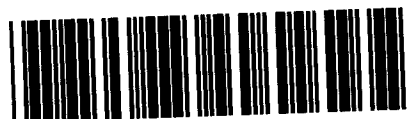


Control Number: 43943



Item Number: 40

Addendum StartPage: 0



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,

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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."<sup>1</sup> 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."<sup>2</sup>

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

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<sup>1</sup> TEX. WATER CODE § 11.134(b)(3)(a), (e).

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

The waters of Canyon Lake are "the property of the State, held in trust for the public."<sup>7</sup> 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

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<sup>3</sup> *Id.*

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

<sup>5</sup> TEX. WATER CODE § 13.139(d).

<sup>6</sup> 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.).

<sup>7</sup> 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.<sup>8</sup> All of GBRA's powers are "public rights and duties."<sup>9</sup> 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,<sup>10</sup> 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.<sup>11</sup> 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.

---

<sup>8</sup> 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.

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

<sup>10</sup> 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.

<sup>11</sup> 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 D



GUADALUPE-BLANCO RIVER AUTHORITY

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933 East Court Street  
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Fax: 830-379-9718

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

LAKE WOOD  
RECREATION AREA  
167 FM 2091 South  
Conzales, 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  
Phone: 830-875-2132  
Fax: 830-875-3670

PORT LAVACA  
OPERATIONS  
P.O. Box 146  
Port Lavaca, Texas 77979  
Phone: 361-552-9751  
Fax: 361-552-6529

SAN MARCOS WATER  
TREATMENT PLANT  
91 Old Eastrop Road  
San Marcos, Texas 78666  
Phone: 512-353-3888  
Fax: 512-353-3127

VICTORIA REGIONAL  
WASTEWATER  
RECLAMATION  
SYSTEM  
P.O. Box 2085  
Victoria, Texas 77902-2085  
Phone: 361-578-2878  
Fax: 361-578-9059

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.<sup>1</sup> 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

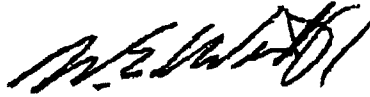
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<sup>1</sup> With regard to our need for this information, GBRA wants to be sure that the amount of water committed for supply within BexarMet's current statutory service area in Comal County (the four disconnected small service areas in Comal County 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 E



Visit our website  
[www.bexarmet.org](http://www.bexarmet.org)

October 23, 2003

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

Thomas C. Moreno  
General Manager/CEO

BOARD OF DIRECTORS

Ronald C. Williamson  
President

Dean H. Perry  
Vice President

Jim Lopez  
Treasurer

Ysidro Solis  
Director

Linda M. Nelson  
Director

Herman E. Sanchez  
Director

John A. Longoria  
Director

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9823 Marbach  
San Antonio, Texas 78245  
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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.

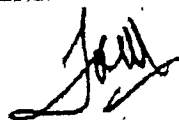
GBRA's entry and expansion into the retail service market was partially contingent upon BexarMet and CRWA's willingness to support GBRA's application to amend its Canyon Permit thereby increasing the amount of water permitted to GBRA from 55,000 to 90,000 acre feet. Unfortunately, GBRA's entry into that 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 F



GUADALUPE-BLANCO RIVER AUTHORITY

GENERAL OFFICE  
33 East Court Street  
Aguin, Texas 78155  
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SOLETO CREEK PARK  
AND RESERVOIR  
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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  
Phone: 830-875-2132  
Fax: 830-875-3670

FORT LAVACA  
OPERATIONS  
P.O. Box 146  
Fort Lavaca, Texas 77979  
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SAN MARCOS WATER  
TREATMENT PLANT  
91 Old Bustrop Road  
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Phone: 512-553-8888  
Fax: 512-553-8127

VICTORIA REGIONAL  
WASTEWATER  
RECLAMATION  
SYSTEM  
P.O. Box 2085  
Victoria, Texas 77902-2085  
Phone: 361-578-2878  
Fax: 361-578-9039

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



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*

January 20, 2004

Mr. Howard Slobodin  
Hazen & Terrill  
810 West 10th Street  
Austin, Texas 78701

RE: Declaration of Administrative Completeness  
Name: Guadalupe-Blanco River Authority  
CCN Number: 12977  
CN: 601180565; RN: 103908547  
Administrative Review Number: P-002-4  
Type of Application: Bexar Metropolitan Water District vs Guadalupe-Blanco River Authority

Dear Mr. Slobodin:

The above referenced application was received by the Water Quality Applications Team on January 16, 2004. An administrative review of the application has been conducted and the application was declared administratively complete on January 20, 2004.

**This application has been forwarded to Ms. Michelle Abrams, Utility Certification and Rate Analysis Team, Districts and Utilities Section (Mail Code 153), Water Supply Division for a technical review.** If during the course of the technical review additional information is needed, you will be notified of the deficiency and be requested to supplement the application.

You may contact Ms. Abrams at (512) 239-6014 if you have questions regarding the technical evaluation of your application. If you have questions regarding the administrative review, please contact Peggy Hiscoe at (512) 239-6168.

Sincerely,

A handwritten signature in cursive script that reads "Peggy Hiscoe".

Peggy Hiscoe  
Water Quality Applications Team (Mail Code 156)  
Permits Administrative Review Section  
Registration, Review & Reporting Division