

Control Number: 43943



Item Number: 39

Addendum StartPage: 0

RECEIVED

JAN 16 2004

Water Quality Applications Team

No. \_\_\_\_\_

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

§  
§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL  
QUALITY

ENVIRONMENTAL QUALITY

**ORIGINAL 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 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 to 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 its retail service operations in Comal County. By denying BexarMet's request, GBRA has improperly exercised control of a public resource for its own advantage. Because GBRA has refused BexarMet's request, 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.

## **II. Parties**

1. BexarMet is a 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 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 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.

6. 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.

7. 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 true and correct copy of the August 8, 2003 letter is attached as Exhibit B and incorporated by reference. GBRA again failed to honor BexarMet's request.

8. About one month later, BexarMet increased its request for a commitment of Canyon Lake water to 3000 acre-feet per year. 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. A true and correct 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 C and incorporated by reference.

9. 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 offer of a 428.5 acre-feet commitment is attached hereto as Exhibit D and incorporated by reference.

10. 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 E 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 true and correct copy of the October 30, 2003, letter from GBRA is attached hereto as Exhibit F and incorporated herein by reference.

11. 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.

12. 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.

13. Unlike BexarMet, Bulverde has never operated a retail water system and thus lacks the financial, managerial, and technical capability to provide continuous and adequate service required to meet the CCN holder's obligations under TEX. WATER CODE § 13.241. In order to satisfy the requirements of Chapter 13 of the Water Code and the Commission's rules, Bulverde's CCN application anticipated that GBRA would render all required service on Bulverde's behalf. Under this arrangement, GBRA is responsible for all aspects of serving Bulverde's customers. After a lengthy contested case hearing, Administrative Law Judge James Norman issued a Proposal for Decision granting a CCN for the disputed area to BexarMet. The Commission then reversed, granting GBRA, through Bulverde, the right to serve the disputed area. The Commission's Final Order is presently the subject of an administrative appeal pending in Travis County District Court in *Bexar Metropolitan Water District v. Texas Commission on Environmental Quality*, Cause No. GV-302775. Bulverde and GBRA have jointly intervened in that suit for judicial review of the Commission's Final Order.

14. 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.

15. 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 D and Exhibit F, 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.

16. 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**

17. 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.

18. 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 D and Exhibit F*; 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.*

19. A \$25.00 deposit accompanies this Petition. BexarMet requests that the Executive Director make a preliminary investigation of BexarMet's Petition and determine that there are probable grounds for it. BexarMet further requests that the Executive Director enter an order setting time and place for hearing of BexarMet's Petition.



Respectfully submitted,

HAZEN & TERRILL, P.C.

By: 

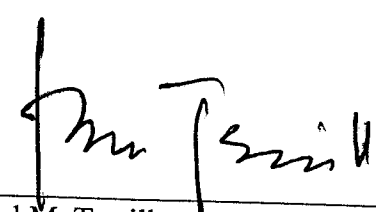
Paul M. Terrill III  
State Bar No. 00785094  
Howard S. Slobodin  
State Bar No. 24031570  
810 W. 10<sup>th</sup> Street  
Austin, Texas 78701  
(512) 474-9100  
(512) 474-9888 (fax)

ATTORNEYS FOR PETITIONER  
BEXAR METROPOLITAN WATER  
DISTRICT

**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2003, a true and correct copy of the foregoing *Original 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:

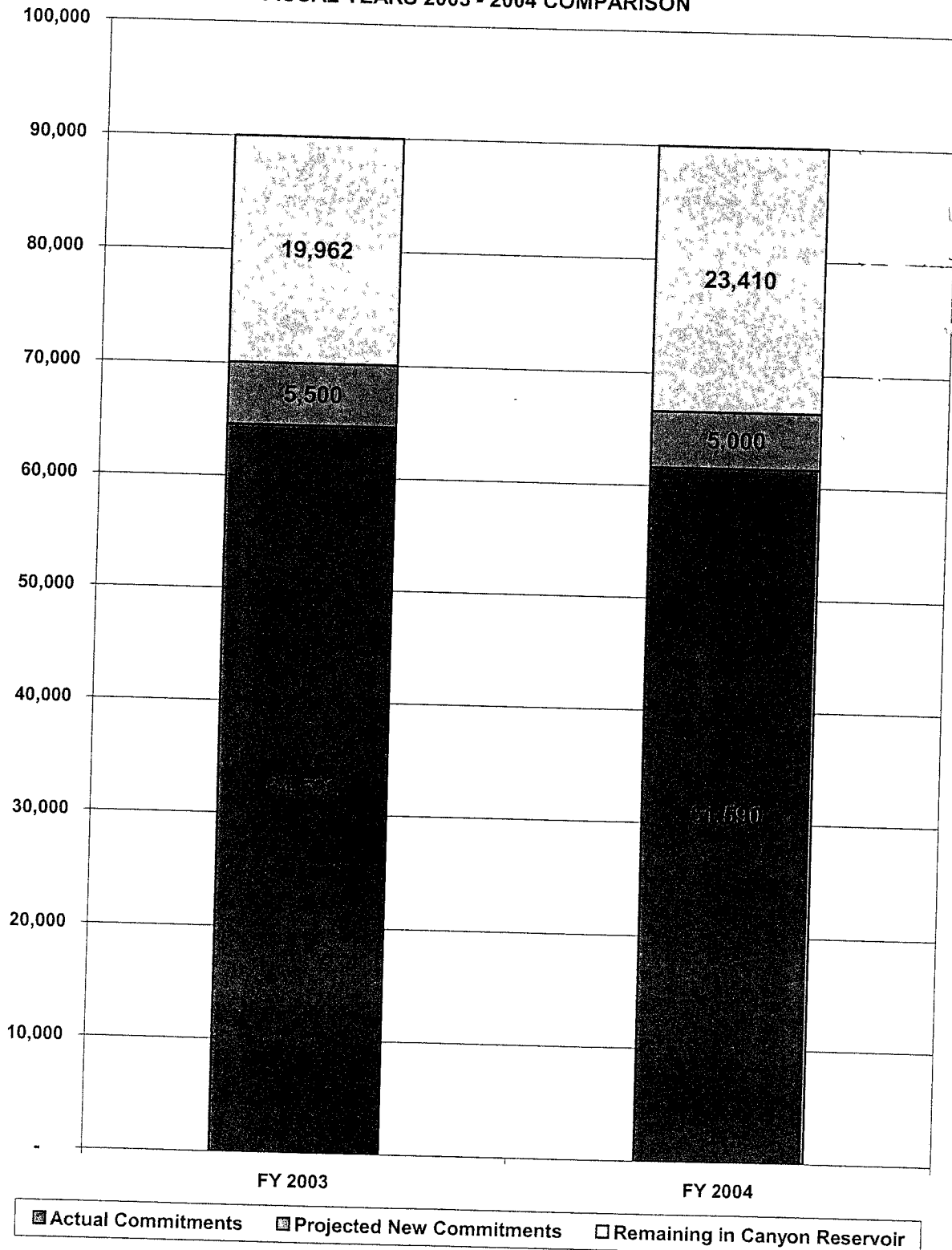
Guadalupe-Blanco River Authority, **CM/RRR, # 7108 1853 1570 0000 5526**  
Attention: General Manager  
933 E. Court St.  
Sequin, Texas 78155

  
Paul M. Terrill



# Exhibit A

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



# Exhibit B

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,

**BEXARMET 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 C

BN

**TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY**  

---

**TRANSMITTAL OF ADMINISTRATIVE RECORD**

**DATE:** December 6, 2004

**TO:** SOAH Natural Resources Docket Clerk

**THRU:** ~~SA~~ Deanna Avalos, TCEQ Final Documents Team Leader

**FROM:** *MM* Melanie Mohair, TCEQ SOAH Docket Coordinator

**RE:** Bexar Metropolitan Water District  
SOAH Docket No. 582-05-1005; TCEQ Docket No. 2004-1384-UCR

Pursuant to 30 TAC § 80.6(b)(4) regarding referrals to SOAH, a copy of the Chief Clerk's case file is attached. Please find certified copies of the following documents:

- ✓ 1. the application;
- ✓ 2. public hearing notice and Chief Clerk's affidavit

If any of these documents are not included as enclosures with this memo, please notify Melanie Mohair, SOAH Coordinator at (512) 239-2578 or Deanna Avalos, Final Documents Team Leader at (512) 239-3327.

RECEIVED  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
-8 DEC 04 08 41

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## INTEROFFICE MEMORANDUM

TO: LaDonna Castanuela, Chief Clerk

DATE: September 14, 2004

THRU: *MA* Earl Lott, Manager  
Utilities and Districts Section  
Water Supply Division

FROM: *MA* Michelle Abrams, Team Leader  
Utilities Financial Review Team  
Water Supply Division

SUBJECT: Docket No. 2004-1384-UCR; Petition of Bexar Metropolitan Water District (BexarMet), Certificate of Convenience and Necessity (CCN) No. 10675, to Compel Raw Water Commitment from Guadalupe-Blanco River Authority (GBRA), CCN No. 12977 in Comal County under Texas Water Code Section 13.043(f); Application No. 34494-A

We hereby transfer the official file for the above application to the Chief Clerk's Office. Please refer this application to the State Office of Administrative Hearings (SOAH) and request that a hearing be scheduled.

We received the Petition of Bexar Metropolitan Water District on January 16, 2004. BexarMet began its efforts to secure raw water from GBRA in March of 2003. Despite repeated requests from BexarMet, GBRA refused to commit to the 2000 acre-feet per year. 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. On August 8, 2003, BexarMet again requested 2000 acre-feet of water. One month later, BexarMet increased its request for a commitment of Canyon Lake water to 3000 acre-feet per year. GBRA has continued to refuse BexarMet's request. Per TWC 11.041 (a), any person entitled to receive or use water from any conserved or stored supply may present to the commission a written petition showing 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 or just or is discriminatory.

The staff assigned to this case are:

Technical - Brian Dickey

Financial - Elsie Pascua

Legal -

THE STATE OF TEXAS  
COUNTY OF TRAVIS

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

*LaDonna Castanuela* **DEC 06 2004**  
LaDonna Castanuela, Chief Clerk  
Texas Commission on Environmental Quality

If we may be of further service regarding this matter, please call.

*Michelle Abrams*  
Michelle Abrams, Team Leader

EL/MA/ac

cc: TCEQ Public Interest Counsel; ATTN: Blas Coy  
TCEQ Agency Communications; ATTN: Andy Saenz, Director  
TCEQ Chief Clerk's Office; ATTN: Melanie Mohair  
TCEQ Legal Office; ATTN: Robert Martinez

RECEIVED  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
-8 DEC 04 08 41



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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 14, 2004

Mr. Howard Slobodin  
Hazen & Terrill  
810 W. 10<sup>th</sup> Street  
Austin, Texas 78701

Re: Docket No. 2004-1384-UCR; Petition of Bexar Metropolitan Water District Certificate of Convenience and Necessity No. 10675 to Compel Raw Water Commitment from Guadalupe-Blanco River Authority, CCN No. 12977 in Comal County; Application No. 34494-A

CN: 601180565; RN: 103908547

Dear Mr. Slobodin:

On January 16, 2004, we received your petition to Compel Raw Water Commitment from Guadalupe-Blanco River Authority. The Commission has requested that a hearing be scheduled. Your application has been assigned Docket No. 2004-1384-UCR. Any further communications should refer to this docket number.

This matter has been referred to the State Office of Administrative Hearings to schedule a hearing. When a hearing has been scheduled, you will receive a notice of hearing which explains when and where the hearing will be held.

In order to review the petition of an Appeal, the staff of the TCEQ may need additional information regarding your petition. You may be receiving Staff Requests for Information (RFI's) within a few weeks. We would appreciate your cooperation in providing the information requested.

If you have questions about this process or what material you should bring with you to the hearing, please contact Ms. Elsie Pascua at 512/239-5367 or Mr. Brian Dickey at 512/239-0963.

Sincerely,

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

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

EL/MA/SP/ac

cc: TCEQ Region No. 13 Office