

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER AUTHORIZING BEXAR METROPOLITAN WATER DISTRICT
OF BEXAR, MEDINA, ATASCOSA AND COMAL COUNTIES
TO IMPOSE AN IMPACT FEE**

An application by Bexar Metropolitan Water District of Bexar, Medina, Atascosa and Comal Counties (hereafter "District") was presented to the Executive Director of the Texas Commission on Environmental Quality (hereafter "Commission") for consideration of approval pursuant to TEX. WATER CODE § 5.122, TEX. LOCAL GOVT. CODE § 395.080 and Commission rules. The District requests approval to adopt and impose an impact fee for new connections to the water system within all service areas of the District. The Commission has jurisdiction to consider and grant this application pursuant to TEX. LOCAL GOVT. CODE § 395.080.

The Commission, after having considered the application and accompanying documents, and Memorandum from the Executive Director's staff dated January 31, 2007, a copy of which is attached as Exhibit "A" and hereby incorporated herein by reference, finds that the District's request for approval to impose a uniform water system impact fee within all service areas should be approved in the amount of \$2,376 per ESFC; that the impact fee is reasonable, equitable, and necessary as a mechanism to finance improvements to serve the designated service areas shown in Exhibit "B"; and that the application of the District conforms in all respects to TEX. LOCAL GOVT. CODE § 395.080 AND 30 TEX. ADMIN. CODE § 293.171 to 293.176, is in proper and legal form, and the purposes thereof are lawful.

NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the request by Bexar Metropolitan Water District of Bexar, Medina, Atascosa, and Comal Counties to impose a uniform water system impact fee of \$2,376 per ESFC within all service areas of the District is approved in accordance with TEX. LOCAL GOVT. CODE § 395.080. The District is advised that any increase in the amount of the approved impact fee will require Commission approval. The District is advised that all funds collected through the levy of the impact fee shall be deposited in an 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. The District is advised that the records of the account(s) into which impact fee revenues are deposited shall be open for public inspection and copying during normal business hours. The Chief Clerk of the Commission is directed to forward the District a copy of this Order. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

For the Commission

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

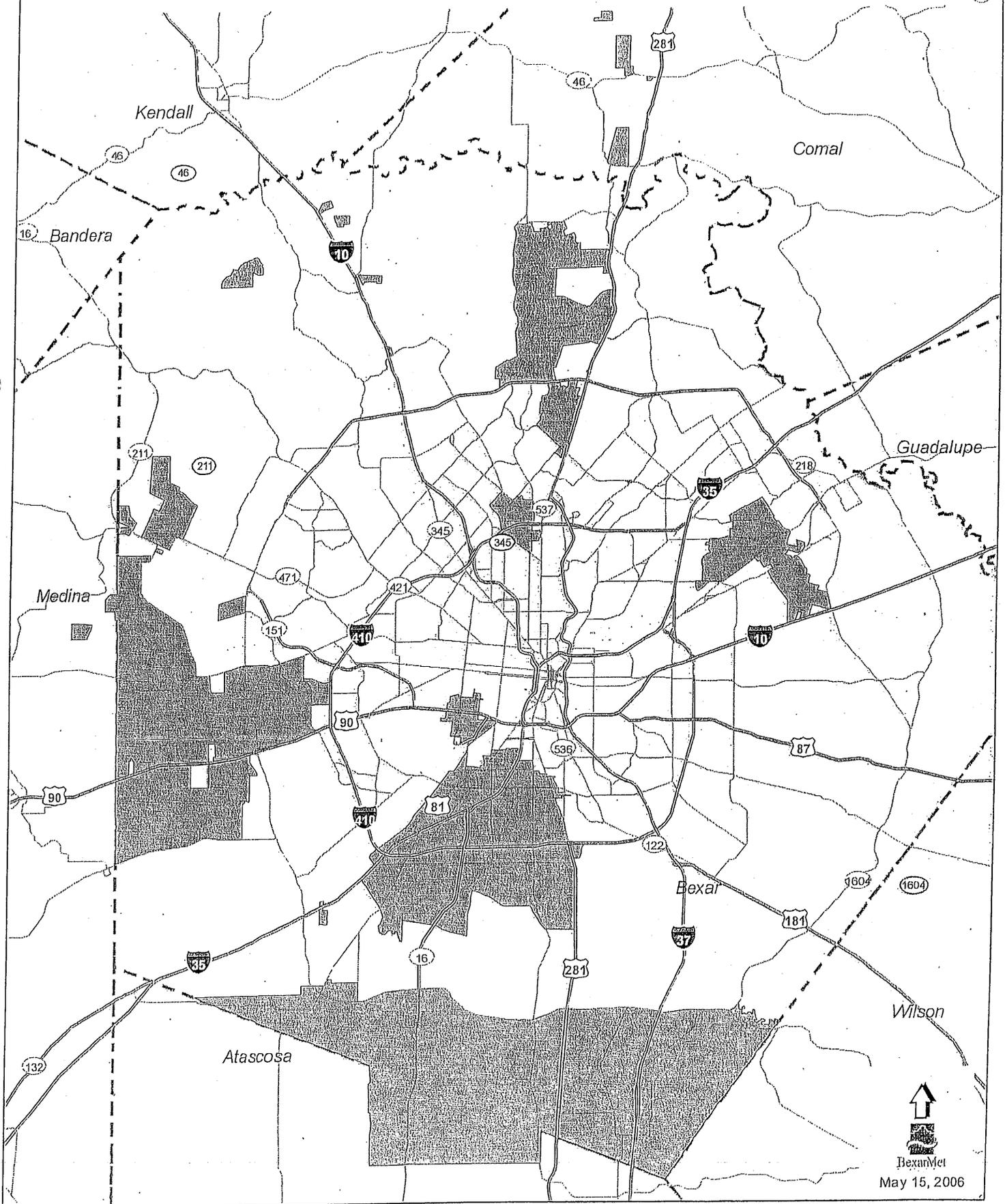


Ronnie Van Dam
Districts Review Team

RJV:

Attachment: Service Area Map

Bexar Metropolitan Water District Service Area





BexarMet
May 15, 2006

Exhibit "B"

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST**

Date of Request: April 5, 2007

Agenda Date: April 25, 2007

Person to Contact Regarding Changes to this Request:

Rob Cummins x6158/ Ronnie Van Dam x6191

CAPTION: Docket No. 2006-1833-DIS. Consideration of an application by Bexar Metropolitan Water District (District) for approval to assess impact fees in Bexar, Medina, Atascosa, and Comal Counties. The District requests Commission approval to levy an impact fee of \$2,376 per connection pursuant to Local Government Code, Chapter 395. The Commission will also consider requests for a contested case hearing and related responses and replies. (TCEQ Internal Control No. 05012006-D01, Rob Cummins, Christiaan Siano)

Chief Clerk Must send Notice of Application/Hearing: **Yes**

Type of Matter: Miscellaneous – Approval of Impact Fees

Counties: Bexar, Medina, Atascosa, and Comal

Uncontested: No

Contested: Yes

Prepared by: Ronnie Van Dam April 5, 2007
Districts Review Team Date

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners
Texas Commission on Environmental Quality

Date: January 31, 2007

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

From: 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.
TCEQ Internal Control No. 05012006-D01
CN:600652739 - RN:101212868

DESCRIPTION OF APPLICATION

Applicant: Bexar Metropolitan Water District of Bexar, Medina, Atascosa, and Comal Counties.

Request: Approval of a uniform impact fee of \$2,376 per equivalent single family connection (ESFC).

Type: Impact Fee.

Authority: Local Government Code, Chapter 395; Commission Rule 30 TAC Sections 293.171-176.

STAFF RECOMMENDATIONS

1. Approve a uniform water system impact fee of \$2,376 per ESFC, to be assessed uniformly within all areas of the District.
2. Advise the District that any increase in the amount of the approved impact fee will require Commission approval.

TECHNICAL INFORMATION

General: The District provides water service to areas surrounding the City of San Antonio in Bexar, Medina, Atascosa, and Comal Counties.

ANTICIPATED RESPONSE

The applicant is expected to agree with the staff's recommendation. However, there have been a significant number of protests.

CONTACT

Ronnie Van Dam, Technical Manager, Districts Review Team, 239-6191.

Prepared by: Ronnie Van Dam January 31, 2007

MAILING LIST
BEXAR METROPOLITAN WATER DISTRICT
DOCKET NO. 2006-1833-DIS; TCEQ INTERNAL CONTROL NO. 05012006-D01

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