

TCEQ DOCKET NO. 2006-1833-DIS

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APPLICATION OF BEXARMET	§	BEFORE THE	CHIEF CLERKS OFFICE
WATER DISTRICT	§		
FOR APPROVAL OF IMPACT FEES	§	TEXAS COMMISSION ON	
IN BEXAR, MEDINA, ATASCOSA	§		
AND COMAL COUNTIES, TEXAS	§	ENVIRONMENTAL QUALITY	

**EXECUTIVE DIRECTOR'S RESPONSE TO
HEARING REQUESTS**

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") files the Executive Director's Response to Hearing Requests by numerous protestants concerning the application by Bexar Metropolitan Water District (the District) for approval of impact fees in Bexar, Medina, Atascosa and Comal Counties, Texas. For the reasons set forth below, the Executive Director recommends that the Commission **grant** the hearing requests from Roy J. Brown, *Customer*; Ronald J. Freeman, representing Bitterblue Inc., *Developer*; Jeff Buell & Frank J. Sitterle, Jr., for Sitterle Homes, *Developer*; Dan Markson, for NRP, *Developer*; John Carlton, on behalf of Standard Pacific Homes of Texas, L. P., *Developer*, and **deny** the hearing requests from Denise Ingledue, *Customer*; Guadalupe Gonzales, *Customer*; Mark & Sylvia Mennel, *Customer*; Mark & Wendy Dickey, Martha Eurey, Sue Wilson, *Customer*; Monte B Lloyd, *Customer*; R.D. Bilbrey, *Customer*; Rhonda Childs, *Customer*; Pauline I. Perry, *Customer*; Ester Cabral, *Customer*; Dianne & Ken Joaquin, *Customer*; Su & Jenny Yim, *Customer*; Martha Mangum on behalf of The Real Estate Council of San Antonio, *Association*; Becky Oliver, on behalf of Greater San Antonio Builders Association, *Association* G.G. Gale, Jr., Vice-President of Timberwood Park Development Company, on behalf of Timberwood Park, *Association*.

I. BACKGROUND

The District is requesting Commission approval to levy impact fees of \$2,556 equivalent single-family connection ("ESFC") for new connections to the water system within or near all of the service areas of the District. Revised documentation and Capital Improvements Plan were received by the Commission supporting a reduced impact fee of \$2,376.

The District provides water service to fifteen separate, non-contiguous service areas which have been grouped into five general areas in Bexar, Medina, Atascosa, and Comal Counties, encompassing approximately 271.98 square miles and serving over 325,000 customers or 78,180 residential ESFCs and 59,692 employee ESFCs. In 1997, the Commission approved impact fees in six different amounts specific to the areas within the District, ranging from \$300 to \$1,068 per ESFC for water. One residential ESFC is defined as the typical consumption by one single

family household with a 5/8 inch water meter. An employee ESFC is equivalent to 25% of a residential ESFC and describes water use at a place of employment. The five general service areas are known as Castle Hills, Hill Country, Northeast, Northwest, and Southside. The District does not provide wastewater treatment or services.

The District has represented that its intent is to finance water supply facilities with impact fee revenue from new development. The District's application has been reviewed by staff in the TCEQ Utilities & Districts Section, Water Supply Division. The Executive Director's current recommendation, based on the information available to the Executive Director at this time, is for the Commission to approve the District's requested impact fee amounts for water. *See Exhibit A (January 31, 2007 technical memorandum).*

II. PROCEDURAL HISTORY

On May 1, 2006, the District filed an application with the Commission requesting authority to adopt and impose an impact fee. The District's application was declared administratively complete on May 2, 2006. Notice of this application was published in the *San Antonio Express News*, a newspaper of general circulation in Bexar, Medina, Atascosa, and Comal Counties, Texas, once a week for two consecutive weeks on September 3 and September 10, 2006, the first publication thereof being more than thirty days prior to the date of consideration of this application. The last day to request a contested case hearing ended October 10, 2006.

III. IMPACT FEES

Chapter 395 of the Texas Local Government Code and Chapter 49 of the Texas Water Code allow Texas districts to assess an impact fee in a district if approved by the Commission. *See* Tex. Loc. Gov't Code §395.080(b); Tex. Water Code §49.212(d). The Commission reviews impact fee applications in accordance with Sections 293.171–176 of the Commission rules. *See* 30 Texas Administrative Code ("TAC") §§293.171–176. An "impact fee" is a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. Tex. Loc. Gov't Code §395.001(4); *see also* 30 TAC §293.171(1). "New development" means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units. Tex. Loc. Gov't Code §395.001(6).

A "capital improvement plan" is a plan that identifies capital improvements or facility expansions pursuant to which impact fees may be assessed. *See* 30 TAC §291.171(2); *see also* Tex. Loc. Gov't Code §395.001(2).

Capital improvements means water supply, treatment, and distribution facilities, wastewater collection and treatment facilities, stormwater, and drainage, and flood control facilities, including facility expansions, whether or not located within the service area, with a life expectancy of three or more years, owned and operated by or on behalf of a district with authorization to finance and construct such facilities, but such term does not include materials and devices for making connections to or measuring services provided by such facilities to district customers.

30 TAC §291.171(3); *see also* Tex. Loc. Gov't Code §395.001(1). Service area is defined as an area within or without the boundaries of a district to be served by the capital improvements specified in the capital improvements plan. 30 TAC §291.171(5); *see* Tex. Loc. Gov't Code §395.001(9). The service area may include all or part of the land within a district or land outside a district served by the facilities identified in the capital improvements plan. *Id.*

Notice of an impact fee application must be published and mailed as provided in section 293.173 of the Commission's rules, unless waived by the Executive Director. *See* 30 TAC §293.173(c)(2). The Commission may act on an impact fee application without holding a public hearing if a public hearing is not requested by the Commission, the Executive Director, or an affected person in the manner prescribed by Commission rule during the 30 days following the final publication of notice of the impact fee application. 30 TAC §293.173(d). If the Commission determines that a public hearing is necessary, the Chief Clerk shall advise all parties of the time and place of the hearing. *Id.*

If the Commission finds that a requested impact fee is reasonable, equitable and necessary as a mechanism for a district to finance improvements to serve the designated service area, the Commission shall approve the capital improvements plan and impact fee. 30 TAC §293.174(a). The Commission may approve an impact fee amount that is different than the impact fee amount requested in the application for approval; however, in no event shall the Commission approve an impact fee amount higher than the impact fee amount contained in the notice required under 30 TAC §293.173(b). *Id.*

IV. STANDARD FOR HEARING REQUEST

The District's application was declared administratively complete after September 1, 1999, and does not fall under any of the statutory provisions listed in section 55.250 of the Commission's rules; therefore, as provided in that rule section, the application is subject to Chapter 55, Subchapter G. Under that subchapter, a request for a contested case hearing made by an "affected person" will be granted if the request:

- (A) complies with the requirements of § 55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment);
- (B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law.

30 TAC § 55.255(b)(2).

An "affected person" is one with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. 30 TAC §55.256(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* In evaluating whether a person requesting a hearing is an "affected person," the Commission will weigh all relevant factors, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c).

Groups or associations seeking party status must meet the requirements set out in 30 TAC § 55.252, that:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.252(a). The rule further provides that the executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of subsection (a) of this section. The request and response shall be filed according to the procedure in §55.254 of this title. 30 TAC § 55.252(b).

A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the Chief Clerk within the time period specified in the notice. 30 TAC § 55.251(b), (d). Additionally, a hearing request must substantially comply with the following:

(1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

30 TAC § 55.251(c)(1)–(4).

V. THE HEARING REQUESTS

All of the following are considered hearing requests because they have substantially complied with 30 TAC § 55.251(c) by providing (1) contact information, (2) a brief identification of their personal justiciable interest and, (3) requested a contested case hearing:

Withdrawn:

Natalie Griffith, on behalf of Habitat for Humanity.
James Mattox, Mission del Lago.

Customers:

Roy J. Brown
Denise Ingledue
Guadalupe Gonzales
Mark & Sylvia Mennel
Mark & Wendy Dickey, Martha Eurey, Sue Wilson
Monte B Lloyd
R.D. Bilbrey
Rhonda Childs
Pauline I. Perry
Ester Cabral
Dianne & Ken Joaquin
Su & Jenny Yim

Developers:

Ronald J. Freeman, representing Bitterblue Inc.
Jeff Buell & Frank J. Sitterle, Jr., for Sitterle Homes
Dan Markson, for NRP
John Carlton, on behalf of Standard Pacific Homes of Texas, L. P.

Associations:

Martha Mangum on behalf of The Real Estate Council of San Antonio
Becky Oliver, on behalf of Greater San Antonio Builders Association
G.G. Gale, Jr., Vice-President of Timberwood Park Development Company, on behalf of Timberwood Park

VI. COMMENTS

All of the following are not considered hearing requests because they have not substantially complied with 30 TAC § 55.251(c):

Pastor Ryan, Bright Star Ministries and Outreach
R. Thorne
M. Lee Niles, P.E., Pape-Dawson Engineers, Inc.
Mrs. Carl E. Powell
Annie Spinks
Jerald T. Mallernee

VII. ANALYSIS OF HEARING REQUESTS

A. Withdrawn Hearing Requests

Natalie Griffith, on behalf of *Habitat for Humanity*. On October 5, 2006, TCEQ received a letter requesting a contested case hearing from Natalie Griffith, on behalf of Habitat for Humanity. On November 7, 2006, TCEQ received a letter withdrawing this hearing request. (withdrew request in letter dated October 31, 2006).

James Mattox, for *Mission del Lago*. On July 21, 2006, TCEQ received a letter from James Mattox, representing Mission del Lago, requests a contested case hearing. On February 7, 2007, TCEQ received a letter dated December 8, 2006, withdrawing the letter requesting a contested case hearing.

B. Customers

Roy J. Brown. On October 9, 2006, TCEQ received a letter from Roy Brown requesting a contested case hearing. Mr. Brown is concerned that if he installs a new meter on his property he will be charged a fee for every foot of his frontage property in addition to the impact fee. Mr. Brown states that he is an existing BexarMet customer and is not immediately affected, but would be if he wished to install a meter on his property.

The definition of "new development" is "the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units." Loc. Gov't Code 395.001(6). Because Mr. Brown suggests that he may want to install a meter on a property that he owns in the District's service area, he may own undeveloped land within the District's service area, or intend to take some action that "increases the number of service units." In such a case, Mr. Brown appears to be an affected person. The ED is not aware of any "frontage road fee," but, depending on what such funds are used for, it could qualify as an impact fee. As determining this would require developing a factual record, it is appropriate for referral to SOAH.

The Executive Director recommends the Commission find that Mr. Brown is an affected person and that his request for a contested case hearing be granted.

Denise Ingledue. On September 25, TCEQ received a letter from Denise Ingledue, requesting a contested case hearing. The letter states that the impact fee would cause financial hardship, that she is struggling with bills to pay her mortgage; that she was not aware of the water problems in the area when she purchased her home. The letter suggests that Ms. Ingledue is a homeowner and therefore a current customer within the district. Ms. Ingledue does not state that she owns undeveloped land within the district that might be subject to the impact fee. Because impact fees are not assessed against current customers, this requester is not an affected person.

The Executive Director recommends that the Commission find that that Ms. Ingledue is not an affected person and that her request for a contested case hearing be denied.

Guadalupe Gonzales. On September 22, 2006, TCEQ received a letter from Guadalupe Gonzales requesting a contested case hearing. The letter states that the requester would be affected financially, though it does not indicate how the requester would be affected by the impact fee. The letter does not state whether the requester is a current customer of the District, or whether the requester is a developer or owner of undeveloped land within the District.

The Executive Director recommends that the Commission find that this hearing requester is not an affected person and that the request for a contested case hearing be denied.

Mark & Sylvia Mennel. On September 20, 2006, TCEQ received a letter from Mark and Sylvia Mennel. The letter states that they would be adversely affected by the impact fee and raises issues relating to the general management of the District. Mark and Sylvia Mennel do not state whether they are current customers of the District nor whether they own undeveloped land within

the service area. The letter does not request a contested case hearing. Moreover, they raise issues relating to the management of the District's water system, which is not relevant to the processing of an impact fee application.

The Executive Director recommends that the Commission find that Mark and Sylvia Mennel are not affected persons, have not raised relevant issues, and that their request for a contested case hearing be denied.

Mark & Wendy Dickey, Martha Eurey, Sue Wilson. On October 4, 2006, TCEQ received a letter signed by Mark & Wendy Dickey, Martha Eurey and Sue Wilson requesting a contested case hearing. They are concerned that the District is trying to expand without first attending to the needs of its current customers. The letter does not state whether the signatories are current customers, nor whether they are owners of undeveloped land within the service area.

The Executive Director recommends that the Commission find that Mark and Wendy Dickey, Martha Eurey, and Sue Wilson are not affected persons, have not raised relevant issues, and that their request for a contested case hearing be denied.

Monte B Lloyd. On September 18, 2006, TCEQ received a letter from Monte B. Lloyd protesting the impact fees and requesting a contested case hearing. Mr. Lloyd is concerned that because he lives within half a mile of the District's service area, and the notice states that the District may have the authority to levy impact fees "within or near all of the service areas of Bexar Metro Water District," he may be subject to the impact fee. Mr. Lloyd wants the application to contain more specific wording so that the District cannot expand beyond specific boundaries.

Service area is defined as an area within or without the boundaries of a district to be served by the capital improvements specified in the capital improvements plan. 30 TAC §291.171(5). Because he states that he is within ½ mile of the District's service area, it appears he is not within the District's service area. Mr. Lloyd does not state he is the owner of undeveloped land that might be the subject of the impact fee.

The Executive Director recommends that the Commission find that Monte B Lloyd is not an affected person, has not raised relevant issues, and that his request for a contested case hearing be denied.

R.D. Bilbrey. On September 18, 2006, TCEQ received a letter from R. D. Bilbrey, requesting a contested case hearing, expressing a concern that the District should not be allowed to expand until it is able to serve its present customers. The letter addresses the District's quality of service. From the nature of the complaint, R. D. Bilbrey appears to be a current customer and therefore would not be affected by the impact fee, as impact fees are not assessed against current customers. Moreover, the letter does not raise issues that are relevant to the processing of this application.

The Executive Director recommends that the Commission find that R. D. Billbrey is not an affected person, has not raised relevant issues, and that the request for a contested case hearing be denied.

Rhonda Childs. On September 18, 2006, TCEQ received a letter from Rhonda Childs, requesting a contested case hearing, expressing a concern that the District should not be allowed to expand until it is able to serve its present customers. The letter addresses the District's quality of service. From the nature of the complaint, Ms. Childs appears to be a current customer, and therefore would not be affected by the impact fee, as impact fees are not assessed against current customers. Moreover, the letter does not raise issues that are relevant to the processing of this application.

The Executive Director recommends that the Commission find that Rhonda Childs is not an affected person, has not raised relevant issues, and that her request for a contested case hearing be denied.

Pauline I. Perry. On September 18, 2006, TCEQ received a letter from Pauline I. Perry, requesting a contested case hearing. Ms. Perry states she does not support the impact fee, and indicates that such a fee would cause financial hardship. Ms. Perry does not state whether she is a current customer, nor whether she owns undeveloped land in the District's service area. Because Mr. Perry appears to be a current customer, she would not be subject to the impact fee, as impact fees are not assessed against current customers.

The Executive Director recommends that Ms. Perry is not an affected person and that her request for a contested case hearing be denied.

Ester Cabral. On September 13, 2006, TCEQ received a letter from Ester Cabral requesting a contested case hearing. Ms. Cabral states that someone at TCEQ informed her that she would not be affected by the impact fee, but that she was requesting a hearing until she received a statement in writing that she would not be affected. The letter states "I received the keys to my home September 23, 2005," indicating she is a current customer. Because impact fees are not assessed against current customers, this requester is not an affected person.

The Executive Director recommends that the Commission find that Ms. Cabral is not an affected person and that her request for a contested case hearing be denied.

Dianne and Ken Joaquin. On September 14, 2006, TCEQ received a letter from Dianne and Ken Joaquin, requesting a contested case hearing. The Joaquins own their own home and believe that impact fee should be directed to the individuals that are benefiting from the capital improvements and facility expansions. Because the Joaquin's are current customers and homeowners, they will not be affected by the impact fees, as impact fees are not assessed against current customers.

The Executive Director recommends that the Commission find that Dianne and Ken Joaquin are not affected persons and that their request for a contested case hearing be denied.

Su and Jenny Yim. On October 2, 2006, TCEQ received a letter from Su & Jenny Yim requesting contested case hearing. The letter speculates that San Antonio Water System will take over Bexar Metropolitan Water District, stating that in such a case the impact fee would become a futile financial attempt. Another concern is that TCEQ has not attempted to contact them regarding this issue since the purchase of their property at 923 Queens Oak. Because Su and Jenny Yim are apparently current customers, they would not be affected by the impact fee as impact fees are not assessed against current customers. Moreover, they have not raised issues that are relevant to the processing of this application.

The Executive Director recommends that the Commission find that Su and Jenny Yim are not affected persons, have not raised relevant issues, and that their request for a contested case hearing be denied.

C. Developers

Ronald J. Freeman, representing *Bitterblue Inc.* On September 21, TCEQ received a letter from Ronald Freeman, representing Bitterblue, Inc. (Bitterblue), requesting a contested case hearing. The letter states that Bitterblue is a developer and works with landowners within the District's service area. Because Bitterblue develops property within the current service area of the District, it would be affected by the proposed impact fee.

The Executive Director recommends that the Commission find that Bitterblue is an affected person and that its request for a contested case hearing be granted.

Jeff Buell & Frank J. Sitterle, Jr., for *Sitterle Homes*. On July 26, 2006, TCEQ received two letters from representatives of Sitterle Homes, one from Jeff Buell, and one from Frank J. Sitterle, Jr., requesting a contested case hearing. As both letters state essentially the same thing, they are considered together here. Sitterle states that it is a builder of new homes within the District's service area and is therefore affected by the proposed impact fees. Sitterle states that the proposed impact fee is double the existing rate, and such high prices will affect Sitterle, its employees and the home buyers, and is concerned that there has been no public hearing to justify the rates. Because Sitterle states that it is a developer of new homes within the District's service area, it could be affected by the proposed impact fee.

The Executive Director recommends that the Commission find that Sitterle is an affected person and that its request for a contested case hearing be granted.

Dan Markson, for *NRP*. On September 21, 2006, TCEQ received a letter from Dan Markson, Vice-President of Development for NRP, requesting a contested case hearing. The letter states that it is a developer with 500 units to be developed within the year; that it currently has properties under contract within the District's service area, and is therefore affected by the

proposed impact fee. NRP is concerned that the District has not held any public hearings justifying the impact fees, and suggests that these fees are inequitable to many of the property owners. Because NRP is a developer within the district, it could be subject to the proposed impact fees.

The Executive Director recommends that the Commission find that NRP is an affected person and that its request for a contested case hearing be granted.

John Carlton, on behalf of *Standard Pacific Homes of Texas, L. P.* On October 9, 2006 TCEQ received a letter from John Carlton on behalf of Standard Pacific Homes of Texas, L. P. (Standard), requesting a contested case hearing, stating that Standard owns approximately 157 acres of undeveloped land within the District's service area, that it will be affected because it intends to develop the tract in the immediate future. Standard believes the impact fees should be reduced to more accurately reflect the costs the District incurs to develop capital improvements in the area. As Standard is an owner of undeveloped land within the district, it would likely be subject to the impact fee.

The Executive Director recommends that the Commission find that Standard is an affected person and that its request for a contested case hearing be granted.

D. Associations

Martha Mangum. On September 21, 2006, TCEQ received a letter from Martha Mangum on behalf of The Real Estate Council of San Antonio (the Council), protesting the application and requesting a contested case hearing. The letter states that the Council represents property owners and developers within the District's service area. The Council is concerned that the District has not held a public hearing to justify the proposed impact fees, and the affect the impact fees will have on housing affordability and small businesses, as the proposed impact fees are three times the existing impact fees.

Because the Council states that it represents developers and property owners within the District's service area, it appears that one or more of its members would otherwise have standing to request a hearing in its own right. There is no indication that participation by this group or association would require participation of any individual member in the case. Accordingly, the Council meets criteria (1) and (3) of 30 TAC § 55.252 (Requirement by Group or Association). However, the Council's letter does not indicate that the interests the Council seeks to protect are germane to the organization's purpose. Therefore, absent a showing of how the interests the Council seeks to protect are germane to its purpose, the Council does not meet all three criteria set out in 30 TAC § 55.252.

Unless the Real Estate Council of San Antonio can show how the interests it seeks to protect are germane to the Council's purpose, the Executive Director recommends the Commission find that the Real Estate Council of San Antonio is not an affected person and that its request for a contested case hearing be denied.

Becky Oliver. On September 22, 2006, TCEQ received a letter from Becky Oliver on behalf of Greater San Antonio Builders Association (the Association) requesting a contested case hearing. The Association represents 1,000 companies involved in residential building. The letter states that many of its member companies own land within the District's service area and would therefore be affected by the proposed impact fee. The Association is concerned that the impact fee will affect homeowners in the district and their ability to buy new homes. Because the Association represents developers and landowners within the district, its members could be affected by the impact fee.

Because the Association states that it represents companies involved in residential building within the District's service area, it appears that one or more of its members would otherwise have standing to request a hearing in their own right. There is no indication that the claim asserted or the relief request would require participation of the individual members in this case. Accordingly, the Association meets criteria (1) and (3) of 30 TAC § 55.252 (Requirement by Group or Association). However, the Association's letter does not indicate that the interests the Association seeks to protect are germane to its purpose. Therefore, absent a showing of how the interests the Association seeks to protect are germane its purpose, the Association does not meet all three criteria set out in 30 TAC § 55.252.

Unless the Greater San Antonio Builders Association can show how the interests it seeks to protect are germane to its purpose, the Executive Director recommends the Commission find that the Association is not an affected person and that its request for a contested case hearing be denied.

G.G. Gale, Jr. On September 18, 2006, TCEQ received a letter from G.G. Gale, Jr., Vice-President of Timberwood Park Development Company, on behalf of all of Timberwood Park residents, requesting a contested case hearing. Timberwood Park is concerned that the District is unable to provide water service for its current customers, and that this fee would not guarantee that new customers would get the level of service they expect. Timberwood Park does not state how it would be affected by the impact fee and appears to represent existing homeowners.

Because the letter raises objection on behalf of the existing residents of Timberwood Park, and existing homeowners are not ordinarily affected by impact fees, this hearing request does not meet the first criteria of 30 TAC § 55.252.

The Executive Director recommends that the Commission find that Timberwood Park is not an affected person and recommends that its request for a contested case hearing be denied.

E. Commenters

The following are not listed as hearing requesters because they did not substantially comply with 30 TAC § 55.251(c), and are therefore not hearing requests.

Pastor Ryan, for Bright Star Ministries and Outreach. On September 14, 2006, TCEQ received correspondence from Pastor Ryan Texas Staveley with Bright Star Ministries and Outreach.

Pastor Ryan suggests the District explore other possibilities of increasing its revenues, such as working more closely with the city energy utility and using solar panels. With the correspondence, the Pastor includes several testimonials as to the good work that Bright Star Ministries is doing and how it is strapped for money. Pastor Ryan does not request a contested case hearing, does not show how Bright Star would be affected in a way not common to the public in general. As such, Bright Star does not appear to be an affected person.

R. Thorne. On September 18, 2006, TCEQ received a letter from Robert C. Thorne stating that he was not requesting a hearing, but requesting that the application be more clearly defined concerning "new connections" and "exclusions." Mr. Thorne owns two lots, only one of which has improvements on it, though both at one time had service meters. Mr. Thorne is concerned that he would have to pay for a new meter should he decide to build a duplex, and recommends that any properties which were previously metered should be exempt from this fee and that the application should reflect this.

The meaning of "new development" includes the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; *any of which increases the number of service units.* Tex. Loc. Gov't Code §395.001(6)(emphasis added). Because Mr. Thorne suggests that he may want to build a duplex, which could fall under the definition of "new development," he would likely be an affected person. However, he specifically states that he does not request a contested case hearing, and therefore his letter has not been treated as a hearing request.

M. Lee Niles, P.E., for Pape-Dawson Engineers, Inc. On June 22, 2006, TCEQ received a letter from M. Lee Niles, Senior Project Engineer for Pape-Dawson Engineers, Inc. Pape-Dawson represents multiple property owners and developers within the District's certificated areas. The letter requests additional information on the public comment process, specifically the dates for submitting comments and requesting additional information. It states that the increase in impact fees is a concern for many of its clients.

Notice of this application was published in the *San Antonio Express News*, a newspaper of general circulation in Bexar, Medina, Atascosa, and Comal Counties, Texas, once a week for two consecutive weeks on September 3 and September 10, 2006. Comment period ended on October 10, 2006. M. Lee Niles did not submit comment or request a contested case hearing during that period. The letter itself does not request a contested case hearing and was not submitted during the hearing request period. Therefore the letter has not been considered a hearing request.

Mrs. Carl E. Powell. On September 26, 2006, TCEQ received a letter from Mrs. Carl E. Powell. The letter states that Mrs. Powell would feel better about the impact fee if it was a one-time connection fee and if it was over and above the actual cost of a connection and shared by all water users; that the new connections should not bear total costs for overall improvements to the water company. The letter does not state how she would be affected, and does not request a contested case hearing.

Annie Spinks. On September 18, 2006, TCEQ received a letter from Annie Sparks, stating that an impact fee would cause her financial hardship, requests a waiver of the impact fee, and suggests that the companies that profit from development should pay the cost. The letter does not request a contested case hearing, and does not state how Ms. Spinks would be affected.

Jerald T. Mallernee. On September 28, 2006, TCEQ received a letter from Jerald T. Mallernee. He does not request a contested case hearing; states that he has lived in the residence since March 2005; and is concerned mainly with affordability; but he does not wish to attend a hearing as it would be a waste of time.

VIII. DURATION FOR THE CONTESTED CASE HEARING

If the Commission refers the matter to SOAH for a contested case hearing, the Executive Director recommends that the projected duration for any contested case hearing between preliminary hearing on the matter and presentation of a proposal for decision before the Commission, should be **six (6)** months.

IX. EXECUTIVE DIRECTOR'S RECOMMENDATION

Based on representations made to the Executive Director, the following own property in the District's service area and would be subject to the District's proposed impact fees:

- Roy J. Brown, *Customer*
- Ronald J. Freeman, representing Bitterblue Inc., *Developer*
- Jeff Buell & Frank J. Sitterle, Jr., for Sitterle Homes, *Developer*
- Dan Markson, for NRP, *Developer*
- John Carlton, on behalf of Standard Pacific Homes of Texas, L. P., *Developer*

The Executive Director recommends that the Commission grant the hearing requests of the above named parties.

Based on representations made to the Executive Director, the following may own property in the District's service area, but would not be subject to the District's proposed impact fees:

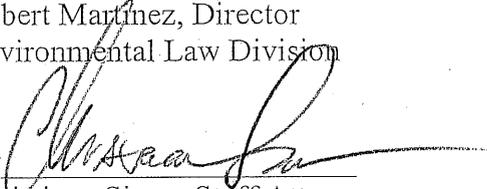
- Natalie Griffith, on behalf of Habitat for Humanity, *hearing request withdrawn*
- James Mattox, Mission del Lago, *hearing request withdrawn*
- Denise Ingledue, *Customer*
- Guadalupe Gonzales, *Customer*
- Mark & Sylvia Mennel, *Customer*
- Mark & Wendy Dickey, Martha Eurey, Sue Wilson, *Customer*
- Monte B Lloyd, *Customer*
- R.D. Bilbrey, *Customer*

- Rhonda Childs, *Customer*
- Pauline I. Perry, *Customer*
- Ester Cabral, *Customer*
- Dianne & Ken Joaquin, *Customer*
- Su & Jenny Yim, *Customer*
- Martha Mangum on behalf of The Real Estate Council of San Antonio, *Association*
- Becky Oliver, on behalf of Greater San Antonio Builders Association, *Association*
- G.G. Gale, Jr., Vice-President of Timberwood Park Development Company, on behalf of Timberwood Park, *Association*

Respectfully submitted,

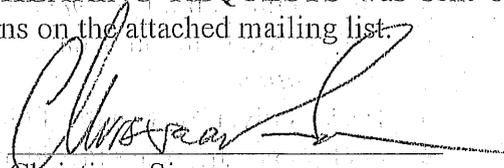
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
Glenn W. Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
Christiaan Siano, Staff Attorney
Environmental Law Division
State Bar of Texas No. 24051335
MC-173, P.O. Box 13087
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Phone: (512) 239-6743
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2007, a true and correct copy of the **EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS** was sent by first class mail, agency mail and/or facsimile to all persons on the attached mailing list.



Christiaan Siano
Staff Attorney

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

Date: January 31, 2007

Thru: RC Robert Cummins, P.E., Leader, Districts Review Team

From: RA Districts Review Team

Subject: Docket No. 2006-1833-DIS. Bexar Metropolitan Water District of Bexar, Medina, Atascosa, and Comal Counties; Application for Approval of Impact Fees; Pursuant to Local Government Code, Chapter 395. DT-FEE.
TCEQ Internal Control No. 05012006-D01 (TC)
CN: 600652739 RN: 101212868

A. GENERAL INFORMATION

Bexar Metropolitan Water District (District), by Resolution dated March 27, 2006, requests Commission approval to levy a uniform impact fee of \$2,556 per equivalent single family connection (ESFC) for new connections to the water system within all of the service areas of the District. Revised documentation and Capital Improvements Plan (CIP) were received by the Commission on November 6, 2006 supporting a reduced impact fee of \$2,376.

The District provides water service to fifteen separate, non-contiguous service areas which have been grouped into five general areas in Bexar, Medina, Atascosa, and Comal Counties, known as Northeast, Northwest, Southside, Castle Hills, and Hill Country. The service areas encompass approximately 271.98 square miles and serve over 325,000 customers or 78,180 residential ESFCs and 59,692 employee ESFCs. The CIP indicates one residential ESFC is defined as the typical consumption by one single family household with a 5/8 inch water meter, and an employee ESFC is equivalent to 25% of a residential ESFC and describes water use at a place of employment. The District does not provide wastewater treatment or services.

The District received Commission approval of impact fees in 1998 and currently assesses non-uniform impact fees based on service area. The CIP indicates that the District has begun the planning and construction of infrastructure to allow transmission of water from one service area to another, to provide better-quality resource management and transition from having multiple service areas to one uniform service area. As a result, the District is proposing a uniform impact fee.

The proposed impact fee is divided into the following six categories: water supply; pumping; ground storage; elevated storage; transmission; and study costs. Each category is divided into existing water system capacity available to new customers and future facilities as identified in the Capital Improvements Plan for the planning period of 2005 to 2015. The District proposes to charge one uniform impact fee that includes each category for all of their service areas.

Notice

The District requested a waiver of requirements under 30 TAC § 293.173(c)(2), to mailing notice to all landowners. By letter dated May 25, 2006, the Executive Director granted the waiver but required the District to comply with the following: give individual written notice to each of its customers; give individual written notice to any known developers who intend to undertake new development in the District's service area; and file an affidavit certifying compliance with these requirements with the Chief Clerk at least one week prior to the date of consideration by the Commission.

Proper notice of the application was published in the *San Antonio Express News* on September 3 and September 10, 2006, a newspaper generally circulated in Bexar, Medina, Atascosa, and Comal Counties, which are the counties in which the District intends to levy the impact fee. Documentation was also provided to support that notice was mailed by first class mail on September 11, 2006, in accordance with revised notice requirements as stated in a May 25, 2006 letter from the Commission's Environmental Law Division to the District's general counsel.

B. CAPITAL IMPROVEMENTS PLAN/IMPACT FEE CALCULATIONS

The District's engineer submitted a CIP which describes the proposed improvements on which the impact fee is based. The impact fees are calculated by dividing the total new customer capacity cost by total new customers expressed as ESFCs for the planning period of 2005 to 2015. The new customers can either be served by excess capacity in existing water system facilities or by future facilities as identified in the CIP. Appropriate capital costs for new customers are obtained by using a ratio of new customer capacity needs to total facility capacity. The specific improvements and estimated costs, as detailed in the CIP, are summarized as follows:

Category	Total Cost of Construction	Prorated Cost for New Development	Projected New Connections (ESFCs)	Impact Fee (\$ per ESFC)
Water Supply	\$ 43,413,495	\$ 10,319,866	30,885	\$ 334
Pumping	\$ 11,086,800	\$ 1,390,702	30,885	\$ 45
Ground Storage	\$ 51,376,947	\$ 1,593,991	30,885	\$ 52
Elevated Storage	\$ 56,121,925	\$ 2,177,284	30,885	\$ 70
Transmission	\$ 71,647,400	\$ 57,696,689	30,885	\$ 1,868
Study Costs	\$ 211,964	\$ 211,964	30,885	\$ 7
TOTAL	\$233,858,531	\$ 73,390,496	30,885	\$ 2,376

C. SPECIAL CONSIDERATIONS

1. Reduced Impact Fee

The District's application requests and the original CIP supports the levy of an impact fee of \$2,556 per ESFC for new connections to the water system. The \$2,556 fee includes an area known as Timberwood Park North which the District had applied to add to its service area through amendment of its Certificate of Convenience and Necessity (CCN). Subsequently, the District withdrew its application to amend its CCN to add Timberwood Park North. A revised CIP, excluding Timberwood Park North, was submitted to the Commission which supports a reduced impact fee of \$2,376 per ESFC for new connections to the water system.

2. Water Development Fee and ESFC Prepayment Fee

During review of the impact fee application, Commission staff has been made aware that on May 2, 2006 the District's Board approved a Water Development Fee of \$1,000 per ESFC for new connections to its water system to fund acquisition of water rights to take effect on May 3, 2006. According to Texas Attorney General Opinion No. GA-0482 (Nov. 7, 2006), a fee solely for the purpose of securing water rights is not an impact fee. The opinion does not state whether such a fee is permissible.

Additionally, staff has been made aware that in anticipation of the Commission's approval of the District's current application to levy impact fees, the District is offering developers a \$1,500 per ESFC prepayment fee for new connections to the water system. The \$1,500 rate includes the District's currently approved impact fee (varying from \$300 to \$1,068 per ESFC) plus a contractual charge, offered as an option to prepay and avoid paying a higher per ESFC rate of \$2,376 if the current impact fee application is approved by the Commission. Commission Rules 30 TAC §§ 293.172 and 293.174 require Commission approval before an impact fee can be assessed.

3. Protests

The Commission has received more than twenty letters requesting a contested case hearing on the District's application for approval of impact fees. A number of these requests are from individual homeowners that are under the impression that the impact fee would be levied on all current customers of the District. Furthermore, many of the requests include concerns with the District's service history and question whether the impact fee is justified or will guarantee improved service by the District in the future. Additional requests, including ones from The Real Estate Council of San Antonio, Greater San Antonio Builders Association, NRP, Sitterle Homes, and Mission del Lago, express concern that an increase in the District's impact fee will have an adverse affect on housing affordability and will price many potential home buyers out of the market.

D. CONCLUSIONS

Based on review of the District's application and supporting documents, the uniform water system impact fee of \$2,376 per ESFC as detailed herein appears to be within the limits allowed by applicable statutes and Commission rules.

E. RECOMMENDATIONS

1. Approve a revised uniform water system impact fee of \$2,376 per equivalent single family connection within all areas of the District as identified on the attached service area map.
2. Advise the District that any increase in the amount of the approved impact fee will require Commission approval.
3. Upon Commission approval of the impact fee, advise the District that:
 - (a) all funds collected through the levy of the impact fee shall be deposited in interest-bearing account(s), and combined with the interest earned, shall be utilized for construction and/or improvements as indicated in the October 2006 amended capital improvements plan; and
 - (b) records of the account(s) into which impact fee revenue is deposited shall be open for public inspection and copying during normal business hours.

F. ADDITIONAL INFORMATION

The District's president and professional consultants are as follows:

President: Victor V. Villarreal
General Counsel: Adolfo Ruiz
Engineer: Keith Pyron, P.E. - P B S & J



Ronnie Van Dam
Districts Review Team

RJV:

Attachment: Service Area Map

MAILING LIST
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DOCKET NO. 2006-1833-DIS; TCEQ INTERNAL CONTROL NO. 05012006-D01

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1. The first part of the document
describes the general situation
of the company and its
activities. It also mentions
the main objectives of the
project and the role of the
participants.

2. The second part of the document
describes the methodology used
for the study. It includes
information about the data
collection and analysis.

3. The third part of the document
presents the results of the study.
It includes a description of the
main findings and a discussion
of their implications.

4. The fourth part of the document
concludes the study and
provides recommendations for
future research.

5. The fifth part of the document
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in the study.

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