

TCEQ DOCKET NO. 2006-1833-DIS

APPLICATION BY BEXAR  
METROPOLITAN WATER  
DISTRICT FOR AUTHORITY  
TO INCREASE IMPACT FEES

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BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

2007 APR 6 PM 58

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**Bitterblue, Inc.'s Response to Bexar Metropolitan Water District's Response to Bitterblue Inc.'s Protest and Request for Hearing**

**TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:**

COMES NOW, Bitterblue, Inc., Protestant in the above referenced matter ("Bitterblue") and files this its Response to Bexar Metropolitan Water District's Response to Bitterblue Inc.'s Protest and Request for Hearing (the "Response") in the above referenced matter and in support thereof would respectfully show as follows:

**I.**

Bitterblue is a developer of much property in the San Antonio, Texas area. As indicated in Bitterblue's protest and request for hearing dated Sept. 20, 2006 (the "Protest"), some of the property that Bitterblue develops (the 208 acre Bass Properties, L. P. Property, the 150 acre Anton B. and Marjorie A. Friesenhahn property and the 780 acre Kinder Partnership property [collectively, the "Bitterblue Property"]) lies both

*"within the current service area of Bexar Metropolitan Water District (the "District") and within the area proposed to be served by the District [in the District's then pending CCN amendment application]."* [Emphasis added.] See page one paragraph one of Bitterblue's Protest.

The District in its response (the "District Response") to Bitterblue's Protest quotes only the part of Bitterblue's Protest that states that the Bitterblue Property is "within the area *proposed to be added* by the District [to its service area]." The District completely ignores the additional phrase in Bitterblue's Protest: that part of the Bitterblue Property is also "*within the current service area* of [the District]." In fact, as the pleadings show, the District's impact fee Application attempts to impose an impact fee on all of Bitterblue's Property, even though only part of that property is within the District's service area. Because **part** of the Bitterblue Property remains in both the District's proposed service area and because **all** of the Bitterblue Property remains in the District's proposed impact fee service area, Bitterblue should remain as a party to the District's impact fee application (the "Application"), and Bitterblue's request that the Application be referred to contested case hearing should be granted.

WHEREFORE, PREMISES CONSIDERED, Bitterblue respectfully requests that the Commission enter an order:

1. Granting Bitterblue's request for contested case hearing; and
2. for such other relief to which Bitterblue may be entitled.

Respectfully submitted,

Freeman & Corbett, L.L.P.  
Attorneys for Bitterblue, Inc.



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CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of April, 2007, a true and correct copy of Bitterblue, Inc.'s Response to Bexar Metropolitan District's Response to Bitterblue, Inc.'s Protest and Request for Hearing was served on the parties of record by hand delivery, facsimile transmission and/or First Class Mail.

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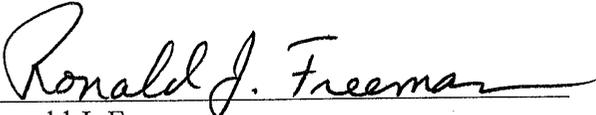
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BEFORE THE TEXAS 6 PM 3: 59  
COMMISSION ON  
ENVIRONMENTAL QUALITY  
OFFICE

**Bitterblue, Inc.'s Motion to Deny or, in the Alternative,  
Remand for Mandatory Amendment**

**TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY:**

COMES NOW, Bitterblue, Inc., Protestant in the above referenced matter ("Bitterblue") and files this its Motion to Deny or, in the Alternative, Remand for Mandatory Amendment (the "Motion") and in support thereof would respectfully show as follows:

**I.**

Bitterblue is a developer of much property in the San Antonio, Texas area. As indicated in Bitterblue's protest and request for hearing dated Sept. 20, 2006 (the "Protest"), some of the property that Bitterblue develops (the 208 acre Bass Properties, L. P. Property, the 150 acre Anton B. and Marjorie A. Friesenhahn property and the 780 acre Kinder Partnership property [collectively, the "Bitterblue Property"]) lies both

*"within the current service area of Bexar Metropolitan Water District (the "District") and within the area proposed to be served by the District [in the District's then pending CCN amendment application]."* [Emphasis added.] See page one paragraph one of Bitterblue's Protest.

The District in its response (the "District Response") to Bitterblue's Protest quotes only the part of Bitterblue's Protest that states that the Bitterblue Property is "within the area *proposed to be added* by the District [to its service area]." The District completely ignores the additional phrase in Bitterblue's Protest: that part of the Bitterblue Property is also "*within the current service area of [the District].*" For this reason, Bitterblue is also filing a separate response to the District's Response pointing out why Bitterblue should remain as a party to the District's impact fee application (the "Application") if the Application proceeds to contested case hearing. However, for the reasons set forth below, the District's impact fee Application should be denied.

**II.**

As the District also notes in its Response, the District has now withdrawn its CCN application which was pending in 2006 when Bitterblue's Protest to the impact fee Application was filed. Although the District now no longer intends to serve the portion of the Bitterblue Property which is outside of the District's current service area, the District has **NOT** made the corresponding

amendment to the impact fee Application to exclude from the District's proposed impact fee area the portion of the Bitterblue Property which will no longer be served by the District. Therefore, the impact fee Application still attempts to allow the District to impose an impact fee on all of the Bitterblue Property, including portions of the Bitterblue Property which the District no longer intends to serve.

### III.

The Commission should deny the District's impact fee Application because the impact fee Application has not been amended to remove from the District's proposed impact fee area the portion of the Bitterblue Property that now will no longer be within the District's water service area as a result of the District's withdrawal of its CCN amendment application last year. A map depicting the difference in these two areas is attached as **Exhibit A**. As can be seen from **Exhibit A**, only a portion of Bitterblue's "Friesenhahn Property" lies within the District's service area while the remainder of the Friesenhahn Property, and all of the Bass and Kinder Properties lie outside of Bexar Met's service area but within the proposed impact fee area. Because the District will not be serving this area which is outside of the District's service area, the District should not be allowed to impose an impact fee on this area.

### IV.

Further, the District's impact fee Application contains land use and facilities cost assumptions related to **all** of the Bitterblue Property, including the portion **NOT** intended to be served by the District. Until and unless those assumptions are removed from the analysis in the District's impact fee Application, it will be flawed. Thus, the District's Application miscalculates the proposed impact fee for the area the District now proposes to serve. Because of these fundamental flaws, the Application should be denied.

### V.

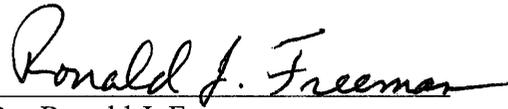
In the alternative, Bitterblue would show that at the very least the Commission should remand the District's impact fee Application to the Executive Director with instructions that the Executive Director either (i) require the District to amend the Application to exclude the portion of the Bitterblue Property which is no longer within the District's proposed CCN service area from any calculations resulting in a proposed impact fee or, in the alternative, (ii) dismiss the Application if the District refuses to amend the Application as instructed by the Commission.

WHEREFORE, PREMISES CONSIDERED, Bitterblue respectfully requests that the Commission enter an order:

1. denying the District's Application; or
2. remanding the Application to the Executive Director with instructions to the Executive Director to require the District to amend the Application as indicated above or else to dismiss it; and
3. for such other relief to which Bitterblue may be entitled.

Respectfully submitted,

Freeman & Corbett, L.L.P.  
Attorneys for Bitterblue, Inc.



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CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of April, 2007, a true and correct copy of Bitterblue, Inc.'s Motion to Deny or, in the Alternative, Remand for Mandatory Abatement was served on the parties of record by hand delivery, facsimile transmission and/or First Class Mail.

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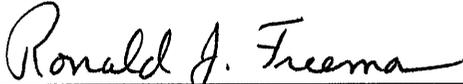
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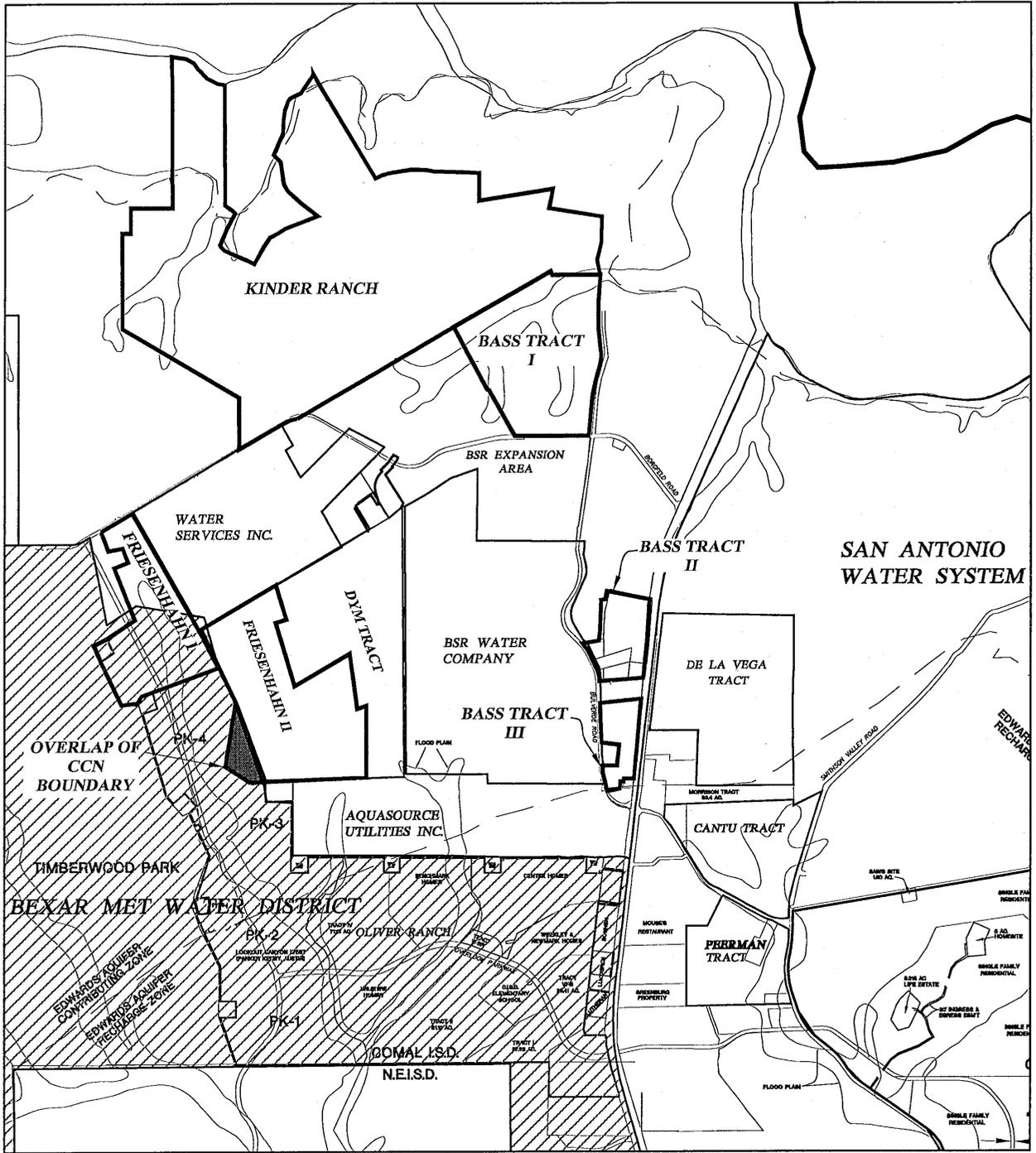
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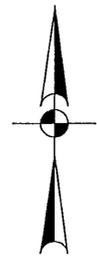
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**EXHIBIT A**  
**KINDER, BASS, & FRIESEHAHN**



SCALE : 1" = 3000'

Date: Apr 16, 2007, 3:03pm User: Jt: JAdkins  
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