRA's recent efforts to expand out of its traditional role as wholesale water purveyor into retail water service cast some light on that

question. BexarMet and GBRA, acting through the City of Bulverde, are presently in a Certificate of Convenience and Necessity ("CCN") dispute regarding retail water service to a substantial portion of Comal County. On November 3, 2000, BexarMet filed an application to amend its existing CCN No. 10675 to provide water service to additional portions of western Comal County. Bulverde also filed an application for a new CCN to provide water utility service to much of the same area sought by BexarMet's application.

15. GBRA's attempted entry into the Comal County retail water market creates a conflict between its duties as a person controlling state-owned water and its ambitions to serve retail customers in Comal County. The water that GBRA controls pursuant to its permit is a public resource, owned by the state for the benefit of its people. TEX. WATER CODE § 11.021(a); *Lower Colorado River Authority v. Texas Dept. of Water Resources*, 689 S.W.2d 873, 875 (Tex. 1984). The Commission is the agency of the State that acts as trustee for ensuring that water's equitable distribution. GBRA's permit to appropriate state-owned water thus carries with it the obligation to serve those persons entitled to receive or use that water.

16. GBRA, now seeking to compete in the retail service market in Comal County, has inappropriately frustrated retail service competition by denying the water requests of its retail service competitor, BexarMet, and by conditioning commitments on arbitrary and unsupported demands. As reflected in Exhibit E and Exhibit G, GBRA has both denied BexarMet's request for 3000 acre-feet of water and imposed unauthorized conditions on the delivery of state-owned water under its control.

17. GBRA previously offered and BexarMet accepted a long-term commitment for 2,000 acre-feet per year of *treated* water for use *outside* of GBRA's statutory district. When BexarMet exercised its contract right to terminate that *treated* water commitment and instead requested a similar amount of *raw* water for use *inside* GBRA's statutory district, GBRA balked. GBRA's

refusal to satisfy BexarMet's request for a commitment of 3000 acre-feet of raw water per year for use in Comal County cannot stand.

IV. PETITION FOR RAW WATER SERVICE

18. BexarMet is a "person entitled to receive or use water" from Canyon Lake, for use within Comal County. *See, City of San Antonio v. Texas Water Comm'n*, 407 S.W.2d 752, 768-69 (Tex. 1966); *Texas Water Rights Comm'n v. City of Dallas*, 591 S.W.2d 609, 613-14 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e). BexarMet is ready, willing and able to pay a just and reasonable price for the 3000 acre-feet of raw water it requests for a term of 30 years.

19. The current and projected commitments of Canyon Lake water leave more than enough water available under GBRA's Certificate of Adjudication No. 18-2074E to satisfy BexarMet's request. GBRA controls a substantial amount of state-owned water — nearly 30,000 acre-feet per year — not contracted to others, which is available for BexarMet's use within GBRA's statutory district. Despite this abundance of water, GBRA has refused to supply available water under its control to BexarMet. *See, Exhibit E and Exhibit G; TEX. WATER CODE § 11.041(a)(4).* Additionally, the basin-wide price demanded by GBRA for Canyon Lake water is unreasonable, unjust, and discriminatory. *Id.*

20. BexarMet requests that GBRA be ordered to provide it 3000 acre-feet per year for 30 years, such water being for use in BexarMet's TCEQ-authorized service areas in Comal County.

21. A \$25.00 deposit accompanied BexarMet's Original Petition to Compel Raw Water Commitment from the Guadalupe-Blanco River Authority.

Respectfully submitted,

HAZEN & TERRILL, P.C.

By: 

Paul M. Terrill III
State Bar No. 00785094
Howard S. Slobodin
State Bar No. 24031570
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
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By: _____

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Shannon L. Strong
State Bar No. 24029853
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322 Martinez
San Antonio, Texas 78205
(210) 225-5454
(210) 225-5450 (fax)

**ATTORNEYS FOR PETITIONER
BEXAR METROPOLITAN WATER
DISTRICT**

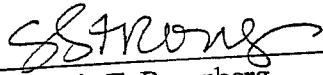
Respectfully submitted,

HAZEN & TERRILL, P.C.

By: _____

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State Bar No. 00785094
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ATTORNEYS FOR PETITIONER
BEXAR METROPOLITAN WATER
DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2005, a true and correct copy of the foregoing *Amended Petition of Bexar Metropolitan Water District to Compel Raw Water Commitment from Guadalupe-Blanco River Authority*, was delivered, as specified below, to the following parties of record:

Guadalupe-Blanco River Authority
Attention: General Manager
933 E. Court St.
Sequin, Texas 78155

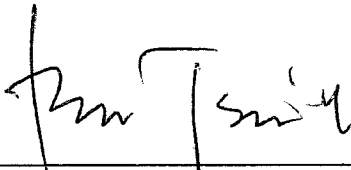
CM/RRR, # 7108 1853 1570 0000 2570

State Office of Administrative Hearings
Docketing Division
P.O. Box 13025
Austin, TX 78711-3025

CM/RRR, # 7108 1853 1570 0000 2587

Bruce Wasinger (*courtesy copy*)
BICKERSTAFF, HEATH, SMILEY, POLLAN,
KEVER & MCDANIEL, LLP
1700 Frost Bank Building
816 Congress Avenue
Austin, Texas 78701

Via Facsimile: (512) 320-5638



Paul M. Terrill

Exhibit A

GUADALUPE-BLANCO RIVER AUTHORITY
 FIRM WATER COMMITMENTS FROM CANYON RESERVOIR (Acre-Feet)
 FISCAL YEARS 2003 - 2004 COMPARISON

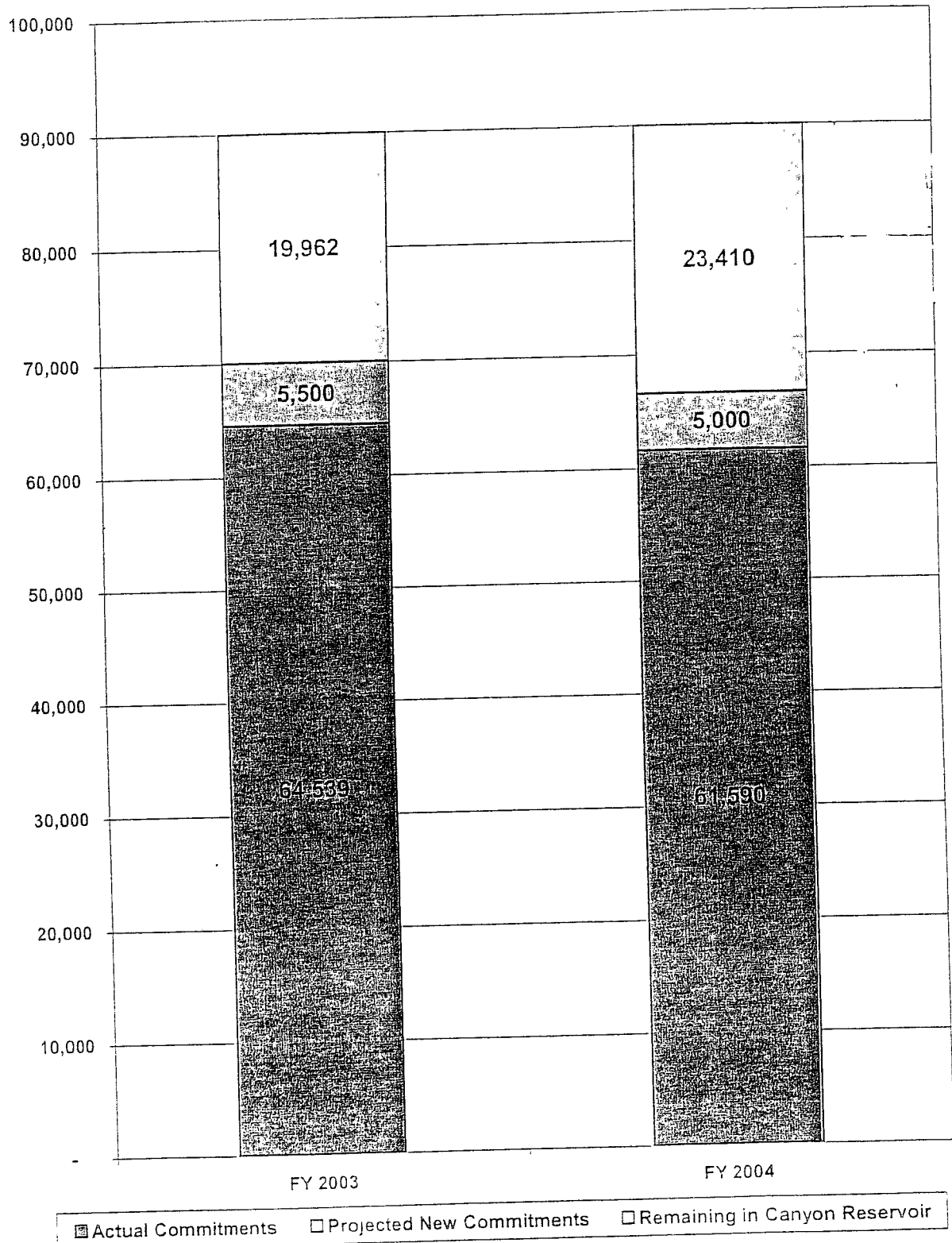


Exhibit B

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 30 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

Exhibit C

August 8, 2003

Mr. William E. West, Jr.
General Manager
Guadalupe-Blanco River Authority
933 East Court Street
Seguin, Texas 78155

**Re: Request for Written Wholesale Raw Water Contract
to Replace 1998 Western Comal Contract**

Dear Bill:

BexarMet's request for 2000 acre feet of water would satisfy 2/3rds of the downstream water purchasers declination of water (2000/3000 acre feet) cancelled that is providing the basis urged for this new rate increase. It would make more sense to sell the water to this public district and receive the rate charge for that specific water sold rather than achieve a similar monetary result by addition of a like charge to be allocated as a basin-wide cost - applied to all customers.

Bill, I propose that you sell the water, as requested. Seems simpler.

Sincerely,

DEXARMET WATER DISTRICT
The Water Resource People


Thomas C. Moreno
General Manager/CEO

Attachment: June 20, 2003 correspondence to William E. West

cc: Mr. David Davenport
General Manager
CRWA

Via Facsimile

Exhibit D



September 19, 2003

Mr. Bill West, General Manager
Guadalupe-Blanco River Authority
933 E. Court Street
Seguin, Texas 78155

Re: BexarMet's Comal County/In-District Request for Raw Water.

Dear Bill:

Thomas C. Moreno
General Manager/CEO

BOARD OF DIRECTORS

Ronald C. Williamson
President

Dean H. Perry
Vice President

Robert "Tinker" Garza
Secretary

Jim Lopez
Treasurer

Arnuro Siller
Director

Ysidro Solis
Director

Gabe Gonzalez Sr.
Director

I received your letter of August 29, 2003, regarding BexarMet's continuing request for a raw-water commitment for use in Comal County. Your letter accurately describes BexarMet's request, with the exception of the amount of water requested. As described below, the amount of raw water that BexarMet is requesting has been increased at the direction of BexarMet's Board.

I do not, however, understand GBRA's request for specific data of BexarMet's "need for additional water to serve the areas within the existing boundaries of [BexarMet's] Certificates of Convenience and Necessity . . . in Comal County," and your emphasis on BexarMet's "current needs in Comal County." (emphasis added). BexarMet's request is an exercise in both near-term and long-term planning. The current need standard described in your letter frustrates BexarMet's planning for its Comal County customers. Moreover, because GBRA competes with BexarMet in providing retail service in Comal County, your suggestion that BexarMet's request amounts to speculative hoarding or reservation might as easily be applied to GBRA's withholding the requested water from BexarMet.

1. BexarMet's Request

Although properly stated in most respects by your last letter, I offer this review of BexarMet's request:

- BexarMet desires a long-term raw water commitment from GBRA;
- BexarMet will use the water committed to serve its present and future customers in Comal County;
- BexarMet proposes to divert the water directly from Canyon Lake at one or both of the Canyon Lake Water Supply Corporation's intakes; and,

Executive Offices
2047 W. Malone
San Antonio, Texas 78225
Phone: (210) 354-6500
Fax (210) 922-5152

Northwest Branch
9823 Marbach
San Antonio, Texas 78245
Phone: (210) 670-3100
Fax (210) 673-3404

South San Branch
2706 W. Southcross
San Antonio, Texas 78211
P.O. Box 245994
San Antonio, Texas 78224-5994
Phone: (210) 922-1221
Fax (210) 922-1894

Mr. Bill West, General Manager
Guadalupe-Blanco River Authority
September 19, 2003
Page 2

BexarMet seeks a 3000 acre-feet per year commitment on the above conditions.

BexarMet's request is both clear and supported by its present and future needs in Comal County. At its meeting on August 25, 2003, the BexarMet Board of Directors instructed me to increase BexarMet's request from 2000 acre-feet per year to 3000 acre-feet per year. That increase was made on the basis of need and also on the basis of availability. In your letter to me dated August 6, 2003, you identified as the "primary reason for [GBRA's most recent] increase in the stored water rate," a 2,950 acre-feet decrease in the amount of water committed from Canyon Lake. As I have told you previously, BexarMet stands ready to make GBRA's latest rate increase unnecessary, by accepting 3000 acre-feet of water for diversion at Canyon Lake.

2. Current Need versus Beneficial Use

Where it appears we disagree is on the need for BexarMet to justify a raw water commitment. Under the present need standard incorporated in your letter, BexarMet could not obtain a commitment accommodating the inevitable growth of its Comal County operations. You attribute this current need requirement to both "the law and the regional water plan." That description leaves the actual authority for that standard unclear. In any case, current need is only part of the equation.

Permits to use state water, such as GBRA's Canyon Permit, are not issued on a current need basis, but instead where water "is intended for a beneficial use," and where an application "addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan."¹ Similar standards should govern BexarMet's request to appropriate state-owned water under GBRA's control. Because you have described BexarMet's request as a speculative reservation, I gather that GBRA questions whether BexarMet will make beneficial use of the water in question. If beneficial use is the governing standard, GBRA does not need additional data regarding BexarMet's "current needs in Comal County."²

BexarMet has present and future needs for water in Comal County to the extent of its

¹ TEX. WATER CODE § 11.134(b)(3)(a), (e).

² See, *Texas Rivers Protection Association v. Texas Nat. Res. Conserv. Comm'n*, 910 S.W.2d 147, 155-56 (Tex. App.-Austin 1995, writ denied).

Mr. Bill West, General Manager
Guadalupe-Blanco River Authority
September 19, 2003
Page 3

request, and will beneficially use the water requested.³ Those needs are not based on speculation, but on projections of population and water demand for presently certificated areas, and projections for areas including, but not limited to, the Bulverde CCN area now subject to appeal. BexarMet's request reflects its obligation under the Water Code and the Commission's rules to maintain supply well ahead of projected demand.⁴ With GBRA's participation in retail water supply, you can no doubt appreciate the necessity of staying ahead of Water Code Chapter 13's minimum capacity requirements.⁵ Finally, in light of ongoing proceedings regarding the disputed City of Bulverde CCN, BexarMet respectfully declines to provide any additional information to GBRA regarding BexarMet's service areas in Comal County. This denial is based on the obvious competitive nature of GBRA's retail service applications.

As a general matter, requiring BexarMet to demonstrate a present need for the full volume to be committed has the benefit of allowing GBRA to plan for its retail growth in Comal County, while denying BexarMet the same opportunity. GBRA desires to occupy a dual role in Comal County. It seeks to serve both wholesale and retail customers. But GBRA's entry into retail service does not justify its use of its Canyon Permit rights to the detriment of other in-district retail service providers. GBRA enjoys a substantial monopoly over the surface water available in Comal County, but should not and cannot abuse that power to control the Comal County retail market.⁶

The waters of Canyon Lake are "the property of the State, held in trust for the public."⁷ GBRA's broad right to appropriate state waters comes with its duty to respond to the qualified requests of persons entitled to that water within, and outside

³ *Id.*

⁴ See, TEX. WATER CODE § 13.139(d); 30 TEX. ADMIN. CODE § 291.93(3).

⁵ TEX. WATER CODE § 13.139(d).

⁶ See, *Texas Water Rights Comm'n v. City of Dallas*, 591 S.W.2d 609, 614 (Tex. Civ. App.—Austin 1979, writ ref'd n.r.e.).

⁷ See, *City of San Marcos v. Texas Comm'n on Envtl. Quality*, No. 03-02-00724-CV, 2003 WL 22024663, at *6 (Tex. App.—Austin Aug 29, 2003, no pet. h.) (citations omitted).

Mr. Bill West, General Manager
Guadalupe-Blanco River Authority
September 19, 2003
Page 4

of its district.⁸ All of GBRA's powers are "public rights and duties."⁹ There is no room in the exercise of those public rights and duties to deny delivery of a state owned resource in the name of competition.

3. Request for Service

BexarMet is a "person entitled to receive or use water" from Canyon Lake,¹⁰ for use within Comal County, and BexarMet is willing to pay a just and reasonable price for the 3000 acre-feet of raw water it requests.¹¹ GBRA obtained its Canyon Permit Amendments with the support of BexarMet in the FOCL process, including the appeal. GBRA controls a substantial amount of water not contracted to others, which is available for BexarMet's use in GBRA's statutory district. I believe that we can find common ground if we can discuss the appropriate standards to be applied to BexarMet's continuing requests.

On the basis of this response to your letter of August 29, 2003, I am requesting a draft contract on the above-stated terms that I may present to BexarMet's Board on Monday September 29, 2003, in lieu of filing a petition to compel service.

Thank you for your consideration and continued efforts to resolve this matter expeditiously.

⁸ See, *City of San Antonio v. Texas Water Comm'n*, 407 S.W.2d 752, 768-69 (Tex. 1966); *Texas Water Rights Comm'n v. City of Dallas*, 591 S.W.2d at 613-14.

⁹ Act of May 21, 1975, 64th Leg., R.S. Ch. 433, § 1, sec. 1, 1975 Tex. Gen. Laws 1149, 1150.

¹⁰ See, *City of San Antonio v. Texas Water Comm'n*, 407 S.W.2d at 768-69; *Texas Water Rights Comm'n v. City of Dallas*, 591 S.W.2d at 613-14.

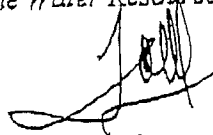
¹¹ TEX. WATER CODE § 11.041.



Mr. Bill West, General Manager
Guadalupe-Blanco River Authority
September 19, 2003
Page 5

Very truly yours,

BEXAR METROPOLITAN WATER DISTRICT
The Water Resource People



Thomas C. Moreno
General Manager/CEO

cc: Ronald C. Williamson, President
& Board of Directors
Bexar Metropolitan Water District

Exhibit E



GUADALUPE-BLANCO RIVER AUTHORITY

GENERAL OFFICE
933 East Court Street
Seguin, Texas 78155
Phone: 830-379-5822
Fax: 830-379-9718

COLETO CREEK PARK
AND RESERVOIR
P.O. Box 68
Farlin, Texas 77960
Phone: 361-575-6366
Fax: 361-575-2267

LAKE WOOD
RECREATION AREA
167 FM 2091 South
Gonzales, Texas 78629-6051
Phone: 830-672-2779

LOCKHART WATER
TREATMENT PLANT
547 Old McMahon Road
Lockhart, Texas 78644
Phone: 512-398-3528

LOCKHART
WASTEWATER
RECLAMATION
SYSTEM
4435 FM 20 East
Lockhart, Texas 78644
Phone: 512-398-6391
Fax: 512-398-6526

LULING WATER
TREATMENT PLANT
350 Memorial Drive
Luling, Texas 78648
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Fax: 830-875-3670

PORT LAVACA
OPERATIONS
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Port Lavaca, Texas 77979
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SAN MARCOS WATER
TREATMENT PLANT
91 Old Bastrop Road
San Marcos, Texas 78666
Phone: 512-353-3888
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VICTORIA REGIONAL
WASTEWATER
RECLAMATION
SYSTEM
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Victoria, Texas 77902-2085
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Fax: 361-578-9039

GBRA WEBSITE
<http://www.gbra.org>

September 29, 2003

Mr. Thomas C. Moreno
General Manager/CEO
Bexar Metropolitan Water District
2047 West Malone
San Antonio, Texas 78225

Re: Request by Bexar Metropolitan Water District for Raw Water Contract

Dear Tom:

In reply to your letter of September 19, 2003 and your request for a draft contract that may be presented to the Board of Bexar Metropolitan Water District (BexarMet) on September 29, 2003, I offer the following response. BexarMet's request and the issues raised in your letter require further explanation of GBRA's position with regard to commitments to supply surface water from Canyon Reservoir.

First, GBRA now understands that BexarMet currently holds only one CCN (CCN No. 10675) that covers certain specific areas in Comal County, and that the areas covered in Comal County consists of four disconnected small service areas. It is GBRA's further understanding that BexarMet's enabling act now identifies CCN No. 10675 and includes the four disconnected small service areas in Comal County within BexarMet's statutory boundaries "for the purpose of the exercise of its current retail water utility services," but that BexarMet's act does not include any other area in Comal County for such purpose. GBRA is not willing to commit to BexarMet on a long-term basis any water based on demands for treated water within areas in Comal County outside of BexarMet's currently-defined retail service area. This position is not any way an effort to gain a "competitive advantage" in connection with provision of retail water service — it simply recognizes and respects the boundaries of BexarMet's current statutory service area.

Mr. Thomas C. Moreno
September 29, 2003
Page 2

Second, in numbered paragraph 2 of your letter, you refer to "BexarMet's request to appropriate state-owned water under GBRA's control." I understand your request to be one seeking a wholesale contract to purchase raw water from GBRA, and not a "request to appropriate state-owned water."

Third, I have repeatedly asked you to provide information needed to properly define the current and projected future demands for treated water within BexarMet's currently-defined service area in Comal County which, as discussed above, consists of the four disconnected small service areas in Comal County covered by CCN No. 10675 identified in BexarMet's enabling act. Although you initially promised several times in July to provide this information in response to my requests, you have thus far provided nothing. To move your request along, we have undertaken our own estimate of the projected future demand within that area. Based on information otherwise available to us and assuming that development occurs to the maximum permissible extent within BexarMet's current statutory service area in Comal County (the four disconnected small service areas in Comal County covered by CCN No. 10675 identified in BexarMet's enabling act), we have calculated that the future demand for treated water within that area will not exceed 428.5 acre-feet per year.

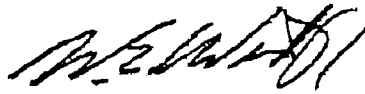
Please let me know if you want to pursue the development of a contract for an amount of raw water based on the projected future demand for treated water within BexarMet's current statutory service area in Comal County (the four disconnected small service areas in Comal County covered by CCN No. 10675 identified in BexarMet's enabling act). If you do want to pursue such a contract, I will have a draft contract prepared promptly after I hear back from you. Before we finalize the contract, however, we will need from you the information requested so that our calculation of the projected future demand for treated water within BexarMet's current statutory service area in Comal County can be confirmed.¹ Contrary to the implication in numbered paragraph 2 of your letter, GBRA is only seeking information on current and projected future demands for treated water within BexarMet's current statutory service area in Comal County (the four disconnected

¹ With regard to our need for this information, GBRA wants to be sure that the amount of water committed for supply within BexarMet's current statutory service area in Comal County (the four disconnected small service areas in Comal County covered by CCN No. 10675 identified in BexarMet's enabling act) is not excessive, so that as much water as possible remains available for others. In fact, the legal authorities you cite in your letter point out that a wholesale contract may be improper where it is found that it attempts to furnish too much water." See, e.g., *City of San Antonio v. Texas Water Commission*, 407 S.W.2d 752, 768 (Tex 1966).

Mr. Thomas C. Moreno
September 29, 2003
Page 3

small service areas in Comal County covered by CCN No. 10675 identified in BexarMet's enabling act), and we are not seeking any information relating to any other area.

Sincerely,

A handwritten signature in black ink, appearing to read "W. E. West, Jr.", with a stylized flourish at the end.

W. E. West, Jr.
General Manager

Exhibit F



Visit our website
www.bexarmet.org

October 23, 2003

Thomas C. Moreno
General Manager/CEO

Mr. Bill West, General Manager
Guadalupe-Blanco River Authority
933 E. Court Street
Seguin, Texas 78155

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Fax: (210) 673-3404

South San Branch
2706 W. Southcross
San Antonio, Texas 78211
P.O. Box 245994
San Antonio, Texas 78224-5994
Phone: (210) 922-1221
Fax: (210) 922-1894

Re: BexarMet's Comal County/In-District Request for Raw Water.

Dear Bill:

Thank you for your letter of September 29, 2003, addressing BexarMet's request for a 3000 acre-feet per year raw water commitment for use in GBRA's statutory district within Comal County. While BexarMet reiterates its request for that full amount, BexarMet accepts GBRA's offer for a 428.5 acre-feet commitment in partial fulfillment of its total request. Please send a raw water purchase agreement reflecting the 428.5 acre-feet commitment.

I continue to dispute whether BexarMet must present the data you claim is necessary to fulfill the entire 3000 acre-feet request. You have cited no legal authority for this requirement as a condition for the purchase of state water permitted to GBRA. I anticipate that our discussions regarding whether that information is required and BexarMet's entitlement to the full amount requested will continue during the process to finalize this initial 428.5 acre-feet commitment. As stated in my letter of September 19, 2003, BexarMet has requested a contract on the terms outlined in that letter, and failing to obtain a commitment on those terms and in that amount, remains prepared to file a petition to compel service.

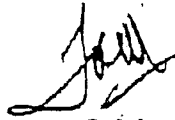
GBRA's entry and expansion into the retail service market was partially contingent upon BexarMet and CRWA's willingness to support GBRA's application to amend its Canyon Permit thereby increasing the amount of water permitted to GBRA from 55,000 to 90,000 acre feet. Unfortunately, GBRA's entry into that market is complicating our dealings concerning the purchase of state water for BexarMet's own retail activities. My letter of September 19, 2003, reflects the amount and terms of the contract sought by request of BexarMet's Board. BexarMet seeks and is entitled to 3,000 acre feet without pre-condition. To reiterate, BexarMet's acceptance of GBRA's offer of 428.5 acre-feet is an interim measure.

Mr. Bill West, General Manager
Guadalupe-Blanco River Authority
October 23, 2003
Page 2

Thank you for your consideration.

Very truly yours,

BEXAR METROPOLITAN WATER DISTRICT



Thomas C. Moreno
General Manager/CEO

cc: Ronald C. Williamson, President
Bexar Metropolitan Water District

Board of Directors
Bexar Metropolitan Water District

Exhibit G



GUADALUPE-BLANCO RIVER AUTHORITY

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GBRA WEBSITE
<http://www.gbra.org>

October 30, 2003

Mr. Tomas C. Moreno
General Manager/CEO
Bexar Metropolitan Water District
2047 West Malone
San Antonio, Texas 78225

Re: Request by Bexar Metropolitan Water District for Raw Water Contract

Dear Tom:

Thank you for your letter dated October 23, 2003 responding to my September 29, 2003 letter.

Pursuant to your request, GBRA will prepare a draft contract for the 428.5 acre-feet per year of stored raw water that you requested from Canyon Reservoir to supply the current and projected future demands for treated water within the four disconnected small service areas in Comal County covered by CCN No. 10675. As you know, I have been asking since early July for the information needed to properly define the current and projected future demands for treated water within these four service areas, but thus far you have provided no demand calculations. Nevertheless in an effort to move your request along, GBRA undertook its own estimate of the projected future demand for those four areas and included the estimate in my September 29, 2003 letter to you. GBRA arrived at that estimate of not more than 428.5 acre-feet per year based on information otherwise available to us and assuming that development within these four small areas occurs to the maximum permissible extent. As I also stated in my September 29 letter however, before we finalize the contract, we will need from you the information requested so that our calculation of the projected future demand for treated water within the four service areas can be confirmed. Please provide this information promptly, so that further delays in completing the raw water contract can be avoided.

I am disappointed that you continue to threaten to take legal action against GBRA to reserve additional stored water from Canyon Reservoir in order to supply the current and projected future demands for treated water within other areas in Comal County. There is no basis for such an action, particularly in light of BexarMet's lack of statutory authority to provide retail water service within any area

Mr. Tomas C. Moreno

October 29, 2003

Page 2

in Comal County other than the four areas covered by CCN No. 10675. Initiation of such an action by BexarMet at this time would only waste time and resources of both our organizations. This is especially true since GBRA continues to cooperate with BexarMet regarding any legitimate need BexarMet may have for a commitment of additional stored water. We request that BexarMet cease using threats of litigation to seek special concessions.

With respect to other matters you raise in your letter, I disagree strongly with your statements and characterizations about retail water service in the Comal County area. As you know, GBRA has long held the necessary statutory authority to provide such service within its ten-county statutory district, and our efforts in this regard have been ongoing for some time and were not at all "contingent on BexarMet and CRWA's willingness to support GBRA's application to amend its Canyon Permit."

Very truly yours,

Guadalupe-Blanco River Authority

By: 

W.E. West, Jr.
General Manager

BW